Transcript of Proceedings

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SECRETARY'S ADVISORY COMMITTEE
ON
AUTOMATED PERSONAL DATA SYSTEMS

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

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

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

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

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

As a result, we think we do what is right, and we try the best we can. But sometimes we, for failure to communicate with the people in the rest of the world, perhaps...
overlook some very important considerations.

And I certainly hope that during this session today we can test against your expertise, this interdisciplin

group, the types of things that we in the criminal justice field feel are appropriate for our purposes for the preser-
vation of privacy.

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

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

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

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

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

Now, what is NYSIIS? It is basically a very
large computerized data base, containing derogatory information about people. And it is definitely a derogatory personal data system, and as such is obviously a concern for those of us who are concerned with privacy.

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

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

But this is indeed what we, who were in the planning stages of NYSIIS before it became a statutory agency, had planned and had designed, and we merely went the route of the large fingerprint identification system because of the need for this as a fundamental foundation for the criminal justice information system.

Our statute reads: "Through electronic data 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
evolve a system.

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

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

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

He went to about six hundred different agencies, and found a complete collapse of good organized crime intelligence information. No available information more than
newspapers and magazine clippings. And with redundancies in the various files and inaccuracies. So much so, that it collapsed.

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

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

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

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

Even the courts are accepting it, which is 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 Informa-
tion 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
fingerprint, a scene of the crime fingerprint, or a personal appearance as a result of somebody's observation of a person who perpetrated the crime; a modus operandi, for example, describing the method by which the crime was perpetrated, may identify the trademark of an individual perpetrator. 

Fraudulent checks, for example.

These two have very limited connotations in terms of privacy.

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

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

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

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

Now why do we collect this data? Why do we
response with the data?

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

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

And likewise, you have a totally different context between the identification portion of our responsibility and the organized crime intelligence portion.

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

In the correction agencies, they are interested of course in checking out who they are receiving in their
various institutions, both from the standpoint of making
sure they got the right person, but also getting an up-to-
date background to check on them; and likewise for parole
needs, to have information from these kinds of files.

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

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

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

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

As a result, we can save many millions of dollars
preventing the development of computerized local files throughout the State.

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

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

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

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

In organized crime intelligence, we feel differently. The concept of this system is quite different from that of the identification system.
First of all, we don't collect data directly at all. We merely serve as a clearing house -- or we plan to serve as a clearing house -- for the agencies in the State which already have organized crime files, and also, when operational, to provide the basis for setting up an organized crime intelligence file in those agencies which do not now have it.

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

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

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

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

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

Let me first make the point that our identification
system, which is the big bulk of our operation, is only partially computerized. Computerizing a very large identification bureau is a tremendous project. It is expensive, and it means that for some period of time you must necessarily operate dual system -- both your manual system and your computerized system.

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

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

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

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

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

So basically our file is built up by the submissions of government agencies, either from police agencies making an arrest or from correctional services with incarceration prints, or perhaps in many cases, also upon
the applicant-licensee, the Government agencies which have
the right to check our files on applicant or licensee.

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

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

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

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

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

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

We are very scrupulous and concerned about any-
thing not supported by fingerprints. However, people do have
our NYSIIS number from some basic fingerprint source of their
own and this will of course serve well to get your name
searched, possibly as reliable as the actual submission of
the fingerprints.

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

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

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

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

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

Indeed, some of the data that exists in the
organized crime field is laying in the basement of the Library of Congress, the records of the McClelland and Kefauver hearings, which has never been mined, in the sense of being computerized and made available for rapid retrieval and discrete retrieval.

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

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

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

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

As far as data collection procedures are concerned, the data collection is mandatory. Arresting agencies are mandated to submit fingerprints to NYSIIS, and
of course, the backup identification data. And these are received by facsimile transmission, by mail or courier, and the basis is, of course, the data which is given by the prisoner, the back-up data, also supplemented by the data which the arresting officer has obtained.

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

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

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

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

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

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

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

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

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

We also have a use and dissemination agreement, which is a very exacting situation, which is signed by the
head of the agencies and it is practically -- maybe we are invading his privacy by making him sign it before he gets the data -- but they have all signed it, and all the bigger agencies have signed it, and it is binding on them in terms of preserving the confidentiality of the people and the documents which we distribute to these various agencies.

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

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

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

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

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

We now also update with information from the
Federal Bureau of Investigation, the National Crime Information Center, and their Division of Identification.

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

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

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

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

In terms of security -- physical security -- we have developed a rather extensive physical security program. We have, of course, locked files. We are in a private building. We have the six upper stories of a ten story building, and we have so programmed the elevators that you cannot get
above the fifth floor by elevator at all.

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

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

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

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

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

Data is classified to a limited extent, and, of course, the organized crime intelligence data is highly classified. We maintain backup tapes off-site. And we do have means of seal orders. We have special problems in terms
of seal orders and youthful offenders that we have to treat in certain ways and we suppress data to certain people in reference to them.

In terms of personnel security, we have in-house -- in-house our people are investigated by our own investigators, in addition to normal investigation that Civil Service would provide.

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

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

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

The Governor, as you are probably aware -- in most states it is true -- has the power of removal of police chiefs. So we have a tremendous weapon at our command.
And of course we do invoke the public officers law, which provides for sanctions for malfeasance, misfeasance, and so on.

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

As far as access to the files is concerned, the access is provided for by law and also to some extent the form of access is controlled by administrative regulation.

We keep an audit trail of all who have access and what information is given and the reason for the request.

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

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

As I said before, we suppress parts of the criminal offender record information in certain cases, as required.

Users will be notified where a file is corrected and the file can be corrected in many ways.

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

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

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

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

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

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

This is, I think, the answer to an awful lot of the problems, and I wish I could sell the State of New York on it. But Massachusetts has led the way. It is the first
state. Several states are considering it -- California included. New York is considering it. But the State of Massachusetts has actually passed our Model State Act, and this I think is going to solve a lot of problems that Congress can let the states solve, instead of trying to solve it with all the attendant problems that rise when Congress gets into an area like this, which is perhaps really beyond their scope of operation, since the basic criminal justice field is a state problem.

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

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

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

But this is a problem, trying to find out when people have died. We don't have any system whereby we are
notified of this. But we have made the assumption that, particularly in rape cases, if a person with a history of first degree rape who is over eighty, he probably is not likely to recidivate. So we have eliminated some of the eighties.

As far as planning, evaluation and supervision is concerned, we are fortunate to have an advisory committee representing the various branches of criminal justice, and they have assisted us in design and implementation of the system originally and also in the monitoring of the system and advising us of the utility of the data which we are able to provide for criminal justice throughout the state.

In the agency itself, we have my confidential assistant who spends his full time as security manager, and we also have a security and privacy officer full time, assigned to examining all aspects of the security and privacy.

We have use and dissemination agreements in terms of our field operations, and field team audits for compliance with the use and dissemination agreements.

And of course we maintain close contact through various organizations such as the State Police Chiefs Organization, the sheriffs' organization and so on, in order to assure ourselves by personal contact of the quality of the service, and also the utility of the service we provide to the agencies.
Don't worry. They let us know if there is anything that doesn't quite satisfy them.

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

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

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

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

In the past, Civil Service Department felt we should keep them on file, and if somebody is arrested, they should be notified. But further examination of this con-
vinced them that the number of times they wouldn't otherwise hear about the arrest was so minimal, it was not really justified on a cost benefit basis to maintain these in the files.

Of course, one of the main arguments that a lot of people give you for retaining these is if you have unidentified dead, you can possibly locate them through keeping these types of civilian files.

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

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

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

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

We have built up support. We have a privacy committee in the legislature now, and I have testified before
them, and they have been receptive to our Model State Act and regulations, and hope to see them passed within the next few years at least.

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

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

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

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

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

Although the Civil Libertarians were concerned
at the time that they were getting actual data directly from our files.

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

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

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

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

So that is the type of information we'd like to add, as well as, of course, the probationary information, as we go on developing the criminal justice information system.
We have transition controls, audit controls, which are constantly monitored and reviewed.

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

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

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

He can of course have changes in the file made, and he can review it to see that they are changed, by again looking at the file, and he doesn't have to come to Albany to look at the file. We will send the files out. We have offices in New York City, and Buffalo, Syracuse. And we will send the files to those offices. And in the case of prisoners who are actually incarcerated, we will send it to the...
warden of the prison. And many, many people take advantage of this, and the right to have their files purged as well.

We have over three thousand people make application each year to purge their files.

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

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

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

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

And then, as I say, many of the costs are minimal in some cases, and aggravated in other cases, depending on the type of search; different sets of fingerprints have different difficulties of search.
Also, if we have to go both manual and computer in some cases for various reasons, it adds to the time and so on.

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

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

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

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

And I submit that the only way I feel comfortable with the idea of a universal identifier, if one must be, would be to tie it in with a fingerprint. All we would need, of
course, would be a single print on the card, which would be retained in a data base with the universal number, wherever that may be maintained, and the fingerprint maintained there. At the same time the number is given, a fingerprint could be taken.

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

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

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

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

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

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

The only thing I would like to correct is a
possible mistaken impression created by the good Doctor's statement of omniscience on my part.

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

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

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

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

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

MR. HARDAWAY: You would not carry a file on me as an individual?

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

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

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

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

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

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

MRS. HARDAWAY: So I would only suspicion that
you carry that, and not have a right to see that?

MR. GALLATI: You would have no right to see that.

Once we open an organized crime intelligence file for anybody to see, the files are dead. Forget them.

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

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

MS. HARDAWAY: Yes.

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

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

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

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

But the number of people involved are not anything of the magnitude of the people dealt with in the identification files.

MS. HARDAWAY: Thank you.

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

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

MR. DeWEESE: Briefly, for the Committee.

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

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

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

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

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

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

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

MR. GALLATI: Well, the procedure is for you to
make a request for the return of the records.

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

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

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

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

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

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

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

MS. GROMMERS: Professor Weizenbaum?

MR. WEIZENBAUM: Just to follow up on that, the
first offender who is not convicted and asks for his record to be purged or returned to him -- you said the record also goes to the FBI?

MR. GALLATI: Right.

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

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

MR. WEIZENBAUM: Is that a separate action?

MR. GALLATI: Yes.

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

MR. GALLATI: Not from us, no.

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

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

MR. GALLATI: Well, I honestly don't know what they do. But they would certainly return them upon the request of the submitting agency. They will return the fingerprint files and the criminal record. Whether they would make a note of this in some other file, of course, I just don't know.
MR. WEIZENBAUM: My suspicion is, under certain circumstances, for example the one I described, that the file very quickly propagates through a lot of agencies, and I doubt very much that all of them can be retrieved. I doubt that very much.

But that is not your business, in a way.

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

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

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

MR. WEIZENBAUM: How reliable is that?

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

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

MR. D'ALLESSANDRO: Up to seven respondents, we have a ninety-three percent reliability. We can get a hundred percent reliability if we print out all the possible respondents, but in particular classifications it
becomes impractical. So I could say between ninety-five
and ninety-seven percent reliability is what we have right now,

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

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

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

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

MR. GALLATI: Yes.

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

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

MR. GALLATI: Well, I think the question is a
very good one, and the answer perhaps is simply that we need
the organized crime files if we are going to do anything
about organized crime. And it's important that we limit it
very carefully, as we have in our statute.
Organized crime intelligence. That is the intelligence with which we are dealing, and we have never had a charter or mandate to do anything other than organized crime.

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

MR. DOBBS: Bob, of the two million people in the identification files, what percentage in fact have convictions?

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

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

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

MR. DOBBS: Are these all felonies?

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

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

MR. D'ALESSANDRO: One of the problems Bob alluded to earlier is that our reporting system has been very poor, historically. So the mere fact there is no conviction in an
individual's records does not necessarily mean he was not convicted.

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

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

MR. GALLATI: That is true.

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

MR. GALLATI: That is true.

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

MR. D'ALESSANDRO: It isn't.

MR. DOBBS: Is it not?

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

There are certain selected misdemeanors, like
drug violations --

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

MR. D'ALESSANDRO: The more serious misdemeanors.

So until 1971, the large bulk of crimes for which fingerprints were taken were felonies.

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

MR. GALLATI: Depending on the license.

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

MR. GALLATI: Right.

MR. DOBBS: But for the others --

MR. GALLATI: For an automobile license, no.

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

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

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

MR. GALLATI: Yes, through the FBI.

MR. DOBBS: And also, I presume, from places like the National Driver Register File?
MR. GALLATI: No, we do not.

MS. GROMMERS: Mr. Gentile?

MR. GENTILE: It is not direct?

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

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

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

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

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

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

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

MR. D'ALESSANDRO: From the FBI.

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

MR. GALLATI: Well, yes, we have to take that into
account because it is very obvious. They send material which
has missing data or data which is obviously inaccurate.

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

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

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

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

MS. GROMMERS: Thank you very much. I just want to remind you all that these questions are all terribly interesting and I know you all like to hear the details. If you could think of limiting yourself to either three questions or four minutes, and then we will come back to Professor Weizenbaum and you, Mr. Dobbs, and anyone else who has a question, if there is time.

Mr. Gentile?

MR. GENTILE: I have one question. In recent articles of Computer World, the Comptroller of the State of
New York audits some of your functions, as I think you alluded to.

MR. GALLATI: He sure does.

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

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

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

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

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

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

We have signed a contract with the NCIC, computer-
ized criminal history program, which we are bound to abide by, and we have used the use and dissemination agreement with our local agencies to protect us, because we require the same types of things from them that the FBI requires from us in terms of confidentiality and security of the documents from NCIC.

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

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

The position of the NCIC is that there should be dedicated systems in law enforcement and criminal justice and they should not be under the control of other than management control of agencies of criminal justice.

This, of course, is somewhat difficult, particularly in smaller states and smaller communities. So I thought we might as well mention that, John, since I know John is president of NASIS, as you know.

MR. GENTILE: Now that you bring that subject up, I might say that independently, the City of Chicago is running in a shared environment its police department, and
former Attorney General John Mitchell got into this one, saying that shared computers can still be used to provide adequate protection and privacy.

And the point I'd like to make here is that when we talk about the dedicated computer, if you talk about dedicating it to criminal justice information systems, you are dedicating it to a very large scale system when you interpret what criminal justice information systems contain. You are talking about the correction agencies, the state government, you are talking about court systems, you are talking about law enforcement agencies, and so on and on.

One final question, and then I will be quiet.

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

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

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

But the use of the word law enforcement, John, is used in the context of the use of the term law enforcement
in the Safe Streets Act, which includes criminal justice.

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

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

MS. GROMMERS: Mr. Davey?

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

Are there charged you make to other local law enforcement agencies for the FBI, or vice versa? How do the mechanics work? How do you transmit information, audit the information being sent in for accuracy purposes, that whole range of areas. If you could spend my four minutes answer that question.

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

First of all, we are a service agency, and basically we do not charge for our services. We provide all these services, basically, without any cost to the users.
For example, we supply facsimile machines to as many agencies as we can within our budgetary limitations, and we also have been supported by the Law Enforcement Assistance Administration to supply others.

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

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

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

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

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

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

Now we also are utilizing the State Police
communications network, and to the extent that we utilized it, of course, the customers, that is, the users in the field, do pay for some part of that network.

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

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

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

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

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

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

MS. GROMMER: Mr. Muchmore?
MR. MUCHMORE: I have two related questions.

First, you mentioned a figure there of the number who would ask for correction of their records. What was that?

MR. GALLATI: Three thousand a year.

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

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

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

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

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

Is that a true figure? Is this unusual? Is this going to be corrected in the future?
MR. GALLATI: Well, everybody wants to correct it. And of course we have had communication with the director indicating the fact that we should submit disposition, and the agencies of criminal justice are doing as much as possible to submit dispositions.

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

MR. MUCHMORE: Especially when found guilty.

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

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

But our experience in New York is horrible in disposition reporting, and it's not dissimilar to most states. And as a result, of course, if we don't get the disposition, the FBI doesn't get it either.
MR. MUCHMORE: I was intrigued. But obviously we must not be abnormal.

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

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

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

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

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

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

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

MR. MUCHMORE: But about a third of these are
one arrest situations.

MR. GALLATI: It's a horrible situation.

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

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

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

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

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

MR. GALLATI: To the person?

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

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

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

MS. GROMMERS: You are not aware that this is possible?
MR. GALLATI: I am sure it is possible.

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

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

MS. GROMMERS: Mrs. Cox?

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

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

MR. SIEMILLER: I would pretty near pass, with just one comment. That is, if you flag this record because it has a female name and a male check, you don't always prove out that it is in error, I think. That's all I have.

MS. GROMMERS: Mr. Anglero?

MR. ANGLERO: Are minors completely excluded from this?

MR. GALLATI: Right.

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

MR. D'ALESSANDRO: Minors or juveniles? Minors are those under twenty-one.
MR. GALLATI: I believe he is probably referring to juveniles. Sixteen and under. Under sixteen, to be exact.

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

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

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

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

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

MR. ANGLERO: This information, whenever it is forwarded -- even though I think that the question was somewhat answered before, but -- is it possible to forbid or prevent the forwarding of information from juvenile or minors that had not been found guilty to any FBI or any one agency
besides you?

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

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

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

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

MS. GROMMERS: Mr. Impara?

MR. IMPARA: Relative to the first offender, assuming I were a first offender and the charge was not adjudicated, and I wrote to you for my record. Would you, in addition to sending me my record, tell me other agencies to whom this had gone as a matter of routine, or would I have to ask you who else have you sent this to so I can write to them and get it back?
MR. GALLATI: Well, the normal procedure is you deal through the arresting agency. So you go to the city, let's say, that made the arrest, and you would ask them to obtain your records from whoever they send them to, because they would send the card to the FBI, it would be their obligation to get it back from the FBI and NYSIIS, or the state agency.

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

MR. IMPARA: That would be routine?

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

MS. GROMMERS: Ms. Lanphere?

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

MR. GALLATI: Dissemination agreements.

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

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

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

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

MR. GALLATI: Well, we will cut them off if they
haven't signed.

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

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

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

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

You were mentioning yesterday perhaps defining a property right of a subject to the information in a file about him. And that may be a way of creating a clearly recognizable cost of information being put in a file, a cost to the information compiler.
To the extent that a property right would begin to include a series of rights, and you mentioned a number of them in the process of this, I think I wasn't entirely clear on which were actually rights of subjects.

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

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

The right to approve dissemination.

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

The right to be notified of additions of information to the file.

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

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

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

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

MR. GALLATI: No. I think we have to take that
as a situation apart.

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

MR. GALLATI: It's not a statutory right. It's an administrative decision. And that is unfortunate. I think it should be included in the Model State Act, and hopefully will be a statutory right.

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

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

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

The property right that he might have to personal information is forfeited by virtue of arrest, just as he
forfeited his liberty at the point of arrest.

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

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

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

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

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

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

MS. GROMMERS: Mrs. Gaynor?

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

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

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

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

MR. GALLATI: Yes.

MS. GAYNOR: For instance -- well, that wouldn't work -- if there is an error, what resource does he have really? Does he have to go back to the agency or can he do it when he finds that perhaps the information that was really sent was wrong information?

How does he get this thing corrected?

MR. GALLATI: In other words, to view his record, he comes to us either at Albany or our office in Syracuse,
New York City, or the prison warden's office, and he reviews his record, and he says, "I was never arrested for so and so, I was never convicted of so and so."

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

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

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

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

MS. GROMMERS: Mr. Aronoff?

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

Supposing, taking Mr. Muchmore's example, supposing a false arrest data and conviction data had been
passed on, and as a result a person could not get a job
for a period of X years while that false information was
being passed on.

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

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

MR. ARONOFF: The state has sovereign immunity.

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

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

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

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

MR. GALLATI: I am not honestly sure they would.

It seems to me you would have good cause of action, if you
can prove negligence.
The negligence might not be on the part of the state, either. If it comes in to us like this, and it is incorrectly charged, it is a false arrest and so on, the action may not be against the state but against the community which was negligent, or worse, in terms of the submission.

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

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

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

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

My question is, does this throw too much of a burden on the information agency to allow a statutory cause of action to a person who has had false information disseminated about him?

How would you react -- your agency?
MR. GALLATI: My reaction would be that this should have the same remedy that you would have for negligence in any tort case. I don't see why this should be any different. I would suggest that the sovereign immunity should be waived in these cases, as in many others, if there is a proven case of negligence on the part of the state. Or, of course, the negligence might really be at the local level, in which case the cause of action should probably be brought at the local level.

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

But some of the people get a little abusive.

MS. GROMMERS: I want to thank you all.

The staff has a number of questions also to ask.

Mr. Justice?

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

What evidence do you have or know is available that would substantiate any claim that an organized computer file on the state or Federal level really does achieve the objective of fighting crime for the money spent, any more
than trying to get better housing or better education or all the other things?

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

MR. GALLATI: Well, in order to answer the question, I think I should focus in on one part of the total picture. Obviously the stolen property file -- we have figures which show so many more recovered vehicles because of the fact that people are able to more quickly determine whether a vehicle is wanted.

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

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

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

How much have we saved local communities? I would say at least as much as our annual budget for identification
purposes, for example; by virtue of the fact that we are able to handle the arrest records situation in New York City, we are able to relieve the City of New York of this burden.

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

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

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

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

MR. DE WEESE: I just wanted to follow up on the negligence argument. I think the problem you have is that all of this occurs in your lofty tower, and it's hard to prove negligence except simply the fact that the file is false. It's very difficult to prove that you have been denied a job
because of a file, because there are many factors which an employer can claim go into his decision not to hire somebody, and it's almost that you have to have a liquidated damages type of situation where you just get so much money for having your file used improperly regardless of the consequences.

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

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

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

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

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

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

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

You indicated that as a result of the existence of the New York State intelligence system, the total taxpaying
body of the citizens in New York may be spending less money, but I don't think that is in any way responsive to the question how does the existence of this kind of a system impact on diminution of crime or apprehension of criminals as against not having it.

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

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

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

MR. MARTIN: The output objectives.

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

MR. MARTIN: That is the assumption that the question is trying to test.

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

I don't know how I can prove it other than to say this is a user need which is recognized and supported in law.
MR. JUSTICE: In your judgment, does it fill that very strong need to have a criminal justice side? You must feel that the things you are doing are helpful to combat crime, but I guess the question I was asking is, is there any way you can substantiate that?

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

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

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

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

MR. GENTILE: I'd like to comment first that Mr. Gallati's organization is kind of a service bureau to the ultimate users, the state agencies who are using his service. So it might be more appropriate to ask those users.
And secondly, I'd like to comment that in a number of states -- in Illinois, for example -- there has been a split of the old law enforcement agencies so that we have now a department of corrections and a department of law enforcement, and the purposes of these two departments are very different.

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

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

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

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

MR. DAVEY: I'd like to make a comment about this question of the court system. This is the second or third time where we learned about the courts being slow in reporting disposition of various cases. The first time being when I discussed the credit reporting aspects of it. This is all
public record information, and yet you find that in both
the law enforcement system and on the credit side, in which
you are essentially dealing with different aspects of the
court system, that this is an area where there is very
inexact reporting requirements. It's easy to get stuff into
the court but extremely difficult to get it out.

