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UNITED STATES CODE ANNOTATED  
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE  
PART II--DEPARTMENT OF JUSTICE  
CHAPTER 33--FEDERAL BUREAU OF INVESTIGATION

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§ 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

(a) The Attorney General shall--

(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records;

(2) acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;

(3) acquire, collect, classify, and preserve any information which would assist in the location of any missing person (including an unemancipated person as defined by the laws of the place of residence of such person) and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person (and the Attorney General may acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin); and

(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, including the United States Sentencing Commission, the States, cities, and penal and other institutions.

(b) The exchange of records and information authorized by subsection (a)(4) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) The Attorney General may appoint officials to perform the functions authorized by this section.

(d) For purposes of this section, the term "other institutions" includes--

(1) railroad police departments which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers; and

(2) police departments of private colleges or universities which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements

established by law or ordinance for law enforcement officers.

**(e)(1)** Information from national crime information databases consisting of identification records, criminal history records, protection orders, and wanted person records may be disseminated to civil or criminal courts for use in domestic violence or stalking cases. Nothing in this subsection shall be construed to permit access to such records for any other purpose.

**(2)** Federal and State criminal justice agencies authorized to enter information into criminal information databases may include--

**(A)** arrests, convictions, and arrest warrants for stalking or domestic violence or for violations of protection orders for the protection of parties from stalking or domestic violence; and

**(B)** protection orders for the protection of persons from stalking or domestic violence, provided such orders are subject to periodic verification.

**(3)** As used in this subsection--

**(A)** the term "national crime information databases" means the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index; and

**(B)** the term "protection order" includes an injunction or any other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil or criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

CREDIT(S)

1993 Main Volume

(Added Pub.L. 89-554, § 4(c), Sept. 6, 1966, 80 Stat. 616, and amended Pub.L. 97-292, §§ 2, 3(a), Oct. 12, 1982, 96 Stat. 1259; Pub.L. 100-690, Title VII, § 7333, Nov. 18, 1988, 102 Stat. 4469.)

2002 Electronic Update

(As amended Pub.L. 103-322, Title IV, § 40601(a), Sept. 13, 1994, 108 Stat. 1950; Pub.L. 107-273, Div. A, Title II, § 204(c), Div. B, Title IV, § 4003(b)(4), Div. C, Title I, § 11004, Nov. 2, 2002, 116 Stat. 1776, 1811, 1816.)

<General Materials (GM) - References, Annotations, or Tables>

**HISTORICAL AND STATUTORY NOTES**

Revision Notes and Legislative Reports

1966 Acts

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Derivation:

United States Code Revised Statutes  
and Statutes at Large  
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5 U.S.C. 300 (as Aug. 31, 1964,  
applicable to Pub.L. 88-527,  
acquisition etc. of § 201 (1st 105  
identification and words of 1st  
other records) par. under "Federal Bureau  
of Investigation", as applicable to acquisition  
etc. of identification and other records), 78  
Stat. 717.  
5 U.S.C. 340 June 11, 1930, ch. 455, 46  
Stat. 554.  
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The sections are combined and reorganized for clarity. Former section 300 of title 5 was from the Department of Justice Appropriation Act, 1965. Similar provisions were contained in each appropriation Act for the Department of Justice running back to 1921, which Acts are identified in a note under former section 300 of Title 5, U.S.C. 1964 ed.

In subsection (a), the word "shall" is substituted for "has the duty" as a more direct expression. The function of acquiring, collecting, classifying, etc., referred to in former section 340 of title 5 was transferred to the Attorney General by 1950 Reorg. Plan No. 2, § 1, eff. May 24, 1950, 64 Stat. 1261, which is codified in section 509 of this title. Accordingly, the first 29 words and last 30 words of former section 340 are omitted as unnecessary.

In subsection (c), the authority to appoint officials for the cited purposes is implied.

1982 Acts. House Report No. 97-820 and House Conference Report No. 97- 911, see 1982 U.S. Code Cong. and Adm. News, p. 2552.

1988 Acts. For Related Reports, see 1988 U.S. Code Cong. and Adm. News, p. 5937.

1994 Acts. House Report Nos. 103-324, 103-489, and House Conference Report No. 103-711, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

2002 Acts. House Conference Report No. 107-685 and Statement by President, see 2002 U.S. Code Cong. and Adm. News, p. 1120.

Amendments

2002 Amendments. Subsec. (a)(3). Pub.L. 107-273, § 204(c), inserted "and" following the semicolon at the end.

Pub.L. 107-273, § 4003(b)(4), inserted "and" following the semicolon at the end, but required no change in text due to prior similar amendment by section 204(c) of Pub.L. 107-273.

Subsec. (a)(4). Pub.L. 107-273, § 1104, rewrote par. (4), which formerly read: "exchange such records and information with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions."

1994 Amendments. Subsec. (e). Pub.L. 103-322, § 40601(a), added subsec. (e).

1988 Amendments. Subsec. (d). Pub.L. 100-690 added subsec. (d).

1982 Amendments. Catchline. Pub.L. 97-292, § 3(a), added "and information" following "identification records".

Subsec. (a)(1). Pub.L. 97-292, § 2(a)(1), struck out "and" at the end thereof.

Subsec. (a)(2). Pub.L. 97-292, § 2(a)(3), added par. (2). Former par. (2) was redesignated (4).

Subsec. (a)(3). Pub.L. 97-292, § 2(a)(3), added par. (3).

Subsec. (a)(4). Pub.L. 97-292, § 2(a)(2), (4), redesignated par. (2) as (4) and in par. (4) as so redesignated substituted "exchange such records and information" for "exchange these records".

Subsec. (b). Pub.L. 97-292, § 2(b), substituted "exchange of records and information authorized by subsection (a)(4)" for "exchange of records authorized by subsection (a)(2)".

Criminal Background Checks for Applicants for Employment in Nursing Facilities and Home Health Care Agencies

Pub.L. 105-277, Div. A, § 101(b) [Title I, § 124], Oct. 21, 1998, 112 Stat. 2681-73, provided that:

"**(a)(1)** A nursing facility or home health care agency may submit a request to the Attorney General to conduct a search and exchange of records described in subsection

(b) regarding an applicant for employment if the employment position is involved in direct patient care.

"(2) A nursing facility or home health care agency requesting a search and exchange of records under this section shall submit to the Attorney General through the appropriate State agency or agency designated by the Attorney General a copy of an employment applicant's fingerprints, a statement signed by the applicant authorizing the nursing facility or home health care agency to request the search and exchange of records, and any other identification information not more than 7 days (excluding Saturdays, Sundays, and legal public holidays under section 6103(a) of title 5, United States Code) after acquiring the fingerprints, signed statement, and information.

