

**ORIGINAL**

**Transcript of Proceedings**

**DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

**OFFICE OF THE SECRETARY**

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**SECRETARY'S ADVISORY COMMITTEE ON**

**AUTOMATED PERSONAL DATA SYSTEMS**

- - -

**Bethesda, Maryland**

**Friday, 29 September 1972**

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**ACE - FEDERAL REPORTERS, INC.**

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DEPARTMENT OF HEALTH, EDUCATION AND WELFARE  
OFFICE OF THE SECRETARY

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SECRETARY'S ADVISORY COMMITTEE ON  
AUTOMATED PERSONAL DATA SYSTEMS

- - -

The meeting met pursuant to notice, Mr. David B.  
Martin, Director, presiding.

Building 16  
NIH  
Bethesda, Maryland

Friday, 29 September 1972

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1 Richard W. Freund  
2 Vice President  
3 First National City Bank  
4 New York, New York

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5 Kenneth A. McLean  
6 Professional Staff Member  
7 Banking, Housing, and Urban Affairs Committee  
8 United States Senate

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1 MR. MARTIN: If everyone would take a seat,  
2 we might be able to call the meeting to order.

3 Good morning.

4 To our participants and discussants whom we  
5 welcome, I extend on behalf of Chairman Frances Grommers  
6 her regrets at not being able to be here to preside over  
7 this meeting as she had hoped to do as the meeting was being  
8 planned.

9 To members of the committee, I would like to  
10 call your attention to several documents that were placed  
11 on your chairs this morning, one a technical report of IBM,  
12 entitled "Program Development Techniques Overview"; a  
13 copy of the full paper on the basis of which Mike Letha  
14 made his presentation relative to the release of student  
15 records at the University of Wisconsin and the Wisconsin  
16 public records statute which we heard at a previous meeting;

17 A folder containing various materials that are  
18 relevant to the presentation on state and municipal data  
19 systems which we will have tonight;

20 And a brief two paragraphs which I will now  
21 read for the record describing the discussion of the  
22 court record keeping practices which we are going to hear  
23 this morning.

24 Excuse me, there was also, as Guy Dobbs reminds  
25 me, a copy of the report entitled "Cost Implications of

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1 Automated Personal Data Systems," which came in yesterday  
2 by air express from the University of Utah, being the fruit  
3 of the work Jerry Davies specified last spring and the final  
4 report on which has arrived.

5 Nancy Cleman, who deserves great credit for all  
6 the work that has gone into organizaing this morning's  
7 presentation tells me that many of our panel participants  
8 and discussants perceive this morning's discussions as  
9 perhaps the most broadly based and sharply focused discussions  
10 of the issues with which we will be dealing which may have  
11 yet been held.

12 Accordingly, at the suggestion of a number of  
13 people who are going to be involved in the discussion, we  
14 are making, in addition to our usual stenographic record  
15 of this, a tape of the morning's discussions with the thought  
16 that there may be some value in having it available for  
17 others to hear in other settings who wish to learn as much  
18 about the issues as we hope to discover through our  
19 discussions this morning.

20 It has been brought to the committee's attention  
21 that criminal arests and the initiation of civil suits to  
22 enforce alleged financial obligations tend to be noted  
23 systematically in a variety of records that serve as a  
24 basis for making decisions about the individuals involved.

25 Consumer reporting firms are said to be large

1        repositories of such information.

2                Decisions commonly affected by their records  
3        include employment, insurance, eligibility, and extensions  
4        of credit.

5                At the same time, however, the committee has  
6        also been told that information about the outcome of  
7        reported arrests and creditor lawsuits tends to be much less  
8        systematically, even irregularly noted in these record  
9        systems, thereby creating a risk that important decisions  
10       about large numbers of individuals will be made unfairly.

11               The purpose of the presentation and discussion  
12       will be to try to define more clearly the dimensions of the  
13       problem, resulting from the failure of communication of  
14       information about the outcome of criminal arrests and civil  
15       suits.

16               To try to learn more about why the problem  
17       exists and to focus on possible means of dealing with it,  
18       the discussion will include attention to the question of  
19       where and how best to create incentives to get such outcome  
20       information flowing.

21               A central issue is the potential adverse effects  
22       on individuals which may result from the deficiency of  
23       such information in criminal justice and other record  
24       keeping systems, both governmental and nongovernmental.

25               Richard Penn, to whom we all owe an obligation

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1 in connection with the development of this presentation,  
2 who serves as program manager of the Technical Analysis  
3 Division of the National Bureau of Standards, and who has  
4 been interested in issues with which we will be dealing this  
5 morning has agreed to serve as a moderator of the panel  
6 discussion with which the morning will begin.

7 Judge Harold Greene, Chief Judge of the District  
8 of Columbia Superior Court, cannot join us until somewhat  
9 later in the morning. Whether he will arrive in time to  
10 make his presentation before our coffee break, which should  
11 occur around 10:30 or 10:45, or whether he will arrive  
12 only in time to do his presentation after the coffee break  
13 remains to be seen.

14 But I am now going to turn to Dick Penn the  
15 task of moderating the panel discussion which is the  
16 opening part of the session.

17 Dick?

18 MR. PENN: Thank you, Dave.

19 What we are going to try and do this morning is  
20 try and present people who are knowledgeable about the  
21 problem and several of its multi-attributed portions.

22 The thing we are dealing with this morning is not  
23 viewed by all people as being the same. Depending on where  
24 you sit, whether you are a producer or a user or a researcher,  
25 or concerned with the total system or concerned with people

1 generally, you do view the problem differently.

2 In order to provide perspective from each of  
3 these viewpoints, I have asked participants of the panel  
4 to discuss with you this morning the problem they see.

5 We will have two users, Bob Gallati and  
6 David Storm, who view it from different points of being  
7 users of information;

8 Larry Polansky, who has developed and implemented  
9 in Philadelphia one of the outstanding systems of court  
10 record keeping in the country today, and let me say at the  
11 outset, this is an atypical rather than typical system, but  
12 it shows what can be done with technology today;

13 We would then like to turn to David Link and  
14 have him speak about it from the standpoint of his viewpoint  
15 as a -- not officially speaking for the American Bar  
16 Association, but based on his experiences with the ABA  
17 Committee on Science and Technology;

18 Then Al Blumstein is going to talk to us about  
19 an over-all systems approach to the thing and perhaps  
20 some way of looking at how to get incentives flowing to  
21 make the system which is now a nonsystem tend to work as  
22 a cohesive thing;

23 Then to set it off, we will have Judge Greene  
24 arrive and indicate some of the constraints and barriers on  
25 why the technology cannot function.



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1           When we finish with this, hopefully we will then  
2 have provided a basis upon which we, collectively, including  
3 the additional resource personnel who are here and  
4 interested and participating in this, will be able to  
5 discuss with you and hopefully we can move towards the  
6 objectives which David has set forth.

7           MR. MARTIN: Dick, would you be willing to name  
8 the discussants who will be with us after the coffee break  
9 to participate in our discussion so the committee will be  
10 aware of our total resource potential?

11           MR. PENN: We have immediately behind me, Mr. Ernest  
12 Short, National Center for State Courts;

13           Mr. Joe Ebersole, of the Federal Judicial  
14 Center;

15           Nan Gold from the District Court;

16           Jim McCafferty, from the Administrative Office  
17 of the U.S. Court.

18           Do we have others?

19           Mark Cannon from the Chief Justice's Office;

20           And Julian Bergan, also from his office, who  
21 is here and who will participate and be prepared to provide  
22 their inputs to us while we are here.

23           MR. MARTIN: In order that we not lose one precious  
24 word from the record, will you take note of the stenographer's  
25 indication when he makes it that he has to change his pad and

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1 pause long enough to let him do that.

2 MR. PENN: We would like to start this morning,  
3 I think, with Bob Gallati, because I am told he is the man  
4 who originally raised this problem with the committee around  
5 here and, hence, is the reason we are here this morning.

6 So we would like to ask him to, if he would, to  
7 kind of set the stage for us from a user's viewpoint of  
8 what is the problem from your viewpoint.

9 MR. GALLATI: I would like to begin by  
10 mentioning the fact that in Article II, Section 2-A of  
11 the New York State Identification and Intelligence System,  
12 known as NYSIIS, Code of Ethics, we find the following  
13 paragraph:

14 "Participants should be greatly concerned  
15 with the completeness and accuracy of the information  
16 in the system. Constant auditing of the data bank  
17 should be undertaken to assure the reliability of  
18 story data. The most critical gap in the completeness  
19 and accuracy of criminal offender record information  
20 is the problem of missing dispositions."

21 This was referred to by me in my testimony before  
22 this committee on July 25 as follows:

23 "One of the big hangups in our whole system  
24 is the failure of the court to supply disposition  
25 information."

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This problem is not unique to New York, as was indicated by Mr. Muchmore at the time, who said, and I quote:

"Every employee we put on the payroll must have fingerprints taken. And our experience has been of the ones that have a record, one out of seven records is incomplete. They have a charge, for instance, say rape, with no disposition of the case whatsoever.

"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. In almost 90 percent of the instances, the charges were dismissed."

Indeed, the problem appears to be national in scope, as indicated by the following quote from a letter to all fingerprint contributors:

"Re: Reporting final dispositions," dated June 2, 1971, signed by the late director, FBI Director Hoover:

"We ask your special attention at this time to the urgent need to report a final disposition for each charge submitted to the FBI Identification Division by fingerprint card. We have made this request previously but never under conditions of such urgency as those which now prevail.

"The national criminal identification system

1 is now the object of the most serious attacks  
2 that have been launched against it since the system  
3 was inaugurated in 1924. These attacks vary in  
4 form and purpose, but they direct their fire mainly  
5 toward the identification record that is incomplete  
6 for lack of disposition shown.

7 "Such records are alleged to be at best  
8 inaccurate, misleading, of no value, and at worst,  
9 a violation of the rights of the person on whom  
10 the record was compiled.

11 "The attacks are stated in several different  
12 ways. A number of civil suits have been filed, all  
13 undecided as yet, demanding that the FBI cease  
14 dissemination of any part of any record that is  
15 incomplete for lack of disposition shown, and/or  
16 total expunge from the record any notation of  
17 arrest or charge unsupported by disposition that  
18 is somewhere available but not shown on the record.

19 "These attacks have come from such diverse  
20 sources as persons who allege loss of employment  
21 because of an incomplete identification record,  
22 prejudicial effect on an attempt to obtain parole  
23 or prejudice and harm for some other reason.

24 "The courts now are beginning to express  
25 some concern over these incomplete criminal

1 identification records and related problems."

2 One might observe that it is about time the  
3 courts have begun to express some concern, since, at least  
4 in New York, the failure of disposition reporting has been  
5 directly related to this lack of concern by the courts.

6 It is certainly difficult to understand the  
7 attitude of the courts in these matters, except, perhaps,  
8 that the courts deal intensely with individuals and are  
9 not oriented to massive administrative record keeping.

10 Only in a preliminary hearing or original  
11 arraignment is the court system usually exposed to the  
12 problem of arrest records without dispositions and there  
13 the lack of dispositions are probably not too critical, by the  
14 time a case is tried, the prosecutor has often obtained  
15 certified copies of the defendant's arrest report and after  
16 disposition, it is most likely complete in most details.

17 The courts are perhaps not unduly hindered or  
18 impaired by missing dispositions for reported arrests.

19 However, whatever the reason for court attitudes  
20 and apparent lack of incentive, I think the New York experience  
21 in this regard is revealing.

22 Section 942-A, former Code of Criminal Procedure,  
23 superseded by the new Criminal Procedure Law, effective  
24 September 1, 1971, required, quote:

25 "The clerk of the court in which the prisoner

1 is arraigned shall promptly report to the State  
2 Fingerprint Identification Bureau and to the Chief  
3 of Police or Peace Officer who made the arrest,  
4 the sentence of the court or other disposition  
5 of such system."

6 This section was in full force and effect from  
7 1928 to 1971. However, by 1954, the State Bureau was unable  
8 any longer to rely upon the courts to submit dispositions  
9 and it turned to the police to perform this function.

10 This situation continues to this day, except that  
11 we now have the Judicial Conference Statistical System  
12 operating in eight of the 62 courts of the State.

13 I would like to submit that this system, Judicial  
14 Conference System, is possibly the best solution to the  
15 problem of criminal offender records which are incomplete  
16 because of missing dispositions.

17 In the past the size and dismal inadequacy of  
18 court reporting, the police, even when highly motivated  
19 to obtain final dispositions, had difficulty in obtaining the  
20 data because of appeals, transfers to different courts, and  
21 the antiquated docket based manual records system.

22 The New York State Judicial Conference Statistical  
23 System is a computer based system and places the burden for  
24 disposition reporting exactly where it belongs, on the  
25 courts, and the court system.

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1           The Judicial Conference is chaired by the chief  
2 judge of the state, who is chief judicial officer of the  
3 Unified Court System.

4           A state administrator and secretary of the  
5 courts is selected by the administrative board of the  
6 Judicial Conference, and he has day to day administrative  
7 responsibilities, including the conduct of the computerized  
8 statistical system, which is designed to measure the  
9 flow of cases processed by the courts, with individual  
10 case dispositions as a byproduct.

11           While the Judicial Conference has been agonizingly  
12 slow in developing their system, it will soon blanket  
13 the state and offices will be receiving dispositions on  
14 tape for all courts in the state on a systematic and regular  
15 basis.

16           These will be merged with the arrest records  
17 already in our files and the disposition problem should  
18 be resolved at least for all arrests in the future.

19           We are still striving mightily to obtain missing  
20 dispositions on a historical basis, here again we must rely  
21 on the police rather than the courts.

22           One final word about missing dispositions, the  
23 FBI's National Crime Information Center Computerized  
24 Criminal History Program in CIC/CCH depends entirely upon  
25 the completeness of criminal offender record keeping at the

state level.

Unlike the millions of manual records in the FBI's Division of Identification, where they depended upon the police to report dispositions, when they reported dispositions directly to the FBI, the NCIC can never be any better than the state files that convert, enter and update its records.

The only feasible system that will insure that the horrible dearth of dispositions in our old manual files is not perpetuated and aggravated by computerization is to place full responsibility on the courts by statute or administrative device such as the Judicial Conference Statistic System.

The solution, I believe, lies with the courts. The administrative branch of government has to depend upon the courts and the legislative branch must see to it that the courts carry out their mission of reporting dispositions, and if all three branches of the government do not work together, we will have increasing chaos in this regard, magnified by the threat of instances of inaccurate dossiers produced by computers.



1 MR. PENN: Thank you.

2 I think that you have articulated very nicely  
3 the viewpoint from that of the police user around here.  
4 Since you have thrown the ball and said it is really the  
5 courts' problem to furnish us the information, I guess it  
6 is only proper and right that we turn next to Larry Polansky  
7 and let him say why the courts are doing what they are doing.

8 MR. POLANSKY: Members of the Committee, Mr.  
9 Martin, Mr. Penn:

10 That ends the formality of my presentation.

11 I have said hellow that way. I wish Judge Greene  
12 was here because I have a few slides at the beginning of the  
13 short presentation I have that were specifically especially  
14 for him.

15 Could I have the lights now, please?

16 I think a number of you are from this Washington  
17 area so you will recognize these.

18 I noticed on my way --

19 (Slide.)

20 -- out to Bethesda today that I was still able to  
21 see evidence of crime and violence in the D.C. area. In  
22 fact there was quite a bit of it around --

23 (Slide.)

24 -- but I understand that you now have a speedy  
25 trial here and some no-knock legislation, and so --

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1 -- it was not at all difficult apparently for t  
2 them to gather a group quickly and --

3 (Slide.)

4 -- to clear the entire situation. It was all  
5 over in a matter of minutes.

6 I wanted Judge Greene to know I was aware now  
7 that speedy trial had come to the D.C. area and that that  
8 was the reason crime had seen a tremendous reduction.

9 MR. PENN: You didn't read this morning's paper  
10 about the suburbs?

11 MR. POLANSKY: I got up at five this morning, I  
12 didn't read any papers.

13 More on point. And perhaps --

14 (Slide.)

15 -- contrary to what Mr. Martin had to say as to  
16 the broad generalities that we would attack, I think I am  
17 generally known as a detail man. I want to give you a little  
18 detail. I want to get down to where some of the problems  
19 are.

20 Let me start with the civil area, then I will  
21 respond to Dr. Gallati a little later.

22 This is a picture of the clerk's office in the  
23 Philadelphia civil court. This is a gentleman in charge  
24 of the information desk.

25 (Slide.)

1 In the room that that picture was taken is a set  
2 of ledgers that represent the judgment indexes, civil judg-  
3 ment indexes of the City of Philadelphia for the common pleas,  
4 general jurisdiction court. Those are very large volumes  
5 against the wall. You will find somewhere between 25 and 40  
6 of those volumes for each year. They are broken down by the  
7 letters of the alphabet and within each book they are again  
8 broken down by the letters of the alphabet. So if you were  
9 looking for Larry Polansky you would attempt to locate the  
10 "P" volume and within the "P" volume you would go the "L" page,  
11 then you would begin a search as --

12 (Slide.)

13 -- these mostly young people are doing. These  
14 are clerks from title companies, from finance companies, that  
15 come to the courthouse to search the records to see if there  
16 are any outstanding judgments and liens against people who  
17 are trying to sell property or who are taking loans.

18 (Slide.)

19 When they search, there are some of the books and  
20 dog-eared pages that they search, with our Pennsylvania  
21 statutes they have five years' worth of these books to search.

22 From what I explained earlier about how they are  
23 organized, they all use this finger method, going to the  
24 "P" book, "L" section, then beginning to run their finger  
25 down the page looking for Larry Polansky or something that

1 looks like it.

2 (Slide.)

3 The handwriting is a tremendous problem in these  
4 old ledgers. In the early 1900s or earlier when they started  
5 this, each of the people who were hired in the clerk's office  
6 had to prove that they were able to write with that  
7 Spencerian script that was so lovely. Now we look at the  
8 high wages we pay and most of what you see there is unreadable.

9 With the advent of the computer -- and this is  
10 my point --

11 (Slide.)

12 -- you now go to a terminal.

13 (Slide.)

14 You key a name and get back a series of answers  
15 with phonetic scheme, some sound index type scheme getting  
16 back names that sound like the one you are asking for and  
17 rather than searching through a room full of volumes,  
18 immediately before you is the name of people on both sides  
19 of the judgment, the dates that the judgments were entered,  
20 the dates they were satisfied if they were in fact reported  
21 as satisfied. And the amounts of the judgment.

22 If you are interested in more information, as  
23 many people are --

24 (Slide.)

25 -- with another several taps on the keyboard you

1 are down into the detailed information about the case, at  
2 least to the extent of knowing the name and address of each  
3 of the parties involved and some more dates perhaps.

4 (Slide.)

5 I have got a slide in here to indicate that these  
6 things are maintained on the computer by these terminals so  
7 if there were changes such as the entering of the fact  
8 that the judgment has been satisfied it can be done right  
9 on the screen.

10 The big point though --

11 (Slide.)

12 -- is that information is available. It is  
13 available at fantastic speeds. If you were doing judgment  
14 searching for a finance company five years ago, you had a  
15 terrible problem on your hands. Now it is easy and people can  
16 get to that information. And in passing let's leave another  
17 problem out as to information you can't get, we do get the case  
18 dispositions, obviously, we are the court. It is not at all  
19 hard for us to get the case dispositions.

20 However in the judgment area what you want is  
21 satisfaction. The fact that the man has paid off his  
22 debt to the plaintiff, that does not come. That only comes  
23 when there is an astute lawyer involved.

24 Right now the system I described is working for  
25 our lower court and won't be introduced into upper court for

1 about six months.

2 In a lower court in a period of about three years  
3 we find only about 20 percent of the items on the file have  
4 been reported as satisfied. We know that by far many, many  
5 more items than that have been satisfied but if no question  
6 arises, if the man doesn't attempt to sell property or doesn't  
7 attempt to take another loan, it remains on that record as  
8 an open judgment against him and perhaps he will never know,  
9 perhaps he will come to some finance company, request a loan,  
10 they will search and find it open, never tell him why they  
11 turned him down, but it is there.

12 Let's pass on to the criminal side quickly. I  
13 don't have that much time.

14 What I have represented there is one screen full  
15 of information that appears when you attempt to search for a  
16 criminal defendant. The inquiry in this case was what do  
17 we have on people named Jones, and in the center of the screen  
18 it is a little difficult to see you have got case numbers  
19 and police identification numbers following that. Beyond  
20 that there is something called microfilm number, which  
21 indicates that we just don't have enough dollars to maintain  
22 all those criminal histories on our file.

23 What we do maintain on our file active and  
24 alive and capable of being retrieved is the microfilm number  
25 of the film you should go to in the clerk's office to get the

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1 record of the last conviction of that conviction, or  
2 acquittal, as a matter of fact. We do maintain all the in-  
3 formation on the cases that have gone through our system  
4 since late 1969 so we can provide ourselves with a criminal  
5 history record at least for the period January '69 through  
6 up to date which is more than the police can provide for  
7 us because as I say we can provide a complete record.

8 (Slide.)

9 This is just to indicate our search can be  
10 narrowed. We originally went in for Jones. Of course the  
11 first screen was full of JOnes with an "A." Now we are into  
12 "J" because I asked for John or Jim Jones or we can search on  
13 the police identification number.

14 You have spoken I understand in materials I have  
15 read about social security number as the number to be used.  
16 I certainly would like to see that single identifier.  
17 However, let me pass along to you a detailed comment from  
18 a great number of policemen I have dealt with. Their response  
19 has been "That is fine. Which social security number shall we  
20 give you when we arrest a defendant? The average professional  
21 has several in his pocket. Which one will you want?"

22 In this case I have given you what we get back  
23 when we key in on our Philadelphia unique identifier,  
24 something like an FBI number. We have our own, the police  
25 have their own criminal investigation files in Philadelphia.

1 They identify them by number after they have done finger-  
2 printing and photographing. If they can get them back to that  
3 same record they will give us the same number again.

4 In keying in for this Mr. Jones, we found that  
5 he had one case in our upper court, one case in our lower  
6 court and two active probation records which ties together  
7 nicely what is going on at least currently. That is all  
8 current.

9 This is not criminal history, this is what is  
10 active now for the man.

11 (Slide.)

12 I brought this to show you the kind of information  
13 you can get at the screen. His name, his address, whether  
14 he is on bail or in prison.

15 We now have an on-line prisoner inventory system  
16 so the fact that he is or isn't at least in our prison, our  
17 county prison or detention center, is fairly accurate.

18 In the next set of lines, I know this is difficult  
19 to read, are indicators that tell me who the bail bondsman  
20 is if there is a bail bondsman, what is the amount of bail,  
21 by number who the bail bondsman was, by number who the  
22 attorney was, and I can translate this at the terminal into  
23 who by name is the attorney and bail bondsman. If there is  
24 a police sojourn who has done a sobriety test or blood test  
25 for drugs, we would have the coded number of the police



1 sojourn. This is the police identifier, about the middle of  
2 the screen. Most serious charge in the case, things like  
3 when was he arrested and when was he first indicted, how  
4 many times did we have to bring him to an arraignment in  
5 order to successfully arraign him, how many times have we  
6 scheduled him for trial and when is he next scheduled for what  
7 kind of action.

8 This is to give you the fact we --

9 (Slide.)

10 -- could translate all we have there. That is  
11 translating that most serious charge, attempted burglary.  
12 We could show all the additional charges.

13 This is the man's lawyer. I translated the number  
14 of his lawyer back to his name, address, phone number.

15 Incidentally in putting together information we have  
16 put some together here on the attorney. We have an arbitration  
17 system in Philadelphia rather well known where the attorneys  
18 are asked to sit on panels to hear small, relatively small  
19 dollar value cases. This gentleman has been chairman on  
20 two sets of cases and it appears that he has five cases out of  
21 six still left that he hasn't turned back.

22 Frankly if he came to the clerk's office and asked  
23 a question and we knew who he was, we would key this in and  
24 ask him where the results are on those five arbitrations he  
25 has been holding.

1 (Slide.)

2 That is translating some disposition information.

3 (Slide.)

4 Another Jones screen.

5 (Slide.)

6 Because I want to get to another record. This is  
7 a probation record. Carries things like when does it start,  
8 when is it expected to terminate? What were the charges?  
9 Who is his probation officer, who is the judge that sentenced  
10 him, what is the census tract he lives in, are there any  
11 special provisions of his probation?

12 The dissemination of the information on this  
13 probation file however is limited. It does not fit the  
14 public view. This is primarily for use of probation  
15 department. They have consented to our public defendant's  
16 office having access to this as well.

17 (Slide.)

18 Just another probation record indicating restitution  
19 is one of the requirements.

20 We also have --

21 (Slide.)

22 -- some juvenile files that have extremely close  
23 dissemination. They are not allowed out anywhere but through  
24 the familiar court area and the juvenile division but we can  
25 reach family records --

1 (Slide.)

2 -- or the individual --

3 (Slide.)

4 -- child's record --

5 (Slide.)

6 -- or the individual arrest, activity in which  
7 he is involved.

8 (Slide.)

9 I think I put that in there to show you we have  
10 got massive printout lists of, in alphabetical order of all  
11 defendants in the system, all disposed records that have  
12 gone thorough the system.

13 They are available at logical places, for instance,  
14 the clerk has long lists of alphabetical disposed records  
15 primarily to help them locate that file number he needs to  
16 select when information is requested on a particular case.

17 (Slide.)

18 We do other sneaky things. This isn't sneaky.  
19 This is a notification back to the defendant that judgment  
20 has been entered against him. This isn't sneaky .

21 (Slide.)

22 On the other hand, this last slide is a notice going  
23 to the motor vehicle bureau, which is automatic, saying that a  
24 judgment has been recorded against a man because of an auto-  
25 mobile accident and if it is not cleared within 30 days they

1 are to remove his license.

2 That is the end of the slides.

3 I want to show you just some samples of the  
4 information we do have. You want to attack the problems I  
5 assume, you want to identify them rather than attach them  
6 first.

7 I mentioned one the civil area when I talked about  
8 the failure of satisfaction to be recorded on civil judgments.  
9 Another is a court problem. That is that we don't automatically  
10 dismiss cases for lack of prosecution. Many states, New  
11 York is a prime example depend upon the lawyers to initiate  
12 and dismiss litigation.

13 Well, if you don't do that and you provide a  
14 tremendous index of all the litigants and all the defendants  
15 then you provide an index to all that you are then going to  
16 provide information to finance companies about stale cases  
17 that have no basis, that people have decided not to prosecute.

18 So take care, there is a lot of incomplete infor-  
19 mation lying out there. We, for our own pare, are taking  
20 action in that area. In the next year we are just beginning  
21 to record cases from the point of filing instead of the point  
22 of being ready for trial, we will then automatically follow  
23 that certain procedural events must occur within the required  
24 time frames, if not we will dismiss as the court, the court  
25 will dismiss for lack of prosecution.

1           Another problem is how do you adequately describe  
2 a debtor? Who is the John Jones that appears on that court  
3 record? I don't know the answer to that one. I know it is  
4 very difficult in the criminal area where you have some  
5 unique identifiers, like his fingerprints because he has  
6 had previous problems but now all you have got is a name.

7           I don't know the answer. I would like some help on  
8 that one.

9           In the criminal area Dr. Gallati has talked about  
10 the failure of the courts to provide disposition information.  
11 I think that generally is true but I would submit from the  
12 other side that when you do find the court that is prepared  
13 to provide the police or a state agency with rather complete  
14 disposition information, they are not prepared to do anything  
15 with it.

16           I have had materials in the hands of our state police  
17 for a year and a half. I know they haven't even looked at  
18 the tapes yet. They haven't done a thing with them. We have  
19 been receiving police criminal histories for many, many years,  
20 and they are very, very accurate on arrests, and they are  
21 just as inaccurate on disposition.

22           Most of the dispositions aren't there.

23           I will agree though that prior to 1969 the burden,  
24 the onus was on the policeman to come to the courthouse  
25 and get that information. But we have been providing it

1 mechanically for three years and we still get the same  
2 kind of criminal history so I think it is also time for these  
3 police departments and criminal identification bureaus to get  
4 up to date.

5 NOT all the dat is available I am afraid. I  
6 think we very much want to have a lot more juvenile information  
7 available not for prosecution or persecution purposes but  
8 for information purposes. But we are running into a number  
9 of areas where the privacy of that information is being questioned  
10 and we just can't release it. It could be helpful in  
11 many, many areas and we just aren't allowed to use it where we  
12 need it.

13 The police for the most part are frustrated in  
14 so many areas that I just don't comprehend. I am not an  
15 attorney, I have spent three years so far in law school. I think  
16 I understand a bit about constitutional law. I am not at all  
17 sure it has to go as far as we appear to be going.

18 What we tend to be doing is emasculating the  
19 people that are asking to protect us, I think the pendulum  
20 has gone too far.

21 Let me stop there. I am hoping that I raise  
22 enough questions with you so that later on you can come back  
23 at me.

End #2

Thank you.

1 MR. PENN: ~~Thank~~ you. We will give you a chance  
2 a little later on in the discussion session. We have heard  
3 Dr. Gallati say the courts need to view this information.  
4 We have heard Larry Polanski say, "Gentlemen, we don't get  
5 information back relative to whether or not judgments are  
6 satisfied; somebody doesn't feed it back to us." So now  
7 we need to turn to the representative of one of the  
8 financial institutions who are concerned with credit, credit  
9 collections as well as the letting of credit.

10 We are lucky to have with us today David Storm,  
11 Assistant Vice President of First National City Bank in  
12 New York. David is going to talk to us about the  
13 problems from a financial institution; what are their  
14 problems as to getting credit information on people; is  
15 there a problem with not granting credit to people who  
16 satisfy judgments and so forth?

17 MR. STORM: Certainly. Distinguished Members of  
18 the Advisory Committee.

19 First let me say the First National City Bank is  
20 honored to have been invited to join you in your discussions  
21 of automated data collections on consumers and the record-  
22 keeping practices of the courts.

23 For those of you who may not be familiar with City  
24 Bank, let me say we are the largest bank in New York and the  
25 second largest bank in the United States.

1                   In the late 1920s we became the first major  
2 New York bank to extend credit to the consumer and from that  
3 time to this we have made more loans to consumers than any  
4 other bank in New York. Our consumer credit outstandings  
5 are I think second in size only to those of Bank of America.

6                   To give you some perspectives on the roles of the  
7 consumer report and court records in the credit granting  
8 process, let me quickly describe that process as it is  
9 practiced in our bank.

10                  The making of credit decision on a consumer credit  
11 application essentially consists of deciding one question.  
12 That question is simply this: If I grant this individual  
13 this credit now, will he repay it promptly in accordance  
14 with its terms? To answer this question, the lender  
15 evaluates two factors: The applicant's ability to repay and  
16 his willingness to do so.

17                  Elements considered in assessing ability include  
18 such things as adequacy of income, debt obligations, type  
19 and length of employment, size of employer, personal assets  
20 and family status. Willingness to pay must be decided from  
21 his past record of meeting his obligations and from the  
22 voracity of his answers to the questions on the credit  
23 application.

24                  Let me say at this point that the lender must  
25 make the right decision 97 out of a hundred times. We



1 estimate that it takes all the profit of ten good personal  
2 loans just to pay the loss on one bad one. A good loan is  
3 one on which there are no collection problems. Cost of  
4 collection is such that a loan requiring repeated handling  
5 in the collection department is a losing proposition for  
6 the lender even if it is ultimately repaid.

7 In making the credit decision on a loan request,  
8 we almost always obtain an automated consumer report from  
9 the credit bureau to which we subscribe. This report  
10 consists of a series of transaction reports from credit  
11 grantors. It identifies the lenders by code number,  
12 gives the date, type and amount of the transaction and the  
13 current status of the account. Information from the civil  
14 courts, particularly creditor suits and judgments, is  
15 included. Criminal court information is not.

16 The importance of this report cannot be over-  
17 emphasized. It confirms the extent of the applicant's  
18 present indebtedness and often reveals obligations which he  
19 has neglected to mention on the credit application.

20 Equally important, it gives us insight into his  
21 borrowing habits and his track record with consumer debt.

22 You are interested I think in whether our consumer  
23 reporting agency is as reliable in reporting the  
24 disposition of creditor suits and judgments as it is in  
25 reporting their existence. And I must inform you in all

1 candor that it is not.

2 Does this failure tend to unfairly deny credit  
3 to the consumer? Personally, I do not think so. In the  
4 first place we know from samplings we have taken of our  
5 loan portfolio that a history of past creditor suits,  
6 regardless of their ultimate outcome, is a very strong  
7 predictor of the applicant's future behavior. Unless other  
8 credit factors in the application are extremely strong, we  
9 know that we cannot afford to take a chance on that  
10 applicant.

11 When the Fair Credit Reporting Account was enacted  
12 we did an analysis of several hundred revised reports  
13 reissued by our credit bureau as a result of consumers  
14 reviewing their credit profiles after we had turned them  
15 down.

16 The overwhelming majority of revisions had to do  
17 with reporting the disposition of suits and judgments. The  
18 ironical fact is, however, that in those several hundred  
19 items there were only one or two where our decision would  
20 have changed one iota had we initially had the revised  
21 data.

22 What do we do when we obtain a report which  
23 shows litigation without its disposition and we still feel  
24 we might wish to make the loan? We get the information from  
25 the applicant himself. Usually he can provide evidence of

1 the outcome or at least tell us the name of his  
2 attorney with whom we can verify that the issue is settled  
3 and that the suing creditor has no further claim upon the  
4 applicant.

5 How do we feel about automated consumer reports?  
6 The banking community in New York turned to an automated  
7 bureau years ago when the volume of consumer credit  
8 transactions made it evident that there was no other  
9 possible way for credit grantors to exchange vital  
10 transaction information quickly.

11 Conversion of manual records to automated files  
12 and building the main frame of a reliable automated  
13 reporting system has been a long arduous and expensive  
14 exercise for the credit bureaus and the subscribers alike.  
15 I believe that the worst bugs are now behind us and that  
16 our bureau today is doing a better job in directly matching  
17 widths and their credit histories.

18 In this connection, the use of the Social Security  
19 number is playing an increasingly important part. It is our  
20 view that its use should be encouraged since it provides  
21 a sure and inexpensive method to minimize identification  
22 errors.

23 Critics of our industry frequently charge us with  
24 burdening the public with excessive debt. Believe me, we try  
25 very hard not to because if we extend credit that is

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1 difficult or impossible for borrowers to repay, we lose  
2 more in the final analysis than they do.

3 Our ability to lend wisely and at reasonable rates,  
4 however, is only as good as the data available to us at the  
5 moment that we make the loan decision. If excessive concern  
6 for consumer privacy results in curtailing the free flow of  
7 credit information, we will be reduced to blindfolded  
8 lending.

9 The result is bound to be overextension of credit  
10 which will in turn result in higher collection costs and  
11 losses for us, and in higher credit costs for all consumers.

12 If on the other hand we have reliable hard facts  
13 available when we make our credit decision, we can make  
14 sound credit evaluations which ensure decisions fair to  
15 borrower and lender alike.

16 Thank you.

17 MR. PENN: Thank you, David.

18 I would like next to turn to someone, who is  
19 David Link -- who is David Link, Associate Dean of Notre Dame  
20 Law School, Chairman of the Committee on Science and  
21 Technology, American Bar Association. Maybe he can comment on  
22 some of the points Larry Polansky made.

23 Mr. Link does not speak to us this morning in a  
24 capacity representing the Bar Association's position but he  
25 will talk from his own viewpoints which are based on

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1 discussions which I believe that committee has held.

2 MR. LINK: Thank you, Dick. David Martin's  
3 letter of invitation stated that you had two concerns in  
4 which I think I have some input. One is as to why the  
5 problem exists. The other is the possible means of  
6 dealing with this problem. And this seen from the  
7 standpoint of an organization of lawyers -- we have been  
8 concerned with this in the Committee of Law and Technology,  
9 the ABA, because of our own question of our responsibility,  
10 or the ABA's responsibility toward these problems.