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

MS. GROMMERS: Thank you very much for that
suggestion. We shall certainly try to follow it up.

Mr. Dobbs?

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

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

I think that it is fair for us to contrast
asking that question, for example, of an HEW information
service in the same sense in which you put it. Because I think that it is an appropriate question there, too.

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

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

(Recess.)

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

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

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

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

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

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

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

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

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

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

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

The second area that the subject has affected us in is in the developing of so-called multi-state information
system, that is, a system that was developed under support from NIMH, starting in about 1966. And it had the aim of computerizing patient information from state psychiatric hospitals in a number of the New England states, and having them all feed into a central computer.

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

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

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

It is now in operation in some of those alcohol treatment centers, and should soon be extended to them all. And then finally what I have just said about the alcohol centers is also true in the narcotics service centers, although in that area the scene is substantially more confused and complex. I probably don't have to pursue that very far.
The information system that is operating in those centers that the NIMH supports has been developed and is still operating out of -- I can't remember the name of the Institute in Texas --it's the Texas Christian University.

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

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

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

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

DR. CAIN: Fine. Irv?

MR. GOLDBERG: Thank you.

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

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

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

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

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

That is the difference between the register and other systems.

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

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

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

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

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

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

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

It was a cooperative project with the State Department of Health, and the State Department of Mental Hygiene, which were separate departments at that time, and as I say, NIMH.
This was the second register -- log scale register -- in the country. The first, which I will refer to very briefly, is one in Monroe County, New York, which covers that entire county's population. And there was one a little later on, I think in 1963 and 1964, with the State of Hawaii, which NIMH supported, and another one in the Tri-County area of North Carolina which is no longer in existence but that I think was initiated in 1963 or 1964.

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

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

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

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

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

MR. GOLDBERG: Okay, very good.

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

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

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

Also, we were bound by the Public Health Service
regulations at the Federal level. And in no instance in the operation of this register has there -- are we aware of any violation of this. We have never had any account of that, any complaint of that in my experience, and I believe Jean Warthem will bear me out on that.

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

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

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

And we have developed a model which will -- which enables us to select any cohort of patients, say admitted in a particular year for the first time ever, and trace that person's psychiatric history as we have it recorded in the register, to tell how long he has been in this facility, how
long out, when he came back to another facility for how long, and so on.

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

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

Once the centers are introduced, we can then study what happens to the population in those areas and related areas or other areas of the State, after the introduction of those centers.

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

The model we have developed for the Maryland register is applicable with certain modifications to other registers in the country, and we are now working with those people to have them, at their interest and request, introduce
this model to their system so that we might get comparative data in other parts of the country, and that work is now going on.

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

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

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

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

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

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

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

The register -- NIMH's role in the register program was terminated effective with the completion of reporting of data for fiscal 1968, ending June 30, 1968, and
we are in the process of completely updating that register system so we would have a data resource at NIMH, and the system itself will be turned back to the State.

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

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

MR. SIEMILLER: I will pass to Puerto Rico.

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

MR. ANGLERO: I will try to consume less.

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

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

MR. ANGLERO: As an information system.

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

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

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

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

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

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

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

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

Now in this interim period, I have had to do a great deal of fast talking, in fact, to keep the reporting system going. And I have succeeded in doing so primarily because, if you forget the linkage aspect for the moment, because we are not linking, we are more up to date than 1968
on dealing with individual transactions, that is, admissions
data, discharge data and so on, for private facilities as
well as state facilities.

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

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

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

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

We have also used this information to study
certain patient groups, like alcoholics, and where they are
going and what have you.
If you remember, if you live in this area, alcoholism was a prime concern of the General Assembly this year. So we are getting value out of portions of the system, but are not currently actually using the longitudinal information.

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

MR. IMPARA: One brief question.

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

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

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

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

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

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

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

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

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

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

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

MR. GOLDBERG: If you are talking about the
State statute, that would be correct.

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

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

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

DR. WARTHLEM: No, they are not.

MR. GOLDBERG: Does this vary between facilities now?

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

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

To the best of my knowledge, there is no hospital who has a routine statement which must be uttered.
MS. GROMMERS: Why not?

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

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

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

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

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

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

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

DR. WARTHEM: The information coming in?

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

DR. WARTHEM: All right. Strictly speaking, at the present time, we have never been able to go out and do
good, reliable studies. Because I think that about the only way this could be done would be to go back and check with the medical record.

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

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

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

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

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

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

MS. GROMMERS: There are.

DR. WARTHEM: I know, but to speak from the point of view of the Department of Health and Mental Hygiene.
Because I really in this can only give my personal opinion, and I do not have legal training.

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

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

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

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

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

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

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

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

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

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

MR. ALLEN: Pass.

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

DR. WARTHEM: All right. We have reporting from
the full set of facilities. We do have reporting from virtually
all facilities directed by a psychiatrist
We do not have reporting from some social work agencies and so on, some alcoholic groups. But agencies directed by a psychiatrist, and this includes out-patient clinics and private hospitals.

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

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

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

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

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

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

DR. WARTHEm: Okay. At the present time, we
have a new Commissioner of Mental Hygiene. Are you aware of that? He is very new. He came July 15.

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

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

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

And as part of this overhaul, no doubt the form that you see in front of you will change somewhat.
MS. GAYNOR: What is your tie-in with schools in relationship to the Department of Mental Health and Mental Hygiene?

DR. WARTHEM: None.

MS. GAYNOR: None whatsoever?

DR. WARTHEM: No formal tie at all.

MS. GROMMERS: How about informal?

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

MS. GROMMERS: With names, or --

DR. WARTHEM: No, no. On a research study, we do no furnish names. The data as they are available to researchers come by way -- primarily by way of statistical tabulations that we perform in-house.

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

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

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

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

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

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

MS. GROMMERS: Thank you very much.

Dr. Gallati?

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

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

MR. GOLDBERG: In Hawaii, they also have had State legislation. I was not present at the time, but I
believe this statute was used as a basis for the statute which was eventually developed by that State.

MR. ARONOFF: I will pass my time.

MS. GROMMERS: Mrs. Cox?

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

DR. WARTHEM: This has never been done.

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

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

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

Number eight on that page, "Characteristics of adolescent cases receiving psychiatric services and/or school facility services." The Baltimore City School Division of Special Services records were used, but this was done by a staff person with their company and nobody else sees the names of these people.
In other words, names are only used for that kind of linkage, but it is not provided to anybody.

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

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

MRS. COX: I mean the treatment.

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

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

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

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

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

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

DR. WARTHEM: For research purposes only.

MRS. COX: All right. Let's put it thatway, then.
It should never be collected for statistical purposes. It is collected to give you research information, then, on the history of mental diseases and the magnitude of the disease and so on?

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

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

MS. GROMMERS: What good is that to anyone?

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

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

And one way of looking at what happens -- and as I said, we had a model which actually does that -- actually
traces the individual's record.

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

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

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

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

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

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

So the death clearance, for example, is now totally not only in-house within the Department, but in-house within
my own shop.

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

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

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

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

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

MS. GROMMERS: Do you use this for budget control
or inventory of beds required or planning purposes?

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

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

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

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

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

MS. GROMMERS: Thank you.

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

MS. GROMMERS: Mr. Muchmore?

MR. MUCHMORE: Pass.
MS. GROMMERS: Mr. Davey?

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

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

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

We might come back to it.

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

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

So in order to get as good reporting as possible, we do not ask for this on a daily basis. When the facility has checked their forms, they pull off the top half and send this to us within roughly a month, or at a really routine day in the month for each facility.
They then retain the rest of the record as part of the medical record until the time of discharge.

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

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

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

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

DR. WARTHÉM: These are ordinarily bits of information unknown at the time of admission.

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

DR. WARTHÉM: Yes.

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

DR. WARTHÉM: Yes, a change in spelling of the name. Sometimes the information has been obtained from the patient.

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

DR. WARTHEM: You mean the correction?

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

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

DR. WARTHEM: Since he doesn't, obviously yes. They are probably made by the patient or the family. They are for us minor ones.

The diagnosis is totally something over which we have no control. If the physician states that the diagnosis is thus, and so, we accept it. And whether or not the patient knows how he was diagnosed is purely, so far as I am aware, a matter between the patient and his physician.

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

Do you want to comment on that?

MS. ROSEN: When the register program was first developed, it is my understanding that every facility was contacted. In most cases, the director -- particular at the
state facilities -- the director may have made the decision as to whether a patient would be informed or not about whether he was being registered, so to speak, or whether he was being put on the register.

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

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

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

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

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

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

MR. GOLDBERG: Generally speaking, I think infor-
I think that is the way it would normally appear at the time.

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

MS. GROMMERS: That would be very helpful.

MR. DAVEY: Maybe you have the answer or not.

But it would be helpful.

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

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

The computer costs were really quite high.

MS. GROMMERS: Can you be specific?

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

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

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

DR. WARTHÉM: The reporting system proper is not
very expensive. The preparation of the forms, the filling out of the forms.

MS. GROMMERS: Like $3.00 per patient?

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

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

DR. WARTHEM: If you went to a psychiatrist in his private office, I know nothing whatsoever about it. If you go to see a psychiatrist in a facility, whether as a private patient or as a state patient, a form will be filled out.
Now at the time of admission, a diagnostic impression may be furnished. The item may also be left blank. Or a psychiatrist may put in a diagnosis.

It may be left blank at the time of admission.

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

MR. SIEMILLER: His best guess.

DR. WARTHÉM: This may very well be. I am sure you are right.

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

MS. GROMMERS: We'd like him to supply that later.

Mr. Dobbs?

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

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

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

DR. WARTH: Can you answer that one, Irv?

I cannot answer specifically.

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

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

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

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

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

The other question was, is it the case that the practicing mental health professional, these days, feels
that the class of information that you are collecting in this kind of register is useful to them in actually furthering and supporting the delivery of their services, or is there any controversy within the field itself about how valuable this kind of information might be, specifically the longitudinal kind of traffic?

MR. GOLDBERG: Well, I think individuals are going to vary in their opinions about this. I think that would be true in almost anything we do.

But generally speaking, there was a great deal of interest — the development of the psychiatric register came about because there was a great deal of interest in this tool as a method of both furthering research and providing information on the utilization of services.

And the fact is that I have had visitors from abroad who have looked at what we were doing with the register. These were psychiatrists who were extremely excited about the potential that this register had, and in fact were extremely anxious and interested in the kinds of anxious to have and interested in the kind of an instrument we developed with respect to the spelling out of the patterns of utilization of care in this population.

They have requested the kinds of forms we had, and as I say, other registers in the country which include people concerned with providing care in private facilities.
They are interested in obtaining this kind of information.
So yes, there has been an expression of interest in it, in the usefulness of it.
Now if you mean individual psychiatrists, I don't know. We don't generally get in touch with that many of them in our normal course of activities.
It's hard really, I guess, to evaluate how many really feel this is particularly useful information to them in their patient management.
Although this is not intended as a patient management tool, I ought to point that out also. We only have a face sheet of information. We do not have an entire record.
We only know that the person has received maybe chemotherapy or something of this kind. We know nothing more than that.
MR. WEIZENBAUM: I have listened carefully, but I am totally confused.
Looking at pages two and three of this pink thing, among other things it talks about the purpose, and it seems to me the purpose as stated here is entirely incestuous.
It lists three purposes. The first one is to provide a laboratory for solving methodological problems for registers of this kind.
The second is to demonstrate the application of
registers for various types of applications of this kind,

And the third is to provide the source for training, guidance and so on, and so forth, to persons interested in building registers of this kind.

It seems completely incestuous. I'm not clear what it has to do with psychiatry, or whatever.

However, I want to attach myself to the question asked earlier where I thought I heard confusing answers with respect to item 2.3. Data banks in particular schools.

One answer we heard from Dr. Warthem was that there wasn't any, and Mr. Goldberg said yes, there was.

And then on page seventeen, paragraph eight, we see 318 children identified out of a total of 5,000 receiving attention from the Baltimore City Schools.

What is going on?

DR. WARTHEM: Let me make a distinction.

MR. WEIZENBAUM: Let me focus sharply so you can perhaps answer it.

Apparently there was a matching of rosters having to do with your data bank somehow. And one roster apparently contained the names or some identifiers of 5,000 children who were having some sort of psychiatric difficulty or at least were recorded in a school data bank of some kind.

This was apparently matched with something else, using your roster. Could you explain that to me?
IR. WARTHEM: Let's talk about two kinds of things.

One, there has been no general matching on a continuing basis.

There have been special studies. There have been special studies in which various rosters have been submitted, I believe in each case to us.

MR. GOLDBERG: We have some.

MS. GROMMERS: Just this particular one.

DR. WARTHEM: The Department of Education at one time -- and I believe you are no longer receiving them, are you?

MRS. ROSEN: No.

DR. WARTHEM: Submitted forms on their children. These were matched --

MR. WEIZENBAUM: What did they submit to you? Forms? Paper?

MRS. ROSEN: They submitted a form that we paid them for their cooperation to collect a certain identifying information and service information from the Division of Special Services in the Baltimore School System.

This definitely was an agency run by the school system for children with emotional problems -- not retardation, just emotional problems.

They were interested, and we were interested at the time that this study was conducted, in seeing how many
children in their service were later or previously identified in psychiatricabilities, whether they had had any treatment. Because they did not treat children. They only were counseling services.

It was a one or two year study, in which we collected data.

MR. WEIZENBAUM: Did they submit 5,000 forms to you?

MRS. ROSEN: Yes.

MR. WEIZENBAUM: And these forms had names and other identification of individual children?

MRS. ROSEN: Yes. And what kind of services they received in the school system.

MR. WEIZENBAUM: And now you passed this set of data, these 5,000 names and records -- somehow you passed this against something else and came up with 318 children?

MRS. ROSEN: Yes.

MR. WEIZENBAUM: What did you pass it against?

MRS. ROSEN: Our register.

MR. WEIZENBAUM: Magnetic tape?

MRS. ROSEN: Yes, by tape.

MR. WEIZENBAUM: So the forms that were submitted the 5,000 -- were these submitted on paper?

DR. WARTHEN: On paper. We coded and key-punched them.
MRS. ROSEN: As a matter of fact, they key-punched it.

MR. WEIZENBAUM: That means the identification of these children by name and possibly Social Security number must have been present on both the files being matched against one another?

MRS. ROSEN: Right.

MR. WEIZENBAUM: And apparently you do the same with Social Security, Census, welfare and police records?

MR. GOLDBERG: No, no. May I comment on some of this?

We are trying to be helpful to you all, and time was so short, we couldn't go into this in detail. We were told to keep it brief. This is why I referred to this document. I will be happy to go into this for you.

I think we pointed out, too, and I intended in my initial remarks to point out, that this is only one of a number of registers which we are interested in supporting.

The others were doing this kind of research we were speaking of, and we were doing it also, but we were doing it in this kind of a context -- developmental.

I mentioned the fact that we were involved in a laboratory to develop techniques and methodology, which we have done.

And we were interested in demonstration
of the application of the register, and various kinds of studies indicated here, and we have conducted those kinds of studies that you are talking about, but not done partly for the study's sake and partly to demonstrate how you could use it in other registers and to provide a resource for training and so on. On this --

MS. GROMMERS: May I just interrupt with a question.

Dr. Warthem said she did not retain the names?

DR. WARTHEM: No, no. Wait. This is not completely true. In any data system that does any kind of matching at all, you must start with names, and you must end with names, or you have nothing to match the next batch against. All right?

Now to describe the total complexity of the system would take a long time, but basically there are several kinds of files that are kept.

One type of file is a pure education file. It really has nothing on it except the information needed to decide whether or not one individual is probably the same individual. This would include things like name and address and Social Security number. Okay?

Now this is one separate file all by itself.

MR. WEIZENBAUM: It doesn't make sense to have a file of names, addresses and Social Security numbers.
DR. WARTHEN: You have to have something to match incoming records against. Once the match is achieved -- and as it happens, the current model makes use of the computer for this -- once the match is achieved, a new type of record is generated. A new tape, if you will. Or a new record.

This scratches the name. It in fact assigns a number to the person. You are person One.

It then starts another file, and it doesn't put a name or address or anything else on it. It puts Number One.

And now it starts entering the psychiatric stuff. The type of facility. It enters the date of admission, it enters the date of discharge, the final diagnosis, and this kind of thing.

Now when you do studies, you use this tape, and you have no idea who Person One is, or Person Two. You know he is twenty-seven years old, was diagnosed schizophrenic, and lives in Baltimore City.

This tape is kept completely separate from the other tape. So that in -- well, it must be done this way, but in a manner of speaking, it is additional protection.

If you had the name tape, all you would have would be a list of names. And you actually would find it hard to get hold of, but if you could.

MR. WEIZENBAUM: There would be the name and
all that, and then there would be a One, saying there
exists a record in Category A.

DR. WARTHEM: That is correct.

MR. GOLDBERG: This is described in the pink
booklet. We show you, for example, on page thirty-one, the
master identity record, and what is contained on that record,
and as Dr. Warthem said, that is for linkages purposes, not
data output. May I just say --

MS. GROMMERS: May we go on?

MS. NOREEN: My questions were already answered.

MR. DE WEESE: I am pretty confused. I really
have trouble with the system.

Is it correct that the person whose records are
included in these files is never told that the record is
being kept, and never signs a waiver at the time he is in
the hospital?

DR. WARTHEM: Apparently there is some issue
on this, because I made the statement I was not aware of any
routine mechanism whereby this was done. Mrs. Rosen says
she feels that in the beginning there was a provision
for this in selected facilities, at the discretion of the
director.

MS. GROMMERS: When a patient is taken up into
a psychiatric system at all, there is a form which must be
signed. Either by the legal guardians or some other
representative of the patient. Which is different.

DR. WARTHEM: That's giving permission for treatment.

MS. GROMMERS: Well, it gives a number of things, but it does not neatly give permission for putting them in a register.

DR. WARTHEM: I will check on it, at least on a spot check basis. But there commonly is a provision in most of these indicating that, there is a stock phrase for the use of records.

I would be fairly certain most of these do not have anything specific about the psychiatric case register.

MS. GROMMERS: We'd like to have you, if you could, look that up for us.

DR. WARTHEM: And it probably differs from hospital to hospital.

MS. GROMMERS: Could you give us specific information in as many hospitals as you can get for us?

MR. DE WEESE: In your opinion, in your view, is the extremely high percentage of people undergoing psychiatric care of the upper social economic class?

DR. WARTHEM: Are they the upper social-economic? Well, I would say no.

You see, I cover the gamut of the institutions, and --

MR. DE WEESE: I don't mean your institutions.
I mean generally. Because as I understand this document, the people in the upper income brackets, because they deal with private psychiatrists, are not included in the system.

You have collected a system of highly derogatory information on people of a certain socio-economic bracket.

DR. WARTHEM: If they are seen in a private physician's office, we will not know of it. Now depending — there is a class of patient of which we probably know very little. I really don't know what tag to give the neurotic group who are only seen in offices.

There are very, very many private patients, actually, both psycho-neurotic and psychotic, seen in private facilities.

MR. GOLDBERG: May I make a comment that is most pertinent?

The Monroe County psychiatric case register does in fact collect information from private practicing psychiatrists. It's the only one that does in this country. That is one of the reasons we try to develop these kinds of registers in various places. And they have a unique community which permits that really.

MS. GROMMERS: Mrs. Hardaway?

MS. HARDAY: Two quick questions that pertain to every day visits, that go on to state government.

Number one, do you interchange your information
with any other state agencies within the State of Maryland, such as the welfare department, et cetera?

DR. WARTHEM: I must distinguish. If you mean on a routine basis, no. There is no continuing interchange. As it happens, we have not made a special study with Welfare in Maryland, and therefore we have not had that interchange.

MS. HARDAWAY: All right. My last question --

DR. WARTHEM: But we might.

MS. HARDAWAY: If I were the Commissioner of Personnel in the State of Maryland, and I suspicioned that I had a director with mental problems, at a high level, that would worry me, and I hear via the grapevine that he, six months ago, entered an institution for psychiatric help.

If I called your Commissioner, could he give me that information?

DR. WARTHEM: No.

MS. HARDAWAY: You are positive?

DR. WARTHEM: All right, I must tell you directly. In Maryland, information on patients serviced in State mental hospitals is part of the public record. And at the discretion of the Commissioner of Mental Hygiene, it is possible to transmit information to a variety of sources.

We have many inquiries from other hospitals in other states, and so on.
MR. MARTIN: It's a straightforward question.

Requires a yes or no answer.

MS. HARDAY: If I as Commissioner of Personnel called your Commissioner --

DR. WARTHEM: You could not get that information from me.

MS. HARDAY: I didn't ask about you. I asked from your Commissioner. Could -- would it be possible to get that from your Commissioner? Would he have access to that information?

DR. WARTHEM: No, he would not.

MR. MUCHMORE: It says on page thirty-seven of the bill that it is not only unlawful to do so, but it also carries a $50 fine.

(Laughter.)

MR. SIEMILLER: Tremendous. A whole $50.

DR. WARTHEM: I'm sorry to not yes or no you, but there are certain conditions under which a Commissioner of Mental Hygiene could instruct me to find out whether or not an individual had been treated in a State mental hospital.

MS. HARDAY: State -- not private?

DR. WARTHEM: In a State mental hospital. The thing I am not allowed to do -- and I have records of various kinds on State mental hospitals -- I am not allowed to use the case register in order to answer this question.
Do you understand my distinction?

MS. HARDAY: So you use other connections?

DR. WARTHEM: Yes. I actually serve a dual role in this. I maintain something we are calling a psychiatric case register, which may not be tapped for any of this.

In my role as Director of the Center for Health Statistics, there are questions pertaining to people in State mental hospitals that I may be legally required to obtain for the Commissioner of Mental Hygiene.

What I may not do is make use of the psychiatric case register to get this information.

So when you asked me about a person in personnel, you might be able to direct the Commissioner to direct me to find out if that person had been in a State mental hospital, but you couldn't direct me to do it by way of the case register.

MS. GROMMERS: One question from staff.

MR. JUSTICE: As you know, we asked you to appear before the Committee because you are on a policy-making level in NIMH.

After you have heard what you heard today on the system, which is no longer funded by NIMH directly, would it seem to you, Dr. Cain, to be in the best interest of the future programs, like the multi-state information system to which you alluded earlier, to re-evaluate some of your
policies and procedures and programs to meet some of the very serious dangers and questions that the committee has raised? For instance, and most explicitly, the suggestion that welfare, police and other agencies might have access to these files?

MR. GOLDBERG: They do not have access.

MR. MUCHMORE: I'd like to point out one thing. I think you ought to read what is in the pamphlet before you ask that sort of question.

The government is instructed:

"That every safeguard will be taken to insure complete confidentiality of this Register; no information in these files will be given to any public or professional agency or person and the data derived from the basic records will be used solely for research purposes ...."

MS. GROMMERS: It says on page twenty-one that such studies have not been carried out.

MR. WEIZENBAUM: But it's violated, Mr. Muchmore. On page thirty-two, it has the data structure of the most sensitive data imaginable.

