

# **Social Security Numbers: Uses and Abuses**

By Robert Ellis Smith  
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Since the founding of the nation, most Americans have been vigilant about the dangers of being enumerated by their government. The mounting demands for enumeration since 1936 perhaps prove only that they have not been vigilant enough.

The possibility of a national enumeration system arose seriously for the first time with enactment in August 1935 of a nationwide government pension program, to take effect the next year. This would involve deducting taxes from workers' regular paychecks, depositing the funds in Washington, and then dispersing monthly pension checks to retirees. To make the system work, everybody would have to be issued a number. Or so it was assumed at the time.

Recent immigrants were the ones most concerned; those from Europe were well aware of the latent dangers in a system for enumerating or registering all citizens. The Nazi regime, after all, had located targets of their terror by using various registration systems already in place. An Italian immigrant to America told his children, "They are going to require a number for all of us. There goes our family name, it will no longer be important."

In addition, there was simply something in the American spirit that abhorred being known as a number. It was dehumanizing and impersonal, regimented. Many religious fundamentalists feared national registration because of the Biblical threats that pestilence and plague might follow.

Revelation 13:16-17 and 14.9-10 in the Bible speaks of a great beast that resembles Satan: “And he causeth all, both small and great, rich and poor, free and bond, to receive a mark, or the name of the beast, or the number of his name. And that no man might buy or sell, save that he had the mark, or the name of the beast, or the number of his name. . . . And the third angel followed them, saying with a loud voice, If any man worship the beast and his image, and receive *his* mark in his forehead, or in his hand, the same shall drink of the wine of the wrath of God, . . . and he shall be tormented with fire and brimstone.” This has been the source of fear of enumeration by many fundamentalist Christians, since Colonial times.

This Biblical warning was cited in debates over a census at the Constitutional Convention. Governor William Burnet of the New Jersey Colony in 1726 complained that enumeration makes people “uneasy” – especially New England Puritans influenced by these Biblical admonitions.<sup>1</sup>

Back in 1715, the governor of the New York Colony had reported, “The superstition of the people is so insurmountable that I believe I shall never be able to obtain a complete list of the number of inhabitants of this province.”<sup>2</sup> When Governor Robert Hunter attempted a headcount of his colony, he was forced to report:

“I have issued out orders to the several Counties and cities for an account, of the numbers of their inhabitants and slaves, but have never been able to obtain it compleat, the people being deter’d by a simple superstition and observation, that the sickness follw’d upon the last numbering of the people [the “torment” mentioned in Revelations].”

This Biblical fear of a head count and of assigning identifying numbers to everyone continued into the Nineteenth and Twentieth Centuries.

The United Mine Workers and the United Steelworkers in the 19430s both expressed a different fear: that Social Security account numbers could be used by companies to blacklist pro-union men and women involved in the labor strife of the time. The unions, in fact, persuaded friendly officials in Franklin D. Roosevelt’s New Deal Administration to include in the Social Security Act of 1935 a provision allowing an individual to replace an existing Social Security number with a second one when “showing good reasons for a change,” a provision that remains in the law.

The new pension system marked the first time in the United States that a government agency would be required to collect and use personal information from most of the population. This would be unlike the data collection by the Bureau of the Census, which aggregates individual data once it collects it and makes no decisions based on the information that affect individuals. For the first time, Americans would be asked to register with their government. No wonder there was such unease among the public.

Registration for the new government pension program was unlike previous military conscription programs; they had affected only men in their twenties and only in wartime. It is true that thousands of rioters in New York City objected to the military draft of 1863 because a man could pay \$300 to avoid it or could pay someone to go to war in his place. The bloody riots were a reaction to the unfairness of the system and the racist overtones of the way that it was administered. They were not a reaction to the idea of conscription

itself. America's first military registration requirement in "peacetime" was to come in 1940.<sup>3</sup>

In the election year of 1936, Congressional Democrats defended the government-run program that they had proposed, and Republicans stressed the disadvantages of the idea – that it would mean lower take-home pay. A week before the election the Republican National Committee flooded employers with millions of official-looking inserts for pay envelopes warning of the deduction to come in the first paycheck of the new year.

But it became clear that the trickiest part of the task of implementing a radical pension program would not be assuring the public about the new payroll deduction, but persuading Americans to register.

And so the bureaucrats never mentioned the word *registration*. "The process was called 'assignment of social security account numbers' instead of 'registration,'" recalled Arthur J. Altmeyer, who was FDR's acting chair of the Social Security Board at the time of creation. "The use of the word 'registration' was avoided because it might connote regimentation. An analogy was drawn between the issuance of a social security account card and the issuance of a department store credit card, which was the only form of credit card in common use at the time."<sup>4</sup>

The notion of a government-run registration was so abhorrent that Altmeyer, with Roosevelt's approval, asked the Postmaster General to assume the responsibility of assigning numbers for Social Security purposes. More Americans apparently trusted the local post office than the new Social Security Board. "He agreed to do so and in a few weeks plans were completed for carrying out this gigantic task through the 45,000 post offices, beginning November 16, 1936," Altmeyer recalled in a memoir. "I had urged that the assignment of account numbers should not begin until then in order to avoid becoming involved in the Presidential campaign of that year." In September Republican candidate Alfred M. Landon denounced the "old-age insurance system," saying "To call it 'social security' is a fraud on the working man."

On the day before the election William Randolph Hearst's *New York Journal-American* published a front-page attack on the pension system accompanied by a drawing of a man with his identity masked, stripped to the waist, wearing a dog tag with an identifying number. It was labeled "Snooping and Tagging." The caption stated, "Each worker would be required to have one for the privilege of suffering a pay cut under the Social Security Act, which is branded as a 'cruel hoax.'" (Alf Landon had used that term in his campaign.) The illustration was not far-fetched. The Addressograph Corp. had tried to sell the Social Security Board on the idea of issuing metal nameplates to all registrants. Altmeyer said he kept Addressograph's prototype nametag as a souvenir of these negotiations.

Some press reports said that the new program would require a person's religion, union affiliation, criminal record medical history, and other personal data. The *Boston American* wrote, "Your personal life will be laid bare, your religion and the church you attend will be listed. Your physical defects will go down in black and white. . . . your union affiliation will be stated. . . . Even your divorce, if you have one, will be included."<sup>5</sup> In fact, an applicant needed to provide only name, date of birth, and parents' names. Each file would include only earnings information.

The Social Security Board retaliated against the Republicans' negative envelope stuffers by printing 50 million leaflets of its own to distribute at factory gates. The brochures explained the process for *assigning* Social Security numbers (not *registering* for Social Security). One of the government's explanatory films to soothe citizens' fears was run

continuously in Times Square on the last day of the election campaign, as well as elsewhere throughout the country.

The 1935 law assigned to the Bureau of Internal Revenue in the Department of Treasury the task of collecting the taxes from both employees and employers. The bureau waited until two days after the election to issue a regulation creating “an account number.” Each person was to apply at a post office and be assigned a number and then provide it to his or her employer. The regulation also provided that a person could change his or her number “showing good reason.”

Despite misgivings and despite the fact that the Social Security Act had not yet been declared constitutional, most of the 26 million application forms were returned through post offices during the first three weeks of registration. By June of 1937, 30 million persons had applied for numbers. Not bad, in a nation of 50 million employed adults. No one wanted to miss out on a government pension, of course, and there was no need to show any proof of identity in order to register. At the time, there seemed little incentive to get an SSN under an assumed name or to get more than one because that might actually reduce one’s later benefits. This remained true so long as the SSN was used for no other purpose. Thus, for many years later, no proof of identity was required to get a Social Security number.

In 1936 the board twice issued statements promising confidentiality and it issued a regulation – Social Security Board Regulation No. 1 dated June 15, 1937 – requiring that no employee “shall disclose to any person or before any tribunal, directly or indirectly” any account information, even in response to a subpoena.

Altmeyer said that this regulation was violated only in a few cases involving persons suspected of espionage and other crimes. But there were other close calls. Every attorney general “at the urging of the Federal Bureau of Investigation,” requested access to Social Security information during the 19 years in which Altmeyer was in office. J. Edgar Hoover’s persistence paid off, and in 1939, President Roosevelt issued an executive order authorizing FBI access to Social Security files in any criminal investigation.

The information on accounts was intended to stay confidential, but it did not stay that way for long. By 1997, an official publication of the Social Security Administration admitted euphemistically, “The next two decades saw a gentle evolution in SSA’s disclosure policies with changes made to respond to changing social needs, additional program responsibilities and other material interests.”<sup>6</sup> In other words, in the computer age, the floodgates were opened.

The implied promise that Social Security *numbers* would be used solely for administering the insurance program was a separate issue. That pledge lasted less than a year – and the Social Security Board itself broke it. It directed that the Social Security number also be used in state unemployment insurance programs, which were funded by the 1935 act. This meant that many more employees not covered by the Social Security program – railroad employees, laid-off federal employees, and others – had to get numbers as well. Still, in a time when most families had only one wage earner and when there was little out-of-home employment for women, a majority of Americans still did not have – and did not need – SSNs.

For many years, the 3-by-2-inch Social Security card bearing a person’s number had the legend “NOT FOR IDENTIFICATION” printed on its face. This has led many citizens to this day to believe that a law or regulation prohibited the use of the number for purposes other than Social Security. But that was never the case. (Partial restrictions on government agencies *collecting* the numbers were enacted in 1974.) The purpose of the

legend, the Social Security officials would say, was merely to notify anyone to whom a card might be presented that it should not be relied upon as evidence of identity. After all, no proof of identity was required then to get a Social Security card. To this day, persons in places of authority nonetheless demand the card and accept it as evidence of identity.

In the first year of the program, the Social Security Board turned to large insurance companies for advice in creating a central record system to keep track of the millions of accounts, in a time of primitive counting machines. The board was shocked to discover that no company had a records system that could serve as a prototype for the massive information collection that the government insurance program would require. The board was building the largest database in the world, and there was no model to emulate. An expert in private-sector data systems told members of the board that it couldn't be done, that the board's only hope of managing the massive amount of data was to create separate regional organizations. This would have required an amendment to the legislation that created the pension system. And it wouldn't work, in a nation where up to a fifth of the citizens move from one community to another in a year.

