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**DOMESTIC COUNCIL COMMITTEE
ON THE RIGHT OF PRIVACY**

WASHINGTON, D.C. 20504

Phil -

I thought you might be
interested in seeing the
attached.

Quincy Rodgers



DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

April 22, 1976

For Quincy
1/22/76

MEMORANDUM FOR RICHARD PARSONS

FROM: QUINCY RODGERS
Executive Director

SUBJECT: Bank Records and Supreme Court Ruling

I strongly recommend that the President not associate himself with the Supreme Court rulings on bank records which came down yesterday.

The most constructive approach would be to point out that the cases involve a number of issues which are currently be debated in Congress. Congress is considering legislation which would establish rules protecting taxpayers rights with respect to bank records while permitting IRS to have the access it needs to enforce the tax laws.

We will provide additional materials on this issue. In the meantime, I urge you to raise this matter in the proper forums, including staff meetings and with the press people.



MARCH 19, 1976

For filing

Office of the Vice President

Press Release

Vice President Nelson A. Rockefeller announced today that President Ford had directed the Domestic Council Committee on the Right of Privacy to undertake a comprehensive study of the emerging issues of information policy.

In announcing the study, the Vice President, who serves as Chairman of the Committee, stated, "The Committee will examine a number of critical issues facing this country, including the political, social, economic and international consequences of our economy's growing information sector. Specific issues, such as the impact of computer and related technologies, the relationship between privacy and freedom of information, and access to information and information delivery systems will also be considered."

In a memorandum to the Vice President, the President noted that there is a need to better coordinate and direct the way in which government policy is made in the area of information policy.

The President specifically directed the Domestic Council Committee on the Right of Privacy to review and clearly define the information policy issues which confront Federal policymakers, to ascertain the status of information policy studies now going forward within a number of agencies of the Executive Branch, and to report to him by September 1, 1976, with recommendations on how the Federal government should organize itself to deal with matters of information policy.

The Committee was directed to work closely with the various departments and agencies having specific responsibilities for formulating information policy, such as the Departments of Justice, Commerce, and Health, Education and Welfare, and the Office of Telecommunications Policy in the Executive Office of the President.

#



THE WHITE HOUSE
WASHINGTON

DATE: 6 Jan

TO: Ed Schultz

FROM: LYNN MAY

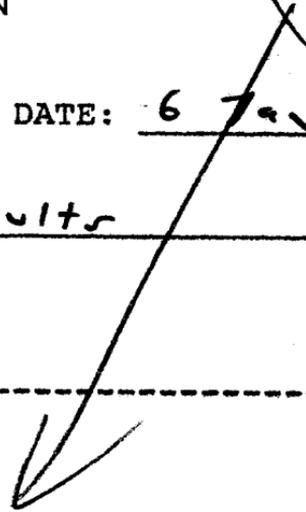
Comments:

FYI, per our

conversations



File



January 5, 1976

MEMORANDUM FOR DICK PARSONS

FROM: LYNN MAY

SUBJECT: Proposed Domestic Council Committee on
Privacy and Information Policy

The above proposal, set forth in the Vice President's memo to the President of December 19, would furnish the Committee a very vague charter to interfere in the activities of Federal agencies. As set forth the Committee would be charged with:

1. reconciling conflicting claims of privacy, freedom of information and Government confidentiality,
2. reconciling the Government's need for information, as a regulator and provider of services, in the context of the legitimate privacy rights of individuals and the needs of the private sector for confidentiality, and
3. those issues of information policy including its economic, political, and social importance, which will require Government attention in coming years.

The first of these has been largely accomplished by the provisions of the Privacy Act of 1974 and the Freedom of Information Amendments. Discrete matters like juvenile justice records, credit records, etc. perhaps require additional legislation and/or administrative reform but this is already part of the mandate of the Committee as currently chartered.

The second provision - reconciling the Government's need for information - was again largely accomplished by the terms of the Privacy Act. In accordance with the Administration's philosophy, no determination was made whether or not information was needed by individual agencies but all such information systems have now been made public along with provisions for public access for purposes of information or reviewing files on private persons. Moreover, this charge implies that the

Committee will serve as a watchdog over the Federal government's information collection role and to carry it to an extreme, comment on the FBI's or CIA's right to collect data on individuals. This charge also duplicates closely that of the Privacy Protection Study Commission.

The third function - to focus on economic, political and social importance - currently belongs to other Federal agencies. Much of the theoretical thrust behind this whole formulation arose out of a Roundtable Discussion on Information Policy convened by the Committee with the Vice President's participation. Throughout that meeting the items discussed either involved new telecommunication technology (cable, broadband satellites, electronic funds transfer, electronic mail, etc.), First Amendment matters (joint ownership of media, freedom of information) or economic policy questions (patent law, copyrights, regulation of communication industries). These areas are currently the responsibilities of OTP, Justice, Commerce, GSA and the DCRG. While there can be no argument that there is need for greater coordination of government policies in these areas, I believe the re-cycling of the Domestic Council Committee on the Right of Privacy for that purpose would be a disaster. First of all the Committee does not enjoy a good reputation with any of the Federal agencies involved - OTP, Justice, OMB, etc. Secondly the technical expertise of the Committee staff in these areas is marginal. Finally, the intrusion of the Committee into the turf of others will be resented and as a result doomed. I believe my approach of asking the Agencies themselves to do a background study which can be used in the development of organizational options (including a Domestic Council Committee on Information Policy) is the best approach to gain cooperation. If a Domestic Council Committee is decided upon, elements of the current Privacy Committee could be incorporated in it.

In summary, the proposal under discussion bags the President because it supplies him little background data and no options. It will surely result in a poor product accompanied by jealousy and infighting I believe, as I've indicated to Quincy, the Domestic Council Committee on the Right of Privacy can play an important role in the formulation of a new Executive Branch approach to Information Policy by developing fundamental issues and options through its perspective to be incorporated with the ongoing OTP study. Giving them the lead, on the other hand, will only promote Agency retrenchment or aggrandizement.



