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Mr. Nixon Discovers Privacy

By Tom Wicker

Skeptical chuckles may have seemed in order when Richard Nixon promised in his 1974 State of the Union Message a "major initiative" and a "cabinet-level review" on the matter of privacy—particularly on safeguarding information stored in computers by interlinked Federal and state criminal justice agencies. Mr. Nixon, after all, had wiretapped his own staff and his Administration had failed since 1970 to take such a "major initiative," despite the repeated requests of Congress that it do so.

But never mind the chuckles. The Justice Department immediately followed the State of the Union Message with the detailed legislative proposal so long awaited. Beyond that, Senator Sam J. Ervin Jr., chairman of the constitutional rights subcommittee, is ready with his own more restrictive bill, and the prospects seem brighter than they ever have been for action at last.

"At last" is not too strong a phrase. Sweden, for example, passed in April 1973, a comprehensive law governing the collection and dissemination of criminal justice information. But little has been done here, although in recent years Federal funding through the Law Enforcement Assistance Administration has achieved a phenomenal growth of criminal justice data banks throughout most of the states; all fifty soon will be involved in the system.

Interlinked among themselves and with the massive Federal system operated by the F.B.I., these data banks are collecting an enormous amount of information about millions of American citizens, by no means all of them criminal offenders. The nature, use and distribution of that information is virtually unregulated by anyone; as noted here before, Massachusetts alone found last year that more than 75

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public and private agencies having nothing to do with criminal justice had achieved regular access to its criminal offender files.

The Department of Justice bill would go far to fill this void, by providing as a matter of law that individuals could review their own records, correct inaccuracies and sue anyone disclosing the information improperly. The measure also would sharply limit those to whom any of the records could be disclosed, and require the sealing of individual records after a specified time.

Senator Ervin's proposal would improve on the Justice Department bill in important respects. For example, it would provide that an arrest record showing no subsequent disposition of the case, or one showing an acquittal or that the case had been dropped, would be "programmed" out of the reach of criminal justice agencies as well as any other public or private inquirers one year after the original arrest. Even during that first year, such a record would be available to police only if the person involved was re-arrested on some other charge.

More importantly, the Ervin bill would place the entire Federal, state and interstate criminal justice data system under the regulation of a nine-man board—one representative each from the Department of Justice and two other interested Federal agencies, three representatives from involved state agencies, and three representatives of the public at large, all appointed by the President and confirmed by the Senate.

This board would remove the system from the exclusive control of police and criminal justice agencies, provide some amelioration of Federal domination, and—so Mr. Ervin hopes—establish an effective instrument for efficient and equitable regulation of unforeseen problems as they arise, with the necessity for new legislation.

All this is strong medicine for some criminal justice organizations to swallow; predictably enough, Clarence M. Kelley, the director of the F.B.I., has declined full endorsement of even the Justice Department bill. He is reported to be reflecting the views of numerous police departments, particularly on the matter of sealing—that is, closing to any inquirer—criminal records seven years following the subject's release from custody on a felony conviction (five years in misdemeanor cases). Some other Federal agencies with an interest in criminal justice records also have reservations about the Justice Department bill, raising the question whether it really is an "Administration proposal."

Nevertheless, Mr. Nixon himself is on the record at least pro forma; Mr. Ervin plans to be a cosponsor of the Justice Department measure, and such Nixon stalwarts as Roman Hruska of Nebraska and Milton Young of North Dakota have been induced to cosponsor the Ervin bill. This cross-sponsorship bodes well for some kind of regulatory legislation, and almost any would be an improvement on the present vacuum.

At the least, the need for control has been stated at the highest level; both the Justice and Ervin bills recognize the principle that those who compile and operate the data banks should not have discretion to determine their use; and even while declining endorsement of a specific bill, Director Kelley said he welcomed legislation to "insure the maximum protection of individual rights."