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come an open board policy so that prisoners and those assisting them could be aware and benefit.

"Every prisoner's liberty is of course circumscribed by the very fact of his confinement but his interest in limited liberty left to him is then only more substantial."[83] The Second and Seventh Circuits have now provided the prisoner with a long over-due protection. Prisoners might at last have an opportunity to understand the nature of their misdeeds and be truely able to rehabilitate themselves.

DOROTHY C. BERNHOLZ

Menard v. Saxbe: Real or Imagined Remedy?

The recent decision in *Menard v. Saxbe*[1] upheld the right of Dale Menard to have the record of his 1965 arrest in California removed from the criminal identification files of the Federal Bureau of Investigation. Since his arrest, Menard had sought relief from what was termed the unjustified burden that the record posed to him and to his future. Even though he had been able to show that his arrest was deemed a detention only, that no crime had been committed, nor charges brought against him, Menard had been unable to have his record cancelled through administrative means. Neither the F.B.I., when apprised of the change in status, *i.e.* a dentention rather than an arrest, nor the local California authorities would act to grant Menard the relief sought, without court order.

The arrest itself was lawful. The circumstances as related by the court show Menard to have been 19, a student, visiting in Los Angeles in August of 1965. Late at night in a local park, police acting on a report of a prowler in the area, picked up Menard under seemingly suspicious circumstances, *i.e.*, on a park bench near the area of the prowler warning. He was held two days without charges filed. Subsequently, after explanations and when the officials were satisfied that there was no connection with Menard and any report of crime, he was released. Menard was routinely fingerprinted and under California procedure, his fingerprints and a record of his arrest and release were

83. Wolff v. McDonnell, — U.S. —, 94 S. Ct. 2963 (1974) (Douglas, J., dissenting).

1. 498 F.2d 1017 (D.C. Cir. 1974), *rev'g sub nom.*, Menard v. Mitchell, 328 F. Supp. 718 (D.D.C. 1971).

forwarded to the F.B.I.[2] The notation on the record as forwarded, read: "Released—Unable to connect with any felony or misdemeanor at this time."[3] Menard, unfortunately, had been found in the wrong place at the wrong time.

Menard, after discovering that his arrest record had been sent to the F.B.I., made several requests for its expungement. His family found that each respective agency, the Los Angeles Police, the California Department of Justice, the Federal Bureau of Investigation, was powerless to act. Aware that the F.B.I., as a central data collecting agency and a powerful source of information, would make his record available upon request to federal and state agencies, Menard continued to press for its removal.

As a result of this pressure, the F.B.I. reviewed his file and agreed to amend the record to show under "Disposition or Sentence," that his arrest was deemed a detention only. Thus it read, "in accordance with 849(b)(1)—not deemed an arrest but a detention only."[4] Under authority of CALIFORNIA PENAL CODE 849(b)(1)(West Supp. 1970) any officer may release from custody a person arrested without a warrant when not connected with any crime and thereafter, the arrest "shall not be deemed an arrest but a detention only."[5] Once the F.B.I. had amended the file it refused to further act in the matter to remove what was now asserted by Menard to be a non-criminal file from the Bureau's Criminal Identification Section. Unable to further pursue his remedy through administrative procedures, still unsatisfied, Menard brought this action.

The action was brought in federal district court, and tried before Judge Gesell.[6] The issue of expungement was considered but the lower court refused to grant the cancellation outright. Though the record developed at the trial showed the arrest to have been based on probable cause and not itself invalid, the issue of valid arrest or invalid arrest was not decisive. Rather, the lower court, based on findings that neither the Federal Bureau nor the federal district court of the District of Columbia were the proper agencies to decide the issue of whether the record should be retained, granted only limited relief. Thus, the district court issued an order running against the F.B.I. which prohibited the dissemination of Menard's record outside of law enforcement circles.[7] The one exception was for the purposes of federal agencies with whom Menard might in the future seek employment.

2. 498 F.2d at 1019.
3. *Id.*
4. *Id.* at 1020.
5. *Id.* at n.5.
6. 328 F. Supp. 718 (D.D.C. 1971).
7. 328 F. Supp. at 728.

