

**PRIVACY OF SOCIAL SECURITY RECORDS**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
SOCIAL SECURITY AND FAMILY POLICY  
OF THE  
COMMITTEE ON FINANCE  
UNITED STATES SENATE  
ONE HUNDRED SECOND CONGRESS

SECOND SESSION

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could go down as being one of the traditional lies to the American people on par with "your check is in the mail," perhaps.

Because it has been expanded for uses of tax purposes, and it has been picked up by the driver's license agencies; it is now required to be used by banks to report interest; and, as all those purposes were being advanced, we never had anyone on the other side of the coin arguing the privacy perspective.

This goes to another issue that I would like to touch on briefly: the need for an independent data protection office that can make that case, because there are always competing interests—

Senator MOYNIHAN. Before you go by that—and take all the time you want—I want to be clear that the history of that statement at the bottom of the card, "not to be used for identification," comes from the sensitivities and the concerns of the people who founded the Social Security Administration in the middle of the 1930's when Nazi Germany had an identification card; it began in Europe.

And those persons who opposed the general idea of Social Security itself said, you see, they are setting up an identification card, and there was much hoopla that went on about that. It was just plain concern for the issues that you raised that this statement was put on the card.

But it was inevitable that, in time, people would find it in their interest to use their Social Security number to explain who they are.

Mr. HENDRICKS. Yes. Absolutely. But I think—

Senator MOYNIHAN. It was not a lie, it was—in the end, what the founders of Social Security hoped would not happen did happen, but it was not their intention.

Mr. HENDRICKS. Right. And I think the example of Nazi Germany is an excellent one in terms of how personal information can be misused for the most horrendous types of harassment, and persecution, and murder.

That is why, in Germany, for instance, they have a very high level of consciousness about their Census data, and other privacy issues as well. That could be the subject of another hearing, I am sure.

But in talking about the ill-conceived uses of the Social Security number, there are two proposals that were recently shot down, and I am very happy about that because I think it symbolizes a turning of the tide and maybe the beginning of the reversal of the expansion of that number.

One was this immigration proposal that would have created a national work identity card. A job applicant would have had to present this to prove he was here legally to work. One idea was to create a call-in database for employers.

We always had a tradition of opposing a national identity card here, and the proposal was shot down.

There was a more obscure proposal this year that would have created a bank insurance fund and the Treasury Department would have taken the Social Security numbers of every American's bank account and put it into a nationwide computer to ensure that if a bank failed, no one would be paid more than the \$100,000 of bank insurance to which they were entitled.

It was sort of a ludicrous proposal that was eliminated, I think, on the House side, in the Bank Insurance Fund legislation.

Senator MOYNIHAN. But I am going to take the liberty of interrupting again.

Mr. HENDRICKS. I welcome your interruptions, Mr. Chairman.

Senator MOYNIHAN. When we set out to make a tamper-proof Social Security card—one that is plastic, if that would be the optimal arrangement; one that could easily be checked; is this number a legitimate number—one of our concerns was that Hispanic Americans approaching an employer who has increasing penalties for employing illegal aliens.

Well, they look at the individual and he is Hispanic, and they look at the Social Security card, and it is a battered piece of cardboard that could be printed in anybody's basement, and they say, well, maybe we do not need to hire this person.

Mr. HENDRICKS. And then you would have outright discrimination in that context.

Senator MOYNIHAN. Yes.

Mr. HENDRICKS. Again, as Morton Halperin mentioned, the Social Security number has become an identification number of choice in the private sector in many contexts, and that is where it is not really mandated, and that is where I think, again, that we could turn it around. And I receive several dozen complaints per year from people who are just very irate about how the purposes for which Social Security number is being asked.

If I say it is a cowboy atmosphere, then the corollary to that is if you want to protect your privacy, sometimes you have to act like Jesse James, a lone gunman, to protect your privacy.

A New Jersey man named Don Pensa who just did not want to give out his SSN. When the DMV in New Jersey asked for it, he convinced them that they could use another number.

When the FAA wanted it for his pilot's license, again he debated with them and stopped them. When the fuel oil company said they would not deliver him fuel unless he gave it, he said, I will go to another company, and they changed their mind.

Unfortunately, his health insurance company, the health insurance company refused to give him health insurance unless he gave them the Social Security number. He got into a 5-month long battle with them, and, with the help of a little publicity, he was finally able to force the insurance company to back down. Another example of something I learned recently and information I would like to turn over to your subcommittee, is that a Long Island man told me that he was being forced to sign a waiver for all of his Social Security retirement benefits for an insurance company that he has a disability policy with.

Senator MOYNIHAN. Oh. We would like to know about that.

