Transcript of Proceedings

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY

SECRETARY'S ADVISORY COMMITTEE ON
AUTOMATED PERSONAL DATA SYSTEMS

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DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

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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
Richard W. Freund
Vice President
First National City Bank
New York, New York

Kenneth A. McLean
Professional Staff Member
Banking, Housing, and Urban Affairs Committee
United States Senate
MR. MARTIN: If everyone would take a seat, we might be able to call the meeting to order.

Good morning.

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

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

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

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

Excuse me, there was also, as Guy Dobbs reminds me, a copy of the report entitled "Cost Implications of
Automated Personal Data Systems," which came in yesterday by air express from the University of Utah, being the fruit of the work Jerry Davies specified last spring and the final report on which has arrived.

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

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

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

Consumer reporting firms are said to be large
repositories of such information.

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

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

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

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

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

Richard Penn, to whom we all owe an obligation
in connection with the development of this presentation, who serves as program manager of the Technical Analysis Division of the National Bureau of Standards, and who has been interested in issues with which we will be dealing this morning has agreed to serve as a moderator of the panel discussion with which the morning will begin.

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

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

Dick?

MR. PENN: Thank you, Dave.

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

The thing we are dealing with this morning is not viewed by all people as being the same. Depending on where you sit, whether you are a producer or a user or a researcher, or concerned with the total system or concerned with people
generally, you do view the problem differently.

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

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

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

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

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

Then to set it off, we will have Judge Greene arrive and indicate some of the constraints and barriers on why the technology cannot function.
When we finish with this, hopefully we will then have provided a basis upon which we, collectively, including the additional resource personnel who are here and interested and participating in this, will be able to discuss with you and hopefully we can move towards the objectives which David has set forth.

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

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

Mr. Joe Ebersole, of the Federal Judicial Center;

Nan Gold from the District Court;

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

Do we have others?

Mark Cannon from the Chief Justice's Office;

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

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

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

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

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

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

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

"One of the big hangups in our whole system is the failure of the court to supply disposition information."
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
is now the object of the most serious attacks
that have been launched against it since the system
was inaugurated in 1924. These attacks vary in
form and purpose, but they direct their fire mainly
toward the identification record that is incomplete
for lack of disposition shown.

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

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

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

"The courts now are beginning to express
some concern over these incomplete criminal
identification records and related problems."

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

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

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

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

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

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

"The clerk of the court in which the prisoner
is arraigned shall promptly report to the State Fingerprint Identification Bureau and to the Chief of Police or Peace Officer who made the arrest, the sentence of the court or other disposition of such system."

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

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

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

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

The New York State Judicial Conference Statistical System is a computer based system and places the burden for disposition reporting exactly where it belongs, on the courts, and the court system.
The Judicial Conference is chaired by the chief judge of the state, who is chief judicial officer of the Unified Court System.

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

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

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

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

One final word about missing dispositions, the FBI's National Crime Information Center Computerized Criminal History Program in CIC/CCH depends entirely upon the completeness of criminal offender record keeping at the
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.
MR. PENN: Thank you.

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

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

That ends the formality of my presentation. I have said hello that way. I wish Judge Greene was here because I have a few slides at the beginning of the short presentation I have that were specifically especially for him.

Could I have the lights now, please?

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

I noticed on my way --

(Slide.)

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

(Slide.)

-- but I understand that you now have a speedy trial here and some no-knock legislation, and so --
-- it was not at all difficult apparently for them to gather a group quickly and --

(Slide.)

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

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

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

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

More on point. And perhaps --

(Slide.)

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

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

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

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

(Slide.)

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

(Slide.)

When they search, there are some of the books and dog-eared pages that they search, with our Pennsylvania statutes they have five years' worth of these books to search. From what I explained earlier about how they are organized, they all use this finger method, going to the "P" book, "L" section, then beginning to run their finger down the page looking for Larry Polansky or something that
looks like it.

(Slide.)

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

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

(Slide.)

-- you now go to a terminal.

(Slide.)

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

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

(Slide.)

-- with another several taps on the keyboard you
are down into the detailed information about the case, at least to the extent of knowing the name and address of each of the parties involved and some more dates perhaps.

(Slide.)

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

The big point though --

(Slide.)

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

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

Right now the system I described is working for our lower court and won't be introduced into upper court for
about six months.

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

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

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

What we do maintain on our file active and alive and capable of being retrieved is the microfilm number of the film you should go to in the clerk's office to get the
record of the last conviction of that conviction, or acquittal, as a matter of fact. We do maintain all the information on the cases that have gone through our system since late 1969 so we can provide ourselves with a criminal history record at least for the period January '69 through up to date which is more than the police can provide for us because as I say we can provide a complete record.

(Slide.)

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

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

In this case I have given you what we get back when we key in on our Philadelphia unique identifier, something like an FBI number. We have our own, the police have their own criminal investigation files in Philadelphia.
They identify them by number after they have done fingerprinting and photographing. If they can get them back to that same record they will give us the same number again.

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

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

(Slide.)

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

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

In the next set of lines, I know this is difficult to read, are indicators that tell me who the bail bondsman is if there is a bail bondsman, what is the amount of bail, by number who the bail bondsman was, by number who the attorney was, and I can translate this at the terminal into who by name is the attorney and bail bondsman. If there is a police sojourn who has done a sobriety test or blood test for drugs, we would have the coded number of the police
sojourn. This is the police identifier, about the middle of
the screen. Most serious charge in the case, things like
when was he arrested and when was he first indicted, how
many times did we have to bring him to an arraignment in
order to successfully arraign him, how many times have we
scheduled him for trial and when is he next scheduled for what
kind of action.

This is to give you the fact we --

(Slide.)

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

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

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

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

That is translating some disposition information.

(Slide.)

Another Jones screen.

(Slide.)

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

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

(Slide.)

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

We also have --

(Slide.)

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

(Slide.)

-- child's record --

(Slide.)

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

(Slide.)

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

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

(Slide.)

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

(Slide.)

On the other hand, this last slide is a notice going to the motor vehicle bureau, which is automatic, saying that a judgment has been recorded against a man because of an automobile accident and if it is not cleared within 30 days they...
are to remove his license.

That is the end of the slides.

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

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

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

So take care, there is a lot of incomplete information lying out there. We, for our own sake, are taking action in that area. In the next year we are just beginning to record cases from the point of filing instead of the point of being ready for trial, we will then automatically follow that certain procedural events must occur within the required time frames, if not we will dismiss as the court, the court will dismiss for lack of prosecution.
Another problem is how do you adequately describe a debtor? Who is the John Jones that appears on that court record? I don't know the answer to that one. I know it is very difficult in the criminal area where you have some unique identifiers, like his fingerprints because he has had previous problems but now all you have got is a name.

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

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

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

Most of the dispositions aren't there.

I will agree though that prior to 1969 the burden, the onus was on the policeman to come to the courthouse and get that information. But we have been providing it
mechanically for three years and we still get the same

I think it is also time for these
departments and criminal identification bureaus to get
up to date.

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

The police for the most part are frustrated in
so many areas that I just don't comprehend. I am not an
attorney, I have spent three years so far in law school. I think
I understand a bit about constitutional law. I am not an

The pendulum has gone too far. What we tend to be doing is emasculating the
people that are asking to protect us, I think. Let me stop there. I am hoping that I raise
effective questions with you so that later on you can come back
enough questions at me. Thank you.

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

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

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

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

For those of you who may not be familiar with City Bank, let me say we are the largest bank in New York and the second largest bank in the United States.
In the late 1920s we became the first major New York bank to extend credit to the consumer and from that time to this we have made more loans to consumers than any other bank in New York. Our consumer credit outstandings are I think second in size only to those of Bank of America.

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

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

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

Let me say at this point that the lender must make the right decision 97 out of a hundred times. We
estimate that it takes all the profit of ten good personal
loans just to pay the loss on one bad one. A good loan is
one on which there are no collection problems. Cost of
collection is such that a loan requiring repeated handling
in the collection department is a losing proposition for
the lender even if it is ultimately repaid.

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

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

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

You are interested I think in whether our consumer
reporting agency is as reliable in reporting the
disposition of creditor suits and judgments as it is in
reporting their existence. And I must inform you in all
candor that it is not.

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

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

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

What do we do when we obtain a report which shows litigation without its disposition and we still feel we might wish to make the loan? We get the information from the applicant himself. Usually he can provide evidence of
the outcome or at least tell us the name of his attorney with whom we can verify that the issue is settled and that the suing creditor has no further claim upon the applicant.

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

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

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

 Critics of our industry frequently charge us with burdening the public with excessive debt. Believe me, we try very hard not to because if we extend credit that is
difficult or impossible for borrowers to repay, we lose more in the final analysis than they do.

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

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

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

Thank you.

MR. PENN: Thank you, David.

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

Mr. Link does not speak to us this morning in a capacity representing the Bar Association's position but he will talk from his own viewpoints which are based on
discussions which I believe that committee has held.

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

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

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

The major cause of the problem that we could see in that particular state, the major cause of any problem of recording the dispositions of criminal actions, that study had to do with criminal court system in those two counties, the major cause of the problem in that state was the complexity of the system.
I just thought I would show you -- I am not sure how well you will see this and I will submit a copy of these to your clerk -- the major problem can probably be best illustrated by simply showing you the complexities -- can you hold that; thank you -- the complexities of one of the counties.

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

Down here, a decision not to prosecute.

Up here, "No probable cause."

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

But once again, you see exits from the system, now at very different places. Yet we were within the same constitutional limitations under the Indiana Constitution.
Now, then, the point that I am making is that first of all the systems are different. And secondly, that the different people will know the disposition depending upon one of two different factors, first of all at what point in the proceeding the disposition takes place, and secondly, the route that it is following.

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

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

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

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

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

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

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

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

Now, some of our previous speakers obviously have
better systems than the one we were studying, but I think that this epitomizes some of the problems we might run into in counties like the present ones.

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

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

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

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

Some of our conclusions about that delay were that the systems -- or about our study on delay, were that first
of all the systems ought to be simplified and could be simplified.

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

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

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

Now all of those have an input to this question of how to pick up dispositions and why the problem exists. The problem exists because it is not simplified; the systems are not simplified. The charging procedures are complex and
diverse. Scheduling is almost a random thing within those systems. The fact that prosecutors did not even know what cases they were prosecuting that day and were calling back to the chief prosecutor to find out whether they ought to settle that case on the day of the trial -- they were out there on pay phones calling back to say, "I finally have gotten into the facts of this case and I think we ought to dispose of it."

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

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

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

What I would recommend at the present time is to force reports on dispositions. And I would force those
reports by saying that if a report is not received as to a disposition within a certain period of time, then the arrest record itself ought to be purged from the files.

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

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

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

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

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

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

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

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

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

Al?

DR. BLUMSTEIN: I think you have seen very vividly in some of the previous discussions how unsystematically the criminal justice system operates. And that is not accidental,
that in large part is intended to assure that there is not
a single system manager who makes decisions about the people
that flow through the system from arrest, through conviction,
through disposition. We intend through the separation of
powers to see to it that there are checks and balances, that the
systems are not totally integrated.

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

An issue we faced directly was the problem of dis-
position of arrest information. We were faced most sharply with
concern about this as a result of some analyses that provided
us with a projection of the arrest probabilities in the
country. We found that a boy of ten years old, today, say,
in the United States, has at least a 50 percent chance of being
arrested sometime in his life for a nontraffic offense. This
means that arrest records including juvenile records are going
to be available not on a small criminal population but
that such records will be available on a significant portion
of the American population.

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

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

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

And I would like to make sure that we distinguish
between the concept of innocence, which is a person not having
had anything to do with the event, the concept of guilt, which
involves a consequence of legal procedure which determines
that he did beyond a reasonable doubt commit an offense and the
in between area where there may well be some doubt, where the
doubt is great enough to preclude conviction, but where there
may be a reasonable probability that the individual committed
the offense.

The police have a concept of probable cause
which is necessary to warrant arrest. The courts have a concept
of beyond a reasonable doubt, which is necessary for convic-
tion. If one were to try to translate these into say subject-
tive probabilities, one might say that the police require 50
percent assurance to warrant arrest, one might say the courts
require a 95 percent assurance to warrant conviction, and that
there are those for whom a reasonable objective might have
somewhere between 50 and 95 percent assurance.

So that arrest might be warranted. Conviction
might not be warranted. The individual is innocent until
proven guilty in terms of any legal intervention with him,
but in future sentencing decisions, a number of judges have
pointed out to us the importance in their judgment of the
kind of information available on prior record -- on prior
arrest records, even when the man was not convicted. The
essential problems in the completeness of the arrest records
have been, I think, well illustrated by the preceding
speakers, and they relate partly to the fragmentation of the
system, partly to the lack of incentive by the police
to follow up, partly the lack of incentive and in part lack of
control on the judicial system to follow up, deriving
in part from the concept and desire of judicial independence,
an independence that I believe everyone would insist on with
regard to the individual decisions that judges make, a concept
that many of us would insist far less strongly on in terms of
conforming to required procedures in participating as part of a
total criminal justice system.

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

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

The alternatives one can use in bringing this
system into a more satisfactory shape include first exhortation,
which there is a lot of, which there has been a lot of, and which
which I don't have a terribly strong faith in as a means for
brining institutions to conform to a larger system they have to be part of. I would go along very strongly with the suggestion of Dean Link regarding the -- regarding the suggestion for purging records that are incomplete after a reasonable amount of time. This would provide some incentives to those parts of the system that feel the records are important whether those be the police, or corrections, or possibly the courts to see to it that if they wanted the records, they will take the responsibility then for developing a complete record even though it is not currently their own responsibility to do so.

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

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

Fourth, I would suggest the development in all such information systems of audit procedures so that the system knows
who has gained access to what records and so that follow up reports can be provided to those users to complete information that is either erroneous or partial at the time that follow up information becomes available.

Next, I would urge the creation in all such criminal justice information systems of public advisory bodies to see to it that procedures are established and followed that will minimize the danger to the individuals whose records are erroneous, that will establish an appropriate purging requirements consistent with the needs of the users and consistent with the needs to protect the individuals located within.

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

We are also seeing a trend again exemplified by some of the things developing in Philadelphia of information systems not available only to one part of the criminal justice system but for use across the total system. Having these information systems, while they represent an opportunity
for much greater access by many more people, they also
represent an opportunity for introducing information control
procedures that are not available with manual systems. They
represent an opportunity for seeing to it that automatic
purging procedures take place. They represent an opportunity for
seeing to it that only portions of files are available to
specified users.

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

MR. PENN: Thank you, Al.

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

One of the things the committee was supposed to do as a first order of business, I guess, today was to try and determine is there a substantive problem to which they should direct their attention relative to criminal justice records, disposition of information being fed back and is there one relative to credit dispositions being fed back. I think the
evidence of the people who have spoken to you and the resource people who attend this morning, offer solid evidence that they believe, at least, there is a problem here which is substantive and one which should be addressed and one which is important.

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

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

Perhaps we should explore that a little more in our discussions that will take place after the coffee break.

But we have shown that there are problems, very serious ones,
because of the division of responsibility here, the fractionation of the criminal justice nonsystem. We have heard references to Larry Polansky's unique court numbers. In the District of Columbia where I did some research a couple years ago, we found there are 36 different unique numbers assigned by 36 different unique agencies, and trying to track an individual through it becomes a real problem. There are interface problems even where the Philadelphia system -- updating their files.

There are problems of hardware compatibility which one must be aware of here. You can't ignore the hardware compatibility problem. There is an interface problem, identification problem, an absence of incentive generally for anyone except the individual being wronged to be concerned with something to do about it.

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

We need to talk very much about the value of additional information, we need to talk about the trade office of the improvement of certain functions at the cost of certain other things. I am certain Professor Miller can talk on this
much better than I can about the problems of infringement of privacy because I have made information available, but this is a trade off we should not consider likely in our group discussions. It is going to cost dollars to collect and disseminate additional information. We should be aware of what we expect to get from that and have reasonable expectations of getting.

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

In fact, we have heard this morning the contrary. The question of audit, follow up data and certainly the last notion of creating public advisory bodies to oversee the public interest around here are things I think should be of concern this morning. We have one additional speaker who unfortunately has not been able to be here this morning but
hopefully will be here shortly after coffee break. That is Judge Greene from Superior Court who will talk about it from a judge's viewpoint because now we have put it on the judge's back this morning. We will let him tell us why he feels some of the technological advances may not be operational.
MR. MARTIN: Before we go to coffee, Arthur Miller has expressed an interest in making a few brief comments before we break for coffee.

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

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

My personal view is that the question of recoordination of disposition of civil cases or criminal prosecutions or criminal arrests, although vitally important, is a relatively solvable one.

I say that because once the problem is recognized, there are a variety of procedures that can assure at least the recoordination of the fact of disposition. And ironically, this is an area where the greater utilization of the technology
make those procedures for recoordination not only more reasonable and cost effective, but it will enable that fact, the fact of disposition, to be more readily accessible because it is often not simply the question of was there a recoordination of disposition, one of the problems is the cost of gaining access to the fact of disposition.

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

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

In some situations, I would venture to say the obligation is on the court system, in other situations I would say the obligation is on the police system, in still other
situations I would say the obligation may be on the user of the system, the credit bureau, the employment agency, what have you.

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

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

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

I would argue, and I think Mr. Blumstein really talked to this issue, that we have got to think about the
legitimate uses of the record even when it is factually accurate, when he tells us and by God he is absolutely right, that the statistical gain plane is that the police make and arrest on 40 to 60 percent probability of conviction, but the conviction is 90 to 100 percent probability of guilt.

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

Now, ironically, we are seeing challenges of exactly this stripe under title seven of the Civil Rights Act of 1964 because some of the very interesting statistics on arrest show a complete inbalance in terms of percentage arrest of blacks and whites, males and females, city people and country folk. And the challenge is being made that if arrest records, even with disposition, are given to potential employers, it becomes a nonrelative relevant discriminant in employment, that blacks will be discriminated more because the fact of arrest, the incidence of arrest is higher even though the conviction rate may be no higher and even if the conviction rate is higher that may be simply a function of police practices in a particular area in terms of how they expend their
manpower as between white and black communities.

