

D.C. Fingerprint Move Illegal

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The routine distribution of fingerprints and other arrest records from the Washington police department to the FBI is illegal, the U.S. Court of Appeals ruled yesterday. The ruling could result in the recall from the FBI computer system of records concerning more than 100,000 arrests in the city since Oct. 31, 1967. Yesterday's decision sends the case back to a lower court judge who must decide how to implement it. U.S. Circuit Court Judge J. Skelly Wright said in an opinion written for a unanimous three-judge appellate panel that the routine shipment of arrest records

"poses . . . considerable obstacles . . . to an individual's pursuit of happiness and enjoyment of freedom and liberty" and takes a "particularly heavy toll . . . on minorities in this country and in this city." Wright, along with U.S. Circuit Judge Spottswood Robinson III and U.S. District Judge Robert R. Merhige of Virginia, said arrest records can be sent by the city to the FBI only when they are requested by the agency or for other specific law enforcement purposes. They said the routine shipment of all records and fingerprint data concerning any arrests, a practice that was admitted by the police

department in the case decided yesterday, violates a specific city ordinance. That ordinance, known as the Duncan ordinance, was adopted in 1967 after lengthy hearings concerning the effect of police records on job opportunities. The judges said that since the transmission of the data violates a specific ordinance, they would not rule on the constitutionality of such a procedure. However, several pages of their written opinion explained that they had "severe doubts" about the constitutionality of the practice anyway. "For the government to disseminate an arrest record pertaining to an

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allegedly criminal episode, when it knows that employers may infer that the individual was guilty rather than innocent of the crime, effectively permits the government to inflict punishment besides the fact that guilt was not constitutionally established," Judge Wright said. The court pointed out that FBI arrest records are available to more than 14,500 public and private agencies for use in checking the background of employees. Among the individual plaintiffs in the suit were a woman who was arrested on a marijuana charge, but who was later freed; a man who was awaiting trial on larceny charges, but who was never convicted; a juvenile arrested on a car theft charge, and a man convicted on a gambling charge