

Challenges to the Confidentiality of U.S. Federal Statistics, 1910–1965

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The article uses a new approach to the analysis of statistical confidentiality in official statistics by reframing the discussion of challenges to statistical confidentiality from the hypothetical threats posed by generalized malicious intruders to those posed by other government agencies with investigative, surveillance, or prosecutorial agendas. We examine cases in the half century from 1910 to 1965 in which U.S. federal government officials tried to gain access to data collected under a pledge of confidentiality in another federal government agency, generally the U.S. Census Bureau.

Key words: Statistical confidentiality; official statistics; population data collection.

1. Introduction

Officials in government statistical agencies are keenly aware that the success of the work they do is heavily dependent on their ability to guarantee to the public that strict procedures exist to protect the privacy of census or survey respondents, and that data collected are confidential and will not be released to users in a manner that will directly harm them. The guarantees are designed to assure the public that they can respond candidly to government statistical inquiries. These officials know that they need to explain the guarantees to the responding public (see, for example, McCaa and Ruggles 2002). Nevertheless, there is ample evidence that the public in the United States and elsewhere is not convinced that such guarantees are truly ironclad (see for example, Hudson 2004; Clemetson 2004; van der Laan 2000).

Thus there is a need to delve further into the concept of statistical confidentiality, particularly to examine the points in the past when confidentiality was actually threatened or even breached. The literature on statistical confidentiality is a large one, both in the United States and internationally. We know, for example, from the reports and analyses of national statistical agencies a good deal about the history of the practices and laws in various nations. Several fine analyses detail the development of the privacy and

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confidentiality provisions for official statistics in the United States (Bohme and Pemberton 1991; Eckler 1972, pp. 164–172, 192–206; President’s Commission on Federal Statistics 1971, 1:195–225 and 2:335–66; Corcoran 1963; Duncan, Jabine, and de Wolf 1993). For international treatments, see the sources linked to the United Nations Statistics Division website, Principles and Practice, Organization and Management (<http://unstats.un.org/methods/statorg/default.htm>). Catherine Hakim, in her survey of census confidentiality in Britain, has suggested that the developments of the administrative and legal safeguards in Britain “closely parallel the history of census confidentiality in other countries” (Hakim 1979, p. 156). There is also a very extensive literature on disclosure avoidance and limitation methods (see, for example, Fienberg and Willenborg 1998).

Less is known, however, about actual breaches or attempted breaches of statistical confidentiality and the impact of those breaches on respondents and agency practice. In this article, therefore, we focus on the experience of one country, the United States, to examine in detail a number of challenges to statistical confidentiality in the federal statistical system from 1910 to 1965. We ask several questions. First, who tries to gain access to confidential statistical data? Second, why did the challenges to confidentiality emerge when they did? And finally, what comprised the challenges? That is, what data were sought and why?

We use a new approach in the analysis of statistical confidentiality, focusing on challenges to statistical confidentiality that arose from within government itself. We do so in part because officials in the statistical system at the time perceived these challenges as the most serious confidentiality threats they faced and in part because some, while long forgotten, have reemerged in recent years as matters of current public concern. We examine cases in the half century from 1910 to 1965 in which U.S. federal government officials outside the statistical system tried to gain access to data collected under a pledge of confidentiality in another federal government agency, frequently the U.S. Census Bureau. In several cases, they were successful. Although this article is essentially historical in nature, the experiences it recounts have considerable relevance now and for the foreseeable future. Towards the end of the article we will explicitly discuss some of these present-day implications.

2. Our Approach and Related Issues in Statistical Confidentiality

The analysis of the challenges to statistical confidentiality from within government is but one aspect of a critical history of statistical confidentiality. There are many other issues which deserve analysis as well. For example, the public does not distinguish well between the possible improper uses of privately collected data, for example credit information, and potential improper use of data collected by government. The issue of confidentiality of data outside of government, and questions of the “surveillance society” require separate treatment. Nor do we examine the question of how an individual or organization might “break into” a data system, or the technical questions of protecting data (cf. Dandeker 1990; Higgs 2001; Zureik 2001; Lyon 2001; Dorling and Simpson 1999; Fienberg and Willenborg 1998).

Further, in this article we assume that the original data collection did not represent an invasion of privacy. Finally, this article explicitly excludes any discussion of possible

harms arising from the use of mesodata (i.e., data tabulated for small geographic areas, such as blocks, tracts, or small area postal codes). We do not deal with improper statistical profiling, that is, the classification, categorization, and tabulation of responses or respondents in ways that the respondents might find offensive or damaging, as long as the profiling does not reveal the individual identity of the respondent. These issues are important, as we and others have discussed elsewhere (see for example, Seltzer and Anderson 2000, 2001, and 2003; El Badry and Swanson 2007; and Seltzer 2005).

Finally we recognize that this analysis is quite specific to the United States over a particular period of time, and needs to be supplemented with comparative studies from other nations and other times. The U.S. statistical system is a decentralized one, in which political pressures on the myriad agencies can loom large. Our narrative highlights the interplay of decision making within the U.S. statistical agencies, and between these agencies and other arms of government, including departmental superiors, the President, Congress, and the courts. Legislative and executive action, as well as administrative practice within the agencies, tempered at times by judicial decisions, has shaped the parameters of statistical confidentiality in the United States. Additional comparative work could identify the common patterns and differences among countries in practice, law, and professional standards and their effect on statistical confidentiality and possible confidentiality breaches. We note, however, that issues of statistical confidentiality and the diversion of data obtained through the statistical system to nonstatistical purposes have also arisen in countries in various parts of the world and with quite different types of statistical systems (see for example, Seltzer and Anderson 2001, 2003).

3. Studying Challenges to Statistical Confidentiality: An Incident Register

It is not necessarily easy to obtain information about incidents where one government agency tries to gain access to confidential data that another agency controls. For agencies that have made commitments of confidentiality to their respondents, requests for confidential access pose an immediate threat, and one that the collecting agency likely would prefer either to deny or accommodate as discreetly as possible. These defense mechanisms create difficulties for historians or others trying to determine and understand what has transpired. (In one sense, the “perfect” breach would be one in which neither the statistical agency nor the respondent was aware of the breach.)

In this article, we rely primarily on threats to confidentiality documented by individual statistical agencies, and we add material from the requesting agency to fill out the evidence of the case. We suspect therefore that there may be many more potential cases to study, and cannot be certain of the representativeness of the ones we have. Nevertheless, our review of archival records pertaining to several statistical and nonstatistical agencies, and the relevant legislative and administrative record, gives us confidence that the available evidence is sufficiently coherent to frame the narrative.

Methodologically, we created an incident register of known requests for confidential data. For each case we document the date of the request; the requesting agency or elected official; the statistical agency that controlled the data; the nature of the request; the response of the statistical agency; sources of information about the incident; an evaluation

of the precedent set by the request for the data; and the nature of additional research needed on the case.³ This incident register helped guide our further archival research.

The narrative provides an interpretation of the logic of the timing, character, and purpose of the challenges in two time periods. The first group of incidents date from World War I through 1930. The second group date from World War II through the early 1960s.

4. The Maturing Statistical System and World War I

Statistical confidentiality is a very complex concept. The standard developed in the United States in the late nineteenth century was designed initially to protect the government rather than the respondent from the unauthorized use of the information provided (Bohme and Pemberton 1991). Furthermore, when the concept in the United States was extended to include the protection of respondents, this protection was aimed at business data at first and only expanded over time to include personal information pertaining to individuals and families. Officials in the new statistical agencies articulated standards for themselves and their enumerators and clerks to reassure the public of the legitimacy of their work and to distinguish statistical data collection from administrative record keeping and police surveillance. They also prohibited practices that would undermine or corrupt the new field of statistics. Instructions to census enumerators, for example, warned against the unauthorized release of information, particularly economic information about individuals or businesses, or the sale of data to private almanac publishers before release. Carroll Wright, the first Commissioner of Labor in the Department of Labor, was particularly sensitive to the issues. He guaranteed business respondents that he would not release individual information to any other arm of government, including Congress (Goldberg and Moye 1985). Early concerns about statistical confidentiality were not unique to the United States. At the same period in Australia, the concept of statistical confidentiality was invoked by the Census Director in Victoria to protect individual-level data on persons enumerated in the 1891 Census from attempts by the police to gain access to these records for the purpose of law enforcement (Hayter 1892).

In the nineteenth century, U.S. federal officials worried about unauthorized leaks of information from census and survey responses. They particularly worried about renegade enumerators or agents who took advantage of their posts (Anderson 1988). At a time of relatively slow mail communication and isolated local communities, officials knew they had very little control over the day to day work of their local agents. Slow communications were troublesome for the Washington officials trying to contact agents across the country, but they also made it difficult for the federal government to compile stores of information that might be considered invasions of privacy. At the time, respondent concern about misuse of information provided to a U.S. Bureau of Labor Statistics survey or census inquiry was framed as fear that the local enumerator or “special agent” (as the data collectors were called) would make improper use of information collected from a business or household, not that the federal government was developing surveillance capacities over people or business firms. The greatest protection against a breach of statistical confidentiality was the administrative incapacity of the federal agencies themselves.

³ The register, as developed by March 1, 2004, is available at <http://www.uwm.edu/~margo/govstat/integrity.htm>

The Census Office was a temporary agency until 1902. Other statistical agencies, like the U.S. Bureau of Labor Statistics (BLS), or the statistical offices within cabinet departments, were small organizations, as was the entire federal government. There was neither a national police force nor a national vital registration system. Federal government surveillance of any kind was weak due to the federal nature of the American state and the mobility and dispersion of the population. The technological basis of data collection was unwieldy paper files (Anderson 1988, 2000).