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

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

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

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

JUDGE GREENE: Coffee is fine.

MR. MARTIN: Well, then, there is one short additional comment. We will break for coffee and resume in about fifteen minutes.

(Short break.)
MR. MARTIN: We will resume the session now, I
will call you to order.

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

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

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

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

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

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

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

In our own court, the Superior Court for the
District of Columbia, for example, we have our entire
computer operation computerized.
Our daily scheduling of cases is done by computer.
All our dockets are kept instead of by quill pen they are
kept by computer. Our statistics that we publish and on
which management decisions are based are obtained from the
computer in all great variety of ways.

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

That is, husbands required to support their wives
and children are done -- are handled in our court by computer.
When the check comes in it is automatically recorded and
the fact of compliance with the Court Order is recorded and
the computer in turn issues a check to the wife in the amount
that she's entitled to.

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

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

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

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

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

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

But I believe that my view at least is that the
courts should not and cannot operate in that fashion. They
must retain and operate their own data processing equipment,
although as I want to point out in a moment cooperation with
other agencies to provide dispositional data and so on obviously is desirable and should be done.

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

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

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

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

They are required in many states to be confidential. Psychiatric reports which the Court receives need to be confidential and privileged.

One answer that can be made to that is that computers as I am told can be programmed so that only certain people will have access to some of the information.
But I think that's, -- gives us false assurances.

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

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

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

I think it is probably correct to say that any joint computer operation between the Executive branch of the Government and the Courts will be operated by the Executive branch simply because the Executive branch has many more facilities and resources and personnel and otherwise than the Courts have, and the Courts will simply be an adjunct to a large computer operated by probably a law enforcement agency.

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

Another perhaps more important point is that under the doctrine of separation of powers, the judiciary
must be and should be separate from and independent of the Executive and it must appear to be independent and separate which is almost as important as being separate and independent.

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

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

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

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

Also I think by this unrestricted kind of a sharing in effect the court becomes a party to the prosecution, and the prosecution becomes a party to the court process. The two become increasingly blurred and merged particularly as the computer is a management tool of considerable proportions in a court system which is sufficiently
large that it requires a computer.

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

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

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

It might or it might not have a bearing on the outcome of your case as to the extent of the shared information.
I would think that you would regard that kind of a process as less than impartial. This of course brings up the point that what I have said about the Government applies with equal force to computer operations, joint computer ventures between courts and insurance companies, let's say, or credit bureaus, or real estate boards.

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

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

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

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

But and we are talking not just about legally privileged information but general information that the public really doesn't have any business knowing.
And if it is all dumped into one big computer and the court data which may or may not be complete is also in there, the court in effect becomes a party to the invasion of the right to privacy which is affected by this and I think the court particularly judicial branch particularly ought to be careful not to become involved in that -- those kind of invasions because in a very real sense it is the judiciary, is the guardian of the right to privacy in the sense of the right to be, not to have one's home invaded and not to have illegal wire tapping and so on all of which are under the heading of the right to privacy.

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

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

Police very often report only arrest data and so do other agencies. And as often as not these data are erroneous. They are erroneous to begin with and they are erroneous in the sense that an arrest which resulted in an acquittal ultimately, when the acquittal is not shown on the data is obviously erroneous. It is damaging to the person on whom the information is disseminated.
Now, we are told then the reason why the data is incomplete is because the courts don't furnish the data. I don't know about anyplace else, other cities, but we have disposition of our criminal cases instantly in our computer, the date disposition was made, and that information is available at any time to the police department, to the prosecution, to anyone else who wants it.

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

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

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

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

Our criminal cases are disposed of in an average
of six to eight weeks which is not a long time by any stan-
dards if you include in your equation the need for making
investigations both by the defense and prosecution and
various pretrial motions and maneuvers and so on.

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

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

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

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

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

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

We can and do make available all the information
that can be made available without infringing on any one's privileges or rights and cooperation between the various components of the criminal justice system and also cooperation between the courts and those who have legitimate need of information of civil cases, civil judgments, is to be fostered and is to be desired.

But that is a different matter from a computerized operation which is basically under the control of the Executive department.

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

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

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

And so I think that to sum up again, while cooperation and to make information available that is legitimate, legitimately to be in the possession of particularly
law enforcement agencies, I think that's fine and I think
the courts have a duty to engage in such cooperation, but
I think the courts also have a duty to make certain that
the doctrine of the separation of powers not be weakened
and that the rights of individuals in the judicial process
not be weakened and I think that would occur if the courts
statistical management system were to be operated by some-
one other than the court.
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,
Detroit, Chicago, throughout the State of California, and Phoenix, Arizona.

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

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

Now, it's interesting to note that of the consumers who come into the T. R. W. Credit Data offices to review their credit files in response to their rights under the Fair Credit Reporting Act, 24 percent of their complaints and questions have to do with this public record information.

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

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

But in talking about the various other ways in
which T. R. W. Credit Data is working with the court, there
seems to be very nonuniform ways of filing information.

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

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

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

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

I think we have talked enough about the filing
of satisfactions with respect to money judgment types of
suits. But the same problem holds for judgment, all dis-
missals of suits, anything which is, any type of conclusive
action which has been taken on any one of the court actions.

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

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

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

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

Thank you.

MR. MARTIN: Mr. DeWeese.

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

MR. POLANSKY: Do I have to answer that question?
Can I stand on the Fifth Amendment Rights?

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

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

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

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

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

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

In the very first instance the reason why court records were made public was to protect the citizen against three things, secret arrests, false arrests, and double jeopardy, this is why almost every statute of every state provides for court dispositions to be a matter of public record.
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.
I have at no time said ours is a public record, it is not one which you could walk to a counter and submit I want Lear Polansky's record.

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

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

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

MR. PENN: That is the civil side.

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

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

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

MR. POLANSKY: Well, we certainly do within the court administrative operation. We are involved with scheduling. We are involved with knowing the quantities of
work that have to be done.

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

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

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

We don't tell the prosecutor or the public defender what judges we are scheduling next week, that is administrative information.

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

MR. DE WEESE: Are there people outside the criminal justice community that have this kind of access, example, licensing bureaus?
MR. POLANSKY: No, but we allow the prisoners access to that information which tells them when their next case listing is so they can tell their families when they're next due in court.

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

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

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

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

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

MR. DE WEESE: Could I just to finish the point I was trying to make is it seems to me these information...
systems have been set up not for the benefit, in the sense
that they are open to the public where you computerize court
records you are really serving special interests of the
credit bureaus, the prospective employers who want easy
access, as Gerald Davey said he would love to deal with
a credit bureau with a system that is computerized.

I question why the taxpayer should pay for that.

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

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

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

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

What I am trying to present to you is that our
purpose was certainly not to feed any credit bureau nor does
the court have a long lost love for the policeman and wants
to provide him with all the information he can to grab every
guy on the street, that was not its purpose either.

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

Instead you set up an independent information
system.

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

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

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

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

MR. DE WEESE: It wasn't clear from your original
presentation.
MR. MARTIN: Mr. Gentile.

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

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

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

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

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

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

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

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

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

I think the court has an obligation to let the police department or anybody else for that matter know what
the disposition was in a certain case, was the defendant
found guilty, not guilty, what was the sentence, was he
put on probation.

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

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

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

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

So far as I am concerned what is a matter of
public record anybody can have access to it and that includes
the private citizens as well as the police department and
if we happen to have a compilation, statistical compilation
available as to how many convictions we had in a certain
year in a certain type of offense and how many acquittals,
there is no reason why that should not be made available
to somebody else.
There is other type of information which is not a matter of public record which is a matter either of privileged information or matter of internal management within the court and that information should not be made available to anybody else.

So I don't know if that answers your question.
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
me is really two kinds of connotations which you maybe pro-
viding a kind of insight to, and that is that the notion of
whoever has control of an information system of this kind, has
power.

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

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

Therefore, your concern about the impartiality
kind of aspect he views because of the system aspect, is one
that I am a little bit concerned about. I don't know if I
said that quite clearly, but I guess the point I am trying to
get at is that you pointed out that it was important for the
judiciary to keep this symbolism of impartiality and of
separate and independent function, because to the extent that
they did not, that they would become a party to the invasion
of privacy.
And I guess I would argue that to the extent that technology might be able to facilitate in a different way the entire process and to the extent that the judiciary does not take advantage of that, it can also become a party to the invasion of privacy and in particular, to the extent that you now are operating a very "effective and efficient" system from a dispositional point of view, but in fact the police department is not, from a systemic point of view there is a huge hole from the viewpoint of the individual.

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

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

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

MR. DOBBS: What I am trying to drive at is the
system appears monolithic to him by virtue of the way in which he is treated, not by virtue of the fact that computers are, in fact, separate, and perhaps if we look at how information was used throughout the whole system so that the individual got the appropriate kind of treatment as a result of proper use of information, he would get a different perception of that system.

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

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

There are many other problems that have to be addressed in other ways. All we can talk about at this point is, to what extent would vesting control in one entity rather than another either add to or detract from those problems. And I still come back with the same solution, at least satisfactory to me, that if you were standing before the judge and you knew that the prosecutor had all of the information that the judge had, but you and your counsel do not have access to that same information, you would feel more frustrated by this monolith than you are today.
MR. MARTIN: Professor Miller?

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

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

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

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

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

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

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

The courts are in business to deliver justice, to
decide cases brought before them impartially as between the
litigant. And modern society is such that the government is
one of, if not the most frequent, litigators in the courts,
particularly the federal courts.

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

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

Now, when he tells us that he is concerned about
the ability to keep independence over his information base,
that is a real concern. It doesn't go to the question of
who has got physical custody of a machine. It goes to such
subjective questions and secondary questions as what hookers
does the legislature put on his use of that machine? What
conditions does it impose on him when he gives him that
machine? Does it mandate who has access to it? To what
degree does the prosecutor get access to that machine?
One of the great tragedies of American justice, I think, is the imbalance between the individual and prosecutorial arm of the government. The fact that the United States attorneys have at their disposal FBI people who can engage in pretrial investigations of potential jurors, I think, is a travesty. It is an imbalance and seems to me, fundamentally inconsistent with our notions of justice and I would hate to see any possibility of executive branch intrusion on the judicial function, through leaning on the information pool that might be created within the courthouse.

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

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

I have said in here before and I will say again, if one compares the relative funding level of the federal
judicial center, the administrative office for the United States courts, the courts themselves, with the kinds of money that is being plowed in, either to the defense establishment or to the criminal justice system, I find it bizarre in the extreme.

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

MR. MARTIN: Commissioner Hardaway.

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

And we have seen a great lack of incentive to secure their own systems. Many times they could do this without any additional funding, simply through an administrative procedure, but they just simply don't do it. And we have heard numerous reasons, excuses, whatever you might want to call it, for not securing their systems. In your opinion, to educate for that incentive, is that too slow of a process in relationship to the speed with which our systems are growing? And would it be a better method to either legislate for that incentive or to perhaps reach it through some sort of a regulatory board that
DR. BLUMSTEIN: My personal -- first, I think that there are a variety of technological approaches to introducing security in information systems, but we have got to recognize that as long as there are legitimate users of any system, those legitimate users can transmit that information illegitimately.

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

I think the approach must involve doing what we can reasonably, through the technological design of the system. I think the approach must also involve careful audit procedures of all the users of the system. Find out who is making what use of the system, monitoring what appear to be excessive uses of it, retain capability to find out who did use it, and finally, a kind of administrative disinterested public advisory body which would probably have to be set up through the legislative process and that this body would monitor the rules and regulations in the operation of the system.
And even with all that machinery, there are going
to flaws, there are going to be lapses. And I think what we
need is a multi-faceted approach to the security so that we
are doing all we reasonably can to see that it is operated
well, legitimately, and with integrity. Just as any other
governmental mechanism will have flaws, this one will have
flaws.

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

MRS. HARDAWAY: Thank you.
MR. MARTIN: I hope your discussants don't feel inhibited. Please feel free to indicate your desire to participate, comment, question. This isn't to draft you. Mr. Dobbs?

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

MR. STORM: To get to your first question first, what is excessive is an overkill. Everybody is concerned with the right of the individual, and in this environment I think more so than ever. Public records are public or they are not. There seems to be a sort of ambivalence that if public records are public but there is a safety in the ability to communicate them, the computer is one thing and one thing only, and that is the power to deal with the vast numbers of things we have to deal with today. And it is the -- the thought is lurking here somewhere that the problem with the computer is making public records too public. And we have to in some way inhibit the mercilessness of this great machine from speaking to facts. It is certainly public policy whether
arrest information is public information or not, but once it has been determined by the public that it is public information, then it seems to me that the right to disseminate this and the right of interested persons to use it follows from it.

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

Now, a lot has been said here about should arrest records be made public, since an arrest is not a conviction. And one of the panelists spoke very well, I thought, to the matter of probability. Well, I think if I was the manager of the branch where you did your banking and I hired a person as the custodian of your funds who had been arrested 20 times, I question if as my depositor that you would feel that I had done the right thing if I had knowingly let that man be the custodian of your funds, and at the same time, while this is one of the responsibilities of management, you the depositor are laying on me, should I not have the facts when I am employing that man to make a rational employment decision?
MR. MARTIN: Mr. Hall? Mr. Hall is the director of the Statistics Division of the Law Enforcement Assistance Administration, Department of Justice. Mr. Hall, I warn you that your presence may trigger an interesting set of interchange between you and Mr. Gentile, Mr. Gallati, Senator Aronoff and Andrew Atkinson who has joined us.

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

Mr. Hall?

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

I think Mr. Polansky very adequately said that he does not consider aggregates of public transactions to be information that should be generally available to the public. I certainly would agree. I think the ability to handle information in different ways makes aggregate information, automated information, very different from manual information. For example,
and I know that -- I know his name, his name is Robert Gallati and I go to a file cabinet; I can get a bit of information about Robert.

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

MR. MARTIN: Professor Weizenbaum.

MR. WEIZENBAUM: Let me make a few remarks. One is that I might inherit a lot of money someday and since, so I am impressed with Mr. Gallati, I might wish to hire him for some very sensitive position; before I do so I might want to investigate him. I might hire an agency to inspect his records. One of the things I would find is that there are well over a dozen offenses against him which he has not settled. I base this, this is all in the public records so people will find this out. Yes. This is based on apparently
a bug in a computer program in a system in New York City, not
Mr. Gallati's system, which confused him with owners of auto-
mobiles whose license plates are very similar to his. His
plate happens to be New York 49. There are a number of
people whose license plates are 49H and A 49 and others such,
and because of a bug in a computer system his name was con-
fused with those. Now when he, being in a very powerful
position, investigated why he was getting letters from the
police department telling him that warrants had been issued
for his arrest and so on, he was able to discover this un-
fortunate error. However, as he told us another time the
director of the other system told him that he may ignore all
those letters, but unfortunately because of the complexity of
the computer system the but in the system cannot be corrected
and he will continue getting those letters. Now it may very
well be that my decision to employ or not to employ him may
hinge on the record which apparently exists in this other
system or that, the decision of the National City Bank to grant
him credit or not may again hinge on that system. This is
a difficulty.

One thing we have not addressed ourselves to is the re-
liance that people place on "what the computer says." Now
it used to be that people used to say well it says so in black
and white. People used to rely on what is written, on the
printed word. That reliance is also often misplaced,
especially today. I am wondering, following this up, to what extent not only credit bureaus, prospective employers and so on, but judges and people making, say payroll decisions and so on rely on "what the computer says" and even worse, to what extent they may rely on judgments that the computer in fact has been programmed to make. Without understanding how those judgments are in fact made. That is, what essentially what the program is that makes those judgments.

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

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

So, what I am trying to get into here, and I would certainly like the response of the judge on this, is the problem of judges and other decision makers in the judicial system, this is of course a much wider problem than merely the judicial system, but let's stick to the judicial system for now, to what extent judges and other people in the judicial system find themselves relying on information coming out of computers in instances where they really had had neither the time nor the training to fully understand how that information was in fact generated.
JUDGE GREENE: Well, I suppose to the extent we are talking about, judicial decisions and sentencing as you suggested, the basis of probabilities of persons repeating the offence to an extent that decision is made now too.

The judge does impose a sentence depending on what he thinks of the probability of recidivism, based on prior record, based on whatever other tools are available. Charts have been used to assigning a certain number to a certain characteristic, particularly such things as prior records and what types of offenses.

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

Is that a legitimate factor to be taken into consideration, that is the question. I think the computer doesn't add much to that particular equation. I think that we have not done it, I have not done it, although I can see that at least consciously we don't do it but we do it to a certain extent. If you have an offender who has let's say ten larceny or burglary convictions in the last three years. You will more likely
than not give him time in prison on the assumption that if he isn't given time in prison the chances are he will again commit a larceny, because he's on drugs, let's say. So we do that any way.

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

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

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

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

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

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

So in that sense, then, the computer is making a judgment which leads you to a judgment and you don't really
understand how the computer came to that.

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

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

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

Now in particular this may be a recording of
category of crime. Okay. And so now if there are three bits
assigned to it that leaves eight categories. Now somebody
comes along and some crime is committed which is sort of a
borderline thing but by virtue of the fact that there are
only eight categories, someone, not a judge, someone not trained in the law, says it is closer to embezzlement than to anything else so it gets code 7.

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

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

I think this is a very quiet danger. If you now add to this that there may be a little piece of code in the computer equally innocently gotten in by virtue of some technological gimmick that has nothing to do with anything that asks, for example, whether the crime we are now considering, was a weapon used -- that's certainly a serious question. No. Is it drug-related?
Now, it turns out that by some interpretation the fact that this fellow takes an asmatic drug or whatever, happened to go in this case because there are only three bits again, gotten to be a code that that, that this is drug-related. Again, as the statistics accumulate on this individual and then you see the aggregate information, okay, you become a victim of this long chain of events, okay, in your judgment process; and of course the ultimate victim is the offender who is standing before you expecting justice.