THE WHITE HOUSE

WASHINGTON

December 22, 1975

MEMORANDUM FOR JIM CANNON

FROM: DICK PARSONS

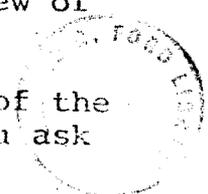
SUBJECT: The Vice President's Memorandum on the Domestic Council Committee on the Right of Privacy

The attached memorandum from the Vice President (Tab A) was prepared by the Domestic Council Committee on the Right of Privacy (DCCRP) but was not cleared by myself or Lynn May prior to submission to the Vice President. (The Vice President is Chairman of the DCCRP.) It makes two recommendations: that the State of the Union Address contain a passage on privacy issues and that the current DCCRP charter be expanded to include the responsibility of formulating information policy, encompassing the "economic, political, and social importance, which will require Government attention in coming years."

I have no problem with a chapter of the State of the Union mentioning the Administration's accomplishments in the privacy field, like the Privacy Act of 1974. I do object, however, to the proposed expansion of the DCCRP's charter, which would then duplicate many of the responsibilities of the Office of Telecommunications Policy, as delineated in Executive Order 11556 (Tab B). The Administration does need a resolution of its current communication policy configuration but that is currently underway in the form of a Domestic Council Study of telecommunications functions within the Executive Branch (Tab C). Quincy Rodgers, Director of the DCCRP, was briefed on the purpose of this study several weeks ago.

OTP and the DCCRP, which is housed and supported by OTP, are engaged in a bureaucratic struggle for the same turf, but from different angles. OTP looks at communication policy from the first amendment and economic development side while the DCCRP views the problems as privacy oriented. Clearly these viewpoints must be incorporated into a cohesive Administration policy apparatus, but that should not be done by duplicating OTP's franchise without a complete review of the problem.

I, therefore, recommend that you oppose the expansion of the DCCRP activities at this time. I also suggest that you ask the Vice President to withdraw the memorandum.



Date: December 20, 1975

Time:

FOR ACTION:

Phil Buchen
Doug Bennett
Jim CannonMax Friedersdorf
Bob Hartmann
Jim Lynn

cc (for information):

Jack Marsh
Bill Seidman

FROM THE STAFF SECRETARY

DUE: Date: December 23

Time: 10 A. M.

SUBJECT:

Vice President's Memorandum regarding
Domestic Council Committee on the Right of
Privacy

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:





THE VICE PRESIDENT
WASHINGTON

December 17, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: THE VICE PRESIDENT

At my request, the staff of the Domestic Council Committee on the Right of Privacy has analyzed the broad policy implications of the privacy issue. Staff has concluded that privacy is a forerunner of a host of broader information issues which will confront Government throughout the coming decades.

Public awareness of the importance of information policy has been stimulated by three important political issues of recent years:

- privacy;
- freedom of information (the "peoples right to know"); and
- confidentiality of Government processes.

The enactment of the Privacy Act last year, the amendments to the Freedom of Information Act at about the same time, and the steady progress through Congress of the so-called Sunshine Law (opening Government decision-making to public scrutiny) point to considerable pressure from the public at large for progress toward certain generalized objectives, some of them quite laudable.

At the same time, disclosures concerning improper activities of the intelligence agencies and the FBI, coupled with Congressional demands for information used in the Executive Branch decision-making process, have demonstrated that there are complex issues where all otherwise attractive goals intersect.



My concern is that neither the Federal Government (and particularly the Executive Branch) nor the American people have any comprehensive overview or conceptual framework for addressing these issues.

Information policy now arises in a piecemeal, ad hoc fashion through the actions of numerous Congressional committees, editorials in the press, and uncoordinated decisions by individuals scattered throughout the bureaucracy. The mere fact that there are already ten Federal commissions (see attached list) and at least a score of agencies dealing with pieces of this overall problem is an indication of both growing interest and policy fragmentation in this area.

The result is inconsistency and conflict in which advocates of legislation such as the Sunshine Law or of a drastic reduction in Government information gathering for intelligence or other purposes can attract support by citing laudable goals, without an understanding by the American people of the many countervailing considerations which these proposals involve. Fundamentally, then, this lack of a conceptual framework and a public understanding of the complexity of the issues makes it difficult to resist even the most unworkable proposals in the face of emotional advocacy.

In addition to the importance of balancing the interests involved in current information conflicts, it would be timely for your Administration to begin to consider and anticipate important economic issues in the area of information policy.

I believe that there are many reasons to begin a serious review of these economic issues. Many commentators have noted recently that the United States is increasingly becoming a society which produces and sells information (such as knowledge and technical know-how) rather than goods. This is a key characteristic of what has become known as the Post-Industrial society.

There are many reasons to encourage this trend, since it promises continued economic growth without substantial materials and environmental costs, and opens the



possibility of reducing unemployment by stimulating the development of growth in new areas where we do not face such severe international competition. However, to do this we must anticipate and provide for the economic dislocations, the educational deficiencies and the development of the legal framework which will be required as our economic base shifts from production of tangible goods to the production and manipulation of information.

Recommendations

In view of the foregoing analysis, I recommend:

a. That you devote a section of your State of the Union Address to the importance of these emerging information issues, particularly the need to reconcile privacy, freedom of information and confidentiality of Government processes; and

b. That you reconstitute the Domestic Council Committee on the Right of Privacy as a Committee on Privacy and Information Policy, charging it with the responsibility of developing an information policy for the United States. Its study would focus on

(1) reconciling conflicting claims of privacy, freedom of information and Government confidentiality;

(2) reconciling the Government's need for information, as a regulator and provider of services, in the context of the legitimate privacy rights of individuals and the needs of the private sector for confidentiality, and

(3) those issues of information policy including its economic, political, and social importance, which will require Government attention in coming years.



The present membership of the Domestic Council Privacy Committee includes the major Federal agencies with an interest in these questions and could form the nucleus of such a group. Some expansion of that group might be warranted, particularly the addition of the President's Science Adviser, who in past Administrations had a role in certain aspects of information policy issues. I believe that the staff of the Domestic Council Committee on the Right of Privacy, which has already been working extensively in the privacy area, could appropriately serve as staff for this undertaking.

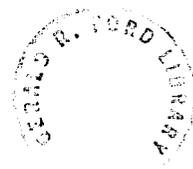
DECISION

- _____ Approve inclusion in State of the Union Message.
- _____ Approve reconstituting Domestic Council Committee on the Right of Privacy as the Domestic Council Committee on Privacy and Information Policy.
- _____ Disapprove.