Instead the board established 12 units organized by geographical regions, but centralized them in the nation's capital and linked them with a single universal index. The index of 30 million names was organized by a phonetic translation of last names, not by numbers, showing that large personal data systems need not be organized by numbers. That was true then and it is true today. The system was good enough to locate a file within a few seconds.

Americans' suspicions of enumeration became clear after World War II when vital statistics officials throughout the country proposed a national Birth Certificate Number, to be affixed to each new birth certificate. This would assign a unique identifying number for a person's lifetime, something the Social Security number was not. Officials in nearly half of the states declined to participate in the program and the idea was dropped.<sup>7</sup>

A number is a number is a number, but Social Security account number 078-05-1120 was one of several numbers that took on lives of their own. It first appeared on a sample Social Security card inserted in wallets sold in 1938. It simply showed a person what the little plastic pocket in the wallet was for. But many purchasers naively assumed that the made-up number was to be their own account number. Thousands of persons had their wages reported under account number 078-05-1120. The year 1943 was the peak, when 5755 wage earners were listed under that number. Even in the 1970s, 39 older persons filed tax returns under 078-05-1120. In the 1970s the Social Security Administration said that it was still processing multiple accounts for persons using what the bureaucrats called "pocket-book numbers."<sup>8</sup>

President Franklin D. Roosevelt signed Executive Order 9397 in 1943 requiring federal agencies to use the Social Security number for identifying individuals in any new "system of accounts." The Civil Service Commission, which managed federal personnel, had asked for the authority. It had decided that it needed a numerical system for keeping track of payroll records of federal civil-service workers, who at that time did not participate in the Social Security program. The order, which is still in effect, directed the Social Security Board to assign an account number to any person required by a federal agency to have one, whether the purpose was for pensions or not. And it directed that, "The Social Security Board and each federal agency shall maintain the confidential character of information relating to individuals obtained pursuant to the provisions of this order." The order also required that the federal agency requiring an account number pay for the enumeration process. The Civil Service Commission always said that it lacked the funds to do this, and so for 18 years civil service employees simply went without SSNs.

There was apparently no pressing need for them to have them. Thus, Roosevelt's executive order had no practical impact at all for many years, until federal agencies resurrected it with the coming of computer systems. Executive Order 9397 is an example of a governmental action that profoundly affected citizens' rights but turned out not to be necessary at all at the time.

In 1961, the Civil Service Commission finally decided to issue SSNs to federal employees. As it began to use computer systems for processing tax returns, the Internal Revenue Service decided to use the Social Security number as an individual taxpayer identification number. This was authorized by an amendment to the tax code in 1961.<sup>9</sup> Until the 1980s the IRS was fairly casual about this requirement, imposing only a \$5 penalty for failure to comply.

Use of the number as a taxpayer ID opened the floodgates. Soon state tax authorities began to use it. The U.S. Treasury Department began to use it as an identifier for holders of U.S. securities, including savings bonds.

In 1964, the Commissioner of Social Security approved the issuance of Social Security numbers to school pupils in the ninth grade and above, if a school requests this. Pupils in the public schools of Baltimore, where the Social Security Administration was now located, became the leading guinea pigs. Social Security officers set up tables at high schools registering students. Of course, the program was voluntary, but there was no way for pupils *to know* that. Everything done in school seems required.

Issuing SSNs in schools was more cost effective, more orderly, and more convenient than having young people register one by one when they entered the job market. That was one of the stated reasons for issuing them in schools.

There was another purpose, according to the Social Security Administration manual in the 1960s: It was to accommodate requests from school systems "desiring to use the SSN for both automated data processing and control purposes, so that the progress of pupils could be traced throughout their school lives across district, county, and state lines." This was one of the first articulations of the reason behind the many demands for personal information in the Sixties and Seventies: "The computer needs it."

This was a breach of a key principle of privacy protection (one that was not drafted and circulated until a decade later, however). The principle is that information gathered for one purpose ought not to be used for an incompatible purpose without consent of the individual. Pupils thought that they were securing Social Security numbers to make it easier for them when they applied for work. They did not realize that they were also providing a means for school authorities to link records about them.

And if high school students were being issued Social Security numbers en masse, why shouldn't colleges use them as student ID numbers? This is exactly what happened.

With the coming of the federal Medicare and state Medicaid supplemental health insurance programs in the early Sixties, thousands of Americans who had reached retirement age without ever needing a Social Security number – including many post-World War II newcomers – now had to be issued identifying numbers. If Medicaid and Medicare used SSNs, why not state elderly assistance programs? This is exactly what happened in 1965.

If state elderly programs used SSNs, why not the Indian Health Program? And that is what happened in 1966. In the same year, the Veterans Administration used the numbers for hospital admissions and other accounting purposes. If the Veterans Administration

used the numbers, why shouldn't the Pentagon use them as service numbers for all military personnel? And this is what happened in 1967.

A new banking law that Congress passed in 1970 required banks and other financial institutions to get Social Security numbers for all customers, whether the accounts produced taxable income or not.<sup>10</sup> This was an obligation on the bank, not the individual; but most customers did not know this or did not care. Just as we think that most things we are asked to do in school are mandatory, we think that most things we are asked to do in a bank are mandatory. People offered up their Social Security numbers. As a consequence of this requirement, many banks urged customers to have their Social Security numbers printed on the face of their checks, or banks simply went ahead and did so. This, of course, was not required by the law, but it was a natural consequence of it.

There is nothing private about a Social Security number printed on the face of a bank check. Check-out clerks in a grocery store, retail sales personnel, payments processors, the guy who fixes the car, personal friends – everybody gets to see it. Nor is a number printed on an Army dog tag or on thousands of military documents very private.

In fact a prisoner named George Turner at a federal facility in Missouri did well for himself exactly ten years after the military converted to SSNs as service numbers. His job was to sort old Army fatigues from Fort Leonard Wood, the nearby Army training base. It took Turner less than a week – after all, he was serving time for tax fraud – to figure out that he could use the discarded clothing to continue his schemes. On each piece of clothing was a soldier's name and Social Security number. Turner requested blank tax forms by mail and filed phony returns and requests for refunds, using the names and Social Security numbers (which now was *both* taxpayer ID *and* military ID) on the different forms. George Turner generated more than 200 refund checks this way. The Internal Revenue Service after a while detected the fraud, but the Army continued to send discarded clothing to the prison with service member's names and Social Security numbers.<sup>11</sup>

Oddly, while the Social Security number was becoming more and more a public piece of information, as George Turner demonstrated, people in places of authority were treating it as *an authenticator of a person's real identity*, as if it were a secret identifier known only to the individual. This practice had the effect of allowing impostors or perpetrators of fraud to use someone else's Social Security number as a means of "proving identity" with any clerk or bureaucrat in the land.

An advisory committee appointed by the Secretary of Health, Education, and Welfare in 1972 to study the proliferating uses of numerical identifiers and the implications of personal databanks noticed the irony. To attend a weekend meeting in a government building, the members were required to give names and Social Security numbers to a guard at the main entrance. The guard had earlier been given a list of members and their numbers. The committee's final report said:

"Given the wide dissemination of SSNs, we were impressed by how easily someone could have impersonated any one of us to gain admittance to the building."<sup>12</sup>

This was not a theoretical concern. It was going on all over the country in the 1970s – people enlisting in the Army, applying for a job, getting a birth certificate or driver's license, getting welfare assistance – while using a stranger's Social Security number *to verify their own identities*. This reached epidemic proportions in the Nineties, when it became known as "theft of identity." Still, no one in Congress or the Executive Branch realized the irony and sought to remedy it. There were selected members of Congress

who raised concerns about the proliferation of SSN uses, as a dehumanizing trend or threat to privacy, but no one mentioned the misplaced reliance upon the number to authenticate identity.

George Turner, the prisoner in Missouri, was simply ahead of his time. By the 1990s, criminal impostors were victimizing thousands of Americans with schemes similar to Turner's. It was called "identity theft." A stranger would secure the victim's Social Security number – from payroll records, by pretext over the telephone, in trash cans, or at World Wide Web sites – and then pose as that person to get a duplicate birth certificate, driver's license, or job. In a more common variation, the impostor would access the individual's credit report – using the Social Security number to verify identity – and discover the retail credit accounts the person had and the account numbers. Then the stranger would ask the retailers to change the address on the account to the impostor's or to a bogus address set up for this purpose. Or the impostor would simply use the victim's Social Security number to apply for a new account. The victim would be unaware that a stranger was using the accounts to order products and services – dunning notices for overdue accounts would be sent to the impostor's new address, not to the true account holder's address. But notices about the delinquent accounts would be sent regularly to the major credit bureaus. Only when the individual was rejected on a new credit application or had credit cards canceled would he or she become aware of the fraud.

But then reclaiming a clean credit report became impossible. A credit bureau would dutifully erase the bad information as required by the federal Fair Credit Reporting Act of 1971, but in the next 45 days, when retailers and credit-card issuers would make their next automated reports to the credit bureau, the fraud-produced information would reappear on the victim's credit report. Only after Congress tightened the law in 1996 and the credit bureaus faced several lawsuits did they take partial steps to prevent this from happening over and over. Further, because retailers accepted the losses as a cost of doing business, they didn't bother to change their practices so that the fraud could be curbed. They didn't bother to alter their systems so that Social Security numbers were unnecessary to retrieve data about an individual.

A prime source of other persons' Social Security numbers is the identifying information at the top of a credit report, what the credit bureaus call "header" or "above-the-line" information, including phone numbers, addresses, mother's maiden names, and Social Security numbers. Because most people provide their telephone numbers on credit applications whether or not their numbers are "unlisted," credit bureaus include listed and unlisted phone numbers "above the line." The Federal Trade Commission, which regulates credit bureaus, ruled in a non-public negotiation in 1993 that credit bureaus are free to rent "header" information all they want. That is when identity fraud became a nationwide epidemic.

This means that "information brokers," which buy personal information from large vendors and resell it to individuals and small businesses, could easily purchase Social Security numbers and unlisted telephone numbers. Many of these brokers sold the data on their World Wide Web sites.