The limitation on the use of his file might have sufficed, but for the passage by Congress of Public Law 92-184,[8] in December 1971, which overruled part of the district court order by providing for the use of the F.B.I. criminal records by a number of previously unauthorized agencies, both state and federal.[9]

On appeal, Menard pressed for complete expungement of his amended record from the criminal files of the Federal Bureau. Operation of the F.B.I. system of collecting data on arrests and its system of dissemination of these records had received a great deal of attention. The system was described at one point as being "out of effective control."[10] Its role as a collecting and distributing agency of confidential information was described as having the "capacity for both good and harm."[11]

The detriment to the individual is easily recognizable anytime such records contain inaccurate or misleading information. Nor is it remote that such records may fall into the wrong hands. As put succinctly by perhaps the utmost authority, "in the hands of an inexpereinced person who is unfamiliar with its purpose, an F.B.I report unquestionably can be a dangerous instrument of injustice."[12]

The theories on which Menard based his claim for relief included arguments that retention of his record by the F.B.I. violated the fourth and fifth amendments of the Constitution, and "subjects him to harsh penalties without being accorded due process of the laws."[13] But, though the court dealt extensively with injuries flowing from the illegal retention of arrest records, more emphasis was placed on the identification network itself. And the decision to grant expungement of Menard's record was based on statutory grounds. Thus the constitutional issues raised by the record in Menard were sidestepped when the end result was obtainable from a strict construction of the statute under which the F.B.I. was authorized to maintain its identification system.

The authority under which criminal files were compiled simply precludes keeping on file "as a record of arrest an encounter with police that has been established not to constitute an arrest."[14] Thus, the Bureau was not precluded from maintaining Menard's file in its neutral identification records, but his record must be relieved of its stigma as a criminal file. And though turning as it did on interpretation of the

8. Act of Dec. 15, 1971, Pub. L. No. 92-184, § 902,85 Stat. 642.
9. 498 F.2d at 1019 n.1.
10. 328 F. Supp. at 727.
11. 498 F.2d at 1027 n.29.
12. Hoover, *The Confidential Nature of F.B.I. Reports*, 8 SYRACUSE L. REV. 2 (1956) (hereinafter cited as Hoover).
13. 498 F.2d at 1023.
14. *Id.* at 1030 (footnote omitted).

key phrase "criminal," the decision nonetheless raised serious questions regarding the present function of the F.B.I.

As established in the record, the F.B.I. has grown immensely since its origin, but according to many, it has done so without a concurrent growth in responsibilities. The authorization to maintain, collect and disseminate from central identification files is contained in 28 U.S.C. § 534.[15] As well as granting the authority to receive from and exchange with state sources, the grant also contains provision for cancellation of exchange privileges with these same sources for unauthorized use of the records. The system itself has developed through use and practice since the original grant in 1924. Its long-time director, J. Edgar Hoover, noted in an early article, that while the Bureau's "jurisdiction has progressively increased, its role as an impartial investigative agency has remained unchanged."[16] Impartiality may be one of the touchstones of the problem confronted by Menard. Another, suggested by the title of the above article, is the confidentiality of the F.B.I. files. The records kept by the Bureau currently number over 200 million cards, of which 19 million are in a separate criminal identification category.[17] Contributing agencies number approximately 8,000. The Bureau in 1970, received for processing about "29,000 fingerprint cards daily, of which 13,000 were arrest submissions. . . ."[18] The Bureau has no way of checking these submissions for accuracy, nor does it make any attempt to do so, only requiring that the form card be properly completed to be included in the data bank. It is not part of the system to double check accuracy or to request follow up information from the local submitting agencies. The records do not reflect any certain degree of accuracy and may be totally erroneous, yet if properly submitted by the contributing agencies they are filed according to normal procedures. There is inherent in this procedure no certain method of determining what percentage of information retained in the data banks is irrelevant, inaccurate or incomplete.

Once filed, only the contributing agency may request a file's return from the data bank. It is the Bureau's policy to grant a request for return without question. This is done routinely, but very few requests —over 6,000 in 1970—are made.[19] It is also the Bureau's policy to

15. 28 U.S.C. 534 (1970). General authority is contained in 534(a), (1) and (2),
(a) The Attorney General shall—
(1) acquire, collect, classify and preserve identification, criminal identification . . .; and
(2) exchange these records with and for the use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions.

16. Hoover at 3.

17. 498 F.2d at 1021.

18. *Id.* at 1022.

19. *Id.*

retain the record even where the record itself shows the arrestee to have been "released without being charged."[20] This practice is based on the policy that only the contributing agency has the authority to request removal of a record from the criminal files. The Bureau makes no independent decisions regarding individual records whatsover. The exception involves records which have been generated by the F.B.I. itself.