Attachment



A



COMMISSIONS WITH RESPONSIBILITIES IN INFORMATION POLICY

- Electronic Funds Transfer Commission
- Privacy Protection Study Commission
- Federal Paperwork Commission
- National Commission on New Technological Uses of Copyrighted Works
- Commission on CIA Activities
- National Commission on Libraries and Information Science
- Public Documents Commission
- National Historical Publication and Records Commission
- National Commission for Review of Federal and State Laws, Wiretapping and Electronic Surveillance
- National Commission to Review the Confidentiality of Health Records (Private body)

AGENCIES THAT ARE MEMBERS OF THE DOMESTIC COUNCIL
COMMITTEE ON THE RIGHT OF PRIVACY

Department of the Treasury

Department of Defense

Department of Justice

Department of Commerce

Department of Labor

Department of Health, Education & Welfare

U.S. Civil Service Commission

Office of Management & Budget

Office of Telecommunications Policy

Special Assistant to the President for Consumer Affairs

General Services Administration

B



Executive Order 11556

ASSIGNING TELECOMMUNICATIONS FUNCTIONS

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, and in consonance with the intention expressed in my message to the Congress transmitting Reorganization Plan No. 1 of 1970, it is hereby ordered as follows:

SECTION 1. Amended and superseded orders. Executive Orders Nos. 10705 of April 17, 1957, 11051 of September 27, 1962, 11191 of January 4, 1965, and 11490 of October 28, 1969, and the President's Memorandum of August 21, 1963, headed "Establishment of the National Communications System" (28 F.R. 9418) are amended as provided herein. Executive Orders Nos. 10695-A of January 16, 1957, 10995 of February 16, 1962, and 11084 of February 15, 1963, to the extent not heretofore made inapplicable, are hereby revoked.

SEC. 2. General functions. Subject to the authority and control of the President, the Director of the Office of Telecommunications Policy (hereinafter referred to as the Director) shall:

(a) Serve as the President's principal adviser on telecommunications.

(b) Develop and set forth plans, policies, and programs with respect to telecommunications that will promote the public interest, support national security, sustain and contribute to the full development of the economy and world trade, strengthen the position and serve the best interests of the United States in negotiations with foreign nations, and promote effective and innovative use of telecommunications technology, resources, and services. Agencies shall consult with the Director to insure that their conduct of telecommunications activities is consistent with the Director's policies and standards.

(c) Assure that the executive branch views are effectively presented to the Congress and the Federal Communications Commission on telecommunications policy matters.

(d) Coordinate those interdepartmental and national activities which are conducted in preparation for U.S. participation in international telecommunications conferences and negotiations, and provide to the Secretary of State advice and assistance with respect to telecommunications in support of the Secretary's responsibilities for the conduct of foreign affairs.

(e) Coordinate the telecommunications activities of the executive branch and formulate policies and standards therefor, including but not limited to considerations of interoperability, privacy, security, spectrum use and emergency readiness.

(f) Evaluate by appropriate means, including suitable tests, the capability of existing and planned telecommunications systems to meet national security and emergency preparedness requirements, and report the results and any recommended remedial actions to the President and the National Security Council.

(g) Review telecommunications research and development, system improvement and expansion programs, and programs for the testing, operation, and use of telecommunications systems by Federal agencies. Identify competing, overlapping, duplicative or inefficient programs, and make recommendations to appropriate agency officials and to the Director of the Office of Management and Budget concerning the scope and funding of such programs.

(h) Coordinate the development of policy, plans, and programs for the telecommunications systems of the Federal Government.



(i) Develop, in cooperation with the Federal Communications Commission, a comprehensive long-range plan for improved management of all electromagnetic spectrum resources.

(j) Conduct and coordinate economic, technical, and systems analyses of telecommunications policies, activities, and opportunities in support of assigned responsibilities.

(k) Conduct studies and analyses to evaluate the impact of the convergence of computer and communications technologies, and recommend needed actions to the President and to the departments and agencies.

(l) Coordinate Federal assistance to State and local governments in the telecommunications area.

(m) Contract for studies and reports related to any aspect of his responsibilities.

Sec. 3. Frequency assignments. The functions transferred to the Director by section 1 of Reorganization Plan No. 1 of 1970 include the functions of amending, modifying, and revising frequency assignments for radio stations belonging to and operated by the United States, or to classes thereof, which have heretofore been made or which may be made hereafter.

Sec. 4. War powers. Executive Order No. 10705 of April 17, 1957, headed "Delegating Certain Authority of the President Relating to Radio Stations and Communications", as amended, is further amended by:

(a) Substituting for subsection (a) of section 1 the following: "(a) Subject to the provisions of this order, the authority vested in the President by subsections 606 (a), (c), and (d) of the Communications Act of 1934, as amended (47 U.S.C. 606 (a), (c) and (d)), is delegated to the Director of the Office of Telecommunications Policy (hereinafter referred to as the Director). That authority shall be exercised under the overall policy direction of the Director of the Office of Emergency Preparedness."

(b) Substituting for the text "subsections 305(a) and 606(a)" in subsection (b) of section 1 the following: "subsection 606(a)".

Sec. 5. Foreign government radio stations. The authority to authorize a foreign government to construct and operate a radio station at the seat of government vested in the President by subsection 305(d) of the Communications Act of 1934, as amended (47 U.S.C. 305(d)), is hereby delegated to the Director. Authorization for the construction and operation of a radio station pursuant to this subsection and the assignment of a frequency for its use shall be made only upon recommendation of the Secretary of State and after consultation with the Attorney General and the Chairman of the Federal Communications Commission.

Sec. 6. Office of Emergency Preparedness. (a) Executive Order No. 11051 of September 27, 1962, headed "Prescribing Responsibilities of the Office of Emergency Planning in the Executive Office of the President", as amended, is further amended by:

(1) Deleting subsection 301(4) and renumbering subsection 301(3) as subsection 301(4).

(2) Substituting for section 303 the following:

Sec. 303. Emergency telecommunications. The Director shall be responsible for providing emergency telecommunications services to the President and the Executive Office of the President, and for providing such services to the Secretary of State, the Attorney General, and the Chairman of the Federal Communications Commission, and to such other officials as may be designated by the President.