"(b) Pursuant to any submission that complies with the requirements of subsection (a), the Attorney General shall search the records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation for any criminal history records corresponding to the fingerprints or other identification information submitted. The Attorney General shall provide any corresponding information resulting from the search to the appropriate State agency or agency designated by the Attorney General to receive such information.

"(c) Information regarding an applicant for employment in a nursing facility or home health care agency obtained pursuant to this section may be used only by the facility or agency requesting the information and only for the purpose of determining the suitability of the applicant for employment by the facility or agency in a position involved in direct patient care.

"(d) The Attorney General may charge a reasonable fee, not to exceed \$50 per request, to any nursing facility or home health care agency requesting a search and exchange of records pursuant to this section.

"(e) Not later than 2 years after the date of enactment of this Act [Oct. 21, 1998], the Attorney General shall submit a report to Congress on the number of requests for searches and exchanges of records made under this section by nursing facilities and home health care agencies and the disposition of such requests.

"(f) Whoever knowingly uses any information obtained pursuant to this section for a purpose other than as authorized under subsection (c) shall be fined in accordance with title 18, United States Code, imprisoned for not more than 2 years, or both.

"(g) A nursing facility or home health care agency that, in denying employment for an applicant, reasonably relies upon information provided by the Attorney General pursuant to this section shall not be liable in any action brought by the applicant based on the employment determination resulting from the incompleteness or inaccuracy of the information.

"(h) The Attorney General may promulgate such regulations as are necessary to carry out this section, including regulations regarding the security, confidentiality, accuracy, use, destruction, and dissemination of information, audits and recordkeeping, the imposition of fees, and any necessary modifications to the definitions contained in subsection (i).

"(i) In this section:

"(1) The term 'home health care agency' means an agency that provides home health care or personal care services on a visiting basis in a place of residence.

"(2) The term 'nursing facility' means a facility or institution (or a distinct part of an institution) that is primarily engaged in providing to residents of the facility or institution nursing care, including skilled nursing care, and related services for individuals who require medical or nursing care.

"(j) This section shall apply without fiscal year limitation."

#### Compilation of Statistics Relating to Intimidation of Government Employees

Pub.L. 104-132, Title VIII, § 808, Apr. 24, 1996, 110 Stat. 1310, was repealed by Pub.L. 107-273, Div. A, Title III, § 311(a), Nov. 2, 2002, 116 Stat. 1786.

#### Family and Domestic Violence; Data Collection and Reporting

Section 7609 of Pub.L. 100-690 provided that:

"(a) **Family violence reporting.**--Under the authority of section 534 of title 28, United States Code [this section], the Attorney General shall require, and include in uniform crime reports, data that indicate--

"(1) the age of the victim; and

"(2) the relationship of the victim to the offender, for crimes of murder, aggravated assault, simple assault, rape, sexual offenses, and offenses against children.

"(b) **National Crime Survey.**--The Director of the Bureau of Justice Statistics, through the annual National Crime Survey, shall collect and publish data that more accurately measures the extent of domestic violence in America, especially the physical and sexual abuse of children and the elderly.

"(c) **Authorization of appropriations.**--There are authorized to be appropriated in fiscal years 1989, 1990, 1991, and 1992, such sums as are necessary to carry out the purposes of this section."

#### FBI Fees to Process Fingerprint Identification Records and Name Checks

Pub.L. 101-515, Title II, Nov. 5, 1990, 104 Stat. 2112; Pub.L. 104-91, Title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, as amended Pub.L. 104-99, Title II, § 211, Jan. 26, 1996, 110 Stat. 37, provided in part that: "For fiscal year 1991 and hereafter the Director of the Federal Bureau of Investigation may establish and collect fees to process fingerprint identification records and name checks for non-criminal

justice, non-law enforcement employment and licensing purposes and for certain employees of private sector contractors with classified Government contracts, and notwithstanding the provisions of 31 U.S.C. 3302 [section 3302 of Title 31, Money and Finance], credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services, and that the Director of the Federal Bureau of Investigation may establish such fees at a level to include an additional amount to establish a fund to remain available until expended to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs."

[Section 101(a) of Pub.L. 104-91, as amended by section 211 of Pub.L. 104-99, provided in part that section 113 of the General Provisions for the Department of Justice in Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (H.R. 2076) as passed by the House of Representatives on Dec. 6, 1995, was enacted into permanent law. Such section 113 of H.R. 2076 amended Pub.L. 101-515, set out above.]

#### Funds for Exchange of Identification Records

Pub.L. 92-544, Title II, § 201, Oct. 25, 1972, 86 Stat. 1115, provided that: "The funds provided for Salaries and Expenses, Federal Bureau of Investigation, may be used hereafter, in addition to those uses authorized thereunder, for the exchange of identification records with officials or federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing, any such exchange to be made only for the official use of any such official and subject to the same restriction with respect to dissemination as that provided for under the aforementioned appropriation."

#### Hate Crime Statistics

Pub.L. 101-275, Apr. 23, 1990, 104 Stat. 140, as amended Pub.L. 103-322, Title XXXII, § 320926, Sept. 13, 1994, 108 Stat. 2131; Pub.L. 104-155, § 7, July 3, 1996, 110 Stat. 1394, provided:

"That (a) this Act [this note] may be cited as the 'Hate Crime Statistics Act'.

"**(b)(1)** Under the authority of section 534 of title 28, United States Code [this section], the Attorney General shall acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property.

"**(2)** The Attorney General shall establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of this section.

"**(3)** Nothing in this section creates a cause of action or a right to bring an

action, including an action based on discrimination due to sexual orientation. As used in this section, the term 'sexual orientation' means consensual homosexuality or heterosexuality. This subsection does not limit any existing cause of action or right to bring an action, including any action under the Administrative Procedure Act [5 U.S.C.A. §§ 551 et seq., 701 et seq.] or the All Writs Act [28 U.S.C.A. § 1651].

"(4) Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.

"(5) The Attorney General shall publish an annual summary of the data acquired under this section.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section through fiscal year 2002.

"Sec. 2. (a) Congress finds that--

"(1) the American family life is the foundation of American Society,

"(2) Federal policy should encourage the well-being, financial security, and health of the American family,

"(3) schools should not de-emphasize the critical value of American family life.

"(b) Nothing in this Act [this note] shall be construed, nor shall any funds appropriated to carry out the purpose of the Act [this note] be used, to promote or encourage homosexuality."