11 And I think it does apply in both the concern  
12 on criminal dispositions and civil dispositions.  
13 Fortunately the knowledge of the first part of this, why  
14 the problem exists, has been aided by some of the work that  
15 I have been doing at Notre Dame as the legal analyst on a  
16 project which studied court delay problems.

17 This particular study simulated court delay in two  
18 counties in the State of Indiana, and led us to a number  
19 of beliefs.

20 The major cause of the problem that we could see  
21 in that particular state, the major cause of any problem of  
22 recording the dispositions of criminal actions, that study  
23 had to do with criminal court system in those two counties,  
24 the major cause of the problem in that state was the  
25 complexity of the system.

1 I just thought I would show you -- I am not sure  
2 how well you will see this and I will submit a copy of  
3 these to your clerk -- the major problem can probably be  
4 best illustrated by simply showing you the complexities -- can  
5 you hold that; thank you -- the complexities of one of the  
6 counties.

7 This was the criminal court system in Saint  
8 Joseph's County, a relatively small county by a lot of  
9 comparisons, and you will notice, the one thing you might be  
10 able to notice, are these heavy black arrows. Those heavy  
11 black arrows indicate exits from the system, times at which  
12 the accused could be released from the system either by  
13 for example this first one is, "Suspect released for lack of  
14 evidence pending further investigation."

15 Down here, a decision not to prosecute.

16 Up here, "No probable cause."

17 If you lay out over that the other system that  
18 we studied, which was a slightly large county and a slightly  
19 more complex system, and this by the way is a summary chart --  
20 our original charts were more complex than this. What the  
21 chart indicates is what we did simulate within the computer  
22 so that there were many more boxes within this.

23 But once again, you see exits from the system,  
24 now at very different places. Yet we were within the same  
25 constitutional limitations under the Indiana Constitution.

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1 Now, then, the point that I am making is that  
2 first of all the systems are different. And secondly, that  
3 the different people will know the disposition depending upon  
4 one of two different factors, first of all at what point in  
5 the proceeding the disposition takes place, and secondly,  
6 the route that it is following.

7 It clearly makes a difference in Saint Joseph's  
8 County, for example, whether there was a direct arrest,  
9 whether the police observed the crime and made an arrest  
10 or whether there was an arrest after investigation as to  
11 who will know about that disposition.

12 The police for example will know about  
13 dispositions during the early stages of any investigation.  
14 The prosecutor may or may not know about those  
15 dispositions. The court probably will not.

16 On the other hand the court in these two systems  
17 will know about decisions on an appeal, or dispositions on  
18 an appeal. And the police undoubtedly will not.

19 Now remember once again that I am talking only  
20 about these two particular courts. And I am using it only  
21 as evidence of the real type of problem here. We can't  
22 make any generalized statements about how you would pick  
23 up dispositions from court to court. We couldn't make a  
24 generalized statement between two relatively closely  
25 related court systems within the same state. They were that

1 different.

2 Evidence of the type of problem that we ran into  
3 comes from the data acquisition that we tried to do in  
4 order to study court delay.

5 One of the things we had to study in court delay  
6 was of course the disposition of various cases. And we  
7 studied every case from the time of arrest, whether there  
8 was a court disposition or not or simply a disposition before  
9 that time.

10 We had to go to records of the state police, the  
11 county sheriff, the city police, the prosecutor's office,  
12 the court docket sheets and files, and probation office  
13 materials. And even then there were a significant number  
14 of cases which could not go into the simulator because we  
15 didn't have enough information.

16 There were a significant number of cases in which  
17 we could not run down the disposition. When we got to each  
18 of the records we would -- we did some interviews with  
19 administrative personnel; we said, "What happened to the  
20 case; we couldn't find it in the police files; we can't  
21 find it in the prosecutor's files; it doesn't appear in the  
22 court files; what happened in the case?" And the answer  
23 consistently came back, "We simply don't know. And there's  
24 no way of telling anymore."

25 Now, some of our previous speakers obviously have



1 better systems than the one we were studying, but I think  
2 that this epitomizes some of the problems we might run into  
3 in counties like the present ones.

4 Now, even when the agency knows of the  
5 disposition, it may be most difficult to find. We found  
6 that in some of the files there was such a complexity  
7 within the filing system that we could not run down a case  
8 and even the clerk who had responsibility for those files  
9 could not help us run down that information.

10 And then again within two closely related systems  
11 we found such differences in the filing system that we had  
12 difficulty running down a case.

13 Interestingly enough, when a case was transferred  
14 under the complex situation in Indiana, in which it was  
15 transferred from one of the counties to the other, from  
16 Saint Joseph's to Marion County or vice versa, we had  
17 difficulty in following the case. Their identification was  
18 different. Many of those cases were not put into the  
19 simulator for that reason.

20 Now some of our conclusions in that study about  
21 delay led us to some beliefs within the American Bar  
22 Association's concern about the recording of dispositions  
23 in criminal cases and in civil cases.

24 Some of our conclusions about that delay were that  
25 the systems -- or about our study on delay, were that first

1 of all the systems ought to be simplified and could be  
2 simplified.

3 The study would have been enough, by the way, had  
4 we just drawn up the flow charts, because the judges in  
5 looking at them did not believe that that was the way the  
6 system operated until we pointed out how each of them was  
7 accurate. It was clear that within those particular  
8 counties a single charging system would have been helpful  
9 to the delay problem, a better system of scheduling cases  
10 would have been helpful, better prosecuting management was  
11 essential, prosecutors did not manage their case loads with  
12 a view to prompt disposition. There was the need for an  
13 administrative judge, at least in one of the counties and  
14 probably in the other.

15 The procedures for the routine collection and  
16 dissemination of data concerning the operation of the court  
17 systems was almost nonexistent. There was a lack of overall  
18 coordination among the various elements of the criminal  
19 justice systems of the two we studied.

20 And finally the ultimate responsibility for delay  
21 in the disposition of cases clearly lay with the judges.

22 Now all of those have an input to this question of  
23 how to pick up dispositions and why the problem exists.  
24 The problem exists because it is not simplified; the systems  
25 are not simplified. The charging procedures are complex and

1 diverse. Scheduling is almost a random thing within those  
2 systems. The fact that prosecutors did not even know what  
3 cases they were prosecuting that day and were calling back  
4 to the chief prosecutor to find out whether they ought to  
5 settle that case on the day of the trial -- they were out  
6 there on pay phones calling back to say, "I finally have  
7 gotten into the facts of this case and I think we ought to  
8 dispose of it."

9 And finally, this question of where the ultimate  
10 responsibility lies with the delay problem clearly  
11 indicates to us where the responsibility for the recording of  
12 dispositions lies.

13 The recommendation that I would now personally  
14 make to the Board of Governors of the American Bar  
15 Association, assuming I could get the support of my Committee,  
16 would be that the ultimate responsibility for recording of  
17 dispositions is the same as the ultimate responsibility for  
18 the delay problem. And that is with the judges, with the  
19 courts.

20 I don't -- I don't care to put an extra  
21 administrative problem on the courts but I think the courts  
22 are going to have this responsibility as far as the delay  
23 question is concerned anyway.

24 What I would recommend at the present time is to  
25 force reports on dispositions. And I would force those

1 reports by saying that if a report is not received as to a  
2 disposition within a certain period of time, then the  
3 arrest record itself ought to be purged from the files.

4 If the report of disposition is not recorded at  
5 a certain time and in the systems we were studying it would  
6 be seven months, but I think again you would have to  
7 individualize this to the particular court system, then I  
8 would recommend the purging of the file.

9 That doesn't mean that the case has to be  
10 disposed of in that time. You could have a disposition  
11 record that came in to explain why the case was continuing,  
12 but again, requiring that with such an effective technique  
13 gives the judge two controls.

14 It first of all gives him the control over why the  
15 case is taking so long. It helps him in his delay problems;  
16 and secondly, it assures that you wouldn't have the situation  
17 where an arrest is recorded or further procedure is recorded  
18 but no disposition is recorded.

19 Unfortunately, such a requirement that the record  
20 be purged if a disposition record is not put in, does not  
21 provide sufficient incentive for the parties responsible to  
22 report. If the prosecutor knows that that's what happens,  
23 and he has no real disposition report, he simply says, "Well,  
24 I won't turn it in and therefore I know they will be purged."

25 I think the only solution to that is to make sure

1 that the court can discipline prosecutors or even the police  
2 for failure to file disposition reports. I am not sure that  
3 that is possible because of the separation of powers; I am  
4 not sure that that is possible through court rules,  
5 although it may be at least under the Indiana court rules.  
6 It is clearly possible as far as I can see through  
7 legislation.

8 This will get the records straight at least in  
9 one place. It will have within the court files a completed  
10 record about the case, no matter how it is disposed of, no  
11 matter when it is disposed.

12 The next question comes as to the requirement of  
13 users of that information and again I think that it would be  
14 proper to have legislation that information users from the  
15 criminal court systems or from the civil court systems  
16 be required to either purge their records after a certain  
17 period of time, or to update their records, thus getting  
18 accurate records about the disposition of civil cases and of  
19 criminal cases.

20 Thank you.

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1 MR. PENN: Thank you, Dave. We have now heard from  
2 two users and a furnisher and an interested party in the system,  
3 the legal profession. I guess I should introduce another research  
4 person, George Hall from the Law Enforcement Administration  
5 System, Director of their statistic division who will be with  
6 us the rest of the morning and will be available during the  
7 subsequent discussion period to shed light from his viewpoint  
8 on the problem we are discussing this morning.

9 But I would like now to turn to Dr. Alfred  
10 Blumstein, Director of Urban System Institute at Carnegie-Mellon  
11 University. Al has considerable experience in doing investi-  
12 gations in the criminal justice area. He served on the  
13 Katzenback Commission which looked into crime in this country.  
14 He now is concerned with the overall planning and information  
15 flows within the total criminal justice system whereas some  
16 of us are involved with only a portion of it. I would like  
17 to see from his viewpoint, if you will, an Olympian view up  
18 on top, looking down, that maybe he can suggest some of the  
19 interfaces we have around here and perhaps from that viewpoint  
20 make some initial suggestions as to what we can do to try to  
21 solve the problem we have identified this morning.

22 Al?

23 DR. BLUMSTEIN: I think you have seen very vividly  
24 in some of the previous discussions how unsystematically the  
25 criminal justice system operates. And that is not accidental,

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1 that in large part is intended to assure that there is not  
2 a single system manager who makes decisions about the people  
3 that flow through the system from arrest, through conviction,  
4 through disposition. We intend through the separation of  
5 powers to see to it that there are checks and balances, that the  
6 systems are not totally integrated.

7           And one of the prices that we have paid is the fact  
8 that the systems don't always cooperate with each other. And  
9 in part, we have got to recognize that phenomenon. In the work  
10 of the Katzenbach Commission, science and technology  
11 task force, the issue record security associated with the growth  
12 of automated information systems for the criminal justice system  
13 took up probably the majority of the time of the advisory  
14 committee of that task force because of the importance of the  
15 issue and the fundamental need for guidance in the monitoring  
16 of the operation of such systems as they start moving into this  
17 very sensitive area of public concern.

18           An issue we faced directly was the problem of dis-  
19 position of arrest information. We were faced most sharply with  
20 concern about this as a result of some analyses that provided  
21 us with a projection of the arrest probabilities in the  
22 country. We found that a boy of ten years old, today, say,  
23 in the United States, has at least a 50 percent chance of being  
24 arrested sometime in his life for a nontraffic offense. This  
25 means that arrest records including juvenile records are going

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1 to be available not on a small criminal population but  
2 that such records will be available on a significant portion  
3 of the American population.

4 And so the issue of concern about these records  
5 is very real and the concern for their integrity is very real  
6 and I am particularly pleased that this committee is directing  
7 its attention to those issues. The need for the kind of  
8 criminal history records that are maintained should be clear,  
9 both for use by the police in generating a set of suspects for  
10 a serious offense, as well as by the judicial and corrections  
11 system in making sentencing decisions.

12 Even when the information is fragmentary, there is  
13 information available and the components of the system feel they  
14 need it, the issue is one of seeing to it that the records are  
15 less fragmentary.

16 There are serious problems in the misuse of the in-  
17 formation both because the information is incomplete and because  
18 the information in many cases is wrong, the wrong arrest,  
19 the arrest of a person incorrectly arrested for an offense he  
20 had nothing to do with.

21 And I would like to make sure that we distinguish  
22 between the concept of innocence, which is a person not having  
23 had anything to do with the event, the concept of guilt, which  
24 involves a consequence of legal procedure which determines  
25 that he did beyond a reasonable doubt commit an offense and the



ak 4 1 in between area where there may well be some doubt, where the  
2 doubt is great enough to preclude conviction, but where there  
3 may be a reasonable probability that the individual committed  
4 the offense.

5 The police have a concept of probable cause  
6 which is necessary to warrant arrest. The courts have a concept  
7 of beyond a reasonable doubt, which is necessary for conviction.  
8 If one were to try to translate these into say subjective  
9 probabilities, one might say that the police require 50  
10 percent assurance to warrant arrest, one might say the courts  
11 require a 95 percent assurance to warrant conviction, and that  
12 there are those for whom a reasonable objective might have  
13 somewhere between 50 and 95 percent assurance.

14 So that arrest might be warranted. Conviction  
15 might not be warranted. The individual is innocent until  
16 proven guilty in terms of any legal intervention with him,  
17 but in future sentencing decisions, a number of judges have  
18 pointed out to us the importance in their judgment of the  
19 kind of information available on prior record -- on prior  
20 arrest records, even when the man was not convicted. The  
21 essential problems in the completeness of the arrest records  
22 have been, I think, well illustrated by the preceding  
23 speakers, and they relate partly to the fragmentation of the  
24 system, partly to the lack of incentive by the police  
25 to follow up, partly the lack of incentive and in part lack of

1 control on the judicial system to **follow up**, deriving  
2 in part from the concept and desire of judicial independence,  
3 an independence that I believe everyone would insist on with  
4 regard to the individual decisions that judges make, a concept  
5 that many of us would insist far less strongly on in terms of  
6 conforming to required procedures in participating as part of a  
7 total criminal justice system.

8           The trade off that have to be dealt with in the  
9 design of the improved system for recordkeeping involve the trade  
10 office between the need for information in making the decisions,  
11 recognizing that there will be a risk of having erroneous  
12 decisions, weighed against the penalties to the individuals  
13 in the system, associated with having false information,  
14 fragmentary and possibly misleading information and I would  
15 add, true information that stays with the individual too long.

16           The concept of redemption, the concept of being  
17 hounded by previous events, particularly when the arrest  
18 process is as widespread as it is, is an issue that goes beyond  
19 the question of seeing that records are complete, but requiring  
20 that records be purged after a reasonable amount of time even  
21 of correct information.

22           The alternatives one can use in bringing this  
23 system into a more satisfactory shape include first exhortation,  
24 which there is a lot of, which there has been a lot of, and which  
25 which I don't have a terribly strong faith in as a means for

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1 bringing institutions to conform to a larger system they have to  
2 be part of. I would go along very strongly with the suggestion  
3 of Dean Link regarding the -- regarding the suggestion for  
4 purging records that are incomplete after a reasonable amount  
5 of time. This would provide some incentives to those parts of  
6 the system that feel the records are important whether those  
7 be the police, or corrections, or possibly the courts to see to  
8 it that if they wanted the records, they will take the  
9 responsibility then for developing a complete record even though  
10 it is not currently their own responsibility to do so.

11 Second, I would suggest that those portions of a  
12 record that are incomplete be limited in terms of the access to  
13 those portions by certain users. That is, there may -- a  
14 criminal history record may be available to a set of legitimate  
15 users, but the portions of that record that are incomplete could  
16 be expunged from the portion submitted to certain users where the  
17 risk to the individual in that case may be viewed to be most  
18 severe.

19 Third, I would urge that better, more complete  
20 procedures be developed to permit an individual to get access  
21 to his records and to provide a reasonable procedure  
22 whereby he could initiate himself procedures for clearing that  
23 record of errors and have partial information.

24 Fourth, I would suggest the development in all such  
25 information systems of audit procedures so that the system knows

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1 who has gained access to what records and so that follow up  
2 reports can be provided to those users to complete information  
3 that is either erroneous or partial at the time that follow up  
4 information becomes available.

5           Next, I would urge the creation in all such criminal  
6 justice information systems of public advisory bodies to see to  
7 it that procedures are established and followed that will mini-  
8 mize the danger to the individuals whose records are erroneous,  
9 that will establish an appropriate purging requirements consis-  
10 tent with the needs of the users and consistent with the needs  
11 to protect the individuals located within.

12           I think the trends we are seeing, we have seen over  
13 the last few years represented perhaps best by the Philadelphia  
14 court system discussed by Larry Polansky, represented by the  
15 search program being sponsored by LEAA, being represented  
16 particularly by the excellent document prepared by Bob Gallati  
17 on privacy and security for such information systems for the  
18 search system, I think the trends clearly indicate a growing  
19 use of automated data systems in the operation of the criminal  
20 justice system.

21           We are also seeing a trend again exemplified by  
22 some of the things developing in Philadelphia of information  
23 systems not available only to one part of the criminal justice  
24 system but for use across the total system. Having these  
25 information systems, while they represent an opportunity

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1 for much greater access by many more people, they also  
2 represent an opportunity for introducing information control  
3 procedures that are not available with manual systems. They  
4 represent an opportunity for seeing to it that automatic  
5 purging procedures take place. They represent an opportunity for  
6 seeing to it that only portions of files are available to  
7 specified users.

8           So that they represent, I believe, an opportunity,  
9 not only for providing better access and better processing  
10 for the users, but they also represent an opportunity for the  
11 public in general to exercise control and limitation on those  
12 systems so that the individuals whose files are contained  
13 in there are not unduly hurt. It is up to the public to  
14 identify what those procedures have to be and I hope this  
15 committee does that. Thank you.

16           MR. PENN: Thank you, Al.

17           If I can just before we go to coffee, I would like  
18 to take a couple minutes to recap a couple points I think have  
19 been made very fully this morning.

20           One of the things the committee was supposed to  
21 do as a first order of business, I guess, today was to try and  
22 determine is there a substantive problem to which they should  
23 direct their attention relative to criminal justice records,  
24 disposition of information being fed back and is there one  
25 relative to credit dispositions being fed back. I think the

9  
1 evidence of the people who have spoken to you and the resource  
2 people who attend this morning, offer solid evidence that they  
3 believe, at least, there is a problem here which is substantive  
4 and one which should be addressed and one which is important.

5 I think that that has been established. The question  
6 of what the problem is and how to do something about it although  
7 Al had made some interesting suggestions around here, is much  
8 less clear, I think, at the moment. We have heard the problem  
9 discussed from a number of viewpoints, from the standpoint  
10 of a criminal justice police system user, standpoint of someone  
11 who uses it in the credit. Bob Gallati told us there is a  
12 problem in hiring of people around here, that there is  
13 indications as 80 percent of certain types of crimes have been  
14 wiped out yet those could bar people from certain jurisdic-  
15 tions from getting jobs, where police records are made  
16 available to certain institutions.

17 On the other hand, we have heard David Storm indicate  
18 that perhaps the situation is not as critical in at least their  
19 loan policy around here because he has indicated that if they  
20 had resolution information on a number of cases for nonpayment  
21 of debts, that it probably wouldn't have changed their granting  
22 of loans to people.

23 Perhaps we should explore that a little more in our  
24 discussions that will take place after the coffee break.  
25 But we have shown that there are problems, very serious ones,

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1 because of the division of responsibility here, the fractiona-  
2 tion of the criminal justice nonsystem. We have heard  
3 references to Larry Polansky's unique court numbers. In the  
4 District of Columbia where I did some research a couple  
5 years ago, we found there are 36 different unique numbers assigned  
6 by 36 different unique agencies, and trying to track an indi-  
7 vidual through it becomes a real problem. There are interface  
8 problems even where the Philadelphia system -- updating their  
9 files.

10           There are problems of hardware compatibility which  
11 one must be aware of here. You can't ignore the hardware  
12 compatibility problem. There is an interface problem, identi-  
13 fication problem, an absence of incentive generally for any-  
14 one except the individual being wronged to be concerned with  
15 something to do about it.

16           There is no real incentive for the court to provide  
17 the information because they don't get any brownie points because  
18 they have done this. There is no real incentive for the police  
19 to try and do it and there is a question of, in the absence  
20 of these incentives, is it really reasonable to talk about  
21 a solution of the problem.

22           We need to talk very much about the value of  
23 additional information, we need to talk about the trade off  
24 of the improvement of certain functions at the cost of certain  
25 other things. I am certain Professor Miller can talk on this

1 much better than I can about the problems of infringement of  
2 privacy because I have made information available, but this  
3 is a trade off we should not consider likely in our group  
4 discussions. It is going to cost dollars to collect and  
5 disseminate additional information. We should be aware of what  
6 we expect to get from that and have reasonable expectations  
7 of getting.

8 Both Dave Link and Al Blumstein have called for  
9 automatic purging of records. This opens up a whole additional  
10 question of when a person, to use Al's words, has gotten  
11 redemption, when he has redeemed himself, should he be  
12 wiped off and should he be starting with a clean slate. We have  
13 also heard discussion about restricting the use. The problem  
14 that I see around here is that we can restrict the use of cer-  
15 tain information but I am not certain that when we generate the  
16 information, it goes into certain personnel data banks in the  
17 credit area for example, that we can control the person that  
18 controls that information, is the same that controls the  
19 dissemination of information.

20 In fact, we have heard this morning the contrary.  
21 The question of audit, follow up data and certainly the last  
22 notion of creating public advisory bodies to oversee the public  
23 interest around here are things I think should be of concern  
24 this morning. We have one additional speaker who  
25 unfortunately has not been able to be here this morning but



12

1 hopefully will be here shortly after coffee break. That is  
2 Judge Greene from Superior Court who will talk about it  
3 from a judge's viewpoint because now we have put it on the  
4 judge's back this morning. We will let him tell us  
5 why he feels some of the technological advances may not be  
6 operational.

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1 MR. MARTIN: Before we go to coffee, Arthur Miller  
2 has expressed an interest in making a few brief comments before  
3 we break for coffee.

4 MR. MILLER: I did that primarily because the dis-  
5 cussion this morning intersects two of, probably the two most  
6 overwhelming concerns I have in my professional life, only one  
7 of which is the privacy issue, the other of which is the  
8 application of technology to the judicial process, the use of  
9 technology to solve or to try and solve the delay question and  
10 to bring some meaning to the empty notion of administration of  
11 justice.

12 And I was just a little bit afraid of, I think the  
13 moderator has relieved some of my anxieties, but I am a little  
14 afraid that as we go to coffee and chat among ourselves, we  
15 might be thinking of the problem under discussion in too narrow  
16 a framework, so I asked David for permission to speak in the  
17 hope that over coffee we can think in somewhat larger terms.

18 My personal view is that the question of recoordin-  
19 ation of disposition of civil cases or criminal prosecutions  
20 or criminal arrests, although vitally important, is a relatively  
21 soluable one.

22 I say that because once the problem is recognized,  
23 there are a variety of procedures that can assure at least  
24 the recoordination of the fact of disposition. And ironically,  
25 this is an area where the greater utilization of the technology

kar 2<sup>1</sup> make those procedures for recoordination not only more reasonable  
2 and cost effective, but it will enable that fact, the fact  
3 of disposition, to be more readily accessible because it is  
4 often not simply the question of was there a recoordination  
5 of disposition, one of the problems is the cost of gaining  
6 access to the fact of disposition.

7 That is a problem that arises in different states  
8 in different ways because of the different types of indexing  
9 and times of indexing positions. But the problem is much  
10 larger than the fact of disposition and how do we get it on a  
11 sheet of paper. The problem is three or fourfold and I would  
12 like the Committee just to think about some of these issues,  
13 because they are, in a sense, a beautiful overlay of the things  
14 we have been talking in here for several months.

15 First assume that you have got the disposition  
16 recorded. By what mechanism do you bring the fact of dis-  
17 position to the attention of all those people who have gone  
18 to the record in the time frame between institution and  
19 disposition. The mere fact that disposition is now recorded  
20 is almost an irrelevancy if no one has an obligation of either  
21 seeking out that fact of disposition, or of communicating that  
22 fact of disposition.

23 In some situations, I would venture to say the  
24 obligation is on the court system, in other situations I would  
25 say the obligation is on the police system, in still other

kar 3<sup>1</sup> situations I would say the obligation may be on the user of  
2 the system, the credit bureau, the employment agency, what  
3 have you.

4 Now that ties directly to Dave Link's focusing on  
5 delay because it is perfectly clear, is it not, that the wider  
6 the band of processing time for that case, the longer the  
7 fact of disposition is absent, the higher the risk that people  
8 will go to the record and find an instituted, civil or criminal  
9 with no disposition.

10 Keep in mind that in some parts of this country,  
11 Cook County I will notice being just one example, you can  
12 have a negligence action hanging unadjudicated for five years  
13 or more. That means a citizen who is being sued for an  
14 automobile accident may have an option with a request for  
15 six million dollars, showing in the court record for five years  
16 or more and the punch line is the case is never brought, never  
17 tried, or he puts in a counterclaim and not only does he win,  
18 but he wins on the countersuit, that is a real problem.

19 So delay and the fact of disposition work hand in  
20 hand. But let me go beyond the fact of disposition being  
21 there, let us say we have got it recorded, let us say we have  
22 got an affirmative obligation on someone to communicate the  
23 fact of disposition to all those who have gone to the record.

24 I would argue, and I think Mr. Blumstein really  
25 talked to this issue, that we have got to think about the

kar 4 1 legitimate uses of the record even when it is factually accurate,  
2 when he tells us and by God he is absolutely right, that the  
3 statistical gain plane is that the police make an arrest on  
4 40 to 60 percent probability of conviction, but the conviction  
5 is 90 to 100 percent probability of guilt.

6 Shouldn't we ask ourselves the question whether or  
7 not the fact of an arrest, even when that fact is a code by  
8 disposition, isn't probative of anything and might not, in  
9 certain context, be so misleading and so potentially dangerous  
10 to the user of the file and subject of the file that the law,  
11 whatever that is, should ban access to a completely accurate  
12 record.

13 Now, ironically, we are seeing challenges of exactly  
14 this stripe under title seven of the Civil Rights Act of 1964  
15 because some of the very interesting statistics on arrest  
16 show a complete imbalance in terms of percentage arrest of  
17 blacks and whites, males and females, city people and country  
18 folk. And the challenge is being made that if arrest records,  
19 even with disposition, are given to potential employers, it  
20 becomes a nonrelative relevant discriminant in employment,  
21 that blacks will be discriminated more because the fact of  
22 arrest, the incidence of arrest is higher even though the  
23 conviction rate may be no higher and even if the conviction  
24 rate is higher that may be simply a function of police prac-  
25 tices in a particular area in terms of how they expend their

kar 5<sup>1</sup> manpower as between white and black communities.

2           So I really think that when we think about disposition  
3 of what -- what we are really talking about is looking at the  
4 -- at the court reporting system as just one example of in-  
5 formation utilization and all of the risks of dissemination,  
6 of incompleteness, of staleness, and of nontermination.

7           I really hope the Committee comes back, not simply  
8 to talk about how you get the little entry of convicted or  
9 acquitted or nol-pros on a particular sheet of paper in a  
10 particular courthouse. It is much bigger than that. I am  
11 sorry.

12           MR. MARTIN: We have just been enjoined by Judge  
13 Greene, Chief Judge of the Superior Court of the District of  
14 Columbia and Nancy Wynstra, the director of planning of the  
15 Superior Court of the District of Columbia.

16           Judge Greene, we had decided to break for coffee  
17 and have your presentation after coffee, but if you would  
18 prefer to make your presentation now, I think we would be glad  
19 to hear it. Which is your pleasure?

20           JUDGE GREENE: Coffee is fine.

21           MR. MARTIN: Well, then, there is one short addition-  
22 al comment. We will break for coffee and resume in about  
23 fifteen minutes.

24           (Short break.)  
25

1 MR. MARTIN: We will resume the session now, I  
2 will call you to order.

3 I would like to note for the record because I  
4 think his name was not mentioned that Julian S. Garza,  
5 the Deputy Clerk of the United States Supreme Court has  
6 joined us, too.

7 For the benefit of the stenographer I think it  
8 would be helpful as we get into the discussion if persons  
9 other than Members of the Committee would identify themselves  
10 by name before they speak.

11 I think it might also be helpful to the Committee,  
12 otherwise all he will be able to say is male voice or female  
13 voice.

14 Judge Greene, can we now hear from you? I hope  
15 you have had a chance to get a little bit of a sense of the  
16 backdrop against which your remarks will be made.

17 JUDGE GREENE: Mr. Chairman, I gather that the  
18 consensus this morning was that it is largely the fault of  
19 the courts that we don't have a coherent system which provides  
20 adequate information to all who need it. And,  
21 I am afraid I am going to add to that feeling to some  
22 extent because I would like to talk for a few minutes, if I  
23 may, about the reasons why we as the judiciary cannot and  
24 should not operate data processing equipment jointly with  
25 executive agencies, why our computer operations should

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1 in my opinion must remain a separate one.

2 Now I think we can plead guilt to the charge that  
3 the courts have been slow in using modern equipment of this  
4 kind, because of the general traditionalistic approach that  
5 courts take to most things.

6 And they have been taken with respect to manage-  
7 ment tools of all kinds. However, that has been changing.  
8 Certainly, it has been changing in large metropolitan areas.

9 In our own court, the Superior Court for the  
10 District of Columbia, for example, we have our entire  
11 computer operation computerized.

12 Our daily scheduling of cases is done by computer.  
13 All our dockets are kept instead of by quill pen they are  
14 kept by computer. Our statistics that we publish and on  
15 which management decisions are based are obtained from the  
16 computer in all great variety of ways.

17 Inventories of equipment, work load of court  
18 reports is so as to assign them to cases where there might  
19 be more need for transcripts rather than others are done  
20 by computer, even such things as support payments in  
21 support cases.

22 That is, husbands required to support their wives  
23 and children are done -- are handled in our court by computer.  
24 When the check comes in it is automatically recorded and  
25 the fact of compliance with the Court Order is recorded and



1 the computer in turn issues a check to the wife in the amount  
2 that she's entitled to.

3 So we are not entirely devoid of interest in  
4 progress along this line. But this computerization has  
5 brought some new problems.

6 And the particular problem that I think I ought  
7 to address myself to is the problem that, we run one computer,  
8 the natural tendency is, why should we.

9 It isn't used all the time, why don't we merge  
10 our computer capability with everybody else, particularly  
11 those who are also a part of the criminal justice system,  
12 namely the police department, the prosecutor and corrections.

13 And there are some advantages obviously to that  
14 kind of a merger of the equipment capabilities. One system  
15 is certainly more efficient than several.

16 They would all be compatible, the statistics  
17 would be kept on the same kind of a basis either by  
18 defendant or by charge rather than on several levels.

19 An instant review of the status of all persons  
20 who are in the criminal justice system could be made more  
21 quickly, and better, if there were just one system.

22 But I believe that my view at least is that the  
23 courts should not and cannot operate in that fashion. They  
24 must retain and operate their own data processing equipment,  
25 although as I want to point out in a moment cooperation with

1 other agencies to provide dispositional data and so on  
2 obviously is desirable and should be done.

3 There are several reasons for the separateness,  
4 for the desire to remain outside of the same management  
5 apparatus.

6 One obvious reason is that much of the information  
7 or at least some of the information that the courts deal  
8 with is privileged. For example, juvenile proceedings are  
9 under law at least in the District of Columbia, I believe  
10 everywhere in the Country, required to be confidential.

11 So that that's the kind of information which  
12 should remain solely within the court, itself. The same is  
13 true of what we call intrafamily proceedings, that is  
14 disputes between members of the same family which are  
15 handled in a civil kind of proceeding rather than criminal.

16 Presentence reports which the Judge receives  
17 to advise him, probation department and social services  
18 advises him of the background of the defendant and makes  
19 recommendations based on that background for sentencing.

20 They are required in many states to be confidential.  
21 Psychiatric reports which the Court receives need to be con-  
22 fidential and privileged.

23 One answer that can be made to that is that  
24 computers as I am told can be programmed so that only certain  
25 people will have access to some of the information.

1 But I think that's, -- gives us false assurances.

2 Although we are told again and again that they  
3 can be programmed that way, it is quite clear they can also  
4 be unprogrammed that way.

5 If an executive official, whoever has control of  
6 the computer, there's no way that he can be prevented, the  
7 person who has control of the computer from gaining access  
8 to the information if he is really determined to do so.

9 He can unprogram, reprogram in ways that the  
10 information can be made available no matter what the initial  
11 assurances were.

12 I think it is probably correct to say that  
13 any joint computer operation between the Executive branch  
14 of the Government and the Courts will be operated by the  
15 Executive branch simply because the Executive branch has  
16 many more facilities and resources and personnel and other-  
17 wise than the Courts have, and the Courts will simply be an  
18 adjunct to a large computer operated by probably a law en-  
19 forcement agency.

20 So that -- I don't believe it would be possible  
21 to prevent that operator of the data processing equipment  
22 from gaining access to information which under the law must  
23 be held to be privileged.

24 Another perhaps more important point is that  
25 under the doctrine of separation of powers, the judiciary

1 must be and should be separate from and independent of the  
2 Executive and it must appear to be independent and separate  
3 which is almost as important as being separate and independent.

4 Now, the Executive branch which I guess most of  
5 you or some of you at least represent, is very often a  
6 party to litigation in the Courts.

7 In criminal cases the Executive branch in the  
8 form of the district attorney is always a party. But the  
9 Executive is a party in many civil litigation.

10 Governments increasingly are sued not just for  
11 negligent acts but for many and many matters involving  
12 governmental policies and governmental actions so that here  
13 we have our principal litigant so to speak in our courts,  
14 if the computer were operated jointly, having access and in  
15 effect control of information that is not available to the  
16 other side to the litigation.

17 The defendant obviously is not a party to this  
18 computer which the prosecution through its connection with  
19 the Executive branch partly controls.

20 Also I think by this unrestricted kind of a  
21 sharing in effect the court becomes a party to the prosecu-  
22 tion, and the prosecution becomes a party to the court  
23 process. The two become increasingly blurred and merged  
24 particularly as the computer is a management tool of con-  
25 siderable proportions in a court system which is sufficiently

1 large that it requires a computer.

2 The assignment of resources, the assignment of  
3 judges, the statistical data, planning, programming, all of  
4 those are, all of those the computer and data processing  
5 equipment are being used.

6 And if the control of that is not in the hands of  
7 the Court but in the hands of the litigant in the court, I  
8 think you -- it -- the only conclusion that can be drawn is  
9 that that is undesirable as a matter of practice and as a  
10 matter of appearance.

11 Even if as I say even as a matter of practice  
12 there wouldn't be anything objectionable. The appearance  
13 of impartiality would certainly be lost and if you just take  
14 a simple example, supposing you were being sued by your land-  
15 lord for back rent and for breaking up the premises, and  
16 you were to find out that the court and the landlord were  
17 jointly operating the computer, were pooling their, the  
18 information, their resources and you wouldn't know anything  
19 about it and you wouldn't know what they were doing and  
20 how they were doing it and to what extent they are operating  
21 together, you wouldn't even know to what extent this would  
22 have a bearing on your case.

23 It might or it might not have a bearing on the  
24 outcome of your case as to the extent of the shared informa-  
25 tion.

1 I would think that you would regard that kind of  
2 a process as less than impartial. This of course brings up  
3 the point that what I have said about the Government applies  
4 with equal force to computer operations, joint computer  
5 ventures between courts and insurance companies, let's say,  
6 or credit bureaus, or real estate boards.

7 In all of those instances there is the fact that  
8 the court is suppose to act as an impartial arbitrator of  
9 disputes, it becomes greatly lost or greatly weakened at  
10 least when the court is operating as important a management  
11 tool as the computer jointly with one of the parties to  
12 the litigation.

13 I think the aloofness that is necessary cannot  
14 survive under those circumstances.

15 Now another problem that exists today with computer  
16 operations which I am sure you have discussed is the problem  
17 of the right to privacy and the invasion of the right to  
18 privacy.

19 As long as the court has its own control of its --  
20 of judicial computer it can guard against invasions of that  
21 right through the information that is contained in that --  
22 in its equipment.