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

The only comment I had on the use of the computer in this whole process would be a statistical kind of use generally, not relating to a particular individual, where the computer could tell us based on 10,000 convictions in a particular city, where you could draw the conclusion that drug addicts who are between the ages of 18 and 22 are more likely than others to become residivists— that kind of information can be and is being gotten from the computer
but I would -- I wasn't suggesting at all that it would be
appropriate to sentence an individual and get his story on
the basis of a computer printout on this simplified method
you suggest.

MR. MARTIN: Dean Link?

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

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

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

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

MR. MARTIN: Mr. McCafferty.
MR. MC CAFERTY: I would like to make a couple
points since I made a long trip up here like other people.

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

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

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

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

We have the very famous case in my county of
Prince Georges where a man received 63 years. He has
now reduced his sentence by personal plea before three
judges to 53 years.

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

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

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

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

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

Now these are two areas that we have to think about, what happens to the individual who has gone through
the process and so has had its pound of flesh in the old literal sense and the guy suddenly comes up and finds out that the so-called expunged record is still being held against him.

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

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

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

MR. MARTIN: Professor Miller?

MR. MILLER: I would like to second that.

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

But I think the marvelous debate between the
judiciary and technology over here causes me simply to
remark that not only is it absolutely crucial what the
environment is at the date of recordation point, Joe's
illustrations of the various subliminal categorization
problems, but of course equally true is the point that it is
very, very important to know what the environment of
evaluation is when the decision-making process gets
initiated at the other end.

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

Of course we sometimes worry about the quality
of the people who put the pre-sentence reports together;
that's a fact of life. I must say maybe with my own
parochialism as being a lawyer and having a certain respect
for the bench and their ability to weigh evidence and
evaluate facts and the rest, I wonder however what the level
of sophistication is in the decision-making environment in
the commercial field when the personnel man says, "Hey, this
record's got three arrests." Does he know what the arrests
are for? With or without disposition. Does he know the
difference between an arrest and conviction; does he really
understand what the difference between an arrest and
conviction is? Does he know much about the circumstances of
the arrest? Is it a guy who has just finished his last law
school exam and he's so elated he got a little bit high
and made a little noise and a neighbor complained and there
was an arrest, or was it even an arrest or conviction for
conscientious objection during World War Two, something
perhaps that's been decriminalized under later shifts in
standards for conscientious objection

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

I am really amused, Mr. Storm, at your concern for
me as your depositor in not hiring the arrestee. I
appreciate your trying to safeguard me but if the alternative
is that the poor kid can't get a job for six months and
then sticks up the bank -- (Laughter. Inaudible.)
MR. DOBBS: I might follow up on Arthur's point. Arthur, I think it is important to reinforce that one of the members of this committee who unfortunately happens not to be here, but Don Muchmor who is Vice President of California Federal Savings who has run into the kind of problem you describe has a slightly different view of the problem. And in their particular bank as they have attempted to employ people who have, in fact, had arrest records outstanding, they have gone to the lengths of trying to, in fact, verify and validate whether they were resulting convictions and at least, according to Mr. Muchmor, in his experience, he was quite surprised to find I believe, that in at least 90 percent of the cases, they ran through that in fact, there were no subsequent convictions and that, in fact, those employees turned out to be quite effective and efficient employees.

MR. MARTIN: Mrs. Gold?

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

As far as the lending and credit problem is concerned and I specifically want to exclude Judge Greene's court from this because I don't know, I have never been there,
but there has been plenty of information disseminated as to what goes on in landlord-tenant and small claims court today in the country. If you spent time in them, you would see these are not guaranteed to the individual, these are credit collection agencies in effect, and that there is very little real practical consideration of the merits of these cases so to me five credit suits, by five credit agencies does not, without evaluation and looking behind it, constitute a valid statement as to whether a person is a good credit risk.

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

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

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

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
record that triggered the action.

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

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

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

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

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

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

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

Fortunately, some of the chief justices have come to us for advice as to whether or not they should participate. The fact of whether or not they provide disposition is not at
issue. But we go out and look at the presently conceived
law enforcement system and try to make a recommendation to the
Supreme Court or the Chief Justice or whatever is involved in
the state. And let me give you a hypothetical example which
may highlight some issues for you.

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

I understand that has even been somewhat shelved
since then. I further began to read into the general
attitude of these situations and I find that the FBI got all
the data, state's data into its central computer on the grounds
only a federal agency would be able to supervise and keep
a system on uniformed control. They -- I then go to the --
any particular state you know and I investigate the particular
system which is in existence and I find such tacit statements
that they would like their system to be able to do such as
development of individual patterns of persons having trouble
functioning in society, I then, you know, have to make a
recommendation to the Supreme Court of that state. And if
we can go back to Judge Greene's former comments as to the
Doctrine of Separation of Powers and Evasion of Rights of
Privacy, I submit to the committee that you should seriously
consider these issues especially where there are no controls
as Al Blumstein has pointed out over what these systems
really do.

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

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

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

MR. HALL: No, I am feeling a little fidgety being
the representative of. how would you put it, the big funnelling source? Unfortunately, I find it unfortunate that you took your remarks from an editorial from some publication rather than looking at other documentation which is in existence. I would like to mention to this committee the -- that LEAA is supporting massively the development of criminal history systems. The LEAA concept is the development of what we call a criminal history for the -- well, it is an offender based transaction statistics/criminal history system.

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

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

Moreover, we have added stringent requirements
concerning what kinds of records can be transmitted interstate, if our funds are utilized and that includes no records which do not contain disposition information. We have limited the kinds of offenses that can be transmitted interstate.

We do not feel quite frankly that we have under the interstate commerce laws, at least, the right to suggest what the states can do intrastate except that we do require that the states have mandatory reporting and we do require that even intrastate, that they adopt security measures that are enforceable and are parallel to Project Search. I would further like to suggest or would like to state that we require the state to involve at the management level all types of criminal justice agencies including the courts to make sure that the kinds of data that go into the intrastate system are not or, at least, have a minimum of danger to the individual.

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

I would further like to submit to this committee the documentation, the description of our position, the documentation of that position along with the very rigid grant funding rules that are applied to the states who are involved in the system.
MR. MARTIN: I am sure we would receive that with pleasure. Could you also as a part of that submission, delineate the nature of your relationship with NCIC and what your relative influence is by whatever techniques you have to exercise influence. Mr. De Weese?

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

So I just called Philadelphia, called the City Courthouse, this is startling because it goes right to the heart of the problem of people who come in here. I told the person who answered the phone that I was from the Gallati Construction Company and I was considering hiring two people. All right? And I said to these two gentlemen, it took me 20 minutes to get the right person; once I got the right person it only took four minutes to get the right answer. I gave him the names of Peter C. Nelson, my law school roommate, and a variation of my name and I asked them if they would please
check out for me what my criminal history was in the City of Philadelphia in your files and asked them if they would check out the civil records. The person informed me in four minutes that neither my roommate nor -- all right, in four minutes your system told me that neither my roommate nor I had criminal conviction docketed, as you pointed out.

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

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

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

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

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

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

MR. DE WEESE: I am talking about criminal.

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

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

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

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

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

MR. MARTIN: Mr. Davey?

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

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

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

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

You even could have gone through my office, which
you possibly could have, if you got both pieces of information.

MR. MC CAFFERTY: Did you mention his name?

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

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

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

MR. MARTIN: Mr. Davey?

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

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

One of the points I was trying to make on this thing is that say for every hundred thousand inquiries which
are being made, somewhere between 1000 and 4000 people are coming in on a monthly basis to review their records.

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

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

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

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

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

Now, I can't speak for the rest of the credit industry, I am not a spokesman for them. I have been out of this business for two years, but I can speak as to what
the policies of credit data were prior to the time that I left.

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

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

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

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

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

And I think that it is highly damaging type of information when someone outside a credit grantor has this type of information available to him because I believe that a credit grantor knows how to treat this type of information.
I do not feel that an employment agency or any other kind of group is in a position to judge what credit granting information is all about and I feel that, again making this point that the type of information collected should be designated for a specific purpose and it should be used only for that purpose.

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

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

And I hope that this can be done.

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

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

MR. MARTIN; Commissioner Hardaway, then
Professor Weizenbaum, then Dr. Gallati.

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

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

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

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

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

Now, in Tennessee, as in your state, more than likely we are the state's largest employer so we never lack
for applicants.

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

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

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

"May I know what that record is?"

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

But let me tell you what happens, they never go to the desk because there may be 20 people applying for that job, and so that interviewer simply takes that application and puts it to the side. And that person has definitely been discriminated against, and when you
discriminate against a man for employment, you have done something.

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

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

Senator Pastore. Professor Weizenbaum.

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

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

That system itself is misnamed and that in all the publicity that surrounds that system and the use of the word "National Crime Information System," that the inspector voiced over and over again, that he was in effect
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 midn 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 ver 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
funding under that program two states.

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

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

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

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

However, just one, just the opposite, just make a very obvious point, if you say there is -- that a state is going to receive a hundred dollars, or whatever, in block grant funds, but that there is -- which they can use
any way they want, virtually, within some constraints, but that there is an extra $10 over here that they can use for development of information and statistical programs, that the reaction to date, at least, has been to take that $10 because that is an extra $10 and that does subject them to the rules that I have outlined and that I will submit to this committee.

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

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

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

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

This program was not announced until the last week in April of this year, so we think that is a fairly
MR. WEIZENBAUM: I wasn't -- that wasn't my point.

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

MR. HALL: Yes.

MR. WEIZENBAUM: Okay.

Now, have you performed that audit?

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

MR. WEIZENBAUM: So your remarks about the auditing and so on and so forth were prospective, not retrospective?

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

MR. SHORT: Excuse me.

I feel it is necessary to make a point here.

In my remarks, and I am quite aware of the controls and guidelines set by LEAA and the state court centers and am in full accord and support with them, we work closely with LEAA, the reason I did not mention LEAA, Mr. Hall, was because I was -- I wanted to make the point in
support of Judge Greene's point about judicial independence. And the reason I did use editorial material is because this is the kind of information that gets to the public and forms public opinion and my point was that if public opinion is being shaken in this direction, it is absolutely necessary that the judicial branch of government maintain the aura of independence.

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

MR. MARTIN: Dr. Gallati?

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

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

MR. SHORT: There again, no question, I agree,
that is probably very true.

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

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

Lunch awaits us and then more this afternoon.

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

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

JUDGE GREENE: I will be very brief.

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

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

The criminal justice system isn't just concerned with law enforcement, it is presumably also concerned with the rights of the defendant on the other side.
I don't know what all these safeguards are and all these things that are built into it, but the chances are that the bias, if any, in all of these programs, is law enforcement oriented, prosecution-police oriented, and it is somewhat disturbing that all the funding is going to come from that kind of source and I -- the conclusion will be inescapable, that eventually, that kind of point of view will prevail in the appropriation.

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

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

JUDGE GREENE: Does it include the defense bar?

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

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

MR. SHORT: That is better.

MR. HALL: All right.

MR. MARTIN: Professor Miller.

JUDGE GREENE: I don't like to contradict you, but I happen to be on the board of the agency that
distributes the LEAA funds in the District of Columbia, the Mayor's Board, and I did not note any men of the defense bar on that board, although a number of prosecution and police officials are on that.

MR. HALL: That is true.

MR. MARTIN: Professor Miller?

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

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

I submit that is brain washing. That is dangerous to the understanding of the public at large, who will 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.)
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
keeping and currency and foreign transactions reporting act
of 1970.

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

MR. BORSOM: Very well, Mr. Chairman.

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

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

We do not keep any automated personal data files
in the sense that, oh, the courts do, or credit bureaus
do. We simply have these accounting accounts. The computer
is expected to calculate the monthly earnings on loans and
monthly, or sometimes, even daily earnings on savings accounts.
and while there is no social security identification number
with loan accounts, there is with the savings accounts,
as required for 1099 report submission -- the Internal Revenue
Service Form which you, perhaps, are all familiar with.
However, the Social Security ID number is just stored. It is not -- no accounts are accessed by use of this number, and the -- I can go now, I think, to the matter of security.

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

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

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

You would have to search through thousands and thousands of accounts, because customarily the alphabetic-
numeric files are not a part of the computer room. They are, of course a part of other departments in the association, however.

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

And I don't think that anyone of the staff could phone any Savings and Loan Association, and get any satisfactory information, other than, perhaps that the individual had an account at the institution.

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

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

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

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

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

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

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

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

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

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

Operationally, banks can be looked upon as financial transaction processing organizations.

Transactions in the forms of checks, deposit tickets, stock certificates, bonds, loan applications, promissory notes, mortgage loan applications, loan payments, payment orders, and so, flow through a bank.

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

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

This view of a bank as a financial transaction processing system is true whether the transactions are processed -- as they were at one time -- by clerks, sitting
on high stools, using quill pens or -- as was the case up
until the mid-30s -- by clerks sitting on low stools,
using hand-operated, adding and bookkeeping machines, or as
it was up until the late 50s, by clerks sitting in cushioned
posture chairs using electromechanical calculators, and
bookkeeping machines; or -- as it is today -- by electronic
computers calculating, and recording data at speeds measured
in millionths of a second.

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

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

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

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

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

In banking today, computers are used for processing
accounting operations for many traditional banking services including the following: checking accounts, credit cards, savings accounts, installment loans, commercial loans, mortgage loans, payrolls, corporate trust, accounts payable, accounts receivables, stock transfers, and so on.

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

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

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

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

Personal data on individuals is held in decentralized, physical files, and not stored in one huge centralized computerized file.

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

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

For example, if an individual who has a credit
card account with us also happens to own some shares of a
corporation, for which we act as transfer agent; the two
files are separated by some 50 miles, and are without a
connecting link.

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

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

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

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

Externally, the sharing of personal data on
individuals has had no impact, one way or the other, by the
advent of the computer.
Traditionally, it is assumed that when an individual references his bank as a source of information on his financial worthiness, his bank is obligated to him, to appropriately attest to that worthiness.

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

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

In summary then: Banks are financial transaction processing organizations.

Computers are just the best, present way of processing financial transactions.

Computers in banks are used primarily for processing numerical values, and not for recording nonquantifiable information.

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

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

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

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

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

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

They felt that the recordkeeping burden was too
burdensome in respect to the objectives which would be received and they argued for discretionary authority by the Secretary of the Treasury to prescribe exactly what types of records would be kept.

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

This approach was adopted and passed the House of Representatives. When the bill came over to the Senate, the Treasury argued that, somewhat successfully, that they should have greater authority in prescribing these recordkeeping requirements and they convinced the Senate Banking Committee.

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

When the Committee met to resolve the differences between the House and Senate Bill, the language, I think in part was mussed up, but the end result as far as the Treasury is concerned prescribed the Treasury's views to require -- on the part of financial institutions, to keep copies of checks and similar instruments as mandated by the Congress, and at
least that's the way (inaudible).

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

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

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

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

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

So that, in effect, if any one walks into a bank
and deposits $10,000 in currency, or withdraws $10,000 in
currency, the bank under these regulations was required to
file the report thereon with the Secretary of the Treasury.

Thirdly, the legislation required reports on the part of individuals who take currency out of the country or into the country in excess of $5,000 on any one occasion.

And the regulations simply implement this requirement.

Fourth, the legislation authorizes the Secretary of the Treasury to require reports from individuals who maintain accounts with foreign financial institutions; this was aimed particularly at the person who has a bank account in Switzerland or some other country that has strict bank secrecy laws, and might be using this to evade the income tax laws or other statutory requirements.

The Secretary has implemented that requirement by regulations which requires individuals to answer a question on their income tax return, a yes or no question, "Do you have an account with a foreign financial institution?"

The fifth substantive provision of the legislation authorizes the Secretary of the Treasury to require that individuals who have accounts with foreign financial institutions maintain certain records. The implementing regulations require these individuals to keep a record of the name of the foreign financial institution, the name of the account holder, and the highest balance in the account during the preceding year, and number of the account -- if there is a number of the account.
Following the initial publication of these regulations the legislation came under legal challenge by the California Bankers Association and the California Civil Liberties Union —

MR. MARTIN: Could you speak just a little louder, please?

MR. MC LAIN: Yes.

They filed an action in the Federal District Court in California challenging the constitutional authority of the entire act and a three-judge court was appointed to review these, review the action; and has recently issued a decision declaring the second substantive requirement I mentioned to be unconstitutional — and that is the one that requires currency reports on domestic financial transactions in excess of $10,000. The other sections of the act apparently were considered to be constitutional by the Federal District Court.

While this was going on and prior to the decision of the court, two Senators in the Senate introduced legislation to restrict access to bank records on the part of law enforcement agencies or other persons for that matter. One was introduced by Senator Tunney of California; the second by Senator Mathias, of Maryland.

Both bills, as I say, would restrict access. The Tunney bill would limit access to bank records to the following conditions:
One is where the account holder himself has given his consent to an agency's obtaining access to his bank records.

Secondly, a bank would furnish information if it was pursuant to a summons or subpoena, provided that the summons or subpoena was also served on the account holder and would not entertain objections to that summons or subpoena.

Thirdly, under the Tunney bill, an agency could obtain access to bank information and an individual pursuant to a court order without notification provided the — there was a showing that the — that there was probable cause that a crime had been committed and that the information was necessary in the investigation of that crime.

The Mathias bill was more stringent than the Tunney bill in the access area. It provided for access only in the case of assent by the account holder or alternatively in the case of a court order, again with the showing of probable cause, and then with an additional requirement that there be a 21-day waiting period before these records could be obtained.

This is presumably to give the person an opportunity to challenge the legality of the court order through the courts.

In addition, the Mathias bill would also preclude the requirement for domestic recordkeeping on the part of commercial banks.

As I said, these recordkeeping requirements apply to all bank records other than transactions international or
domestic. The Mathias bill would apply these requirements only to international transactions.