MR. GOLDBERG: That is a statistical file with a register number, and nobody can say that is John Doe without getting into the master identity file.
MR. WEIZENBAUM: The master identify record, the file, the data structure, is displayed on page 31 and 32, which means that I, who happen to know about computers, can manage to find a tape of yours, for example, or manage to somehow get into your computer -- that it would be perfectly easy for me to de-code your tape.

All I am suggesting is that here is a safeguard among every safeguard, that was in fact not taken, which I think makes this question realistic.

MR. MUCHMORE: You'd be violating page 35 and 37, and you'd have to pay $50.

MR. JUSTICE: On page 21, it says, "Record matching studies with police, welfare and other agency records, either on a sample basis or as part of a broader psychosocial register, have not yet been carried out..."

My question was, in view of this discussion, would you expect and plan to re-evaluate this intention, or would you want to perhaps minimize it?

DR. CAIN: Well, let me say something about the MSIS. Multi-State Information System. Not only on these grounds --

MS. GROMMERS: Will you be sure just to speak specifically here? We'd really like a yes or no answer first.

DR. CAIN: Yes. Well, the short of it is that
a substantial study has just been designed and the contract
signed to evaluate the MSIS, and similar systems operating
in several parts of the Nation.

It is a serious subject.

MR. JUSTICE: Will that include the confidentiality?

DR. CAIN: Yes.

MS. GROMMERS: Will it include matching police
records?

DR. CAIN: I don't know. I will have to check that
out. I don't know if that is performed in any of those
other systems. If it is, it certainly should --

MS. GROMMERS: We thank you very much. Thank
you very much for your attention.

MR. MUCHMORE: I would really like to say something.
There is a basic question here which is very important, and
one which I object to quite strenuously.

The allegation that he -- Professor Weizenbaum --
could obtain one of those tapes. In the first place, it's
a crime on his part, number one.

Two, the question you raise I think has two parts,
and one was omitted from your question, which seems to be
the most important part that came out of the discussion today,
and that is, has a patient ever been advised of what is
happening? That is the most important part.

And yet we haven't really borne in on that single
aspect of it.

MR. GOLDBERG: May I just make one comment please?

I appreciate all of these questions. I think they are very pointed and extremely important and valid.

And these are -- all of these are concerns that we have been worried about. I would hate, however, for the committee to leave without at least some clarification on one or two issues, very, very briefly.

That is, no one does have access to the computer files. The computer files have a special library. Only certain persons have access to it. One cannot get into the files unless he knows what is in effect a password.

There are only certain authorized people who have self identification.

MS. GROMMERS: How much do you pay them?

MR. GOLDBERG: The only person on my staff has been just admitted for slight surgery at Naval Medical --

MS. GROMMERS: It's just a rhetorical question.

MR. GOLDBERG: I appreciate that. The only person with access to it actually on my staff is Mr. Williams. He knows what it is. The only other people are those who maintain the library.

MS. GROMMERS: And the people who design your system program, to begin with.
The point is not that anyone does or anyone will, but rather that someone could.

MR. GOLDBERG: But I say, there are certain safeguards which would make it extremely difficult for anybody to have access. There's nothing written on the tape label to indicate what is on the tape, any number of these tapes --

MS. GROMMERS: We appreciate that, and we would also be glad to change a few of the considerations we have been looking at here on what is the cost of security and what really is security.

We would like to thank you very much, and unfortunately, we would love to continue, but --

MR. GOLDBERG: May I --

MS. GROMMERS: But I think we will have to break. We will resume at 2:00 o'clock.

(Whereupon, at 1:20 p.m., the meeting was recessed for lunch, to be resumed the same day at 2:00 p.m.)
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?
MR. LICHTENBERGER: Thank you very much, Madame Chairman. We are pleased to be here.

I am Allan Lichtenberger, and our little group -- two of the men are not with us today; one is out at the Census working on a project there for adult continuing education, and we had to leave somebody to keep the store. So Dr. Chismore -- Dale Chismore -- is not here, and Dr. Harris is at the shop.

I am Allan Lichtenberger, and I want to tell you that our little group is called the Educational Data Standards Branch. We are in the National Center for Educational Statistics. We collect no data. We have one job, and that is to standardize educational terminology.

Now I want to introduce these men who are with us. Dr. John Putnam at my immediate left. John is the only city slicker in our group. He comes from Milwaukee by way of Northwestern and Yale, and what is that little school in Tennessee? Peabody Institute. Where he took his doctorate.

Dr. Charles Roberts, who has the staff handbook terminology project that is going on now. At the same time, the one on pupil information is being developed. Dr. Roberts comes from Texas, and Texas University is his school.

Ivan Seibert is from Iowa, from Iowa University. He was there in the State department of education. He has been a county superintendent of schools, a teacher, a coach,
the whole bit clear from the rural schools on up.

Mine is Nebraska. I left that for last. And

It's Nebraska University, although I should mention Peru
State Teachers College. If anybody wants to talk about
football, we can do that too. I find no great enthusiasm, but
for years and years, we found we were the ones at the lower
end of the scale; now that we are at the top, we are enjoying
it.

I have a little cartoon from one of the comic
strips, and it starts out like this. This gentleman over
here at the left is saying to four people, "Mankind will never
master the art of communication."

Their responses are words such as this: "Absurd."
"Ridiculous." "Tommy rot." "Hogwash."

So this gentleman reached down and picked up a
hunk of mother earth, and their responses were: "Ground,"
"Soil." "Earth." "Dirt."

And he left, saying, "The prosecution rests."

Well, we don't get to rest very much, but our
problem, the problem on which we work, goes back more than a
hundred years.

The first report that was made by the first
Commissioner of Education to the Congress, his task was that
of providing a report of the condition and progress of education
in the several States.
His first report said it was virtually impossible, virtually impossible to make a report, because the reports from the states used different language. There was no comparability, or very little comparability.

Now they talked about that for forty years. That was back in 1868. They talked about it for forty years, and in 1909, 1910, 1911, 1912, a group -- not the Office of Education, which was called the Bureau of Education then -- went to work for those three or four years and developed a report of the Committee on Uniform Records and Groups.

Now these are collectors items, but this group was the Department of Superintendents.

Now the American Association of School Administrators, they work with two or three other groups, and established a cooperative approach.

Now in our commission, we have the task of coordinating national efforts to standardize educational terminology.

This is a 1912 bulletin. Another one out of the archives is a 1928 bulletin. It has almost the same name, except it is the report of the Committee on Uniform Records and it takes up all of the areas of educational information and puts them under one cover.

Then in 1934, there was another item. This time the Office of Education moved into this area, and they worked
from 1934 until 1940, when the War came along, and published a little bulletin on school finance.

All through these, the whole purpose was establishing definition and classifications.

Then after the war, they came back and had at it again. And for two years, the committees were working, somewhat, but by 1949 -- and I never could find out why -- all of those committees were inactive.

It was at that time that a group of men met in the Office of Education and thought this: Now here we have two little bulletins. We look back over forty years of work and we have hardly dented this matter of a lack of comparability of educational information. What shall we do?

It was at that time that our little unit was established.

Actually, it goes back to 1951. So we are of age now. Not any of us has worked there through this whole period of time. The men who began this are now out in the field, and we use them as part of the cooperative effort in doing this work we have to do.

Now one of the first products -- we don't have this (indicating) anymore, it's out of print. It was an expediency, and you can see what a mangled thing this is.

The Common Core of State Education Information. It contains
516 items that State departments of education agreed they
would collect and own annually.

Now these are combined and derived items, not
basic unit items as you will find in the other handbooks.

This expediency served for eighteen years
as the basis for the biennial survey of educational information, the information collected by the Office of Education.

The pressure to revise this is coming on every
day. I don't know how we are going to escape doing it, and
maybe we shouldn't.

The next one was Handbook 2, on finance. It
identifies, classifies, and defines those items of information about school finance that need to be maintained in comparable form, that are agreed upon as important enough to be maintained in comparable form by all school systems.

This was published in 1957, and if we were to
nominate a candidate for one of the most important documents in the mid-century, I think this would have to be identified. It is in obvious obsolescence. We are revising it. The new handbook should be issued this fall.

The next one was handbook three, and I don't have a copy of it. It was on school property, buildings, facilities, land, equipment, and anything else. The things that are used to make education go.

The next one was staff. This is being revised.

The one Dr. Putnam is working on, Handbook 5, published in 1964, Pupil Accounting.

Then we have one of our latest -- Standard Terminology for Curriculum Instruction in Local, and State School Systems. This is six years hard work by Dr. Putnam and Dr. Chismore. Thirty-one conferences, seventy-six organizations, to round up this maverick area of curriculum that had just grown by accretion. And it's a masterpiece.

The next one that has been published -- Dr. Seibert and Dr. Harris were the ones in charge of this one -- the State Education Agency. It does the same for the State education agency as the others do for local school systems in their areas.

We think it's a very good handbook.

This one is the Principles of Public School Accounting. It's a different character. It's a "how to do it" book, and deals with double-entry, accrual based accounting.

How far have we yet to go? I don't see any end to this. As long as education is dynamic, we are going to have new terminology, and we are frantically trying to put these together.

We are moving into the field of systems. We can't help it, because those don't represent separate, isolated files.
We find now with data processing that inter-relating of data is extremely important. Furthermore, the early emphasis was on reporting. Let's face it, that's what it was.

Now the emphasis -- while that emphasis remains -- a greater emphasis really is on information for decision-making and management at the local and state school system levels.

It's an entirely -- well, not entirely unexplored, but a virtually unexplored field. And it's made a difference in the kind of work we do.

Now, why define these terms? Can't anybody define them?

No, that isn't true. States are unique entities. They establish their own school systems, they use different terminology, and we also find that even though they tried very hard to use the same terminology, if we ask, for example, for the number of schools, what do we get? School districts, number of buildings, almost everything but schools. And there can be three schools in one building. Many are -- there are many situations in which there is more than one school in a building.

And ask for teacher-pupil ratio -- first of all, what is a teacher? Teacher-pupil ratios often reflect librarians and counselors and everyone else who suddenly
become teachers, to give a low pupil-teacher ratio.

Try to define reading. We found that we could do it only with the help, the agreement of the committees with which we work.

There is a national committee that works with each of these.

John is now on a regional conference tour with his handbook on pupil information.

Dr. Roberts just finished the one on staff. Ten regional conferences.

I suppose we ought to make a count of how many hundreds of people work on one of these handbooks, but they will not be accepted unless we have some means of this input from the field.

Now we find -- I don't want to use the word enthusiasm -- I think it's impatience. They want to know when are these handbooks coming out, how can we operate unless we have the terminology? I am going to stop with that and turn it over to Dr. Putnam for what he has to say about Handbook 5 revision.

DR. PUTNAM: Thank you, Allan.

We are in the process of revising Handbook 5 now. The original Handbook 5 was completed in 1964, and now school systems and state agencies have had an opportunity to try it out to see how it fits their needs.
They have had some experience, and now we are attempting to get some feedback to strengthen the handbook that was developed at that time.

You are concerned with various issues for the use of information about individuals. I'd like to indicate by reading just a little portion from this handbook that even back in 1964, and prior to that time, we did have some concern for this matter of the use of information.

In fact, this is printed here on page seventy-four in italics. It says, "Some information in the records of individual pupils is of a confidential nature. For example, some information recorded under Item 4040, type of mental, emotional and behavioral exceptionality, may fall into this category. When such information concerns individual pupils, it should be made available only through professional personnel trained in its interpretation.

"When this information is summarized for general reporting purposes, it should not be identifiable with any specific individual."

This summarized a concern that we had at that time, and I will leave this handbook just as an exhibit for any of you people that might like to look at it at a later time.

So now we are in the process of updating this handbook of items of information. The earlier work was done
by personnel in-house, in the Office of Education.

At the present time, our mode of operation is
a little different. We have a contractor doing much of the
work under our direction as project monitor or project
officer.

In the new handbook, which I think has been given
to several of you, there are three major criteria for includ-
ing items of information.

First of all, that the item of information is
needed for providing effective educational services. This
is not only instruction. It would include various of the
pupil personnel services. It would include transportation,
food, a number of services that are related to enhancing the
effectiveness of instruction.

A second criterion is the criterion of reason-
ablessness that the item can be collected and maintained with
reasonable effort, with reasonable cost. If it is too
expensive or too hard to collect the information, or to
maintain it, then we ought not to keep it. We ought not
to include it in our handbook.

Third is a matter of communication, that the
information, to qualify for being used in our handbook, is
needed for the exchange or reporting of information or to
have information available for us for whatever purpose it
may be needed.
Incidentally, we feel that if the information is only of value to a local school system, there is no need for us to be concerned with terminology or with definitions. Your own local terminology or definition is quite adequate.

It's only when you try to communicate with other agencies or other individuals, that the terminology becomes important, because that is the only way you can be sure that you are not talking past one another, using the same terms to mean different things, or to use different terms to mean the same thing.

This is our main concern, actually, the matter of communication.

We are also concerned with providing guidelines to local school systems and state agencies as to what items of information are important for them to have in their systems.

Our prime concern, as I look at it, however, is the matter of communication.

Information is used in several ways. The information in our handbook will be used by those persons who are concerned with improving the effectiveness of instruction, so it will include teachers, of course. It will include councilors, pupil personnel workers, health personnel, and so on, because these people are all concerned with improving instruction and, generally seeking, the kinds of information that they will be developing will be found in the cumulative
records of pupils.

A good group of the information that is included is needed for business office purposes. So this may include where do pupils live, when that is the basis of scheduling transportation, or in fact determining which schools the students ought to be attending, or establishing whether or not they should be given free transportation to school.

Some information about the condition of children is important. The business office ought to know which pupils have certain conditions which qualify the school system for reimbursement from the state because individual children qualify under state legislation, regulations, as being exceptional, as requiring programs of special education if they are to achieve the full development that is possible for them.

Information about the residents and other considerations is important for tuition purposes.

So these are a few illustrations to indicate that the business manager of the school system, or whomever serves that function, has a need for information, for a variety of information.

Another area of use of the information which is very important is the situation when a pupil transfers from one school to another or one school system to another. It may be that the child during the year is traveling from
one state to another as his family changes their residence.
It may be that the child is going from the elementary to
secondary or secondary to college.

At this point, a transcript ought to go along
with the pupil, we feel, a transcript of some sort, so that
the pupil gets started in his new situation as smoothly
as possible, with as little delay, so that those items of
information that are most significant to the proper placement
of the child are available for the new school and for the
new teachers.

MS. GROMMERS: May I interrupt just a moment?
Are both of the other gentlemen going to be speaking as well?

DR. PUTNAM: Well, in answer to the question
about whether the other gentlemen will be speaking, I believe
that this really is the largest part of our presentation
as a group, and that they may have comments, but they will
not be making presentations as such.

MS. GROMMERS: May I ask you then, would you be
kind enough to specify exactly what it is that you would
like to be speaking to as part of your presentation?

DR. PUTNAM: Well, I will speak a little bit more,
try to give a background of our area, will speak something
about the chapter we have about confidentiality of the
student information, and this is an area which is under
development, and we really will be pleased for any kind of
feedback that you people are able to give us, recommendations that you may give us either at this time or at a later time.

So I am kind of working up to that, to say that we are in the business of getting pupil information which is used for a variety of purposes. And much of this information we might say is of a privileged nature, some of it we might say is confidential.

So we are concerned about the manner in which this information is used, and this is bringing us up to where we are right now. We just finished the background.

The concern in our new project for revision of Handbook 5, the handbook of terminology about students and pupils, well, the concern was reflected in the earlier handbook, as I indicated a few moments ago.

The information -- the directions given to our contractor were to provide a chapter on uses of the information.

As our contractor spoke with people representing state agencies and with people representing local agencies, the concern of the use of the information, not only what items ought to be there but how it is going to be used and what are guidelines for the appropriate handling of information, the matter of confidentiality and so on surfaced again and again.
We have a national committee for our project which comprises representatives of a dozen national organizations concerned with information about pupils and students and organizations at various levels.

These people on this committee also expressed a concern about the confidentiality of information.

As a result, we have taken this area out of a chapter which had been intended to be used or to be included for uses, and have incorporated now a special chapter on the confidentiality of student information.

I, at this point, would like to distribute these so that, at a couple of places in my remarks then, you may be able to look at these comments or the things we have here and you may wish to comment on those.

Also, so that you will know how to reach us for any reactions that you may have, following this meeting, I would like to give you -- well, you have my name, John Putnam. My room number is 3064 in the Federal Office Building No. 6, Office of Education, Washington, D. C., zip code 20202.

And should you have comments, suggestions, recommendations, we would be pleased for you to let us know, because in these meetings that Al referred to, we are exposing the work which has been done to this point to the scrutiny of persons across the country who are concerned
with the different areas of information in our handbook.

This chapter six that you have here is based on--

centers around three major issues.

The first is how can the relevance of the data in the student file be assured?

The second major issue is how can the accuracy of the data be guaranteed?

And finally, how can the data be safeguarded from unauthorized, illegal and unethical use?

The background for the material which is in this chapter, which, incidentally, updates the chapter in the handbook draft that several of you may have -- this is more recent and reflects the two regional meetings which we had last week in Chicago and Denver -- but the material in this handbook is based on statements of three national organizations.

The first is the Russel Sage Foundation Report of a couple of years ago.

The second, the American School Councilor Association of the American Personnel and Guidance Association.

The third, the Michigan Child Accounting and Attendance Association.

The Michigan report is here. We have several copies of this, and I have six copies which I will leave
for you people to use as you see fit.

I'd like to point in particular to six statements which are pretty directly from the Michigan Child Accounting and Attendance Association, appearing on pages 7 and 8 of this material which was handed to you.

The first two of these statements refer to the relevancy of data. The first question or statement has to do with what data is needed, what information is needed in the records of individual pupils.

The second -- or the third and fourth statements suggest that written policies are needed in local school systems, and they encourage these policies be developed for the verification of the accuracy of the data.

Procedures to verify accuracy and to destroy unneeded information.

They suggest about the right of the parent and the pupil to review, to verify and to challenge data which is not appropriate which is in there.

The last two statements suggest guidelines for controlling access to pupil data, indicating in the fifth statement who is authorized, and again in the sixth statement that written policies are needed for controlling the access to this data.

The application of this in a local school system is suggested on page 10 in Exhibit 6.1. These are
illustrative guidelines which might be used by local school systems. You can see on the left there are several groups, persons or agencies that might seek access to information or to whom information might be communicated.

The numbers in the columns on the right which are listed at the bottom of the page indicate under what conditions, if any, these materials should be made available.

Now this is not presented as a pronouncement as to what local policies ought to be. It is presented as an illustration which might be a model or a suggestion to local school systems as to what their local policies might be.

The organization that we mentioned a moment ago, in their statements each encouraged persons at the state and local level to see to it, so far as they could, that policies were developed, that legislation was developed, to assure the proper use of information which is collected about students and pupils.

As I indicated a few moments ago, our materials are under development. They will be under development for another half year or more.

We would appreciate any comments, suggestions, recommendations, that you might have about these materials or other portions of the materials that are going to be incorporated into our revised handbook of terminology about pupils and students.
MS. GROMMERS: Thank you very much for the presentation. Would you like to question us, or have us question you, or how would you like to proceed?

DR. PUTNAM: Any way you would like to proceed. In many ways, I feel that I am a neophyte in this.

I am helping to develop these materials, helping to pull them together, working with our contractor and the other people in our project, and I don't pose as a specialist in the area.

So we are just grateful for any kind of help we can have, and if, for example, you should have some recommendations to make, even today, we have regional meetings we will be conducting for the next four weeks, and we will be able to try these out with the people at various levels, local, state, school levels, with various kinds of responsibilities -- administrative, pupil personnel, special education, things of this sort -- in an attempt to develop a national consensus on the items of information that are important to local school systems, and the manner in which they should be used.

MS. GROMMERS: I think what we might do is proceed around the room, starting with Mr. Siemiller, to see whether there are any comments or questions.

MR. SIEMILLER: Pass.

MS. GROMMERS: Senor Anglero?
MR. ANGLERO: I would like to know -- I have
to assume that the relationship between this and what we are
doing is the kind of communication, common denominator to
communicate between school systems, and we are trying to do
the same through the computers.

But in terms of state or local, what is your
responsibility in development of personal data systems in a
sophisticated way, a modern way?

And if so, do you have any monitoring on the
system?

DR. PUTNAM: Our responsibility is not one of
monitoring. We don't collect information. We are attempting
to help persons across the country themselves determine what
they feel is most appropriate for their needs.

We don't collect information, though within the
National Center for Educational Statistics information is
collected. We don't do this. We feel -- at least I am
expressing myself in terms of the persons who have been
involved in the development of this material, not within
the Office of Education, but persons about the country -- we
feel that this is basically a local concern, local considera-
tion working within the scope of applicable state and
Federal legislation.

There isn't much, so far as I know, applicable
Federal legislation, and so most of these people then are
working within the state, developing their own situation from where they are, starting at the local level and working within the context of the state government.

We ourselves are not involved in monitoring or telling people how they ought to be carrying on their activities.

MR. LICHTENBERGER: I would like to add to that. We have no mandate. There is no mandate that we have, or any power we have.

And it works very well, because most of the states do use the terminology of the handbooks.

Now the monitoring -- you see, we don't have that role, but a technical assistance role. We do some -- not very much. Because of the number of our people, we just don't have enough to go around.

But whenever we can, we do get out and help the people in the states, and it seems to work pretty well.

For example, Handbook 2 was implemented in all of the states with the exception of one, and its reporting was very close to this.

MR. IMPARA: Just a simple clarification of what you just said, Al, that no local or state agency is required to use any of the handbooks, although many of them modify this to their own particular needs.

DR. PUTNAM: Yes, we feel there are advantages
to being able to communicate accurately, and the guidelines are useful to them as they review and update their systems of pupil information.

MR. IMPARA: As I scan the chapter six draft, I notice there is a particular section beginning on page nine which addresses confidentiality and automatic data processing, which is the guidelines that you mention on page ten.

Although the issue is addressed in here as simply an issue, would it be feasible to recommend specific detailed procedures using some other model as devices for insuring confidentiality in terms of an automatic data processing such as linkages?

How can linkages be accomplished between the welfare agencies and schools, for example, on data processing, and what kinds of limitation might occur reasonably on these kinds of linkages?

DR. PUTNAM: I think it would be appropriate to include consideration of this area. We do have a limitation on complexity within our handbook since it must be used by very small units as well as very large units.

And we don't look on our prime concern as being that of systems or procedures. We feel our prime mission is the one of language, communication, terminology, and definitions.

I would feel that we do have room to hit the
high points on this sort of thing, and to make several
specific recommendations, if we were to know how to attack
or how to suggest appropriate procedures for this kind of
consideration.

I don't know what the solution is, or what
the answer is to this, and perhaps some of you people would
be able to help us identify some of those primary considera-
tions.

MR. IMPARA: Would it be appropriate, in your
opinion, to, as you say, hit the high spots and perhaps give
some references where a reader might go to follow up on
some of these?

DR. PUTNAM: I think this would be very helpful,
and again, if you can help us with what the reference might
be, we can certainly include that sort of thing. And people
who want to go into greater detail on their own in an area
would have access to that information. We could help get
them there.

MS. HARDAY: Just one thing for my own
clarification.

You do not gather this information? You are
simply guiding the states?

