#00:00:00-5# Prof. Dr Wilhelm Steinmüller - Berlin, March 2009

#00:00:05-5# "It's not about privacy... It's about making a technology socially manageable!"

#00:00:10-7# Krasemann: Today we are guests of Professor Wilhelm Steinmüller here in Berlin. Thank you very much for allowing us to interview you today for our project. I would like to introduce you very briefly and if I say something wrong, please feel free to correct me. You were born in 1934 and then studied theology, philosophy and economics, went on to gain a doctorate in law with a thesis entitled "Die Naturrechtslehre des Johannes von Rupella und des Alexander von Hales", then completed your habilitation with a thesis entitled "Evangelische Rechtstheologie", then became Professor of Canon Law and Philosophy of Law at the University of Regensburg, then co-founded Legal Informatics, were appointed to the University of Bremen and then changed your subject completely. You trained as a psychotherapist, have a practice there in this field too, were also temporarily in the USA, are now back here in Germany, were also temporarily admitted to the bar again and, as far as data protection is concerned, helped develop the right to informational self-determination with Mr Lutterbeck and others. We'll come back to that in a moment. Have I got that right?

#00:01:30-6# Steinmüller: Perhaps we should rewrite the opening prologue a bit once I've told you how it went.

#00:01:35-7# Krasemann: Then we'll try even further... We'll record it again at the end and then correct it, but that's roughly what we took from your website, but then we'll see what we can present differently.

#00:01:47-8# Steinmüller: I studied law right from the start. Philosophy and so on, that was also there, and I also spent a lot of time with the theologians, but... That plays a big role in data protection later on.

#00:01:59-2# Krasemann: How did it come about that - even though you did the other things "just on the side"

#00:02:02-6# Steinmüller: No, no, I had a double degree.

#00:02:06-6# Krasemann: And how did you come to that? That's unusual at first.

#00:02:09-4# Steinmüller: I was just interested. There are few things that don't interest me.

#00:02:13-8# Krasemann: Which of these interested you the most?

#00:02:16-3# Steinmüller: Theology.

#00:02:17-3# Krasemann: Why?

#00:02:19-1# Steinmüller: Pffff. That's getting far into what we're discussing in the future. I've always had, if I may exaggerate a little, one hate and two loves: the hate was law - of course I studied it on my father's recommendation - and one love was theology and the other was technology. And I started with the first love and continued with the second.

#00:02:43-5# Krasemann: When did you discover the technology for yourself?

#00:02:45-8# Steinmüller: Well, when I realised that I originally pursued legal theology mainly because I was very interested in it for political and theoretical reasons. Almost all Protestant lawyers were completely defenceless against the Third Reich because they - mostly Lutherans - were of the opinion that we had to obey the Kaiser. We had to give the emperor what was the emperor's. And the other side was forgotten. That doesn't go back to Luther, as people claim, but to Melanchthon, who had to make sure that Luther survived, that Lutheranism survived, and thus do something to compensate for the losses. Of course, in all my lecturing activities - whether as a lawyer or as a computer scientist - I have always had in the background to sensitise my students to future Hitlers, who will of course look very different. And I did Protestant legal theology because the Protestant theologians and therefore also the professors - 90% of the professors are Protestant - were essentially defenceless against Hitler, whom they had to obey. There were people back then who swore three or four oaths to various constitutions.

had sworn. And after the war, some prominent Nazis who were law professors tried to find a reason why Hitler should have been contradicted on legal grounds. And one of them was a professor who had commented on the Reich Military Penal Code, after which many certainly perished, the second was a political prosecutor - nothing more is known about his biography at the time - the third, however, was a friend of Karl Balt [check name] and was there... and so on. So they developed how to use legal means to understand the law in such a way that Hitler could have been resisted. And that wasn't possible with immanently legal means, so theology had to come in. It was the higher authority, so to speak. And that's why it appealed to me.

So this Protestant legal theology was actually basically about the right to resist.

#00:05:15-7# Krasemann: You said that technology came along at some point. When did you first have access to data protection? Or when was it an issue that you also...

#00:05:24-8# Steinmüller: Data protection came later. When I realised after a few years that I was writing for future historians in four hundred years' time, but not for living people - legal theology; I wanted to develop Catholic legal theology, Protestant theology already existed - I stopped from one day to the next and thought about it: What am I going to do then? Yes, the second thing that interested me was technology and law. Yes, what is technology at the moment? Yes, that's computers. So, since I'm a lawyer - in inverted commas - what happens when the state - law! - the computer intrudes? What happens then? But then I had a big problem, because I didn't know any maths, we didn't have that at school. Then I went to the only man who had the reputation of being a really capable mathematician and lawyer - that was Podlech - Fiedler dropped out for reasons unknown to me today - and I went to him and said: If I do something like this, do I have to do maths? Then he thought about it for a long time - he was a private lecturer at the time for political reasons, because eight professorships were taken away from him because he was politically active - then, after much deliberation, he said: No, you don't need maths. My interest in legal informatics and my friendship with Adalbert Podlech, who is one of the great universal scholars still around, goes back to that point. And then I sat down at home, designed a lecture for the Altbacher Hochschulwochen [check], where I was invited to talk about this [the topic of legal informatics or data protection?]

#00:07:13-8# Rust: Where are we in time?

#00:07:15-1# Steinmüller: That was in 1969, and I - the assistants gave me all the material there was on IT and law, IT and the state - and then I finished the essay, and when I was done, I thought about it: What is it called? And then - "legal cybernetics" sounded too much like the GDR, "legal information science" is a tongue twister - in short: I then wrote the wrong title over it, namely "legal informatics". And that caught on worldwide, the word was mine.
Before that there were a whole series of individual essays - in Germany probably Simitis and one or two others first, in America one or two others - but of course, because I have a bad memory, I was interested in the systematics, so I developed the theory for it.