The Subcommittee on Financial Institutions of the Senate Banking Committee held two days of hearings on the Tunney and Mathias bills, as well as on the general issue of bank secrecy and the treasury regulations. One of your distinguished panel members or Commission members testified at these hearings, Professor Arthur Miller, of Harvard, and was quite persuasive, I thought.

The general issues --

MR. MILLER: Nobody here would agree with that.

MRS. HARDAWAY: I was going to say for the record, can we say that doesn't surprise us?

MR. MC LAIN: As you would expect, the Administration was opposed to any legislation in this area. They argued that any impediment to access to bank records would restrict law enforcement activities and would result in a weakening of law enforcement.

On the other hand, various civil liberty groups concerned with this issue, and legal scholars testified strongly that there are basic constitutional rights, that there are no protections in the statute or implementing regulations that in any way govern the conditions by which federal agencies can gain access to these records.

When Congress passed the legislation we were under
the impression that a federal agency could not obtain access
to bank records unless it was pursuant to a subpoena or other
legal process, and this assumption was contained both in the
House and Senate reports and the legislation.

Following that we have learned that this really is not
the case, that quite frequently the Federal Bureau of Investi-
gation, perhaps other agencies, have been able to obtain
bank information on an informal basis without a subpoena or
summons or a court order, or without any kind of notification
whatsoever to the individual.

Columnist Jack Anderson testified before a committee to
this effect and presented the Committee with copies of FBI
records that he had somehow obtained, on three individuals:
Jane Fonda, Benjamin Spock, and I believe Floyd McKissic,
showing conclusively that the FBI has been bugging their
bank accounts and getting information on the financial transac-
tions of these individuals, all without a court order and all
in strict secrecy.

When confronted with this issue, the Chief of the
Organized Crime Division, William Lynch, acknowledged that
this type of surveillance does go on, but he felt that no
additional legislation was necessary. He argued that the FBI
officials are responsible and that they are obtaining this
information when necessary in cases of national security or in
the prosecution of crimes, and that bankers were responsible
officials and could be counted on to protect the public interest.

The banking community was caught somewhat in the middle. I guess they really weren't too happy with the legislation for two reasons: one, of course, is that it does impose an extra cost burden on banks to keep these records, and secondly, it does breach somewhat the fiduciary relationship between the bank and its customer.

I think if I could summarize the views of the banking industry is that they want to be taken off the hook and they want to know what they can do and what they can't do, and they don't want to be left with the burden of making a decision. They recommended legislation that would simply prohibit the bank from turning any information to a law enforcement agency unless it was pursuant to some kind of subpoena or legal process.

This would take the decision-making out of the hands of the banker and put it in the hands of the court or whatever agency had authority.

Following these hearings, the Subcommittee unfortunately was not able to meet to consider the legislation because of the lateness of the sessions. So, at the present time the staff of the Subcommittee, myself and other individuals involved, are in the process of going over the hearing record, trying to sift the arguments presented
by both sides and to come up with some reasonable solutions that would guarantee the individual the right of privacy without at the same time impeding the criminal investigative activities. Whether these two objectives can be reconciled is doubtful.

And I think in the final analysis a decision would have to be made based pretty much on one's own value system, as to what type of value or premium he would put on the objective of privacy versus the efficiency of law enforcement, -- like in any decision in a democracy.

So it requires a balancing of the objectives, a balancing of the equities, and I assume this is pretty much the process that the committee will go through next year when it takes up the legislation.

I am hopeful that we can get to it early next year, come up with some reasonable approach. It seems clear as a minimum that some legislation is necessary to clarify the access provisions. Whether it would go as far as the Tunney bill or the Mathias bill at this point in time is open to question.

That is all.
MR. MARTIN: Thank you very much, Ken. Our fourth and final presenter is Charles -- oh, William M. Adams, yes, associate director, operations and automation division of the American Bankers Association who will, with some slides, give us a picture of the emerging future in banking operations, providing a basis for consideration of what record keeping operations of banks may be like in the face of this emerging future.

MR. ADAMS: Okay, I want to go back a couple -- three years, or four or five years -- to when the term or phrase "checkless society" first got started across the country and that will be my starting point for this particular presentation.

(Slide.)

And I guess one of the reasons that the checkless society terminology got started was that bankers were a little bit afraid that they might get inundated with all the paperwork and collapse, kind of like the brokerage industry did.

If you notice in the slide that looks like Charles De Gaulle in the middle rather than a banker, but it does give you the impression that the bankers were afraid that the paperwork and numbers and volumes of checks were going to be just too much to handle and we were going to be inundated and collapse like the brokerage industry did.

And about the same time, I guess, there were a lot
programmers and assistance people who realized that the use
of checks was no longer, or at the same time in the future,
wasn't going to be needed. They saw that the technology could
keep up with that. So about this time, the check itself came
under a great deal of scrutiny as a medium of exchange here
in the country, and it was about this time that the so-called
cashless society phrase first got started.

Now, this particular slide is rigged, obviously.
This particular firm doesn't want to take any cash, not be-
cause they are promoters of the cashless society, but it is
a little firm down here on 17th Street and they are a little
afraid of getting robbed, so they have got this sign up to
indicate they don't have any cash aboard and don't rob us,
but it gives you an idea that there was a great deal of con-
cern on the part of the banking industry about whether or not
the check was going to be here.

The technicians thought we could get into a check-
less, cashless society because technologically, it was feasible.
And there were some people within the industry that were ad-
vocating that we move headlong and rush into the checkless
society. In fact, there were some that suggested we isolate
a city in the United States and try it on an experimental
basis, no cash, no checks, so forth.

It was out of this particular concern that the ABA
or banking industry created monetary and payment system planning
committee. And their primary objective, well, this will give you an idea of who was on the planning committee. These were policy level bankers, not technicians. These are presidents of banks and chairmen of the boards of banks and they formed this monetary and payment system planning committee and their primary objective was to determine whether or not their present check payment system, as we know it, could survive the decade of the '70s and whether or not we ought to rush headlong into the checkless society.

(Stopped.)

One of the things they found out, this committee, through a study they had done, was that the check volume was growing at a seven percent annual rate, which meant that by the time we reach 1980, we would, in the United States, have doubled our volume of checks and banks will be processing 44 million checks a year, rather than 22 billion as they did in 1970.

(Stopped.)

And the MAPS committee also found that the check processing system, even though we use MICR and computers quite heavily, it is still quite heavily labor incentives. Still 60 percent of the cost of processing checks goes for labor-type functions as opposed to equipment-type functions.

(Stopped.)

One of the things they projected was the available
supply of clerical help between now and 1980, realizing that
the available supply of good people was going down or wasn't
going to meet the increased rate of growth.

And the cost of checking or processing checks was
going to go up.

(Slide.)

But, however, they did find that the system that is
in existence today is operationally sound. And that it is
very easily going to handle the volume of checks that is going
to happen between now and 1980.

(Slide.)

So there primary conclusion was, after two years of
study was that our present payment check system can handle the
volume of checks and growth between now and 1980.

(Slide.)

And they also have found, took an attitude study
and found on the part of consumers, businessmen and bankers,
that none of these people really wanted the check payment
system changed in any way. Everybody was -- that they talked
to in these three categories, felt like the checkless society
was something they didn't want and they were pretty well
satisfied with the checking system as we have it today, without
making any changes to it.

(Slide.)

However, the committee did feel like that what was
needed in the industry was an evolutionary change rather than a revolutionary change. They did feel like that with the volume of checks doubling by 1980 and with the clerical supply going down and the cost of labor going up, that maybe by 1980 we couldn't afford the check payment system as we know it today, that the cost of processing checks might be too great, for the people to like it like they do today.

(Slide.)

So they did recommend this MAPS committee that the banking industry develop some clearing and distribution facilities for handling some form of electronic payment.

(Slide.)

And they recommended that this development of automated clearing facilities, if you will, be done on a local basis by local bank clearing houses.

(Slide.)

And they recommended that someday these local bank automated clearing facilities be tied together by some form of communication network so that the local clearing facilities could exchange payments between cities.

(Slide.)

And they recommended that the ABA provide liaison between these developments of automated clearing facilities. This is my primary function with the ABA, is doing this kind of thing, promoting the development of automated clearing
facilities for the banking industry.

(Slide.)

They also recommended that the charge card or bank card be developed to its full potential, they saw within this a way of alleviating or reducing the need or reliance upon checks.

(Slide.)

Okay, out of MAPS committee, this particular MAPS committee met, made their final report in March of last year, and since that time, we have seen in the banking industry a lot of cities start their own clearing house developments, and this started in California with a committee out there called a SCOPE committee and the SCOPE committee in California was formed about four years ago and the SCOPE as it says here, stands for Special Committee on Paperless Entries.

(Slide.)

And we kind of put all kinds of SCOPE activities together and classified this as any kind of development that is going on within the country on a local clearing house level that is looking into ways of changing their particular payment mechanism as a SCOPE activity.

(Slide.)

Right now there are SCOPE committees located in each of these cities you see up here on the map. There are some 22 odd SCOPE committees in existence, now some of these are
dedicated to creation of an automated clearing house for exchange of electronic payments, some of them are just merely studying the situation and others are just acknowledging that those changes are coming and that they may get involved with it.

(Slide.)

Now, the granddaddy SCOPE group of them all was the one in California. This particular slide is a schematic of the way the California SCOPE system works. Now, the California SCOPE system is going into existence or starting operation October 16, and they are going to put automated clearing houses in both Los Angeles and San Francisco. And some 97 percent of the banks in California have agreed to participate. And the idea is that a participating bank can receive from one of its customers, an employer, let's say it is an employer, as the schematic shows, an employer signs up with a bank, any of his employees that would like to have their payroll deposited directly into their checking account can so sign an identification agreement with their bank and employer that says they would like to have their pay earnings deposited directly into their bank and they would like not to have a check given to them for their pay.

What happens is their employer creates a magnetic tape or could be punch cards, and this is -- represents the employees who are participating earnings for that particular
pay period. They give this magnetic tape to this bank and
their bank submits it to this automated clearing house in
San Francisco or Los Angeles. And the employee then can
bank with any participating bank in the State of California.

And the employer doesn't have to bank with any
bank, but the one he wants to, but he gives the tape to his
own bank, his own bank then in turn peels off the items on
employees that bank with his bank, submits the rest to the
clearing house and they merge all these tapes together and he
gets one tape back for all employees paid similarly who bank
with him.

(Slide.)

This shows the same thing. The businessman gives
the bank the payroll data and the bank in turn gives his to
the automated clearing house and the employee's checking account
is then credited for the amount of the pay for that, and the
employee does not have to show up at the bank at all.

Now, in a similar fashion, the California system
could obviously handle preauthorized debits or payments. In
other words, he could arrange with his bank for the bank to
pay certain kinds of bills and the mortgage company or the
insurance company or whatever it was that he was paying could
submit a tape to the bank saying these people owe me money,
take it out of their checking accounts and that is the way that
would work.
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.

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.
And the four they looked at were direct deposit payroll, what California SCOPE is doing, preauthorized payments which the California group can do, they looked at point of sale funds transfer, that is where you go into a store and you buy something at the store and the merchant credits your, or debits your checking account directly from a terminal located in the store, so that as you buy something the funds are taken out of your account and put in his.

And they also looked at truncated check flow which is nothing more than the nonreturn of checks to the customer with his statement.

In other words, the bank -- a first deposit would keep the check and the customer would only get a descriptive-type statement back at the end of the month with no supporting checks.

(Slide.)

Out of this particular study which was a great thorough study of one payment mechanism in a local area, they decided or recommended that Atlanta create an automated clearing house and the banks in Atlanta, in conjunction with the federal reserve bank in Atlanta are committed to implementing or installing an automated clearing house in Atlanta some time in 1973.

(Slide.)

What they are going to try -- there is something
they call the Atlanta Bill Check Plan. What that means is that a firm in this case, it could be a utility, your electric bill or your water bill or it could be a retail store, the firm submits a bill in a normal fashion to a consumer. And the consumer, rather than writing a check and sending it back to the utility along with the bill, merely signs the bill, returns the bill to the utility or the retailer. And the utility or retailer in the same fashion as they normally do with their accounts receivable functions, takes that stub or top half of the statement, whatever it happens to be, takes it into a data processing system and creates a magnetic tape. They will take off of their records the customer's checking account number. It will be located on the utilities record, that is where the checking account number is and they will put that on this tape with the amount of the bill payment, submit the tape to their bank as their deposit for the day.

The bank in turn will submit those items on the tape that doesn't belong to them, to the automated clearing house, and those items will go back to the consumer's bank and he will see that particular item on his statement at the end of the month.
Okay, now that's one side of what's developing now across the country, and that is banks working together to create automated facilities for handling electronic type payments and credits.

In addition you are seeing some individual bank efforts that are pointed toward more, I think, developments with instant money, 24-hour banking services, and so forth. This happens to be the Hempstead Bank Project in Long Island, New York.

Now, what they have done in Hempstead Bank in Long Island, New York, is to offer an instant transaction card to their customers. It's very similar to a bank credit card. It happens to be a card, though, that authorizes a merchant to -- or the consumer authorizes the merchant to take money out of his checking account and give it to the merchant.

What the customer does is come to the counter at the store, give the merchant her IT card, it's called. He, in turn, puts in a sales slip in the terminal. The terminal is connected with the bank's computer and she's allowed then as soon as she's ready to key in her secret code in that little box you see on the left indicating she authorizes payment out of her checking account into his checking account, and that she is indeed the same person who is represented on that particular card.
This is the Hempstead Bank Instant Transaction System under development.

(Slide.)

A similar thing was done by City National Bank in Columbus, Ohio, and that was a cooperative experiment between City National, BankAmericard and IBM. And they gave some residents of upper Arlington, a suburb there in Columbus, rather affluent -- is that where you're from?

MR. ARONOFF: No, I'm up there several days a week. I know the area. It was a low risk area.

MR. ADAMS: Right. They picked a good one, no question about that.

But they gave some of these BankAmericards out, special cards, out to people, asked them to use them in place of cash whenever they shopped at these two shopping centers there in upper Arlington.

And whatever is noteworthy about both the experiments was that this was the first time consumers were allowed to take a credit card type of device into a grocery or drug store where they didn't ordinary take credit. And they found that the customer very much -- they found and are finding in Long Island -- that the customer liked having a way of getting her groceries charged to her checking account or BankAmericard account without having to write a check or fool around with it.
MR. ARONOFF: How did her husband like it?

MR. ADAMS: Well, they reacted like most husbands react, I guess. They would prefer not to let their wives have anything in their purse when they leave, money or card. They tried that experiment, anyway, in Columbus for several months and I think were quite pleased with the results in terms of the customers' acceptance of the card. They even told them, if you are going to buy a newspaper, use your card; don't use a dime.

(Slide.)

Another bank in Columbus, I guess Columbus is a very competitive town, has taken a different approach to serve other consumers better. This is the Huntington Handy Bank Branch. This was a completely "people-less" or "teller-less" bank branch. It's open 24 hours a day seven days a week and within the branch you can do almost any normal demand deposit, checking account type of transaction. It does have half a post office in there, by the way, so you can get stamps there and you can mail letters and buy envelopes and that kind of thing.

And it's open 24 hours a day, and you can take money out of your checking account, you can have it transferred from your savings account to a checking account; you can take a loan out.

In fact, I was listening to the guy yesterday from
Huntington Handy Bank, he said they had one gal who said it embarrassed her to get a loan, and she loved the machine because the machine was giving her a loan and nobody knew about it.

(Slide.)

This is what is inside these teller-less banks -- branches. This is a Moseler Automatic Teller, and the customer can put a card in there very similar to a normal credit card, can choose from several different transactions, take money out of her checking account or savings account or shifting it or borrowing it; and it will come out in that little corner of the device over there.

I knew I had another one.

(Slide.)

This is Docutel's answer to the same thing -- I have got to give them equal time. This particular machine you can see in downtown Washington, First National Bank has them installed in their branches. They are open 24 hours a day, obviously, and you can get cash in $25 or $50 increments by inserting the card and asking for it, charging it against your checking account.

(Slide.)

Okay. We are also seeing a development in the charge card area where we are developing national authorization networks that will allow people to use their credit cards in New York and have it -- their credit card plan be out in California, for instance, and that the authorization will
take place via a terminal communicating with a computer out in California, in the case of BankAmericard, Inc., operated, or in New York, in case of the Mastercharge interbank plan.

(Slide.)

These three firms in particular are developing national credit card authorization networks. And all three of them say that eventually they will be used for transferring of funds from one part of the country to another part of the country.

(Slide.)

The Federal Reserve Bank is dedicated to a, I would like to say an increase in efficiency in the present check processing system. And ultimately to have facilities for the transfer of electronic funds or funds electronically.

They said in a policy statement of 1970 that they were going to increase the efficiency in the present check processing system as a way of getting between here and the day that we could have the electronic transfer of funds, so the Federal Reserve has been very active in promoting these kinds of activities across the country.

(Slide.)

This is just a breakdown of the Federal Reserve districts and where they plan to put what they call regional check processing centers into existence that will cause immediate payment or one-day check clearings to become
a reality. Right now it takes two and three days to clear checks.

Their first goal is to cut that down to one day check clearing and get the float out of the system as they call it.

(Slide.)

Okay. The government itself is promoting things that will help banks get into this one check to cover many payments.

This is a composite check program of the government -- that the government has in which they issue one check to one bank that covers deposits for many people that are employees of the government. What they give the bank is one check that says, this is for people that are listed, and they have all those funds put in their checking accounts; and these kind of things are better if they give the bank a check and a list. They give them a check and a 90 day tape and the treasury knows that.

(Slide.)

(Discussion off the record.)

That is like that joke I heard yesterday about a guy went into a store over in Africa and I think they had doctors' brains. It was 10 cents a pound. And they had lawyers' brains, 20 cents a pound. And bankers' brains, $10 a pound.
The guy said, "How come the bankers' brains are so much more expensive?"

He said, "Well, you have got to kill an awful lot of them to get a pound's worth of brains."

That is an extra.

(Slide.)

Anyway, all of these things that are happening in the banking industry sort of to the banker represent potential ways of doing business differently than he does today.