The record illustrates the basic flaws in such a system of mindless retention and indiscriminate collection. Nothing is discarded and everything is retained. An individual's own inquiry about his record is simply referred to the agency which submitted the report originally.[21] Thus, the result is the bureaucratic standoff which Menard confronted.

Jurisdiction, however, over F.B.I. records and their expungement, does not ordinarily rest with the federal district court in the District of Columbia. Jurisdiction, as emphasized by the entire record, is thought properly to rest in local courts, *i.e.*, in the jurisdiction in which an arrest was made. Menard's cause of action was cognizable by the district court on the basis of the role of the Bureau, in energizing the record keeping system. Thus where Menard "attacks abuses of the Identification Division in its unique role in the information network, suit against the Bureau is proper."[22]

The decision attacks what is termed the very "passive role" the F.B.I. has sought to maintain regarding the accuracy of its records. Thus, once Menard had shown that his record was no longer one of arrest, but rather a detention, and not criminal in nature, the Bureau could not ignore that claim. Its function to maintain its files "carries with it as a corrollary the responsibility to discharge this function reliably and responsibly and without unnecessary harm to individuals whose rights have been invaded."[23] The F.B.I.'s function is to maintain "reliably informative" records. When it becomes obvious that an individual's record on file is not reliable, then the Bureau has a responsibility to correct such a record.

Menard is illustrative of the conflict in decisions in this field. Problems with the form of relief sought, with jurisdiction, and with the theories on which to base a cause of action are only a few inherent in this area. Differing results from similar theories, make a cause of action for expungement of a record an uncertain one.

This uncertainty in the law of expungement has evolved from conflicting policy considerations. These are represented first by the as-

20. *Id.* at 1020.
21. *Id.* at 1022.
22. *Id.* at 1026.
23. *Id.*

serted and rational need of law enforcement personnel to record and maintain files of fingerprints as well as photographic evidence for identification in criminal matters. Opposed are the rights of the individual, his right to privacy and to be free from official interference.

In general, public policy favors retention of records on two grounds: (1) identification of an accused as one who committed the crime with which he is charged; and (2) the identification of an accused as the same person who has been charged with or convicted of other crimes.[24] Additionally these records may serve a useful purpose in the apprehension of escaped prisoners.[25] These purposes deal solely with law enforcement functions and their rationalization needs little explanation or enlargement. These policies may assume at the least, a lawful arrest, and at the most a conviction of the defendant.

Problems arise when an individual is never charged with any crime, or is arrested by mistake, or acquitted after trial, etc. His records may serve no useful law enforcement function as criminal identification. Yet it has been the practice and belief generally that an "innocent person arrested through mistake has no right to have cancelled a record of the arrest."[26] This is sometimes justified by the view that the record actually reflects a "fact." The practice rests primarily on the theory which holds that a court of equity has no power to correct or cancel a record which is correct and lawfully made. The policy reflects a determination that a fact exists, *i.e.*, an arrest, and does not reflect a consideration of the merits of a particular case.

Early decisions in this field refused to grant expungement on the basis of this policy and concurrently on the right of law enforcement officials to take and retain fingerprint identification of individuals held on criminal charges.[27] According to 76 C.J.S. *Record* § 29, there was no right to cancellation of a public record "made in compliance with a Statute."[28] Often in these cases, courts were able to rely on ultimate relief to an innocent person through further statutory relief. In *United States v. Kelly*,[29] the court relied on a federal statute which required an identification record to be made on an accused, but also provided that the record was not to be made public before trial; and that further provided for the destruction or return of the record to the

24. Anno. 83 A.L.R. 127 (1933).
25. 6 C.J.S. *Arrest* § 17c(2) (1937).
26. 66 Am. Jur. 2d *Records and Recording Laws* § 9 (1973).
27. *See, e.g.*, Coppock v. Reed, 189 Iowa 581, 178 N.W. 382 (1920); Mollineux v. Collins, 177 N.Y. 395, 69 N.E. 727 (1904); United States v. Kelly, 55 F.2d 67 (2nd Cir. 1932); *also*, Down v. Swann, 111 Md. 53, 73 Atl. 653 (1909).
28. 76 C.J.S. *Records* § 29 (1952).
29. 55 F.2d 67 (2nd Cir. 1932).

individual if he was discharged without conviction. Innocent persons were thus protected from either publication or misuse of their record.