DR. PUTNAM: We are coordinating the efforts
to develop a national consensus on what items are of impor-
tance for local school systems to have in their systems of
information -- the terminology and the definitions.

MS. HARDAWAY: All right. You are not in the data gathering business?

DR. PUTNAM: No, we are not, though there are others in our overall unit, the National Center for Educational Statistics, who do collect information. We are not involved in that in our own particular unit, the Educational Data Standards Branch described by Mr. Lichtenberger.

MR. LICHTENBERGER: Mr. Nessetta will be here tomorrow to talk about that part.

MS. HARDAWAY: So you are just guiding states into a common language so when it is reported to you, for whatever reason a state would require it, it would be in the same language?

DR. PUTNAM: This is correct. And when the person goes from one state to another, one school system to another, they can communicate.

As I look at it, the prime emphasis is not to develop reporting to the Federal government. The Federal government will be a beneficiary of this activity, but I wouldn't see more than maybe fifteen or twenty percent of the items here, that would be probably beyond the percentage of items, that would be reported to the Federal government ultimately through the state agencies.
But we feel we need to have a handbook which can be implemented at the local level where the information is collected. That is the vital point. And unless it is collected in comparable form at that point, the comparability may be lost forever.

Manipulation may help to improve it, but it may be lost.

So we are trying to coordinate the activity so that the people at the local level will be able to do better for the pupil overall in terms of his education, to plan more effective educational programs for groups of pupils, to help the individual pupil as he goes from one place to another, or in guidance and so on, in his position where he is at the current time.

Our emphasis is at the local level, and so we must, we feel, have a document which can be used locally. If the local people look through and find that a big area of information is missing, they may say, we can't implement this.

MS. HARDAWAY: One question. Do you find within the states a fear? When you say some use the handbook and some do not -- would you find a fear that this would, in the mind of the state, be an easy system for the Federal government to have in order for the states to report to the Federal government, and that at perhaps some point this information
would be used then in consideration of Federal educational grants, et cetera, back to the states?

DR. PUTNAM: Well, much of it is used for that purpose. One of the things that is important, I feel, in this -- and we had a meeting this morning just on this, because we also feel that various of the Federal agencies ought also to use the same language of communication when they are communicating or asking for information from the states and local school systems about the students.

And so, in answer to your question, yes, this will be used as a basis for information requests from the Federal government.

And when we can coordinate among the various agencies of the Federal government and among the various units within the Office of Education, also, for example, if data is requested for more than one, then we are easing the burden on the state and local agencies, and we are getting much more meaningful information at the same time.

MS. NOREEN: I basically just have one question. You said when you drew up these guidelines you consulted with state and local people?

DR. PUTNAM: We are doing this at the present time through our regional meetings.

MS. NOREEN: I was wondering if you have anyone who just directly represented the student, and not some other
type of organization as well.

DR. PUTNAM: To this point, we have not had such a person. But we would welcome input from such people. Perhaps you can suggest a way in which we might involve them. We do have regional meetings, and we have involved a number of organizations that we felt had concern. We have asked them to come to our meetings to make their input.

And I'd be pleased to give you the schedule -- or to anyone else -- the schedule of our regional meetings so that persons of this sort who had an interest and concern might be able to attend some of our regional meetings and make a direct input to our project.

MS. NOREEN: I think it would be interesting if you could have more student representation.

DR. PUTNAM: I will leave one other thing, and maybe leave several of these, but this indicates where our regional meetings will be during the next four weeks. The date, the location, and the exact conference room.

MS. GROMMERS: Could you yourself arrange or initiate getting some students into this?

DR. PUTNAM: I am afraid I just won't be able to do it myself, because I am going to be tied up in actually participating in these meetings.

MS. GROMMERS: Who would you suggest organize
this?

DR. PUTNAM: Well, I can help you get in touch with the person that can send you the conference materials. That is our contractor. And we would welcome this sort of participation, although I am not able -- I just won't have the time. I am going to be out of the office the last two days of this week, and the next four weeks we will be having the meetings.

MS. GROMMERS: I am not requesting it, but asking the question, could it be possible to set up a mechanism whereby someone from your organization --

DR. PUTNAM: I'd have to defer to Mr. Lichtenberger who might be able to do that.

We have the mechanism, once we know who the people are, so finding out who to invite -- and this is one point I am not able to help on.

MR. LICHTENBERGER: The question is a good one. I am very much interested in your asking it. It has come up before. It has come up very -- rather late in the operation, but it intrigues me very much.

Why not have some of the young people whose records are going into this have some kind of a representative input.

I don't know just how it would be done. Now I can't right here tell you how that would be done, but,
Madame Chairman, could I take this as a suggestion from here and we could see if there isn't some way to do this.

I think it would be fascinating, and it ought to be done.

MR. MARTIN: I think if you were to talk to Stan Thomas, Assistant Secretary for Student and Youth Affairs, and indicate the least interest in doing this, Stan would be all over you like a tent, helping and suggesting ways to do it.

MR. LICHTENBERGER: That was one of the things I was taking into consideration before I pull the cord. I want to talk it over with Mrs. Gilford. Your question down there is a very good one, and Mrs. Gilford has taken this into account, almost annually -- what data acquisition plan -- that does get to this matter of what we are going to ask these people. The question has come up.

Because we put this item in here, does it give the Federal government license then to just ask all these questions? Well, we can't handle all of them, it's obvious. But there has to be a mechanism and Mrs. Gilford is working that out. A data acquisition plan where the chief state school officers and others -- which is a protection against just acquiring great loads of data which we can't possibly handle.

MR. SIEMILLER: And have no need for.
MS. NOREEN: That was my basic idea, just to see if we could get some kind of student ideas on the committee.

MR. LICHTENBERGER: We could follow the same plans. Great numbers wouldn't solve it, but if we could have a few people to speak for others --

MS. NOREEN: I think the problem is, a lot of people who would be interested don't know about it and wouldn't know how to get involved if they had the time.

DR. PUTNAM: Let's work on it.

MR. DOBBS: I have only a suggestion which really goes along with Jane's, but from a different point of view. It's probably a lot more difficult to deal with.

You suggest in several places, based on inputs from Russel Sage and other work, the importance of a judicial procedure, a procedure incorporating due process principles, and then point out -- which is perfectly appropriate, I think -- that in practice the applicable state and local laws as interpreted by legal counsel should -- (reading) -- the development of the policy procedures.

I wonder if it would be appropriate for you to try to find a way to bring together what I suspect are conflicting local legal statutes surrounding the issue, insofar as they relate to educational materials, with a view of displaying it in some cohesive fashion, and with a view towards getting legal inputs from perhaps the state attorney...
generals or other local legal counsel, relative to them
getting themselves together in terms of some consistent view
of the problem.

That is a harder one to do, but --

DR. PUTNAM: I could see this as being a very
significant implementation activity. It's a little more diffi-
cult at this point inasmuch as there are such differences
from state to state, and we are attempting to develop
something which will have applicability in all of the states.

The best we can do is -- at least, this is the
point of view reflected in these materials -- is to suggest
that a review of these materials be made, that a policy be
developed, and that it reflect the applicable legislation
and regulations and so on.

Because each state has their own unique problem.
Maybe we took the coward's way out, but we didn't see any
other way to do it.

It may be that this could be a most useful imple-
mentation activity, and it might be that a national conference,
or something of that sort, just on this topic, might be very
appropriate.

I don't think, within the scope of our own
activity, that we are able to carry that on. We don't have
the funds or time.

MR. DOBBS: Well, perhaps a simple way would be
to ask the local people relative to this specific set
of guidelines to get rulings from local counsel in terms of
limitations that are already on the books which would
prevent them from in fact implementing procedures in accordance with the guidelines.

MR. LICHTENBERGER: And at least they'd find out
whether they exist or don't exist. In some places they don't exist at all.

MR. DOBBS: Sure, and maybe for you, it would help you find out how useful the guidelines will be in a broader sense.

DR. PUTNAM: Yes. We do attempt to get this information from people who are concerned with school administration in various local school systems, as we have our regional meetings.

MR. GENTILE: One short comment. In the State of Illinois, we have approximately -- well, somewhere between 1200 and 1300 school districts. And I was just wondering if you anticipate great deal of problem -- great problems in implementing your handbook once it is completed.

I think the cost of conversion, et cetera, would be quite great, especially for those districts that have systems already in use.

And you mentioned one incentive for prodding:

the local districts to convert to your system and that is
that your federal reporting requirements will come out using these standards.

Are there any others that you can think of?

IR. PUTNAM: Well, the state agency itself. State agencies are very deeply involved in these, in making recommendations along these lines. Many states will take this and either put their own cover on it or use this document or else interpret this, say this is what the meaning of this is under our own state legislation and our own state boards and policies, and distribute this to the local school systems, and give this to them as guidelines.

While we don't implement ourselves, there are agencies that are interested in doing this. In fact, it is a part of their function. And the national organizations that are involved also encourage their membership who are in key positions in various levels of the educational organization to implement the concepts, if not the language, of the handbooks.

So it's a voluntary process, but it does move ahead.

MR. DAVEY: Do you have any jurisdiction over any of the state universities, or things of this nature? Or is it largely the other schools?

MR. LICHTENBERGER: When this was put into effect in 1951, higher education was included. And for some reason,
at that time, they elected not to be a part of the standard
terminology effort.

Now they have taken that up, and it is in our Nation-
al Center, and Theordore (Drews) is working on that. And
they are coming out with their manuals.

This is going on now. It was later than ours,
and maybe ours is more difficult. We have a lot of schools.

MR. DAVEY: As a follow-on to that, first part
of the question, there are a number of universities who
have written a kind of code of ethics regarding student
records and things of this nature.

I wonder if you have taken those into considera-
tion in the drafting of these regulations, and what is your
attitude towards these things?

It does represent what Jane was after a few
minutes ago, some kind of student input into this whole
thing. I'd like a comment.

DR. PUTNAM: Personally, I am not familiar with
these, and would welcome the opportunity to become acquainted
with them.

MR. LICHTENBERGER: I want to comment to the point,
because for many years -- I have been in this a long time --
for many years we did pretty well on confidentiality of the
data because of the professional ethics among educators.

Now with the data machines, easier access, a code
of ethics is fine, and we don't want to lose that. However, it doesn't answer all the questions.

There is a whole body of legal information that has to be worked out here. But I don't know that we can get that into this, but it is a very interesting point.

MR. DAVEY: I don't know if it is even within your purview or not, but when students do come out and say this is a type of information that should not be supplied to draft boards or other things, they are taking a rather strong position.

I was just wondering what your attitude is.

MR. SIEMILLER: The type of representation you are talking about, I think, was very much present in the Russell Sage meeting and subsequent report. And in turn, the Russell Sage document I think has had considerable impact on not only proposed chapter six, but on what is being done in the field at the present time.

I don't know how many of you -- maybe you are all more familiar with this document than I am (indicating). But much of what we are talking about here came out of this Russell Sage Foundation Guidelines for the Collection, Maintenance and Dissemination of Pupil Records.

There were twenty people involved in that, and if you look over the representation on this, I think there is some solid background on that.
MS. GROMMERS: You all were given this about two meetings ago. You will find it in your archives.

MR. MUCHMORE: I have a statement and two questions.

Statement is a simple one. I compliment you on what you are doing. I think it's a worthwhile task you have undertaken, and I think you are going to have a difficult time in implementing it, but that is normal with this type of thing.

I used to receive these in (Roy Simpson's) office. We filed them for twenty-four hours, and then put them in another file for two days, and three years later we did something about it.

Everything has now been changed, however. I think -- I frankly feel it is a little vague in points, and I think there are places -- at least a dozen -- where you could sharpen it up and come down to "it is recommended," or "there are recommendations," or something comparable to that.

Because I know that they look for the word "recommend" and on the basis of the recommendation, they take action.

I think there is that weakness, if there is any, in this.

The other one I see is an omission of something I saw recently in one of the states. I can't think where, but
they had a section in which was a suggested guidelines for
school districts in that state whereby they had about five
lines, and in that language it stated that was to be sent
home, was to be signed by the parent and returned,

And in there, in about five lines, they stated
the rights of the parent as to what they could see in the
child's record, and it seemed to me at the time that it was
an ideal item to have.

And I would suggest that you add this as a guide-
line that should be adopted by each of the school districts.

And it's just simple language, and you have the parent have
it and sign it and send it back so you will know they have
it.

DR. PUTNAM: Do you know where we might obtain
a copy?

MR. MUCHMORE: It seems to me it was in Colorado.
I am not certain. One of the Mid-Western states. Somebody
showed it to me and said it is something very, very new to
us, and we wonder how it's going to work.

DR. PUTNAM: If you are able to track it down,
or recall --

MR. MUCHMORE: I will get it to you.

DR. PUTNAM: Thanks.

MR. MUCHMORE: The other is that I think there
is something omitted from this, and omitted from anything
else I have ever seen in education, and I think it's a very
important factor.

We always talk about the right of the parent
to come in, and whether he can know what the child is learn-
ing, and the parent's right to do this and that.

But in reality they should have a right to
participate in determining any new basic items which are to
be added to the child's record in the A, B, C and D cate-
gories, which is pretty standard as far as your definition,
and they meet the challenges of the past.

But that is something that could be put into
this, too, that parents should be brought in in determining
the shift from A to B, or B to A, of specific items.

Because there will be many, many people who will
otherwise have a total lack of understanding of this, and
the school districts sometimes have a tendency to issue
statements saying B item 72 is now in A and it's Item 73.

And I think that kind of thing could solve a
lot of problems.

But again, my compliments on what you have done.

It's a great start.

DR.PUTNAM: A little clarification on that last
point -- are you thinking in terms of new items in a reporting
system, or in a record system, or are you thinking of the
items that may be in the record of the child?
MR. MUCHMORE: The items in the record of the child. But you carried it further, and I like your point -- both your points.

The item in the record of the child -- whatever makes up Category A, define Category A. If you are going to change the base of category A, it seems to me there ought to be some parents that work with you in determining what should be added or subtracted from Category A. That is a guidelines that could be used with all schools.

MS. COX: I need a little information here. This is for the states, and as I understand, education data information is collected by the states and this is partly to get uniformity of that collection and classification of categories and definitions.

Now what comes into the National Center for summarization and for use?

MR. LICHTENBERGER: I will respond. It is practically all summary data. How many youngsters, how many of these young people, at what grade levels, and that type of thing.

But I don't want to leave it this way. There are some collections of information through special studies about individuals. This is true.

MS. COX: As I remember, most of it comes in in so many studies in class A, and that type, but there is
a lot of national questions that come up that have to be on
an individual basis. Probably this is collected by this
time on a sampling basis or a special study basis.

What, on a national level, protection of confi-
dentiality do you have on that statistic? You don't need it
on the summary data from the schools.

MR. LICHTENBERGER: On this, I have to be --
I talked to Mr. Nessetta before I left, and we had this
discussion. We are not going to try to answer those. They
do exist. There are ways --

MS. GROMMERS: He will be with us tomorrow.

MR. LICHTENBERGER: Yes, he will. Your question
is a good one. He should be able to answer it.

MR. COX: It says, "confidential reports received
from cooperative agencies and individuals, such as welfare
agencies and hospitals and so on, is certainly confidential
within the school."

That type of thing, again, would only be sent
as a summary of so many children are on welfare or that
type of thing, as it comes into the National Center?

MS. GROMMERS: We have a question on content
from one of our staff members. Before he asks that, I have one
question.

Where you are going to be promoting not a hand-
book, but an electronic data system, could you not solve a lot
of these problems by making a program available to people
in which all of these categories would appear, and if that is
the case, and this is preliminary to that, don't you want to
think an awful lot about what blocks go into that program?

MR. LEITHEIN: The question I have relates
to Appendix A, Exhibit 1.1 of the exhibits.

Since your presentation represented the classification of information to be both necessary and relevant in
education, I was wondering whether you might be able to
explain several of the categories which you have included,
in terms of your standards of relevance, particularly those
for religion, the parameters in the two hundred series of
information on the parents, and their background, and several
others, too.

MS. GROMMERS: This is in your handouts that you
have in your folders, and it is a prior document, a staff
paper.

MR. LICHTENBERGER: Now your question is on the
two hundred series?

MS. GROMMERS: First of all, he wanted you to
speak to why the category of religion was included at all.

DR. PUTNAM: The reason religion is there is not
to identify religion as such, but to tie this to the
educational program.

If there are certain restrictions on the activities
of the child because of his religion, if he is exempted from certain activities, for example, or if the matter of types of medical treatment, and so on, are a factor, in working with this child in the case of an emergency, then we should know what these factors are so the school can act appropriately if the condition should arise.

And if this is the case under these circumstances, the stating of the specific religion would help to explain to people who know what the treatment ought to be.

Or with the financial condition for the subject matter, then that ought to also be indicated.

MS. GROMMERS: I believe this is against the law in some states. Massachusetts, for example. I wonder whether you intend to clearly mark that this is voluntary.

MR. PUTNAM: Well, we do have a statement that this handbook is not intended to take precedence against any state law or regulation.

If it is against the law to get that kind of information, then of course it would not appear in the record in that state.

MR. LEITHEH: The question that would come from your answer, though, is that the classification of information you are asking for here is sort of overkill in the sense that you are asking for more information than you need, and you are not asking for the right category in the sense
of its restrictions on either medical treatment, for
attendance. Those restrictions ought to be noted specifically,
rather than asking for everybody's religion.

DR. PUTNAM: This is correct, and this is the
way the whole handbook is intended to be used. We don't
anticipate anyone is going to implement all the items in
this handbook. But if you have this item in your informa-
tion system for your reasons, then it is going to be more
meaningful to you and useful to you, and you can communicate
it if you use it on the basis of these definitions and
terms.

But we are not intending to say all of these items,
or whatever items, ought to be in your own information
system.

MR. LEITHE: Isn't that a problem when you
represent a series of information like this? You represent
a criteria as being a necessity to running an educational
system.

In a sense what you do is elevate all these
classifications of information to some formal status.

DR. PUTNAM: Could be.

MR. GROMMERS: Would you accept a modification
or would you rather, or prefer to continue to include
religion? The choice is up to you.

DR. PUTNAM: Well, the feeling of the people
involved is that there are certain educational decisions
to be made in certain situations based on that item.

Now I do not look at this really as just an item
for religion. May I go to the item in the handbook and
indicate what items appear under this?

It is not quite the way it looks on our
page 1.5. There are two items. May I read what those two
items are in the handbook?

The first is religious restrictions. And the
second is religion.

Religious restrictions says, "any specific
prohibition or limitation on the pupil's school activities
because of his or his parents' religious beliefs and practices."

And then in situations where this item is
completed, the next item also should be completed, and the
next item is "Religion," and it says:

"The pupil's religious preference as
indicated by the pupil or family."

Its for use only where this other item is
completed. These two items are tied together, and we ask
for religion only when it has significance in the educational
program. That is, we are recommending or suggesting that
it only be used in that context.

MS. GROMMERS: Could you speak to the next point?

The information about the parents' economic status -- two
hundred series.
MR. LEITTHEN: Particularly the one of most interest to several staff members was Item 250, economic information relating to the parents, what relevance that has to either the educational program -- and I presume this information is being maintained for the good of the student -- what relevance this has either to the educational program or what necessity it has to running an educational institution.

DR. PUTNAM: Okay. There are three items or categories under this.

The first is welfare. The second is special compensation programs. The third is source of economic information.

And the purpose here is to determine -- as I would interpret it -- what is the economic situation of the pupil so far as the necessity of the school to provide certain kinds of economic assistance, such as school lunches, clothing perhaps, other kinds of programs of this sort.

It is even a matter for, let's say, junior colleges. If they know that the parent has their sole income from retirement income, or disability income, or something of this sort, then tuition help might be found for this person.

This is the reason for having that information there. We do not ask for income. We don't ask for anything of that sort. Or we don't recommend or include it in the
handbook.

MR. LEITHEN: In Item 530, is the membership that you refer to there some special term of art? Does that refer to membership in organizations?

DR. PUTNAM: No, the membership here -- this is really an accounting -- pupil accounting piece of information. And it is used for determining state aids, generally.

The child comes into membership when he first enrolls. During that period that he is in membership, he is either present or absent each day school is held, and then he terminates the membership by withdrawing or completing work or dropping out.

MR. LEITHEN: Just one sort of question and comment. Again, it illustrates the point I am trying to make, that is, in the 630-31-32-33 series, where you begin with outside activities and employment -- again, the point I would make is, why is it necessary to evaluate all these types of information to some formal status in the student's file where it might be just as easy, if the student wants placement assistance, to ask him when he comes in for an interview what he is interested in, what he has been doing outside of school.

The suggestion that you should collect this information is implicit in elevating this whole thing to a formal status.
DR. PUTNAM: Well, there are times when these kinds of considerations become important. For example, at the time a record is forwarded from a secondary school to a college for college application, we are giving less and less concern to pure intellectual information, that is to say scores on various tests of academic achievement. We are becoming more and more concerned for a well-rounded student, the people who are active in various kinds of activities, who show leadership and initiative and things of this sort.

And this is considered to be a significant part of that record of the pupil, his activity on things other than purely academic.

MS. GROMMERS: Aren't the dull ones entitled to a good education, too?

DR. PUTNAM: This is to help them. I don't know -- I think you are supporting what I am saying here, that we ought not to limit ourselves to tests of academic achievement. And these are places where other persons are able to indicate that they are active and capable and ought to be considered for certain benefits as well.

MR. IMPARA: Mostly it's a clarification of a question. I would like to congratulate Dr. Putnam on his responses, which were obviously based on his experience, and were hypothetical in nature, and that these are not things
that the Office of Education mandates being included in a student file.

These are all of the possible things. It's like a Sears-Roebuck Catalog. You don't buy everything. It's simply something from which you can select based on your own local need.

MS. GROMMERS: The program is there, though, with the slots just waiting to be filled. I wonder if it's the same thing.

MR. IMPARA: No, that's not the intent. The intent is to provide a catalog system, a local system, which can be adopted. A local system may not be able to afford the total system study which went into a document of this nature.

MR. MARTIN: I wonder whether it would be a useful thing to consider, in categorizing information, where there is some information, where it is your intent and everybody's intent that the information be collected and available only for limited and specific cases, that you talk about that information or present it in a schedule, in a place separate from the information that you anticipate and the likely intent is it will become uniform base data for all students.

I think by listing it differently, with a little parenthetical "don't collect this unless you really need it," you are going to feed the feeling that information
systems have to over-collect information, and you might want to consider segregating special purpose, limited application instructions about standardized ways of collecting information from the information that is more mainline, and as to which there won't be any doubt about the utility and virtue of collecting on everybody.

DR. PUTNAM: We have attempted to do this to an extent. In our handbook draft, page 2.21, you can see, even with our meeting that we have had, there has been a lot of comment on this, but this is an attempt to single out or give special attention to certain items which seem to be of greater significance than others, and it's a more selected listing of items where school systems might start.

And then any way they wanted to augment that within the items that are here, or any other items, then they are free to do this, but if they are looking for guidance as to a place to start, or if they are reviewing their materials, this would be the basis for that kind of review.

We have attempted to do that and if you want to suggest, for example, some are more important than others, or might be deleted, we'd be pleased to get that kind of a response.