In other words, new ways to market these new services, and I think you are going to see a lot more of this kind of competitive innovation take place, where banks strive to come up with better packages that appeal to consumers more in terms of convenience and getter ways of giving them better information in addition to doing their regular normal banking functions for them.

(Slide.)

That was the last slide I think that's all.
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 lifestyle 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.
MR. ADAMS: I think that the way you trace a person's lifestyle is much easier if the bank has a manual system than it is with a computer system.

With a manual system you have got a ledger card that shows exactly on there everything that's transpired over the last several months or years. Now, to trace that same kind of activity through a computerized program would take you several days, because a transaction that is posted against a checking account will only appear on a transaction journal daily. For you to find out what the guy did the day before, you have got to go back to yesterday's journal.

The manual method is to have everything posted on the same place so it is quite visible to anybody who wants to take a look at it to see the type of activities.

MR. GENTILE: My point was not manual as opposed to automated but rather that in any banking system the very fact that you have a whole capability of tracing checks means that you are dealing with sensitive data potentially.

MR. MC LEAN: This is an important point, one I didn't emphasize in my presentation and perhaps should have.

One of the principal arguments of the California Civil Liberties Union in challenging the constitutionality of the Bank Secrecy Act is that unlimited access to this type of information, particularly checks, can reveal to an
amazing extent a person's entire background, his political
associations, who he associates with, who he contributes
money to, what kind of organization he is supporting, and
that if it became generally known that this type of
information could be supplied to governmental investigators at
will, and in complete secrecy, the mere knowledge that this
information was unprotected could have what lawyers call the
chilling effect upon basic First Amendment rights including
the right of free association.

That's why the ACLU nationally and in California
is so concerned about this issue.

MR. MARTIN: Mr. De Weese.

MR. DE WEESE: I just called Philadelphia and took
out a $10,000 loan in --

(Discussion off the record.)

MR. DE WEESE: I pass.

MR. MARTIN: Senior Anglero.

MR. ANGLERO: Really, I am somewhat impressed by
the society. In some way I cannot understand this so I
am going to try to ask you first, do you know the Food Stamps
Program? You know we got all the problems in the world to
get the U.S. Senate to approve or Senate, U. S. Congress, to
approve and the President, that Puerto Rico be
included in these Food Stamp Programs. That was all we got,
because they said that that was impossible to establish in
in Puerto Rico. We have not developed our sophistication; our whole economy and marketing system has not evolved in such a way as to take advantage of a cashless, that would be cashless transactions, like Food Stamp Program.

I don't know how something like this will be, not only in Puerto Rico but in the U.S., where you have got all these welfare people, have never in their life had a check to write; but in the other aspects of this, the project, well, after recognizing that this could be the humanization of also society, you got a humanless bank.

And from the other aspect that your predictions were that there would not be enough to deal with all sections, would then recreate unemployment.

MR. ADAMS: Do you want an answer to that now?
MR. ANGLERO: Would recreate unemployment if we make humanless bank transactions.

MR. ADAMS: What the banking industry is trying to accomplish was pointed out very well in this Georgia Tech study. They determined if they put into effect all of the technologically feasible alternatives to the check, into place and they were accepted with a high rate of acceptance by the consumer, that they would have attacked only 30 percent of the check processing problem in Atlanta.

In other words, assuming that they put all of what we know as technologically feasible into place to replace
checks, that by 1980 in Atlanta they would still be
processing the same volume of checks they were processing
in 1970. In other words we are only attacking the growth as
we see it, the day of the checkless society is a long way
away. And what -- less checks is what we are really after.

Mr. Anglero: Okay, deal with the growth.

MR. ADAMS: Your point of not -- humanless, about
people not ready to accept or be able to manipulate buttons
and so forth is correct. There is no question about that.

I don't think anybody in the banking industry
feels like we are going to be able to get those things in
place of people in every case. But in the case of the handy
bank in Columbus, they figure they can have one tellerless
branch and with every other branch, every other branch
could be like this. They have people in one branch and they
have these tellerless things in another branch nearby.

Mr. Anglero: This is in some way economics which
I am not able in, but in terms of the .. (inaudible). We
know that large part, 90 percent or something like that is
made on credit, once was that; I don't know how much it is
now. Once was credit, 95 percent. Supposedly that means
we do not have enough cash to pay for our obligations on a
given moment so we need that credit. At that moment, at any
moment that I feel, I think I am, human being, that I don't
want or I want to postpone a payment at a given time because
anything happen to my family, I just need cash at that moment because of a crisis.

What source would be available, if any, in order that I can manage myself to take care of this unexpected situation?

MR. ADAMS: You mean you are assuming that you have already signed up to have all your bills paid by a bank?

MR. ANGLERO: In one given moment I want a thousand dollars. I don't have, or I do have, but it is all committed.

MR. ADAMS: I understand what you are saying. You want to postpone the payment of the bills.

MR. ANGLERO: Right.

MR. ADAMS: That was one of the reasons why the Atlanta group took this bill check approach, was that they wanted, they felt like all of our attitude studies we have had done in the industry indicate the consumer wants to maintain control over the timing of the payments and that some of these preauthorized payment plans like the California thing, doesn't allow the customer to keep control over timing of the payments.

And that is why they felt like down in Atlanta, that wouldn't sell 100 percent. That without having some way of allowing the customer to maintain control over the time of the payments that it just wasn't going to sell.
And I would assume that if this bothers you, you would not sign up to have your bills paid automatically, first of all. But, assuming that you did sign up and now you are in a tight spot and you can't do anything about it, and you don't want to make a loan, I would say you would have to go to some extra trouble to cancel those payments.

MR. FREUND: Would it be any different than if you got a bill now, a mortgage bill say, and you draw a check to pay that bill and that very afternoon you found yourself in dire straits for money, that you could stop payment on that check, you can do that today, you can stop payment on a check.

You will be able to do the same tomorrow. It is your money in the bank, it isn't somebody you know lending you the money. It is your money. You have control over it.

MR. ARONOFF: The sensitivity to the computer from the time he says, "Yes, I want it done that way," until the time a transfer is made, is almost instantaneous, isn't it?

MR. ADAMS: It would depend. We are talking about point of sales fund transfers, yes.

MR. ARONOFF: You really can't stop payment on a computer easily.

MR. FREUND: You can certainly stop it faster on computer than you can stop payment sending it through the United States mail.
In Bill Adams' world of the future, you will have an instrument in your home that will, perhaps, let you communicate with the bank computers.

MR. ADAMS: I think you can reverse it just as fast as it went through.

MR. FREUND: I think some items it is possible to do it not. There doesn't seem to be any barriers in doing it.

MR. ARONOFF: Maybe you are right. I am not sure. I am not sure that should be the idea anyway, that we should go into the idea of writing a check with the idea of stopping payment. I understand your point of view, but we are talking about that hypothetical crisis.

MR. FREUND: With an emergency, yes.

MR. ADAMS: We weren't trying to sell each of you on signing up this afternoon. We would be glad to wait until tomorrow.

MR. FREUND: As my friend from the legislature said, lend him the money at 18 percent.

MR. MARTIN: Senor Anglero?

MR. SIEMILLER: You can go to the bank and arrange to write checks on money you don't have. An automatic loan you have.

MR. FREUND: That is right, overdraft privileges.

MR. MC LEAN: Did you have any figures on impact
of accounts receivable on business firms that sign up on this plan?

I would think that you would be reducing the size of the consumer -- (Inaudible.) --

MR. BAGLEY: They wouldn't be getting their 18 percent and they don't like that.

MR. MARTIN: Senor Anglero has the line of questioning now.

MR. ANGLERO: I still have two points more.

One is in terms of bank reconciliations.

MR. ADAMS: Bank reconciliation is still the responsibility of the person who has the checking account. And it would be understood some of these particular kinds of things would be more difficult for you to reconcile if you didn't keep good records.

MR. ANGLERO: Okay.

MR. ADAMS: I mean right now, if you write a check you have got to fill out the check stub, or your balance book, whatever it happens to be -- with these kinds of methods you have still got to make an entry just the same and if you forget to do it, in either case, you don't know where you stand at the end of the month. You may not get a tape back with your statement.

MR. ANGLERO: I want to make a question.

This is experience myself. I got a Master Charge
card and I was to purchase a couple of things in one good store in San Juan, and they ask, okay, I charged it, it was over $100, they said they have to check with the bank.

And they check with the bank, and they ask for my identification. I identified myself with the store. They check with the bank that my card was good.

But they go further than that and I had to provide my license, my driver's license number.

MR. FREUND: To whom?

MR. ANGLERO: To the bank.

MR. FREUND: You were in a store?

MR. ANGLERO: I was in a store and I had to provide them my driver's license number and they provided it to the bank and so --

MR. FREUND: Would the bank have your driver's license number?

MR. ANGLERO: I don't recall, because I never have a copy of what I did when I asked for it. Only thing is, I cannot understand why, if I am the right holder of the card, they have to check.

MR. FREUND: If I hand a Master Charge card to some merchant that just says this guy is number 12345678. It really doesn't say I am 12345678.

MR. ANGLERO: I identified myself with the guy that I was myself, and he said, I got to prove I was myself.
I could not, but I had to do it after all. I tried not to provide it to the bank --

MR. FREUND: I really don't understand the bank's interest, and I assume it was one of our branches.

MR. ANGLERO: Fine. They say, if you don't do that, you will not get finance.

MR. FREUND: I don't know the answer.

MR. SIEMILLER: Wouldn't it be more positive identification than if someone else had found his card?

MR. FREUND: That is to the merchant. I can understand the merchant wanting to identify him through some secondary form with a signature, saying this is so and so. But I don't understand transmitting, the need of transmitting that information to the bank, because I don't think the bank would have his driver's license and by stealing the wallet, you would have gotten everything.

MR. MARTIN: Miss Gaynor, did you want to follow up?

MRS. GAYNOR: I don't think anyone answered Juan's question about the emergency and to go back with this reconciliation, and trying to straighten out accounts, in many instances, for instance, if you are charged twice for the same check, it may take you six months to reconcile it, right?

MR. FREUND: Yes.
MRS. GAYNOR: Well, I assume you are not going to answer the idea of the emergency, and preauthorization, and how we get the money.

MR. ADAMS: I thought we did.

MRS. GAYNOR: No you really didn't.

What did you say? Maybe I missed it.

MR. ADAMS: I thought we said he had several options and the options were open to him. With one he could borrow money from the bank; two, he could stop payment electronically in a similar fashion to stopping payment on his check; or three, he could never have gotten into it in the first place, by not signing up for the service.

I think that is the way you get around that.

MRS. GAYNOR: How much interest do the banks make by taking advantage of this note?

MR. ADAMS: I don't understand what you mean?

Which note?

MR. GENTILE: It seems the banks are the ones who benefit by this and the alternative to an individual hypothetical case that Mr. Anglero suggested, was to borrow money. So you have interest charges on the borrowed funds and you also have what is the, I think a million, I don't know whether the interest is by deposit or processing your checks one day faster, but it is phenomenal.

I am sure you would have that figure, and just
having this immediate accountability seems to me really
gives the bank a great advantage of the note which I would
imagine is one of the motivating factors for bankers to
want to support this system.

MR. ADAMS: The motivating factor for clearing
checks immediately, is to eliminate a --
MR. ADAMS: What I was going to say was it's common practice today in the banking industry for commercial banks to give individuals immediate credit for any deposit of checks. I think if -- you will find as a practice, as an individual, with a personal checking account, that you take your paycheck down there and deposit, the bank will give you immediate credit for that regardless of the fact it takes two or three days to clear it in the present system.

However, what we are talking about is speeding up that two or three days and the idea of speeding up the clearing of the check two or three days is not to give the bank or for the bank to gain advantage on our losing float, because you are not losing any float but the idea is to eliminate that time span in which people who are fraudently kiting, I think is the expression, don't do this like that any more.

It's possible under the present system for a lot of fraudulent things to take place because of this time delay between the depositing of a check and the clearing of a check and that is going to be eliminated, but right now the banking industry is already financing this floatage, enjoining as an individual, although banks do charge corporations for collection time.

MR. GENTILE: I don't want to dwell too long on this, but I would like to make one point, assuming a positive balance which is what we would have to assume, in other words,
the man's payroll check is deposited before he starts issuing
to the banks advantage to have this process faster, certainly
it should increase your interest on the float.

MR. FREUND: Let's take an example. You are
employed by the ABC Company, they give you a check for your
week like a salary. At the present time you deposit it in
your local bank and it takes several days for that to get to
the ABC's bank. In that time, in that time-frame of two to
three days the ABC's bank has the money on deposit. Your
check hasn't come through yet to reduce their deposits, correct?
The elimination of that time span, the reduction of it, the
contraction of it will reduce the float that circulates
around the country at the present time, which is the objective
of the Federal Reserve system, to reduce the float by making
what I believe Bill referred to before in his slide presen-
tation as one-day funds or whatever they are calling it these
days, is the contract IT?

If you were in the banking business, if you kept abreast
of what is going on at the present time, the Federal Reserve
recently tried to implement I guess last week, that would
have made one-day by dictum, a dictum with which I personally
agree and my bank also does. Many small banks objected to
it because it would get money out of their banks faster. The
objective of the Federal Reserve Bank, Federal Reserve System,
was to get it out of the float of the country because it does distort the money position of the country, it really does, and over time, if you were to read George Mitchell, one of the governor's speeches since 1952, when there was like seven days float between the east and west coast, that has gradually been contracted down so this money floats around now for only a maximum of two days.

And now they are going to make it immediately available, by saying it's immediately available, to the tendency is to accelerate the collection of funds that flows through the payment systems of the country. This, I don't think, has anything to do with the subject of New York.

MS. NOREEN: Yes, as I gather from Mr. Borsom's dissertation, his bank is releasing information to credit bureaus. I was wondering if when banks do this they give any indication to the bureau.

MR. BORSOM: I was speaking of savings and loan associations, and generally when an individual wants to get credit, goes to a store and wants to open a charge account in a department store, they list references, and list other information, the fact that they have a savings account at a savings and loan association, the fact they have a loan. And, yes, customarily, that department store would ask the credit bureau for a report on this individual, who presumably by virtue of his having mentioned these credit references intends
to have them checked. Then, the credit bureau would call
the savings and loan association or send a form to the savings
and loan association and the association would respond yes
or not that the individual did not have an account.

MS. NOREEN: So if the individual did not specifically list the savings and loan the credit company would not
check.

MR. BORSOM: Would not know where to ask. Five
thousand savings and loan associations.

MR. FREUND: You disappoint me. I thought I
covered this so thoroughly in my presentation. When you open
a charge account at a department store in your town and fill
out bank references, what do you think they use them for?
To test your handwriting?

MS. NOREEN: Sure.

MR. FREUND: As a matter of fact, for a substantial
sum of money like a mortgage or something of that nature,
it's clearly indicated on there usually that this gives them
the authority to reference your bank that you have indicated
as you know, as a reference, as a credit reference. It's not
in fine print, it's in nice heavy print.

MR. MARTIN: We are going to take a break at four
for coffee because we have to be out of the area in which
coffee is served by 4:15. In as much as Professor Miller
will not be able to return after coffee, I am going to take
him out of order so we can get his question or two in before we break for coffee.

MR. MILLER: Thank you. In Ken's description of the bank secrecy act and its enactment and the fracas that's developed since, there was one aspect that was, unless I was wandering, I -- I don't think he covered, and I think it's particularly relevant to the committee. I have mentioned it before, and that is the provision in the regulations requiring that the bank obtain the social security or taxpayer identification number of every customer as of July 1972. I call that to the committee's attention since it is so intimately tied to our investigation as to the proper utilization of the social security number.

Now, does the banking industry, since it will have to collect this number, and since the regulations have an amorphous passage in it, in them, requiring the microfilm check, and that is part of the record keeping that Ken McLean referred to, the microfilming of all checks and bank instruments, if the bank has to collect the social security number and if the bank understands a standard yet to be developed, must maintain the microfilm in a form that's reasonably accessible to the Treasury Department. Has any thought been given in the industry to shifting over to the social security number as the bank account number?
MR. FREUND: I don't know if I can answer it. I think permission has to be given by the social security administration.

MR. MILLER: No. No, you could do it today if you wanted to.

MR. FREUND: As the bank account number?

MR. MILLER: Yes.

MR. ADAMS: Are you using it exclusively you mean?

MR. MILLER: You may decide why keep two numbers if the government says you have got to keep one.

MR. BORSOM: We have discussed this in the savings and loan business in analyzing the systems and for one thing how many numbers are there in the social security, nine. There are too many numbers, you see, up in it you get that many numbers, the savings and loan data base could be operating on arbitrarily issued account numbers starting with account number one, which of course reduced the file size. Then, too, you have got a lot going for the old system, you know, and to change the system is just an awful lot of work.

MR. MILLER: I understand that --

MR. BORSOM: Number three, it would have to be verified and the sum total of benefits doesn't yet equal the work involved.

MR. MILLER: You see what I mean hypothesizing, you have got to collect the number, you have got to store the
MR. BORSOM: Only with savings accounts.

MR. MILLER: No, the new regulations require across the board.

MR. ADAMS: It doesn't say you have got to store it, it just says you have got to get it.

MR. MILLER: You have got to get it and presumably it doesn't mean you can get it today and dispose of it tomorrow. You have got to store it whether it's on a sheet of paper or magnetic film. O.K. I am just hypothesizing that at some point you will decide that it's as easy to impregnate my checks with that as my number; my account number appears to have six digits right now. That is not very much fewer than nine; then as I looked at the schematic you had on the board, one of the schemes was this merchant clearance system, and I'm just hypothesizing the possibility of the bank account number will be the manipulative device used by the merchants, becomes the social security number, which means that you are in effect giving your social security number to every merchant.

But I gather your response is the industry has not thought about this.

MR. FREUND: There are many functional problems with it. Your account number on that check has a check digit in it which proves that the number is right; when it's read automatically, computation takes place. And we would have to
develop a system like that. Probably all 14 thousand banks
in the country would have to subscribe to the same system, you
know. So, there is that problem.

