

THE RIGHT OF PRIVACY AND THE NEED TO KNOW
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The term "rights" is used a lot these days. It is tossed around in newspaper headlines, by TV commentators, by protest groups, and from the pulpit. We talk about the rights of minorities...of women...of unborn children...of future generations...and increasingly, of the rights of the individual in today's fast-paced, crowded world.

To me, the nostalgia craze, and the growing popularity of getting back to nature indicates that some of us long for a time when it was easier to be a self-sufficient individual.

Nostalgia is fun---and it's also refreshing to open your eyes to nature. But it's naive to think that we can turn back the clock to a simpler time. What we need to do is to come to grips with today and define the problem---which is how to maintain the dignity of the individual while keeping order, and, at the same time, develop and maintain programs to improve our quality of life.

That's what I want to talk about today: the rights of the individual in our society, specifically the right of privacy and its relationship to the legitimate need of government to have information about the individual.

The specter of government intrusion into the affairs of individual citizens has always been a highly emotional subject---and unfortunately, one mainly discussed in the framework of newspaper headlines. Events of recent years have brought the issue into sharp focus: military surveillance of civilians, wiretapping, the bugging of offices and industrial and political espionage.

My files are crammed with clippings on the subject, with headlines such as----

"Reversing the Rush to 1984."

Or---"Big Brother Society Feared."

And---"Federal Data-Gathering Like Octopus."

I see two types of anxiety reflected in these headlines. One is on the part of the individual, the other by society in general.

Let's look briefly at society as a whole. Under this heading, there are two general concerns. First, there is the concern flowing from the myriad of advertising and mass media campaigns.

By the late 1950's, computers and television had become part of the everyday scene in America. Vance Packard's book The Hidden Persuaders crystallized a fear that had been forming for some years---the fear that increased knowledge about society in general would lead to the ability to manipulate the public mind. Words such as "brainwashing" and "subliminal advertising" were current on the cocktail party circuit.

This fear was put into perspective shortly afterward by Raymond Bauer. He said the fear of manipulation is an old one on the part of society, and pointed out that superstition has been replaced by fear of the unknown potential of new technological inventions.

Bauer's main point was that those who would desire to manipulate the public mind are always one jump behind the public mind. In other words, as the potential for manipulation increases, so does our sophistication, and with it, our resistance level to persuasion. An example of growing resistance is the consumer movement---who could

have foretold such a powerful grassroots phenomenon just a few years ago?

The most realistic description I have seen of the capability of mass media to manipulate society came from Bernard Berelson. He said: "Some kinds of communication, on some kinds of issues, brought to the attention of some kinds of people, under some kinds of conditions, have some kinds of effects."

While thinking about this subject, it occurred to me that in just ten years it will be 1984. Nineteen eighty-four---and George Orwell's powerful work about what totalitarianism can do to the human spirit. The very title has come to be a shorthand way of referring to anything which infringes on the rights of the individual. The relationship between government and society it describes is probably the ultimate example of manipulation.

While the manipulation Orwell envisioned was brutally direct, there is also a subtle variation of this fear. This second concern is based on the fact that dictators throughout history have provided diversions to keep the minds of the masses off their real troubles, so it follows that a government---utilizing statistical information---could cater to public opinion on certain emotional issues, leaving it free to pursue its real aims, which might be counter to public interest.

But this theory ignores one fundamental truth. In America, the thrust of the government's statistical programs has been to provide increased amounts of summary data to all groups within our society at a reasonable cost, whatever their political philosophy.

I think the other anxiety in the headlines I mentioned is more valid and of much greater concern to the average person. That's the fear of misuse of personal information---that information gathered for a legitimate purpose will be used later in a different context which could injure either the individual or his family.

This fear was summed up very well by the noted Russian author Alexander Solzhenitsyn in his novel, Cancer Ward. He wrote:

"As every man goes through life he fills in a number of forms for the record, each containing a number of questions...there are thus hundreds of little threads radiating from every man, millions of threads in all. If these threads were suddenly to become visible, the whole sky would look like a spider's web....They are not visible, they are not material, but every man is constantly aware of their existence. Each man, permanently aware of his own invisible threads, naturally develops a respect for the people who manipulate the threads."

This fear of the misuse of personal information is exaggerated by the popular image of the computer. That image often casts the computer in the role of a villain. It becomes the tool of the all-pervasive, yet unidentified "they." Whenever we find fault with some action of government, business, school, or any other segment of society, it's always "they" who did it, and increasingly

the computer is blamed for making it possible.

