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CONFIDENTIALITY OF CENSUS REPORTS

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HEARINGS
BEFORE THE
COMMITTEE ON
OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
EIGHTY-SEVENTH CONGRESS
SECOND SESSION
ON
H.R. 10569 and similar bills

BILLS TO AMEND TITLE 13, UNITED STATES CODE, TO PRESERVE THE CONFIDENTIAL NATURE OF COPIES OF INFORMATION FILED WITH THE BUREAU OF THE CENSUS ON A CONFIDENTIAL BASIS

JULY 31 AND AUGUST 1, 1962

Printed for the use of the
Committee on Post Office and Civil Service



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CONFIDENTIALITY OF CENSUS REPORTS

TUESDAY, JULY 31, 1962

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
POST OFFICE AND CIVIL SERVICE COMMITTEE,
Washington, D.C.

The subcommittee met, pursuant to call, at 2 p.m. in room 215, House Office Building, Hon. David N. Henderson (subcommittee chairman) presiding.

Mr. HENDERSON. The subcommittee will come to order.

This subcommittee was appointed by the chairman of the House Post Office and Civil Service Committee for the purpose of considering the following bills: H.R. 10205, introduced by Congressman Ford; H.R. 10344, introduced by Congressman Lesinski; H.R. 10347, introduced by Congressman Tollefson; H.R. 10441, introduced by our ranking member, Congressman Johansen, of our committee; H.R. 10569, which I introduced; and H.R. 12323, introduced by Congressman Glenn. We are considering these six bills in the hearings today and tomorrow.

The subcommittee is composed of Mr. Olsen, Mr. Ichord, Mrs. Norrell, Mr. Udall, Mr. Johansen, Mr. Cunningham, Mr. Rousselot, Mr. Derwinski, and I have been designated chairman.

The purpose of all of the bills under consideration is to safeguard the confidential nature of copies of reports filed with the Bureau of the Census on a confidential basis. It had been generally assumed, prior to the Supreme Court ruling, Decision No. 47 of December 11, 1961, in the case of the *St. Regis Paper Company v. the United States*, that copies of census reports did in fact have confidential status. However, the majority opinion of the Court held that section 9 of the United States Code, title 13, did not specifically accord such protection to the copies. Mr. Justice Clark in delivering the opinion of the Court stated, and I quote:

We fully realize the importance to the public of the submission of free and full reports to the Census Bureau, but we cannot rewrite the Census Act. It does not require petitioner to keep a copy of its report nor does it grant copies of the report not in the hands of the Census Bureau an immunity from legal process * * *. Indeed, when Congress has intended like reports not to be subject to compulsory process it has said so.

In his dissenting opinion, Mr. Justice Black, with whom Mr. Justice Whitaker and Mr. Justice Stewart concurred, stated and again I quote:

But surely the Government's promises, fairly construed, do not indicate that the scope of the protection afforded against the use of census reports "for purposes of taxation, investigation, or regulation" is limited to the original of those reports and to the Census Bureau alone. The Bureau does not itself even engage in the activities against which the use of these reports is protected. 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.

In order to understand the full import of the Supreme Court decision, it is necessary to know something about the legal background of the subject of census confidentiality. I do not propose to take time here to do this, but I will insert in the record at this point a statement prepared by the U.S. Chamber of Commerce titled, "The Problem—And Its Background."

(The statement referred to follows:)

THE PROBLEM—AND ITS BACKGROUND

Prior to December 1961 there was a general belief within the business community that the "confidentiality" of census reports applied equally to company-retained file copies of those reports—and, therefore, that these file copies were immune from legal process.

BEATRICE FOODS DECISION

Backing up this belief was a 1960 ruling by the court of appeals (seventh circuit) that Beatrice Foods Co. did not have to comply with an FTC subpoena demanding that company's file copies of census reports. The court held that "assurances of confidentiality and protection constitute a pledge of good faith on the part of the Congress, the President and the Department of Commerce * * *. The United States has given its word and should be permitted to keep it."

The appellate court concluded that since FTC cannot obtain the original it should not be permitted "to do indirectly that which it cannot do directly"—i.e., FTC cannot get the report data from census; therefore, it should not be permitted to demand it from the company.

In support of this reasoning, the seventh circuit court cited a 1930 opinion from the Attorney General to the Secretary of Commerce which advised that "the Director of the Census should decline to furnish certain requested census information to the Women's Bureau of the Department of Labor."

Additionally, the appellate court noted a 1958 opinion by the U.S. District Court (Southern District, New York) in the case of *United States v. Bethlehem Steel Corporation*. In that case, when the Government asked Bethlehem and Youngstown Steel for their copies of census reports, the companies asked the Government to supply them with copies of similar reports filed by other major steel producers. Census refused to make this data available to the Department of Justice or to any other person. The Federal court held that the Government could not be required to supply the defendant companies with other steel producers' reports, "since such reports were confidential under the statute."

In the *Bethlehem* case, the district court made a significant observation which fostered the feeling among businessmen that the confidentiality of census reports was sufficiently broad to apply to company-retained file copies. The court observed:

"One need not probe far to understand that when Congress imposed upon citizens the duty of disclosing information of a confidential and intimate nature, its purpose was to protect those who complied with the command of the statute. Apart from giving assurance to citizens that the integrity of the information would be preserved by the Government, another purpose was to encourage citizens to submit freely all data desired in recognition of its importance in the enactment of laws and other purposes in the national interests. Accordingly, Congress created a privileged status as to the information furnished to the Census Bureau and directed its confidential treatment so as to prevent misuse."

This interpretation that the "information" is accorded "privileged status" enabled one to conclude that company copies, as well as Census copies, were confidential—inasmuch as both contained the same "information."

Thus, the *Beatrice Foods* decision by the Seventh Circuit Court of Appeals—supported by the *Bethlehem* ruling—very definitely encouraged the view that company file copies were immune from subpoena. Further encouragement was derived from the Supreme Court's denial of the FTC's petition for review of the *Beatrice Foods* decision.

And then came the *St. Regis* case—which reversed the entire concept.

ST. REGIS CASE

In this case, involving an FTC investigation to determine whether acquisitions by the St. Regis Paper Co. were in violation of the antimerger section of the Clayton Act, FTC ordered the company (under sec. 6, FTC Act) to submit various reports, including file copies of census reports. The company failed to furnish all of the requested materials. Subsequently, a Federal district court ordered the company to furnish the requested data—except for some requests which were vague and others which had been answered by previously submitted materials. This order of compliance included the company's census file copies.

The matter then moved into the Second Circuit Court of Appeals—and this paved the way for the creation of a conflict in the circuit courts. Whereas the Seventh Circuit Court of Appeals, in the *Beatrice Foods* case, had protected company file copies, the Second Circuit Court of Appeals confronted with the St. Regis matter, ruled that the company had to submit its file copies to FTC.

Because of this conflict on the question of compulsory production of the copies of census reports, the Supreme Court agreed to take up the *St. Regis* case—and did so in its October term 1961.

On December 11, 1961, the Supreme Court (by a vote of 6 to 3) upheld the lower courts' findings that file copies of census reports are not confidential, and thus are subject to legal process.

The majority opinion, delivered by Justice Clark, commented:

"We fully realize the importance to the public of the submission of free and full reports to the Census Bureau, but we cannot rewrite the Census Act. It does not require petitioner (St. Regis) to keep a copy of its report nor does it grant copies of the report not in the hands of the Census Bureau an immunity from legal process. Ours is the duty to avoid a construction that would suppress otherwise competent evidence unless the statute, strictly construed, requires such a result. That this statute does not do. 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., the Government officials. Indeed, where Congress has intended like reports not to be subject to compulsory process it has said so."

What about the decision in the *Bethlehem* case that it is the "information" furnished the Census that is confidential? The Supreme Court's majority opinion observed that "* * * the prohibitions against disclosure * * * do not purport to generally clothe census information with secrecy."

Also in the majority opinion is the statement that "it appears" that FTC, through the use of special reports, could require companies to supply the "identical information" it furnishes Census—and, therefore, FTC access to company file copies merely enables the Commission to obtain, already prepared, the information it has power to demand.

This is a highly questionable point. What Census is empowered to demand from business firms is limited to information available in company records. What Census gets through its close cooperation with business includes estimates, approximations, etc.—information in excess of the law's requirement. While FTC might demand and receive much of the same information given to Census, it is most unlikely that companies would hazard the risk of giving FTC anything beyond that data readily available in company records. Thus, in many instances, this would not be "identical information" with that submitted to Census.

The minority opinion delivered by Justice Black gave evidence of a sharp difference of opinion within the Supreme Court. Dissenting vigorously from the majority views, Justice Black said the promise of confidentiality was backed up even by a Presidential proclamation (in 1929) declaring: "No person can be harmed in any way by furnishing the information required."

Three excerpts from the minority opinion are especially significant:

"The Court (majority) holds that, because the Government did not so expressly bind itself with respect to actions it may take against copies of these reports through the Federal Trade Commission, the solemn and comprehensive promises of secrecy which it made need not be honored. But surely the Government's promises, fairly construed, do not indicate that the scope of the protection afforded against the use of census reports 'for purposes of taxation, investigation, or regulation' is limited to the originals of those reports and to the Census Bureau alone."

* * * * *

"Quite plainly, the promised protection was against governmental 'taxation, investigation, or regulation' generally, and, to protect the integrity of that prom-

ise, it is of course necessary that all of the particular arms of Government which are engaged in those activities be bonded 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. It is not less good morals and good law that the Government should turn square corners in dealing with the people than that the people should turn square corners in dealing with the Government." (From: "The Broken Promise: Confidentiality of Business Data In Census Reports," Chamber of Commerce of the United States, Apr. 11, 1962.)

Mr. HENDERSON. For our purposes here, I might repeat that prior to the *St. Regis* decision in December 1961, it was generally assumed by Government agencies and the business community that the confidentiality of census reports applied equally to company-retained file copies and that such file copies were immune from legal process.

The bills which we are considering today propose to amend United States Code, title 13, to specifically provide that copies of census reports retained by business firms will have the same confidential status as the original census reports filed with the Bureau of the Census. We have been furnished and the members of the subcommittee have here this afternoon letters from the Bureau of the Budget and the Department of Commerce stating the need for such legislation; we also have letters from the Federal Trade Commission which opposes any such legislation. These letters will be placed in the record at this point. I understand that the Federal Trade Commission does not plan to testify at these hearings.

(The letters referred to follow:)

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 11, 1962.

HON. TOM MURRAY,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for comments with respect to H.R. 10205, H.R. 10344, H.R. 10347, H.R. 10441, and H.R. 10569, all designed to amend title 13, United States Code, to protect the confidential nature of copies of census reports retained by respondents.

Prior to the Supreme Court decision in the *St. Regis* case, the Census Bureau had always maintained that the file copy of census reports retained by respondents enjoyed the same confidentiality as the report filed with the Census Bureau. This position was supported by the Bureau of the Budget. "While fully recognizing the delicate balance of opposing considerations," the Solicitor General in arguing the *St. Regis* case before the Supreme Court also supported this position.

In obtaining useful statistical information promptly without the delay occasioned by legal review on the part of reporting firms, assurance that individual respondent reports will be accorded confidential treatment is extremely important. The Supreme Court did not deny the importance of the confidential status accorded individual statistical reports, stating: "We fully realize the importance to the public of the submission of free and full reports to the Census Bureau, but we cannot rewrite the Census Act." Since the Court did not feel it could construe the present Census Act as providing confidentiality to the respondent's file copy of census reports, legislation is required if this objective is to be achieved.

It is also clear that care must be taken not to extend confidentiality to such an extent as to interfere unduly with responsibilities of other agencies of government in carrying out functions which require information. These include the antitrust acts and other regulatory acts. The Solicitor General noted this point in his presentation to the court by arguing, as we do here, that the protection to the respondent's file copy of the Census reports should apply only to the file copy and not to the information itself or to other records

and documents of the company. He said, "The fact that a business concern has made a report to the Census Bureau does not diminish its obligation to other Government agencies such as the Federal Trade Commission in response to subpoenas, interrogatories, discovery, or other legal process."

The appropriate confidentiality of file copies of Census reports can be provided for without severely restricting information available to other agencies of government if, for example, H.R. 10569 were clarified by amending it to delete the words "any such information, reports, and other data" and to substitute the words "census reports" in lines 7, 8, 9, and 10 of the bill. If H.R. 10569 were so amended it would be in line with the ideas noted and its enactment would be consistent with administration objectives. However, any extension of confidentiality beyond the census copy would be strongly opposed by the administration for the reasons outlined above.

We would also like to emphasize the importance of including in any legislation on this subject that provision of H.R. 10569 which would permit copies of Census reports to be used in judicial or administrative proceedings with the consent of the individual or establishment concerned.

Sincerely yours,

PHILLIP S. HUGHES.

Assistant Director for Legislative Reference.

THE SECRETARY OF COMMERCE,
Washington, D. C., July 19, 1962.

HON. TOM MURRAY,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department with respect to H.R. 10205, H.R. 10344, H.R. 10347, H.R. 10441, H.R. 10569, and H.R. 12323. The purpose of each is to amend section 9 of title 13, United States Code, to provide that the respondent's file copy of a Census report shall not be subject to subpoena or other process.

For the reasons set forth below, the Department urges enactment of legislation for this purpose. H.R. 10569 is generally satisfactory, but to avoid any possibility that it might be construed to affect documents other than file copies of Census reports, we recommend that H.R. 10569 be modified to delete the words "any such information, reports, and other data" each place they occur in the bill and to substitute therefor the words "census reports."

Prior to the decision of the Supreme Court in the *St. Regis Paper Company* case, decided December 11, 1961, it was believed that the copies of Census reports retained by respondents were as protected as the originals on file with the Bureau of the Census. The Supreme Court ruled the file copy was not so protected because it failed to find in title 13, as currently written, any specific provision for such protection. Because of that ruling it is imperative that corrective legislation be enacted to extend the confidentiality of section 9 to the copies of Census reports retained by respondents. The decision had an extremely adverse effect on Bureau operations, as not only did some companies destroy their file copies, and thus severed reporting continuity, but many companies lost faith in the promises of the Bureau, and the response to surveys has deteriorated. The lack of file copies increases the cost of obtaining statistical information. The lack of confidence and cooperation will reduce the number of voluntary reports and correspondingly will reduce the accuracy of the statistics. The Bureau of the Census is a statistical agency of the Government and is often referred to as the factfinder for the Nation. In carrying out this role, information is collected from individuals, companies, establishments, and other organizations. The Bureau has had wide experience in devising special questionnaires to obtain information necessary for the Congress, the executive branch, and businessmen to plan for the future. In general, these questionnaires are drawn up so that they can be readily answered on a uniform basis directly from individual company records as customarily maintained. However, because of variations of the accounting systems of some companies from the customary pattern, such companies cannot furnish directly from their records the facts requested by the Census Bureau, but have to make reclassifications and regroupings of their figures, to some extent by the use of estimates, in order to provide the Census Bureau with the facts for such companies which can be combined to produce the desired totals on a uniform basis. In view of

the necessity to rely in part on estimates, the companies would sometimes not consider the figures they submit to the Census Bureau as suitable for other than Census purposes.

Respondents are assured that their reports will not be revealed by Bureau employees (13 U.S.C. 9); to keep the filed information inviolate, substantial criminal sanctions are provided for any unauthorized disclosure (13 U.S.C. 214). These sections of title 13 dealing with confidentiality of Census reports were enacted for the purpose of protecting companies against any harm which might result from their complying with a Census reporting requirement. This privileged relationship enables the Census Bureau to require responses to inquiries which are necessarily formulated on a uniform basis for all companies in a particular activity regardless of whether or not their books of record directly yield the requested information. For this and other reasons estimates and approximations are necessarily acceptable in statistical reporting to an extent that would not be acceptable for financial or certain other purposes. Furthermore, it is essential to the economical and speedy consummation of statistical programs that the rules governing reporting permit the companies to authorize subordinate officials to furnish information directly without formal clearance by comptrollers, auditors, or company counsel concerned with problems other than statistical reporting. Moreover, it is frequently necessary to use preliminary figures because final figures are not yet available in the company record system. For these reasons the confidential relationship which is present in Census reporting is vital to its effectiveness.

The amendment to section 9 would assure respondents that their file copies of Census reports will not be obtained by subpoena. It is necessary for uniform and consistent reports at successive reporting periods that the respondents keep a file copy for reference purposes. The amendment would not impair the information-gathering position of the regulatory agencies as it was prior to the *St. Regis* decision; the amendment would return to the conditions Census believed existed prior to the decision, and under which the Government had been operating, with the endorsement of, among others, the U.S. Court of Appeals for the Seventh Circuit.

The amendment to section 9 would prohibit regulatory or other agencies from requiring any reporting entity to make its file copies of census reports available. In other words, a respondent will be free to give information to Census for statistical purposes only, without fear that a copy of the return can be demanded by a regulatory agency and used against the respondent. The respondent would not, of course, be prohibited from voluntarily turning his file copy of a census report over to another agency, but the respondent could not be required to supply it. Furthermore, the ability of a regulatory agency to formulate inquiries, even ones identical with those asked by Census, would not be affected. The only restriction would be that the inquiry would not demand an answer by definition identical with that furnished the Census Bureau in another context and for another purpose.

The *St. Regis* decision has impaired the working relationship between the Census Bureau and its respondents. Although the confidentiality of the Census Bureau's own files was affirmed, it is also true that respondents had previously been led to believe by the Government that retained copies enjoyed this same confidentiality. Moreover, the decision has interposed an impediment in the statistics-gathering process because respondents who wish to preserve confidentiality must now destroy their file copies of questionnaires. Some now express reluctance to cooperate further in statistical inquiries. Thus, those companies will have no copies for regulatory agencies to subpoena, and at the same time, the completeness and accuracy of statistics, which are relied upon by the same regulatory agencies as well as by many others, are being adversely affected. Without a remedial amendment, the Government and the public are suffering damage without any commensurate benefit.

This Department urges early enactment of amendments to title 13 in accordance with the above recommendations.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of this report and further that enactment of H.R. 10569 amended as suggested above would be consistent with administration objectives.

Sincerely yours,

LUTHER H. HODGES,
Secretary of Commerce.

FEDERAL TRADE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, July 20, 1962.

HON. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of July 5, 1962, for comments by the Commission on H.R. 12323, 87th Congress, 2d session, a bill to amend title 13, United States Code, to preserve the confidential nature of copies of information filed with the Bureau of the Census on a confidential basis.

This bill would amend section 9(a) of title 13, United States Code, by adding at the end thereof a new subsection which would render immune from legal process copies of "information, reports, and other data" which had been retained by the individual or establishment filing the report with Census; it further provides that, without the consent of the individual or establishment concerned, such information, reports, and other data which had been retained shall not "be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding."

As is true of other bills on this same subject which are now pending in Congress (H.R. 10205, H.R. 10344, H.R. 10441, and H.R. 10569, all of the 87th Cong., 2d sess.), the subject bill is intended to negate the Supreme Court's decision in the *St. Regis* case. It has been argued that the compulsive production of copies of Census reports constitutes a breach of faith on the part of the Government and that to require such production will discourage cooperation with the Bureau of the Census. The Commission questions whether such legislation is necessary to achieve this purpose, and, in any event, the Commission believes that the subject bill has potential effects far beyond this purpose which might seriously hamper the operations of the Commission.

The alleged breach of faith urged in support of these various bills results from the fact that the Census prints the legend "Keep this copy for your file" on census report copies which are retained by the reporting companies. Census could easily remove this legend from its copies and inform the reporting company that they need not retain them. Although Census has urged that it benefits from the retention of such copies in that they can be used in preparing subsequent reports, this same benefit could be achieved simply by lending the companies copies of their previous reports for use in preparing new ones. These loaned copies would remain the property of the Census Bureau and not be subject to legal process.

The enactment of the provision in the subject bill, that census reports may not be used in any administrative or judicial proceeding, could be harmful to most respondents in Commission proceedings, as well as to the Commission itself. Most companies have found their census reports a convenient way to provide the Commission with information, and preventing the use of these reports in Commission proceedings would compel both these companies and the Commission to go to the trouble and expense of compiling basic industry information in other forms. Therefore, such a provision would benefit only the small minority of companies who prepare and compile production and similar information separately for the Commission rather than giving it to the Commission in the form of retained copies of census reports.

The Commission has, for a number of years, obtained from industry members copies of their retained census reports. It is not without significance that in practically all instances the companies have not interposed any objection to furnishing copies of such reports. In numerous instances, where the Commission has sought statistical data like that which is compiled by Census, the companies themselves have advised that the same or similar data already have been submitted to the Government and have suggested that the information can be readily, and should be, obtained from the Bureau of the Census.

During the past 3 years, the Commission has quite commonly framed its requests for information concerning violations of section 7 of the Clayton Act in the alternative (the demand on *St. Regis* was not so framed). Companies have been requested to furnish the same information as submitted to the Bureau of the Census or, in lieu thereof, to furnish photocopies of the relevant sections of the reports to the Census. It is highly significant, we believe, that of the substantial number of such requests that have been sent out, certainly well in excess of 100, so far as a quick check reveals, not a single company has objected to furnishing copies of their retained census reports, and in several instances

where they did not retain copies, they obtained the material from the Census Bureau in order to furnish it to the Commission.

The Commission's more serious objection to the subject bill is that it provides that "all copies of such information, reports, and other data" shall not be used in any administrative or judicial proceeding. In the first place, the language "information, reports, and other data" is ambiguous. The information and data contained in census reports are merely production data of the reporting company. This information, for many years, has been relied upon by all branches of the Government, including committees of Congress, the Department of Justice, and the Federal Trade Commission, as well as by private parties, in all types of proceedings. The Commission is sure that Congress does not intend to make this underlying data unavailable in such proceedings, but this should be made clear in the subject bill if it is to be enacted into law.

The Commission opposes the enactment of H.R. 12323. It is our opinion that its enactment is not necessary to achieve the apparent purpose of the bill and that it has potential effects far beyond this purpose, which would impose an undue burden on business concerns and might seriously hamper the operations of the Commission.

Commissioner Anderson stated that he favored legislation which would conform to the views expressed in the letter of July 11, 1962, from the Bureau of the Budget to your Committee.

By direction of the Commission :

PAUL RAND DIXON, *Chairman.*

N.B. The Bureau of the Budget advised on July 18, 1962, that while there is no objection to the submission of this report, the Bureau previously has reported to the committee recommending an alternative approach with the concurrence of other governmental agencies concerned.

JOSEPH W. SHEA, *Secretary.*

FEDERAL TRADE COMMISSION,
Washington, D.C., July 21, 1962.

HON. TOM MURRAY,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your requests for comments on H.R. 10205, H.R. 10344, H.R. 10441, and H.R. 10569, all of the 87th Congress, 2d session, bills to amend title 13, United States Code, to preserve the confidential nature of copies of information filed with the Bureau of the Census on a confidential basis; and H.R. 10347, a bill to provide that copies of information filed with the Bureau of Census shall be immune from legal process, and for other purposes.

All of these bills would amend section 9 of title 13, United States Code, by adding at the end thereof a new subsection which would render immune from legal process copies of census reports retained by respondents. In addition, H.R. 10205 and H.R. 10347 would make such copies inadmissible in administrative or judicial proceedings and H.R. 10569 would make such copies inadmissible in such proceedings without the consent of the reporting individual or establishment.

These bills are intended to negate the Supreme Court's decision in the *St. Regis* case. It is contended that the compulsory production of copies of census reports constitutes a breach of faith on the part of the Government and that it will discourage cooperation with the Bureau of the Census. The Commission questions whether these bills are necessary to achieve their purpose and in any case it believes that three of these bills have potential effects far beyond this purpose and might seriously hamper the operations of the Commission.

The alleged breach of faith urged in support of these bills results from the fact that the Census prints the legend "Keep this copy for your file" on census report copies which are retained by the reporting companies. Census could easily remove this legend from its copies and inform the reporting companies that they need not retain them. Although Census has urged that it benefits from the companies retaining copies for use in preparing subsequent reports, this same benefit could be achieved simply by lending the companies copies of their previous reports for use in preparing new ones. These loaned copies would remain the property of the Census Bureau and would not be subject to legal process.

The Commission's more serious objection goes to the three bills which provide that "all copies of such information, reports and other data" shall not be used in any administrative or judicial proceeding. In the first place, the language "information, reports and other data" is ambiguous. The information and data contained in census reports is merely the production data for the reporting company. This information has been for many years relied upon by all branches of the Government, including committees of Congress, the Department of Justice, and the Federal Trade Commission, and by private parties, in all types of proceedings. The Commission is sure that Congress does not intend to make this underlying data unavailable to the Government and this should be made clear in these bills.

Second, the provision that census reports may not be used in any administrative or judicial proceeding is harmful to most respondents as well as to the Commission. Most companies have found their census reports a convenient way to provide the Commission with information, and preventing the use of these reports in Commission proceedings would compel both these companies and the Commission to go to the trouble and expense of compiling basic industry information in other forms. This provision of these bills would therefore benefit only the very small minority of companies who prefer to compile production and similar information separately for the Commission rather than giving it to the Commission in the form of retained copies of census reports.

The Commission has for a number of years obtained from industry members copies of their retained census reports. It is not without significance that in practically all instances the companies have interposed no objection to furnishing copies of such reports. In numerous instances where the Commission has sought statistical data like that which is compiled by Census the companies themselves have advised that the same or similar data have already been submitted to the Government and have suggested that the information can be readily and should be obtained from Census.

During the past 3 years the Commission has quite commonly framed its requests for information concerning possible violations of section 7 of the Clayton Act in the alternative. (The demand on St. Regis was not so framed.) Companies have been requested to furnish the same information as submitted to the Bureau of the Census or in lieu thereof to furnish photocopies of the relevant sections of the reports to Census. It is highly significant, we believe, that of the substantial number of such requests that have been sent out, certainly well in excess of 100, so far as a quick check reveals, not a single company has objected to furnishing copies of their retained census reports and in several instances, where they did not retain copies, have obtained the material from the Census Bureau in order to furnish it to the Commission.

Accordingly, the Commission opposes these bills. It is our opinion that the enactment of these bills is not necessary to achieve their purpose; and that H.R. 10205, H.R. 10347, and H.R. 10569 have potential effects far beyond this purpose, would impose an undue burden on business concerns and might seriously hamper the operations of the Commission.

By direction of the Commission, Commissioner Anderson concurring in the conclusion.

PAUL RAND DIXON, *Chairman.*

N.B.: The Bureau of the Budget advised on July 17, 1962, that while there is no objection to the submission of this report, the Bureau previously has reported to the committee recommending an alternative approach with the concurrence of other governmental agencies concerned.

JOSEPH W. SHEA, *Secretary.*

Mr. HENDERSON. I have received voluminous correspondence from private individuals, business firms, and professional groups strongly opposing the Supreme Court decision and urging enactment of remedial legislation. Without objection, I plan to introduce some of these letters and statements into the record at the proper place. In our hearings tomorrow morning, we shall hear the views of representatives from the business community.

This afternoon we will hear from the Bureau of the Budget and other spokesmen from the administration. As our first witness this afternoon we have the Deputy Director of the Office of Statistical Standards, Bureau of the Budget, Mr. Walter Ryan. With Mr. Ryan is Mr. Paul Krueger of his staff. Mr. Ryan is also accompanied by the Director of the Bureau of the Census, Mr. Richard Scammon, and Mr. Ewan Clague, Commissioner of Labor Statistics of the Department of Labor. I see also Mr. Kenneth F. McClure of the Office of General Counsel, Department of Commerce.

Mr. Ryan, we have here your prepared statement. You may proceed as you see fit, after which we will want to question you and perhaps ask for further clarification from you or your colleagues.

First, we will insert H.R. 10569 in the record at this point, along with the language of section 9 of title 13 of the United States Code.

(H.R. 10569 and the language of sec. 9 of title 13 of the United States Code follow:)

[H.R. 10569, 87th Cong., 2d sess.]

A BILL To amend title 13, United States Code, to preserve the confidential nature of copies of information filed with the Bureau of the Census on a confidential basis

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 9 (a) of title 13, United States Code, is amended by adding at the end thereof the following: "No department, bureau, agency, officer, or employee of the Government except the Secretary of Commerce, shall require, for any reason, copies of any such information, reports, and other data which have been retained by any such establishment or individual. Copies of any such information, reports, and other data 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—CENSUS

SUBCHAPTER I—GENERAL PROVISIONS

§ 9. Information as confidential; exception

(a) Neither the Secretary, nor any other officer or employee of the Department of Commerce or bureau or agency thereof, may, except as provided in section 8 of this title—

(1) use the information furnished under the provisions of this title for any purpose other than the statistical purposes for which it is supplied; or

(2) make any publication whereby the data furnished by any particular establishment or individual under this title can be identified; or

(3) permit anyone other than the sworn officers and employees of the Department or bureau or agency thereof to examine the individual reports.

(b) The provisions of subsection (a) of this section relating to the confidential treatment of data for particular individuals and establishments, shall not apply to the censuses of governments provided for by subchapter III of chapter 5 of this title, nor to interim current data provided for by subchapter 17 of chapter 5 of this title as to the subjects covered by censuses of governments, with respect to any information obtained therefor that is compiled from, or customarily provided in, public records.

STATEMENT OF WALTER F. RYAN, ACTING CHIEF, OFFICE OF STATISTICAL STANDARDS, BUREAU OF THE BUDGET, ACCOMPANIED BY PAUL F. KRUEGER, ASSISTANT CHIEF, OFFICE OF STATISTICAL STANDARDS, BUREAU OF THE BUDGET; RICHARD M. SCAMMON, DIRECTOR, BUREAU OF THE CENSUS, DEPARTMENT OF COMMERCE; EWAN CLAGUE, COMMISSIONER, BUREAU OF LABOR STATISTICS, DEPARTMENT OF LABOR; AND KENNETH F. McCLURE, ASSISTANT GENERAL COUNSEL, DEPARTMENT OF COMMERCE

Mr. RYAN. Mr. Chairman and members of the subcommittee, the Bureau of the Budget appreciates the opportunity to appear before this committee to testify in support of the position of the administration as stated in the Bureau's report on the several bills recently introduced to establish the confidential nature of copies of census reports retained by respondents.

BACKGROUND

Without attempting an exhaustive review of the actions and events leading up to the situation which has resulted in the introduction of the bills you are now considering, I do wish to summarize the major developments in chronological order: (1) the decision of the Court of Appeals for the Seventh Circuit in the *Dilger* case (276 F. 2d 739) that retained copies of census reports were immune to disclosure by legal process; (2) the refusal of the Supreme Court to review the *Dilger* decision (364 U.S. 882.) The decision was dated April 4, 1960; (3) a contrary decision of the Court of Appeals for the Second Circuit in the *St. Regis* case, announced December 16, 1960, holding that retained copies of census reports could be obtained by legal process; (4) as a result of the conflict in the circuits on the question of compulsory production of copies of census reports, the Supreme Court agreed to review the issues; (5) the Supreme Court on December 11, 1961 affirmed the judgment reached by the court of appeals in the *St. Regis* case.

Section 9(a) of the Census Act (title 13, U.S.C.) prohibits the Secretary and other officers and employees of the Department of Commerce from using information furnished by respondents for other than statistical purposes; and, from making any publication thereof wherein the name or identity of those furnishing information is revealed; and, finally, from permitting anyone other than sworn officers and employees of the Department to examine the individual reports filed. In its opinion in the *St. Regis* case, the Supreme Court noted the Solicitor General's statement that the purpose of section 9(a) is to encourage the free and full submission of statistical data to the Bureau of the Census, and this objective can be accomplished only

through the creation of a confidential relationship between the Bureau and its respondents. The Solicitor General, therefore, argued that copies of census reports retained by respondents should not be subject to compulsory disclosure.

While the Court decided that the Census Act did not grant immunity from legal process to copies of reports not in the hands of the Census Bureau, it did not deny the importance of the confidential status of individual census reports, stating:

We fully realize the importance to the public of the submission of free and full reports to the Census Bureau, but we cannot rewrite the Census Act.

There is, therefore, need for legislation, if retained copies are to be provided immunity from legal process. The several bills under consideration propose to amend section 9 of the Census Act to achieve this objective.

CONFIDENTIALITY ESSENTIAL IN STATISTICAL PROGRAMS

The availability of accurate and current statistics measuring social and economic conditions in the United States is extremely important not only to many private businesses but also to those responsible for the formulation of legislative and executive policy. The primary means by which statistical agencies assure prompt and responsive replies to their inquiries is by providing that the information so supplied, insofar as individual respondents are concerned, will be held confidential and will be used only for statistical purposes. This principle is well recognized and is reflected in the record of congressional debate as far back as 1879 as the reasoning underlying the statutory requirement that reports to the Bureau of the Census be maintained on a confidential basis by that Bureau.

The confidential status of individual reports held by the Census Bureau is not now at issue. However, this status has a most important bearing on the present situation because all of the reasons which support the desirability of maintaining confidentiality of the respondent's report in the hands of the Census Bureau apply with equal force and validity to the copy of that report retained in the files of the respondent.

The experience of the Census Bureau and other Federal agencies engaged in the collection, processing, and publication of general-purpose statistics is that prompt replies to questionnaires and the speedy and economic carrying out of statistical programs require that the rules and practices governing reporting encourage companies to authorize subordinate officials to furnish information directly, without time-consuming formal clearance by comptrollers, auditors, or legal counsel concerned with problems other than statistical reporting. Also, the provision of timely data frequently calls for the use of preliminary figures before final data are available from the respondent's record system.