(3) Deleting section 406.

Sec. 7. Emergency preparedness. Executive Order No. 11490 of October 28, 1969, headed "Assigning emergency preparedness functions to Federal departments and agencies," as amended, is hereby further amended (1) by substituting "Policy (35 F.R. 6421)" for "Management (OEP)" in section 401 (27), and (2) by substituting the number of this order for "10995" in section 1802 and in section 2002 (3).

Sec. 8. National Communications System. The President's Memorandum of August 21, 1963, headed "Establishment of the National Communications System" (28 F.R. 9413), is amended by:

(a) Substituting the following for the first paragraph after the heading "Executive Office Responsibilities":

"The Director of the Office of Telecommunications Policy shall be responsible for policy direction of the development and operation of the National Communications System and shall:

(b) Substituting the term "Director of the Office of Telecommunications Policy" for the term "Special Assistant to the President for Telecommunications" wherever it appears in said memorandum.

Sec. 9. Communications Satellite Act of 1962. Executive Order No. 11191 of January 4, 1965, headed "Providing for the Carrying Out of Certain Provisions of the Communications Satellite Act of 1962", is amended by:

(a) Substituting the following for subsection (c) of section 1:

"(c) The term 'the Director' means the Director of the Office of Telecommunications Policy," and

(b) Substituting the following for the catchline of section 2: "*Director of the Office of Telecommunications Policy.*"

Sec. 10. Advisory committees. As may be permitted by law, the Director shall establish such interagency advisory committees and working groups composed of representatives of interested agencies and consult with such departments and agencies as may be necessary for the most effective performance of his functions. To the extent he deems it necessary to continue the Interdepartment Radio Advisory Committee, that Committee shall serve in an advisory capacity to the Director. As may be permitted by law, the Director also shall establish one or more telecommunications advisory committees composed of experts in the telecommunications area outside the Government.

Sec. 11. Rules and regulations. The Director shall issue such rules and regulations as may be necessary to carry out the duties and responsibilities delegated to or vested in him by this order.

Sec. 12. Agency assistance. All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the Director and to furnish him such information, support and assistance, not inconsistent with law, as he may require in the performance of his duties.

Sec. 13. Functions of the Secretary of Commerce. The Secretary of Commerce shall support the Director in the performance of his functions, shall be a primary source of technical research and analysis and, operating under the policy guidance and direction of the Director, shall:

(a) Perform analysis, engineering and administrative functions, including the maintenance of a working file and a data base responsive to the needs of the Director in the performance of his responsibilities for the maintenance and operation of the National Communications System.

(b) Conduct research and analysis in the field of telecommunications and related areas, including the development of technical standards and the coordination of such standards with international organizations.

(d) Conduct research and analysis in the general field of telecommunication sciences in support of other Government agencies as required and in response to specific requests from the Director.

(e) Conduct such other activities as may be required by the Director to support him in the performance of his functions.

SEC. 14. *Retention of existing authority.* (a) Nothing contained in this order shall be deemed to impair any existing authority or jurisdiction of the Federal Communications Commission. In carrying out his functions under this order, the Director shall coordinate his activities as appropriate with the Federal Communications Commission and make appropriate recommendations to it as the regulator of the private sector.

(b) Except as specifically provided herein, nothing in this order shall be deemed to derogate from any existing assignment of functions to any other department or agency or officer thereof made by statute, Executive order, or other Presidential directives.

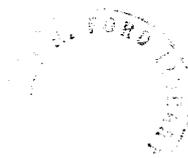
Richard Nixon

THE WHITE HOUSE,
September 4, 1970.

[F.R. Doc. 70-12017; Filed, Sept. 4, 1970; 4:58 p.m.]



c



#7501334

December 10, 1975

MEMORANDUM FOR JIM CANNON

FROM: LYNN MAY

SUBJECT: Attached Proposal to Study the Organization
of Telecommunications Functions within the
Executive Branch

Don Derman (OMB), after reconsidering this matter, phoned me and said that the President is already aware that a study of OTP has begun. Derman stated that he was told that it came up in the budget meeting on small agencies on November 21, in which Lynn and you were present.

If that is so, should this be an information memo rather than a decision memo?



December 10, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Proposal to Study the Organization of
Telecommunications Functions within
the Executive Branch

I recommend the Domestic Council undertake a study of the organization of telecommunications functions within the Executive Branch. The current structure has been criticized from within the Administration and by the Congress as needing greater definition and resolution.

BACKGROUND

The Office of Telecommunications Policy (OTP) was created in 1970 to serve as adviser and spokesman for the President on communications policy and to coordinate cost-effective operations for Government communications systems, including managing frequencies used by Federal agencies. OTP was preceded by a string of offices with analogous functions located in the Executive Office of the President dating back to the Truman Administration.

In the budget process last January, OMB proposed that the functions of OTP be transferred to the Office of Telecommunications in the Department of Commerce. A considerable amount of Congressional opposition was mounted against this proposal and you chose not to adopt it. Since then, OTP has functioned in a kind of limbo, lacking a full-time director and performing its technical and policy functions in a perfunctory manner.

CONGRESSIONAL SITUATION

Senator Baker and others concerned with communications questions in the Congress have subsequently requested clarification of OTP's status in the Administration and have stressed the need for an office dealing with telecommunications matters in the White House.



STUDY OBJECTIVES

The objectives of the study would be twofold: the first stage would be the development of a paper to assess the effectiveness and appropriateness of the current operational functions of OTP. This will be used to develop options for short-term organizational changes, which will then be discussed with directly affected Federal agencies (like DOD) and Congressional Committees, prior to submission to you for final approval. The second phase of the study would be the assessment of the long-range needs of a communications policy apparatus within the Executive Branch and the submission of the recommendations for your approval.

ORGANIZATION

The review would be conducted by a working group, chaired by the Executive Director of the Domestic Council, consisting of the following agencies of the Executive Office of the President:

OTP	NSC
OMB	The Counsel to the President

I feel that the preliminary stage of the study should be an in-house, Executive Office activity, undertaken without a public announcement, because of the extreme sensitivity of the Congress on this issue and because of the parochial interests of the Federal agencies involved. Pending your approval, however, I intend to brief Senator Baker about his at the earliest opportunity.