MS. GROMMERS: I'd like to try once more to make the point -- at the point where you would, rather than a
handbook, actually prepare a system program and documentation of that, and possibly a form that could be filled out with black marker and then processed by a digital scanner, which might be a nice way of getting real data across the country which is, according to your objective testimony, what you are looking for -- if you have all those blanks, it's going to be more difficult to expect someone not to give data than if it is already separated.

DR. PUTNAM: Although that is not our mission. Our mission is not to get into the systems and forms. We are working on the language.

If you are concerned about what items are asked from the Federal level, Mr. Nessetta, tomorrow, can respond to what is the selection of items from this that would be asked for at the Federal level.

MS. GROMMERS: Thank you very much. We will do that.

MR. MARTIN: I'd like to know how much interaction there is between your unit, as you described it earlier, and the rest of the world of the Office of Education, or the Office of the Secretary.

Who is aware of your work, and how do you interact about it?

MR. LICHTENBERGER: I will speak to that. For instance, this morning, one of the reasons we were glad
you were a little late starting is because Dr. Putnam had a session of I think three hours with the people representing other agencies. And it's part of a series.

We try to get this input from the other units of the government, and also within the Office of Education.

And incidentally, it is one of the more difficult things to do. People out in the field keeping the records, they find that they need these very much. They want guidance in this.

In the office where we are changing quite often, everybody has an interest they want to ride or work on pretty hard, so we work on that, and it's not an easy thing to do, but that's the way we are getting at this.

DR. PUTNAM: May I indicate also, we are very gratified -- though she wasn't able to be there -- Dr. Elliott, on behalf of her own bureau and the Bureau of Education for the Handicapped, submitted five or six pages of thoughtful recommendations for improving the handbook.

So even though a number of units were not able to be at our meeting, we are corresponding and letting them know and keeping them posted, asking for suggestions and their presence at any point along the way.

We recognize we need to work together and keep one another informed so far as possible.

MS. GROMMERS: Thank you very much, gentlemen,
for being with us this afternoon. We will have a coffee
break.

MR. LICHTENBERGER: I just want to add one thing.
We didn't get these other men to speak. Dr. Roberts is
on annual leave, but he has this other handbook, the one on
staff, and so he came in to be with us this afternoon.

(Short recess.)

MS. GROMMERS: This afternoon we are very happy
to have with us three gentlemen who are sitting at the
table. Mr. Hastings, the HEW General Counsel, unfortunately
was having a meeting with the Secretary at this moment,
and we are therefore very happy to welcome Mr. St. John
Barrett, the Deputy General Counsel, of HEW.

And Mr. William Small, Vice President of CBS
News. And to his left, Samuel J. Archibald, whose report
"The Basis of the Right to Know" was the background docu-
ment for the Government Information Subcommittee Study on
Restrictions on Access to Information, and he worked on the

Which one of you gentlemen is Mr. Barrett? Will
you address us first?

MR. BARRETT: I will review very briefly with you
what the Freedom of Information Act is, what the situation
in the Government was relating to information, as I
perceived it at the time the act was enacted, and very
briefly how it has changed the scene and what we may expect in the future from it.

The Freedom of Information Act is five years old. It was enacted in 1967. I was working for the Government, but was then in the Department of Justice, at the time it was enacted. I can't recall that I was aware of it at all when it was enacted.

I have no doubt that I regarded the papers and documents that I kept in my office, that my secretary kept in our files, as mine.

If I had been pressed, I suppose I would have conceded that they are actually the documents and records of the Department of Justice, but if somebody had asked me to locate and show them or give them a copy of this or that letter or memorandum, or photocopy of some legal document, my first response would have been, "why?" "Why do you want it?" "What are you going to do with it?" "Why in the world should I give it to you?"

And I might even have felt a little bit of -- not unease--but maybe umbrage that the question was even asked.

I think that was very typical throughout the Government. I really have no doubt about it. Government officials, Government agencies, kept and regarded records and documents much as private businessman would.
They are kept for the purposes of the official and the agency, and they were used for whatever purposes the official or agency felt served its interests. That meant showing them perhaps to individuals or other agencies on request for the purpose -- it might even be favorable publicity -- to advance the work of the agency, or what have you.

And declining on other occasions to show the same document to others who might not be on as friendly a basis with the particular official or for reasons thought best to that official, that his interest in having the document was less warranted.

Now the Freedom of Information Act was designed to turn this whole system upside down so that the question ceased to be "why disclose," but rather, "why not?"

And it provides generally that documents shall be made available for inspection and for copying, unless one of various specific exemptions that are spelled out in the Act apply and therefore permit the official to withhold disclosure.

I think that five of those exemptions may be of particular interest to you in the matters that you have under study.

The first of those is numbered 3 in the Act, and it provides that documents are records which are specifically---
for which disclosure is specifically prohibited or perhaps non-disclosure specifically permitted -- will not be disclosable, or the disclosure is not mandated by the Freedom of Information Act.

In our Department, the most important category of records -- certainly the largest -- to which this applies are our Social Security records.

In the Social Security Act, there is a specific provision imposing criminal penalties on the unauthorized disclosure of any information that has been collected in connection with the administration of the Act.

The Commissioner, however, is authorized by the Social Security Act to permit disclosure pursuant to regulations which he adopts. He has issued some regulations which do permit some disclosure.

Exemption number four, under the Act, relates to records and documents containing commercial or financial information. I believe it is trade secrets, commercial, financial information which is confidential by custom or usage.

The precise language is trade secrets and commercial or financial information obtained from any person and privileged or confidential.

In our Department, that applies perhaps most frequently to records of the Food and Drug Administration, which does have a lot of commercial information. But it has
also been applied, perhaps without any careful thinking out of just how it applies, to information furnished the Public Health Service and the National Institutes of Health in connection with project grant applications for research grants in medicine.

Another exemption, number five, applies to internal communications, internal memoranda within the Department or agency. The stated purpose for that being to protect the decision-making process within the agency, to disclose which might inhibit free expression of opinions, views and judgments, and thereby suppress the integrity and efficacy of the process itself.

Exemption number six applies to information, the disclosure of which would constitute an unwarranted invasion of personal privacy, personnel records, medical records, personal information relating to named or identifiable individuals.

And lastly, exemption number seven, which relates to investigatory files compiled for law enforcement purposes.

This has been read to apply to files whether the law enforcement they are directed to, or the investigation was directed to, is criminal or civil in nature. Thus, we have considered that it applies to our investigatory files relating to civil rights violations.

Also some audits of grantees.
When the statute was enacted, in fact within a day or two, the Justice Department released what is
titled "The Attorney General's Memorandum on the Public
Information Section of the Administrative Procedure Act."
That is what I have here.

It is a very general discussion and compilation
of the provisions of the Act, the committee reports and other
related documents, that pretty much make up the legislative
history relating to the Act.

I think this memorandum itself pretty well epitomizes the governmental reaction to this enactment,
which was essentially to go on doing business as usual to the fullest extent possible.

Our own Department of Health, Education and Welfare published a regulation at the same time -- I think most of the departments did -- and it was done -- the drafting was done in consultation with the Department of Justice.

I understand that in our Department, the process in part at least was to find out from the constituent agencies essentially what they felt should not be disclosed.

And of course many of the agencies had deeply-felt beliefs as to what sort of disclosures and disclosure of what documents would impede the effective administration of their programs.

These were fitted -- to the extent they could be
fitted -- under the exemptions of the Act, giving the
exemptions the broadest interpretation that would be possible.

For instance, in the exemption -- there is a
very important exemption that I failed to mention relating
to inter-agency -- I mentioned the exemption, but not the
particular point. -- the exemption relating to internal
memorandum, which actually refers to intra-agency memoranda,
and describes them as intra-agency, also applies to inter-agency
memoranda.

The Attorney General, and we, read inter-agency
to apply to communications between, say, the Department of
Health, Education and Welfare, and the Welfare Department of
the State of California. Both of them being indeed agencies,
our correspondence could be termed inter-agency memoranda.

Other of the exemptions were given equally broad
interpretation.

It was some time before the Courts got into the
act. It was, of course, inevitable that they would. And many
of the provisions in our present regulation, we find today,
in view of the court decisions, are without legal basis in
the Act.

We are in the process now of revising the regu-
lation. The Secretary has clearly announced on more than
one occasion that the policy of our Department is what the
Freedom of Information Act had indeed been intended to
legislate for the entire government, namely, that the rule is disclosure, unless there is a specific, well-articulated justification for non-disclosure which can be clearly supported by law.

I think that this policy as it is further articulated and implemented will have a very much broadening effect in the disclosure of information by our Department.

Have I covered what you hoped I might?

MS. GROMMERS: Mr. Small is going to talk next, speaking as a more or less voice of the public's rights on the need to know.

MR. SMALL: Bureaucrats love secrets, and those of you who are in the government love rubber stamps that tell you you can mark it top secret or bottom secret or confidential or whatever.

And newsmen hate them. And I think it's quite true that many in government did not notice either the signing of this law on July 4, 1966, or its implementation eleven months later. Nor even the Ramsey Clark guidelines, which of themselves are excellent until you get into the particulars.

The law itself, I think -- and Sam is a much better person to speak to this than I am -- but it strikes me as sort of a typical case of a good idea that had too many layers of good ideas imposed upon it.
And the result is that Lyndon Johnson, who had no appetite at all for such legislation when it all began, was perfectly willing to sign it by the time he saw the finished product, and even -- if I remember correctly, Sam, didn't he sign it out at Johnson City on the steps of the Post Office, or something like that, on the Fourth of July. -- even was able to say, which goes far beyond the Act -- "I have always believed that freedom of information is so vital that only the national security, not the desire of public officials or private citizens, should determine when it must be restricted."

Well, this Act goes far beyond simple national security, even if anyone could define it. I think the best story I have heard in a long time about how privacy in government works was all that happened during the Calley trial.

There is at the Associated Press something called the special team. I think there are ten reporters who do not cover day-to-day news, but tackle special investigative reporting, or they will look for a special angle to a going story of consequence.

And Gaylord (Shaw) who is the head of that group, tells about some of the things that went on during the Calley trial. And a young lady worked for him and called the Pentagon and said, I am submitting a list of --
in the Pentagon, you submit the questions and they come back
to you -- she submitted a list of fifteen questions, and they
came back, and she called the man at the Pentagon and said,
"You marked thirteen of these confidential, and I have not
been given a reply."

And he said, "correct." And she said, "I'd
like to point out that one of the items simply asked in
what year was Fort Benning founded."

He said, "That's classified."

She called Fort Benning, got a young Lt. in the
public information section, and said, "Could you tell me in
what year Fort Benning was founded?"

He said, "Of course I can, it was 1870." -- or
whatever it was, he gave her the date.

She said, "Thank you." He said, "Boy, the AP
has money to burn."

She said, "What do you mean?" He said, "You
called long distance, you could have called the Pentagon."
She said, "They said it was classified."

He said "What?" She said, "They said it's
classified information."

"Oh," he said, "Well, don't tell them where you
got it."

(Laughter.)

I think you will find all through government --
and I must say, the defense establishment is probably the
government people who are determined to keep as many secrets
as they can from anyone except the man at the other end of
the inter-agency memo or their boss. Even from each other.

The violations, if you will, of the intent
of this Act occur daily. And when a newsman tries to get
the information, he finds it extremely difficult, because while
indeed, as Ramsey Clark points out in these guidelines,
it is the intent to turn the system upside down, and that
revolution should come before the hiding of any fact, it hasn't
changed the bureaucracy in Washington.

It's not likely to change it in my lifetime. And
the only resource that a newsman has with public officials
who just won't budge is to go to court.

Now there are two things wrong with this. One,
it is expensive.

Now while CBS can afford to go to court, this
Act is not meant only for media giants, conglomerates such
as CBS. After all, we own the Yankees and a guitar factory,
and we have lots of money.

But it is also meant to protect the guy who
works for the Virginia Sun or the Montgomery County news-
papers, who has very little money, and indeed finds himself
hardpressed to pay the charges -- which is another aspect of the money end of it -- the charges to duplicate documents once they have been released to you.

But far more important than the difficulties in going to court is the question of time.

As we all know, anyone who has had any experience in the courts, with good lawyers -- and the government has lots of lawyers, even if it doesn't have lots of good lawyers -- there is a waste of delay, endlessly.

And of course in the newspaper business, your purpose is to get information as quickly as you can, because it is a story you are working on. It doesn't do us any good, normally, to, for example, get information ten years late on My Lai, the Calley business. Obviously, it's something you want to get quickly.

And the ability of bureaucrats to delay is phenomenal.

The greatest use I have made of the FOI act is to use it as a threat. I shouldn't let the secret out to too many of you in the government. You will go back and say that's a hollow threat at 2020 M Street, and indeed, I guess that's what I am.

But frequently we will just say, "Look, what you are doing is a violation of the FOI Act, you must give us that information." It sometimes works.
I am grateful for that, because before we had that threat, hollow or now, it didn't work. We used to take the second step, which was, "No, it's not, our lawyers tell us it's not."

Then you say, "Well, I'm going to go to the Moss Committee"-- when Sam was there, and now it's Congressman Moorhead who heads the committee. And that is sort of a threat on a threat, and that occasionally works.

And finally you go to the Committee -- not often, but sometimes -- if you look at the early years under Moss, you find that the guy in the Justice Department, or whatever, who wouldn't talk to CBS, finds it more threatening to hear the same words coming from a member of the House of Representatives.

So it has been somewhat useful in that way. But when they don't want to give you information, and are determined to hide it, the delays can be endless.

Even the first step, when you say this is a violation of a five year old Act of Congress, and they say, "you may be right, let us check legal counsel."

And you call back a couple of days later and they say -- and this actually happened to me, involving Justice -- "the lawyers haven't decided yet." And this drags on for days and weeks -- days, anyway -- and they try to get rid of you that way.
When that has failed, and you remain persistent, and in some stories you can and sometimes you do it out of meanness or principle or whatever you want to call it -- then you find they get a lawyer's ruling and it's a little cloudy and they want to run it by another set of lawyers, or maybe they get a lawyer's ruling that says you are running under the several exemptions Mr. Barrett named. We are clean and you can't have that information.

But there is no question in my mind that the vast majority of people in the Federal government will do whatever they can to keep you from getting information, and that probably a very significant minority, if not a majority, don't even know that such an Act exists, because in their daily word, it didn't pop up.

So they continue with the classification of material, and they take the attitude he expressed earlier, that of a private businessman -- "These files are mine, this information is mine, it belongs to my little corner of" whatever department they are in, and not to the public at large.

As you know, President Nixon this year, as a result of the Pentagon Papers controversy, asked for improved procedures in declassifying material. I talked to some friends in the Defense establishment, and said, "Has this really made much of a difference?"

He said, "Oh, yes, it's very exciting, now you
get stuff that is stamped, 'Do not declassify until the
date 2,002.'"

That is a nice way to put the restriction on
certain material. Thirty years is most you can classify it,
and I guess it's exciting to come across their desk because
it sounds like Buck Rogers.

I said, "But is any more stuff being de-
classified?" And the answer is no. The fact of the matter
is, there are hundreds of people in this city who are filing
thousands of documents that ought to be in the public domain.

A man named Bill (Florence), who is the Pentagon's
declassification expert, you may recall testified after the
Pentagon Papers and said, "Ninety-nine percent should be
made public; there is no reason at all to hide it."

Well, why is it being hidden? Several reasons.
One is pride of ownership or authorship, that you are more
important if you have material that the fellow across the
room can't read.

A lot of it is to avoid controversy. The less
that is open to the public at large or the press, the less
likely you are to get in trouble.

A lot of it hides personal or bureaucratic
embarrassments. It covers the mistakes. It's a great way
to hide the errors. There are people in this world who don't
want to make decisions. They are eagerly looking around for
other people who will say, "That is my decision."

So in a place such as the one I worked at, somewhere along the line the buck has to stop. But in the Government, it never needs to stop because all you need to do is stamp it classified and your mistakes are buried. It's a wonderful way to cover things up.

But it's a lousy way to run a country, and it's a lousy way for citizens at large to know what is happening in their country.

Sam?

MR. ARCHIBALD: I have just been writing some comments down here as we go along, and I hope you won't like them.

The Freedom of Information Act was designed to turn the government information practices upside down. It wasn't supported by any government agency. Not one government agency, of the eighty-three in existence at that time, supported this legislation.

They were all in favor of the principle, sure. "This is a sort of democracy, and the people have some right to know. But we are not in favor of spelling out that principle in law."

So when the law was reluctantly signed by President Johnson -- isn't that a kind of a funny thing? The guy who invented the credibility gap is the guy who signed...
the Freedom of Information law -- when it was signed by him and took effect, you wouldn't expect all of the agencies to immediately rush out regulations spelling out, implementing this law as it was intended, or even as it was spelled out. You are right. They didn't.

Most of the agencies adopted regulations at the very last minute. Some of them even refused to adopt regulations until they were pushed. Those that did adopt regulations, in almost every instance just codified their past secrecy practices in regulations.

And therefore, of course, since the law was a generality and since the regulations didn't spell out how you could enforce it yourselves, nothing would be expected to happen. And that is what the agencies hoped. But that wasn't the fact.

People began using this law. Now one important point in this new law is that not only did it say public records are available to any person without proving the need to know or anything, but if you are refused public records you can go to court.

And the agency has the burden of proof that secrecy is necessary. It puts the burden of proof on the back of the government for the very first time in the short, happy history of our democratic process.
The courts have been exercising this prerogative in the comparatively few times people have taken their case to court. There have been, in the first four and a half years of the law's operation, about 150 cases filed. And the courts have said to the government --

The government, by the way, argued in every case, "Well, you don't have to make us prove it, just accept what we say." And they said, "Hell, no." Well, not exactly. They said, "Heck, no, you've got to come into court and prove this is necessary. You have to, in many cases, give us the document even if you claim investigatory files" --

I almost said national security; they haven't unfortunately forced them to prove national security --"And if it's an investigatory file and you can't disclose it, you show it to us in camera and we will make the decision whether or not it is."

As a result of this court enforcement provision, as a result of putting the monkey on the agency's back, there have been some interesting developments.

Among the more often used sections of this law, sections which say you must make everything public except under the nine exemptions, which are permissive exemptions, by the way, I want to emphasize, and not mandatory -- among the most used exemptions are, as Mr. Barrett pointed out, one which says, "You need not make available information
privileged and confidential"—trade secrets, so called.

All of the cases taken to court under this exemption—every single case—the government has lost.

That is not a lot of cases, unfortunately. It's six. But it's a pretty good percentage.

The other section says interagency memoranda need not be made available. Whatever they are.

Of the ten cases which have gone to court in the first four and a half years, under this exemption, the government lost six.

By the way, we did a survey of government agencies, asking them what sections they used most frequently. They indicated that most frequently, when the law was brought to their attention and when they were forced to cite a section of law as authority for withholding, the two most often used sections were these two: privileged and confidential; inter-agency memorandum.

In 403 cases they cited inter-agency memoranda as a cause. And people who took those cases to court, overthrew the government.

375 times they cited inter-agency memorandum as an excuse. 60 percent of the people who took those cases to court won.

In the other major area, investigatory files—by the way, for law enforcement purposes—the government lost
only one of seven cases. So the trend is toward the court
making the government prove secrecy, and the government failing
to be able to prove secrecy when relying on trade secrets,
or interagency memoranda, the lawyer-client, doctor-patient
relationship.

But they were successful when they relied on
investigatory memoranda and other such things as national
defense and foreign policy discussions.

As a result of the early court losses, the
government's early losses in court, they realized there was
a law here after all, and maybe we had better do something about
it.

So of course, like every major bureaucracy --
a campus, a government, or a news organization -- they
formed a committee.

The Department of Justice formed a committee
to advise the other council -- the council of other agencies --
on how to handle the law.

Because they said some of you general counsel
in other agencies are going to court and losing cases, which
hurts the government as a whole. We have to disclose things
which might be embarrassing.

The committee -- well, we don't know how well
they have done. They won't divulge their views.

But there is one thing apparent. This law which
is on the books only because the free and responsible press
fought for it, has been used by private interests to get
public records for personal gain.

So what? This is the name of the democratic
game, unless you are still back in high school civic textbooks.
The democratic system is that which permits a
clash of wills, a clash of interest. I see nothing wrong
with a guy using a law because it is to his benefit. I
would like to see, frankly, incidentally, more of the press
who supported the law use it to its fullest.

One of the reasons they don't--well, of course,
the explanation that Bill gave is very valid.

The other reasons -- many of them don't know
about it. I think probably, except for the Washington
press corps, this law is less known among reporters, the
press, and the publishers than anywhere else including the
government.

Incidentally, in the field I understand you
people are interested in, all this law says is that public
records are available. It does not identify public records.
Either because that is impossible or because we had too many
other problems to solve or create, depending upon your
attitude toward it.

The Attorney General's memorandum trying to
explain the law -- the memorandum, by the way, is four years
out of date; it will be revised because these new court actions were brought to the Attorney General's attention rather forcefully in a set of hearings -- does say that a public record to which this law is applicable is not a document but it is a record, regardless of the physical form or characteristics. It may be a tape, a compilation of material, and so forth.

Some of the other problems which are going to be changed, if not solved, in connection with the use of the law are the exorbitant costs that some of the agencies charge, hoping that this will discourage users. Anywhere from nothing to $10 an hour to search the public records; anywhere from nothing to $10 a page to copy them.

This is going to be changed to a probably uniform fee of $3.50 a hour for search, and $0.10 a page for copying.

Unless you happen to be a reporter asking the agency for information and it will be good for the agency to get it out, then of course it is all for free, which is probably the way it should be.

There probably will be legislation to require the government to pay court costs and reasonable attorney fees if they take the case to court and lose it. This is not, of course, unusual in other fields.

There are a number of other things. In the
first four years, we contacted government agencies to ask
how much it had been used, and they listed 200,000 requests
for information under this law, and only 2,000 refusals.

Pretty good record. Except, of course, the
requests were as phony as a $3 bill. Every time somebody
would request a copy of a speech or pamphlet or routine
document, they listed this as a Freedom of Information case.

The 2,000 refusals are refusals which were really
under the Freedom of Information. That is not much use of a
law that took eleven years to create, a lot of furor and a
lot of government time to unwind.

But it's a lot better -- 2,000 people getting
information better -- than it ever was before.

Well, there was a reason for this law. The basic
reason was the democratic process. We are supposed to have
a right to know what our government is doing, supposed to be
able to find out all those sorts of high-minded ideals.

And there was one exemption put in there, in spite
of or maybe because of these high-minded ideals. An agency
may withhold information that is contained in personal
and medical files or similar files, the disclosure of which
would constitute a clearly unwarranted invasion of personal
privacy.

That language was very carefully worked out. Not
an invasion of personal privacy. Not an unwarranted invasion.
But a clearly unwarranted invasion of personal privacy. So if you refuse, you better be prepared to prove in court that it is clearly unwarranted.

This whole idea of the right to know conflicts, of course, with the right to privacy. One of the reasons for putting this specific, permissive exemption in was that the philosophy behind establishing the right to know law is that you have a right to see what the government is doing, how it is carrying out its job for you.

