

Exam Number:

GEORGETOWN UNIVERSITY LAW CENTER  
EXAMINATION  
"THE LAW OF INFORMATION PRIVACY"  
(3 HOURS)

Professors Cividanes and Rotenberg

December 16, 1992

INSTRUCTIONS:

1. This is an OPEN book examination.
2. You should select three of the following four questions. Each question will receive equal weight. There will be no additional credit for answering a fourth question.
3. Use only one side of the paper. Write clearly.
4. We will consider only the material that is in the exam book or in the typed submission.
5. Organize your answers carefully. Note the particular format requested in each question.

This exam consists of 3 pages in addition to this cover page. Please be sure that your exam is complete.

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## Question 1

The year is 1995. You are a special assistant to the Secretary of Defense.

The Department of Defense (DOD) is still reeling from its inability to identify the remains of U.S. soldiers missing in action turned over by Vietnam in 1993. To prevent this from ever happening again, DOD has decided to embark on a genetic database project that will maintain genetic information obtained from each combat soldier. The main goal is to positively identify combatants who die in war.

Amidst increasing concern about the potential for privacy abuses and an impending congressional oversight hearing, the Secretary has asked you to review the proposal for the DOD genetic databank. Your review should address the following issues and any other concerns you wish to discuss.

First, employers and insurers may want access to the data once it is collected by the DOD. Second, the DOD should anticipate that other federal agencies and state offices may want access to the information. Third, as an employer and health service provider, the DOD may itself feel pressure to use the genetic data for screening purposes. Finally, the DOD guidelines will almost certainly be followed by private sector companies collecting genetic information. This places an added burden on the DOD to "get it right."

Your memo should put forward specific recommendations.

## Question 2

You are a high level assistant to the Minister of Communications for an emerging democratic country in Eastern Europe. (You obtained this post because you were educated at a very fine law school in the United States). You have been requested by the Minister to draft privacy guidelines for new telecommunications services. The Minister has asked you to avoid technical and legal jargon, and to develop a set of commonsense guidelines that will address consumer concerns, business interests, and privacy objectives. She has also indicated that while she admires the 1981 OECD Guidelines, she believes it would be appropriate to develop principles that recognize the special privacy concerns surrounding telecommunication services.

You should draft six or seven principles; each principle

should be stated in a sentence or two. An explanatory paragraph should accompany each principle.

### Question 3

You are counsel to the Office of Science and Technological Policy, a White House agency charged with advising the President on science issues. The following legislative proposal has been sent to the OSTP for comment. You have been asked to write a brief critique of the proposal from a privacy vantage point.

#### "Rights and Responsibilities of Computer Network Users"

"Recognizing the importance of computer communications for the nation's economy, and the need to ensure individual accountability, the performance of law enforcement functions, and the protection of national security;

"1) Users of computer network services shall be required to include their actual name or Social Security Number when transmitting electronic mail messages by means of a computer network system used in interstate commerce;

"2) Computer network service providers shall not transmit any encrypted or encoded communication without retaining the ability to provide a plain-text version of the message upon presentation of a subpoena or a lawful search warrant;

"3) Transactional records regarding computer network use must be stored for a period of one year and be produced upon the presentation of subpoena; and

"4) Computer network service providers shall be required to engage in random inspection of publicly accessible computer bulletin boards to determine if any illegal materials, such as copyright infringing software, are available."

### Question 4

You are counsel to a private law firm in New York. Mr. Warren comes to your office and expresses concern about the sale of personal data regarding his recently wedded daughter

by a direct marketing firm, Data 'R' Us. He believes that the practice is unfair and a violation of her privacy.

Discuss the potential causes of action for Mr. Warren's daughter in New York and the likelihood of success. If you conclude that her chances of success are not very good, briefly outline a legislative initiative that would address the Warrens' concern.