first ten minutes, because it took the Soviets that much time to provide a Latin censor. They were always sure we were speaking Rumanian. But finally the censor would come on and say, 'May I remind you, comrade, that you should use a language of a state recognized by the United Nations.' I could have asked them," he smiled, " 'What about the Vatican?' " He stopped smiling. "The Soviet dictatorship," he said, "begins not in the Kremlin but in the kindergarten. I am basically very depressed about the twentieth century. It is a totalitarian century. This century, I am convinced, will totally and totalitarianly get rid of the liberal mind, the Renaissance man. This is the first time when there is a perfect match between crude political ideas and the complex technology that makes those ideas acceptable."

What, we asked him, could be done? "Nothing, really," he said, "except to serve your own universe—of yourself—by not lending yourself to this process. But even you may be too big a piece of real estate. Too many things may have penetrated you already."

Mr. Kosinski, we learned, always wears a shirt and tie to his college classes. "I like to feel locked in," he said, "against foreign influences." Starting his undergraduate course, "Death and Modern Imagination," he told his students, "I am not here to save you. I am not a missionary. I am merely trying to save myself from what has happened to you. There's a place in my boat for those of you who want to jump in."

Before saying good-by to Mr. Kosinski, we demanded a firsthand look at his disappearance act. Miss von Fraunhofer ushered us down the hall, while Mr. Kosinski hid. Then we came back. We looked everywhere very carefully—in the closets, under the sofa, behind every cabinet, even in the darkroom. There was no question, the author of *Being There* wasn't there. We gave up.

At that point, out came Mr. Kosinski. "Once," he told us, "I hid for a whole weekend. I came out only for food and work. People were in and out too, but they never found me."

SOLUTION OF LAST WEEK'S KINGSLEY DOUBLE-CROSTIC (No. 1931)

(JAMES) RIDGEWAY:
THE POLITICS OF ECOLOGY

Companies which create most of the energy and cause the pollution are the leaders in the anti-pollution crusade. These large corporations anticipate that by dominating the ecology movement, they can influence the rate and manner in which pollution control is achieved.

who seek to purchase information. Further, for reasons of profit, these companies place a premium on the derogatory information they assemble. Except in three states, citizens do not have the right even to see these dossiers in order to correct inaccuracies. They will have that right for the first time when a federal law, the Fair Credit Reporting Act, goes into effect April 25, 1971. But they still will not have the right to control access to the information, on which there are in effect no legal restrictions, or the right to control the kinds of information that can go into their dossiers.

Until there are adequate protective measures—an "information bill of rights" that protects him against invasion of privacy through information dissemination—the citizen's major recourse is to understand how these agencies operate and what are his limited rights under present and pending law.

The first problem of the dossier is accuracy. There is no doubt that inaccurate information comes into the files of credit bureaus and insurance inspection agencies. In fact, credit bureaus disclaim accuracy in their forms, because most of the material is obtained from others (merchants, employers) and not verified by them. The information "has been obtained from sources deemed reliable, the accuracy of which [the credit bureau] does not guarantee."

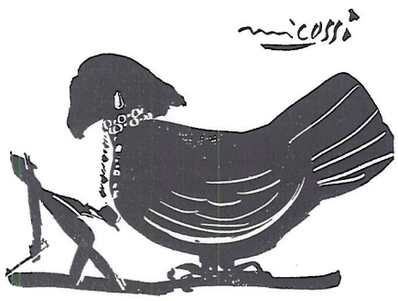
Illustrations of errors are legion. New York State Assemblyman Chester P. Straub was refused a credit card because his dossier revealed an outstanding judgment. The judgment actually was against another person with a similar name, but the bureau had erroneously put it against Straub's name. Testimony before a U.S. Senate committee has accused credit bureaus of using a "shotgun" approach to recording judgments against consumers —entering any judgment on all the records bearing the same name as the defendant's, or a similar name, without checking to see which individual was actually involved.

In addition to errors of identification, there are errors due to incomplete information. A woman ordered a rug, but the seller delivered one of the wrong color. He refused to take it back and sued for payment. Although his case was thrown out of court, her credit record showed only that she had been sued for non-payment, and she was unable to get credit elsewhere thereafter. Arrests and the filing of lawsuits are systematically collected by credit bureaus and rushed into dossiers, but the dismissal of charges or a suit is not reported in the newspaper and so the credit bureau never learns of, or records, the affirmative data.