National Crime Information Center Project 2000

Pub.L. 101-647, Title VI, Subtitle B, Nov. 29, 1990, 104 Stat. 4823, provided that:

"Sec. 611. Short title.

"This section [subtitle] may be cited as the 'National Law Enforcement Cooperation Act of 1990'.

"Sec. 612. Findings.

"The Congress finds that--

"(1) cooperation among Federal, State and local law enforcement agencies is critical to an effective national response to the problems of violent crime and



drug trafficking in the United States;

"(2) the National Crime Information Center, which links more than 16,000 Federal, State and local law enforcement agencies, is the single most important avenue of cooperation among law enforcement agencies;

"(3) major improvements to the National Crime Information Center are needed because the current system is more than twenty years old; carries much greater volumes of enforcement information; and at this time is unable to incorporate technological advances that would significantly improve its performance; and

"(4) the Federal Bureau of Investigation, working with State and local law enforcement agencies and private organizations, has developed a promising plan, 'NCIC 2000', to make the necessary upgrades to the National Crime Information Center that should meet the needs of United States law enforcement agencies into the next century.

**"Sec. 613. Authorization of appropriations.**

"There are authorized to be appropriated the following sums to implement the 'NCIC 2000' project:

"(1) \$17,000,000 for fiscal year 1991;

"(2) \$25,000,000 for fiscal year 1992;

"(3) \$22,000,000 for fiscal year 1993;

"(4) \$9,000,000 for fiscal year 1994; and

"(5) such sums as may be necessary for fiscal year 1995.

**"Sec. 614. Report.**

"By February 1 of each fiscal year for which funds for NCIC 2000 are requested, the Director of the Federal Bureau of Investigation shall submit a report to the Committees on the Judiciary of the Senate and House of Representatives that details the progress that has been made in implementing NCIC 2000 and a complete justification for the funds requested in the following fiscal year for NCIC 2000."

Parimutuel Licensing Simplification.

Pub.L. 100-413, Aug. 22, 1988, 102 Stat. 1101, provided that:

**"Section 1. Short title.**

"This Act [this note] may be cited as the 'Parimutuel Licensing Simplification Act of 1988'.

**"Sec. 2. Submission by association of State regulatory officials.**

**"(a) In general.**--An association of State officials regulating parimutuel wagering, designated for the purpose of this section by the Attorney General, may submit fingerprints to the Attorney General on behalf of any applicant for State license to participate in parimutuel wagering. In response to such a submission, the Attorney General may, to the extent provided by law, exchange, for licensing and employment purposes, identification and criminal history records with the State governmental bodies to which such applicant has applied.

**"(b) Definition.**--As used in this section, the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

**"Sec. 3. Effective date.**

"This Act shall take effect on July 1, 1989."

Rulemaking Relating to Authorization of Access to Federal Criminal Information Databases

Section 40601(b) of Pub.L. 103-322 provided that: "The Attorney General may make rules to carry out the subsection added to section 534 of title 28, United States Code, by subsection (a) [subsec. (e) of this section], after consultation with the officials charged with managing the National Crime Information Center and the Criminal Justice Information Services Advisory Policy Board."

Uniform Federal Crime Reporting Act of 1988

Section 7332 of Pub.L. 100-690 provided that:

**"(a) Short Title.**--This section [this note] may be cited as the 'Uniform Federal Crime Reporting Act of 1988'.

**"(b) Definitions.**--For purposes of this section, the term 'Uniform Crime Reports' means the reports authorized under section 534 of title 28, United States Code [this section], and administered by the Federal Bureau of Investigation which compiles nationwide criminal statistics for use in law enforcement administration, operation, and management and to assess the nature and type of crime in the United States.

**"(c) Establishment of system.**--

**"(1) In general.**--The Attorney General shall acquire, collect, classify, and preserve national data on Federal criminal offenses as part of the Uniform Crime Reports.

**"(2) Reporting by Federal agencies.**--All departments and agencies within the Federal government (including the Department of Defense) which routinely investigate complaints of criminal activity, shall report details about crime

within their respective jurisdiction to the Attorney General in a uniform manner and on a form prescribed by the Attorney General. The reporting required by this subsection shall be limited to the reporting of those crimes comprising the Uniform Crime Reports.

**"(3) Distribution of data.**--The Attorney General shall distribute data received pursuant to paragraph (2), in the form of annual Uniform Crime Reports for the United States, to the President, Members of the Congress, State governments, and officials of localities and penal and other institutions participating in the Uniform Crime Reports program.

**"(d) Role of Federal Bureau of Investigation.**--The Attorney General may designate the Federal Bureau of Investigation as the lead agency for purposes of performing the functions authorized by this section and may appoint or establish such advisory and oversight boards as may be necessary to assist the Bureau in ensuring uniformity, quality, and maximum use of the data collected.

**"(e) Inclusion of offenses involving illegal drugs.**--The Director of the Federal Bureau of Investigation is authorized to classify offenses involving illegal drugs and drug trafficking as a part I crime in the Uniform Crime Reports.

**"(f) Authorization of appropriations.**--There are authorized to be appropriated \$350,000 for fiscal year 1989 and such sums as may be necessary to carry out the provisions of this section after fiscal year 1989.

**"(g) Effective date.**--The provisions of this section shall be effective on January 1, 1989."

#### AMERICAN LAW REPORTS

Accused's right to discovery or inspection of 'rap sheets' or similar police records about prosecution witnesses. 95 ALR3d 832.

Judicial expunction of criminal record of convicted adult. 11 ALR4th 956.

Invasion of privacy by use of plaintiff's name or likeness for nonadvertising purposes. 30 ALR3d 203.

Right of exonerated arrestee to have fingerprints, photographs, or other criminal identification or arrest records expunged or restricted. 46 ALR3d 900.

Validity, construction, and application of statutory provisions relating to public access to police records. 82 ALR3d 19.

Construction and application of § 3(e)(5) of Privacy Act (5 USCA § 552 (e) (5)), providing for proper maintenance of agency records used in determinations. 79 ALR Fed 585.

Expunction of federal arrest records in absence of conviction. 97 ALR Fed 652.


Giving false information to federal police agency or agents as violation of 18 USCA § 1001, making it a criminal offense to make false statements in any matter within the jurisdiction of an agency of the United States. 1 ALR Fed 370.

Voir dire examination of prospective jurors under Rule 24(a) of Federal Rules of Criminal Procedure. 28 ALR Fed 26.

What action may be required of federal agency in suit by individual to have records amended, pursuant to sec. 3 of the Privacy Act of 1974 (5 USCA § 552a(g)(1)(A)). 55 ALR Fed 338.