The Federal Trade Commission has compounded the problem by encouraging credit bureaus to use Social Security numbers to verify the identity of a consumer who seeks to get a copy of his or her credit report, as permitted by law. A Social Security number does not provide much verification of a person's identity if a stranger can get it easily.

A task force created within the Social Security Administration in the early 1970s took a long look at the burgeoning use of the Social Security number. Its study focused on the

function of the number as the key component for linking records about a single individual in disparate and remote computer systems.

One reason organizations were collecting Social Security numbers was precisely to link records; they wanted to be able in the future to allow for pooling or merging records about an individual from different systems. Data files were not then linked by telephone or any other telecommunications. Even “batch processing,” by which a file or list from one computer file was loaded on to another system to merge data, was just beginning. Data managers, however, certainly anticipated that automated matching and merging of files would soon be routine. If each individual record could be retrieved by a single ID number, then the process of matching files, for whatever reason, would be feasible. Insurance companies, for instance, discovered that if they used separate policy numbers of their own, processing Medicare and Medicaid information was slow and awkward. Using a common number created the possibility of linking records with data systems outside the organization.

The Social Security number was simply a convenient number, one that most people had memorized or had access to. It was widely believed that a common numerical identifier was essential for merging files or even for managing large data systems. The discovery of alternative techniques since that time has made that belief outdated.

The Social Security task force issued a report in 1971 that questioned the desirability of “any kind of universal identification system in terms of its psychological impact on the individual citizen.”<sup>13</sup> The reason for this “psychological impact” was apparently not the dehumanizing aspect of enumeration, but the loss of control that would come from linking data:

“It is clear that if the SSN became the single number around which all or most of an individual’s interactions were structured . . . the individual’s opportunity to control the circumstances under which information about himself is collected and disclosed would be greatly circumscribed.”

President Nixon’s Secretary of Health, Education and Welfare, Elliot L. Richardson, decided to appoint an Advisory Committee on Automated Personal Data Systems to study the larger questions posed by increased use of computers to collect information on individuals. Just a few months after the Social Security Administration task force issued its report, the Secretary’s Advisory Committee took a new look at the increasing uses of Social Security numbers.

The HEW committee – the one whose members gave up their Social Security numbers at the front door – issued a well-received report in 1972 called *Records Computers and the Rights of Citizens*, saying, “The federal government itself has been in the forefront of expanding the use of the SSN.”<sup>14</sup> It concluded:

“We recommend against the adoption of any nationwide, standard, personal identification format, with or without the SSN, that would enhance the likelihood of arbitrary or uncontrolled linkage of records about people, particularly between government or government-supported automated personal data systems.”

The committee recommended use of the number be limited to, first, requirements imposed by federal agencies, and, secondly, only when pursuant to authority from Congress. And, thirdly, “Congress should be sparing in mandating use of the SSN.” Further, “when the SSN is used in instances that do not conform to the three foregoing principles,” it should be totally voluntary.

Both the HEW advisory committee and the Social Security Administration task force were created partly in reaction to a standard developed by the American National Standards Institute in 1969 for a uniform identifier for each American, incorporating a person's Social Security number and additional elements. As with the earlier proposal for a mandatory Birth Certificate Number, the public and the press met the idea with immediate opposition. The organization was forced to withdraw the proposed standard.<sup>15</sup>

Congress took the HEW recommendations seriously and in drafting a comprehensive privacy-protection proposal in 1974 moved towards making the recommendations part of the law. Senators Sam J. Ervin, Jr., Charles H. Percy, and Barry M. Goldwater were especially vigorous about this. But support for making the privacy protections apply to private businesses faded in both houses of Congress. What emerged in the late fall was the Privacy Act of 1974, which seeks to protect personal information gathered *by the federal government*, but not information collected by private businesses like banks, credit-card companies, employers, and health-care providers. Congress included in the Privacy Act a modest provision on Social Security numbers that applied to state, local, and federal levels of government only; it did not extend to the private sector. In essence, it authorized current uses of Social Security numbers, but no more. The provision in the Privacy Act says that government benefits may not be denied an individual for declining to provide a Social Security number unless there was an existing federal or state law or regulation specifically authorizing this.<sup>16</sup> (In 1976 Congress amended the law to exempt tax, motor-vehicle, and welfare offices in state government from its limitations. This meant that these agencies could continue to require Social Security numbers.)

Since 1974, agencies at all levels of government have justified their demands for Social Security numbers by pointing to general authorizations in laws predating the Privacy Act that simply allow the agencies to conduct some function or to collect information to conduct their functions. That is not at all what members of Congress had in mind in the fall of 1974, but the practices are only occasionally challenged successfully.

The lasting effect of the HEW report was in its creation of a Code of Fair Information Practice governing computer databases, not in its warnings about Social Security numbers.

Meanwhile, private businesses began insisting on the Social Security number, often using it as a customer or account number. If the Medicare and Medicaid programs used it, why wouldn't it be convenient for insurance companies to use it as a policy number? And that is what many insurance companies began to do. Newspapers sponsoring sweepstakes for their readers often made the Social Security number the basis for entering the contests (although the HEW report strongly condemned this). This only accustomed millions of persons to disclosing their numbers for non-Social Security purposes and non-tax purposes without thinking of the consequences. It also motivated some people to get more than one Social Security number or to use more than one – to have a better chance of winning.

A man in Cleveland, Ohio, was surprised when his two children, aged seven and five, received notices to pay overdue taxes. Then the father recalled that to enter the children in the *Cleveland Press* sweepstakes in 1976 he had applied for new Social Security numbers for them. The Social Security Administration routinely put the children and their numbers on lists it regularly sends to local tax agencies. The local agency had no record of the two paying taxes and sent the delinquency notices.<sup>17</sup>

A Native American father descended from the Abenaki Tribe had the opposite approach. Stephen J. Roy of Pennsylvania regarded Social Security numbers as part of “a great evil” used by computers to rob people's spirits. This, he said, is what non-Indians would

call *dehumanization*. He based his spiritual belief on what he called the legend of Katahdin, the mountain that overlooks a settlement of the Abenaki Tribe in the state of Maine. He did not want his daughter, Little Bird of the Snow, to be enumerated in this way, and insisted that she decide for herself when she was older about having a Social Security number.

But the family received state Aid to Dependent Children, food stamps, and state medical assistance. The state and federal governments insisted that the family provide a Social Security number for four-year-old Little Bird of the Snow. When the state reduced the family's public assistance in the 1980s, the father filed a lawsuit in federal court. He found a sympathetic federal judge. In fact, the judge, Malcolm Muir, said that he himself converts numbers into words as a personal way of remembering digits. The judge nicknamed the chief judge on his court "Phillippino Overpot," for instance, simply as a way of remembering his colleague's telephone number. Using his personal system, the judge figured that the little girl's name would translate into the number 515-94-1802. Would the government accept this number as an alternative? A government witness thought that the bureaucracy could handle this, even if the first three digits would indicate that the number had been issued in Kansas and the judge's fabricated number would be 30,000 numbers ahead of Social Security numbers in use at the time. The Social Security Administration's computers would reject "impossible" account numbers, and so some accommodation would be necessary. Would the father accept it, the judge asked. The father liked the idea a little bit, but was unwilling to accept it as an alternative because it would be a unique identifier.

Only at the end of the trial was it revealed that Little Bird of the Snow had had an SSN assigned to her at birth; the parents had returned it and asked that it be revoked. That was not relevant to Judge Muir. He ruled that the SSN requirements in the welfare and food stamp programs were an unconstitutional infringement on religious beliefs. He enjoined the agencies from denying benefits to the family.

The federal government said that it would appeal the ruling to the U.S. Supreme Court and argue that its inability to get Social Security numbers on everybody would hamper its plans to match computer lists in different state and federal agencies and thereby uncover fraud and "double-dipping."

Department of Justice lawyers were busy that fall with two vexing challenges from individuals concerned about their personal privacy. A woman who wanted to apply for a driver's license without providing a photograph of herself had succeeded in getting the Eighth Circuit Court of Appeals to agree with her argument. Because of the injunction in the Ten Commandments, "Thou shalt not make unto thee any graven image," Frances Quaring did not want to be photographed. Lawyers in the U.S. Department of Justice were preparing to persuade the U.S. Supreme Court to overturn the opinion by the court of appeals that the state of Nebraska had to accommodate the religious objections of Ms. Quaring.

When the Supreme Court heard the Nebraska case, Warren E. Burger, then chief justice of the U.S. and a man renowned for objecting to any and all photographs of himself, immediately asked the attorney for the woman what would happen if press photographers snapped her picture at the Supreme Court. It won't happen, the man responded; she had stayed home on that important day in her life precisely to make sure that it did not happen. Associate Justice Sandra Day O'Connor noted aloud that the Court's decision in the photograph case would surely have an effect on its ruling in the government's anticipated appeal in Little Bird's case.

On June 17, 1985, the Court announced that it was deadlocked 4-4 whether the government had to accommodate a religious objection to providing a photograph. Justice Powell was hospitalized and did not participate. Whenever there is a tie on the high court, the opinion of the lower court stands, meaning that the Eighth Circuit's ruling that a person has a constitutional right not to provide a photograph for a driver's license is the governing law to this day.<sup>18</sup> On the same day, the court agreed to hear the government's appeal in the case of "Little Bird vs. Big Government."

A few weeks later, the Missouri Supreme Court expressly rejected the Eighth Circuit's opinion and ruled that the state *could* deny a driver's license to someone who refused to provide a Social Security number (not a photograph this time) because of that person's "sincerely held" religious belief against being assigned a number.