In 1902 Congress established the U.S. Census Bureau as a permanent agency and in 1903 placed it in the new Department of Commerce and Labor, then after 1913 in a separate Department of Commerce. The permanent U.S. Census Bureau expanded to collect economic statistics between the decennial census years. The schedules and forms which in previous years would have been put in storage when the agency closed for the decade now remained accessible, along with a staff of clerks who had the experience to readily access them. Through the 1910 Census the agency demonstrated the effects of permanent status in new administrative practice. One innovation was the presidential census proclamation, a practice which has continued to the present. Designed both to advertise the census and promote complete enumeration, it included explicit assurances to the public about the uses of the data. As President William Howard Taft's proclamation stated:

The census has nothing to do with taxation, with army or jury service. . . or with the enforcement of any national, State, or local law or ordinance, nor can any person be harmed in any way by furnishing the information required (quoted in Barabba 1975: 27; quoted in full in Bohme and Pemberton 1991: 8).⁴

In other words the statistical data collected were not to be used for enforcement or taxation purposes. The individual respondent should suffer no direct harm because of an answer on a census form. The proclamation forcefully represented the understanding among census officials and other statisticians within government that they were drawing a line of separation between their work of providing statistical tabulations and descriptions of the society and the work of other government agencies, whether that was collecting taxes, enforcing the law, or administering benefit programs. By 1890 Congress had amended the census statute to remove the requirement for census enumerators to supply a separate set of the manuscript returns to state or local officials. Instead, Congress substituted a provision permitting local officials, upon payment of the cost of transcription, to order a list of names (with some characteristics) for their local jurisdiction (Wright and Hunt 1900, p. 73). This provision broke the link between the statistical agency and state and local government, where most direct government took place. After the turn of the century Congress authorized the Director to provide governors and courts "at his discretion . . . copies of certified copies of . . . population and agricultural returns" but made the provision onerous. The requesting body had to provide a written request and pay for the cost of the copy. During its first decade as a permanent agency, the U.S. Census Bureau, much to the dismay of departmental leadership, also balked at contributing to the investigatory activities of other agencies, such

⁴ For the full text, see Records of the Office of Statistical Standards, 1940–1968 (40.7), Entry 147, Box 52, File: Census Proclamations, RG51, NARA.

as the U.S. Bureau of Corporations, within the U.S. Department of Commerce and Labor, for fear such activities would undermine the willingness of respondents to answer questionnaires (Anderson 1988, pp. 118–123).

The entry of the United States into World War I in 1917 posed the question of statistical confidentiality anew, and the line became much less distinct. In practical terms, American entry into the war required the mobilization of the economy and the population. President Woodrow Wilson's administration built new institutions to manage the war economy, including the U.S. Central Bureau of Planning and Statistics in 1918 to gather data on and manage the economy. In order to recruit and deploy an army rapidly, in May 1917 Congress created a draft registration system, Selective Service, and a draft army. The U.S. Census Bureau provided estimates of the distribution of draft age men for planning the location and capacity of the registration and draft system.

Many Americans did not welcome the decision to enter World War I in April 1917. President Wilson had run for reelection on an antiwar platform the previous November. Thus army officials were quite concerned that young men would not register for the draft in June 1917 as required, and that draft resistance would impede the war effort. The registration also raised difficult questions about whether aliens would register, whether the millions of enemy aliens from the Central Power nations would be loyal to the United States, whether aliens from the empires of Germany or Austria Hungary should or would fight for the United States (Fitzpatrick 1940; Chambers 1987).

In the context of these difficult issues, officials in the Army's Provost Marshal General's office, the office responsible for organizing and directing the implementation of military conscription, together with officials in local draft boards, wrestled with procedures to counter resistance to the draft registration and the draft. It soon became clear that the returns from the 1910 Census could provide information to confirm the names, addresses, and ages of individuals who might be suspected of avoiding the draft registration. The possibility of requests for such information framed the conflict between the commitment in President Taft's proclamation and the presumed requirements of modern war. Why should one agency of government prevent another agency of government from doing its job? Why should not the individual-level data be made available to aid the war effort?

In order to respond positively to these requests, in June 1917 Census Director Sam Rogers sought guidance from the Secretary of Commerce William C. Redfield. (Rogers was nominated as Census Director by President Wilson in 1915. He had no prior experience in statistics, having recently served as campaign manager for the Democratic Senator who was chairman of the Senate Finance Committee, *N.Y. Times* 3/4/1915, p. 8.) As Director Rogers explained,

I have received numerous requests from registration officials in various parts of the United States to furnish them with information from the census records, showing the ages of men who they believe have failed to register, although between the ages of 21 and 30.⁵

⁵The United States entered World War I on 4/6/1917. The Selective Service Act became law on 5/18/1917, and all men born 1886–1896 were required to register on 6/5/1917 (a special public holiday set aside for this purpose). Census Director Rogers's request to the Secretary of Commerce was dated 6/22/1917. Samuel Rogers to the Secretary of Commerce, 6/22/1917, and Rogers to the Solicitor, Department of Commerce, 6/28/1917. File 3400-124, Box 157, Genl. Recds. of the Dept. of Commerce, Office of the General Counsel, Subj. and Index Files, 1903–1947, RG40, NARA.

He also knew that Taft’s proclamation seemed to guarantee that the individual data would not be used for enforcement purposes. Nevertheless, he saw a higher standard that outweighed the earlier pledge:

I believe that every branch of the Government, including this Bureau, should assist at the present time, so far as possible, in securing a full registration. Accordingly, it is recommended that the matter be taken up with the President, with the view to having an order issued waiving the rigid rule laid down in Ex-President Taft’s proclamation, and authorizing this Bureau to supply the proper officials (both registration and Federal) who are in control of the registration and prosecution of individuals who have failed to register, with data from the census schedules, which may show the ages of such individuals.

On June 25, the Commerce Department Acting Solicitor issued the requested opinion.⁶ It gave the Census Director the authority to provide names and ages to the registration authorities:

It does not appear that any person will be harmed by the furnishing of the information desired and for the purpose which it is desired . . . Other provisions of the law prohibit the Director of the Census from giving certain information in regard to the business of individuals, firms, and corporations, but these provisions do not, in my opinion, apply to information in regard to names and the ages of individuals . . . There is nothing in the law or the proclamation which manifests an intent to restrict the Government, through the head of the Department, from furnishing names and ages of individuals as recorded in the Census office.

Vincent Barabba (1975, p. 27) noted that as a result of this opinion “personal information for several hundred young men was released to courts, draft boards, and the Justice Department.”⁷

In time of war, then, a Census Director found that the line of separation the official statistical community had hoped to place between confidential census information and other activities of government need not be maintained. Instead, as Director Rogers put it, he found that “this bureau” should “assist at the present time, so far as possible, in securing a full registration.” In his judgment, statistical confidentiality should be conditioned and compromised by more apparently pressing government needs.

⁶“IN RE authority of the Director of the Census to furnish registration officials with names and ages of certain persons from census records.” Opinion of the Acting Solicitor, Office of the Solicitor, Department of Commerce, 6/25/1917, *Ibid*; Bohme and Pemberton, 1991:10 give 6/26/1917 as the date of this opinion; the file reference in the archival records gives 6/25/1917 as the date. It is possible that the original opinion of the Commerce Department’s Solicitor was confirmed the next day by the U.S. Solicitor General, although Census Director Rogers’s letter of thanks, 6/28/1917, only refers to the opinion issued by the Departmental Solicitor. U.S. Department of Commerce, 1917. See also Robert Holley, “Confidential nature of individual data returned on population schedules.” Memorandum to the Director, 9/8/1938, Entry 274, Box 56 (Holley), Folder: Austin, W.L., Recds. of the Bur. of the Census, RG29, NARA. Holley notes that one section of the 1910 Census Act that states “That information furnished under the provision of the next proceeding section shall be used only for the statistical purposes for which it is supplied,” actually refers to data provided by various kinds of manufacturing and other establishments, and not population data.

⁷For an example of a request from the officials in Selective Service to verify the age of a potential draft evader, see James H. Hughes to the Honorable Herbert J. Drane, House of Representatives, July 10, 1918, and Hughes to Bureau of Census, July 10, 1918, Records of the Selective Service System, 1917–1919, General File, Box 9, File: General 17 (331–340), RG163, NARA.

Once breached, statistical confidentiality was difficult to reassert. In the years following the war's end, the U.S. Census Bureau faced a number of requests for the release of confidential data, and proposals for redefining the agency's mission to include population control.

The most dramatic challenge to the standards articulated in Taft's proclamation came from officials in the Provost Marshal General's office. The *Second Report of the Provost Marshal General to the Secretary of War* (1919, pp. 20–21) described the operations of the selective service system through December 1918. Provost Marshal General Enoch H. Crowder found the example of the draft so attractive that he proposed that the 1920 Census be restructured as a registration activity. "The end of the war," he wrote,

leads one necessarily to a contemplation of the possible changes that may be brought about in our national life by the application, after the war, of the principles evolved in the operation of the selective service during the emergency

The taking of the decennial census has heretofore always proceeded upon the idea that no satisfactory results could be attained unless the desired information was sought out piecemeal and compiled. The possibility of having every man, woman and child report at a given place on a given day for enrollment and submitting to an examination as to domestic and industrial status, was considered remote, if indeed it was considered at all. The administration of selective service has demonstrated not only the practicability of such a scheme but the superiority of it in speed, accuracy, and completeness. What under the present census method is a matter of months, becomes under the selective procedure a matter of days. The machinery for the taking of the census by registration is established. To apply the selective plan to the census would not be an experiment but the extending of the application of a principle already established.

Such a registration system would be an administrative and control system first, a statistical resource second. By definition, confidentiality would not exist in such a population registry. Crowder was credited with successful management of the Selective Service system, "a marvel of effective simplicity," as the *New York Times* (2/7/1919, p. 14) put it. His proposal to turn the upcoming census into a "Crowder Census," met with some support.⁸ Nevertheless, Crowder's proposal came too late in the legislative debate to affect the plan for the 1920 Census. Congress mandated that the 1920 Census should look much like the 1910 count, but clarified that the confidentiality language applied to both economic and population data (Holley 1938:4). Wilson's presidential proclamation for the 1920 Census again proclaimed that the respondent could not be harmed by providing the information.