23 But and we are talking not just about legally  
24 privileged information but general information that the pub-  
25 lic really doesn't have any business knowing.

9  
1 And if it is all dumped into one big computer and  
2 the court data which may or may not be complete is also  
3 in there, the court in effect becomes a party to the invasion  
4 of the right to privacy which is affected by this and I  
5 think the court particularly judicial branch particularly  
6 ought to be careful not to become involved in that -- those  
7 kind of invasions because in a very real sense it is the  
8 judiciary, is the guardian of the right to privacy in the  
9 sense of the right to be, not to have one's home invaded  
10 and not to have illegal wire tapping and so on all of which  
11 are under the heading of the right to privacy.

12 So that there again public policy would seem to  
13 dictate this the court not be a party to the possible use  
14 of the information on the computer in this fashion.

15 Now, the obverse of the coin of making too much  
16 information available is making too little information  
17 available and I understand there's been some discussion of  
18 that this morning.

19 Police very often report only arrest data and so  
20 do other agencies. And as often as not these data are  
21 erroneous. They are erroneous to begin with and they are  
22 erroneous in the sense that an arrest which resulted in an  
23 acquittal ultimately, when the acquittal is not shown on  
24 the data is obviously erroneous. It is damaging to the person  
25 on whom the information is disseminated.

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1 Now, we are told then the reason why the data  
2 is incomplete is because the courts don't furnish the data.  
3 I don't know about anyplace else, other cities, but we have  
4 disposition of our criminal cases instantly in our computer,  
5 the date disposition was made, and that information is  
6 available at any time to the police department, to the  
7 prosecution, to anyone else who wants it.

8 As a matter of fact we have gone so far as to  
9 include on our computer program the identification number  
10 that the metropolitan police department uses with respect  
11 to any one they arrest so that makes it even easier to  
12 tie that particular person -- the particular disposition  
13 in our computer to the person that the police arrested.

14 There is no excuse in other words for the  
15 prosecuting agencies, the police agencies not to have dis-  
16 positional data, at least there is no excuse for it in  
17 Washington, D. C., because we have it, it is available  
18 instantly.

19 We are glad to make it available to those that  
20 want it.

21 Now, I also understand it's been said, and I  
22 am sure it's true, in many cities it takes a long time to  
23 have cases disposed of. And that is deplorable and unfor-  
24 tunate but it isn't true here.

25 Our criminal cases are disposed of in an average



1 of six to eight weeks which is not a long time by any stan-  
2 dards if you include in your equation the need for making  
3 investigations both by the defense and prosecution and  
4 various pretrial motions and maneuvers and so on.

5 Six to eight weeks is about the minimum that a  
6 matter can be delayed. Our civil cases are disposed of  
7 in six months or less, which is also I think by all reasonable  
8 standards current.

9 So again without -- I can't speak for any other  
10 court system but at least so far as we are concerned there's  
11 no reason whatever why dispositions cannot be carried along  
12 with arrest data, and why they cannot be there immediately.

13 They aren't. And I don't like to be in the  
14 position of putting the blame or burden on someone else  
15 but the fact is we have the data on the computer, it's  
16 available, any one who wants it can have it instantly.

17 So there is no reason it can't be on there.

18 I think the courts should contrary to the belief  
19 that merely because we would have an independent computer,  
20 that would preclude cooperation.

21 It does not preclude cooperation. We are willing  
22 to use the same, use the same numbering system that the  
23 police department is using, the corrections system can  
24 use the same numbering system.

25 We can and do make available all the information

12

1 that can be made available without infringing on any one's  
2 privileges or rights and cooperation between the various  
3 components of the criminal justice system and also coopera-  
4 tion between the courts and those who have legitimate need  
5 of information of civil cases, civil judgments, is to be  
6 fostered and is to be desired.

7 But that is a different matter from a computerized  
8 operation which is basically under the control of the Execu-  
9 tive department.

10 One of the principle functions of the court is to  
11 be there to protect the individual against the power of  
12 the state, against the power of Government.

13 That's one of the reasons for the -- one of the  
14 principle reasons for the courts existence. I think that  
15 the computer is -- gives the state additional tremendous  
16 advantage in constant battle, if you will, with the individual  
17 rights and the rights of government, the needs of the  
18 individual and the needs of government.

19 I think it's particularly important that the  
20 courts in regard to that important additional tool, that the  
21 courts not be a party in any way whatever to any further  
22 weakening of the position of the individual in that regard.

23 And so I think that to sum up again, while  
24 cooperation and to make information available that is legiti-  
25 mate, legitimately to be in the possession of particularly

1 law enforcement agencies, I think that's fine and I think  
2 the courts have a duty to engage in such cooperation, but  
3 I think the courts also have a duty to make certain that  
4 the doctrine of the separation of powers not be weakened  
5 and that the rights of individuals in the judicial process  
6 not be weakened and I think that would occur if the courts  
7 statistical management system were to be operated by some-  
8 one other than the court.

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MR. MARTIN: Thank you very much, Judge Greene.

We now have about an hour and a quarter in which discussion, questions, so on may occur.

I would only request that we try to conduct the discussion on a one voice at a time basis for the benefit of the stenographer and the tape and I will try alertly to watch for sign of interest in speaking or raising questions among members of the committee and members of the panel and discussant.

One of the members of the committee, Gerald Davey, who has had experience in the credit field indicated he would like to say a few words and I am going to call on him first.

MR. DAVEY: --

MR. MARTIN: Reporting field I should say.

MR. DAVEY: Yes, I was formerly with T. R. W. Credit Data and I am aware of many of the problems involved in gathering public record information and converting this data so that it can be used by the credit granting customers.

I met last Friday with T. R. W. credit people to become current with their present problems. Let me kind of give you a little bit of background on this thing.

T. R. W. Credit Data does well over a million inquiries a month, throughout the United States, primarily in New York, in the New York metropolitan area, Buffalo,

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1 Detroit, Chicago, throughout the State of California, and  
2 Phoenix, Arizona.

3 There are -- these, over a million or so inquiries  
4 are made each month and using as a basis about 30 million  
5 different credit histories.

6 Of this information 7 percent is composed of  
7 public record information such as personal bankruptcies,  
8 financial suits and judgments, liens and so on. The rest  
9 of the data is supplied by the credit grantors themselves.

10 Now, it's interesting to note that of the con-  
11 sumers who come into the T. R. W. Credit Data offices to  
12 review their credit files in response to their rights under  
13 the Fair Credit Reporting Act, 24 percent of their com-  
14 plaints and questions have to do with this public record  
15 information.

16 This is about three-and-a-half times what one  
17 would normally expect and in discussing this question with  
18 T. R. W. Credit Data here are some of the reasons for these  
19 problems as they see them.

20 First of all, and we are talking about courts  
21 all over the United States and I think that after our  
22 presentations this morning from Judge Greene and from  
23 Mr. Polansky and the court systems which they have, it would  
24 be a pleasure to deal with them.

25 But in talking about the various other ways in

3  
1 which T. R. W. Credit Data is working with the court, there  
2 seems to be very nonuniform ways of filing information.

3 Many times they cannot even separate the civil and  
4 criminal cases. The suits, the judgments and so on are  
5 indistinguishable and you practically have to look at each  
6 document and compare what is in each document before the  
7 appropriate information can be gleaned from it.

8 Mr. Polansky touched upon the identification  
9 problems and these are really severe. You start running  
10 between various types of situations such as the docket  
11 numbers, name files, where do you pick up the address  
12 information.

13 This is a very, very -- for the most part difficult  
14 way in which to handle this type of information. One of the  
15 problems which was most informations fully put forth by T.R. W.  
16 Credit is this reverification procedure, that is that where  
17 one does have a question, just the process of going to the  
18 courts and getting this information checked is very difficult.

19 And in many courts this is not seen as a function  
20 of the court so that once again the consumer is in a diffi-  
21 cult position of trying to get records corrected or whatever.

22 I think we have talked enough about the filing  
23 of satisfactions with respect to money judgment types of  
24 suits. But the same problem holds for judgment, all dis-  
25 missals of suits, anything which is, any type of conclusive

1 action which has been taken on any one of the court actions.

2 There's also another problem which has been  
3 brought out and that is does any one of -- does any one  
4 have the right to see these records at all?

5 And many times we have needed to bring suit to  
6 a court in order to get this public record information. I  
7 perhaps -- perhaps part of it comes up as to definition of  
8 what a public record is and how they should be treated.

9 I believe this is probably one of the most  
10 critical problems which this committee has been facing from  
11 its very inception and that is the record handling within  
12 the court system.

13 And I think that as we see this whole movement  
14 toward more and more consumer action, that this problem  
15 will only increase and I think that we have all been aware  
16 of what is happening as far as criminal cases are concerned,  
17 I think that every bit as important a problem is in the  
18 civil void where probably vast numbers of consumers are  
19 affected by what is found in the courts as a result of some  
20 type of a suit or judgment.

21 Thank you.

22 MR. MARTIN: Mr. DeWeese.

23 MR. DE WEESE: Yes, I'd like to ask Mr. Polansky  
24 a question first about how much did your system cost?

25 MR. POLANSKY: Do I have to answer that question?

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1 Can I stand on the Fifth Amendment Rights?

2 Initially it's an unfair answer to give you. I  
3 could give you a number that said the system cost us \$125,000  
4 the first year. But we didn't even have any hardware the  
5 first year.

6 Then it cost us about \$250,000 the second year  
7 and we did have hardware but we didn't do all the things  
8 we do today and we didn't have terminals on it.

9 I can tell you it costs about half a million  
10 dollars a year now for hardware.

11 MR. DE WEESE: Do you think it's going to keep  
12 growing like that?

13 MR. POLANSKY: Let me finish that statement that  
14 hardware doesn't just provide service to the court, it  
15 provides service to the prosecutor , police department, and  
16 prisons, I don't know how to tell you what it costs.

17 MR. DE WEESE: It's a very expensive proposition  
18 and I'd like to make the fact that you have completely  
19 in your system lost sight of the reason why court records  
20 were made public and were kept in the first instance.

21 In the very first instance the reason why court  
22 records were made public was to protect the citizen against  
23 three things, secret arrests, false arrests, and double  
24 jeopardy, this is why almost every statute of every state  
25 provides for court dispositions to be a matter of public record.



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Now at some point along the line the police realized that these records are no good to them because what they want is a personal criminal history which is completely different than what normally is kept in courthouses.

Courthouses as you point out today it's docketed on a yearly basis alphabetical order.

This is of little value to the police. So they began to put together criminal history dossier folder that is kind of a loaded word, just criminal history but almost every state uniformly provided these police criminal histories would be confidential, that not everybody would have access to them as everybody has access to court record that are public.

So that points out to begin with that someone thought there was a distinction between when you put together a dossier on someone and when you just docket it in the courthouse but you come along and computerized all these see, so in a very short time I can get a complete criminal history on someone in the city of Philadelphia.

MR. POLANSKY: You can; I beg your pardon.

MR. DE WEESE: It is a public record.

MR. POLANSKY: No, it is not. What is your definition of public record, that was the question posed by the gentlemen at your table.

1 I have at no time said ours is a public record,  
2 it is not one which you could walk to a counter and submit  
3 I want Lear Polansky's record.

4 If you have a reason to know, and a right to know,  
5 and the right to know, you will receive information.

6 MR. DE WEESE: How about the clerks you point out  
7 to from the finance houses and from the title companies and,  
8 are these people --

9 MR. POLANSKY: It has been determined over the  
10 years that they have a right to know, that that is a public  
11 record, the record of judgments in most statutes is public  
12 and they do have a right to know.

13 MR. PENN: That is the civil side.

14 MR. DE WEESE: But your criminal records are  
15 kept separate? These you are saying, these people don't  
16 have access.

17 MR. POLANSKY: That's right, you could not walk  
18 into the civil clerk's office and key the machine. You  
19 could request a criminal record. All you will get is a  
20 message saying that information is not available.

21 MR. DE WEESE: In your particular system who has  
22 access to the criminal side of the records?

23 MR. POLANSKY: Well, we certainly do within the  
24 court administrative operation. We are involved with  
25 scheduling. We are involved with knowing the quantities of

1 work that have to be done.

2 The police department has access to our records  
3 in terms of not criminal history because they have criminal  
4 histories.

5 What we have are units that indicate warrants  
6 outstanding against individuals. Our probation department  
7 has access to it because they use it as an additional  
8 factor for the individuals benefit to get background  
9 verification, to provide additional information to the Judge  
10 when he goes into the sentencing part of the operation.

11 Again for the benefit of the defendant not to  
12 his detriment. Our public defender is allowed and granted  
13 access to our information based on the fact that there  
14 should be no less information made available to him than made  
15 available to the prosecutor who we also make the information  
16 available to, selected information.

17 We don't tell the prosecutor or the public defender  
18 what judges we are scheduling next week, that is administra-  
19 tive information.

20 We tell them what records are on the file, what  
21 cases are scheduled, what defendants, what room they're  
22 scheduled to.

23 MR. DE WEESE: Are there people outside the  
24 criminal justice community that have this kind of access,  
25 example, licensing bureaus?

9  
1 MR. POLANSKY: No, but we allow the prisoners  
2 access to that information which tells them when their  
3 next case listing is so they can tell their families when  
4 they're next due in court.

5 MR. DE WEESE: I have one more question, if  
6 the criminal judgments are docketed in the court records  
7 and they are available for public inspection is that true,  
8 whether or not they're in your computer there is a matter of  
9 public record.

10 MR. POLANSKY: I can't respond to who will be given  
11 access to a file. If you were to come to the clerk's office  
12 and ask for the file on Lear Polansky, one of the questions  
13 you as an individual would come to the desk of the Clerk  
14 of Court and say, "I want the record of Lear Polansky,"  
15 you would have to prove your right to see the record.

16 Either that you are Lear Polansky, or that you  
17 are his attorney or legal representative. You could not  
18 get his record as far as I know.

19 I would defer to Judge Greene, I don't know how  
20 it works --

21 JUDGE GREENE: We are concerned that these are  
22 all public records, anyone who comes along and wants to see  
23 it can see it.

24 MR. DE WEESE: Could I just to finish the point  
25 I was trying to make is it seems to me these information

1 systems have been set up not for the benefit, in the sense  
2 that they are open to the public where you computerize court  
3 records you are really serving special interests of the  
4 credit bureaus, the prospective employers who want easy  
5 access, as Gerald Davey said he would love to deal with  
6 a credit bureau with a system that is computerized.

7 I question why the taxpayer should pay for that.

8 MR. POLANSKY: T. R. W. came into Philadelphia  
9 threw up their hands and decided they didn't want to deal  
10 with us. Our purpose was not to provide information to any  
11 credit bureau, our purpose was to gain control of the work  
12 load that comes through the court.

13 And to provide those things that the court is  
14 by statute required to provide.

15 For instance, a record of all existing judgments,  
16 must be provided. The court feels at least in Philadelphia  
17 that the court has a responsibility to insure that litigation  
18 moves with dispatch.

19 How else do you do that then by getting a record  
20 of every case that comes into your court and knowing at  
21 what stage it is in the process and knowing when it is  
22 exceeding its time it should take with the process.

23 What I am trying to present to you is that our  
24 purpose was certainly not to feed any credit bureau nor does  
25 the court have a long lost love for the policeman and wants

11  
1 to provide him with all the information he can to grab every  
2 guy on the street, that was not its purpose either.

3 MR. DE WEESE: That's pretty clear because what  
4 you were asked to do by J. Edgar Hoover and Dr. Gallati  
5 was to provide the police with a final disposition.

6 Instead you set up an independent information  
7 system.

8 MR. POLANSKY: We set up an independent system  
9 for J. Edgar Hoover as for --

10 MR. DE WEESE: There is still no mechanism to  
11 insure in Philadelphia that the police get the final dis-  
12 position in their files or that this is then transferred  
13 to the F.B.I.

14 MR. POLANSKY: There is no mechanism in Philadel-  
15 phia? I think it's agreement of criminal justice agency  
16 group in Philadelphia that the court does and has provided  
17 daily, weekly, monthly and annual reports of dispositions  
18 of the police department in automated form suitable for  
19 the equipment they have.

20 They in turn have their arrangements with NCIC  
21 and with our proposed state system. I don't think there is  
22 any mandate that we do that. But yes there are arrangements  
23 for that information to flow.

24 MR. DE WEESE: It wasn't clear from your original  
25 presentation.

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1 MR. MARTIN: Mr. Gentile.

2 MR. GENTILE: I heard many interesting things to-  
3 day, I just want to recap them to make sure I understand  
4 it then I want to ask a question of Judge Greene and a  
5 reaction from Mr. Polansky. I understand from what was said  
6 today that Judge Greene feels that the judiciary branch  
7 must operate its own computer to be separate and a part from  
8 other activities and that Mr. Polansky is operating on the  
9 shared environment.

10 MR. POLANSKY: I am not. I am operating on a  
11 computer that is rented by and for the court but provides  
12 services to others. We are allowing others to share in  
13 our computer.

14 However, let me respond with philosophically  
15 I have no problem with the sharing of computers within  
16 justice agencies, I will take that.

17 MR. GENTILE: I don't want to stress the computer  
18 dedication issue because I think that that in fact is a red-  
19 herring.

20 That to say that dedicating a piece of machinery  
21 is going to solve our problems, I think, is not a very  
22 good thing to say. Especially if it's followed by Judge Greene's  
23 statement which is that we encourage the sharing of files  
24 by identification, common identification numbers and  
25 corrections and police, and then the statement that these are

1 public records anyhow.

2           So I can't understand what the issue is on the  
3 dedication of hardware. I also noted from Judge Greene's  
4 statement that he has records on some psychiatric records  
5 that he uses.

6           I propose that these were not developed by the  
7 courts but were obtained from some medical institution  
8 or physician. I also noted that Mr. Polansky had stated  
9 that they have many controls established that not anybody  
10 walking up is going to get a record and from what I gathered  
11 from Judge Greene's statement, your information is public  
12 record and open to whomever would like it, is that correct?

13           But let me ask my question before you address  
14 that. My question is, do you feel any danger in sharing  
15 all of these files whether you are operating your own com-  
16 puter or somebody else's, it seems to me is irrelevant.  
17 Are you concerned about potential snowballing effect of  
18 combining files, thereby developing new information from  
19 old data, whether or not you are on your own computer or  
20 not?

21           JUDGE GREENE: It depends what kind of information  
22 we are talking about. Some of it is appropriately furnished  
23 and some of it is not.

24           I think the court has an obligation to let the  
25 police department or anybody else for that matter know what



1 the disposition was in a certain case, was the defendant  
2 found guilty, not guilty, what was the sentence, was he  
3 put on probation.

4           There is no reason why this information should not  
5 be made available to the police department.

6           On the other hand, there is other information  
7 which is not to be made available and we are talking about  
8 psychiatric reports, I don't care where they came from,  
9 they are now in the possession of the court.

10           If they are used by the Judge for the purpose  
11 of imposing sentence, that is a matter which is between the  
12 Judge and his conscience and it is none of the business  
13 of the police department or prosecution as to what is in  
14 those reports.

15           So we have to distinguish between what types of  
16 reports we are talking about. Some are matters of public  
17 record.

18           So far as I am concerned what is a matter of  
19 public record anybody can have access to it and that includes  
20 the private citizens as well as the police department and  
21 if we happen to have a compilation, statistical compilation  
22 available as to how many convictions we had in a certain  
23 year in a certain type of offense and how many acquittals,  
24 there is no reason why that should not be made available  
25 to somebody else.

1           There is other type of information which is  
2 not a matter of public record which is a matter either of  
3 privileged information or matter of internal management  
4 within the court and that information should not be made  
5 available to anybody else.

6           So I don't know if that answers your question.

End 7

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MR. GENTILE: It was mentioned the courts are traditionally slow in adopting new management techniques. My question now is, do you feel that a court operated system has sophisticated control as others, in controlling access and assuring privacies of the individuals?

JUDGE GREENE: Well, of course, I am biased, but my answer is that yes, we do. One good example of that is that you know in our city, the fact is we have dispositional data available instantly for anyone.

On the other hand, the police department has not yet succeeded with the computer operated by the executive branch and by the police department jointly with other agencies of the District of Columbia government, they have not succeeded in digesting this data. And even transferring it to its own data processing equipment so that they can show the disposition.

So I would, from that fact alone, I would say the court is capable of operating in a technical manner.

MR. MARTIN: Mr. Dobbs?

MR. DOBBS: I would like to follow up on John's line of questioning with Judge Greene. I guess I, too, was somewhat disturbed by your emphasis on who has physical control, although I am not sure you really meant physical control, maybe you really meant management control, maybe that is satisfactory, but I guess that the thing that sort of disturbs

kar 2<sup>1</sup> me is really two kinds of connotations which you maybe pro-  
2 viding a kind of insight to, and that is that the notion of  
3 whoever has control of an information system of this kind, has  
4 power.

5 And that to the extent that the power derives from  
6 control of the thing, and rather from the institutions, that  
7 there is some appearance and imputation, in your case, on the  
8 part of the public that there is some impartiality in the  
9 whole judicial process.

10 I sort of, you know, tried to collapse that argu-  
11 ment, but I -- that was the sense of what I got. I guess I  
12 would argue that from the viewpoint of the individual, in  
13 terms of how he sees the judicial process, that it already  
14 appears monolithic to him from the viewpoint of his contacts  
15 with the police at one end and the judicial system at the other  
16 end.

17 Therefore, your concern about the impartiality  
18 kind of aspect he views because of the system aspect, is one  
19 that I am a little bit concerned about. I don't know if I  
20 said that quite clearly, but I guess the point I am trying to  
21 get at is that you pointed out that it was important for the  
22 judiciary to keep this symbolism of impartiality and of  
23 separate and independent function, because to the extent that  
24 they did not, that they would become a party to the invasion  
25 of privacy.

kar 3 1 And I guess I would argue that to the extent that  
2 technology might be able to facilitate in a different way the  
3 entire process and to the extent that the judiciary does not  
4 take advantage of that, it can also become a party to the  
5 invasion of privacy and in particular, to the extent that you  
6 now are operating a very "effective and efficient" system  
7 from a dispositional point of view, but in fact the police  
8 department is not, from a systemic point of view there is a  
9 huge hole from the viewpoint of the individual.

10 This goes back, I think, to the point Arthur was  
11 making before we closed.

12 JUDGE GREENE: I am not sure I can respond to the  
13 extent that the individual feels this is a monolithic system  
14 that he is up against. It seems to me, it follows from that  
15 that we should not further improve this monolithic quality,  
16 but it follows from that that whatever we can do to diminish  
17 it and to show that at least within the framework of the  
18 court system, which is the one part of the system which is to  
19 be impartial, as between the government and individual, it is  
20 not part of the monolith.

21 And certainly it is not the answer to throw up our  
22 hands and say it is monolithic anyway, we might as well go  
23 all the way, I don't see that as a reasonable answer to the  
24 problem.

25 MR. DOBBS: What I am trying to drive at is the

kar 4<sup>1</sup> system appears monolithic to him by virtue of the way in which  
2 he is treated, not by virtue of the fact that computers are,  
3 in fact, separate, and perhaps if we look at how information  
4 was used throughout the whole system so that the individual  
5 got the appropriate kind of treatment as a result of proper  
6 use of information, he would get a different perception of  
7 that sytem.

8 I would argue strongly that physical facilities  
9 and who, in fact, controls them in no way is going to alleviate  
10 that situation.

11 JUDGE GREENE: Well, I didn't mean to imply that  
12 whoever has management control, that the distribution of con-  
13 trol, management control over the computer is going to solve  
14 all of the problems of the law enforcement or criminal justice  
15 process.

16 There are many other problems that have to be  
17 addressed in other ways. All we can talk about at this point  
18 is, to what extent would vesting control in one entity rather  
19 than another either add to or detract from those problems.  
20 And I still come back with the same solution, at least satis-  
21 factory to me, that if you were standing before the judge and  
22 you knew that the prosecutor had all of the information that  
23 the judge had, but you and your counsel do not have access to  
24 that same information, you would feel more frustrated by this  
25 monolith than you are today.

kar 5 1 MR. MARTIN: Professor Miller?

2 MR. MILLER: Two different points. First to pick  
3 up on what I think Guy is driving at and which I feel very  
4 strongly and that is that you cannot deal with any part of the  
5 judicial information system in isolation. It is a life cycle.

6 What you have really got to do, fundamentally, is  
7 start back at the ground zero with the question of what is a  
8 public record. Now, the statutes dealing with public records,  
9 as Tate clearly indicates, goes back to the 19th century, where  
10 you quill and ink stands, not computers.

11 The statutes dealing with confidentiality of  
12 governmental records goes back in the main, at least 50 years,  
13 and have not been reappraised in the light of big government,  
14 mass society, and modern communications network.

15 You see, Gerry, you would like to get your hands  
16 on public record information, I say you in your former capacity  
17 as head man of Ogard Credit Bureau. I sympathize with that  
18 from a business perspective, but the perspective I have, I  
19 think, the first question is to redefine public record in  
20 light of the exigencies of modern society, both cost and  
21 societal need, rights of the individual, talking into account  
22 the incredible profusion and proliferation of information  
23 delivery systems and decision making based on public records  
24 that were declared for public for very limited purposes and  
25 are now being used for reasons no one ever deemed of when

kar 6 1 those original statutes were promulgated.

2 Thus, I think the judge's reaction to Guy Dobbs  
3 is absolutely right. You know, we take the sytem as we find  
4 it. The system has a lot of flaws in it, it has got to deliver  
5 certain quantums of information under these public record  
6 statutes. And it is true that the public views the justice  
7 system as a monolithic executive branch type system. And the  
8 only way to get at that is by starting, hopefully, from scratch  
9 again.

10 But I agree with the judge that for God's sake,  
11 we don't throw up our hands and throw out such things as --  
12 at least give some ray of sense to the individual that there  
13 is division between the judge and the prosecutor.

14 Now, the second thing I want to talk about, really,  
15 is part of that. I hope the judge doesn't think he has fallen  
16 among wolves here. And to avoid this, I would simply like to  
17 remind the panel that the judge is quite right when he reminds  
18 us about separation of powers. That is not something you just  
19 read in sixth grade civics in grade school, that is something  
20 engraved in the Constitution of the United States for good  
21 and valid reasons, going back to the monarchical control over  
22 courts which was an ingredient of the American Revolution and  
23 has altered out thinking or has molded our thinking about the  
24 respect of functions, of judges, executors and legislators.

25 The courts are in business to deliver justice, to



kar 7<sup>1</sup> decide cases brought before them impartially as between the  
2 litigant. And modern society is such that the government is  
3 one of, if not the most frequent, litigators in the courts,  
4 particularly the federal courts.

5           Somehow we have to say to our judges, it is true,  
6 you are part of that governmental establishment, but the  
7 greater value is that you deliver justice, whether it goes for  
8 you employer or against your employer.

9           It may be bizarre, it may be wishful thinking,  
10 let's face it, the legislature does have control over the  
11 appropriations process. It can tell Judge Greene whether he  
12 is going to have an extra clerk next year or not, or fix his  
13 salary so on and so forth. But we like to think that our  
14 judges rise above the problems created by that schizoid  
15 character of being both a decision maker and, in a sense, a  
16 hireling of the system.

17           Now, when he tells us that he is concerned about  
18 the ability to keep independence over his information base,  
19 that is a real concern. It doesn't go to the question of  
20 who has got physical custody of a machine. It goes to such  
21 subjective questions and secondary questions as what hookers  
22 does the legislature put on his use of that machine? What  
23 conditions does it impose on him when he gives him that  
24 machine? Does it mandate who has access to it? To what  
25 degree does the prosecutor get access to that machine?

kar 8 1                   One of the great tragedies of American justice,  
2 I think, is the imbalance between the individual and prosecu-  
3 torial arm of the government. The fact that the United States  
4 attorneys have at their disposal FBI people who can engage in  
5 pretrial investigations of potential jurors, I think, is a  
6 travesty. It is an imbalance and seems to me, fundamentally  
7 inconsistent with our notions of justice and I would hate to  
8 see any possibility of executive branch intrusion on the  
9 judicial function, through leaning on the information pool that  
10 might be created within the courthouse.

11                   Now, this has absolutely nothing to do with the  
12 other question which is, should or shouldn't the courts apply  
13 technology to the solution of the problems of administration  
14 of justice.

15                   The law in its sheltered parochialism has not  
16 moved fast enough. It is moving faster today than it did last  
17 week or yesterday. But that does not mean that we should open  
18 up those systems or allow access to the executive branch just  
19 on some notion of economy or efficiency or cost effectiveness,  
20 because there are infinitely more important social values at  
21 stake, indeed in my personal view the greatest intrusion on  
22 the judiciary today is the unwillingness of the executive  
23 branch and the legislature to fund the judiciary.

24                   I have said in here before and I will say again,  
25 if one compares the relative funding level of the federal

kar 9 1 judicial center, the administrative office for the United  
2 States courts, the courts themselves, with the kinds of money  
3 that is being plowed in, either to the defense establishment  
4 or to the criminal justice system, I find it bizarre in the  
5 extreme.

6 And ironically, I look at the other side of the  
7 coin, judge, I think the executive and legislature are violating  
8 separation of powers by not giving you the management tools  
9 you need to discharge your burdens.

10 MR. MARTIN: Commissioner Hardaway.

11 MRS. HARDAWAY: I would like to address my question  
12 to Dr. Blumstein, please. For the past several months we have  
13 listened to much testimony from government officials and from  
14 private industry concerning their individual systems of data  
15 to collection for whatever purpose it might be.

16 And we have seen a great lack of incentive to secure  
17 their own systems. Many times they could do this without any  
18 additional funding, simply through an administrative procedure,  
19 but they just simply don't do it. And we have heard numerous  
20 reasons, excuses, whatever you might want to call it, for not  
21 securing their systems. In your opinion, to educate for that  
22 incentive, is that too slow of a process in relationship to  
23 the speed with which our systems are growing? And would it be  
24 a better method to either legislate for that incentive or to  
25 perhaps reach it through some sort of a regulatory board that

kar 10<sup>1</sup> would require it?

2 DR. BLUMSTEIN: My personal -- first, I think that  
3 there are a variety of technological approaches to introducing  
4 security in information systems, but we have got to recognize  
5 that as long as there are legitimate users of any system,  
6 those legitimate users can transmit that information illegiti-  
7 mately.

8 So that no technological solution alone is going to  
9 be sufficient in introducing the security. Second, as long as  
10 there is sufficient financial interest or political interest  
11 in gaining access to this kind of information, there will  
12 continue to be illegitimate use by legitimate users as well as  
13 illegitimate use of the systems itself, using the security  
14 lapses in it.

15 I think the approach must involve doing what we can  
16 reasonably, through the technological design of the system.  
17 I think the approach must also involve careful audit procedures  
18 of all the users of the system. Find out who is making what  
19 use of the system, monitoring what appear to be excessive  
20 uses of it, retain capability to find out who did use it, and  
21 finally, a kind of administrative disinterested public advisory  
22 body which would probably have to be set up through the  
23 legislative process and that this body would monitor that audit  
24 process, would monitor the rules and regulations in the oper-  
25 ation of the system.

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2 And even with all that machinery, there are going  
3 to flaws, there are going to be lapses. And I think what we  
4 need is a multi-faceted approach to the security so that we  
5 are doing all we reasonably can to see that it is operated  
6 well, legitimately, and with integrity. Just as any other  
7 governmental mechanism will have flaws, this one will have  
8 flaws.

9 I think we have to try to corner it on all sides  
10 because it is going to advance, it is going to develop, and I  
11 would want to see security built into it, through audit, by  
12 disinterested agencies and the separate public policy boards  
13 established to see to it that these are done with  
14 integrity and that the process is monitored from the public's  
15 perspective rather than only from the users perspective.

MRS. HARDAWAY: Thank you.

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1 MR. MARTIN: I hope your discussants don't feel  
2 inhibited. Please feel free to indicate your desire to par-  
3 ticipate, comment, question. This isn't to draft you.

4 Mr. Dobbs?

5 MR. DOBBS: I had a question for Mr. Storm. In his  
6 concluding remarks he pointed out that excessive concern for  
7 consumer privacy would raise the cost of credit. I guess my  
8 question really is twofold: number one, how would you char-  
9 acterize excessive concern for consumer privacy, and number  
10 two, whether you have any cost information that's been de-  
11 veloped by First City that might help us in terms of what  
12 those costs might be for additional safeguards.

13 MR. STORM: To get to your first question first,  
14 what is excessive is an overkill. Everybody is concerned  
15 with the right of the individual, and in this environment  
16 I think more so than ever. Public records are public or they  
17 are not. There seems to be a sort of ambivalence that if  
18 public records are public but there is a safety in the ability  
19 to communicate them, the computer is one thing and one thing  
20 only, and that is the power to deal with the vast numbers of  
21 things we have to deal with today. And it is the -- the  
22 thought is lurking here somewhere that the problem with the  
23 computer is making public records too public. And we have  
24 to in some way inhibit the mercilessness of this great machine  
25 from speaking to facts. It is certainly public policy whether

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1 arrest information is public information or not, but once it  
2 has been determined by the public that it is public infor-  
3 mation, then it seems to me that the right to disseminate this  
4 and the right of interested persons to use it follows from it.

5 As to costs, I have told you the cost of a bad loan, the  
6 cost of a bad employment decision, and I think I have to speak  
7 to that, is -- can be even more onerous. All of us here I  
8 think use banks and I spoke to you before as a grantor of credit.  
9 As an employer, I think you have a concern when you come into  
10 my bank with your money and if you don't, the Federal Deposit  
11 Insurance Corporation who represents you with our bank has,  
12 that you are served by officers and non-officials in our bank  
13 whose honesty you can depend on.

14 Now, a lot has been said here about should arrest records  
15 be made public, since an arrest is not a conviction. And one  
16 of the panelists spoke very well, I thought, to the matter of  
17 probability. Well, I think if I was the manager of the branch  
18 where you did your banking and I hired a person as the custod-  
19 ian of your funds who had been arrested 20 times, I question  
20 if as my depositor that you would feel that I had done the  
21 right thing if I had knowingly let that man be the custodian  
22 of your funds, and at the same time, while this is one of the  
23 responsibilities of management, you the depositor are laying  
24 on me, should I not have the facts when I am employing that  
25 man to make a rational employment decision?

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1 MR. MARTIN: Mr. Hall? Mr. Hall is the director  
2 of the Statistics Division of the Law Enforcement Assistance  
3 Administration, Department of Justice. Mr. Hall, I warn you  
4 that your presence may trigger an interesting set of inter-  
5 change between you and Mr. Gentile, Mr. Gallati, Senator  
6 Aronoff and Andrew Atkinson who has joined us.

7 For those of you who don't know, Mr. Atkinson is the  
8 Superintendent of the Regional Computer Section for Cincinnati,  
9 Hamilton County, Ohio.

10 Mr. Hall?

11 MR. HALL: Actually, I would like to take some  
12 issue with some of the comments that Mr. Storm made and go  
13 back to I think a comment that Professor Miller made so ade-  
14 quately and eloquently. That is the question of just what is  
15 a public record. I think the advent of the computer has  
16 changed radically the entire notion of what is a public record.  
17 The ability to compile and aggregate a great deal of information  
18 about a great number of people introduces a quantum difference  
19 in the kind of records that you would consider public records.

20 I think Mr. Polansky very adequately said that he does  
21 not consider aggregates of public transactions to be information  
22 that should be generally available to the public. I certainly  
23 would agree. I think the ability to handle information in  
24 different ways makes aggregate information, automated infor-  
25 mation, very different from manual information. For example,



1 and I know that -- I know his name, his name is Robert  
2 Gallati and I go to a file cabinet; I can get a bit of in-  
3 formation about Robert.

4 . . . VOICE: I submit its very different when  
5 you can positively go to a computer and get the information  
6 about everyone who happens to have red hair and green eyes  
7 or more importantly where you can get information about every-  
8 one arrested for a particular offense at a particular time,  
9 whether or not there was any individual disposition or not.  
10 So, I would submit to this group that it is extremely import-  
11 ant to view differently the individual records of transactions  
12 that occur in courts, that occur with the police and so forth  
13 and that are filed upon individual pieces of paper from the  
14 kind of record you get when you aggregate these kinds of  
15 things about individuals and about sets of individuals.

