

# The Computerized Man

By JUSTICE WILLIAM O. DOUGLAS

The computer has taken its place alongside the A-Bomb to mark the second phenomenal revolution of this generation. An idea can now be transmitted around the world in one-seventh of a second. And so the recurring question is, what ideas will be disseminated? If they concern people, what data will go into the machine, how will people be evaluated, whose names will come out if the subversive button is pressed, the lazy button is pressed, the unreliable button is pressed, and the like?

If a centralized data center is established, as proposed, and all the contents of personnel files are poured into it, privacy in this nation will be drastically diluted.

What is this privacy?

There is an area of privacy not expressly mentioned in the Constitution but within the penumbra shaped by emanations of its provisions — an area that has been held to be protected against state as well as federal action. . . . The right to "belong," the right to "associate" is in the penumbra of the First Amendment which guarantees "Freedom of speech" and "Freedom of assembly." But it also extends where there is no "speech" or no "assembly." Otherwise those rights would suffer, especially freedom of speech, as joining a group, whether Communist or non-Communist, is a subtle though indirect method of expression.

The privacy of the individual has . . . other roots in the Constitution. His religious beliefs are irrelevant when it comes to government employment. . . .

The government . . . may not invade the individual's right of privacy nor abridge his liberty of speech, press, religion or assembly. "What church do you belong to?" "Are you an atheist?" "What are your views on the United Nations?" These and like inquiries are irrelevant to government. A man's beliefs are his own; he is the keeper of his conscience; Big Brother has no rightful concern with these matters.

Yet government agencies still exact information from employees concerning their religion, color, race, and nationality. . . .

All federal employees are asked, "Have you ever been arrested, taken into custody, held for investigation or questioning, or charged by any law enforcement authority?" Traffic violations and juvenile transgressions prior to age 16 are excepted. But false arrests are common; arrests for assertion of civil rights are frequent; many arrests never reach the test of judicial scrutiny. Yet all arrests go into the federal file.

Intra-personal family relationships have also been probed.

## Department of Labor

A Department of Labor questionnaire included . . .

"Just before your teens, how did you let off steam when you got angry: (A) By fighting; (B) By kicking or throwing something; (C) By cursing; (D) By talking it over with someone; (E) I didn't. I tried to hide my feelings."

Personal questions probe deeply:

"Do you have any serious marital or domestic problems? . . .

"If there anything in your past life that you would not want your wife to know?" . . .

## Other Federal Agencies

Apart from the Civil Service Commission, a number of federal agencies use personality tests.

Those personality tests have been common, including questions pertaining to one's sex life and his beliefs on a wide range of subjects. In 1965 the Civil Service Commission abandoned them "except in connection with medical determinations for em-

ployment or fitness for duty." Yet the exception apparently embraces a large group . . . One Civil Service medical examination on an application for a disability retirement demanded "true" or "false" answers to . . . "I love my father," "I hate my father," "I would like to be a florist," "I love my mother," "My sex life is satisfactory," "I am attracted to members of my own sex," "I believe there is just one true religion," "I am an implement of God."

## Non-Government Tests

Popular tests used in industry include: "Do you often feel just miserable?" "Is your sex life satisfactory?" "About how many people have you disliked (or hated) very much?" (A) None, (B) One to three, (C) Four to ten, (D) Eleven to fifty, (E) Over fifty."

One who hates four or more people is in trouble.

Another popular test calling for a true or false answer includes:

"I believe I'm being plotted against."

"I dream frequently about things that are best kept to myself."

"I am a special agent of God."

About half of the large corporations use personality tests.

School children, ministers, pilots, salesmen, executives, are often given these personality tests.

When the employees of one federal agency objected to . . . personality tests as "highly embarrassing," it replied that no one was required to answer . . . But when they failed to answer . . . they got a letter from the chief medical officer . . . that . . . "no more than four questions could be ignored . . . Search for Mentally Ill

The experts are at odds about these personality tests. These tests commonly grade a person by 8, 9, or 10 traits while 25,000 might approximate an accurate personality portrayal. Moreover, the creator of the test fashions his own neurotic world . . . for example, that to daydream is neurotic. A premise of another test is that belief in God is normal but being very religious is bad. (Some psychiatrists affirm that "excessive religiosity" may be a symptom of mental illness.)

Another is based on the theory that if one cheats on an examination it proves he is smart . . .

