

Controlling the Data Banks

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PRESIDENT NIXON was absolutely right in his State of the Union address when he included protection of individual privacy among those issues which should get legislative attention this year. Since Mr. Nixon is a very recent convert to this view, many uncertainties remain about how quickly and fully the commitment will be translated into specific policies. Thus it is doubly encouraging that the Department of Justice is proceeding at once to send Congress its long-awaited bill to control federal, state and interstate criminal justice data banks.

The unveiling of any comprehensive administration measure on criminal records would be reason for some celebration. The Congress first requested recommendations from the Justice Department back in 1970, but the response was half-hearted at best until former Attorney General Elliot Richardson made the subject a personal priority last year. Attorney General William Saxbe has followed through, and the result is a rather impressive bill which sets out broad, general policies intended to insure that all criminal records in automated or interstate files will be accurate, timely and complete, that individuals will be able to review and correct files on themselves, and that there will be far less trafficking in criminal records among public and private agencies outside the law enforcement field.

Some points of contention remain. Within the administration, the FBI is said to be less than enthusiastic about the new bill, and several other federal agencies will probably be going to Congress on their own to seek authorization to continue current practices such as checking the criminal records of job and credit applicants. On Capitol Hill, Sen. Sam J. Ervi (D-N.C.) is ready to introduce his own regulatory bill. The Ervin proposal is more stringent and detailed than the Justice Department measure in several important respects, and it would also transfer regulatory authority over federal criminal history files from the Justice Department to an independent federal-state board. But it appears that this year such substantive issues can finally be seriously

addressed—and even resolved with some harmony and dispatch—because a good working alliance is developing among Senator Ervin, the Justice Department and Sen. Roman Hruska (R-Neb.), ranking Republican on the Senate Judiciary Committee and a potential pivotal figure in the discussion to come.

Thus, on the top-priority privacy issue of criminal records, the debate has advanced from whether Congress should legislate anything to what kind of bill should be passed. The outlook is not so promising, however, on related fronts. While endorsing the protection of privacy as a general principle the other night, Mr. Nixon did not propose any specifics. Instead, he simply announced another study—"an extensive Cabinet-level review" of government and industry practices impinging on privacy. Thus the President seems to have shelved, among other things, the report of the HEW advisory panel which called for a code of "fair information practices" for all federal data banks. He also seems to have postponed any positive administration involvement in the congressional efforts to deal with such specific problems as credit reporting, the secrecy of bank records and the rights of participants in federal programs.

The most striking flaw in Mr. Nixon's approach was his definition of the "privacy problem" primarily as a function of advancing technology. Computers have indeed eroded man's ability to control who knows how much about a person's private life and how such knowledge is used. But the basic problem is less the capability of machines than the curiosity of man, particularly the curiosity of those in positions of power over the lives of their fellow citizens. We need no further studies of the potential dangers of official nosiness—wiretapping, bugging, illegal searches, political surveillance, harassment of dissident groups, and the other abuses and excesses which have aroused such public concern. Mr. Nixon did not address himself to this subject at all. Until he does so, his commitment to protecting privacy will remain vague and incomplete.