Just because the government collects some information, does it make it a public record? Of course it doesn't. It doesn't make my income tax a public record, except to a select few in the White House, the FBI and on Capitol Hill. It doesn't make my Social Security file a public record.

But suppose I want to find out how the government agency which has these things -- Social Security, income taxes, those sorts of things -- is doing its job? I can only find out by seeing what it does with the information it gets.

Right there is a conflict. Where does the right to know, based on the philosophy of the democratic society, end, and the right of privacy start? Obviously, you people are here to solve that problem. I hope you do. Can I help you?

MS. GROMMERS: Miss Cox would you like to start
off with questions?

MS. COX: Pass at this stage.

MS. GROMMERS: Mr. Davey?

MR. DAVEY: I'd like to ass for a moment, because I am thinking.

MS. GROMMERS: Mr. Aronoff?

MR. ARONOFF: I'd like to start with a comment that this whole issue, in the way it is presented here, gives me a kind of a weird feeling. I think I said this once before.

For one of the few times, I get the feeling on this right to know and right to privacy, you can easily get the ACLU and the John Birch Society on the same side of either issue, whichever way you are going to argue, which gives interesting implications all the way through.

But I'd like to just take the data that we have had, and directing my question to either Mr. Small or Mr. Archibald, if we used the right to know theory and extend it to its fullest implication, as I think you both indicated you would like to do, and if we then go over the kinds of systems that we have examined here, I would think that you would say that the records of the coal miner in West Virginia having to do with Black Lung, for your purposes, in order to show the public the issue, would be available, even if you would find out specific people that would be involved,
so that you would go down there with the cameras and get
the typical example of the person that would build the
story to show the purpose that you had in mind.

I am suggesting it, and asking you to respond to
it.

Or in the vocational rehabilitation area, you
might very well find the counselor who was talking to the
welfare person, who in turn was rehabilitating that disabled
welfare person, in order to get a job, and that person then
was still on welfare, let's say.

In order to show the failure of that program, you
would want access to the records, and you would say the
FOI legislation should give you access to that information, I
think.

If you ever got to Mr. Gallati, you might have
a more difficult time, I would think. But nevertheless,
you might want to know whether he is able to crack the Mafia,
really, in New York, or not, and you would be interested
in making a heck of an interesting business there.

Or you might go down to Maryland and say, well,
we want to find out the success of whether people have mental
disorders or not -- or whether this whole program is working.
And there you might find some specific people that have
been treated, in order to find out how that program is
going.
I suggest to you that getting that record, and then getting into individuals in order to make your point, does cross the line and may very well get into the invasion of privacy. And I'd like to have your response there in terms of trying to help you.

MR. ARCHIBALD: I will accept your suggestion. And tell you you are full of hog manure. Because there is no intent to make a point.

Suppose the point were on the side of right, virtue and the government agency? Suppose the point is that the program is working.

Nobody is trying to get this information to prove one point or the other, and the courts have already ruled this.

I suggest you look at the American Tobacco case vs. FTC. They have already ruled in this field -- not directly, but quite related -- where the government said in its cancer studies, "We can't show you this information, we can't show you the basic case studies because it divulges medical information."

The court said, "You must show them, with some limitations."

I want limitations applied, but not by the bureaucracy of the Executive Branch, but by the Judiciary. I don't see why they can't make decisions. This is the process
we have to do it.

The reason for getting this information, at
lease from my prejudiced viewpoint, is not to show that a
program is not working, but to find out whether it is
working. To do that, it may entirely be possible that you
might have to invade somebody's privacy. You might. I beg
your pardon -- not have to -- but you might actually invade
somebody's privacy.

The trouble is that the privacy that has been
protected in the past is not, has not been, and I think is
not today personal privacy, but the government's privacy.

The reaction has been against disclosing things
that would embarrass the government. I am absolutely certain
that if an agency were sure that a program was working well,
it would welcome CBS -- even CBS -- with open arms. CBS
with its record of telling the truth about the selling of
the Pentagon.

Opposed to your example -- and of course it is
the hard case, the most difficult case -- let me explain
the most recent use of this law to protect a person's privacy.

The Interior Department hired a guy named
Harry (Trelvan). If any of you read The Selling of the
President, you remember him as the hero and/or anti-hero,
depending on your attitude toward Republican form of
government.
They hired him to study the public information of the Interior Department. An important study, and a damn good guy to do it.

$125 a day -- $12,000 it cost -- and well worth it. Fifty pages. Eighteen pages of general comments on how rotten their information operations were, and how they could be improved in general. The rest specific comments on departments, information operations, who was doing what, and with which, and to whom.

And they wouldn't make this public. They said this is not a public record. Why, it mentioned names, and would invade their privacy.

After a series of pressures -- newspapermen tried to get it and couldn't -- the Congressmen tried to get it -- and finally, after a committee hearing, they said, "All right, we will make the first eighteen pages public. This is general comment about the information, public relations shortcomings of the Interior Department."

"One paragraph we cannot make public because it mentions a specific individual. It would embarrass him unnecessarily, under the invasion of privacy section."

Using this Freedom of Information law, not going to court, but you see, because the law says you may go to court, it also requires a decision to refuse to be made by the top level of an agency.
Usually, refusal comes from the lower administrative working level. If you push, the decision to refuse must be made by the top guy.

All right. The general counsel made the first decision that the eighteen pages, except for one paragraph, can be made public. An appeal was filed with the Secretary of Interior.

The appeal started out, "Dear Mr. Secretary, Secrecy minded bureaucrats in your department fear this letter is going to embarrass you."

It laid forth all of the attempts to get this eighteen pages, explained the censored paragraph, and explained their statement that to disclose this would be embarrassing, would invade the personal privacy.

Who was identified in this paragraph, and what was so embarrassing? The letter told the Secretary who was embarrassed. The letter was given to the press a couple of days ago, and will be published, I hope.

Whose personal privacy? The Secretary of Interior. It said, "He's a very photogenic guy and he ought to be used in more publicity shots for television, so we can get better publicity."

They weren't withholding that to protect personal privacy. They were withholding it because it's obvious gimmickry, and so forth.
Fine. I am on the side of Harry (Trelvan), but that is the main reason for the use of personal privacy. That is the case on the other side.

And I submit that more cases like that happen, more misuse of this argument of personal privacy than the cases you set forth in which there is some justification.

MR. ARONOFF: I am not trying to quarrel. You through a question out -- "Can we help?" I am throwing one back at you, because I don't know where this whole debate goes.

By the way, I will quarrel with one thing. I don't think your opinion should be to either prove the good or badness of an agency. You shouldn't be pre-judging. You should be finding out and reporting what you find, not with a predisposition either way.

MR. ARCHIBALD: Which is the way it is done, by the way, believe it or not.

MR. ARONOFF: Now the other aspect, carrying it a step further, you are saying really it is not the individual right that usually is concerned here, it is the government protecting its right.

But one of the reasons that this committee was established is the fact that because of the government's collection of vast amounts of information, and because of various private agencies collecting vast amounts of information, unwittingly you may get into the invasion of personal
privacy.

And it's a question of how far you go with your right to know statutes, which may get into the area of privacy that was collected by the government for one purpose, but then is used by you for an entirely different purpose.

And I am suggesting to you that the very passage of the statute on the one hand, the right to know statute itself, has engendered a kind of counter-force there which may in turn end up in some statutes to protecting privacy, and that maybe what we are really looking to is protecting a good wall on both sides and still giving the latitude in the middle for the democratic process that you refer to.

MR. SMALL: If I may respond to the response. Sam and I are both extremists. I hope I am not as extreme in language as he is.

But we, I think, are pretty much, at least in theory, in agreement with the late Hugo Black's concept of the purity of the First Amendment.

And I feel very strongly that basically he is right. That almost every protective device you see is not really involving -- at least the ones I have experienced in this business -- not involving the rights of individuals as much as the individual in government.

And I find them fair game. I think anyone who works in the government ought to be open to the eyes of the
people, be they the large media organizations, the small ones, the family, whatever.

And I think our opening remarks would indicate the failings of the FOI Act rather than its success, which have been minimal. Important, but minimal.

I am not sure that we shouldn't be looking at a lot of the things we traditionally kept as secrets, look at them freshly. There is a reference made, for example, to Internal revenue.

I am not sure that all tax returns should be kept private. Private in terms of the government and those within the government -- that small group which apparently includes Jack Anderson now, that have access to them.

Some years ago, when I was living in Kentucky, I toured the state with a group of lawyers and judges, debating Cannon 35, and the whole question of courtroom coverage.

And in a particularly heated debate in Covington one night, some judge rose and said, "You would defy the sanctity of the jury. The next thing you know, you will want to sit in with those twelve people."

And I finessed the answer, waffled, and escaped, I thought successfully. And that night there was a lawyer from Frankfort, Kentucky who was traveling with us who said, "Boy, you are a coward, you evaded that question."
I said, "Well, I thought it wasn't relevant to what we were discussing. I didn't want to get into the jury system."

He said, "Why do juries have to be private?"

It was the first time I had ever heard someone in the legal profession suggest that maybe juries should meet in the open. And over the years, as I thought about it, I am not so sure that he didn't have the germ of a very good idea.

Why must twelve of our peers meet in private to discuss a case which has been discussed in public? Now admittedly, some cases do have aspects which are discussed in chambers, in camera. But very few do.

And why should the jury have that protection?

Well, we know the historic defenses for the jury system, and their right to meet in private, but I am not sure it wouldn't help perhaps to have juries in the open.

I am not sure we wouldn't receive more justice if those two people did not have to defend their views openly. I certainly feel this way about the vast majority of what our government does. I think there is an irony here in the question of invasion of individual rights.

We have mentioned personal problems, medical problems, all that. The ironic things being that of all the agencies we deal with, HEW is probably as open as any.
Certainly a good deal more open than most in this city.

But what would be wrong with having a lot more of this information which we have traditionally and historically said must be kept secret -- in having it open?

You know, the Democrats tried an experiment a few weeks ago in having an almost open convention, and a lot of people looked at it in different ways, and a lot of people were appalled by it, but I found it refreshing, that a good deal of that linen was washed in public. More than I have ever seen at a convention, and I have been going to every one since 1952.

I found it the most open of the conventions I have seen, and I don't think that is unhealthy at all. Maybe I am wrong. And certainly one can cite incidents where an individual -- and in the case of many of the individuals you deal with -- a poor and therefore generally defenseless individual is the victim of this kind of openness.

But I think you would find that in the long run that individual would be the exception. That most of the time, we are dealing with people who have a great many defenses, their prime one being the right to classify materials, to keep materials secret.

MS. GROMMERS: Mr. Gallati?

MR. GALLATI: A couple of questions. I think
we are talking a little bit on two different levels. We are concerned primarily with the rights of individuals, most of whom are not in government at all. These are the subjects of the files.

And I think you probably would very much agree with us that these people have some very important rights, including the right to privacy.

For example, a person who, in order to get a benefit to which he is legally entitled, is required by law or administrative directive to fill out a certain amount of data concerning himself, much of which may be very private indeed; all of it private in one context.

Now we feel -- if I can speak for the group -- that this person and his data belongs to him, and should be protected. Even as, perhaps, you write a story and you copyright it. If you write a biography of yourself, even if it's only three lines long, you can copyright it, can you not, and this belongs to you, and nobody can print that unless you give legal permission.

Likewise, this individual who has surrendered his biography, if you will, in order to obtain a legal right, should be protected. I think you would agree.

We are not talking now about the cabinet ministry, not talking about the bureaucrats of the secretarial level.

We are talking about some poor person who has to get a few
dollars to support his family. These are the type of person we are concerned with.

I don't think your stories are any better because you necessarily get the information about individuals, per se. You might decide that a good story can be built upon a specific case, in which case you should go to that individual, get his permission, but not get it from the files of the government agency that holds this information.

Well, that is a statement, not a question. But I would like your reaction to it.

But one other question, that is, this whole problem of public records, it seems to me, in the best interest of society and very much in the best interest of the media, somebody should take and wrestle with this problem of what is a public record, and it should be keen definitions of what is the public record.

And we can say that within the concept of public record there are all kinds of public records; some of which are by nature called public records but are today not truly public records.

For example, the most obvious one, one which I am acquainted with, is a conviction in court. That is a public record and anybody can go to the court and obtain the record.

But let the agencies of law enforcement, for
example, compile these records so that you now have what amounts to a dossier of individual public records, it now becomes a dossier on a person. I think we would all agree that that is something more than the common definition of a public record, even though it consists of units of a public record.

And I suggest that this is a type of thing that the press has in the past, as we all know, exploited, and perhaps should not exploit, even though it is a public record.

Now if the press gets that from their own morgue sources, there is very little can be done about it. Maybe, or maybe not, this should be used in stories.

But in any event, it should not be gotten from the custodians of this record who have a responsibility to protect the confidentiality of these records, even though they are in individual instances public records, but as a totality become a dossier.

MR. SMALL: One of the great concerns of all of you, as well as people like (Sam Irving) --

MR. GALLATI: I am flattered by the comparison.

MR. SMALL: -- the exchange between all of you in this line of work, particularly in the age of computers, is such that the only ones who do not have access are people in the public press.

That at least seemingly we are heading in a
direction where the police chief in St. Charles, Illinois
some day will punch a computer and find what every one in
the entire United States and welfare and law enforcement
knows about Sam Archibald. That is going to be a very fat
dossier when he gets it.

So there are serious questions which I know
you are grappling with. How much of that -- how do you
retrieve from the computer all of that kind of information,
much of it unevaluated.

I don't think many of us have seen the FBI files,
for example, but the stories one hears would indicate that
there is a lot of unevaluated information, because of the
nature of that agency.

Is that going to be shared freely and easily
with the other agencies which may be less scrupulous about
revealing what they found out back in St. Charles, Illinois,
or whatever?

I think you will find the thrust of what we
do in the news business is not directed at embarrassing single
individuals, but when you say close all their records, you
raise questions about the ability to report, for example,
on the success of programs.

One of the great dilemmas in our society right
now is the question of welfare. What are the right programs?
How are they working? How are they failing, etcetera.
If one does not have access to the welfare records, or even parts of them, in individual states, we are left with the rumors and the charges and the counter-charges, many from political sources, which are hardly the same as being able to go and study the records that you have, say, on welfare programs in New York State or Ohio or whatever.

MR. GALLATI: May I suggest that you don't have to have the personal identifiers. You can have statistical data, or if you wanted to go that far, have the actual files with the identifiers removed, and such files could not be otherwise identified, and you could come to the same conclusion in a need to know, right to know, or freedom of information, without embarrassing or depriving the individual involved of the right of privacy.

MR. SMALL: Let me just say it is not my right to know, I work for CBS.

MR. WEIZENBAUM: It says freedom of the press, to print, whatever you can lawfully get your hands on.

We are just saying there are certain things you can't lawfully get your hands on.

MR. SMALL: What we are suggesting is that there really should be very little that -- not just me -- but that anyone can get their hands on.

MS. GROMMERS: You must be familiar with the Fair Credit Reporting Act hearings, where, for example,
the information came out on what kind of surveillance is
required of you when you are undergoing a test to pass your
insurance premium raise, and that information is unevaluated.
You, not you the press, but one can get one's
hands on that kind of information.

MR. SMALL: The gentleman in the corner suggested
in a different way earlier perhaps what we need is a
clarification of what kind of information should be gathered
in the first place.

I worry too about insurance companies and the
kind of material they are gathering. I am worried about the
day they get the FBI dossiers and freely exchange them.
Because one never has a chance to see what they say about
one.

But you are going to have problems -- individuals
always will -- for example, if I take you to court and charge
you with any kind of crime, that a trial may be very embarrass-
ing to you, even if you are innocent.

Or if we go to a quasi-judicial thing, such as
the Pepper crime hearings, and Frank Sinatra pops up. Well,
it was right embarrassing to Frank Sinatra.

But sometimes it is in the nature of the public
good that he be embarrassed. It is unfortunate, perhaps, in
our society that that accusation and defenses -- be they the
Fifth Amendment, as some plead before Pepper, or the Sinatra
counter-attack, or whatever, in the minds of the general public raise more doubts than they resolve.

    But public trials are public not necessarily to protect the individual on trial, but also to protect his society. We all have a stake when someone goes to trial in seeing that the trial is fair, because we may be next.

    MR. GALLATI: You are confusing the issue. Because you are talking about public figures. We are not talking about public figures. They have already surrendered their privacy by virtue of the fact that they are celebrities.

    Also, you are comparing the press with the judiciary, and I'm afraid the judiciary might be a little put out by it.

    MR. ARCHIBALD: Some of the press would object, too.

    MS. GROMMERS: Let me go on to Professor Allen.

    MR. SMALL: I should say that I complained to Sam on the way out on another issue. I said, "Sam, not everyone in our business is honest and pure and good."

    And he said, "No, no, your record is not much better than doctors, and worse than lawyers."

    MR. ALLEN: As lawyers you present a very persuasive case for one side of what are the most interesting legal questions, when you have two really fundamental values that are coming in conflict.
Where do you really land between the right to know on the one side, and the individual's aspirations for privacy? And the statutory mechanism is set up, and it is set up with competing sets of categories that must be revealed also, and then the sets of exemptions.

And we have a process for deciding on particular cases whether they are within the exemptions.

But I guess the question comes down to whether the thrust for legitimate right to know can occasionally push really too far to where it intrudes unwarrantedly.

MR. ARCHIBALD: Clearly unwarrantedly.

MR. ALLEN: Clearly unwarrantedly, in the present statutory language. But that is the interesting question, whether it should be that strongly warranted if, when so characterized, if people are required to register, for example, with a governmental agency, if then in turn that, for example, is made available as a commercial list with names and addresses, with some identifying characteristic available -- it it going too far then?

You suggested that perhaps not. I guess this is where the judgments of reasonable people begin to perhaps get -- recognizing the legitimacy of important values in competition -- should the gun lists have been sold?

MR. ARCHIBALD: Yes. Mr. Gallati already drew the line -- it's simple -- he drew the line very, very
clearly, and that is why I disagreed so strongly, or shook my head in disagreement.

You said when a person gets a government benefit, should his name and identification be made public.

**MR. ALLEN:** I was going one step beyond that.

**MR. ARCHIBALD:** He drew the line. You asked where the line was. That was the premise for the statement. You said a government benefit. When you get a government benefit, you have a concomitant duty, you see.

**MR. ALLEN:** What is your answer?

**MR. ARCHIBALD:** Of course it should be.

**MS. COX:** Should be what?

**MR. ARCHIBALD:** What should be what?

**MR. WEIZENBAUM:** Are you saying if a person gets a government benefit by virtue of that he has lost --

**MR. ARCHIBALD:** The right of privacy is diminished.

**MS. COX:** Why?

**MS. GROMMERS:** Professor Allen has the floor.

**MR. ALLEN:** I was trying to give you the next stage on the continuum beyond where there is an application for a benefit, of where there is a mandatory duty to register and no benefit being derived. And even in that instance, would you deem it appropriate that those who were compelled to register with the Treasure Department should have their names and addresses, attached with the characteristic
as gun owners, that that should be distributed and should there be a penalty attached if that kind of information is released, and it is subsequently decided that it shouldn't have been?

MR. ARCHIBALD: Are you from up-state New York?

MR. ALLEN: Does that make a difference?

MR. ARCHIBALD: Yes, it does.

MR. ALLEN: No.

MR. ARCHIBALD: Frank Horton, Congressman from up-state New York, has introduced legislation just to effectuate what you are setting forth, and I thought you may have talked to him, because he started it because some doctor who is also a gun nut -- collector, pardon me -- when he registered, as he was required to do by law, he all of a sudden began getting partisements and mail solicitations, and so Congressman Horton imposed upon the Internal Revenue Service, and they said, well, we won't make this public any more, the name of the people who get a government benefit, that is to say, a license to sell, which is also included, antique guns.

Of course, a guy who gets a license to sell new guns, which are easier to kill people with, we will make public, because he is a businessman.

I think as far as a grant of a license to sell guns, which is what the collector's license is, because
without the collector's license they can't sell even an antique gun, which is twenty-five years old, and I know a lot that have killed people -- I think if you grant them the license to sell guns, I have a right to know to whom you are granting that license.

If you are paid a government salary, I have a right to know your name, government address, and how much you are paid.

MS. GROMMERS: How about his religion?

MR. ARCHIBALD: That has nothing to do with it, unless of course it is pertinent.

(Laughter.)

I have a right to know the name of, and religion of, all government-paid chaplains.

MS. GROMMERS: Our point is that sometimes this information is also on the list.

MR. ARCHIBALD: I didn't say anything about a list. That gets back to the question of compilation, the list and all the other junk.

MR. GALLATI: Sam, I'd like to know from you, who are a loyal American, how many benefits you receive from the government.

The day I was born, I received a benefit from the government. Education, opportunity to be a veteran, veterans benefits; I receive benefits every day of my life
from the government.

I am deeply grateful, and I don't think I should
be required to surrender all my privacy at all times in
all places for all purposes because I have been receiving
benefits.

MR. SMALL: But should those benefits be kept
confidential?

MR. ARCHIBALD: I never received a benefit from
the government.

MR. SMALL: Yes, you have, Sam.

MR. GALLATI: Oil depletion allowance,
charitable income.

MR. ARCHIBALD: That is not a benefit. I don't
receive from the government. The government receives from
me. This is my government.

I am subservient to a country, an ideal. I am
a loyal American, not a loyal citizen of the Federal or
state government.

The government happens to be a group of people
who banded together to keep us from killing each other. This
is the purpose of government.

I didn't receive the benefit of being a veteran.
The government received the benefit of my services. I
received benefits as a result of that -- I received educational
and home loan benefits. And when I received those, the public has a right to know how much I was given as a special grant from the government, has a right to look at my home loan; has a right to look at the FHA appraisals on it.

MR. GALLATI: Who has?

MR. ARCHIBALD: The public.

MR. GALLATI: The media?

MR. ARCHIBALD: I am not the media, by the way.

Let me make that clear. I am not of the media.

MR. ARONOFF: How about the right to look at your lungs as you are smoking a cigarette?

MR. SMALL: Don't you feel the public has a right to know -- not your private life -- but about the benefits you have received? If you receive a pension for a war wound, if you receive a scholarship under the GI Bill, whatever, don't you think that ought to be public?

MR. GALLATI: I don't think any application which gave private data in order to obtain these legal benefits should be made public.

MR. SMALL: I don't know what is on your application, because I haven't seen it either.

I do know if you have received a war wound pension, that that ought to be public. And the circumstances surrounding it, I believe, should be public. Look at General (LaValle). The question is still unresolved. He is
loan. They haven't gotten one cent from the United States
government. They guaranteed they would pay the government
if Lockheed fails.

MR. ARCHIBALD: All right. When Lockheed
fails and the government pays them.

MR. SMALL: More important, do we not have the
right to know the circumstances?

MR. SIEMILLER: Yes, but somebody in your
position has a right to state it correctly, too.

MR. ARCHIBALD: All right, that is one end of
the continuum.

MS. LANPHERE: I don't think we will have a
meeting of the minds, Madame Chairman.

MS. GROMMERS: Mr. Impara?