In contrast to the photograph-drivers' license issue, the Supreme Court had little difficulty on the issue of Social Security numbers and government benefits. In 1986, it voted 8-1 in *Little Bird of the Snow's* case that the government's demand for a Social Security number does not itself impair a person's freedom to exercise religion, guaranteed in the First Amendment to the Constitution.<sup>19</sup>

By the late Eighties, Americans were now being asked for Social Security numbers in order to rent an apartment, to get a fishing license, to order a cable TV connection, to begin telephone service, to donate blood, to make funeral arrangements, to get medical treatment. At different times, people have been asked for Social Security numbers to rent a room at a Holiday Inn, to use credit cards at gasoline stations, and, in Virginia, to register to vote. In 1993 the U.S. Court of Appeals for the Fourth Circuit ruled that Virginia must either discontinue requiring Social Security numbers for voter registration or make sure that the numbers are not disclosed, because "the harm that can be inflicted from the disclosure of a SSN to an unscrupulous individual is alarming and potentially financially ruinous."<sup>20</sup>

The trend towards constant demands for a Social Security number for any transaction, which gave rise to a citizens group in Massachusetts called PANIC, People Against National Identity Cards, was clear – the Social Security number (with all its imperfections<sup>21</sup> was becoming a de facto national ID number. The nation was inexorably moving towards what had once been unthinkable: requiring every man, woman, and child to have a government-issued identity number and to carry proof of it on one's person at all times.

This was no idle Orwellian fear. The Director of the Passport Office in the Department of State, Frances G. Knight, actually advocated the issuance of an identity card, with fingerprints, to every citizen. This was in 1975.<sup>22</sup> Knight, who held her job for 22 years before retiring in 1977, was the female equivalent of J. Edgar Hoover, an entrenched, expert bureaucrat whom no politician cared to cross. But on this one, Frances G. Knight stood alone. No one wanted to side with Ms. Knight on a national ID card. By coincidence, at the time, a diverse committee appointed by the Attorney General was studying the use of false IDs to commit crimes. The law enforcement and vital statistics officials on the committee said that they were tempted to recommend creation of a national identity card; they were sure that this would solve all problems related to fraud. But they wouldn't say so publicly, because they were aware that the public reaction would be immediately negative. And so the pro-law enforcement group voted down a proposal to create a national ID number.

Instead in subsequent years, officials and politicians created, one by one, discreet new demands for proof of identity that led in the same direction. But no one else would endorse a national identity card itself.

There was evidence of this in the debates of a Select Commission on Immigration and Refugee Policy established in 1980 to find a way to prevent employers from hiring illegal immigrants and to ration the flow of newcomers to America. The Rev. Theodore M. Hesburgh, then president of the University of Notre Dame, chaired the panel, which included Senators Alan K. Simpson and Edward M. Kennedy, as well as the Secretary of State and Secretary of Labor at the time. Hesburgh could find nothing objectionable about a mandatory ID card in order to hold a job. After returning from Asia, he told the press, “If I can walk into a restaurant in Bangkok and just hand them a card to charge \$100, it shouldn’t be that difficult to establish some method to establish legal status in the U.S. You wouldn’t have to carry it always. If you wanted to use it for other purposes you could do so.”

At a meeting in December 1980, after the election of Ronald Reagan as President and a Republican majority in the Senate for the first time in 26 years, Hesburgh asked for a vote on tightening current identity requirements. A majority agreed. Then he asked for a vote on a new “more certain” document that each worker would have to present before getting hired. A slim majority including Kennedy voted *against* that. But Hesburgh said then that he would poll the three members of the panel who were absent. He tried, but the chair could not garner the votes to make such a recommendation.

In the end, the commission’s final report avoided recommending a national ID card or a mandatory work card. Instead, Congress tossed around various proposals for requiring existing ID documents for employment, even though none of them, except a passport, verifies citizenship or legal immigrant status. A bipartisan bill in 1982 would have required workers to present one of four different IDs before getting hired. (Strangely, only one of the required documents has a photograph.) The bill also would have required the Reagan Administration to develop a plan for “secure identification” within six months. Congress could not reach agreement on an immigration-reform bill that year, and so the ID proposal died.

A year later, Senator Robert J. Dole convened a three-day hearing on moving towards a national ID scheme. But members of Congress were not willing to endorse such an idea; instead they tossed the issue to the Executive Branch and insisted that it develop a plan for a national identifier.

Witnesses before Dole’s committee said that government agencies were relying more and more on the mere presentation of a Social Security number as proof of identity – and also discovering that their files were full of erroneous and duplicate SSNs. The Department of Defense alone found at least 1000 persons in its systems using numbers also being used by others.

The issue was not resolved in the 1980s – nor was the issue of controlling immigration. In 1990 Congress appointed a bipartisan Commission on Immigration Reform to resolve the impasse. In July of 1994, the chair, former Representative Barbara Jordan of Texas, let float a trial balloon. It’s the Washington way. She seemed to endorse the idea of a mandatory work card with photograph, or a plastic national ID card, or at least a “tamper-proof” Social Security card.

Because of her advocacy during the 1974 nationally televised hearing about the impeachment of President Nixon, Jordan enjoyed a reputation as a defender of the Constitution and a liberal. “I would not be a party to any system I felt was an unwarranted intrusion into private lives,” she said.

When it came time to testify before a Senate committee the next month, Jordan merely endorsed the idea of a “more secure” worker ID document and a computerized system for

employers to verify the identity and citizenship status of any applicant. She seemed to be backing off her original proposal for a national identity card.

Senator Alan K. Simpson of Wyoming, then chair of the immigration subcommittee and primary advocate of the verification system, said:

“Does this mean we are creating a ‘national ID card’? Not at all. I have always provided in my legislation, as the commission has in its recommendation, that no one would be required to carry a card, should one be used, or to present it to law enforcement officials for routine identification purposes. The card, if there is to be one, would be presented *only* at the time of new-hire employment, or at the time of application for federally funded benefits, including health care.”<sup>23</sup>

Simpson’s proposed card, then, would be required to get a job and to get health care. His insistence that this would not evolve into an all-purpose card was reminiscent of assurances from the Social Security Board in the 1930s. Anyone familiar with the 40-year erosion of the Social Security number as an exclusive, single-purpose identifier would, of course, view Simpson’s assurances with great skepticism.

Simpson had disparaged the fear of a national ID number earlier in 1991, at the only Congressional hearing ever held exclusively to study the trend. Representative Andy Jacobs, Jr., of Indiana, convened a hearing of his Ways and Means Subcommittee on Social Security and heard groups representing immigrants discourage use of mandatory identity numbers. Representatives of credit bureaus said for the first time publicly that they were highly dependent on Social Security numbers to keep straight the 450 million credit reports they issue yearly. Robert Ellis Smith, publisher of *Privacy Journal* newsletter, said in his testimony, “It is ironic that less than one year after we Americans rejoiced in the liberation of peoples in Eastern Europe we are seriously considering a means of social control that Eastern Europeans rejected soundly. One year after we rejoiced in the liberation of Nelson Mandela, we are considering a ‘domestic passport’ similar to that in South Africa.”

In the end, Simpson and other immigration reformers settled for a law enacted by the new Republican Congress in 1996 establishing a computerized system of verifying the citizenship status and the accuracy of Social Security numbers of new hires – but only as a pilot project in the immigration-intensive states of California, New York, Texas, Florida, and Illinois.<sup>24</sup> By a vote of 221-191, the House of Representatives narrowly rejected a requirement for a “tamper-proof” Social Security card or a mandatory worker ID document. The law that was passed required the Social Security Administration to evaluate options for a “tamper-proof” card. In a report issued in 1997, the agency said that to issue new cards to every American would cost from \$3,898 to \$9,231 million. The plan is feasible, the report said, “However, the issuance of an enhanced card raises policy issues about privacy and the potential for the card to be used as a national identification card.”<sup>25</sup> In its report, the agency noted with enthusiasm that at least 75 percent of all newborn infants are now being assigned Social Security numbers before they leave the hospital, as part of the Enumeration at Birth program.

It turned out that 1996, not George Orwell’s 1984, was the disastrous year for government attempts to monitor individuals by assigning them an ID number. Congress included in the immigration reform law passed that year the following requirement effective October 2000:

“A federal agency may not accept for any identification-related purposes a driver’s license, or other comparable identification document, issued by a state, unless the license or document satisfies the requirements [of displaying the

person's Social Security number on the face of the license itself or imbedding it in the document in electronic form].<sup>26</sup>

Very few people even noticed this new requirement. But when the U.S. Department of Transportation in 1998 proposed regulations to implement the Congressional mandate, thousands of citizens did take notice and registered their objections. Most of the protesters were conservative Americans, many of them reflecting the Biblical injunction against enumeration that had motivated fears among Puritan New Englanders two and one-half centuries earlier. Pushed by a bizarre alliance of the conservative Eagle Forum and the libertarian American Civil Liberties Union, conservative members of Congress took up the cause and successfully repealed the requirement, in a law passed in October 1999. Many Senators and representatives who had voted for the 1996 legislation now voted to repeal it.

But there was more in 1996. The welfare reform law that year created a duplicative National Directory of New Hires, which requires employers to report immediately to Washington the name, Social Security number, and birth date of every person newly hired in the private and public sectors. This time the intention was to catch errant parents who owed child support and should have it deducted from their paychecks. The Department of Labor was assigned to create the system, which would operate nationwide. By contrast, Senator Simpson's immigration system to detect undocumented immigrants seeking employment was created as an experiment involving only five major states.

The solemn assurance from Senator Simpson and others that these two verification systems for screening new hires would be used only for the one discreet purpose of catching illegal immigrants or deadbeat parents was not worth much. Representative Steve Chabot of Ohio, however, asked, "Would government be able to resist the temptation gradually to expand this new system, to track people, or to store more and more information on them? The answer depends on your view of government." Chabot, not Simpson, was right. After Senator Simpson had retired from the Senate, members of the House of Representatives in 1999 – oblivious to all the pledges – approved overwhelmingly two new uses for the Department of Labor database: to track down persons who have defaulted on higher education student loans and to catch persons who may be collecting state unemployment compensation and holding a job at the same time.<sup>27</sup> The Senate approved the second use, but not the first. It was a safe bet that members of Congress would try to approve new uses for the database in the future, thereby creating an all-purpose screening system for everyone in the nation.

There is still more. The welfare reform law also required all states to collect Social Security numbers when renewing or issuing licenses *of any kind*, including occupational licenses, marriage licenses, and commercial drivers' licenses. Before enacting this rule in the summer of 1996, Congress heard objections similar to those registered over the immigration measure on drivers' licenses. In the end, it deleted *non-commercial drivers' licenses* from the welfare-reform requirement. But the end result was that each state must now require Social Security numbers on a marriage license.

