

Count On It:  
The Law of the 2010 U.S. Census  
Legal Question of the Week  
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It is a bright and sun-shiny day.<sup>1</sup> You respond to a public disturbance call and arrive at a house to find a homeowner in an animated discussion with some “official-looking” visitor. Using your keen investigative skills,<sup>2</sup> you are able to determine that the official-looking visitor is a census taker. The homeowner is not happy with the “Federal Gubment” trespassing on his property and he wants the man arrested. You have some foggy notion about what the census is all about, but you have no idea what the legal rights of census takers are. Fear not - your legal adviser is currently sitting at his desk playing minesweeper<sup>3</sup> and is available to take your call!

A census is a counting of residents and the concept dates back at least as far as biblical times. King David got in trouble for taking a census<sup>4</sup> and you probably remember that Joseph and Mary, the earthly parents of Jesus, were in Bethlehem on that silent night because Caesar Augustus ordered a census of the entire Roman world.<sup>5</sup> The United States Census is required to be done every ten years by the U.S. Constitution, Article I, Section 2:

**“Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons.<sup>6</sup> The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct.”**

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<sup>1</sup> With a shout-out to Johnny Nash and “I Can See Clearly Now.” Try to get THAT song out of your head now.

<sup>2</sup> The “keen investigative skills” consist of asking “What the heck is going on here?!”

<sup>3</sup> I’m joking, of course. Chances are I’m working on something that is not only vital to the Police Department and the City of High Point, but to the future of all mankind.

<sup>4</sup> 1 Chronicles 21 and 2 Samuel 24.

<sup>5</sup> Luke 2:1.

<sup>6</sup> I hate to footnote the Constitution of the United States of America, but I am compelled to point out that after the 14<sup>th</sup> Amendment, there are no persons counted as 3/5ths of a person anymore.

Since 1790, national census information has been collected every 10 years.<sup>7</sup> The numbers affect not only each area's representation in the U.S House of Representatives but also the allocation of federal funds among other things. The first national census consisted of 200 assistants appointed by U.S. Marshals riding around on horseback to count people, writing with quill pens on whatever scraps of paper they could find. While the first census cost \$45,000 to complete, it is estimated that the 2010 census will cost over \$11 billion. I'm going out on a limb and predicting that the total population numbers will be higher as well.<sup>8</sup>

This year around mid-March, the census bureau will mail a ten question form to every household in America. Along with the form will be a prepaid envelope so the required information can be mailed back.<sup>9</sup> Then from April until July, census takers will visit those homes that did not return a census form to ask them the questions in person. But how can you tell if a person claiming to be a census worker is legitimate? What about personal privacy rights? Do people have to answer the census worker's questions? Who was that masked man? Answers to these questions and more after we pause for this important information...

### **An Important Public Service Announcement From Your Friends In The Legal Office About NCAWARE**

For those of you that aren't yet aware of NCAWARE, (ha!) the North Carolina Warrant Repository is the latest AOC hit to sweep the state. Designed to be a comprehensive<sup>10</sup> repository of unserved criminal processes, NCAWARE is scheduled to be fully implemented in all 100 counties by the end of the year. Because this will result in you being more actively involved in the creation and service of criminal process, the legal office wants to remind you of the different types of process you will encounter:

1. Arrest warrant: An arrest warrant charges a person with a criminal offense and orders an officer who has the authority and jurisdiction to arrest the person and bring him or her before a judicial official.

2. Criminal summons: A criminal summons charges a person with a criminal offense and orders that person to appear in court on a particular date. You **MAY NOT ARREST** on a criminal summons as it does not authorize an arrest.

<sup>7</sup> For the mathematically astute among you, you can see that this means that we are due for another census this year, which makes this legal update very timely and relevant, as usual.

<sup>8</sup> Speaking of higher population numbers, do you remember how last year at this time Dook fans were harder to find than a five-leaf clover and the ones that you could find were quieter than a professional mime? These days you can't spit without hitting one and their mouths don't stop yapping and reminding you that your own team can't beat the high school team from down the street. Here's a reminder: Carolina has won 2 of the last 5 National Championships. Dook's still got some catching up to do. But I'm not bitter. Okay, maybe a little bitter.

<sup>9</sup> Sure beats being pregnant and riding a donkey from Nazareth to Bethlehem.

<sup>10</sup> By comprehensive, they apparently mean "except for the piles and piles of paper warrants which were issued prior the system being created."

3. Order for arrest: Unlike an arrest warrant, an order for arrest does not charge a crime but authorizes an officer to take the person into custody. Most often these are issued after a person fails to appear in court or after an indictment has been issued.

4. Citation: This is a directive issued by an officer or other authorized person, that a person appear in court and answer a misdemeanor or infraction charge. I would imagine that these would not be found in NCAWARE because they are generally served immediately after they are written.

5. Magistrate's Order: This is the charging document used after an officer makes a warrantless arrest and the magistrate finds probable cause for that arrest. These will also not appear in NCAWARE as they would be served immediately as well.

