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Criminal Law—Inherent Judicial Authority to Expunge Criminal Records—State v. C.A., 304 N.W.2d 353 (Minn. 1981)

siveness criterion distinguishes isolated beliefs on issues of ultimate concern from systems of beliefs governing all aspects of the adherent's life.[63] The final criterion, the institutional nature of the beliefs, may require unwieldy and potentially unconstitutional classifications of religious ritual similar to those necessitated by the *Ideal Life* multifactual analysis.[64] Despite the shortcoming inherent in the final criterion, the first two factors of Judge Adams' analysis remove questions of church tax exemptions as far as practicably possible from the innately subjective nature and constitutional scrutiny of establishment and free exercise questions.

While the result in *Ideal Life* was the right one, the multifactual analysis used by the Minnesota Supreme Court is constitutionally suspect. A religious organization should not have its status as a church determined from a standard derived from the formal characteristics of any given religion. An analysis looking to the organization's genuine purposes and the comprehensiveness of the organization's efforts to achieve its purposes provides a less objectionable method of allowing church property tax exemptions.[65]

Criminal Law—INHERENT JUDICIAL AUTHORITY TO EXPUNGE CRIMINAL RECORDS—*State v. C.A.*, 304 N.W.2d 353 (Minn. 1981).

Expungement is the process of eradicating the legal record of arrest or conviction.[1] The need for this important process is indicated by the fact

two prohibitions and governs them alike. It does not have two meanings, one narrow to forbid "an establishment" and another, much broader, for securing "the free exercise thereof." "Thereof" brings down "religion" with its entire and exact content, no more and no less, from the first into the second guaranty, so that Congress and now the states are as broadly restricted concerning the one as they are regarding the other.

330 U.S. at 31-32 (Rutledge, J., dissenting). Moreover, Judge Adams stated, "It is difficult to justify a reading of the first amendment so as to support a dual definition of religion . . . ." Malnak v. Maharishi Mahesh Yogi, 592 F.2d at 211-12.

63. 592 F.2d at 209.

64. An inquiry into the institutional nature of a religious organization may result in a subjective evaluation of the tenets of a "church." Such an inquiry would create the same problems the *Ideal Life* multifactual analysis presents and therefore should never be controlling.

65. A simple but, at least for now, politically unfeasible alternative to all methods of analysis is the outright abolition of church property tax exemptions.

1. *See* Grandison v. Warden, Maryland House of Correction, 423 F. Supp. 112, 116 (D. Md. 1976); Police Comm'r v. Municipal Court, 374 Mass. 640, 648, 374 N.E.2d 272, 277 (1978); State v. Chambers, 533 P.2d 876, 878 (Utah 1975); *see also* Gough, *The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status*, 1966 WASH. U.L.Q. 147. Professor Gough states:

By an expungement statute is meant a legislative provision for the eradication of a record of conviction or adjudication upon fulfillment of prescribed conditions, usually the successful discharge of the offender from probation and the passage

that of the 10.4 million arrests[2] in the United States in 1980, only sixty-one percent will result in convictions.[3] All arrestees, however, will have a criminal record unless the record of their arrest is expunged.[4] The Minnesota Supreme Court in *State v. C.A.*[5] addressed the scope of expungement relief available in Minnesota.[6] The effect of *C.A.* is to expand slightly the inherent power of Minnesota courts to grant expungement of

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> of a period of time without further offense. It is not simply a lifting of disabilities attendant upon conviction and a restoration of civil rights, though this is a significant part of its effect. It is rather a redefinition of status, a process of erasing the legal event of conviction or adjudication, and thereby restoring to the regenerate offender his *status quo ante*.

Id. at 149 (citation omitted).

2. Uniform Crime Reports Program procedures require that an arrest be counted on each separate occasion an individual is taken into custody, notified, or cited. Only one arrest is counted for each individual arrested, regardless of the number of charges lodged against him. Traffic violations are excluded. The number of arrests increased 29% between 1979 and 1980. *See* FBI, CRIME IN THE UNITED STATES, UNIFORM CRIME REPORTS 189, 191 (1980).