#00:08:02-9# Rost: Did the student unrest play a role back then?

#00:08:04-9# Steinmüller: Zero!

#00:08:05-6# Rust: Zero. Not for you?

#00:08:07-1# Steinmüller: No, not with me. A communist student once came in and said: "You, we're disturbing you here. And I said: Is the "you" a declaration of war? He says: Yes! Then I said: Good, then I'll call you "you" too. Please come forward and present your things. And he wasn't prepared for that and walked out again. (Laughter) That was very nice! That was my only encounter.

#00:08:29-2# Krasemann: So that means that data protection didn't play a role in this movement?

#00:08:34-8# No, no, that came later! That came later. It then filtered through to Bonn via Bernd Lutterbeck, who had a relative in the Ministry of the Interior, in a different department from [Abbruch], that there was someone there who did something like data processing, government and so on. And Bernd Lutterbeck needed money for his doctoral thesis, which he wanted to write on data protection. Until then, there was only one dissertation in Germany that wasn't much good, and what Simitis had sporadically published on the subject [cancellation] Yes, so on the scientific side there was only this dissertation, and it was no good. And then Bernd wanted to write a doctoral thesis. In short, that's where we are [cancellation] And then he said, well, I'll find out who the responsible referee is, so that's us,

I got on the train with him, we travelled to Bonn, talked to the responsible officer. And on the journey there, Bernd Lutterbeck, who was always very good politically - how should I put it, very good in terms of acquisition - said: We must somehow have a trick to sell him. I say: Yes, that doesn't sound bad. Yes, what trick is there? We must have some kind of scent mark.

Then I say: Wait a minute, what is data protection orientated towards? And of course I didn't have the slightest idea, Bernd didn't either, what that was, but afterwards we got 40,000 marks and this expert opinion contract via phase-orientated data protection. And with tough restrictions - we were supposed to have everything ready within two or three months and then deliver the documents to the consultant, because he wanted to make it disappear in a drawer, which he did.

And, we had a total of 5 months and 17 days. All right, anyway. We then drove home and then the embarrassment was great: What is phase-orientated data protection? Finally - I think I had a flash of inspiration - I said: Why? It's quite clear! Data collection, data storage, data transmission, oh, marvellous! And then we put the group together - there were two assistants: Mallmann and Lutterbeck, and me as the chief, and three students, I think, or one student was there, who then worked for the Bavarian Data Protection Commissioner for a longer period of time.

#00:10:52-0# Krasemann: Who was that?

#00:10:53-4# Steinmüller: Helga Tubies [check name], she wrote the data backup part of the expert report. Well, good, and then we delivered it. And then it disappeared in the drawer, etc. etc. But before we delivered it, I took the thing home with me. And then the devil got the better of me and I thought I had to put something else in there, so I wrote the word "informational self-determination" on page 94 and 114. That's how it got in. Later, I completely forgot that it was actually in there, and I don't know what. So it's had a wild history. In any case, that's how the thing came into the world, then stood in the library of the Federal Constitutional Court for 13 years, very few copies were printed because they actually only... Robbery stories! I published what happened there and then it was, yes, that's how it all went.

#00:11:49-7# Rost: What was the conceptual idea behind it? From America came such ideas of privacy, Kamlah, Westin - that influenced you?

#00:11:59-0# Steinmüller: Not at all! Not at all! And for one very simple reason: if we had ordered the books, the deadline for submission would have long since passed. It was all interlibrary loan... So we didn't have any time at all to look at the literature, then we did a bit of garnishing at the end, but

#00:12:14-2# Rost: What did you draw on? From yourself?

#00:12:17-4# Steinmüller: From the claims of the data processors - IBM and Siemens - which were completely unbelievable at the time, but we believed them. Which then became reality ten years later. That's why our draft data protection law was ten years ahead and therefore made a lot of sense. No, we thought about it: What does data processing look like? What steps are involved? Aha, there are different potential risks, so we have to make different regulations. And what we didn't realise was that we had finished 2000 years of legal history. That was a system-analytical approach. We introduced systems analysis into jurisprudence. We didn't know that at all, we didn't have the slightest idea. We didn't have time to think about it. Because if we had read the literature, we would have ended up somewhere in civil law, in the law of actions, in Roman actions. And that's what the Americans did in their own way and that wasn't it! In the meantime, our concept has essentially become established worldwide. And yes, what's even more important: it was a great team! So we had our ongoing meetings - I don't know who had which idea. Bernd doesn't know, I don't know. We worked really well together and even the students worked incredibly well, one of them was then at the Federal Patent Office, and so on and so forth. Oh yes, Kolb, right, legal advisor, I think, at the European Patent Office, right. Mallmann is well known, etc. Yes, it was great teamwork, and Bernd had his doctoral thesis. And that was it. [long pause] Oh, and then it wasn't published! The industry wanted it to be published. But the [MA at the BMI] let it disappear in his drawer because it was his think tank. And that's how it went, then.

#00:14:09-4# The link between legal informatics, which originally did not include data protection - we wrote a few lines about it - and data protection was then practically due to the assistant's request. And Bernd Lutterbeck wanted to have his doctoral thesis financed, and that's what happened. And then we realised that it belonged together. That was the second part. And the third part was the legal questions that were linked to it - that was legal policy - the legal part, that came next.

later on: Right to information, as it was later called.

#00:14:38-1# Rost: We have a public-law approach and we have a private-law approach, which came in with Professor (unintelligible), for example.

#00:14:45-6# Steinmüller: All we did was look at what legal issues there were. And then we divided them into public law, private law and criminal law. But there wasn't much yet.

#00:14:54-8# Krasemann: What were these fears that you mentioned earlier, or first of all the assertion by Siemens or IBM, which you first led, and then the fears that perhaps also arose from that?