Finally, although every effort is made to devise questionnaires so that they can be answered as directly as possible from existing company records, such records do vary among companies. Since business firms are asked to report on a uniform basis in order that their data may be combined to produce useful industry totals, the records of

some companies do not provide the desired information and estimates or approximations may have to be given.

For these and similar reasons, data which are acceptable for statistical purposes may not be considered by the respondent as suitable for other purposes. Hence, there is urgent need to maintain an effective confidential relationship between the respondent and the statistical agency.

IMPORTANCE OF RETAINED FILE COPIES

Prior to the Supreme Court's decision in the *St. Regis* case, the Bureau of the Census had always maintained that the file copy of Census reports retained by the respondent enjoyed the same degree of confidentiality as the report filed with the Bureau and had so informed respondents.

Mr. HENDERSON. Mr. Ryan, if I may interrupt right at that point, I believe you pointed out earlier in your testimony, but I think at this point it would be well to have it clear, that there were also existing prior decisions of the Court to that effect?

Mr. RYAN. That is right, Mr. Congressman.

Mr. JOHANSEN. Is that prior to the *Beatrice Foods* case or the *Dilger* case, which I understand is the one you referred to?

Mr. RYAN. Yes, sir.

Mr. JOHANSEN. There were prior cases?

Mr. HENDERSON. There were several cases, were there not?

Mr. RYAN. There was legislation, Congressman, which endorsed this view. I do not recall any particular cases in which this decision was brought out as clearly as it has been in the last two cases.

Mr. JOHANSEN. Did I understand you to say there was prior legislation on this point?

Mr. RYAN. Not that particularly identified the problem of the file copy in the hands of the respondent. It was generally assumed that the confidential nature of Census reports included file copies.

Mr. JOHANSEN. Is it your statement that the Bureau of the Census, or what Government agency, prior to the *St. Regis* case, had given assurance to those contributing information that the confidentiality extended to the file copies?

Mr. RYAN. The Bureau of the Census as well as the Bureau of the Budget. In its capacity of being responsible for statistical coordination for the Federal Government, the Bureau of the Budget took the position with respondents that confidentiality extended to file copies.

Mr. JOHANSEN. Could you give us an example or two of such assurances so given so that we may have them in the record?

Mr. RYAN. We shall be glad to supply it.

(The following was submitted for the record:)

The position of the Bureau of the Budget and the Bureau of the Census that confidentiality of Census reports extended to file copies retained by respondents was stated as a matter of public record by the Solicitor General in August 1960, when the Supreme Court was petitioned for a writ of certiorari to review the decision of the Court of Appeals for the Seventh Circuit in the *Dilger* case. This was widely reported in the press, principally in trade journals. After the Supreme Court had declined to review the case, the Bureau of the Budget discussed its position and the issues involved at a meeting with its Advisory Council on Federal Reports on November 18, 1960. As a result, business respondents to Census questionnaires were further apprised of the views of both the Budget Bureau and the Census Bureau.

Mrs. NORRELL. As I understand it, this decision places the Bureau of the Census in the position of securing statistics under false pretenses, does it not?

Mr. RYAN. This is an interpretation which has been commonly placed on this situation. Actually I suppose my lawyer friends would point out that the situation is distinct in terms of the legal situation and that actually the Supreme Court held that the Census Act did not cover the file copy so far as confidentiality is concerned. But since the Government had so informed respondents, I think you are quite right.

Mr. JOHANSEN. The Bureau of the Census and the Bureau of the Budget gave that assurance in good faith and that assurance was revised by the Supreme Court.

Mrs. NORRELL. That is what I had in mind.

Mr. HENDERSON. Getting back to my point, lower courts had so held, had they not, Mr. Ryan?

Mr. RYAN. That is right.

Mr. HENDERSON. You may proceed.

Mr. RYAN. To protect the confidential status of substantive data reported on the original return to the Bureau of the Census but to deny such status to the retained file copy and to permit use of data contained therein for other than statistical purposes does not represent consistent Government policy.

If no file copies were kept by respondents, the whole question now before us would of course be academic. But the Census Bureau and other statistical agencies as well have a direct interest in seeing that file copies are retained by the respondent. Indeed, the Government, the public in general, and particularly the users of statistics have such an interest. Briefly stated, the availability of file copies in the hands of respondents facilitates communication between the statistical agencies and its respondents regarding explanation, revision, or amendment of information reported without having to return the original report and provides a basis for uniform and consistent reports at successive reporting periods. The basic objective is to obtain accurate information as promptly, economically, and efficiently as possible. Recent experience confirms our belief that an effective pledge of confidentiality is essential to preservation of the advantages which arise from the use, for purposes of consultation, of the file copies of census reports.

Mr. JOHANSEN. May I interrupt to ask, does the witness care to be a little more specific as to what he refers to by "recent experience?" Does he have something specific in mind?

Mr. RYAN. We do, sir, and with your permission we would like to have the Director of the Census Bureau summarize that experience directly.

Mr. JOHANSEN. That may come after the completion of your testimony.

Mr. RYAN. If I might.

AMENDMENT NEEDED IN PROPOSED LEGISLATION

The administration supports legislation to amend section 9 of the Census Act to establish the confidential status of file copies of census reports. Two points which are basic to the administration's position

of support of legislation to amend section 9 of the Census Act warrant special emphasis. The first point concerns the need to insure that, in establishing the confidential status of file copies of census reports, there is created no undue interference with the responsibilities of other agencies of the Government in carrying out functions which require information. Such responsibilities include those under the antitrust acts and other regulatory acts.

The position of the administration on this matter is the same as that taken by the Solicitor General in the Government's brief to the Supreme Court in the *St. Regis* case. The Solicitor General held that the protection of the respondent's file copy of a census report should apply only to the file copy and not to the underlying information or to other records and documents of the respondent company, saying:

The fact that a business concern has made a report to the Census Bureau does not diminish its obligation to furnish information, reports, or documents to other government agencies such as the Federal Trade Commission in response to subpoena, interrogatories, discovery, or other legal process.

To illustrate this point, an agency other than the Census Bureau should be permitted, under proper authority, to ask similar or the same questions as those already put by the Census Bureau if these are deemed necessary to the effective discharge of its responsibilities. The respondent would be required to provide the agency with answers, even though they might differ from answers furnished the Census Bureau. As noted earlier, precisely the same answers may not be appropriate in both instances. The respondent should not be required to disclose the answers made on the census report and contained in the file copy of that report. This aspect of the administration's position would be recognized if, for example, H.R. 10569 were amended to delete the words "any such information, reports, and other data" in lines 7, 8, 9, and 10 of the bill and to substitute the words "census reports."

The second point in the administration's position calling for emphasis is the need to include in legislation a specific provision enabling a respondent to furnish voluntarily a copy of his census report to another agency. The option to respond to a request for information by supplying a copy of a report already made to the Census Bureau should be available to the respondent. H.R. 10569 now contains a provision which would permit copies of census reports to be used in judicial or administrative proceedings with the consent of the individual or establishment concerned. We believe such a provision is a necessary component of legislation to provide for the confidential status of file copies of census reports retained by respondents.

Mr. Chairman, with your permission I would like to call on the Commissioner of Labor Statistics to supplement this statement with the experience of the Bureau of Labor Statistics in its own reporting procedures which reflects the impact on an agency that depends primarily on voluntary reports to get its information.

Mr. HENDERSON. Thank you, Mr. Ryan. We certainly want to give Mr. Clague and Mr. Scammon as well an opportunity to testify, but first, with regard to the second point you make it might be well to clarify this point since Mr. Johansen is the author of a bill that does not contain the language you refer to in H.R. 10569. I am sure

my colleague would respond that he would have no objection to the company giving its consent for the file copy to be used in the manner you talked about.

Mr. JOHANSEN. Very definitely not. I concur with that added provision completely and, if I might go a step further with the possibility of providing legislative history, I would like to address myself to the first point, and that is that insofar as I am concerned in offering the bill I did and supporting legislation of this type, there is no thought or intention on my part that any other agency of Government should not have the right to seek and to secure by subpoena or other due process, information necessary to the performance of its functions. I would like the record very clear that there is no intent to prevent that sort of thing. The point is that it should be done with the knowledge on the part of the respondent that it is being done in relationship to a law enforcement or an investigative function and that the request is addressed to certain specific information, so that he is on notice as to what is being done and why and at the same time the actual copies of the reports supplied under a pledge of confidentiality enjoy the same protection of immunity that the originals have.

Mr. HENDERSON. I thank the gentleman very much for his comments at this point.

Going back to the first suggestion you made, Mr. Ryan, where you recommend the words "census reports" be substituted in lieu of the words "any such information, reports, and other data," which seem to appear in all the bills, I would like to have you further explain why you think the language "census reports" is better than the language of the bills. I would point out that we have inserted in the record the entire language of subsection 9 of title 13 of the United States Code which gives the confidentiality to the report in the Department of Commerce or Census Bureau. The language there restricts the use of the information furnished, in subparagraph (1); and subparagraph (2) restricts the publication the data furnished; and subparagraph (3) prohibits anyone other than the sworn officers and employees of the Department or Bureau or agency thereof to examine the individual reports.

It seems to me that the language of the bills was tailored to the language that gave the confidentiality in the Bureau and in the Department of Commerce itself.

Mr. RYAN. Mr. Chairman, the reason for the administration's proposal that the words "census reports" be substituted for the phrases that you have identified, specifically the phrase "any such information, reports, and other data." is basically to try to identify the type of information in the records of the company which should have the same protection as does the data in the hands of the Census Bureau. There is not too much difficulty in identifying the data in the hands of the Census Bureau. There may be more difficulty in determining what part of the records held by the company constitutes the kind of information to which the protection afforded the data in the Census Bureau should be extended. The phrase "information, reports, and other data" we felt from this point of view was somewhat ambiguous. The data to be protected in the Census Bureau is that contained in the census reports and we tried to identify that same information by saying the same information contained in the held copy of the respondent is what we want to protect also.

Mr. HENDERSON. I think it would be well at this time to hear from Mr. Clague and Mr. Scammon and then we can get it all in perspective.

Mr. CLAGUE. I am glad to appear before this committee, at the request of the Bureau of the Budget, to testify on this proposed legislation. I strongly favor legislative action to protect the confidentiality of copies of census reports retained by respondents. I believe legislation of this type is essential if we are to maintain the quality of Federal statistics.

The U.S. census of manufacturers and other censuses relating to American business provide the foundation for the whole system of Government economic statistics. They are essential in policy formation, in the development and administration of Government programs, and in appraising the level of our social and economic health. They are relied on heavily by our regulatory bodies. Businessmen need this type of economic intelligence in reaching decisions as to what to produce, how much, where, and when.

The Bureau of Labor Statistics depends on these censuses, not only for the vital descriptive information they provide, but also for benchmarks and for weights in establishing our own series of current statistics in such areas as employment, wages, and hours of work. Other statistical agencies use the censuses in the same way. Hence, to a substantial degree, the reliability of our whole system of Federal economic statistics is dependent upon the completeness and accuracy of the censuses.

I have no doubt that the quality of our censuses will deteriorate if, as a result of the *St. Regis* decision, business respondents are to lose their assurance that the confidentiality of these intimate and vital reports will be respected. I am not concerned exclusively about the small minority of businessmen whose reports might reveal illegal activities or would provide the basis for taxation or regulatory action. These respondents can submit accurate census reports and still safeguard their position by destroying their file copies. More serious is the danger that honest businessmen, conducting business in a perfectly proper manner will begin to withhold information that might lead to litigation or embarrassment, or substitute less useful information because it seems safer. This is often the result when reports cease to be transmitted directly by a firm's accounting department—which can break down and reassemble the basic data in the most useful form, make good estimates for missing items, etc.—and become the responsibility of the company's legal department.

The high reliability and worldwide reputation of the U.S. censuses were not gained overnight. It took decades to improve our methods and to build up confidence and willingness to cooperate among American businessmen. I am not suggesting that these would be lost overnight. But I am persuaded that when businessmen become convinced that their copies of census reports may be seized for regulatory purposes, the completeness and accuracy of our census data will begin to deteriorate.

In arriving at this conclusion, we are not entirely dependent on speculation, for we have witnessed the experience of other countries where the confidentiality of business reporting is not assured and where, partly as a result of this, Government statistics are regarded with suspicion and disdain. It is my impression that the countries

which have not attempted to guarantee confidentiality in census reports, or which have been unable to make good their guarantee, have generally been unable to produce business censuses of high quality.

The foregoing has dealt specifically with the confidentiality of census reports, which is the specific subject matter of the present proposals. I feel that the implications of these bills are much broader, however, than the wording of the bills suggests.

The statistical program of the Bureau of Labor Statistics includes some of the most important economic indicators of the Nation. All of these statistics are the result of voluntary reporting. We have a high rate of cooperation because our results are useful and because our respondents have been assured that their reports were confidential. It is a matter of pride with us that businessmen can turn over to us their intimate business records, secure in the knowledge that they will not be revealed outside the Bureau. Carbon copies of these reports are usually retained by our respondents. Such copies were not involved in the *St. Regis* case and are not the subject of current legislative proposals. But I am sure that the passage of a bill such as H.R. 10569 will strengthen the assurance we can give to cooperating employers and will support their willingness to provide economic data as a public service.

Mr. HENDERSON. Thank you, Mr. Clague. Before proceeding with a question or two that we have, I would like to say without taking anything away from the Bureau of the Census, for which this committee has high regard and respect, I think I can say for myself I know of no one in the Government statistical field who has done more in giving confidentiality among businesses than you have in the very strategic position that you have held, and I think your statement certainly has great weight with at least the chairman of the committee.

I would like to ask one question, Mr. Clague. Could you tell us what effect you have been able to see at this point with regard to the decision of the Court in the *St. Regis* case?

Mr. CLAGUE. Mr. Chairman, we have begun to receive answers from businessmen saying they are concerned about this decision and are therefore hesitant to give us this information which we are requesting on a voluntary basis. It has not been a large proportion of our respondents. Our statistics are still flowing. But there is, if I may say so, a rather ominous minority who are definitely worried about the situation, and all we have been able to do is to say that, as of the present, this particular Court decision did not apply to our reports. However, by analogy it could be made to apply to them in the same way and we cannot do anything more than suggest, as the Census has done, that if they have the file copy of their reports they do not have to keep it, but if they do keep it, it might be called for.

Mr. HENDERSON. In the last paragraph of your statement you used the term "intimate business records," and we conclude that you are saying here that they voluntarily turn over to you intimate business records which are not in census reports at the present time.

Mr. CLAGUE. I am sure that most of the reports they give to the census are intimate business reports of the same kind as our reports. But more specifically, to answer your question, we do ask different questions than the census asks. We have other kinds of statistics which we request and it was to those reports I was referring. They are no more intimate than the census reports, but they are different.

Mr. HENDERSON. As you look ahead as to the effect of the decision, can you tell us what will be the situation if we do not enact legislation such as we have under consideration.

Mr. CLAGUE. Of course, a great deal depends upon what happens in actual fact; but if a few examples occur such as the *St. Regis* case—rather dramatic examples of companies being required to furnish these confidential reports—I think we would find a multiplication of refusals to answer.

Specifically speaking about our voluntary reporting, we always have some refusals among businessmen. That is their right; and when at times we get a letter from a representative of the business concern asking if it is compulsory to report, we write back and say "No; it is not"; but then we go on to give what we hope is a persuasive argument as to why he should report, what our needs are for the information, and why we hope that the firm will respond voluntarily.

Now, if these records voluntarily given—and in this sense, I think we are just as badly off as the census—if a man because he has been voluntarily selected in one of our samples—and some of our samples are relatively small in the total number of businessmen selected—if that man is to be subjected to this risk, if he furnishes the information because he happened to be drawn in the sample, this will have a disastrous effect.

Mr. HENDERSON. He would just as soon not be in the sample?

Mr. CLAGUE. That is right. He will say with perfect justification, "Why should I be in your sample?"

Mr. HENDERSON. Any questions of Mr. Clague?

Mr. JOHANSEN. Mr. Chairman, first of all I have in my hand a list of private organizations—I would say some 25 or so—which have indicated by statements submitted to the committee their concern: chambers of commerce, American economic associations, and various industrial associations and business associations. I wonder if the concern they express doesn't reflect a possible potential influence on their constituencies and their members with respect to the very problem you are mentioning.

Mr. CLAGUE. Congressman Johansen, I think my answer certainly would be "Yes; it will." The word will spread. A great many people now in the business world haven't heard of this decision yet, but as the word gets around the refusals will multiply.

Mr. JOHANSEN. Now, I want to go to one technical question. I think possibly the answer is here before me. I notice, for example, in my bill that it seems to me it has a very serious defect—and this was drafted very early in the history of this—I think it has a very serious defect of defining copies of census reports. Whereas in the chairman's bill I notice that it refers to—

no department, bureau, agency, officer, or employee of the Government except the Secretary of Commerce—

and then it seems to relate to any data gathering in the Department of Commerce.

My thought was unless we use the broader language of Mr. Henderson's bill we wouldn't even be revising and modifying or strengthening the existing law with respect to your operation. And it is certainly your thought, and I am sure the thought of the committee, that this corrected legislation would apply just as broadly as the basic statute applied and not therefore exclusively to the Census Bureau.

Is that correct?

Mr. CLAGUE. Well, Mr. Johansen, this is the census code itself, and the whole code which you are amending relates to the census. So we did not request that anything be done for us; we didn't ask for this broader language. I think Mr. Ryan a moment ago gave the answer that we would endorse. This language must not be vague. You have to be very precise as to just what you are protecting. Otherwise a great deal of uncertainty is created as to all kinds of records that might be protected, some perhaps unwisely. So I don't think this would help us.

Mr. JOHANSEN. Does the existing statute title 13 cover your agency?

Mr. CLAGUE. No; it does not. As I said in my statement, we really hope that, by analogy and by the fact that the census is well protected, the courts then will follow that precedent insofar as our own situation is concerned. We would not then be so worried about our independent situation.

Mr. RYAN. In the Bureau of the Budget we have considered the possibility of proposing more general legislation. It would be new legislation or perhaps an amendment to the Federal Reports Act. However, we felt the immediate situation called for remedy as quickly as possible. The immediate situation has to do with the census reports and so the immediate problem was an amendment to the census legislation. This does not preclude, later on, consideration of similar proposals for covering general statistical work outside the Census Bureau.

Mr. JOHANSEN. Let me phrase my question this way, then: With respect to those businessmen who have expressed misgivings to you with regard to your data gathering, is it your impression that the adoption of the Henderson amendment or some reasonable facsimile thereof will rub off so far as we are concerned in establishing confidence and assurance with respect to your segment of the statistics gathering?

Mr. CLAGUE. Yes, sir; that is exactly what we hope will happen.

Mr. HENDERSON. Mr. Clague, in that regard in my opening statement I quoted from the Court where they said they could not rewrite the Census Act. By doing so they opened the door at least to the re-writing of the Census Act, which is the ultimate purpose that we have here, but your statement is a general one with regard to what you feel will be the overall effect on the business concerns and as they cooperate or as they are required to report in other areas?

Mr. CLAGUE. Yes, Mr. Chairman. Our feeling is that the only disquietude we have run into is the mention of the *St. Regis* decision. If that was dropped out, I have the feeling they would no longer be worried about our reports. Of course, another case could arise in which one of our reports might be at stake, but that would be a separate court case, and I think your legislation protecting the census would be a good protection for us.

Mr. JOHANSEN. I wonder if any of the witnesses could indicate some degree of the proportion of statistical data secured by census which is involved in this proposed legislation which is voluntary and what proportion mandatory by law. Possibly that will come in your testimony.

Mr. SCAMMON. I am sure we can supply that.

(The requested information follows:)

List of Census Bureau surveys dependent upon responses from businessmen covering the year 1961

Title	Frequency	Voluntary (V) or mandatory (M)
Agriculture (cotton ginning):		
Cotton ginned by States.....	Semimonthly 12 times during season.	M.
Cotton Ginned by Counties.....	Monthly 6 times during season.	M.
Business:		
Weekly Sales of Retail Stores.....	Weekly.....	V.
Monthly Retail Trade Report.....	Monthly.....	V.
Retail Trade Annual Report.....	Annual.....	M.
Monthly Wholesale Trade Report.....	Monthly.....	V.
Canned Food Report.....	5 times year.....	V. ¹
Green Coffee Inventories and Roastings.....	Quarterly.....	V.
Construction:		
Sales of New One-Family Homes.....	Monthly.....	V.
Housing Starts.....	do.....	V.
Value of New Construction Put in Place.....	do.....	V.
Industry:		
Annual Survey of Manufactures (MA-100).....	Annual.....	M.
Flour Milling Products (M20A).....	Monthly.....	V.
Confectionery (Including Chocolate Products) (M20C).....	do.....	V.
Salad Dressing, Mayonnaise, and Related Products (M20F).....	Annual.....	M.
Fats and Oils (M20J).....	Monthly.....	M.
Fats and Oils (M20K).....	do.....	M.
Woven Fabrics (M22A).....	do.....	V.
Consumption on Woolen and Worsted Systems (M22D).....	do.....	V.
Woolen and Worsted Machinery Activity (M22E).....	Annual.....	M.
Spun Yarn for Sale (M22F).....	Monthly.....	V.
Knit Cloth for Sale (M22K).....	Annual.....	M.
Tufted Textile Products (M22L).....	Semiannual.....	V.
Stocks of Carpet Wool and Related Fibers (M22M).....	Quarterly.....	V.
Cotton, Man-Made Fiber Staple, and Linters (M22P).....	Monthly.....	M.
Cotton, Silk, and Man-Made Fiber Woven Goods Finished (M22S).....	Annual.....	M.
Broad Woven Goods (M22T).....	do.....	M.
Cotton Broad-Woven Goods (M22T.1).....	Quarterly.....	V.
Man-Made Fiber Broad-Woven Goods (M22T.2).....	do.....	V.
Woolen and Worsted Woven Goods (M22T.3).....	do.....	V.
Tire Cord and Tire Cord Fabric (M22T.4).....	do.....	V.
Apparel (M23A).....	Annual.....	M.
Men's Apparel (M23B).....	Monthly.....	V.
Knit Underwear and Nightwear (M23C).....	Quarterly.....	V.
Gloves and Mittens (M23D).....	Annual.....	M.
Women's, Misses', and Juniors' Apparel (M23H).....	Monthly.....	V.
Brassieres, Corsets, and Allied Garments (M23J).....	Annual.....	M.
Sheets, Pillowcases, and Towels (M23X).....	do.....	M.
Red Cedar Shingles (M24C).....	do.....	M.
Hardwood Plywood: Market Shipments (M24F).....	do.....	M.
Softwood Plywood and Veneer (M24H).....	do.....	M.
Lumber Production and Mill Stocks (M24T).....	do.....	M.
Mattresses and Bedsprings (M25E).....	Monthly.....	V.
Manufacturers' Shipments of Office Furniture (M25H).....	Annual.....	M.
Pulp, Paper, and Board (M26A).....	Monthly.....	V.
Converted Flexible Packaging Products (M26F).....	do.....	V.
Tabulating Cards and Sets: Manufacturers' Shipments (M27T).....	Annual.....	V.
Sulfuric Acid (M28A).....	do.....	M.
Superphosphate and Other Phosphatic Fertilizer Materials (M28D).....	Monthly.....	V.
Paint, Varnish, and Lacquer (M27F).....	do.....	V.
Gelatin (M28W.1).....	do.....	V.
Animal Glue (M28W.2).....	do.....	V.
Asphalt and Tar Roofing and Siding Products (M29A).....	do.....	V.
Sales of Lubricating Oils and Greases (M29C).....	Annual.....	V.
Shoes and Slippers (M31A).....	Monthly.....	V.
Luggage, Briefcases, and Personal Leather Goods (M31E).....	do.....	V.
Refractories (M32C).....	Quarterly.....	V.
Clay Construction Products (M32D).....	Monthly.....	V.
Pressed and Blown Glassware (Except Glass Containers) (M32E).....	Annual.....	M.
Glass Containers (M32G).....	Monthly.....	V.
Steel Mill Products (M33B).....	Annual.....	M.
Commercial Steel Forgings (M33C).....	Monthly.....	V.
Nonferrous Castings (M33E).....	do.....	V.
Metal Cans (M34D).....	do.....	V.
Plumbing Fixtures (M34E).....	Quarterly.....	V.

¹ The end-of-year report is mandatory.

List of Census Bureau surveys dependent upon responses from businessmen covering the year 1961—Continued

Title	Frequency	Voluntary (V) or mandatory (M)
Industry—Continued		
Steel Power Boilers (M34G).....	Annual.....	M.
Closures for Containers (M34H).....	Monthly.....	V.
Steel Shipping Barrels, Drums, and Pails (M34K).....	do.....	V.
Heating and Cooking Equipment (M34N).....	do.....	V.
Aluminum Foil Converted (M34P).....	Annual.....	M.
Farm Machines and Equipment (M35A).....	do.....	M.
Typewriters (M35C).....	Monthly.....	V.
Construction Machinery (M35D).....	Quarterly.....	V.
Farm Pumps (M35G).....	Monthly.....	V.
Fans, Blowers, and Unit Heaters (M35H).....	Quarterly.....	V.
Internal Combustion Engines (Except Outboard, Automotive, and Aircraft) (M35L).....	Annual.....	M.
Air-Conditioning and Refrigeration Equipment (M35M).....	do.....	M.
Office, Computing, and Accounting Machines (M35R).....	do.....	M.
Tractors (Except Garden Tractors) (M35S).....	Monthly.....	V.
Vending Machines (M35U).....	Annual.....	M.
Electric Lamps (M36B).....	Quarterly.....	V.
Fluorescent Lamp Ballasts (M36C).....	do.....	V.
Electric Lamps (M36D).....	Monthly.....	V.
Wiring Devices and Supplies (M36K).....	Annual.....	M.
Motors and Generators (M36H).....	do.....	M.
Home-Type Radio Receivers and Television Sets, Automobile Radios, Phonographs, and Record Player Attachments (M36M).....	do.....	M.
Backlog of Orders for Aerospace Companies (M37D).....	Quarterly.....	V.
Aircraft Propellers (M37E).....	Semiannual.....	V.
Complete Aircraft and Aircraft Engines (M37G).....	Monthly.....	V.
Truck Trailers (M37L).....	do.....	V.
Atomic Energy Products (M38Q).....	Annual.....	M.

Mr. HENDERSON. Perhaps Mr. Scammon would like to testify at this point.

Mr. SCAMMON. The Bureau of the Census has not submitted a formal statement. Our feeling has been Mr. Ryan's presentation covers the principle production of evidence to deal with the specific problem with which we are now faced.

I would like to take just a moment to respond to the particular question of Congressman Johansen in terms of a "for instance" as to how the present situation of the *St. Regis* case hampers the work of a statistical agency of the Government, namely the Bureau of the Census and how we think it will over the months and years snowball to make our work so much more difficult.

To be specific, we have a new monthly report on regional retail sales volume. By our usual methods of mail inquiry and follow-up, we were able to obtain reports from only about 75 percent of the large companies. Prior to the *St. Regis* decision the cooperation of the very large retail companies was generally in excess of 90 percent.

Now we can't, of course, measure exactly what *St. Regis* added. But in a recent typical week Bureau officials held discussions with seven large companies in an attempt to obtain their cooperation in the regional retail sales program. In every instance the *St. Regis* decision was introduced into the discussion by company representatives. The persistent appearance of this topic in discussions with non-respondents and our reduced success in introducing new surveys since the *St. Regis* decision suggests it is the primary cause.

While on the subject of cooperation it should be noted that the withholding of reports by only a small percentage of the companies in an

industry or in a geographic area, if they are of large size, can injure or destroy a survey entirely. Unfortunately it is these large companies which are the ones most likely to be involved in the consequences of the *St. Regis* decision.

If I may add to that: An instance has come up in which a European firm acquired the property of an American firm. When that European firm first had contact with the Census Bureau it was their intent not to report anything to anyone. They were following a practice which Mr. Clague commented upon in which nobody trusts anybody, because they have very good reason not to trust anybody. They are afraid if they submitted material it is going to be used to harass them, to knock them out of business, to arbitrarily increase their taxes or to subject them to regulation. And their experience as businessmen was that the keeping of dual or triple or quadruple sets of books and reports was normal. This was the way you worked with the Government.

Now over the years I think the American Federal Government statistical programs, Mr. Clague's, our own, and others, have been most fortunate in building up a good relationship in which we trust the business community and they trust us.

Now along comes *St. Regis* and immediately there is introduced a doubt, a dubiety, a question, a suspicion in all this relationship. People start destroying file copies. People start wondering what the motives are in this particular instance. People start insisting that their general counsel's office approve everything before it be sent on to the Bureau of the Census because they are just not quite sure. They don't think their friends in the statistical agencies really mean to do them dirt but they are just not quite sure and they begin to adopt an uncooperative attitude toward their relationship with the Government.

It is this attitude, I think, Mr. Chairman, which in our own case, and I think Mr. Clague and Mr. Ryan would agree with me, we are most concerned about. Because it seems to us that the keeping of the national statistical books must be maintained clear and free from any purpose for which those statistical books are to be used.

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 that imagination is a pretty far-reaching thing. Because when a man knows, on the evidence before him, that the material he is asked to submit for a statistical purpose may be used to harass him, drive him out of business, operate against his interest financially, he is going to adjust those figures. Now he may do it deliberately, callously, or he may do it simply in the same way some Federal forms 57 are made out—by shining the light of the truth on certain of his activities and overlooking the rest.

The fact is that in the case of many of these voluntary reports we won't get the data at all. On the mandatory basis, the data are very likely to be so hedged, so compromised, so evasive that its statistical value right, left, middle, up, down, is lost in a general melange of confusion created by such undertakings as the *St. Regis* decision.

Mr. JOHANSEN. Mr. Chairman, I would like to say I think that is a magnificent statement and I would like to caution the witness if he

has access to the transcript of this testimony that he not edit it or alter it one iota.

Mr. SCAMMON. You are very kind, sir.

Mrs. NORRELL. At this point I would like to submit for the record a letter that I received yesterday from the Waukesha Motor Co., Waukesha, Wis. In the body of the letter this gentleman says:

I urge you to recommend some legislation that will preserve the confidential nature of information submitted to the Census Bureau. We have furnished much information through the Census Bureau based on the fact that it has been held confidential by that agency, and I must compliment them on the way they have handled this data.

I do not know the size of this concern but it does bear out the contention that you have there.

Mr. HENDERSON. The subcommittee is delighted to have this letter, Mrs. Norrell.

(The letter follows:)

WAUKESHA, MOTOR Co.,
Waukesha, Wis., July 27, 1962.

Re H.R. 10569.

HON. CATHERINE G. NORRELL,
U.S. Representative (Arkansas),
House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE NORRELL: It is my understanding that your subcommittee is holding hearings on the above subject bill on July 31 and August 1.

I urge you to recommend some legislation that will preserve the confidential nature of information submitted to the Census Bureau. We have furnished much information through the Census Bureau based on the fact that it has been held confidential by that agency, and I must compliment them on the way they have handled this data.

Sincerely,

C. E. NELSON, *President.*

Mr. HENDERSON. Mr. Ryan, I would like to state the subcommittee is glad to know that the administration does support our efforts to correct the situation resulting from the Supreme Court decision in the *St. Regis* case. At this time I think we are very concerned about something that has not been brought out and perhaps it would be well to get it into the record at this time: We feel that Government decisions, the decisions that you and the Bureau of the Budget, or the President at the White House, or that we in the Congress must reach, depend to a great extent on Government statistics. The fear that has been expressed this afternoon and that we have had through our correspondence, we wonder if we can in the future make these decisions. Specifically right now as we are thinking of the President's impending decision on the tax reform, or tax cut, the decision that will be transferred to the Congress perhaps, or that we will have to make independently, we know that we are going to rely to a great extent on the information that you are able to furnish the President from the Bureau of the Budget or that we are able to get from you, from Mr. Clague, or from Census, and certainly if we do not have confidence in the basic statistical data, then our decisions will be more confused than ever and I wonder if you would like to comment broadly on this aspect and that is the Government's use of its own statistics.

Mr. RYAN. Mr. Chairman, I think you have struck an important note because the Government is perhaps one of the most significant users of statistical information produced by Government agencies and in particular I believe as more and more interest is expressed

in the status of the economy, as attempts are made to forestall ups and downs in the level of our economy, there is need to have more detailed information about various aspects of the economy. This, for example, means we must put more emphasis on our industrial statistics. Now, industrial statistics do describe various types of activity. The records of companies engaged in industrial activity are geared many times to the form of ownership which is prevalent. The books of record need not and in many cases are not designed to supply the kind of information that is necessary for detailed analysis of our economic structure. This is where we see the greatest danger, that reporting firms will not find it worthwhile to make the adjustments in their recordkeeping systems, to make the estimates that may be necessary in order to approximate from the data that are available from their operating records, the kind of information necessary to adequately describe what is going on in our economy.

We are worried that the fact of this influence on statistics will affect the ability of the Government to perform its functions, including economic and social objectives.

Mr. JOHANSEN. Isn't it true therefore that all users of this information will potentially be the losers? Those in Government who use the statistics, those in private business who use the statistics? We can all suffer from the impairment of the data.

Mr. RYAN. I believe that is certainly true, Congressman Johansen. In particular if business respondents elect to escape from this problem by not keeping, for example, file copies, then no one gains. Certainly the statistical agencies lose. Every other agency that would like to have access to the type of information loses.