16 MR. MARTIN: Professor Weizenbaum.

17 MR. WEIZENBAUM: Let me make a few remarks. One  
18 is that I might inherit a lot of money someday and since,  
19 so I am impressed with Mr. Gallati, I might wish to hire him  
20 for some very sensitive position; before I do so I might want  
21 to investigate him. I might hire an agency to inspect his  
22 records. One of the things I would find is that there are  
23 well over a dozen offenses against him which he has not  
24 settled. I base this, this is all in the public records so  
25 people will find this out. Yes. This is based on apparently

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1 a bug in a computer program ~~in~~ a system in New York City, not  
2 Mr. Gallati's system, which confused him ~~with~~ owners of auto-  
3 mobiles whose license plates are very similar to his. His  
4 plate happens to be New York 49. There are a number of  
5 people whose license plates are 49H and A 49 and others such,  
6 and because of a bug in a computer system his name was con-  
7 fused with those. Now ~~when~~ he, being in a very powerful  
8 position, investigated why he was getting letters from the  
9 police department telling him that warrants had been issued  
10 for his arrest and so on, he was able to discover this un-  
11 fortunate error. However, as he told us another time the  
12 director of the other system told him that he may ignore all  
13 those letters, but unfortunately because of the complexity of  
14 the computer system the but in the system cannot be corrected  
15 and he will continue getting those letters. Now it may very  
16 well be that my decision to employ or not to employ him may  
17 hinge on the record which apparently exists in this other  
18 system or that, the decision of the National City Bank to grant  
19 him credit or not may again hinge on that system. This is  
20 a difficulty.

21 One thing we have not addressed ourselves to is the re-  
22 liance that people place on "what the computer says." Now  
23 it ~~used~~ to be that people used to say well it says so in black  
24 and white. People used to rely on what is written, on the  
25 printed word. That reliance is also often misplaced,

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1 especially today. I am wondering, following this up, to what  
2 extent not only credit bureaus, prospective employers and so  
3 on, but judges and people making, say payroll decisions and  
4 so on rely on "what the computer says" and even worse, to  
5 what extent they may rely on judgments that the computer in  
6 fact has been programmed to make. Without understanding  
7 how those judgments are in fact made. That is, what essen-  
8 tially what the program is that makes those judgments.

9 For example, I am told that there are computer systems  
10 in California that compute probability of recidivism on the  
11 part of prospective parolees. Presumptively this is based  
12 on some sort of classification, that people that have been  
13 arrested so many times and have been convicted so many times  
14 and have such and such particular crimes, say sexual crimes  
15 or financial crimes or whatever, then a certain probability  
16 of recidivism is akin to them. It seems to me a judge or  
17 parole officer who is now being asked to make a judgment  
18 which is of course crucial to the individual concerned may  
19 not be in a position to understand it all, he may simply  
20 not be in a position to understand how the computer which  
21 finally delivers a number, .8, say, or .3 or whatever, how  
22 the computer arrived at that decision. Even if it's explained  
23 to him in terms of a flow chart or program, not being trained  
24 in that mysterious art he may not be able to understand it.  
25 Again, coming back to the credit thing, it may be, for

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1 example, that there is an individual who bought say some  
2 furniture from a department store. He found the furniture  
3 defective. Having no remedy, he refuses to pay for it.  
4 Meanwhile, the department store has sold the paper to a  
5 financial house. He ~~refuses~~ to pay. The financial house  
6 says it's not ~~our~~ responsibility, so a suit is instituted  
7 against this individual. Now, there is a record that he is  
8 in legal difficulty with respect to some loan. A loan officer  
9 looks at this. All he sees the computer put out is one bit.  
10 O.K. In effect the computer has made a judgment. O.K., which  
11 is encoded in one bit, namely, that there is litigation.  
12 O.K. That may very well be that such an individual is in  
13 fact an excellent credit risk, that he intends -- well, I will  
14 just leave it there, it may be that he is in fact an excellent  
15 credit risk.

16 So, what I am trying to get into here, and I would  
17 certainly like the response of the judge on this, is the prob-  
18 lem of judges and other decision makers in the judicial system,  
19 this is of course a much wider problem than merely the judicial  
20 system, but let's stick to the judicial system for now, to  
21 what extent judges and other people in the judicial system  
22 find themselves relying on information coming out of computers  
23 in instances where they really had had neither the time nor  
24 the training to fully understand how that information was  
25 in fact generated.

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1 JUDGE GREENE: Well, I suppose to the extent we  
2 are talking about, judicial decisions and sentencing as you  
3 suggested, the basis of probabilities of persons repeating  
4 the offence to an extent that decision is made now too.  
5 The judge does impose a sentence depending on what he thinks  
6 of the probability of recidivism, based on prior record, based  
7 on whatever other tools are available. Charts have been used  
8 to assigning a certain number to a certain characteristic,  
9 particularly such things as prior records and what types of  
10 offenses.

11 For example, we are told that embezzlers repeat more  
12 often than other people do. Now, the question is if you take  
13 into account the fact of those studies and therefore a judge  
14 is more rigid in his sentencing of people who have been con-  
15 victed of embezzlement, whether this comes from the computer  
16 or not, that is irrelevant. What he's really relying on  
17 is the study that says that embezzlers are repeaters and  
18 murderers are not. What we generally know.

19 Is that a legitimate factor to be taken into consideration,  
20 that is the question. I think the computer doesn't add much  
21 to that particular equation. I think that we have not done it,  
22 I have not done it, although I can see that at least conscious-  
23 ly we don't do it but we do it to a certain extent. If you  
24 have an offender who has let's say ten larceny or burglarly  
25 convictions in the last three years. You will more likely

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1 than not give him time in prison on the assumption that if  
2 he isn't given time in prison the chances are he will again  
3 commit a larceny, because he's on drugs, let's say. So we  
4 do that any way.

5 The mere fact that it may be more systematized, I don't  
6 believe adds that much to it. But in talking about probabil-  
7 ities, if I may respond or at least comment on something  
8 that Mr. Storm said, and that is if he sees a person applying  
9 for a loan and he has a number of arrests, he would feel the  
10 probabilities are that he's not a good risk and he owes it  
11 to his depositors not to give a loan to that person.

12 I, and I may be biased because I am a lawyer and a judge,  
13 I was brought up with the belief that a person is presumed  
14 to be innocent until he's -- unless he's proved guilty, and  
15 I would not indulge in probabilities that somebody, just  
16 because he's been arrested therefore he's probably guilty  
17 even if he had never been convicted. I think that is a  
18 totally illegitimate conclusion to draw, and I think it's the  
19 best argument I have heard for not making arrest records  
20 available to anybody.

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1 MR. STORM: Judge, may I respond to that briefly?

2 I was not talking about arrest records in terms of  
3 credit. I was talking about creditor suits as a predictor of  
4 future performance on a credit transaction. Later I was  
5 speaking to employment, and a history of arrests as  
6 indicative of the possible honesty of an employee.

7 I think a bonding company would look to that and  
8 I think an employer would look to that.

9 MR. WEIZENBAUM: I would like to follow up on two  
10 things very quickly here.

11 What you have just said here, the business of  
12 suits being predictors, et cetera; okay, my point was that  
13 there are people who are -- who have a great sense of what is  
14 right and what is wrong including their own sense of  
15 obligation that when they owe money they must pay it and in  
16 the very service of that right, they may get themselves into  
17 the kind of position that I was just -- in the very service of  
18 that sense of right, they may get themselves in the position  
19 which I mentioned, namely of not paying for defective  
20 merchandise and so on so forth; and that the computer would  
21 therefore generate a black mark which you would then say is  
22 a predictor of a bad credit risk which in fact happens not  
23 to be so.

24 So in that sense, then, the computer is making a  
25 judgment which leads you to a judgment and you don't really

1 understand how the computer came to that.

2 Okay. Well, let me make the other point to the  
3 Judge. You say you do these things unconsciously and so on;  
4 well, that is probably worse than doing it consciously  
5 because again it is the question of understanding and not  
6 understanding what you are actually doing.

7 Unfortunately you latched onto the probability  
8 thing that I mentioned which was merely an example. Let me  
9 give you another example. Speaking now as a computer  
10 technician, which I am, I know that many tiny little  
11 apparently irrelevant decisions are made by programmers who  
12 have no system responsibility. Okay. For example a  
13 decision might be made to format a certain record in a  
14 computer by assigning, say three bits to that particular  
15 category, whatever it is inside the computer.

16 Okay. Now that program, that little subroutine  
17 begins to run; it becomes enmeshed in a bigger program  
18 and eventually it is essentially unchangeable because it  
19 has become so deep into the guts of some program that nobody  
20 knows how that could be changed.

21 Now in particular this may be a recording of  
22 category of crime. Okay. And so now if there are three bits  
23 assigned to it that leaves eight categories. Now somebody  
24 comes along and some crime is committed which is sort of a  
25 borderline thing but by virtue of the fact that there are



1 only eight categories, someone, not a judge, someone not  
2 trained in the law, says it is closer to embezzlement than to  
3 anything else so it gets code 7.

4 Okay. Now later on the computer is asked, you  
5 know, to -- in effect to produce a record and perhaps the kind  
6 of probability, I will just get back to that for just a  
7 moment, now, the reliability of this fellow; now you have  
8 said that embezzlement, you know, is likely to repeat. Okay.  
9 Now it is a fact of the computer technology, that happens  
10 to have classified the particular offense as embezzlement.  
11 In fact, it may be something else altogether.

12 If you were faced with the genuine and total  
13 account of what actually happened seven years ago or five  
14 years ago, you see, you might come to an entirely different  
15 judgment. But you don't understand. You know. All you see  
16 is that the computer says, "Convicted three times of  
17 embezzlement or of an embezzlement-like offense." In fact,  
18 you get it as a number or statistic.

19 I think this is a very quiet danger. If you now  
20 add to this that there may be a little piece of code in the  
21 computer equally innocently gotten in by virtue of some  
22 technological gimmick that has nothing to do with anything  
23 that asks, for example, whether the crime we are now  
24 considering, was a weapon used -- that's certainly a serious  
25 question. No. Is it drug-related?

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1 Now, it turns out that by some interpretation  
2 the fact that this fellow takes an asmatic drug or whatever,  
3 happened to go in this case because there are only three  
4 bits again, gotten to be a code that that, that this is  
5 drug-related. Again, as the statistics accumulate on this  
6 individual and then you see the aggregate information, okay,  
7 you become a victim of this long chain of events, okay, in  
8 your judgment process; and of course the ultimate victim is  
9 the offender who is standing before you expecting justice.

10 JUDGE GREENE: If I may comment one sentence.  
11 What you say would be true and would have great validity if  
12 decisions were in fact made on that basis. But the fact is  
13 that before anybody, any judge would sentence an offender,  
14 he obviously would not take the computer's printout as to the  
15 offense. He would get a pre-sentence report from the  
16 probation department - it would be five or ten pages long -  
17 which would give him all of this information.

18 The only comment I had on the use of the computer  
19 in this whole process would be a statistical kind of use  
20 generally, not relating to a particular individual, where  
21 the computer could tell us based on 10,000 convictions in a  
22 particular city, where you could draw the conclusion that  
23 drug addicts who are between the ages of 18 and 22 are more  
24 likely than others to become residivists.-- that kind of  
25 information can be and is being gotten from the computer

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1 but I would -- I wasn't suggesting at all that it would be  
2 appropriate to sentence an individual and get his story on  
3 the basis of a computer printout on this simplified method  
4 you suggest.

5 MR. MARTIN: Dean Link?

6 MR. LINK: I would just like to latch onto  
7 something that the Judge said about the relevancy of an  
8 arrest or of the filing of a civil suit. We have noted this  
9 morning that Professor Miller has raised the question I think  
10 very well about what should be a public record, and I have  
11 also noted in some of Dr. Gallati's writings the suggestion  
12 that we penalize for the misuse of records.

13 And I would simply submit to the panel as to their  
14 question of this morning as to how you pick up dispositions  
15 that it seems to me that an incomplete record ought not  
16 be a public record.

17 And I would further submit that if we are going  
18 to punish for the misuse of records, we might well think  
19 in terms of punishing for the use of an incomplete record.

20 I simply submit to you that incomplete records  
21 are just not records and therefore we really ought to  
22 question what we do with arrests that have no disposition  
23 following them or civil suits that are dropped and we  
24 can't find the disposition.

25 MR. MARTIN: Mr. McCafferty.

1 MR. MC CAFFERTY: I would like to make a couple  
2 points since I made a long trip up here like other people.

3 We are pretty conscious you need data in the  
4 aggregate such as the Judge says as well as for information  
5 purposes. I think very well we have to look at who controls  
6 information because information is the same as money.

7 The people who control the purse strings, Professor  
8 Miller made that point very well, our Chief Justice when he  
9 gave his first speech said that the court system and the  
10 federal system was equivalent to a C-5-A which was about  
11 \$200 million for one year.

12 When one thinks of dispensing justice in 400  
13 places of court or 90 districts, 11 courts of appeal,  
14 involving 60,000 criminal defendants a year, a hundred  
15 thousand civil cases, many of them now class actions and  
16 multiple district litigation cases; one of them we have  
17 involves 22 million consumers in a multiple district  
18 litigation case in Minnesota and we have over 200,000  
19 bankruptcies, so we are talking about a mass of data.

20 This mass of data after we get disposition  
21 information, there are other changes. And this is  
22 something that we haven't addressed ourselves to.

23 We have the very famous case in my county of  
24 Prince Georges where a man received 63 years. He has  
25 now reduced his sentence by personal plea before three

1 judges to 53 years.

2 This is a constant thing that goes on in the  
3 federal judiciary because of the review of sentences. We  
4 had up to 120 days for illegal sentences to be changed or  
5 review of sentences.

6 Now the other point and there are two of them  
7 that have just come on the scene, the Youth Corrections Act,  
8 there is a certificate to set aside conviction under 5021  
9 which is Title XVIII. This is very important to these young  
10 men that they have done their bit, they thought they were  
11 redeemed. And they do set aside the sentence and they get  
12 a certificate and they only get it if they really deserve it.

13 This goes on the FBI wrap sheet or as they call  
14 it, the identification record.

15 Now we have something new on the scene. For men  
16 and women who have been involved in simple possession of  
17 marijuana and drugs, they may have their records expunged.  
18 And in the federal system we have court orders; we must  
19 even return to the federal court where it is sealed, every  
20 statistical card dealing with that individual.

21 I brought a court order today just to show you  
22 the point. It is under Title XXI, Food and Drug Act,  
23 Section 844B.

24 Now these are two areas that we have to think  
25 about, what happens to the individual who has gone through

1 the process and so has had its pound of flesh in the  
2 old literal sense and the guy suddenly comes up and finds  
3 out that the so-called expunged record is still being held  
4 against him.

5 There have been many moves in this country as many  
6 as 15 years ago to provide that after five years of living in  
7 a community without a re-arrest that your whole record be  
8 expunged. I am sure Mr. Gallati can speak to that but that is  
9 on the other end.

10 There are people who have a fantastic ability to  
11 be arrested, if you are in the right part of the community  
12 and you are not wearing a tie and a coat and so forth. So  
13 the risk factor some people have in being arrested, having  
14 this held against them for the rest of their lives, is a very  
15 real one.

16 I say to any of you who look at the arrest  
17 records, talk to the man or woman.

18 MR. MARTIN: Professor Miller?

19 MR. MILLER: I would like to second that.

20 Massachusetts recently enacted an expungement statute on  
21 criminal conviction and now humorously they are debating  
22 whether the statute prevents you from having a marker in the  
23 file indicating that a record has been expunged; that is  
24 really Catch 22.

25 But I think the marvelous debate between the

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1 judiciary and technology over here causes me simply to  
2 remark that not only is it absolutely crucial what the  
3 environment is at the date of recordation point, Joe's  
4 illustrations of the various subliminal categorization  
5 problems, but of course equally true is the point that it is  
6 very, very important to know what the environment of  
7 evaluation is when the decision-making process gets  
8 initiated at the other end.

9 Now fortunately, the benefit which is served by  
10 these pre-sentencing reports which give elaborate detail,  
11 it is just not a three-digit indicator.

12 Of course we sometimes worry about the quality  
13 of the people who put the pre-sentence reports together;  
14 that's a fact of life. I must say maybe with my own  
15 parochialism as being a lawyer and having a certain respect  
16 for the bench and their ability to weigh evidence and  
17 evaluate facts and the rest, I wonder however what the level  
18 of sophistication is in the decision-making environment in  
19 the commercial field when the personnel man says, "Hey, this  
20 record's got three arrests." Does he know what the arrests  
21 are for? With or without disposition. Does he know the  
22 difference between an arrest and conviction; does he really  
23 understand what the difference between an arrest and  
24 conviction is? Does he know much about the circumstances of  
25 the arrest? Is it a guy who has just finished his last law

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1 school exam and he's so elated he got a little bit high  
2 and made a little noise and a neighbor complained and there  
3 was an arrest, or was it even an arrest or conviction for  
4 conscientious objection during World War Two, something  
5 perhaps that's been decriminalized under later shifts in  
6 standards for conscientious objection

7 Is it a civil rights worker who gets arrested and  
8 even convicted for criminal trespass in Alabama or up in New  
9 York or an antiwar demonstrator, or is it just a black kid  
10 in Harlem who gets swept up in a common dragnet arrest and  
11 the decision-makers doesn't even know that 90 percent of the  
12 people in Harlem have criminal arrest records by the time they  
13 are 21, and that negative decision without thinking about it  
14 simply contributes to, in a sense, a societally induced  
15 residivism rate.

16 I am really amused, Mr. Storm, at your concern for  
17 me as your depositor in not hiring the arrestee. I  
18 appreciate your trying to safeguard me but if the alternative  
19 is that the poor kid can't get a job for six months and  
20 then sticks up the bank -- (Laughter. Inaudible.)

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1 MR. DOBBS: I might follow up on Arthur's point.  
2 Arthur, I think it is important to reenforce that one of the  
3 members of this committee who unfortunately happens not to be  
4 here, but Don Muchmor who is Vice President of California  
5 Federal Savings who has run into the kind of problem you describe  
6 has a slightly different view of the problem. And in their  
7 particular bank as they have attempted to employ people who have,  
8 in fact, had arrest records outstanding, they have gone to the  
9 lengths of trying to, in fact, verify and validate whether  
10 they were resulting convictions and at least, according to  
11 Mr. Muchmor, in his experience, he was quite surprised to find  
12 I believe, that in at least 90 percent of the cases, they ran  
13 through that in fact, there were no subsequent convictions  
14 and that, in fact, those employees turned out to be quite  
15 effective and efficient employees.

16 MR. MARTIN: Mrs. Gold?

17 MRS. GOLD: It suggests to me that perhaps all of  
18 these perspective employers and lending agencies are starting  
19 at the wrong end of the horse so to speak, they ought to be  
20 looking at the court convictions as their point of departure,  
21 checking perspective lends and employers in the courts' index  
22 rather than going to police records.

23 As far as the lending and credit problem is  
24 concerned and I specifically want to exclude Judge Greene's  
25 court from this because I don't know, I have never been there,

1 but there has been plenty of information disseminated as to  
2 what goes on in landlord-tenant and small claims court today  
3 in the country. If you spent time in them, you would see  
4 these are not guaranteed to the individual, these are credit  
5 collection agencies in effect, and that there is very little  
6 real practical consideration of the merits of these cases so  
7 to me five credit suits, by five credit agencies does not,  
8 without evaluation and looking behind it, constitute a valid  
9 statement as to whether a person is a good credit risk.

10 A third issue that I would like to talk about is that  
11 there has been a comment on the separation of powers, this  
12 is a very critical and crucial issue. I think perhaps the  
13 committee ought to spend a little thought on the fact that Judge  
14 Greene talked about this marvelous computer, it is, a very  
15 effective system. What he didn't tell you is the struggle he  
16 has had to get it and keep it. It has been a good long five,  
17 ten years you have had with that? And this is true of all courts,  
18 they are technologically deprived.

19 There is very little money given to them for  
20 technological and management improvement and until there is  
21 a public outcry about this that reaches the ears of Congress,  
22 we are not going to be able to avoid pooling our resources  
23 with the executive agencies.

24 And then -- well, it slipped. I will stop there.

25 MR. MARTIN: Senator Aronoff then Mr. Short.

MR. ARONOFF: Mr. Chairman, if I may, Mr. Atkinson who will be speaking this evening made a comment to me that related to the record from beginning to end and a complete system. I prefer to defer and let him make it. It is a two sentence comment, if it will be all right.

MR. ATKINSON: I am Andy Atkinson from the regional computer center in Cincinnati. We have operational in Cincinnati a total process system which takes the record from the arrest and the court docket is prepared --

MR. ARONOFF: Excuse me for one minute. You can sit up here for a minute.

MR. ATKINSON: When court action is completed, the complete disposition is entered into that same subject and process record. So that if action were such that the case were reduced or the conviction were reduced, automatically that disposition goes not just into the court record but back into the police record and so on because it is a common record.

Now, there are portions of each of this common record privileged to the court, privileged to law enforcement, and privileged to the probation and other correction agencies tied into it but in this manner, you reduce the possibility of looking at the wrong end of the horse and everyone is working from the same common record. Efficiency is great also but it is only a by-product of the assurance that the records that each level of the judicial system are working with are the same

1 record that triggered the action.

2 MR. MC CAFFERTY: Can I ask a question? Is this put  
3 in the order of the court, the judge's sentence or as the  
4 friend down here said, reevaluated and put in some sort of  
5 format such as three-years prison which may mean one thing in  
6 one state and one thing in another?

7 MR. ATKINSON: It is put in by the Clerk of Courts  
8 in the courtroom. The disposition is entered and automatically  
9 adjusted.

10 MR. MARTIN: Mr. Short, Chief of Systems and  
11 Technology at the National Center for State Courts. Perhaps  
12 you could tell us about the sentence, Mr. Short. One of the  
13 things that hasn't come out in this discussion and perhaps  
14 before we adjourned is some sense of what the levers are for  
15 influencing the recordkeeping or for systems behavior in  
16 the court systems.

17 MR. SHORT: First of all, the sentence for state  
18 courts was established about a year ago by, upon recommendation  
19 of Chief Justice Burger and supported by President Nixon to  
20 do whatever they could to improve the judicial process in the  
21 state court. In my position, I have been called upon  
22 to advise state courts in many situations who have been  
23 approached toward tying into large scale data processing  
24 system.

25 Now, I don't think the issue here is whether or not

1 the court should provide police disposition information or  
2 how you go about doing it, to the matter of fact that it is  
3 provided to the criminal history file. No one is quibbling  
4 with that point, everyone agrees it should be done, just  
5 what is the most efficient way to do it. Let me say that up  
6 until a year or so ago no one as far as I know was really  
7 concerned with whether or not the courts gave the police systems  
8 disposition information or not.

9 Then some legislators got enthusiastic about the  
10 problem, and Sam Ervin and a few of his colleagues started  
11 looking at the adequacies and inadequacies of these large  
12 personal data systems and all of a sudden the big funding  
13 source decided maybe these big criminal history or data processing  
14 operations should not just be law enforcement oriented  
15 but should, in fact, be a total criminal history information  
16 or criminal justice data processing system, whatever the  
17 words are.

18 Since then and since the mandate has sort of been  
19 informally communicated, these formerly principally law  
20 enforcement systems have been scurrying about trying to get  
21 courts to sign off that they are, in fact, participating in  
22 a criminal data processing system.

23 Fortunately, some of the chief justices have come to  
24 us for advice as to whether or not they should participate.  
25 The fact of whether or not they provide disposition is not at

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1 issue. But we go out and look at the presently conceived  
2 law enforcement system and try to make a recommendation to the  
3 Supreme Court or the Chief Justice or whatever is involved in  
4 the state. And let me give you a hypothetical example which  
5 may highlight some issues for you.

6           If I read up on the back ground of these systems  
7 before I went out and advised the state, and I found out that  
8 there had been an organization called Search, which had proposed  
9 some security measures for large scale information systems and  
10 if they had stated that the need for an informed effective  
11 criminal justice system must be balanced against the need for  
12 an individual to keep information about himself and his life  
13 private, and they had entered reaction to statements such as  
14 these, certain people involved in the criminal law enforcement  
15 community, and this particular quote is from Jerome Doffle  
16 head of the FBI's National Crime Information System 1970 wrote  
17 there can be not absolute right to individual privacy in a  
18 society. Dislike the Search proposal so much, he even objected  
19 to them being published. Then subsequently when the FBI won  
20 control from the data banks, they abandoned all but one of  
21 the SEarch recommendations.

22           I understand that has even been somewhat shelved  
23 since then. I further began to read into the general  
24 attitude of these situations and I find that the FBI got all  
25 the data, states' data into its central computer on the grounds

1 only a federal agency would be able to supervise and keep  
2 a system on uniformed control. They -- I then go to the --  
3 any particular state you know and I investigate the particular  
4 system which is in existence and I find such tacit statements  
5 that they would like their system to be able to do such as  
6 development of individual patterns of persons having trouble  
7 functioning in society, I then, you know, have to make a  
8 recommendation to the Supreme Court of that state. And if  
9 we can go back to Judge Greene's former comments as to the  
10 Doctrine of Separation of Powers and Evasion of Rights of  
11 Privacy, I submit to the committee that you should seriously  
12 consider these issues especially where there are no controls  
13 as Al Blumstein has pointed out over what these systems  
14 really do.

15 What kind of information is kept in them. What  
16 is done with that information, how it is manipulated, what  
17 are the subroutines which put the probability factors on different  
18 events and come out with a total solution.

19 What are the other things being done in these  
20 systems besides just criminal history files. And I submit to  
21 you the courts have no problems with criminal history files,  
22 everybody will have them.

23 MR. MARTIN: Mr. Hall, I assume you wouldn't feel  
24 comfortable unless you can speak now.

25 MR. HALL: No, I am feeling a little fidgety being

1 the representative of. how would you put it, the big funneling  
2 source? Unfortunately, I find it unfortunate that you took your  
3 remarks from an editorial from some publication rather than  
4 looking at other documentation which is in existence. I  
5 would like to mention to this committee the -- that LEAA is  
6 supporting massively the development of criminal history systems.  
7 The LEAA concept is the development of what we call a criminal  
8 history for the -- well, it is an offender based transaction  
9 statistics/criminal history system.

10 In order for a state to qualify for funding in  
11 this program and, I submit we are providing the lion's share  
12 of the federal funds going into this and not the Federal Bureau  
13 of Investigation, but in order for a state to qualify for funding  
14 they do have to accept certain requirements for the completeness  
15 and the limitation of data. We require that the state accept  
16 the responsibility for having complete disposition information,  
17 complete corrections information and so forth. And we are,  
18 we are disciplining these systems through the power of the  
19 financial audit.

20 Moreover, we are requiring that these intrastate  
21 systems which we are supporting will be connected to the national  
22 system; we are requiring that these state systems accept the  
23 privacy and security considerations that were developed by  
24 the project security and privacy commission.

25 Moreover, we have added stringent requirements



1 concerning what kinds of records can be transmitted interstate,  
2 if our funds are utilized and that includes no records which  
3 do not contain disposition information. We have limited the  
4 kinds of offenses that can be transmitted interstate.  
5 We do not feel quite frankly that we have under the interstate  
6 commerce laws, at least, the right to suggest what the states  
7 can do intrastate except that we do require that the states  
8 have mandatory reporting and we do require that even intrastate,  
9 that they adopt security measures that are enforceable and  
10 are parallel to Project Search. I would further like to  
11 suggest or would like to state that we require the state to  
12 involve at the management level all types of criminal justice  
13 agencies including the courts to make sure that the kinds  
14 of data that go into the intrastate system are not or, at least,  
15 have a minimum of danger to the individual.

16 We require that the state develop methods of purge;  
17 we require that the state have some method of inspection of  
18 records and so forth. I would like to simply say that the  
19 information that the gentleman from the state courts has is  
20 simply erroneous.

21 I would further like to submit to this committee  
22 the documentation, the description of our position, the  
23 documentation of that position along with the very rigid grant  
24 funding rules that are applied to the states who are involved  
25 in the system.

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1 MR. MARTIN: I am sure we would receive that with  
2 pleasure. Could you also as a part of that submission,  
3 delineate the nature of your relationship with NCIC and what  
4 your relative influence is by whatever techniques you have to  
5 exercise influence. Mr. De Weese?

6 MR. DE WEESE: Yes, I want to make one extremely  
7 important point. When I started this discussion, I sort of,  
8 I think I gave the, sort of the wrong attitude. I don't know,  
9 I appeared to be attacking this poor gentleman from Philadel-  
10 phia who is trying to do everything he can to protect privacy  
11 and I was telling him what he was doing in Philadelphia, he told  
12 me what he is doing in Philadelphia, he is keeping the  
13 criminal separate from the civil files and nobody outside of the  
14 criminal justice community has access to that and so forth,  
15 legitimate access.

16 So I just called Philadelphia, called the City  
17 Courthouse, this is startling because it goes right to the  
18 heart of the problem of people who come in here. I told  
19 the person who answered the phone that I was from the  
20 Gallati Construction Company and I was considering hiring two  
21 people. All right? And I said to these two gentlemen,  
22 it took me 20 minutes to get the right person; once I got the  
23 right person it only took four minutes to get the right answer.  
24 I gave him the names of Peter C. Nelson, my law school roommate,  
25 and a variation of my name and I asked them if they would please

ak 11 1 check out for me what my criminal history was in the City  
2 of Philadelphia in your files and asked them if they would  
3 check out the civil records. The person informed me in  
4 four minutes that neither my roommate nor -- all right, in  
5 four minutes your system told me that neither my roommate  
6 nor I had criminal conviction docketed, as you pointed out.

nd11 7 MR. POLANSKY: An active case or a closed case?  
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1 MR. DE WEESE: I asked you this morning if this  
2 was available to private employers, credit companies, you  
3 told me it was not, sir, it is, and you either lied or you  
4 don't understand what you own system is doing, I don't  
5 care which it is, I am upset, as you can see.

6 MR. POLANSKY: To the best of my knowledge, I  
7 did not lie nor would I attempt to lie.

8 I don't know which office you reached and I would  
9 like to know off the record.

10 MR. DE WEESE: I am sorry, I will not divulge  
11 that, I don't want their heads to roll, I want your head  
12 to roll.

13 MR. POLANSKY: Fine, mine deserves to roll if I  
14 lied.

15 The fact there was a judgment effective against  
16 your friend I told you was certainly available. Let's  
17 clear the civil side.

18 MR. DE WEESE: I am talking about criminal.

19 MR. POLANSKY: The response to could you get his  
20 criminal history, did you get his criminal history, you  
21 got an indication of whether there was or was not a record.  
22 YOU did not reach what we can't let you reach, psychiatric  
23 records that Judge Greene said you cannot see.

24 YOU will not reach them. That is why you will  
25 not get the file if you walk to that office.

MR. DE WEESE: I got what I wanted to know,

1 unfortunately --

2 MR. POLANSKY: I think you got too much,  
3 incidentally, I don't believe you should have gotten that  
4 which you received over the phone.

5 MR. DE WEESE: If Peter C. Nelson would have had  
6 a criminal record, they would have told me. That is  
7 ridiculous. I wish I would have known somebody who had  
8 been convicted.

9 MR. MARTIN: Mr. Davey?

10 MR. DE WEESE: You told me a person outside  
11 the criminal justice system would not get access and I got  
12 access easily.

13 MR. POLANSKY: I said you cannot get to that file,  
14 we are talking about the file, you cannot and still cannot.  
15 We talked about reaching the desk. No, you can not reach  
16 the files.

17 They will ask you if you are the attorney, they  
18 will ask you if you are the individual, because there are  
19 things inside that are not this nebulous public record you  
20 talk about.

21 I don't think that you should have been able to  
22 reach even that which you did reach, which is public record,  
23 over the phone. I don't know how you did it but we will  
24 find out how that is possible.

25 You even could have gone through my office, which

1 you possibly could have, if you got both pieces of  
2 information.

3 MR. MC CAFFERTY: Did you mention his name?

4 MR. DE WEESE: I don't think I did.

5 MR. MC CAFFERTY: That might have bearing on  
6 it. I know he can defend himself but what he was doing,  
7 you didn't get a criminal record, you got only a situation  
8 that is now before the court and that is a matter of public  
9 record.

10 MR. DE WEESE: No, no, I asked specifically whether  
11 this person had been convicted of a crime in the City of  
12 Philadelphia over the last four years, I was told he had  
13 not been and I can only assume if he would have been,  
14 that would have been told to me, too.

15 MR. MARTIN: Mr. Davey?

16 MR. DAVEY: I would like to come back a little  
17 bit to the civil side of the court records, particularly  
18 with respect to credit.

19 One of the points I tried to make earlier this  
20 morning in the discussion on this thing is that the credit  
21 bureaus, whether they like it or not, are now dealing with  
22 the consumer and the consumer is coming in in large  
23 numbers as a result of this Fair Credit Reporting Act.

24 One of the points I was trying to make on this  
25 thing is that say for every hundred thousand inquiries which

1 are being made, somewhere between 1000 and 4000 people are  
2 coming in on a monthly basis to review their records.

3 Now, this is very expensive and the credit bureau  
4 finds itself in the position of trying to explain why it is  
5 that a person didn't get credit. In some of the instances  
6 that we are pointing out, a lot of these were based on  
7 court and public record information.

8 I will come back to this in a moment, but the  
9 point that I was trying to make is that if the credit  
10 bureau is in this position, whether it should be or  
11 shouldn't be, is immaterial at the present time.

12 The point is can this information be speeded up,  
13 can it be helped so that these people can get the  
14 information that they are seeking and can their records be  
15 rectified so that credit can be granted or whatever?

16 Now, with regard to the type of information which  
17 we are picking up from public sources, let me indicate the  
18 kinds of things that credit bureaus normally pick up.

19 It is usually very brief. It is in a sense like  
20 an index where the plaintiff and the defendant and the  
21 amount of the suit, perhaps the docket number and the type of  
22 suit or type of judgment are listed.

23 Now, I can't speak for the rest of the credit  
24 industry, I am not a spokesman for them. I have been out of  
25 this business for two years, but I can speak as to what

1 the policies of credit data were prior to the time that I  
2 left.

3 And that is that, number one, nothing would be  
4 picked up unless it could be followed all the way through  
5 the judicial process.

6 In other words, if a suit was picked up, the only  
7 way that a suit could be picked up is that if a judgment  
8 would follow and so on, all the way through to the final  
9 disposition.

10 In the event that a suit could not be followed on,  
11 then that suit was not picked up. Only judgments were picked  
12 up. No landlord-tenant suits were even considered, small  
13 claims were practically nonexistent.

14 It was very carefully decided as to the type  
15 of information which would go in there.

16 I think that that is an important type of a  
17 thing and it is the type of thing that I would like to see  
18 others in this business do, and that is to restrict the  
19 kind of information, because I think that it is highly  
20 damaging type of infomration.

21 And I think that it is highly damaging type of  
22 information when someone outside a credit grantor has  
23 this type of information available to him because I believe  
24 that a credit grantor knows how to treat this type of  
25 information.



1 I do not feel that an employment agency or any  
2 other kind of group is in a position to judge what credit  
3 granting information is all about and I feel that, again  
4 making this point that the type of information collected  
5 should be designated for a specific purpose and it should  
6 be used only for that purpose.

7 Now public record information, as far as I am  
8 concerned, is a real problem. I think that it is something  
9 we all need to be involved with.

10 I know the courts don't have sufficient money  
11 to do the kinds of things that are required of them. I  
12 am hoping through this type of airing of these situations  
13 that we can get the type of money necessary in order to  
14 run the courts in a more consumer oriented fashion.

15 And I hope that this can be done.

16 Now, of course, you keep coming back to the central  
17 theme as to what public record information is and I don't  
18 know what the answer is and I think it is unclear in many  
19 cases throughout the country and as you start dealing with  
20 individual courts, you can go from one extreme where there  
21 is no such thing as public information to the other extreme  
22 where everything is public record information.