MR. IMPARA: I don't know if I have a related
question. You indicated it was your belief that restrictions
shouldn't be set by the agency which maintains or collects
the information, but rather they should be established by
the court.

My question is two-fold. Number one, why
shouldn't the restrictions on the deliverance of information,
particularly of personal information, be established by
the individual who provides this information?

And number two, if they weren't set by the
individual, then who is to protect the individual prior to
the release of the information? Because if it were a
decision of the court, then it would be after the fact, rather
than before the fact.

MR. ARCHIBALD: You mean after the fact of
deliverance to the government agency?

MR. IMPARA: Or to some sector of the public.

MR. ARCHIBALD: No, the court only gets to the
public if the court so determines --

MR. IMPARA: Assuming that all of the hearings
are held in camera.

MR. ARCHIBALD: Yes, that is the court decision,
too. But your question is, shouldn't the individual set
the restriction?

MR. IMPARA: Yes.

MR. ARCHIBALD: On access. This is sort of like
hiring a criminal as a copy. Whether it's a loan guarantee
or whatever that Lockheed would happily say it may be made
available, I don't think -- well, a better example --

MR. IMPARA: Let's get away from Lockheed
and talk about people. There may be an analogy.

MR. ARCHIBALD: How about a small group of
people?

MR. IMPARA: Let's talk about an individual
person, because that is what the committee is about, is
personal data systems.

MR. ARCHIBALD: I can't draw the line. I'm
MR. IMPARA: Well --

MR. ARCHIBALD: A corporate individual is an individual in the eyes of the law and in my eyes, as much as another individual.

And if you are going to draw the line between a corporate right as an individual and an individual right, you have to draw it --

MR. IMPARA: Lockheed happens to be a public company, and there are certain laws which regulate public companies.

If you are talking about a private company not in the public domain, your analogy may hold, but let's talk about personal privacy for a moment.

MR. ARCHIBALD: Okay. Personal privacy. An individual. What is the question?

MR. IMPARA: Should the individual have jurisdiction over the release of information to the media or some other public resource?

MR. ARCHIBALD: No, I don't think so. I think the government should.

MR. GENTILE: Who is the government?

MR. ARCHIBALD: Executive, Legislative, and Judicial. All three.

MR. IMPARA: You said earlier the court should
make the decision, rather than the agency.

MR. ARCHIBALD: Under this law they do. They do make the final decision.

MR. GENTILE: This is exactly one of the points I want to follow up, because you said earlier that the courts should decide and not the administrator, and your colleague Mr. Small pointed out that perhaps even juries shouldn't be private.

I propose that you gentlemen, who have been extremely hard on bureaucrats, and the federal government. -- I am with the state government --

(Laughter.)

-- are mixing a few things together here. You are mixing different branches of government. You are mixing public information, which you are not prepared to define, and you are mixing private information, which we are trying to define.

Now if you are complaining about the bureaucrats' administration of Freedom of Information Act, and if at the same time you are admitting that you can't even define the public record, I don't see that you have a valid complaint if you can't even define your terms -- how do you find us guilty?

MR. ARCHIBALD: We left it up to the lawyers. They define the term.
programs.

The chances of getting down to that individual are extremely remote, if ever.

Very frequently, when one has access to the kinds of records that you are talking about, one might say an examination of records shows as follows.

If you read the New York Times, you have seen them discuss, for example, the welfare program, and you can talk about X, Y and Z, rather than John Jones or Peter Smith or whatever.

What we are saying to you is, the thrust of the information problem is not so much on those single individuals but the problem is that the public at large does not have a clear grasp of what it is government is doing, because so much of it is clothed in secrecy.

MR. GENTILE: Fine. What we as a committee are trying to do is strike that delicate balance between having complete openness of public records and yet not invading an individual's privacy.

And perhaps the news media -- CBS itself -- would like to provide certain guarantees, if they need certain information, that privacy would not be invaded.

But perhaps it is already invaded when it is just passed on to you. I don't know. But it's a complex problem, and what I take exception to is the broad
generalizations which kind of oversimplify the problem.

It's not a simple problem. It's a very complex problem. And I think you gentlemen have oversimplified it, carrying it, as you say, as extremists.

MR. SMALL: I would be happy to accept that charge.

I think perhaps we have oversimplified, certainly in our opening remarks, just as you have oversimplified the case of what happens if public records are truly public, that some poor devil sitting in Des Moines, Iowa has all his emotional problems exposed to the world. That just doesn't happen.

MR. GENTILE: But again, we haven't really defined the public record yet.

Mr. Archibald, were you instrumental in writing the legislation of the FOI Act?

MR. ARCHIBALD: I was involved, yes.

MR. GENTILE: Now if you can define what the public record is --

MR. ARCHIBALD: I don't have to. It is already defined.

What I say is the Freedom of Information law does not define a public record. Public Law 44 U.S.C. 366, 1964 -- it's been recodified -- this is a Congressional enactment redefining an official record or public record. It is in the
law itself there.

MS. GROMMERS: Senor Anglero has a different viewpoint which might produce what we are looking for here. I will speak to you all about what is in your charge and the advisability of reading it before the meeting ends.

MR. SMALL: Would you like it read? It's only one paragraph.

MS. GROMMERS: No, I think we'd better go on to Senor Anglero.

MR. ANGLERO: The only question I do have at this moment -- I don't know that much about this law. What I would like to know is how much -- from the discussion, I get that it covers the federal government, but I cannot get that it covers also the state and local governments. Is this true?

MR. SMALL: No, it is a Federal law.

MR. ARCHIBALD: Only Federal. Now many states -- a few states have similar laws. Some of them much better laws involving access to public domain, and more important, access to the meetings and actions of governing bodies. But this law covers only the Federal government. But that is almost everything.

MR. ANGLERO: Not for me.

MR. SMALL: Not for me either. And we should
make clear that this refers to the Federal government and not to the Congress, because the violations, if you will, of this spirit in the Congress are far more common than they are in the Federal government. The number of private committee meetings in secret is astounding. What is the total now—thirty-seven percent of all committee meetings—something like that—that's over one-third, including the very subcommittee that wrote this Act, when they met at the beginning of this Congress.

MS. GROMMERS: Well, we are not looking at that. We are only looking at private, personal information.

Mr. Siemiller?

MR. SIEMILLER: Yes, I have a couple of comments, and two questions.

I come from the trade union movement, and I charge you, Mr. Archibald, first with creating a jurisdictional dispute by substituting the hog for the well-known bull.

MR. ARCHIBALD: You don't represent that group, though.

MR. SIEMILLER: And you, Mr. Small, you are guilty of a wrong classification of this committee, because if you will look at the people and their backgrounds, you will find the most heterogenous group you ever saw put together.

So when you said "you all" as to one situation,
I think you were entirely wrong.

Then, Mr. Archibald, you said you knew a lot of guns twenty-five years old that have killed people. I challenge you to name one.

And then you, Mr. Small, does the public have the same right to know the sources of your news programs and the people -- background people -- involved, as you contend the public has the right to know all other things of individuals?

MR. SMALL: They do when those sources are public records.

MR. SIEMILLER: It seems like we had quite a court case recently about that too. That's all I have.

MR. ARCHIBALD: You don't mean, Mr. Siemiller, that twenty-five year old guns don't kill people?

MR. SIEMILLER: I didn't say that. You said you knew a lot of twenty-five year old guns that have killed people, and I said name one.

MR. ARCHIBALD: Well, I've got a (Huntsinger) 380 at home. And an M-1.

MS. GROMMERS: Miss Cox?

MS. COX: No, I am completely squelched right now. I feel I have no rights and privileges. I mean, just because I am over sixty-five and draw welfare checks, that means that the government has all my personal data, according
to you, and has all my personal medical data, you can do
anything with it, right or wrong?

Now remember, the government collects a lot of
information that isn't required by law. If you say if it is
required by law, I couldn't get paid for my Medicare if the
doctor doesn't write in.

And I still think it's in violation of my privacy
when I go into the hospital and have Medicare put on my door.
It discriminates me against those who are not
Medicare patients. That is in violation of my privacy.

MR. ARCHIBALD: I couldn't agree more.

MS. COX: I don't have to tell everybody that
I am a Medicare patient. It's known when you are over sixty-
five. But some of these things are just in violation of my
privacy.

MR. SMALL: I think the argument of what they
put on the hospital door is perhaps with the hospital or
the administration of the hospital.

But I'd like to make clear -- I keep saying that;
I sound like someone in the White House -- I'd like to point
out that, as heterogeneous as your group is -- and I admire
you for that -- that you are not the only protectors of the
rights of the individuals in this country.

And that if you look at the history of battles
for individual privacy, I think you will find the press has
been in the forefront. And I don't want to leave here
as the villain in that case.

The questions you raise are very difficult
ones, and when you narrow them down to the kind of question
you have just discussed, obviously they are not easily
dismissed by generalization from either me or from others
in this room.

They are difficult questions. It seems
to me you also raise questions about how much should the
government be asking you or others about your own private
life to receive these benefits.

MS. COX: Well, I am sure there is ten times
as much asked for than is needed in order to operate many
of these agencies. They put in every question they can
think of sometimes.

MR. SIEMILLER Plus two.

MS. COX: I have property. I own property.

Of course, it's registered. I have a deed. It is public
to that extent. But isn't it my property?

MR. SMALL: Of course.

MS. COX: And I might have -- I don't look
like I ever had, and I don't -- a medical history. Isn't
that partly my property?

But I am forced to give some of that to the
government. Don't I get any protection on that? Because
if they let it go to an insurance company, I might not --
I mean I can, but I might not be able to get insurance, just
because there is some medical record.

MR. SMALL: Some of these questions really
should be raised, should they not, with the government
agencies that are seeking this information.

MR. ARCHIBALD: I'd like to go back to the line
Mr. Gallati drew. I don't think that under Medicare or
Social Security you are receiving any grant or benefit or

MS. COX: It's my right.

MR. ARCHIBALD: They earned that. That is not
a government benefit. Nobody is doing anything for you. You
did it for yourself.

That has nothing to do with what we are talki ng
about. There is where you draw the line.

MR. WEIZENBAUM: That goes even more to the
fact that it is private information.

MR. ARCHIBALD: Exactly. I agree.

MR. SMALL: How much of this private information
should government agencies have, and how much should they
share with other agencies?

MR. WEIZENBAUM: That is the issue we are trying
to wrestle with.

MR. SMALL: I wish you well.
MR. WEIZENBAUM: But you are subverting that process by insisting the press can get access.

MR. SMALL: Well, to the press, but also to the public at large. The press or individuals or insurance companies. If this material is in the public records, it should be open.

MR. WEIZENBAUM: But you just told me that certain information shouldn't be collected by government agencies. So government agencies collect for a certain purpose, and then carefully limit it to collecting the right information, then you claim you can get it and distribute it to anybody without control.

Don't you see an inconsistency?

MR. SMALL: If this were an easy question to resolve, you wouldn't even want us here, would you?

MR. ARCHIBALD: Or you wouldn't be here.

MR. SMALL: One of the problems, if you examine the guidelines on the FOI Act, is that the Members of Congress sought to protect, if you will, these various areas. Except their interest extended beyond just your medical history or your insurance problems, but to the question of the Pentagon and the CIA and the State Department.

And maybe some of these are indeed valid. I am not sure.

MR. WEIZENBAUM: That is not a hard line to draw.
really.

MR. SMALL: It's a very difficult line to draw.

MS. GROMMERS: Mr. Davey, do you have a question?

MR. DAVEY: Yes, I'd like to --

MR. SMALL: But I would contend that individual rights of privacy are disappearing, not because what little there is has been revealed in the press, because it is comparatively little about any great interest, but because of what government is seeking.

MS. GROMMERS: His point was not what the press was doing as much as to point out the inconsistency of the position you had taken.

MR. DAVEY: I would like to look at this question involving information which is given on a confidential basis.

There are a number of forms and things which people, either welfare recipients, medical people who gather the information for research purposes, any number of things, where it is stated explicitly on the form that this information will be kept confidential.

Now is there any obligation that you would feel in that type of situation -- I mean you -- I mean representatives viewing the open information act, as having any kind of responsibility to those individuals who gave it under those circumstances, number one?
And number two, should that statement be taken off if it does come against this? How would this be defined? How would you see this? What would you like to see? How would you like to see it structured?

MR. SMALL: Mr. Barrett, you haven't given us any help for an hour.

MR. BARRETT: I'm not sure.

MR. DAVEY: I guess it's been raised as an issue in the past, the right of privacy and freedom of information just kind of impinging, and this is one area where it really does come on into each other and where some type of confidentiality has been expressed and promised.

And now we are afraid that that promise may not be able to be observed or followed through. Now that is one problem.

Then the second problem is how should it be handled in the future. Should those statements be on there, if indeed it cannot be kept secret or confidential?

MR. BARRETT: Well, I don't know exactly what statements you are referring to, but I do have the impression that we have in government given assurances of confidentiality that we do not have authority to give.

And I think sometimes we have misled people. And when it came down to the crunch, we weren't able to deliver.
In the areas that I have worked in, that has occurred in my experience, where we are getting information from individuals regarding civil rights violations, and they might say, well, I don't want to tell you what is going on when we go down and try to vote, or at the school, if anyone else is going to know that I told you. It's very tempting to tell the person, "No one will know."

You simply can't do it. And although the exemption that applies to personal and confidential information has been read, I don't think lately, as being in the disjunctive, in other words, anything that we acquire under a pledge of confidentiality was in fact confidential and hence exempt under the statute, I think lawyers now will tell you that is not the case, that it is not just any confidential information the exemption is referring to, but only trade secrets, financial, and for a while this was a matter of law review debate, but now it is clear.

Now I think that addressed the first part of your compound question.

MR. DAVEY: Now the second part is what we do now for people who would still like to see some kind of confidentiality existing in information he gives to whatever source, and the inability to observe that. What do we do? Do we state a statement on this thing that because of the Freedom of Information Act, which has been published, we will
try to keep this confidential, but there may be some event in which this whole thing may be opened up?

    MR. BARRETT: Well, I will give you a personal view, and that is that the confidentiality of the information in the hands of the government, once received, should not depend on what was said to the individual from whom it was obtained at all, but should depend on the character of the information itself.

    And that for one thing will avoid slippage in who said what and who is entitled to what.

    It will tend to put the less alert, less smart on the same basis as everyone else.

    The tough question -- really two questions, I guess -- what information indeed should the government be obtaining or be able to force from individuals? And secondly, having done so --

    MR. DAVEY: I don't want to mislead anybody, but those are very interrelated.

    MR. ARCHIBALD: I wonder if I could answer the second part with some examples in this field of what I think to be the proper handling of so-called confidential, trade secrets, privileged information.

    The Environmental Protection Agency has adopted the best system. Most of HEW has the second best. And no other agency is in the whole ball park.
This came up a number of years ago in connection with the Rural Electrification Administration. They accepted requests for loans from small groups of farmers and so forth. The investors owned tax-paying electric power companies that objected to the government helping people get electricity and they wanted to know -- they demanded to know -- who filed for a government loan, an REA loan, how much they were requesting, and for what purpose, and REA said, of course, we can't.

Their purpose was to block the program, in getting this information. We agreed. Incidentally, we were on the side of right, virtue and REA.

And they said, "We automatically grant them confidentiality. After we have finished and after we have acted on the loan, then we will make public the information. But there will be all sorts of pressures to prevent it if we give it out before."

We worked out a compromise. Confidentiality would not be automatically granted. Confidentiality had to be requested by the agency or individual asking for confidentiality, and would only be granted at the discretion of the agency under some sort of conditions where there was some decision that it was necessary.

It went to the content of the information, the importance of the confidentiality, and not just to the automatic request.
This is what EPA has adopted, the system they have adopted in all the filings they require from businesses, individuals, and so forth, on how badly they are polluting the atmosphere and waters. We will make this public unless you prove to us the need for confidentiality.

As a result of the REA experience and so forth, in EPA's experience the number of requests for confidentiality have dropped way, way down.

When they have to prove it, they don't ask for it. And the grants -- well, it's been about half and half in some cases, with REA, after they required them to request confidentiality, they only granted it in four or five cases compared to fifty or sixty each year before.

So the answer to your question is that a government decision is not just an automatic stamp of confidentiality.

MR. SMALL: Sam, what do you do when the lady says, "I'd like my private medical history kept confidential"?

MR. ARCHIBALD: And the government refuses?

MR. SMALL: No, do you say her request is enough?

MR. ARCHIBALD: No. Somebody must make the decision. They must say this deserves confidentiality or it doesn't.

Then if that decision is objected to, you can
go to court, through the Freedom of Information Act.

But right now, in too many cases, it's automatic.

I'd like it thoughtful.

MS. GROMMERS: Mr. Gentile?

MR. GENTILE: I have one little comment. It follows what you just said about the route of appeals, et cetera.

I'd just like to point out that the Secretary has brought together a group from government, private industry, and we plan on conducting public hearings. We do not view that the people who make these determinations and decisions should be the bureaucrats that you so violently objected to earlier, but rather that we should go to the people.

The government, you mentioned earlier, was the three branches -- Judicial, Congressional, and Executive Branch. And what we are saying is that that really is just a vehicle for government. That we are going to the people and that it should not be solely the Executive Branch or the courts or the judiciary, nor any special interest group such as the press or news media, but that we should go and conduct hearings and do our own research and come up with these kinds of value judgments that you are addressing.

That's no question, just a comment.

MR. SMALL: I don't understand. You are talking
about a panel?

MR. SIEMILLER: This panel.

MR. SMALL: To decide in terms of each of the federal agencies? I lost your point, sir.

MR. GENTILE: Our point was in establishing the value judgments to determine if this lady's medical file private, we are going to the people, and will get a fair cross section of the people.

MR. SMALL: You are talking about the standards you will recommend?

MR. GENTILE: Right. And even perhaps a vehicle. We are not that far along in our work that we could say we would not recommend some board or panel that should review special cases.

MR. WEIZENBAUM: I am so stunned by what I have heard, I am almost speechless.

MR. SIEMILLER: Oh, Boy.

(Laughter.)

MR. SMALL: If so, you are unique in this room.

MR. WEIZENBAUM: It seems to me that the first authors of the Constitution, when they wrote the First Amendment, I think had in mind that if the government were to always fairly, consciously, competently and in strict observance of human rights conduct its affairs, probably a free press would not be necessary. That they insisted on
freedom of the press, because they knew that the government
could not be counted on. They were very fearful of the
government, having an experience with King George the Third
and others, they were fearful that the government might not
fairly, consciously, competently, and in strict observance
of human rights, conduct its affairs.

And so consequently, it seems to me they in
effect charted the press, what the French call the Fourth
Estate, to in effect become another arm of government,
autonomous of the government machinery.

It seems to me, therefore, that in effect they
put a burden of responsibility on the press to fairly,
consciously, and et cetera, conduct its affairs.

I think in those terms, I move to say that you
have done a disservice to the press, to this committee,
and to our charge here, in having so over-stated your case
that you drive people like me, for example, who are enormously
in favor of very, very much more freedom of information
than we have today -- you positively drive us in the
opposite direction.

And I think we have to adjust to getting back
to our former position in favor of freedom of the press
and freedom of inquiry.

For example, well, you have already agreed it is
a much more complicated problem than your simple slogans
would lead us to believe.

For example, when you characterized what is a public record, in effect you said anything the government official writes down. Or let's restrict it to the eight or ten or fifteen hours he might be in his office.

This then implies that if the man happened to have been fool enough -- and there are lots of fools in the government -- the man who turned over the Kissinger papers to the press -- if he happened to make a note of that, perhaps even a note of transmittal, that becomes a public document.

MR. SMALL: Of course, it should.

MR. WEIZENBAUM: Therefore, you would argue that the government -- the right the press claims to protect informers would disappear. And the press insists on certain rights, and I agree the Supreme Court decision is tragic I think. We understand that problem.

I just want to close with one personal observation, an axiom that I have long held to, which I call the New York Times axiom. Obviously it doesn't apply to CBS. Or maybe it does.

It goes: The New York Times always tells the truth and the whole truth about everything it prints, except for those very, very few stories about which I happen to have personal knowledge, in which case they are always substantially wrong.
If I could trust the press to exercise considerably more discretion than you have exercised here, then I'd be very much in favor of opening the gates. Very much more than they have been.

On the other hand, the press is just people, too. Just like the government. And if I thought there was that much discretion in a very large institution, then I would hope that I could transform the government to have that much discretion.

I am sorry that you have so vastly overstated the case.

MR. SMALL: I am sorry we have offended you. But let me say about the nature of a free press in our society, that if you think that the New York Times is providing you with the truth and the entire truth, you have a poor understanding of what the news media does.

MR. WEIZENBAUM: I don't think you understood my point. I said it provides -- I strongly believe it is the truth, the whole truth, except in those instances where -- it's a joke.

(Laughter.)

Do I have to explain the joke now?

MR. SMALL: No, I am delighted you have identified it as such.

MR. WEIZENBAUM: My personal experience with
CBS is exactly to the same point.

MR. SMALL: That's fine.

MR. WEIZENBAUM: No, it isn't fine.

MR. SMALL: All right then, it isn't fine.

However you like.

But let me say that what we do in the press is to look for truth, and on any given day we don't necessarily find part of it, any of it, or what you know to be true.

The reason we don't is that we are seeking information from people, including many of them in the government who don't want to give us information.

And so all we can report at any given moment is as much as we can determine. And on occasion, our interpretation of what we have discovered.

In the words of Walter Lipmann, it is a search light working its way around in the darkness, and it can only touch on this point or that point, and events keep moving along, and there is a great deal that we will never publish and never broadcast because we will never discover it.

And there are some things we discover twenty, thirty or forty years later that belong to historians, but they appear in newspapers or on broadcasts.

But that is no reason for us not to continue in search of this. And to seek every device possible to
make it easier to find out as much as we can.

The Pentagon Papers are a good example of material that, had we known them at the time they were written, would have been devastating to the course this country was taking at that time, which I think most people have concluded since was the wrong course.

And we did not have access to the Pentagon Papers then. And if the man who released some secret documents involving Henry Kissinger was fool enough to write a note of transmittal, and we found it, it should also be made public.

We are not in the business of trying to pre-judge what Kissinger means or doesn't mean. We are in the business of trying to tell as much as we can find out about important events to our listeners and to our public.

And I don't feel that we have been engaging in slogans here. You start from a different premise. You state at one end and worry about the woman whose personal life may be hurt by the press. That rarely happens.

We start at the other end, with the immense body that we call government. But you are doing a great deal of injury to that man and many more, and we can help if we can tell as much as we can about what he does.

That was the purpose of this legislation. That is the purpose of our being in the press.
And I don't see why you find this chasing you to a new position. That is what we are all about. And we are indeed an autonomous body. We are not part of the government.

And we have failings and we make a lot of mistakes. Of course there are errors in the New York Times. There are errors on CBS.

But the only way a citizen can learn about what the hell is happening in our world is to read and listen to as many sources of news as he can, and begin to make independent judgments. And this is more possible today than it ever has been in our history.

And if we open more government, it will be still more possible for the individual citizen to make judgments and to find out material on his own.