3. The 39% not convicted includes individuals who were arrested but subsequently exonerated because they were acquitted of the charge or the case was dismissed. *See* Comment, *Criminal Procedure: Expunging the Arrest Record when There Is No Conviction*, 28 OKLA. L. REV. 377, 378 n.4 (1975).

4. As of 1974, only six states had statutes authorizing the expungement of an exonerated arrestee's record. Comment, *The Expungement or Restriction of Arrest Records*, 23 CLEV. ST. L. REV. 123, 127 n.24 (1974). These statutes, however, never apply to the FBI's Identification Division. Nearly all arrests made in the United States are forwarded to the FBI and stored in computers for ready use by law enforcement agencies across the country. For a discussion of FBI policy regarding dissemination of arrest records, see Note, Menard v. Mitchell: *Expungement vs. Retention of Arrest Records*, 41 UMKC L. REV. 106, 108-10 (1972), and Case Comment, *Criminal Law—Constitutional Law—F.B.I.'s Right to Retain and Disseminate Arrest Records of Persons Not Convicted of a Crime May Be Limited by the First and Fifth Amendments*, 46 NOTRE DAME LAW. 825 (1971).

5. 304 N.W.2d 353 (Minn. 1981). The plaintiff's name is refered to by initials to protect anonymity. *Id.* at 355 n.1.

6. *Id.* at 357. Four general types of expungement exist. *See generally* Annot., 46 A.L.R.3d 90 (1972). The most widely adopted is the destruction of local records and the recall of copies forwarded elsewhere. *See, e.g.*, United States v. Kalish, 271 F. Supp. 968 (D.P.R. 1967) (physical destruction of arrest record); Eddy v. Moore, 5 Wash. App. 334, 487 P.2d 211 (1971) (return of arrest records to arrestee); Note, *The Rights of the Innocent Arrestee: Sealing of Records Under California Penal Code Section 851.8*, 28 HASTINGS L.J. 1463, 1469 (1977). A second type is amendment of the record to show the arrestee's innocence. *See, e.g.*, Beasley v. Glenn, 110 Ariz. 438, 520 P.2d 310 (1974) (statute permits notation to be entered if arrestee cleared after wrongful arrest); District of Columbia v. Sophia, 306 A.2d 652 (D.C. 1973) (remedy for mistaken arrest is clarification of record by notation showing innocence). A third option is sealing the record and thereafter allowing examination only upon issuance of a court order. *See, e.g.*, People v. Robertson, 97 Misc. 2d 1026, 412 N.Y.S.2d 982 (N.Y. Crim. Ct. 1979) (sealing of record and return of arrest record); People v. Casella, 90 Misc. 2d 442, 395 N.Y.S.2d 909 (N.Y. Crim. Ct. 1977) (defendant not within statute and sealing of record denied); Note, *supra*, at 1469. Although many jurisdictions distinguish between sealing and expungement because sealing does not involve destruction, for purposes of this case note the terms will be treated as synonymous. The fourth type is prohibiting dissemination of the record. *See, e.g.*, People v. A., 99 Misc. 2d

records.[7]

The petitioner in *C.A.* was convicted of consensual sodomy. Pursuant to the conviction he was temporarily committed to the State Security Hospital at St. Peter and then to the state correctional facility at Stillwater.[8] The Minnesota Supreme Court overturned the conviction and ordered a new trial. The charges against the petitioner were subsequently dropped and the case was never retried.[9] Petitioner sought expungement of his criminal record pursuant to Minnesota Statutes section 299C.11 and prior case law.[10] The trial court granted part of C.A.'s motion and

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295, 415 N.Y.S.2d 919 (N.Y. Crim. Ct. 1978) (defendant's arrest and prosecution records sealed and dissemination prohibited).

