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## THE CENTRALITY OF INFORMATION

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### **Is technology changing what can be said to be a “reasonable expectation of privacy?”**

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A central theme in all areas of science and technology is radical improvement in our ability to gather, store, combine, and use information—especially information about people. This improvement is the result of continuing progress in such diverse fields of inquiry as computer science, molecular biology, chemistry, and cognitive psychology. In some cases, this new ability to gather and use information raises troubling questions about the scope and protection of that sphere of personal autonomy and privacy that the Founding Fathers could assume was beyond the effective reach of the state.

Electronic surveillance, for instance, is dramatically shrinking the locations and activities in which one has a recognized expectation of privacy. Techniques that derive information from an individual's body fluids, body structure, mental habits, voice timbre, eye motions, temperature change, and scores of other non-controllable attributes generate knowledge about past behavior, allow monitoring and measurement of present activities, and may make possible predictions about future performance. We can electronically monitor criminals, or persons awaiting trial, in their homes. We can call up information about one person from a multitude of government or commercial databases, compare and integrate it and, in effect, reveal new information about that person without their knowledge.

There are bright promises and troubling uncertainties about established, emerging, or potential technical capabilities. But difficult questions may also be raised by the information or power that science cannot yet provide. For example, science can reveal and measure some threats that it cannot remove. It can tell us who has been exposed to the deadly HIV

virus that causes AIDS, but not as yet how to remove the infection or cure the disease. Such questions as whom to test and how to use the results of testing create real tensions between the constitutional imperatives of individual rights and the general welfare.

Science can also reveal the presence of environmental toxins at ever lower levels, but cannot tell us whether the risks outweigh the benefits of which they are a byproduct. That judgment involves values and choices about which science has little useful to say. Here too the question of how to translate available scientific information into public policy involves important tensions to which the Constitution speaks.

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### **Is “blacklisting” by means of computerized government information systems constitutional?**

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While information has immense benefits and capabilities to improve our lives both individually and as a Nation, it also has dangers. Information about a person is potentially a means of influencing and controlling that person. Information challenges traditional sources of authority and institutions built on that authority. Experience, training, and education may be rendered useless by new information. Information can also erode responsibility: what was once considered a sin to be condemned or a crime to be punished may, with fuller knowledge, appear to some as an illness to be treated or a genetic defect to be repaired. This perception can lead to imposingly difficult questions about the limits on social engineering in the context of constitutional values of personal freedom and privacy.

It is for these reasons that information, and the electronic, chemical, biological, and social technologies that generate and give access to it, often affect constitutional relationships that

we are accustomed to think of as political, economic, or legal in nature. Constitutional relationships deal with power, with limitations on power, and with the balance between them. Di-

rectly or indirectly, information often generates that power, informs its limitations, or affects their proper balance.