#00:15:04-5# Steinmüller: I have no fears, I wasn't talking about fears.

#00:15:06-1# Krasemann: The dangers that you've seen?

#00:15:07-2# Steinmüller: No, no, not at all! Not at all! It wasn't about dangers, it was about standardising a new realm of reality. As a lawyer, you obviously think in terms of dangers - that would be thinking in terms of action law again. No, no, it was the same for us as with nuclear law or biotechnology: a new area of reality needs legal standards. Now the financial constitution - needs legal norms, only now in international law. A new area of reality - that is a public law approach.

#00:15:41-1# Rost: Did you see yourself as a moderniser?

#00:15:43-7# Steinmüller: What is that?

#00:15:44-4# Rost: Well, the fact that they now want to bring technology into public administration - that didn't play a role?

#00:15:50-9# Steinmüller: No, no! I was thinking in purely structural terms: something new is happening, what rules are required? That's a very exciting story. That's legal policy, and legal policy - namely the drafting of laws and standards - has no place in law, in the law faculty. Where did I learn that? I only realised that later: I learnt it from the theologians - I sat in the canonical, i.e. canon law, advanced seminar as a renown layman, and there we drafted norms for the future council.

designed. And that's how I learnt it. A lawyer doesn't learn that, because law has to do with given things - these are the laws.
Positivism! Still.

#00:16:39-9# Krasemann: At some point you had the expert report ready. What happened to the report then?

#00:16:43-9# Steinmüller: Oh, so. Yes, it disappeared in the drawer. And I forgot about it, others forgot about it. Then the hearings came and Auernhammer, the officer in charge, didn't want to hand it over. Then Genscher finally forced him, and then he finally, but then the Ministry of the Interior said: "We don't have the money to print something like this. And then a small group from the Bundestag finally had it printed.

#00:17:12-3# Krasemann: What were the reactions to that? Were there any?

#00:17:15-1# Steinmüller: Yes, a lot of lawyers laughed about it, with some justification, because we were even refused to remove the printing errors. And there were a few things in there that we would have preferred to have ironed out: "Israeli" instead of "Jewish" or vice versa, I can't remember.

#00:17:32-1# Krasemann: So that means you were actually disappointed that so little - you put a lot of work into it - as it turned out, it was a very groundbreaking work, and then it only appeared on such a small scale

#00:17:46-2# Steinmüller: We only realised that later. It was really groundbreaking, wasn't it, but we didn't realise it. We didn't have time to think about it.

#00:17:54-7# Krasemann: When did you first have the feeling... or when did you realise that?

#00:17:58-0# Steinmüller: At the Federal Constitutional Court in 1983.

#00:18:00-3# Rust: Not before?

#00:18:01-2# Steinmüller: No, not really. Yes, in preparation for the census judgement, of course. It played more and more of a role there, and, yes...

#00:18:09-8# Krasemann: You said earlier that there were some robber stories or something similar about the time that the judgement or your expert opinion was with the Federal Constitutional Court and then reappeared at some point for that time

#00:18:20-0# Steinmüller: Yes, that was a very strange story. The rapporteur of the census judgement - you know, there are rapporteurs, and then - the rapporteur was Heusinger [also on request, check anyway] - he also happened to be the head of the Society for Legal and Administrative Informatics, and he wanted to be the only technically competent judge - more or less appointed by the Federal Constitutional Court - to give the expert opinion for the entire Senate. And Benda was President of the Federal Constitutional Court at the time - he had previously been Minister of the Interior, much like the Ministers of the Interior today, and suddenly he was a good constitutional judge, and strangely enough he had published a short essay on privacy, which wasn't great, but it was his last, and we concluded from it: He wants to go down in legal history. And that's what he did. The data protection judgement was the last major judgement he made, in other words, Heusinger made it. And it was quite strange, when Heusinger announced the judgement, he spent two hours - no, Benda announced it - and Heusinger stood next to him and [make it clear] spoke every word with his lips. Every word! [Pause] By the way, you have to check whether "Heusinger" is right. I always get the name mixed up. Yes, and that was a legal tour de force, the likes of which are few and far between, but I can only explain that in legal terms - we don't need that here now.

#00:19:57-4# Krasemann: What was it like in the time before, now in between, when you now have this expert opinion (unintelligible)?

#00:20:02-2# Steinmüller: A couple of people blasphemed about informational self-determination, smiled, and then

#00:20:08-3# Krasemann: On what grounds?

#00:20:11-0# Steinmüller: Pfff, yes, well. Some chick who's never done law, only legal informatics, how does he get to say things like that? I am [pause] yes, a dilettante! And a dilettante is insulted, and that's normal.

#00:20:26-1# Krasemann: Yes, but someone has to, well, just

probably wasn't, but someone here must have given at least pseudo-arguments.

#00:20:31-9# Steinmüller: I don't know. I didn't take care of it. I had other things to do - building up legal informatics. Back in 1970, I think worldwide, I offered the first training programme - six semesters in a row, so real training for students.

#00:20:45-8# Rost: What was the core paradigm of legal informatics back then? There were two, there are two big figures: One, that runs a bit in the direction of artificial intelligence and things like that with purely ....

#00:20:57-1# Steinmüller: That came much later!

#00:20:58-9# Rost: ...and... There was a certain optimism in there, an American or pragmatic optimism in there: We can do this, in a few years - this is the end of the sixties - in a few years we'll have automatic translation. And then there was another side that paid more attention to whether IT could be brought into administration, whether it could be used to support organisations.

#00:21:16-3# Steinmüller: Yes, yes. That was particularly big and important in the GDR - planning science and I don't know what else. Yes, but that remained theory there.

#00:21:24-7# Rost: What was your idea? What was the core idea back then?