There's the problem Bill mentions of converting from
a present system to a new system. You know, it's ten years
we took to do this job. I mean you know compared to that
one. There are other problems; many corporate accounts.
Are you going to use their employer number as the identifier?

MR. MILLER: Well, the regulations require the
tax identification number. O.K. You have responded.

MR. FREUND: What do you do when you keep money
from your wife, which I know you don't do, in a separate account?

MR. BORSOM: How many accounts do you have?

MR. MARTIN: One voice at a time.

MR. FREUND: It's been thought of, you know;
by two thousand, year two thousand, we will be doing it.
You know it takes time.

MR. MILLER: All right. That's an answer.

MR. FREUND: Yes.

MR. MARTIN: We will break for exactly 15 minutes
for coffee or whatever is available. Mr. Borsom has -- or
Mr. Freund has to leave at 4:45, so we want to get back
promptly in order to have access to him.

(Recess.)
MR. MARTIN: Would the meeting come back to order please. Mr. Siemiller is the next in line. Would the panel please come to order. Mr. Siemiller.

MR. SIEMILLER: You reported that a three judge tribunal in California had declared unconstitutional the domestic portion of the bank act. My question is, what's the status of it at the present time? Did he stay the application or let it ride pending an appeal, and at the present time are the banks furnishing the information or withholding it?

MR. MCLEAN: No, they are not furnishing it. The Treasury and Justice Departments haven't made up their mind as yet whether they want to appeal it. The information I have was they did not consider this to be a vital part of the act anyway, and that the records of these transactions would be maintained anyway, and presumably access could be gotten to those records by some process which we may later on tighten up. So, the only thing that was constrained was the automatic reporting of each and every transaction, currency transaction, in excess of $10,000. I am not sure whether the ACLU or the California Bankers Association, you know, what their position is, if they are going to appeal the other items, you know, where they were turned down.

MR. SIEMILLER: The application, though, is nation-wide.
MR. MCLEAN: Yes.

MR. MARTIN: Mr. Davey.

MR. DAVEY: Yes. Both Mr. Borsom and Mr. Freund indicated that in the systems which they represent that because the system is based largely on account numbers that they didn't feel that they had personal data systems really to be concerned with. I would like to pursue this matter a little bit because I think this is a bit on the simplistic side of this. I think that it's possible to get at this information either through a number or through a name. If I send in a mortgage check -- check for my mortgage without any kind of statement on this think, I am sure you will be able to apply that correctly to a particular account.

I think, coming in the other way, you can get to a name and also a file, which is associated with that account number. The types of things such as would be included in this file would be my mortgage application, my personal financial statement, anything else. And so we may be having a little bit of difficulty with respect to what we mean by a personal automated data system, but I think this is all part of a same type of thing whether it's completely computerized or whether it's a hybrid system where you can go from one means to another means, and I think it's not only the case as far as savings and loans are concerned but I also think it's the same as far as the bank is concerned as you look at various things here.
Certainly the credit card authorization system is one in which one can quickly go from a computerized system which is largely there by account number to a name and to an application which can be checked, as I figure was the case that one was mentioning earlier on, where if they wanted some further identification that this was they actually did was to pull out his application to see whether the driver's license was the same as he gave over the telephone to make certain that he was the one -- that he was absolutely the one that was making the request. And, I think that as one moves further and further into this whole automation area, as far as banks are concerned and you get into this consolidated bank statement accounting where you have got not only the checking account, the checking plus account, the overdraft size of things, the savings accounts, the loans and credit cards, all on one consolidated statement, I consider that to be a highly automated personal data system, one which is not immune from all of the other things that we have been discussing throughout the course of this committee.

And I would like to get some kind of response from both of you gentlemen with regard to what kind of efforts are being taken to safeguard not only the automated files which are in account number sequence but also the file, the address file which you have to periodically combine in order to send out statements and also the links to the credit applications
of whatever form they may be and so on and so forth. And I think that it's a much more complex problem than you initially kind of indicated in your opening remarks, that since everything was account number oriented that we really don't have any problems. I don't mean to be disrespectful, but I think it was an over-simplification.

MR. FREUND: Well, you know obviously that little loan application that somebody signed when they came in to make a personal loan can be tied in a fashion to a computerized file of their loan payments to date. In banking today there are primarily two different files, one on computers, one in a physical file, you know. I think the committee should define an automated personal data file.

I used as my definition the one that was given to me in a letter from David Martin that had parenthesis and then said, i.e., something about a computerized file with personal data in it you know. And by personal data I assumed that meant that guy was a bartender and he had 14 kids and he made $7500 a year and that sort of thing. That is not computerized. Now sure, an authorized person can get to that file, obviously, it's not automated you know, and I am serious when I felt you were addressing yourselves to what I considered to be an automated data system.

MR. DAVEY: I agree there is some kind of question 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.
MR. DAVEY: Yes, I think what I am doing is kind of broadening the definition as to what we mean by automated data file, because there are links between one file and another file, and you are able to retrieve whatever type of information you want.

I am not questioning the fact that the banks and the Savings and Loans do an excellent job, as far as their fiduciary responsibilities are concerned, but I also feel it is a little bit simplistic as we are going through here, that, you know, we don't have any problems because everything is account-number oriented, and baloney; I think everybody got problems in this whole area.

MR. FREUND: Well, when I was asked to come down here and decided to come down here, I thought you know, I have got to keep the presentation as simple as possible. I was not sure that was the right approach until I sat in the room, here, this morning, for an hour and you know, saw the wolves attack our counterpart, our innocent counterparts up here, you know.

As you know, we could get into talking about this for hour after hour of just what this is.

MR. DAVEY: Yes.

MR. FREUND: And it is complex, there is no question about it, but you know, my theory, my attitude towards it, my perspective is that I don't know any more about our
customers today than I did yesterday before there were
automated files. I really don't. And, I don't see anything
coming along in a hurry, even in the consolidated statement
where anything else but the current transactions, current,
being, you know, last six months; last year, will be recorded
in the -- in that file.

MR. DAVEY: Yes, that is -- that is good personal
information. If somebody knows what my credit limit is as
far as a bank credit card is, if they know that I have a
mortgage and they know the size of that mortgage, they know
what the terms of that mortgage are, if they know that I
have a certain credit limit as far as an overdraft statement
is concerned; if they know what my personal bank balance is,
as far as both my checking account and on a savings account,
and if I have a personal loan, or two, that is a great deal
of information about me, which I consider to be rather per-
sonal to me.

And I guess I am just a little bit nervous about
that not being what we would call a personal -- data system.

MR. FREUND: I guess, maybe there is a personal
data file on a guy, let us say, who has a checking account
with us, and goes into overdraft and the check that puts it
into overdraft, is referred to an officer. I think the
personal data file is right in that officer's head. He knows
or he thinks he knows if this guy is a good Joe or not, or
whether he takes him out to lunch occasionally, you know, or something of this nature.

I don’t think he has a thing at his desk and pushes buttons.

MR. DAVEY: Oh no, this is all done automatically and since the information is available in the system, then I guess what the questions are that we are asking is, what are the safeguards, that only authorized personnel can get at that information.

Now, I have called many times at the bank, any bank, and given them my account number and asked for what my balance is.

Now, some get a little tricky and say, what was your last deposit.

MR. FREUND: To identify you.

MR. DAVEY: To identify me, but I would say 75 percent of the time that that is not done, that it is just plain, "Yes, here is what is your statement now, and your balance," and this is of this nature.

MR. FREUND: That may be, I mean, I cannot say that is in our manual of operations as to what is to be done but you know there are personal idiosyncracies of the officer responding.

MR. DAVEY: This is not an officer who is responding, this is just a clerk.
MR. FREUND: My dear boy, we are all clerks, you know.

MR. DAVEY: I understand that.

MR. MARTIN: Mr. Freund, let me get at the question in another way, I don't think we are really interested, and I don't think you are really speaking about what you know. You are a surrogate for an institution and if we assume, and correct the assumption if it is wrong, that the computer has made possible BankAmericard; that there would not be BankAmericard, if it were not for the computer, wouldn't you say that your institution has acquired a volume of information that it did not have before the computer? Before you started rendering that service?

MR. FREUND: First of all, I object to your using the word "BankAmericard" in my presence. I think we have a larger file on a lot more individuals. I don't think we have any different information, than we had before.

MR. MARTIN: What do you mean by a larger file?

MR. FREUND: We have more people. We have solicited credit card accounts and some people have wisely made the decision to come with our Master Charge rather than go with BankAmericard, and so our file has expanded accordingly, but the information we have on them is identical with the information that we had on personal loans back before credit cards.

MR. MC LEAN: Could I make a point on that?
Insofar as the credit card replaces cash transactions, and in so far as the bank credit card organization maintains a continuing record of these transactions, wouldn't you of necessity have more information?

In other words, if I previously paid for something by cash, and now I pay by credit card, you have a record of those.

MR. FREUND: If you open a credit card with us, we obviously have information on you that we did not have on you before, if you didn't have a small loan account with us.

MR. MARTIN: So, that is a direct contradiction of your earlier statement?

MR. FREUND: How?

MR. MARTIN: Well, you said that as an institution, forgetting the personal pronoun: "I," that the computer had not resulted in your institution having any more information about your customers now than you had before the computer.

If the computer has made possible rendering the services of Master Charge, and excuse me for confusing which credit card system we were talking about, then you now have a whole flow of information about the character of purchases made through that process, which are now in your institutional records which were not prior to the advent of the services which is a direct result of the computer.
MR. FREUND: Okay.

MR. MARTIN: All right, so I think we could say we have greatly qualified your opening statement.

MR. FREUND: Yes.

MR. MARTIN: Mr. Ware?

MR. WARE: Mr. Borsom and Mr. Freund, let me read you something, suggest something to you; then ask your reaction.

Suppose you had applied for a loan application, or a deposit account, and you filled out the necessary forms, but prior to your signing it, the clerk took out a card and read you something like the following: "You are hereby informed that as a result of the information you are about to give, one, this information will be entered into a computer-based system.

"Two, as prescribed by law, this data will be automatically passed to certain other computer-based systems; notably, the IRS.

"Three, this information will be subject to the process of inspection.

"Four, for reasons of business of this institution, will be made available to credit reference bureaus.

"Five, other than as specifically noted above, this institution has no control over further dissemination.

"Your signature on this application constitutes
acknowledgement that you have been informed of these facts."

Now, if this were done, would you find this objectionable in your business, do you think there would be deleterious effects? Would you expect some reaction from your customers? How do you respond to this?

Obviously the intent of what I am getting at is to make the individual fully aware of what he is letting himself in for. Vis-a-vis, personal data about himself, migrating around.

MR. FREUND: Whatever the gross amount of banking services that are being rendered in the country today, are, I believe, they would still be rendered even if the people were asked to sign such an instrument.

MR. BORSOM: You said, I think, a savings account?

MR. WARE: I don't want to restrict your answer.

MR. BORSOM: I would answer the same way. I think, if the only place you could get a loan, I mean, if every place you could get a loan, or every place where you were to open a savings account, this kind of disclosure statement was asked for, the net difference would be insignificant except for the guy who really, the semi-pro, or the pro, who is trying to hide funds.

MR. FREUND: And he would probably find some way around it?

MR. BORSOM: He would lie, you see. The pro lies.
MR. WARE: I understand.

MR. BORSOM: So you would not get a handle on him, anyway. He would give you a false ID number. We don't have any requirement or way to verify ID numbers.

MR. MARTIN: Mr. Dobbs?

MR. DOBBS: That was beautiful. I know what you were trying to get at. Would you be disturbed if we add to Willie's list, the name of the service bureau, or bureaus to whom the information is -- will be checked with?

MR. BORSOM: Some. Then, you will have changed the rules of the game.

MR. DOBBS: Yes, I know.

MR. BORSOM: So I suppose if a guy came in and he didn't think he had any damaging information in the list of service bureaus that you have attached to the statement, he would say, "You would not have any net effect on the number of loans or savings accounts you opened."

And, if he did think he had some damaging information, he would find someplace where they didn't ask for those service bureaus. So, I think that would be, you know, I don't think that that is really the kind of question you can ask and list specific service bureaus.

If you were to say, you know, the credit bureaus of the United States of America, than you again put everyone on the same footing.
MR. DOBBS: Well, I would like to explore it a little bit, because it does relate to an earlier comment when it was pointed out that you know, why do you think banks and other people who give credit, collect that information.

And, I guess one of the things that I think that we have seen in our deliberations thus far, is that, in fact, the supplier of that loan information has very little idea about what happens to it. And very specifically, I think, he does not, in most cases, know that somewhere an entry is going to be made in some credit bureau of the fact that a contract has been made.

I just -- as far as we can tell, it is just not generally available knowledge. And, you know, part of the thrust of Willie's question is whether or not we have an obligation to the citizen which goes beyond the fact that he is, in fact, asking for a service, and because he is asking for the service which only the institution can supply; that he gives up something.

And whatever we are suggesting is that one of the things he ought not to give up is knowledge of the whereabouts of information that surround the transaction that encompasses that service delivery.

MR. BORSOM: I would like to amend what you are saying, or ask you to reconsider it. Instead of putting it in terms of an institution, you see, if you are talking about
the funds-gathering institutions of the nation; namely, banks, and Savings and Loan Associations, then I can agree with your term.

But, if you are trying to isolate it to a single ABC Savings Loan Association, or bank --

MR. DOBBS: No, I like the way you are going, do you think such a proposal would be considered by the American Banking Association?

MR. BORSOM: Well, I can speak for the Savings and Loan business, if the bankers have to do it, and we all have to do it, you know, generally, we don't object.

MR. DOBBS: Would you do it voluntarily?

MR. BORSOM: No, I don't think so, because you see, you have again broken the rules of the game. The rules of the game are that when the public goes to ask for credit, the public is being served.

MR. DOBBS: Where do you find that rule?

MR. BORSOM: That is Point One. All right, I am making the rules, now. When someone comes and applies for a loan --

MR. DOBBS: That is the problem.

MR. BORSOM: No, I think when someone applies for a loan, they are asking for a service.

MR. DOBBS: And they pay for it with interest.

MR. BORSOM: Fine.
MR. DOBBS: The thing they don't know, what they are buying are those other byproducts. All I am saying is let us make it explicit.

MR. BORSOM: Whether the public is damaged by giving this information, which induces a lender to make a loan, right?

MR. DOBBS: Are you damaged by telling the public what happens to the information?

MR. BORSOM: Let me finish answering your question. You asked, would we volunteer to do it, and I am saying, no.

MR. DOBBS: Why not?

MR. BORSOM: Well, I am telling you.

MR. DOBBS: Okay.

MR. BORSOM: Because, and I think I have mentioned it before. I think as soon as you pick out one institution and say, now, when the public goes to that institution, you see, banking and Savings and Loan Associations, and mortgage bankers, insurance companies, there are three, or four different major financial institutions financing the homes of the country.

And the moment you ask one segment to do something that the other segments don't have to do, and ask them to do that voluntarily, then you are changing the rules of the game.
MR. DOBBS: I will stipulate that I will not ask one segment.

MR. BORSOM: If you ask the whole segment, I go back to Mr. Freund's answer, there is not going to be any net difference. When the public comes to a lender and says, lend me some money; they are a lot more interested in how much it is going to cost, when they are going to get it, how they have to pay it back, what happens if they don't pay it back, than they are about whether the personal information they give is going to go to any other credit bureau.

The truth is that more times than not, when that personal information goes to a credit bureau, it serves that member of the public, because it facilitates his getting credit at some other place.

MR. DOBBS: What you say is perfectly true, Mr. Borsome, the problem is that the public is largely unaware of the fact that something else happens to that information. This is why they are not worried about it.

MR. BORSOM: Oh, now, wait now, you are giving an opinion.

MR. DOBBS: That is an opinion.

MR. BORSOM: Okay.

MR. DOBBS: Based on what I think we have heard today.

MR. BORSOM: Okay, my opinion is that most of the
public is honest. Most of the public pays their bills. You know, we have now something in the order of a one percent-
late, of all the payments on ten million, 12, 13 million loans in the Savings and Loan business, you know -- one percent are late.

And a fraction of a fraction of a percent are in trouble. These people prefer, I will give an opinion -- you did, too, I would say that most of the public prefers to have the truth known as widely as possible, because it facilitates their getting credit anywhere they happen to be.

Now, we have got this difference, you see.

MR. DOBBS: I don't see any difference, at all. I agree with you that the public would like to have the truth as widely known as possible, and what we are trying to do, is to get a little bit more of the truth into the public domain.

MR. BORSOM: Agreed. We have a common goal, then.

MR. DOBBS: Peace.

MR. MARTIN: Professor Weizenbaum --

MR. DAVEY: Let me make one comment, just one thing and that is that as far as all the New York City banks are concerned, they have put on their credit applications and loan applications, the fact that this information would be going to a credit bureau and a number of the institutions in California, and, -- as well as the Department Stores have
been doing this for sometime. And the public is aware if they can read.

They may not understand it, but is is there in very clear forms and at the time they sign the application, usually in a line just above that signature block, is the fact that this information will be exchanged with others and will be checked for credit, and will be deposited in a credit bureau operation.

They do not name a thing, but they do know.

MR. DOBBS: It is not a universal practice?

MR. DAVEY: Not yet, but the banks in New York did it volunatrily when they first started on this kind of a thing.
MR. MARTIN: Professor Weizenbaum.

MR. WEIZENBAUM: Yes, earlier our banker friend who just left unfortunately characterized in his prepared statement the bank as essentially an information processing system. I think he called it a financial transaction processing system, something of that kind.

And I think the confusion that crept in that has been alluded to now around this little horseshoe is the difference between a system and a file. I think the assertion is that the bank doesn't have any automated personal data files but, in fact, I think it has developed here and indeed I believe it, that the bank as such is a personal automated personal data system.