But, after the dust had settled and no one was looking, Congress amended the 1996 law in 1997 to delete the word *commercial*. This meant that an SSN would be necessary for *all* driver's licenses and renewals. Because the coalition of liberal and conservative groups had been successful in 1999 in repealing the law requiring *display* of the SSNs on all driver's licenses, they did not notice that Congress, with stealth, had still required an SSN to be presented to apply for a license or a renewal. Only in October 2000, when the new requirement took effect, did people notice. By then, it seemed too late to repeal it.

By means of a cruel joke by a Congressional paper-pusher or of an incredible coincidence, the new provision was indexed in the federal statutes as Section 666(a)(13) of Chapter 42! Fundamentalists who believe that the “mark of the beast” condemns anyone who is enumerated see red when they see the number 666. The Book of Revelation in the Bible says that the number 666 *is* the mark of the beast. By another bit of serendipity, the privacy protection organization Electronic Privacy Information Center in the 1990s happened to locate its office in Washington at 666 Pennsylvania Avenue, S.E.

*But there is still more.* Also in 1996, Congress, in a law allowing employees to transfer their health-insurance benefits, included a provision for “administrative simplification” of payments for health care. In the process, Congress ordered that an identifying number be issued to every doctor and medical facility and *to every patient*, whether or not the patient was paying for the health care himself or herself.<sup>28</sup> It assigned to the federal Department of Health and Human Services the task of deciding whether the health-care identifier should be a person’s Social Security number, a totally new number, or a combination of the SSN and additional digits. There was such sharp disagreement within the department over the patient ID number and the objections from the public were so great that Congress in 1998 – mostly the same elected representatives who had approved the original idea – passed a moratorium on this matter.

In the previous decade, Congress had required parents to provide their own Social Security numbers on any application for a birth certificate and, beginning in 1997, any application for a Social Security number for a child. Of course parents felt compelled to get Social Security numbers for their newborns, because a 1986 federal law now requires a Social Security number be listed for any dependent child claimed on a federal tax return.<sup>29</sup> The Internal Revenue Service claimed that in the first year after it began requiring Social Security numbers on all dependents, the number of claimed dependents dropped by seven million. The IRS assumed that taxpayers were no longer claiming these seven million persons as dependents because they were not entitled to do so in the first place and feared that they would get caught, through matching of Social Security numbers.

All of this abetted the drift towards a de facto national ID document, as did a secret directive by the Federal Aviation Administration that airlines must ask passengers to present a government-issued photo identification document. The order was issued in 1995 after an anonymous threat to blow up planes at Los Angeles Airport. There was also concern about security at the upcoming 1996 Olympics in Atlanta and concern about the trial of persons suspected of bombing the World Trade Center in New York City. The FAA refused to release the text of the directive. The agency told the public that it did not directly require identification as a condition of boarding an airplane. Airlines were directed to take alternative security precautions if a person declined to present identification.

Airlines discovered immediately, however, that the government’s directive about asking for ID, though it was secret and confusing, allowed them to detect travelers using the return portion of someone else’s discounted round-trip ticket, in violation of airline rules. In fact, they could do this *because the directive was kept secret from the traveling public*. Thus, most of the airlines used the directive to deny passage to anyone not presenting an ID. This was for revenue purposes, not for security purposes. After all the connection between assuring the true identification of a passenger and assuring that luggage was free of bombs, weapons, or contraband was tenuous.

At any rate, the directive – combined with the airlines’ enthusiasm to interpret it as authority to deny passage to passengers without government-issued ID – served to force

most Americans to carry identification whenever they traveled by airplane, without regard to the long-recognized Constitutional right to travel without undue restrictions.<sup>30</sup> Only a few Americans protested; most feared that they would be regarded as callous to airline security if they complained or they perceived the requirement as actually effective.

Americans seemed hardly haunted by the specter of a requirement to carry identity papers. A national public opinion survey in 1995 asked a cross-section of adults, "Is not having a national government identification number extremely important or not?" In response, 24 percent rated it extremely important, 30 percent said somewhat important, 20 percent said not very important, 20 percent said not at all important. Five percent were not sure. Americans' level of concern was twice as high for getting access to their own credit reports, for having food properly labeled, or for protecting the confidentiality of their personal information. It was three times as high for controlling false advertising, reducing insurance fraud, avoiding excessive debt, or controlling health-care costs.<sup>31</sup>

In the beginning of the Twentieth-First Century, the strong coercion to carry photo identification, along with the multiplying demands for Social Security numbers, had created a de facto requirement that every American have his or her "papers in order" at all times. The regimentation anticipated in 1935 was complete.<sup>32</sup>

Footnotes appear at page 46

## APPENDIX 1

Testimony of Robert Ellis Smith  
Publisher, Privacy Journal, and Attorney<sup>1</sup>

Before the Committee on Government Reform  
Subcommittee on Government Management, Information, and Technology

On Governmental Uses of Social Security Numbers and Alternatives

May 18, 2000

Over the past decade we have worked ourselves into an illogical situation that has caused disruption to the lives of many citizens and made the proper identification of citizens actually less efficient, not more efficient. The dilemma is that we are relying on a single number to authenticate the true identity of an individual, at the same time that we have made that number semi-public. The identifier is the Social Security number.

This makes it easy for an impostor to pose as another person, by authenticating identity by using the innocent person's identifier. This would not be possible if government agencies and private businesses relied less on the Social Security number to authenticate someone's identity *or* took steps to assure that the number remains a confidential bit of information. Instead, government agencies and businesses do just the opposite: they rely almost exclusively on the SSN as an authenticating device *and* make it easy for strangers to obtain someone else's number. \* \* \*

## **“Papers in Order” Mentality**

“America stands as one of the few places where citizens have the freedom to travel without internal controls – and vast open space in which to exercise that freedom.” I said that in 1991 when I testified on this subject before the Committee on Ways and Means on this same subject.<sup>2</sup> Since then we have allowed the government to coerce airlines into demanding photo identification from travelers, even on domestic flights, and so that unique freedom that I spoke of is no longer unfettered.

In writing my new book on privacy in American history,<sup>3</sup> I came across this revealing observation by a French writer in 1802 who marveled:

“From whatever part of the globe a person comes, he may visit all the ports and principal towns of the United States, stay there as long as he pleases, and travel in any part of the country without ever being interrupted by a public officer.”<sup>4</sup>

If we do not reverse the trend towards a mandatory national ID number or document, we will have lost this freedom. It is the aspect of American society that foreigners most admire. It is the absence of this characteristic that we Americans disparage in other cultures: South Africa with its domestic passport until the 1990s; Eastern Europe during years of Communist control; and Nazi Germany, when it was always necessary “to have your papers in order.”

A universal ID number or document – whether de facto or required by law – simply gives too much discretion to persons in positions of authority who stop and question innocent individuals pursuing innocent activities.

## **Dehumanization**

Being known as a number, not a name, is also dehumanizing. It allows people in authority as well as our neighbors and co-workers to treat us as less than human. Prisons are dehumanizing because a person is not known by a name of his or her choosing. Consequently, in prisons, it is easy to brutalize other people. The more our culture dehumanizes our fellow citizens, the more we can expect anti-social, criminal behavior.

## **Religious and Philosophical Objections**

Many Americans – mainly fundamentalist Christians – object to a governmental assignment of numbers for religious reasons. Under the First Amendment, that must be respected so long as those views, in the words of the courts, are “sincerely held.”

It is up to individuals, not the state, to determine how individuals identify themselves. Throughout history, assigning surnames has been a government means for social control,<sup>5</sup> and assigning identity numbers serves the same purpose, with even greater control. When our founders were drafting our Constitution, governments in Austria and Prussia were just beginning to mandate last names.

Being required to present government ID or a government number at many points in our society removes the spontaneity of American life, the informality, the intellectual risk-taking, the freedom that other cultures envy.

## **Pragmatic Reasons**

Since the early 1990s, there has been a strong pragmatic reason for protecting one's SSN: the epidemic of theft of identity. This epidemic has occurred since an unfortunate (and non-public) decision by the Federal Trade Commission in 1993 that credit bureaus may disclose or rent consumers' Social Security numbers and other identifying information "above the line" in a credit report. This means that "information brokers" or on-line "infomediaries" can easily purchase Social Security numbers and resell them on-line, often to anonymous buyers. Legislation to shut off this spigot, which leads to theft of identity, nearly passed in 1996 and Rep. Kleczka has introduced similar legislation in this session (HR 1450).

Of course, the perpetrators of theft of identity have other sources of Social Security numbers – the hallways of universities where students grades are posted by Social Security numbers, trash in payroll offices, credit reports used at their places of employment, even the pages of the Congressional Record.<sup>6</sup> But HR 220 and HR 1450 together will reduce the problem of identity theft by 60 percent or more.

There are additional pragmatic reasons for this legislation. The incidents of inaccurate Social Security numbers are so numerous that any record linkage based on them will be seriously flawed. The SSNs is not totally anonymous; a stranger can tell from what state it was issued and approximately what year.

## **Alternatives to Use of SSNs**

Limiting collection of SSNs will not be disruptive. With today's database technology, the SSN and other personal identifiers make using SSNs or any numerical identifiers unnecessary.

Using an algorithm to digitize a person's full name and other identifying information (birth date, address, occupation, or self-chosen PIN) keeps track of millions of data files in many organizations. Proprietary forms of this methodology include SOUNDEX, Alpha Search, and SearchSoftwareAmerica. Federal Express, the National Insurance Crime Bureau, VISA, and Wausau Insurance use variations of these techniques. The state of Maryland keeps track of millions of motor-vehicle files with these methodologies.