23 And it can be gathered for whatever purpose, and  
24 I would just like to make that particular comment.

25 MR. MARTIN: Commissioner Hardaway, then

1 Professor Weizenbaum, then Dr. Gallati.

2 MRS. HARDAWAY: I want to address myself, David,  
3 to the committee and make a point that I think it is  
4 important for us to come back to as committee members and  
5 that is the individual whose privacy we have been charged  
6 to take care of or to look into methods of taking care of  
7 him.

8 Particularly speaking to what Arthur mentioned  
9 here in the area of employment, which happens to be my  
10 particular expertise, and then what Tate has had happen  
11 to him here.

12 To answer Arthur's question, no, most people  
13 who work in employment offices do not understand the  
14 difference between arrest and conviction. And most  
15 applications carry the statement, have you ever been arrested,  
16 we have just changed our application within the Tennessee  
17 state government to say, "Have you ever been convicted,"  
18 but up until a month ago, it said, "Have you ever been  
19 arrested."

20 MR. ARONOFF: Did you have anything to do with  
21 that, Jane?

22 MRS. HARDAWAY: No, we give all the credit  
23 to our governor.

24 Now, in Tennessee, as in your state, more than  
25 likely we are the states largest employer so we never lack

1 for applicants.

2 We have a large number of people applying for  
3 every job. Within that number there are many qualified  
4 people. Many of them who carry a conviction for something  
5 such as Arthur referred to, where on the night of the college  
6 graduation, they decided to visit the local house of prosti-  
7 tution and just have a little fun and while they walked in  
8 the doork it was raided and boom, they were taken in and  
9 there it is, and he continues to list it because it has not  
10 been expunged.

11 And if he is going to be honest on his applica-  
12 tion, there it is for a long number of years. Now, when  
13 the interviewer looks at that application, very often  
14 they do exactly what Tate did. They make a phone call.

15 Whether they get the accurate information or  
16 not does not matter, it is whether they get a yes or a no.  
17 "Is there a record?" "Yes, there is."

18 "May I know what that record is?"

19 "No, you may not until you come down to the  
20 desk and prove that you have a right for that information."

21 But let me tell you what happens, they never go  
22 to the desk because there may be 20 people applying for  
23 that job, and so that interviewer simply takes that  
24 application and puts it to the side. And that person has  
25 definitely been discriminated against, and when you

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1 discriminate against a man for employment, you have done  
2 something.

3 And that application goes over here, and when  
4 he calls about his job, the interviewer doesn't say, "I  
5 got a yes or a no," because that is their own personal  
6 judgment in how they arrived at which stack the application  
7 was placed on. They simply say there is no job available  
8 and there is no law in the world that requires that  
9 interviewer to say this is how I came to my conclusion.

10 So it is a pressing point and I believe this  
11 committee needs to get into it when we get into our report.

12 Senator Pastore. Professor Weizenbaum.

13 MR. WEIZENBAUM: Last month we had sitting in  
14 those hot seats over there an inspector from the FBI who  
15 told us about the National Crime Information Center, which  
16 is alluded to earlier.

17 Mr. De Weese pointed out at the time, and I  
18 think accurately, that given the inspector's own testimony  
19 that some very large percentage of the information kept  
20 in that national crime information system was, in fact,  
21 arrest records, not convictions, and so on.

22 That system itself is misnamed and that in all  
23 the publicity that surrounds that system and the use of the  
24 word "National Crime Information System," that the  
25 inspector voiced over and over again, that he was in effect

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misleading the public.

I think what happens is that people -- or what might happen, in any case, is that people might inquire, you know, is such and such a name in that system. Okay, if the answer to that question is yes, then in the mind of the observer who may again not be trained, the effect is that this must be a national criminal of some kind because he is in the National Crime Information System.

It may very well be that he was mistakenly arrested and so on and so on, all the things that follow that you are well familiar with.

I just want to make that comment.

Then I would like to ask a question of the Representative from the LEAA, Mr. Hall.

Two questions:

One, how many of these state systems that you mention, how many do you in fact -- does your agency in fact support, approximately?

**MR. HALL:** At this point, under the program that I just described, we require the states to submit an action plan describing what they are going to do, who is going to do it, and committing themselves to establishing that.

At this point we have received 21 such plans.

We have approved, I think the number is 16 of them, some with some conditions, and we are actually

1 funding under that program two states.

2           However, there are, I would be less than candid  
3 if I didn't say that in prior years, before the development  
4 of what we call our Comprehensive Data Systems Program,  
5 LEAA has used discretionary funds to support the development  
6 of criminal history, in fact, the entire search effort  
7 was established to develop the prototype of the criminal  
8 history information system, and there were 20 states  
9 actively participating, in that kind of development.

10           At this point, all 50 states or 55 LEAA  
11 jurisdictions are involved in that effort.

12           But at this point, all of the discretionary  
13 funds from the Law Enforcement Systems Administration are  
14 being funnelled, for criminal histories, are being funnelled  
15 through the Comprehensive Data Systems Programs, which does  
16 have the kinds of regulations I just described.

17           However, I think it is -- also to be candid --  
18 most of the funds that are appropriated to LEAA are given  
19 to the states in the form of block grants and at this  
20 point, I have no idea of how much LEAA money is actually  
21 going into such systems.

22           However, just one, just the opposite, just make  
23 a very obvious point, if you say there is -- that a state  
24 is going to receive a hundred dollars, or whatever, in  
25 block grant funds, but that there is -- which they can use

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1 any way they want, virtually, within some constraints,  
2 but that there is an extra \$10 over here that they can  
3 use for development of information and statistical  
4 programs, that the reaction to date, at least, has been to  
5 take that \$10 because that is an extra \$10 and that does  
6 subject them to the rules that I have outlined and that I  
7 will submit to this committee.

8 MR. WEIZENBAUM: I am sorry, I didn't ask my  
9 question sufficiently carefully and elicited a longer  
10 answer than I sought.

11 What I meant was how many systems do you support  
12 over which you have the right and the responsibility to do  
13 the kind of audits that you mentioned?

14 Now, I take it that the answer to that question  
15 would be a number.

16 Mr. Hall. The answer was the first set of  
17 numbers I gave you, and I had to couch it in those terms  
18 to make sure it was clear. We have received at last  
19 count 20 plans of which we have approved 16, which simply  
20 says that the state is now eligible to request funding  
21 through a grant application and we have actually dispensed  
22 money to one and received grant applications, formal grant  
23 applications for one other one.

24 This program was not announced until the last  
25 week in April of this year, so we think that is a fairly

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1 large response.

2 MR. WEIZENBAUM: I wasn't -- that wasn't my  
3 point.

4 Good, so there is at the moment one system in  
5 some state over which you have the right and the duty to  
6 perform the kind of audit you were talking about, a running  
7 system now?

8 MR. HALL: Yes.

9 MR. WEIZENBAUM: Okay.

10 Now, have you performed that audit?

11 MR. HALL: The system is now being established  
12 and we are monitoring the establishment of the system. It  
13 is not operational.

14 MR. WEIZENBAUM: So your remarks about the audit-  
15 ing and so on and so forth were prospective, not retro-  
16 spective?

17 MR. HALL: The remarks are prospective, not  
18 retrospective.

19 MR. SHORT: Excuse me.

20 I feel it is necessary to make a point here.

21 In my remarks, and I am quite aware of the  
22 controls and guidelines set by LEAA and the state court  
23 centers and am in full accord and support with them, we  
24 work closely with LEAA, the reason I did not mention LEAA,  
25 Mr. Hall, was because I was -- I wanted to make the point in



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1 support of Judge Greene's point about judicial independence.  
2 And the reason I did use editorial material is because this  
3 is the kind of information that gets to the public and  
4 forms public opinion and my point was that if public  
5 opinion is being shaken in this direction, it is absolutely  
6 necessary that the judicial branch of government maintain  
7 the aura of independence.

8 MR. HALL: By the way, just for the record,  
9 I couldn't agree with you more.

10 MR. MARTIN: Dr. Gallati?

11 DR. GALLATI: Mr. Short put in the record from  
12 Editorial Service the fact that the FBI, NCIC had adopted  
13 only one of the recommendations proposed by Project Search.  
14 This is absolutely untrue. I wouldn't give you any number  
15 exactly because -- some of them have been adopted in toto,  
16 some have been adopted in part.

17 Not all of the recommendations of Project Search  
18 have been adopted by NCIC, but a substantial number of  
19 them have been, to their credit, and I think we should  
20 in fairness to the FBI and NCIC, which is more than the FBI  
21 per se, it is a consortium of states operating with the FBI  
22 also, they have a relatively good security privacy program  
23 at this time. I think it could be improved, as every  
24 state program.

25 MR. SHORT: There again, no question, I agree,

1 that is probably very true.

2 As I say, the only reason I pointed this out  
3 was that these were the opinions which are shaping public  
4 opinion, and that this is why the need for judicial  
5 independence, one of the needs.

6 MR. MARTIN: I have the feeling we could con-  
7 tinue all day, and I am really sorry we don't -- that we  
8 didn't plan to have it that way, but I think we are  
9 close to a half an hour over our scheduled time.

10 Lunch awaits us and then more this afternoon.

11 So I am going to suggest that after Judge Greene  
12 and Professor Miller, that we might call a halt to the  
13 formal presentation.

14 Perhaps there will be opportunity over lunch to  
15 continue the discussion informally.

16 JUDGE GREENE: I will be very brief.

17 What is somewhat disturbing is that most of the  
18 funding for all these programs is coming from law  
19 enforcement oriented agencies.

20 Now, while in a sense the courts are a part of  
21 the law enforcement process, in another sence, they  
22 transcend that process.

23 The criminal justice system isn't just concerned  
24 with law enforcement, it is presumably also concerned with  
25 the rights of the defendant on the other side.

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1 I don't know what all these safeguards are and  
2 all these things that are built into it, but the chances  
3 are that the bias, if any, in all of these programs, is  
4 law enforcement oriented, prosecution-police oriented,  
5 and it is somewhat disturbing that all the funding is  
6 going to come from that kind of source and I -- the conclusion  
7 will be inescapable, that eventually, that kind of point  
8 of view will prevail in the appropriation.

9 MR. HALL: A quick comment under the 1968 Act,  
10 law enforcement is defined the way I would define criminal  
11 justice.

12 It certainly does include courts as well as police,  
13 prosecutions, corrections.

14 JUDGE GREENE: Does it include the defense bar?

15 MR. HALL: Yes, as a matter of fact, it does.  
16 And I think the evidence of some interest in the courts is  
17 the fact that we are funding the national center for state  
18 courts.

19 I think we have, well, the national center for  
20 state courts has a great deal of financial support from LEAA.

21 MR. SHORT: That is better.

22 MR. HALL: All right.

23 MR. MARTIN: Professor Miller.

24 JUDGE GREENE: I don't like to contradict you,  
25 but I happen to be on the board of the agency that

or 17  
1 distributes the LEAA funds in the District of Columbia,  
2 the Mayor's Board, and I did not note any men of the  
3 defense bar on that board, although a number of prose-  
4 cution and police officials are on that.

5 MR. HALL: That is true.

6 MR. MARTIN: Professor Miller?

7 MR. MILLER: Yes, I have three quick cases,  
8 first the observation that LEAA contributions -- it  
9 contributes to or is a partial supporter of the National  
10 Center on State Courts, I think is a very good illustration  
11 of how easy it is to weaken the separation of powers and  
12 I frankly am somewhat dismayed to hear that there is that  
13 kind of nexus between you.

14 The second point is I trust from what Mr. Hall  
15 has said to us, is that the committee realizes, most  
16 assuredly 16, probably 21, and there is a very good  
17 chance of 50 state court -- excuse me, state information  
18 systems will be funded through LEAA, will carry the  
19 euphemism, criminal offender data system, despite the fact  
20 that probably a very significant percentage of the files  
21 in those criminal offender systems will be just people  
22 who have had an arrest.

23 I submit that is brain washing. That is dangerous  
24 to the understanding of the public at large, who will  
25 read in the daily paper about these criminal offender

information systems.

It is like calling the Defense Department, the Defense Department rather than as it used to be called, the War Department.

My last point is a frivolous one and that is to thank staff, in particularly Nancy, for putting this rather exciting panel together.

There is only one mistake you made, Nancy.

Last night the CBS movie was "Heat of Anger," in which the entire movie really turns on the admissibility of a 25-year old conviction record against a man we know in our hearts is innocent.

MR. MARTIN: Thank you all, participants and discussants, very much, for being with us today.

Let's try to be back here at 2:15.

(Whereupon, at 12:05 p.m., the hearing was recessed, to reconvene at 2:15, on this same day, in the same place.)

AFTERNOON SESSION

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(2:25 p.m.)

MR. MARTIN: Would the meeting please come to order.

Chairman Grommers regrets, gentlemen, her inability to be present at this meeting, and asked me to express, then, to you, her gratitude for your willingness to come and present to the committee about personal data systems in financial institutions.

Our presenters, this afternoon, are William M. Adams, Associate Director for Operations and Automation Division of the American Bankers Association, whose presentation might, I think, appropriately, I think come last, since he will be holding up with slide, a division of the electric money, I guess it is called; and its potential implications for bank record keeping systems.

Charles Borson, we apologize for the misspelling of your name in the agenda. He is Executive Vice President of the National Society of Comptrollers and Financial Officers.

Richard Freund -- we are drawing again for help on the First National City Bank. One of his colleagues was Mr. Storm, who was on the panel this morning.

And Kenneth McLean, who comes for the second time before the committee to talk about the financial record

1 keeping and currency and foreign transactions reporting act  
2 of 1970.

3 I think we might appropriately start with Mr.  
4 Borsom, and then proceed to Mr. Freund, and then Ken McLean,  
5 and finally Mr. Adams.

6 MR. BORSOM: Very well, Mr. Chairman.

7 Maybe my contribution here would be to help the  
8 committee eliminate from its shopping list the savings and  
9 loan business, when I explain that Savings and Loan Associa-  
10 tions have about 51 million savings accounts and about 13  
11 million mortgage loan accounts.

12 And, it is a data processing which is about 80  
13 percent computerized, is account-number controlled, access  
14 is by the account number which is an arbitrary number assigned  
15 by each individual Savings and Loan Association to an account  
16 when it is opened.

17 We do not keep any automated personal data files  
18 in the sense that, oh, the courts do, or credit bureaus  
19 do. We simply have these accounting accounts. The computer  
20 is expected to calculate the monthly earnings on loans and  
21 monthly, or sometimes, even daily earnings on savings accounts.  
22 and while there is no social security identification number  
23 with loan accounts, there is with the savings accounts,  
24 as required for 1099 report submission -- the Internal Revenue  
25 Service Form which you, perhaps, are all familiar with.

1           However, the Social Security ID number is just  
2 stored. It is not -- no accounts are accessed by use of this  
3 number, and the -- I can go now, I think, to the matter of  
4 security.

5           There is a, of course, a concern for the security  
6 of the equipment and the security of the record, and computer  
7 rooms are, with rare exception, I cannot recall any; are  
8 under security system, where people who must be identified,  
9 sign in and sign out. Doors are locked.

10           People who work in SAVings and Loan Associations  
11 commonly are not permitted to have their mortgage loan with  
12 that same Savings and Loan Association, but generally, there  
13 are arrangements made with a couple of other Savings and Loan  
14 Associations so that the loans are -- the staff of Association  
15 A commonly goes to Association B, C, or D, to get a loan.

16           This makes these Loan files and these Savings  
17 files, which are given all in account-number-order for the  
18 computer personnel; really are just a bunch of numbers.  
19 Now the names are printed out when histories of the accounts  
20 are printed periodically, but again, the printout is by  
21 account number, so that if you were in a big institution, and  
22 you were in the computer department, you would have a devil  
23 of a time finding out the balance of even a friend.

24           You would have to search through thousands and  
25 thousands of accounts, because customarily the alphabetic-



1 numeric files are not a part of the computer room. They  
2 are, of course a part of other departments in the association,  
3 however.

4 I might conclude by saying that Savings and Loan  
5 Associations are very much interested in the attitude that  
6 their customers have towards them, and they hope that the  
7 borrowing customer will, when he gets his mortgage paid  
8 down a little bit, become a savings customer, so they are  
9 very sensitive to how their customers are treated.

10 And I don't think that anyone of the staff could  
11 phone any Savings and Loan Association, and get any satis-  
12 factory information, other than, perhaps that the individual  
13 had an account at the institution.

14 I might digress by saying, I have had occasion,  
15 personally, to know that an individual who was either on my  
16 staff, or who I was maybe considering hiring had an account,  
17 and I would call a friend who worked in a Savings and Loan  
18 Association and chat about the matter, and always got very  
19 circumspect answers, such as, "Yes, there is an account," and  
20 "He has had an account for a long while."

21 The operating rules are that if an individual  
22 who has an account at a Savings and Loan Association wants  
23 to, they may have the information in their account disclosed  
24 to others by written instructions, or appear personally, in  
25 the Association office, and ask, or instruct that the

1 information be given.

2 The Associations do, of course, cooperate with  
3 credit bureaus and send information to them and they usually  
4 use credit bureaus to get information on the extension of  
5 credit.

6 However, compared to most lenders, our turnover  
7 in loans is much lower so that we are not dealing with as  
8 many people. For instance, customarily, a mortgage loan is  
9 issued, today, for a period of 20 to 30 years; and while its  
10 normal life may go on only for ten years, it reduces the  
11 frequency with which people apply for credit at a Savings  
12 and Loan Association, compared with a small organization,  
13 or organizations, which make small-dollar-amount loans, for  
14 a short period of time.

15 I cannot think of anything else that I might  
16 add to help you understand the Savings and Loan situation,  
17 Mr. Chairman.

18 I could take questions now or if you prefer, later.

19 MR. MARTIN: Is your time constrained, sir? What  
20 time do you have to leave us?

21 MR. BORSOM: Well, I would like to be just a  
22 nod ahead of the traffic, but I can stay until 5:30, or six.

23 MR. MARTIN: Fine, if you don't mind, I think we  
24 might go ahead and then I will give a chance for questioning  
25 after the presentations are completed.

1 Mr. Freund?

2 MR. FREUND: Thank you.

3 I think, to meaningfully discuss automated personal  
4 data systems in commercial banks, one must first understand  
5 the role of data processing in banks.

6 Operationally, banks can be looked upon as finan-  
7 cial transaction processing organizations.

8 Transactions in the forms of checks, deposit  
9 tickets, stock certificates, bonds, loan applications, prom-  
10 issory notes, mortgage loan applications, loan payments,  
11 payment orders, and so, flow through a bank.

12 With the exception of currency -- which is  
13 relatively small in both physical volume, and dollar value --  
14 it is not the document itself -- the check or the deposit  
15 ticket, or the loan application, et cetera -- which is pro-  
16 cessed, but rather the financial information, recorded on  
17 the document.

18 Parenthetically, having the financial information  
19 recorded and communicated by electronic signals rather than  
20 by a paper document is at the heart and soul of today's  
21 movement towards an electronic funds transfer system -- the  
22 so-called checkless society.

23 This view of a bank as a financial transaction  
24 processing system is true whether the transactions are  
25 processed -- as they were at one time -- by clerks, sitting

1 on high stools, using quill pens or -- as was the case up  
2 until the mid-30s -- by clerks sitting on low stools,  
3 using hand-operated, adding and bookkeeping machines, or as  
4 it was up until the late 50s, by clerks sitting in cushioned  
5 posture chairs using electromechanical calculators, and  
6 bookkeeping machines; or -- as it is today -- by electronic  
7 computers calculating, and recording data at speeds measured  
8 in millionths of a second.

9 So, banking has progressed from performing its  
10 basic processing operations by hand through various stages  
11 of technological evolution until today when operations are  
12 performed by electronic computers.

13 Clearly, the computer in a bank is merely the  
14 current state-of-the-art tool, in a long line of tools for  
15 processing the transactions that flow through the bank.

16 The computer in a bank is comparable to a machine  
17 tool in an automobile manufacturing plant.

18 In banking, the computers process financial infor-  
19 mation, and produce a variety of financial services, in  
20 General Motors, Ford, Chrysler, and American Motors, the  
21 machine tools process metal and produce a variety of cars.

22 I regret taking your time with all of the fore-  
23 going background information, but I hope it does provide us  
24 with a base of common understanding.

25 In banking today, computers are used for processing

1 accounting operations for many traditional banking services  
2 including the following: checking accounts, credit cards,  
3 savings accounts, installment loans, commercial loans,  
4 mortgage loans, payrolls, corporate trust, accounts payable,  
5 accounts receivables, stock transfers, and so on.

6 In all of these services, only dollar values and  
7 quantified information is computer-processed.

8 From a very practical point of view, computers  
9 in banks are used almost exclusively as high-speed accounting  
10 machines, and not as repositories for large files of personal  
11 information.

12 The use of computers in banks has not resulted in  
13 the collection of additional personal data on individuals.

14 The form you fill out when applying for a loan is  
15 substantially the same today, as it was in pre-computer days.

16 Personal data on individuals is held in decentral-  
17 ized, physical files, and not stored in one huge centralized  
18 computerized file.

19 The loan application you filled out is filed in a  
20 metal file cabinet, in the Loan Department, just as it was,  
21 20 years ago.

22 The dollar values of transactions for two or more  
23 computerized services are in separate and often, physically  
24 remote files.

25 For example, if an individual who has a credit

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1 card account with us also happens to own some shares of a  
2 corporation, for which we act as transfer agent; the two  
3 files are separated by some 50 miles, and are without a  
4 connecting link.

5 Internally, within a bank, there is no greater  
6 sharing of personal data on individuals who have a computer-  
7 ized account of some type than there was when the accounting  
8 was performed manually -- one could make a strong case that  
9 there is less sharing today, than there was, then.

10 Certainly there are greater physical safeguards  
11 in today's computerized banking operations than was ever  
12 dreamed of in the past.

13 It is common to find in banking today, computer  
14 areas protected by complex security systems, consisting of  
15 guards, closed circuit television surveillance, man-trap  
16 vestibules, machine-readable ID cards, and program library  
17 vaults.

18 In addition to the physical safeguards, computers,  
19 themselves, offer what might be considered intellectual pro-  
20 tection, in the form of the program language which, while  
21 familiar to the initiated, differs in syntax from one organ-  
22 ization and one programmer to another.

23 Externally, the sharing of personal data on  
24 individuals has had no impact, one way or the other, by the  
25 advent of the computer.

1           Traditionally, it is assumed that when an indi-  
2           vidual references his bank as a source of information on  
3           his financial worthiness, his bank is obligated to him, to  
4           appropriately attest to that worthiness.

5           Beyond that, the bank is responsive to the due  
6           process of the law.

7           But, let me emphasize, in neither case, does the  
8           existence or nonexistence of automated, personal data  
9           systems, affect a bank's responsiveness.

10          In summary then: Banks are financial transaction  
11          processing organizations.

12          Computers are just the best, present way of pro-  
13          cessing financial transactions.

14          Computers in banks are used primarily for pro-  
15          cessing numerical values, and not for recording nonquantifiable  
16          information.

17          Internally and externally, there is no greater  
18          sharing of personal data on individuals, as a result of  
19          automation.

20          George Owell's 1984 has not yet arrived on the  
21          banking scene.

22          Thank you.

MR. MARTIN: Thank you.

Kenneth McLean, professional staff member with the Banking, Housing and Urban Affairs Committee of the Senate will tell us about the -- sometimes shortly referred to as the Foreign Currency Transactions Act.

MR. MC LEAN: Thank you, Dave.

I am glad to be back. As some of you may recall at your first meeting, I talked about the fair credit reporting act which was one title of Public Law 91-508, and oddly enough and by, perhaps, ironic coincidence, two additional titles to that same piece of legislation have been often mistakenly referred to as the Bank Secrecy Act. And I believe these two pieces of legislation demonstrate to some extent the schizophrenic process of Congress and the fact that it often pursues simultaneously two public policy objectives which are somewhat in conflict.

The Fair Credit Reporting Act, of course, is concerned with the issue of privacy and particularly the privacy of individual consumers with respect to credit reporting agencies. The Bank Secrecy Act actually was concerned with law enforcement objectives and was aimed at giving law enforcement agencies greater access to financial records.

To give you a little bit of the background of the legislation, it grew out of a series of hearings beginning



1 in 1968 held by Congressman Patman in the House Banking and  
2 Currency Committee. While the initial focus of these hearings  
3 was on Swiss bank accounts, the concern expanded to include  
4 financial records in general.

5           Testimony was given by various law enforcement  
6 agencies that they were hampered and stymied by the lack of  
7 access to bank records, not only in Swiss foreign bank  
8 accounts but also in domestic banks.

9           In particular the charge was made that many of  
10 the larger banks especially in New York, for one reason or  
11 another, had stopped the practice of microfilming of copies  
12 of checks. Other banks had shortened the time period by  
13 which these checks were kept on file.

14           The law enforcement people argued that this type  
15 of information, checking account information, is of vital  
16 importance in pursuing various investigations involving  
17 income tax frauds, security manipulations and a whole host of  
18 other white collar criminal activities.

19           And they had urged that legislation be passed which  
20 would require additional volume of recordkeeping on the part  
21 of financial institutions both on domestic and international  
22 transactions.

23           It is somewhat unfortunate that the titles or the  
24 hearing process concentrated primarily on the problem of  
25 Swiss bank accounts, but I think a careful reading of the

1 hearing shows that the Congress and the Committee were  
2 concerned really with the whole range of financial transactions,  
3 both domestic and international.

4 The principal controversy in the legislation was  
5 not one of privacy. In fact, the issue of privacy was seldom  
6 raised. And when it was, it was raised by the commercial  
7 banking industry, and for one reason or another was not taken  
8 seriously by the Congress.

9 The principal controversy arose over the level and  
10 scope and extent of the recordkeeping requirements and the  
11 discretion of the Secretary of the Treasury in prescribing  
12 these requirements. The original draft of the bill was  
13 prepared by the House Banking Committee Staff in consultation,  
14 close consultation, with the Justice Department, particularly  
15 the Organized Crime Division of the Justice Department which had  
16 the greatest stake in this legislation as well as the U.S.  
17 Attorney's office of the Southern District of New York, which  
18 was headed up at that time by Robert Morgenthau, who,  
19 incidentally, has probably brought more prosecutions in the  
20 white collar crime area than any other U.S. Attorney.

21 The first draft of the legislation received  
22 Justice Department's endorsement and Administration support,  
23 following which the New York banking community reacted quite  
24 adversely.

25 They felt that the recordkeeping burden was too

1 burdensome in respect to the objectives which would be  
2 received and they argued for discretionary authority by the  
3 Secretary of the Treasury to prescribe exactly what types of  
4 records would be kept.

5           The Democrats -- of the Patent Committee -- felt that  
6 discretionary authority given to the Secretary of the Treasury  
7 would result in inadequate relation, and therefore, their  
8 approach was to come up with a rather rigid bill which specifi-  
9 cally prescribed and mandated the types of records to be  
10 kept.

11           This approach was adopted and passed the House of  
12 Representatives. When the bill came over to the Senate, the  
13 Treasury argued that, somewhat successfully, that they should have  
14 greater authority in prescribing these recordkeeping require-  
15 ments and they convinced the Senate Banking Committee.

16           So the bill basically gave the Secretary of the  
17 Treasury the authority to prescribe these requirements without  
18 listing in detail or mandating in particular which types of  
19 records would be kept.

20           When the Committee met to resolve the differences  
21 between the House and Senate Bill, the language, I think in  
22 part was mussed up, but the end result as far as the Treasury  
23 is concerned prescribed the Treasury's views to require --  
24 on the part of financial institutions, to keep copies of checks  
25 and similar instruments as mandated by the Congress, and at

1 least that's the way (inaudible).

2 Following this heated controversy the Treasury  
3 issued regulations which were to be effected in July 1 of 1972  
4 to implement the Bank Secrecy Act.

5 When I say the "Bank Secrecy Act", it was passed, I  
6 think, in October of 1970, so there was a considerable lag  
7 between the passage of the Act and the regulations.

8 As it finally emerged from the Congress, there were  
9 five substantive provisions of the legislation. And I will  
10 just quickly run over those to give you an idea of what we  
11 are talking about.

12 First of all it does require financial institutions,  
13 banks and other financial institutions, to keep such records  
14 as the Secretary of the Treasury determines are useable to  
15 law enforcement agencies, criminal actions, or regulatory  
16 provisions.

17 Secondly, the legislation requires that unusual  
18 currency, domestic currency transactions, that is, deposit  
19 or withdrawal of currency, be reported either by the financial  
20 institution or the individual concern or both. The implementing  
21 regulations require reporting only by the financial institu-  
22 tion involved and it set the cut-off point at \$10,000.

23 So that, in effect, if any one walks into a bank  
24 and deposits \$10,000 in currency, or withdraws \$10,000 in  
25 currency, the bank under these regulations was required to

1 file the report thereon with the Secretary of the Treasury.

2 Thirdly, the legislation required reports on the part  
3 of individuals who take currency out of the country or into  
4 the country in excess of \$5,000 on any one occasion.

5 And the regulations simply implement this requirement.

6 Fourth, the legislation authorizes the Secretary  
7 of the Treasury to require reports from individuals who  
8 maintain accounts with foreign financial institutions; this  
9 was aimed particularly at the person who has a bank account  
10 in Switzerland or some other country that has strict bank  
11 secrecy laws, and might be using this to evade the income tax  
12 laws or other statutory requirements.

13 The Secretary has implemented that requirement  
14 by regulations which requires individuals to answer a question  
15 on their income tax return, a yes or no question, "Do you  
16 have an account with a foreign financial institution?"

17 The fifth substantive provision of the legislation  
18 authorizes the Secretary of the Treasury to require that  
19 individuals who have accounts with foreign financial institu-  
20 tions maintain certain records. The implementing regulations  
21 require these individuals to keep a record of the name of the  
22 foreign financial institution, the name of the account holder,  
23 and the highest balance in the account during the preceding  
24 year, and number of the account -- if there is a number of  
25 the account.

1           Following the initial publication of these regula-  
2 tions the legislation came under legal challenge by the Cali-  
3 fornia Bankers Association and the California Civil Liberties  
4 Union --

5           MR. MARTIN: Could you speak just a little louder,  
6 please?

7           MR. MC LAIN: Yes.

8           They filed an action in the Federal District Court  
9 in California challenging the constitutional authority of  
10 the entire act and a three-judge court was appointed to review  
11 these, review the action; and has recently issued a decision  
12 declaring the second substantive requirement I mentioned to be  
13 unconstitutional -- and that is the one that requires  
14 currency reports on domestic financial transactions in excess  
15 of \$10,000. The other sections of the act apparently were  
16 considered to be constitutional by the Federal District Court.

17           While this was going on and prior to the decision  
18 of the court, two Senators in the Senate introduced legisla-  
19 tion to restrict access to bank records on the part of law  
20 enforcement agencies or other persons for that matter. One  
21 was introduced by Senator Tunney of California; the second  
22 by Senator Mathias, of Maryland.

23           Both bills, as I say, would restrict access. The  
24 Tunney bill would limit access to bank records to the following  
25 conditions:

1           One is where the account holder himself has given his  
2 consent to an agency's obtaining access to his bank records.

3           Secondly, a bank would furnish information if it  
4 was pursuant to a summons or subpoena, provided that the  
5 summons or subpoena was also served on the account holder and  
6 would not entertain objections to that summons or subpoena.

7           Thirdly, under the Tunney bill, an agency could  
8 obtain access to bank information and an individual pursuant  
9 to a court order without notification provided the -- there  
10 was a showing that the -- that there was probable cause that  
11 a crime had been committed and that the information was  
12 necessary in the investigation of that crime.

13           The Mathias bill was more stringent than the Tunney  
14 bill in the access area. It provided for access only in the  
15 case of assent by the account holder or alternatively in the  
16 case of a court order, again with the showing of probable  
17 cause, and then with an additional requirement that there be a  
18 21-day waiting period before these records could be obtained.

19           This is presumably to give the person an opportunity  
20 to challenge the legality of the court order through the courts.

21           In addition, the Mathias bill would also preclude  
22 the requirement for domestic recordkeeping on the part of  
23 commercial banks.

24           As I said, these recordkeeping requirements apply  
25 to all bank records other than transactions international or

1 domestic. The Mathias bill would apply these requirements  
2 only to international transactions.

3 The Subcommittee on Financial Institutions of  
4 the Senate Banking Committee held two days of hearings on  
5 the Tunney and Mathias bills, as well as on the general issue  
6 of bank secrecy and the treasury regulations. One of your  
7 distinguished panel members or Commission members testified at  
8 these hearings, Professor Arthur Miller, of Harvard, and was  
9 quite persuasive, I thought.

10 The general issues --

11 MR. MILLER: Nobody here would agree with that.

12 MRS. HARDAWAY: I was going to say for the record,  
13 can we say that doesn't surprise us?

14 MR. MC LAIN: As you would expect, the Administra-  
15 tion was opposed to any legislation in this area. They  
16 argued that any impediment to access to bank records would  
17 restrict law enforcement activities and would result in a  
18 weakening of law enforcement.

19 On the other hand, various civil liberty groups  
20 concerned with this issue, and legal scholars testified  
21 strongly that there are basic constitutional rights, that  
22 there are no protections in the statute or implementing  
23 regulations that in any way govern the conditions by which  
24 federal agencies can gain access to these records.

25 When Congress passed the legislation we were under



1 the impression that a federal agency could not obtain access  
2 to bank records unless it was pursuant to a subpoena or other  
3 legal process, and this assumption was contained both in the  
4 House and Senate reports and the legislation.

5 Following that we have learned that this really is not  
6 the case, that quite frequently the Federal Bureau of Investi-  
7 gation, perhaps other agencies, have been able to obtain  
8 bank information on an informal basis without a subpoena or  
9 summons or a court order, or without any kind of notification  
10 whatsoever to the individual.

11 Columnist Jack Anderson testified before a committee to  
12 this effect and presented the Committee with copies of FBI  
13 records that he had somehow obtained, on three individuals:  
14 Jane Fonda, Benjamin Spock, and I believe Flloyd McKissic,  
15 showing conclusively that the FBI has been bugging their  
16 bank accounts and getting information on the financial transac-  
17 tions of these individuals, all without a court order and all  
18 in strict secrecy.

19 When confronted with this issue, the Chief of the  
20 Organized Crime Division, William Lynch, acknowledged that  
21 this type of surveillance does go on, but he felt that no  
22 additional legislation was necessary. He argued that the FBI  
23 officials are responsible and that they are obtaining this  
24 information when necessary in cases of national security or in  
25 the prosecution of crimes, and that bankers were responsible

1 officials and could be counted on to protect the public  
2 interest.

3           The banking community was caught somewhat in the  
4 middle. I guess they really weren't too happy with the  
5 legislation for two reasons: one, of course, is that it  
6 does impose an extra cost burden on banks to keep these  
7 records, and secondly, it does breach somewhat the fiduciary  
8 relationship between the bank and its customer.

9           I think if I could summarize the views of the  
10 banking industry is that they want to be taken off the hook  
11 and they want to know what they can do and what they can't do,  
12 and they don't want to be left with the burden of making a  
13 decision. They recommended legislation that would simply  
14 prohibit the bank from turning any information to a law  
15 enforcement agency unless it was pursuant to some kind of  
16 subpoena or legal process.

17           This would take the decision-making out of the hands  
18 of the banker and put it in the hands of the court or whatever  
19 agency had authority.

20           Following these hearings, the Subcommittee unfor-  
21 tunately was not able to meet to consider the legislation  
22 because of the lateness of the sessions. So, at the present  
23 time the staff of the Subcommittee, myself and other  
24 individuals involved, are in the process of going over  
25 the hearing record, trying to sift the arguments presented

1 by both sides and to come up with some reasonable solutions  
2 that would guarantee the individual the right of privacy with-  
3 out at the same time impeding the criminal investigative acti-  
4 vities. Whether these two objectives can be reconciled is  
5 doubtful.

6 And I think in the final analysis a decision would  
7 have to be made based pretty much on one's own value system,  
8 as to what type of value or premium he would put on the  
9 objective of privacy versus the efficiency of law enforcement,  
10 -- like in any decision in a democracy.