Nevertheless, the U.S. Census Bureau continued to receive requests for the release of confidential individual-level information. Bohme and Pemberton (1991, p. 11) note that in early 1920, while the enumerators were in the field, the Justice Department, on behalf of the Department of Labor, asked if the local enumerators in Toledo, Ohio, could provide "information about individuals' citizenship from the 1920 Census of Population. . . for use in deportation cases." The Commerce Department Solicitor "pointed out that the 1920 Census

⁸ See also, for example, the *New York Times*, 2/6/1919, 3 and 2/16/1919, 41.

act prohibited the Director from disclosing information about private business concerns, it did not restrict his discretionary disclosure of individual information (by the Director, but not (emphasis in original) by any other U.S. Census Bureau employee without the Director's permission) from the population and agriculture censuses." In the early 1920s, Bohme and Pemberton report, state and local governments and private organizations asked for and received lists of illiterates from the 1920 Census. These requests point to an understanding in other government agencies that their investigative and enforcement activities could be aided by data from the Census and either administrative weakness to resist or unwillingness to generate interagency conflict (Bohme and Pemberton 1991, p. 11).

Officials in the statistical agencies found these requests increasingly problematic and sought ways to restore the line of separation between confidential data and program demands. In correspondence in the early 1920s, for example, Census Director William Mott Steuart responded to a request from Walter F. Willcox for access to the schedules. (Steuart was nominated by President Harding as Census Director in 1921. He had had a long career at the U.S. Census Bureau beginning in 1880. In 1919, during the Wilson administration, he had been appointed Assistant Director, *The Evening Star* (Washington, DC), 10/21/1916.) Willcox, a former census statistician and member of the Census Advisory Committee, was interested in conducting a research project to evaluate "the accuracy of the census of Tompkins County (New York)." Director Steuart acknowledged that under the law, he had "discretion" to do so, but expressed reservations about giving Willcox access. "I always feel considerable hesitancy about giving out names and addresses, even in a case such as yours where I have every confidence that the information is wanted for legitimate purposes and will be safeguarded as far as possible against any improper use." The Census Director admitted that "we are regularly furnishing to the Internal Revenue Bureau information as to the ages of children, when requested, for the enforcement of the tax on establishments employing child labor." He continued: "But quite apart from any question of law I think as a matter of policy we ought carefully to guard against giving any one the impression that the information collected by the Census under the assurance that it will be treated as confidential is not as carefully safeguarded as it ought to be."⁹ As the requests expanded, the rationale shifted from national defense and the control of aliens, to quasi welfare functions at the state and local level. If such requests continued, the census would become an administrative registry by default. At the same time, there is some evidence that officials in the U.S. Bureau of Labor Statistics were reinforcing their guarantee to business leaders that they would not release individual level information, even to Congress.¹⁰

⁹ William Mott Steuart to Walter F. Willcox, March 27, 1922, Correspondence of Joseph A. Hill, Entry 202, Box 226, RG29, NARA.

¹⁰ Barabba (1991: 27) reports that in the 1920s the Secretary of State asked the U.S. Census Bureau for data about "individual farms" in Stevens County, Washington for an "international tribunal" adjudicating a dispute about sulphur dioxide pollution from a smelter in Canada. The U.S. Census Bureau provided "aggregated county data" . . . "which allowed the court to award damages to the Washington farmers." In another incident, Herman Byer, Assistant Commissioner of Labor Statistics in the late 1940s, described how a subsequent Commissioner of Labor Statistics, Ethelbert Stewart, was said to have responded to congressional pressure in the 1920s to reveal identifiable *micro* data. According to Byers, Stewart was asked at a Congressional hearing to reveal the data on individual automobile manufacturers to Congress, and he refused on grounds of confidentiality. When the committee chair threatened Stewart, "Mr. Stewart, our committee will subpoena those records," Stewart responded, "You do, and I'll burn them first" (Quoted in Duncan and Shelton 1978: 168).

In 1929 Congress reaffirmed the confidentiality language in the census statute to cover the release of population information by the Director, and President Herbert Hoover's Census Proclamation again affirmed statistical confidentiality. Section 18 of the 1929 Statute retained the language providing discretion to the Director "upon the written request of the governor of any State or Territory or of a court of record, to furnish such governor or court of record with certified copies of so much of the population or agricultural returns as may be requested." Section 18 also authorized the Director "in his discretion, to furnish to individuals such data from the population schedules as may be desired for genealogical or other proper purposes." The section also included the proviso: "that in no case such shall information furnished under the authority of this Act be used to the detriment of the person or persons to whom such information relates" (Holt 1929, p. 189). In 1930, when the Women's Bureau asked for a "list of names, addresses, occupations, and employment status of women living in Rochester, N.Y.," the U.S. Census Bureau saw a clear-cut case which could be used to restore confidentiality. There were no questions of national security, deportation of aliens, or criminal activity involved. The U.S. Census Bureau requested an opinion from the Attorney General and on the basis of this opinion denied the request (Bohme and Pemberton 1991, p. 12).

In other words, once census officials supported the initial release of information to draft boards in 1917, officials in other agencies, for example in the Justice Department, asked for further releases. Census officials found they had weakened the principle of statistical confidentiality. There does not seem to be a partisan difference in the willingness to protect confidentiality or to release confidential data. Presidents Taft, Wilson, and Hoover all proclaimed statistical confidentiality, and Census Directors in both Republican and Democratic administrations violated the guarantee. Rather it appears that interagency pressures and perceived national security needs led to weakening the guarantee.

5. Depression, War and Its Aftermath

The demands that the Great Depression made on the statistical system are well-known. From its inception in 1933 the administration of President Franklin D. Roosevelt upgraded the statistical activities of several agencies, and created the Central Statistical Board to study and coordinate statistical work across the federal government (Anderson 1988; Duncan and Shelton 1978). To our knowledge, during the early deep years of the depression, there were no requests for the release of confidential micro data from officials in either the administrations of Herbert Hoover or that of Franklin Roosevelt. Officials in both administrations were concerned primarily with the macro-problems of the depression and were looking at such aggregates as unemployment, production, and migration.

The situation changed dramatically when war broke out in Europe in the fall of 1939. Officials in defense agencies sought information that would help protect the nation and either did not recognize or did not value legislative guarantees of statistical confidentiality that inhibited release of this information to agencies "investigating" national security. Once again the statistical agencies faced requests to release to other government officials individual-level data collected under a pledge of confidentiality. When officials in the statistical system responded that such release violated the law and long-standing practices and norms, the

administration moved to circumvent or change the law, sometimes with proactive support from accommodating individuals within the statistical agencies themselves.

In the period from late 1939 to late 1942, therefore, a plethora of legislative and administrative initiatives emerged to repeal the confidentiality of the responses to data in the census and data collected by other agencies in the Commerce Department. The initiatives culminated in the provisions of Title XIV of the Second War Powers Act (March 1942) and the Federal Reports Act (December 1942). As in World War I, the principle of statistical confidentiality gave way to the perceived needs of a government at war and as with World War I, the challenges to release data continued after the war, culminating in the *St. Regis Paper* Supreme Court case of 1961. In 1962 once again, Congress restored the standard in clarifying legislation. It is to this complex history that we now turn.

6. Military Intelligence or Statistical Confidentiality

6.1. 1939

Nineteen thirty-nine was the year before a presidential election and the year before the decennial census. It was also the year that World War II broke out in Europe, which precipitated the Roosevelt administration's efforts to restructure the institutions of government to address issues of national defense. President Roosevelt was a strong internationalist and, during World War I, a former Assistant Secretary of the Navy, but much public opinion was wary of American involvement. The administration proclaimed American neutrality while beginning to consider measures to protect the nation. As part of this effort, for example, on September 1, 1939, Undersecretary of Commerce Edward Noble asked Census Bureau Director William Lane Austin for a report on "whether the existence of a world war. . . is likely to make desirable any changes in the conduct of your Bureau." (Austin had been nominated as Census Director by President Roosevelt in 1933, shortly after the President took office. He had joined the U.S. Census Bureau staff in 1900 as a clerk and in 1932, during the administration of Herbert Hoover, had been named Assistant Director, *The Washington Post*, 4/4/1933, p.5 and 2/4/1941, p.5.) Undersecretary Noble asked Director Austin to review and report on the activities of the U.S. Census Bureau during the First World War, and particularly to focus on the service that the Bureau could play in supplying economic information relating to military preparedness, trade, and the "manufacture or export of munitions." The Director replied on September 5, noting that the 1940 Census was the top agency priority at the time. He offered to "render any assistance and cooperation in connection with War work that it may be instructed or required to do," and noted that the U.S. Census Bureau was "in a particularly good position" to aid the war effort because its "large mechanical facilities" could be made available to tabulate data for the federal government. He did not offer to change or redirect fundamentally the activities or practices of the agency.¹¹

¹¹ Noble to Austin, September 1, 1939, and Austin to Noble, September 5, 1939, Entry 142, General Records Maintained by William Lane Austin, 1933–1941, Box 11, Folder: Memoranda: Secretary Hopkins, Secretary Jones, RG 29, NARA.