Mr. HENDERSON. Mr. Ryan, I have one further question: I assume that you have had and seen copies of the letters sent to the committee by the Chairman of the Federal Trade Commission. You will recall in one letter Mr. Dixon stated it was very convenient for the Federal Trade Commission to use census reports in their proceedings.

Would you agree that we should not jeopardize the entire census statistical system simply because the Federal Trade Commission determines it is convenient to use the copies of the census report rather than conducting its own studies and surveys and investigations?

Mr. RYAN. In this operation of balancing opposing interests, Mr. Chairman, we are of the opinion that the interests of the statistical system which we have attempted to describe here outweigh the interest of the Federal Trade Commission in particular or any other regulatory agency that needs access to an individual record. We feel there should be no impediment to the asking of questions by these agencies but at the same time there should be no force which would require the respondent to give to such agencies the information that he has prepared for statistical purposes.

Mr. HENDERSON. This is a problem facing the committee, of course. That is, we do not want to keep the regulatory agencies from conducting their investigations and getting all of the information that exists but for a matter of convenience and just being able to go down to Census in this instance or down to the Bureau of Labor Statistics for a matter of convenience, you feel that is overriding the problem we run into here with the loss of confidentiality in reporting?

Mr. RYAN. This is certainly true, Mr. Chairman. I should point out, however, that the proposals that the administration makes in the form of modification of the bills that are before you and particularly the bill introduced by yourself reflect the concern of the Federal Trade Commission on these two points. As you have said, no one wants to unduly impede the Federal Trade Commission or other agencies in obtaining information they feel they need from respondents. Hence we support the position that the Federal Trade Commission should have every right to ask questions of respondents. We feel respondents should not be forced in reply to that request to give information that has been prepared for a statistical agency on a confidential basis.

Mr. JOHANSEN. Mr. Chairman, may I pinpoint this right here by quoting this sentence from the letter of the Chairman of the Federal Trade Commission :

Most companies have found their census reports a convenient way to provide the Commission with information and preventing the use of those reports in Commission proceedings that would compel both the companies and the Commission to go to the expense of compiling industry information in other forms.

As I understand it, in the revision contained in the Chairman's bill there is nothing whatsoever that precludes the voluntary submission of copies of census reports on the part of a respondent. There is nothing whatever that precludes it and therefore the argument offered in the sentence I quoted is based on a premise which no longer exists. Isn't that correct?

Mr. KRUEGER. Mr. Congressman, this is precisely the reason this point was emphasized in the administration report. The Federal Trade Commission is itself a substantial user of census and other Government statistics. I believe they will say as they have said before, that in many instances if not in the great preponderance of instances, when they ask companies for reports and give them the option which we claim they should have of supplying information if they wish in the form of data which they have reported to the Census Bureau they may do so but we want it clearly understood and recognized that this subject should be at the option of the respondent.

Mr. JOHANSEN. And without penalty and without detriment to the respondent if he so sees fit not to do so.

Mr. KRUEGER. Absolutely, but once having given it freely and willingly, then, of course, it should not be under any sort of wraps. That is why we consider this particular point of significance.

Mr. JOHANSEN. There is one other area of questions I should like to cover very briefly and this gets into the technical problems of drafting this legislation: If I as a manufacturer submit information to the Census Bureau in a letter, for example, a followup correspondence on my original report, or—this is a two-headed monster that I am raising here—if there are attachments to the formal census report form is it your feeling that the confidentiality of copies of either of those two types of records should be preserved under this legislation?

Mr. RYAN. To respond to the spirit of your question, Congressman, we felt in the first point we made with respect to how we would propose to amend the bill introduced by the chairman, we would amend this to delete the words "copies of such information, reports and other data" and substitute actually the words "census reports" which are in your original bill, basically to try to define as closely as we could

what is being protected that was in the hands of the respondent.

Now "copies of census reports"—the question you asked is, would the definition of a census report include first of all, an amendment or a clarification or revision made by letter, presumably at a later time, and secondly, whether or not other sheets which are attached physically to the file copy to be considered part of the census report in an effort to make sure that this legislation accomplishes its purposes but does not at the same time impede other agencies and the Census Bureau from obtaining the data they need and have authority to collect. Our position would be that the definition of census report would exclude other pieces of paper and unless the clarification or the revision were actually noted in the file copy that it would not be included in the definition.

Mr. JOHANSEN. Then, if in some section of the file copy I put an asterisk and say, "See attached sheet," would it or wouldn't it be covered?

Mr. RYAN. It would not be, Congressman. We are trying to draw a line at some point.

Mr. HENDERSON. Don't we get to the point of defining what we mean by legislative language, either the census report or the technical language I have in my bill, just where we are drawing the line and it seems to me that the problem here is, as I see it, one of trying to raise an umbrella by legislation but not giving to the respondent the right to raise a much larger umbrella?

Mr. RYAN. That is right. This is a problem and the Federal Trade Commission pointed out these words are ambiguous and this is one of the reasons they object to the amendment and what we are trying to do is remove as much of that ambiguity as possible.

Mr. UDALL. If the Chair is through I had a couple of questions.

Mr. HENDERSON. Yes, sir; go right ahead.

Mr. UDALL. I wanted to say that I came down here with the first impression from reading the material that this probably was a good bill and something clearly that should be done.

I have read the report of the House Judiciary Committee and of the FTC report and I am beginning to wonder about it.

Mr. Scammon, if you send me a census form and I fill it out and send it back to you and I lose or destroy my copy and a couple years later I write in and say, "Dear friends in the Census, I need a copy of my report of July 1962," would you send me one? Would you do this?

Mr. SCAMMON. We might have to charge you for it but under normal circumstances we would do it; yes.

Mr. UDALL. The reason I ask is, under rulings of our Federal district courts and many of our State courts you have situations like this: I sue you for some kind of a claim or in a divorce case the wife sues the husband and the issue arises as to what is my income. You want to get a copy of my income tax return. Now under Federal law income tax returns are confidential and can't be disclosed but the courts have held that you can have the court order me to write Internal Revenue and request a copy of my income tax returns. They send them back and I have to furnish them to you in the lawsuit.

It seems to me a lot of this alarm may be unjustified, if this is the case with census reports, in that the man who says, "I am going to destroy them so you can't get at them," if it comes down to actual liti-

gation, the court can require him to write the Census Bureau or the agency that has the reports and get a copy and then furnish it.

Mr. SCAMMON. This may be, Congressman, but I point out the filing of an income tax report is not voluntary. You and I and each one of us here must file this report. The majority of the census reports we are talking about are voluntary reports and not mandatory. For those which are mandatory we have no agents for enforcement as does Internal Revenue.

Mr. UDALL. I don't think there is a legal distinction there—I wouldn't think so "off the cuff"—whether it is voluntary or involuntary.

If I file a voluntary report with the census and I write in and say, "Please send me a copy," you are going to send it.

Mr. SCAMMON. My point is under the extension of the *St. Regis* decision, under the atmosphere which is created of confidentiality, doubt and suspicion, the people picked to be a part of the voluntary survey will say, "Gentlemen, thank you, but include me out. I will have nothing to do with this. I don't trust you." And they would be right.

Mr. UDALL. I can see how it would handicap a voluntary data gathering activity if the idea gets around as it apparently is beginning to among business firms, "You had better watch out about giving voluntary information to Government agencies."

Mr. SCAMMON. The group who would be affected the most would be the Federal Trade Commission because the desire of the Federal Trade Commission to get these data is evidence of the validity of the data in the first place. If the data cease to have validity, if the figures themselves become murky, if you have a situation in which this set of figures, these statistics, these data cannot be relied upon, then, of course, our friends in the Federal Trade Commission or any other Federal agency have denied to themselves an accurate statistical picture of the very area they are trying to regulate.

Mr. UDALL. Mr. Chairman, I would like to ask the chairman or the staff this question. I seem to detect a sort of intrafamily unhappiness here among the various agencies of the administration and I am surprised that there has been no statement by the Justice Department, particularly the Antitrust Division. I would have thought they would have had a direct and very immediate interest in this legislation but apparently they have not commented. I don't know whether they have been silenced by higher authority or whether they haven't been asked for their comments on this legislation.

Mr. HENDERSON. I might respond by saying that Justice was invited to file a statement or appear, and I understand they are here, at least observing what is going on, Mr. Udall.

Mr. UDALL. Maybe we can have a muzzling hearing like the Senate did, to find out if anybody has been muzzled in the administration.

That is all I have, Mr. Chairman.

Mr. HENDERSON. Thank you very much, Mr. Ryan and your colleagues.

(The statement of the Department of Justice follows:)

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., August 1, 1962.

HON. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning H.R. 10205, 10344, 10441, and 10569, bills to amend title 13, United States Code, to preserve the confidential nature of copies of information filed with the Bureau of the Census on a confidential basis, and H.R. 10347, a bill to provide that copies of information filed with the Bureau of the Census shall be immune from legal process, and for other purposes.

All of these bills, although not identical in text, are designed to overrule the decision of the Supreme Court in *St. Regis Paper Company v. United States* (368 U.S. 208 (1961)) and, thus, protect the confidentiality of retained copies of census reports.

The Department of Justice urges the adoption of the recommendations expressed on pages 6 and 7 of the prepared statement of Walter F. Ryan, read to the Subcommittee on Census and Government Statistics, on July 31, 1962. Mr. Ryan, speaking for the administration, emphasized that legislation of this type should apply to only file "copies" of census reports retained by reporting organizations. It should not grant immunity from legal process to underlying information, documents, or other records. Also, such legislation should incorporate a specific provision permitting a respondent to submit voluntarily a copy of its report to a Government agency for use in judicial or administrative proceedings.

Although the Department of Justice would interpose no objection to legislation restricted to preserving the confidentiality of retained copies of census reports, it opposes enactment of any legislation which does not comport to the foregoing recommendations.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

Mr. HENDERSON. The Chair is honored to recognize at this time the Honorable Emanuel Celler of New York, chairman of the House Judiciary Committee. I want to welcome you, Mr. Chairman, before our subcommittee.

STATEMENT OF HON. EMANUEL CELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. HENDERSON. I understand that you have a statement which you would like to make. At this point, without objection, I would like to place in the record a copy of the statements of other Members of Congress as follows: Representative Gerald R. Ford, Jr., of Michigan; Representative Milton W. Glenn of New Jersey; Representative John Lesinski of Michigan; and Representative Thor C. Tollefson of Washington.

(The statements follow:)

STATEMENT OF REPRESENTATIVE GERALD R. FORD, JR., OF MICHIGAN

Mr. Chairman, may I compliment you for introducing H.R. 10569, a bill to preserve the confidential nature of copies of information filed with the Bureau of the Census on a confidential basis. I am especially pleased to know that you intend to press for prompt enactment of this necessary corrective legislation during the present session of Congress.

On February 15, 1962, I introduced H.R. 10205, a similar but not identical bill, to accomplish the same purpose. I was disturbed by the decision of the U.S. Supreme Court of December 11, 1961, in the case of *St. Regis Paper Company v. United States* (368 U.S. 208). Our citizens are told by the Census Bureau that information supplied to the Bureau is confidential and that it cannot be used for purposes of taxation, investigation, or regulation by any other governmental agency. This assurance is based on clear language in the Federal statutes. Many of us were indeed surprised, therefore, when the Supreme Court ruled that this confidentiality applied only to the original reports in the hands of the Bureau of the Census and not to copies retained in the files of those making the reports.

I think the majority and minority opinions in the *St. Regis* case set forth effectively and precisely the reasons why remedial legislation such as provided in H.R. 10569, H.R. 10205, and similar bills, is required.

The decision of the Court as explained in the controlling (majority) opinion rests on the fact that "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., the Government officials. Indeed, when Congress has intended like reports not to be subject to compulsory process it has said so." The Court also pointed out that the Census Act "does not require petitioner to keep a copy of its report, nor does it grant copies of the report not in the hands of the Census Bureau an immunity from legal process." The legislation under consideration by this subcommittee at the present time clarifies the intention of the Congress. It provides that copies of reports supplied the Census Bureau and retained by any establishment or individual maintain their confidentiality and are immune from legal process.

The minority opinion in *St. Regis* includes excellent reasons for adopting the legislation under consideration and thus clarifying the intention of Congress. The minority opinion quotes the pertinent sentences from the form supplied by the Census Bureau, to wit: "Your report is confidential and only sworn Census employees will have access to it. It cannot be used for purposes of taxation, investigation, or regulation." The minority opinion then goes on to say: "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. It is no less good morals and good law that the Government should turn square corners in dealing with the people than that the people should turn square corners in dealing with their Government."

I am sure all of us want our Government to keep its word and to deal honestly with all citizens. The adoption of a bill to preserve the confidential nature of copies of information filed with the Bureau of the Census on a confidential basis will be a good step in the right direction. It is imperative that this legislation be enacted if the Government is to keep faith with its citizens as far as compulsory census reports are concerned.

HOUSE OF REPRESENTATIVES,
Washington, D.C., July 26, 1962.

HON. DAVID N. HENDERSON,
Chairman, Subcommittee on Census and Government Statistics, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I have introduced H.R. 12323, which is the same bill as that introduced by you, H.R. 10569, and other bills by our colleagues, Congressmen Ford, Lesinski, Tollefson, and Johansen.

If we expect our citizens to make confidential reports to the Bureau of the Census in order to make available accurate facts for the purpose of realistic decisionmaking, it is vital that these reports remain confidential, and not be opened by subpoena or otherwise to commissions or agencies for exploratory purpose. The loss of confidentiality of these reports, as is now in order by the recent Supreme Court decision, might even damage the census program. It certainly was the intent of Congress in giving the cloak of confidentiality to these reports to have it remain so in order to guarantee an accurate body of collected facts, which could provide the foundation for realistic decisionmaking of many facets in the Census Bureau.

The Council of Economic Advisers, on whom the President must depend for counsel and guidance in charting the course of governmental action, should not be deprived of sound, reasonable, nonsuspect data, simply to facilitate the task of the Federal Trade Commission in checking on the activities of business.

The passage of this bill will reinstate the census program to a level on which there can be no doubt as to the willingness and degree to which business will agree to cooperate to produce meaningful and useful statistics to serve the best interest of the United States. In order to do this, all we have to do is to reaffirm the intention of Congress that these reports be kept confidential in the specific terms as contained in the bill.

Sincerely yours,

MILTON W. GLENN,
Member of Congress.

HOUSE OF REPRESENTATIVES,
Washington, D.C., July 30, 1962.

HON. DAVID N. HENDERSON,
Chairman, Subcommittee on Census and Government Statistics, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: As you know, I introduced H.R. 10344, one of the bills which you are considering today. As a former chairman of the Subcommittee on Census and Government Statistics, I continue to maintain my interest in the statistical programs of the Government. I am deeply concerned with the far-reaching effect on such programs of the Supreme Court decision in the case of *St. Regis Paper Company v. The United States* last fall. If remedial legislation is not soon enacted, I believe that irreparable damage will be done to the entire Federal statistical system.

Even though existing legislation provides penalties for failure to respond to some Census inquiries, it is well known that the entire Census statistical program is essentially based on the voluntary cooperation of the many varied respondents. Confidence has been built up over a period of years of faithful adherence to the statement shown on many of the schedules and questionnaires: "Your report is confidential and only sworn Census employees will have access to it. It cannot be used for purposes of taxation, investigation, or regulation." I am sure the Census Bureau can inform you what is happening to the voluntary cooperation since the Supreme Court decision.

I would oppose any action seeking to impede the investigations of the Federal Trade Commission or the Antitrust Division of the Department of Justice. What these agencies apparently do not realize is that this proposed legislation not only will not interfere with their investigations, but that it is essential to the successful prosecution of many of their cases. It has been stated (cf. Mr. Celler's letter of Mar. 19, 1962, to Mr. Murray, published in the *New York Times*, Apr. 4, 1962) that in monopoly cases and merger cases the question of the market and the position of the defendant and others in that market are crucial. Further, that Census data furnishes the most readily and widely acceptable figures upon which determinations are made. It is obvious that, without full and free reporting from all companies, Census figures will be subject to considerable questioning as to what portion of the market or anything else they represent.

The legislation, which I favor, would not in any way prevent companies from voluntarily furnishing copies of their census reports to any agency requesting them. Assured of confidentiality, companies will have no reason not to retain copies of their reports and in many instances would make them available voluntarily as they have in the past. Under the present situation, without this legislation many companies are undoubtedly following the advice contained in the Supreme Court decision, that the law does not require the petitioner to keep a copy of the report. Thus, there are no copies to be furnished voluntarily or otherwise.

The understandable resentment of the business world generally toward the Supreme Court decision is not a sign of widespread malfeasance needing the protective cloak of confidentiality. It is based largely on the "broken promise" aspect of the decision. As Mr. Justice Black in the dissenting opinion stated, "It is no less good morals and good law that the Government should turn square corners in dealing with the people than that the people should, turn corners in dealing with the Government." I believe it is essential that we assure the people

of our insistence that the Government does turn square corners in dealing with them; we can best do that in this instance by the prompt passage of this remedial legislation.

I would appreciate it if you would include a copy of this letter in the hearings' record.

With best wishes, I am

Sincerely yours,

JOHN LESINSKI,
Member of Congress.

STATEMENT OF THOR C. TOLLEFSON, OF WASHINGTON

Mr. Chairman and members of the subcommittee, I want to commend you for giving consideration to the several bills which are designed to insure that copies of census reports retained by business firms are given the same confidential status as the original census reports filed with the Bureau of Census. The Supreme Court ruling in the *St. Regis Paper Company* case held that such copies did not have confidential status.

That ruling prompted the following remarks by me in the House earlier this year:

"Mr. Speaker, with the fantastic growth of Government over the recent years and the consequent need for more people to have dealings with it comes the question, 'How good is the Government's word?' A relatively recent Supreme Court decision may supply one answer. I would like to tell the Members of the House about it.

"There is an age-old maximum in law which holds that you cannot do indirectly what the law says you cannot do directly. But the courts and Government agencies move in mysterious ways their wondrous to perform and the old maximum begins to fade away.

"A case in point arises from the 1954 Bureau of Census Act which authorizes the Bureau to require detailed data from manufacturers and business concerns. Under penalty of fine and imprisonment, businessmen are required to fill out a lengthy and complicated form supplying such detailed information about their affairs as the Bureau might require.

"To allay the fears of businessmen over revealing business data and secrets to their competitors or agencies of Government—besides the Census Bureau—the 1954 act provides that neither the Bureau nor any of its employees may reveal the contents of the business census report to anyone, including agencies of Government. To further reassure businessmen, the form to be filled out by them carries the statement: 'Your report is confidential and only sworn Census employees will have access to it. It cannot be used for purposes of taxation, investigation, or regulation.'

"The clinching assurance was provided by the President of the United States himself who proclaimed: 'No person can be harmed in any way by furnishing the information required.'

"All these assurances, no doubt, were related to a constitutional provision which says in effect that no person may be compelled to testify against himself in a criminal proceeding. An agency like the Federal Trade Commission is a quasi-judicial body, and refusal to comply with its orders may be punished by fine and imprisonment.

"There is another old saying. It goes like this: 'There is more than one way to skin a cat.'

"The FTC has found another way.

"Under the provisions of the 1954 Census Act the Bureau of Census is prohibited from giving to the Federal Trade Commission any of the data contained in the business census reports filed with the Bureau. But Government bureaucracy must not be daunted, despite the assurances of the President, the Bureau of Census, or the understanding of Congress. Under a recent Supreme Court decision—*St. Regis Paper Co. v. United States*—all that the Federal Trade Commission has to do is subpoena a copy of the census report, not from the Census which cannot legally supply it, but from the individual businessman himself. Once in the hands of the FTC it becomes a matter of public record and its contents soon are available to all. Thus, what the FTC could not do directly, it did so indirectly.

"So the assurances of Government become as sounding brass or a tinkling cymbal—made so by a Supreme Court decision. Its word is certainly not reliable. The people's faith in the integrity of Government is once more shaken.

"As another old saying has it, the law is what the Supreme Court says it is. It is not necessarily what the Congress intended nor what the words of the law itself indicated. Nor is it what the President or the executive agencies assure the people it is."

Mr. Chairman, I hope that your committee takes favorable action upon one of the bills now being considered by it.

Mr. JOHANSEN. Before the witness proceeds, I would like to say it has been my privilege on numerous occasions to appear before the Judiciary Committee and to receive the most courteous treatment by the chairman. I hope to be in a position to reciprocate.

Mr. CELLER. It is very kind of you to make that statement.

Mr. Chairman and members of this distinguished subcommittee, amidst the heavy duties and responsibilities as chairman of the Judiciary Committee I rather hastily dictated this statement and I would ask permission to be permitted to revise and extend my remarks.

Mr. HENDERSON. Certainly.

Mr. CELLER. I have had to act rather hurriedly on this.

These bills espouse the philosophy of "what you don't know won't hurt you." Ignorance, we are told, is not bliss, is preferable to disclosure of business statistics to law enforcement agencies. Today when free access to information is more important than ever before, it is disturbing indeed to find the Congress being asked to enact a law to promote ignorance on the part of its own Government.

These bills are designed to keep agencies of the Government, directed by the Congress to enforce laws within their jurisdiction, ignorant of data necessary for such enforcement, merely because a copy of such data is in the possession of another agency of the same Government.

An ignorant executive agency is expected to achieve a high degree of performance. Freedom of information is to be denied to Government agencies because such information might disclose a violation of law.

The Supreme Court is to be rebuffed for holding that relevant data in the possession of a corporate defendant in an antitrust suit can be used by a Government agency to prove the violation.

Congress has the duty, I believe, to enact legislation to promote inter-agency exchange of information rather than legislation promoting secret closets of information in every agency. Very recently the headline of a story in the New York Times was: "ICC Withholds Data on Rail Loan." From whom was this agency withholding information? From the General Accounting Office.

The bills before this committee are designed to nullify the recent decision by the Supreme Court in *St. Regis Paper Co. v. United States*, 363 U.S. 203 (1961). The Court there held that the Federal Trade Commission could compel the production by a company of its file copies of its census reports.

These bills would gravely prejudice the effective enforcement of the antitrust laws. This is particularly true of monopoly cases under section 2 of the Sherman Act and merger cases under the Celler-Kefauver Act. The *St. Regis* case, incidentally, involves a number of merger acquisitions.

Now, gentlemen, you probably know as well as I do that the degree of concentration of power through consolidations and mergers must give one pause. The antitrust laws, in my opinion, are anchored to windward in the sea of industrial power. These antitrust laws must

be enforced. Otherwise a little businessman is engulfed. Otherwise we are going to reach that position where it can be said as follows: "Every man for himself," said the elephant as he danced among the chickens."

I don't think you want to see that day come and I don't want to see that day come. But if we cannot enforce our antitrust laws that day is surely coming.

In monopoly cases and in merger cases the question of the market, and the relative positions of the defendants and others in that market, are crucial. The determination of these intricate economic factors is difficult at best. The Government's figures are challenged at every step by the defense. Census data furnishes the most readily available and widely acceptable figures upon which such crucial determinations may be made. The published data are often inadequate. This may be because the line of commerce involved is included in the published figures as part of a larger classification or because it is necessary to know, as a measure of concentration, the position of the four largest and the eight largest companies in an industry and the position of the particular defendant or defendants in that context.

Whatever may be said of the policy of the Bureau of Census, operating under its particular laws, to keep the original returns secret, the Supreme Court has held in the *St. Regis* case that no such policy obtains with respect to copies of the returns to Census which are retained by reporting companies. Significantly, original income tax returns, as well as the taxpayer's copy, are available to Government agencies enforcing our laws.

Now, surely, if income tax returns are available why shouldn't census reports be thus available?

In a recent speech before the Senate, Senator Humphrey said:

Secrecy is an enemy of democracy * * *. The trouble with secrecy is that it begets more secrecy.

These bills illustrate the truth of Senator Humphrey's wise words. These bills would extend the secrecy of information in a Government agency's files to secrecy of information in the files of a corporation.

As a general rule, information in the files of one agency of the Government 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 a game of blind man's buff, played between 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 the census returns retained by the reporting companies.

I say this, because it seems to me that secrecy should be the exception and not the rule, certainly with respect to business statistics in the possession of Government agencies.

Judge Learned Hand remarked in *United States v. Coplon* (2 Cir. 185 F. 2d 289 at p. 638) :

* * * there may be evidence—"state secrets"—to divulge which will imperil "national security"; and which the Government cannot, and should not be, required to divulge. *Salus rei publicae suprema lex.*

But even this ultimate privilege, founded on the "supreme law" of national self-preservation "is not to be lightly invoked," by the executive branch of the Government, as the Supreme Court held in *United States v. Reynolds* (345 U.S. at p. 7).

If this ultimate privilege may be interposed only as a last resort at the expense of the administration of justice, I fail to see any comparable urgent necessity for enveloping in secrecy business statistics needed for the enforcement of our laws.

Two main arguments are made for nondisclosure. First, it is said that census reports of statistical data are made on a voluntary basis, and knowledge that copies are subject to disclosure would deter companies from reporting voluntarily. Secondly, it is said that companies might not furnish accurate information if compelled to give such information with knowledge that some other agency might make use of it.

As to the first argument, Congress has imposed a legal duty—the gentleman before testified this is a voluntary matter. That is not true. Read 13 United States Code, section 224: "Failure to answer questions affecting companies, businesses, religious bodies, and other organizations," and read the penalties involved for failure to give proper information or for failure to give information. It is not voluntary at all, except in a few minor instances. This is compulsory. There is nothing voluntary about this, except in those few minor instances.

As I say, Congress has imposed a legal duty to make such reports by imposing penalties for failure to furnish information to the Bureau of the Census. (See 13 U.S.C. 224, 225.) If the taxpayer's copy of his compulsory income tax return is subject to disclosure, I fail to see why a company's file copy of its compulsory census return should be privileged from disclosure.

The second argument—that companies would deliberately falsify their census returns—would put reputable businessmen in the class of criminals and racketeers, busily engaged in falsifying records. I refuse to accept any such conception of businessmen as a class.

Furthermore, the census statutes provide penalties for false or misleading statements, and other penal statutes also stand as a deterrence. These provisions should insure the accuracy of census returns, as they do income tax returns.

Indeed, it seems to me that statistical data subject to the observation of more than one Government agency is more likely to be accurate and reliable than data not subjected to such observation. One may be able to fool one agency all of the time much more readily than several agencies with additional information in hand.

This argument—that compulsory census returns will be less reliable if subject to disclosure—flies in the face of daily experience in our courts. Until the advent of these bills, I never heard it suggested that

documentary evidence was less reliable because it was subject to disclosure by subpoena.

If the courts were to adopt the novel argument here for the first time asserted and mistrust documentary evidence merely because it was subject to subpoena, I daresay the administration of justice would suffer with a vengeance. By the same token, I see no reason to suppose that compulsory business statistics will be less reliable because subject to disclosure. To conceal them in a veil of secrecy would cause a comparable breakdown in antitrust enforcement.

The statement filed with this subcommittee by the Department of Commerce is a model of inconsistency. On the one hand, the attempt is made to impress the subcommittee with the assertion that the Bureau of the Census is the "factfinder for the Nation," and is such by virtue of collecting information from business companies. On the other hand, the Commerce statement asserts that census figures are not reliable because much of them are based upon "estimates" of business companies.

The subcommittee is told in the same statement that confidentiality insures that the companies will send statistical information without any delay caused by legal review. I suggest that a little delay by a company for more complete review might well improve the accuracy of the statistics compiled by Census.

It should be our objective to protect the innocent and to expose the wrongdoer. Secrecy of information may bring about a result contrary to right and justice. A recent decision provides a striking case in point. In *Klein v. American Luggage Works, Inc.* (D. Del. 1962) (CCH Trade Cases, Para. 70355), excise tax returns proved indispensable in demonstrating the error in plausible but fallacious economic evidence. Had these excise tax returns been immune from disclosure a miscarriage of justice might well have resulted.¹

This argument of secrecy has an additional air of unreality. There is nothing inherently confidential about business statistics, and when legitimate business secrets are at stake, existing law provides ample means for their protection from disclosure to competitors. Even in a private law suit, a court may compel disclosure of relevant confidential business data under appropriate safeguards where disclosure is essential to a proper determination of the case. The court very likely would order that the evidence be sealed and made impervious to disclosure to competitors. By the same token, business statistics, even if confidential, should be similarly subject to disclosure, likewise under appropriate safeguards, where needed by the Government for the due enforcement of the law. These bills would make it difficult or impossible for the Government enforcement agencies to procure the most reliable form of business data.

¹ In the Court's opinion, Judge Wright stated:
" * * * During cross examination of plaintiff's expert accounting witness, counsel for Wanamaker called attention to Klein's Federal excise tax returns for the same years, which indicate the dollar volume of gross sales of all brands of luggage marketed. These figures are tabulated in the margin to facilitate comparison. In the face of Klein's testimony that he sold American luggage at a profit, it is readily apparent that the two sets of figures are hopelessly irreconcilable. If anything, they infer plaintiff consistently sold American luggage below cost. Nor may resort be had to the gross sales reflected in the tax return for computation of profits derived from sales of American luggage. Assuming the accuracy of these figures, they fail to show what portion of the gross sales in each year were derived from American luggage products. The record is thus devoid of any reliable evidence of Klein's profits from the sale of American luggage in the years prior to the refusal to deal * * *."

These bills would have the further extraordinary effect of discouraging cooperation by law-abiding companies, otherwise willing to cooperate with the Government. I am reliably informed both by the Federal Trade Commission and by the Antitrust Division of the Department of Justice that generally companies contacted have been willing to make such returns available. Their willingness often extends to informing the Bureau of the Census that they would have no objection to such agencies looking at their original census returns in the possession of the Bureau. Surely such wholly desirable cooperation should be encouraged.

What are the alternatives?

Agencies of the Government would have to spend an enormous amount of time, at substantial cost to the taxpayers and substantial drain upon their own appropriations, if they must make their own economic survey of an industry. They may not have the expertise of the Census Bureau, born of long experience with that industry. Moreover, on the basis of past experience a "homegrown" industry survey by an antitrust agency is subject to attack as incomplete, or inaccurate, or not the best evidence, and it may be excluded from evidence on such grounds.

Further, the Government might have no alternative, where such material is not available in the course of an investigation, to filing suit without the necessary facts in hand, if a probable violation of the antitrust laws to be remedied.

Once a suit has been filed, a company may be required to reconstruct all over again the figures embodied in its census return. In that event, the company would either use the figures from its return or go through a painful, lengthy, and expensive process of reconstructing those figures. The difficulty of such reconstruction on the part of the company, or on the part of the Government attempting to make a survey of its own,¹ becomes magnified where, as often happens, market statistical data for more than a single year are required. The sheer delay thus entailed would often frustrate enforcement of the antitrust laws where enforcement is most urgently needed.

I am informed that attempts by the antitrust agencies to secure "equivalent" data are often unsatisfactory because such "equivalent" data is often compiled on a different basis from the industrywide census universe figures. In such cases, defendants, as well as the Government, may face the arduous, if not impossible task of reconciling the defendant's "equivalent" figures with the census universe. In such a comparison, the parties and the court become inextricably enmeshed in a morass of disputed statistics.

In many instances, moreover, the data compiled by Census is simply not available from other sources, so that antitrust enforcement becomes, not tortuous, but impossible.

Obviously, a company under suspicion of an antitrust violation will not make an all-out effort to cooperate with the Government if it is guilty. The *St. Regis* case itself is one long history of frustrating

¹ These difficulties include identifying the firms to be surveyed, obtaining Bureau of the Budget approval for proposed questionnaires, obtaining answers from reluctant respondents, and correlating and presenting the data in a manner admissible in court. To undertake such a survey in a preliminary investigation, with no process available to compel answers, would be virtually impossible.

attempts by the FTC to obtain information from *St. Regis* dating back to 1956, and the end is not yet in sight.

Two of these bills—H.R. 10344 and H.R. 10441—prohibit agencies other than the Department of Commerce from obtaining by compulsory process copies of census reports retained by “respondents.” They simply repeal the effect of the *St. Regis* case.

One bill—H.R. 10205—immunizes not only copies of reports but copies of “any such information” from legal process and prohibits its use in a judicial or administrative proceeding. This would not only preclude use of a copy of such report, even though voluntarily given; it might also be construed to prevent antitrust and other agencies from having similar information reconstructed.

Two bills—H.R. 10569 and H.R. 12323—prevent the use of census reports and information as evidence or for any other purpose unless consented to. Worse, they seem to forbid even a reconstruction of necessary information. This would not only repeal the *St. Regis* case but would repeal pro tanto the discovery procedure of the Federal Rules of Civil Procedure.

Of course, once it becomes well known that there is no way to compel disclosure of such reports and information, voluntary disclosure will be greatly lessened.

These bills are symptomatic of a dangerous climate of secrecy among Government agencies. Among the worst offenders, I am told, are the Bureau of the Census, the Bureau of Mines and the Bureau of the Budget. Census, I am reliably informed, in addition to refusing to give antitrust agencies individual statistics, has refused information even as to the names or the number of companies it has used to construct total industry figures. Even despite the consent of the reporting company, Census has refused to allow representatives of antitrust agencies to examine the company's reports in Washington.

My files contain many examples of this “don't inform” attitude on the part of Government agencies. I attach as an appendix to this statement a glaring example of the sort of runaround whereby the Census Bureau obstructs the enforcement of the antitrust laws and fastens Herculean labors on antitrust agencies and defendants alike.

