

Post 10/16/71 Arrest Records and the FBI

In a letter published today, the Director of the FBI reproves us rather harshly for a critical reference to his bureau in a recent editorial about pistol permits in the District of Columbia. We think that the director doth protest too much. But since the issue is certainly arguable, it would be best, perhaps, to present the relevant considerations and let interested readers decide it for themselves.

U.S. District Court Judge Gerhard A. Gesell decided a case last spring involving a 19-year-old student arrested in California on suspicion of burglary but never actually charged with the offense. The student sought to have the arrest record expunged from the files of the Los Angeles police and the FBI. Judge Gesell denied the prayer for expungement. But he ruled at the same time that the student's "arrest record may not be revealed to prospective employers except in the case of any agency of the federal government if he seeks employment with such agency. His arrest record may be disseminated to law enforcement agencies for law enforcement purposes."

Judge Gesell's opinion dealt thoughtfully and in detail with the invasion of privacy and the possible injustices that flow from widespread and indiscriminate distribution of unchecked information about arrests sent to the FBI by local police departments all over the country—often involving arrests of persons subsequently released without charge or found innocent after trial. He observed that the FBI had no resources for adequate control or verification of these data. We applauded his decision editorially at the time. And it is our understanding that the FBI similarly welcomed the decision

relieving it of an obligation to give out information which might be used very mischievously. The FBI's prompt compliance with the judge's ruling seemed to us highly salutary.

It is quite true, as Mr. Hoover notes, that the Gesell opinion said "it is abundantly clear that Congress never intended to, or in fact did, authorize dissemination of arrest records to any state or local agency for purposes of employment or licensing checks." The opinion also says, however, that "there is a compelling necessity to furnish arrest data to other law enforcing agencies for strictly law enforcement purposes. Arrest records . . . play a significant role in the prosecutor's exercise of discretion, they greatly aid in setting bond, determining sentences and facilitating the work of penal and other institutions of correction. When arrest records are used for such purposes, they are subject to due process limitations within the criminal process, and misuse may be checked by judicial action."

In our opinion, the use of arrest data to guide the issuance of pistol permits falls precisely in this category. The Metropolitan Police Department is unmistakably a law enforcement agency; and its purpose in regulating the possession of pistols is strictly a law enforcement purpose. In this respect it is substantially different from the use of arrest records to guide the issuance of a license, for instance, to operate a beauty parlor or run a restaurant.

Maybe it was ungenerous on our part to accuse the FBI of sulking. But it can hardly be said that the agency went out of its way to cooperate with the local police.