11 So it requires a balancing of the objectives, a  
12 balancing of the equities, and I assume this is pretty much  
13 the process that the committee will go through next year when  
14 it takes up the legislation.

15 I am hopeful that we can get to it early next  
16 year, come up with some reasonable approach. It seems clear  
17 as a minimum that some legislation is necessary to clarify  
18 the access provisions. Whether it would go as far as the  
19 Tunney bill or the Mathias bill at this point in time is open  
20 to question.

21 That is all.

22

23

24

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1 MR. MARTIN: Thank you very much, Ken. Our fourth  
2 and final presenter is Charles -- oh, William M. Adams, yes,  
3 associate director, operations and automation division of the  
4 American Bankers Association who will, with some slides, give  
5 us a picture of the emerging future in banking operations,  
6 providing a basis for consideration of what record keeping  
7 operations of banks may be like in the face of this emerging  
8 future.

9 MR. ADAMS: Okay, I want to go back a couple --  
10 three years, or four or five years -- to when the term or  
11 phrase "checkless society" first got started across the  
12 country and that will be my starting point for this particular  
13 presentation.

14 (Slide.)

15 And I guess one of the reasons that the checkless  
16 society terminology got started was that bankers were a little  
17 bit afraid that they might get inundated with all the paper-  
18 work and collapse, kind of like the brokerage industry did.

19 If you notice in the slide that looks like Charles  
20 De Gaulle in the middle rather than a banker, but it does  
21 give you the impression that the bankers were afraid that the  
22 paperwork and numbers and volumes of checks were going to be  
23 just too much to handle and we were going to be inundated  
24 and collapse like the brokerage industry did.

25 And about the same time, I guess, there were a lot

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1 programmers and assistance people who realized that the use  
2 of checks was no longer, or at the same time in the future,  
3 wasn't going to be needed. They saw that the technology could  
4 keep up with that. So about this time, the check itself came  
5 under a great deal of scrutiny as a medium of exchange here  
6 in the country, and it was about this time that the so-called  
7 cashless society phrase first got started.

8 Now, this particular slide is rigged, obviously.  
9 This particular firm doesn't want to take any cash, not be-  
10 cause they are promoters of the cashless society, but it is  
11 a little firm down here on 17th Street and they are a little  
12 afraid of getting robbed, so they have got this sign up to  
13 indicate they don't have any cash aboard and don't rob us,  
14 but it gives you an idea that there was a great deal of con-  
15 cern on the part of the banking industry about whether or not  
16 the check was going to be here.

17 The technicians thought we could get into a check-  
18 less, cashless society because technologically, it was feasible.  
19 And there were some people within the industry that were ad-  
20 vocating that we move headlong and rush into the checkless  
21 society. In fact, there were some that suggested we isolate  
22 a city in the United States and try it on an experimental  
23 basis, no cash, no checks, so forth.

24 It was out of this particular concern that the ABA  
25 or banking industry created monetary and payment system planning

kar 3 1 committee. And their primary objective, well, this will give  
2 you an idea of who was on the planning committee. These were  
3 policy level bankers, not technicians. These are presidents  
4 of banks and chairmen of the boards of banks and they formed  
5 this monetary and payment system planning committee and their  
6 primary objective was to determine whether or not their present  
7 check payment system, as we know it, could survive the decade  
8 of the '70s and whether or not we ought to rush headlong into  
9 the checkless society.

10 (Slide.)

11 One of the things they found out, this committee.  
12 through a study they had done, was that the check volume was  
13 growing at a seven percent annual rate, which meant that by  
14 the time we reach 1980, we would, in the United States, have  
15 doubled our volume of checks and banks will be processing 44  
16 million checks a year, rather than 22 billion as they did in  
17 1970.

18 (Slide.)

19 And the MAPS committee also found that the check  
20 processing system, even though we use MICR and computers quite  
21 heavily, it is still quite heavily labor incentives. Still  
22 60 percent of the cost of processing checks goes for labor-  
23 type functions as opposed to equipment-type functions.

24 (Slide.)

25 One of the things they projected was the available

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1 supply of clerical help between now and 1980, realizing that  
2 the available supply of good people was going down or wasn't  
3 going to meet the increased rate of growth.

4 And the cost of checking or processing checks was  
5 going to go up.

6 (Slide.)

7 But, however, they did find that the system that is  
8 in existence today is operationally sound. And that it is  
9 very easily going to handle the volume of checks that is going  
10 to happen between now and 1980.

11 (Slide.)

12 So there primary conclusion was, after two years of  
13 study was that our present payment check system can handle the  
14 volume of checks and growth between now and 1980.

15 (Slide.)

16 And they also have found, took an attitude study  
17 and found on the part of consumers, businessmen and bankers,  
18 that none of these people really wanted the check payment  
19 system changed in any way. Everybody was -- that they talked  
20 to in these three categories, felt like the checkless society  
21 was something they didn't want and they were pretty well  
22 satisfied with the checking system as we have it today, without  
23 making any changes to it.

24 (Slide.)

25 However, the committee did feel like that what was

kar 5 1 needed in the industry was an evolutionary change rather than  
2 a revolutionary change. They did feel like that with the  
3 volume of checks doubling by 1980 and with the clerical supply  
4 going down and the cost of labor going up, that maybe by 1980  
5 we couldn't afford the check payment system as we know it  
6 today, that the cost of processing checks might be too great,  
7 for the people to like it like they do today.

8 (Slide.)

9 So they did recommend this MAPS committee that the  
10 banking industry develop some clearing and distribution  
11 facilities for handling some form of electronic payment.

12 (Slide.)

13 And they recommended that this development of  
14 automated clearing facilities, if you will, be done on a  
15 local basis by local bank clearing houses.

16 (Slide.)

17 And they recommended that someday these local bank  
18 automated clearing facilities be tied together by some form  
19 of communication network so that the local clearing facilities  
20 could exchange payments between cities.

21 (Slide.)

22 And they recommended that the ABA provide liaison  
23 between these developments of automated clearing facilities.  
24 This is my primary function with the ABA, is doing this kind  
25 of thing, promoting the development of automated clearing



kar 6 1 facilities for the banking industry.

2 (Slide.)

3 They also recommended that the charge card or  
4 bank card be developed to its full potential, they saw within  
5 this a way of alleviating or reducing the need or reliance  
6 upon checks.

7 (Slide.)

8 Okay, out of MAPS committee, this particular MAPS  
9 committee met, made their final report in March of last year,  
10 and since that time, we have seen in the banking industry a  
11 lot of cities start their own clearing house developments,  
12 and this started in California with a committee out there called  
13 a SCOPE committee and the SCOPE committee in California was  
14 formed about four years ago and the SCOPE as it says here,  
15 stands for Special Committee on Paperless Entries.

16 (Slide.)

17 And we kind of put all kinds of SCOPE activities  
18 together and classified this as any kind of development that  
19 is going on within the country on a local clearing house level  
20 that is looking into ways of changing their particular payment  
21 mechanism as a SCOPE activity.

22 (Slide.)

23 Right now there are SCOPE committees located in each  
24 of these cities you see up here on the map. There are some 22  
25 odd SCOPE committees in existence, now some of these are

KAR 1 dedicated to creation of an automated clearing house for ex-  
2 change of electronic payments, some of them are just merely  
3 studying the situation and others are just acknowledging that  
4 those changes are coming and that they may get involved with  
5 it.

6 (Slide.)

7 Now, the granddaddy SCOPE group of them all was the  
8 one in California. This particular slide is a schematic of  
9 the way the California SCOPE system workes. Now, the California  
10 SCOPE system is going into existence or starting operation  
11 October 16, and they are going to put automated clearing  
12 houses in both Los Angeles and San Francisco. And some 97  
13 percent of the banks in California have agreed to participate.  
14 And the idea is that a participating bank can receive from one  
15 of its customers, an employer, let's say it is an employer,  
16 as the schematic shows, an employer signs up with a bank, any  
17 of his employees that would like to have their payroll depos-  
18 ited directly into their checking accout can so sign an iden-  
19 tification agreement with their bank and employer that says  
20 they would like to have their pay earnings deposited directly  
21 into their bank and they would like not to have a check given  
22 to them for their pay.

23 What happens is their employer creates a magnetic  
24 tape or could be punch cards, and this is -- represents the  
25 employees who are participating earnings for that particular

kar 8 1 pay period. They give this magnetic tape to this bank and  
2 their bank submits it to this automated clearing house in  
3 San Francisco or Los Angeles. And the employee then can  
4 bank with any participating bank in the State of California.

5 And the employer doesn't have to bank with any  
6 bank, but the one he wants to, but he gives the tape to his  
7 own bank, his own bank then in turn peels off the items on  
8 employees that bank with his bank, submits the rest to the  
9 clearing house and they merge all these tapes together and he  
10 gets one tape back for all employees paid similarly who bank  
11 with him.

12 (Slide.)

13 This shows the same thing. The businessman gives  
14 the bank the payroll data and the bank in turn gives his to  
15 the automated clearing house and the employee's checking account  
16 is then credited for the amount of the pay for that, and the  
17 employee does not have to show up at the bank at all.

18 Now, in a similar fashion, the California system  
19 could obviously handle preauthorized debits or payments. In  
20 other words, he could arrange with his bank for the bank to  
21 pay certain kinds of bills and the mortgage company or the  
22 insurance company or whatever it was that he was paying could  
23 submit a tape to the bank saying these people owe me money,  
24 take it out of their checking accounts and that is the way that  
25 would work.

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(Slide.)

That is the California SCOPE system and it is going into operation October 16. This particular schematic shows an arrangement in Indianapolis between four banks who accept payroll tapes in a similar fashion to what California has planning. The only difference is that the banks don't have an automated clearing house, it is just an arrangement and they have four employer companies that are signed up and they give tapes to each of the four major banks in Indianapolis.

Right now they have got four companies signed up that do this sort of thing and any of their employees who live within a 21 county area around Marian County in Indianapolis can have their payroll earnings deposited in any bank within that 21 county area.

(Slide.)

About two years ago, the Georgia Tech, a group of Georgia Tech people started a study on the research on improvements of the payments mechanism, and this was a federal research sponsored project to find out if there were ways they could improve the payment mechanism, say, in a specific area like Georgia or Atlanta or -- and it was out of this study -- this group looked at four different forms of electronic fund transfer services, or these are check alternatives, that they look at as to how feasible they were, whether or not they were marketable to consumers and so forth.

E kar 10 1

2 And the four they looked at were direct deposit  
3 payroll, what California SCOPE is doing, preauthorized payments  
4 which the California group can do, they looked at point of  
5 sale funds tranfer, that is where you go into a store and you  
6 buy something at the store and the merchnat credits your,  
7 or debits your checking account directly from a terminal  
8 located in the store, so that as you buy something the funds  
9 are taken out of your account and put in his.

10 And they also looked at truncated check flow which  
11 is nothing more than the nonreturn of checks to the customer  
12 with his statement.

13 In other words, the bank -- a first deposit would  
14 keep the check and the customer would only get a descriptive-  
15 type statement back at the end of the month with no supporting  
16 checks.

17 (Slide.)

18 Out of this particular study which was a great  
19 thorough study of one payment mechanism in a local area, they  
20 decided or recommended that Atlanta create an automated clearing  
21 house and the banks in Atlanta, in conjunction with the federal  
22 reserve bank in Atlanta are committed to implementing or in-  
23 stalling an automated clearing house in Atlanta some time in  
24 1973.

25 (Slide.)

What they are going to try -- there is something

kar 11' they call the Atlanta Bill Check Plan. What that means is  
2 that a firm in this case, it could be a utility, your electric  
3 bill or your water bill or it could be a retail store, the  
4 firm submits a bill in a normal fashion to a consumer. And  
5 the consumer, rather than writing a check and sending it back  
6 to the utility along with the bill, merely signs the bill,  
7 returns the bill to the utility or the retailer. And the  
8 utility or retailer in the same fashion as they normally do  
9 with their accounts receivable functions, takes that stub or  
10 top half of the statement, whatever it happens to be, takes it  
11 into a data processing system and creates a magnetic tape.  
12 They will take off of their records the customer's checking  
13 account number. It will be located on the utilities record,  
14 that is where the checking account number is and they will  
15 put that on this tape with the amount of the bill payment,  
16 submit the tape to their bank as their deposit for the day.

The bank in turn will submit those items on the  
18 tape that doesn't belong to them, to the automated clearing  
19 house, and those items will go back to the consumer's bank  
20 and he will see that particular item on his statement at the  
21 end of the month.

*Nice Federal Reporters, Inc.*

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23

24

25

1 (Slide.)

2 Okay, now that's one side of what's developing now  
3 across the country, and that is banks working together to  
4 create automated facilities for handling electronic type  
5 payments and credits.

6 In addition you are seeing some individual bank  
7 efforts that are pointed toward more, I think, developments  
8 with instant money, 24-hour banking services, and so forth.  
9 This happens to be the Hempstead Bank Project in Long Island,  
10 New York.

11 Now, what they have done in Hempstead Bank in Long  
12 Island, New York, is to offer an instant transaction card  
13 to their customers. It's very similar to a bank credit card.  
14 It happens to be a card, though, that authorizes a merchant  
15 to -- or the consumer authorizes the merchant to take money  
16 out of his checking account and give it to the merchant.

17 What the customer does is come to the counter at  
18 the store, give the merchant her IT card, it's called. He,  
19 in turn, puts in a sales slip in the terminal. The terminal  
20 is connected with the bank's computer and she's allowed then  
21 as soon as she's ready to key in her secret code in that  
22 little box you see on the left indicating she authorizes pay-  
23 ment out of her checking account into his checking account,  
24 and that she is indeed the same person who is represented on  
25 that particular card.

1 This is the Hempstead Bank Instant Transaction  
2 System under development.

3 (Slide.)

4 A similar thing was done by City National Bank in  
5 Columbus, Ohio, and that was a cooperative experiment between  
6 City National, BankAmericard and IBM. And they gave some  
7 residents of upper Arlington, a suburb there in Columbus,  
8 rather affluent -- is that where you're from?

9 MR. ARONOFF: No, I'm up there several days a week.  
10 I know the area. It was a low risk area.

11 MR. ADAMS: Right. They picked a good one, no  
12 question about that.

13 But they gave some of these BankAmericards out,  
14 special cards, out to people, asked them to use them  
15 in place of cash whenever they shopped at these two shopping  
16 centers there in upper Arlington.

17 And whatever is noteworthy about both the experi-  
18 ments was that this was the first time consumers were allowed  
19 to take a credit card type of device into a grocery or drug  
20 store where they didn't ordinary take credit. And they  
21 found that the customer very much -- they found and are finding  
22 in Long Island -- that the customer liked having a way of getting  
23 her groceries charged to her checking account or BankAmericard  
24 account without having to write a check or fool around with  
25 it.



1 MR. ARONOFF: How did her husband like it?

2 MR. ADAMS: Well, they reacted like most husbands  
3 react, I guess. They would prefer not to let their wives  
4 have anything in their purse when they leave, money or card.

5 They tried that experiment, anyway, in Columbus  
6 for several months and I think were quite pleased with the  
7 results in terms of the customers' acceptance of the card.  
8 They even told them, if you are going to buy a newspaper, use  
9 your card; don't use a dime.

10 (Slide.)

11 Another bank in Columbus, I guess Columbus is a very  
12 competitive town, has taken a different approach to serve  
13 other consumers better. This is the Huntington Handy Bank  
14 Branch. This was a completely "people-less" or "teller-less"  
15 bank branch. It's open 24 hours a day seven days a week and  
16 within the branch you can do almost any normal demand deposit,  
17 checking account type of transaction. It does have half a  
18 post office in there, by the way, so you can get stamps there  
19 and you can mail letters and buy envelopes and that kind of  
20 thing.

21 And it's open 24 hours a day, and you can take  
22 money out of your checking account, you can have it transferred  
23 from your savings account to a checking account; you can take  
24 a loan out.

25 In fact, I was listening to the guy yesterday from

1 Huntington Handy Bank, he said they had one gal who said it  
2 embarrassed her to get a loan, and she loved the machine because  
3 the machine was giving her a loan and nobody knew about it.

4 (Slide.)

5 This is what is inside these teller-less banks  
6 -- branches. This is a Moseler Automatic Teller, and the  
7 customer can put a card in there very similar to a normal  
8 credit card, can choose from several different transactions,  
9 take money out of her checking account or savings account or  
10 shifting it or borrowing it; and it will come out in that  
11 little corner of the device over there.

12 I knew I had another one.

13 (Slide.)

14 This is Docutel's answer to the same thing -- I  
15 have got to give them equal time. This particular machine  
16 you can see in downtown Washington, First National Bank has  
17 them installed in their branches. They are open 24 hours a  
18 day, obviously, and you can get cash in \$25 or \$50 increments  
19 by inserting the card and asking for it, charging it  
20 against your checking account.

21 (Slide.)

22 Okay. We are also seeing a development in the charge  
23 card area where we are developing national authorization  
24 networks that will allow people to use their credit cards in  
25 New York and have it -- their credit card plan be out in  
California, for instance, and that the authorization will

1 take place via a terminal communicating with a computer out  
2 in California, in the case of BankAmericard, Inc., operated,  
3 orin New York, in case of the Mastercharge interbank plan.

4 (Slide.)

5 These three firms in particular are developing  
6 national credit card authorization networks. And all three  
7 of them say that eventually they will be used for transferring  
8 of funds from one part of the country to another part of the  
9 country.

10 (Slide.)

11 The Federal Reserve Bank is dedicated to a, I would  
12 like to say an increase in efficiency in the present check  
13 processing system. And ultimately to have facilities for the  
14 transfer of electronic funds or funds electronically.

15 They said in a policy statement of 1970 that they  
16 were going to increase the efficiency in the present check  
17 processing system as a way of getting between here and the  
18 day that we could have the electronic transfer of funds,  
19 so the Federal Reserve has been very active in promoting  
20 these kinds of activities across the country.

21 (Slide.)

22 This is just a breakdown of the Federal Reserve  
23 districts and where they plan to put what they call  
24 regional check processing centers into existence that will  
25 cause immediate payment or one-day check clearings to become

1 a reality. Right now it takes two and three days to clear  
2 checks.

3 Their first goal is to cut that down to one day  
4 check clearing and get the float out of the system as they call  
5 it.

6 (Slide.)

7 Okay. The government itself is promoting things  
8 that will help banks get into this one check to cover many  
9 payments.

10 This is a composite check program of the government  
11 -- that the government has in which they issue one check to  
12 one bank that covers deposits for many people that are employees  
13 of the government. What they give the bank is one check that  
14 says, this is for people that are listed, and they have all  
15 those funds put in their checking accounts; and these kind  
16 of things are better if they give the bank a check and a list.  
17 They give them a check and a 90 day tape and the treasury  
18 knows that.

19 (Slide.)

20 (Discussion off the record.)

21 That is like that joke I heard yesterday about a  
22 guy went into a store over in Africa and I think they had  
23 doctors' brains. It was 10 cents a pound. And they had  
24 lawyers' brains, 20 cents a pound. And bankers' brains, \$10  
25 a pound.

1           The guy said, "How come the bankers' brains are  
2 so much more expensive?"

3           He said, "Well, you have got to kill an awful lot of  
4 them to get a pound's worth of brains."

5           That is an extra.

6           (Slide.)

7           Anyway, all of these things that are happening  
8 in the banking industry sort of to the banker represent  
9 potential ways of doing business differently than he does  
10 today.

11           In other words, new ways to market these new  
12 services, and I think you are going to see a lot more of  
13 this kind of competitive innovation take place, where banks  
14 strive to come up with better packages that appeal to  
15 consumers more in terms of convenience and getter ways of  
16 giving them better information in addition to doing their  
17 regular normal banking functions for them.

18           (Slide.)

19           That was the last slide I think that's all.  
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MR. SIEMILLER: Social Security or RR Retirement Board hasn't gone to that process yet, have they?

MR. ADAMS: No, they haven't, The Treasury has had a hard time talking the Social Security people into doing it.

MR. MARTIN: Although the agenda calls for us to break for coffee at 3:30, I think we had lunch late and ought to discuss things now and postpone the coffee break. Our procedure has been, gentlemen, to go around the table and give each Committee member an opportunity to ask one or two questions to begin with. Then if there are more, we will continue.

So we might start with, Florence Gaynor.

MRS. GAYNOR: I pass.

MR. MARTIN: Mr. Gentile.

MR. GENTILE: I will make one short comment.

It has been mentioned banks have accounting data and no sensitive data. I would like to point out that in other testimony it has been mentioned that a great deal of a person's life style can be determined from tracing checks.

MR. FREUND: That is very true. You give me your bank statements through the day you started in on salary and I will pretty well know your financial position. Under a manual system or under an automated system.

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1 MR. ADAMS: I think that the way you trace a  
2 person's life style is much easier if the bank has a  
3 manual system than it is with a computer system.

4 With a manual system you have got a ledger card  
5 that shows exactly on there everything that's transpired  
6 over the last several months or years. Now, to trace that  
7 same kind of activity through a computerized program would  
8 take you several days, because a transaction that is posted  
9 against a checking account will only appear on a transaction  
10 journal daily. For you to find out what the guy did the day  
11 before, you have got to go back to yesterday's journal.

12 The manual method is to have everything posted  
13 on the same place so it is quite visible to anybody who  
14 wants to take a look at it to see the type of activities.

15 MR. GENTILE: My point was not manual as  
16 opposed to automated but rather that in any banking system  
17 the very fact that you have a whole capability of tracing  
18 checks means that you are dealing with sensitive data  
19 potentially.

20 MR. MC LEAN: This is an important point, one I  
21 didn't emphasize in my presentation and perhaps should have.

22 One of the principal arguments of the California  
23 Civil Liberties Union in challenging the constitutionality  
24 of the Bank Secrecy Act is that unlimited access to this  
25 type of information, particularly checks, can reveal to an

1        amazing extent a person's entire background, his political  
2        associations, who he associates with, who he contributes  
3        money to, what kind of organization he is supporting, and  
4        that if it became generally known that this type of  
5        information could be supplied to governmental investigators at  
6        will, and in complete secrecy, the mere knowledge that this  
7        information was unprotected could have what lawyers call the  
8        chilling effect upon basic First Amendment rights including  
9        the right of free association.

10                That's why the ACLU nationally and in California  
11        is so concerned about this issue.

12                MR.MARTIN:    Mr. De Weese.

13                MR. DE WEESE:    I just called Philadelphia and took  
14        out a \$10,000 loan in --

15                (Discussion off the record.)

16                MR. DE WEESE:    I pass.

17                MR. MARTIN:    Senior Anglero.

18                MR. ANGLERO:    Really, I am somewhat impressed by  
19        the society.    In some way I cannot understand this so I  
20        am going to try to ask you first, do you know the Food Stamps  
21        Program?    You know we got all the problems in the world to  
22        get the U.S. Senate to approve or Senate, U. S. Congress, to  
23        approve and the President, that Puerto Rico be  
24        included in these Food Stamp Programs.    That was all we got,  
25        because they said that that was impossible to establish in



mea-4

1 in Puerto Rico. We have not developed our sophistication;  
2 our whole economy and marketing system has not evolved in  
3 such a way as to take advantage of a cashless, that would  
4 be cashless transactions, like Food Stamp Program.

5 I don't know how something like this will be, not  
6 only in Puerto Rico but in the U.S., where you have got all  
7 these welfare people, have never in their life had a check  
8 to write; but in the other aspects of this, the project,  
9 well, after recognizing that this could be the humanization  
10 of also society, you got a humanless bank.

11 And from the other aspect that your  
12 predictions were that there would not be enough to deal  
13 with all sections, would then recreate unemployment.

14 MR. ADAMS: Do you want an answer to that now?

15 MR. ANGLERO: Would recreate unemployment if we  
16 make humanless bank transactions.

17 MR. ADAMS: What the banking industry is trying  
18 to accomplish was pointed out very well in this Georgia Tech  
19 study. They determined if they put into effect all of the  
20 technologically feasible alternatives to the check, into  
21 place and they were accepted with a high rate of acceptance  
22 by the consumer, that they would have attacked only 30  
23 percent of the check processing problem in Atlanta.

24 In other words, assuming that they put all of what  
25 we know as technologically feasible into place to replace

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1 checks, that by 1980 in Atlanta they would still be  
2 processing the same volume of checks they were processing  
3 in 1970. In other words we are only attacking the growth as  
4 we see it, the day of the checkless society is a long way  
5 away. And what -- less checks is what we are really after.

6 Mr. Anglero: Okay, deal with the growth.

7 MR. ADAMS: Your point of not -- humanless, about  
8 people not ready to accept or be able to manipulate buttons  
9 and so forth is correct. There is no question about that.

10 I don't think anybody in the banking industry  
11 feels like we are going to be able to get those things in  
12 place of people in every case. But in the case of the handy  
13 bank in Columbus, they figure they can have one tellerless  
14 branch and with every other branch, every other branch  
15 could be like this. They have people in one branch and they  
16 have these tellerless things in another branch nearby.

17 Mr. Anglero: This is in some way economics which  
18 I am not able in, but in terms of the .. (inaudible). We  
19 know that large part, 90 percent or something like that is  
20 made on credit, once was that; I don't know how much it is  
21 now. Once was credit, 95 percent. Supposedly that means  
22 we do not have enough cash to pay for our obligations on a  
23 given moment so we need that credit. At that moment, at any  
24 moment that I feel, I think I am, human being, that I don't  
25 want or I want to postpone a payment at a given time because

mm1 1 anything happen to my family, I just need cash at that moment  
2 because of a crisis.

3 What source would be available, if any, in  
4 order that I can manage myself to take care of this unexpected  
5 situation?

6 MR. ADAMS: You mean you are assuming that you have  
7 already signed up to have all your bills paid by a bank?

8 MR. ANGLERO: In one given moment I want a  
9 thousand dollars. I don't have, or I do have, but it is all  
10 committed.

11 MR. ADAMS: I understand what you are saying.  
12 You want to postpone the payment of the bills.

13 MR. ANGLERO: Right.

14 MR. ADAMS: That was one of the reasons why the  
15 Atlanta group took this bill check approach, was that they  
16 wanted, they felt like all of our attitude studies we have  
17 had done in the industry indicate the consumer wants to  
18 maintain control over the timing of the payments and that some  
19 of these preauthorized payment plans like the California  
20 thing, doesn't allow the customer to keep control over timing  
21 of the payments.

22 And that is why they felt like down in Atlanta,  
23 that wouldn't sell 100 percent. That without having some way  
24 of allowing the customer to maintain control over the time of  
25 the payments that it just wasn't going to sell.

mm2 1 And I would assume that if this bothers you, you  
2 would not sign up to have your bills paid automatically,  
3 first of all. But, assuming that you did sign up and now  
4 you are in a tight spot and you can't do anything about it,  
5 and you don't want to make a loan, I would say you would  
6 have to go to some extra trouble to cancel those payments.

7 MR. FREUND: Would it be any different than if you  
8 got a bill now, a mortgage bill say, and you draw a check  
9 to pay that bill and that very afternoon you found yourself in  
10 dire straits for money, that you could stop payment on that  
11 check, you can do that today, you can stop payment on a  
12 check.

13 You will be able to do the same tomorrow. It  
14 is your money in the bank, it isn't somebody you know lending  
15 you the money. It is your money. You have control over it.

16 MR. ARONOFF: The sensitivity to the computer from  
17 the time he says, "Yes, I want it done that way," until the  
18 time a transfer is made, is almost instantaneous, isn't it?

19 MR. ADAMS: It would depend. We are talking about  
20 point of sales fund transfers, yes.

21 MR. ARONOFF: You really can't stop payment on a  
22 computer easily.

23 MR. FREUND: You can certainly stop it faster on co  
24 mputer than you can stop payment sending it through the  
25 United States mail.

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1 In Bill Adams' world of the future, you will have  
2 an instrument in your home that will, perhaps, let you  
3 communicate with the bank computers.

4 MR. ADAMS: I think you can reverse it just as  
5 fast as it went through.

6 MR. FREUND: I think some items it is possible  
7 to do it not. There doesn't seem to be any barriers in  
8 doing it.

9 MR. ARONOFF: Maybe you are right. I am not  
10 sure. I am not sure that should be the idea anyway, that we  
11 should go into the idea of writing a check with the idea of  
12 stopping payment. I understand your point of view, but we  
13 are talking about that hypothetical crisis.

14 MR. FREUND: With an emergency, yes.

15 MR. ADAMS: We weren't trying to sell each of you  
16 on signing up this afternoon. We would be glad to wait until  
17 tomorrow.

18 MR. FREUND: As my friend from the legislature  
19 said, lend him the money at 18 percent.

20 MR. MARTIN: Senor Anglero?

21 MR. SIEMILLER: You can go to the bank and arrange  
22 to write checks on money you don't have. An automatic loan  
23 you have.

24 MR. FREUND: That is right, overdraft privileges.

25 MR. MC LEAN: Did you have any figures on impact

mm4 1 of accounts receivable on business firms that sign up on  
2 this plan?

3 I would think that you would be reducing the  
4 size of the consumer -- (Inaudible.) --

5 MR. BAGLEY: They wouldn't be getting their 18  
6 percent and they don't like that.

7 MR. MARTIN: Senor Anglero has the line of  
8 questioning now.

9 MR. ANGLERO: I still have two points more.

10 One is in terms of bank reconciliations.

11 MR. ADAMS: Bank reconciliation is still the  
12 responsibility of the person who has the checking account.  
13 And it would be understood some of these particular kinds  
14 of things would be more difficult for you to reconcile if  
15 you didn't keep good records.

16 MR. ANGLERO: Okay.

17 MR. ADAMS: I mean right now, if you write a check  
18 you have got to fill out the check stub, or your balance book,  
19 whatever it happens to be -- with these kinds of methods  
20 you have still got to make an entry just the same and if you  
21 forget to do it, in either case, you don't know where you  
22 stand at the end of the month. You may not get a tape back  
23 with your statement.

24 MR. ANGLERO: I want to make a question.

25 This is experience myself. I got a Master Charge

1 card and I was to purchase a couple of things in one good  
2 store in San Juan, and they ask, okay, I charged it, it was  
3 over \$100, they said they hve to check with the bank.

4 And they check with the bank, and they ask for my  
5 identification. I identified myself with the store. They  
6 check with the bank that my card was good.

7 But they go further than that and I had to provide  
8 my license, my driver's license number.

9 MR. FREUND: To whom?

10 MR. ANGLERO: To the bank.

11 MR. FREUND: You were in a store?

12 MR. ANGLERO: I was in a store and I had to  
13 provide them my driver's license number and they provided  
14 it to the bank and so --

15 MR. FREUND: Would the bank have your driver's  
16 license number?

17 MR. ANGLERO: I don't recall, because I never  
18 have a copy of what I did when I asked for it. Only thing  
19 is, I cannot understand why, if I am the right holder of the  
20 card, they have to check.

21 MR. FREUND: If I hand a Master Charge card to  
22 some merchant that just says this guy is number 12345678.  
23 It really doesn't say I am 12345678.

24 MR. ANGLERO: I identified myself with the guy  
25 that I was myself, and he said, I got to prove I was myself.

1 I could not, but I had to do it after all. I  
2 tried not to provide it to the bank --

3 MR. FREUND: I really don't understand the  
4 bank's interest, and I assume it was one of our branches.

5 MR. ANGLERO: Fine. They say, if you don't do  
6 that, you will not get finance.

7 MR. FREUND: I don't know the answer.

8 MR. SIEMILLER: Wouldn't it be more positive  
9 identification than if someone else had found his card?

10 MR. FREUND: That is to the merchant. I can  
11 understand the merchant wanting to identify him through some  
12 secondary form with a signature, saying this is so and so.  
13 But I don't understand transmitting, the need of transmitting  
14 that information to the bank, because I don't think the bank  
15 would have his driver's license and by stealing the wallet,  
16 you would have gotten everything.

17 MR. MARTIN: Miss Gaynor, did you want to follow  
18 up?

19 MRS. GAYNOR: I don't think anyone answered  
20 Juan's question about the emergency and to go back with this  
21 reconciliation, and trying to straighten out accounts,  
22 in many instances, for instance, if you are charged twice  
23 for the same check, it may take you six months to reconcile  
24 it, right?

25 MR. FREUND: Yes.



1 MRS. GAYNOR: Well, I assume you are not going to  
2 answer the idea of the emergency, and preauthorization, and  
3 how we get the money.

4 MR. ADAMS: I thought we did.

5 MRS. GAYNOR: No you really didn't.

6 What did you say? Maybe I missed it.

7 MR. ADAMS: I thought we said he had several  
8 options and the options were open to him. With one he could  
9 borrow money from the bank; two, he could stop payment  
10 electronically in a similar fashion to stopping payment on  
11 his check; or three, he could never have gotten into it in  
12 the first place, by not signing up for the service.

13 I think that is the way you get around that.

14 MRS. GAYNOR: How much interest do the banks  
15 make by taking advantage of this note?

16 MR. ADAMS: I don't understand what you mean?  
17 Which note?

18 MR. GENTILE: It seems the banks are the ones who  
19 benefit by this and the alternative to an individual  
20 hypothetical case that Mr. Anglero suggested, was to borrow  
21 money. So you have interest charges on the borrowed funds  
22 and you also have what is the, I think a million, I don't  
23 know whether the interest is by deposit or processing your  
24 checks one day faster, but it is phenomenal.

25 I am sure you would have that figure, and just

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1 having this immediate accountability seems to me really  
2 gives the bank a great advantage of the note which I would  
3 imagine is one of the motivating factors for bankers to  
4 want to support this system.

5 MR. ADAMS: The motivating factor for clearing  
6 checks immediately, is to eliminate a --

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1 MR. ADAMS: What I was going to say was it's  
2 common practice today in the banking industry for commercial  
3 banks to give individuals immediate credit for any deposit  
4 of checks. I think if -- you will find as a practice, as an  
5 individual, with a personal checking account, that you take  
6 your paycheck down there and deposit, the bank will give you  
7 immediate credit for that regardless of the fact it takes  
8 two or three days to clear it in the present system.

9 However, what we are talking about is speeding up that  
10 two or three days and the idea of speeding up the clearing  
11 of the check two or three days is not to give the bank or  
12 for the bank to gain advantage on our losing float, because  
13 you are not losing any float but the idea is to eliminate  
14 that time span in which people who are fraudently kiting,  
15 I think is the expression, don't do this like that any more.

16 It's possible under the present system for a lot of  
17 fraudulent things to take place because of this time delay  
18 between the depositing of a check and the clearing of a check  
19 and that is going to be eliminated, but right now the banking  
20 industry is already financing this floature, ~~enjoining as an~~  
21 individual, although banks do charge corporations for col-  
22 lection time.

23 MR. GENTILE: I don't want to dwell too long on  
24 this, but I would like to make one point, assuming a positive  
25 balance which is what we would have to assume, in other words,

jean 2

1 the man's payroll check is deposited before he starts issuing  
2 checks or not issuing checks in a cashless society. It's  
3 to the banks advantage to have this process faster, certainly  
4 it should increase your interest on the float.

5 MR. FREUND: Let's take an example. You are  
6 employed by the ABC Company, they give you a check for your  
7 week like a salary. At the present time you deposit it in  
8 your local bank and it takes several days for that to get to  
9 the ABC's bank. In that time, in that time-frame of two to  
10 three days the ABC's bank has the money on deposit. Your  
11 check hasn't come through yet to reduce their deposits, correct?  
12 The elimination of that time span, the reduction of it, the  
13 contraction of it will reduce the float that circulates  
14 around the country at the present time, which is the objective  
15 of the Federal Reserve system, to reduce the float by making  
16 what I believe Bill referred to before in his slide presen-  
17 tation as one-day funds or whatever they are calling it these  
18 days, is the contract IT?

19 If you were in the banking business, if you kept abreast  
20 of what is going on at the present time, the Federal Reserve  
21 recently tried to implement I guess last week, that would  
22 have made one-day by dictum, a dictum with which I personally  
23 agree and my bank also does. Many small banks objected to  
24 it because it would get money out of their banks faster. The  
25 objective of the Federal Reserve Bank, Federal Reserve System,

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1 was to get it out of the float of the country because it does  
2 distort the money position of the country, it really does, and  
3 over time, if you were to read George Mitchell, one of the  
4 governor's speeches since 1952, when there was like seven  
5 days float between the east and west coast, that has gradually  
6 been contracted down so this money floats around now for only  
7 a maximum of two days.