In view of the recalcitrance of the Bureau of the Census to furnish information to other agencies, I think it only fair to point out that the Secretary of Commerce himself, head of the Bureau of the Census in a way, sought and obtained statutory authority to call upon other Government agencies to furnish information for Census work (13 U.S.C. sec. 6).

To sum up, as a matter of commonsense I fail to see why information which has been obtained at considerable expense by one agency of the Government should not be made available to other agencies of the Government in the enforcement of our laws, except in cases of national security.

The right of the people to know what their Government knows is indispensable to that informed public opinion which alone can make our democracy work.

As chairman of the Antitrust Subcommittee of the Committee on the Judiciary I have had my share of frustrating experiences, attempting unsuccessfully to obtain from uncooperative Government agencies

information to which the people and their elected representatives in Congress were legitimately entitled.¹

We pay a high price for ignorance. We can indulge a bureaucratic desire for secrecy only at the expense of a less enlightened electorate, less effective enforcement of our laws, and prodigal waste of the taxpayers' money. As a rule, I believe Macy's should tell Gimbel's, for Congress may justly complain where one agency lavishes the taxpayers' money for something readily available from another agency.

These bills promote an abuse of secrecy. Secrecy so abused in this instance is a threat to our free enterprise system—a system whose freedom depends upon the ability of our Government to enforce the anti-trust laws.

Accordingly, I earnestly urge that these bills be rejected. Indeed, I suggest that this distinguished committee might well consider lifting the shroud of secrecy from original census returns centrally located in the files of the Census Bureau right here in Washington. Thereby we could at once effect a substantial saving of public funds and foster effective administration of the laws.

Thank you very much.

(The following appendix was submitted for the record by Mr. Celler:)

APPENDIX²

On January 19, 1962, the X company made formal request of the Bureau of the Census for duplicate certified photostatic copies of MC-20C reports filed with the Bureau in connection with the 1954 and 1958 Census of Manufacturers, and of the MC-20C reports filed by companies which had been acquired by X since 1954.

By letter of January 31, 1962, the Bureau of the Census outlined certain procedures to be followed in determining whether the reports filed by subsequently acquired companies would be made available to the parent corporation. It further advised that the estimated cost for searching its records and preparing copies was \$500. From the general tenor of this letter, there was no indication that the Bureau would refuse to comply with the company's request for copies. However, on February 2, the Bureau wrote a brief letter to X, stating that it was the policy of the Census Bureau not to make copies of original company returns available to survey respondents except when it was administratively determined that such action was necessary to the efficient conduct of the statistical program of the Bureau. It further stated that certain statements in the company's letter of January 19 were not necessarily consistent with such policy.

On February 19, the X company renewed its request, stating that it intended to use the forms in its own interest and for its own purposes. The company also stated that without such schedules the company would suffer irreparable harm

¹ See, e.g., *U.S. v. Tobin*, 195 F. Supp. 588, rev'd, D.C. Cir., — F. 2d — (June 7, 1962). The Antitrust Subcommittee's report on "The Consent Decree Program of the Department of Justice" (1959) states (pp. XI, XIII):

"Early in the course of the committee's study it became apparent that wholehearted cooperation would not be forthcoming from the Department of Justice. * * *

"The uncooperative attitude displayed by the Department of Justice throughout this investigation hampered the committee in its work. * * *

"Faced with the intransigent attitude of the Department, the committee turned to, and obtained from, affected private parties the type of specific information that the committee needed. Defendants subject to the provisions of certain consent decrees were requested to supply documents which had been withheld by the Department of Justice. The committee recognizes that these requests were burdensome, but, in view of the Department's position, it had no alternative. It is clear that most of the necessary information was readily available in the files in the Department of Justice, one centralized location. The committee, however, was required to search out corporations all over the country and, at great trouble and expense to these companies, obtain documents in a piecemeal fashion. The committee regrets that the circumstances required it to impose these hardships in order to complete its investigation."

It is as wrong today for the Census Bureau to withhold business statistics from the Department of Justice and the Federal Trade Commission as it was wrong, in 1959, for the Department of Justice to withhold relevant documents from the Antitrust Subcommittee.

² I have deleted the name of the company.

since it was virtually impossible to reconstruct and reproduce the information from its own files.

On March 5, the Bureau replied that it had reexamined the situation but had concluded that the policy outlined in its letter of February 7 should stand. The letter continued by outlining the difficulties which would be involved in conducting a search of its records and concluded by expressing regret for the difficulties which confronted the company as the result of its decision.

In an effort to obtain information substantially similar to that contained in the reports, a Commission attorney and an accountant visited the offices of the X company in Chicago to assure themselves that copies of the reports were not available and to discuss other means of securing the desired information. Officials agreed to and did make available the X company's departmental annual reports for each processing plant for the years in question as a means of reconstructing the data contained on the missing forms. These departmental reports, however, do not reflect the detail that is asked for on the census forms so that it is impossible to reconstruct the data in the same detail as was originally filed by the numerous processing plant managers. Consequently, the acceptance of this material either by respondent or by the hearing examiner is questionable.

This refusal by the Bureau of the Census to provide X company with copies of its own reports has materially increased the burden of counsel in support of the complaint and may in the end jeopardize, by invalidation of the industry survey, the entire lawsuit. The additional cost burden to the Commission can only be measured as of certain dates but will increase materially as the case progresses. The increment to manpower cost over and above the normal cost incurred has already amounted to several thousand dollars and applying the same criteria to cases of the present and future, the additional manpower costs could well cost the Commission very substantial sums of money in excess of the normal expenditures for such actions.

(At the request of the chairman, the following information concerning X company was supplied by the Bureau of the Census.)

DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS,
Washington, D.C., August 3, 1962.

HON. TOM MURRAY,
Chairman, Post Office and Civil Service Committee, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of August 1, 1962, in which you requested comments regarding the appendix to Congressman Celler's statement before the special subcommittee of the House Committee on Post Office and Civil Service on Tuesday, July 31, 1962, and a list of business and industry surveys conducted covering the year 1961, showing whether voluntary or mandatory.

The facts concerning the correspondence between the Census Bureau and X company, described in the appendix to Congressman Celler's statement, are correct. The example chosen by Congressman Celler was exceptional, however, in that it occurred shortly after the *St. Regis* decision at a time when the Bureau was faced with an unprecedented volume of requests for copies of Census of Manufactures report forms.

Prior to this example, the Bureau policy was to make copies of original reports available upon the request of the companies submitting the reports. Prior to this example and now, there have been and are special cases involving legal rights and similar considerations which require special inquiry, but the original policy has now been reestablished.

I am also enclosing the requested list of Bureau surveys as described in your letter, with an indication of the voluntary or mandatory status of each.¹

With all best regards,
Sincerely,

RICHARD M. SCAMMON,
Director, Bureau of the Census.

¹ For list, see p. 21.

Mr. HENDERSON. Thank you, Mr. Celler.

Any questions?

Mrs. NORRELL. No questions.

Mr. UDALL. I want to commend the witness on a most persuasive and effective statement. I can see a lot of thought and work has gone into it and I want to assure my colleague I shall carefully deliberate on his advice before I make up my mind on the disposition of the bill.

Mr. CELLER. Spoken in the true spirit of a Udall.

Mr. HENDERSON. Any further questions?

Mr. JOHANSEN. No questions.

Mr. HENDERSON. Mr. Celler, the committee and staff will give a great deal of weight to what you have said. You are a highly regarded Member of the House and we appreciate your taking the time this afternoon, when the House is in session, to come and advise us as you have.

Mr. CELLER. I am deeply appreciative of your kindness, all of you. Thank you.

Mr. HENDERSON. This concludes the testimony that we had planned to receive this afternoon and the subcommittee will stand adjourned until 10 o'clock tomorrow morning.

(Thereupon, at 4:15 p.m., a recess was taken until Wednesday, August 1, 1962, at 10 a.m.)

Mr. [Name], Thank you, Mr. [Name]

the question

Mr. [Name], I want to commend the witness on a very fine and objective statement. I think a lot of thought and work has gone into it and I want to commend the witness for the clarity of his statement and the way he has handled the question of the

Mr. [Name], Thank you, Mr. [Name]

Mr. [Name], Thank you, Mr. [Name]

Mr. [Name], Thank you, Mr. [Name]

Mr. [Name], Thank you, Mr. [Name]. The witness has done a very great deal of work and you have said that you are a very great admirer of the witness and we appreciate your taking the time this afternoon when the horse is in session to come and testify in

Mr. [Name], Thank you, Mr. [Name]. I am very sorry that our witness will not be able to testify.

Mr. [Name], Thank you, Mr. [Name]. I am very sorry that our witness will not be able to testify. I am very sorry that our witness will not be able to testify. I am very sorry that our witness will not be able to testify.

CONFIDENTIALITY OF CENSUS REPORTS

WEDNESDAY, AUGUST 1, 1962

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
POST OFFICE AND CIVIL SERVICE COMMITTEE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m., in room 215, House Office Building, Hon. David N. Henderson (subcommittee chairman) presiding.

Mr. HENDERSON. The subcommittee will come to order.

As I explained in our opening session yesterday, this subcommittee was appointed by the chairman of the Post Office and Civil Service Committee for the purpose of considering H.R. 10569 and other bills relating to the confidentiality of census records.

The purpose of all of these bills is to safeguard the confidential nature of copies of reports filed with the Bureau of the Census on a confidential basis. Yesterday, we had the pleasure of hearing from witnesses representing the Federal agencies, including the Bureau of the Budget, the Department of Commerce, and the Department of Labor, as well as the Director of the Bureau of the Census. All of these Federal representatives testified in favor of the proposed legislation, but it was pointed out yesterday that the committee has in its files a statement from the Federal Trade Commission opposing such legislation.

At this time I would like to insert in the record a copy of an article which appeared in this morning's Wall Street Journal titled, "Administration Splits Over Bill To Protect Business Census Data."

Without objection I will order the reporter to insert that.

(The article follows:)

[From the Wall Street Journal, Aug. 1, 1962]

ADMINISTRATION SPLITS OVER BILL TO PROTECT BUSINESS CENSUS DATA—TWO AGENCIES SUPPORT MEASURE AND SAY THIS IS KENNEDY VIEW, BUT FTC VOICES ITS OPPOSITION

WASHINGTON.—A split appeared within the Kennedy administration over a proposal to tighten the census laws in order to protect confidential business information.

The Commerce Department, which oversees the Census Bureau, and the Budget Bureau announced support for the measure at a House Post Office Subcommittee hearing, and officials of the agencies said this was the administration's position. But the Federal Trade Commission disclosed its opposition in a letter to the subcommittee. The Justice Department took no official stand, but some of its lawyers are known to oppose the suggested legislation on the ground it would hinder enforcement of the antitrust laws.

The dispute arises out of a Supreme Court ruling last December that copies of census reports don't enjoy a privileged status and that any copies retained by companies may be subpoenaed by Federal Trade Commission and Justice

Department investigators for use in antitrust prosecution. Several bills have been introduced in recent months to overturn the ruling and permit companies to continue denying Government investigators access to the reports as they did prior to the court decision.

A PERIODIC CHECK

The Census Bureau submits scores of questionnaires to businesses periodically for various surveys pertaining to business activities. The replies sent to the Census Bureau are confidential and may not be used by the FTC, the Justice Department, or any other Government agency except for statistical purposes. Prior to the court ruling, the confidential status applied also to whatever copies the businesses retained in their files.

The Court decision has produced two results that disturb Census Bureau statisticians and other Government recordkeepers. Some companies are destroying their file copies of past census questionnaires and are refusing to fill them out for current surveys; and some companies are refusing to provide even estimates in response to mandatory surveys. They have been warned by their attorneys and trade journals about possible Government use of the questionnaires in antitrust investigations.

INACCURACY MAY RESULT

Census and Budget Bureau representatives say this withholding of information could affect the accuracy of vast numbers of Government business reports. And the longer the situation drags on, they argue, the harder it will be to obtain correct information in the future and bring surveys up to date.

While the proposed legislation has substantial backing, it also has some strong opposition. Chairman Celler, Democrat, of New York, of the House Judiciary Committee, said the legislation would "gravely prejudice the effective enforcement" of the antitrust laws. If the Census Bureau has in its files information pertaining to antitrust violations, the New Yorker said, it is only right that such information be passed on to the Justice Department and the FTC.

Mr. HENDERSON. Yesterday we heard Chairman Emanuel Celler, of the House Judiciary Committee, read a statement strongly opposing the proposed legislation.

This morning we will hear witnesses from business and industry, and also representatives of research organizations, and others who work closely with Government statistical data. Before calling our first witness this morning, I should like to announce that the subcommittee record will be held open through Friday, August 3, in order to allow additional statements to be submitted.

Our first witness this morning is Mr. Myron S. Silbert, vice president of Federated Department Stores, Inc., Cincinnati, Ohio. Mr. Silbert is representing the U.S. Chamber of Commerce. Mr. Silbert, we certainly appreciate your coming here to testify, and I know you are highly qualified to discuss the matter under consideration in view of your long experience with Federal statistics, and especially your work with the Intensive Review Committee which studied the entire program of the Census Bureau back in the early 1950's.

It is a pleasure to have you here this morning.

STATEMENT OF MYRON S. SILBERT, VICE PRESIDENT OF FEDERATED DEPARTMENT STORES, INC., CINCINNATI, OHIO, ACCOMPANIED BY HILTON DAVIS, MANAGER, CHAMBER OF COMMERCE MANUFACTURE-DISTRIBUTION DEPARTMENT

Mr. SILBERT. My name is Myron S. Silbert. I am vice president of Federated Department Stores, Inc., of Cincinnati, Ohio.

I appear here today for the Chamber of Commerce of the United States, the world's largest business federation. Its membership includes more than 27,000 business firms and individuals, plus over 3,600

local and State chambers of commerce and trade and professional associations—encompassing and underlying membership of more than 3 million business and professional men and women. I am a member of the Chamber's Manufacture-Distribution Committee. Joining me here on my right is Mr. Hilton Davis, manager of the chamber's manufacture-distribution department.

I am happy to have the opportunity today to express the chamber's support for legislation to restore confidentiality to company-retained copies of census reports.

Our concern in this matter arises from the Supreme Court's ruling last December that the Census Act's promise of confidentiality applies only to the reports submitted to the Census Bureau—and not to the copies retained by respondents. We believe this loss of confidentiality for copies cannot help but harm the Census statistical program—to the disadvantage of Government, business, and all users of the statistics. For this and other reasons, which I will present, the chamber encourages enactment of legislation to restore confidentiality to company file copies.

In this connection, the chamber is delighted that the administration has registered its support for such remedial legislation. Here we have an issue that is centered squarely on the question of Government-business relationships, a subject which, in general terms, has occupied considerable time and space in the Nation's news media in recent months. The fact that the administration sides with business on this issue should be helpful in establishing the kind of Government-business relationships that will be good for the economy.

Now, let me set forth a few reasons why the chamber believes corrective legislation is necessary.

I. THE GENERAL IMPORTANCE OF CENSUS DATA

At the risk of stating the obvious, I would like to comment on the importance of Census Bureau statistics—because it is only by understanding this importance that one can also understand the importance of confidentiality.

Eight years ago, I was a member of the Intensive Review Committee on Census Programs, appointed by the Secretary of Commerce. This was a committee whose members represented retailing, manufacturing, advertising, education, labor, and so forth. More than 1,200 organizations and individuals cooperated in our study.

The Review Committee reported its findings in 1954 to the Secretary of Commerce. Because the findings are so expressive of the importance of census data, some selected references are pertinent here.

The lead statement in the report was this:

The key to the successful functioning of any human institution is good management, and all good management is dependent on good records.

The Review Committee's report recognized that "the level and the direction of change" of the American economy at any time are the result of countless daily decisions by millions of business concerns and farmers and other producing, buying, selling units—including families, and government at all levels. The report said such decisions "can be no better than the information on which they are based."

How is good information secured and maintained in a dynamic and highly mobile society in which comprehensive change is the keynote? Where the labor force is constantly expanding? Where new industries are continuously springing up—and old industries are revolutionizing their processes? What's the role of census data?

This comprehensive character of change, of economic trends, is matched by a comprehensive system of economic indicators—which enables business and Government to keep track of production, population, employment, unemployment, wages, prices, credit, finance, and so forth. The relationship of census statistics in this economic tracking process was highlighted in the Review Committee's report, as follows:

The single most comprehensive economic indicator is the edifice of figures making up gross national product, or the sum total of the value of all the goods and services produced in our economy. These economic indicators do not represent statistics for statistics' sake. They are guideposts to action, guides for both public policy and private business policy; and they are followed intently by Government officials and equally by the many scores of thousands of people in our business enterprise and farm economy who must be continually alert to changes in economic conditions and trends.

This comprehensive system of economic indicators rests in one way or another on the benchmark statistics provided by the Bureau of the Census. Without these census records, it would not be possible to construct or interpret this system of economic indicators. Business executives, farmers, labor leaders, professional men, scholars, scientists, Government officials, and administrators in all phases of our society are dependent on census records or on economic indicators based on census records. [Emphasis supplied.]

The vitality of the Census Bureau's statistical programs can be shown by the fact that since 1810 the census of manufactures has provided the only comprehensive measure of the industrial growth and expansion of the United States. Its reports summarize quantities and values of manufactured products, employment, earnings, raw materials consumption, expenditures for plant and equipment, and other data. The Census presents this information not only to the Nation as a whole, but for each State, and each county, and each town and city.

Results of the census of manufactures are used by all major economic groups in the country: manufacturing, agriculture, distribution and service trades, banks, transportation agencies, educational and research bodies, labor unions, and Federal, State, and local governments.

With the possible exception of population data, probably no other single group of census data has such a wide range of use and application. The bulk of the information provided by this census of manufactures is not available from any other source.

The Review Committee made this case in behalf of the census of manufactures:

The need for census data on manufacturing is particularly great at the present time with the growing responsibility placed on industry to provide employment and to serve an ever-growing population with an increasing standard of living. The time has long since passed when marketing planning can be done by hunch or rule of thumb. It requires facts that all groups may use with confidence.

Considerable progress has been made in developing an understanding of the forces governing our economy. Without the benchmark data provided by the census of manufactures on what is happening in our industrial system, however, we cannot hope to continue to gain knowledge of how to smooth out the peaks and valleys in production and employment * * *.

In addition to the census of manufactures, another highly important Bureau program is the census of business—covering the whole-sale, retail, and service trades; providing data on kind of business, type of operation, and legal form of organization; number, size, and location of establishments; volume of receipts, in total and in various commodity lines; number of proprietors; employment and payrolls, etc. In this census also, the information is made available not only for the Nation as a whole, but for each State, county, town, and city—and for individual subdivisions of a metropolitan area.

With regard to the census of business, the Review Committee attested to its value by listing 11 ways it is used substantially by numerous business firms:

1. Measuring market potentials.
2. Allocating outlets, salesmen, advertising expenditures, etc., to markets.
3. Determining routing schedules for salesmen, individual salesmen's territories and quotas, and expense budgets.
4. Determining the location of new stores, shopping centers, warehouses, and manufacturing plants.
5. Helping to determine manufacturing schedules and proper inventory in relation to the size of markets.
6. Providing guidance to small manufacturers, wholesalers, and retailers.
7. Determining and measuring new trends in distribution.
8. Forecasting sales trends, market potentials, and changes in distribution channels.
9. Selecting areas for test campaigns and making budget allocations for such programs.
10. Providing data needed in planning marketing surveys.
11. Providing the raw materials for special industry or area reports by magazines, trade associations, development agencies, and the like.

Now, rather than attempt to encompass all of the Census Bureau's programs in my comments, I believe what I have said illustrates the point I want to make. And that is simply this: Our Nation's economic progress is dependent upon—and a reflection of—the decisions made daily by business, by government, by consumers. Their decisions are based on or shaped by statistical data compiled and published by the Census Bureau. Hence, census statistics are essential to economic health and economic progress. And the better the statistical data, the better the economic decisions.

Logically, therefore, our objective should be to continue to improve this statistical data, and thus enhance economic advancement. Fortunately, that is the prime objective of the legislation before this committee.

II. THE FOUNDATION OF A GOOD CENSUS STATISTICAL PROGRAM

The effectiveness of the Census program has been founded in large part on the effectiveness of the Census-business relationship, which in turn is influenced by the confidential character afforded business information.

By law (the Census Act), business firms are required to furnish information for the several censuses of business if such information can be supplied directly from company records. The fact that such information is afforded a confidential character facilitates compliance.

But, the value of the Census program is not limited to this legal minimum of information. Over the years, Census has developed such an effective relationship with key business people that it has been able to secure information beyond that legal minimum—for example, timely and meaningful information in the form of estimates when the desired information is not specifically available in company records, or when the requested informational categories do not conform to the particular company's bookkeeping procedures; or when a special effort is made to speed up a report, to do it in 5 days as against 2 months.

One point in which I have had some contact with the Census is in cooperation in developing the form of the reports. In my own company we have had a working relationship with the technicians in the Census where they felt free to come out and test an idea that they might have. In over 15 years our office has been open to them to come in and to see whether a typical business firm would have the information available, what the bugs might be in the form, and of course there is a great deal of that cooperation in development of forms.

The close relationship of business and Census in developing estimates of data was described as follows by the U.S. Solicitor General, in his brief for the United States in the *St. Regis* case in October, 1961:

An analyst of the Bureau * * * undertakes to work out, with his opposite number in the reporting company, an estimate based on information in the records as kept * * * the technician of the Bureau of the Census because of his knowledge of the industry under consideration, may question some estimates as unrealistic and request consideration of other factors before an estimate is agreed upon. In like manner he may doubt, and therefore wish to verify, particular returns. The process of compiling the necessary statistics for even a single company often involves close and continuous collaboration between company technicians and Census Bureau experts.

Consequently, the forms filed by companies with the Census Bureau often contain estimates, forecasts, approximations—information in excess of the legal requirement—supplied voluntarily by these firms. Estimates often concern such vital matters as value of intraplant shipments or sales to various classes of customers.

This valuable business cooperation—beyond the law's requirement—has been attributable largely to the Census Bureau's assurances that business data will be treated in strict confidence.

The importance of this promise of "confidentiality" was underscored in 1959 by the then Director of the Census Bureau—in particular relation to the value of "estimates" and speedy compilation of data. The Director pointed out that the purpose of the law's provisions of confidentiality was to protect companies "against any harm which might result from their complying with a Census reporting requirement"—and he added:

This privileged relationship enables the Census Bureau to require response to inquiries which are necessarily formulated on a uniform basis for all companies in a particular activity regardless of whether or not their books of record directly yield the requested information. For this and other reasons

estimates and approximations are necessarily acceptable in statistical reporting to an extent that would not be acceptable for financial or certain other purposes. Furthermore, it is essential to the economical and speedy consummation of statistical programs that the rules governing reporting permit the companies to authorize subordinate officials to furnish information directly before formal clearance with comptrollers, auditors, or company counsel, and that this information frequently be furnished before final figures have been developed in the company record system. *In brief, the confidential relationship which is present in Census reporting is vital to its effectiveness.* [Emphasis supplied.]

And I might add this, a great deal of work was done, sponsored I think by the Joint Committee on the Economic Report and the Council of Economic Advisers, to take each indicator to see how it could speed up its being reported through methods to which the Director of the Census referred.

An integral factor in the continuing effective relationship between business and Census is the retention by companies of file copies of the reports transmitted to the Bureau. A copy of the Census reporting form is clearly marked for this purpose, in bold type: "Keep This Copy for Your Files."

These file copies are highly important to the Census Bureau—more important to the Bureau, perhaps, than to the company. The retained copies serve as a focal point of reference in discussions between the Census Bureau and the reporting firms. This is not only to assure the precision of a current census, but also to achieve continuity between successive censuses and intervening surveys.

As the Solicitor General said in his brief:

In light of the aim for current data and statistics the importance of a readily available reference is apparent * * *. It is for these reasons that the Census Bureau requests that the copies be retained by the reporting companies, and intends that its promise of confidential treatment cover the copy as well as the original.

The prospects of maintaining this effective Census-business relationship—in which companies voluntarily cooperate in developing estimates and approximations, beyond the law's requirements, and in a manner which facilitates economical and speedy compilation of data—were diminished severely by the Supreme Court's ruling.

Clearly, the loss of confidentiality for company file copies must harm the Census-business relationship—and, therefore, must harm the Census statistical product. Reportedly, the Census Bureau already has been confronted with some instances of less than cooperative attitudes by business, which are directly attributable to this loss of confidentiality. And I would guess there have been other "uncooperative" situations that the Bureau suspects were caused by the Supreme Court decision, even though some other reasons may have been cited by the firms.

The longer the delay in enacting remedial legislation, the more pronounced this adverse impact will become.

III. THE "TRADITION" OF CONFIDENTIALITY

Seeking the protection of "confidentiality" for company copies of census reports is obviously not a quest for something new—at least not in the practical sense. To be sure, the Supreme Court's decision held that such confidentiality for company copies never existed in the law—although it does exist for the reports in possession of the

Census Bureau. But, prior to the decision, both business and Census Bureau operated on the basis that company copies, as well as Census copies, were confidential. And there was ample reason for them to do so.

Imprinted on the Census forms is this statement:

Confidential.—This report should be returned within 30 days of receipt. This report is required by act of Congress (13 U.S.C. 131). Your report is confidential and only sworn Census employees will have access to it. It cannot be used for purposes of taxation, investigation, or regulation.

This statement, plus the specific designation of one copy for files, certainly suggested that confidentiality was applicable to the company file copy.

Further backing up this belief was a 1960 ruling by the Court of Appeals for the Seventh Circuit that Beatrice Foods Co. did not have to comply with an FTC subpoena demanding that company's file copies of census reports. The court held that—

assurances of confidentiality and protection constitute a pledge of good faith on the part of the Congress, the President, and the Department of Commerce * * *. The United States has given its word and should be permitted to keep it.

The appellate court concluded that since FTC cannot obtain the original it should not be permitted "to do indirectly that which it cannot do directly"; that is, FTC cannot get the report from Census; therefore, it should not be permitted to demand it from the company.

The seventh circuit court noted a 1958 opinion by the U.S. District Court of the Southern District, New York, in the case of *United States v. Bethlehem Steel Corporation*. In that case, when the Government asked Bethlehem and Youngstown Steel for their copies of census reports, the companies asked the Government to supply them with copies of similar reports filed by other major steel producers. Census refused to make this data available to the Department of Justice or to any other person. The Federal court held that the Government could not be required to supply the defendant companies with other steel producers' reports, "since such reports were confidential under the statute."

In the *Bethlehem* case, the district court made a significant observation which bolstered the belief among businessmen that the confidentiality of census reports was sufficiently broad to apply to company-retained file copies. The court observed:

One need not probe far to understand that when Congress imposed upon citizens the duty of disclosing information of a confidential and intimate nature, its purpose was to protect those who complied with the command of the statute. Apart from giving assurance to citizens that the integrity of the information would be preserved by the Government, another purpose was to encourage citizens to submit freely all data desired in recognition of its importance in the enactment of laws and other purposes in the national interests. Accordingly, Congress created a privileged status as to the information furnished to the Census Bureau and directed its confidential treatment so as to prevent misuse.

Thus, the *Beatrice Foods* decision by the Seventh Circuit Court of Appeals—supported by the *Bethlehem* ruling—very definitely encouraged the view that company file copies were immune from subpoena. Further encouragement was derived from the Supreme Court's denial of the FTC petition for review of the *Beatrice Foods* decision.

Later, of course, came the *St. Regis* case—and the Supreme Court ruling which abolished the traditional concept of confidentiality under which business and Census had been operating.

Significantly, the Supreme Court's majority opinion commented:

We fully realize the importance to the public of the submission of free and full reports to the Census Bureau, but we cannot rewrite the Census Act.

Obviously, therefore, the law must be amended. But from a practical, working viewpoint, such amendment will not grant some new cloak of confidentiality to business data—to the disadvantage of antitrust agencies. Rather, such amendment will simply recognize and legalize the confidential character of the Census-business relationship that existed prior to December 11, 1961.

IV. ANTITRUST CONSIDERATION

In the development of this issue, certain comments have been made to suggest that confidentiality should not be restored because enforcement of our antitrust laws would be improved if the antitrust agencies can subpoena company file copies of census reports.

This is a very shortsighted view—if not totally inaccurate.

If confidentiality is not restored, companies can simply destroy their file copies—in which event there will be no copy to subpoena. So, the antitrust agencies would not gain the expected advantage anyhow. But, these agencies may lose something. If the quality of census data deteriorates, as was suggested by yesterday's witnesses, then the Bureau's regular data will be less useful to the agencies. An imperfect census would be of little value to everybody concerned.

Thus, it would appear that the antitrust agencies really have nothing to gain from the current situation created by the *St. Regis* decision—but that they, like others, would benefit from legislative correction of this situation.

Another point that has been made in the Supreme Court's majority opinion is that it appears that FTC, through the use of special reports, could require companies to supply the identical information it furnishes Census—and, therefore, FTC access to company file copies merely enables the Commission to obtain, already prepared, the information it has power to demand.

This is a highly questionable assertion. What Census is empowered to demand from business firms is limited to information available in company records. What Census gets through its close cooperation with business includes estimates, approximations, and so forth—information in excess of the law's requirement.

While FTC might receive much of the same information of record given to Census, it is most unlikely that companies would risk giving FTC estimates and other data not directly available in company records. Thus, in many instances, what FTC receives would not be identical information with that submitted to Census.

Another assertion that has been made is that the bills would encourage companies that are willing to cooperate with antitrust agencies not to so cooperate. This was made in conjunction with the comment that both the FTC and the Antitrust Division of the Justice Department say that generally companies contacted have been willing to make their copies available.

We fail to understand this assertion at all. In the first place, the voluntary cooperation referred to by FTC and Justice Department obviously took place before the Supreme Court decision—in the same atmosphere of confidentiality we now seek to have restored. Thus, if remedial legislation is enacted, the situation confronting the anti-trust agencies will be essentially the same as before. Their access to company copies will still depend on the company's willingness to furnish the copies voluntarily. We cannot understand how enactment of the legislation would lessen this aspect of voluntary cooperation.

But, we can see that failure to enact the legislation might lessen voluntary cooperation with antitrust agencies. The Supreme Court's decision cannot help but raise questions in the business mind about any form of cooperation with the Government that involves the transmission of company data. As has been aptly stated, the decision "results in the Government breaking faith with business firms." And a broken promise breeds anything but trust and cooperation.

Until and unless Congress restores business faith in the Government's word—through the restoration of confidentiality—it would seem logical to expect that the antitrust agencies, as well as Census Bureau, would experience something less than complete cooperation.

V. ALTERNATIVES

Absent any legislative correction of the situation resulting from the Supreme Court decision, business is confronted with these alternatives:

(a) Business firms can continue to cooperate fully with Census, retaining their file copies as before: This is unlikely because, if they do, they run the risk of having their file copies subpoenaed by the Department of Justice or the Federal Trade Commission, and used against them.

(b) Business can cooperate fully with Census, but not retain file copies: This would tend to destroy the continuity of Census statistics and reduce their quality. Both business and Government would suffer. But, business would not be in danger of being attacked with its own data by a regulatory agency.

(c) Business can continue to cooperate fully with Census, and ask Census to keep their file copies for subsequent reference use: This is impractical. It would thrust a significant communications problem between Census and companies, and threaten heavy additional costs in the Census program.

(d) Business can refuse to cooperate with Census, except to submit only that data required by law: This would also harm the statistical program, to the disadvantage of both business and Government—and research students. Clearly, none of these alternatives is satisfactory.

The only satisfactory alternative to the current situation is the enactment of corrective legislation—to relieve the companies of any risk in cooperating with the Census Bureau, and thus to promote continuing effectiveness of the Bureau's statistical program.

VI. THE FORM OF LEGISLATION

As the committee considers what form the legislation should take, we hope you will agree that confidentiality should apply to the company-retained copy of the Census report, and other data that are solely and exclusively supplemental to the Census report. Specifically: worksheets, tabulations, breakdowns, and so forth, that are compiled by the company solely as aids to the preparation of the report—and copies of letters between Census and the company which deal with the company's report.

In connection with the latter, many companies find it necessary, in preparing their census report, to assemble special data that would not otherwise be available in the company. Like the report, these data are useful in subsequent clarifying communications between the Census Bureau and business—and in assuring continuity of data from one report to the next. Therefore, it is extremely important that these specially prepared documents be retained in company files, and that they be accorded the same confidentiality as the Census report derived from them.

We do not believe this can be considered an unreasonable request. On the surface, to be sure, it seems to call for confidentiality for something more than merely "copies of Census reports," as recommended by the administration. But, in a practical sense, it really does not. These special papers are so essential to the Census report as to be virtually a part of the report.

Hopefully, final language can be agreed upon which will extend confidentiality to these special papers—but, at the same time, comply with the administration's request that confidentiality not be extended "to such an extent as to interfere unduly with responsibilities of other agencies of Government in carrying out functions which require information." We do not seek to lessen the customary authority of other agencies to request data from companies.

Actually, granting confidentiality to such supplemental papers as would not otherwise be available in the company except for the company's Census responsibilities would not obstruct other agencies' quests for information. The reason is that such papers may be destroyed if they are not declared "confidential"—and therefore not be available for demand, anyhow. Their loss would be to the disadvantage of all concerned. But their retention would be valuable for Census purposes.

On another point made by the administration—that copies of Census reports may be used in proceedings "with the consent of the individual or establishment concerned" we agree. We think it is both logical and reasonable to keep the way open for companies voluntarily to make available their copies.



