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to
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COMMUNITY MEETING ON PRIVACY AND INTELLIGENT VEHICLE HIGHWAY SYSTEMS

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We tend to look at our individual mobility as something of a birthright. In the 218 years of the United States, we have either invented or refined technologies to improve this mobility: from locomotives to automobiles; from airplanes to spacecraft. Unlike spacecraft, however, we don't live and work in a vacuum. For every new step we've taken, we've also had to step onto scales of constitutionality and fairness to balance the weight of an individual's mobility with the larger needs of our society. That's one reason why we have speed limits, traffic lights and double-yellow lines.

In the 1990s, finding this balance is more complex because the ever-changing technologies are more complex and increasingly subtle in their intrusiveness. As a result, one question being asked increasingly is whether our newest technologies might improve our mobility at some new cost to personal privacy.

Nearly 30 years ago, Supreme Court Justice William O. Douglas said, and I quote, "We are rapidly entering the age of no privacy, where everyone is open to surveillance at all times; where there are no secrets from government."[1]

This warning, and concerns like it, led to the Privacy Act of 1974, to protect personal information unless there is a demonstrable and just cause to intrude into someone's life.

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1. Osborn v. United States, 385 U.S. 323, 341 (1966) (Douglas, J., dissenting).

Today, some fear they might unknowingly cede a portion of their privacy when new technologies are adopted in their daily routines. Gone forever are the days remembered by Henry Stimson, who was President Herbert Hoover's Secretary of State. He once said, and I quote, "Gentlemen do not read each other's mail."[2] Today, of course, we would have to change that to "each other's *E*-mail." And as for honor in the age of the computer hacker, it is increasingly difficult not just to separate what is public from what is private, but to know what information *can be expected to remain* private. This question of privacy now has a direct bearing upon improving our mobility.

Our country has the world's most developed transportation system; and yet, road congestion gets worse every day. In 1991, 70 percent of the rush hour traffic on our urban Interstates was considered congested. In 1983 the percentage was 55 percent. And since 1983, this same sort of congestion has been growing in Rural America at an average annual rate of 12.3 percent.

The price we're paying for this is incredibly high. We pay the price in driver frustration. Our economy pays for it in billions of dollars in lost productivity. The literal health of our country pays for it in poor air quality.

Even though fuel efficiency has doubled in the last 20 years, cars and trucks still account for 25 percent of all carbon dioxide emissions in the United States. To make matters worse, idling in congested traffic is taxing our economy needlessly by wasting gasoline and diesel fuel.

Can technology alone solve these problems? No. But technology can help us modify our habits, maintain our mobility, meet the demands of a growing society, and succeed in an increasingly competitive international marketplace. The questions are how to do it, and what are the costs.

Fortunately, we have some promising possibilities in the technologies known as Intelligent Vehicle Highway Systems, or IVHS — which are fast becoming known more generally as Intelligent Transportation Systems.

I don't need to remind anyone here about the usefulness of new technologies. The Information Age was born here in Silicon Valley, and that age has brought electronic innovations into virtually every aspect of our lives — from how we work, to how we use banks, to

2. David M. Kennedy, *The Colonel: The Life and Wars of Henry Stimson, 1867-1950*, THE ATLANTIC, Nov. 1990, at 163 (book review).

how we communicate with each other. But what about road congestion?

IVHS offers us alternatives to just building more roads. IVHS synchronized traffic signals, ramp metering, and electronic toll collection systems are already in place in some areas, and are being studied by many others. IVHS is also helping buy time to meet Clean Air Act standards, and to focus less on building roads and more on complementing our roads with other transportation alternatives like light rail here in Santa Clara County.

The Federal Government has an essential role to play in this effort. Part of that role is born of the Government's responsibility to facilitate economic growth; part is born of our responsibility to protect public safety; and part is born of our responsibility to help cities and states meet the goals of Federal laws such laws as the Clean Air Act.