The controversy over when and how to use expungement arises from the natural conflict between general societal good and individual rights. *See* Case Comment, *Criminal Procedure: Expungement of Arrest Records*, 62 MINN. L. REV. 229, 230-31 (1978). *See generally* Nizer, *The Right of Privacy: A Half Century's Developments*, 39 MICH. L. REV. 526 (1941); Rehnquist, *Is an Expanded Right of Privacy Consistent with Fair and Effective Law Enforcement? Or: Privacy, You've Come a Long Way, Baby*, 23 U. KAN. L. REV. 1 (1974). The belief that arrest and conviction records must be available to aid police in criminal activity conflicts with the threat to individual arrestees' privacy arising from the retention and dissemination of arrest record information, especially when the arrestee is subsequently acquitted or deemed mistakenly arrested. *See* Case Comment, *supra*, at 231; Comment, *Expungement and Sealing of Arrest and Conviction Records: The New Jersey Response*, 5 SETON HALL L. REV. 864, 865-66 (1974). Even if an individual is proven entirely innocent the record remains. Anyone subsequently gaining access to it for employment, security, political or criminal investigations may indirectly continue the prosecution. Such exposure could be annoying, prejudicial or damaging to the arrestee. *See* 304 N.W.2d at 362; *see also* United States v. Dooley, 364 F. Supp. 75, 78-79 (E.D. Pa. 1973). For additional judicial discussions of the disabilities that flow from an arrest record, see Sullivan v. Murphy, 478 F.2d 938 (D.C. Cir.), *cert. denied*, 414 U.S. 880 (1973); Wilson v. Webster, 467 F.2d 1282 (9th Cir. 1972); Menard v. Mitchell, 430 F.2d 486 (D.C. Cir. 1970); Morrow v. District of Columbia, 417 F.2d 728 (D.C. Cir. 1969) (citing REPORT OF THE COMMITTEE TO INVESTIGATE THE EFFECTS OF POLICE ARREST RECORDS ON UNEMPLOYMENT IN THE DISTRICT OF COLUMBIA (1967)). The Report cited in *Morrow* found that most prospective employers used arrest records and that the consequencs of a person having been arrested, even if the charges were subsequently dismissed, were severe. *But see* Kogon & Loughery, *Sealing and Expungement of Criminal Records—The Big Lie*, 61 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 378 (1970). Kogan and Loughery criticize expungement of records both in principle and in fact. They argue that, in principle, expungement is nothing more than a state sanctioned lie and, in fact, it does not work because records always leave some trace that makes the expunged information retrievable. *See id.* at 383.

7. Several expungement statutes exist in Minnesota. MINN. STAT. § 638.02 (1982) deals with expungement for convicts and allows the Board of Pardons to grant a "pardon extraordinary." In addition, under MINN. STAT. § 152.18(2)-(3) (1982), convicted narcotics offenders may obtain complete expungement if parole conditions are not violated. Expungement of juvenile records involves distinct policy considerations and is frequently the subject of special statutory enactments. *See, e.g.*, MINN. STAT. § 260.161(2) (1982). *See generally* Gough, *supra* note 1.

8. 304 N.W.2d at 355.

9. *Id.*

10. *Id.* at 356-57. Section 299C.11 requires that expungement relief be available only if the criminal proceedings are decided in favor of the arrestee. MINN. STAT. § 299C.11

ordered the sheriff to return all copies of petitioner's fingerprints, photographs, and other identification data.[11] Petitioner's seven other expungement motions were denied. These motions sought to restrain various state officials and employees from revealing information of petitioner's arrest,[12] trial, and conviction and sought the return, erasure, or sealing of all government records documenting these occurrences.[13] The trial court's denial of these motions was affirmed on appeal to the Minnesota Supreme Court.[14]

Courts have reached various conclusions as to the rights of exonerated arrestees to have arrest records and other information expunged. These decisions fall into four groups.[15] The majority view classifies the problem as essentially legislative, based on the need for public safety and effective law enforcement.[16] Inconvenience to an individual's privacy is deemed

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(1982); *see In re* R.L.F., 256 N.W.2d 803 (Minnn. 1977) (pre-trial dismissal of charges after successful motion to suppress evidence constitutes valid basis for expungement relief). *But see* City of St. Paul v. Froysland, 310 Minn. 268, 246 N.W.2d 435, 439 (1976) (stay of imposition of sentence not deemed determination of proceedings in favor of accused within meaning of MINN. STAT. § 299C.11).