VII. CONCLUSIONS

The national chamber urges your approval of legislation to restore confidentiality to the relationship between the Census Bureau and business. Our reasons for believing such legislation is necessary may be summarized as follows:

(1) Economic progress—collectively and individually—is based on sound, meaningful economic indicators.

(2) Good economic indicators are based on an effective Census statistical program.

(3) An effective Census program is based on an effective relationship between Census and business.

(4) An effective Census-business relationship is based on the confidentiality of that relationship.

In short, the restoration of confidentiality will enhance our national prospects for economic advancement.

Because of the limited time left in this session of Congress, the chamber hopes this committee will be able to move quickly on the needed legislation—and that House approval will be forthcoming shortly.

Mr. HENDERSON. Thank you, Mr. Silbert.

You say you hope we will restore the confidentiality to other data that is solely and exclusively supplemental to the census report and you specifically refer to worksheets, tabulations, breakdowns, and so forth.

Do you mean that this would be a part of the report that would go forward to the Census Bureau, these worksheets, tabulations, and breakdowns?

Mr. SILBERT. No, those are kept with the file copy. They are the company's census worksheets and the census combinations, and assembly is made solely and exclusively for use in preparing the census report.

Mr. HENDERSON. Are there any questions by the members of the subcommittee?

Mrs. NORRELL. I want to commend you on a very good statement.

Mr. HENDERSON. We congratulate you on a very concise and able statement, Mr. Silbert. We appreciate your appearance here this morning.

Our next witness is Mr. Alvin F. Welsh, of the National Association of Manufacturers, and manager, market research, Worthington Corp.

It is a pleasure to have you with us this morning, Mr. Welsh.

Mr. WELSH. Thank you. I am glad to have this opportunity.

STATEMENT OF ALVIN F. WELSH, NATIONAL ASSOCIATION OF MANUFACTURERS; MANAGER, MARKET RESEARCH, WORTHINGTON CORP.

Mr. WELSH. Mr. Chairman and members of the subcommittee, my name is Alvin F. Welsh. I am manager, market research, Worthington Corp., and I headquarter in Harrison, N.J. I appear here, however, on behalf of the National Association of Manufacturers, a voluntary membership corporation composed of approximately 17,000 member companies of all sizes, from the smallest to the largest, manu-

facturing, processing, and distributing an infinite variety of products. The great bulk of the NAM membership is "small business," as that term is generally understood, since 83 percent of its member companies employ fewer than 500 employees.

Industry recognizes that the soundness of marketing decisions made by any business whether it be large, medium, or small is dependent upon an adequate and reliable body of marketing information. We in industry believe that in a free enterprise economy the great bulk of such marketing information should be obtained from private sources. However, because of the absolute need for confidentiality and the magnitude of the task of collecting data on a nationwide basis, industry recognizes that this is a project which, in many instances, can best be done by governmental agencies. For these reasons, the association has a formal policy concerning the cooperation by industry and to improve the quality of Government statistics and the efficiency in their collection.

As one means of carrying out this policy, the association is one of the sponsors of the Advisory Council on Federal Reports. Therefore, the association and all of its members, both as suppliers and users of census information have a very vital interest in the problem which resulted in the introduction of legislation you are now considering. This serious problem of maintaining confidentiality of data and information supplied to the Bureau of the Census can be eliminated or minimized only by congressional action. We appreciate the interest your committee has demonstrated by these hearings and strongly support your efforts to bring about corrective action at the earliest possible date.

In my capacity as manager of marketing research, I am not involved in legal or judicial matters and therefore my knowledge of these affairs is limited to what I am able to read in newspapers and periodicals. As a businessman, however, it seems to me that the *St. Regis* decision was in direct contradiction to the intent of Congress and that the decision was based on a very literal and rigid interpretation of the statute. In view of this, and since I am not a lawyer, I have asked the council of the National Association of Manufacturers to prepare a supplemental statement regarding some of the legal background and pertinent points resulting from the decision in the *St. Regis* case. With your permission, I should like to submit this supplemental statement for incorporation in the record of your hearings at the conclusion of my testimony.

Mr. HENDERSON. Without objection that will be done, sir.

Mr. WELSH. Thank you. I understand copies of this statement have been submitted to you.

However, because of my responsibility to provide the most reliable data and information of the widest scope, I am affected by any action which limits the quality and diversity of statistical programs. Through the years the Bureau of the Census and business and industrial concerns have developed a most cooperative relationship, but even more important, the Bureau has demonstrated its ability to maintain the confidentiality of the individual company reports in accordance with the Census Act. As a result, each year the Bureau has been able to provide this Nation with better and more diversified statistics.

I am deeply concerned over the possibility that this loss of confidentiality will jeopardize the outstanding spirit of cooperation which has existed between the Bureau of the Census and industry to the detriment of all concerned.

Recently I had the opportunity to talk to a group of Latin American businessmen and in the course of this talk I described to them the vast scope of data that is available to us through the Bureau of the Census, and of our position, but I must also add very shamefully they had to admit they were not able to depend upon their Government for statistics or for confidentiality. I thought that might be of interest.

The importance of according full confidential treatment to Census information cannot be overemphasized and this has been recognized by the Bureau of the Census. The exposure of individual figures could be extremely detrimental to the competitive position of a business firm. As I understand the situation, under the *St. Regis* case ruling, business firms had several alternative courses.

1. They can continue to cooperate fully as in the past, retaining their file copies. If they do, their file copies can be obtained by other Government agencies and thus become a matter of record with consequent exposure to their competitors. Furthermore, even for those who would desire to cooperate fully, prudence would dictate that any estimates be reviewed by the most qualified experts in the firm. This would require management personnel, as well as the legal department, to double check on the accuracy of any estimate and also to be sure that there could be no misinterpretation by persons unfamiliar with the technical information involved. This would add considerably to the cost at a time when we are doing everything possible to maintain price levels. Furthermore, there would be additional delay which detracts from the value of any marketing data.

2. They can cooperate fully with the Bureau but not retain file copies of reports and work papers. This would downgrade the quality of the statistics as exact continuity is essential. Often this can be assured only by reviewing previous work papers due to changes in personnel making these reports, etc. Bear in mind that the elapsed time between some of these reports is 4 and 5 years, so unless you do have work papers to refer to the likelihood of complete continuity is very remote and that I think is the most important factor in the retention of work papers because the trend in many cases is more important than the magnitude of a statistic.

3. They could submit only that data required under strict interpretations of the census laws and refuse otherwise to cooperate with the Census Bureau. Such a course, in our judgment, would be detrimental to all statistical programs and would work to the disadvantage of both the Government and the business community.

It is our belief that the need for data by industry is well established. The best possible statistics are a necessity if we are to—

1. Have an orderly expansion of business.
2. Do scientific marketing.
3. Prevent economic waste.
4. Identify our economic and material needs.

5. Take maximum advantage of our Nation's economic potential.
6. Have available accurate and complete data for evaluating our defense capabilities.
7. Provide equal marketing opportunity for both large and small business.

Basically the Bureau of Census data is the poor man's marketing research department. Nowhere can you get such a wealth of information at a minimum cost.

The lack of information can be extremely detrimental to all those firms which cannot afford to do extensive marketing research. With the present cooperative relationship existing between industry and the Bureau of the Census, additional information previously unavailable is being provided for public use. For example, even though this particular report I have in mind is compulsory, business has cooperated with the Bureau to enlarge the classification so these statistics were more meaningful, which I think has been a tremendous help to industry and Government as well, and as I have pointed out, this is under a compulsory ruling on the statistics of this particular industry and act.

The present cost-price squeeze does not allow many business firms any margin for a serious mistake.

To show this committee how census data is used for marketing purposes, I have included as an appendix to my statement an excerpt from an article in the *Journal of Marketing*, April 1954, written by Neil H. Borden, Stanley Frame, William C. Gordon, Jr., and Charles W. Smith. I might add that the *Journal of Marketing* is the spokesman, so to speak, for the marketing research profession.

Much additional authoritative writing could be presented to you but to do so would unnecessarily burden the record of your hearings. I hope that what I have presented shows the need for and uses of full and adequate statistical data. In our judgment, it would be contrary to the public interest for the Congress to let stand an interpretation of the Census Act which it seems to us will impede the effectiveness of the census statistical program which is so important to business, industry, Government and the Nation's economy.

In our opinion, to be fully effective, the statistical program must continue to stem from a cooperative relationship between business and the census and that relationship can only be maintained through statutory assurances that the information supplied by business enterprises will remain confidential. This should include such data as working papers, etc., directly necessary to fulfilling the requirements of the Bureau of the Census to the highest degree possible. Legislation designed to accomplish this purpose is necessary to maintain the effectiveness of the statistical programs of the United States.

Mr. HENDERSON. Thank you very much, Mr. Welsh. You have made a very fine statement and without objection the items you referred to in your statement will be included in the record at this point.

(The document follows:)

APPENDIX

AN APPRAISAL OF CENSUS PROGRAMS FOR MARKETING USES

III. USES OF CENSUS DATA FOR MARKETING PURPOSES

(Excerpt from article in the *Journal of Marketing*, April 1954, by Neil H. Borden, Stanley Frame, William C. Gordon, and Charles W. Smith)

A. Development of need for census data in the field of marketing

Recognition of the values of census data in the field of marketing first began to develop around 1920. About that time, as a result of the successful use of mass production methods, American industry was beginning to develop mass distribution methods. Successful use of these methods required careful planning and control based on precise knowledge of the size and composition of markets, and the number and location of distributors and dealers. The trend of sales and production in various fields began to be of great value in setting company volume goals and planning strategy.

The growing need for better marketing facts led publishing companies to make private studies designed to show their advertisers the basic distribution of market potential for their products and the major concentrations of retail trade within the United States. These studies made extensive use of data from the census of population and census of manufactures.

As manufacturers began to put these early studies to use, they became aware of important deficiencies in the data. In discussions with Department of Commerce representatives, the idea of expanding census operations to provide better marketing data through a census of business, giving facts regarding the retail, wholesale, and service trades, gradually developed. Under the impetus of the buyer's market prevailing in the 1930's, the need for marketing facts continued to expand.

As marketing men began to learn of the availability of census data they made more and more use of them. Today, many of the techniques of scientific marketing (i.e., the use of factual information to plan and control sales operations) depend fundamentally on the availability of census data.

Like water resources in the absence of a drought, the availability of census data has come to be taken for granted by marketing men. As reflected in the survey, full realization of their basic dependence on such data is only now developing as a result of the possibility that census operations may have to be curtailed in the interests of Government economy.

Today, the increasing magnitude and complexity of business operations and the rapidity of changes in our economy make the planning and control of sales operations more important than ever before. Planning and control are important for attaining expansion of the economy and stability and efficiency in marketing. Accordingly, if census data contribute materially to the planning and control of marketing operations, as this study indicates, then the censuses have great value to the general public as well as to business.

It is against this background that the specific uses of census data for marketing purposes will now be discussed.

B. Major purposes for which census data are needed in the field of marketing

1. *Economic or sales forecasting.*—Because the investment in facilities and manpower required to develop a market on a national scale is so great, more and more companies are basing their long-term plans on economic and sales forecasts. Census data have been drawn upon heavily in the preparation of such forecasts.

For example, a company that sells a product used by specific age groups must know the trend of population of these age groups in laying its long-range marketing plans. A company that sells a product used by certain types of industries must know the relative rate at which production of each of these industries is growing. A company that sells household goods must know the trend of family formation, and the size of such families, in appraising the outlook for future volume and profits. All of these data are available in reports published by the Bureau of the Census. Trends are established from the periodic benchmarks provided by the censuses when they are repeated as prescribed by law.

2. *Analysis of market potentials.*—In planning the placement of advertising and selling effort, it is essential to know the size and geographic distribution of the potential market for a given product.

Detailed information on actual sales of a product by all manufacturers of the product is seldom available even when a trade association collects and reports such data to its member companies. In particular, the geographical distribution of sales is usually not provided in association reports. As a consequence, many companies develop market potential estimates based on census data that are related to the sale of the product they make.

Such yardstick figures are provided by many different types of census data. For example, retail sales of a particular type of store may show where the potential market for a particular products is located. Or the type of fuel used by homes in a given area may indicate the market for a type of household equipment. A manufacturer of industrial products may find his yardstick of market potential in the production figures for certain types of industries that use the kinds of products he makes. All of these types of data are available in census reports.

3. *Analysis of distribution.*—A major factor influencing the competitive position of any company is the number and location of the outlets for its products. To establish sound distribution policies and determine where the company's salesmen can spend their time most profitably, it is necessary to know the type, size, and location of all available potential outlets, territory by territory. A large company can obtain information of this type privately by making its own census, but the cost involved is tremendous, and it benefits only one company in the economy.

Data to serve this purpose are provided by the Census of Business, which reports separately for the wholesale, retail, and service trades. These data are available even to the smallest companies which could not hope to obtain the information privately because of the high cost involved.

4. *Layout of sales territories.*—Effective use of a sales force involves careful planning of sales territories. Such planning requires knowledge of the geographic distribution both of market potential for the product and of potential sales contracts, whether customers or trade outlets.

As previously discussed, both of these basic types of information can often be developed economically by a business firm through the use of readily available census data.

5. *Analysis of sales performance.*—Effective control over expenditures for advertising and sales effort can best be achieved through systematic, periodic appraisal of the results achieved by such expenditures. Essentially, this involves making direct comparisons of actual sales with some predetermined goal (typically called "sales quota" or "sales potential estimates"). The establishment of such goals, therefore, is a major sales management function. Efficiency and economy in business operation depend on the accuracy of such standards against which to measure actual operations.

In setting sales potentials, past company sales are usually an important factor. To prevent perpetuation of a poor performance situation, however, past company sales are usually modified by some estimate of market potential. The use of census data in establishing market potentials has been previously discussed.

6. *Location of plants.*—When a company builds a new plant one of the factors that is usually considered in determining location is the nearness to the potential markets it will serve. This factor is becoming increasingly important as transportation costs absorb a larger and larger share of the sales dollar. Other factors of equal importance to plant location, which are revealed in census data are availability of raw materials, availability of labor, and earnings of the labor force.

As previously discussed, census data provide a basis for the determination of market potentials for many types of products; therefore, they are widely used in plant location studies.

7. *Location of warehouses or stores.*—The location of warehouses or stores, at the proper geographic point, likewise involves careful analysis of many types of data that are readily obtainable only from census reports.

For example, the extent and trend of shifts in urban area population to the suburbs of metropolitan centers must be analyzed by any department store before it reaches a decision as to where to locate a branch store. The income of the

families in the area and the primary sources of such income (whether from agriculture, manufactures, or business) are all important in determining the desirability of a potential location and the type of merchandise to be carried, as well as finance and credit requirements. The required data for such analysis are all available in census reports and only in census reports.

8. *Determination of samples in marketing research studies.*—When information about a particular marketing problem must be obtained from individuals or from business establishments on either a personal interview basis or by means of mail questionnaires, the cost of contacting all individuals or business establishments (i.e., taking a complete census of their opinions) is usually too great to be justified by the value of the resulting data. As a result, the use of sampling techniques in marketing research has developed. Such techniques not only provide accurate information at reasonable cost, but more quickly than is possible using the complete census technique.

A basic problem in using any sampling technique, however, is to select the correct number and types of respondents required to give a true cross section of the entire "universe" involved, and to provide a basis for estimating the degree of accuracy of the replies received. One of the critically important uses of census data is in selecting samples for marketing research projects.

The method whereby a truly reliable cross section of any particular "universe" is actually selected is necessarily quite technical in detail, although the basic idea and purpose are very simple. The whole idea of sampling is to select a small number of respondents out of a very large universe in such a way as to insure that the sample or small group which is selected is an absolutely true miniature facsimile of the entire group being measured. Now, if the size and other characteristics of the universe itself are not known beforehand, it is quite impossible to select a sample for the sole reason that there is no really rational basis for knowing just how to go about the job of selecting the sample itself. Sample selection is a precise job which can be performed only in the presence of adequate census data.

Census data give an accurate and complete picture of the universe as of the year in which they are taken, but as they become older and conditions change, they become less valuable for the purpose of sampling. The universe changes rapidly in our dynamic economy. This is one of the reasons that marketing research practitioners, as a group, are so vitally interested in having census figures revised as frequently as possible. Without relatively up-to-date census data as a basis for selecting samples, much of the marketing research work now being conducted by private research companies, and by the market research departments of manufacturers, would be much more costly and less accurate.

Accuracy in sampling studies and accuracy in all the marketing procedures outlined above have a bearing on the accuracy of business decisions, and hence on the level of economic welfare. Accordingly, there is need of periodic censuses at not too infrequent intervals to help attain accuracy. The need for accuracy becomes greater during times of economic stress. Hence periodic censuses provide business with a valuable antidepression tool when it is most needed.

In addition to the above uses of census data which were most frequently indicated by respondents, there are many other uses of importance. Among these, the study of market opportunities when launching new businesses, new products or new services is worthy of note. In view of the significance to our economy of new enterprise and new products, the availability of dependable data to help managements appraise their opportunities and risks in launching new ventures is highly desirable. The censuses provide valuable data for such appraisals.

SUPPLEMENTAL STATEMENT OF LAW DEPARTMENT, NATIONAL ASSOCIATION OF
MANUFACTURERS

Pursuant to the request made by Mr. Alvin F. Welsh on behalf of the National Association of Manufacturers in his testimony before this subcommittee, we are pleased to submit this supplemental statement setting forth briefly some of the legal background and other pertinent points resulting from the decision in the *St. Regis Paper Co.* case.

As the committee knows, business firms are required by the Census Act to furnish such information to the Bureau of the Census as can be supplied from company records. Over the years the Bureau of the Census and business and industrial concerns have developed mutually cooperative relationships which

have made it possible for the Census Bureau to secure timely and meaningful information in the form of estimates, projections, approximations, etc., of a character which is not required to be submitted under the law. This cooperative relationship was described as follows by the Solicitor General of the United States in his brief in the *St. Regis* case:

"An analyst of the Bureau * * * undertakes to work out, with his opposite number in the reporting company, an estimate based on information in the records as kept * * *. The technician of the Bureau of the Census, because of his knowledge of the industry under consideration, may question some estimates as unrealistic and request consideration of other factors before an estimate is agreed upon. In like manner he may doubt, and therefore wish to clarify, particular returns. The process of compiling the necessary statistics for even a single company involves close and continuous collaboration between company technicians and Census Bureau experts."

Until recently there existed throughout the business community a belief that information supplied to the Census Bureau was confidential and could not in any way be used against the cooperating supplier. The same belief existed as to copies retained in the possession of the respondent. There were several reasons for this:

First, of course, were the provisions of section 9(a) of the Census Act which required officers and employees of the Department of Commerce to treat information furnished it as confidential.

Second, the form of the report provided to respondents by the Census Bureau is marked "Confidential" and in addition states that "Your report is confidential and only sworn Census employees will have access to it. It cannot be used for purposes of taxation, investigation, or regulation." The Bureau also furnished reporting companies a copy of the report form with the command "Keep this copy for your files." The Census Bureau also advised reporting companies that the retained file copies of the report were confidential.

Third was a Presidential proclamation of November 29, 1929, which backed up the statute and the Census Bureau by stating unequivocally: "No person can be harmed in any way by furnishing the information required."

In sum, as stated by the Seventh Circuit Court of Appeals, "These assurances of confidentiality and protection constitute a pledge of good faith on the part of the Congress, the President and the Department of Commerce." *Federal Trade Commission v. Dilger*, 276 F. 2d 739, 744.

Notwithstanding "these assurances of confidentiality and protection," when the question came before the Supreme Court for the first time in 1961 that Court held that the protections of confidentiality apparently assured in section 9(a) extended only to reports in the hands of the Census Bureau and not to copies thereof retained by reporting companies at the direction of the Bureau. Consequently, retained copies were held to be subject to legal process in proceedings brought by the Federal Trade Commission. *St. Regis Paper Co. v. United States*, 368 U.S. 208 (1961).

Three dissenting Justices took vigorous exception to the majority's holding in the *St. Regis* case. For example, they stated:

"The Court holds that, because the Government did not so expressly bind itself with respect to actions it may take against copies of these reports through the Federal Trade Commission, the solemn and comprehensive promises of secrecy which it made need not be honored. But surely the Government's promises, fairly construed, do not indicate that the scope of the protection afforded against the use of census reports 'for purposes of taxation, investigation, or regulation' is limited to the originals of those reports and to the Census Bureau alone."

The dissenters added:

"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. It is no less good morals and good law that the Government should turn square corners in dealing with the people than that the people should turn square corners in dealing with the Government."

To the dissenters, therefore, the *St. Regis* case presented not only a legal issue but raised a moral question as well. Fortunately, your committee and the Congress are in a position to resolve both questions by making certain that copies of reports retained by reporting companies are to be given full protection of confidentiality. In fact, it would appear that the majority of the Supreme Court invited the Congress to act in this regard when it stated that "We fully realize

the importance to the public of the submission of *free and full reports* to the Census Bureau, *but we cannot rewrite the Census Act.*" [Emphasis added.]

The importance of confidential treatment of census information was emphasized in 1959 by the Director of the Census Bureau. He pointed out that the purpose of the provisions of section 9(a) was to protect companies "against any harm which might result from their complying with a census reporting requirement." He added:

"This privileged relationship enables the Census Bureau to require response to inquiries which are necessarily formulated on a universal basis for all companies in a particular activity regardless of whether or not their books of record directly yield the requested information. For this and other reasons estimates and approximations are necessarily acceptable in statistical reporting to an extent that would not be acceptable for financial or certain other purposes. Furthermore, it is essential to the economical and speedy consummation of statistical programs that the rules governing reporting permit the companies to authorize subordinate officials to furnish information directly before formal clearance with comptrollers, auditors or company counsel, and that this information frequently be furnished before final figures have been developed in the company record system. *In brief, the confidential relationship which is present in census reporting is vital to its effectiveness.*" [Emphasis added.]

It seems to us obvious that the prospects of maintaining and effectuating what has been a cooperative and confidential relationship between the business community and the Bureau of the Census were considerably diminished by the Supreme Court's ruling in the *St. Regis* case.

The need for data by industry was well described in 1954 in a report to the Secretary of Commerce by his Intensive Review Committee on Census Programs. That Committee was composed of representatives of retailing, manufacturing, advertising, education, organized labor, etc., and more than 1,200 organizations and individuals cooperated in its study.

With respect to the census of manufactures the Review Committee had this to say:

"The need for census data on manufacturing is particularly great at the present time with the growing responsibility placed on industry to provide employment and to serve an ever-growing population with an increasing standard of living. The time has long since passed when marketing planning can be done by hunch or rule of thumb. It requires facts that all groups may use with confidence.

"The administrative efforts of the Government will be handicapped without basic industrial statistics. Government has accepted the responsibility of seeking to protect its citizens from the worst ravages of business fluctuations. If we are to make progress in this direction, a growing insight and understanding of how our economy operates is necessary * * *.

"Considerable progress has been made in developing an understanding of the forces governing our economy. Without the benchmark data provided by the census of manufactures on what is happening in our industrial system, however, we cannot hope to continue to gain knowledge of how to smooth out the peaks and valleys in production and employment * * *."

In our judgment, as was pointed out by Mr. Welsh in his oral presentation, it would be contrary to the public interest for the Congress to let stand an interpretation of the Census Act which it seems to us will impede the effectiveness of the census statistical program which is so important to business, industry, Government and the Nation's economy. To be fully effective the statistical program, we submit, must continue to stem from a cooperative relationship between business and the Census Bureau and that relationship can only be maintained through statutory assurances that the information supplied by business enterprises will be protected by the cloak of confidentiality.

It should be remembered and emphasized that the purpose of section 9(a) of the Census Act was to facilitate the statistical gathering programs of the Federal Government. It was not, as suggested in some quarters, designed to aid the enforcement of the antitrust laws. Thus, the Census Act certainly should not be considered in terms of providing enforcement devices for antitrust agencies. Enforcement attitudes, such as those demonstrated by the Federal Trade Commission in the *St. Regis* case, lend significance and point to the observation made by Prof. Milton Handler that "overzealous officials frequently look for shortcuts, treating ease of enforcement as a goal in itself." (U.S. News & World Report, Dec. 25, 1961, p. 26.)

The census of manufactures not only calls for specific answers to specific questions but also calls for opinions, estimates, projections, etc., which business concerns will furnish on a confidential basis but not on a basis where such "educated guesses" can be used for purposes of prosecution or for purposes of cross-examination. Lack of confidentiality of such reports will inevitably impair statistical gathering programs since only bare, provable facts will be reported to the Census Bureau.

The Federal Trade Commission and the Department of Justice presently possess adequate authority to require corporations to supply information. Thus, for example, with regard to the Federal Trade Commission, as stated by the Supreme Court in the *St. Regis* case:

"It appears, therefore, that through the use of special reports the Commission could require the petitioner to supply the identical reports from its files."

The big difference, however, is that when the Trade Commission issues a demand for a special report, the respondent is on notice that the information may be used against him and will refrain from expressing opinions, estimates, projections, etc., which are not evidence and should not be used as such. Likewise, it can hardly be contended that the Department of Justice lacks adequate authority to obtain any information deemed relevant to its proceedings.

It may be suggested in some quarters that enactment of corrective legislation will impair cooperation between companies and the antitrust agencies. This, of course, is possible but the record does not indicate that lack of cooperation is probable since at least 90 percent of all companies under antitrust scrutiny have cooperated with the Department of Justice prior to the *St. Regis* decision. (See report of Attorney General's National Committee To Study the Antitrust Laws, p. 348.) Since the *St. Regis* decision it would seem more probable that cooperation with the Census Bureau will be impaired than that cooperation with antitrust agencies would end. In any event, as indicated, it is our view that the antitrust agencies have adequate authority to deal with the recalcitrant.

Legislation such as that before your committee is necessary not only to maintain the effectiveness of the statistical programs of the United States, but is also necessary in order to correct a departure from our traditions of "fair-play" as pointed out by the dissenting Justices in the *St. Regis* case. We urge your committee to consider extending the privilege of confidentiality to any information and other data such as "working papers," directly necessary to carrying out the mutually cooperative relationship between the Census Bureau and reporting companies.

Accordingly, we support and urge enactment of legislation designed to correct the problems created by the decision of the Supreme Court in the *St. Regis* case.

Mr. HENDERSON. I would like to refer to the point you made with regard to use by small business of Government statistics. Certainly the National Association of Manufacturers represents small as well as large business concerns in the Nation and I think that the point you made of how vital it is to them and their inability to obtain these statistics otherwise is most helpful to the committee.

Are there any questions?

Mrs. NORRELL. Just this point occurs to me. I am just wondering from the standpoint of curiosity how long it has taken to build up this air of confidence between the Census Bureau and the people who belong to your organization, the NAM. In other words, have you always had this air of confidence between the Census Bureau and the organizations that you represent?

Mr. WELSH. This goes back to 1947, but really it has been between 1954 and 1958 where my example applies.

I was instrumental in trying to get our industry in this one instance to have a more meaningful set of statistics. It was very gratifying to see that the members of industry felt confident that what they provided on an individual basis would only be revealed on a collective basis.

Mrs. NORRELL. Thank you, Mr. Chairman.

Mr. DERWINSKI. Mr. Welsh, in your concluding paragraph you give us an excellent summary of your position and an excellent statement. I would, in the nature of constructive criticism, wish to offer one correction and that is where you state—I read now from your statement—“The relationship can only be maintained through statutory assurances.” I think you need statutory protection and I am hopeful our committee will give you that.

Mr. WELSH. I will certainly accept that suggestion. I think you are right. As I explained, I have not had the benefit of a legal background, so my use of words is probably not correct.

Mr. DERWINSKI. I am not questioning that. I am just making the point that you are, if anything, a little too polite and diplomatic in dealing with the subject and under the issue that the committee through this legislation hopes to meet, I personally feel the word “protection” is a necessary and effective word.

Mr. WELSH. Let me assure you certainly we are after protection to get the fullest cooperation from all of industry.

Mr. DERWINSKI. Thank you.

Mr. HENDERSON. Thank you very much, Mr. Welsh.

Our next witness is Mr. Roye Lowry, executive secretary of the Federal Statistics Users' Conference of Washington, D.C.

Mr. Lowry, it is a pleasure to welcome you before the subcommittee this morning.

STATEMENT OF ROYE L. LOWRY, EXECUTIVE SECRETARY, FEDERAL STATISTICS USERS' CONFERENCE, WASHINGTON, D.C.

Mr. LOWRY. Thank you very much, Mr. Chairman. My name is Roye L. Lowry, I am the executive secretary of the Federal Statistics Users' Conference.

The Federal Statistics Users' Conference is an organization of over 150 business, farm, labor, and nonprofit research organizations which use Federal statistics and are interested in their improvement.

The Federal Statistics Users' Conference is grateful for the invitation the committee has extended to testify before you today on proposed legislation to assure the confidentiality of copies of census reports retained by respondents to census questionnaires.

The conference is concerned about the potential effects of the decision in *U.S. v. St. Regis Paper Company* on Federal statistics programs. We are given to understand that the Census Bureau has already begun to feel the impact of the Supreme Court's decision in a number of important ways. Among these are: a less cooperative attitude among respondents toward voluntary programs; a growing disinclination to provide estimates where no verifiable answers exist in company records; and a growing tendency to delay responses to Census questionnaires until they first have been cleared by the heads of the respondents' legal and accounting departments.

All of these things can have important consequences for the completeness and timeliness of important Federal statistical series—not just for the Census programs immediately concerned, but also for such important statistical presentations as the national economic accounts and the interindustry purchases and sales studies of the Office of Busi-

ness Economics and the economic growth of the Bureau of Labor Statistics.

The Federal Statistics Users' Conference urges the committee to recommend to the House legislation which will grant confidentiality to the copy of a Census return retained in respondent's file.

We believe that the clear and unambiguous language proposed by the Bureau of the Budget will accomplish this purpose. I see no purpose in gilding the lily. The two previous witnesses have clearly illustrated in detail the uses of Federal statistics and their importance.

Mr. HENDERSON. Thank you, Mr. Lowry. I can see that the Federal Statistics Users' Conference is really objective in its attitude toward the Federal Government statistical programs and therefore we certainly appreciate your taking your time to come in and assist us in our deliberations this morning.

It might be very helpful if you would refer back to your statement with regard to the conference as an organization of over 150 business, farm, labor, and nonprofit research organizations and very briefly expand on that and tell us how these organizations use the Federal statistics.

Mr. LOWRY. Users from all sectors of the economy use Federal statistics in a variety of ways: in market research studies, investment planning, setting of sales quotas, economic projections, economic considerations in collective bargaining negotiations, economic studies of all kinds. From the narrowest to the broadest possible kind of use.

Mr. HENDERSON. In collective bargaining have you had experience that labor organizations as well as business organizations do accept the Federal statistics as being dependable and reliable?

Mr. LOWRY. Well, I have had no experience in collective bargaining, but I can say that the labor organizations which are members of the conference do use Federal statistics and do in general have great confidence in them in collective bargaining negotiations. The major purpose of the Federal Statistics Users' Conference is to encourage the improvement of Federal statistics to the end that users can be sure that all Federal data are dependable and reliable.

Mr. HENDERSON. In your opinion, if Congress did not act along the lines as proposed in the bills under consideration and would leave things under the decision in the *St. Regis* case do you feel that the impact we have already seen as the Census Bureau testified would greatly be increased in the foreseeable future?

Mr. LOWRY. I certainly do, Mr. Chairman. May I give two examples. Last year the Congress provided for an expanded current retail trade statistics program. One of the important features of this expanded program was to get monthly information relating to retail trade for the 20 largest metropolitan areas. That was really a very important breakthrough because in the past current statistics relating to retail trade had been for the country as a whole without regard to what is going on in one market or another market or what is the geographic distribution and what are the various trends in important areas.

The Bureau of the Census made a very appealing presentation of the need for developing geographic detail of this character in monthly retail trade statistics. The Congress was impressed by their argu-

ments and granted additional funds for this purpose. For over a year the Bureau of the Census has been working on this program. One of the greatest problems they have is getting cooperation from business people in these metropolitan areas where even more than at the national level they are revealing something about the state of their own business.

If there should be a further deterioration in the cooperative attitude of business, obviously this kind of important development in Federal statistics cannot take place and we will all be the losers for it.

Let me give you a second example:

A member of the conference called me 2 or 3 months ago. He had been in town and had spent an entire day at the Department of Commerce helping the Department to develop information over, above, and beyond anything the company had ever reported to the Bureau of the Census. This was in connection with the very detailed inter-industry purchases and sales study, a statistical presentation which shows what goods and materials industries use, where they get them and where their sales go.

He was asked to provide for some of their establishments a detailed kind of breakdown of how much of what they use in producing some 30-odd different products. Their records did not reveal how much of what they used for these products, and many of the components in the different products were the same. He had to do this on a judgment basis and he had had absolutely nothing to go on in the form of company records because the company records are not kept that way. Here was a man who was getting to be a little bit disturbed about offering his judgment for something that would be an important statistical program and wondering, "Am I really contributing to something that may come back to haunt me someday and I would have no proof one way or the other on it?"

Mr. HENDERSON. Was he disturbed because of the *St. Regis* decision?

Mr. LOWRY. Exactly so and this is precisely why he called me.

With the growth of elaborate kinds of analytical programs for which business is requested to furnish information not contained in company records, it is very important that business not be discouraged from providing estimates.

