

Even Innocent Fingerprints Stay With FBI

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Anyone arrested in the United States has a permanent fingerprint file in the FBI's Identification Section unless the arresting agency specifically requests that it be expunged.

Otherwise, the file remains even if the person is found innocent or his case is dropped.

This information and other details of the FBI's massive network of identification files are disclosed in federal court records here.

In a sworn disposition by Special Agent Beverly E. Ponder, chief of the technical section in the FBI's Identification Division, the bureau said it receives an average of nearly 29,000 sets of fingerprints daily, almost half connected with arrests.

The only way to remove the fingerprints from the FBI files, Ponder said, is through a formal request from the law enforcement agency which submitted them.

Ponder's deposition, filed in the three-year-old lawsuit of a California man seeking to have his FBI record erased, also confirmed that the fingerprints are made available to banks, railroad police and, in some cases, insurance companies.

In a supplementary response to questions by attorneys for the California man, the FBI further disclosed that:

- It has "no provision" for keeping the fingerprints of juveniles in a confidential file separate from those of adults.

- The bureau makes its fingerprint files available "to any duly constituted law enforcement agency or agency of the government, either local, state or Federal," without regard to whether the disposition of an arrest has been noted.

- Over the last 15 years, only six of the thousands of police departments and sheriff's offices which regularly receive information from the FBI have been disciplined for misusing it. Of the six, only two are currently restricted.

Further disclosures may be made about the FBI fingerprint files—soon to be computerized for more efficient dissemination—when the case of Dale B. Menard comes to trial before U. S. District Court Judge Gerhard A. Gesell later this year.

Menard, now a member of

the Marine Corps, was arrested by the Los Angeles police on August 10, 1965, and charged with burglary.

After being held for two days, he was released and a notation was placed on his record that he police were "unable to connect (him) with any felony or misdemeanor at this time."

Then a student, Menard sought unsuccessfully to have his arrest record expunged from the files of the Los Angeles police and the FBI.

After he filed suit here in 1968, the record was revised to indicate "not deemed an arrest but detention only." Nonetheless, his fingerprints remained with the FBI.

The American Civil Liberties Union has supported his legal moves.

District Judge Aubrey E. Robinson Jr. originally granted a judgment in favor of the FBI, but he was reversed by the U.S. Court of Appeals last June.

Chief Judge David L. Bazelon of the appeals court wrote at the time that "if the person arrested has been exonerated it is difficult to see why he should be subject to continuing punishment by adverse use of his 'criminal' record."

Attached to the FBI answers filed in court was a memorandum to "all fingerprint contributors" from Director J. Edgar Hoover dated Jan. 22, 1971.

In it he complained of "unnecessary correspondence being sent direct to the FBI Identification Division concerning the expungement of arrest data," much of it from attorneys and court officials.

Hoover stressed that "the request for the return of fingerprints not only must emanate from the original contributor but also must indicate sufficient identifying data such as FBI number or registry number."

As an alternative, he suggested that "if charges are dismissed or an individual is found not guilty, we can retain the arrest fingerprint card you submit and merely post final action as disposition data. This procedure, of course, will result in the arrest data being quoted to anyone entitled to receive it."