I think that point has been developed. Now, I think the -- in the prepared testimony it was asserted that the computer is merely another point on a more or less -- in a more or less continuous spectrum. We start with the quill pen and we go to mechanical adding machines, then electric accounting machines and finally we are at the computer. And there is an illusion that goes with that sort of metaphoric image, namely that these various points along this continuum don't really make any important difference except that they make banking more efficient.

I think we have seen again in the testimony and the conversation that has developed since that the introduction
of the computer has made an enormous difference, for example, it has made possible certain innovations we have heard about and certain innovations that are projected which would be impossible with the computer.

I suggest it has also made possible certain side effects which may not be as desirable as we would like which would have been impossible without the introduction of the computer. I will finish my little speech in a moment, David.

The -- apparently the banking community from what we have heard here considers the bank to be in effect, an isolated or isolatable social subsystem. I emphasize the word isolated but of course, it impacts on the whole society including and perhaps even especially on people who may not be customers.

For example, the statements that you have been making here about the public buying a service when they ask for credit carries with it an implication that there is a choice.

You know, just as I can choose to buy a motorcycle or I can choose not to buy a motorcycle, okay, I can choose to apply for credit or I can choose not to apply for credit. Well that is simply not so.

Today the ability to gain credit has become almost essential for a very very large segment of our society.

I would argue that the -- that that part of our society that is essentially excluded from the automated personal data system that the banks have become is an extremely important
segment of our society and is to some extent being
victimized by this progress in our technology. I would end
with a question. We saw in the slide, we saw an automatic
loan officer, that little branch bank that doesn't have any
tellers in it that actually makes loans. Now, surely there is
a computer sitting behind the scene somewhere that makes
a decision as to whether a particular applicant for a loan is
worthy of that -- of receiving that loan or not.

Obviously, not just anyone can walk in there and
get a hundred or whatever it is.

Now suppose that system works very well and bankers
begin to like it. Okay, now, suppose further then that these
things proliferate. Okay. And then just as is the case today,
that there are many things that you can hardly get anymore
without going through some automatic process, okay suppose
it turns out that this really becomes the norm, that when
someone wants a loan the same criteria automatic, computerized
programmed, okay, is applied to determining whether or not
that loan should be granted or not.

Then where does the judgment come in that might
be important here? And what happens to tie in with what
we heard this morning, what happens to people who may have --
to people whose automated personal record may have a mark
in it to the effect that they have been arrested or that
they are involved in litigation and so on and so on?
MR. MARTIN: Would you like to respond to that at all, Mr. Adams?

MR. ADAMS: No, I wouldn't, I am not even sure I understood all of it.

MR. WEIZENBAUM: Let me try to summarize it in a sentence or two.

MR. ADAMS: I don't know how these criminal records got together with the loan records.

MR. WEIZENBAUM: I don't know either but let me summarize in one or two sentences. We saw on the screen a great big network of prospective cashless, checkless society, electronic money transfers and so on and so on.

Now, it is quite clear to me that there is an enormous segment of our society that could be said to benefit from such a network you know very considerably okay. But it is also clear to me that as there is an enormous segment of our society today who have never written a check, who have never, in fact, had bank accounts but they are important people anyway, okay, that that system would, in fact, exclude from all sorts of important social activities in this country that particular segment of the society.

What I am trying to argue is that the bankers view that the computer is merely another step in the direction of progress, okay and that the effect of the computer is merely to make banking more efficient, I emphasize the word merely,
okay, that banking is an isolatable social subsystem which really
doesn't touch other aspects of society.

Okay. That view is not only misleading but possi-
sibly very dangerous.

MR. ADAMS: I think you are assuming several things, one of the assumptions you are assuming is that the competitive environment or the economy that we have here in the United States is one that would create an opportunity for the banking industry to decide that they are ultimately going to offer loans only via computerized robots, that nothing else will be able to compete with that in terms of supplying money at interest rates that are less than the robot. And that to me is contrary to the way banking has developed, and the use of computers has been in terms of making banking services, if not more efficient, at least, less costly.

And in terms of ultimately the computer making only those types of loans less expensive than any other type, I would say that maybe that would ultimately be the case.

MR. WEIZENBAUM: I don't feel you understood me. Let me give a very homely example. I recently just a month ago moved to California. I established a bank account there, and but not having any California identification, particularly not having a California driver's license, nor anything else to certify that I, in fact, now life there, okay, I find that I have very great difficulty -- I certainly have very great
difficulty getting a hold of money except at the very bank at which I made a deposit. Even branches give me difficulty.

Okay I also find that the retail business in that particular section of California where I now happen to live is very very much credit card oriented.

Okay. And consequently not having the proper identification, it turns out that sometimes when I want to buy something, I can't because it happens to be Saturday or I happen to be 20 miles away from the bank in which my money is stored and so I can't buy what I want to buy. Now, I happen to be a member of a very privileged segment of society.

Nevertheless I have this difficulty. I suggest with the advances that we are talking about here, culminating ultimately in the cashless society and so on and so forth, that this particular phenomenon which hits many many people very very hard today will, in fact, divide the country into two classes.

Okay, those who participate strongly in the economy okay and those who not only not participate but who can't, who are excluded from it.

What I am suggesting is that the blindness of the technologist and his blind pursuit of progress, that is in quotes, of technological progress, merely in the service of efficiency may, in fact, be doing this to which he ought to be sensitive. And that perhaps it is time to reconsider and to think about some of these consequences and to stop thinking...
of both computer systems and banking systems as being essentially isolated subsystems, but to think of the society as a whole, and not be quote so euphoric in the presentation of these extremely progressive technological marvels.

MR. BORSOM: Professor, I think you have just made the argument for a nationwide personal data system which could be plugged in anyplace in the 50 states for the good professor, zap, he is a good guy and you can buy anyplace that you happen to be.

MR. WEIZENBAUM: That is certainly one solution. A side effect of that, of course, is that it excludes all the guys that you and I think aren't good guys.

MR. BORSOM: What segment of our social fabric is now excluded.

MR. MC LEAN: May I comment on this because it happens to be an issue I am working on right now and, in reviewing different credit criteria systems, let's hypothesize two systems. Under System A which is basically the old system which existed 15 or 20 years ago the credit granting function was a function of credit managers, it was a high cost system in that the credit manager earned a salary of let's say between $15,000 and $20,000 a year. The credit granting decision was basically one based upon such personal information as can be gleened but an eyeball judgment on the part of the credit manager. Let's call that system A. Let's come up with
System B, which is a more computerized system made possible by
the availability of personalized information stored on compu-
ters.

Let us assume then under System A, 80 percent of the
people who apply for credit get it, 20 percent are rejected.
Well let's suppose under System B we have the same ratio,
80-20. Let us further assume that under System B it is really
more efficient as far as the banking community is concerned,
the cost of operating System B is cheaper because you employ
lower skilled labor, it is mechanized and furthermore it is more
efficient from the banking point of view in that the resulting
losses are less.

I think what the committee is concerned about is,
what about the 20 percent of the people who are rejected?
Those are not going to be the same kind of people. System
B is inherently an arbitrary system, it is efficient in the
aggregate. It is more economical in the aggregate but when you
get down to individual cases the instances of arbitrary
rejections are going to increase and that is the thing the
committee is really worried about and that is the human side
of the problem that hasn't been faced up to by the credit granting
industry.

MR. BORSOM: Well gentlemen, I think fair credit
account requires you know that the individual who is denied
credit has access to the reasons why. So that what you are
saying is correct, yes, you have a more efficient system for the "X" percentage, 80, whatever, who conform by judgmental standards which are put into a computer by an executive, some remote location. Now the balance of those, the exceptions are handled on an individual basis and it is still for the total system, it is more economical and you know there is -- we have no real evidence that anyone has been denied credit or will be denied. I should think that the people who don't get the green light on the first, you know, jab into the automatic credit grantor have lots of recourse.

I don't see them isolated. I think that they have to get on the street car or taxi cab and go somewhere else. But that is because of something that had happened, you know, that is outside the responsibility at least, of the information gathering system and the information using system.

You know what is the counts of it? What is the counts of it? Make it all inefficient so everyone is an individual executive decision.

MR. MC LEAN: No, I am not suggesting that I think the solution was contained -- there has to be some alternative procedure whereby those who are rejected are able to present their case to a human being rather than a computer and to get individualization. Despite your remarks it doesn't operate quite that simply. We have dozens of letters from individuals from around the country who have been denied credit based upon
seemingly arbitrary decisions and they have tried to challenge
decisions and they have been told that sorry, we have a
computerized scoring system. You have to have 180 points
to get credit. You have 170 and there is nothing we can do about
it.

MR. BORSOM: Is that from a savings and loan
association or from a department store or from a credit bureau
or --

MR. MC LEAN: More frequently from banks and depart-
ment stores than savings and loan associations. I don't
think S and L is quote that mechanized.

MR. BORSOM: On the contrary.
MR. MARTIN: Mr. Impara?

MR. IMPARA: I have some comments, not questions, and I will make them very brief because I don't think they are totally related.

The slide presentation we saw is -- disturbs me greatly. And I would hope that the thinking of the American Bankers Association or any other organization which might attempt to promulgate such a concept as that would seriously consider that in addition to working on such a thing as permitting use of a card in lieu of cash on any kind of basis -- the credit card industry in general bothers me, too. -- would devise or consort with educational enterprises to do a much better job to assist them in doing a much better job in teaching about money management.

The frenzy with which I read in the newspapers about people who are in financial difficulty because they have overextended themselves is very bothersome, and I think that such a device as the cashless-checkless society -- or whatever name it might go by -- would tend to increase the frenzy with which people overextend themselves.

Thank you very much.

MR. MARTIN: Commissioner Hardaway?

David, two comments:

First of all, I wouldn't want to leave the impression that we all feel like it's bad for the bank to make a
profit. I don't think you have to make a profit.

Well, in the beginning, we were talking about their money floating and giving some indication that that was to their - maybe too much to their benefit. And I think any business has to make a profit. I believe in the good old American business making a profit.

I would urge you to look into your own business, and if something can be done for you, yourselves, to look at your own applications and give people proper notice and proper information that their information is being interchanged, I would hope that you would do that yourselves, and you would -- I would urge you to do that.

I would address my question to Mr. McLain:

I am interested in the comment he made on the hearings held on the Bank Secrecy Act. I believe you said that no one, while you were considering that, addressed themselves or looked into the matter of privacy.

MR. MC LAIN: This was on the first go-round in 1970, is that correct?

That is correct, except for a related argument made by commercial banking witnesses who opposed the legislation largely on cost grounds, and the interjection of the privacy issue was largely as an afterthought, and was not seriously regarded by the members of Congress.

The groups who are more actively concerned with
privacy such as the American Civil Liberties Union, constitutional scholars, et cetera, were completely silent on the issue.

MRS. HARDAWAY: Let me ask for an opinion: Do you feel this is because people just aren't concerned about that issue, or because they did not understand what the committee was about to do; or because the public was not informed about, you know, the seriousness of it?

MR. MC LAIN: I don't think the groups concerned with privacy fully appreciated the implications of the legislation. They were concerned with other matters and, as you know, many bills go through Congress, and this was one that slipped through without the scrutiny that perhaps it should have had from the privacy standpoint.

MRS. HARDAWAY: Do you feel we have any obligation to inform the public when a matter of importance is being considered?

MR. MC LAIN: Yes, indeed. I think the public has been alerted by it. Of course the California suit, as well as the more recent hearings of the banking committee in which the privacy issue was thoroughly aired -- but I think it speaks well of having some kind of formal organization -- if not at the governmental level, at least at the private level -- that would concentrate and concern itself with privacy issues as they are contained or inherent in all
kinds of legislation, because everything that goes through Congress today or through a state legislature or through the regulatory agencies has some implications on individual privacy.

MRS. HARDAWAY: One other question, Mr. Adams, if I had $10,000 in my bank and I decided to move it to another bank, would you at that time tell me that you know you were going to report all of this when I moved that $10,000?

MR. ADAMS: Well, if you had $10,000 in the bank, and you withdrew it in cash, the Treasury regulations originally called for the bank having to report that, but that is the part that has been declared unconstitutional.

MRS. HARDAWAY: Let's say I have a large amount of money in your bank, would you notify me that this Act had been passed that would have some bearing upon my banking business?

MR. ADAMS: There was no legal obligation for banks to inform customers of their -- I would say of their responsibilities with regard to the act. However, I think most bankers assumed that they had a moral obligation.

There was one subsection of the regulations calls for persons transporting money out of the country in amounts greater than $5,000, they are required to report that to customs as they leave or customs as they come back, which
is part of the IRS or Treasury.

Now, in most cases people going overseas with greater than $5,000 will buy the travelers checks from the banker, and I think most banks have assumed that they will inform the customer at that time that he is obligated to report the fact he is taking it overseas to the Treasury as a result of the regulations. I think most bankers have put together something from the regulations that says they have to obtain his social security number, because we -- this particular issue, the gathering of the social security number was the most offensive part in terms of actual numbers of responses from bankers, was the most offensive part of the regulations. The banks were already keeping records all along and the fact the Treasury defined how long they had to keep them didn't change anything but the fact they now had to keep them for five years instead of whatever they were keeping them for -- so they were already keeping them.

One of the things they did object to was in order to do business with an individual they had to obtain his social security number. And in every case. It was mandatory.

You couldn't, if a guy refused to give it to you, you had to turn down the account, and these kinds of things are built into this regulation, and these are the kinds of things that upset bankers. And as it would upset any business person, I think, that has to do something because the government
says they have to do it before they can engage in any kind
of business.

MRS. HARDWAY: Thank you.

MR. BORSOM: Mr. Chairman, I would like to respond
to Mr. Impara's comments, because the United States Savings
and Loan League on two occasions that I can recall have developed
films which have been made available to schools and to local
TV stations telling the benefits of thrift, of saving money
so that you can ultimately have a downpayment on a home.

And the United States Savings and Loan League also
runs each year a training seminar for college professors in
finance, hoping that knowledge of thrift institutions as
opposed to commercial banking, hoping that that knowledge will
filter into the college textbooks and in the college system,
and ultimately to the teachers who come as the products of
colleges.

Then local savings and loan associations have a
good many programs where they go into the schools and tell
about the benefits of thrift, and the desirability of maintain-
ing a good credit position, of not overextending yourself, and
savings and loan associations, you see, are opposed to the
idea, really, of consumer lending, of buying on time.

They would rather have people save money and then
make a purchase and point out that the cost of buying on time
is frequently 18 percent.
As a matter of fact one of the major savings and
loan associations in Chicago, a $1 billion neighborhood
association, has what they call the Bohemian installment
plan. And that asays that if you want to have an automobile,
you start now, and for two years you save $200 a month, and
then at the end of two years under the Bohemian installment
plan, you have the money to buy the car.

They are playing on the ethnic thriftiness of the
Bohemians who the latterday scottsmen, as you know.

So some of this has been done over the years and is
being done on a local level. And you perhaps wouldn't see it,
but it is done more often in small towns than cities.

MR. MARTIN: Senator Aronoff.

MR. ARONOFF: I pass.

MR. MARTIN: Dr. Gallati?

DR. GALLATI: Just a little feeling I get, and
I gather from some of the questions and remarks of my colleagues
that it's not a feeling isolated with me.

I just have this -- of a chilling effect --
concerning the attitudes of the distinguished representatives
of the banking industry present here today, in several
respects.

In the first place, I hear this statement said
that most people are honest and they pay up their loans. God
bless the honest people. There are some people, of course,
who don't pay, and they are dishonest.

MR. BORSOM: They are out of funds, at least.

DR. GALLATI: Okay. We are so efficient in this
business of making loans that some very small fraction -- and
I forget what it is -- like 20 percent, one percent -- don't
pay.

How about those people who don't qualify? This
is comparable to in my opinion, the problem we had with
automobile insurance; some people couldn't get Allstate.
Allstate was efficient, GICO was efficient. The rates were
low: God bless the people who can get it. Some people
couldn't get anything, so we had to step in with legislation
and have an assigned risk.

Okay. Maybe the day is coming that the financial
banking industry does not become sensitive to these problems,
and we will have assigned risks for loans, too; and perhaps
the legislation will occur.

Now I was particularly concerned --

MR. ADAMS: Is that a threat or a promise?

DR. GALLATI: No. I think you should be sensitive.
You can answer whether it's a threat or not. I can't. I am
just saying that this is the type of thing perhaps we should
think about.

Now, if I did not misunderstand what was said, if
I open an account in a savings and loan association, I give
references --

MR. BORSOM: No, not if you open a savings account. You want some money, Doctor, I mean, if you want to borrow some money on a home, you give references; yes.

DR. GALLATI: In no case where I open an account would I have to give references, is that correct?

MR. BORSOM: A savings account?

DR. GALLATI: No, any account where I put money in?

MR. BORSOM: No.

DR. GALLATI: Well, then, I misunderstood.

MR. BORSOM: You would be asked to give your social security number and mailing address, and your signature.

DR. GALLATI: The point I was going to make is that you went to the credit bureau which gave references and it's not applicable --

MR. BORSOM: No.

MR. SEIMILLER: That wouldn't be true for a checking account at a bank, you are asked to give references if you open a checking account?

MR. BORSOM: You are going to have to ask my ex-colleagues -- incidentally, I want to take exception to being included in "the banking business".

MR. SEIMILLER: I thought that was an honor we were bestowing on you.

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
track of individuals that frequently overdraw their accounts. And this is an individual banking prerogative.

The bank -- when you overdraw your account, the banker, officer, has the option of letting you do it or making, you know -- or bouncing it. He has that option when the check comes in and you don't have the funds, insufficiency; he can make it "insufficient funds" and send it right back through the system, or he can let you overdraw.

I would say that the frequency of how often you overdrew it would determine how your -- this banking officer views your particular account as to whether or not he wants to let you do it again.

There are no, to my knowledge, there are no ways that this knowledge is ever given to another or an outside source.

MR. ARONOFF: There's no punchcard or anything like that goes in, "frequent overdrafter" or --

MR. ADAMS: No.

MR. SIEMILLER: Stan, what happens if he does it very frequently? He is asked to take his account over to First National, they can afford that?

