

A Dialogue Between the Bureau of Justice Statistics and Key Criminal Justice Data Users

In 2008 the Bureau of Justice Statistics (BJS) convened a multidisciplinary workshop for professionals who use justice statistics. BJS asked participants—representatives from academia, court systems, victim advocacy, and law enforcement communities—to provide feedback about how they use BJS statistical information and to recommend ways that BJS could optimize the value of the data it collects and publishes.

Four senior level researchers presented papers at the workshop, including:

Lynn Addington, Ph.D., is associate professor of Justice, Law and Society at American University, and has authored books and many journal articles on criminal justice and public safety. Professor Addington is currently a visiting fellow at BJS, working with the NCVS redesign. [See Professor Addington's paper](#) on current issues in victimization research.

Theodore Eisenberg, Ph.D. is the Henry Allen Mark Professor of Law at Cornell Law School. He has used innovative statistical methodologies to examine diverse topics related to courts and litigation. [See Professor Eisenberg's paper](#) that puts forth the premise that civil justice issues play as prominent a role in society as criminal justice.

Brian Forst, Ph.D. is professor of Justice, Law and Society at American University and a noted author in the field of law enforcement. [See Professor Forst's paper](#), "Improving Police Effectiveness and Transparency: National Information Needs on Law Enforcement."

Karen Heimer, Ph.D. is professor of Sociology and Public Policy at the University of Iowa. She has conducted research on juvenile delinquency, imprisonment trends in the United States, women and crime, and violence against women. [See Professor Heimer's paper](#) that presents a snapshot of NCVS-based research on violence against women and offers suggestions for making the NCVS even more useful for specific purposes.

BJS staff and members of the justice and victim advocacy communities conducted discussion panels after the presentations. Workshop participants then had the opportunity to comment on issues raised or to question the panel members. [See the complete transcript](#) of the day-long event.

Current Issues in Victimization Research and the NCVS's Ability to Study Them

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Introduction

Thirty-five years have passed since the fielding of the first National Crime Survey (NCS) and 15 years since its redesign and emergence as the National Crime Victimization Survey (NCVS).¹ This BJS Data Users Workshop presents a good, and much-needed, opportunity to examine how the survey has been (and could be) used in its present form as well as to consider possible ways the survey could be changed to explore new issues of concern to victimization researchers. This paper has two primary aims. The first is to provide an overview of the current trends and issues in victimization research. Trends include topics that have attracted research attention as well as those yet to be fully explored as available data can limit what can be studied and how victimization is conceptualized. The second aim is to consider how the NCVS can address these issues. Possible changes for the NCVS are suggested as a way of stimulating discussion at this workshop.

Before continuing, a few qualifications are necessary. First, this paper does not specifically address issues involving violence against women, as Dr. Karen Heimer's companion paper for this session is devoted to that topic. Second, the goal is not to present an exhaustive list of current victimization issues. Instead, the examples provided are meant to be illustrative of different areas of research and to provide a starting point for opening discussion regarding the ways in which the NCVS could be used. Third, a working familiarity with the crime survey is assumed. Due to space limitations, this paper cannot provide an extensive description or review of the attributes of the NCS and NCVS. Readers interested in an overview of the NCS and NCVS are directed to sources such as Cantor and Lynch (2000) and Rennison and Rand (2007).

Finally, in light of the charge for this workshop, this paper tends to focus on new possibilities for the NCVS, especially ways in which the survey could be improved, rather than tout the current functions it serves. This perspective could be interpreted as being negative or critical of the NCVS, but it is not the spirit in which this paper is written. The NCS

and NCVS have played an essential role in shaping what researchers know about victimization as well as providing the national measure of criminal victimization for the United States.² For the NCVS to continue in this crucial and central role, it should be capable of serving the needs of researchers, practitioners, and policymakers. Continuing to meet the current needs of these various users of NCVS data may require changes to the survey.