An additional advantage is that a search for a file using these methods will bring up several near matches, so that a clerk – or artificial intelligence in a computerized system – can select the accurate match. Thus, an error in one data element will still produce an accurate match. This is not true when data systems rely on one numerical identifier, like a Social Security number.<sup>7</sup>

Organizations like MIB Inc., which stores millions of computerized medical diagnoses on Americans for insurance companies, do not rely on Social Security numbers at all. Long ago, IBM discontinued using the number as an employee number. By law in Wisconsin and in Arizona, university systems must keep track of thousands of students without

requiring a Social Security number.<sup>8</sup> For many years, Stanford University has used a unique lifetime Stanford University ID number, not the SSN. Genealogists keep track of millions of individuals without the benefit of any numerical identifiers. The Church of Jesus Christ of Latter-Day Saints (Mormon), which maintains the world's largest database of information about individuals, assigns a random ID number to each individual; it does not rely on Social Security numbers.<sup>9</sup>

Managers of most criminal justice information systems are smart enough not to rely on Social Security numbers to keep track of millions of computerized files on individuals.

Aside from technological alternatives, governmental agencies could comply with the bill simply by creating a randomly selected alternative ID number of nine digits for individuals who desire an alternative to a Social Security number.

### **Inaccuracy Rates**

Let us not believe that Americans can be relied on to handle only one numerical identifier and that “everybody knows his or her Social Security number.” In fact, studies show that many persons inadvertently provide an incorrect Social Security number from memory. Many people accidentally provide a spouse's number. Studies show a much higher accuracy rate when an individual has to consult a document when providing an identifying number, not relying on memory. The accuracy rate will undoubtedly be far higher if individuals present a machine-readable card for each discrete transaction – as they do for credit-card purchases.

For years, Canadians have had at least two identifying numbers – the Social Insurance Number (SIN) for the government-run pension system and a health-care identifier for each province's government-run health-care program. This is the way it should be in a democratic society – separate identifiers for separate purposes.

A single all-purpose number or identifier sounds convenient – until you think of the vast powers that this gives the people in charge of demanding the ID document.

### **Suggestions for the Bill**

HR 220 will retard the trend towards requiring a national ID number and it will require government agencies to use more care in identifying individuals and in authenticating their identities. I suggest that the sub-committee consider adding to HR 220 a provision permitting state tax authorities to use the Social Security number as an individual taxpayer ID, because this is a purpose that is compatible with uses by the IRS authorized in the bill.

However, I suggest that the subcommittee make clear in the bill that there is an absolute prohibition against any government agency requiring a Social Security number for a child 16 years or younger, except for a child earning reportable income or desiring a Social Security number for employment.

There is time enough for each American to decide for himself or herself when and under what circumstances he or she will be labeled with a governmental number.

Prohibiting demands for SSNs on children would end (1) the IRS requirement that a Social Security number must be reported on Form 1040 for any child who is claimed as a dependent,<sup>10</sup> (2) the requirement that a Social Security number be secured for an infant if a family receives public assistance, (3) the coercion in many public school systems that children be enumerated by the Social Security Administration during the school day, and (4) the Department of Agriculture requirement that all members of a household must provide Social Security numbers if one member receives food stamps or reduced-price school lunches.

Each of these requirements, especially the Form 1040 requirement, has forced parents to get governmental ID numbers on their children at birth. The children, of course, have no opportunity to consent. They and their identifying numbers become part of governmental data systems from birth.

Thousands of parents like myself have declined to have their children enumerated in this way, and ought to be able to benefit from deductions and credits for their dependents if they can prove the existence of the child (and there is no suspicion that the child is claimed as a dependent by someone else).

Footnotes appear at page 47



## **APPENDIX 2**

### Excerpts from Privacy Journal

#### **From Privacy Journal, July 1996**

#### **ALTERNATIVES TO SSN USE**

Organizations need to be extremely cautious about collecting, using, and disclosing Social Security numbers of customers or other individuals.

There are many reasons for this: First, stolen or misappropriated Social Security numbers lead to thousands of cases of “theft-of-identity” or “credit theft” each month. In addition new immigrants without documentation appropriate strangers’ Social Security numbers as a means to get a legal identity. If lists of persons’ Social Security numbers are available even within an organization, employees can be bribed or corrupted to sell them, or can misuse them themselves.

Second, with someone else’s SSN, a stranger can impersonate that person over the telephone, in person, or on-line and retrieve personal information about the individual. The Internal Revenue Service, for instance, will disclose detailed tax information to anyone who provides a Social Security number of an individual taxpayer. Many banks and brokers do so as well.

Third, the number is not totally anonymous – strangers can tell in what state it was issued and approximately what year. Fourth, the incidents of inaccurate SSNs are so numerous that any record linkage based on the SSNs will be flawed. Fifth, many individuals have a sincerely held religious or philosophical objection to being enumerated.

With today’s database technology, the SSN and other personal identifiers are less necessary than in the past. A search for information on Winston Smith, for instance, when all you have is first name, last name, and home address, telephone number, or date of birth is a reasonable search today whereas in the past such a search would have required more computing resources than were available at reasonable cost.

MIB Inc. (formerly Medical Information Bureau) is an example of an organization that stores millions of computerized records on individuals with no numerical identifiers at all. This is done by using an algorithm to digitize a person’s full name and other identifying information (birth date, address, or occupation), in order to locate a match in the data base. Proprietary forms of this methodology include SOUNDEX, Alpha Search, and SearchSoftwareAmerica. A search for a file will provide the closest match, based on a comparison of the data elements. Thus, an error in one data element will still produce an accurate match. This is not always true when only one numerical identifier, like the Social Security number, is used for a search in a data base. Large organizations like Federal Express, National Insurance Crime Bureau, VISA, and Wausau Insurance use variations of this methodology, without the need for Social Security numbers.

When Social Security numbers must be kept on individuals (as in the case of the personnel department), the numbers can be encrypted so that they may be used for linkage of data files, as necessary, without revealing the actual digits of the SSNs. The

resulting “record linkage number” will not permit a stranger to derive the SSN even if the linkage number becomes publicly known (see “Encrypting Personal Identifiers” by Eleanor Marx, *HSR: Health Services Research* 29:2, June 1994).

Still another alternative, if an office must have a numerical identifier to make an accurate match of a record or to detect duplicates, is to ask a customer for only the last four digits of his or her SSN. This maintains the anonymity and the confidentiality of the complete number, but in most cases will be adequate for establishing matches. It is also a number that each person can easily remember.

An organization can avoid most of the dangers of keeping Social Security numbers by establishing its own unique account number. Clearly this will require extra effort. One argument against this has been that most people don’t remember a unique identifier. However, many studies show that a sizable percentage of people inadvertently provide erroneous Social Security numbers, when asked. Records have a higher accuracy rate when applicants are asked to consult a document – or use an electronic device – when providing an ID number, not to rely on memory.

In any event, the Social Security number is not a reliable means for establishing personal identity, because it has been so readily available and has been subject to widespread use by impostors. Administrators should rely, instead, on what has always been the best means of establishing personal identity – personal recognition. Where this is not practical or possible, there are adequate surrogate methods, like signature comparison, passwords, a personal identifying number known only to the individual (PIN), encryption for authentication, digital or digitized signatures, identity documents with photographs, fingerprint comparison (so long as there is no stigma or compulsion), and forms of biometrics.

**From August 1996:**

*In response to the article in our July issue concerning alternatives to Social Security numbers as identifiers for organizations maintaining large databases, we received several suggestions through the Internet. Here are some:*

**From Washington, D.C.:** The state of Maryland uses Soundex (of name and birth date concatenated [linked in a chain]) both for driver and vehicle registrations.

**From Cary, N.C.:** As a long-time Virginia resident, I envy Maryland’s use of Soundex. My county library uses 14-digit numbers on library cards.

**From Cambridge, Mass.:** “Against Universal Health-Care Identifiers” in the *Journal of the American Medical Informatics Association* 1:316-319, 1994, by Dr. Peter Szolovits of MIT and Dr. Isaac Kohane of Children’s Hospital in Boston, discusses a number of ways in which cryptography-based health care identifiers can be used to preserve privacy while remaining manageable for typical medical purposes. This is publication #49 (in Postscript format) at <http://medg.lcs.mit.edu/people/psz/publications.html>.

**From Yardley, Pa.:** One way is to use a simple scheme like three letters from last name, the first initial, and some digits; another is just to use sequential numbers. Another is an MD5 hash of the full-name string [a one-way mathematical function as a stand-in for the name that makes translation back to the original name impossible]. This is always unique for a unique string, so you might need to add some numbers.

**From Madison, Wis.:** When I was working on the development of the Wisconsin Student Data Handbook – which was supposed to allow Wisconsin’s public schools to track their students, about a million of them – we tried to develop what we called an “SSN surrogate,” also of nine bytes per individual. It involved an algorithm which combined year, month, and date of birth with sex and two consonants each extracted from the first and middle names. (Last names were too volatile.) We figured it would provide reasonably unique codes for up to about ten percent of the student population, which experience showed was about the number who couldn’t or wouldn’t give us a real SSN to use. Even with SSNs we knew we were going to have to add two bytes (one assigned locally, one at the state level) to break ties. Yes, there are duplicate SSNs, possibly because of honest error or misunderstanding but also possibly because of fraud. If we run across duplicate ID codes, we just increase that tie-breaker byte. We anticipated that the main stumbling block would be failure to get full middle names from most kids. We tested it and it worked pretty well but we never had a chance to implement the plan as funding got cut.

**From Cyberspace:** I worked with a banking software company that set up employee records simply by exact hire date and time. Since they never hired anyone at exactly the same time, it gave each person a unique number. You could do the same for any database in which records are added gradually one at a time – just number them based on exact date and time added.

**From Palo Alto, Cal.:** Here at Stanford University we made a decision long ago not to use SSN for identification except where required by law (payroll taxes, for example). We use a unique Stanford University ID (SUID), which is a lifetime number and applies to all students, alumni, faculty, staff, and patients. It serves all the same purposes that the SSN would do if it were used. It does require more attention than the SSN would to ensure uniqueness and prevent duplication. But it does have the advantage that matching with any government files which contain SSN is much more difficult. The easiest way for an organization to switch over to its own ID number might be to create new nine-digit numbers so that all programs that use SSNs now will continue to work.

**From Felton, Cal.:** Look into the work of genealogists, since they are dealing with people without SSNs and are using large data bases with CD ROMs and such.