The facts, however, are clear: the computer has made a profound contribution to the public good---and done it so well we take it for granted. Just one example is the millions of checks Social Security recipients get each month. Those checks simply wouldn't arrive as fast or as accurately with manual processing.

In addition, the public generally over-estimates the abilities and the applications of computers---thanks in part to spy movies and television. Together with recent headlines, this image of the computer has led to vague fears of an ominous National Data Bank, which would store every facet of our personal lives for instant retrieval by any government agency which requested information.

For these two fears I have described to be realized in the United States---for our society to move that close to the nightmares described by Orwell and Solzhenitsyn---America would have to abrogate not only current law, but its entire democratic tradition.

Let me underline this thought by quoting to you a prophetic portion of a paper written by Otis Dudley Duncan which concerned plans for the 1970 census:

"...in this country we have proved that a statistical system can incorporate rigid safeguards of confidentiality. The institutionalization of these safeguards has proceeded to the point where it is inconceivable that they would break down, except in the catastrophic event of a breakdown in our whole system of institutions protecting the rights of the individual. In the case of such a catastrophe, my guess is that much more direct ways of infringing these rights would be found than that of making inappropriate use of statistical records secured ostensibly in confidence.

Many of the headlines I mentioned before are followed by articles which list the Census Bureau in their catalog of information-gathering agencies. So far the Bureau has not been identified as a culprit, but some of the articles leave the impression that it has the potential to be one.

My concern is that as real culprits are identified, the Census Bureau will be tarred with the same brush---and that this will occur without an understanding of the vital role the Bureau plays in the Nation's decision making process, or of its standards in regard to privacy and confidentiality. I am also concerned that lawmakers, in trying to guarantee that personal information is safeguarded, will overreact, with the result that legitimate data-collection machinery will be hampered.

Because of these concerns, I appreciate the opportunity to share my thoughts with this audience---which represents such an influential group within the statistical community. I would like to review for you just how the Bureau looks on the rights of privacy of the citizens from whom it collects data, and how we keep confidential the information we do collect.

We at the Census Bureau believe our mission is to gather accurate, timely, and complete data from individuals, businesses, and governments,

and to make available to the public general statistical summaries of that data.

But there is an inherent conflict in gathering data from individuals. That conflict is between the individual's right of privacy on the one hand, and, on the other, government's use of mandatory processes to obtain the information it needs for valid purposes.

Basic to this discussion is the question: what is the right of privacy? It is a very easy term to use, but a very difficult one to define.

American legal and academic scholars have wrestled with the problem for the better part of a century. Several West European nations have commissions reviewing present privacy safeguards, and what is needed for the future. Sweden recently enacted a comprehensive data act. And several West German states have ombudsmen whose job is to report to elected officials on problems of individual data privacy and confidentiality.

Also in Germany, psychologists have offered the definition of privacy as those areas of people's lives in which they can act without fearing that information may be passed on in a way disfunctional to themselves. Put another way, it is the concept of selective transmission of information, be it to family, friends, one's doctor, or a government organization.

In attempting a definition, let us assume that privacy does not mean a sacrosanct area where no questions can be asked. Rather, we have a situation in which questions may be asked on a voluntary or mandatory basis. And, the individual believes the answers he gives will not be used for purposes other than those described.

This "security" of belief on the part of the individual, when coupled with a promise from the receiver that the requested information will only be used in specified ways, creates a bond between the two. I would call this a "confidential relationship."

The Most Reverend Mark J. Hurley, writing for the Knights of Columbus, has defined confidentiality as "secrets"---two types of which are the "committed secret" and the "promised secret."

The committed secret is one kept by reason of a tacit agreement between the parties that the information will not be divulged. Examples would be secrets between lawyer and client, and doctor and patient.

The promised secret is one kept by virtue of a promise made prior to learning the secret. Such a promise might be our Bureau's pledge that responses to census questionnaires will be seen only by sworn employees of the Bureau. Another would be the presidential proclamations defining the nature of the census and stating the sort of activities for which individual data will not be used.

Here it is important to distinguish between personal information gathered for statistical purposes as opposed to that gathered for administrative purposes. The information may be the same in both cases, but administrative records are intended to affect the individual directly---for instance, those used by the Internal Revenue Service, or the Social Security system. Statistical records---such as those maintained by the Census Bureau---do not deal with the individual directly when used only for the compilation and

analysis of summary data.

Obviously, privacy does not exist in an absolute sense, any more than freedom does. As Justice Oliver Wendell Holmes said in his celebrated opinion: "Freedom of speech does not include the freedom to yell 'fire' in a crowded theater."