#### LIBRARY REFERENCES

##### American Digest System

Attorney General 5 et seq.

Key Number System Topic No. 46.

Infants 133.

Key Number System Topic No. 211.

##### Encyclopedias

Attorney General, see C.J.S. § 7.

Infants, see C.J.S. §§ 69 to 85.

Attorney General, 7 Am. Jur. 2d §§ 7, 28.

##### Forms

Attorney General, 3 Am. Jur. Legal Forms 2d § 29:2.

##### Texts and Treatises

Criminal Procedure, 8 Fed. Proc. L Ed § 22:27.

Freedom of Information, 15 Fed. Proc. L Ed § 38:103.

#### NOTES OF DECISIONS

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## 1. Construction

This section governing maintenance of criminal records must be construed in a manner designed to prevent government dissemination of inaccurate criminal information without reasonable precautions to insure accuracy. *Tarleton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

## 2. Construction with other laws--Generally

Statute providing that on conviction of a defendant in federal court for an offense punishable by death or imprisonment in excess of one year a certified record of the conviction is to be made to a repository designated by Attorney General does not limit Attorney General's other statutory power to collect "criminal identification records"; hence, FBI "Rap" sheet entries, including fingerprint records, based on petitioner's arrest were not required to be expunged, notwithstanding that charges were dismissed. *Rowlett v. Fairfax*, W.D.Mo.1978, 446 F.Supp. 186.

### 3. ---- Freedom of Information Act

The FBI's exchange of rap-sheet information is subject to cancellation if dissemination is made outside the receiving departments or related agencies; although perhaps not specific enough to constitute a statutory Exemption under the FOIA Exemption 3, section 552(b)(3) of Title 5, these statutes and regulations, taken as a whole, evidence a congressional intent to protect the privacy of rap-sheet subjects, and a concomitant recognition of the power of compilations to affect personal privacy that outstrips the combined power of the bits of information contained within. U.S. Dept. of Justice v. Reporters Committee For Freedom of Press, U.S. Dist. Col. 1989, 109 S.Ct. 1468, 489 U.S. 749, 103 L.Ed.2d 774.

### 4. Mandatory nature of section

The word "shall" in this section providing that the Attorney General shall acquire and preserve criminal identification records is not merely an authorization but an imperative direction. U. S. v. Rosen, S.D.N.Y. 1972, 343 F.Supp. 804.

### 5. Maintenance of records--Generally

The Federal Bureau of Investigation is more than a mere passive recipient of records received from others; rather, the FBI energizes those records by maintaining a system of criminal files and disseminating the criminal records widely, acting in effect as a step-up transformer that puts into the system a capacity for both good and harm. Tarlton v. Saxbe, C.A.D.C. 1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

### 6. ---- Arrests

In view of possible adverse effect on plaintiff of FBI's maintenance of record of his California arrest and detention, without further prosecution, and of possibility of dissemination of record, mere fact that plaintiff had been arrested did not justify maintenance of his fingerprints and record of his detention in criminal identification files. Menard v. Mitchell, C.A.D.C. 1970, 430 F.2d 486, 139 U.S.App.D.C. 113, on remand 328 F.Supp. 718.

Maintenance and dissemination by federal officials of arrest records where the arrestee has never been convicted of nor pled guilty or nolo contendere to any crime arising from the conduct for which the arrest was made and criminal proceedings arising from such conduct have been terminated does not violate the right of privacy or due process. Hammons v. Scott, N.D. Cal. 1976, 423 F.Supp. 625.

### 7. ---- Criminal records

A record of an arrest and conviction constitutes a "criminal record" within meaning of this section; thus, such records are properly maintained in the F.B.I. criminal files. Crow v. Kelley, C.A.8 (Mo.) 1975, 512 F.2d 752.

Congress intended to differentiate "criminal identification" from other information that FBI is authorized to gather. *Menard v. Saxbe*, C.A.D.C.1974, 498 F.2d 1017, 162 U.S.App.D.C. 284.

#### 8. ---- Detentions

Record of police "detentions" for which the FBI knows that no probable cause for arrest existed may not be included in FBI files; as a corollary thereto, arrest or convictions known by the FBI to be unconstitutional are not properly enshrined in FBI files. *Tarlton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

Once FBI was informed by local police that arrestee's encounter with local police was purely fortuitous, and was not deemed an arrest but only a detention, FBI had no authority to retain arrest record received from local police in its criminal files along with mass of arrest records. *Menard v. Saxbe*, C.A.D.C.1974, 498 F.2d 1017, 162 U.S.App.D.C. 284.

That defendant had been detained for two days by California police and released without judicial hearing, that FBI maintained record of his detention indicating date of arrest, charge, disposition, etc., and that federal officers had no knowledge of any crime committed by plaintiff or incident to his detention did not establish that records were outside fair reading of term "criminal records" in this section authorizing FBI to maintain criminal records. *Menard v. Mitchell*, C.A.D.C.1970, 430 F.2d 486, 139 U.S.App.D.C. 113, on remand 328 F.Supp. 718.

#### 9. ---- Fingerprints

Inclusion of fingerprints in neutral noncriminal files, such as general identification files, provides no reasonable basis for a claim of legal injury. *Menard v. Saxbe*, C.A.D.C.1974, 498 F.2d 1017, 162 U.S.App.D.C. 284.

#### 10. ---- Identification records

Under this section authorizing Attorney General to maintain identification files, identification division of FBI is precluded from maintaining in its criminal files as an arrest record an encounter with police that has been established not to constitute an arrest, but is not prohibited from maintaining neutral identification records. *Menard v. Saxbe*, C.A.D.C.1974, 498 F.2d 1017, 162 U.S.App.D.C. 284.

#### 11. ---- Petty offenses

Nonserious offenses are to be deleted from all Federal Bureau of Investigation criminal records, upon request for dissemination for all individuals over age 35, and on conversion to computerized files for all other individuals. *Tarlton v. Saxbe*, D.C.D.C.1976, 407 F.Supp. 1083.

#### 12. ---- Right of privacy



Where defendants under indictment seeking return of arrest records had not been acquitted and there was no improper dissemination of the records, no improper use of the records, and no injuries sustained by defendants as a result of retention of the records, retention of the records did not violate defendants' right of privacy and United States Attorney would not be required to return records to defendants. U. S. v. Rosen, S.D.N.Y.1972, 343 F.Supp. 804.

### 13. ---- Legal injury

Arrestee, whose fingerprints were routinely forwarded by local police to FBI along with notation that he had been arrested for burglary and two days later "Released-- unable to connect with any felony or misdemeanor at this time." and whose record was retained by the FBI, had not merely suffered personal distress, but had sustained a cognizable legal injury. Menard v. Saxbe, C.A.D.C.1974, 498 F.2d 1017, 162 U.S.App.D.C. 284.