**Response:** We checked with the Church of Jesus Christ of Latter-Day Saints (Mormon), which maintains the world’s largest genealogical data bases. It assigns a random ID number in its data base of 20 million family relationships and uses a simple alphabetical search in its other data base of 200 million individuals. It does not need to use Social Security numbers.

**From September 1996:**

**From Stanford, Cal.:** A letter in the August issue said that Stanford University uses a unique identifying number in place of the Social Security number (except where required by law). Not true. Stanford for many years has used the SSN to identify individuals to medical insurance companies, which facilitates the compilation of medical-history dossiers by insurance companies, even though there is no legal requirement that they do so. When I complained in 1985, they gave me a phony SSN to use. As expected, my W-2 arrived carrying the phony SSN, which took some hassling to straighten out.

**From October 1996:**

## **CONGRESS OUT OF STEP ON SSNs**

Just when motor-vehicle registrars and other government officials have discovered the dangers of displaying Social Security numbers, Congress is requiring the number to appear on the face of every driver's license in the nation.

In the immigration reform legislation enacted in the final days of the Congressional session, a state is required to collect a Social Security number from an applicant and display it on or in the driver's license document so that it can be read by a person or by a machine.

The requirement is effective for new applications and renewals after October **in the year 2000**. The original legislation, S 1664, was incorporated into the omnibus appropriations bill signed Sept. 30 (PL 104-208).

The American Association of Motor Vehicle Administrators did not oppose the legislation, although many state administrators object to displaying the SSN on the face of the document. In fact, California prohibits it.

One mindful administrator is Registrar Jerold Gnazzo in Massachusetts, who recognizes the dangers of "theft of identity" and now urges citizens to have the registry use a random ID number and remove the SSN from their permits. Eighty percent of the 4.8 million drivers in Massachusetts have SSNs on their licenses, even though the registry is required to notify them that they do not have to.

For nearly a decade the registry in Massachusetts fought in court for the right to be able to *disclose* Social Security numbers.

The dangers of collecting Social Security numbers by DMVs became clear this summer when a computer consultant in Oregon procured the list of all drivers' home addresses and vehicle ID numbers in the state registry and posted it on a World Wide Web site (although Social Security numbers were not included). "I wanted to remove the cloak of anonymity that drivers had," he said. After many motorists and the governor complained, the man agreed to discontinue his posting. One of those who was listed – and who called the listing "horrendous" – is Benson Schaeffer of Portland. His daughter, "My Sister Sam" TV star Rebecca Schaeffer, was murdered in Los Angeles in 1989 by a stalker who learned her home address through open motor-vehicle records in California. "Unfortunately I know from personal experience," he said.

The Massachusetts registry had Sen. Edward M. Kennedy, D-Mass., successfully amend the provision in the immigration bill, to exempt any state that verifies Social Security numbers with the Social Security Administration. Massachusetts is the first state to do this; California is the only other state doing it.

The Social Security number requirement is an example of legislation passed by the 104th Congress that affects all citizens, not just the targets of the specific bill. The welfare reform act, like the immigration bill, contained a provision requiring Social Security numbers to be collected from applicants for a driver's license. It did not require displaying the number. But that provision was weakened before it was enacted so that

individual driver's licenses (as opposed to commercial licenses) are not affected [see PJ Aug 96].

Until January, Kentucky displayed the Social Security number as the driver's license number, but it responded to concerns about "theft of identity" and passed a law last year making that optional. By law, drivers in Virginia got that option in September 1995.

The immigration law will wipe out laws in Indiana, Iowa, Minnesota, New Hampshire, and Oklahoma that make SSNs voluntary on driver's license applications.

The Postal Service, after years of disparaging privacy concerns, now alerts consumers to the dangers of identity theft. An advisory issued by the Chief Postal Inspector this month says,

*Identity fraud is digging deep into consumers' pockets. The perpetrator may use a variety of tactics to drain your finances: posing as a loan officer and ordering your credit report (which lists account numbers); "shoulder surfing" at the ATM or phone booth to get your PIN code; "dumpster diving" in trash bins for unshredded credit applications, canceled checks or other bank records; or, until recently, notifying the Postal Service to redirect your mail to the address of choice, such as a mail drop, which allows anonymity. It may be months before you're aware you're a victim.*

*Do you carry your Social Security number in your wallet? Consider this: that nine-digit code gives crooks access to your medical, financial, credit, and educational records. There are no legal restrictions on private company use of Social Security numbers. What's worse, most states still use your SSN for your driver's license number - a policy that is, fortunately, changing."*

Clearly the Postal Service does not talk to the House or Senate.

**From October 1999:**

### **CONGRESS REPEALS 1996 LAW REQUIRING SSN ON DRIVERS LICENSE**

The transportation appropriations bill as approved by Congress and signed by the President this month includes an amendment that will repeal the 1996 federal law requiring Social Security numbers to appear on the face of each driver's license.

As approved by both houses this month, the amendment in HR 2084 repeals Section 656(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which required public display of Social Security numbers. The apparent purpose was to allow for the matching of records in order to disqualify illegal immigrants from government programs. [But see the following story from February 2001 concerning SSNs on applications for licenses.]

There were few objections when the provision was first enacted [see PJ Oct 96]. But when, in the spring of 1998, the U.S. Department of Transportation was obligated under the law to draft regulations, religious fundamentalists and political conservatives immediately organized a grass-roots effort to squelch the regulations. They discovered that many of the Republican Members of Congress whom they approached had voted for the provision in 1996 but now wanted to back away from it. By October of last year, the groups succeeded in getting Congress to place a one-year hold on the regulations. Then

they succeeded in getting House Majority Leader Dick Armey, R-Tex., to champion a permanent ban.

Sen. Richard C. Shelby, R-Ala., chair of the Senate Appropriations Subcommittee on Transportation, successfully kept the repeal alive during House-Senate negotiations. Thus, after the President signs the transportation-funding bill, there will be no requirement that driver's licenses display the Social Security number in order to be acceptable as ID by federal authorities.

At the same time, the Senator from Alabama fended off repeated objections from the direct marketing industry to a provision that he proposed to require the consent of individuals before direct marketers and others could get driver's license information. Originally, the proposal on drivers' records in this session had two purposes. First, it would link DMV privacy protections to federal funding, to cure objections that a 1994 federal law allowing drivers to "opt out" was an unconstitutional infringement on states rights, an issue the U.S. Supreme Court is currently considering. Second, the change would alter a little-noticed part of the 1994 law that permits release of motor-vehicle records, including driver's-license photographs, to anybody who asserts that the purpose is fraud-prevention or detection [see PJ Feb 99].

Shelby upped the ante by going for an "opt-in" requirement. This survived an assault by direct-marketing lobbyists. Thus, "express consent" from a person will be necessary before a state may release motor-vehicle address and phone lists for marketing – a prospect that lobbyists for the industry said last month would effectively shut down their crucial access to this information. But the link to federal funding, the original purpose of the proposal, did not survive. The final language about this is ambivalent, but Shelby's office insisted that the new protections are imposed on state motor vehicle departments irrespective of federal funding to the state.

By also insisting on privacy protection in the issue of "affiliate-sharing" in the financial modernization bill under consideration (HR 10), Shelby has cultivated a high profile in defense of privacy on Capitol Hill. Shelby and Rep. Edward Markey, D-Mass., were successful thus far this month in insisting that the sharing of personal information by affiliates of financial corporation conglomerates be limited by some sort of opt-out opportunity for consumers. The forum for this debate was the House-Senate conference that is convened to reconcile differences between the House version and the Senate version of a bill that is passed by both houses.

**From May 2000:**

### **READING PRIVACY JOURNAL'S MAIL**

**From Denver:** Everyone assumes that these private-sector databases automatically have their Social Security number and I think they probably have mine. But I don't want to give it to them if they don't already have it. The problem for me is that my lease has expired and I must get an apartment swiftly. I have *never* given my SSN to any landlord, but now it has become standard procedure for landlords to demand it. My banker has it. I seem to recall I could not get my auto insurance without giving my SSN also. My reason for wanting to resist if it's not too late is simply that too much data is being tied together in an effort to make everyone an open book, which we all know can hurt us in future transactions or make us victims of more junk mail. I have examined many Web sites unable to answer my curiosity.

**From Mesquite, Tex.:** Your advice in *Bottom Line Personal* in March said, “Disclose your Social Security number to private companies only when there are tax consequences. Most insurance companies and some credit card companies will back off if you refuse to give your SSN.” If anyone refuses to give their Social Security number, they would not have a phone, electricity, gas, water, garbage pickup, or medical insurance. Doctors and hospitals will refuse medical attention. Credit card companies will not issue a credit card. They use SSNs to obtain credit history from credit bureaus.

**Response:** Of course, phone companies, utilities, creditors, insurance companies, and government agencies will turn down your application when you do not provide a Social Security number. They will do it a second time, and a third. When you seek a copy of your own credit report, the credit bureau will insist on your SSN. You have to try three or four times. You have to be persistent and make sure that you find someone in the organization who understands your concern and will waive the SSN requirement. It works. When it does not, shop elsewhere. Credit bureau staffs will tell you that an SSN is not a required element in a credit report, because many consumers don’t provide one. If you plan ahead and are willing to get a “no” three or four times, you will find that many organizations will process an application without any SSN.

**From February 2001:**

### **CONGRESS PLANTS A TIME BOMB IN MOTOR-VEHICLE OFFICES**

Just after a coalition of civil-liberties groups and conservative and Christian fundamentalist groups had beaten back a Congressional proposal to require Social Security numbers displayed on each driver’s license, Congress covertly enacted a requirement that states collect Social Security numbers on license applications and renewals.

The new requirement became effective last October, prompting significant complaints to Congressional offices and public-interest groups. Last month, Michigan’s Secretary of State filed a federal lawsuit saying that the requirement violates “the fundamental right to privacy secured to the people under the Michigan and U.S. Constitutions.” *Michigan v. U.S.*, 5:01-CV-01 (W. D. Mich., Jan. 4).

The suit alleges that the requirement is not related to the collection and enforcement of child-support orders, which was the apparent rationale. (Secretary of State Candice Miller said that Michigan was doing quite well collecting child-support payments without the new requirement.)