Mr. HENDRICKS. Yes. And he had been very frustrated in trying to do something about this. And now that I am here, I realize that this is where he can get the most help. So, I will provide that information to your staff. It is a very troubling example.

Senator MOYNIHAN. Yes, indeed. Just hold one second, will you?

Our distinguished counsel, Mr. Lopez, is almost certain that that is illegal, and we will find out soon. I see Mr. Enoff nodding his

head in agreement. That is illegal. I want to know the name of that company.

Mr. HENDRICKS. Yes. Well, we will gladly provide you all that information and be waiting to report on the activities.

Again, I thank Morton Halperin for mentioning this Social Security Administration match that they were doing secretly under the former Commissioner with the TRW and the Citicorp.

One thing that Privacy Times discovered by working with the Senate Aging Committee staff is that when Citicorp, for instance, submitted a database of 3 million people to match with SSA, nearly 1 million of the Social Security numbers turned out to be incorrect, presumably in Citicorp's database.

And TRW did a 150,000-person database, and, again, about one-third of the numbers turned out to be incorrect. So, that points to the issue that this is not really a reliable personal identifier.

It is not a reliable personal identifier, one, because it is used for other purposes than it is originally intended, and, two, because, as we know, SSN's are stolen, lost, shared, intentionally altered, or accidentally transposed.

Another issue is emerging in Fair Credit Reporting Act amendments, as the credit bureaus are pushing very hard to make the Social Security number an official identifier. This despite the experience that TRW had, and that we in the privacy community are very much opposed to it.

The Privacy Act has a section on the Social Security number, but the whole point of my testimony is to show that they are virtually meaningless.

In terms of general solutions, again, Morton Halperin has already said that about amending the Privacy Act and a recommendation from this committee would be useful there.

I think we can go further and start exploring the possibility of a moratorium on the use of all SSN's that are not already authorized by law. That will give us a pause and a chance to find out where we are and maybe come out with a good policy.

Borrowing an idea from something that is in the Freedom of Information Act amendments, I think that any proposal in the future to expand the use of the SSN must by dicta come before the subcommittees of jurisdiction; this subcommittee and the one in the House, so the proposal can have the benefit of your expertise, and you can weigh all the competing interests and really make the right policy decision.

It is when these policies are slipped through the back door and go through other subcommittees that really do not have your expertise that sometimes we get bad policy in this area.

Amending the Privacy Act—and just a word on the issue of a data protection board. This is a proposal that is introduced by Congressman Wise in the House.

I have studied other countries as well, and in Canada, the Privacy Commissioner then, John Grace, did a study of how their social insurance number, appropriately called the S-I-N, or SIN number, was being used throughout their Federal Government.

And he found, in a lot of cases, they did not need to use this SIN number, and he recommended to the government that it stop using

it in these contexts. And, sure enough, the government agreed, and they rolled back the use of the SIN.

And, so, I believe that this data protection board can play a very appropriate role. I think someday we will have one, and I hope that we can expect your support as we reach that point that it is near enactment.

What the subcommittee can do now, in closing—I think all we have is this anecdotal data about SSN use. What we would like to see is perhaps a two-track study by the appropriate research office of Congress—and that could be GAO, OTA, CRS—to explore the extent to which Federal, State, and local agencies are complying with the Privacy Act section which deals with the Social Security number.

And the second track would document the extent which the private sector organizations are using the SSN as an identifier when they are not required by law.

Then I think also, too, the pressure on government to do these sort of verification schemes for people outside the government will always continue, and I think a commitment from SSA that these sort of proposals will not be endorsed is important.

In closing, my colleague to the right likes to quote Louis Brandise. I like to quote Supreme Court Justice William O. Douglas, who is more from my neck of the woods out West.

In his dissent in the *California Bankers' Association* case in 1974, in which he opposed a law that required the recording of all checks and bank accounts.

He said, "It would be highly useful to governmental espionage to have like reports from all our book stores, all our hardware and retail stores, all our drug stores.

These records also might be useful in criminal investigations. A mandatory recording of all telephone conversations would be better than the recording of checks under the Bank Secrecy Act if Big Brother is to have his way.

In a sense, a person is defined by the checks he writes. By examining it, the agents get to know his doctors, his lawyers, his creditors, political allies, social connections, religious affiliation, and educational interests, the papers and magazines he reads, and so on, ad infinitum."

And this is the key. "These are all tied to one Social Security number. And now that we have the data banks, these other items will enrich that storehouse and make it possible for a bureaucrat by pushing one button to get, in an instant, the names of 190 million Americans who are subversives or potential and likely candidates."

Mr. Chairman, I have gone way over my time. I apologize for that. But thank you for this opportunity. I would be happy to answer any questions.