#00:21:27-2# Steinmüller: My core idea was a new technical development, which, moreover, cannot be derived from the old technology, it's a different kind of technology, the sociologists never realised it, they only spoke of "technology", information technology is penetrating the state, and that's when I became curious. Mr Rost, perhaps... I thought about it recently: I wasn't actually a researcher - I was an explorer! I realised that when I had done something enough times, I stopped and did the next thing. And that's what interested me: What is actually happening? And very quickly, an information management system developed on top of the normal administration, with data centres and so on and so forth. Then I became interested: What happens, for example, when the state chancellery in Bavaria does a huge amount of planning? Yes, that means a shift in power. Aha, so power was the key word: information is

Power. Not quite true, of course, but I clarified that later. And the whole thing went down, of course, because the Ministry of Finance was stronger. And so I learnt one thing after another. Back then, when the Bavarian Information System was introduced, I gave the keynote speech for the State Chancellery. And I slowly realised what was going on. I'd never read Marx and things like that - I'd never read them, but I learnt more and more. And that amazed me. And then it affected me. And then I laughed. And then I got sad. That's the story of about twenty years, thirty actually. So that's how it went, and then I learnt a lot about data protection, then there were the unbeatable hearings - five, six, seven hearings - Bundestag, Bundestag internal committee a few; all the parties held hearings on the Data Protection Act, then the individual federal states also held hearings on their data protection laws, and that's when I learnt what was going on. I realised for the first time where the lobbies are. And who they are. And that, for example, the doctors and the address publishers were the strongest lobbies after the Federation of German Industries. And not the others. And then there were a few strange scientists sitting among the 150 business representatives. That's when I learnt something new. I learnt real legal policy from the ground up, namely from reality - as a theorist, I have always remained a theorist.

#00:23:54-4# Krasemann: How did this power that these lobbyists had manifest itself?

#00:23:58-5# Steinmüller: Oh, I can tell you a nice story: We've just been to see the Auernhammer again, the responsible consultant. That was our first meeting, not "once again", but the first meeting. When there was a knock, a man came in and said: "Yes, I'm the representative of the federal association for so-and-so. I've heard that you have a draft data protection law. Can you pass it over to me? Then he [Auernhammer] said: Yes, who are you? - Yes, I'm a member of parliament. - Sorry, you won't get it.
Separation of powers. Three minutes later, the man came back in and said: "Excuse me, did you realise earlier that I'm a representative of the Federal Association of the Anyway Economy? - Excuse me, please, here is the expert report.

#00:24:39-3# Rust: Ohhh no!

#00:24:40-6# Uhhh, here's my draft bill. - We then made big eyes, as prospective professors and so on, and

Then he said: Yes, why don't you read § 11 of the "Joint Rules of Procedure of the Bundestag Committees" or (unintelligible) That's what it says. - Yes, that's how it is! And then I heard how the 3,000 lobbyists moved from the parliamentary district to the government district in Bonn - there are now 5,000 or even more in Berlin, I'm not sure. So that's when I learnt what was going on. And now we know that in social law, the social organisations - apart from the DGB, of course, and other small people - deliver the draft laws, and the advisors in the ministry don't have any time at all, so they take over some of them.

#00:25:35-7# Rost: I'm not quite sure what legal informatics was back then, as a paradigm? Professionally now? We've talked a lot about legal policy. But was it, for example, the optimism that laws can be translated into technology, quite directly?

#00:25:50-1# Steinmüller: No, no. That was neither (unintelligible) , but it was curiosity, a sociological curiosity in the broadest sense. We wanted to know: What's actually going on there? And since I had a research chair, I could do whatever I wanted - in Bavaria I could even have taught gynaecology - and then that's what I did. To the great annoyance of my colleagues! They had a thousand exams to correct and I had none. But it was curiosity. Quite simply - yes, socio-political curiosity in the broadest sense. And technology, of course. Technology was appealing. But I had no idea.

#00:26:31-6# Rost: When you say "systems theory" - there was Talcott Parsons' structural-functionalism in the social sciences at the end of the sixties and... What else was there? There was cybernetics, we have Norbert Wiener, you can mix them all together. I also think 2nd order cybernetics, that's where the first one started. I think the GDR had already done a lot there with Professor Klaus. I don't think Klaus had a good standing, not a good standing at first, but then it became pretty clear that you could do a lot with him. What was it like back then?

#00:27:18-3# Steinmüller: Our problem was [pause] again socio-political: If we write down legal norms, or if we write down what happens when data processing penetrates the state, then two kinds of problems happen, namely the reorganisation of the state and secondly the reorganisation of the law. Now we have to describe this in an understandable way. How do we do that? We need a language. Luhmann was completely unsuitable, because who learns Luhmann's language when we are trying to implement something politically?

want? Not possible! What else was there? Mathematics? Mathematicians smile at such lowly practicalities. Law? Has no language for technology, for this kind of technology. There was nothing. Then we just looked around until we found something, and that was general systems theory, as first developed by Klaus [shows "What is, what should cybernetics be?"] with his cybernetics. We weren't interested in the fact that he was important in the GDR. And then in 1970, in our first textbook, which was available worldwide at the time [shows the edition of "juristische arbeitsblätter" "Einführung in die Rechtsinformatik"], we initially used systems theory as a basis, but very soon realised that we didn't need large areas of it at all, and over time it became increasingly clear that we only needed certain set pieces from general systems theory. And general systems theory, as we use it in this almost formal form, has at most the word "system" in common with Luhmann, nothing else. The aim was to find a comprehensible language that is suitable for covering the empirical, technical and legal spheres. The third language that communicates. Here technology - information technology - there law, there are no breaks. Luhmann said at the time that law and technology behave like deer and cars - sometimes they just collide. And that was (unintelligible) out. [Pause] It didn't work! [Pause] And besides, I didn't want to learn a language that omitted all subjects and always used formal (unintelligible) Yes, well, I don't want to blaspheme Luhmann. I used to argue about that with my friend.