11. 304 N.W.2d at 357.

12. *Id.* The court did not specifically define "arrest record," but found some guidance in the definition of "arrest information" given in MINN. STAT. § 15.162(1)(a) (1980) (repealed 1981), which stated in relevant part:

> "Arrest information" shall include (a) the name, age, and address of the arrested individual; (b) the nature of the charge against the arrested individual; (c) the time and place of the arrest; (d) the identity of the arresting agency; (e) information as to whether an individual has been incarcerated and the place of incarceration.

Cf. MINN. STAT. § 13.82(2) (1982) ("arrest data" described and classified as public data).

In addition, as was noted in City of St. Paul v. Froysland, 310 Minn. 268, 275-76 n.5, 246 N.W.2d 435, 439 n.5 (1976), § 299C.11 is directed only to the return of identification data and not all records relating to arrest.

13. 304 N.W.2d at 355-57.

14. *Id.* at 357.

15. *See generally* Annot., 46 A.L.R.3d 900 (1972).

16. *See, e.g.*, Herschel v. Dyra, 365 F.2d 17 (7th Cir.) (absent express contrary legislative authority, superintendent of police may retain all arrest records in official files of police department regardless of whether accused has been acquitted or discharged), *cert. denied*, 385 U.S. 973 (1966); Loder v. Municipal Court, 17 Cal. 3d 859, 553 P.2d 624, 132 Cal. Rptr. 464 (1976) (expungement would not be granted where state legislature had provided an extensive body of legislation controlling this question), *cert. denied*, 429 U.S. 1109 (1977); Kolb v. O'Connor, 14 Ill. App. 2d 81, 142 N.E.2d 818 (1957) (whether police can retain their files for identification purposes is matter of public policy); Weisberg v. Police Dep't of Village of Lynbrook, 46 Misc. 2d 846, 260 N.Y.S.2d 554 (N.Y. Sup. Ct. 1965) (state courts have no inherent power to order police department records sealed or otherwise withheld from public knowledge).

In re R.L.F., 256 N.W.2d 803 (Minn. 1977), brought Minnesota in line with the majority of jurisdictions by specifically limiting the power to grant expungement. Without statutory authorization for expungement, "the court's inherent power is limited to instances where the petitioner's constitutional rights may be seriously infringed by retention of his records." *Id.* at 808.

to be outweighed by the benefit to society in keeping records.[17] Other courts deny expungement, but place specific restrictions on the dissemination of arrest record information.[18] Restraints on the dissemination of arrest records are imposed to avoid unjustified invasions of privacy.[19] A third approach permits expungement only in "extreme circumstances," such as arrests made upon mistaken identity, police misconduct, or when no crime has been committed.[20] Finally, some courts have held that expungement may be ordered notwithstanding statutory restrictions or the absence of narrowly defined circumstances authorizing expungement. These courts place the burden of proof on the state to show a compelling reason for retention of the arrest records.[21]

Arrestees in Minnesota receive limited expungement relief from Minnesota Statutes section 299C.11.[22] Section 299C.11 requires the return of all fingerprints, photographs, other identification data, and all copies thereof upon demand and determination of proceedings in favor of the arrested individual.[23] In addition, in *In re R.L.F.*,[24] the Minnesota Supreme Court held that section 299C.11 includes arrest records even though it specifically mentions only fingerprints, photographs, and other identification data.[25] *In re R.L.F.* also extended the trial court's inherent expungement power to prevent the serious infringements of constitu-

17. *See, e.g.*, Kolb v. O'Connor, 14 Ill. App. 2d 81, 87-88, 142 N.E.2d 818, 822 (1957).

