

# Court Limits F.B.I. on Its Criminal Files

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WASHINGTON, April 23—The Federal Bureau of Investigation must expunge a person's arrest record from its criminal files if the arrested person was exonerated and released without charges, a Federal court of appeals ruled here today.

In a 27-page opinion, a three-judge panel of the Court of Appeals for the District of Columbia said the F.B.I. had "no authority to retain" the record of a California man, Dale B. Menard, who was arrested on suspicion of burglary but never charged with a crime.

Mr. Menard was a 19-year-old college student when he was arrested in Los Angeles in August, 1965. He was booked, fingerprinted and held in police custody for more than two days. The appellate court said no information was found "that tied Menard to any crime." A fingerprint card was subsequently forwarded to the F.B.I. that read, "Released — unable to connect with any felony or misdemeanor at this time."

#### Distribution Limited

In June, 1971, Judge Gerhard A. Gesell of the United States District Court here did not order the removal of Mr. Menard's arrest record from the F.B.I. files, but he did limit the distribution of such records.

Today, the court said that the "F.B.I. has the responsibility to expunge the incident from its criminal identification files." Records must be removed, the court said, "when the F.B.I. is apprised that a person has been exonerated after initial arrest,

released without charge and a change of record [is made] to 'detention only,'" as in the Menard case.

The court said it was not preventing the bureau from keeping fingerprints "in its neutral noncriminal files, provided there is no reference of any kind to indicate that the prints originated in a source for criminal files."

While the F.B.I. accepts information for its files from local police agencies, the court said the bureau "cannot take the position that it is a mere passive recipient of records received from others." By maintaining and disseminating its files, the F.B.I. acts as a "step-up transformer that puts into the system a capacity for both good and harm," the court said.

The F.B.I. will remove an incomplete arrest record at the request of a local law enforcement agency, but not at the request of the person arrested. If the local authorities do not

act, a "bureaucratic stand-off" results, the court said.

The F.B.I. now has 71 million fingerprint cards on file that pertain to an estimated 21 million persons. About 30 per cent of these files — as in the Menard case — have no disposition of one or more arrests, according to a spokesman for the bureau.

Staff members of the Senate Judiciary Committee disputed the 30 per cent estimate today, and said "no one really knows" what percentage of the F.B.I.'s criminal records had no listing of a final outcome. Records with no dispositions could be more than 50 per cent, the staff aides said.

Mr. Menard was supported by the American Civil Liberties Union in his suit.

A spokesman for the Justice Department said that no decision had been made on appealing today's ruling. "We want to read it very carefully and that usually takes some time," the spokesman said.