#00:29:41-8# Rost: Who was that

with? #00:29:42-8# Steinmüller: With

Podlech. #00:29:43-8# Rost: I see.

#00:29:44-4# Steinmüller: He appreciated him very much, of course. He could do a lot more. When I read Jerry Cotton, he read maths textbooks. And on his 65th birthday, five faculties gave lectures in his honour.

#00:30:03-7# Krasemann: Then came the time when the censuses were carried out, which also...

#00:30:09-6# Steinmüller: A census, yes.

#00:30:11-2# Krasemann: And did you realise at that moment that it might have something to do with the ideas we had back then, at the beginning of the seventies?

#00:30:20-1# Steinmüller: Nope! I had my big box of notes, which, when I left university, contained about five thousand pieces of paper. And I looked in there, census, oh no, no, Federal Statistical Office not interesting. And then my assistant at the time, Garstka, and Egerle, who is now a professor in Weißnichtwo, oh yes, he's the legal advisor at ZDF, came and said: "You, Wilhelm, there's something! I say: Hmm, we've heard it before. - Have a look! - Well, then I sat down and got hold of the census forms, and on the ICE - IC at the time, I think - I suddenly realised that there were completely different things behind it. It wasn't the census that was to be carried out, that was a by-product, but old plans of the administration from 1935, i.e. from the Reich Security Main Office and the Reich - I don't know, statistics or whatever - that were to be carried out, namely the plan was to divide up the Federal Republic in terms of location, time and people so that every person could be traced to within 50 metres during their lifetime, using data processing. At last they had the technology! The SS had tried it back then with a huge cartography - erh Kartomat, I can't remember what they were called - but they didn't succeed, now the technology was there. And the plans continued without interruption, in some cases right into the quotations. The police commissioner at the time - Herold - as a left-wing SPD man, as he once wrote to me, and a trade unionist, he inadvertently adopted a quote verbatim from the police officers of the Third Reich - "being social and honourable tasks" and so on... These dreams, which every administration has in principle if it is allowed to create freely, these dreams should be realised.

#00:32:16-5# Rost: Do the plans still exist? Could one...?

#00:32:18-7# Steinmüller: I don't know. I don't think any administration ever cancels plans. That would be against all empiricism. [Pause] I don't know. Pfff, anyway, I wrote that to the Federal Constitutional Court, then I got a call from the Federal Constitutional Court saying that Steinmüller shouldn't speak at the hearing, someone who speaks our language should speak, and that was Podlech. And that's what we did. And Heusinger was the only one who understood the whole complex. Benda supported him. They then slowly - like "The Twelve Jurors" - in a huge discussion, which I think lasted almost half a year.

lasted, turned over every single one. And then there was the census judgement.

#00:33:10-8# Krasemann: When we talked about it with Mr Lutterbeck, and also with Mr Podlech, it came through a bit that, yes, they were perhaps a bit disappointed. All these ideas were already in place at the beginning of the seventies, the Federal Constitutional Court then adopted them almost word for word, passages, especially from Mr Podlech, and they are never quoted anywhere in this judgement, which means that your names are not mentioned in this context. Does that bother you at the time and in retrospect?

#00:33:37-9# Steinmüller: Well, it never bothered me because I didn't know that the Federal Constitutional Court tends to quote when they have such sources. So they quoted from the expert opinion and from Podlech's alternative commentary. But it was also a phone call or a personal conversation, we were not allowed to quote because the two authors were suspected of being left-wing at the time, then the judgement would never have come about.

#00:34:04-4# Krasemann: But then, as you said earlier, an idea that you incorporated when you took the report home with you - the right to informational self-determination - is now one of the central ideas and concepts of data protection in Germany, if not in Europe or worldwide.

#00:34:21-0# Steinmüller: Some people have taken it over, yes.

#00:34:24-3# Krasemann: And that means, but it still doesn't say that it was your idea.

#00:34:29-4# Steinmüller: Why? I'm interested in whether something spreads. Whether my name is behind it   [Shoulder shrugs]

#00:34:36-3# Krasemann: When did you first realise that these things were coming to the fore again to this extent? And indeed, you said earlier that you only realised later that what had been discovered was actually groundbreaking. When did this idea or this notion that we had actually done something groundbreaking come about? With the judgement, you said? When you read it?

#00:34:58-2# Steinmüller: With the grounds of the judgement, probably, yes.

#00:35:01-0# Krasemann: Did the judgement in this form surprise you afterwards? That it came like that? You said yes (unintelligible) little by little (unintelligible)

#00:35:06-1# Steinmüller: Yes, well! That was a miracle!

#00:35:07-2# Rust: Yes!

#00:35:08-7# Steinmüller: Yes. It's hard to say surprise. And the rapporteur, and Benda signed off on it, managed the feat of involving the entire economy and the entire state and whoever else in a data protection regulation in a court case that is actually only between the parties. That was a legal masterstroke, the like of which I know of very few.

#00:35:37-6# Rost: Did you have a connection to the data protection practitioners who were now in the process of setting up data protection officers, institutions for data protection officers?

#00:35:47-6# Steinmüller: Relatively little. In the early days of legal informatics, in 1969, we worked together with inspectors. They were the only ones who were interested in data processing. Later, the data centres joined in. There were sometimes interested parties, including Thilo Weichert, for example, where we worked together a little, but [pause]

#00:36:10-0# Rust: No further connection.

#00:36:11-4# Steinmüller: There wasn't, we were only three or four people. We didn't have time. That was Podlech, that was Simitis, Fiedler unfortunately didn't do much, although he had the most money, and me. And I don't know who else I've forgotten, but that's it. And then a lot of people who somehow worked with us. And the division of labour was actually very simple - it was never discussed - the division of labour was very simple: I came up with the theoretical stuff, that was my talent. Simitis pushed it through and Podlech worked in the background.