Also, there is the problem of obsolescence of information, as shown by the man whose bureau dossier in the Sixties listed a lawsuit from the Thirties. It was a $5 scare suit for a magazine subscription he had never ordered, and "nothing had come of it"—except in regard to his credit rating.

The introduction of computers can create its own set of problems. Although mechanical errors in the handling of information by people may be reduced, the probability of machine error is increased. In addition, credit data are taken directly from a creditor's computer to a credit bureau's computer without discretion. Your payments may have been excused for two months, due to illness, but the computer does not know this, and it will only report that you missed two payments. Storage problems alone will prevent the explanation from being made. Your rating with that creditor may not be affected, but with all others it will be.

These credit bureau inaccuracies generally relate to "hard data," which are subject to verification or contradiction. The insurance inspection agency, on the other hand, reports "soft data," or gossip, and they are not subject to verification at all. This creates new sources of inaccuracies. Where the information is inherently uncheckable, the biased employee or the biased informant can easily introduce inaccuracies. Even where bias is not present, innuendo or misunderstanding can create error, while a vindictive inspector can abuse his power for personal reasons.



Why don't inspectors check the accusations made by informants with the accused? One reason is they don't have the time. If they must make ten or fifteen reports a day, they can spend only forty minutes on an average report, including transportation and typing it up. This allows no time for checking accusations, or even facts.

A more vicious reason is the agency's penchant for derogatory information and the fact that it records on both a weekly and a monthly basis the percentage of cases in which an inspector recommends declines. He must file a certain percentage of derogatory reports (at one time 8 per cent for life and 10 per cent for auto reports) if he is to be known as a "good digger." If he has not met his "quota," the temptation to use any rumor, without confirmation, may be overwhelming. These quotas may be regarded by the agency as a necessary control device to prevent inspectors from filing fake reports without investigation, but they show a reckless disregard for the safety of the investigated public.

Gossip-mongering with a quota on unfavorable comments can lead the harried inspector to rely on innuendo. A vivid illustration of the problems in insurance reporting is the case of two successful young businesswomen who applied for a life insurance policy required for a particular business transaction. On completion of a routine report, Retail Credit Company advised the insurance company not to issue the policy. It reported "severe criticism of the morals of both women, particularly regarding habits, and Lesbian activities." The investigator's information came from neighbors. None of these neighbors actually stated they had seen any illicit activity, but innuendo accomplished the same result. "Informants [unidentified] will not come out and state that applicant is Lesbian, but hint and hedge around and do everything but state it." The insurance company followed Retail Credit's advice and denied the policy.

Until passage of the Fair Credit Reporting Act, the law offered no protection against an inaccurate re-

port, except in three states. There was no way one could even see a report to correct it. However, this new act offers some solutions to problems of accuracy.

1) It requires users of reports to notify consumers of the name and address of the consumer reporting agency whenever the user (e.g., creditor, insurer, or employer) takes adverse action on the basis of the agency's report.

2) It gives the consumer the right to know the "nature and substance of all information" on him in the agency's files, except medical information and the sources of "investigative information" (i.e., gossip). The limitation on sources of gossip is a serious weakness. Such sources can be discovered in litigation, however, and a suit is made easy to bring. Thus, *the agency can no longer guarantee the confidentiality of its sources.*

3) If a dispute arises between the consumer and the agency about the accuracy of an item, the agency must reinvestigate and *reverify* or delete the information. This will usually mean going back to the same neighbors and obtaining the same gossip. If the dispute is not settled by reinvestigation, the item must be noted as disputed. This leaves the user free to believe the agency.

These provisions are the strongest in the bill. They are weak from the consumer's point of view in two areas: The consumer should be allowed to learn the sources of gossip before litigation so that he can effectively rebut inccurate gossip; further, he should be provided a quick, simple procedure for obtaining a declaratory judgment on the truth of any item.

4) The act also provides for enforcement through private actions if the agency is negligent. Negligence is easy to allege, but may be difficult to prove. Only time will tell what standards the courts will set.