Privacy, as freedom, has meaning only in the context of human society, and society changes as time passes. As our society becomes more complex, we need to know more about ourselves in order to establish priorities and properly allocate our human, financial, and natural resources.

In the rural life style of 1790, for example, it would have been hard to justify the government's interest in whether a household had its own bathroom facilities. Today, with society's commitment to eliminate slums and sub-standard housing, that information is needed to identify the number and location of such housing before millions of taxpayers' dollars are spent on such programs.

To contend otherwise is to say that the interests of the individual transcend the interests of society, and have priority over public efforts to eliminate sub-standard housing.

The question about complete plumbing is just one of the many well-publicized examples which critics of the census have used. Taking a question out of context to imply invasion of privacy is the most persistent technique for criticizing the Bureau, and the most intellectually dishonest.

The right of privacy is often expressed as "the right to be left alone." But that concept is inconsistent with the individual's responsibility to society.

Each man, woman, and child in our society reaps benefits from being a member of that society. Of course, these benefits vary from place to place and within the subgroups of our society. Yet the individual obviously derives benefits from dwelling among his fellow beings.

It is axiomatic that we never get anything for nothing. What, then, is the trade-off when it comes to the individual and society? The obligations of an individual living in a highly complex, densely-populated industrial civilization are greater than any in history. Sometimes the price the individual pays is in money---such as taxes; in other cases, it is time---such as jury duty, a jail sentence, or duty in the armed forces when required. Sometimes it is establishing qualifications to do certain things---such as driving a car, or practicing certain occupations.

If we grant that we all operate in the context of human society, and that we have a responsibility to that society, we can arrive at a definition of the right of privacy along these lines: it is the right of the individual, to the extent possible, to control what information about himself he releases, to whom he releases it, and under what conditions.

All of which is a roundabout way of saying there is a right of privacy, but it is a right which may be circumscribed to allow the expression of other freedoms. Obviously, any limitation of our right of privacy must be made with extreme caution and only after careful consideration of the consequences. That then is our understanding relative to the right of privacy. What then about confidentiality?

In his role as Chairman of the Subcommittee on Constitutional Rights, Senator Sam Ervin has said "Somewhere a balance must be struck between the individual's desire to keep silent and the government's need for information. If it is proved necessary to invade certain rights, clearly it is the constitutional duty of Congress to establish precisely how and under what circumstances this may be done."

Congress has been doing exactly that for almost a century. Since the act which provided for the 1880 census, laws protecting the confidentiality of information given in response to census questions have been progressively tightened.

Up until 1910, census law required the Director to furnish on demand to governors or heads of municipal governments certain parts of an individual's return---the name, age, sex, birth place, and race.

The act for the 1910 census changed that wording to read that the Director could---at his discretion---furnish information for genealogical and other proper purposes.

1910 also marked the start of another tradition---the presidential proclamation. The one issued by President Taft told the American people their replies to census questions were to be used only to compile general statistical information, and that their answers were protected by law. In part it read: "The census has nothing to do with taxation, with Army or jury service...or with the enforcement of any National, State, or local law or ordinance, nor can any person be harmed in any way by furnishing the information required."

The current law under which the Census Bureau operates is Title 13 of the U.S. Code, most of which dates from 1929. This law is very specific when it comes to personal information. It requires that information obtained from an individual be used only for statistical purposes. It also requires that published data be in such a form that it is not possible to identify an individual or a single business establishment. The law stipulates that no one other than sworn officers and employees may have access to individual information, and each census employee has signed an affidavit of nondisclosure to uphold the law.

The current law still has wording much like that of 1910, which allows the Director at his discretion to provide copies of individual information for genealogical and other proper purposes. The key word here is "discretion." Over the years the application of this rule has become restrictive rather than permissive.

In current Bureau practice, the term "confidentiality" represents nothing less than a clear extension of an individual's right of privacy. I think the best way of showing this is to review the Bureau's track record regarding the confidentiality of individual data.

Most people who follow the Bureau's activities closely have assumed that data from individuals have been held in strict confidence at all times. I must report that this has not been always the case. But looking at the way we did things in the past, and comparing them with today's practices, makes me even more certain that our current position is a very strong one.

Between 1900 and the mid-1920's, there were authorized releases of individual data considered

proper that today would cause a 'storm of protest in the press, in the courts, and in Congress. As far as we know this practice caused no such outcry then. I say as far as we know because complete records do not exist.