Current Trends and Open Issues in Victimization Research

Before examining specific issues, it is useful to place the current state of victimization research into a larger context. In general, limited attention has been given to research and theoretical development in the area of criminal victimization. Much less work has been devoted to studying victimization especially as compared to other areas of criminology such as the development and empirical testing of theories explaining criminal offending and delinquency. A perusal of a few leading criminology journals over the past 2 years illustrates the present situation. *Criminology* (the official academic journal of the American Society of Criminology) published two articles that concerned victimization issues. This number represents 3% of its articles over the past 2 years. During the same period, *Justice Quarterly* (the official academic journal of the Academy of Criminal Justice Sciences) published five victimization articles, which reflect 12% of its articles. A recent issue of *Criminology & Public Policy* was devoted to "tak[ing] stock of the state of affairs in criminology as a social science of policy" (Clear & Frost, 2007, p. 637). Of the 27 articles appearing in this November 2007

²Other sources of victimization data are available in the United States (e.g., National Longitudinal Study of Adolescent Health) and around the world (e.g., British Crime Survey, International Crime Victims Survey). These surveys benefited from having the NCS/NCVS as a guide. While information about victims now is conceptualized as taking the form of victimization surveys, police agencies also provide victim-level data. For decades, the Uniform Crime Reporting Program (UCR) has collected murder victim data in its Supplementary Homicide Report. Currently the UCR is in the process of changing its data collection method to the National Incident-Based Reporting System, which collects select victim characteristics (such as sex, age, and race).

¹This paper purposefully uses the acronym "NCS" to refer to the crime survey before its redesign and "NCVS" to refer to it post-redesign.

special issue, not one examined victimization policy.³ This lack of attention is not due to an absence of important, pressing victimization issues. Instead, this situation may be interpreted as highlighting a need for data that would permit studying these current victimization issues. It also underscores the importance of this workshop's examination of the ability of BJS data to address user needs.

This characterization of overall victimization issues within the larger context of criminological research should not be interpreted to mean that all victimization issues have been ignored. To the contrary, a few areas receive a great deal of research attention including violence against women (especially rape and domestic violence) and violence against children (especially child abuse and bullying).⁴ This assessment of victimization research overall also does not mean that the NCVS data have gone untouched. A search of published articles located more than 150 publications that used the crime survey since its redesign. This work covers a wide range of issues, victims and crimes, but the most common use of NCVS data is to examine reporting to the police. To investigate how the NCVS could be used to explore current victimization issues and meet additional user needs, this paper tends to look beyond the topics previously examined using the crime survey.

The following summary of current research issues is organized into four general categories: "new" victims, "new" places where victimizations occur, "new" crimes, and explanations of victimization. The designation of "new" is not intended to indicate that the victims, places, and crimes themselves are new, but that the research attention given to them is new. Within each category, the capability of the NCVS to study the various topics is addressed.

"New Victims"

One current trend in victimization research is a focus on particular victims, especially those who have received very little, if any, previous attention. When considering how well these new victims are captured by the NCVS, it is important to recall who is included in the survey. Currently only household members over the age of 12 are eligible for inclusion in the NCVS.⁵ The NCVS sample of households

³While not directly addressing victimization issues, Rosenfeld's (2007) article recommended re-examining the collection of official crime data from police as well as creating a more comprehensive national crime data collection system, within which the NCVS would play a role. The benefits of a national crime data collection system also have been discussed by Lynch and Addington (2007).

⁴Victimization research has become largely research on violence against women. *Violence and Victims* and the *Journal of Interpersonal Violence* are two specialized academic journals that cover victimization issues. During the past 2 years, more than half of the articles in these two journals addressed violence against women. While violence against women is certainly an important topic, it is not the only form of victimization.

⁵The NCS originally comprised a series of separate victimization surveys, which included the household survey as well as a survey of businesses (Rennison & Rand, 2007).

excludes those living in military barracks or institutions such as nursing homes and prisons as well as the crews of vessels (BJS, 2004).

For purposes of this workshop, a relevant consideration is the ability of the NCVS to study these new victim groups. To facilitate such an examination, the summary below is divided into three categories: (1) victims captured by the NCVS, (2) victims not captured by the NCVS (but could be included in a household survey), and (3) victims not captured by the NCVS (and could not be included in a household survey).