Mr. HENDERSON. Mr. Lowry, are you in a position where you could comment on what you consider to be the attitude of the national labor organizations with regard to impact of the *St. Regis* decision?

Mr. LOWRY. I do not think I could really comment on the attitude of labor organizations toward the impact of the *St. Regis* decision.

Mr. HENDERSON. Are there any questions of other members of the subcommittee?

Mr. OLSEN. In the *St. Regis* decision did not the Court say that the reports the Federal Trade Commission wanted were items that they could have subpoenaed directly themselves anyway?

Mr. LOWRY. I believe there were words to that effect.

Mr. OLSEN. So your criticism goes to the power of anyone to subpoena copies of Census reports that would not otherwise be within the jurisdictional power of some other agency to subpoena?

Mr. LOWRY. The point we are making is just this, sir, that for a long while businesses have been making reports to the Bureau of the Census,

including in these reports a number of things for which they had no verifiable and direct evidence in their records. There had been a general understanding that all of this was confidential.

The Supreme Court now says that the copy of the census return held in the files is not confidential. Without using the direct language of the Court, it appears that the Court was disturbed because there is no clear and unambiguous language which protects the respondent's copy of the census return. We think that it is important that there be remedial legislation in clear and unambiguous language which makes the point that formerly was just a matter of practice and general understanding.

Mr. OLSEN. I think I agree with you but then I wanted to have the understanding that I don't think we ought to go to the point of **forbidding or in any way hampering other Federal agencies** from subpoenaing the material that they are entitled to.

Mr. LOWRY. By no means. The conference's board of trustees has discussed this at some length, and individual members of the conference have also expressed concern about this. We have no desire in any way to impede or to throw a roadblock in the way of any Federal agency in obtaining information it needs.

Mr. HENDERSON. Mr. Lowry, I would like to say that you have been as helpful on this occasion as you have been on other occasions when you have been before our subcommittee. We recall the FSUC testimony with regard to the census of transportation and so on and we appreciate your appearance this morning.

Mr. LOWRY. Thank you very much.

Mr. HENDERSON. The next witness is Mr. Glenn B. Sanberg, executive vice president, American Society of Association Executives, Washington, D.C.

Mr. Sanberg, it is a pleasure to have you before the subcommittee.

**STATEMENT OF GLENN B. SANBERG, EXECUTIVE VICE PRESIDENT,
AMERICAN SOCIETY OF ASSOCIATION EXECUTIVES, WASHINGTON, D.C.**

Mr. SANBERG. Mr. Chairman, my name is Glenn B. Sanberg. I am executive vice president of the American Society of Association Executives. I am grateful for the opportunity to testify before this special subcommittee on the critical matter of confidentiality of reports made to the Census Bureau. I appear in behalf of the members of American Society of Association Executives which is an organization of 2,250 business executives who manage important trade, technical, and professional associations in this country.

Perhaps it will help the subcommittee if I describe briefly the work of the American Society of Association Executives. ASAE was founded 42 years ago by a group of forward-looking men who realized that the special skills involved in effective group participation required a medium for exchange of experience and know-how. From that first meeting in 1920, the society has grown steadily until today our 2,250 members represent the majority of the national business and professional associations in this country, a spectrum of the business, industrial, and professional pursuits of our American life.

The vital role of the voluntary association in our economic life is well known and needs no apology. Trade and professional groups have become an essential part of our economic growth and well-being. This has been true I might say parenthetically because this is the only means by which small business can be represented effectively in their particular industries or occupational groups. The records are replete with graphic, major illustrations of significant progress achieved by this means. What, however, is too little known or understood, is the important contributions these economic groups make to our society. We have cataloged more than a hundred service activities of associations. Some of the more important are:

Basic, applied, and motivation research of many kinds; product and service development; market studies; industry standards; executive, supervisory and vocational education and training; and special public service projects serving local, State and National Governments.

Each of these programs is made possible by the cooperation of members who voluntarily pool their resources to do together what they cannot do as individuals. Parenthetically, it may be said that lobbying for or against legislation is not, as is sometimes erroneously assumed, a major activity of most associations. This is the first time ASAE has appeared before a congressional committee on a legislative matter. In this case, however, a vital principle is at stake.

America's noblest contribution to man's passionate search for human justice and freedom lies in its revolutionary concept of a society where there is no insurmountable obstacle to man's full growth and development other than his own capacities and choices and the protection of similar opportunities for others. We find, for instance, less than 50 percent of the associations represented in ASAE have any kind of legislative program. This, incidentally, is the first time that ASAE has appeared before a congressional committee. We feel, however, in this case that precedent must be broken because a vital issue is at stake.

In our view, the crossroad of free enterprise has been reached, when it is no longer possible to maintain confidentiality or identifiable information involving basic production, cost or marketing statistics. Government cannot expect cooperation on the one hand while jeopardizing the confidence of vital information on the other.

If this kind of information is not given anonymity, ultimately trust and cooperation withers. This holds true whether the recipient is government or an association. This holds true, we know, whether it involves an association or government. We cannot afford the luxury of a denial of this basic right of a business to determine when its business data may be used adversely by a competitor. Indeed, to deny this right would stifle free competition at its source.

For these reasons, you may well understand our concern when the Supreme Court announced its decision in the *St. Regis* case. Both business and Government rely on this source of economic data for use in planning and decisionmaking. You can also understand why our members urge prompt enactment of this amendment to the standing census law. If adopted during the current session of the Congress, the harm already done to business confidence in general, and census statistics in particular, can be minimized.

Restoration of the tradition of census confidentiality is as urgent as it is essential, with respect to both the report rendered by business firms to the Census Bureau as well as any file copies retained by the reporting firm. If confidentiality is a valid principle for one, it must be made valid for the other. As the Court made clear, there is no question as to confidential status of the census report submitted, or "the importance to the public of submission of free and full reports to the Census Bureau * * *." Then as if to suggest corrective legislation, the Court's opinion pointed out, "but we cannot rewrite the Census Act."

Even though much census data is collected under mandatory authority, any molesting of the tradition of confidentiality endangers the whole statistical program and is not only bound to blunt statistical accuracy, but also cause delays in publication and increase Government gathering costs to say nothing of the private cost of "safe" reporting. Were it necessary to accept this damage to statistical values so that Federal investigating activity could proceed, there would be an issue for careful judgment. Fortunately, however, you have the assurance of the Executive Office of the President in a letter of July 11, 1962, that appropriate confidentiality of file copies of census reports can be provided, particularly if a minor change is made in the text of H.R. 10569; that is, by provision that it apply to census reports specifically, and restrictively.

It is most reassuring to know that your subcommittee, Mr. Chairman, can rewrite the Census Act and is undertaking to do so.

Twenty years ago ASAE was one of the founding sponsors of the Advisory Council on Federal Reports and has since been privileged to give substantial support to its program. This Council is an official business advisory body set up in 1942 at the request of the Director of the Bureau of the Budget. Its function is to provide the Bureau's staff with qualified industry advice and assistance in the administration of the Federal Reports Act and to help the Bureau develop better and more useful statistics in public and private use. I serve on that Council as an official representative of ASAE.

Mr. Chairman, it will interest your subcommittee I believe to know that the Advisory Council prior to the Supreme Court decision in the *St. Regis* case, counseled the Bureau of the Budget on the problems which would be raised. In one stroke, the Court stripped from company-held file copies of census reports the protection traditionally promised by Census officials. In its report to the Bureau, the Advisory Council stressed the sanctity of the pledge of confidentiality; the need for full cooperation between Government and industry in the reporting field; and that public interest is involved where the availability of good Federal statistics is at stake.

We believe that no essential governmental function would be rendered less effective by this corrective measure. Furthermore, the important, ongoing, recurrent reporting of vital data of the varied segments of our economy would be restored to the wholesome climate of confidence and cooperation between business and Government. The acceptance of H.R. 10569 in the Congress will be a first long step forward for both Government and business.

In closing, I wish to point out that, while it is essential to correct census law as this bill would do, the problem of confidentiality which

businessmen face is not limited just to census reports. It is Government-wide and to deal with it adequately, your committee, Mr. Chairman, after getting enactment of H.R. 10569, should consider the broader problem of providing needed confidentiality protection for copies of reports to any Federal agency where the original copy is privileged and where, as in the present case of census reports, business respondents need the assurance of consistent policy and standard practice in order that the benefits of full and free submission of information may be extended all along the line. We, in ASAE, think it highly desirable to do this without delay. We would suggest that your committee consult with the Office of Statistical Standards of the Bureau of the Budget and its Advisory Council on Federal Reports and others on how best to extend the principle in H.R. 10569 to all file copies submitted in confidence.

Mr. HENDERSON. Thank you, Mr. Sanberg, for a very fine statement and certainly your suggestions merits consideration by the subcommittee. We certainly know that you appreciate the immediate problem facing the subcommittee.

Are there any questions by the other members?

Mrs. NORRELL. I think it is an unusually good statement.

Mr. HENDERSON. Mr. Rousselet?

Mr. ROUSSELOT. You mentioned in your statement the harm already done to business confidence in general. Do you have some case examples from your own organization?

Mr. SANBERG. Yes. At a meeting in San Francisco earlier this year, some 32 comptrollers of industry firms indicated beyond questions of a doubt that this, to their thinking, was one of the most critical problems that they faced and these men are the men who are providing for the most part the kind of figures and data that we are talking about here. The concern is deep and it is wide. It covers not only big business, but it covers small business.

Mr. ROUSSELOT. Did any of those comptrollers mention a specific example?

Mr. SANBERG. I cannot cite one. I could probably obtain one.

Mr. ROUSSELOT. I think one for the record might be helpful.

Mr. SANBERG. I shall try to do that.

Mr. ROUSSELOT. You might identify the company.

Mr. HENDERSON. We would be very glad to receive that, Mr. Sanberg.

Mr. SANBERG. We will attempt to get it for you.

(The information requested follows:)

ADVISORY COUNCIL ON FEDERAL REPORTS.
Washington, D.C., August 3, 1962.

Mr. GLENN B. SANBERG, *Executive Vice President, American Society of Association Executives, Washington, D.C.*

DEAR MR. SANBERG: I am pleased to respond to your request for a few details concerning the meeting I had in San Francisco with some 30 company controllers, financial vice presidents, and treasurers last February. The purpose of my meeting with these company officials was to discuss with them for 2 hours the problems they currently encounter in connection with Government reports. As you know from your active service on the Advisory Council, such requests for information by Federal agencies impose a considerable burden, and at times management problems, on reporting companies. The efforts of the Council to alleviate reporting costs and difficulties has done much to give busi-

nessmen a measure of confidence in the Federal reporting programs since demonstrable efforts are being made to hold Government-incurred paperwork to a minimum.

The problem of greatest concern to these company officials was the decision of the Supreme Court in the *St. Regis* case. That decision shocked these company representatives, as it no doubt has many others, since there had been the belief that reports they are required to submit to the Census Bureau at their own expense were at least not to be divulged in view of the highly proprietary character of much of the information contained. It was apparent from their comments that business concerns were finding it necessary to take precautionary steps such as the destruction of their census records. I reported my findings to the Advisory Council on March 1, 1962, and I quote from minutes of that meeting, page 789: the executive secretary "reported keen interest in the effect of the Supreme Court's decision in the *St. Regis* case, and that companies are advising each other in regard to precautionary steps; that managements believe that Government agencies are adopting a tougher attitude and that their apprehensiveness is eroding much of the traditional confidence that has existed between Federal statistical agencies and their reporting constituents."

The entire business community, I feel certain, needs and would welcome the restoration of the situation which existed before the *St. Regis* decision such as would be accomplished by the amendment now under consideration by the special committee of the House Post Office and Civil Service Committee.

Sincerely yours,

RUSSELL SCHNEIDER,
Executive Secretary.

Mr. HENDERSON. Mr. Derwinski?

Mr. DERWINSKI. In your statement, Mr. Sanberg, you emphasize the fact that H.R. 10569 is narrow in its approach and suggest the committee, after we have handled this legislation, extend our activities. I think that is a worthwhile suggestion and certainly a precedent that we hope to establish this time would be more helpful in an all-embracing approach to this problem.

I think that you have made a tremendous contribution to the committee by this suggestion. Thank you, sir.

Mr. HENDERSON. Thank you, Mr. Derwinski.

Thank you very much, Mr. Sanberg. We appreciate your appearance.

Our next witness is Dr. Ralph J. Watkins, vice president, Surveys & Research Corp. of this city.

**STATEMENT OF RALPH J. WATKINS, VICE PRESIDENT, SURVEYS
& RESEARCH CORP., WASHINGTON, D.C.**

Mr. HENDERSON. It is a pleasure to welcome you before the committee, Mr. Watkins.

Mr. WATKINS. Thank you very much.

I would like to express my appreciation of the privilege of appearing before your subcommittee in your consideration of proposed legislation aimed at preserving the confidential nature of copies of statistical reports submitted to the Bureau of the Census. As I understand it, that purpose would be achieved by an appropriate amendment to title 13, United States Code, such as that stated in H.R. 10569, and perhaps as amended in line with the suggestion by the Bureau of the Budget.

I strongly endorse the purpose of this proposed legislation. I had long hoped that the Supreme Court would uphold the traditional view of the Bureau of the Census that copies of census reports retained in the files of respondents enjoyed the same confidential status as the

originals submitted to the Bureau. Unfortunately, the Court decided otherwise, and great mischief has been done to the basic statistical system of the country on which our economic welfare is so dependent. It is difficult for me to believe that the Court saw with clarity what was at stake and what would be the consequences of its decision. Nor in this age of sweeping judicial decisions can I entertain much sympathy for the Court's view that it was powerless to "rewrite the Census Act."

The mischief, however, has been done, in the *St. Regis Paper Company* case decided December 11, 1961; and only the Congress of the United States can undo that mischief. I would urge that it be done promptly and decisively.

The Congress has wisely provided for the full confidential status of census returns submitted to the Bureau of the Census and has made them inviolate and safe from efforts of other arms of Government to gain access to these confidential statistical reports for punitive purposes or for purposes of taxation, investigation, or regulation. The statistical edifice built upon this confidential status of census reports is now threatened with undermining by the *St. Regis* case decision. Urgent action is needed to protect that edifice by restoring to the retained file copies in the hands of respondents the confidential status which both the Census Bureau and respondents generally have in the past assumed them to have.

Now that I have expressed my views I owe it to this subcommittee to seek to qualify myself, to explain my background of interest in and concern for this problem. I speak in my personal capacity but I have had a long professional connection with the problem.

I am a graduate of the University of Texas in both economics and business and hold the doctorate from Columbia University. My present position, since July 1, 1962, is vice president of Surveys & Research Corp. I retired on June 30, 1962, from the staff of Brookings Institution where I had been director of economic studies since October 1, 1957. For the 13 years prior to that date, I was director of research for Dun & Bradstreet, Inc., in New York. In all of these capacities I have been made keenly aware of the crucial importance of census reports in our system of economic intelligence.

Service with my peers on professional committees or groups has intensified my interest in the problem of protecting the confidential status of census returns. Since 1947 I have been a member of the American Statistical Association's Advisory Committee to the Bureau of the Census, except 1955, the year of my presidency of the association. Since 1956, I have served as Chairman of the Advisory Committee on Statistical Policy to the U.S. Bureau of the Budget. For the years 1956 to 1960, I served as Chairman of the Population and Housing Census Users Council, a group set up to advise the Bureau of the Census on its plans for the decennial census of 1960. In the fall of 1953 I was named by the Secretary of Commerce, the Honorable Sinclair Weeks, Chairman of the Intensive Review Committee, a nongovernmental committee set up to undertake a review and appraisal of census programs. The Committee's report was submitted to the Secretary on February 16, 1954. I was the first Chairman of the Federal Statistics Users Conference, in 1955-56; and served again

as Chairman in 1958-59. It is scarcely necessary to add that all these services were without compensation, Mr. Chairman.

The problem of the confidentiality of census records has come up time and time again in the deliberations of these groups. Without exception these well-informed and dedicated men and women on these professional committees have staunchly upheld the long tradition of inviolability of confidential census reports and have applauded the Census Bureau's zealous, systematic, and intelligent efforts to protect confidentiality of its returns and to maintain the confidence of its respondents so carefully built up over the years.

Permit me to close this statement with a brief quotation from page 15 of the report of the Intensive Review Committee (appraisal of census programs) :

The Bureau is prohibited by law from publishing any statistics that disclose information reported for individual persons or firms. The Bureau has maintained stringent administrative controls to assure that individual information is not disclosed and has earned the reputation among respondents for respecting the confidentiality of the intimate records submitted to it. This is an asset of great significance and facilitates the taking of the several censuses. In particular, it encourages cooperation by respondents and minimizes the need for legal action in mandatory censuses.

That asset of great significance is being dangerously eroded by the consequences of the decision of the Supreme Court in the *St. Regis Paper Company* case, and it is my earnest hope that the Congress will act promptly to repair the damage that has been done, by restoring confidentiality to copies of census returns retained by respondents.

Thank you, Mr. Chairman.

Mr. HENDERSON. Thank you, Dr. Watkins.

Yesterday Chairman Emanuel Celler, of the House Judiciary Committee, appeared before our subcommittee, and I would like to quote a part of his statement :

As a general rule, information in the files of one agency of government 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 a game of blindman's buff played between different departments of the same Government.

Now with the long experience the committee recognizes you have had with Federal statistical programs, would you care to comment on the remark of Congressman Celler?

Mr. WATKINS. Mr. Chairman, it is obvious from what I have said that I am diametrically opposed to the Congressman's views. I have great respect for Congressman Celler. I do not question his sincerity in making such a statement, but it seems to me it is fundamentally fallacious and I think it would be deplorable if the Federal Government, the agencies of the Federal Government, were to act on that philosophy. Ours is not a government of unlimited powers. Ours is a government of limited powers. It is not a monolithic structure in which all power in our society rests in the hands of the Federal Government; and when it becomes that sort of a system, liberty is dead in this land. If it is not possible for a statistical agency of the Government, which has the mandatory task—and by the way, let me point out that it is a constitutionally derived task; the Bureau of the Census is the only agency in the Federal Government whose statistical functions derive

from the original Constitution of the United States. If that agency of government which has the responsibility of developing the basic statistical records, the benchmark records, on which our whole edifice of economic intelligence is built—if we cannot do that statistical job on the basis of the confidential relationship that ought to obtain between the private enterprise system and government, then it seems to me that we are imperiling the foundations of our society.

Mr. HENDERSON. Dr. Watkins, are you familiar with the letter that was submitted by the Federal Trade Commission to our subcommittee that this would be a matter of convenience to them in their investigations, to get at these copies of the reports?

Mr. WATKINS. I grant you, sir, that it would be a matter of convenience, but I think that convenience would be bought at a terrifically high price. I would strongly disagree with the Federal Trade Commission in that position.

Mr. HENDERSON. Mrs. Norrell, do you have a question?

Mrs. NORRELL. Carrying out that same thing, I note in two instances in that same report that you mentioned yesterday that Congressman Celler says:

It seems to me the statistical data, subject to the observation of more than one Government agency, is more likely to be accurate and reliable than not subjected to such observation.

He goes further:

I suggest that a little delay by a company for more complete review might well improve the accuracy of the statistics compiled by Census.

That is just carrying out what you have been discussing there. Then he goes on to say:

There is nothing inherently confidential about business statistics and when legitimate business secrets are at stake, existing law provides ample means for their protection from disclosures to competitors.

I wonder if you would like to comment on that last remark?

Mr. WATKINS. It is a little difficult to do it without going back to the ABC's. It seems to me that those views overall are fallacious, and I do not agree at all that we would get an improvement of governmental statistics by having some other agency looking over the shoulders of the Census Bureau in collecting these basic statistical records. I do not quite understand what he has in mind when he says that there are other ways and means of protecting this information from the view of the concern's competitors.

It is not merely that problem of competitive relations, it seems to me. It is the problem of a statistical system which operates to the extent of probably more than 90 percent on the basis of voluntary compliance by thousands and thousands of respondents; and they do so on the basis of this long tradition of confidentiality, their confidence in the Bureau of the Census, that this confidentiality will be respected. If you undermine that confidence, then I think you will undermine the whole edifice of economic intelligence on the basis of which our society has to be operated, both public and private.

Mrs. NORRELL. Thank you.

Mr. HENDERSON. Thank you. Any other questions?

Mr. JOHANSEN. Dr. Watkins, I commend and concur in the statement you have given but I would like to good naturedly disagree with you on one point. It seemed to me that you implied a criticism of

the Supreme Court for having discovered one area in which it could not rewrite law, and I think the Court is to be commended for that. They have done a fairly healthy job of rewriting law and Constitution and everything else and bless their hearts if they are going to discover one area where they think they have a limitation on that power. I think it is an amazing miracle, even though I disagree with the effect of the decision.

Mr. WATKINS. Sir, I would hope they could take a larger area of constitutional law.

Mr. JOHANSEN. I was sure we were not in disagreement basically.

Mr. WATKINS. I am quite sure.

Mr. HENDERSON. I remarked to my friend yesterday that perhaps if the Court had been advised of the great social impact in its decision, that perhaps they could have found a basis for doing so.

Mr. WATKINS. Possibly so.

Mr. JOHANSEN. Let me just ask this one question, then I won't consume the time of the committee longer. Isn't the part of the price that would be paid for the abandonment of this confidentiality an impairment of the value and validity of the statistics themselves, even for the use of those statistics by the Federal Trade Commission, or our esteemed colleague, Mr. Celler, or anyone else?

Mr. WATKINS. I think that is true, sir. It seems to me that much less information would be available to the Federal Trade Commission if this ruling were allowed to stand. The Federal Trade Commission has the power, as I understand it, to subpoena any information that it needs from the records of a company, assuming due process and the appropriate judicial procedures. That is not in question here at all.

Mr. JOHANSEN. In fact, it is reasserted and protected.

Mr. WATKINS. That is right. I would not want to see anything done that would impede the normal powers of Federal agencies in investigating the conduct of the economy or any aspect of the economy; but I do not think those powers are impeded in any significant way by a rule which would protect the confidential status of these census file copies.

Mr. JOHANSEN. Does the witness feel that by my stressing the importance of preserving that confidentiality, I am implying that the businessmen who want it are confessing to be crooks or something of the sort?

Mr. WATKINS. I am afraid I did not understand you.

Mr. JOHANSEN. I do not wonder. Let me rephrase it. The suggestion seemed to be made yesterday afternoon that if we did not raise this ban on confidentiality we were somehow implying that those who presumably benefited from the confidentiality, that is, the sources of these statistics, had something to hide, and my question is do you feel any implication of that kind in this effort to preserve confidentiality?

Mr. WATKINS. Absolutely none at all, sir.

Mr. JOHANSEN. Thank you.

Mr. HENDERSON. Thank you, Dr. Watkins. We are very appreciative of your fine statement and your appearance this morning.

Our next witness is Mr. Frederick F. Stephan, professor of social statistics, Princeton University, Princeton, N.J.

We are most appreciative of your traveling this far to give us the benefit of your views this morning.

STATEMENT OF FREDERICK F. STEPHAN, PROFESSOR OF SOCIAL STATISTICS, PRINCETON UNIVERSITY, PRINCETON, N.J.

MR. STEPHAN. Thank you, sir. It is a privilege to spend a few minutes here with you this morning, considering what I believe to be a very important problem.

I might explain the basis of experience out of which my views expressed in the statement have been developed. I am an independent professional man. Occasionally I have one or two employees, but most of the time none. However, I want to speak not as a user of the statistics, though I am a user, but rather as a statistician commenting upon what I believe to be good for the country as a whole and in that respect I want to say that I believe that a good deal of what stability we have in our economy results from the fact that businessmen large and small, consumers, labor, the Government officials, the legislators, and others, who are concerned with taking individual actions affecting our economy, are far better informed about the actual state of affairs than they have been in the past. One of the contrasts we might draw between the present period and the great depression of the 1930's has been this added stability arising out of having dependable information about what is going on as contrasted with rumors, inaccurate and incomplete information that characterize the past.

My experience as a statistician goes back to the 1920's, when I conducted surveys and did other work of that kind. As early as 1932, when I had responsibility in Pittsburgh for putting together the information about relief programs for the unemployed workers and their families, I encountered a situation in which one of the local government bodies, the directors of the poor, refused to divulge information even to the county commissioners about the rate of their expenditures in poor relief; however, they were willing to give the information to me on a confidential basis for incorporation in a total that would not reveal the amounts that they were currently expending and that I offer you as an example that it is not just the businessman that behaves this way. Government officials in the local level at least again and again are in situations in which they feel it incumbent because of conflicts or other considerations to hold private to themselves information that they are completely willing to provide for incorporation in a communitywide total that serves a statistical purpose of telling what in the aggregate the community is doing.

I have also collected information on a confidential basis from individuals about their salaries, for example, and about personal affairs, which only would have been provided if there was the trust and confidence in me and the people that worked with me that we would not divulge the information to other people, and so the community as a whole gets information it could not otherwise obtain if the provisions of confidentiality were not protecting the information supplied.

I think there is a parallel here, that while the specific matter before you is an amendment of the provision concerning confidentiality, in the background is a question of whether the confidentiality provision should be in the law at all and Congressman Celler's remarks that you just referred to would seem to challenge the whole business of confidentiality and not just this proposed amendment.

On that point I think the choice is not between having all the agencies of Government have equal access to all the information any of them have.

It is between having the information for a limited and specific use, namely, purely statistical use or not having it at all; or having it on so incomplete a basis that the results are of questionable accuracy and one has to guess as to how much to add for the reports that are missing.

Mr. HENDERSON. Don't you feel that if you do not agree that the confidentiality should be extended to the file copies of the statistical report that you do almost have to go to the extreme that there should be no confidentiality even in the Bureau, itself?

Mr. STEPHAN. I think that is the next step, that the ultimate implications of Congressman Celler's point, and I have great sympathy with the purpose back of it, namely, to give full powers to the regulatory agencies to perform their proper functions, that the ultimate implication is that there is no need to trouble the companies at all, the agencies that are engaged in regulation should go immediately to the Census Bureau and examine the original copy.

I think the argument against that, which is compelling in my own thinking, is that if this becomes the practice, or is even threatened, then the original copies just won't be there to be examined in many important cases and what is at stake is the integrity and usefulness of the whole statistical system.

The choice is between having a fully developed and adequately protected system for the special purpose of providing general information about areas and industries, rather than individual companies on the one hand or between having a chaotic and only very incomplete set of information about individual companies to be used as a source of information about specific companies rather than for statistical totals. On that choice, there is no question in my mind that the intent of the provisions in title 13 was to make possible a dependable statistical system and that this is only possible if title 13 is interpreted to include all the materials solely developed for the statistical reports.

That is the intention of my statement, to make clear the kind of a choice that is before us.

Mr. HENDERSON. I have always said that the witness who departs from his statement as you have makes the very best witness and I wish to assure you that at this point your full statement will be inserted in the record.

(The statement follows:)

PREPARED STATEMENT OF FREDERICK F. STEPHAN, PROFESSOR OF SOCIAL STATISTICS,
PRINCETON UNIVERSITY, PRINCETON, N.J.

The provisions of United States Code 13, section 9(a) protecting the confidentiality of statistical reports to the Bureau of the Census by individuals and establishments have made it possible for American citizens and businessmen, as well as the Congress and Government officials, to obtain accurate statistics concerning our economy.

These statistics are very important. They provide a foundation of facts to guide decisions and actions. They are indispensable in revealing the course of events so that individuals and companies can manage their affairs wisely and so that legislation and Government actions will accomplish the purposes to which they are directed.

Without the immunity from diversion of statistical reports to legal proceedings and regulatory processes not contemplated in their preparation there would be long delays in the assembling of the information on many subjects. There would also be difficulties in maintaining standards of uniform statistical classification and relative accuracy of reporting. These consequences would be very serious impediments to the prompt flow of needed economic and financial information and to its accuracy and usefulness.

The decision of the Supreme Court in *St. Regis Paper Company v. The United States* revealed the need for clarification of the intent of the Congress in this matter. The bills before your committee provide that clarification in a manner I believe is sound and in the best interests of our country. I urge you to report a bill of this kind and strongly recommend that it be enacted. Unless this is done our entire system of essential economic intelligence may be damaged irreparably.

Statistical reports, including copies held in the files of respondents should not be substituted for the regular accounts and records of individuals and companies when the purposes of examining them are not purely statistical. Ordinarily the regular accounts and records are just as readily available. They certainly are preferable as evidence in legal and regulatory proceedings. Statistical reports must be prepared to meet certain special requirements that may make individual reports not exactly fair, complete, and accurate statements about an individual's business or an establishment. These requirements are necessary to make the statistical combination of reports uniform and accurate as a summary of information about many individuals or establishments in an industry, an area, or other statistical classification. The data furnished by each respondent must fit the same statistical framework, otherwise the meaning of the figures would be in doubt because some respondents used different classifications than others or variations of the same classifications that do not match properly.

Thus adherence to standard and uniform statistical classifications so essential to the preparation of correct statistical summaries from individual schedules necessitates some departures from the accounting classifications, some allocation of amounts not distributed in the accounts, preparation of special estimates needed for statistical aggregates, and other variations from the regular system of records and accounts appropriate to the particular character and operations of a company.

Moreover, statistical reports must be collected promptly after the close of the period to which they refer and without the delay that would result if they are held until the accounts have been audited or the reports reviewed by legal counsel. Careful estimates can be accepted in lieu of final figures to speed up reporting.

Many differences in definition, classification, and analysis between reports required for statistical purposes and those for legal proceedings are immaterial to the latter and will unnecessarily occasion misunderstanding and complicate finding facts to the detriment alike of statistics and investigation if statistical reports are so used.

For these reasons the confidential treatment of statistical reports provided by title 13, United States Code, should include copies of these reports held by respondents and also such special working papers as may have been prepared solely for the purpose of completing the schedules in which the reports are transmitted to the Census Bureau.

Mr. HENDERSON. If you have any other comments or highlights we will be delighted to hear them.

Mr. STEPHAN. I would merely like to say that in my statement I tried to make clear the difference between the collection of statistics to fit a uniform statistical set of classifications, and the kind of information that I think the regulatory agencies have a right to get and ought to get from the original accounting systems directly. My experience includes collecting information from the machine tool builders during the war at a time when even the private association of machine tool builders was unable to obtain reports from more than about 70 percent of the total production, and as a Government agency that collected information on a confidential basis and for the needs

of the War Production Board and other war agencies we were able to get 100 percent of the information.

If we do not make clear that the confidentiality extends to all of the records involved, including those retained by the respondents themselves, I think we face the possibility of perhaps reverting from 100-percent coverage to 70-percent coverage or less, and I offer that remote example as an indication of what is likely to happen if this amendment is not passed.

Mr. HENDERSON. I think you have made a very fine point here, and that we all feel that the well-being economically of our Nation is vital to national security but I think you have provided us with a specific example of where even the national security could be involved in this problem.

Are there any questions?

Mrs. Norrell?

Mrs. NORRELL. No, thank you.

Mr. JOHANSEN. May I ask one very crude, blunt question? If we eliminated this element of confidentiality and made these data available to all Government agencies, wouldn't it be an open season and field day for "snoopers"?

That is putting it harshly, but isn't that what it would result in?

Mr. STEPHAN. I am not sufficiently acquainted with activities of all Government agencies to answer. I have great respect for the work of regulatory agencies and the restraint that I think they very often exhibit.

Mr. JOHANSEN. Wouldn't there be a tendency to abandon that restraint?

Mr. STEPHAN. It would be an opportunity for snoopers. Whether or not there would be snoopers perusing the records, looking for sensational material or other things that they might use improperly would depend upon the discretion of the regulatory agencies. I do not feel that I can assail the integrity of the regulatory agencies. I would not try nor want to do that. I believe in the proper functions of regulatory agencies and I think they can do their jobs best if they do not depend upon the sort of preliminary reports that are prepared for statistical purposes, rather than more accurate reports that result after all of the accounting questions have been settled, the auditors have had a look at the books and there has been sufficient time to get the reports in final shape, but to make the statistics useful, we cannot wait that long. Statistics are sort of perishable. Their greatest use occurs when they occur promptly. At the present moment I am a member of a committee appointed by the President to review the statistics of employment and unemployment and as you well know, it is very important that we get reports on the situation with respect to that aspect of the economy within a week or so after the data are collected rather than to wait 3 months or 6 months to find out what the situation is.

We can give up a little bit of sharp accuracy for promptness and come out much further ahead.

Mr. HENDERSON. Don't you think that the report that you will make in that regard, you will have a great deal more confidence in your recommendations and the actions that might follow if you have the dependability in these Government statistics that we are concerned with here?

Mr. STEPHAN. I certainly do feel that way.

Mr. HENDERSON. Mr. Rousselot?

Mr. ROUSSELOT. No, thank you.

Mr. HENDERSON. I certainly want to again thank you for your trip here, but more than that, to thank you for a very fine statement this morning.

Mrs. NORRELL. Mr. Chairman, this has nothing to do with the statement of the gentleman, but I just want to say that regardless of how we might feel about the decisions of the Supreme Court, they are certainly to be commended on asking the help of the Congress in giving them clarified language on which to base any kind of a decision. And also that Congressman Celler, who is quite an excellent Congressman, is to be commended on his concern that we do not go too far the other way. I think that both are to be commended very highly for giving us some basis for clarifying legislation.

Mr. HENDERSON. Thank you, Mrs. Norrell.

Our next witness is Mr. Robert R. Nathan, of Nathan Associates, Inc., of this city. It is a pleasure to welcome you, Mr. Nathan.

