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In The Nation: A Right Not to Be Data-Banked?

By TOM WICKER

WASHINGTON, July 6—Do you have a right not to be stored in a computer, where you can be called up for instant investigation by any bureaucrat or law officer who considers you a "person of interest" or who may want to provide someone else—maybe your employer—with "facts" about you? If you haven't thought about that, it's high time you did.

Ben A. Franklin detailed in The New York Times of June 28, for example, how Government "data banks" are mushrooming out of computer wizardry. Literally hundreds of thousands of individual dossiers now are being stored on tape by various agencies. The tape can be fed to computers with instant recall; and the computers and tapes can be interconnected from one agency or region to another in an ominous national network. Numerous state agencies have easy access to the material in this computer network, and are under little or no pressure to keep it confidential.

At the very least, therefore, some guidelines on the compilation of these banks and some safeguards on disseminating the material appear in order. An interesting case pending in Fed-

eral court here (*Menard v. Mitchell and Hoover*) may help provide them.

A Maryland man was arrested in California in 1965 on suspicion of burglary, held for two days, then released when police found no basis for charging him with a crime. Subsequently, a brief record of the detention, together with the Maryland man's fingerprints, appeared in F.B.I. criminal files.

Maintaining that the record is misleading and incomplete and that it is not properly a "criminal record," the Maryland man moved in Federal District Court here to have it purged from the F.B.I. files.

Court Concern Indicated

The court denied this motion, and the man appealed. On June 19, the Court of Appeals for the District of Columbia, while finding no fault with the district court's ruling on the motion, ordered the case remained for trial and "more complete factual development." The supporting opinion, although limited to the case, suggests the circuit court's concern about what ought to go into Government files, under what rules, and whether proper safeguards surround its dissemination.

The judges (Bazelon, McGow-

an and Robinson) pointed out that the fact that the police had been "unable to connect" the Maryland man with a crime did not necessarily acquit him of having committed one, and they conceded that certain arrests not followed by a charge or a conviction might be a proper part of someone's criminal record. But, they asked, did the mere fact that a man had been picked up and held for two days justify the F.B.I. in retaining the record in its criminal identification files?

An arrest record (the distinction between a "detention" and an "arrest" is considerably less than a difference) can be terribly damaging to one's opportunities for schooling, employment, advancement, professional licensing; it may lead to subsequent arrests on suspicion, damage the credibility of witnesses and defendants, or be used by judges in determining how severely to sentence. Moreover, thousands of arrests are made every year without any further action against the arrested person, usually for lack of evidence.

Dissemination Issue

Thus, the court asked, if a person is arrested, even properly, but no probable cause for

charging him is developed, should he "be subject to continuing punishment by adverse use of his "criminal" record?"

This has particular point because of the lack of established safeguards on dissemination. The Maryland man's record, for instance, could be made available by statutory authority to "authorized officials of the Federal Government, the states, cities, and penal and other institutions" and also, by an Attorney General's regulation, to government agencies in general, most banks, insurance companies, and railroad police.

When New York recently passed a law requiring employees of securities firms to be fingerprinted, several hundred were dismissed for "criminal records," but about half of them had only arrests, not convictions, on their records. The Appeals Court, noting this, reasoned that F.B.I. records had been passed directly to the securities firms involved.

As data banks proliferate, so will the indiscriminate use of the material they contain. And that raises the question whether an American citizen has a constitutional or legal right not to be data-banked, computerized, stored, exchanged and possibly damaged—materially or in reputation—by the process.