In contrast, and as a corrollary to the right to make and retain a criminal identification record, is the right of an individual never convicted of any crime to the cancellation of his police record, recognized in other jurisdictions.[30] In *Itzkovitch v. Whitaker*,[31] which considered police use of the defendant's photograph in a "rogue's gallery," an injunction was held proper to prevent the photograph from being used in the future by the police department.

Much of the controversy can be clarified by distinguishing between the mere retention of an arrest record and the later use and dissemination of such a record. Further use of an innocent citizens record "by publication and circulation" may have constituted a libel at one time.[32]

Justification for removal of a record rests on their nature and uses for other than law enforcement purposes. In remanding *Menard* originally, Judge Bazelon enumerated some common disabilities which flow from knowledge of an arrest.[33]

Far reaching injuries, perhaps totally unjustified, concern economic losses, opportunity losses and social losses. Thus, opportunities for schooling, employment, or professional licenses may be restricted or nonexistent as a consequence of the mere fact of an arrest, even if followed by acquittal of complete exoneration of the charges involved.[34]

As to further investigation by law enforcement officials, an arrest record may mean that an individual may be the first to be questioned in any subsequent investigation,and perhaps the last to be absolved of suspicion. Police may use the information to support decisions on later arrests, on

> whether to exercise their discretion to bring formal charges against an individual already arrested. Arrest records have been used in deciding whether to allow a defendant to present his story without impeachment by prior convictions, and as a basis for denying release prior to trial or appeal; or they may be considered by a judge in determining the sentence to be given a convicted offender.[35]

It is not known how often this information receives circulation out-

30. *See*, Itzkovitch v. Whitaker, 117 La. 708, 42 So. 228 (1906); Schulman v. Whitaker, 117 La. 704, 42 So. 227 (1906).

31. 117 La. 708, 42 So. 228 (1906).

32. 6 C.J.S. *Arrest* § 17c(2) (1937).

33. Menard v. Mitchell, 430 F.2d 486, 490-492 (D.C. Cir. 1970), *remanded* 328 F. Supp. 718 (D.D.C. 1971) (limited relief granted), *rev'd sub nom.*, Menard v. Saxbe, 498 F.2d 1017 (D.C. Cir. 1974) (expungement ordered).

34. *Id.* at 490 (footnote omitted).

35. *Id.* at 491 (footnotes omitted).

side of law enforcement areas, but it is recognized that it occurs.[36] The procedures followed by the F.B.I. do not involve systematic follow-up on possible unauthorized use of information received from them. The Bureau itself admits to little supervision over "contributing agency uses."[37] Complaints, received by the F.B.I. regarding such misuse, receive little in the way of attention or investigation unless the Bureau receives "a direct complaint . . . of which there are about four or five a year . . . ."[38]

When a complaint is recognizable in law, an unconscionable use is neither condoned nor tolerated. A record of arrest alone may not be the basis for discrimination in employment.[39] It is said that the mere record of an arrest, without conviction, has no probative force of its own. For, "under our system of criminal justice, only a conviction carries legal significance as to a person's involvement in criminal behavior."[40] Yet an individual is required in a number of instances to give information regarding an arrest, such as appliants for admission to the Bar in the State of North Carolina. In a number of areas individuals are required to be fingerprinted as a condition of licensing or employment.[41]

The challenge to retention of arrest records and to records of convictions has been the subject of no little effort in recent years and such challenges have met with some success. Equitable relief has been deemed proper in a number of circumstances. Illustrative are cases which have dealt with arrests made without probable cause, arrests made incident to systematic police harrassment, and arrests made during civil disorders. Unusual circumstances, as indicated above, have been the common denominator in the cases in which the remedy of expungement has most often been granted.

It has been thought by some that only an illegal arrest could be subject to the remedy of expungement.[42] In *Hughes v. Rizzo*,[43] the petitioners brought suit to expunge all records of their arrest from any local law enforcement agencies and return of all files from any receiving agencies. On the basis of finding that the arrests were without prob-

36. 498 F.2d at 1024.

37. *Id.* at 1026.

38. *Id.* n.28.

39. Gregory v. Litton, 316 F. Supp. 401 (C.D. Cal. 1970); *cited in* Menard v. Saxbe, 328 F. Supp. at 724.

40. 328 F. Supp. at 724.

41. *See*, 328 F. Supp. at 728. Every applicant for a license to practice medicine in Nevada; every applicant for admission to the North Carolina Bar; all real estate brokers in the State of Idaho.