Failure of a state to collect Social Security numbers (or perhaps “a number other than the Social Security number”) could result in a loss of funding from the federal Department of Health and Human Services. To Michigan that means \$900 million, including an immediate loss of \$20 million in incentive funds, according to Miller.

“The role of government should be to protect your personal privacy, not be invading it. No wonder people are afraid and talk about Big Brother watching them,” said Miller when she filed the lawsuit in Grand Rapids Jan. 4.

In 1996 Members of Congress, in an attempt to track down parents not supporting their children, originally proposed requiring SSNs to apply for any license, including “a

driver's license." After objections, the language in the final bill was changed to "a commercial driver's license." Congress then bowed to pressure from citizens groups and repealed a separate law that required that SSNs be displayed on the license. But, after the dust settled and no one was looking, it amended the 1996 law in 1997 to delete the word *commercial*.

In response to requests, the ACLU in Rhode Island secured a couple of tiny concessions. The state had been requiring SSNs on state identification cards ("non-driver's licenses"), requiring presentation of a Social Security card, and denying licenses to persons who do not have an SSN, all of which is not required by law. The Department of Health and Human Services in 1999 issued a statement saying, "The act does not require an individual have a Social Security number as a condition of receiving a license."

"The new policies have been arbitrarily enforced against Hispanics," said Steven Brown of the ACLU in Providence, R.I.



## APPENDIX 3

### Proposed Model Legislation for Protecting Social Security Numbers 2001

1. “It shall be illegal to buy or sell the Social Security number of a person.” [This is the source of much identity theft; it is always a secondary use of the SSN; and it is inconsistent with using the SSN as an *authenticator* of personal identity.]
2. “No person shall be required to provide a Social Security number on an application for credit or on a request for a copy of one’s own credit report under the Fair Credit Reporting Act.” [The FCRA merely requires satisfactory proof of identity to see one’s own credit file. Use of SSNs to make a match between a requested credit report (by a credit grantor) and a credit report in a credit bureau’s system has been the cause of confusion for credit grantors, nightmares for consumers, and identity theft. If credit bureaus did not rely on SSNs to make a match, 80 percent of identity theft would cease. There is a long list of case law to support the need for this provision.]
3. “No person shall be compelled or coerced into providing a Social Security number for any transaction unless there are income-tax consequences in the transaction or there is relevance to Social Security, Medicare, or Medicaid benefits. No person shall be compelled or coerced into providing a Social Security number on an application for employment until there has been a firm offer of employment. Any application for employment requesting the Social Security number prior to a firm offer of employment shall state that the request is voluntary.” [This would essentially freeze demands for Social Security numbers in a way least disruptive to organizations currently relying on SSNs. It would tie demands for Social Security numbers to the two original purposes (SSA administration and federal taxes) – two uses that are at least anchored in long-standing law. Placing SSNs on job-application forms increases the risk of exposing them to fraudulent users of SSNs.]
4. “No elementary or secondary school or institution of higher education shall use a student’s Social Security number as a student identification number.” [An alarmingly high number of identity theft frauds originate from SSNs taken from universities. Deterring school systems from using the SSNs as a student ID number will permit parents to delay labeling their children with numerical IDs.]

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## Footnotes

<sup>1</sup> James H. Cassedy, *Demography in Early America, 1600-1800* (Cambridge: Harvard University Press, 1969), p. 70.

<sup>2</sup> Quoted in David J. Seipp, "The Right to Privacy in American History" (Cambridge: Harvard University Program on Information Resources Policy, 1976), second version, p. 29.

<sup>3</sup> Mandatory registration for the Selective Service System continued even after World War II, but Congress did not enact President Harry S. Truman's proposal in 1948 to make military training universal for all males. During the War in Vietnam a lottery system for enlisting military personnel was instituted in 1969. Congress and President Richard M. Nixon permitted the selective service law to expire in 1973, but mandatory registration for males at their eighteenth birthdays was reinstated in 1980. Still, the requirement that young men enlist in the armed services, as opposed to merely register for a possible draft, has not reoccurred since the Vietnam war years.

<sup>4</sup> Arthur J. Altmeyer, *The Formative Years in Social Security* (Madison: University of Wisconsin Press, 1966), p. 68-71.

<sup>5</sup> Social Security Administration, "Privacy and Customer Service in the Electronic Age" (November 1997).

<sup>6</sup> "Privacy and Customer Service in the Electronic Age."

<sup>7</sup> Alan F. Westin: *Privacy and Freedom* (New York: Atheneum, 1967), p. 304.

<sup>8</sup> *Records, Computers and the Rights of Citizens, Report of the Secretary's Advisory Committee on Automated Personal Data Systems, U.S. Department of Health, Education and Welfare* ("HEW report") (Washington: U.S. Government Printing Office, 1973), p. 112. Also published by The MIT Press, Cambridge, Massachusetts, 1973.

<sup>9</sup> Public Law 87-397, 26 U.S.C. 6109.

<sup>10</sup> Bank Secrecy Act, 31 U.S. Code 1051.

<sup>11</sup> Omaha *World-Telegram*, November 18, 1981, p. 34, *Chicago Sun Times* News Service), quoted by Robert Ellis Smith, *Report on the Collection and Use of Social Security Numbers* (Providence, R.I.: Privacy Journal, 1990), p. 3.

<sup>12</sup> HEW report, p. 131.

<sup>13</sup> Social Security Administration, "Social Security Number Task Force Report to the Commissioner" (May 1971).

<sup>14</sup> HEW report, p. 121.

<sup>15</sup> HEW report, p. 122, note.

<sup>16</sup> 5 U.S. Code 552a (note). The Privacy Act covers the federal government only, except for this provision on Social Security numbers, which applies to all levels of government.

<sup>17</sup> *Computerworld*, October 4, 1976, quoted in Smith report on SSNs.

<sup>18</sup> *Jensen v. Quaring*, 472 U.S. 478 (1985), 728 F.2d 1121 (8<sup>th</sup> Cir. 1984).

<sup>19</sup> *Bowen v. Roy*, 476 U.S. 693 (1986). Judge Muir's intriguing decision is at 590 F. Supp. 600 (1984). The details about the trial are recounted in the Jurisdictional Statement by the Department of Justice before the U.S. Supreme Court.

<sup>20</sup> *Greidinger v. Davis*, 988 F.2d 1344 (4<sup>th</sup> Cir. 1993).

<sup>21</sup> Many national ID numbers in Scandinavia, Israel, and elsewhere are issued sequentially at birth and can identify an individual for life, unlike our Social Security number, which has an imperfect numbering system based on the state of issuance and, roughly, the time of issuance. Strictly speaking, it is not required of every citizen (yet). There are persons with more than one number and there are numbers being used by more than one person.

<sup>22</sup> *Privacy Journal*, April 1975, p. 3.

<sup>23</sup> Alan Simpson, "U.S. Needs System to Verify Eligibility for Employment," *The Plain Dealer*, Cleveland, *Dallas Morning News*, and other newspapers, August 14, 1994. See also Robert Ellis Smith, "The True Terror is in the Card," *The New York Times Magazine*, September 8, 1996, p. 58.

<sup>24</sup> Sec 656(b) of the Immigration Responsibility Act 1996, 42 U.S.C. 653(j).

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<sup>25</sup> Social Security Administration, *Report to Congress on Options for Enhancing the Social Security Card*, September 1997.

<sup>26</sup> 5 U.S. Code 301 (note). The repeal was included in the 1999 Department of Transportation appropriations bill, Public Law 106-69.

<sup>27</sup> The authorization to use the database for additional purposes was included in HR 3073 in 1999; it was not enacted.

<sup>28</sup> 42 U.S. Code 1320 d-2(b).

<sup>29</sup> Birth certificates, 42 U.S. Code 1305, 42 U.S. Code 607, 42 U.S. Code 602. Applications for a minor's Social Security number, 42 U.S. Code 405(c)(2). Minor dependents on a tax return, 26 U.S. Code 6109(note).

<sup>30</sup> *Kolender v. Lawson*, 461 U.S. 352 (1983), saying that citizens are not required to carry identification with them. *Kent v. Dulles*, 357 U.S. 116 (1958), "[Travel] may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values." And *Aptheker v. Secretary of State*, 378 U.S. 500 (1964).

<sup>31</sup> Louis Harris and Associates, *Equifax-Harris Mid-Decade Consumer Privacy Survey 1995* (New York, N.Y.: Louis Harris and Associates 1995).

<sup>32</sup> A version of this text originally appeared as a chapter in Robert Ellis Smith, *Ben Franklin's Web Site: Privacy and Curiosity From Plymouth Rock to the Internet* (Privacy Journal, 2000).

## Footnotes for Appendix 1, Testimony of May 18, 2000

<sup>1</sup> Since 1974, Robert Ellis Smith has published *Privacy Journal* newsletter, based in Providence RI. [www.privacyjournal.net](http://www.privacyjournal.net). He is the author of several books on privacy and has testified before Congress and state legislative bodies on different aspects of the issue. *Privacy Journal* has published "Report on the Collection and Use of Social Security Numbers" 1993).

<sup>2</sup> Subcommittee on Social Security, Committee on Ways and Means, February 27, 1991.

<sup>3</sup> Robert Ellis Smith, *Ben Franklin's Web Site: Privacy and Curiosity from Plymouth Rock to the Internet* (Privacy Journal, Providence RI, 2000). One chapter in the book traces the history of Social Security numbers and the trend towards a national ID requirement.

<sup>4</sup> *Ben Franklin's Web Site*, page 307, quoting Francois Andre Michaux.

<sup>5</sup> James C. Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998).

<sup>6</sup> *Congressional Record*, p. S2546, March 20, 1996, first reported in *Privacy Journal*, December 1996.

<sup>7</sup> *Privacy Journal*, July 1996.

<sup>8</sup> Wisconsin Statutes 118.169. Arizona Revised Statutes 15-183. New York now bans display of the number as a student ID on state campuses, Chap. 214, Laws of 2000.

<sup>9</sup> *Privacy Journal*, August 1996.

<sup>10</sup> 26 US Code 6676(e).

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