We do have some information on one case which demonstrates the type of situation in which it was considered proper in the past to release data about individuals. This occurred in 1918, during World War One. Congress had passed a War Powers Act, and presumably this was the basis for such an extreme use of census data. Information about individuals was given to the Department of Justice for use as evidence in prosecuting young men who claimed they were too young to register for the draft. While we do not know the exact circumstances surrounding the release, we do know that personal information for at least several hundred young men was released to courts, draft boards, and the Justice Department.

The Bureau stopped such releases during the 1920's, a position which was made official in 1930 by an opinion from the Attorney General. His opinion said that even the name and address of an individual is confidential.

Now we jump to 1941. It's hard to imagine now, but with World War Two underway, there was near hysteria about the Japanese-Americans living on the West Coast---emotion which led to one of the most embarrassing moments in U.S. history, the internment of large numbers of these loyal Americans. At the height of this feeling, the Secretary of War requested that the Census Bureau supply the names, addresses, and ages of all persons of Japanese extraction living on the West Coast. This time---in spite of the national emergency---the Bureau held to its position on confidentiality of individual records and refused. The Bureau did supply summary data at the tract level, which is now part of the regular publication program.

In 1947, during the rising concern about possible communist infiltration and sabotage, the attorney general requested information about certain individuals in census records on behalf of the FBI. Again, the request was denied.

A loophole in the law turned up in a case in the early 1960's when the courts ruled that file copies of census forms not kept by the Bureau could be subpoenaed. This resulted in Congress amending the law to extend confidentiality to include even copies of census questionnaires which are kept by businesses for their own files.

That briefly is a summary of how confidentiality grew to be an integral part of census taking. Keeping that information in mind, and my earlier remarks about generalized fear of the computer, let's look at how a modern census is processed.

After all the forms are collected, the data on them must be transferred to computers. It used to be that the data on each form were manually transferred to punchcards, and the punchcards fed to computer tape. Now, we bypass this laborious process. The forms are microfilmed on highspeed page-turning machines and returned to storage. This is the last time each original form is handled until it is destroyed.

The first page of the census form is not microfilmed. This page has the address of the household. So---the rolls of microfilm, which have names and personal information, contain only a

geographic code relating that information to the block on which the household is located.

Another sophisticated piece of machinery reads the microfilm and transfers the dots that originated with the citizens' pencilled-in circles directly onto computer tape. This machine cannot read handwriting, so the personal information about individuals is separated from their names at this point for the rest of the tabulation process.

Even this is not enough to guarantee that a person could not be identified in the statistical summaries. Some areas have such a small population that it would be possible by deduction to know whose characteristics are in the tables. Our computer program is set up so that if this would be the case, that information is suppressed---both on computer tape and in the printed publications. Some analysts---probably some of you in this audience---have had problems with these suppressed figures, trying to add up to the tract level from block data, for instance.

We are examining other techniques for protecting confidentiality. These include rounding numbers to the nearest five, and a "random noise" system, in which values of one and negative one are scattered throughout the tabulations, balancing to zero at certain geographic levels. Such a system would have no substantial effect on statistical analysis.

When it comes to suppression of data from the economic censuses even the cutoff points are confidential---because that information by itself could be used for deduction, since the numbers involved are so much smaller than population figures.

I also should mention here the Public Use Sample, which we established in 1960. These are not summaries, but individual census records minus certain data to ensure that the individual cannot be identified. The smallest area description for which these records are available is 250,000, and even then certain data have been truncated to avoid identification. An example would be extremely high salary figures, for instance. Everything over \$50,000 is simply marked "\$50,000 and over."

These samples have proven to be of great value to the academic and business communities for research, and for determining if special tabulations would provide the summary data desired.

Another example of the Bureau's efforts to strike a balance between increased usefulness of our product and at the same time maintain confidentiality, is the GBF/DIME system. G-B-F stands for Geographic Base File, DIME for Dual Independent Map Encoding. This is an automated file containing address ranges along streets in metropolitan areas. Essentially it is an automated map. Used in conjunction with other computer programs, this file can blend locally-gathered data with census data and provide information for local problem solving and planning. Where do the disabled in a city live? Where is the incidence of a particular disease highest? Do most runaway children come from certain neighborhoods? The applications are endless.

The GBF/DIME system can do this and still maintain confidentiality. Even though the process takes the actual address and assigns it to area

units such as blocks or tracts, it eliminates the address itself, and also any information that would identify the respondent. In other words, instead of being the culprit, the computer in this case literally supplies anonymity by converting personal information to area information.

When the tabulation of a census is finished, the original paper forms which have been stored in guarded buildings on a government facility are destroyed. They are shipped in sealed box-cars and recycled, with Bureau officials watching until they drop into the pulping vats.