TIMETABLE

The study would begin immediately. The first stage dealing with OTP's operational functions should be completed within fifty days (February 1, 1976). The second stage, reviewing the Administration's long-range organizational requirements for communications policy should be completed by April 1, 1976.

RECOMMENDATIONS

Phil Buchen, Jim Lynn, Brent Scowcroft and John Eger, Acting Director of OTP, concur in this recommendation.

PRESIDENTIAL DECISION

APPROVE _____

DISAPPROVE _____



[1176?]

DOMESTIC COUNCIL COMMITTEE
ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504



I thought you might be
interested in seeing the
attached.



Quincy Rodgers



Toward a National Information Policy

Quincy Rodgers

The views and conclusions contained in this article are those of the author and should not be interpreted as necessarily representing the official policies, either expressed or implied, of the Domestic Council Committee on the Right of Privacy or of the U.S. Government.

The 1975 Annual Meeting of the American Society for Information Science featured a Keynote Session which was especially interesting, both because of its subject matter, "Toward a National Policy in Information," and because of the distinguished people who participated.

National policy is the primary concern of the Domestic Council, its committees, task forces, and staff. Vice-President Nelson Rockefeller, who serves as Chairman of the Domestic Council Committee on the Right of Privacy, has been concerned with the broad policy implications of the privacy issue, as is President Ford, his predecessor as Chairman of the Committee. This and the awareness of the fact that privacy issues are a part of a number of broader information issues heightened my interest in the ASIS-75 Keynote Session.

The Keynote Address was given by Harvard sociologist Daniel Bell, perceptively introduced by Andrew Aines as one of the foremost thinkers of our time. The enlightening panel that followed was moderated by Edwin Parker, and included Anthony Oettinger, Eugene Garfield, Robert Cairns, and Melvin Day. ASIS is to be commended for undertaking this program.

Policy and Perspective

At the outset of his address, Bell delivered a handy reminder that the framework within which we view events is crucial to policy formulation. He warned of "a failure to understand an underlying structural change" in the world around us and particularly in the

advanced industrial societies. He shared a Talmudic proverb which eloquently makes the point that once inside a medium it's difficult to get outside and gain perspective: "Who first discovered water? Well, we don't know. This we do know: The fish did not."

I have heard similar observations by Buckminster Fuller:

The fundamental changes that are occurring in our life are essentially almost all invisible. . . . We cannot see the hands of the clock move. . . . We can't see the stars in motion although they move over a million miles a day. . . . We fail to see great changes coming about in our society. . . . If we could see a large enough spectrum. . . . we might be able to also see some of the trends. . . . World society is lingering in images which were put in books and pictures and that is very, very out of date with what it going on. . . . (from the phonograph record *R. Buckminster Fuller Thinks Aloud, Part 1*)

This problem of perspective, of understanding the meaning of events as they are occurring, permeates all policy formulation and provides one of the major challenges in its development. Occasionally, an event will occur that will make it easier to "see" structural change. The Arab oil embargo might have been one such event in that it signalled the changed conditions of the world's energy balance. Actually it was an event which precipitated an awareness of changes that had already taken place. And the energy crisis demonstrated how hard it is to achieve that awareness when structural changes are still in the early stages.

Yet this is what we must learn to do. Given the rapid pace of change in our society, it is clear that mechanisms are needed to provide policy-makers with the perspective that will allow them to

anticipate problems, rather than simply react to them. The alternative is to careen blindly into the future.

The Information Age

What Bell and others have sought to give us is an awareness that the United States is in the midst of such a fundamental structural change. Bell calls ours a "post-industrial" society, and suggests that just as the industrial revolution brought about a metamorphosis in the previously dominant agricultural society, the post-industrial revolution will bring about basic changes in industrial society. This is the theme of much of his writing.

The result will be an information age where the creation of knowledge and information, rather than the creation of goods, will be the dominant economic activity. To Bell, information and knowledge are the "transforming resources" and the "key variables" of the information society—roles played by created energy (electricity, oil), capital, and labor in an industrial society.

Others share with Bell this view of the important role of information. To Oettinger, "information is as vital a resource as energy or matter." Peter Drucker has written on this subject. Economists, such as Kenneth Arrow, have turned their attention to the information sector. Parker, assisted by Marc Porat, has begun to define and measure it. They have estimated that the information sector contributes from 20 to 40 percent of the Gross National Product and that one-half of the nation's workers are involved in information processing. While improved definition of terms is needed, the information sector is, by any standard, significant.

These are obviously important developments. But great uncertainty arises among many people when they try to determine what should be done about

Quincy Rodgers is the Executive Director of the Domestic Council Committee on the Right of Privacy, Office of the President, Washington, D.C. He formerly served as Minority Counsel to the Subcommittee on Separation of Powers of the U.S. Senate Committee on the Judiciary. Mr. Rodgers has also served as an attorney in New York City and Washington, D.C.



[1176?]

DOMESTIC COUNCIL COMMITTEE
ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

I thought you might be
interested in seeing the
attached.

Quincy Rodgers



Toward a National Information Policy

Quincy Rodgers

The views and conclusions contained in this article are those of the author and should not be interpreted as necessarily representing the official policies, either expressed or implied, of the Domestic Council Committee on the Right of Privacy or of the U.S. Government.

The 1975 Annual Meeting of the American Society for Information Science featured a Keynote Session which was especially interesting, both because of its subject matter, "Toward a National Policy in Information," and because of the distinguished people who participated.

National policy is the primary concern of the Domestic Council, its committees, task forces, and staff. Vice-President Nelson Rockefeller, who serves as Chairman of the Domestic Council Committee on the Right of Privacy, has been concerned with the broad policy implications of the privacy issue, as is President Ford, his predecessor as Chairman of the Committee. This and the awareness of the fact that privacy issues are a part of a number of broader information issues heightened my interest in the ASIS-75 Keynote Session.

The Keynote Address was given by Harvard sociologist Daniel Bell, perceptively introduced by Andrew Aines as one of the foremost thinkers of our time. The enlightening panel that followed was moderated by Edwin Parker, and included Anthony Oettinger, Eugene Garfield, Robert Cairns, and Melvin Day. ASIS is to be commended for undertaking this program.