Even though the agency's secrecy is now partially broken, relief may still not be available because most agencies are granted immunity for agency libel. Under the law of most states, the agencies are given a "conditional privilege" to publish false statements; so the libel action will not succeed. The privilege is granted on the grounds that they are fulfilling a private duty by providing businessmen with information they need in the conduct of their affairs. Georgia and Idaho (and England) do not grant the agencies such a privilege on the grounds that the privilege itself does not benefit the general public, but only a profit-oriented enterprise, and that individual rights take precedence over the self-interest of the enterprise.

In the states granting the privilege, it is conditioned on the agency's 1) disclosing the information only to those with the requisite commercial interest, and 2) acting in good faith and without malice. However, proof of malice requires more than just the falsity of the report. In the past this has conferred an effective immunity on false reports. Malice, however, may be shown by the quota systems of the agencies or by their secrecy. Arguably, these company policies show a "wanton and reckless disregard of the rights of another, as is an ill will equivalent." Such theories, however, have not yet been tested in court.

There is no regulation on sale of the extensive personal information collected by credit bureaus, insurance agencies, and employers. The dossiers are considered their "property," and they may do what they wish with it. The only influence to limit availability is an economic one, arising from the condition on the privilege for publishing libel—the report can be given only to subscribers of the service or others claiming a legitimate interest in its subject matter. However, claims of interest are easy to make and are not often scrutinized.

Furthermore, the citizen never knows when these dossiers are opened to someone. His consent is not sought before release of the information. He is not warned when someone new obtains the information, or told who they are—unless, under the new law, they take adverse action. There are no pressures on the information agencies to account to the subject of the dossier, nor have these agencies shown any willingness to assume such responsibility.

Credit bureaus may follow the Associated Credit Bureau guidelines and release information only to those who certify that they will use it in a "legitimate business transaction." This, of course, includes not only credit granters but also employers, landlords, insurers, and dozens of others. But even these weak guidelines are unenforceable by the association, and a CBS study found that half the bureaus they contacted furnished information to CBS without checking the legitimacy of their business purpose. Announced policies of inspection agencies also require a showing of a business purpose. But this includes anyone who has $5 and announces himself as a "prospective employer."

In April, the Fair Credit Reporting Act will impose a restriction on the release of information, but it is no better than those presently available. An agency will be able to sell information to anyone having "a legitimate business need" for the information. There are no economic or legal restrictions preventing any credit bureau or inspection agency from giving out their dossiers indiscriminately to anyone who can pay.

The consequences of making highly personal information easily available have only begun to be recognized. Credit reporting agencies may serve as private detectives for corporations that want to intimidate a critic. Recently the press reported that American Home Products, a drug manufacturer with more than $1-billion in sales, hired Retail Credit Company to investigate

"How do you do? I am Warren Ellis and this is my friend Dennis McBride. We are people who like people."

the personal affairs of Jay B. Constantine, an aide to the Senate Finance Committee who had helped draft legislation opposed by the drug industry. The investigation was stopped only "after their stupidity was uncovered," according to Senator Russell Long, Finance Committee chairman, who also said that the company had tendered "a complete letter of apology."

The introduction of computers furnishes other possibilities for use and misuse of personal information. Arthur R. Miller, in his new book, *The Assault on Privacy*, reports that MIT students in Project MAC (Machine Aided Cognition) were able to tap into computers handling classified Strategic Air Command data. If they can do this, any time-sharing user can tap into a computer data bank. There is no way at present that computer people can guarantee their control over access. They cannot even guarantee that they can prevent rewriting of the information in the computer by outsiders.

What can be done to control the availability of these dossiers? Primarily, anyone obtaining information on you should be required to obtain your express consent to the release before receiving the information. This would recognize your interest in preserving the privacy of your own personality. It would allow you to decide whether any particular transaction was worth the invasion of your privacy by the other party.

Even if the information in the dossier is completely accurate and available only to creditors, insurers, and employers, there may be personal or private details—perhaps irrelevant to the demands of the credit-insurance industries—that people want kept to themselves. Some kinds of information may be so personal that their storage and sale are offensive. For example, it is possible to assemble a list of the books a person reads by observing his bookshelves, talking to his neighbors, or obtaining the records of the public library. An employer or insurer could manufacture a "business purpose" for obtaining such information—to determine the subject's knowledge or intelligence, generally, or in a specific field. There is little doubt that such an effort would be offensive to most people, violating their privilege of private thoughts and opinions. It would be offensive even if accurate.