Thus the search for the mentally ill is well-organized. So are the psychologists who clamor for a permanent place in the screening and selection of employees. And their appeal is great, for the trend to conformity has made laymen less and less critical of these massive inroads on their privacy. . . .

## Dangers of Labeling

In addition, the lure of "scientific" analysis is so great that many people actually believe a personality can be put into a computer. Personality testing is held in awe by many people because its scales sound so definitely scientific and certain . . . Moreover, it is pointed out that intelligence, aptitude, and skill are not enough for employment, that more people lose jobs because they cannot adjust to their fellows than because they cannot do the required tasks. And so the search for the "misfit" gains momentum. The psychiatrists join forces as they work on the periphery of what is "normal" and are interested in people who show "pathology." It may be that some assignments, for example, overseas, may produce psychiatric casualties, among technically qualified people who are good security risks . . . The layman ventures into the unknown when he tries an evaluation of these various tests. But I risk the view that if used they should cover only cases which observation and interviews and case histories suggest are marginal; that if given at all

they should be administered only by eminently qualified people; and that the data collected should never enter the personnel file. Someone's label "schizophrenic" "neurotic" "extrovert" "cataleptic" "psychopathic" can give a person a lifetime brand, ruinous to his career. The label may have been improperly attached to begin with; even if valid then, the condition may have been completely cleared up. . . .

Almost any personality test may result in severe damage to the individual. For many people will see the results of the test and there are ways for the unscrupulous or for the informer or a political foe to get almost anything out of the sieve known as Washington, D.C.

Some supervisors must supply the names of employees who attend integrated PTA meetings and engage in the Great Books discussion. Employees are often requested to promote anti-poverty, beautification, and equal employment programs. They are told to lobby in local city councils for fair housing ordinances. Some agencies either prohibit employees from having any contact with members of congress or require them to report all such contacts, social or otherwise.

Disciplinary measures have been used against recalcitrants, and . . . instituted without the suspected employee having any right to counsel.

## Federal Data Bank

This is the kind of data being collected on employees. Think what damage can be done once it is fed into a computer. The threat is accentuated by the proposal to create a federal data center.

Some 20 federal agencies collect data on individuals. All former employees or agency heads get questionnaires to fill out concerning their former employees. Professors and other university officials get inquiries concerning their former students . . . What is collected is highly subjective data. Is the applicant "reliable," "cooperative," "aggressive," "stable," "loyal," and the like! The answer may reflect an emotional or ideological rift between the applicant and the person being interviewed or filling out a questionnaire. It may be motivated by an old grudge, by a casual encounter that has no significance. The applicant may have outgrown the defect which the interviewer once observed. A trait that seemed to mark a permanent condition may have been wholly transitory. One youthful transgression may never be repeated. Even a prior criminal conviction may be utterly irrelevant to the present-day needs of a prospective employer.

Yet all these statements go in as "facts. . . ."

In the cases of which I speak the interview between the investigator and the former teacher or employer are "in camera." Or in the case of a questionnaire, it is filled out glibly and carelessly or with meticulous effort . . . The applicant has no chance to see it, challenge it, correct it. . . . there will be no account of rehabilitation that has been successful; there will be no place for redemption and forgiveness. The "fact" that a person is not worthy because he was opposed to our military venture in Viet Nam may over the years become well-nigh conclusive proof of a treasonable attitude. . . .

Computers can handle items such as age, years in high school, college degrees . . . with precision. And those who brag over what the computer has done to improve operations . . . have a point when information in no way subjective is fed into the machine. . . .

A data center that puts into a computer the random appraisals of an individual and allows those appraisals to be used against him, without full opportunity of confrontation and cross-

examination, would indeed ensconce Big Brother. . . .

We know from the chairman of the U.S. Civil Service Commission that the computer plays a large role in government. . . .

"A computerized file contains the names and employment data of some 25,000 persons, all considered likely prospects for federal appointive positions, is searched electronically. This talent bank, with its automated retrieval system, broadens the field of consideration for the President in critical decisions of leadership selection. . . ."

To rely on the computer for these delicate choices is to search for certainty where there can be none. Most of our choices are value choices that involve imponderables that no machine can reflect.

As the Bureau of the Budget admits ". . . it is not possible . . . to have a data center that is meaningful . . . in which the identity of the individuals for which there is information is erased."

## Possible Leakage

Some data centers receive tapes by hand delivery. What safeguards are there against leaks during the transportation?

If electronic methods are used to transmit the data to the . . . center, what protection against "bugging" can there be?