At the same time other Commerce officials were also considering the role of the census and the war. In early September 1939 David Niles, Special Assistant to Commerce Secretary Harry Hopkins, wrote to the President's secretary, Missy Le Hand, about questions for the 1940 Census. Niles noted that he had "talked with Harry on the "phone a short time ago and he wanted me to ask the President whether there were any new questions that the President might want included on the Census questionnaire because of the war situation." Niles acknowledged that he was not being terribly clear, and indirectly admitted that he was thinking of using the results of such questions for surveillance, not statistical information. "It is not quite clear," he noted, "how we could legally use that information because of the statutes under which the Census operates." As he was aware, since he had been briefed earlier in the year, the confidentiality provisions of the census law prevented the disclosure of individual-level data. To our knowledge the White House did not propose adding new questions to the census form at this time. What it did do, though, was open an internal discussion about census confidentiality by considering a proposal to amend Section 11 of the Census Act.¹²

In November 1939, administration officials raised the question of allowing access to confidential census information to the military intelligence agencies and the Federal Bureau of Investigation.¹³ The Attorney General's office drafted a bill to amend the census statute and transmitted it to the Budget Bureau, the office with responsibility for vetting all the administration proposals for legislation to be sent to Congress. (The Budget Bureau was located in the Executive Office of the President.) "Under existing law," noted the Justice Department memorandum accompanying the draft legislation,

individual reports of the census office are confidential and may not be examined by any person other than sworn employees of that office. While this rule of law is generally desirable, it appears advisable in the interests of national defense to make an exception in connection with investigations of violations of the laws against espionage and other matters relating to national defense. In connection with such investigations the Federal Bureau of Investigation of the Department of Justice, the Office of Naval Intelligence of the Department of the Navy, and the Intelligence Division of the Department of War, should be permitted to have access to such reports.

The actual text of the bill added new language to Section 11 of the 1929 Census Act. The existing language required:

That the information furnished under the provisions of this Act shall be used only for the statistical purposes for which it is supplied. No publication shall be made by the Census Office whereby the data furnished by any particular establishment or individual can be identified, nor shall the Director of the Census permit anyone other than the sworn employees of the Census Office to examine the individual reports.

¹² Niles to LeHand, September 6, 1939; Entry 142, Box 10, Folder: Publicity: Confidential Features of Census 55b, RG 29, NARA.

¹³ President's Official File: 3b-3c, Department of Commerce, Box 6, Folder: Commerce Department, 1939-1940, Census Bureau, FDR Library.

The proposed language added:

Provided, however, that the records of the Bureau of the Census, including the individual reports, shall be available to the Federal Bureau of Investigation of the Department of Justice, Office of Naval Intelligence of the Department of the Navy, and the Intelligence Division of the Department of War in connection with violations of the laws against espionage and other matters relating to the national defense whenever, in the opinion of the Attorney General, the Secretary of War or the Secretary of the Navy, the public welfare would be served by according such access to said records.

The Budget Bureau sent the draft legislation and memoranda to the Commerce Department. Commerce officials sent them to the U.S. Census Bureau for comment. When the bill arrived at the Bureau, the reaction was immediate. Officials mobilized to squelch the legislation as quickly as possible. Calvert Dedrick, Chief Statistician in the U.S. Census Bureau's Division of Statistical Research, wrote to Stuart Rice, then Chairman of the Central Statistical Board on December 5: "We consider this one of the most dangerous pieces of legislation which could be introduced, particularly at the time of the decennial census and during a campaign year." Dedrick included a four-page memorandum detailing the history of the development of the confidentiality requirements protecting individual level census information. "The Attorney General's recommendation," he pointed out, "runs directly counter to the development of public policy in this respect for the past 60 years."¹⁴

A confrontation between the Department of Justice and the Department of Commerce loomed if the U.S. Census Bureau strenuously opposed the legislation. Officials in the Commerce Department responded to the emerging opposition in the U.S. Census Bureau and reported to the President. On December 7, Presidential Aide Edwin M. ("Pa") Watson sent a memorandum to Roosevelt including the draft legislation and David Niles's request for the President's reaction. "If the President is interested, Niles will not make any opposition; otherwise, I believe they (the Commerce Department) will oppose it." The next day President Roosevelt dictated his response through Watson: "Tell Dave Niles's that unrestricted access to Census files should not be given to Army or Navy Intelligence or F.B.I. However, where G2 (as Army Intelligence was called), O.N.I. (Office of Naval Intelligence) or F.B.I need information regarding a specific person, the information should be given to them in confidence after they have stated the reason for asking it."¹⁵

The President's brief response provided little clarification either on his thinking on the general issue of using individual-level census records for surveillance or on what to do with the draft legislation. Roosevelt implicitly suggested that he was not opposed to amending the Census Act to make information on individuals and firms available to the intelligence agencies. We have been unable to find records indicating if Watson ever communicated Roosevelt's response to Niles, or if Niles ever communicated Roosevelt's wishes to the U.S.

¹⁴ Dedrick to Rice, December 5, 1939, Entry 210, General Records Maintained by Calvert Dedrick, Box 210, Folder: Rice, Dr. Stuart A., RG29, NARA; Dedrick to Austin, December 5, 1939, Records of the Bureau of the Budget, Entry 20A, History of General Legislation, 76th – 79th Congress, 1939–1946 (39.1) (Legislative History of Unenacted and Vetoed Public Bills), Box 27, Folder C158(1)-(5), Commerce Department, Census Bureau #2, RG51, NARA.

¹⁵ President's Official File: 3b-3c, Department of Commerce, Box 6, Folder: Commerce Department, 1939–1940, Census Bureau, FDR Library; cf. O'Reilly 1982.

Census Bureau, G2, ONI, or the FBI. The normal channels of communication between Watson and Niles would have been oral.¹⁶ In its baldest form, the President was proposing action that violated the existing language of Section 11 of the Census Act. At best his instructions to provide information “regarding a specific person” put the Director in a perilous legal position. If the Director provided such information to the intelligence agencies, he risked violating the “detriment” clause of Section 18 of the Census Act.¹⁷ It is not surprising that Roosevelt’s directive, if it was transmitted, was not transmitted through normal bureaucratic channels, though indirect evidence discussed below suggests that Census Bureau officials did become aware of the interest in the administration in giving the intelligence agencies access to individual-level census reports.

6.2. 1940

In light of the President’s ambiguous response to the legislation, the Budget Bureau faced a conflict between two cabinet departments on the draft legislation. On January 4, 1940, the conflict became official. The Commerce Department formally communicated with the Budget Bureau opposing the legislation. On January 16, 1940, the Budget Bureau moved to resolve the conflict by broadening the discussion to other departments with defense or statistical responsibilities. The Budget Bureau requested “an expression of views on the proposed legislation from the Departments of Treasury, War, Navy, Agriculture, Commerce and Labor, and from the Board of Governors of the Federal Reserve System.” The expansion of the discussion of the draft legislation in turn created new political dynamics.¹⁸

From the moment they learned of the draft legislation in early December 1939, officials in the U.S. Census Bureau were profoundly concerned that any news that such a proposal was afoot would have a negative effect on the responses to the upcoming census. Not surprisingly, then, they kept the internal bureaucratic discussion a quiet one among high-level policy decision makers. Memos initially circulated among very few people: Stuart Rice, former head of the Central Statistical Board and recently named the new Assistant Director for Statistical Standards in the Budget Bureau; Census Director Austin; Census Bureau Assistant Director for Statistical Research Calvert Dedrick; and Budget Bureau Director Harold Smith.¹⁹

In mid-January, however, when the Budget Bureau asked for responses from five other cabinet departments, the issue began to leak. Furthermore, the discussions from November 1939 through mid January 1940 had taken place while Congress was out of session. Congress returned on January 3, 1940. On January 24, 1940, Congressman Daniel Reed

¹⁶We contacted Raymond Teichman, supervisory archivist at the FDR Library (email communication of February 12, 2002), to determine the normal channels of communication between Watson and Niles. Teichman indicated that since the library does not have White House telephone records, we are unable to determine if Watson followed up with David Niles. Teichman indicated that their communications would probably have been oral. Teichman also indicated that he found no evidence that the White House communicated about the matter with the agencies in writing in the FDR Library.

¹⁷The archival record of the consideration of the proposed change in Section 11 of the Census Act is quite detailed. We have not found material in this record to indicate that officials in the Justice Department, the White House, or the U.S. Census Bureau thought that the language of Section 18 of the 1929 Census Act (on the discretion of the Director to provide copies of records) might provide the authority that the administration was seeking.

¹⁸History of General Legislation, Box 27, Folder C158(1)-(5), RG51, NARA.

¹⁹Ibid.

“voiced objections to the Census of Housing on the floor of the House.” In the first week of February, Senator Charles W. Tobey opened an attack and claimed that the questions on the 1940 schedule, notably that on income, violated individual privacy. Over the next few weeks, a crescendo of newspaper reports picked up the story and challenged the confidentiality of census responses.²⁰

In the meantime, on February 9, President Roosevelt signed the 1940 Census Proclamation, which included the following assurance:

The sole purpose of the census is to secure general statistical information regarding the population. . . of the country, and replies are required from individuals only to enable the compilation of such general statistics. No person can be harmed in any way by furnishing the information required. The census has nothing to do with taxation, with military or jury service, with the compulsion of school attendance, with the regulation of immigration or with the enforcement of any national, State or local law or ordinance. There need be no fear that any disclosure will be made regarding any individual person or his affairs.

For the due protection of the rights and interests of the persons furnishing information, every employee of the Census Bureau is prohibited, under heavy penalty, from disclosing any information which may thus come to his knowledge.²¹

As the proclamation was issued, the draft bill to repeal the confidentiality provisions of the Census Act was still under review in the Budget Bureau. It does not appear that in February 1940, Senator Tobey or other critics of the census in Congress or the media had access to the actual language of the draft bill. There were hints of the debate, for example an article in the *New York Times* on February 27, 1940, reporting that the “Budget Bureau Reveals Postal and Treasury Department Officials Disapproved FBI Request for Legislation to Permit FBI to Inspect Information.”²² Senator Tobey, however, did not directly frame his attack in terms of a pending piece of legislation. Accordingly, the controversy raged over hypothetical invasions of privacy and confidentiality from the new housing census and the question on income, rather than in terms of the larger question of the use of the data for investigation and surveillance.

The story of Senator Tobey’s challenge to the income questions in the 1940 Census is well-known (see for example, Eckler 1972; Barabba 1975). In mid-February Tobey focused his attack on the new question on income. On February 20 he proposed a bill to eliminate the question. He sponsored Senate hearings to gain support for the bill; the bill passed a Senate subcommittee on March 5. Administration and Census Bureau officials strenuously defended the new question and the confidentiality of the census more generally. In mid-March, as Senator Tobey’s bill was moving toward further consideration in the Senate, Commerce Secretary Hopkins proposed that individuals who objected to providing an answer to the income question to the enumerator at the doorstep could send the information directly to the U.S. Census Bureau in a sealed envelope. By March 20, Tobey’s bill floundered and the census proceeded (Eckler 1972).