### 14. Accuracy of records--Generally

The FBI is not and cannot be the guarantor of the accuracy of information in its criminal files, but neither can it avoid all responsibility for inaccuracies which injure innocent individuals; accordingly, on application for expungement, task of district court is to consider, by the standards of reasonable care within the FBI's capacity, where between these extremes the proper definition of FBI responsibility may be found. Tarlton v. Saxbe, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

Although Federal Bureau of Investigation does not and cannot guarantee accuracy of information contained in its criminal files, FBI's function of maintaining and disseminating criminal identification records and files carries with it as corollary responsibility to discharge this function reliably and responsibly and without unnecessary harm to individuals whose rights have been invaded. Sadiqq v. Bramlett, N.D.Ga.1983, 559 F.Supp. 362.

### 15. ---- Power of court

Recognition of a duty on part of the Federal Bureau of Investigation to make reasonable efforts to maintain constitutionally accurate criminal files is but an exercise of judicial authority to use remedial mechanisms to redress or obviate constitutional injuries. Tarlton v. Saxbe, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

### 16. ---- Inquiry into accuracy

Cost and administrative difficulty of implementing duty of inquiry in respect to accuracy of information in FBI criminal files must be weighed in ascertaining what if any legally protectable federal interest accrues to subjects of those files. Tarlton v. Saxbe, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

## 17. ---- Reasonable care standard

A reliable and responsible performance of the record-keeping function of the FBI requires such reasonable care as the FBI is able to afford to avoid injury to innocent citizens through dissemination of inaccurate information. *Tarlton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

## 18. ---- Completeness

The Congress cannot be presumed to have authorized the FBI to receive and disseminate without reasonable precautions the sort of incomplete, unchallengeable information from state or local officials which those officials themselves are forbidden to disseminate. *Tarlton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

## 19. ---- Currency of records

In considering a request for expungement of FBI records, the district court may, in its discretion, wish to consider whether persuasive reasons exist which might justify the failure of the FBI to keep its files reasonably current, whether the FBI should upon request of an individual detailing allegations of inaccurate entries in his FBI criminal file forward those allegations to the relevant local law enforcement agency with a request for comment or contradiction, or it may wish to review the present FBI forms for use by local law enforcement officials to determine whether it is reasonable to require the reporting of additional information about the crime which is the subject of the submission. *Tarlton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

Duplicitous listing in petitioner's F.B.I. criminal file of witness tampering charges coupled with lack of a disposition entry for charges which were disposed of 27 months earlier violated even minimal definition of F.B.I. responsibility for maintaining accurate criminal file, entitling petitioner to an appropriate order directing F.B.I. to correct its records. *Shadd v. U. S.*, W.D.Pa.1975, 389 F.Supp. 721, affirmed 535 F.2d 1247, certiorari denied 97 S.Ct. 241, 429 U.S. 887, 50 L.Ed.2d 169.

## 20. ---- Pending challenges

Individual arrest records of Federal Bureau of Investigation need not reflect existence and nature of pending challenges to such records. *Tarlton v. Saxbe*, D.C.D.C.1976, 407 F.Supp. 1083.

## 21. ---- State and local law enforcement information

FBI's duty to maintain reasonably accurate records did not require it to resolve disputes between subject of record and state authorities, as to whether state court order expunging subject's juvenile arrest from his arrest record was actually issued, and, if so, whether order was transmitted to state Bureau of Investigation. *Alexander v. U.S.*, C.A.9 (Cal.) 1986, 787 F.2d 1349.

F.B.I. had no duty to satisfy itself as to underlying validity of petitioner's state arrests and convictions before entering information in relation thereto on its files. *Crow v. Kelley*, C.A.8 (Mo.) 1975, 512 F.2d 752.

The FBI has a duty to take notice of responsible information furnished by local law enforcement agencies and, on application for expungement, district court may inquire whether persuasive reasons exist for not extending this duty to a more general duty of requesting local law enforcement agencies to reveal the factual bases, if any of allegations submitted to the FBI challenging the accuracy of prior information submitted by local agency. *Tarlton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

When FBI is apprised by local police that a person has been exonerated after initial arrest, released without charge and a change of record to "detention only," the FBI has responsibility to expunge the incident from its criminal identification files; the FBI cannot turn aside its responsibility by claiming that it is powerless to act absent a specific and formal request from local police for withdrawal of the record. *Menard v. Saxbe*, C.A.D.C.1974, 498 F.2d 1017, 162 U.S.App.D.C. 284.

Federal Bureau of Investigation has duty to correct inaccuracies in its records concerning criminal conduct of individuals when corrective information is supplied to it by local law enforcement agencies. *McKnight v. Webster*, E.D.Pa.1980, 499 F.Supp. 420.

## 22. ---- Parole and sentencing use

Duty of the FBI to take reasonable measures to produce accurate information for parole or sentencing authorities supports the procedural rights guaranteed at sentencing and parole hearing since such authorities are themselves required to sentence on an accurate and constitutional criminal record. *Tarlton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

## 23. ---- Forwarding of challenges

Federal Bureau of Investigation, at minimum, has duty to forward challenges to its criminal records to appropriate criminal justice agencies and courts for investigation and initiation of correction procedures. *Tarlton v. Saxbe*, D.C.D.C.1976, 407 F.Supp. 1083.

## 24. ---- Presumption of accuracy

Court was required to assume that official records of federal government would correctly reflect final disposition of case in which charges against individual were dismissed. *U. S. v. Seasholtz*, N.D.Okla.1974, 376 F.Supp. 1288.

## 25. ---- Disclaimer

The Federal Bureau of Investigation may not disclaim responsibility for the records system it has created through insertion of a printed warning on the records it disseminates. *Tarlton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

## 26. Expungement of records--Generally

Expungement of an arrest record lies within equitable discretion of court and relief usually is granted only in extreme circumstances and, in determining whether such circumstances exist, courts consider the balancing of the equities between a right of privacy of the individual and the right of law enforcement officials to perform their necessary duties. *U. S. v. Schnitzer*, C.A.2 (N.Y.) 1977, 567 F.2d 536, certiorari denied 98 S.Ct. 1456, 435 U.S. 907, 55 L.Ed.2d 499.