Currently, the information gathered in most dossiers includes a subject's past educational, marital, employment, and bill-paying records. His "club life," drinking habits, and associates are recorded. Also included are an employer's opinion of his work habits and his neighbors' opinion of his reputation,

(*Continued on page* 58)

What You Can Do

WHAT CAN YOU DO to protect yourself from your dossiers? The Fair Credit Reporting Act—when it becomes effective this month—allows you to protect yourself, but only if you take action. Let me use, as an example, the ordinary purchase of a life insurance policy. After you have decided to purchase some life insurance, you should first consider how much of an invasion of privacy you are willing to suffer in order to get it.

If a character investigation will be made, you are entitled under the act to be told automatically only that it will be made, and you are told that fact three days after the investigation has been ordered. Once you have been informed, it is up to you to take any further initiative. You must request in writing additional information. Once you have made that request, the insurer must reveal "the nature and scope" of the investigation. According to Representative Leonor K. Sullivan of Missouri, the House manager of the bill, this means they must tell you "all the items of questions which the investigation will cover. The best method of meeting this criterion is for the agency to give the consumer [you] a blank copy of any standardized form used." Unfortunately, all of this happens at least three days after you have signed the contract.

However, you can still insist on receiving this information before you sign the contract. Nothing in the law prevents you from obtaining this information earlier. The agent and the insurer are both anxious to sell you insurance. If you don't like too much snooping, demand that the scope of the investigation be revealed before you buy. If you think it is overzealous, complain to both the agent and the insurer and be specific about what you think is too intrusive. If the company will not listen to your complaints, find another one—or consider using group insurance. It is an interesting fact that group insurance does not usually require an investigation, and its use has been growing.

Once the privacy problems have been settled between you and the insurer, you must also worry about the accuracy of the report. If you are turned down or high-rated by the insurer, due in part to an investigation and report, the insurer must tell you that it was due to a report and give you the name and address of the agency making the report.

This entitles you to go to the agency and demand that it disclose "the nature and substance of all the information (except medical information) in its files." According to the House manager of the bill, this means disclosure of "all information in the file relevant to a prudent businessman's judgment" in reviewing an insurance application. If you have demanded a blank copy of the agency's standard form, you will know whether you have been told all that you are entitled to know.

If you disagree with any information in your file, tell the agency. The agency is then required to reinvestigate and reverify or delete the information. If they do not claim reverification, make certain that they delete the information, and then personally notify all prior recipients that it has been deleted. If they do claim reverification, ask how they reverified, from whom, and exactly what was said. Don't be satisfied with general answers because you cannot refute specific accusations with generalities. Although the act does not give you access on request to the names of those who lied about you, it does give you access to those names if you file suit under the act. Thus, the names cannot be protected forever. Many reputable agencies should see this and be willing to attempt to settle disputes with you without litigation. Even if the agency claims reverification, you can still have the item listed as disputed if it is in error, and file a brief statement outlining your side of the story.

A second common example is the credit card company that charges you improperly and will not answer your letter of complaint, but continues to bill you and threatens to ruin your credit rating if you don't pay. You can follow the procedure discussed earlier and wait until some other creditor turns you down, then go and get the file corrected. It may be better, however, to go and check your file at the local credit bureau periodically, so that you can correct errors before they are reported and you are turned down.

—R. N.

Invasion of Privacy

Continued from page 21

character, and morals, which probably includes gossip about old neighborhood feuds.

Insurance company underwriters indicate that many do not use some questions (e.g., "What social clubs does he belong to?"). Some questions are overdrafted (e.g., the query "Who are his associates?" is useful to them only as "Does he have any criminal associates?"—a quite different version). The reason for asking what *kind* of alcoholic beverage an applicant drank was incomprehensible to at least two underwriters.

When asked whether they ever sought to have unnecessary questions struck from the form, the response was "Why should we? It's just as easy to skip over them when reading." There was no indication that they had any scruples about, or even any understanding of, the problem as an invasion of privacy.