²⁰ Rice to Director, 4/9/1940; Ibid., *New York Times*, 2/2/40; 17:2.

²¹ *New York Times*, 2/11/1940, 13.

²² *New York Times*, 2/27/40, 1:4.

The story behind this story reveals a more complicated resolution of the issues. In early March President Roosevelt agreed to withdraw consideration of the draft legislation. At the height of the uproar about the income questions in late February, Budget Director Harold Smith wrote a memorandum to Roosevelt that highlighted the language concerning census confidentiality in the President's Census proclamation, which Roosevelt had signed on February 9. Smith reminded the President, that "It does not seem to me, therefore, that the enactment of the legislation proposed by the Department of Justice should be considered as being in accord with your program, and, if you approve, I will so advise the Attorney General and the other departments which have submitted their views with respect thereto." In a handwritten note, dated March 2, the President replied, "I agree with you."²³ As a result, the proposed legislation was never introduced.

With the draft legislation withdrawn and the census on track, the confidentiality issue cooled. Census Day was April 1. News articles reported the Census Director Austin visiting the White House to enumerate President Roosevelt. Director Austin assured the public that "the U.S. Census Bureau throughout its 150 years has never violated the law requiring secrecy."²⁴ Yet buried in the deluge of coverage of the enumerators in the field and other census news in early April was Senator Tobey's evidence that his challenge was not entirely unfounded. On April 8 and April 14, the *New York Times* reported the language of the draft bill. Tobey challenged Attorney General Robert Jackson to explain what he had in mind with the now defunct bill. Both the Attorney General and the U.S. Census Bureau ignored this challenge, neither having any incentive to respond or reopen the debate.

6.3. 1941

In January 1941 Franklin Roosevelt began an unprecedented third term as President of the United States and faced a threatening world at war. In a political environment in which the public was still unconvinced that the United States would or should enter the war, the President expanded the defense infrastructure. He created new defense agencies and brought internationalist Republicans, Henry Stimson and Frank Knox, into the cabinet to build bipartisan support for expanding national defense and preparing for war. While census officials and administration advisors had been able to convince Roosevelt that a legislative battle over the confidentiality provisions of the Census Act during a census and an election year was politically dangerous, there were strong signals early in 1941 that the President still sought a mechanism to permit the administrative and intelligence agencies access to individual level information collected by the U.S. Census Bureau. William Lane Austin, Census Director who led the battle against the 1939 legislation, was involuntarily retired at the end of January 1941.²⁵

²³ Smith to FDR, Note from FDR to HDS, 3/2/40, President's Official File (POF) 3b-3c: Folder: "Commerce Dept., 1939-40 Census Bureau," FDR Library.

²⁴ *New York Times*, 3/21/1940, "Senate Unit Raises New Census Issue," 17.

²⁵ Austin reached 70 near the end of January and it required a Presidential Executive Order for him to remain as Director beyond January 31, 1941. Such Executive Orders were by no means exceptional. Indeed, both he and the federal statistical community had expected that he would be extended for an additional year so he could complete the main work of the 1940 Census. Stuart Rice to W.F. Ogburn, 2/6/1941. W.F. Ogburn papers. Box 27, Census Advisory Committee; Folder 5, Bureau of the Census, correspondence, 1941, University of Chicago Library, Special Collections.

Ignoring the universal recommendation from the statistical, social science, and user communities that a person with professional knowledge be appointed as Austin's replacement, the administration announced the nomination of J.C. Capt as Director on April 22. The Senate confirmed the nomination, without debate, on May 13.²⁶ Capt took office on May 22, 1941, and on June 6 he obtained the support of Commerce Secretary Jesse Jones for legislation to eliminate the 1941 Census of Manufactures, to provide authority for periodic surveys for national defense needs, and to make individual level census reports available for use in the "national defense program."

Census Director Capt's proposed legislative language was vaguer and broader than that of the 1939 draft bill. It no longer specifically amended Section 11 of the Census Act. Rather it simply authorized the Commerce Secretary to provide officials in other government agencies access to confidential census data for the "national defense program." The implication was that the new defense agencies, for example the Office of Production Management, the Office of Price Administration, and the War Production Board, would have access to the data.²⁷

The Census Director found a sympathetic reception in the Senate. Section 3 of the bill which became Senate Bill 1627 (S1627) provided:

That notwithstanding any other provision of law, any individual census report or any information contained therein may be used in connection with the national defense program under such rules and regulations as may be prescribed, with the approval of the President, by the Secretary of Commerce. No person shall disclose or make use of any individual census report or any information contained therein contrary to such rules and regulations; and anyone violating this provision shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding \$500 or be imprisoned not exceeding six months or both.²⁸

The Senate report accompanying the bill was explicit about the goals of the legislation:

The needs of the defense program are of such a character as to require full and direct information about specific individuals and business establishments. It is clearly the intent of Congress and of the administration to implement in every possible way the defense program. An essential part of this implementation must be through the proper use of statistical data to speed production and to provide the detailed knowledge needed for the planning of total defense. To continue to impose the rigid provisions of the present confidential use law of the Census Bureau on

²⁶ Capt was an able administrator and very well-connected politically. As described in the words of one White House adviser to the President, "he is the man Harry Hopkins is to speak to you about, Harry brought him over [to the Census Bureau from the WPA]. . . to handle the political patronage [as a Confidential Assistant to Austin]. . . did a splendid job. . . [so that] the Senators and the Congressmen are all for him . . .", but as the same adviser adds, "[u]nfortunately, he has no professional background or standing in his profession. He has absolutely no statistical background." James Rowe, Jr., to FDR, James Rowe Jr. Collection, Box #5, folder "Census Bureau," FDR Library.

²⁷ See Senate Rept. 495, June 26, 1941, to accompany S 1627 (77th Congress, 1st Session); and Papers accompanying specific bills and resolutions, HR 77A-D20, S2208-S2395, 77th Congress, Box 159, and Letterbooks of the House Census Committee, 77th Congress, Records of the U.S. House of Representatives, RG233, NARA; U.S. House of Representatives, Committee on the Census 1941.

²⁸ *Congressional Record* (77th Cong., 1st Session), volume 87, pt. 6, 6969, August 11, 1941.

data now in the possession of the Bureau and that to be gathered and used for national defense would defeat the primary objects of the legislation here proposed.²⁹

But all was not clear sailing. According to established legislative practice, the House Census Committee was the likely place to initiate and vet such legislation, and thus almost simultaneously with S1627, several similar bills were introduced in the House and referred to the House Census Committee. On June 24, 1941, Representative Guy Moser, Chair of this Committee, introduced House of Representatives Bill 5139 (HR 5139), which among other provisions would permit individual census reports to be used in connection with national defense. HR 5139 also permitted access to individual census reports to members of Congress, and thus was unacceptable to census officials and others in the administration. On July 3, 1941, another member of the House Census Committee, Congressman John Rankin, introduced House Bill 5232 (HR 5232) to allow individual “census reports” to be used in connection with national defense. This bill also had other provisions unacceptable to the administration. Finally, on July 16, 1941, House Census Committee Chair Moser introduced House Joint Resolution 213, to permit individual census reports to be used in connection with national defense by the Office of Production Management. The resolution also permitted access to individual census reports to members of Congress. Again the administration opposed the proposal. None of the House proposals made legislative headway. The Senate passed S1627 in August 1941 and sent the bill to the House, where it met a chilly reaction from Chairman Moser. Moser held hearings on all the bills in October and November, clearly distrusted the testimony of the administration, and vowed that the Senate bill would not get out of his committee.³⁰

There was great concern expressed in the hearing testimony about giving government officials access to confidential data, particularly economic information about individual businesses (U. S. House of Representatives, Committee on the Census 1941). S1627 remained in the House Census Committee when the attack on Pearl Harbor brought the United States into the war.

Four days later, on December 11, 1941, Census Director Capt reminded the Commerce Secretary that the U.S. Census Bureau was still constrained by the confidentiality requirements of the Census Act, and proposed to write the language of S1627 into an executive order to get around the ban. As Director Capt wrote,

[T]he Bureau of the Census has no authority at the present time to permit other governmental agencies to obtain from Census records information about individuals or business establishments that may be indispensable to the defense of the nation. Authority therefore is needed for the Bureau of the Census to make available for war purposes any record of information in the possession of the Bureau of the Census when directed to do so by the Secretary of Commerce.

²⁹ Senate Rept. 495, June 26, 1941, to accompany S 1627 (77th Congress, 1st Session).

³⁰ Papers accompanying specific bills and resolutions, HR 77A-D20, S2208-S2395, 77th Congress, Box 159, and Letterbooks of the House Census Committee, 77th Congress, Records of the U.S. House of Representatives, RG233, NARA; U.S. House of Representatives, Committee on the Census 1941.

In my judgment, it is necessary to have these powers vested in the Secretary of Commerce at once to make possible the flexible, efficient, and economical war-time operation of the Bureau of the Census in obtaining and making available statistics for planning and directing war efforts.³¹

This time, it was the Justice Department, now under a new Attorney General, Francis Biddle, that objected to the proposal to void the confidentiality provisions of the Census Act. The Attorney General's Office decided that there was no legal authority for such an Executive Order.³²

6.4. 1942

The Census Director was not to be dissuaded however. In January 1942, Director Capt proposed inserting the language of S1627 into the omnibus bill that would become the Second War Powers Act.³³ Budget Director Harold Smith refused his request, and the bill as introduced in the Senate on January 16, 1942, Senate Bill 2208 (S2208), made no mention of census data. Director Capt and Commerce officials continued to try to find a way around census confidentiality in correspondence with Attorney General Francis Biddle through the second half of January. In late January the Second War Powers bill passed the Senate and moved to the House and the House Judiciary Committee. There Capt found the opportunity he wanted. The committee held hearings the first week of February. On Wednesday morning, February 4, Census Director Capt and Commerce Department Solicitor South Trimble, Jr. appeared before the House Judiciary Committee to propose language to permit the abridgment of confidentiality. Both men were well connected to committee chair, Representative Hatton Sumners. Capt was a fellow Texan.³⁴ South Trimble, Jr., was the son of the Clerk of the House, South Trimble.

