

HIG BROTHER

able to come up with anything. The record, ambiguous at best, lay in the Bureau files for potential dissemination to anyone who queried the records system for a check of Menard's name. It was later found to have been passed along to the Marine Corps, among others. But it was the potential scope of its dissemination that was particularly troubling. For if Menard by chance applied to be a real estate salesman in Idaho, to practice medicine in Nevada or law in North Carolina, or, for that matter, to drive a taxicab in Glendale, Arizona, run a bowling alley in the District of Columbia, or just to have a summer job in Provincetown, Massachusetts — to mention only a few of the circumstances in which the Bureau would be required to run checks on any job or license applicant — he would have to be fingerprinted and have his arrest record summoned up from the FBI files for comparison of the prints. The consequences were quite unpredictable.

Menard became the plaintiff in a major lawsuit brought by the American Civil Liberties Union, and after long and arduous litigation, U.S. District Court Judge Gerhard A. Gesell in Washington ruled in 1971 that the FBI had no legal authority to disseminate arrest records outside the federal government for non-law enforcement purposes.* Gesell noted that the Identification Division of the FBI "has little opportunity to supervise what is actually done with the arrest records it disseminates. It requires that a proper purpose be stated by the agency requesting information but what is in fact done with the information as a practical matter cannot be constantly checked. It is apparent that local agencies may on occasion pass on arrest information to private employers." The judge, complaining of "the increasing complexity of our society and technological advances which facilitate massive accumulation and ready regurgitation of far-flung data," appealed for government restraint:

A heavy burden is placed on all branches of Government to maintain a proper equilibrium between the acquisition of information and the necessity to safeguard privacy. Systematic recordation and dissemination of information about individual citizens is a form of surveillance and control which may easily inhibit freedom to speak, to work, and to move about in this land. If information available to Government is misused to publicize past incidents in the lives of its citizens the pressures for conformity will be irresistible.

* The judge refused, however, to order the expungement of Menard's actual record. Menard appealed that part of the decision, and in April 1974 the U.S. Court of Appeals for the District of Columbia Circuit finally ruled that the FBI could not retain the records of the young man's "police encounter" in its criminal files (although it could leave them in its "neutral identification records").

LOOKING AHEAD

Initiative and individuality can be suffocated and a resulting dullness of mind and conduct will become the norm. We are far from having reached this condition today, but surely history teaches that inroads are most likely to occur during unsettled times like these where fear or the passions of the moment can lead to excesses. The present controversy, limited as it is, must be viewed in this broadest context. In short, the overwhelming power of the Federal Government to expose must be held in proper check.

The FBI's influence in government circles must never be underestimated. Before long Senator Alan Bible, Democrat of Nevada, was sponsoring a rider to the FBI appropriations bill that specifically and indefinitely restored the Bureau's authority to make fingerprint checks for employment and licensing purposes whenever the practice was established under state law and local ordinances. (Bible apparently became involved because casino operators in Las Vegas were concerned that they would no longer be able to depend upon FBI checks of the people they hired. Others, including banks, also protested that they were being denied a valid service that protected the public.) The Bureau proudly and defiantly resumed its procedures. In a major concession to critics, however, Clarence Kelley announced on July 1, 1974, that the FBI would no longer distribute "raw arrest data" more than a year old to non-law enforcement agencies. The arrest records would still be disseminated, Kelley said, if they included a conviction for a crime or if the arrest had taken place within a year of the request for the check of the files, regardless of whether a disposition of the case had been entered on the Bureau's "rap sheet."

Dale Menard was a rare exception, in that he and his family pursued the issue and found out what had happened with the records of his arrest in Los Angeles. Less aware, less aggressive, or less articulate people, particularly members of disadvantaged minorities who have uneasy relations with the police, are subject to the same abuses and problems, but are unlikely to risk the confrontations or venture the costs necessary to set things right. One study showed that 75 percent of the employment agencies in the New York area would not accept for referral a job applicant with an arrest record. Another showed that of seventy-five employers surveyed, sixty-six would not even consider a man who had been arrested for assault, even if he had been tried and acquitted on the charge.

The annals of congressional committees and legal organizations are full of tales of horrifying problems caused by arrest records that are not updated or are simply in error. One young black man in Washington was arrested while a senior in high school in May 1970; then in

January 1971 he was tentatively based on a case in college under a Navy. On occasions showed his investigating crime and and friends. In California that installed alarm "security check" with the had an arrest record. He "public nuisance" and he had been tried and dismissed; but those of the FBI by the local police arrests continued to his teacher, approached California transportation, during Brine Area Rapid Transit (BART) television cameras, the president Nixon should be in four BART policemen fingerprinted him and resisting arrest. When the whole case was fool board of education had inquiring whether it should re

Bureau officials have in having the fullest, most do they want to circulate capacity — and, it often that submit fingerprints positions. As state and some of the same abuses improved substantially. files with little prospect seminate them anyway mildest of sanctions against concerning use of fingerprints the individual officers regarding the trial of the Menard agencies — the Cabazon Northumberland County were then on the "restricti