Policy and Perspective

At the outset of his address, Bell delivered a handy reminder that the framework within which we view events is crucial to policy formulation. He warned of "a failure to understand an underlying structural change" in the world around us and particularly in the

advanced industrial societies. He shared a Talmudic proverb which eloquently makes the point that once inside a medium it's difficult to get outside and gain perspective: "Who first discovered water? Well, we don't know. This we do know: The fish did not."

I have heard similar observations by Buckminster Fuller:

The fundamental changes that are occurring in our life are essentially almost all invisible. . . . We cannot see the hands of the clock move. . . . We can't see the stars in motion although they move over a million miles a day. . . . We fail to see great changes coming about in our society. . . . If we could see a large enough spectrum. . . . we might be able to also see some of the trends. . . . World society is lingering in images which were put in books and pictures and that is very, very out of date with what is going on. . . . (from the phonograph record *R. Buckminster Fuller Thinks Aloud; Part 1*)

This problem of perspective, of understanding the meaning of events as they are occurring, permeates all policy formulation and provides one of the major challenges in its development. Occasionally, an event will occur that will make it easier to "see" structural change. The Arab oil embargo might have been one such event in that it signalled the changed conditions of the world's energy balance. Actually it was an event which precipitated an awareness of changes that had already taken place. And the energy crisis demonstrated how hard it is to achieve that awareness when structural changes are still in the early stages.

Yet this is what we must learn to do. Given the rapid pace of change in our society, it is clear that mechanisms are needed to provide policy-makers with the perspective that will allow them to

anticipate problems, rather than simply react to them. The alternative is to careen blindly into the future.

The Information Age

What Bell and others have sought to give us is an awareness that the United States is in the midst of such a fundamental structural change. Bell calls ours a "post-industrial" society, and suggests that just as the industrial revolution brought about a metamorphosis in the previously dominant agricultural society, the post-industrial revolution will bring about basic changes in industrial society. This is the theme of much of his writing.

The result will be an information age where the creation of knowledge and information, rather than the creation of goods, will be the dominant economic activity. To Bell, information and knowledge are the "transforming resources" and the "key variables" of the information society—roles played by created energy (electricity, oil), capital, and labor in an industrial society.

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DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

November 3, 1975

MEMORANDUM FOR:

LIAISON GROUP MEMBERS

FROM:

QUINCY RODGERS
Executive Director

SUBJECT:

Change of Place for Liaison
Group Meeting

The Liaison Group Meeting scheduled for Thursday, November 6, at 10:00 a.m. is to be in Room 305 of the Old Executive Office Building, 17th Street and Pennsylvania Avenue, N.W.

The Liaison Group Members are cleared for entrance.



NOV 11 1975

AGENDA

Meeting with Liaison Representatives

Thursday, November 6, 1975

10 a.m. - 12 noon

Room 305

Old Executive Office Building

I. Introduction of Privacy Committee Staff and Liaison
Group Members

II. Reports on Pending Initiatives

III. Program Areas Under Consideration



DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

October 24, 1975

MEMORANDUM FOR: PHILIP W. BUCHEN
Counsel to the President

FROM: QUINCY RODGERS
Executive Director

SUBJECT: Domestic Council Committee on the
Right of Privacy Program Summary

As I mentioned to you I am sending the attached paper which briefly summarizes our proposed program for the next fourteen months. A more extensive version of paper has been distributed within the Domestic Council.

We have made an effort to identify those problem areas which have already been dealt with by the Privacy Act or other legislation, to consolidate programs and to assign priorities in light of current circumstances. We have also tried to develop privacy policy in a broad context and draw appropriate relationships to major issues of domestic policy.

I welcome your reactions and advice.



DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

October 24, 1975

PREFACE

In this memorandum we present a proposed program for Presidential and Executive Branch action on privacy and information management issues, for the time period thru January 1, 1977.

This proposed program rests on the notion that personal privacy is a fundamental component of individuality and liberty. We believe that our program reflects the President's view that respect for personal privacy is an important element of protection of the individual from the pressures of "massive government, massive management, massive communication and massive acquisition of information." 1/

The program we outline herein should contribute substance to the board principles of liberty and personal autonomy. As such this program should be viewed as one part of the Administration's overall response to the challenge posed by the President - to find the means to safeguard individual liberty and autonomy. Where appropriate our program description relates privacy concerns to other fundamental values that bear upon the relationship of the individual to society. As a consequence many of our proposed areas of priority focus upon the basic concerns of the individual as he functions in society as a parent and as a child, as a medical patient, an employee, a consumer, a taxpayer and a citizen.

1/ Remarks of the President at the Dedication Ceremonies of the Stanford University Law school, Stanford University September 21, 1975.



Our program contemplates a variety of outputs. For some of our projects we think that a legislative proposal within the January 1, 1977 time frame is the appropriate Administration action. In others we think it will be necessary to initiate preparatory action such as conferences and studies. Our approach reflects the fact that we tried to set our priorities on the basis of their importance and value to people and not necessarily on the basis of what projects can be immediately accomplished. Our commitment to this approach was strengthened by our notion that where new ground is to be broken, expressions of high level interest are not only a vital beginning but have significance in and of themselves.

We have divided this memorandum into three sections. TAB A includes high priority projects that present us with an immediate or fast-emerging opportunity for program development and action. TAB B outlines important projects with real developmental potential that by definition or force of circumstances should first take the form of studies and conferences or other preparatory steps. TAB C outlines areas of significance not currently requiring developmental initiatives but included because of their potential impact on privacy.



PROJECTS WITH IMMEDIATE DEVELOPMENTAL NEEDS AND POTENTIAL

1. Juvenile Justice

The President, other political leaders and scholars alike have expressed the belief that democratic societies face an urgent challenge to reconcile the demand for a safe and lawful society with equally compelling demands for the safeguarding of individual autonomy and privacy. Our preliminary work convinces us that the juvenile crime problem presents this challenge in its most difficult and severe form.