That afternoon, Commerce Secretary Jesse Jones, also a Texan, sent bill language to Sumners.³⁵ Jones proposed “a suggested amendment to the omnibus war-powers bill which was presented to the House Judiciary Committee this morning by South Trimble, Jr., Solicitor of the Department of Commerce, and J. C. Capt, Director of the Bureau of the Census.” “This authority,” he continued, “is urgently needed by the Department of Commerce in order to collect information in connection with the war effort without delay and to make this and other information now obtained by the Department of Commerce under the seal of confidence available to other war agencies.” On Friday, February 6, without further public debate, the House Judiciary Committee incorporated the language proposed by Capt, Trimble, and Jones into S2208. The new Title read:

³¹ Memorandum from J.C. Capt to the Secretary of Commerce, 12/11/41, Genl. Recds. of the Dept. of Commerce, Off. of the Genl. Counsel, Subj. and Index File, 1903–1946, Box 152, File 5706 -33, RG40, NARA.

³² Memorandum to the file, E.T. Quigley, 12/23/41, *Ibid*.

³³ Stuart Rice to Harold Smith, Director, Bureau of the Budget, January 17, 1942, and Rice to Congressman Guy Moser, January 17, 1942, Records of the OMB, General Records, 1940–1968 (40.7), Office of Statistical Standards, Entry 147, Box 51, File: Census Bureau, General File I, 1940–1959, RG51, NARA.

³⁴ Indeed, Sumners was one of the early supporters of Capt's nomination as Census Director.

³⁵ Jones to Sumners, with accompanying text, February 4, 1942. Papers accompanying specific bills and resolutions, HR 77A-D20, S2208-S2395, Box 159, File: S2208, RG233. Jones's letter is also reprinted in the House Judiciary Committee Report on S2208.

TITLE XV – UTILIZATION OF VITAL WAR INFORMATION

Sec. 1501. The Secretary of Commerce is authorized, subject to any regulation or direction that the President may issue, to make such special investigations and reports of census or statistical matters as may be needed in connection with the conduct of the war. In carrying out the purpose of this section, the Secretary is further authorized to dispense with or curtail any regular census or statistical work of the Department of Commerce or any bureau or division thereof . . .

Sec. 1502. That notwithstanding any other provision or law, any record, schedule, report, or return, or any information or data contained therein, now or hereafter in the possession of the Department of Commerce, or any bureau or division thereof, may be made available by the Secretary of Commerce to any branch or agency of Government for use in connection with the conduct of the war, subject to any regulations that the President may issue. No person shall disclose or make use of any individual record, schedule, report, or return, or any information or data contained therein contrary to the terms of such regulations; and anyone violating this provision shall be guilty of a felony and upon conviction thereof shall be fined not exceeding \$1,000, or be imprisoned not exceeding two years, or both.

The House Report on the bill explained the addition:

Title XV is a new title added to the bill after it was referred to the Committee on the Judiciary. Its inclusion was requested by the Secretary of Commerce . . . This new provision would authorize special investigations and reports of census or statistical matters as may be needed in connection with the conduct of the war. It would permit information in the possession of the Department of Commerce to be made available to any branch or agency of the Government for use in connection with the conduct of the war.³⁶

The House Judiciary Committee adoption of the Census Director's amendment to S2208 provided the vehicle to propel the abridgment of confidentiality forward. In the rush to move the overall bill, the Committee said little about its rationale beyond endorsing the wishes of Secretary Jones and Director Capt. Clearly one factor was that war was no longer hypothetical. The amendment permitted the use of "vital war information" not data for "national defense." But there were other considerations in early February 1942. On Saturday, February 7, the *New York Times* reported the overall passage of S2208 in the committee. The bill was something of a hodgepodge, some provisions quite controversial, some not. Fifteen titles dealt with everything from the metallic content of five-cent coins, to expedited citizenship status for alien soldiers, to the organization of war production. With all the provisions to choose from, the *Times* chose to highlight the new census provision. The article headlined: "Spy Data Sought from 1940 Census."³⁷

³⁶ Ibid.

³⁷ 2/7/1941, 9.

The House Committee on the Judiciary before giving its approval today to the Senate adopted Second War Powers Bill, amended the measure to take back the promise it made in 1940 that all data obtained by the Census takers would be held strictly confidential, even from other bureaus and agencies. . . . Some agencies of the government want data now as a matter of national safety. They seek some of the information obtained particularly from Japanese and others who since have become enemy aliens, especially about those in coastal areas from which they have been ordered evacuated by the Department of Justice. . . . [Such] data, now a secret under law, government officers believe, would be of material aid in mopping up those who had eluded the general evacuation orders.

By early February 1942, there was great fear of enemy alien sabotage and espionage on the West Coast. The West Coast congressional delegation and local officials had called for severe restrictions on Japanese aliens, including evacuation from coastal areas. The more extreme proposals called for wholesale evacuation and incarceration of all persons of Japanese ancestry. As the *Times* reported, the House Judiciary Committee was willing to break the confidentiality commitment to protect against potential sabotage on the coast.³⁸

The fate of the provision was not assured, however. In the last week of February, S2208 moved to the House floor. Debate on the myriad titles was long and complex, stretching over five days. Late in the debate House Census Committee Chairman Moser rose on the House floor to oppose Title XV. He attacked the provision because of the irregular way it bypassed his committee, and the substance of the provision. Once the issue was joined, other members rose to question the provision and raised the concern about government snooping into private and confidential matters. Congressman Frederick Cleveland Smith challenged the provision and questioned its intent. “The powers granted under this title are exceedingly broad and comprehensive, and unless used most judicially [sic] and held to the single purpose of expediting the prosecution of the war, can become a great danger to the economy.” A bit later Smith challenged the floor managers for the bill in the following exchange:³⁹

Mr. Smith of Ohio: Mr Chairman, I should like to ask the committee where this provision we are discussing originated. Who wrote title XV of this bill?

³⁸ It is beyond the scope of this article to describe in detail the role of the U.S. Census Bureau and its data in the forced removal and incarceration of the West Coast Japanese American population in 1942. The U.S. Census Bureau detailed Calvert Dedrick, head of its Statistical Research Division, to provide statistical expertise to the Western Defense Command in late February 1942. The U.S. Census Bureau provided very detailed small area tabulations (that is, meso data) from the 1940 Census for operational use in the forced removal of the Japanese Americans from their homes. Roughly 110,000 individuals of Japanese ancestry from the West Coast were forcibly evacuated and “relocated” to concentration camps. The removals began in late March 1942 and were completed by the summer. The U.S. Census Bureau has consistently denied that it provided any microdata in connection with the removal process or for any other purpose. After the passage of the Second War Powers Act, such distribution of microdata to the military was legal. The literature on the evacuation is voluminous. For an introduction to the background on the decision to evacuate the Japanese, see CWRIC 1997. For additional background on U.S. Census Bureau involvement, see Seltzer and Anderson 2000.

³⁹ February 28, 1942, Debate on Title XV, Utilization of Vital War Information, of S2208, Second War Powers Act Bill, *Congressional Record* (77th Congress, 2d Session), Vol. 88, Part 2, 1773, 1803.

Mr. McLaughlin (bill manager). This suggestion was at the request of the Commerce Department in order that it might be in a position to furnish material to the other departments which material is deemed necessary in connection with the prosecution of the war, and which it is not now in a position to give to the other departments.

Mr. Smith of Ohio. We know that the National Resources Planning Board has for some time been making an attempt to get control of the census statistics. What I am wondering is whether it is not some organization that is back of this proposal. **If the purpose of this title is to investigate aliens or get information related to them for the purpose of preventing sabotage or espionage, that is one thing** [emphasis added]. But if the purpose of it is along the lines that the National Resources Planning Board is working, namely a communized state, I think the Congress ought to know about it . . .

Mr. McLaughlin: . . . Specifically answering the gentleman's question, I believe the matter is in safe hands.

Moser did not convince his colleagues to remove Title XV from the bill. On Saturday, February 28, his efforts failed on a voice vote. Quickly thereafter, the House passed the amended S2208.

In early March 1942, S2208 went to a conference committee to reconcile the difference between the House and Senate versions of the bill. Title XV emerged with the rest of the bill on March 12. The only change in the provision was the additional requirement that any request to the Secretary of Commerce for confidential data be in writing. The rationale for the provision remained the need to identify Japanese aliens and citizens of Japanese ancestry on the West Coast, now made more urgent by intervening decisions by the White House.⁴⁰

Between the introduction of the Title XV language in S2208 in early February, and the passage of the bill in the House at the end of the month, things had been moving quickly on plans for the forced evacuation and exclusion of the Japanese alien and Japanese ancestry population from the West Coast. On February 19, 1942, President Roosevelt promulgated Executive Order 9066, which permitted military commanders to prescribe military areas "from which any or all persons may be excluded, and with such respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion." In early March 1942, Congress considered legislation to enforce Executive Order 9066. Public Law 77-503 was voted on by Congress and signed into law by the President on March 21, 1942. At a Senate Committee on Military Affairs hearing on the enforcement bill on March 13, 1942, Senator Warren Austin, who was also a member of the conference committee for the Second War Powers Act, responded to a fellow senator who asked how the Japanese would be identified:

we are now considering. . . legislation that would empower the [government] to requisition from the Commerce Department, Bureau of the Census, what the census shows about these people. That would give an enumeration of the Japanese and it would also give names and residences, so that, when the Army makes its evacuation it can. . .