18. The federal courts in the District of Columbia have followed this position since 1967. *See, e.g.*, Utz v. Cullinane, 520 F.2d 467 (D.C. Cir. 1975) (court prohibited dissemination of arrest records to FBI); Morrow v. District of Columbia, 417 F.2d 728 (D.C. Cir. 1969) (court issued order prohibiting dissemination of arrest record).

19. *See* Morrow v. District of Columbia, 417 F.2d 728, 742 (D.C. Cir. 1969).

20. *See* Case Comment, *supra* note 6, at 234. This is the position generally taken by the federal courts. *See, e.g.*, Sullivan v. Murphy, 478 F.2d 938, 966-67 (D.C. Cir.) (mass arrests where procedures rendered judicial determination of probable cause impossible), *cert. denied*, 414 U.S. 880 (1973); Urban v. Breier, 401 F. Supp. 706, 713 (E.D. Wis. 1975) (mass arrest of individuals without probable cause); United States v. Dooley, 364 F. Supp. 75, 78 (E.D. Pa. 1973) (federal court has power to grant expungement for individuals arrested without probable cause or due to harassment).

21. *See, e.g.*, Davidson v. Dill, 180 Colo. 123, 503 P.2d 157 (1972) (court should order arrest record expunged when harm to individual's right of privacy outweighs public interest in records); Bradford v. Mahan, 219 Kan. 450, 548 P.2d 1223 (1976) (court through its equitable power may order inaccurate police records expunged when adverse consequences to citizen are shown to outweigh public interest); Eddy v. Moore, 5 Wash. App. 334, 487 P.2d 211 (1971) (compelling showing on part of state necessary to justify retention of arrest record after acquittal).

22. MINN. STAT. § 299C.11 (1982) provides:

> Upon the determination of all pending criminal actions or proceedings in favor of the arrested person, he shall, upon demand, have all such finger and thumb prints, photographs, and other identification data, and all copies and duplicates thereof, returned to him, provided it is not established that he has been convicted of any felony, either within or without the state, within the period of ten years immediately preceding such determination.

23. *Id.*

24. 256 N.W.2d 803 (Minn. 1977).

25. *Id.* at 805.

tional rights that may result from the retention of records.[26]

In *C.A.* the Minnesota Supreme Court established judicial authority to grant expungement of arrest records in certain circumstances not falling within the statutory provisions for expungement and not constituting a substantial infringement of constitutional rights.[27] All courts have "inherent judicial powers" which include the authority to control the performance of "unique judicial functions."[28] Part of the judicial function "is to control court records and agents of the court in order to reduce or eliminate unfairness to individuals, even though the unfairness is not of such intensity as to give a constitutional dimension."[29] Relying on these concepts, the *C.A.* court held that, when necessary to its unique judicial function, a trial court can order the expungement of records and materials under the direct control of the court or court personnel.[30]

In *C.A.* the petitioner's motion for the return of fingerprints, photographs, and other identification data was allowed because it was required by statute.[31] The supreme court denied the remaining motions

26. *See id.* at 808; *see also* Sullivan v. Murphy, 478 F.2d 938, 968 (D.C. Cir.), *cert. denied*, 414 U.S. 880 (1973).

27. *See* 304 N.W.2d at 357. The court held that the trial court had properly ruled that § 299C.11 applied only to the idenficiation data and that there was no substantial constitutional infringement. *Id.*