That leaves the microfilm. Where does it go after we are finished processing the data? The rolls are sent to the Personal Census Service Branch in Pittsburg, Kansas, which we commonly refer to as the Age Search Service. This is a unique self-supporting operation which has helped millions of people. Every day the Bureau receives about 1,300 requests from people who need to verify some item of information about themselves. Most are for substitute birth certificates which either never existed, or have been lost or destroyed. People need them to qualify for retirement, for Social Security, for Medicare, to get a passport, and many other uses. For a very small fee, the Age Search Service will search old census records and issue a certificate which has legal standing.

This service is provided only at the request of the person himself. For example, a son cannot ask about his father unless he has a power of attorney or a death certificate. This operation is the only use made today of the Director's authority to release personal information at his discretion.

Finding this type of information for those who request it is not an easy job. It takes an expert to utilize the microfilm. Since the census is based on addresses, not names, there is no such thing as a master list of records arranged alphabetically by name. For the correct reel of film to be located, the person making the request must supply information about where he or she lived at the time the census was taken.

The very size of the U.S. population helps to guarantee confidentiality. It took some 5,000 miles of microfilm to process the 1970 census. For us to make this process of working backward any easier would be extremely costly, and would in theory, weaken the protection of confidentiality.

Now---where does the microfilm of past censuses exist? The records of the counts from 1790 through 1880 are accessible to the public in the National Archives. Data in these enumerations were not gathered under laws of confidentiality. The census of 1890 is almost non-existent, having been mostly destroyed by fire.

The Pittsburg, Kansas unit has microfilm for 1900 through 1960, and late this year will have the 1970 records set up to be able to answer the requests which are already coming in.

Copies of the 1900 through 1950 records are also held by the National Archives. These were sent to the Archives for storage. But in December of last year, the Archives opened the 1900 census to limited access by qualified researchers, a move opposed by the Census Bureau. While this access is under controlled circumstances, we feel

at the very least it violates in principle the rights of the estimated seven million persons still alive who were counted in the 1900 census.

The law under which the Archives operates says government records may be made public after 50 years, unless an interagency agreement stipulates a longer period of time. In 1952, the Director of the Census Bureau and the Archivist agreed that census records should remain closed for 72 years---or the average lifetime. The Bureau's position is that the 1952 agreement was in excess of the Director's authority, and therefore is invalid.

The obvious question is---how long does the law's guarantee of confidentiality apply? A lifetime? One hundred years? Or forever? The Bureau hopes Congress will close this final loophole in the laws of confidentiality.

Congress at the moment has a lot to consider in the area of privacy and confidentiality. Some 60 bills are pending in the House and Senate. The basic question seems to be not whether something must be done to insure privacy and protect it, but what, and by whom. Four of those bills deal with census information. Eight of them would establish a Federal Privacy Board or some committee or commission as an overall authority. Many of the bills would allow the citizen the right to inspect his own records, correct them, and bring suit for damages resulting from incorrect or mis-used records.

In his first speech before Congress, President Ford made it clear that privacy is very much on his mind. He said: "There will be no illegal tapings, eavesdropping, buggings or break-ins by my Administration. There will be hot pursuit of tough laws to prevent illegal invasions of privacy in both government and private activities."

You might well ask why we at the Census Bureau are so concerned, if our record is good and our intentions are clear. Aside from the moral implications, I'll give you a very practical answer---one which this audience especially should appreciate.

A census or a survey is only as good as the contract of trust between the people about whom information is obtained...and those with the mandate to obtain it. If the public feels we are not keeping our word that their answers will be kept confidential---or that even the potential for such violation of their trust exists---their answers will not be as accurate, or given as willingly.

If this occurs on a large scale, the quality of the summary statistics will deteriorate. And if this occurs the Nation has lost its prime decision making tool, and society will be the loser.

This would be a tragedy. It would come just as more and more decision makers in the public and private sectors are becoming aware of how valuable census data is to them---and it would come as the Bureau's main thrust is to increase the utility of the data it gathers.

To the Census Bureau, a promise is a promise. The calendar may read 1984 in ten years, but I want to make it clear that as far as the Bureau is concerned, George Orwell's 1984 will never come.

In his remarks to the most recent meeting of the Advisory Committee on Privacy and Confidentiality

ality, Commerce Secretary Frederick Dent said:
"I think perhaps the strongest brand name in
America might be that of the Census Bureau."

Ladies and gentlemen of the A.S.A., you can rest
assured...at the Census Bureau...we plan to keep
it that way.