⁴⁰ Conference Report to Accompany S2208, Second War Powers Act, 1942, March 12, 1942, House Report 1896 (77th Congress, 2d Session).

compare its list of evacuees against the census and have some knowledge of whether this has been an effective protection or not.⁴¹

Senator Austin’s characterization of the intent of Title XV of the Second War Powers was the same as the rationale attributed to “government officers” in the *New York Times* story of 2/7/1942, that is, “mopping up” after the forced evacuation program.

After the conference report on S2208, the Second War Powers bill faced two more weeks of wrangling and some further changes before final passage as Public Law 507 (77th Congress, 2d Session). Title XV became Title XIV in the final bill. The President signed the law on March 27. After two and a half years, and with the assiduous efforts of Census Director Capt, the administration had the authority it sought to use for war purposes responses to census and survey questions collected under a guarantee of confidentiality. The final language of Section 1402 (U.S. Code Congressional Service 1943) read:

That notwithstanding any other provision of law, any record, schedule, report, or return, or any information or data contained therein, now or hereafter in the possession of the Department of Commerce, or any bureau or division thereof, may be made available by the Secretary of Commerce to any branch or agency of the Government, the head of which shall have made written request therefor for use in connection with the conduct of the war

7. Making Better Statistical Policy

Except for the flurry of opposition to the Justice Department proposal of 1939 to modify Title 13 to permit the diversion of information collected by the U.S. Census Bureau for statistical purposes to serve intelligence and military purposes, statistical confidentiality was *not* an issue of central concern to federal statistical policy makers at that time. Far more important were issues related to the coordination of the decentralized U.S. federal statistical system, including issues of sharing data and information between agencies for statistical purposes. From this perspective, Title XIV of the Second War Powers Act was a clumsy law. The law only authorized access to data produced by the Commerce Department “for use in connection with the conduct of the war.” Since the mid 1930s the Central Statistical Board had been proposing the coordination of federal statistical activities in terms of uniform survey practices, question wording, and classification schemes. Some of these goals were achieved when the Central Statistical Board moved into the Budget Bureau in 1939 and Stuart Rice became the Director of the new Office of Statistical Standards. Bills had been introduced in Congress to provide statutory authority for further coordination, but they had not passed. In the summer of 1942 Congress revived the legislation and considered coordination of federal statistical policy. The Federal Reports Act passed on December 24, 1942, and included standardization of the rules governing the sharing of data, including confidential statistical data, among federal agencies. The relevant language read in part:

Sec. 3 (e) For the purpose of this Act, the Director [that is, the Budget Director] is authorized to require any Federal agency to make available to any other Federal agency

⁴¹ U.S. Congress, Senate, Committee on Military Affairs, “S. 2352.” Unprinted hearing report prepared by Ward and Paul, official reporters, 77th Congress, 2nd Session, March 13 1942, 8–9, Japanese Evacuation and Resettlement Study Collection (JERS), Banc MSS 67/14c FILM, Reel 4, Frame 69, Bancroft Library.

any information which it has obtained from any person after the date of enactment of this Act, and all such agencies are directed to cooperate to the fullest practicable extent at all times in making such information available to other such agencies . . . [exemptions applying to IRS, and other Treasury agencies. . .]

Sec. 4 (a) In the event that any information obtained in confidence by a Federal agency is released by that agency to another Federal agency, all the provisions of law (including penalties) which relate to the unlawful disclosure of any such information shall apply to the officers and employees of the agency to which such information is released to the same extent and in the same manner as such provisions apply to the officers and employees of the agency which originally obtained such information; and the officers and employees of the agency to which the information is released shall in addition be subject to the same provisions of law (including penalties) relating to the unlawful disclosure of such information as if the information had been collected directly by such agency.

(b) Information obtained by a Federal agency from any person or persons may, pursuant to this Act, be released to any other Federal agency only if (1) the information shall be released in the form of statistical totals or summaries; or (2) the information as supplied by persons to a Federal agency shall not, at the time of collection, have been declared by that agency or by any superior authority to be confidential; or (3) the persons supplying the information shall consent to the release of it to a second agency by the agency to which the information was originally supplied; or (4) the Federal agency to which another Federal agency shall release the information has authority to collect the information itself and such authority is supported by legal provision for criminal penalties against persons failing to supply such information.

By the end of 1942, legislatively defined mechanisms existed to share newly gathered confidential data across all agencies of the federal government. Authority for administering such data sharing lay with the Director of Statistical Standards in the Budget Bureau. The provisions of the Federal Reports Act remained in place after the war. The authorizations of the Second War Powers Act were repealed in 1947 as part of the First Decontrol Act of 1947.⁴²

In Anderson and Seltzer (2005) we provide further detail on the impact of the authorizations for sharing data across federal agencies permitted under the Federal Reports Act. In Seltzer and Anderson (2007) we discuss the implementation of Section 1402 of the Second War Powers Act between 1942 and 1947. The U.S. Census Bureau and its leadership have continued to deny that individual-level disclosure took place during World War II (see most recently, Habermann 2006). We had hitherto considered that there was conflicting evidence as to whether or not the U.S. Census Bureau actually provided

⁴²(S931) Chapter 29, Public Law 29, passed March 31, 1947 (50 U.S.C.A. Appendix, Section 644a). The act ended governmental control of the economy except in the case of commodities and products that were still in short supply or needed control during reconversion at home or abroad (e.g., rubber and sugar). The opening section of that law noted that "The Congress hereby declares that it is vital to a free economy and full production in the United States that all emergency controls and war powers under the Second War Powers Act be removed except in certain limited instances." The language continued by detailing the limited circumstances in which control could continue, with no further mention of Section 1402. (For further background, see Seltzer and Anderson 2002.)

individually identified microdata about Japanese Americans from the 1940 Census to other government agencies (Seltzer and Anderson 2003, Table 2). Our more recent research provides ample evidence of the release of identifiable microdata on both individuals, including specifically Japanese Americans, and business entities, during World War II (Anderson and Seltzer 2007, 2005).

8. Postwar Years

As after World War I, the U.S. Census Bureau faced additional requests for access to confidential data after 1945. The legislative changes to confidentiality provisions made during the war blurred the boundaries of acceptable “sharing” of data among agencies of the federal government. The U.S. Census Bureau once again discovered it needed to explain to the officials in other federal agencies why it should not provide the data requested. In 1947, the Attorney General’s Office sought “information from census records about certain individuals for use by the FBI” in the context of “rising concern about possible Communist infiltration and sabotage” (Barabba 1975, p.27). The U.S. Census Bureau denied the request. In the late 1940s, the Secret Service asked for information about the people in a neighborhood in Washington, DC which was planned as the temporary residence of President Harry Truman. The U.S. Census Bureau denied the request but provided small area tabulations of the neighborhood to the Secret Service. By the time of the 1950 Census, the U.S. Census Bureau was again guaranteeing the confidentiality of responses, but there is strong evidence that they had not convinced their colleagues in other federal agencies.⁴³

The U.S. Census Bureau faced conflicting mandates. On the one hand, the Federal Reports Act required that “any Federal agency” was “to make available to any other Federal agency any information which it has obtained from any person. . . and all such agencies are directed to cooperate to the fullest practicable extent at all times in making such information available to other such agencies.” On the other, Section 9 of Title 13, the 1954 codification of the Census Act, required that the Bureau not:

- use the information furnished under the provisions of this title for any purpose other than the statistical purposes for which it is supplied; or
- make any publication whereby the data furnished by any particular establishment or individual under this title can be identified; or
- permit anyone other than the sworn officers and employees of the Department or bureau or agency thereof to examine the individual reports.

Throughout the 1950s, the ambiguities surrounding the principle of statistical confidentiality bedeviled the federal statistical system.⁴⁴ They finally erupted in a major interagency conflict when the Federal Trade Commission (FTC) asked the St. Regis Paper

⁴³ Barabba 1975: 27. The temporary White House incident is used as a prominent example of the agency’s refusal to breach confidentiality. See <http://www.census.gov/dmd/www/dropin09.htm>. See also Anderson 1988: 200, for an example of the advertising for the 1950 Census.

⁴⁴ There is considerable internal government discussion about statistical confidentiality and the implementation of the provisions of the Federal Reports Act in the records of the Division of Statistical Standards, Bureau of the Budget, General Records, 1940–1968 (40.7), Entry 147b, RG51, NARA.

Company for the file copies the company retained of its 1958 manufacturing census responses. (At that time the FTC had important responsibilities in the enforcement of anti-trust laws.) The company refused, citing the support of the U.S. Census Bureau and an earlier court decision upholding the right of the company to refuse the request. The U.S. Census Bureau also refused to provide the copy of the St. Regis report to the FTC. The FTC sued St. Regis in federal court to gain access to the form and fought the case to the Supreme Court. In 1961, the Supreme Court sided with the FTC and required that St. Regis Paper turn over the file copies to the FTC.

The U.S. Census Bureau, though not formally party to the litigation, nevertheless recognized that the outcome of the case would have an extraordinarily damaging impact on compliance with its censuses and surveys. Mr. Justice Clark based his majority opinion on a strict reading of the Census statute: "Congress did not prohibit the use of the reports per se but merely restricted their use while in the hands of those persons receiving them, i.e., government officials. Indeed, where Congress has intended like reports not to be subject to compulsory process, it has said so" (*St. Regis Paper Company and the United States*, 368 US 208 (1961); quoted in Rubin 1962, p. 28). In a dissenting opinion Mr. Justice Black criticized Clark for missing the point. He argued that the majority opinion made a mockery of the agency's pledge printed on its forms that any information given would not be used "for purposes of taxation, investigation, or regulation." Black noted that the

Census Bureau and the President promised that the Census Bureau would keep Census reports particularly confidential. . . . Quite plainly, the promised protection was against governmental "taxation, investigation, or regulation" generally, and to protect the integrity of that promise, it is, of course, necessary that all of the particular arms of Government which are engaged in those activities be bound by the Government's pledges. Our Government should not, by picayunish haggling over the scope of its promise, permit one of its arms to do that which, by any fair construction, the government has given its word that no arm will do (quoted in Rubin 1962, p. 28).