Neither the Privacy Act nor pending criminal justice information system legislation treats juvenile justice as a discreet system. We propose that the Administration devote attention and resources to the development of a comprehensive and balanced approach to law enforcement collection, maintenance and use of information about juveniles. As a first step we propose that the Committee staff meet with a variety of individuals and organizations currently leading in the effort to define information and privacy standards in the juvenile justice system. This process will enable us to collect and analyze their research and recommendations, while at the same time informing them of the Administration's interest. This work would also permit us to determine which institutions are included in the juvenile justice system and to evaluate the extent to which conventional principles of information privacy are applicable to juveniles. In our second step we would work with the Justice Department, the new appointees charged with juvenile justice at LEAA, and other appropriate Federal agencies to draft specific legislative and/or administrative recommendations concerning privacy and information management standards in the juvenile justice system.



2. Privacy in the Employment Relationship

We believe that privacy in the employment relationship will be one of the major areas of attention during the coming year. Employers out of necessity collect and use a considerable amount of personal information about employees. This information is necessary to business and is often beneficial to employees. Nevertheless, the currently unregulated collection and use of personal information threatens employee privacy and productivity.

Use of the polygraph in the employment setting is also a datory pre-employment device and additionally as a means to test the rectitude and honesty of current employees. Conflicting state policies and regulations concerning use of the polygraph have further complicated the problem.

Employer use of personality testing schemes also remains a problem. Many observers claim that the test results are unreliable.

On-the-job surveillance is another area of growing concern. For a variety of reasons many employers use electronic cameras and audio surveillance equipment to watch and record their employees.

We propose that the Department of Labor and the Civil Service Commission assemble a high level panel of business and labor leaders, scholars and others with a direct interest in employment to study the problems and make recommendations. Also reform of Federal employment eligibility and security screening practices should be attempted. Present Federal policy in this area is internally inconsistent and appears to grossly violate principles of fair information practice recognized by the 1974 Privacy Act.

3. Privacy Rights of Consumers in Finance and Credit

We believe that one of the basic attributes of liberty is economic freedom.

We propose to emphasize two current Committee projects that are dedicated to preserving the financial integrity of the individual.

a. Banking Privacy.

Legislation governing access to records in financial institutions has been pending in the Congress (H.R. 1005, H.R. 2752), and these bills would sharply restrict access to bank accounts, particularly by law enforcement agencies. We have been working with Treasury and Justice to develop an alternative proposal that will preserve provisions to tighten the confidentiality of financial records while accomadating their very legitimate concern that these reform measures not unreasonably impair the effectiveness of law enforcement.

The Committee staff attaches high priority to these efforts, and we will keep the Administration closely informed.

b. Fair Credit Reporting Act Amendments.

Congress is considering legislation to amend the Fair Credit Reporting Act to provide more complete customer access to credit records and more confidentiality constraints on credit agencies. The Committee staff believes that important improvements can be made in the FCRA without in any way impairing the vital operation of the credit business. We also believe that the Committee staff should play an active and substantive role in the Administration's response to legislative reform of the Fair Credit Reporting Act.

4. Privacy Rights of Medical Patients

The Committee staff believes that priority attention should be given to the development of privacy policy for medical care and record-keeping.

The Privacy Act establishes some fair information standards for medical records maintained by Federal agencies. Its provisions represent the barest of beginnings, not only because the statute is directed only to Federal agencies but, as well, because it fails to fully address the problems of collection, access and confidentiality. Proposed bills in the Congress recognize these deficiencies and attempt to establish a more comprehensive scheme.



We propose that the Committee staff in cooperation with interested HEW task force personnel draft and circulate an Administration medical privacy bill or other appropriate initiative by early 1976. In developing recommendations, we expect to work with appropriate representatives of the Congress, the medical profession, the health care industry and patient and consumer groups. We believe that the urgent questions presented by the health care issue and the extensive data available from several research projects and conferences make it reasonable for the DCCRP staff to take an unusually active role over a relatively short time frame. We also believe that one important benefit from our work in this area could be the development of methods for assessing the "information and privacy" impact of various health care schemes.

5. Privacy Aspects of the Relationship of the Citizen to the Government

History made the architects of our Constitution very much aware that a strong and centralized government must inevitably pose the principal threat to individual liberty. We believe that we must continue to be especially vigilant to ensure that the federal government in all of its programs and activities scrupulously respects the privacy rights of individuals.

Two federal programs warrant particular attention at this time.

a. Taxpayer Privacy Legislation

Present law defines all income tax returns as "public records", although these records are generally open to inspection only under Presidentially-approved regulations or by Presidential order. The Privacy Act does not explicitly address the unique aspects of tax returns. As a consequence, Congress for the first time in forty years is now reviewing the statutory rules governing the disclosure of tax information.

The Committee staff has worked with IRS in an effort to get the Congress to tighten confidentiality and dissemination standards. That legislation requires continued attention.

b. Use of Social Security Number.

Four out of five Americans, including almost all working age adults, now have a social security number. The SSN is a highly visible and sensitive issue for those Americans who fear its misuse.

We recommend that the President repeal Executive Order 9397 "Numbering System for Federal Accounts Relating to Individual Persons".

This 1943 Executive Order, among other things, directed Federal agencies to use the social security number when developing new record-keeping systems that require numeric or standard personal identifiers. Executive Order 9397 is inconsistent with the letter and the spirit of Section 7 of the Privacy Act. Few would even contend that in view of the Privacy Act the order is still operative. Nonetheless, its presence on the books is confusing. Its repeal would give the President an opportunity to support and encourage the work of the PPSC, the Executive branch and the Congress to find realistic ways to limit and control uses of the social security number. Repeal could be effected before the end of the year, perhaps to coincide with the first year anniversary of the enactment of the Privacy Act.

6. Privacy Implications of State of the Art Hardware Developments

In an age of scientific discovery and technological development society must continually struggle to evaluate the social implications of rapidly emerging technology.

We are becoming increasingly concerned about state-of-the-art advances in technologies, other than the digital computer, that involve potential and, frankly, frightening implications for personal privacy. For example, relatively little scrutiny has been given to the rapid development and implementation of highly sophisticated infra-red, telescopic and night light visual surveillance systems. We have also been impressed by reports of extraordinary developments, some of them recently



made public in connection with the Congress' investigation of the CIA, in the hardware capabilities of eavesdropping and wiretapping equipment. We are also concerned about new cable T.V. and the telephone technologies that for the first time make it technologically practicable to introduce visual surveillance into the home.