MR. ARONOFF: The reason I ask, it was a very personal example. We have 33 accounts with the First National Bank. One of the 33 accounts is my wife's account, and I travel a lot and before I realized that the better thing for
me to do would be to give her a line of credit on my account, if she writes a $10 check for the groceries along the line and I am in Washington or some other city along the line there would be overdrafts that would come back.

The biggest mistake I made by the way was giving the loan of credit into my account. I think the overdraft was better. But --

MRS. HARDWAY: I can hardly wait.

MR. ARONOFF: What I am concerned about, in spite of the 33 accounts and the estates and everything else that are in there, is there some black mark from that?

And secondly, would I then be treated differently than somebody that didn't have 33 accounts in the bank?

MR. WEIZENBAUM: If you have 32 wives, you are already being treated differently.

MR. DAVEY: May I respond a little to that, Stan?

This is just a matter of interest. For demand deposits which includes both checking and saving accounts, I don't know of any information which is passed on to any credit bureau anywhere in the country. With the one exception that there is where there has been a fraudulent account, and there maybe a delinquent -- you know, $1,000 or $2,000 balance -- when the guy has disappeared.

Then that information may be presented to a credit bureau just for their own protection so other banks, or
something of this nature.

But I don't know of any information which is passed on with respect to demand deposits. Now, occasionally when you on your application will give a bank reference, what they will do is to call the bank to see if you have a checking account or a savings account. And normally what they will do is to find out the range in which your average balance is, they will say a middle three-figure or middle-two figure, which would mean $50 or $500 or something in that area.

There's a difference between a demand deposit side of banking and the loan side of banking. And there are tight restrictions as to what can be done on the demand deposit side, and very little information comes out about that in any kind, and anything which is done in that respect is internal to the bank.

Again, from the banks I know, they keep track of this thing, if it becomes onerous to them, then they will tell you, take your account some place else.

But short of that, there isn't anything else being done that I am aware of any place.

MR. ARONOFF: I can safely cancell the line of credit and go back to the old way.

MR. MARTIN: Mr. De Weese, did you have another question?

MR. DE WEESE: Yes, I did.
I think it's not surprising that this act sort of fell through the floorboards because it was called the Bank Secrecy Act, and I think this threw some people for a loop.

MR. MC LAIN: Actually, we were for bank secrecy at the time, rather -- against bank secrecy; we were trying to open up the records of the bank.

MR. DE WEESE: But what really disturbs me is something that was brought out: the government just intends to drop it because they didn't need this information anyway?

MR. MC LAIN: No, I didn't say that. They haven't made up their minds; there is some staff level through that they don't need this, but a final decision is yet to be made.

MR. DE WEESE: The undoubtedly argued strongly they needed the microfilm. I haven't read the case, but they probably outlined a very persuasive argument that they needed this stuff badly, and now just to say now we don't need it anyway, but if we had got away with it, we would have kept it, to heck with it.

MR. MC LAIN: That is not fair to the Treasury Department. The emphasis in the hearing was very strong on check information. That was the crucial evidence as far as law enforcement authorities are concerned in apprehending white collar criminals, and very little emphasis, if any, was given to the automatic reporting of large currency withdrawals and deposits.
MR. MARTIN: Mr. Anglero, had you another question?

MR. ANGLERO: Yes, perhaps one question, or one observation, perhaps a question, I don't know.

Again talking about the cashless society. And checkless at this moment. I use to be in charge of administration in parliament, and once I thought it could be a good idea to have a direct entry from the government to a given bank depending if it's allowed by the -- the choice of the employee.

So I assumed as the guys hired, per fiscal year you can have an open account there providing some control, but which you don't have to really -- the government doesn't have to issue a monthly check or two-week check or whatever it is, even if we are going to checkless or cashless.

And that could be some argument and it could work, I don't know, this is something that came out.

But coming to the sophistication that we visualized today, and providing that a lot of the delinquency, let's say in this country, and also including Puerto Rico as part of this country, comes because of the need for money or whatever it is, because they want to get some money one way or the other.

You think that a checkless-cashless society or in what degree would this decrease the delinquency rate of the Nation?
MR. ADAMS: Assuming we got to a completely checkless-cashless society at sometime? That that might decrease the delinquency?

No, I don't see how it could.

MR. MC LEAN: I think you are talking really about two different things. The function of a credit card is twofold.

One is to serve as a substitute for a cash trans-
action. In the system the banks are talking about is to use these credit cards more frequently in connection with automatic data processing equipment to replace cash trans-
actions. At the point of sale.

This is the little block you saw at the store where the lady goes to the supermarket checkout counter, buys groceries, instead of paying by cash she gives a credit card, they put it in the box and her bank balance is instantly debited.

I don't see that would have much of an impact on delinquencies.

But insofar as the credit card is used as a credit device to encourage buying on time, I think it does indeed have some impact on delinquencies.

But here the impact is going to take place whether or not you know we go to this completely automated system.
The very fact that you have credit cards available to more and more people has an impact on their bill-paying habits.

So you are going to have that problem whether we have the cashless society or not.

MRS. HARDWAY: Do you mean the money simply would not be in the cash register drawer?

MR. ANGLERO: Well or on the person in my pocket. I would have no money in my pocket.

MR. ADAMS: You'd have the card.

MR. ANGLERO: This is what I am asking. When, in the slides we saw a sign there, that says we have, we only deal with checks, no cash, no cash here.

And it was aimed to prevent and to -- to tell anyone, they make nothing there because there is no money. So if there is the idea and approach, will the use of whatever system is designed, would it be so good, so efficient, that we'd prevent anyone from stealing a credit card for example.

MR. ADAMS: I think that's the hope of the banking industry, I think that's what they'd like to have. Ideally one of these automated teller stations would work for one of these terminal devices where the customer is allowed the choice, she can key in her secret code only she knows.
I think an ideal thing would be instead of doing
that she could plug in her earlobe or something and it would
recognize that the card belonged to that particular individual
only.

It was not stolen and it was their card. That
would be the ideal terminal setup so that you could identify
that individual with that card and you would know that no
one else could take it.

And under those circumstances I would say that
we would have made a good step toward eliminating the need
for somebody to rob somebody else. I think it might be
a good thing. A voice print or thumb print or something
that identifies that individual exclusively.

And I'd like to make one last comment here, if I
don't get a chance otherwise, but I have brought some slides
over here that I use to talk about some of the developments
that are happening in banks and the direction they're
heading toward.

Your reaction to this has been a lot like the
reaction to banker groups all over the country. It's with,
an old saying one of the guys at the ABA has that the dogs are
not going to buy the dog food if they don't like it.

Your reaction to the checkless society is a lot
like bankers' reaction to it, is that they don't think it
will sell.
And to say this is the way it's going to happen because I brought some slides here to project some things that could happen is really assuming way way too much.

I think your own, this group's here reaction to what I proffered forth here indicates that you as a normal person reject some of the ideas that are evolving and that same rejection is going to keep the banking industry from being able to sell it.

Hopefully the American economy that has come about because we have had competitive enterprise and given the consumer the choice, he will take what he things is best for him, and if the consumer feels like what we are talking about is not in his best interests he is not going to buy it.

And all of the buttons and gadgets and slick cards that we put out, if they don't offer a convenience to him that he didn't have otherwise he is not going to take it.

MR. MARTIN: Mr. --

MR. ADAMS: And that sort of sums up my feeling about what we have talked about here today. I appreciate your concern, that you'd expressed here today but it only points up the fact we have got a hard job ahead of us in terms of selling some of these ideas we have been talking about and I feel that the banker per se as well as any other
bussinessman today is as morally concerned about what he's doing as any other group.

And that he's not objectively thinking that he is going to put something into effect and not worry about the moral consequences.

MR. MARTIN: Mr. Adams, let me respond to that at the price of prolonging the meeting for a couple minutes.

The Secretary of Health, Education, and Welfare in creating this Committee might buy some particularly the panel we have had this afternoon, be perceived to have a justification or a warrant for doing so which hangs from the slender reed of the fact that the Social Security number is widely used, in fact it now has to be used as a consequence of congressional enactment by the banking industry, his motive I think is much deeper than that.

And I am not sure that the encounter that we have had this afternoon, perhaps in part because of its inevitable, certainly not intended adversarily quality, this sort of a meeting tends a bit to get adversarily and I don't think anyone should infer from that that the secretary or that the committee approached the task in an adversary manner, his motive I think stems from what he perceives his role to be in the National Government.

The Secretary of Health, Education, and Welfare, in decades past one might have thought that the attorney
general, the head of the justice department, might have equal
warrant for concern, about these issues, but for reasons
that we may deplore but have to accept as our society has
developed, the justice department has come to be perhaps
less concerned for understandable reasons with justice as
with law enforcement.

And that's not to criticize the justice department.
It's mode of functioning and the kind of role it has to
play is a product presumably of the kind of society that
we have in some measure become.

I think the secretary's motivation in this is
one of trying to understand and see whether with the aid
of this committee and all the people that have come before
it what the potentially adverse effects have quite desirable
technological developments for some purposes maybe, the
response of this particular panel excluding the representa-
tive from the legislative branch, has been one of blindness
I would say to the kinds of questions that are bothering
the secretary and that are bothering this committee.
Blindness born of a very understandable not villainous
attitude.

The addition to progress, technological progress,
efficiency, public service viewed with tunnel vision, born
of a quite desirable it seems to me and quite laudable
commitment to the worth of what one is engaged in in one's life.
But as our technology is set on us in society
they tend I think to isolate us from each other, technologists
become isolated from each other.

It's hard to become an effective technologist. To
become so one must concentrate on the application of one's
technology whether it is law enforcement, banking or
whatever and in the isolation from each other and larger
social concerns that arises from our addition to our
technology perhaps comes a loss of sight of values and
concerns that ought somehow or other to permeate our
understanding of all that we do.

And I would hope that the banking representatives
who have met with us this afternoon would know, one, that
we enormously value your willingness to come and spend
time with us.

I would hope also that you would go away not
with a memory of an adversary quality but of a really
concerned effort to engage your attention for problems
that we don't fully understand, and which I think in all
candor your presentations indicate that you not only don't
understand but haven't even begun to recognize the need
to be worried about whether you understand them or not and
I say this in a spirit of enormous friendship and in no way
meaning to sound critical and I would hope this tiny
little edge of the banking industry we have had with us
and I am sorry Mr. Freund is gone, may somehow or other feed-
back to your colleagues some sense of our concern about
these issues.

There's nothing bad about the technology inherently.
There was nothing bad about any of the technologies that
man has brought about but there are certainly an awfully
lot of bad consequences of technology with which we are
now having to wrestle and the hope is before this technology
has reached its full potential effect on the society that
we can perhaps do what we have not always succeeded in doing
with technology and that is to anticipate what its adverse
consequences might be and by taking prudent action, volun-
tarily out of a sense of the importance for doing so,
in recognition of what perils it may hold for values that
we lost sight of but which we value, I suppose deeply,
that we will attend to these matters voluntarily and not
wait until the government requires that persons turned
down for credit of certain rights.

It seems to me that the credit bureau industry
has to count it a black mark in its record to have had
that forced down its throat over its objection.

Far better would it be if the credit industry
had through some process of anticipation recognized that it
might have been a good thing to arrive on that course of
conduct on its own and I suspect that the banking industry
would prefer ten years from now to have tried to anticipate what modifications, what voluntary effort in its behalf might help prevent adverse consequences rather than to succeed in applying its technology to a society which isn't able always to anticipate the consequences of what it does.

But when it does anticipate it and then seeks to do something about it to fight it which is surely what will happen, it's the history of all efforts to control technology.

The efforts to control air pollution in the automobile industry were not applauded by the automobile manufacturers who have located for perfectly and understandable and historical reason their plants along our water courses in the nation, did not come in advocating measures to reduce the pollution of our streams because when the proposals to undo the adverse effects of that technology occurred they would feel a particular economic disadvantage from it and it took a long time for the public interest to assert itself over that special private interest that would be specially geared by the effort.

And I do hope that you can go away from this meeting in a spirit of trying to join us in the inquiry of understanding. We don't know what the answers are.

And in spite of the certainty of attack or questioning you may have felt this afternoon, I think, every
member of this committee would acknowledge that we are
druggling with something we do not fully understand and
we hope the consequence of our meeting will be that you will
wish to join us in this undertaking and help us find the
answers because their answers that I think and the secretary
feels are important for the society to find, more important
than efficiency in banking or any other field of endeavor
in which the computer and these systems may be applied.

MR. ADAMS: I understand what you are saying.

All I wanted to do was just say what I just said I felt
like I hadn't said it previously and from the comments
coming out I felt like that I would have liked to have said
that before I left and now that I have said that I appreciate
the opportunity to have said it.

I understand what you are saying.

MR. MARTIN: You say -- I hope you do. Your
remarks don't indicate that you did because what you said
was we are going to have a hard time selling it.

Maybe the first thing you ought to decide is
should we want to buy it. Should you try to sell it.
Henry Ford may have had a hard time getting people to buy
cars but when they caught on they really went.

And now we feel that perhaps, no blame on Henry
Ford but, there was something about that technology as it
came on that if we had foreseen it, maybe we could have
managed its onset in a manner that would have left us today
with a society and environment that we'd feel happier about.

So my invitation to you is to reexamine whether
this particular technology or how do you manage its
production so that it isn't a question of selling hard
over objects, but helping to understand what the source
of those objects may be and seeing if they can't be responded
to so that whatever advances are possible can be brought
on not in the manner that you are suggesting they be,
through selling us.

MR. ADAMS: I happen to be by profession a sales-
man and I believe in what salesmen happen to do but that
doesn't mean that I am speaking completely for the banking --

MR. MARTIN: No, but I am speaking to you as a
representative of the banking industry and I hope it will
feedback that way because you are our only access now that
Mr. Freund is gone.

MR. ADAMS: I happen to believe Henry Ford did
a good thing. And at the time that he did it. And I happen
to believe that the automobile was not a problem until so
many people decided they wanted one.

And it wasn't Henry Ford's particular conscience
that should have bothered him when he made the automobile
that some day he would pollute the sky, because at that
time he had no idea what he was doing.
MR. ARONOFF: Can I throw one?

MR. MARTIN: That certainly is not what I am implying.

MR. ARONOFF: In defense of the banking industry and I feel I can endorse your comments and I think that they were appropriate, David, but I would have thought the banking industry itself would have not let one or two comments go unanswered because I think that Joe and Bob can leave a wrong impression also and that is that inevitably because of the technology that we have, you are going to have a two-class society of A) the havers, and B) the one's that will never have.

Actually with the growth of technology in the banking industry you have the banks and the savings and loans with the use of the technology going more and more into areas that they never before ventured to go, into the inter-cities, into making through building and loans, loans to a greater number of minority groups as a matter of policy than they did before.

Now, I am not saying they're going fast enough, that's an entirely different inquiry. But I think that the statistics would probably show that with some of the greater amount of knowledge that the banking industry now has they're ready to take greater risks, that some people that have some quote black credit marks against them are
not necessarily bad credit risks.

I can speak not only locally in the sense natty
area but in terms of working with the banking industry, in
terms of planned programs, of developments, and of actually
meeting together to themselves lend to a greater amount
of people that only five years would have been regarded
as quote bad credit risks.

And at the risk of overstating that side of the
case I think the committee should at least compare the banking
industry of 1972 with that of 1962, and I don't think you
would find it growing as wide apart as some members even
on the panel tended to indicate.

MR. MARTIN: Well, I don't think anyone's
implying that we must, developments must lead us to adverse
effects.

But the risk --

MR. ARONOFF: No, I was talking about the greater
and greater division of society.

MR. MARTIN: But if you take Joe's hypothetical
and that's all it was, a hypothetical view of the future,
you certainly would want to make sure that the onset of the
technology was managed in such a way as to, -- as to as
much as possible make impossible that hypothetical view
of the future.

And all I am suggesting is that we don't fully
always understand what we are doing with our technologies
and perhaps if we listen to what may sound like crazy
hypotheticals of the future and try to address how to
protect against them we will succeed, whereas if we don't
even think about them perhaps as so often in the past we
will fail.

And failure with this technology could be a very
very serious, -- could confront our society with a very
very serious change in character, let us say that.

A change in character which we may never feel,
which the members of the society when it comes on may feel
as delightful, 1984, your model any model of the future may
be just fine for the inhabitants of the time and maybe
we have no obligation to preserve for our successors a
model of society which we happen to prefer.

Maybe we should just say, "Well, privacy, freedom,
all those kinds of things. They can go." People could
live under a different way.

And yet maybe we feel that there are certain
values that are worth trying to preserve or at least that
at the pace at which we lose them should be something that
is held within the reach of people as it goes along so it
just doesn't happen suddenly.

MR. BORSOM: Mr. Chairman, I'd like to register
for the record a strong objection to being stereotyped with
banking.

MR. MARTIN: Financial institutions, excuse me, sir.

MR. BORSOM: And also kind of confused, I think, with the credit bureau collection industry, from time to time I think in the discussion that's happened.

I think in order to comment back to the committee I'd like to give you my feeling that the committee, members of it, I don't want to stereotype either, are relatively insensitive to the competitive situation between various kinds of financial institutions, banking and savings and loan associations in particular and I want to try to ask those of you who are chilled by scope to join the club.

We see scope as something maybe not bad breath but at least an ill wind for the savings and loan business.

And we are determined within the savings and loan business to continue to develop customer and consumer satisfying services and convenience in the face of the bank owned and operated payment systems and the promise of the bank owned and operated EFTS, system ala scope.

So I am asking you even though we were nice looking guys and we smile at each other we are really on quite opposite sides of the table on a good many things.

MR. MARTIN: Thank you very much for being with us.

The Committee will reassemble at 6:30 for dinner at the Holiday and followed at 7:30 in the Montgomery Room.
(Whereupon, at 5:54 p.m., the meeting was adjourned, to reconvene at 7:30 p.m., this same date, Wednesday, October 11, 1972, in the Montgomery Room.)