42. 328 F. Supp. at 724. *See*, Hughes v. Rizzo, 282 F. Supp. 881 (E.D. Penn. 1968); United States v. Rosen, 343 F. Supp. 804 (S.D.N.Y. 1972); United States v. Dooley, 364 F. Supp. 75 (D.D.C. 1973).

43. 282 F. Supp. 881 (E.D. Penn. 1968).

able cause and solely for the purposes of harassment of the petitioners, hippies, the order was granted. Police misconduct formed a major part of the decision. Petitioners' arrests led to no charges, and police questioning admittedly was unconcerned with any alleged criminal activities.

In cases such as *Hughes* and *Sullivan v. Murphy*,[44] police procedures were relevant and decisive. *Sullivan* involved thousands of arrests during the 1971 May Day demonstrations against the Vietnam War, in the District of Columbia. The petitioners, brought the action for expungement of their records in the form of a class action.

Sullivan focuses upon many of the problems that both parties must have dealt with. That is, plaintiffs in the suit were able to show that a great proportion of the arrests made during the demonstrations were made indiscriminately and without probable cause. The claim for relief was predicated on the showing that the arrests were unlawful and in violation of federal constitutional rights. On the other hand, police officials attempted to justify their procedures during the demonstration on the basis of the emergency situation. Normal procedures had been followed initially, and proper field arrest forms were completed in many situations.

However, formal arrest and booking procedures did actually break down in the field, in part from necessity and in part due to mistaken directives. Many of those arrested were subjected to only dragnet arrest procedures, or mass arrests with little or no information concerning criminal conduct known to police officials. Yet most arrestees were subjected to fingerprinting and an arrest file. When later determining whether to prosecute for disorderly conduct, the most common offense for which there had been arrests, the officials were simply unable to identify the arrested person with the officer who had initiated the arrest, with witnesses able to testify or with any criminal activity whatsoever. Many of the cases were dismissed, many resulted in acquittals, and in a great number of instances charges were simply never filed.

As a result, thousands of persons were thus subjected to criminal identification records, without a single charge having been filed against them. Granted that both the innocent and the guilty had been swept into the criminal justice system, the court in *Sullivan* took the position that the burden was therefore shifted to law enforcement officials to justify inclusion of the members of the class into the criminal identification files by connection with criminal conduct on their part.[45]

On the basis of the circumstances of the arrest, the court found that

44. 478 F.2d 938 (1973).
45. *Id.* at 970.

"federal courts have not only jurisdiction to hear and determine claims of deprivation and threatened deprivation of rights guaranteed by the Fourth and Fifth Amendments but also judicial authority to use their remedial mechanisms to redress or obviate such constitutional injuries."[46] Accordingly, expungement was ordered in those cases where no probable cause could be shown to justify the arrest, as where officials were unable to even produce an arrest form from which a determination as to the legality of the arrest could be made. Thus, *Sullivan* was compelled to follow the traditional approach in that relief through expungement of an arrest record was "an appropriate remedy in the wake of police action in violation of constitutional rights."[47]

Other examples involving infringement of constitutional rights are found in situations where it is determined that "local law" has been "invoked solely for the purpose of harrassment."[48] Full relief has included not only expungement of the record of arrest but convictions as well.[49] In *United States v. McLeod*,[50] a case involving alleged interference in voter registration drives and police harassment, the arrests and prosecutions were found illegal and in violation of the Civil Rights Act of 1957.[51] The remedy of expungement was felt best suited to "see that as far as possible the persons who were arrested and prosecuted in violation of section 1971(b) are placed in the position in which they would have stood had the county not acted unlawfully."[52]

The same results have been achieved where an attack was made upon the constitutionality of a statute under which defendants were harassed and prosecuted by local police. In *Wheeler v. Goodman*,[53] a North Carolina statute was found unconstitutional as too vague and overbroad, punishing "status" rather than criminal behavior. The defendants were "hippies" and subjected to unlawful arrest; at the very least the police were unable to discover any evidence of criminal conduct.[54] Expungement of their arrest records was ordered on the theory that since they had committed no crime, their records could serve no useful purpose, and were of no value in future criminal investigations. And though the court in *Wheeler* recognized as the general rule "that an equity court should not order expunction unless extreme circumstances

46. *Id.* at 965.
47. *Id.* at 968.
48. United States v. McLeod, 385 F.2d 734, 746 (5th Cir. 1967). *Also see*, Wheeler v. Goodman, 306 F. Supp. 58 (W.D.N.C. 1969).
49. *See*, cases cited note 48 *supra*. *See also*, Kowall v. United States, 53 F.R.D. 211 (W.D. Mich. 1971).
50. 385 F.2d 734 (5th Cir. 1967).
51. 42 U.S.C. § 1971(b) (1957).
52. United States v. McLeod, 385 F.2d at 749.
53. 306 F. Supp. 58 (W.D.N.C. 1969).
54. *Id.* at 60.

exist,"[55] the underying facts as obvious from the record, justified the equitable remedy.