**STATEMENT OF ROBERT R. NATHAN, NATHAN ASSOCIATES,
WASHINGTON, D.C.**

Mr. HENDERSON. I understand you do not have a prepared statement. You may go ahead in any manner you like.

Mr. NATHAN. Thank you, Mr. Chairman, and members of the subcommittee. I apologize for not having a prepared statement, but I have been out of the city for the last 10 days and did not get an opportunity to prepare one. My comments will be very brief.

I have heard the statements of several of the witnesses this morning, many of whom I have worked with over a considerable period of years in Washington and elsewhere and I concur largely with the presentation they have made.

I personally had about a dozen years of experience in the Government, during the 1930's and during the war, concerned with data on the national income, unemployment statistics, and business operating data. My experience was especially pertinent during the period of war mobilization in the early 1940's. In more recent years it has been my privilege and the privilege of my associates to work extensively in the development of the underdeveloped countries, helping them with their plans and programs.

If there is one principle which is of the utmost importance, it is the principle that good, accurate, comprehensive data are desperately needed for economic functioning, whether it is in the area of Government policy, private business projections, private business planning, investment programming, whether it is in security realm or whether it is in straight economic development. Whatever the area one is concerned with that has to do with the field of economics, the need for comprehensive accurate data is of greatest urgency. Somehow this need for more and better statistics seems to be an insatiable need.

Over the years, fortunately, we have been able to improve the quality and coverage of our data in this country. I think this has made possible a tremendous contribution to the functioning of our economy. I agree very much with Fred Stephan on his observation that accurate

and comprehensive data were of tremendous importance in our successful mobilization planning during World War II, during the Korean war, during our fight against the depression in the 1930's. Also, it has been a major contributing element to the relatively improved stability of our economy since the end of World War II and the end of the Korean war. I think it has been of tremendous importance in facilitating the economic development of the underdeveloped countries.

The real problem that faces this committee and faces the Congress is to try to appraise the costs and benefits of this kind of legislation. On the cost side we must ask ourselves, Will the enactment of this legislation really have an adverse impact on the coverage, scope, and accuracy of Census data? Will the fact that the data are available to any agency of the Government other than the Census Bureau, if found in the files of the company, inhibit coverage? Will this discourage reporting in an accurate and comprehensive manner. The Census Bureau is fearful these results will ensue unless this legislation is enacted.

The Census Bureau has about as competent a group of objective, technical people as I have encountered anywhere in any Government agency. They are not empire builders, not seeking status for their own sake. It is a very competent group. I am very happy to be serving with them as a member of the Census Advisory Committee of the American Economic Association.

It is their feeling, and I share this with them, that accuracy, scope, and cooperation will be enhanced if the confidentiality of the file copies is protected along with the submitted copies. The retained copies gives the Census Bureau a chance to check on questions. These are confidential data which often require check backs.

There is a great likelihood that many of the census reports which rely on voluntary cooperation would not be forthcoming if this confidentiality of the file copies were denied because businessmen would be hesitant about cooperating where they are not fully protected.

I personally believe that the benefits of the present status under the Supreme Court decision are really dubious. On the other hand, the cost that would result in terms of the nature and character of our basic data could be exceedingly great.

Of course, Government must have information about business and it must have accessibility to records for administrative proceeding purposes. Not all businessmen are pure of heart. There are always those who will violate or seek to violate certain procedures and I think the Government must have powers to look at information and acquire data. But they do have those powers in the form of subpoena and other methods.

We lived with confidentiality of census records for a long time; that is, until the Supreme Court decision. I just do not believe that the Antitrust Division of Justice or the Federal Trade Commission or the SEC or other administrative agencies were terribly harmed by this confidentiality, which now the Supreme Court finds the law does not specifically accord to the businessman. The benefits that Government might derive out of now having accessibility to this record are highly dubious relative to the cost. I emphasize the dubious benefit because if the businessman does not want to keep those records,

he does not have to. If he does not have them, they are not available. It seems clear that the benefits that may be derived by the Government from accessibility to this type of report is limited. The cost, on the other hand, could be very severe. I think we have to balance possible costs against possible benefits. I think the risks to the accuracy and comprehensive character of census data is just too great a risk to take a chance.

I would summarize by saying it seems to me it was the intent of Congress to insure confidentiality, certainly in submitted reports and I think this could be implied as to the retained reports. The law did not specifically state this. If that was the intent, and I think it was and ought to be the intent of Congress, then this situation can now be readily repaired by the kind of legislation that is suggested.

I sincerely hope this legislation will be enacted.

Mr. HENDERSON. I thank you for the very fine statement. I would assure the witness that if you would like to submit a prepared statement or other comments to the committee, they will be included in the record. I think your testimony has been most helpful to us.

Mr. JOHANSEN. I certainly concur in that appraisal of your testimony.

Mr. HENDERSON. Thank you very much for being with us.

Mr. LATIMER. May I submit my statement? It would only take about a moment or two to submit it orally because I do not have extra copies. If you could indulge me for 2 minutes, I guarantee I will be through by that time.

I arranged yesterday to be on the docket. I am a little surprised I am not on the printed docket.

Mr. HENDERSON. You may proceed, Mr. Latimer.

STATEMENT OF J. AUSTIN LATIMER, AUTOMOTIVE SERVICE INDUSTRY ASSOCIATION

Mr. LATIMER. Mr. Chairman, I might say parenthetically it is a pleasure to be back before a committee of which I was at one time a member of the staff.

My name is J. Austin Latimer. My address is 1001 Connecticut Avenue NW., Washington, D.C. I am here to represent the Automotive Service Industry Association as local counsel. This trade association, with membership in all 50 States, has a membership of over 5,000 wholesalers of automotive parts, supplies, equipment, and accessories and 450 manufacturers of such products.

Speaking for an association with over 6,000 business firms I think I can give you a viewpoint of our industry that will be of importance and interest in the consideration of this important bill. Also, I want to emphasize that those I represent are always anxious to comply with reasonable requests from any governmental agency or congressional committee for information and pertinent data.

However, we feel that in a large part, such information furnished to the Bureau of the Census is and has been traditionally considered of a confidential nature. This causes not only our industry but the business world to look with much apprehension to the possible effect of the *St. Regis* decision.

At the outset, I want to commend Representative Henderson and his colleagues in the House for the introduction of H.R. 10569 and

related bills, all designed to do what was thought to be our rights prior to the *St. Regis* case. These bills, as it has been pointed out, will amend title 13 of the United States Code (the Census Act), by adding new protective language. It is my information that Chairman Johnston of the Senate Post Office and Civil Service Committee will probably introduce companion legislation in the Senate. It is our hope that this will also be enacted into law promptly, through a meeting of the minds of both Houses to make possible final action on this legislation before the adjournment of this the 2d session of the 87th Congress.

The public can easily be misled by the general statement in the Court's decision that since reports to the Census Bureau are confidential, not subject to subpoena, that the individual and business firm is protected, but the danger, of course, lies in the fact that this same protection does not apply, under the ruling of the Supreme Court, to worksheets, et cetera.

Of course, it may be argued that the supplier of requested census information need not retain such worksheets and can reply to a demand from a court or committee that he has no such data, but in doing so he may be liable for contempt, and a holding that it is his duty to retain office records upon which he based his report to Census. Also, in my opinion, an individual or firm should not be denied the right to keep a record of what has been submitted to a branch of the Government. No one would seriously contend that any action should be taken to take away the right of a taxpayer to keep copies and worksheets in connection with his tax returns, nor of any information furnished to a governmental agency under the assurance by the agency of the confidentiality of the data.

In the opinion of the Automotive Service Industry Association and its more than 6,000 members, we feel that H.R. 10569 should be enacted into law promptly.

Mr. HENDERSON. Thank you very much for your fine statement.

At this point in the record, without objection, I will insert statements received by the subcommittee concerning this legislation.

(The statements follow:)

ALABAMA STATE CHAMBER OF COMMERCE,
Montgomery, Ala., April 25, 1962.

HON. DAVID N. HENDERSON,
Chairman, House Census Subcommittee, House Office Building, Washington D.C.

DEAR MR. HENDERSON: We are informed that you have introduced a bill to correct a dangerous situation that was created last December when the Supreme Court ruled that while company reports in possession of the Census Bureau are confidential, copies kept by the companies are not. The statistical services of the Bureau of the Census have progressed remarkably in recent years to the point that current and accurate statistical materials can now be obtained on every phase of the economy. This information is invaluable in projecting sales markets, justification of expansion, and other projects requiring accurate information concerning the movement of the population and the economy.

The Supreme Court ruling places a severe handicap on the Census Bureau in the securing of data for this important work. Certainly many companies could be expected to resist efforts to obtain information about their operations if they felt that every copy retained in their files could be subpoenaed by antitrust agencies for possible use in court actions against them.

Thus we are strongly in favor of your bill and we are urging members of our congressional delegation to support it.

Yours very truly,

JOHN M. WARD, Executive Vice President.

AMERICAN BAKERS ASSOCIATION,
Washington, D.C., July 31, 1962.

Hon. TOM MURRAY,
Chairman, House Post Office and Civil Service Committee,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN MURRAY: The American Bakers Association and the Biscuit & Cracker Manufacturers' Association wish to go on record with the House Post Office and Civil Service Committee in support of pending legislation to expressly give to copies of census reports, as well as information and data connected therewith, the confidentiality status which was provided implicitly prior to the decision of the U.S. Supreme Court in the *St. Regis* case in 1961.

Because this decision now makes available to other Government agencies without restriction the file copy of forms filed with the Census Bureau on a confidential basis, as well as accompanying work data and related information, we believe a serious impediment to the collection of necessary statistical information from business by the Census Bureau will result.

The members of our industry have always cooperated with the Census Bureau in its requests for information in connection with census programs. Unquestionably, they would like to continue to extend that cooperation in the future. Yet, if information for statistical purposes which is furnished in great detail to the Census Bureau, because the law places a seal of confidentiality on the Bureau's treatment of such information, is to be made readily available through file copies to any other Government agency concerned with taxation, investigation, or regulation, a serious question is raised as to whether the same cooperation should be extended in the future.

This, we believe, would be unfortunate in the development of necessary statistical programs by the Census Bureau. On the other hand, self-protection appears to allow no other course of action. Consequently, various census programs which are so important to business and the economy of the United States will suffer immeasurably, unless Congress acts to restore the seal of confidentiality in this area.

We strongly recommend, therefore, that your committee act favorably on legislation to avoid the effect of the application of the Supreme Court decision. Mr. Justice Black, in his dissenting opinion, concurred in by Justices Whittaker and Stewart, succinctly stated the case when he said:

"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 piecayunish 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. It is no less good morals and good law that the Government should turn square corners in dealing with the people than that the people should turn square corners in dealing with their Government."

This excerpt from the dissenting opinion eloquently states the case in support of corrective legislation.

The thousands of bakery operators who file census reports regularly, as well as other businesses, are entitled to have the confidentiality of their information preserved no less in their own files than in those of the Census Bureau.

We ask that this letter be made a part of the record of the hearings and urge your committee to report out favorably the necessary legislation to enable action by the Congress in this session.

Respectfully,

JOSEPH M. CREED, *Counsel.*

THE AMERICAN COLLEGE OF RADIOLOGY,
Chicago, Ill., May 7, 1962.

Hon. DAVID N. HENDERSON,
House of Representatives, Washington, D.C.

DEAR MR. HENDERSON: The American College of Radiology is a medical association composed of over 5,000 physicians who specialize in the use of X-ray and radioactive modalities in the diagnosis and treatment of disease and injury.

We are writing at this time to express the hope that hearings will be conducted on legislation that has been introduced into the House of Representatives for the purpose of preserving the confidential nature of copies of information filed with the Census Bureau. We further believe it to be desirable for legislation to be enacted protecting the confidential nature of such data.

The American College of Radiology has not up to this date been requested to file such information, but we, along with other organizations, use such information and do have an interest in its being accurate and complete. We believe that the recent Supreme Court decision allowing Federal regulatory agencies access to copies of such information held in company files will injure the statistical program of the Census Bureau. Further, it may well lead some of those who have to report to destroy file copies and thus reduce further reporting to the Census Bureau to the bare bones of legal requirements.

We will appreciate any consideration that you are able to give to this request and any action that you are able to take to promote hearings and eventual legislation.

Very truly yours,

WILLIAM C. STRONACH, *Executive Director.*

THE AMERICAN COTTON MANUFACTURERS INSTITUTE, INC.,
Washington, D.C., July 31, 1962.

HON. DAVID N. HENDERSON,
Chairman, Census Subcommittee, House Post Office and Civil Service Committee, Washington, D.C.

DEAR CONGRESSMAN HENDERSON: The American textile industry has had, over the years, an excellent working relationship with the U.S. Census Bureau. We have seen the Bureau's statistical program in the textile area grow steadily, improving constantly in quality and usefulness over the years.

Without doubt, the Bureau's long-standing pledge of confidential treatment of statistical reports filed with it has been carefully observed and has contributed much to the widening coverage and increasing reliability of its data.

The Bureau's program will be seriously retarded unless remedial legislation now pending before your subcommittee succeeds in restoring the confidential nature of company reports to Census which existed over so many years prior to last December's Supreme Court decision in the *St. Regis* case. We strongly support your bill H.R. 10569 and urge that every effort be made to secure its enactment in the present session. While it is highly important to restore confidentiality to company-retained copies of reports filed with the Census Bureau, we believe that such confidentiality should also be extended to the working papers assembled for the sole purpose of correctly completing the census report form. Only so, will companies be in position to be fully responsive to Census Bureau followup communications on specific reports. Such followup communication is an essential part of the Bureau's work in maintaining the comparability and completeness of its published data.

Respectfully,

R. BUFORD BRANDIS, *Chief Economist.*

AMERICAN DENTAL TRADE ASSOCIATION,
Washington, D.C. April 20, 1962.

HON. DAVID N. HENDERSON,
House Office Building, Washington, D.C.

DEAR MR. HENDERSON: As you are aware, the recent Supreme Court decision in the *St. Regis Paper* case has aroused considerable consternation in trade association circles and the business community. It is the opinion of many that the Court decision does not correctly interpret the will of Congress and that this interpretation is due to a deficiency in the original legislation concerning the confidential nature of reports filed with the Bureau of the Census.

It is particularly gratifying, therefore, to note that you have introduced a bill (H.R. 10569) to correct the deficiency in the original legislation.

It is hoped you will find it possible to schedule hearings on this bill in the very near future since the present uncertain situation is undoubtedly having a deleterious effect upon the programs of the Census Bureau and possibly those of trade associations which collect and publish census-type data from the industries they represent.

The comments in this letter are of a personal nature and do not necessarily represent the views of the members of this association.

Cordially yours,

EDMUND WELLINGTON, Jr., *Executive Secretary.*

AMERICAN ECONOMIC ASSOCIATION,
Cambridge, Mass., April 24, 1962.

HON. DAVID N. HENDERSON,

Chairman, Subcommittee on Census and Government Statistics, Post Office and Civil Service Committee, House of Representatives, Washington, D.C.

DEAR MR. HENDERSON: My attention has been called to the probable effect of the Supreme Court's recent decision in the *St. Regis Paper Co.* case on the Census Bureau's ability to collect data. As I understand it, the Supreme Court ruled that while returns submitted to the Census Bureau are confidential, the respondents' file copies of the returns are not confidential.

The American Economic Association has for some time had a committee under Prof. Solomon Fabricant of the National Bureau of Economic Research working with the Census on the collection and analysis of data. It is the opinion of the Census Advisory Committee of the American Economic Association that the effect of this decision, if not corrected, on the collection of data useful for economic research and for the administration of public policy will be serious.

As president of the American Economic Association, I strongly urge the passage of H.R. 10569 which, as I understand it, will return the situation to what it was before the *St. Regis Paper Co.* decision. Although the members of the association have not been canvassed on this issue, I believe I speak for them in urging this action.

Sincerely yours,

EDWARD S. MASON, *President.*

AMERICAN INSTITUTE OF LAUNDERING,
Joliet, Ill., July 26, 1962.

Representative DAVID N. HENDERSON,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN: Since the passage of the Census Act, industry has gone far beyond what is ordinarily required by law, and has reported information which has been of benefit to the various Government agencies in analyzing the present and future position of business activity. To a large extent, this industry cooperation was due to the fact that the reports, whether Census Bureau copies or industry file copies, were held in strict confidence.

If the cooperation of industry is to continue, to the benefit of the Government and industry, the confidential status must be returned to the file copies of the census reports. Only in this way will the Nation continue to benefit from the full reporting of important economical information.

Cordially,

GEORGE ISAACSON, *General Manager.*

POSITION OF AMERICAN MARKETING ASSOCIATION, CHICAGO, ILL., RE CONFIDENTIALITY OF INFORMATION SUPPLIED BY BUSINESS FIRMS TO GOVERNMENT AGENCIES

We, the board of directors of the American Marketing Association, recognize that the data available to business from the Bureau of the Census and other Government agencies is extremely valuable to business and market planning. We also recognize that the reports requested by various Government agencies are sometimes very time consuming to the personnel asked to supply the information. The timing of reports and the classifications of data requested often require a time-consuming regrouping of accounting data and establishment of estimates where the data requested are not available from corporate records.

Due to these reporting requirements it is necessary for the corporation to maintain a copy of the reports submitted in order to answer any followup inquiry from the Government agency regarding the report submitted and to be able to submit a comparable report when it is again requested.

Without the retention of such copies additional work would be required to answer inquiries or prepare subsequent reports. Two even more serious problems would also arise if copies are not retained—the comparability of data supplied to the appropriate Government agency would suffer and fewer businesses would cooperate by supplying information.

To encourage cooperation of business with data-seeking Government agencies, we believe that the copies retained by the reporting companies should be privileged from disclosure in the same manner as are the original copies in the hands of Government agencies.

We direct that our position be made known to proper Government agencies and the Congress when it considers legislation needed to extend said privilege.

VANCE E. LOCKHART,
Executive Director.

STATEMENT OF THE AMERICAN PAPER & PULP ASSOCIATION BY
ROBERT E. O'CONNOR

This statement is being submitted to the Subcommittee on Census and Government Statistics of the House Post Office and Civil Service Committee, in lieu of personal appearance by the American Paper & Pulp Association, in support of H.R. 10569 and related bills.

The American Paper & Pulp Association is the overall national association of the paper and pulp industry. The paper and allied products industry operates mills or plants in 47 of our 50 States. The industry includes 472 different companies which produce the primary products of pulp or paper in approximately 850 mills. In addition, there are upward of 4,000 plants making converted paper products. Some 590,000 employees, together with more than 2 million of their dependents derive their livelihood from the paper and allied products industry. Our annual total industry payroll is over \$3½ billion.

We are vitally concerned with H.R. 10569 and related bills which would amend title 13 of the United States Code to preserve the confidential nature of copies of information filed with the Bureau of the Census on a confidential basis.

A tremendous amount of confidential information is reported by American business to the Census Bureau every month of the year, for the most part without a prior investigation into the Bureau's right to ask for it. Most companies in our industry and in the business community have traditionally cooperated and complied with the Bureau's requests promptly, willingly, and voluntarily, with no question of statutory compulsions, and in many cases with knowledge of the absence of any requirement of law. This is done for two reasons: (1) They appreciate the great value of the work by the Census Bureau to the country at large; and (2) they have relied upon the confidential nature of their submissions. We believe it is reasonable to assume that much of the material which has been submitted voluntarily will no longer be submitted in view of the Government's inability to protect its confidentiality.

Section 9(a) of the Census Act and the sections of prior law upon which it is based, with exceptions which are not material, have provided for many years that neither the Secretary of Commerce nor any bureau or agency thereof may use the information furnished in census reports except for census purposes, make any publication of the data contained in such reports as coming from the establishment or individual reporting it, or permit any person except officers and employees of the Census Bureau to examine such reports.

At the request of the Bureau, most companies have retained file copies of their reports to simplify subsequent correspondence with the Bureau ("your file copy"). This retention is based upon the statement on census forms, "This inquiry is authorized by law. Your report is accorded confidential treatment, subject to the provisions of law. Your census report cannot be used for purposes of taxation, investigation, or regulation." The companies' copies of reports are particularly important for the reasons that: (1) when the Census Bureau staff reviews the questionnaires that have been sent in, it is often found necessary to communicate with the companies about certain details, to secure explanations, corrections, or missing entries, and the retained copies give the companies a basis for answering the questions; and (2) when the next census or survey is taken, the companies' file copies of the previous inquiry provide a basis for answering in a consistent fashion so that the statistics will be comparable and meaningful.

For many years it has been generally assumed, and also held by the Court of Appeals for the Seventh Circuit, in *F.T.C. v. Dilger*, in 1960, that the file copies are entitled to the same privilege against disclosure that the original copies submitted to the Census Bureau enjoyed.

The Federal Trade Commission and the Department of Justice have taken a contrary view, for the reason that reports to the Census Bureau comprise a rich lode of economic information and data freely given under the assurance by the Census Bureau that it would remain forever confidential.

As this subcommittee is aware, over the objections of the Census Bureau, and contrary to the opinion of the Solicitor General of the United States, the Supreme Court on December 11, 1961, sustained, in *St. Regis Paper Company v. United States*, the right of the Federal Trade Commission to require the production of retained file copies of confidential reports to the Census Bureau. The majority opinion stated that it could not rewrite the Census Act but it fully realized the importance to the public of the submission of free and full reports to the Census Bureau. We feel that this certainly indicates the feeling on the part of the Court that the present unfortunate situation can only be corrected by Congress. We urge that Congress accept this appraisal and take the necessary remedial course proposed by H.R. 10569.

In the *Dilger* case, previously mentioned, the Court of Appeals for the Seventh Circuit, in commenting upon the representations by the Bureau of the Census said "Those assurances of confidentiality and protection constitute a pledge of good faith on the part of the Congress, the President, and the Department of Commerce."

Certainly the Government's promises properly and fairly construed cannot and do not indicate that the scope of the protection afforded against use of census reports "for purposes of taxation, investigation, or regulation" is limited to the originals of those reports and to the Census Bureau alone.

As was emphasized by Mr. Justice Black in his able dissent, concurred in by Justices Whittaker and Stewart, "Our Government should not by peevish 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. It is no less good morals and good law that the Government should turn square corners in dealing with the people than that the people should turn square corners in dealing with their Government."

H.R. 10569, in particular, would have the purpose and effect of restoring the law to the status it was thought to have enjoyed by the Census Bureau, by the public, by the President, by the Secretary of Commerce, by the Court of Appeals for the Seventh Circuit, and by virtually everyone else prior to the majority decision of the Supreme Court in the *St. Regis* case.

Surely there never has been a time when mutuality of confidence and cooperation between our Government and our business community was more vital than now.

We urge that this subcommittee promptly report favorably, without amendment, H.R. 10569, and that it be enacted into law as promptly as possible in the public interest.

STATEMENT OF THE AMERICAN PULPWOOD ASSOCIATION

The American Pulpwood Association is composed of producers, dealers, consumers, and others directly concerned with the growing and harvesting of pulpwood—the principal raw material used in the manufacture of pulp, paper, paperboard, and other forest products. This association wishes to go on record in support of H.R. 10569 and related bills which will restore confidentiality to company-retained copies of census reports.

Producers and consumers of pulpwood have in the past been cooperative with the Bureau of the Census. Most companies have gone well beyond the legal requirement and have furnished additional data and other pertinent information, on a monthly basis as well as annually, to assure uniform responses and increase the value of the census data. The current census reports to industry have great value in estimating the impact of this industry upon the national economy.

The Supreme Court's decision, in the *St. Regis* case last December, that company-retained copies of Census Bureau reports were not confidential, seriously threatens the completeness and effectiveness of census reports. It also defeats the need for speed in compiling and publishing the data since the companies will necessarily check and recheck their data and provide for legal review so as to limit it exclusively to the data required by law. The Supreme Court's decision has materially affected the confidence of the industrial community in the integrity and good faith of the Government since the census report forms are clearly marked "Confidential" and "Cannot be used for purposes of taxation, investigation, or regulation."

There is no intent to interfere with the responsibilities of other governmental agencies in carrying out functions which require information. However, the confidentiality of file copies of Census reports is extremely important if the needs of the Government and the business community for the desired statistical information are to be adequately fulfilled and copies retained for continuing consultation with the Bureau of the Census.

We therefore support and urge the passage of H.R. 10569.

W. S. BROMLEY, *Executive Secretary.*

STATEMENT OF THE AMERICAN RETAIL FEDERATION, BY DONALD F. WHITE,
DIRECTOR-COUNSEL, GOVERNMENTAL RELATIONS

The American Retail Federation welcomes this opportunity to express its support for a number of bills (H.R. 10205, H.R. 10344, H.R. 10347, H.R. 10441, H.R. 10569, and H.R. 12323) before this subcommittee to safeguard the confidentiality of business copies of census reports.

The American Retail Federation, through its 43 State and 31 National retail associations, represents more than 800,000 retail establishments employing nearly 5 million persons who handle more than 70 percent of all retail sales in this country.

Our members recognize that the collection and dissemination of economic and statistical data are absolutely basic to the forward planning and decisionmaking required by Government and business in the development of a vital and growing economy. Retailing plays a major role in this economy. Over 43 percent of the 4 million firms in the United States are retail establishment. This year, total sales at retail are running at an annual rate of \$230 billion—or almost 42 percent of the projected \$552 billion annual rate for the gross national product through the second quarter. The data which retailing furnishes to the Bureau of the Census, is therefore, a tremendously important contribution to statistic gatherers.

Our industry has an excellent record of relations with the Bureau of the Census, as well as other Federal Government agencies, in the preparation and submission of statistical information. The American Retail Federation was one of the sponsors of the Advisory Council on Federal Reports, a business-Government group set up in 1942 at the request of the Director of the Bureau of the Budget. We recognized then, as now, the importance of coordination and timeliness in the collection and submission of data. The digested material is useful to members of our industry as well as to the Government; retailing has willingly and promptly responded to requests from the Bureau of the Census, realizing that, in doing so, it was to our mutual benefit. Our excellent relationship has fostered the filing of important information beyond that required by statute and frequently in raw form in order to permit its processing in a timely manner. To a great degree this relationship has existed because of trust and confidence between the Bureau of the Census and business. Over the years, the courts have bolstered this trust in decisions which have preserved the historical and essential confidentiality of information reports when other Government agencies, such as the Federal Trade Commission and the Antitrust Division of the Department of Justice, have sought either original reports or business copies for use in investigations—and ultimately litigation—against business.

The U.S. Supreme Court's decision in the *St. Regis* case shattered this long-standing relationship. By its narrow construction of the Census Act, confidentiality extends only to original reports on file with the Census Bureau—not file copies kept by businesses. While we do not necessarily argue with the Supreme Court's approach, the effect has been, as Chairman Henderson, of this subcommittee stated upon introduction of his bill (H.R. 10569):

“ * * * the Federal Government, because of that decision, has broken faith with the public and with businessmen who were guaranteed by law that their census reports—and by clear implication, copies of these reports—will be held in confidence * * * ”

The free submission of information has been seriously jeopardized as a result of this decision. Until the long-standing privilege afforded business copies of census data is restored, the prior relationship between Government and retailers can be expected to deteriorate. Wherever possible, the character and extent of information supplied will change in the light of the now-existing lack of confidentiality. As the adviser to retailing on the Washington scene, the

American Retail Federation would be in derogation of its duty to its members if it failed to caution them on future submissions.

Fortunately, a number of Members of Congress have recognized the only effective way of correcting this situation in their introduction of the aforementioned bills. The retailing industry is grateful for their action and is particularly indebted to Chairman Henderson of the Subcommittee on Census and Government Statistics for scheduling hearings on his and other bills.

It is equally gratifying to note the administration's support of legislation which would preserve the confidentiality of census report copies retained by business.

While there are alternative ways to prevent these copies from falling into the hands of some Government agencies, none are satisfactory from the point of view of Government or retailers. Our industry is anxious to continue the submission of comprehensive, candid and timely reports. Corrective legislation is the only answer.

We urge its prompt enactment during this session of the 87th Congress.

AUTOMOTIVE ELECTRIC ASSOCIATION,
Detroit, Mich., June 18, 1962.

HON. DAVID N. HENDERSON,
House of Representatives, Washington, D.C.

DEAR SIR: We wish to respectively convey to you our interest in the bill No. H.R. 10569, which you are sponsoring and wholeheartedly agree that legislative correction is necessary to restore the businessmen's faith in Government promises.

The Automotive Electric Association has a national membership of approximately 600 companies, engaged in manufacture and distribution of automotive parts, and in their behalf, the association approves and supports your action to remedy and restore the confidential status of business data in the census reports.

Respectively yours,

J. HOWARD REED, *Executive Secretary.*

DROP FORGING ASSOCIATION,
Cleveland, Ohio, May 7, 1962.

Representative DAVID N. HENDERSON,
House of Representatives, Washington, D.C.

DEAR SIR: It is our feeling that this current session of Congress should pass legislation guaranteeing the preservation of confidential business statistics submitted to the Census Bureau.

The recent Supreme Court decision which would allow segments of the Government to obtain copies of reports previously considered confidential is in our opinion a step in the wrong direction.

If the Government or any other organization hopes to conduct statistical activities of a continuing nature they will certainly not be helped by any action which does not preserve the confidence of such reports.

Sincerely yours,

R. W. ATKINSON, *Staff Representative.*

ELECTRONIC INDUSTRIES ASSOCIATION,
Washington, D.C., August 1, 1962.

HON. DAVID N. HENDERSON,
Chairman, Subcommittee on Census and Statistics, House Post Office and Civil Service Committee, House of Representatives, Washington, D.C.

DEAR MR. HENDERSON: The Electronic Industries Association, the national organization representing manufacturers of electronic equipment components, wishes to go on record as supporting pending legislation, similar to H.R. 10569, which would grant immunity from legal process to copies of census reports and related information.

The purpose of this legislation now pending before your subcommittee is to rectify an unfortunate situation brought about as the result of the Supreme Court's decision in *St. Regis Paper Company v. U.S.* As you and members of

your subcommittee are fully aware, this decision held that copies of census reports retained by companies do not have the statutory confidentiality accorded by law to original copies sent to the Census Bureau and consequently are subject to legal process by other Government agencies and departments.

The Electronic Industries Association is of the firm view that unless legislation is enacted granting immunity from legal process to copies of such reports and to the related information, it will adversely affect the Government's program involving the collection of vital statistical information which is necessary and useful to the Government in appraising business conditions and in evaluating economic programs and policies of Congress and the administration.

Without corrective legislation, such as H.R. 10569, companies required to submit census reports would be properly advised to destroy all retained copies and related data to preserve their confidentiality. Retention of copies of census reports and related data is desirable and necessary for purposes of periodic recheck and to provide additional information to the Government when requested. Therefore, we strongly believe that company retained copies of reports and related information should be afforded the same immunity from judicial process as the original reports submitted to the Census Bureau.

We are aware that there exists a difference of opinion as to whether corrective legislation on this subject should be limited to company-retained copies of census reports. We think such a limitation would be a mistake. It is our strong belief that the census program involving the collection of business statistics and other information would be more effective and beneficial by extending the rule of confidentiality not only to company-retained copies but also to all supporting data, worksheets, breakdowns, and other similar information directly related to the development of census reports. Otherwise, the value of the census program in obtaining detailed accurate and complete information could be greatly affected.

The Electronic Industries Association urges that this subcommittee and the Post Office and Civil Service Committee report favorably on legislation similar to H.R. 10569 and that every effort be made to secure passage at this session of Congress.

We request that this letter be incorporated in the records of the hearings on this issue.

Yours very truly,

JOHN B. OLVERSON, *General Counsel.*

INDIANA STATE CHAMBER OF COMMERCE,
Indianapolis, Ind., May 8, 1962.

HON. DAVID N. HENDERSON,
Chairman, Subcommittee on the Census, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HENDERSON: In our own research and planning and in that of the many Indiana businesses with which we assist, we depend on data included in the U.S. census for much of our resource information. We accordingly are most anxious that everything possible be done to encourage businessmen and others to cooperate in the fullest degree in supplying the necessary raw data for the valuable census compilations.

It is our judgment that the recent action of the U.S. Supreme Court ruling that copies of census reports retained by the companies preparing them are not confidential and are subject to subpoena by the Federal Trade Commission and the Department of Justice will very definitely be a detriment to full cooperation in supplying desired data for the census and, accordingly, will make the compilations less comprehensive and, as a result, less reliable and valuable. This is a situation which we consider most unfortunate.

We accordingly wish to urge that this Congress enact legislation that will restore and assure the confidentiality of company-retained copies of census reports. It is our understanding that your bill, H.R. 10569, would restore the confidential nature of these reports. We trust your committee will schedule hearings on this bill and related legislation at an early date so the present Congress can be permitted to act on this important issue.

Cordially yours,

JACK E. REICH, *Executive Vice President.*

STATEMENT BY WILLIAM S. STORY, EXECUTIVE VICE PRESIDENT, INSTITUTE OF SCRAP IRON & STEEL, INC., WASHINGTON, D.C.

The Institute of Scrap Iron & Steel, Inc., is a trade association with headquarters here in Washington, D.C. Approximately 1,200 ferrous scrap processors and brokers who handle about 90 percent of the Nation's scrap are members of our association.

We are most appreciative of the opportunity to make our views on the confidentiality of census reports known to this subcommittee.

Census Bureau reports, as you know, are of considerable interest and assistance to all businessmen, including ferrous scrap processors. Because of this, our members have been quite cooperative in the past in supplying data to the Bureau. It must be appreciated that this cooperation involves considerable effort and thought on the part of our members.