28. "Inherent judicial power governs that which is essential to the existence, dignity and function of a court because it is a court." *In re* Clerk of Lyon County Court's Compensation, 308 Minn. 172, 176, 241 N.W.2d 781, 784 (1976). The concept of inherent judicial power grows out of express and implied constitutional provisions mandating a separation of powers and a strong and independent judiciary. *See id.* at 176-77, 241 N.W.2d at 784; State v. Osterloh, 275 N.W.2d 578, 580 (Minn. 1978). A court's inherent judicial power is intended to be used to protect itself from encroachment of its constitutional authority by the legislative and executive branches. *See In re* Clerk of Lyon County Court's Compensation, 308 Minn. 172, 176-77, 241 N.W.2d 781, 784 (1976); State v. Osterloh, 275 N.W.2d 578, 580 (Minn. 1978). A court, however, must avoid encroaching upon the equally important authority of the legislature and executive. *See* 304 N.W.2d at 358; *see also* State v. Osterloh, 275 N.W.2d 578, 580 (Minn. 1978) (judicial branch has no inherent power to impose terms and conditions of sentencing for commission of criminal act); *In re* Clerk of Lyon County Court's Compensation, 308 Minn. 172, 176, 241 N.W.2d 781, 784 (1976) (judicial branch has no inherent power to fix clerk's salary); *In re* Disbarment of Greathouse, 189 Minn. 51, 55, 248 N.W. 735, 737 (1933) (courts have inherent power to admit applicants to practice law).

29. 304 N.W.2d at 358.

30. *Id.* at 360-61.

31. *See id.* at 360. Broader relief for petitioner might have been forthcoming except for two flaws in his argument. First, an essentially procedural mistake in the form of all but the first motion made it impossible for the court to order relief. Petitioner failed to identify with sufficient specificity the documents and individuals sought to be made subject to the order. *Id.* Records and documents to be expunged or controlled must be described specifically by location, file number, book and page number, or similar description. *See* MINN. R. CIV. P. 702 (motions, unless made during hearing or trial, shall be in writing, state with particularity grounds, and set forth relief or order sought). Second, the record in the case did not support the numerous expungement motions filed. *See* 304 N.W.2d at 356-57. The inherent power of the court to grant expungement relief ex-

which sought to prevent disclosure.[32] The motions relating to the attorneys and officials within the court's direct control, and thereby subject to the court's inherent judicial power, were denied for failure to specify the documents and individuals.[33] Other individuals mentioned in petitioner's motions, such as officials at the Minnesota Security Hospital and the state correctional facility, were controlled by the executive branch and therefore beyond the inherent power of the courts.[34]

Although the Minnesota Supreme Court denied petitioner the complete expungement relief he sought in *C.A.*, the opinion indicates an expansion of inherent judicial expungement power in Minnesota. After *In re R.L.F.* it appeared that the Minnesota court would apply a strict rule, similar to the "extreme circumstances" jurisdictions. The *R.L.F.* court had clearly stated that a trial court could order expungement only under statutory empowerment or "where petitoner's constitutional rights may be seriously infringed by retention of his records."[35] The *C.A.* decision signals a more liberal approach to the expungement issue. The Minnesota Supreme Court apparently will now enforce expungement orders relating to court records and court agents if the petitioner's motion is specific enough to allow efficient administration and expungement is necessary to protect the petitioner from prejudicial harm.

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tends only to documents and agents under the court's control. In *C.A.* petitioner made motions for the return of documents and to restrain state officials not under the court's control. *Id.* at 356-59.

32. 304 N.W.2d at 360-61.

33. Other officials may have been subject to court ordered expungement to a limited extent. Police departments are part of town or city governments, which are political subdivisions defined by the legislature. *See* MINN. STAT. §§ 365.15, 415.01 (1982). Correctional facilities and the board of corrections, as well as the Bureau of Criminal Apprehension, are all part of the executive branch of state government. *See id.* §§ 15.06, 241.01, 244.08, 299C.01.

34. 304 N.W.2d at 361. It is also important to note that the court seemed much more inclined to grant the sealing of a file than its expungement, and would allow such a request upon proper showing. *Id.* at 361; *accord* District of Columbia v. Hudson, 404 A.2d 175, 181 (D.C. 1979) (sealing of record achieves protection of individual rights and serves governmental interests). Sealing of records is preferable to destruction because a sealed file may be reopened by court order upon a showing of good cause. 304 N.W.2d at 361; *see also* District of Columbia v. Hudson, 404 A.2d 175, 181 (D.C. 1979) (record opened only upon showing of compelling need). It has been suggested that "good cause" would be other civil litigation concerning the particular arrest or the discovery of additional evidence. *Id.*

35. 256 N.W.2d at 808.