Jurisdiction over expungement of a record has been held proper on the basis of a theory of ancillary jurisdiction, in the District of Columbia. The question of jurisdiction arose before the court sitting in criminal session in *Morrow v. District of Columbia.*[56] In a decision limited in scope to the District of Columbia, J. Skelly Wright, Circuit Judge upheld broad use of "ancillary equitable jurisdiction" by the lower court. In upholding the order to expunge a record, the court expressed broad discretionary powers,

> the major purpose of ancillary jurisdiction . . . is to insure that a judgment of a court is given full effect; ancillary orders will issue when a party's actions, whether directly or indirectly threaten to compromise the effect of the court's judgment.[57]

The general view, however, probably remains unchanged, in that without unusual or extreme circumstances, expungement is not properly granted.[58] The remedy may not at this time extend to every arrest that does not lead to conviction; but it is certain that courts have the inherent power to grant full relief when equity requires that it be given. Thus in a recent decision, the court could say, "that any challenge to the inherent power of a federal court to enter an order expunging arrest records is foreclosed by prior decision."[59]

It is difficult to place Menard in perspective, in light of the traditional theories on which expungements have been granted. Menard could not show basic flaws in the initiation of his file, *i.e.*, no infringement of his fourth and fifth amendment rights. Nor does the relief granted in his case rest on the generally accepted theories for which expungements have been ordered. A look at the limitations of the decision may help to clarify some of these inconsistencies.

It should be noted that the decision considered only the unique role played by the F.B.I. within the context of screening and therefore maintaining reasonably accurate files. Thus its duty to correct or cancel that which is brought to its attention. Though the duty is not absolute and liability does not flow from maintaining incorrect or inaccurate data, per se, their responsibility regarding the screening of information received is simply not one which the F.B.I. can pass off or ignore. But only when made aware of inaccuracies or when put on

55. *Id.* at 65.
56. 417 F.2d 728 (1969).
57. *Id.* at 740.
58. *See*, cases cited note 42 *supra.*
59. Kowall v. United States, 53 F.R.D. at 213.

notice of possible inaccuracies does the Bureau have the duty to make independent inquiry.

First, Menard's attack was not directed at the making of arrest records, but rather on their wholesale distribution. What was initially a local police matter, and which proved to be an unfortunate incident of no consequence, was to be broadcast on a national scale.

Secondly, once aware of the possible consequences of widespread dissemination of his data sheet, the problem becamse one of remedies. If, within the accepted pattern, he could not show that the underlying causes of his arrest were in violation of constitutional rights, he was without a remedy altogether.

Two developments proved decisive to his success. The first obviously was the California decision to regard his arrest as a detention with noncriminal implications. The second was the failure on the part of both the F.B.I. and significantly, the California authorities to make allowances for evaluation of a file once it has been initiated.

The emphasis then became the reponsibilities of the F.B.I. to act to expunge a record from its criminal files when apprised that the record contains noncriminal information. The practice of the agency to claim that it is powerless to act without a formal request for return of a record, under the circumstances, is specifically disapproved.[60] Justification for the disapproval came from a determination that though "the Congressional program contemplates a major role for local authorities, it does not contemplate Bureau abdication to the local authorities."[61]

CONCLUSION

Future actions for expungement of an arrest record may receive more generous treatment. Though the Court of Appeals based its decision on statutory grounds, rather than on a weighing of the merits of retaining records of dubious value, the emphasis unmistakably moves in this direction. Though it is not impossible to forecast a movement in the direction contemplated in *Menard* towards direct confrontation, one warning is clear. Jurisdiction is a primary concern; thus expungement proceedings should be initiated where the arrest took place. This procedure alone promises the fullest relief possible under all of the circumstances.

MARY C. TOLTON

60. 498 F.2d at 1028.
61. *Id.*