Where defendant's arrest was lawful, pursuant to indictment returned by duly constituted grand jury, charges set forth in indictment were lawful ones not subject to any constitutional infirmity, there was no government harassment, trial judge held there was sufficient incriminating evidence against defendant to require submission of at least nine counts to jury, and jury acquitted defendant of all nine counts, defendant was not entitled to expungement of arrest record, notwithstanding acquittal. *U. S. v. Linn*, C.A.10 (Okla.) 1975, 513 F.2d 925, certiorari denied 96 S.Ct. 63, 423 U.S. 836, 46 L.Ed.2d 55.

## 27. ----- Power of court

It is within the inherent equitable powers of a federal court to order expungement of a record in an appropriate case. *U. S. v. Doe*, C.A.6 (Ohio) 1977, 556 F.2d 391.

Courts possess power to expunge arrest record where arrestee has been acquitted. *U. S. v. Linn*, C.A.10 (Okla.) 1975, 513 F.2d 925, certiorari denied 96 S.Ct. 63, 423 U.S. 836, 46 L.Ed.2d 55.

District court has inherent power to order expungement of criminal records. *U.S. v. Cook*, S.D.Tex.1979, 480 F.Supp. 262.

A court has inherent power to order the expungement of arrest records. *U.S. v. Singleton*, S.D.Tex.1977, 442 F.Supp. 722.

The courts have power to expunge arrest and criminal records. *Tarlton v. Saxbe*, D.C.D.C.1976, 407 F.Supp. 1083.

## 28. ----- Duty of Attorney General to maintain records

For a federal court to expunge a conviction would not amount to an improper requirement that the Attorney General violate his statutory duty to acquire, collect, classify and preserve criminal identification, crime and other records. *Doe v. Webster*, C.A.D.C.1979, 606 F.2d 1226, 196 U.S.App.D.C. 319.

## 29. ---- Officials entitled to expunge

Although assistant United States attorney might have violated Justice Department guidelines when he agreed to order expunging movant's criminal records, assistant United States attorney was acting within his authority when he did so, and thus there was no basis for setting aside agreed order granting motion to expunge. U.S. v. Cook, S.D.Tex.1979, 480 F.Supp. 262.

## 30. ---- Acquittal

Acquittal, standing alone, is not in itself sufficient to warrant expungement of arrest record. U. S. v. Linn, C.A.10 (Okla.) 1975, 513 F.2d 925, certiorari denied 96 S.Ct. 63, 423 U.S. 836, 46 L.Ed.2d 55.

Although charges on which petitioner was arrested were dismissed shortly after his arrest, petitioner had no interest, constitutional or statutory, that would support expungement from FBI "Rap" sheet of two entries, including fingerprint records, based on the arrest. Rowlett v. Fairfax, W.D.Mo.1978, 446 F.Supp. 186.

Expungement of arrest records of police officers and one retired police officer who were arrested for illegal wiretapping but acquitted on all charges was matter for Congress, and not for court, where movants did not introduce sufficient factual evidence presenting unusual facts to warrant departure from general rule that power to expunge an arrest record is a narrow one which should not be routinely used whenever a criminal prosecution ends in acquittal but should be reserved for the unusual or extreme case and where each movant had and still had an exemplary reputation in both the general community and the law enforcement community. U.S. v. Singleton, S.D.Tex.1977, 442 F.Supp. 722.

Mere fact that person is not convicted on charges for which he was arrested does not automatically entitle the subject of the arrest record in question to an expungement of that record. Coleman v. U. S. Dept. of Justice, N.D.Ind.1977, 429 F.Supp. 411.

California arrestee, who was released from incarceration when charges were dropped, was not entitled to expungement of arrest record on ground that maintenance and dissemination of arrest records of persons who are not convicted of and do not plead guilty or nolo contendere to any crime arising from the arrest is violative of right of privacy, due process and presumption of innocence, notwithstanding that the matters complained of are required by state legislation or that refusal to expunge impaired other interests, including employment possibilities or that plaintiff might not have pled a state cause of action for defamation. Hammons v. Scott, N.D.Cal.1976, 423 F.Supp. 618.

Even where a person has been acquitted of charges against him, the arrest records and other materials of identification may be retained unless there is a statute that directs return of such records, the arrest was unlawful, or the record of the arrest is the "fruit" of an illegal seizure. U. S. v. Rosen, S.D.N.Y.1972, 343 F.Supp. 804.

## 31. ----- Comity

A district court cannot review the constitutionality and relitigate the merits of all the arrests and convictions in the United States when it is presented with a request for expungement of an arrest record, nor can it order expungement of information from files of local governmental agencies over which it has no jurisdiction; rather, considerations of federal-state and comity would seem to require that local courts which supervised the arrest or entered the conviction under attack should make the initial determination as to the validity of that arrest or conviction. *Tarlton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

## 32. ----- Statutory authorization

While keeping criminal records constitutes an important police function and notwithstanding general record-keeping laws, criminal records may be ordered expunged from the Federal Bureau of Investigation's criminal files based on statutory authorization or on the court's inherent equity power to vindicate substantial rights. *Doe v. Webster*, C.A.D.C.1979, 606 F.2d 1226, 196 U.S.App.D.C. 319.

As to federal records maintained by federal officials, federal records statutes do not create right to expungement of criminal records. *Schwab v. Gallas*, N.D. Ohio 1989, 724 F.Supp. 509.

Federal courts do not expunge arrest records in normal case unless directed by statute, or arrest was unlawful. *U. S. v. Seasholtz*, N.D. Okla. 1974, 376 F.Supp. 1288.

## 33. ----- Extraordinary circumstances generally

District court did not abuse its discretion in denying, without evidentiary hearing, petition for expungement of all criminal records concerning the petitioner's arrest and acquittal on a bank robbery charge 13 years earlier; in petition for expungement and memorandum in support of expungement, petitioner failed to offer any information suggesting existence of additional extenuating circumstances in his case which would make his case sufficiently unusual or extraordinary to warrant expungement. *Geary v. U.S.*, C.A.8 (Mo.) 1990, 901 F.2d 679.

In connection with the clemency program established by Presidential Proclamation 4313 for Vietnam era draft evaders, the power to grant an order of the type sought by defendant, viz., an order to have the record of his indictment sealed and to have the fingerprints, photographs and biographic information taken at the time of his surrender returned to him by the Government, lay within the equitable discretion of the district court; however, that power was not one to be exercised in the normal case but only under certain extraordinary circumstances. *U. S. v. Hirsch*, E.D.N.Y. 1977, 440 F.Supp. 977.

Whether circumstances of arrest are extraordinary or extreme so that justice requires exercise of equity power by federal court to expunge arrest record of

individual depends upon facts of particular case. U. S. v. Seasholtz, N.D.Okla.1974, 376 F.Supp. 1288.