I recognized this years ago when I co-authored the Intermodal Surface Transportation Efficiency Act, which we've all come to know by its I-S-T-E-A acronym as "ice tea." This law was the most sweeping rewrite of our highway and transit policies since President Eisenhower commissioned the Interstate Highway System in 1955. And because in 1991 Congress recognized in ISTEA that a new age of transportation technologies was upon us, we authorized more than $650 million over six years to help develop the technologies needed to make our highways capable of doing their job into the next century.

The role of the Federal Government is essential in this, particularly in the early years of IVHS development. That's why it's been gratifying to work with the Clinton Administration to raise that total for IVHS-related programs to $1 billion.

What we must remember, though, is that IVHS will ultimately become an American way of life primarily because consumers will want its benefits, not because government mandates it or pays for it. Consumers will be willing to invest in IVHS because they want to avoid congestion, have better emergency services, benefit from more convenient routing, and pay tolls where necessary without waiting in line.

The cost issue is an important one. No one wants to create a big brother watching every drive we take, let alone foot the bill for it. But even the most eager advocates of IVHS foresee no more than 20 percent of its total costs over the next 20 years being paid by Federal tax dollars. Government's preeminent role, in consultation with all concerned, should be to form the framework in which companies can offer IVHS services and equipment to consumers. Government must provide for some of the early research and prototypes to help compa-

nies make decisions about where to invest. Government must ensure enough standardization so that many companies and products can participate, with increased innovation encouraged along the way. Finally, government must address the public policy issues, such as the privacy implications of IVHS.

ISTEA made it possible for the Federal Highway Administration to provide a grant to Santa Clara University's College of Law for its year-long study on privacy, which includes our meeting tonight. Santa Clara University is widely recognized for its expertise in the legal issues surrounding the advances of high technology, and the privacy issues involved in IVHS are in many ways typical of the issues raised by any emerging technology.

For us to promote the success of IVHS, we need to understand *why* people may view IVHS as potentially threatening their privacy. We need to understand *when* this concern is warranted, and *how* we can address these concerns.

Our understanding begins by remembering that most Americans regard privacy as an essential right. In a 1990 Harris Poll, nearly 80 percent of the respondents said that, and I quote, "if we rewrote the Declaration of Independence, we would probably add 'privacy' to the list of 'life, liberty, and the pursuit of happiness' as a fundamental right."[3] The survey also found that nearly 80 percent of those polled were either somewhat concerned or very concerned about threats to their personal privacy in America, compared with 64 percent in 1978. Finally, 71 percent of the respondents agreed with this statement: "Consumers have lost all control over how personal information about them is circulated and used by companies."

Supreme Court decisions have addressed this fear to some extent. The Court has interpreted the Fourth Amendment of our Constitution, which protects citizens from unreasonable searches and seizures, as including freedom from surveillance where individuals have a reasonable expectation of privacy. But when it comes to driving, the Court has held that citizens have less of a privacy expectation because a car and much of its contents are in plain view, which is to say, public. Privacy is also mitigated by the rules governing how we drive — such as the need to earn a driver's license, to obtain a vehicle registration and car inspection, and to observe traffic laws. Those are the rules of the road. But what about broader rules governing information?

3. *More Americans Demanding Privacy*, ATLANTA CONST., June 12, 1990 at 1, Col. 4.

In terms of collecting and controlling information, the Supreme Court has found that government collection of personal information does not violate privacy when that collection serves an internal and legitimate purpose. Federal law supports this principle. So, both Court decisions and Federal law suggest that IVHS will not create privacy problems from a purely legal standpoint.

However, the issue is whether IVHS technologies differ fundamentally from past practices and therefore require a different set of rules. After all, any degree of systematic electronic surveillance of all vehicles using a roadway is vastly different from observing drivers one at a time.

Another point to remember is that IVHS will be only one key lane in the new information superhighway that's under construction in the United States. So it would be a mistake to confine our concerns to IVHS alone. We must also look at the impact of IVHS information *in combination* with other existing and future information technologies.