In early 1962 the issues moved to Congress, as a number of bills were introduced to clarify the meaning of the confidentiality pledge in Title 13. The debate was extraordinarily broad and to our knowledge this was the first time in the twentieth century that Congress undertook a full examination of the purposes of and potential limitations on statistical confidentiality. In the summer of 1962, the House Committee on Post Office and Civil Service conducted far-reaching hearings and heard from all sides (U.S. House of Representatives 1962). Once again, one sees positions aired both supporting and opposing strict standards of statistical confidentiality. Defending the standard as it had developed over the past 50 to 75 years, Census Bureau Director Richard Scammon testified:

Once you start saying that material is not confidential, that material may be used to your disadvantage, that this material may be used to your disinterest, then you are going to get just as dubious a set of reports as the imagination of man can devise and I would

suggest that this imagination is a pretty far reaching thing (U.S. House of Representatives 1962, 23; also quoted in Rubin 1962, p. 28).

Statistical confidentiality was not only an ethical requirement, but absolutely essential to the integrity of the publications and analyses produced in the federal statistical system. On the other side of the argument were the defenders of efficient government. Echoing the logic of coordination underlying the Federal Reports Act, Representative Emmanuel Celler, Chair of the House Judiciary Committee, came before the House Post Office and Civil Service Committee to testify in favor of the Supreme Court majority view. Representative Celler had also been a member of the House Judiciary Committee in the 77th Congress, and participated in the debates about Section 1402 of the Second War Powers Act. He thought that the *St. Regis* decision should be taken further:

As a general rule, information in the files of one agency should be available to other agencies of the executive branch in the enforcement of the laws. The administration of justice should not be reduced to the level of blind man's buff, played by different departments of the same government.

If the Bureau of the Census has in its files information relevant to a violation of the antitrust laws, it seems to me as a general proposition that such information should be available to the Department of Justice and the Federal Trade Commission – the agencies charged with antitrust enforcement.

It would be more appropriate, therefore, to repeal the secrecy presently accorded the original census returns in the possession of the Bureau of the Census than to extend the shroud of secrecy to file copies of census returns retained by reporting companies ((U.S. House of Representatives 1962, 34; also quoted in Corcoran 1963, p. 39).

In the fall of 1962 Congress rejected Celler's position and amended Title 13 to provide a confidentiality guarantee for the file copies retained by companies filing census reports. The new language read:

No department, bureau, agency, officer, or employee of the Government, except the Secretary in carrying out the purposes of this title, shall require, for any reason, copies of census reports which have been retained by any such establishment or individual. Copies of census reports which have been so retained shall be immune from legal process, and shall not, without the consent of the individual or establishment concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding (Title 13, United States Code, Section 9; Public Law 87–813).

President John Kennedy signed the bill on October 15. The Cuban missile crisis began the next day, and census confidentiality was swept from the attention of Congress and the public. (For a more complete treatment of statistical confidentiality issues as they arose in connection with data on businesses and enterprises, see Anderson and Seltzer 2005.)

At the time, commentators close to the issue were not sure that it had been resolved. In retrospect, though, one can see that the 1962 amendment to Title 13 had the same effect as the 1930 Attorney General opinion denying the Women's Bureau access to individual census reports from Rochester, New York. The issue was put to rest. To our knowledge, in the 40 years between 1962 and 2001, the U.S. Census Bureau effectively resisted any federal agency requests for access to individual reports for the purpose of taxation, investigation or regulation, and has been able to respond to the challenges that the federal data collections are an invasion of personal privacy. Although the passage of the Privacy Act of 1974 and the Freedom of Information Act brought the issue of statistical confidentiality to legislative attention again, the U.S. Census Bureau claim to strict confidentiality prevailed.⁴⁵ Unlike during the two world wars, the administration did not propose administrative procedures or legislative changes to abridge confidentiality during the Vietnam War or the first Gulf War.

Since the terrorist attacks of September 11, 2001, however, the situation has become far more murky. Statisticians in many U.S. federal agencies have been reluctant to talk about requests made by security or intelligence agencies and personnel for access to data and information initially collected for statistical purposes, let alone any incidents where access may have been provided. An overt breach in the legislation protecting statistical confidentiality took place when the so-called Patriot Act was enacted into law in October 2001. One of the sections of that omnibus legislation set aside, with minimum legal protections for data providers, the strong confidentiality protections that had hitherto governed the data-gathering operations of the National Center for Education Statistics (NCES) in the Department of Education. For a description and one view of this development, see Seltzer and Anderson 2002.

At the same time, studies of the U.S. Census Bureau's involvement in the round-up of Japanese Americans after the United States entered World War II have added to public concern about statistical confidentiality. This became apparent in 2004 when the U.S. Census Bureau found itself involved in a public controversy about the assistance it had provided to the U.S. Department of Homeland Security in facilitating the latter agency's access to 2000 Census mesodata at the level of 5-digit postal codes about Arab-Americans by detailed ancestry. From the start, the U.S. Census Bureau's role in the World War II round-up was mentioned in press accounts of this new controversy (see, for example, *NY Times*, 7/29/2004, p. 19) and has been prominently featured in subsequent professional papers on the subject (see for example, El Badry and Swanson 2007; Habermann 2006; and Seltzer 2005).

On a more positive note, in late 2002 Congress revisited the debates once again and passed the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) (116 Stat. 2962, Public Law 107-347) clarifying the protections to data collected for statistical purposes across the federal government and defining the conditions under which the U.S. Census Bureau, U.S. Bureau of Labor Statistics, and U.S. Bureau of Economic Analysis can share micro data.

⁴⁵ In 1971, California Rural Legal Assistance asked the U.S. Census Bureau for "individual census data for jury selection." Bohme and Pemberton 1991:12. The bureau denied the request. In the early 1980s, the courts ruled that the U.S. Census Bureau did not have to release address registers to local governments so they could evaluate accuracy of the 1980 Census (Baldrige vs. Shapiro 1982).

9. Discussion

We conclude with some observations about recent and future developments in statistical confidentiality in the United States. Are the legal and administrative understandings and safeguards of statistical confidentiality put in place in the period from 1910 to 1965 adequate for the future? Forty years after the *St. Regis* case there are some very new challenges on the horizon.

First, the technical situation has changed, and with it the participants in the debates about statistical confidentiality. For most of the period we reviewed, micro data were collected and preserved on paper schedules and punch cards. Only the statistical agencies themselves had easy, if slow, access to the cards and forms, and requests for micro data required the cooperation of the agency to provide lists, names, or individual forms. As late as the mid-twentieth century, only the U.S. Census Bureau had the administrative and technical capacity to manage the data files necessary to surveil the entire American population and economy, and even its capacity was limited. Since the 1960s, the computer revolution and innovations in massive statistical data processing have made it possible for individuals and organizations outside the federal government to access large data files. No longer does the U.S. Census Bureau have an overwhelming technological advantage in being the prime site for comprehensive data analysis on the American population and economy.

One can see the effect of the new technical situation in a shift in the nature of the literature on statistical confidentiality since the 1970s. With the computer revolution and the emergence of the World Wide Web, discussion of statistical confidentiality within official statistical agencies and the research community has shifted to such questions as how to guarantee confidentiality while providing increased access to data files through public use samples, to the technical, legal, and ethical dimensions of linking micro data and/or administrative data, and to the technical requirements for nondisclosure. These discussions have expanded to a much larger community of officials in statistical agencies, academic researchers, and most recently the private sector data providers. In the earlier period we reviewed, a small number of officials who oversaw the federal statistical system, chief among them the Director of the U.S. Census Bureau, the Commissioner of Labor Statistics, and after 1940, the Director of the Office of Statistical Standards in the Budget Bureau, set standards for statistical confidentiality because they held the monopoly on technical expertise and data stewardship. That monopoly of technical expertise and capacity and hence authority to set standards for statistical confidentiality has disappeared.

Second, it is important to broaden the discussion of statistical confidentiality from a narrow, technical consideration of statistically-based disclosure limitation methods typically designed to protect against a hypothetical “intruder” (see for example, Fienberg and Willenborg 1998, p. 340) to a broader range of substantive, technical, operational, legal, policy, and ethical safeguards designed to deter the most likely and persistent “intruders,” that is, other agencies of government with investigative, intelligence, or prosecutorial agendas.

Third, as already discussed the war on terror and threats to national security once again highlight in particularly stark terms the inherent conflict between governmental efficacy

and statistical confidentiality (cf. National Research Council 2005, pp. 55–64; Seltzer and Anderson 2002; Habermann 2006; Seltzer 2005). As during the world wars, there is much discussion today in the United States about coordination of government information and efficiency, and once again Congressman Celler’s common sense notions of data sharing for the common good are on the agenda. Again we have to articulate a response to his 1962 argument that “/a/s a general rule, information in the files of one agency should be available to other agencies of the executive branch in the enforcement of the laws. The administration of justice should not be reduced to the level of blind man’s buff, played by different departments of the same government.” Once again, it is necessary to explain exactly why statistical confidentiality should be preserved when doing so might appear to endanger people’s lives. We suggest that an enlarged community of official statisticians, academic researchers, and private data providers needs to be involved in the discussion. Participants should also include policy makers and the public alike.

There are many ways to bring about the involvement of a larger community in the discussion. But any such discussion must begin with a full and open examination of the past that addresses both what happened and why it took place (National Research Council 2005, 5, 83). Such a discussion can rightly begin among those familiar with the federal statistical system, including both those in government and those outside it. However, ultimately this discussion must move to a wider audience if the important concept of statistical confidentiality is to be maintained. This article was intended to both contribute to our internal dialogue within the statistical profession and to help pave the way for the needed wider discussion. Finally, although we have explored these issues with the U.S. statistical system in mind, it is clear that many of the issues raised have parallels in other countries.

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