Now back to our census discussion. According to the official census website,<sup>11</sup> legitimate census workers will carry an official government badge with their name.<sup>12</sup> In addition, you can call the regional census center<sup>13</sup> to verify their identity. Census workers are sworn for life to protect the data they collect under federal law. If they violate that oath, they face a fine of up to \$250,000 and imprisonment for up to 5 years.<sup>14</sup>

More importantly for our hypothetical, citizens are required by federal law to cooperate with the census. Failure to do so could result in a fine. They must also give truthful answers or face another fine. Finally, owners or managers of hotels, apartments, or boarding houses must furnish the names of the occupants or give free access to the census workers or face a fine of their own. I've included the applicable federal law in an appendix to this update.

So what should the officer do in our hypothetical situation? My advice would be to first try and convince the homeowner to cooperate. Tell him he's violating federal law and all he has to do is answer ten easy questions. If he won't listen to reason, I wouldn't arrest him for this federal offense.<sup>15</sup> Instead, I would tell the census worker to leave and go contact their superiors to inform them of the situation and follow their instructions. I would imagine they have a protocol for just this type of occurrence – after all, they've been doing this for over 200 years.

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<sup>11</sup> <http://2010.census.gov/>

<sup>12</sup> In addition to a badge, these workers are provided with a flashcard containing a sentence about the 2010 census written in approximately 50 languages. If a resident doesn't speak English, the census taker shows the flashcard to the resident and the resident points to the language he or she speaks. Then a census taker who speaks that language is assigned to that particular address. These guys have thought of everything!

<sup>13</sup> The regional census center for North Carolina is in Charlotte. Their phone number is (704)-936-5300.

<sup>14</sup> "What are you in for?" "I violated my census taker oath." That's not going to be a pleasant stay in prison.

<sup>15</sup> Although you are authorized as a law enforcement officer to arrest for violations of federal laws, it is generally better to leave those things to federal officials who are more familiar with federal procedures. In our situation, no one's life is in danger, so there is no hurry to take anyone into custody.

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### **APPENDIX Federal Law Concerning the Census**

#### 13 USCS § 221

##### § 221. Refusal or neglect to answer questions; false answers

(a) Whoever, being over eighteen years of age, refuses or willfully neglects, when requested by the Secretary, or by any other authorized officer or employee of the Department of Commerce or bureau or agency thereof acting under the instructions of the Secretary or authorized officer, to answer, to the best of his knowledge, any of the questions on any schedule submitted to him in connection with any census or survey provided for by subchapters I, II, IV, and V of chapter 5 of this title [13 USCS §§ 131 et seq., 141 et seq., 181 et seq., 191 et seq.], applying to himself or to the family to which he belongs or is related, or to the farm or farms of which he or his family is the occupant, shall be fined not more than \$ 100.

(b) Whoever, when answering questions described in subsection (a) of this section, and under the conditions or circumstances described in such subsection, willfully gives any answer that is false, shall be fined not more than \$ 500.

(c) Notwithstanding any other provision of this title, no person shall be compelled to disclose information relative to his religious beliefs or to membership in a religious body.

#### 13 USCS § 222

##### § 222. Giving suggestions or information with intent to cause inaccurate enumeration of population

Whoever, either directly or indirectly, offers or renders to any officer or employee of the Department of Commerce or bureau or agency thereof engaged in making an enumeration of population under subchapter II, IV, or V of chapter 5 of this title [13 USCS §§ 141 et seq.], any suggestion, advice, information or assistance of any kind, with the intent or purpose of causing an inaccurate enumeration of population to be made, shall be fined not more than \$ 1,000 or imprisoned not more than one year, or both.

#### 13 USCS § 223

##### § 223. Refusal, by owners, proprietors, etc., to assist census employees

Whoever, being the owner, proprietor, manager, superintendent, or agent of any hotel,

apartment house, boarding or lodging house, tenement, or other building, refuses or willfully neglects, when requested by the Secretary or by any other officer or employee of the Department of Commerce or bureau or agency thereof, acting under the instructions of the Secretary, to furnish the names of the occupants of such premises, or to give free ingress thereto and egress therefrom to any duly accredited representative of such Department or bureau or agency thereof, so as to permit the collection of statistics with respect to any census provided for in subchapters I and II of chapter 5 of this title [13 USCS §§ 131 et seq.], or any survey authorized by subchapter IV or V of such chapter [13 USCS §§ 181 et seq.], in so far as such survey relates to any of the subjects for which censuses are provided by such subchapters I and II [13 USCS §§ 131 et seq.], including, when relevant to the census or survey being taken or made, the proper and correct enumeration of all persons having their usual place of abode in such premises, shall be fined not more than \$ 500.

#### 13 USCS § 224

##### § 224. Failure to answer questions affecting companies, businesses, religious bodies, and other organizations; false answers

Whoever, being the owner, official, agent, person in charge, or assistant to the person in charge, of any company, business, institution, establishment, religious body, or organization of any nature whatsoever, neglects or refuses, when requested by the Secretary or other authorized officer or employee of the Department of Commerce or bureau or agency thereof, to answer completely and correctly to the best of his knowledge all questions relating to his company, business, institution, establishment, religious body, or other organization, or to records or statistics in his official custody, contained on any census or other schedule or questionnaire prepared and submitted to him under the authority of this title, shall be fined not more than \$ 500; and if he willfully gives a false answer to any such question, he shall be fined not more than \$ 10,000.