The experts seem to agree that even though no people's names are on the tape, data can be manipulated . . . to pick out individual names. The risks of improper use multiply when names and social security numbers are included. . . .

Laws help and act as deterrents. But . . . laws on wiretapping have had no appreciable effect on the use of that device. Making a crime out of the use of electronic devices to find out what a person's private life is like is one proposal. But since the police themselves are addicted to the practice, it is difficult to imagine them becoming effective law enforcement officials at that level. Laws directed against improper computer use may create a sense of security but they will afford no protection against Big Brother once everyone's ideology, reading habits, sex life, and various idiosyncrasies get in the tape.

Leakage of information is only a collateral matter. Why Big Brother should be allowed in the first place to put into a data bank personality and ideological data about anyone is the initial question: If we get a police state without a data center, the police state will be the first to create one. If we get a data center first we are well on our way to subordinating everyone to bureaucratic surveillance, to police surveillance, to political surveillance. . . .

## Inevitable Network

Today there are in the federal government, in the states, and in industry, numerous data centers. Hooking them up in time into a national electronic system seems inevitable. For the demands mount annually and the costs of collecting "facts" through pushing a button are lower than turning agents or private detectives loose.

Those who are proposing the new data center are well-intentioned. They see much value in centralized data. But if traffic . . . military . . . census . . . revenue . . . and Loyalty Security Board statistics, statistics on the politics and reading habits of the individual, his ideological bent, his youthful transgressions, his membership in a "subversive" organization, that may have been nominal, fleeting, or thoughtless, and all the other facets of his life and his family's are retrievable if one only presses a button, what temptation there will be to use it! Our revenue statistics were confidential in the beginning; yet now they are available to the states and to numerous other federal agencies. The reasons for using collected and stored information increase in

periods of mounting tensions or where political or popular pressures are great. The very existence of a pool of data on every facet of a man's life makes the temptation irresistible when a party or a people are out to destroy him.

Alexis de Tocqueville wrote that in a Democracy people are "only led to revolution unawares." . . . They can also unwittingly become enmeshed in repressive systems whose approaches are as noiseless as time. We have not had a plan but we have gone far to invade the privacy of the individual and to fasten on ourselves a regime of repressive practices.

## The Nature of Privacy

But what is this privacy that we purport to cherish?

Every individual needs both to communicate with others and to keep his thoughts and beliefs from others. This dual aspect of privacy means that a person should have the freedom to select for himself the time and circumstances when he will share his thoughts and attitudes with others and the extent of that sharing. This privacy has been increasingly invaded in modern times and science is one of the chief culprits. The excuses for the invasion are national security, protection against crime, efficiency, and the like.

If we are to maintain the barriers that make for strong independent people, we must draw the line between action for which the individual may be exposed and thoughts for which he never may be.

## Impermissible Information

What a person has done during his life should be available to prospective employers, to investigating committees, and to others in positions of lawful authority. What he believes, like the art or the music that he likes, should be beyond anyone's reach, unless a person in a knowledgeable way freely consents to make the disclosures. . . .

"Were you ever arrested?" needs special protection unless a system for erasing "arrests" where the person was later vindicated is designed and unless "arrests" made in the guise say of "disorderly conduct" where the real charge was assertion of a First Amendment right are excluded. One person's appraisal of another should likewise never be fed into a computer, for that appraisal though highly prejudiced, is quickly turned into a "fact" by the machine.

Psychologists, psychiatrists, sociologists, and others press for recognition and ask for privileges to study and explore mankind. Anyone who in a knowledgeable way freely consents to collaborate with them is of course privileged to do so. But social and organizational pressures should not be given sanctions to compel this collaboration, no matter how sincere the promises that all information received will be treated as "confidential."

## Legislatures and Courts

### As Barriers

These are the issues around which great debates are beginning to take shape. Big Brother in the form of an increasingly powerful government and an increasingly powerful private sector will pile the records high with reasons why privacy should give way to national security, to law and order, to efficiency of operations, to scientific advancement, and the like. The cause of privacy will be won or lost essentially in legislative halls, in constitutional assemblies and in the courts. If it is won, this pluralistic society of ours will experience a spiritual renewal. If it is lost we will have written our own prescription for mediocrity and conformity.

Excerpts from speech delivered at ACLU/S.F. State Faculty Program Center Conference on "Privacy in a Crowding World," May 20, 1967. Copies of full text available from ACLU office.