#00:36:53-1# Rost: What was the idea of data protection again? What is the core idea that you are now filtering out?

#00:36:58-6# Steinmüller: The core idea is based directly on legal informatics: If we know roughly what data processing does in the state and, analogously, in the economy, then there are certain danger points, like with steam boilers or nuclear plants, and you just have to regulate them. Because if they remain unregulated, then things like the financial constitution will happen. That was the basic idea. And then we thought about what is the danger... we did that in 1970, 70/71 in the expert report, what if unlimited data is collected? What happens if it is stored indefinitely? And so on, and so on. And then we developed a few rules that were absolutely new, for example: the data is not dangerous at all, only the users are, because privacy has long since ceased to exist, because what data there is about me has long been in the administration, in the economy, but spread over twenty, forty, eighty, a hundred places. In other words, the only problem is maintaining the distribution. Not privacy! etc. etc. It's not the data that's dangerous, it's the users. Why? Isn't there dangerous data? No, even... There is completely harmless data, like the address? Completely wrong! If the mafia is chasing you, your address is the most explosive data they have. There are... Data never has the property of being dangerous or harmless. Only the users do. And that's why, of course, the battle goes on all the time: who gets the doctors' data, and the health insurance companies control the doctors' data, who control the doctors, and the doctors get their money from the data that the health insurance companies want to have, and so on. Right? It's a pure power struggle where it's all about the data.

#00:38:40-0# Krasemann: That is, so to speak, what was later called "There is no irrelevant data" in the Federal Constitutional Court judgement.

#00:38:44-1# Steinmüller: Yes, that's the takeover from the expert report.

#00:38:48-2# Krasemann: And the surprising thing for me, when you think about it, is that the idea emerged at the beginning of the seventies, as you say, when you could actually use all the technologies that came along in the eighties, especially in the nineties, with data mining on a huge scale, even for private individuals, to process data on a scale that was completely unthinkable back then.

#00:39:09-8# Steinmüller: Take the fee collection centre. You can never get in, it's hermetically sealed.

#00:39:14-5# Krasemann: But from that point of view, it's surprising that people realised back then that there really was a big problem.

#00:39:20-1# Steinmüller: That's not surprising! We didn't have the slightest opportunity to deal with the literature. We would have just gone into the (unintelligible). We learnt from legal informatics to think system-analytically, and we transferred that. That's it! That's it! We had no choice. We couldn't read a book. Except for the commentaries that happened to be available in the law seminar. Which then garnished our footnotes.

#00:39:45-0# Krasemann: As I said, I don't just mean what the literature says about it, but also what the technology already presented at the time, so to speak, or what was possible.

#00:39:50-8# Steinmüller: If you read our data protection report, you'll see that the technology doesn't play a role, in principle. Instead, we thought about what would happen if, given the case, IBM's claims were true, what would happen then? I then got my hands on the Bavarian Information System, the documents written by Siemens, supposedly written by officials from the State Chancellery, but they were Siemens engineers. It said: We are planning the unlimited availability of all data on all inhabitants, horizontally and vertically. The strange thing is that the The same brochure - I think I gave it to Garstka - the same brochure with the same title, completely identical, with the exception of a few figures, was published again in the same month that it was cancelled. And with this model of thinking, we then considered how we could throw a spanner in the works. And then we thought, yes, of course we have to argue legally, the distribution of competences must be maintained and so on and so forth. And if the division of competences is maintained, then the data is fractionalised and then it is simply divided up. How do you do that? Well, you need to know a bit about technology, but not much. Computers can do almost anything, so why not split them up?

#00:41:14-1# Rost: If people today are not interested in data protection, and they are also interested in the

What do you tell them?

#00:41:19-9# Steinmüller: Nothing more.

#00:41:20-7# Rost: What else did you tell them when you weren't sad, but were still optimistic, shall we say?

#00:41:26-8# Steinmüller: I was never sad or optimistic. I simply fought. For the realisation of a few ideas. That was successful in the beginning. The Data Protection Act was eight years ahead at the time. Then later on, the deadline was slowly reduced to four and two years, and the moment everyone knew that it was about power and the distribution of power, that was the moment I could stop. There was nothing left to do! The lobbies etc., they all knew about it and then, as Simitis rightly emphasises, they destroyed everything that had been achieved with a plethora of special laws.

#00:42:03-3# Krasemann: What kind of examples would that be?

#00:42:06-0# Steinmüller: Ooooch, I don't even know all that. There are such thick collections of laws where they're all in there.

#00:42:13-0# Krasemann: After the census judgement, there was more, not power, but at least a strengthening of data protection in general in Germany by the supervisory authorities, which already existed to some extent, but of course had a slightly different standing, which then came about. What was it like from your side or from your... What did you then do in the rest of your time, was data protection still a direct issue for you?

#00:42:37-8# Steinmüller: Well, first of all, the fact that there were data protection authorities was in our report. We had made a few suggestions. Then later on, there were some new data protection laws, either from the federal states, or special laws or amendments, and of course there were always discussions in parliaments. And sometimes also in committees.

#00:42:57-4# Krasemann: That means you were still consulted as an expert?

#00:43:00-9# Steinmüller: Yes, that went on for quite a long time.

#00:43:01-8# Krasemann: And, you reported earlier on these more or less enlightening experiences, that the lobbyists are so

had a lot of power, do you then at some point have the feeling, oh, that's... you can't do anything anymore anyway, or is it the case that you still had this enthusiasm, yes, I can still achieve something with it?

#00:43:21-5# Steinmüller: The lobbyists didn't realise that for a very long time. It wasn't until the end of the eighties that they did, and that's when I stopped. Then came the Internet, and I realised that what was in the data protection report at the time had to be completely reworked, and that's when I stopped. That was the official reason.
There was another private one.