The bottom line is that we should not be paralyzed by fear of the future. Genuine privacy concerns do not have to foreshadow the overly dramatic specter of government running amok, spying on its citizens to prevent dissent. Very simply, we *can* manage emerging technologies so that we can both enjoy their benefits *and* satisfy ourselves that our privacy has not been unduly compromised.

Today, we have a rare opportunity to get ahead of the curve and address privacy concerns early on, rather than after people are harmed by inappropriate disclosures of personal information. We can still demonstrate to the American people that careful planning will address their concerns so they will welcome IVHS rather than fear it. To do this, explicit consideration of privacy protections must be included at every stage of IVHS development and deployment.

I believe we can rely on what are known as the six Fair Information Principles as a guide. These principles, developed in the 1970s, have been included in Federal and state privacy protection laws. The principles have also been adopted voluntarily by many private credit bureaus, hospitals, and insurers.

The first principle is that only *relevant* personal information should be collected. In other words, if our purpose is to improve traffic management, we should collect only the information necessary to achieve that goal and nothing else.

Second, individuals should be informed what information is to be collected and how it will be used. We may not be able to guarantee that every IVHS application will be voluntary, so the public must be

aware that some limited personal information may be accumulated along the way.

Third, individuals should be able, and with relative ease, to inspect their records for accuracy, completeness, and appropriateness. For example, if tolls are collected electronically, drivers should have access to the records of their toll road use, and should have the means to correct any errors.

Fourth, personal information should be available within the collecting organization only to those with a legitimate need to know. This would apply to public and private operators alike.

Fifth, disclosures of personal information to third parties outside of the original operator should not be made without the individual's agreement or appropriate legal process.

And sixth, security measures must be in place to ensure that pledges of information confidentiality are meaningful.

These six principles can serve as a foundation for privacy protection and thereby encourage wider IVHS use. If people do not believe their rights will be protected, they will reject IVHS out of hand — and the opportunity to improve our mobility will be lost.

To put these principles into practice, the U.S. Department of Transportation must ensure that any organization involved in IVHS development and implementation adopts and uses a privacy policy, such as the one IVHS America is developing. If necessary, Congress should consider enacting legislation to require this approach to ensure that the public is protected and that our goal of improving transportation through new technologies remains focused.

Our forum tonight is another step towards seizing this opportunity. Legislators, technology experts, administrators, privacy advocates, and consumers need to continue working together to develop and implement appropriate privacy protections.

None of us can foresee all uses — and possible misuses — of IVHS-collected information. But it's important to remember that IVHS is not our first experience with new technologies entering the American mainstream.

IVHS privacy issues are not fundamentally different from those raised by the rapid introduction of automatic teller cards and machines. ATMs also record an individual's location at a specific time, as well as personal data and a personal transaction. Automatic tellers were not rejected because of privacy considerations. On the contrary, ATMs gained acceptance because of their efficiency and convenience, and because privacy was as assured as it could be for any transaction done in a public place.

IVHS privacy issues are also cousin to those raised about copyright law roughly a quarter of a century ago with the development of the integrated circuit and the silicon chip. Copyright law at that time preceded those technologies and understandably failed to deal with such issues as circuit design protection. No one would suggest that we should have blocked all the efficiencies and power of the PC revolution simply because chip designs were not anticipated in existing law. Instead, we reviewed the situation and modified the law to apply our copyright concepts to new technology.

Yes, a fundamental facet of our society is about to change, and for the better. Our common responsibility is to ensure that these improvements in our ability to get from here to there continue to include a right to privacy, and that technology does not drive our decisions. Throughout our 218 years, America has succeeded not by denying new technologies with their benefits to our living standards and productivity. Instead, we have found ways to adapt our long-standing legal traditions — including individual rights protections — to new technologies. That is the continuing challenge before our government, and before us all.