In addition, we are greatly troubled by a second aspect of the hardware problem. This hardware has been widely proliferated and is accessible not only to law enforcement agencies but to private investigating organizations and private citizens. Virtually every city of any size can today boast its own "spy" shop. Many of these establishments sell an impressive array of snooping equipment and for the first time put private investigatory agencies and "inquisitive" citizens in a position to do some sophisticated and intrusive surveillance.

Businessmen perceive an increase in industrial espionage. The availability of sophisticated surveillance devices has contributed to this increase. This kind of activity tears at the economic and moral fabric of our society.

We propose that the Committee staff immediately assemble a task force of scientists and policy makers to study and assess state-of-the-art developments in those areas of technology, other than the digital computer, that have profound privacy implications. One part of this study should also consider questions of hardware proliferation and access. A Presidential speech on this issue might also be considered. This speech could note recent revelations in Congressional hearings and direct the Domestic Council Committee on Privacy to initiate a major study of privacy invading technologies.

POLICY PLANNING PROJECTS

1. Access to Personal Information by Law Enforcement Agencies

one of the most sensitive and difficult issues in the privacy policy making process is the nature of and extent to which law enforcement agencies should have access to personally identifiable information held by parties other than law enforcement agencies.

For this reason Committee staff has commissioned independent consultants to do a study of the legal and empirical characteristics of law enforcement access. The study will attempt to clarify the terms and conditions under which Federal, state and local law enforcement officials have access, for purposes related to a criminal investigation, to information about individuals held by other Federal agencies, public organizations and a variety of third parties, be they public or private. The study will articulate the major policy alternatives related to law enforcement access that are available. Interested groups will be included as the work proceeds.

2. Information Policy Roundtable

Privacy issues are the cutting-edge of larger problems of information policy. Each effort to formulate policy in the area of personal privacy raises the curtain on some other problem. Often it develops that privacy is only one of many competing values to be served in the use and management of information. Consideration of this larger context is necessary if personal privacy is to have sufficient philosophical and conceptual underpinnings so that policy-makers can comfortably handle the issues and so that fundamental values of privacy will be secure in the face of competing claims.

With these broad concerns in mind, Committee staff, in conjunction with the Vice President's office, developed a Roundtable on Privacy and Information Policy. A number of information policy and privacy scholars participated in this conference.

3. Behavioral and Social Science Privacy Study

Privacy is recognized as an indispensable attribute of liberty and as a basic right protected by the Constitution. However it is important to note that the attributes we ascribe to privacy derive from philosophic and a priori reasoning, and are not based on social science inductive or empirical research. Recently scholars have challenged privacy advocates to produce credible research to support their policy claims.

We will establish a task force to explore and develop the social science and behavioral base for privacy. We would expect to enlist the services of social scientists from the National Science Foundation, The National Bureau of Standards, the Library of Congress and others. Committee staff will produce a research project design before the end of the year and assemble the task force in early 1976.

PENDING PROJECTS

1. Criminal Justice Information Systems

Legislation to regulate Federal and interstate criminal justice information systems is pending, and Congressional committees are currently working on final versions. At the same time, the committee is working with the Domestic Council staff, OMB, and OTP on administrative decisions regarding criminal justice information.

2. False Identification Task Force

Federal Task Force on False I.D., chaired by the Department of Justice is considering the difficult problems associated with the easy availability of false identification papers. The Committee is maintaining liaison activity with the Task Force. Its recommendations may necessitate further activity by the Domestic Council Committee on the Right of Privacy.

3. Parent/Student Access to School Records

"The Family Educational Rights and Privacy Act of 1974", also known as the Buckley Amendment, establishes important privacy standards for student records. The Act, which was effective as of November 19, 1974, applies to any educational institution that receives Federal funds administered by HEW's Commissioner of Education.

On January 6, 1975, the Office of the Secretary of HEW published proposed rules for implementation of the Buckley Amendment, 40 FR 12080. The Department hopes to adopt final regulations during calendar year 1975.

Domestic Council Committee staff and other interested parties will continue to watch and assess the implementation of the Buckley Amendment. After HEW's final regulations have been in place for a long enough period to evaluate their impact, we should reassess the need for further affirmative action in the area of school records and educational privacy.

4. Privacy Act Implementation

a. Statistical Information.

The research community has voiced fears that the Privacy Act might unreasonably impair research efforts by locking up the personal information necessary for sociological and behavioral research. Early requests for an amendment to the Privacy Act to clarify the statistical research access protocol were turned aside by OMB on the basis that the Act should not be tinkered with until at least a year's operational experience. Accordingly, agencies with particular research missions were asked to consider their own authorizing legislation, and propose enabling amendments as necessary. Agencies were also urged to handle research information disclosures under the routine use provisions of the Privacy Act. We are very much concerned about the deficiencies of the Privacy Act with respect to research information and feel that this issue should be closely monitored.

b. Computer System Security.

It became apparent early in our work that an effort to develop a methodology for measuring the sensitivity of personal information would be useful. Without such a measure it is virtually impossible to differentiate one personal information configuration from another, or for information system managers to know what level of confidentiality protection is appropriate. The methodology produced by a DCCRP task force after extended analysis, is almost ready for distribution. Our plan is to circulate the report for comment, and we intend to suggest measures to proceed further with information sensitivity evaluation. In tandem with this effort the National Bureau of Standards developed guidelines for information system managers to use in assessing security risks in their particular systems. That report has already been distributed in connection with OMB guidelines for Privacy Act implementation.



5. Military Surveillance

Legislation on this subject is pending in Congress. The Committee has considered legislative alternatives to the bills before Congress. At the present time, the lack of activity on this specific legislation in the Congress, coupled with broad Congressional activity touching upon surveillance and intelligence activities generally makes the course of future activities temporarily uncertain.

6. Electronic Funds Transfer.

The Committee staff's initial response to the mushrooming growth of EFT will center on two developments. First the Office of Telecommunications Policy, in connection with the Committee's early initiative on EFT, has almost completed work on a comprehensive report on electronic banking. We expect to make detailed recommendations concerning the Administration's use of the substance of this report. Secondly, Congress has responded to electronic banking developments by establishing an Electronic Funds Transfer Commission. We expect to establish close liaison with the soon-to-be-assembled staff and thereby coordinate our research and policy efforts. We think that by early or mid-1976 initial research and coordinating activity will have progressed enough to allow us to make the first specific policy proposals.