Victims Captured by the NCVS

The Elderly

Victimization among the elderly (especially elder abuse) is garnering greater interest as more of the U.S. population is aging due to increased life expectancies and the graying of the Baby Boomer generation.⁶ Prominent national agencies such as the National Institute on Aging, the National Institute of Justice, and the National Academy of Sciences recently have sponsored studies on elder abuse. Researchers are investigating various forms of victimization of the elderly as well as their concerns about being victimized (e.g., Chu & Kraus, 2004; Shields, King & Fulks, 2004; Lachs, Bachman & Williams, 2004).

Adults of all ages are included in the NCVS sample, therefore these data can be used to study victimization of the elderly and BJS has issued reports on this topic (e.g., Klaus, 2005). The NCVS data have a couple limitations with regard to studying elderly victims. One is the fact that the sample excludes those living in nursing homes and thereby misses a vulnerable segment of elderly adults.⁷ A second issue concerns studying elders who are unable to respond to the survey questions due to physical or mental limitations. Typically in this situation, the NCVS uses a proxy respondent from the household. If the proxy respondent is the victimizer, this filter would affect the accuracy of the responses obtained. The NCVS also could be bolstered in a few ways to improve the elder victimization data collected. One way is to increase the sample of elderly respondents to permit comparisons of interest such as looking across types of living arrangements (such as those living in their own home, family/caretaker home, and assisted living home) or across age sub-categories. Another is the inclusion

⁶Defining "elderly" itself is a rather new issue. Typically elderly is defined as age 65 and older. Today with more active older adults (and Baby Boomers approaching this demarcation), there has been some resistance to this bright-line definition. The Census Bureau uses additional age sub-categories including "older" (age 55 and above), "young-old" (ages 65-74), and "oldest-old" (age 85 and above) (He, Sengupta, Velkoff & DeBarros, 2005). Because the NCVS collects exact ages, these data can readily accommodate any definition of elderly.

⁷To reach this population, it may be possible to use an existing sample or sampling frame of nursing homes and residents such as that used by the National Center for Health Statistics' National Nursing Home Survey.

of crimes to which this population may be particularly susceptible such as fraud and neglect (Klaus, 2005). A third, and somewhat related, way is to assess whether current NCVS victimization screening questions cue (or trigger the respondent to recall) victimizations like abuse that occur because of dependency such as a caretaker withholding food or money.

Repeat victims

Individuals who are repeatedly victimized comprise another population of interest to researchers. Repeat victims provide information about the risk of victimization that can inform theoretical explanations and policy (e.g., Planty & Strom, 2007; Farrell, Tseloni & Pease, 2005; Pease & Laycock, 1996; Lauritsen & Quinet, 1995). The NCVS identifies repeat victims through the collection of separate incident reports for each victimization reported during the interview period as well as its classification of series victimizations. Series victimizations are incidents that occurred six or more times during the recall period (the preceding 6 months), are similar to each other in detail, and whose details are indistinguishable to the respondent (Planty, 2007). Researchers also have used the NCVS as a longitudinal dataset to examine repeat victimizations across interview periods (Ybarra & Lohr, 2002; Dugan, 1999). A few limitations arise with these uses of the NCVS to study repeat victims. With regard to series victims, only a small amount of information is collected about series victimizations, which makes it difficult to ascertain the association between the incidents. Additional questions or a supplement could investigate the interdependence of these victimizations as well as the factors that may contribute to the persistence of the victimization (Cantor & Lynch, 2000). Using the NCVS longitudinally also has limits. One particular issue is the fact that the NCVS is a survey of households and does not follow individual respondents who move. Repeat victims may be more likely to move and fail to be included in subsequent interviews.

Vicarious Victims

Victimization does not affect only the immediate victim but also those residing in the victim's household and community. Only a handful of researchers have explored the effect of crime on "vicarious victims" (e.g., Eitle & Turner, 2002; DuBow, McCabe & Kaplan, 1979). With regard to assessing the effects of victimization on other members of the household, the NCVS identifies these individuals, but currently does not ask them any vicarious victimization questions. New questions or a supplement could collect this information. A supplement, for example, could examine the effect of victimizations occurring to household members, neighbors and the larger community to allow comparisons of the repercussions to these various incidents.

