TOM WICKER New Orleans States-Item
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Data Banks Pose Rights Questions

WASHINGTON—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 federal 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 FBI criminal files.

Maintaining that the record is misleading and incomplete (it says the man was "released — unable to connect with any felony or misdemeanor" and adds "not deemed an arrest but detention only") and that it is not properly a "criminal" record, the Maryland man moved in federal district court here to have it purged from the FBI files.

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 remanded 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, McGowan 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 FBI 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. A survey by the New York Civil Liberties Union, for instance, has shown that 75 per cent of New York area employment agencies will not handle a job-seeker with an arrest record.

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.

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