

Privacy: A Year-End Report

Post 12/26/74

WHEN THIS YEAR'S session of Congress began, the so-called "privacy issue" finally seemed to be gaining strength. Primarily because of Watergate, more and more legislators were joining Sen. Sam J. Ervin (D-N.C.) and a few other stalwarts in protesting governmental intrusion into people's private lives. Members of Congress by the score were making speeches about privacy and introducing bills to deal with everything from political spying to computerized data banks. This year, it seemed, Congress might act forcefully to combat the inquisitive tendencies of government and give citizens greater assurance that their liberties would be protected, not invaded, by the state.

What happened? Well, the situation changed. President Nixon's resignation defused the issue. President Ford has expressed considerable interest in the privacy issue from time to time, and under congressional pressure did issue an executive order curtailing White House access to individual tax returns. But Mr. Ford's privacy committee, supposedly his chief vehicle for policy development, has not shown much clout in dealing with the many agencies that amass, use and exchange information on individuals. Meanwhile, some of these agencies — especially the FBI, the Treasury Department and the Census Bureau—have all used their influence to ward off basic changes in their operations.

As a result the 93d Congress wound up enacting only one "privacy bill." That measure, now on President Ford's desk, is no minor achievement, for it establishes new rules to govern all federal records on individuals. Under this act, for instance, the existence and general nature of every federal records system on individuals must be disclosed. Citizens will be able to review and, if necessary, contest the contents of many files about themselves. Information used to make decisions affecting individuals must meet new standards of accuracy, completeness, timeliness and relevance. The confidentiality of personal information must be maintained, and exchanges of such data without the subject's knowledge and consent will be relatively limited.

These are unquestionably major reforms. The final act does, however, bear many marks of compromise between the broader Senate measure and the more limited version favored by the administration and the House. Two defects are conspicuous. First, the act leaves implementation largely to each federal agency and those citizens who choose to exercise their newly granted rights of inquiry and challenge. The Senate had vested powers of coordination and oversight, though

not enforcement, in a privacy commission. The compromise, however, adopts the House approach and thus depends heavily—too heavily in our view—on the willingness of each agency to reform its own record-keeping attitudes and practices.

The second large defect is the act's hands-off attitude toward law enforcement agencies and files. Originally, it was assumed that controls on criminal history records and law enforcement intelligence files would be established in a separate bill. However, negotiations between congressional committees and the Justice Department collapsed this fall and no such legislation has emerged. The general measure does not fill the resulting gap. Instead, it leaves records involved in law enforcement—the most sensitive kinds of files—largely exempt from citizen scrutiny. There are other dubious provisions, too. For instance, the act allows agencies, in the name of law enforcement, to go on collecting information on citizens' exercise of First Amendment rights. This is virtually a blank check which could perpetuate abuses.

The congressional failure to set new policies for law enforcement records is symptomatic of a larger failure, the inability of the 93d Congress to come to grips with threats to individual liberty posed by official spying and harassment in the name of law enforcement or national security. The Nixon years provided ample evidence of the variety and gravity of such threats. One need only recall the illicit warrantless wiretaps, the Huston domestic surveillance plan, the plumbers, the enemies' lists, plus the surveillance and incitement of dissidents undertaken by the FBI under J. Edgar Hoover and the newly alleged surveillance of American citizens attributed to the Central Intelligence Agency. It is a dismal catalog.

One committee did react impressively: the House Judiciary Committee, which decided 28-10 that President Nixon's abuses of power and invasions of citizens' constitutional rights constituted an impeachable offense. The prevailing attitude on the Hill, however, seems to be that Mr. Nixon's resignation removed the danger, and an institutional approach is not required. So legislation to end warrantless wiretaps went nowhere; the internal security operations of the FBI have not been closely scrutinized; no real curbs on intelligence gathering have been pushed through. The 93d Congress, in other words, has left a long agenda of unfinished business in this connection—and has left us wondering what further offenses must be committed and revealed before enough legislators decide to act.