Credit bureaus and investigation agencies do not generally gather such information as test scores or personality traits. Nor are lists of books assembled—yet. But there is nothing to prevent these investigators from adding this information to the standard items in their dossiers. The FBI has tried a similar form of investigation. Common law doctrines seem not to cover these problems, and, until recently, legislatures and relevant administrative bodies have shown no interest. Most information agencies have no announced policies that would preclude them from including any type of question. Thus, the only reason such information is not gathered is an economic one: No one is sufficiently interested to request and pay for it.

New technology is also tipping the balance against the individual's right of privacy as far as kinds of information are concerned. With problems of storage and transmittal solved, the technological tendency is to collect more data on individuals, inevitably more sensitive data.

The way information is gathered also has ominous implications for the individual's privacy. Credit bureaus gather their information from employers, newspapers, and credit-granters who are members of the bureau. They also collect data from the "welcome wagon" woman who visits homes and notes what buying "needs" you have so that you can be dunned by the right merchant. American Airlines' computer can give anyone information about what trips you have taken in the last two or three months. Further, it can give your seat number and be used to determine who sat next to you, perhaps inferentially describing your associates. In addition, it can tell your telephone contact number and, from this, determine where you stayed or your associates in each city of departure. Credit card accounts can do much the same thing, telling what you have bought recently (to establish standard of living and life-style) and where you shop.

Each of these methods of inquiry constitutes a serious invasion of privacy, but the most serious invasion is the neighborhood investigation by the inspection agency. Here information is gathered by questioning your neighbors, building superintendent, grocer, or postmaster about what you do while you are in your own home. There is the threat not only of gossip-mongering and slander, but of the creation of a kind of surveillance on your home. For most people, the only available private place is "home." Here, even though observed by neighbors perhaps, the individual can feel free to discard his social role and be more expressive of his own personality. It is here that the "neighborhood check" of the inspection agency is most frightening.

How does an inspector go about obtaining information from your neighbors? Frederick King of Hooper-Holmes candidly described the procedures used when a married man is suspected of an extramarital affair. "You go to a neighbor and establish rapport. Then you ask, 'What's your opinion of him as a family man?' This will usually elicit some hint—through the expression on his face or the way he answers. Then you start digging. You press him as far as he will go, and if he becomes recalcitrant you go somewhere else. If you go to enough people, you get it."

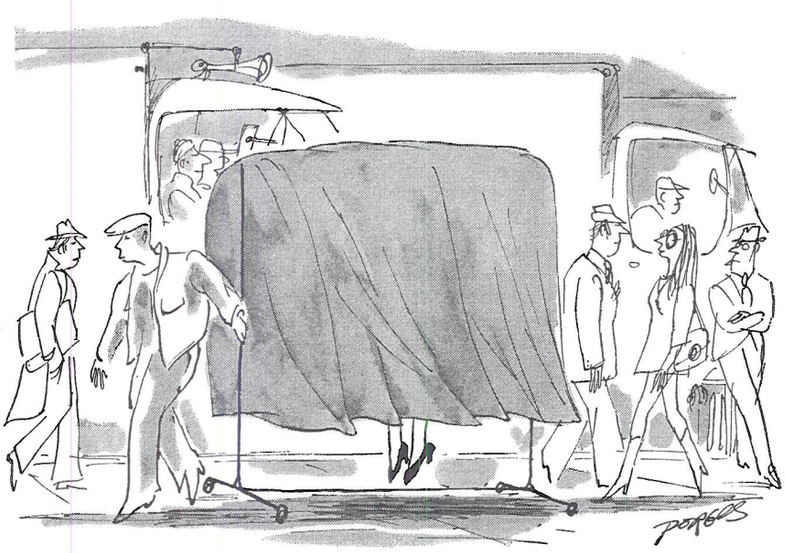
Do present laws give you any protection from these invasions of your privacy in regard to either the types of information stored and sold or the manner in which they are gathered? Probably not.

There is a tort cause of action for invasion of privacy, but instead of furnishing a broad protection device, the courts have established four subcategories of the right. Two of these subcategories related to the gathering and publication of personal material are "public disclosures of private facts" and "intrusion."