#00:43:41-2# Krasemann: That simply means resignation?

#00:43:44-7# Steinmüller: Correct assessment of the situation. I don't know if I..., I haven't, never resigned - I'll go on somewhere else.

#00:43:52-6# Krasemann: From today's perspective, would you say that was right?

#00:43:55-8# Steinmüller: What did we do back then?

#00:43:56-9# Krasemann: Nope. I think that's out of the question.

#00:43:59-4# Steinmüller: Yes, well. If I had had a worthy successor, he would have...., yes................He would have done it from the start
I even wrote a hundred pages about the Internet in my big book back then, my final book, but under the title "Universal Network" - the Internet is in itself terribly easy to understand, you just have to know that it's a giant computer with too many wires, a single computer with too many wires, then you've actually understood the principle of the Internet. Everything else is deduction.

#00:44:36-7# Krasemann: In other words, what would have been the approaches that could have been taken? If lobbyists, let's leave them out, they wouldn't have existed and you would have carried on. What else could have been done then?

#00:44:45-0# Steinmüller: I refused to think about it. Then I broke it off and the next day I became a psychotherapist.

#00:44:50-3# Krasemann: Did the one have anything to do with the other?

#00:44:52-7# Steinmüller: No.

#00:44:53-6# Krasemann: That was simply a different area of interest, or how did you come up with that?

#00:44:57-2# Steinmüller: No, I knew that the battle was over in terms of data protection and I stopped. I ended up writing a big book, which took me four years, where I wrote down everything that future generations should actually know, but [shoulder shrug]

#00:45:12-5# Rost: The one from 1993?

#00:45:13-8# Steinmüller: Yes, yes. But the result was that the Wissenschaftliche Buchgesellschaft forced it to be published in a book, and no computer scientist reads a book over a hundred pages, so that's pointless. I told them that at the time, but the book was a flop.

#00:45:27-5# Krasemann: But you still stand by the content of what it says today? Nothing has changed there?

#00:45:31-9# Steinmüller: I would make the data protection part a bit shorter, but yes, nothing has changed. The development of information technology is relatively slower, in contrast to what is meant.

#00:45:46-4# Krasemann: Have you, or what are the core theses from this work as far as data protection is concerned?

#00:45:51-4# Steinmüller: That's the original thesis. The administrative tasks in government and business trigger information flows that have to be allocated for the tasks. If you divide them up sufficiently, that's not a problem. It's not the division that's the problem, it's the lobbies.

#00:46:13-0# Krasemann: How could you divide it up if you say that's not a problem?

#00:46:15-7# Oooch, simple. Technology has been providing this since 1970. You can add the purpose of each date. And

for every file. And for every database. And for every information system.

#00:46:30-5# Krasemann: So metadata as well as....

#00:46:32-2# Steinmüller: Yes, sure. Just like the descriptors used to be. Yes, exactly.

#00:46:35-9# Krasemann: An idea that is still being discussed today, especially after the data scandals of 2008.

#00:46:41-5# Steinmüller: The Data Protection Act, I'll say our Data Protection Act, because that was essentially our concept, is based exclusively on this idea. (unintelligible)

#00:46:52-2# Rust: On what thought?

#00:46:54-1# Steinmüller: On the idea of data allocation. Where there is a task, and where this task is legitimate, you can also have the data. And the technology provides arbitrary things for arbitrary idiots, so we can also divide it up. That's all! That was the basic idea behind the data protection report back then. And it's still outdated today. I simply allocate the informational tools, and we have the technology to do so, worldwide.

#00:47:26-1# Rost: But organisations want to undermine that latently, permanently. And both in the economic (unintelligible)

#00:47:30-1# Steinmüller: But of course it will be undermined, it will be undermined in every respect, because data is money.

#00:47:34-2# Krasemann: That means you don't think that will come at some point?

#00:47:38-0# Steinmüller: Yes, do you want to abolish capitalism?

#00:47:40-7# Krasemann: After all, as I said, from what happened in 2008, there was, for a certain time, a pendulum movement in politics towards wanting to do a lot of things. Which of course has now been partially withdrawn from the BDSG in 2009...

#00:47:54-0# Steinmüller: In 2008, they didn't want to do anything for a long time.

The lobbies had long since prevailed. You must not forget: If there is a legislative proposal today, then the lobbies have long since delivered their goods. And data processing implementation is then child's play. And the data centres, for their part, have hardly any power, they can't admit to doing anything extra because they are auxiliary bodies. And the MPs have no idea.

#00:48:29-3# Krasemann: And the data protection supervisory authorities?

#00:48:31-5# Steinmüller: They are heard as far as it is expedient. They shout loudly, Thilo Weichert in particular and Simitis, but [pause] What will become of it? The Federal Constitutional Court is on a lonely position. They're always saying "giddy-up" and the others are saying "giddy-up". And the two traumatised interior ministers - almost nobody knows that they really are severely psychologically traumatised, our current one [Schäuble] and the previous one [Schily]... [Pause] They don't even know what they're doing psychologically, I've already realised that... As a psychotherapist, I'm a trauma specialist and then I learnt in America that they are severely traumatised and think that the world is in danger. And they really think that. And that's not true. And that's why the strangest things happen in the data sector. Because information is the potential control of something. Knowledge is not power - that's not right! But knowledge can give power.

#00:49:45-9# Krasemann: What about the data protection supervisory authorities? We talked about that briefly earlier. Did you have any contact with certain authorities at the time?

#00:49:53-1# Steinmüller: What time?

#00:49:54-5# Krasemann: First of all, from the early days, we've already talked about that a bit. That would have been in the late seventies, early eighties.

#00:50:00-2# Steinmüller: I once had the choice of becoming the data protection officer for Hamburg. And then, after I had spoken to the Post Ministry secretary, who was a fanatical data processor, and realised that I was going to be put on the spot, I said the next day that I was going to Bremen.