34. ---- Accuracy of records

The FBI must expunge information from its criminal files when the local agency which first reported that information to the FBI later reports information disputing the accuracy of the relevant FBI records. Tarlton v. Saxbe, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

35. ---- Constitutional violations

Generally, courts order expungement of arrest or conviction records to remedy constitutional injuries sustained by reason of such arrest or convictions. Tarlton v. Saxbe, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293 on remand 407 F.Supp. 1083.

District court is empowered to order expungement of government records where necessary to vindicate rights secured by the Constitution or by statute. Founding Church of Scientology of Washington, D. C., Inc. v. Director, Federal Bureau of Investigation, D.C.D.C.1978, 459 F.Supp. 748.

A court may order the expungement of arrest record where police action and arrest violated certain basic constitutional rights. Shadd v. U. S., W.D.Pa.1975, 389 F.Supp. 721, affirmed 535 F.2d 1247, certiorari denied 97 S.Ct. 241, 429 U.S. 887, 50 L.Ed.2d 169.

36. ---- Harassment arrests

Where petitioner who sought to expunge arrest on firearms charge from his F.B.I. criminal file did not contend that arrest was without probable cause or solely for harassment purposes and where F.B.I. record properly reflected magistrate's dismissal of charge, order sought would be inappropriate. Shadd v. U. S., W.D.Pa.1975, 389 F.Supp. 721, affirmed 535 F.2d 1247, certiorari denied 97 S.Ct. 241, 429 U.S. 887, 50 L.Ed.2d 169.

Federal courts have equity power to expunge arrest records of individuals in extraordinary or extreme circumstances such as illegal arrests or mass arrests or harassment where justice requires. U. S. v. Seasholtz, N.D.Okla.1974, 376 F.Supp. 1288.

Issue as to whether arrest records of person, who had been acquitted but did not contend that arrests were made without probable cause or for purposes of harassment, should be expunged was legislative matter rather than a matter for the courts. U. S. v. Dooley, E.D.Pa.1973, 364 F.Supp. 75.

37. ---- Harm to person listed

District Court would exercise its equitable powers to expunge plaintiff's arrest record from FBI files, where plaintiff had been arrested on extortion charge, but not indicted, as result of dispute 15 years previously between himself and owner of liquor store who had denied him service, where plaintiff had suffered harm and more harm would result from maintaining his arrest records, and where Government did not have law enforcement interest in maintenance of plaintiff's arrest record, and its generalized interest in maintaining a system of records would not be defeated by precedent set by expunction of plaintiff's record. *Natwig v. Webster*, D.C.R.I.1983, 562 F.Supp. 225.

Record of conviction of distributing less than an ounce of heroin was ordered expunged because of intentional and unconstitutional acts by the Government in destroying evidence crucial to defense of entrapment, misleading the court and, for over six years, ignoring judicial mandate to promulgate and rigorously enforce rules designed to preserve discoverable evidence, especially since defendant, who was a nonresident alien and who was sentenced under Youth Corrections Act, section 5005 et seq. of Title 18, had no prior record and made a strong showing that he was entrapped and, along with his family, would suffer great harm because of the overturned conviction. *U. S. v. Benlizar*, D.C.D.C.1978, 459 F.Supp. 614.

38. ---- Official misconduct

Arrest record was ordered expunged where massive and serious violations of law by government agency and its agents hindered defendant's ability to affirmatively demonstrate that he had been entrapped, record could cause defendant to be excluded from citizenship and force him to be separated from his wife and child and defendant had already spent months in jail pursuant to the conviction, which had been overturned because of the serious misconduct. *U. S. v. Benlizar*, D.C.D.C.1978, 459 F.Supp. 614.

39. ---- Probable cause for arrest

Lack of probable cause is not the only defect warranting expungement of an arrest record. *U. S. v. Benlizar*, D.C.D.C.1978, 459 F.Supp. 614.

If no probable cause for arrest existed, and the arrest is therefore unconstitutional, the record of the arrest is not properly includible in FBI files and may be subject to expungement. *Coleman v. U. S. Dept. of Justice*, N.D.Ind.1977, 429 F.Supp. 411.

Federal court has power to enter order expunging arrest records of individuals, who are arrested without probable cause or for purposes of harassment, and may expunge such records in extraordinary circumstances where justice requires. *U. S. v. Dooley*, E.D.Pa.1973, 364 F.Supp. 75.

40. ---- Professional career

Defendant's allegation that retention of arrest record, following dismissal of indictment which did not concede the innocence of defendant, would create a poignant problem for defendant because of his status as a rabbinical student so that defendant may be asked to explain circumstances surrounding his arrest did not



present a harsh or unique situation with potential for harm within narrow bounds of class of cases where expungement of arrest record may be declared appropriate. U. S. v. Schnitzer, C.A.2 (N.Y.) 1977, 567 F.2d 536, certiorari denied 98 S.Ct. 1456, 435 U.S. 907, 55 L.Ed.2d 499.

Defendant, a former state senator convicted of various crimes in connection with the sale of computer equipment to the state and a county, was not entitled to have his criminal record expunged on the ground that it operated as a barrier to his further professional and individual growth as an ordained minister, particularly in light of fact that expungement would have removed some of the deterrent phase of the record in the case. U.S. v. Gillock, W.D.Tenn.1991, 771 F.Supp. 904.

#### 41. Dissemination of records--Generally

Substantial bundle of constitutional rights, including those to due process, privacy and presumption of innocence, may be unnecessarily infringed by police authorities' practice of routinely distributing preconviction or postexoneration arrest records, including not only fingerprints but also data identifying person arrested and information concerning details and surrounding circumstances of arrest, to Federal Bureau of Investigation for nationwide redistribution for both law enforcement and employment and licensing purposes. Utz v. Cullinane, C.A.D.C.1975, 520 F.2d 467, 172 U.S.App.D.C. 67.

Considerations which establish that the Federal Bureau of Investigation is under some duty to prevent dissemination of inaccurate arrest and conviction records do not prevent the FBI from disseminating accurate criminal records or from disseminating inaccurate records after taking reasonable measures to safeguard accuracy. Tarlton v. Saxbe, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

#### 42. ----- Duty of Federal Bureau of Investigation

A magistrate trying federal misdemeanor drunk driving charges lacked authority to prohibit the United States Attorney's Office from reporting the convictions to state motor vehicle authorities; prohibition might prevent Justice Department from fulfilling its duty to exchange information with authorized officials of other jurisdictions and would have the same effect as an expungement, which had not been sought. U.S. v. Sweeney, C.A.9 (Cal.) 1990, 914 F.2d 1260.