You know, I had lunch today with a man who used to be at NASA, a very high executive. He's now in the Defense Department. And he's very unhappy because he feels the news media -- it was an argument over the bombing of the dikes -- and he feels the government is treated badly in all the reporting so far.

And at one point he stopped and said, "Do you know (Curt Davis)?" I did not. He said, "He once told me that he hates the press because they push around and distort what he says, and he has all kinds of problems until he
remembers that when he was in Hitler's Germany, all he heard was Goebbels and he believed it.

MR. WEIZENBAUM: I must say I agree with you. All I was trying to say was that you should exhibit the kind of humility that you have just done, to point out the difficulty of the task, which is also the difficulty of our charge.

That is all I was trying to say. And when I mentioned the Kissinger thing, what I was suggesting there was that if in fact those documents had come to the New York Times with a transmittal slip, that would have been a government document, that they would have chosen not to publish in the interest of protecting their sources.

I think our charge is correct, that we should worry about that one man, who has a record with the Veterans Administration or the welfare people. We should worry about him, because he is multiplied many times over.

There are many more people, and it is in our charter. Someone has to worry about that one man. There is too little of that worrying going on.

And I think the press has a function to bring this problem to the attention of the people.

MR. SMALL: If I were humble, I didn't mean to be.

(Laughter.)
MR. ARCHIBALD: May I add one minor point.

I find myself, as I said, often defending the press, but I don't defend the press's right to know. I am talking about the public right to know. The press is only a part of that.

And I think that you made the point very, very clearly when you said we know what was in the minds of the authors of the First Amendment. What you don't know is that it was an open debate that the amendment was kicked around in Congress.

And you know why they had to kick it around?

Because we don't know what was in the minds of the men who created the Constitution, because that was a secret meeting.

We have a right to know what the government is doing, and somebody has to be extreme, because everybody else except me and Bill -- and sometimes I wonder about him -- are on the other side.

MS. GROMMERS: Let me call on Miss Noreen.

MS. NOREEN: Pass.

MS. GROMMERS: Mr. DeWeese?

MR. DE WEESE: I guess I just have to follow up for a second, for a little bit, what Mr. Weizenbaum has said. Because I agree with him a hundred percent.

He is not questioning your goal. What he is saying is that the means that you are using to get to that
goal have some side effects which I am not certain that you have considered fully, or if you have considered them for the sake of the record, you are passing over them to make your case as strong as it possibly can be.

And I think really, in practice you are not interested really in the kind of information that we are trying to protect.

I read most of the cases under the Freedom of Information Act, and there hasn't been a case where the press has sought this kind of information. But there have been people who have snuck in the back door.

This Act was passed to open up government to the people, via the press, but the problem is that other people have snuck in and abused this Act, and the result has clearly been to invade people's privacy.

An example -- it wasn't the press that requested the information about people in this country who own fire arms under the 1968 Act. It was a mail order house and it used the information to flood people with hundreds and hundreds of circulars about guns.

This is an invasion of privacy. It wasn't the press that sought this information.

And this brings me to my second problem, which is sort of a comment which doesn't really refer to you, and that is, for the benefit of this committee, I think of how we
can change the Freedom of Information Act.

The problem with the Act is that the government is the advocate for the individual. And in those cases where a party under the Act is seeking the kind of information we are trying to protect, individual files of people outside the government, the government acquiesces.

The Treasury Department that decided to give the gun records to the mail order houses. The Treasury Department said, yes, go ahead, take it. And this is the problem that I think we face as a committee.

The way the Freedom of Information Act can be changed around is by replacing the government with an ombudsman-type of affair where the individual's right will be litigated at the trial court level, which isn't happening now under the Act because the Government acquiesces.

The government only puts up a strong defense when it goes to government operations. That is the kind of information you are concerned about. And when it concerns information about people in government, then they put up a strong defense. But when the request comes from a mail order house, about individual records, there is no defense. They acquiesce.

That is the real problem, and your position and our position are not in conflict, I don't think.

MS. GROMMERS: Mrs. Hardaway?
Ms. HARDAWAY: I thought all the years that Huntley and Brinkley were taking the awards that it should have gone to CBS.

MR. SMALL: That was unsolicited.

You know, the President spoke at the newsman's dinner this year, and he said the Vice President has three television sets in his bedroom. One is tuned to ABC, one is tuned to NBC, and the other is turned to the corner.

(Laughter.)

Ms. HARDAWAY: My twenty-two year old daughter at Vanderbilt University had an experience with your station that I need to get clear in my mind.

On your Six O'clock News three months ago, the statement was made that a source close to the President told this reporter today thus and such.

It infuriated my twenty-two year old daughter who was watching the news. She immediately went to the telephone and put in a long distance call to your New York office, and wanted to know who that source in fact was.

That began about a six week running battle with CBS between Lynn Hardaway and CBS. During that time, she talked with several people in the News Department. Her question was always the same -- "Who was that source. If you are going to tell me that as a matter of fact, then I have a right to know is that an accurate source."
She was promised letters. She never received one. She was promised return phone calls. She did not receive those either.

Finally, on her last phone call, she may have talked to the president. She was pretty determined. But the gentleman told her to hold on just a moment -- on her own money and her own time she held exactly thirteen minutes.

And at the end of that time, a young lady came on the phone and read her a statement which said, in fact -- and she did take it down on the tape recorder, and I don't know if she still has the tape or not --

MR. SIEMILLER: Which is illegal. She'd better not have.

MS. HARDAWAY: It said it was a reliable source and that CBS had verified this source as being reliable.

However, in the interest of the security of their source, they could not divulge that name.

Now, my question to you is, you are in the business of keeping me, a citizen, informed, and I am glad you are in that business, and I approve and I want you to continue.

But I want to be very certain that you are factual when you inform me. And in fact on that subject you were not, because later news proved that you were not factual.

Now your president and vice presidents and
directors made that decision. Someone did on a high level, for that young lady to read that statement, as perfect as it was, to my daughter over the phone.

What is your prerogative in making that statement that would make you any different from the President of the United States of America, who would make that same decision about a question of national security? And what would make you wiser than he?

MR. SMALL: Let me say, for starters, I'd like to hire your daughter. She's far more persistent than our reporters.

You raise an entirely different question, which was touched on earlier here. The question of sources involving the news media.

And at the danger of sloganeering, and over-simplifying, the first thing to note, of course, is that the news media is not an arm of the government, that it's not part of the government.

For example, if you want to know how I make decisions, at the news desk here in Washington, I probably would tell you because you are charming and you have this great daughter.

But I don't have to tell you, and nothing in the law says that I have to, no more than anyone in this room if interviewed by reporters has to talk to them about
anything he wants, unless of course he is in the government.

MR. GALLATI: You have received the government benefit. You are entitled to use the airwaves. You should disclose everything. You have a very great government benefit given to you.

MR. SMALL: Well, given to the stations affiliated with us. Networks are not yet licensed.

But this Administration has five months to go, and maybe four years more, so that could change, too.

But it's true that individual stations have a license to broadcast. But --

MS. GROMMERS: I think if you could continue to speak to Mrs. Hardaway's question.

MR. SMALL: Well, it is speaking to that, in that they are not required, of course, to reveal their practices. In other words, what I am saying is that we ask more of government than government or individual citizens can demand of us, but this is part of what the First Amendment is all about.

And there are good reasons for that. Now I am sorry about your daughter. I am particularly sorry she had to wait thirteen minutes and pay for it on a long distance line.

But CBS, for example, had no need even to read that statement to her under law. As a matter of public
relations, that's something else.

The reasons for this are very good. The history of freedom of the press in this country, going back far before this became a nation, going back to the (Senger) trial the reason is that if you permitted as much publication in those days as possible, and the newspapers were not responsible then, most of them were pamphlets and they were wild in their charges, but the thesis was that if you would permit as much as possible that this meant information, even though much was fraudulent, was getting out to the public, and this was far better than having the voices restricted to that of the government-subsidized newspapers, which we had.

George Washington and Thomas Jefferson were great spokesmen for freedom of the press, but they had their own subsidized newspapers in this city that published the Administration view.

But the contention of the First Amendment, and these men in their support of it, was that as many other voices that could be heard should be heard. There is no compulsion other than the laws of slander and libel -- which have been pretty much, I am afraid, dismissed by the Sullivan decision -- but no compulsion on the press to identify its sources. Or has not been.

MS. HARDAWAY: One follow up question. Obviously for some reason the decision was made that that source
should be protected. Correct?

MR. SMALL: Yes.

MRS. HARDAWAY: You felt a need to protect your source or your individual, because your reporter said "a source close to the President" which would indicate one person, so you felt a need to protect that person.

Then would you agree that, under some other given set of circumstances, individual people would have a right to protect their privacy? Or would you set yourself aside in all other circumstances?

MR. SMALL: Of course people have. But we have been talking about, today, matters of public record. Matters involving the government.

Of course individuals have a right. I might say that while CBS policy may tolerate it, my own personal view is one of antipathy toward anonymous sources, and this city is particularly bad in this regard.

I think it's dreadful, because the press is used by the anonymous State Department spokesman, etc. It happens even today.

MS. HARDAWAY: So if my individual record has become a public record, you then feel you should not protect it?

MR. SMALL: You lost me there. You mean --

MS. HARDAWAY: In other words, I asked you if
you felt there were given sets of circumstances where
an individual's right should be protected; you said yes, but
that public records should not be protected from privacy.

So that if my individual record has become a
public record, through welfare, mental health hospital, or
et cetera, I have then lost my rights under your --

MR. SMALL: What I am saying is the emphasis
should be at the other end. When government seeks this
information of a private nature from you, the restriction
should be on the government, at that end, and not the public's
right to look at it.

The reasons are very simple. Let's assume you
live in Nashville? Let's assume there are large federal
grants to Nashville's welfare system, or whatever. And that
the man who is running it is a crook. And he loads the records
with his relatives and friends and neighbors, and people
who are kicking back part of those sums.

Well, the way to determine that is to examine
the records. Now those records may include material that
is personal. And the nature of the press, I don't think
much of that would become public, but it's quite possible;
if a reporter has access to your records, he at least knows
that about you.

What I am saying is, at the other end, matters of
that nature, whenever possible, should not be assumed by
the government interrogator.

MS. HARDAWAY: One last question. Would you see any set of circumstances, or would you give any President the latitude, then, of making a decision about national security so far as divulging information?

MR. SMALL: I have rather extreme views about what national security is, but the answer to that question is yes, but I think I'd be more likely to say it at the other end, too. The welfare recipient in Nashville. I would think it would be possible to protect his rights at the very source.

But on the question of national security, I would see some extreme example. I don't think there are very many, but I would see examples, certainly in the military field, where this would be necessary.

MS. GROMMERS: We have one question. I have one short question and we have a final question here, if we could.

MR. MARTIN: As far as I am aware, the use of words in a United States statute speaking of privacy or the right to privacy uniquely occurs in the Freedom of Information Act.

Am I wrong, or do you know of any other instance where that is the case?

MR. ARCHIBALD: I don't know of any.

MR. SMALL: I don't know of any.

MR. BARRETT: No.
MR. MARTIN: I thought your observation, Mr. Archibald, about the way in which this is being abused, as I understood the example you gave, is very illuminating for the Committee.

There has been a lot of advocacy in this country and a lot of other countries about creating a right to privacy and I think it's a highly controversial notion.

I wonder if you could squeeze out any more notions about the efficacy of this provision and law. It sounds as though this law is a double-edged sword, and this is a sword which this Committee may want to be picking up some way or other.

Are there any words of counsel on that?

MR. ARCHIBALD: Well, there was a hearing on strengthening of the privacy exemptions. This was a hearing resulting from the gun nuts experience. There will be consideration by the House Operations in Government, Information Subcommittee of strengthening the privacy protection, particularly as it applies to the purchase or sale of mailing lists and those sorts of things.

I don't think it's going to get anywhere. If it were possible to do it by law, you people wouldn't be here. The Congressmen would have been doing it already.

I don't know. This is an apparent clash -- and I'm not sure it is a clear clash -- between (a) the right
of privacy which is even more undefined than the right of access to the public record, at least by statutory enactment.

It's something I think that as we go toward 1984, you are going to come up with, I hope, a solution of.

But what we are seeking is the public record, the official record, the record of an action of a government agency. If it impinges upon an individual, somebody is going to get hurt.

Here's a case -- and maybe you read it in the Nashville Tennessean, Ma'am. -- where a blind gentleman receiving benefits -- among them the FHA loan appraisal and loan for his house --

MS. HARDWAY: Right.

MR. ARCHIBALD: He was sorely put upon, apparently, by the Government. Now the newspapers, the Nashville Tennessean, wanted to see the FHA appraisal of this house. And the FHA did everything possible -- and I mean everything possible -- to block their access to this FHA appraisal on this gentleman's house, the blind gentleman, who worked for a Federal agency and was receiving various sorts of aid and including a special FHA appraisal, and help in buying the house.

They were denied access to this record of FHA's appraisal -- a government action -- an official action -- a public record.
They went to court. This is one of the newspapers which did go to court. They went to court and the court ruled they had a right of access to this FHA appraisal of this house.

So they got the appraisal. A completely illegible copy. They had to go to court again to get a legible copy.

The court said all right, but the name of the appraiser -- and the contention was that this government appraiser was either playing footsy with somebody, or was stupid for appraising a $4,000 house at the $10,000 level.

MS. HARDAWAY: $2,000, actually.

MR. ARCHIBALD: All right. The court said you can have the legible copy, but not the guy's name. So they went to a higher court. The higher court said, yes, you can have the guy's name.

They went to the appraiser, and he said, "I made a mistake."

It took a couple of years to correct this mistake, and they invaded this blind gentleman's privacy. They invaded the hell out of it, and helped him in so doing.

MS. HARDAWAY: He requested the help. They didn't get into that until he requested it. And I believe that we need to make that point clear. He requested help from that newspaper.

They did not invade his privacy. He went to the
newspaper and asked. As a matter of fact, it wasn't two years ago, it happened during a recent campaign, political campaign that I was involved in, and he went to the candidate that was eventually elected Governor, and he turned him to the newspaper, and that is how it came about.

But he asked for help. Therein lies the danger of what I think we are all talking about. You did not state that properly, and did not give the clear facts.

Now I happened to be here, and know that story oh so very well; and you purposely left that out, Mr. Archibald, and you did know that you left it out, because when I corrected you, you immediately said that's right.

MR. ARCHIBALD: Yes.

MS. HARDAWAY: And you would not have done that had you not known you mis-stated that from the conception.

MR. ARCHIBALD: That is true.

MS. HARDAWAY: Therein, I think, you and part of the press let me down, and had I not been here, all of this crowd would have had a different idea of that story.

MR. ARCHIBALD: But all of this crowd can go to the official record, which is right here, and you are absolutely right, but I am here as an advocate. I am here arguing a point.

MS. HARDAWAY: What I am saying is, have you mis-stated anything else to me this afternoon that I was not
familiar with?

MR. ARCHIBALD: Certainly.

MS. HARDWAY: Then I think you have done me a disservice.

MR. ARCHIBALD: I wasn't asked to come here and tell you what will make you happy. I was asked to tell you background facts and have an opportunity to argue my point.

MS. HARDWAY: That wasn't my question to you. I said did you mis-state anything else here this afternoon?

MR. ARCHIBALD: Yes. I have spoken for probably, off and on, an hour, and I must have made at least a half dozen mis-statements.

MS. HARDWAY: Knowingly?

MR. ARCHIBALD: If I looked over the record, I would probably know them, yes. Everybody does.

MS. COX: You didn't do it intentionally, you mean? Or did you?

MR. ARCHIBALD: No. I don't think so. I don't think so, but I have done enough investigating and running investigations to know that anybody makes mis-statements all the time.

Did I intentionally not tell you he asked for it? I didn't intentionally, but the point I was making with this case is that the gentleman said the newspapers
haven't gone to court to protect an individual. They have.

The argument of the government was, initially,
that this would invade his privacy, in addition to a lot
of other things. Whether or not he asked for it doesn't
change the point at all.

The point is that the newspapers have occasionally
-- very seldom; too seldom -- stood up for individuals,
and that it is difficult to fight against the government.
And that it does involve little people.

It involves little people not on your side only,
protecting them from invasion by free and occasionally
irresponsible use, but the people on the other side, the
little people who need access to information.

MS. GROMMERS: Could I just go on with that idea,
which is, if you have a freedom of information and a right
to know, would you also be in favor, Mr. Archibald, and Mr.
Small, of the right of the individual to know that this
information was being collected about him?

MR. SMALL: Yes.

MR. ARCHIBALD: Yes. No qualification. Can I
make it stronger?

MR. SMALL: Talking about the right of privacy,
I think you are hard put to cite very many cases -- and I
know of none -- where newspapers or broadcasting access to
public records have violated the right of privacy of
individuals. Maybe you have some that I am not aware of that have come before you. But it seems to me the greater danger, in terms of right of privacy, is what the government has been getting from individuals, much of it not dictated by law, but agency fiat, or at the whim of the guy at the bottom of the ladder who interviews a welfare recipient, or whatever.

MS. GROMMERS: Where at the moment the individual does not have the right to know, would you have any intention of trying to extend the freedom of information to the right of the individual to have freedom to his own information?

MR. SMALL: Under this Act, the individual has every freedom that a reporter has. This act is not designed to help the press. It is designed to help anyone.

That is why you have the kind of violations that upset the gentleman in the corner, where a business concern got its hands on material and used it for trash mailing.

MS. GROMMERS: I think we didn't really mean to be looking at all the things the press might be doing bad, but this came out as a possible side issue here, whereas most of our emphasis has been indeed on how the press has been helping, and the right to know now has been established.

And this could help us even more with furthering the right of the individual to know as much as possible.

MR. SMALL: When you ask for that, you are asking
for things I was accused of sloganeering about.

MS. GROMMERS: Well, we have mixed feelings on this panel.

MR. SMALL: I understand. But under this legislation, any individual -- you have a right to go to the Justice Department and ask for the same thing that I can ask for.

The First Amendment doesn't talk about CBS. It didn't even conceive of broadcasters. It was talking about the public, and what freedom of the press means to every citizen.

MR. ARONOFF: Mr. Small, you, through the station, have done somewhat more in terms of spotlighting the individual right of privacy by a DBS documentary having to do with a man whose right was invaded by a credit company.

MR. DE WEESE: That was NBC.

MR. SMALL: CBS has done one like that, in any case.

MR. ARONOFF: I hope you recognize the strong feelings here.

MR. Archibald, in your capacity on the Fair Campaign Practices Committee, do you permit the same freedom of acquisition of all information that comes in to you that you yourself have just advocated? Could I find out all of the allegations that have been raised in terms of unfair practices
against various candidates for office throughout the country upon request?

MR. ARCHIBALD: Let me clarify for the rest of these people one thing. I am just playing around with the freedom of information as a side thing. My full time job is Executive Director of the Fair Campaign Practices Committee, a private, non-profit corporation, which has --

MR. ARONOFF: Very definite government purpose --

Charlie Taft from Cincinnati --

MR. ARCHIBALD: Very definite.

Our purpose is, we get candidates to sign the Code of Fair Campaign Practices. When there is a complaint of a violation, we collect the facts and them make them available.

We do a number of things in the campaign field. We are private, non-profit, tax exempt.

The answer to your question is yes, including every bit of correspondence I write internally, externally, not to individuals but to all board members, including all of our tax exempt filings -- the total filing, not just what is regularly made public. Our budget, or contributors from $1 on up, everything in this committee is public record.

There is a very good reason for it. Our only weapon in this committee is to collect the facts from both sides and turn it over to the free and responsible press and
hope they will print the story. I wish they would print more than they do.

This is our only weapon.

MR. ARONOFF: Am I correct in saying that until you feel the facts have been collected, you build a wall around them?

MR. ARCHIBALD: No.

MR. ARONOFF: You don't?

MR. ARCHIBALD: No.

MR. ARONOFF: Okay.

MR. ARCHIBALD: Well now, we receive a complaint of a violation. That complaint is a public record. If the guy wants to contact us, he does it in public.

If we go to the other side and ask for their answer, their answer is a public record.

Now the FBI, and some other investigating agencies, used to announce they were investigating an individual. Well, of course, the story comes out that the good FBI is investigating that guy, and therefore he is bad.

The fact that we are investigating, we do not overtly make public, until the investigation is completed. So maybe that is the hedge that you are talking about.

MR. ORONOFF: Thank you.

MS. HARDAWAY: If Mr. Small asked you if you were investigating that man, would you tell him you were?
MR. SMALL: He is very difficult to deal with.

MS. HARDAWAY: You mean if CBS came to interview you, and asked you if you were investigating Stan Aronoff who is running for the Senate in Ohio, would you say to him, "Yes, in fact we have had a complaint and we are investigating him"?

MR. ARCHIBALD: We would say to him, "We have a complaint, here is the complaint, which has already been probably made public.

"Our usual procedure is to contact the other side and ask for an answer. I will not tell you whether we are following our usual procedure at this time." The answer to your question is -- we give three or four days to answer, then the fact that -- we will not disclose the fact that we are investigating until the case is completed.

MS. HARDAWAY: Why?

MR. ARCHIBALD: It's a practical, political reason. Because somebody could file a complaint with us and have a reporter contact us to ask whether we are investigating, and he then puts out a press release and the Fair Campaign Practices Committee is investigating so and so.

This is our investigation. This is our practice. When the investigation is completed, two or three days later, you will have the public record, whether or not he answers. But until we have completed the investigation, no.
MS. GROMMERS: That is Mr. Gallati's reason for not wanting his files to remain public.

MR. ARCHIBALD: I don't think that is quite true, if you are talking about a compilation of a dossier.

MS. GROMMERS: It's very late. I have one announcement. We'd like to invite you to come back to the Holiday Inn for a drink, and hopefully for dinner.

The announcement is short and brief. And I will read from a prepared text.

Although the hearing forum the advisory committee has been using yesterday and today appears to be a very effective method for eliciting information about the data systems being presented, it is likely the committee's capacity to question the presenters closely would be even further improved if all the committee members took upon themselves the responsibility of reading carefully the background material that has been prepared or assembled by the staff, as you have all requested.

MS. COX: We didn't get it before. How could we read it?

MS. GROMMERS: As I announced, they were put in your folders last night, on your desk.

The ability to ask focused, precise questions of presenters will be especially important tomorrow afternoon when we will have before us the principal officers
of four HEW statistical centers, the Associate Director for Research of the Bureau of the Census, and Mr. Julius Shiskin, Director of the Statistical Policy Division, Office of Management and Budget.

Some of the issues to be discussed are rather technical. For example, the problems of statistical disclosure, which is of course right in your field.

Accordingly, I would be very grateful if you all would make a very special effort this evening to read the following items in your folders -- and if you will check to see if they are there.

The first one is the collection and processing of personal data by the Third National Cancer Survey.

The second is the checklist for information regarding the statistical reporting systems;

This is a variation of the check list you have been using for the other systems.

Three, the Federal-state relations in the collection of educational statistics.

The important Federal records geographic analysis, NCHS policy.

We will see you all back at the Holiday Inn. Thank you all for a very interesting afternoon.

(Whereupon, at 6:35 p.m., the meeting was recessed, to be resumed, the following day, Wednesday, July 26, at 9:00 a.m.)