8 And now they are going to make it immediately available,  
9 by saying it's immediately available, to the tendency is to  
10 accelerate the collection of funds that flows through the  
11 payment systems of the country. This, I don't think, has  
12 anything to do with the subject of New York.

13 MS. NOREEN: Yes, as I gather from Mr. Borsom's  
14 dissertation, his bank is releasing information to credit  
15 bureaus. I was wondering if when banks do this they give any  
16 indication to the bureau.

17 MR. BORSOM: I was speaking of savings and loan  
18 associations, and generally when an individual wants to get  
19 credit, goes to a store and wants to open a charge account  
20 in a department store, they list references, and list other  
21 information, the fact that they have a savings account at a  
22 savings and loan association, the fact they have a loan. And,  
23 yes, customarily, that department store would ask the credit  
24 bureau for a report on this individual, who presumably by  
25 virtue of his having mentioned these credit references intends

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1 to have them checked. Then, the credit bureau would call  
2 the savings and loan association or send a form to the savings  
3 and loan association and the association would respond yes  
4 or not that the individual did not have an account.

5 MS. NOREEN: So if the individual did not specific-  
6 ally list the savings and loan the credit company would not  
7 check.

8 MR. BORSOM: Would not know where to ask. Five  
9 thousand savings and loan associations.

10 MR. FREUND: You disappoint me. I thought I  
11 covered this so thoroughly in my presentation. When you open  
12 a charge account at a department store in your town and fill  
13 out bank references, what do you think they use them for?  
14 To test your handwriting?

15 MS. NOREEN: Sure.

16 MR. FREUND: As a matter of fact, for a substantial  
17 sum of money like a mortgage or something of that nature,  
18 it's clearly indicated on there usually that this gives them  
19 the authority to reference your bank that you have indicated  
20 as you know, as a reference, as a credit reference. It's not  
21 in fine print, it's in nice heavy print.

22 MR. MARTIN: We are going to take a break at four  
23 for coffee because we have to be out of the area in which  
24 coffee is served by 4:15. In as much as Professor Miller  
25 will not be able to return after coffee, I am going to take

1 him out of order so we can get his question or two in before  
2 we break for coffee.

3 MR. MILLER: Thank you. In Ken's description of  
4 the bank secrecy act and its enactment and the fracas that's  
5 developed since, there was one aspect that was, unless I was  
6 wandering, I -- I don't think he covered, and I think it's  
7 particularly relevant to the committee. I have mentioned it  
8 before, and that is the provision in the regulations requiring  
9 that the bank obtain the social security or taxpayer identifi-  
10 cation number of every customer as of July 1972. I call that  
11 to the committee's attention since it is so intimately tied  
12 to our investigation as to the proper utilization of the  
13 social security number.

14 Now, does the banking industry, since it will have to  
15 collect this number, and since the regulations have an amorphous  
16 passage in it, in them, requiring the microfilm check, and  
17 that is part of the record keeping that Ken McLean referred to,  
18 the microfilming of all checks and bank instruments, if the  
19 bank has to collect the social security number and if the  
20 bank understands a standard yet to be developed, must maintain  
21 the microfilm in a form that's reasonably accessible to the  
22 Treasury Department. Has any thought been given in the industry  
23 to shifting over to the social security number as the bank  
24 account number?

25

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1 MR. FREUND: I don't know if I can answer it.  
2 I think permission has to be given by the social security  
3 administration.

4 MR. MILLER: No. No, you could do it today if  
5 you wanted to.

6 MR. FREUND: As the bank account number?

7 MR. MILLER: Yes.

8 MR. ADAMS: Are you using it exclusively you mean?

9 MR. MILLER: You may decide why keep two numbers  
10 if the government says you have got to keep one.

11 MR. BORSOM: We have discussed this in the savings  
12 and loan business in analyzing the systems and for one thing  
13 how many numbers are there in the social security, nine.  
14 There are too many numbers, you see, up in it you get that  
15 many numbers, the savings and loan data base could be oper-  
16 ating on arbitrarily issued account numbers starting with  
17 account number one, which of course reduced the file size.  
18 Then, too, you have got a lot going for the old system, you  
19 know, and to change the system is just an awful lot of work.

20 MR. MILLER: I understand that --

21 MR. BORSOM: Number three, it would have to be  
22 verified and the sum total of benefits doesn't yet equal the  
23 work involved.

24 MR. MILLER: You see what I mean hypothesizing,  
25 you have got to collect the number, you have got to store the

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an 7  
1 number.

2 MR. BORSOM: Only with savings accounts.

3 MR. MILLER: No, the new regulations require across  
4 the board.

5 MR. ADAMS: It doesn't say you have got to store  
6 it, it just says you have got to get it.

7 MR. MILLER: You have got to get it and presumably  
8 it doesn't mean you can get it today and dispose of it tomor-  
9 row. You have got to store it whether it's on a sheet of  
10 paper or magnetic film. O.K. I am just hypothesizing that at  
11 some point you will decide that it's as easy to impregnate my  
12 checks with that as my number; my account number appears to  
13 have six digits right now. That is not very much fewer than  
14 nine; then as I looked at the schematic you had on the board,  
15 one of the schemes was this merchant clearance system, and  
16 I'm just hypothesizing the possibility of the bank account  
17 number will be the manipulative device used by the merchants,  
18 becomes the social security number, which means that you are  
19 in effect giving your social security number to every merchant.

20 But I gather your response is the industry has not  
21 thought about this.

22 MR. FREUND: There are many functional problems  
23 with it. Your account number on that check has a check digit  
24 in it which proves that the number is right; when it's read  
25 automatically, computation takes place. And we would have to

1 develop a system like that. Probably all 14 thousand banks  
2 in the country would have to subscribe to the same system, you  
3 know. So, there is that problem.

4 There's the problem Bill mentions of converting from  
5 a present system to a new system. You know, it's ten years  
6 we took to do this job. I mean you know compared to that  
7 one. There are other problems; many corporate accounts.  
8 Are you going to use their employer number as the identifier?

9 MR. MILLER: Well, the regulations require the  
10 tax identification number. O.K. You have responded.

11 MR. FREUND: What do you do when you keep money  
12 from your wife, which I know you don't do, in a separate account?

13 MR. BORSOM: How many accounts do you have?

14 MR. MARTIN: One voice at a time.

15 MR. FREUND: It's been thought of, you know;  
16 by two thousand, year two thousand, we will be doing it.  
17 You know it takes time.

18 MR. MILLER: All right. That's an answer.

19 MR. FREUND: Yes.

20 MR. MARTIN: We will break for exactly 15 minutes  
21 for coffee or whatever is available. Mr. Borsom has -- or  
22 Mr. Freund has to leave at 4:45, so we want to get back  
23 promptly in order to have access to him.

24 (Recess.)  
25

1 MR. MARTIN: Would the meeting come back to  
2 order please. Mr. Siemiller is the next in line. Would  
3 the panel please come to order. Mr. Siemiller.

4 MR. SIEMILLER: You reported that a three judge  
5 tribunal in California had declared unconstitutional the  
6 domestic portion of the bank act. My question is, what's  
7 the status of it at the present time? Did he stay the  
8 application or let it ride pending an appeal, and at the  
9 present time are the banks furnishing the information or  
10 withholding it?

11 MR. MCLEAN: No, they are not furnishing it. The  
12 Treasury and Justice Departments haven't made up their mind  
13 as yet whether they want to appeal it. The information I have  
14 was they did not consider this to be a vital part of the act  
15 anyway, and that the records of these transactions would be  
16 maintained anyway, and presumably access could be gotten to  
17 those records by some process which we may later on tighten up.  
18 So, the only thing that was constrained was the automatic  
19 reporting of each and every transaction, currency transaction,  
20 in excess of \$10,000. I am not sure whether the ACLU or the  
21 California Bankers Association, you know, what their position  
22 is, if they are going to appeal the other items, you know,  
23 where they were turned down.

24 MR. SIEMILLER: The application, though, is nation-  
25 wide.

1 MR. MCLEAN: Yes.

2 MR. MARTIN: Mr. Davey.

3 MR. DAVEY: Yes. Both Mr. Borsom and Mr. Freund  
4 indicated that in the systems which they represent that  
5 because the system is based largely on account numbers that  
6 they didn't feel that they had personal data systems really  
7 to be concerned with. I would like to pursue this matter  
8 a little bit because I think this is a bit on the simplistic  
9 side of this. I think that it's possible to get at this  
10 information either through a number or through a name. If  
11 I send in a mortgage check -- check for my mortgage without  
12 any kind of statement on this think, I am sure you will be  
13 able to apply that correctly to a particular account.

14 I think, coming in the other way, you can get to a name  
15 and also a file, which is associated with that account number.  
16 The types of things such as would be included in this file  
17 would be my mortgage application, my personal financial state-  
18 ment, anything else. And so we may be having a little bit  
19 of difficulty with respect to what we mean by a personal  
20 automated data system, but I think this is all part of a  
21 same type of thing whether it's completely computerized or  
22 whether it's a hybrid system where you can go from one means  
23 to another means, and I think it's not only the case as far  
24 as savings and loans are concerned but I also think it's the  
25 same as far as the bank is concerned as you look at various  
things here.

1 Certainly the credit card authorization system is one in which  
2 one can quickly go from a computerized system which is largely  
3 there by account number to a name and to an application which  
4 can be checked, as I figure was the case that one was  
5 mentioning earlier on, where if they wanted some further  
6 identification that this was they actually did was to pull  
7 out his application to see whether the drivers license was  
8 the same as he gave over the telephone to make certain that  
9 he was the one -- that he was absolutely the one that was  
10 making the request. And, I think that as one moves further  
11 and further into this whole automation area, as far as banks  
12 are concerned and you get into this consolidated bank state-  
13 ment accounting where you have got not only the checking  
14 account, the checking plus account, the overdraft size of  
15 things, the savings accounts, the loans and credit cards,  
16 all on one consolidated statement, I consider that to be  
17 a highly automated personal data system, one which is not  
18 immune from all of the other things that we have been dis-  
19 cussing throughout the course of this committee.

20 And I would like to get some kind of response from both  
21 of you gentlemen with regard to what kind of efforts are  
22 being taken to safeguard not only the automated files which  
23 are in account number sequence but also the file, the address  
24 file which you have to periodically combine in order to send  
25 out statements and also the links to the credic applications

1 of whatever form they may be and so on and so forth. And  
2 I think that it's a much more complex problem than you  
3 initially kind of indicated in your opening remarks, that  
4 since everything was account number oriented that we really  
5 don't have any problems. I don't mean to be disrespectful,  
6 but I think it was an over-simplification.

7 MR. FREUND: Well, you know obviously that little  
8 loan application that somebody signed when they came in to  
9 make a personal loan can be tied in a fashion to a computer-  
10 ized file of their loan payments to date. In banking today  
11 there are primarily two different files, one on computers,  
12 one in a physical file, you know. I think the committee  
13 should define an automated personal data file.

14 I used as my definition the one that was given to me in  
15 a letter from David Martin that had parenthesis and then  
16 said, i.e., something about a computerized file with personal  
17 data in it you know. And by personal data I assumed that meant  
18 that guy was a bartender and he had 14 kids and he made  
19 \$7500 a year and that sort of thing. That is not computerized.  
20 Now sure, an authorized person can get to that file, obviously,  
21 it's not automated you know, and I am serious when I felt  
22 you were addressing yourselves to what I considered to be  
23 an automated data system.

24 MR. DAVEY: I agree there is some kind of question  
25 as to what we mean by automated system.

MR. FREUND: Yes, see my whole contention about this thing, and you know I have been engaged in this thing for I was on Weston's committee on national data bank and that was the conclusion they came to in that committee, which the book will be published, I believe, sometime after Thanksgiving, that there are no such things as this giant brain with all this information that you can pull out at will and you know give all the badies about you, particularly, or the goodies about you, which there are probably none having been in the credit business so long. But, and my contention is, that in banking universally in this country there are no automated personal data files on the nature I believed you were approaching.

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9-ter-1 1 MR. DAVEY: Yes, I think what I am doing is kind  
2 of broadening the definition as to what we mean by automated  
3 data file, because there are links between one file and  
4 another file, and you are able to retrieve whatever type of  
5 information you want.

6 I am not questioning the fact that the banks and  
7 the Savings and Loans do an excellent job, as far as their  
8 fiduciary responsibilities are concerned, but I also feel  
9 it is a little bit simplistic as we are going through here,  
10 that, you know, we don't have any problems because everything  
11 is account-number oriented, and baloney; I think everybody  
12 got problems in this whole area.

13 MR. FREUND: Well, when I was asked to come down  
14 here and ~~decided~~ to come down here, I thought you know, I  
15 have got to keep the presentation as simple as possible. I  
16 was not sure that was the right approach until I sat in the  
17 room, here, this morning, for an hour and you know, saw the  
18 wolves attack our counterpart, our innocent counterparts  
19 up here, you know.

20 As you know, we could get into talking about this  
21 for hour after hour of just what this is.

22 MR. DAVEY: Yes.

23 MR. FREUND: And it is complex, there is no ques-  
24 tion about it, but you know, my theory, my attitude towards  
25 it, my perspective is that I don't know any more about our



Er-2  
1 customers today than I did yesterday before there were  
2 automated files. I really don't. And, I don't see anything  
3 coming along in a hurry, even in the consolidated statement  
4 where anything else but the current transactions, current,  
5 being, you know, last six months; last year, will be recorded  
6 in the -- in that file.

7 MR. DAVEY: Yes, that is -- that is good personal  
8 information. If somebody knows what my credit limit is as  
9 far as a bank credit card is, if they know that I have a  
10 mortgage and they know the size of that mortgage, they know  
11 what the terms of that mortgage are, if they know that I  
12 have a certain credit limit as far as an overdraft statement  
13 is concerned; if they know what my personal bank balance is,  
14 as far as both my checking account and on a savings account,  
15 and if I have a personal loan, or two, that is a great deal  
16 of information about me, which I consider to be rather per-  
17 sonal to me.

18 And I guess I am just a little bit nervous about  
19 that not being what we would call a personal -- data system.

20 MR. FREUND: I guess, maybe there is a personal  
21 data file on a guy, let us say, who has a checking account  
22 with us, and goes into overdraft and the check that puts it  
23 into overdraft, is referred to an officer. I think the  
24 personal data file is right in that officer's head. He knows  
25 or he thinks he knows if this guy is a good Joe or not, or

ter-3  
1 whether he takes him out to lunch occasionally, you know,  
2 or something of this nature.

3 I don't think he has a thing at his desk and pushes  
4 buttons.

5 MR. DAVEY: Oh no, this is all done automatically  
6 and since the information is available in the system, then I  
7 guess what the questions are that we are asking is, what are  
8 the safeguards, that only authorized personnel can get at  
9 that information.

10 Now, I have called many times at the bank, any  
11 bank, and given them my account number and asked for what my  
12 balance is.

13 Now, some get a little tricky and say, what was  
14 your last deposit.

15 MR. FREUND: To identify you.

16 MR. DAVEY: To identify me, but I would say  
17 75 percent of the time that that is not done, that it is just  
18 plain, "Yes, here is what is your statement now, and your  
19 balance," and this is of this nature.

20 MR. FREUND: That may be, I mean, I cannot say  
21 that is in our manual of operations as to what is to be done  
22 but you know there are personal idiosyncracies of the officer  
23 responding.

24 MR. DAVEY: This is not an officer who is respond-  
25 ing, this is just a clerk.

ter-4

1 MR. FREUND: My dear boy, we are all clerks, you  
2 know.

3 MR. DAVEY: I understand that.

4 MR. MARTIN: Mr. Freund, let me get at the ques-  
5 tion in another way, I don't think we are really interested,  
6 and I don't think you are really speaking about what you  
7 know. You are a surrogate for an institution and if we  
8 assume, and correct the assumption if it is wrong, that the  
9 computer has made possible BankAmericard; that there would  
10 not be BankAmericard, if it were not for the computer, wouldn't  
11 you say that your institution has acquired a volume of  
12 information that it did not have before the computer? Before  
13 you started rendering that service?

14 MR. FREUND: First of all, I object to your using  
15 the word "BankAmericard" in my presence. I think we have a  
16 larger file on a lot more individuals. I don't think we  
17 have any different information, than we had before.

18 MR. MARTIN: What do you mean by a larger file?

19 MR. FREUND: We have more people. We have solicited  
20 credit card accounts and some people have wisely made the  
21 decision to come with our Master Charge rather than go with  
22 BankAmericard, and so our file has expanded accordingly, but  
23 the information we have on them is identical with the infor-  
24 mation that we had on personal loans back before credit cards.

25 MR. MC LEAN: Could I make a point on that?

ter-5

1 Insofar as the credit card replaces cash transactions, and  
2 in so far as the bank credit card organization maintains a  
3 continuing record of these transactions, wouldn't you of  
4 necessity have more information?

5 In other words, if I previously paid for something  
6 by cash, and now I pay by credit card, you have a record of  
7 those.

8 MR. FREUND: If you open a credit card with us,  
9 we obviously have information on you that we did not have  
10 on you before, if you didn't have a small loan account with  
11 us.

12 MR. MARTIN: So, that is a direct contradiction  
13 of your earlier statement?

14 MR. FREUND: How?

15 MR. MATIN: Well, you said that as an institution,  
16 forgetting the personal pronoun "I," that the computer had  
17 not resulted in your institution having any more information  
18 about your customers now than you had before the computer.

19 If the computer has made possible rendering the  
20 services of Master Charge, and excuse me for confusing which  
21 credit card system we were talking about, then you now have  
22 a whole flow of information about the character of purchases  
23 made through that process, which are now in your institutional  
24 records which were not prior to the advent of the services  
25 which is a direct result of the computer.

1 MR. FREUND: Okay.

2 MR. MARTIN: All right, so I think we could say  
3 we have greatly qualified your opening statement.

4 MR. FREUND: Yes.

5 MR. MARTIN: Mr. Ware?

6 MR. WARE: Mr. Borsom and Mr. Freund, let me read  
7 you something, suggest something to you; then ask your  
8 reaction.

9 Suppose you had applied for a loan application,  
10 or a deposit account, and you filled out the necessary forms,  
11 but prior to your signing it, the clerk took out a card and  
12 read you something like the following: "You are hereby  
13 informed that as a result of the information you are about  
14 to give, one, this information will be entered into a computer-  
15 based system.

16 "Two, as prescribed by law, this data will be  
17 automatically passed to certain other computer-based systems;  
18 notably, the IRS.

19 "Three, this information will be subject to the  
20 process of inspection.

21 "Four, for reasons of business of this institution,  
22 will be made available to credit reference bureaus.

23 "Five, other than as specifically noted above,  
24 this institution has no control over further dissemination.

25 "Your signature on this application constitutes

1   acknowledgement that you have been informed of these facts."

2               Now, if this were done, would you find this  
3   objectionable in your business, do you think there would be  
4   deleterious effects? Would you expect some reaction from  
5   your customers? How do you respond to this?

6               Obviously the intent of what I am getting at is  
7   to make the individual fully aware of what he is letting  
8   himself in for. Vis-a-vis, personal data about himself,  
9   migrating around.

10              MR. FREUND: Whatever the gross amount of banking  
11   services that are being rendered in the country today, are,  
12   I believe, they would still be rendered even if the people  
13   were asked to sign such an instrument.

14              MR. BORSOM: You said, I think, a savings account?

15              MR. WARE: I don't want to restrict your answer.

16              MR. BORSOM: I would answer the same way. I  
17   think, if the only place you could get a loan, I mean, if  
18   every place you could get a loan, or every place where you  
19   were to open a savings account, this kind of disclosure  
20   statement was asked for, the net difference would be insig-  
21   nificant except for the guy who really, the semi-pro, or the  
22   pro, who is trying to hide funds.

23              MR. FREUND: And he would probably find some way  
24   around it?

25              MR. BORSOM: He would lie, you see. The pro lies.

1 MR. WARE: I understand.

2 MR. BORSOM: So you would not get a handle on  
3 him, anyway. He would give you a false ID number. We don't  
4 have any requirement or way to verify ID numbers.

5 MR. MARTIN: Mr. Dobbs?

6 MR. DOBBS: That was beautiful. I know what you  
7 were trying to get at. Would you be disturbed if we add to  
8 Willie's list, the name of the service bureau, or bureaus  
9 to whom the information is -- will be checked with?

10 MR. BORSOM: Some. Then, you will have changed  
11 the rules of the game.

12 MR. DOBBS: Yes, I know.

13 MR. BORSOM: So I suppose if a guy came in and he  
14 didn't think he had any damaging information in the list of  
15 service bureaus that you have attached to the statement, he  
16 would say, "You would not have any net effect on the number  
17 of loans or savings accounts you opened."

18 And, if he did think he had some damaging infor-  
19 mation, he would find someplace where they didn't ask for  
20 those service bureaus. So, I think that would be, you know,  
21 I don't think that that is really the kind of question you  
22 can ask and list specific service bureaus.

23 If you were to say, you know, the credit bureaus  
24 of the United States of America, than you again put everyone  
25 on the same footing.

Mr-9 1 MR. DOBBS: Well, I would like to explore it a  
2 little bit, because it does relate to an earlier comment  
3 when it was pointed out that you know, why do you think banks  
4 and other people who give credit, collect that information.

5 And, I guess one of the things that I think that  
6 we have seen in our deliberations thus far, is that, in fact,  
7 the supplier of that loan information has very limited idea  
8 about what happens to it. And very specifically, I think,  
9 he does not, in most cases, know that somewhere an entry is  
10 going to be made in some credit bureau of the fact that a  
11 contract has been made.

12 I just -- as far as we can tell, it is just not  
13 generally available knowledge. And, you know, part of the  
14 thrust of Willie's question is whether or not we have an  
15 obligation to the citizen which goes beyond the fact that he  
16 is, in fact, asking for a service, and because he is asking  
17 for the service which only the institution can supply; that  
18 he gives up something.

19 And whatever we are suggesting is that one of the  
20 things he ought not to give up is knowledge of the where-  
21 abouts of information that surround the transaction that  
22 encompasses that service delivery.

23 MR. BORSOM: I would like to amend what you are  
24 saying, or ask you to reconsider it. Instead of putting it  
25 in terms of an institution, you see, if you are talking about



1 the funds-gathering institutions of the nation; namely,  
2 banks, and Savings and Loan Associations, then I can agree  
3 with your term.

4 But, if you are trying to isolate it to a single  
5 ABC Savings Loan Association, or bank --

6 MR. DOBBS: No, I like the way you are going, do  
7 you think such a proposal would be considered by the American  
8 Banking Association?

9 MR. BORSOM: Well, I can speak for the Savings and  
10 Loan business, if the bankers have to do it, and we all have  
11 to do it, you know, generally, we don't object.

12 MR. DOBBS: Would you do it voluntarily?

13 MR. BORSOM: No, I don't think so, because you  
14 see, you have again broken the rules of the game. The rules  
15 of the game are that when the public goes to ask for credit,  
16 the public is being served.

17 MR. DOBBS: Where do you find that rule?

18 MR. BORSOM: That is Point One. All right, I am  
19 making the rules, now. When someone comes and applies for  
20 a loan --

21 MR. DOBBS: That is the problem.

22 MR. BORSOM: No, I think when someone applies for  
23 a loan, they are asking for a service.

24 MR. DOBBS: And they pay for it with interest.

25 MR. BORSOM: Fine.

1 MR. DOBBS: The thing they don't know, what they  
2 are buying are those other byproducts. All I am saying is  
3 let us make it explicit.

4 MR. BORSOM: Whether the public is damaged by  
5 giving this information, which induces a lender to make a loan,  
6 right?

7 MR. DOBBS: Are you damaged by telling the public  
8 what happens to the information?

9 MR. BORSOM: Let me finish answering your question.  
10 You asked, would we volunteer to do it, and I am  
11 saying, no.

12 MR. DOBBS: Why not?

13 MR. BORSOM: Well, I am telling you.

14 MR. DOBBS: Okay.

15 MR. BORSOM: Because, and I think I have mentioned  
16 it before. I think as soon as you pick out one institution  
17 and say, now, when the public goes to that institution,  
18 you see, banking and Savings and Loan Associations, and  
19 mortgage bankers, insurance companies, there are three, or  
20 four different major financial institutions financing the  
21 homes of the country.

22 And the moment you ask one segment to do something  
23 that the other segments don't have to do, and ask them to  
24 do that voluntarily, then you are changing the rules of the  
25 game.

ter-12

1 MR. DOBBS: I will stipulate that I will not ask  
2 one segment.

3 MR. BORSOM: If you ask the whole segment, I go  
4 back to Mr. Freund's answer, there is not going to be any net  
5 difference. When the public comes to a lender and says,  
6 lend me some money; they are a lot more interested in how  
7 much it is going to cost, when they are going to get it, how  
8 they have to pay it back, what happens if they don't pay it  
9 back, than they are about whether the personal information  
10 they give is going to go to any other credit bureau.

11 The truth is that more times than not, when that  
12 personal information goes to a credit bureau, it serves  
13 that member of the public, because it facilitates his getting  
14 credit at some other place.

15 MR. DOBBS: What you say is perfectly true, Mr.  
16 Borsome, the problem is that the public is largely unaware  
17 of the fact that something else happens to that information.

18 This is why they are not worried about it.

19 MR. BORSOM: Oh, now, wait now, you are giving an  
20 opinion.

21 MR. DOBBS: That is an opinion.

22 MR. BORSOM: Okay.

23 MR. DOBBS: Based on what I think we have heard  
24 today.

25 MR. BORSOM: Okay, my opinion is that most of the

1 public is hones. Most of the public pays their bills. You  
2 know, we have now something in the order of a one percent-  
3 late, of all the payments on ten million, 12, 13 million  
4 loans in the Savings and Loan business, you know -- one  
5 percent are late.

6 And a fraction of a fraction of a percent are  
7 in trouble. These people prefer, I will give an opinion --  
8 you did, too, I would say that most of the public prefers to  
9 have the truth known as widely as possible, because it facili-  
10 tates their getting credit anywhere they happen to be.

11 Now, we have got this difference, you see.

12 MR. DOBBS: I don't see any difference, at all.  
13 I agree with you that the public would like to have the  
14 truth as widely known as possible, and what we are trying to  
15 do, is to get a little bit more of the truth into the public  
16 domain.

17 MR. BORSOM: Agreed. We have a common goal, then.

18 MR. DOBBS: Peace.

19 MR. MARTIN: Professor Weizenbaum --

20 MR. DAVEY: Let me make one comment, just one  
21 thing and that is that as far as all the New York City banks  
22 are concerned, they have put on their credit applications  
23 and loan applications, the fact that this information would  
24 be going to a credit bureau and a number of the institutions  
25 in California, and, -- as well as the Department Stores have

1 been doing this for sometime. And the public is aware if  
2 they can read.

3 They may not understand it, but is is there in  
4 very clear forms and at the time they sign the application,  
5 usually in a line just above that signature block, is the  
6 fact that this information will be exchanged with others and  
7 will be checked for credit, and will be deposited in a  
8 credit bureau operation.

9 They do not name a thing, but they do know.

10 MR. DOBBS: It is not a universal practice?

11 MR. DAVEY: Not yet, but the banks in New York  
12 did it volunatrily when they first started on this kind  
13 of a thing.

1 MR. MARTIN: Professor Weizenbaum.

2 MR. WEIZENBAUM: Yes, earlier our banker friend who  
3 just left unfortunately characterized in his prepared statement  
4 the bank as essentially an information processing system. I  
5 think he called it a financial transaction processing system,  
6 something of that kind.

7 And I think the confusion that crept in that has been  
8 alluded to now around this little horseshoe is the difference  
9 between a system and a file. I think the assertion is that the  
10 bank doesn't have any automated personal data files but, in  
11 fact, I think it has developed here and indeed I believe it,  
12 that the bank as such is a personal automated personal data  
13 system.

14 I think that point has been developed. Now, I think  
15 the -- in the prepared testimony it was asserted that the  
16 computer is merely another point on a more or less -- in a more  
17 or less continuous spectrum. We start with the quill pen  
18 and we go to mechanical adding machines, then electric  
19 accounting machines and finally we are at the  
20 computer. And there is an illusion that goes with that sort  
21 of metaphoric image, namely that these various points along this  
22 continuum don't really make any important difference except  
23 that they make banking more efficient.

24 I think we have seen again in the testimony and the  
25 conversation that has developed since that the introduction

1 of the computer has made an enormous difference, for example,  
2 it has made possible certain innovations we have heard about  
3 and certain innovations that are projected which would be  
4 impossible with the computer.

5 I suggest it has also made possible certain side  
6 effects which may not be as desirable as we would like which  
7 would have been impossible without the introduction of the  
8 computer. I will finish my little speech in a moment, David.  
9 The -- apparently the banking community from what we have heard  
10 here considers the bank to be in effect, an isolated or  
11 isolatable social subsystem. I emphasize the word isolated but  
12 of course, it impacts on the whole society including and perhaps  
13 even especially on people who may not be customers.

14 For example, the statements that you have been making  
15 here about the public buying a service when they ask for credit  
16 carries with it an implication that there is a choice.

17 You know, just as I can choose to buy a motorcycle  
18 or I can choose not to buy a motorcycle, okay, I can choose  
19 to apply for credit or I can choose not to apply for credit.  
20 Well that is simply not so.

21 Today the ability to gain credit has become almost  
22 essential for a very very large segment of our society.  
23 I would argue that the -- that that part of our society  
24 that is essentially excluded from the automated personal data  
25 system that the banks have become is an extremely important

9-4 3 1 segment of our society and is to some extent being  
2 victimized by this progress in our technology. I would end  
3 with a question. We saw in the slide, we saw an automatic  
4 loan officer, that little branch bank that doesn't have any  
5 tellers in it that actually makes loans. Now, surely there is  
6 a computer sitting behind the scene somewhere that makes  
7 a decision as to whether a particular applicant for a loan is  
8 worthy of that -- of receiving that loan or not.

9 Obviously, not just anyone can walk in there and  
10 get a hundred or whatever it is.

11 Now suppose that system works very well and bankers  
12 begin to like it. Okay, now, suppose further then that these  
13 things proliferate. Okay. And then just as is the case today,  
14 that there are many things that you can hardly get anymore  
15 without going through some automatic process, okay suppose  
16 it turns out that this really becomes the norm, that when  
17 someone wants a loan the same criteria automatic, computerized  
18 programmed, okay, is applied to determining whether or not  
19 that loan should be granted or not.

20 Then where does the judgment come in that might  
21 be important here? And what happens to tie in with what  
22 we heard this morning, what happens to people who may have --  
23 to people whose automated personal record may have a mark  
24 in it to the effect that they have been arrested or that  
25 they are involved in litigation and so on and so on?



1 MR. MARTIN: Would you like to respond to that at  
2 all, Mr. Adams?

3 MR. ADAMS: No, I wouldn't, I am not even sure I  
4 understood all of it.

5 MR. WEIZENBAUM: Let me try to summarize it in a  
6 sentence or two.

7 MR. ADAMS: I don't know how these criminal records  
8 got together with the loan records.

9 MR. WEIZENBAUM: I don't know either but let me  
10 summarize in one or two sentences. We saw on the screen  
11 a great big network of prospective cashless, checkless  
12 society, electronic money transfers and so on and so on.

13 Now, it is quite clear to me that there is an  
14 enormous segment of our society that could be said to benefit  
15 from such a network you know very considerably okay. But it  
16 is also clear to me that as there is an enormous segment of  
17 our society today who have never written a check, who have  
18 never, in fact, had bank accounts but they are important  
19 people anyway, okay, that that system would, in fact, exclude  
20 from all sorts of important social activities in this country  
21 that particular segment of the society.

22 What I am trying to argue is that the bankers view  
23 that the computer is merely another step in the direction of  
24 progress, okay and that the effect of the computer is merely  
25 to make banking more efficient, I emphasize the word merely,

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1 okay, that banking is an isolatable social subsystem which really  
2 doesn't touch other aspects of society.

3 Okay. That view is not only misleading but pos-  
4 sibly very dangerous.

5 MR. ADAMS: I think you are assuming several things,  
6 one of the assumptions you are assuming is that the competitive  
7 environment or the economy that we have here in the United  
8 States is one that would create an opportunity for the  
9 banking industry to decide that they are ultimately going to  
10 offer loans only via computerized robots, that nothing else  
11 will be able to compete with that in terms of supplying  
12 money at interest rates that are less than the robot. And that  
13 to me is contrary to the way banking has developed, and the use  
14 of computers has been in terms of making banking services,  
15 if not more effecient, at least, less costly.

16 And in terms of ultimately the computer making  
17 only those types of loans less expensive than any other type,  
18 I would say that maybe that would ultimately be the case.

19 MR. WEIZENBAUM: I don't feel you understood me.  
20 Let me give a very homely example. I recently just a month  
21 ago moved to California. I established a bank account there,  
22 and but not having any California identification, particularly  
23 not having a California driver's license, nor anything else  
24 to certify that I, in fact, now live there, okay, I find that  
25 I have very great difficulty -- I certainly have very great

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1 difficulty getting a hold of money except at the very bank  
2 at which I made a deposit. Even branches give me difficulty.

3 Okay I also find that the retail business in that  
4 particular section of California where I now happen to live is  
5 very very much credit card oriented.

6 Okay. And consequently not having the proper  
7 identification, it turns out that sometimes when I want to buy  
8 something, I can't because it happens to be Saturday or I  
9 happen to be 20 miles away from the bank in which my money is  
10 stored and so I can't buy what I want to buy. Now, I happen  
11 to be a member of a very privileged segment of society.

12 Nevertheless I have this difficulty. I suggest  
13 with the advances that we are talking about here, culminating  
14 ultimately in the cashless society and so on and so forth, that  
15 this particular phenomenon which hits many many people very very  
16 hard today will, in fact, divide the country into two classes.

17 Okay, those who participate strongly in the economy  
18 okay and those who not only not participate but who can't,  
19 who are excluded from it.

20 What I am suggesting is that the blindness of the  
21 technologist and his blind pursuit of progress, that is in  
22 quotes, of technological progress, merely in the service  
23 of efficiency may, in fact, be doing this to which he ought to  
24 be sensitive. And that perhaps it is time to reconsider and  
25 to think about some of these consequences and to stop thinking

1 of both computer systems and banking systems as being essentially  
2 isolated subsystems, but to think of the society as a whole,  
3 and not be quote so euphoric in the presentation of these ex-  
4 tremely progressive technological marvels.

5 MR. BORSOM: Professor, I think you have just made  
6 the argument for a nationwide personal data system which could be  
7 plugged in anyplace in the 50 states for the good professor,  
8 zap, he is a good guy and you can buy anyplace that you happen  
9 to be.

10 MR. WEIZENBAUM: That is certainly one solution.  
11 A side effect of that, of course, is that it excludes all the  
12 guys that you and I think aren't good guys.

13 MR. BORSOM: What segment of our social fabric  
14 is now excluded.

15 MR. MC LEAN: May I comment on this because it  
16 happens to be an issue I am working on right now and, in reviewing  
17 different credit criteria systems, let's hypothesize two  
18 systems. Under System A which is basically the old system which  
19 existed 15 or 20 years ago the credit granting function  
20 was a function of credit managers, it was a high cost system  
21 in that the credit manager earned a salary of let's say between  
22 \$15,000 and \$20,000 a year. The credit granting decision  
23 was basically one based upon such personal information as can  
24 be gleaned but an eyeball judgment on the part of the credit  
25 manager. Let's call that system A. Let's come up with

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1 System B, which is a more computerized system made possible by  
2 the availability of personalized information stored on compu-  
3 ters.

4 Let us assume then under System A, 80 percent of the  
5 people who apply for credit get it, 20 percent are rejected.  
6 Well let's suppose under System B we have the same ratio,  
7 80-20. Let us further assume that under System B it is really  
8 more efficient as far as the banking community is concerned,  
9 the cost of operating System B is cheaper because you employ  
10 lower skilled labor, it is mechanized and furthermore it is more  
11 efficient from the banking point of view in that the resulting  
12 losses are less.