#### 43. ----- Accuracy of records

The FBI is not authorized to disseminate inaccurate criminal information without taking reasonable precautions to prevent inaccuracy. Tarlton v. Saxbe, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

#### 44. ----- Currency of records

Court would not, at present prevent Federal Bureau of Investigation from disseminating year-old arrest records without notation of disposition of charges for law enforcement purposes, but would direct Bureau to conduct feasibility study

relating to methods of keeping disposition entries on criminal records reasonably current. *Tarlton v. Saxbe*, D.C.D.C.1976, 407 F.Supp. 1083.

45. ---- Bar examiners

Section 201 of Act Oct. 25, 1972, 86 Stat. 1115, set out as a note under this section, does not authorize the Federal Bureau of Investigation to provide the Florida Board of Bar examiners the criminal history record information for the purpose of determining the fitness of bar applicants. 1979 (Counsel-Inf. Op.) 3 Op.O.L.C. 55.

46. ---- Government employers

United States executive order limited by judicial decisions was, in permitting use of FBI fingerprint records for purposes of governmental employment, proper exercise of President's responsibilities in name of national security, in view of many civil service and other built-in safeguards protecting misuse of such information, and government's discreet use of such information was not infringement upon any constitutional right asserted by person whose fingerprinting resulted from arrest on probable cause. *Menard v. Mitchell*, D.C.D.C.1971, 328 F.Supp. 718, remanded on other grounds 498 F.2d 1017, 162 U.S.App.D.C. 284.

47. ---- Parole officers

Action of official of division of parole in obtaining assistance of F.B.I. agent in identifying parolee's associates and in providing FBI-compiled criminal records of such associates did not taint parole violation inquiry, but was sensible and proper utilization of lawful investigative resource. *People v. Santos*, N.Y.Sup.1975, 368 N.Y.S.2d 130, 82 Misc.2d 184.

48. ---- Secret Service information

The Federal Bureau of Investigation has the authority to disseminate to other law enforcement agencies information collected and transmitted to it by the Secret Service for law enforcement purposes. 1982 (Counsel-Inf.Op.) 6 O.L.C. 313.

49. ---- State and local agencies

This section under which fingerprint identification functions were delegated to FBI was designated to facilitate coordination of law enforcement activities of federal and local governments and was not intended or effective to authorize dissemination of arrest records to any state or local agency for purposes of employment or licensing checks. *Menard v. Mitchell*, D.C.D.C.1971, 328 F.Supp. 718, remanded on other grounds 498 F.2d 1017, 162 U.S.App.D.C. 284.

50. ---- Libel

If the FBI has the authority to collect and disseminate inaccurate criminal

information about private individuals without making reasonable efforts to safeguard the accuracy of the information, it would in effect have the authority to libel those individuals, but, absent the clearest statement of congressional policy, the Congress cannot be imputed with an intent to authorize the FBI to damage the reputation of innocent individuals in contravention of settled common-law principles. *Tarlton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

#### 51. ---- Procedural safeguards

Dissemination of inaccurate criminal information by the FBI without the precaution of reasonable efforts to forestall inaccuracy restricts the subject's liberty without any procedural safeguards designed to prevent such inaccuracies. *Tarlton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

#### 52. Actions allowable against Federal Bureau of Investigation

Insofar as arrestee's action to remove his record from FBI's criminal files attacked abuses of identification division of FBI in its unique role in the information network, suit against the FBI was proper. *Menard v. Saxbe*, C.A.D.C.1974, 498 F.2d 1017, 162 U.S.App.D.C. 284.

#### 53. Persons entitled to maintain action

Plaintiff has standing to maintain action to expunge certain information from his FBI "criminal" file when such information consisted of several entries of arrests for which no ultimate disposition was indicated and of arrests and convictions which were allegedly perpetrated in violation of his constitutional rights. *Tarlton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

#### 54. Exhaustion of remedies

District court did not abuse its equitable discretion in denying an acquittee's request that information relating to his arrest and trial be expunged, in that acquittee, who had made unsuccessful attempts to secure federal employment, declined to seek administrative relief within the federal government by which he could insure himself that the derogatory information was not considered in connection with reviewing his job application. *Allen v. Webster*, C.A.4 (N.C.) 1984, 742 F.2d 153.

Complaint with respect to validity of underlying arrests and convictions must be raised in the appropriate state forum rather than by way of petition for writ of mandamus requesting the F.B.I. to remove allegedly false and unconstitutional information from its files; considerations of federal-state comity require that federal court give initial opportunity to state or local authorities to pass on the validity of the convictions. *Crow v. Kelley*, C.A.8 (Mo.) 1975, 512 F.2d 752.

The policy of federal-state comity, while applicable to requests for expungement of arrest records, does not prevent expungement actions directed against the FBI

prior to a successful expungement action in the local court of the jurisdiction which first provided the disputed record. *Tarlton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

Challenges to Federal Bureau of Investigation criminal records must ordinarily proceed first before appropriate local agencies or courts. *Tarlton v. Saxbe*, D.C.D.C.1976, 407 F.Supp. 1083.

#### 55. Justiciability

Pro se complaint wherein plaintiff sought to expunge certain information from his FBI "criminal" file presented the sort of dispute that had been traditionally considered justiciable; and claim was ripe for decision. *Tarlton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

#### 56. Jurisdiction

Jurisdiction of action wherein plaintiff sought to expunge certain information from his FBI "criminal" file was founded upon section 1331 of this title granting district courts jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. *Tarlton v. Saxbe*, C.A.D.C.1974, 507 F.2d 1116, 165 U.S.App.D.C. 293, on remand 407 F.Supp. 1083.

#### 57. Venue

Although petitioner was confined in the District of Kansas, venue of mandamus action seeking expungement of arrest record entries from FBI "Rap" sheet was proper in the Western District of Missouri since defendant United States marshal resided in the latter district. *Rowlett v. Fairfax*, W.D.Mo.1978, 446 F.Supp. 186.

#### 58. Waiver

Defendant who failed to make use of remedy of expunging record of fingerprints taken after illegal arrest waived objection to use of information in other, unrelated investigations. *Com. v. Fredericks*, Pa.Super.1975, 340 A.2d 498, 235 Pa.Super. 78.

#### 59. Admissibility of evidence

Arrest based solely on National Crime Information Center information which was inaccurate when relayed to state arresting officers and which had been so for five months constituted denial of due process of law, and unregistered firearm seized subsequent to such arrest must be suppressed. *U. S. v. Mackey*, D.C.Nev.1975, 387 F.Supp. 1121.

28 U.S.C.A. § 534

28 USCA § 534

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