Public disclosure of private facts has not been actionable without a finding of "unreasonable publication," and publication to a "small group" would include the subscribers of a credit bureau or investigation agency, in much the same way that publication of defamation to such groups has been held privileged. The exemption is based on the same reasoning that sustains the conditional privilege to defamation and has the same dangers to the subject, who may not be able to correct falsehoods or defend himself against the consequences of having intimate details of his life revealed to the business community in his town.

Intrusion has been found most often in cases involving physical intrusion. Peering through windows, wiretapping, and eavesdropping seem to strike a more responsive chord in courts than does interviewing your neighbors or acquaintances. This tort is usually held to require an "extreme" or "shocking" violation of your privacy, and physical trespasses are most easily perceived as shocking.

In a New York Court of Appeals decision involving the author and Gen-



eral Motors, the court went beyond physical intrusions to include surveillance for an unreasonable time. However, even this decision makes actionable only those intrusions that are for the purpose of gathering confidential information. The question whether this doctrine covers investigations seeking to discover marital relationships, sexual habits, or housekeeping abilities has not been presented to the courts since the New York decision. However, three of the court's judges specifically stated that the four recognized subcategories of the right to privacy are neither frozen nor exhaustive.

If judicial protection against the collection and sale of overly personal information is limited, legislative protection is still nonexistent, even after passage of the Fair Credit Reporting Act. That statute may provide accuracy protection, but the Senate conferees refused to accept any provisions that would limit the types of data about you that can be gathered and sold.

The invasion of privacy should more accurately be called the invasion of self. The right to protect himself against an informational assault is basic to the inviolability of the individual. On the one hand, we recognize that an arrest record may haunt an individual, and there is precedent for a wrong arrest that is thrown out of court to be expunged from the record. But we have not yet recognized that the bits of information contained in dossiers kept on 105 million Americans may be just as decisive and just as damaging to their lives.

The individual's right to privacy of self is crucial to the functioning of our society. Suppose you walked into a courtroom and picked up a pamphlet relating everything the judge had ever done in his personal life. What would that information do to your interaction with that court? To some extent it is absolutely necessary to preserve barriers of privacy and protection about people's lives in order to permit ordinary interaction between people, an interaction that is to a significant degree based on trust.

Our Founding Fathers developed Constitutional safeguards in the Bill of Rights against the arbitrary authority of government. The rights against unreasonable search and seizure and against self-incrimination were examples of basic rights of privacy deemed critical for a free people. Generations passed and the country developed private organizations possessed of a potential for arbitrary authority not foreseen by the early Constitutional draftsmen. Most pervasive and embracing of these organizations is the modern corporation. Aggressive by its motivational nature, the corporation, in a credit-insurance economy spurred by computer gathering and retrieval efficiency, has created new dimensions to information as the currency of power over individuals. The secret gathering and use of such true or false information by any bank, finance company, insurance firm, other business concern, or employer place the individual in a world of unknowns. He is inhibited, has less power to speak out, is less free, and develops his own elaborate self-censorship.

What this costs in individual freedom and social justice cannot be measured. It can only be felt by the daily contacts with human beings in invisible chains reluctant to challenge or question what they believe to be wrong since, from some secret corporate dossier, irrelevant but damaging information may be brought to bear on them. The law and technology have provided the "dossier industry" with powerful tools to obtain and use information against people in an unjust way — whether knowingly or negligently. The defenseless citizen now requires specific rights to defend against and deter such invasions of privacy.

The Fair Credit Reporting Act will take steps toward solving some of the problems of accuracy in individual dossiers. For the first time, people may find out what credit bureaus and inspection agencies are saying about them, and they now have some means of correcting inaccuracies. But there are still no restraints on availability of this information or on the kinds of information gathered. Unless citizens are provided with an "information bill of rights" enabling them to see, correct, and know the uses of these dossiers, and to impose liability on wrongdoers, they can be reduced to a new form of computer-indentured slavery. The law must begin to teach the corporation about the inviolability of the individual as it has striven to teach the state.

EDITOR'S NOTE: *Mr. Nader's article is adapted from a report commissioned by the American Civil Liberties Union, as part of its 50th Anniversary program.*

Sunday Rain

by John Updike

The window screen
is trying to do
its crossword puzzle
but appears to know
only vertical words.