Immigrants

Recent news accounts suggest an increase in the victimization of immigrants, especially those perceived to be illegal immigrants (Londono, 2007). A few suggested explanations for this trend include animosity in many communities over immigration policy debates and a belief that those in the United States illegally will not report the victimization to police. The NCVS includes immigrants (legal and illegal) who reside in sampled households; however, these individuals are not identified since respondents are not asked citizenship status questions.⁸ The addition of such a question would allow this population to be identified and studied. Potential problems could arise from asking this question in the NCVS. Traditionally the NCVS does not ask if the respondent engages in illegal activity. A related concern is whether immigration status, especially illegal immigration status, could be accurately measured in any government-sponsored study. Another potential problem is whether asking citizenship questions would offend respondents (both immigrants and non-immigrants) and make them less likely to participate in the survey.

Victims Not Captured by the NCVS But Within the Scope of a Household Survey

Children under Age 12.

The victimization of children receives a great deal of research attention, especially with regard to child abuse, school violence, and bullying (both in and out of school). By design, the NCVS excludes children under age 12. Lowering the age for eligible respondents would permit the NCVS to gather information about these younger victims. Making such a change would require determining the youngest age at which asking direct questions would be appropriate and feasible as well as whether a modified or abbreviated form of the NCVS might facilitate reaching this age group. Other victimization surveys have directly questioned children as young as 10 (Finkelhor, Hamby & Ormrod, 2005).

Victims Not Captured by the NCVS And Outside the Scope of a Household Survey

Highly Mobile Individuals.

Highly mobile individuals experience higher levels of victimization than those who do not move or move less frequently (Addington, 2005; Dugan, 1999). Victimization is related to mobility both as a cause of the move and an increased vulnerability after the move. This population attracts research attention, in part, due to this increased risk of victimization. In addition, studying highly mobile

⁸Some information might be gleaned from hate crime questions that cover victimizations motivated by ethnic background or national origin. These data are limited since the incident initially would need to be identified as a hate crime. In addition, the ethnic background/national origin designation may be comparable to, but it is not the equivalent of, immigration status.

individuals allows researchers to parse out the effects of the person (or “hot victims”) from the effects of the place (or “hot spots”) (Pease & Laycock, 1996). Only limited attention has been devoted to studying this small, but highly victimized, group of individuals. A likely reason is a lack of data. While researchers have used the NCVS as a longitudinal dataset (Ybarra & Lohr, 2002; Dugan, 1999), the survey does not follow mobile respondents. As such, substantial changes to the current NCVS design would be required to study this group of victims. Creating a longitudinal crime survey is not a new idea. This possibility was considered as part of the NCS redesign (Biderman & Lynch, 1991). One alternative to completely changing to a longitudinal design is to follow a sample of individuals. Such a format would permit highly mobile individuals to be studied within a primarily household survey format. During the redesign discussions, BJS suggested the possibility of a supplement that would follow a subset of respondents (Biderman & Lynch, 1991). This supplement was never pursued.

Individuals in Jail

Those serving jail sentences are another neglected, but important, subset of crime victims. These individuals are at a higher risk for victimization than the non-incarcerated population not only during the time they are in jail but also when they are out on the street (Dugan & Castro, 2006). A household-based survey like the NCVS, however, is not designed for collecting this information.⁹

A data collection effort that samples jails and interviews inmates would be the most effective vehicle for studying these victims (see Dugan & Castro, 2006, for a description of Baltimore Jail Study).

Businesses

Most victimization research focuses on individuals. Non-individuals such as businesses also are victimized, and these victimizations can result in significant financial losses to the company as well as harm to the employees directly involved with a criminal incident targeting the business such as an armed robbery. The NCVS excludes non-individual victims such as businesses. The NCS originally included a separate survey of businesses, but it was discontinued due to criticisms over an inadequate sample size and the resulting limited utility of the data collected (Rennison & Rand,

⁹Individuals in jail are at risk for victimization in two different areas. Both are important to study, but neither is captured very well by the NCVS or other BJS data. One area of interest is this population's victimization experiences when not incarcerated. The NCVS might capture some individuals who are in jail for only a short period of time and are otherwise residing in an eligible household. This group likely comprises a small number of NCVS respondents. The other area of interest is this population's victimization experiences in jail. This area is clearly beyond the NCVS's scope. Here BJS does conduct prisoner studies and collect data on inmate victimization (e.g., Beck & Harrison, 2007); however, the focus is on federal and state prisons rather than jails.