13 I think what the committee is concerned about is,  
14 what about the 20 percent of the people who are rejected?  
15 Those are not going to be the same kind of people. System  
16 B is inherently an arbitrary system, it is efficient in the  
17 aggregate. It is more economical in the aggregate but when you  
18 get down to individual cases the instances of arbitrary  
19 rejections are going to increase and that is the thing the  
20 committee is really worried about and that is the human side  
21 of the problem that hasn't been faced up to by the credit granting  
22 industry.

23 MR. BORSOM: Well gentlemen, I think fair credit  
24 account requires you know that the individual who is denied  
25 credit has access to the reasons why. So that what you are

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1 saying is correct, yes, you have a more efficient system for the  
2 "X" percentage, 80, whatever, who conform by judgmental  
3 standards which are put into a computer by an executive, some  
4 remote location. Now the balance of those, the exceptions are  
5 handled on an individual basis and it is still for the total  
6 system, it is more economical and you know there is -- we have  
7 no real evidence that anyone has been denied credit or will be  
8 denied. I should think that the people who don't get  
9 the green light on the first, you know, jab into the automatic  
10 credit grantor have lots of recourse.

11 I don't see them isolated. I think that they have  
12 to get on the street car or taxi cab and go somewhere else.  
13 But that is because of something that had happened, you know,  
14 that is outside the responsibility at least, of the information  
15 gathering system and the information using system.

16 You know what is the counts of it? What is the  
17 counts of it? Make it all inefficient so everyone is an  
18 individual executive decision.

19 MR. MC LEAN: No, I am not suggesting that I think  
20 the solution was contained -- there has to be some alternative  
21 procedure whereby those who are rejected are able to present  
22 their case to a human being rather than a computer and to get  
23 individualization. Despite your remarks it doesn't operate  
24 quite that simply. We have dozens of letters from individuals  
25 from around the country who have been denied credit based upon

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1 seemingly arbitrary decisions and they have tried to challenge  
2 decisions and they have been told that sorry, we have a  
3 computerized scoring system. You have to have 180 points  
4 to get credit, You have 170 and there is nothing we can do about  
5 it.

6 MR. BORSOM: Is that from a savings and loan  
7 association or from a department store or from a credit bureau  
8 or --

9 MR. MC LEAN: MOre frequently from banks and depart-  
10 ment stores than savings and loan associations. I don't  
11 think S and L is quote that mechanized.

12 MR. BORSOM: On the contrary.  
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1 MR. MARTIN: Mr. Impara?

2 MR. IMPARA: I have some comments, not questions,  
3 and I will make them very brief because I don't think they  
4 are totally related.

5 The slide presentation we saw is -- disturbs me  
6 greatly. And I would hope that the thinking of the  
7 American Bankers Association or any other organization which  
8 might attempt to promulgate such a concept as that would seriously  
9 consider that in addition to working on such a thing as  
10 permitting use of a card in lieu of cash on any kind of basis. --  
11 the credit card industry in general bothers me, too. --  
12 would devise or consort with educational enterprises to do  
13 a much better job to assist them in doing a much better job  
14 in teaching about money management.

15 The frenzy with which I read in the newspapers about  
16 people who are in financial difficulty because they have  
17 overextended themselves is very bothersome, and I think that  
18 such a device as the cashless-checkless society -- or whatever  
19 name it might go by -- would tend to increase the frenzy with  
20 which people overextend themselves.

21 Thank you very much.

22 MR. MARTIN: Commissioner Hardaway?

23 David, two comments:

24 First of all, I wouldn't want to leave the impres-  
25 sion that we all feel like it's bad for the bank to make a



1 profit. I don't think you have to make a profit.

2 Well, in the beginning, we were talking about their  
3 money floating and giving some indication that that was to their -  
4 maybe too much to their benefit. And I think any business  
5 has to make a profit. I believe in the good old American  
6 business making a profit.

7 I would urge you to look into your own business, and  
8 if something can be done for you, yourselves, to look at your  
9 own applications and give people proper notice and proper  
10 information that their information is being interchanged, I  
11 would hope that you would do that yourselves, and you would  
12 -- I would urge you to do that.

13 I would address my question to Mr. McLain:

14 I am interested in the comment he made on the  
15 hearings held on the Bank Secrecy Act. I believe you said that  
16 no one, while you were considering that, addressed themselves  
17 or looked into the matter of privacy.

18 MR. MC LAIN: This was on the first go-round in  
19 1970, is that correct?

20 That is correct, except for a related argument  
21 made by commercial banking witnesses who opposed the legisla-  
22 tion largely on cost grounds, and the interjection of the  
23 privacy issue was largely as an afterthought, and was not  
24 seriously regarded by the members of Congress.

25 The groups who are more actively concerned with

1 privacy such as the American Civil Liberties Union,  
2 constitutional scholars, et cetera, were completely silent on  
3 the issue.

4 MRS. HARDAWAY: Let me ask for an opinion: Do you  
5 feel this is because people just aren't concerned about that  
6 issue, or because they did not understand what the committee  
7 was about to do; or because the public was not informed about,  
8 you know, the seriousness of it?

9 MR. MC LAIN: I don't think the groups concerned  
10 with privacy fully appreciated the implications of the  
11 legislation. They were concerned with other matters and, as  
12 you know, many bills go through Congress, and this was one that  
13 slipped through without the scrutiny that perhaps it should have  
14 had from the privacy standpoint.

15 MRS. HARDAWAY: Do you feel we have any obligation  
16 to inform the public when a matter of importance is being  
17 considered?

18 MR. MC LAIN: Yes, indeed. I think the public  
19 has been alerted by it. Of course the California suit, as  
20 well as the more recent hearings of the banking committee  
21 in which the privacy issue was thoroughly aired -- but I  
22 think it speaks well of having some kind of formal organiza-  
23 tion -- if not at the governmental level, at least at the  
24 private level -- that would concentrate and concern itself  
25 with privacy issues as they are contained or inherent in all

1 kinds of legislation, because everything that goes through  
2 Congress today or through a state legislature or through  
3 the regulatory agencies has some implications on individual  
4 privacy.

5 MRS. HARDAWAY: One other question, Mr. Adams, if I  
6 had \$10,000 in my bank and I decided to move it to another  
7 bank, would you at that time tell me that you know you were  
8 going to report all of this when I moved that \$10,000?

9 MR. ADAMS: Well, if you had \$10,000 in the bank,  
10 and you withdrew it in cash, the Treasury regulations  
11 originally called for the bank having to report that, but that  
12 is the part that has been declared unconstitutional.

13 MRS. HARDAWAY: Let's say I have a large amount  
14 of money in your bank, would you notify me that this  
15 Act had been passed that would have some bearing upon my  
16 banking business?

17 MR. ADAMS: There was no legal obligation for  
18 banks to inform customers of their -- I would say of  
19 their responsibilities with regard to the act. However, I  
20 think most bankers assumed that they had a moral  
21 obligation.

22 There was one subsection of the regulations calls for  
23 persons transporting money out of the country in amounts  
24 greater than \$5,000, they are required to report that to  
25 customs as they leave or customs as they come back, which

1 is part of the IRS or Treasury.

2 Now, in most cases people going overseas with  
3 greater than \$5,000 will buy the travelers checks from the  
4 banker, and I think most banks have assumed that they will  
5 inform the customer at that time that he is obligated to report  
6 the fact he is taking it overseas to the Treasury as a result  
7 of the regulations. I think most bankers have put together  
8 something from the regulations that says they have to obtain  
9 his social security number, because we -- this particular  
10 issue, the gathering of the social security number was the  
11 most offensive part in terms of actual numbers of responses  
12 from bankers, was the most offensive part of the regulations.

13 The banks were already keeping records all along  
14 and the fact the Treasury defined how long they had to keep  
15 them didn't change anything but the fact they now had to keep  
16 them for five years instead of whatever they were keeping  
17 them for -- so they were already keeping them.

18 One of the things they did object to was in order  
19 to do business with an individual they had to obtain his social  
20 security number. And in every case. It was mandatory.

21 You couldn't, if a guy refused to give it to you,  
22 you had to turn down the account, and these kinds of things are  
23 built into this regulation, and these are the kinds of things  
24 that upset bankers. And as it would upset any business  
25 person, I think, that has to do something because the government

1 says they have to do it before they can engage in any kind  
2 of business.

3 MRS. HARDAWAY: Thank you.

4 MR. BORSOM: Mr. Chairman, I would like to respond  
5 to Mr. Impara's comments, because the United States Savings  
6 and Loan League on two occasions that I can recall have developed  
7 films which have been made available to schools and to local  
8 TV stations telling the benefits of thrift, of saving money  
9 so that you can ultimately have a downpayment on a home.

10 And the United States Savings and Loan League also  
11 runs each year a training seminar for college professors in  
12 finance, hoping that knowledge of thrift institutions as  
13 opposed to commercial banking, hoping that that knowledge will  
14 filter into the college textbooks and in the college system,  
15 and ultimately to the teachers who come as the products of  
16 colleges.

17 Then local savings and loan associations have a  
18 good many programs where they go into the schools and tell  
19 about the benefits of thrift, and the desirability of maintain-  
20 ing a good credit position, of not overextending yourself, and  
21 savings and loan associations, you see, are opposed to the  
22 idea, really, of consumer lending, of buying on time.

23 They would rather have people save money and then  
24 make a purchase and point out that the cost of buying on time  
25 is frequently 18 percent.

1           As a matter of fact one of the major savings and  
2 loan associations in Chicago, a \$1 billion neighborhood  
3 association, has what they call the Bohemian installment  
4 plan. And that asays that if you want to have an automobile,  
5 you start now, and for two years you save \$200 a month, and  
6 then at the end of two years under the Bohemian installment  
7 plan, you have the money to buy the car.

8           They are playing on the ethnic thriftiness of the  
9 Bohemians who the latterday scottsmen, as you know.

10           So some of this has been done over the years and is  
11 being done on a local level. And you perhaps wouldn't see it,  
12 but it is done more often in small towns than cities.

13           MR. MARTIN: Senator Aronoff.

14           MR. ARONOFF: I pass.

15           MR. MARTIN: Dr. Gallati?

16           DR. GALLATI: Just a little feeling I get, and  
17 I gather from some of the questions and remarks of my colleagues  
18 that it's not a feeling isolated with me.

19           I just have this -- of a chilling effect --  
20 concerning the attitudes of the distinguished representatives  
21 of the banking industry present here today, in several  
22 respects.

23           In the first place, I hear this statement said  
24 that most people are honest and they pay up their loans. God  
25 bless the honest people. There are some people, of course,

1 who don't pay, and they are dishonest.

2 MR. BORSOM: They are out of funds, at least.

3 DR. GALLATI: Okay. We are so efficient in this  
4 business of making loans that some very small fraction -- and  
5 I forget what it is -- like 20 percent, one percent -- don't  
6 pay.

7 How about those people who don't qualify? This  
8 is comparable to in my opinion, the problem we had with  
9 automobile insurance; some people couldn't get Allstate.  
10 Allstate was efficient, GICO was efficient. The rates were  
11 low: God bless the people who can get it. Some people  
12 couldn't get anything, so we had to step in with legislation  
13 and have an assigned risk.

14 Okay. Maybe the day is coming that the financial  
15 banking industry does not become sensitive to these problems,  
16 and we will have assigned risks for loans, too; and perhaps  
17 the legislation will occur.

18 Now I was particularly concerned --

19 MR. ADAMS: Is that a threat or a promise?

20 DR. GALLATI: No. I think you should be sensitive.  
21 You can answer whether it's a threat or not. I can't. I am  
22 just saying that this is the type of thing perhaps we should  
23 think about.

24 Now, if I did not misunderstand what was said, if  
25 I open an account in a savings and loan association, I give

1 references --

2 MR. BORSOM: No, not if you open a savings account.  
3 You want some money, Doctor, I mean, if you want to borrow some  
4 money on a home, you give references; yes.

5 DR. GALLATI: In no case where I open an account  
6 would I have to give references, is that correct?

7 MR. BORSOM: A savings account?

8 DR. GALLATI: No, any account where I put money in?

9 MR. BORSOM: No.

10 DR. GALLATI: Well, then, I misunderstood.

11 MR. BORSOM: You would be asked to give your social  
12 security number and mailing address, and your signature.

13 DR. GALLATI: The point I was going to make is that  
14 you went to the credit bureau which gave references and  
15 it's not applicable --

16 MR. BORSOM: No.

17 MR. SEIMILLER: That wouldn't be true for a  
18 checking account at a bank, you are asked to give references if  
19 you open a checking account?

20 MR. BORSOM: You are going to have to ask my  
21 ex-colleagues -- incidentally, I want to take exception to  
22 being included in "the banking business".

23 MR. SEIMILLER: I thought that was an honor we  
24 were bestowing on you.

25 MR. ADAMS: He is sensitive, is he?



DR. GALLATI: May I make one more point?

You know that the point I made, if it is true that on checking accounts I do have to give references, I would think the banks' obligation to the references, not the credit bureau --

MR. DAVEY: That's correct. I don't know of any bank that goes to credit bureau for opening checking account or savings account.

MR. SEIMILLER: Frankly, I don't think we even follow through with them. I am on the board of a bank out in Chicago; I think we require it opening a checking account, but I don't believe we ever -- if it is done, it's done very rarely -- checking through it. Why they do it, I don't know.

MR. MARTIN: Senator Aronoff wants to withdraw his pass.

MR. ARONOFF: Just one question:

If a person has -- this is directed to the banking industry -- has an overdraft of a small amount, then has a second, third, fourth or fifth overdraft of a small amount, which overdraft is made good?

Is there any notation that goes into a file? That's Question 1, the fact of the overdraft.

And is that information passed on in any way to any other source?

MR. ADAMS: I would say the prudent banker keeps

1 track of individuals that frequently overdraw their accounts.  
2 And this is an individual banking prerogative.

3 The bank -- when you overdraw your account, the  
4 banker, officer, has the option of letting you do it or  
5 making, you know -- or bouncing it. He has that option when  
6 the check comes in and you don't have the funds, insufficiency,  
7 he can make it "insufficient funds" and send it right  
8 back through the system, or he can let you overdraw.

9 I would say that the frequency of how often you  
10 overdraw it would determine how your -- this banking officer  
11 views your particular account as to whether or not he wants to  
12 let you do it again.

13 There are no, to my knowledge, there are no ways  
14 that this knowledge is ever given to another or an outside  
15 source.

16 MR. ARONOFF: There's no punchcard or anything  
17 like that goes in, "frequent overdrafteer" or --

18 MR. ADAMS: No.

19 MR. SIEMILLER: Stan, what happens if he does it  
20 very frequently? He is asked to take his account over to  
21 First National, they can afford that?

22 MR. ARONOFF: The reason I ask, it was a very  
23 personal example. We have 33 accounts with the First National  
24 Bank. One of the 33 accounts is my wife's account, and I  
25 travel a lot and before I realized that the better thing for

1 me to do would be to give her a line of credit on my account,  
2 if she writes a \$10 check for the groceries along  
3 the line and I am in Washington or some other city along the  
4 line there would be overdrafts that would come back.

5 The biggest mistake I made by the way was  
6 giving the loan of credit into my account. I think the over-  
7 draft was better. But --

8 MRS. HARDAWAY: I can hardly wait.

9 MR. ARONOFF: What I am concerned about, in spite  
10 of the 33 accounts and the estates and everything else that are  
11 in there, is there some black mark from that?

12 And secondly, would I then be treated differently  
13 than somebody that didn't have 33 accounts in the bank?

14 MR. WEIZENBAUM: If you have 32 wives, you are  
15 already being treated differently.

16 MR. DAVEY: May I respond a little to that, Stan?

17 This is just a matter of interest. For demand  
18 deposits which includes both checking and saving accounts,  
19 I don't know of any information which is passed on to any credit  
20 bureau anyplace in the country. With the one exception  
21 that there is where there has been a fraudulent account,  
22 and there maybe a delinquent -- you know, \$1,000 or \$2,000  
23 balance -- when the guy has disappeared.

24 Then that information may be presented to a credit  
25 bureau just for their own protection so other banks, or

1 something of this nature.

2 But I don't know of any information which is passed  
3 on with respect to demand deposits. Now, occasionally when you  
4 on your application will give a bank reference, what they will  
5 do is to call the bank to see if you have a checking account  
6 or a savings account. And normally what they will do is to  
7 find out the range in which your average balance is, they will say  
8 a middle three-figure or middle-two figure, which would mean  
9 \$50 or \$500 or something in that area.

10 There's a difference between a demand deposit side  
11 of banking and the loan side of banking. And there are  
12 tight restrictions as to what can be done on the demand deposit  
13 side, and very little information comes out about that in  
14 any kind, and anything which is done in that respect is internal  
15 to the bank.

16 Again, from the banks I know, they keep track of this  
17 thing, if it becomes onerous to them, then they will tell you,  
18 take your account some place else.

19 But short of that, there isn't anything else  
20 being done that I am aware of any place.

21 MR. ARONOFF: I can safely cancell the line of  
22 credit and go back to the old way.

23 MR. MARTIN: Mr. De Weese, did you have another  
24 question?

25 MR. DE WEESE: Yes, I did.

1 I think it's not surprising that this act sort of  
2 fell through the floorboards because it was called the Bank  
3 Secrecy Act, and I think this threw some people for a loop.

4 MR. MC LAIN: Actually, we were for bank secrecy  
5 at the time, rather -- against bank secrecy; we were trying  
6 to open up the records of the bank.

7 MR. DE WEESE: But what really disturbs me is  
8 something that was brought out: the government just intends  
9 to drop it because they didn't need this information anyway?

10 MR. MC LAIN: No, I didn't say that. They haven't  
11 made up their minds; there is some staff level through that  
12 they don't need this, but a final decision is yet to be made.

13 MR. DE WEESE: The undoubtedly argued strongly  
14 they needed the microfilm. I haven't read the case, but they  
15 probably outlined a very persuasive argument that they needed  
16 this stuff badly, and now just to say now we don't need it  
17 anyway, but if we had got away with it, we would have kept it,  
18 to heck with it.

19 MR. MC LAIN: That is not fair to the Treasury  
20 Department. The emphasis in the hearing was very strong on  
21 check information. That was the crucial evidence as far as law  
22 enforcement authorities are concerned in apprehending white  
23 collar criminals, and very little emphasis, if any, was given  
24 to the automatic reporting of large currency withdrawals and  
25 deposits.

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1 MR. MARTIN: Mr. Anglero, had you another question?

2 MR. ANGLERO: Yes, perhaps one question, or one  
3 observation, perhaps a question, I don't know.

4 Again talking about the cashless society. And  
5 checkless at this moment. I use to be in charge of adminis-  
6 tration in parliament, and once I thought it could be a good  
7 idea to have a direct entry from the government to a given  
8 bank depending if it's allowed by the -- the choice of the  
9 employee.

10 So I assumed as the guys hired, per fiscal  
11 year you can have an open account there providing some  
12 control, but which you don't have to really -- the government  
13 doesn't have to issue a monthly check or two-week check or  
14 whatever it is, even if we are going to checkless or cashless.

15 And that could be some argument and it could work,  
16 I don't know, this is something that came out.

17 But coming to the sophistication that we visualized  
18 today, and providing that a lot of the delinquency, let's  
19 say in this country, and also including Puerto Rico as part  
20 of this country, comes because of the need for money or  
21 whatever it is, because they want to get some money one way  
22 or the other.

23 You think that a checkless-cashless society or  
24 in what degree would this decrease the delinquency rate of  
25 the Nation?

1 MR. ADAMS: Assuming we got to a completely  
2 checkless-cashless society at sometime? That that might  
3 decrease the delinquency?

4 No, I don't see how it could.

5 MR. MC LEAN: I think you are talking really  
6 about two different things. The function of a credit card is  
7 twofold.

8 One is to serve as a substitute for a cash trans-  
9 action. In the system the banks are talking about is to use  
10 these credit cards more frequently in connection with  
11 automatic data processing equipment to replace cash trans-  
12 actions. At the point of sale.

13 This is the little block you saw at the store  
14 where the lady goes to the supermarket checkout counter,  
15 buys groceries, instead of paying by cash she gives a credit  
16 card, they put it in the box and her bank balance is instantly  
17 debited.

18 I don't see that would have much of an impact  
19 on delinquencies.

20 But insofar as the credit card is used as a  
21 credit device to encourage buying on time, I think it does  
22 indeed have some impact on delinquencies.

23 But here the impact is going to take place  
24 whether or not you know we go to this completely automated  
25 system.

3 1           The very fact that you have credit cards available  
2 to more and more people has an impact on their bill-paying  
3 habits.

4           So you are going to have that problem whether  
5 we have the cashless society or not.

6           MRS. HARDWAY: Do you mean the money simply  
7 would not be in the cash register drawer?

8           MR. ANGLERO: Well or on the person in my pocket.  
9 I would have no money in my pocket.

10          MR. ADAMS: You'd have the card.

11          MR. ANGLERO: This is what I am asking. When,  
12 in the slides we saw a sign there, that says we have, we  
13 only deal with checks, no cash, no cash here.

14          And it was aimed to prevent and to -- to tell any-  
15 one, they make nothing there because there is no money.  
16 So if there is the idea and approach, will the use of  
17 whatever system is designed, would it be so good, so efficient,  
18 that we'd prevent anyone from stealing a credit card for  
19 example.

20          MR. ADAMS: I think that's the hope of the  
21 banking industry, I think that's what they'd like to have.  
22 Ideally one of these automated teller stations would work  
23 for one of these terminal devices where the customer is  
24 allowed the choice, she can key in her secret code only  
25 she knows.



4  
1 I think an ideal thing would be instead of doing  
2 that she could plug in her earlobe or something and it would  
3 recognize that the card belonged to that particular individual  
4 only.

5 It was not stolen and it was their card. That  
6 would be the ideal terminal setup so that you could identify  
7 that individual with that card and you would know that no  
8 one else could take it.

9 And under those circumstances I would say that  
10 we would have made a good step toward eliminating the need  
11 for somebody to rob somebody else. I think it might be  
12 a good thing. A voice print or thumb print or something  
13 that identifies that individual exclusively.

14 And I'd like to make one last comment here, if I  
15 don't get a chance otherwise, but I have brought some slides  
16 over here that I use to talk about some of the developments  
17 that are happening in banks and the direction they're  
18 heading toward.

19 Your reaction to this has been a lot like the  
20 reaction to banker groups all over the country. It's with,  
21 an old saying one of the guys at the ABA has that the dogs are  
22 not going to buy the dog food if they don't like it.

23 Your reaction to the checkless society is a lot  
24 like bankers' reaction to it, is that they don't think it  
25 will sell.

jr  
1 And to say this is the way it's going to happen  
2 because I brought some slides here to project some things  
3 that could happen is really assuming way way too much.

4 I think your own, this group's here reaction to  
5 what I proffered forth here indicates that you as a normal  
6 person reject some of the ideas that are evolving and that  
7 same rejection is going to keep the banking industry from  
8 being able to sell it.

9 Hopefully the American economy that has come  
10 about because we have had competitive enterprise and given  
11 the consumer the choice, he will take what he things is  
12 best for him, and if the consumer feels like what we are  
13 talking about is not in his best interests he is not going  
14 to buy it.

15 And all of the buttons and gadgets and slick  
16 cards that we put out, if they don't offer a convenience  
17 to him that he didn't have otherwise he is not going to  
18 take it.

19 MR. MARTIN: Mr. --

20 MR. ADAMS: And that sort of sums up my feeling  
21 about what we have talked about here today. I appreciate  
22 your concern, that you'd expressed here today but it only  
23 points up the fact we have got a hard job ahead of us in  
24 terms of selling some of these ideas we have been talking  
25 about and I feel that the banker per se as well as any other

1 bussinessman today is as morally concerned about what he's  
2 doing as any other group.

3 And that he's not objectively thinking that he is  
4 going to put something into effect and not worry about the  
5 moral consequences.

6 MR. MARTIN: Mr. Adams, let me respond to that  
7 at the price of prolonging the meeting for a couple minutes.

8 The Secretary of Health, Education, and Welfare  
9 in creating this Committee might buy some particularly  
10 the panel we have had this afternoon, be perceived to  
11 have a justification or a warrant for doing so which hangs  
12 from the slender reed of the fact that the Social Security  
13 number is widely used, in fact it now has to be used as a  
14 consequence of congressional enactment by the banking  
15 industry, his motive I think is much deeper than that.

16 And I am not sure that the encounter that we  
17 have had this afternoon, perhaps in part because of its  
18 inevitable, certainly not intended adversarily quality,  
19 this sort of a meeting tends a bit to get adversarily and  
20 I don't think anyone should infer from that that the  
21 secretary or that the committee approached the task in an  
22 adversary manner, his motive I think stems from what he  
23 perceives his role to be in the National Government.

24 The Secretary of Health, Education, and Welfare,  
25 in decades past one might have thought that the attorney

1 general, the head of the justice department, might have equal  
2 warrant for concern, about these issues, but for reasons  
3 that we may deplore but have to accept as our society has  
4 developed, the justice department has come to be perhaps  
5 less concerned for understandable reasons with justice as  
6 with law enforcement.

7           And that's not to criticize the justice department.  
8 It's mode of functioning and the kind of role it has to  
9 play is a product presumably of the kind of society that  
10 we have in some measure become.

11           I think the secretary's motivation in this is  
12 one of trying to understand and see whether with the aid  
13 of this committee and all the people that have come before  
14 it what the potentially adverse effects have quite desirable  
15 technological developments for some purposes maybe, the  
16 response of this particular panel excluding the representa-  
17 tive from the legislative branch, has been one of blindness  
18 I would say to the kinds of questions that are bothering  
19 the secretary and that are bothering this committee.  
20 Blindness born of a very understandable not villainous  
21 attitude.

22           The addition to progress, technological progress,  
23 efficiency, public service viewed with tunnel vision, born  
24 of a quite desirable it seems to me and quite laudable  
25 commitment to the worth of what one is engaged in in one's life.

ir 8  
1 But as our technology is set on us in society  
2 they tend I think to isolate us from each other, technologists  
3 become isolated from each other.

4 It's hard to become an effective technologist. To  
5 become so one must concentrate on the application of one's  
6 technology whether it is law enforcement, banking or  
7 whatever and in the isolation from each other and larger  
8 social concerns that arises from our addition to our  
9 technology perhaps comes a loss of sight of values and  
10 concerns that ought somehow or other to permeate our  
11 understanding of all that we do.

12 And I would hope that the banking representatives  
13 who have met with us this afternoon would know, one, that  
14 we enormously value your willingness to come and spend  
15 time with us.

16 I would hope also that you would go away not  
17 with a memory of an adversary quality but of a really  
18 concerned effort to engage your attention for problems  
19 that we don't fully understand, and which I think in all  
20 candor your presentations indicate that you not only don't  
21 understand but haven't even begun to recognize the need  
22 to be worried about whether you understand them or not and  
23 I say this in a spirit of enormous friendship and in no way  
24 meaning to sound critical and I would hope this tiny  
25 little edge of the banking industry we have had with us

9  
1 and I am sorry Mr. Freund is gone, may somehow or other feed-  
2 back to your colleagues some sense of our concern about  
3 these issues.

4           There's nothing bad about the technology inherently.  
5 There was nothing bad about any of the technologies that  
6 man has brought about but there are certainly an awfully  
7 lot of bad consequences of technology with which we are  
8 now having to wrestle and the hope is before this technology  
9 has reached its full potential effect on the society that  
10 we can perhaps do what we have not always succeeded in doing  
11 with technology and that is to anticipate what its adverse  
12 consequences might be and by taking prudent action, volun-  
13 tarily out of a sense of the importance for doing so,  
14 in recognition of what perils it may hold for values that  
15 we lost sight of but which we value, I suppose deeply,  
16 that we will attend to these matters voluntarily and not  
17 wait until the government requires that persons turned  
18 down for credit of certain rights.

19           It seems to me that the credit bureau industry  
20 has to count it a black mark in its record to have had  
21 that forced down its throat over its objection.

22           Far better would it be if the credit industry  
23 had through some process of anticipation recognized that it  
24 might have been a good thing to arrive on that course of  
25 conduct on its own and I suspect that the banking industry

10  
1 would prefer ten years from now to have tried to anticipate  
2 what modifications, what voluntary effort in its behalf  
3 might help prevent adverse consequences rather than to  
4 succeed in applying its technology to a society which isn't  
5 able always to anticipate the consequences of what it does.

6 But when it does anticipate it and then seeks  
7 to do something about it to fight it which is surely what  
8 will happen, it's the history of all efforts to control  
9 technology.

10 The efforts to control air pollution in the  
11 automobile industry were not applauded by the automobile  
12 manufacturers who have located for perfectly and understand-  
13 able and historical reason their plants along our water  
14 courses in the nation, did not come in advocating measures  
15 to reduce the pollution of our streams because when the  
16 proposals to undo the adverse effects of that technology  
17 occurred they would feel a particular economic disadvantage  
18 from it and it took a long time for the public interest  
19 to assert itself over that special private interest that  
20 would be specially geared by the effort.

21 And I do hope that you can go away from this  
22 meeting in a spirit of trying to join us in the inquiry  
23 of understanding. We don't know what the answers are.

24 And in spite of the certainty of attack or  
25 questioning you may have felt this afternoon, I think, every

11 member of this committee would acknowledge that we are  
12 wrestling with something we do not fully understand and  
13 we hope the consequence of our meeting will be that you will  
14 wish to join us in this undertaking and help us find the  
15 answers because their answers that I think and the secretary  
16 feels are important for the society to find, more important  
17 than efficiency in banking or any other field of endeavor  
18 in which the computer and these systems may be applied.

9 MR. ADAMS: I understand what you are saying.  
10 All I wanted to do was just say what I just said I felt  
11 like I hadn't said it previously and from the comments  
12 coming out I felt like that I would have liked to have said  
13 that before I left and now that I have said that I appreciate  
14 the opportunity to have said it.

15 I understand what you are saying.

16 MR. MARTIN: You say -- I hope you do. Your  
17 remarks don't indicate that you did because what you said  
18 was we are going to have a hard time selling it.

19 Maybe the first thing you ought to decide is  
20 should we want to buy it. Should you try to sell it.  
21 Henry Ford may have had a hard time getting people to buy  
22 cars but when they caught on they really went.

23 And now we feel that perhaps, no blame on Henry  
24 Ford but, there was something about that technology as it  
25 came on that if we had foreseen it, maybe we could have



1 managed its onset in a manner that would have left us today  
2 with a society and environment that we'd feel happier about.

3 So my invitation to you is to reexamine whether  
4 this particular technology or how do you manage its  
5 production so that it isn't a question of selling hard  
6 over objects, but helping to understand what the source  
7 of those objects may be and seeing if they can't be responded  
8 to so that whatever advances are possible can be brought  
9 on not in the manner that you are suggesting they be,  
10 through selling us.

11 MR. ADAMS: I happen to be by profession a sales-  
12 man and I believe in what salesmen happen to do but that  
13 doesn't mean that I am speaking completely for the banking --

14 MR. MARTIN: No, but I am speaking to you as a  
15 representative of the banking industry and I hope it will  
16 feedback that way because you are our only access now that  
17 Mr. Freund is gone.

18 MR. ADAMS: I happen to believe Henry Ford did  
19 a good thing. And at the time that he did it. And I happen  
20 to believe that the automobile was not a problem until so  
21 many people decided they wanted one.

22 And it wasn't Henry Ford's particular conscience  
23 that should have bothered him when he made the automobile  
24 that some day he would pollute the sky, because at that  
25 time he had no idea what he was doing.

1 MR. ARONOFF: Can I throw one?

2 MR. MARTIN: That certainly is not what I am  
3 implying.

4 MR. ARONOFF: In defense of the banking industry  
5 and I feel I can endorse your comments and I think that  
6 they were appropriate, David, but I would have thought the  
7 banking industry itself would have not let one or two  
8 comments go unanswered because I think that Joe and Bob  
9 can leave a wrong impression also and that is that  
10 inevitably because of the technology that we have, you  
11 are going to have a two-class society of A) the havers,  
12 and B) the one's that will never have.

13 Actually with the growth of technology in the  
14 banking industry you have the banks and the savings and  
15 loans with the use of the technology going more and more  
16 into areas that they never before ventured to go, into  
17 the inter-cities, into making through building and loans,  
18 loans to a greater number of minority groups as a matter  
19 of policy than they did before.

20 Now, I am not saying they're going fast enough,  
21 that's an entirely different inquiry. But I think that  
22 the statistics would probably show that with some of the  
23 greater amount of knowledge that the banking industry now  
24 has they're ready to take greater risks, that some people  
25 that have some quote black credit marks against them are

1 not necessarily bad credit risks.

2 I can speak not only locally in the sense natty  
3 area but in terms of working with the banking industry, in  
4 terms of planned programs, of developments, and of actually  
5 meeting together to themselves lend to a greater amount  
6 of people that only five years would have been regarded  
7 as quote bad credit risks.

8 And at the risk of overstating that side of the  
9 case I think the committee should at least compare the banking  
10 industry of 1972 with that of 1962, and I don't think you  
11 would find it growing as wide apart as some members even  
12 on the panel tended to indicate.

13 MR. MARTIN: Well, I don't think anyone's  
14 implying that we must, developments must lead us to adverse  
15 effects.

16 But the risk --

17 MR. ARONOFF: No, I was talking about the greater  
18 and greater division of society.

19 MR. MARTIN: But if you take Joe's hypothetical  
20 and that's all it was, a hypothetical view of the future,  
21 you certainly would want to make sure that the onset of the  
22 technology was managed in such a way as to, -- as to as  
23 much as possible make impossible that hypothetical view  
24 of the future.

25 And all I am suggesting is that we don't fully

15  
1 always understand what we are doing with our technologies  
2 and perhaps if we listen to what may sound like crazy  
3 hypotheticals of the future and try to address how to  
4 protect against them we will succeed, whereas if we don't  
5 even think about them perhaps as so often in the past we  
6 will fail.

7 And failure with this technology could be a very  
8 very serious, -- could confront our society with a very  
9 very serious change in character, let us say that.

10 A change in character which we may never feel,  
11 which the members of the society when it comes on may feel  
12 as delightful, 1984, your model any model of the future may  
13 be just fine for the inhabitants of the time and maybe  
14 we have no obligation to preserve for our successors a  
15 model of society which we happen to prefer.

16 Maybe we should just say, "Well, privacy, freedom,  
17 all those kinds of things. They can go." People could  
18 live under a different way.

19 And yet maybe we feel that there are certain  
20 values that are worth trying to preserve or at least that  
21 at the pace at which we lose them should be something that  
22 is held within the reach of people as it goes along so it  
23 just doesn't happen suddenly.

24 MR. BORSOM: Mr. Chairman, I'd like to register  
25 for the record a strong objection to being stereotyped with

16

1 banking.

2 MR. MARTIN: Financial institutions, excuse me, sir.

3 MR. BORSOM: And also kind of confused, I think,  
4 with the credit bureau collection industry, from time to  
5 time I think in the discussion that's happened.

6 I think in order to comment back to the committee  
7 I'd like to give you my feeling that the committee, members  
8 of it, I don't want to stereotype either, are relatively  
9 insensitive to the competitive situation between various  
10 kinds of financial institutions, banking and savings and  
11 loan associations in particular and I want to try to ask  
12 those of you who are chilled by scope to join the club.

13 We see scope as something maybe not bad breath  
14 but at least an ill wind for the savings and loan business.

15 And we are determined within the savings and  
16 loan business to continue to develop customer and consumer  
17 satisfying services and convenience in the face of the  
18 bank owned and operated payment systems and the promise of  
19 the bank owned and operated EFTS, system ala scope.

20 So I am asking you even though we were nice looking  
21 guys and we smile at each other we are really on quite  
22 opposite sides of the table on a good many things.

23 MR. MARTIN: Thank you verymuch for being with us.  
24 The Committee will reassemble at 6:30 for dinner at the Holiday  
25 and followed at 7:30 in the Montgomery Room.

17

End #22

1 (Whereupon, at 5:54 p.m., the meeting was  
2 adjourned, to reconvene at 7:30 p.m., this same date,  
3 Wednesday, October 11, 1972, in the Montgomery Room.)  
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