Senator MOYNIHAN. Thank you. Those were very useful thoughts that we have the GAO take a general look at this whole general subject. Before another moment passes, however, I want to get that statute clear here.

This is the Social Security Act, Section 207: "The right of any person to any future payment under this title," which is to say, Social Security, "shall not be transferable or assignable, at law or in

equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.”

Whatever that insurance company on Long Island is doing, they had better—maybe they do not know this.

Mr. HENDRICKS. The insurance company is in Kansas; the constituent is in Long Island. But I think he is about to get served very well.

Senator MOYNIHAN. Well, they had better stop.

[The prepared statement of Mr. Hendricks appears in the appendix.]

Senator MOYNIHAN. And now, Mr. Rotenberg, we welcome you, sir, on behalf of the Computer Professionals for Social Responsibility.

**STATEMENT OF MARC ROTENBERG, DIRECTOR OF THE WASHINGTON, DC OFFICE, COMPUTER PROFESSIONALS FOR SOCIAL RESPONSIBILITY, WASHINGTON, DC**

Mr. ROTENBERG. Thank you very much, Mr. Chairman. The computing profession has a longstanding concern about the development of adequate privacy protection for computer systems containing personal information.

Senator MOYNIHAN. I am going to put your whole statement in the record and you proceed just exactly as you wish.

[The prepared statement of Mr. Rotenberg appears in the appendix.]

Mr. ROTENBERG. All right. Thank you. The recent events about the sale of personal information held in government databases are, as my colleague to the left suggested, just the tip of the iceberg.

And, in fact, I would go a step further and say that this problem is much more far-reaching and complex than may have been previously suggested.

There is a temptation, for example, to suggest that an appropriate solution might be the expansion of criminal codes to restrict the sale of government information, or, perhaps more monitoring of government employees to see what their record-usage practices are.

But, in fact, I think what you are seeing is the result of dramatic changes in computer technology and business practices that have evolved during the past 20 years.

And the most critical change which is largely responsible for the birth of this information broker industry is the growing misuse of the Social Security number by the private sector.

Senator MOYNIHAN. Now, you are the third person on this panel to use the term “misuse” or some variant thereof. That is new.

Mr. ROTENBERG. Let me try to explain that, Mr. Chairman. In 1973, the then Secretary of HEW, Elliott Richardson, asked Willis Ware to convene a panel to assess some of the privacy implications of the rapid computerization of government recordkeeping systems.

Senator MOYNIHAN. We have heard enough to indicate that they are still working with Dr. Ware.

Mr. ROTENBERG. Yes. Dr. Ware’s panel came back with a number of recommendations, many of which were incorporated into the Privacy Act of 1974. One of the critical recommendations that was



contained in the 1973 HEW report was that strong restrictions be placed on the use of the Social Security number.

In fact, Section VII of the Privacy Act reflects the findings of the HEW report in making a requirement that any agency which asks for a person's Social Security number must do three things: it must first specify the statutory authority for the request; it must, second, indicate whether the request is mandatory or voluntary; and, third, it must explain the reason or the purpose that the request is being made.

Moreover, that particular section of the Privacy Act goes on to make clear that if a person chooses not to disclose his or her Social Security number, no harm should, therefore, result.

Now, these are a very good set of principles and they were intended to constrain the use of a Social Security number to limit its misuse.

Unfortunately, what has happened in the last 20 years is two flaws in the act's structure have come to light. The first flaw is that there has not been adequate oversight.

It was clear in 1973 that it was going to be necessary to create an independent privacy oversight committee to realize the principles that were contained in the act. But, at the last moment, that particular provision was removed.

And it is for this reason that many privacy advocates today believe that a data protection board should be established.

Senator MOYNIHAN. Which committee? Is it government affairs? Margaret Malone thinks it may be. The Privacy Act came out of Government Affairs.

Mr. HALPERIN. The Government Affairs Committee has jurisdiction.

Senator MOYNIHAN. And they had thought to have a subcommittee on oversight of this particular measure.

Mr. ROTENBERG. They intended to create an independent agency.

Senator MOYNIHAN. Oh. The equivalent of the Canadian Privacy Commission.

Mr. ROTENBERG. Precisely.

Senator MOYNIHAN. I see. I understand.

Mr. ROTENBERG. But that provision was removed from the bill before passage and the authority was left at OMB. And I think that is one of the sources of the problem.

The second source of the problem is the rather dramatic change in recordkeeping practices in the private sector during the last 20 years, such that the Social Security number has increasingly been used as an identifier of personal records.

Now, it is a truism, certainly, that the Social Security has become a universal de facto identifier in the United States. But that merely restates the problem, which is to say, that any person who is in possession of a Social Security number is able to acquire a great deal of information about the subject to whom the number is assigned.

