

colleagues, voted not to dismiss Foster. A majority of her fellow board members disagreed.

The district superintendent, Chester Kent, was on shaky grounds with another board member earlier in 1994. Four people said then that Kent disclosed information from the school record of Ann Martin to show that she was weak in math and would be an ineffective member of the board.

Federal law requires school districts to maintain a policy of not disclosing student records. Martin complained to the office in the U.S. Department of Education responsible for compliance. Kent was unfazed. In 20 years, the department has never punished a school system for non-compliance and, as Kent's lawyer pointed out, there is no fine or criminal penalty for violations.

### MCDONALD'S SNOOPING TOO

A former supervisor of McDonald's restaurants in upstate New York has sued the company and others because, he says, they monitored voice mail messages between him and his female lover, then played the tapes for his wife.

The \$1 million lawsuit of Michael Huffcut and his wife, Lisa, says that an employee of the company that leases McDonald's restaurants in the Elmira, N.Y., area began overhearing the messages in 1993, sent them to the voice-mail box of the owner of the leasing company, then played the tapes for Mrs. Huffcut and said, "Have you heard these?"

Under federal law, employers may monitor live telephone conversations and voice mail messages without consent to assure quality of service and to protect assets. But courts have generally said that this exception to the wiretap law does not extend to conversations that are obviously not work-related. Further, the law prohibits the disclosure of illegally intercepted conversations.

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### A HACKERS GROUP IS HACKED

By Simson Garfinkel

The Electronic Frontier Foundation, established to promote the rights of computer "hackers," has dismissed its executive director, Jerry Berman, and chartered a new course designed to take it far from the world of inside-the-Beltway Washington politics.

The changes came just after passage of the FBI's Digital Telephony law, which requires that the nation's communications companies reengineer their networks in order to grant the FBI easy access for court-approved wiretaps. The bill was opposed by most of EFF's high-tech members and most of the Washington civil-liberties establishment. Nonetheless, Berman worked actively behind the scenes to design a compromise and to assure its passage.

With four EFF staffers including JanLori Goldman, formerly of the ACLU privacy project, Berman has started his own public-policy group, called Center for Democracy and Technology. It is to be funded by grants from communications companies that had committed to Berman's work at EFF.

Berman says that EFF under his guidance took a calculated risk. The FBI bill was director Louis Freeh's top priority and a Democratic House and Senate were unlikely to turn down President Clinton's appointee on this issue. So instead of opposing the bill, as it had done in 1991, EFF worked closely with the FBI, the communications and computer industries, and Congressional staff to remove what Berman saw as the most objectionable elements, in the same way that Berman had lobbied on Freedom of Information and criminal-records reforms for the ACLU before being hired by EFF founder Mitch Kapor.

Consequently, EFF won financial support from corporations - \$75,000 from AT&T in 1993, \$50,000 from Apple, \$35,000 from Bell Atlantic, \$50,000 from IBM, \$47,500 from Lotus Development, \$75,000 from Sun Microsystems, \$75,000 from Microsoft. Kapor, the founder of Lotus Development software, himself contributed more than \$300,000. This month, he resigned as chair of the board of the group; and his colleague in starting EFF, Grateful Dead lyricist John Perry

Barlow stepped down as vice chair, although both remain on the board. Andrew Taubman, a management consultant who had joined the foundation earlier, was named executive director, and Washington computer-law expert David Johnson became chair and a senior policy fellow.

"The organization's critics say that the EFF was seduced by insider politics, then ravished," reported *The Economist* Jan. 14.

Instead of being actively involved in policy making, EFF will produce a "State of the Net" report and explore issues of intellectual property in an electronic age, Taubman said.

The telephony law authorizes about \$500 million in taxpayer money to reimburse phone companies. At a previously planned meeting in Washington Jan. 13 sponsored by PRIVACY JOURNAL and the Electronic Privacy Information Center (EPIC), privacy advocates from a wide range of organizations vowed to fight the necessary appropriation of the funds, to come up in this session of Congress. EFF's new leadership was faced with the decision whether to join that effort (reversing its position of last summer), isolate itself from other civil-liberties groups by supporting the appropriation, or stand on the sidelines on this one.

### CREDIT REPORTS FOR INSURANCE

Three Southern states are trying to prohibit insurance companies from using credit reports in making underwriting decisions.

"Insurance is mandatory here; the credit-ranking systems are not regulated. If you have a less than desirable credit score, you go into the substandard insurance pool," an official of the Florida Department of Insurance told PRIVACY JOURNAL. The department drafted a rule against the practice and heard from industry witnesses at a hearing Jan. 11. Immediately, Allstate Insurance and American Insurance Group challenged the proposed rule in an administrative hearing (94-7244 and 94-7245), which caused enforcement of the rule to be suspended.

Under the federal Fair Credit Reporting Act, credit reports may be used for determining eligibility for credit, insurance, or employment, and for other business purposes.

Insurance underwriters have long used *consumer reports*, as opposed to credit reports, but the practice of using credit reports for insurance eligibility had been rare. Some major insurers have found credit reports not useful in underwriting. A consumer report is a narrative description of one's lifestyle, housing conditions, employment, and neighborhood. A credit report is a ledger listing one's credit accounts and the repayment histories.

Georgia, location of the leading producer of consumer reports, Equifax, plans to implement a similar ban on using credit reports in insurance May 1. Texas is close to implementing a similar rule.

### SELLING CREDIT-CARD NUMBERS

The Federal Trade Commission has broken up the first known instance of companies selling lists of consumers' credit-card account numbers.

The practice itself is not illegal, but the two companies involved were permitting use of the account numbers for deceptive and unfair practices, according to the FTC. National Media Corp. and Media Arts Publications, Ltd. - both producers of TV "infomercials" - gathered the account numbers when TV viewers purchased products from them. The companies that rented the lists would later call persons on the lists and offer "free" trials of products or services (like travel or shopping clubs) and then charge their credit cards without telling them. In consent decrees with the FTC, ten companies agreed to discontinue the practice, to destroy the lists, and to cease selling or renting credit-card account numbers and expiration dates in the future. File no. 922-3355, Dec. 28, 1994.

### IS ANYBODY HOME?

The Office of Consumer Affairs in the Department of Health and Human Services, which the Bush Administration used as a bully pulpit for privacy reforms, has been silent on the issue in the past year. There has been no director of the office since Colorado political activist Polly Baca left in November. Baca, who was appointed in early 1994, returned to her home state to accept another position; she never pursued the privacy issue, as her two predecessors had. The acting director is Bernice Friedlander. The