#00:50:19-0# Krasemann: Why should you be glued? In what form?

#00:50:21-0# Steinmüller: Ooooch, she has... during the negotiations she conceded, zero books, no business trips and the like. That's when I knew what the song was.

#00:50:28-8# Krasemann: When was that?

#00:50:30-1# Steinmüller: Pffff. Wait a minute. 82/83. And then I became a computer scientist, until then I was a lawyer.

#00:50:37-1# Krasemann: But you would have liked to have done that too? Well, if the boundary conditions had been right?

#00:50:42-4# Steinmüller: No, no, no, not gladly, because I had a bit of intelligence. For some personal reason, I have no memory for people and so - I once had the opportunity to become state secretary or something like that - that would have been the worst thing I could ever have done. I experienced how Willy Brandt came up to me after five or ten years and greeted me by name. I knew his name was Willy Brandt.

#00:51:11-7# Rost: If you now say - this is a bit different from what you're saying, but - "My data belongs to me", then you can demand money for it. And that means we now have to do something in terms of civil law, so perhaps we can justify data protection by saying that data really has become a commodity that can be traded. What do you think of that?

#00:51:28-5# Steinmüller: That was the original approach, also the American one, and that would have given us carte blanche for the entire administration. We thought about it at the time, and because we couldn't read enough, we came up with something ourselves, and that was our good fortune. Data protection would never have materialised if it had gone down this civil law route. I don't know to what extent you practised law. Were you a lawyer?

#00:51:49-3# Rust: No.

#00:51:50-0# Steinmüller: That's the old Roman legal action system: you open up a right of action if something goes wrong somewhere. Who complains today? Things are so complex that if you don't put professionals in charge - i.e. data protection authorities - then nothing will happen. They are already completely powerless against Schily and co.

#00:52:13-9# And, because my point has always been that teachers, psychologists and other (unintelligible) and journalists can spread things. Computer scientists can't - they have a highly specialised, mathematical, tiny little part, even if they think they're great mathematicians. Sociologists can't do it because they are stuck on the old technology and do too much Luhmann, and Luhmann has never had anything to do with the new, even if he has written about it. What else is there?

#00:52:46-0# Rust: Languages?

#00:52:47-2# Steinmüller: Yes! On mediation languages.

#00:52:49-0# Rost: Yes, that cybernetics is...

#00:52:51-3# Steinmüller: Computer science can't do it! What else is there? Not sociology! Not law anyway, because it's on the normative level, not the empirical level.

#00:53:00-6# Krasemann: Why can't computer science do it?

#00:53:02-8# Steinmüller: Because computer science is based on algorithm theory and the theory of formal languages. And these are two tiny little specialisms of applied mathematics. [Pause] And every decent computer scientist is embarrassed when what they do is implemented technically. That's the big mistake. Computer science doesn't deal with computers, but with abstract mathematical models about computers.

#00:53:32-6# Krasemann: Some people are already demanding that people should be protected from themselves. It used to be a bit different with data protection law, where people tended to think that you had to protect people from the state in particular.

#00:53:43-5# Steinmüller: Why do you have to protect people from themselves? You have to protect them from the researchers, but not from themselves.

#00:53:47-8# Krasemann: That would be the question. With social networks like this, do you have to think in this direction, or is that private autonomy?

#00:53:54-1# Steinmüller: If you're that stupid and don't know what data processing is, you have to protect yourself. That's right, yes.

#00:53:59-7# Krasemann: And do you see a lot of "stupid" people there? Well, from that point of view, that's also the....

#00:54:05-0# Steinmüller: Well, I'm talking about before the paradigm shift, before the Internet, and that people are happy to give away all the data. Every fax is monitored worldwide. If you send a fax today, it is of course monitored by the CIA. Worldwide. All internet traffic, everything... That happened a long time ago...

#00:54:27-9# Rost: What makes you think that?

#00:54:29-9# Steinmüller: Why? It's in the newspaper. You just have to read the cold numbers. It's in the paper.
Of course. The whole battle with the English secret intelligence service, which isn't quite so secret after all, and... Nope... If you put one and one together, you can figure it out very quickly. [Pause] That was a very exciting thing for me: the machine-readable ID card was one of the most complicated things ever at the time. You had to have technical knowledge, you had to have systems analysis knowledge, you had to have legal knowledge and a few other things... I remember how we sat with Baum, the Minister of the Interior at the time, and then Baum said, "What I'm writing now, I [Baum] don't understand, Mr Simitis, please explain. He did, even though he didn't like me that much. Understandable, all two roosters on the same muck. And he did it very well, and even ministers couldn't understand what it was all about. But the story has moved on. Today we have the personal licence plate, but nobody talks about it any more. It has, of course, been banned by the Constitutional Court, and there is also a corresponding Bundestag printed paper - forget it! Nobody cares about it. [And then, a very important story, the two interior ministers were both traumatised, barely escaped with their lives, and what trauma means is something I learnt in psychology - trauma means a lifelong unconscious fear that is then reflected in all areas of life. And that's why they're so crazy with their... What we did in four years, Schily and company are destroying in four weeks. It's a tragedy, but that's the way it is.

#00:56:19-0# All the knowledge has been lost, and you're both still documenting it a bit. The knowledge is

lost.

#00:56:26-7# Rost: That's why we build infrastructure. That's why data protectors, the professional ones, take care of building intelligent and good, data protection-friendly infrastructures.

#00:56:35-9# Steinmüller: That was my thesis from 1969.

#00:56:38-8# Rost: And that failed, the project?

#00:56:41-6# Steinmüller: My goodness, it's a project as long as there's data processing. You can do something about it or not. And they've understood that by now. It's not about privacy, it's about making a technology socially manageable. And that's all!

#00:56:57-8# Rust: Yes!