And, if you look at the NET brochure, for example, which you mentioned in your opening statement, you will see that many of the services that that information broker provides are made possible once the Social Security number is provided to the company. But for the provision of the number, the services could not exist.

So, I am emphasizing at this point that this is a problem that really needs to be addressed. This is the dynamic; the underlying engine that has given rise to the tremendous demand for personal information.

Now, briefly then, I see three steps that might be taken at this point to try to curb this problem. And, as I suggested earlier, I think you are seeing what is really the beginning of many similar incidents that are likely to come about in the next few years.

Senator MOYNIHAN. Yes.

Mr. ROTENBERG. The first recommendation is the creation of the Data Protection Board. I view this initiative as absolutely critical right now.

Senator MOYNIHAN. Was that the provision that was omitted?

Mr. ROTENBERG. Yes. Representative Bob Wise has a bill in the House right now. I do not believe it has been introduced in the Senate.

But this step must be taken to begin to provide some of the expertise and resources that is necessary for the agencies to develop stronger privacy protection, and also to work with the private sector to explore alternative recordkeeping systems.

The second recommendation that I would make is that the principles contained within the Privacy Act regarding restrictions on the use of the Social Security number be extended to the private sector, and, specifically, that private sector organizations not be permitted to obtain a Social Security number absent statutory authority.

The goal is not to prohibit the flow of information that is necessary for a proper purpose; the goal here would be to try to restrict the use where there is no clear purpose that has been established or no statutory authority for the request.

Now, I should mention that many organizations—and this is true in government as well—say that they need the Social Security number because that is the way that they have designed their recordkeeping systems.

But we are finding increasingly that when you go to an organization and say, look to an alternative identification scheme, organizations are able to develop them.

And, in fact, there was an item yesterday in the Washington Post which said that the State of Maryland has decided that for their motor vehicle record system they are no longer going to use the Social Security number as the identifier—

Senator MOYNIHAN. Oh, really?

Mr. ROTENBERG. Because there has been concern about the privacy implications of the SSN. Similarly, other States are beginning to re-think their recordkeeping practices and whether alternative identification numbers might not be developed.

So, in one sense, it is very important to counter this belief that this is an uncontrollable process. The decision to use the SSN—

Senator MOYNIHAN. An inevitable process, as you would say.

Mr. ROTENBERG. Thank you. It could be stopped if organizations chose to stop it.

Senator MOYNIHAN. We find out who I am, according to the State of New York. Yes. That is my Social Security number on my driver's license.

Mr. ROTENBERG. It is?

Senator MOYNIHAN. Yes.

Mr. ROTENBERG. All right. My third recommendation, Mr. Chairman, is to propose that a study be undertaken to look specifically at the problem of how information can be transferred from individuals to institutions without allowing institutions to engage in the secondary uses, the transfers to other institutions where the privacy problems begin.

Now, there has been a great deal of research in this area in the last couple of years by a computer scientist named David Chaum.

And many computer scientists are excited by the possibility that the particular approach that he recommends will satisfy the record-keeping needs of organizations, while protecting the privacy interests of individuals.

To use an environmental analogy, this would be like designing an engine which does not generate any pollutants. And it is certainly an idea that I hope would be pursued.

I would recommend, perhaps, that a study be undertaken either by the computer science and Telecommunications Board of the National Research Council, or by the Office of Technology Assessment.

Both organizations have recently looked at related issues and I think could offer great insight in trying to solve this particular problem. So, I thank you for the opportunity to testify. We would be pleased to answer your questions.

Senator MOYNIHAN. Well, we thank you, sir, and each of you. I do not know Dr. Chaum, but I am sure, obviously, he is a person we want to attend to. The National Research Council, of course, has the Committee of National Statistics within that council that would be interested.

What did you say was their particular committee at this point?

Mr. ROTENBERG. The Computer Science and Telecommunications Board.

Senator MOYNIHAN. The Computer Science and Telecommunications Board.

Mr. ROTENBERG. In 1990 they produced a very good report on computer security called "Computers at Risk" and touched briefly on this issue that I have raised. Now I think there would be a number of people interested in pursuing it.

Senator MOYNIHAN. Well, yes. Some graduate students at Cornell, I would expect, who seem to be hacking their way into networks in Australia. You want to give those fellows tenure. All right.

We have a problem here. We have been prepared to see the Social Security number used for whatever purposes individuals thought best, but, mind you, when hospitals start giving Social Security numbers to individual babies—well, the hospital does not; the Social Security Administration does—it is not something the new parent is likely to think much about. You know, records are records.

Keeping them, having blocks, and having fire walls between their uses is obviously not just a good idea, but it increasingly requires technology, does it not? I mean, if you do not work at it, things you do not like will happen because you cannot control them. Is that not correct?