Most scrap processing yards are relatively small businesses with minimum office staffs. Recordkeeping and assembling is, for them, an expensive and time-consuming process. Perhaps more important is that this industry is a highly competitive one with small profit margins.

At a recent meeting of the institute's board of directors I read the portion of the proposed 1963 census form dealing with confidentiality. The members were shocked and disturbed to learn that their own heretofore private files could be used for purposes of taxation, for investigation, or for regulation. They felt, with some justification, that they would eventually suffer should they continue to provide what was once confidential data to a Government agency. They well remembered that not long ago Government agents went through the offices of the United Steel Corp. searching the files.

The result of the Supreme Court's ruling, at least as far as this industry is concerned, will be to lessen cooperation by frightening the average small businessman from making copies of data; from keeping any sort of statistical records; and from replying promptly to requests for information lest in their haste they be accused later of deliberately making errors.

This issue of confidentiality extends not only to copies of reports made to the Census Bureau, but also to the working papers which are used to prepare the reports. Our members do not keep records in exactly the form needed to take off the data required for a census report. In many instances, they must estimate this information and to do this must establish procedures for estimation. These are part and parcel of the working papers.

If these are not also to be considered confidential, the basis on which such estimates are made will be lost because I am sure there would be a tendency to throw the working papers away. This will, in the long run, injure the comparability of census data because it is difficult to recall from the period of one census to another just how the estimating work was done for the previous report. This does not apply in the same degree, of course, to reports which are made monthly, but in the case of our larger firms, the problem of maintaining work papers continues to exist.

I would urge this subcommittee to approve a bill which will close the loophole opened in the confidentiality of census documents so that our member companies may feel free to continue to assist the Bureau of the Census by providing as completely as possible the data for its reports.

KANSAS STATE CHAMBER OF COMMERCE,
Topeka, Kans., May 1, 1962.

Representative DAVID N. HENDERSON,
Chairman, Census Subcommittee of the House Post Office and Civil Service
Committee, House Office Building, Washington, D.C.

DEAR REPRESENTATIVE HENDERSON: This organization naturally has a vital interest in economic growth and in the maintenance of a healthy business climate as an essential to such growth. For this reason, we are concerned about the recent Supreme Court decision in the *St. Regis* case.

The importance of the census statistical program to business, to Government, and to the national economy is well known. Its effectiveness depends largely on the cooperative relationship between business and the Census Bureau, a relationship which is threatened by the recent Court decision.

Therefore, we feel that corrective legislation to restore confidentiality to company-retained copies of census reports is important. It would help preserve the value of the reports, restore faith in the Government's words, and thus contribute to the good business climate necessary to our welfare.

Yours very truly,

ROY H. JOHNSON, *Tax Research Attorney.*

LIQUEFIED PETROLEUM GAS ASSOCIATION, INC.,
Chicago, Ill., May 16, 1962.

HON. DAVID M. HENDERSON,
*Chairman, Census Subcommittee, House Post Office and Civil Service Committee,
House of Representatives, Washington, D.C.*

SIR: The membership of this association, the national association of the liquefied petroleum gas industry, having approximately 3,000 members throughout the United States, is extremely interested in bills now pending before your committee that would have the effect of preserving the confidential nature of copies of information filed with the Census Bureau. This industry and its members depend on census information to a considerable degree for business operations and under these circumstances has cooperated to every extent possible with the Bureau of Census in their census of business and compilation of other census data that may relate to this industry or its customers.

The copies of the information or data that is legally required to be filed with the Census Bureau is important background information that companies should have in their files. The retention of this information is equally important to the Census Bureau in that information furnished to that Bureau can be developed on the basis of this prior data. We feel that it is extremely important to encourage the retention of this information and the bill that would preserve the confidential nature of this data will lend this encouragement. These bills will unquestionably permit and secure for the Census Bureau the highest degree of cooperation from industry. We urge early hearings on these measures and their passage.

Respectfully yours,

ARTHUR C. KREUTZER,
Vice President and Counsel.

MILLERS' NATIONAL FEDERATION,
Chicago, Ill., July 26, 1962.

HON. DAVID H. HENDERSON,
House of Representatives, Washington, D.C.

DEAR SIR: On behalf of the flour milling industry of the United States, I would like to express support of your bill, H.R. 10569, on which public hearings are being held this week. The members of the Millers' National Federation produce over 90 percent of the wheat flour milled in the United States as well as substantial quantities of other grain products.

The Supreme Court opinion in the *St. Regis* case has created a situation under which the sensitive data required to be filed with one Federal agency becomes available to others which may use the information in a manner adverse to the interests of the company filing the data. It is analogous, in effect, to force an individual to testify against himself and certainly violates a basic ethical precept.

We believe H.R. 10569 would provide a reasonable and clear assurance that copies of census reports are to remain confidential as we had believed them to be formerly.

We would be pleased to have this letter made a part of the record of the hearings of your subcommittee.

Sincerely,

C. L. MAST, Jr., *President.*

MISSOURI STATE CHAMBER OF COMMERCE,
Jefferson City, Mo., April 25, 1962.

Congressman DAVID N. HENDERSON,
Chairman, Census Subcommittee, House Post Office and Civil Service Committee,
Washington, D.C.

DEAR REPRESENTATIVE HENDERSON: I understand that you are the sponsor of a badly needed bill to restore the confidential nature of Census Bureau reports which confidential nature has been destroyed by the recent U.S. Supreme Court decision in the *St. Regis Paper Company* case.

As a research man, I personally am acquainted with the extreme importance of restoring the confidential nature of the company retained file copies of the reports prepared for the Census Bureau. If the confidentiality of these reports is not restored, I personally feel that the usefulness of the Census Bureau in compiling badly needed business statistics will be largely destroyed.

This will be a most unfortunate development, not only from the viewpoint of the business that relies on many of these reports but from the viewpoint of Congress and other legislative bodies that rely on them in order to formulate legislative programs.

Sincerely yours,

WILLIAM R. BROWN, *Research Director.*

STATEMENT OF ELTON KILE, PRESIDENT, NATIONAL ASSOCIATED BUSINESSMEN, INC.

I am Elton Kile, of Plain City, Ohio. I am president of National Associated Businessmen, Inc., with offices in suite 500 of the 1000 Connecticut Avenue Building, Washington, D.C., and I present this statement to the House Committee on Post Office and Civil Service in behalf of the 800 companies which are our members.

Specifically, our member companies wish to be recorded in favor of H.R. 10205, by Representative Gerald R. Ford, Jr., of Michigan; H.R. 10344, by Representative John J. Lesinski, Jr., of Michigan; H.R. 10441, by Representative August E. Johansen of Michigan; H.R. 10347 by Representative Thor C. Tollefson of Washington, and H.R. 10569 by Representative David N. Henderson of North Carolina.

These five bills are similar in that all of them propose amendment of title 13, United States Code, the Census Act, by adding language which would reverse and correct a Supreme Court decision of December 1961, which ruled that company-retained copies of census reports were not confidential, as they had always been considered theretofore, and that they were thus subject to subpoena by regulatory agencies. Congressman Henderson's bill, H.R. 10569, states the case well in providing that:

"No department, bureau, agency, officer, or employee of the Government, except the Secretary of Commerce, shall require, for any reason, copies of any such information, reports or other data which have been retained by any such establishment or individual. Copies of any such information, reports, and other data 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."

The identical bills introduced by Representative Lesinski and Representative Johansen, H.R. 10344 and H.R. 10441, are also fully acceptable to us.

The relationship between business and the Census has for many years been on a cordial and confidential basis. Business has been willing to give the Census full and complete information, with the implicit understanding that a company could retain in its files copies of such information without fear or danger that its records and confidential data might be subpoenaed or otherwise demanded for purposes that might be inimical to the interests of the company involved.

The decision of the Supreme Court in the *St. Regis* case upset this understanding and assurance—and consequently put every company in the land on guard against its longtime friend, the Census.

No company, whether individually owned, a partnership, or a corporation, can possibly be blamed if it refuses to give information to the Census which may later be snatched out of its files by bureaus or agencies whose motives may not always be entirely innocent of intent.

At the same time, the information of the census will be far less complete and perhaps less accurate if the cooperation of business is permitted to remain in the parlous state to which it has been reduced by action of the Court.

National Associated Businessmen joins with other business groups in asking immediate action by the Post Office and Civil Service Committee and the Congress to correct this untoward and unnecessary situation.

NATIONAL ASSOCIATION OF CREDIT MANAGEMENT,
New York, N.Y., July 31, 1962.

Re H.R. 10569.

Hon. DAVID N. HENDERSON,
Chairman, Subcommittee on Census and Government Statistics, House Committee on Post Office and Civil Service, Old House Office Building, Washington, D.C.

DEAR MR. HENDERSON: The National Association of Credit Management is the trade association of more than 35,000 credit and financial executives representing every manufacturing industry, every type of distributing facility, and every major service industry, as well as major banking and financial concerns throughout the United States.

We understand that hearings are currently being held by your subcommittee on H.R. 10569 and similar corrective legislation designed to restore the confidential nature of company-retained copies of their reports to the U.S. Bureau of the Census.

We in the credit profession are, perhaps, as acutely aware as any other professional or trade group in the country of the necessity for the continued sanctity and inviolability of confidential records, including those from which Census Bureau information is compiled. The enactment of H.R. 10569, or similar legislation, alone can assure both the Government and the public of a degree of future cooperation by businesses in submitting such information which will extend, as it has in the past, well beyond the basic requirements of law.

Acting upon the request of our National Legislative Committee, taken in formal action in its annual meeting of May 13, 1962, at Philadelphia, Pa., this association therefore respectfully invites your subcommittee to consider favorably H.R. 10569, or similar bills, to exempt company retained copies of census reports, or information assembled by businesses solely for their use in completing such reports from legal process for purposes of taxation, investigation, or regulation by agencies of the Government other than U.S. Bureau of the Census.

We further respectfully request that this statement by our association be made a part of the record of the subcommittee hearing.

Very respectfully yours,

ALAN S. JEFFREY,
Executive Vice President.

NATIONAL ASSOCIATION OF DAIRY EQUIPMENT MANUFACTURERS,
Washington, D.C., August 1, 1962.

Hon. TOM MURRAY,
Chairman, Post Office and Civil Service Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The National Association of Dairy Equipment Manufacturers strongly favors the enactment of Representative Henderson's bill, H.R. 10569. This bill would restore the confidentiality of the "retained copies" of census of manufacture schedules which our members hold in their files for the convenience of the Bureau of Census after furnishing the original copy to the Bureau.

The summary reports and special studies which the census data yields are of considerable value to our association and its members. We do not wish to see this valuable Government service to industry impaired as a result of the decision of the Supreme Court in the *St. Regis Paper Co.* case.

The Bureau of Census has stated that the confidentiality of the retained copies of census schedules in the hands of reporting companies is vital to the effective administration of its census program.

If regulatory agencies in the prosecution of investigations or complaints require specific data from a manufacturer, the basic information from which the census schedules are prepared by statisticians of reporting companies are not immune to subpoena in a proper case.

Such regulatory agencies should not be permitted to intrude in a field which the Congress, the President of the United States, and the Secretary of Commerce intended to be privileged.

We respectfully urge your committee to report H.R. 10569 favorably so that the damage done to this important service of Government by the court decision will be repaired.

It will be appreciated if you will include this letter in the hearing record.

Respectfully,

JOHN MARSHALL, *Executive Vice President.*

STATEMENT OF THE NATIONAL ASSOCIATION OF FROZEN FOOD PACKERS, WASHINGTON, D.C., BY LAWRENCE S. MARTIN, EXECUTIVE VICE PRESIDENT

Mr. Chairman and members of the committee, the undersigned, Lawrence S. Martin, executive vice president of the National Association of Frozen Food Packers, is grateful for the opportunity to make this statement in behalf of the association in connection with proposals now before you to preserve the confidential nature of copies of information filed with the Bureau of the Census.

The National Association of Frozen Food Packers is an independent, voluntary, nonprofit association organized for the purpose of promoting and protecting the interests of the American frozen food industry. Its members account for substantially 85 percent of all frozen fruit and vegetable production in this country. Their packing plants are located throughout the United States and are engaged in processing, selling, and shipping frozen food with distribution nationwide. Total frozen food production is now in excess of 7 billion pounds annually, with a retail value approaching \$5 billion.

My convictions regarding this matter now before your committee are especially strong and are based, to a large degree, upon the experience of our association in its own statistical programs. For more than 20 years we have tabulated statistics on the Nation's frozen food pack. This tabulation, I am proud to say, is accepted as accurate and authoritative by both our industry and its related trades and by Government agencies. It is used extensively by both in the planning and execution of production, marketing, educational, research, and other programs.

We actually make a census of production which goes well beyond our membership in terms of number of packers. We had to convince nonmembers as well as members that all company reports entrusted to us would be treated in absolute confidence. This we have done for years and we have developed a report the integrity of which cannot be questioned. This is because we enjoy virtually 100 percent cooperation from our industry—without regard to membership status—based upon confidence in the association.

The Bureau of the Census has for years enjoyed a like measure of confidence on the part of the business community. The Supreme Court ruling in the *St. Regis Paper Company* case has stripped the Bureau of its ability to maintain this confidence. I would not presume to criticize the action of the Court, but I am convinced that without immediate legislative remedy of the situation so created, the statistical programs of the Bureau of the Census will be severely damaged.

Failure of the Bureau to receive full and clear data from which to prepare and issue its reports will be to the distinct disadvantage of business, Government, and all users of its statistics. Effectiveness of the Census program depend upon an atmosphere of close cooperation between business and Census. This in turn depends upon maintaining the confidentiality of all information developed in any form by business firms for the Bureau.

Preceding the Supreme Court decision, lower courts had ruled to protect the confidentiality of the company file copy of census reports. I believe there was excellent basis for such rulings. Certainly the intent of Congress in assigning the cloak of confidentiality to these reports was to guarantee an accurate body of collected facts to provide the foundation for realistic decisionmaking. All Congress need do at this time is reaffirm that intention in specific terms.

For these reasons, the National Association of Frozen Food Packers respectfully urges that your committee accord favorable consideration to H.R. 10569, or any other proposal which would henceforth assure the confidentiality of all copies of all information filed with the Bureau of the Census. Thank you for consideration of our views in this matter.

NATIONAL ASSOCIATION OF REAL ESTATE BOARDS,
Washington, D.C., May 31, 1962.

HON. DAVID N. HENDERSON,
Chairman, Subcommittee on Census and Government Statistics,
Committee on Post Office and Civil Service,
Washington, D.C.

DEAR MR. HENDERSON: I am writing in regard to H.R. 10569, your bill to preserve the confidential nature of copies of information filed with the Bureau of the Census.

Earlier this month, at our spring meetings in Chicago, the association adopted a resolution favoring legislation protecting the confidential status of copies of census reports kept by business concerns in their files. Our position is that the recent U.S. Supreme Court decision declaring copies of these reports in company files open to Federal investigators completely nullifies the purpose of the statute protecting the copies of reports filed with the Bureau of the Census. We deplore the possibilities of "fishing expeditions" by Federal agencies in businessmen's files which this case encourages. If the Federal Government is to be supplied with complete business information, which it vitally needs, the businessman must certainly be accorded the protection of confidential status for copies of reports kept for his own use as well as for copies on file with the Bureau.

Because of the urgent need for a solution to this problem, we hope that it will be possible to schedule hearings as soon as possible on H.R. 10569 and urge favorable action on it by your subcommittee.

Sincerely yours,

JOHN C. WILLIAMSON, *Director.*

NATIONAL ASSOCIATION OF SHOE CHAIN STORES,
New York, N.Y., April 26, 1962.

HON. DAVID N. HENDERSON,
House Office Building, Washington, D.C.

DEAR MR. HENDERSON: This association, which represents an important segment of shoe retailing in this country, commends your interest and efforts to obtain legislative assurances to restore faith in the confidentiality of business data submitted to Government, on a confidential basis.

It seems to us vitally necessary that Congress give its study and attention to the promulgation of a statute to this end. To do so it is, of course, essential that public hearings be scheduled as soon as possible if a prompt restoration of confidence and effective operation of the Bureau of the Census are desired.

If there is any way in which we can be helpful in efforts to achieve these results, please be good enough to advise us.

Sincerely yours,

EDWARD ATKINS,
Executive Vice President.

NATIONAL ASSOCIATION OF WHOLESALERS,
Washington, D.C., August 1, 1962.

HON. DAVID N. HENDERSON,
Chairman, Subcommittee on Census and Government Statistics, Committee on
Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The National Association of Wholesalers wishes to express to the Congress its interest in legislation which will restore the confidentiality of business-retained copies of census reports. We believe legislative action is necessary in order to preserve the validity of census reports which provide a vast quantity of data of great value both to Government and to private industry.

Through the years business organizations and Government departments and regulatory agencies have considered returns made to the Census, and business-retained file copies of such returns to be privileged and not subject to demands from any Government agency for any reason whatsoever. This belief stemmed from the fact that in the Census Act, Congress provided that no employee of the Census could divulge to any other Government department for any purpose whatsoever, information received by the Bureau of the Census on a confidential basis.

Because of this privileged status, respondents could, without legal hazard, give approximations and estimates where actual figures were not available, in order that reporting could be complete. Further, in recognition of the need for speedy completion of tabulation and publication of statistical information, businesses authorized subordinate officials (at the working level) to respond immediately to requests for information received from the Bureau of the Census. Data was provided from all the records available in the company, and by the most knowledgeable persons concerned, and, where necessary, businesses provide estimates in order to complete the report. With this "streamlined" method of reporting, a legal review was not made before returns were forwarded to the Bureau of the Census.

In the *St. Regis* decision by the Supreme Court in December 1961, the privilege of the retained copies was nullified. Since then, the Department of Commerce has found that many companies that formerly cooperated in voluntary reporting programs, including the furnishing of many estimates, no longer do so because the retained copies are no longer privileged.

As a result, copies of all census returns held in business custody could be demanded by the many agencies of the Government.

The wholesale industry has, through the years, willingly prepared thousands of reports for the Bureau of the Census at great expense to the industry. These wholesale companies do not have "house counsel" readily available to provide a legal review. If the present situation were to continue, wholesalers must destroy their copies of census returns and the working documents which have been developed for the sole purpose of making those returns, or else hire legal counsel to give a review of these documents to determine if there are any implications of a legal nature. The destruction of company-retained copies materially would interfere with the continuity of reports and in addition would hamper the conduct of followup correspondence between the company and the Bureau of the Census, a frequent development by which the Bureau obtains additional information on a selected basis.

There are other areas where the same or similar problems exist with respect to confidential reports submitted to the Government. Federal income tax returns, complaints received in confidence by the Federal Trade Commission and the Antitrust Division of the Department of Justice have some measure of privilege. Also to be considered are requests for licenses from the Food and Drug Administration, and other agencies which contain confidential information of a competitive nature, and are received on a confidential basis.

Copies of these returns and correspondence pertaining to them retained in the files of business should be as privileged as the originals forwarded to the Government departments and regulatory agencies. Indeed, any extension of confidentiality to a document prepared by business should apply to the same extent to all copies retained in the files of business. Any other rule would negate the confidentiality of the original, would impede basic communications between Government and the citizens and continue the confusion caused by the *St. Regis* decision.

The National Association of Wholesalers respectfully urges the Congress to examine the need for protection, of all company-retained copies of reports, filings, and correspondence submitted to and received by the Government in confidence. The Supreme Court has indicated by its decision in the *St. Regis* case, specific action is needed if copies retained by respondents are to enjoy the same cloak of confidentiality as the material submitted to, and in the custody of, Government agencies.

Respectfully submitted.

PAUL L. COURTNEY, *Executive Vice President.*

NATIONAL COTTON COMPRESS & COTTON WAREHOUSE ASSOCIATION,

Memphis, Tenn., May 2, 1962.

Hon. DAVID N. HENDERSON,
Chairman, Census Subcommittee, House Committee on Post Office and Civil
Service, House Office Building, Washington, D.C.

DEAR MR. HENDERSON: We are writing to urge that your subcommittee proceed with consideration of H.R. 10569 and similar proposals by others which are designed to preserve the confidential nature of copies of information filed with the Bureau of the Census.

We regard the Court decision which held copies of such reports to be subject to court processes as unfortunate from the viewpoint of all concerned. We feel that your bill or a similar measure would set the matter straight, enabling the Census to function with greater effectiveness and businessmen to cooperate with the protection intended by the Congress.

Sincerely yours,

JOHN H. TODD, *Executive Vice President.*

NATIONAL EMPLOYMENT ASSOCIATION,

Detroit, Mich., May 7, 1962.

Representative DAVID N. HENDERSON,
House Office Building, Washington, D.C.

DEAR SIR: The members, Representative Henderson, of this association, all operators of private employment agencies, are interested in the rights of business as free enterprise and thus would support you in your efforts to preserve the confidential nature of copies of information filed with the Census Bureau. Your bill, H.R. 10569, is a step in the right direction and we are pleased that you have introduced it.

We urge all haste in processing of this bill through the House of Representatives so that it might have a chance for action at this session of Congress. We know that the work of the Census Bureau is going to lose considerable effectiveness if this corrective legislation is not passed soon.

Any time the rights of businessmen as operators under the free enterprise system are threatened by Government, you will find the members of the National Employment Association at the forefront of the battle. Certainly there is something wrong when the Government breaks its promise of confidentiality of business data reported to the Census Bureau. We appreciate your action.

Very truly yours,

D. DALE HUGHES, *Executive Secretary.*

NATIONAL FISHERIES INSTITUTE, INC.,

Washington, D.C., May 21, 1962.

Hon. DAVID N. HENDERSON,
Chairman, House Census Subcommittee,
U.S. Capitol, Washington, D.C.

DEAR MR. HENDERSON: For your information I am enclosing herewith a copy of Resolution No. 1, on the Confidentiality of Business Reports to Government, which was adopted at the annual convention of the National Fisheries Institute just concluded at New Orleans, La.

We are aware of your great interest in this subject and understand that plans are scheduled for public hearings. Will you please include our resolution in the record in support of your bills H.R. 10569, H.R. 10347, by Congressman Tollefson, of Washington, and similar legislation.

Sincerely yours,

CHAS. E. JACKSON, *General Manager.*

RESOLUTIONS CONSIDERED AT THE 17TH ANNUAL CONVENTION OF THE NATIONAL
FISHERIES INSTITUTE, NEW ORLEANS, LA., APRIL 30, 1962

RESOLUTION No. 1—RESOLUTION OF CONFIDENTIALITY OF BUSINESS REPORTS TO
GOVERNMENT

Whereas the Supreme Court in a recent decision of what is known as the *St. Regis Paper* case ruled that while company reports in Census Bureau files are confidential, copies retained in company files are not. Thus antitrust agencies may subpoena such company copies for use as evidence in investigations; and

Whereas the Court's decision was contrary to the views of the Census Bureau, the Department of Commerce, Budget Bureau, and the U.S. Solicitor General, who have consistently supported the confidentiality of file copies; and

Whereas legislation to protect the confidentiality of business reports has been introduced by several Members of Congress, including Representative Thor C. Tollefson, Republican, of the State of Washington, and Representative David N. Henderson, Democrat, North Carolina, who was recently named chairman of the House Census Subcommittee; and

Whereas it is essential that Congress act on this legislation promptly before this Congress concludes: Therefore, be it

Resolved, That the proper legislative committees of the Congress be urged to immediately schedule public hearings and take whatever action is necessary to protect the confidentiality of business reports to Government.

NATIONAL LUMBER MANUFACTURERS ASSOCIATION,
Washington, D.C., April 27, 1962.

HON. DAVID N. HENDERSON,
House of Representatives, Washington, D.C.

DEAR MR. HENDERSON: Our industry is sincerely interested in the corrective measures which you and others have proposed in an attempt to clarify the intent of Congress when it passed the Census Act (H.R. 10569 and similar bills). The intent in making census returns confidential has been seriously distorted as a result of the Supreme Court decision in the *St. Regis* case.

We would urge that hearings be held as soon as possible to allow American industry an opportunity to express its support for legislation designed to return the protection of confidentiality to file copies of census reports.

Since the passage of the Census Act, much of industry has gone far beyond what is required by law and reported additional information which has been of benefit to the various Government agencies in analyzing the present and future position of business activity. Much of the unrequired industry cooperation was due to the fact that the reports, whether Census Bureau copy or industry file copy, were held in strict confidence.

Since the *St. Regis* decision, industry is in a quandary as to whether voluntary cooperation in census programs is justifiable; and where cooperation is required, as to whether the file copies should be kept in view of the hazard that they might eventually be used to the detriment of the reporting company, or to destroy the copies.

If the cooperation on the part of the industry is to continue to the benefit of the people, the Government and industry, the confidential status must be returned to the file copies of the census reports. The intent of Congress will in this way be achieved and the Nation will continue to benefit from the full reporting of important economic information.

Sincerely,

MORTIMER B. DOYLE,
Executive Vice President.

NATIONAL PAPER BOX MANUFACTURERS ASSOCIATION, INC.,
Philadelphia, Pa., May 2, 1962.

HON. DAVID N. HENDERSON,
House of Representatives, Washington, D.C.

DEAR SIR: Our association is most anxious to see action taken to assure the confidentiality of business data provided for census reports. We understand that your subcommittee is sponsoring a corrective bill to assure that file copies of census reports retained by the businessman receive the same confidential treatment as the originals. Our association feels very strongly that this should be a legal guarantee. Further, we are interested in legislation which would guarantee the confidentiality to members' reports submitted to a trade association when the association itself is not involved in Government action. There have been instances where records have been subpoenaed from the files of this association even though they were submitted in confidence.

Anything you could do to insure quick passage of the laws which would cover these matters certainly would be appreciated.

Sincerely yours,

NORMAN T. BALDWIN, *Executive Secretary.*

NATIONAL RETAIL FURNITURE ASSOCIATION,
Chicago, Ill., July 31, 1962.

Representative DAVID N. HENDERSON,
Chairman, Census Subcommittee, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The retail home furnishings industry has a keen interest in H.R. 10569, to protect the confidentiality of company-retained copies of Census Bureau reports.

We submit this statement in conjunction with the hearings you are currently holding on this and related bills, and respectfully request that it be made part of the hearing record.

We support this proposed corrective legislation. Our 4,500 independent family-owned member retail furniture and home furnishing companies have always given the Census Bureau the utmost cooperation in furnishing needed information promptly so that it can be tabulated and published quickly while it is still of value to retailing generally and to business as a whole.

Without the corrective legislation you propose, we fear that the value of census data will suffer because retailers may be forced to limit their reports to what the law requires, omitting valuable supplementary estimated data. They may also be slower in filing, due to the need to check and recheck figures, to obtain legal clearances, etc., all of which would reduce the value of their reports in terms of timeliness.

We hope you will do all in your power to obtain passage of this legislation during the current Congress, and offer our cooperation to that end.

Very truly yours,

DEREK BROOKS,
Vice President and Director of Government Relations.

NORTHWEST COUNTRY ELEVATOR ASSOCIATION,
Minneapolis, Minn., May 9, 1962.

Representative DAVID N. HENDERSON,
Chairman of the Census Subcommittee,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN HENDERSON: The board of directors of this association recently voted unanimously favoring enactment of legislation to restore confidentiality to company file copies of census reports.

Your bill, H.R. 10569, embodies what we have in mind and would, in our opinion, restore the original intent of Congress, which was eliminated by the Supreme Court decision that file copies are not confidential.

For your information, this association represents companies that own and operate about 600 country elevators in the States of Minnesota, North Dakota, South Dakota, and Montana. We have 120 members in the association, some of whom own and operate only 1 elevator, while the largest owns and operates approximately 200 country elevators.

We urge you and your subcommittee to press for enactment of this corrective legislation so we can continue to cooperate with the Census Bureau wholeheartedly and with confidence.

Sincerely yours,

PETE STALLCOP, Executive Secretary.

SOUTHERN GARMENT MANUFACTURERS ASSOCIATION, INC.,
Washington, D.C., April 26, 1962.

Hon. DAVID N. HENDERSON,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HENDERSON: It is the hope of this association that you, as chairman of the Census Subcommittee of the House Post Office and Civil Service Committee, might see fit to schedule hearings at some early date on the bill introduced by you and similar bills introduced by your colleagues which would restore confidentiality to reports filed by companies with Government agencies.

As you well know, industry associations such as our own have a difficult enough time impressing on our members the importance of cooperating with

Government agencies soliciting statistical data without the insurmountable handicap of having to contend with a possible loss of confidentiality.

I'm taking the liberty of sending a copy of this letter to the chairman of our national affairs committee, Mr. E. W. Weant, of Blue Bell, Inc., Greensboro, N.C. I know Mr. Weant will also be interested in working with you in any way in which we may be helpful on this subject.

With best regards,

Sincerely yours,

ELLIS E. MEREDITH, *Executive Secretary.*

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., July 27, 1962.

HON. DAVID N. HENDERSON,
Chairman, Subcommittee on Census and Government Statistics, House Committee on Post Office and Civil Service, House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the board of directors of the Transportation Association of America, I should like to express TAA's support of H.R. 10569 and similar bills now being considered by your subcommittee, all of which are directed toward safeguarding the confidentiality of copies of census reports.

For the record, TAA is a national transportation policy organization whose membership consists of representatives of transport users, investors, and carriers of all modes, including air, freight forwarder, highway, oil pipeline, railroad, and water carriers—all of whom work together to establish sound national policies to assure the maintenance of a strong transport system under private enterprise. Such across-the-board membership representation includes users, investors, and carriers of all sizes, large and small.

As indicated in my letter of November 14, 1961, to the then Chairman Lesinski, the TAA board, after considerable study and discussion by its various advisory panels of transportation interests, voted to support, with certain qualifications, the Census Bureau's proposal for a census of transportation.

When the position was taken by the TAA board to support the census of transportation, the question of confidentiality of copies of census reports had not been ruled on by the U.S. Supreme Court in the *St. Regis Paper Company v. The United States* case. Since this ruling, many members of the association have expressed concern about its possible effect on copies of reports to be submitted in the proposed census of transportation, since they had always considered such reports, including copies thereof, as strictly confidential.

Therefore, to assure that copies of all such reports are fully confidential, as we have always felt was the intent of Congress when it passed those sections of title 13 dealing with confidentiality of census reports, we urge your subcommittee to support H.R. 10569, or any similar bill designed to obtain this objective, and to give it immediate consideration so that final legislative action may still be possible during this session of Congress.

We request that this letter be made part of the official hearings on this legislation.

Sincerely,

HAROLD F. HAMMOND, *President.*

TRUCK-TRAILER MANUFACTURERS ASSOCIATION, INC.,
Washington D.C., April 13, 1962.

HON. DAVID N. HENDERSON,
Chairman of Subcommittee on Census and Government Statistics, House Office Building, Washington, D.C.

MY DEAR MR. HENDERSON: Members of our industry are very much interested in your bill (H.R. 10569) because ours is one of the industries required to report to the Bureau of Census our production and shipment statistics.

Although the Supreme Court decision in the *St. Regis Paper Co.* case has not been, to the best of my knowledge, used against any of our members, we are, nonetheless, conscious of the possibility of the misuse of company informa-

tion which heretofore has been considered entirely confidential whether in the hands of the Bureau of the Census or in the form of carbon copies in our members' files.

I am very much in hopes, Congressman Henderson, that you will find it possible for your subcommittee to recommend passage of the bill which you have introduced to assure the confidentiality of individual company reports required by the Bureau of the Census.

Sincerely yours,

JOHN B. HULSE, *Managing Director.*

NATIONAL RETAIL MERCHANTS ASSOCIATION,
Washington, D.C., August 3, 1962.

HON. DAVID N. HENDERSON,
Chairman, Census and Government Statistics Subcommittee, Old House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The National Retail Merchants Association, representing more than 10,500 department, chain, and specialty stores, strongly supports the enactment of H.R. 10569, a bill you have sponsored to restore the confidential nature of copies of reports filed by business firms with the Bureau of the Census.

During the hearings conducted this week by your subcommittee, a number of spokesmen from the business community presented outstanding testimony favoring your bill and related measures. The National Retail Merchants Association endorses the views expressed by those witnesses.

Moreover, we would like to take this opportunity to urge your subcommittee to approve the suggestion offered by Mr. Myron S. Silbert that the legislation should provide confidentiality for: "other data that are solely and exclusively supplemental to the census report. Specifically: worksheets, tabulations, breakdowns, etc., that are compiled by the company solely as aids to the preparation of the report—and copies of letters between Census and the company which deal with the company's report." (See p. 11 of Mr. Silbert's testimony.)

I would appreciate this letter being made a part of the official record of hearings just concluded by your subcommittee.

Sincerely,

JOHN C. HAZEN,
Vice President—Government.

• THE TOBACCO INSTITUTE, INC.,
Washington, D.C., August 2, 1962.

HON. DAVID N. HENDERSON,
*Chairman, House Census Subcommittee,
House Office Building, Washington, D.C.*

DEAR MR. HENDERSON: This in reference to the study being conducted by your subcommittee of the confidentiality of company-retained copies of census reports.

I wish to go on record, on behalf of the tobacco industry, in support of a change in the law so as to insure the confidentiality of such reports. We will appreciate it if this expression by the Tobacco Institute, Inc., can be made a matter of record with your subcommittee.

Sincerely,

GEORGE V. ALLEN,
President and Executive Director.

(Whereupon, at 12:15 p.m., the subcommittee was adjourned, subject to the call of the Chair.)

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