2007). Another reason supporting the discontinuation of these commercial surveys was that crimes against businesses were included in the police data collected by the UCR. A re-emerging research issue is whether these crimes are reported so that police data adequately capture victimization of businesses. If underreporting exists, a commercial victimization survey could provide a more comprehensive understanding of crime. Research from other countries suggests that business crime is underreported especially among smaller companies (Taylor, 2003). BJS has begun to examine ways of capturing particular types of business victimization. In 2001, BJS piloted the Computer Security Survey (Rantala, 2004). The goal of the CSS is to provide national statistics on cyber crimes against businesses such as embezzlement, fraud, theft of proprietary information, and vandalism (Rantala, 2004).

“New” Places Where Victimitizations Occur

Another current trend in victimization research examines specific places where victimizations occur. For the following examples, the NCVS can be an effective tool to capture this information. Changes in the current crime survey would permit this information to be gathered more effectively.

College Campuses

Victimization on college campuses has been a long-standing interest for criminologists (e.g., Fisher & Sloan, 1995; Hoffman, Schuh & Fenske, 1998). In the aftermath of the Virginia Tech shootings last April, violence and crime on college campuses have re-emerged as prominent issues. Since the NCVS collects information on the student status of its respondents, these data can be used to study campus crime (Baum & Klaus, 2005).¹⁰ For more in-depth studies of campus violence, a concern is whether the NCVS sample size allows for the study of particular crimes, especially when analyzing multivariate models of relatively rare violent crimes like rape and robbery.

Workplace Violence

Violence in the workplace is another perennial topic of interest for researchers and one that receives increased attention after well-publicized fatal incidents occur. Currently attention is being given to threats of violence and bullying in the workplace. These more common forms of victimization have negative consequences for the individual as well as the overall work environment and productivity (Kenny, 2005; Matthiesen & Einarsen, 2007). The NCVS collects information on workplace violence through questions in the main survey and periodic supplements. As

¹⁰Official crime data are collected pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f). The Clery Act requires colleges and universities to report to the U.S. Department of Education their annual crime statistics from campus and local police departments.

part of the regular incident information collected, the NCVS identifies whether the respondent was working or not at the time of the victimization incident. This information allows using the NCVS to study workplace violence (e.g., Duhart, 2001). While the NCVS collects occupational information from all respondents, it only codes and identifies certain jobs (such as police officers and teachers). This occupational information could be enhanced if the NCVS provided Industry and Occupation Codes as part of its data collection on employment. Since other federal agencies use these standardized codes, NCVS data could capitalize on information from other data sources (Census, 2008). For example, occupation-specific victimization rates could be estimated using NCVS data combined with information provided by Census and the Bureau of Labor Statistics.

Sub-National Victimization Estimates

The availability of sub-national victimization estimates would improve the understanding of local crime problems and assist in the formation of effective, targeted policies. These sub-national data would permit comparisons across jurisdictions of the same size and characteristics (Lynch & Addington, 2007). Additional information at the local level also could help provide more comprehensive explanations for national crime trends. Given the utility of these data, the interest in obtaining sub-national victimization estimates is not new. The initial evaluation of the NCS recognized the importance of obtaining local victimization data to inform police, policymakers, and citizens and recommended developing a “survey kit” to provide local officials with the tools to collect this information (Penick & Owens, 1976, p. 57-58).

Although the NCVS relies on a very large sample to generate national estimates, it has a limited capacity for providing sub-national estimates. Presently sub-national estimates can only be generated for the largest cities (Lauritsen & Schram, 2005). Area-identified NCVS data link victimization data with tract-level Census information. These data might be capable of creating “generic areas” and estimates for these areas; however, no study has used the area-identified data in this manner (Lynch & Addington, 2007). In response to the NCVS limitations in this area, BJS has engaged in efforts to explore alternative ways of collecting local victimization data. In 1998, BJS conducted victimization surveys in 12 cities (the “12-Cities Survey”), which used NCVS survey questions as well as a series of supplemental attitudinal questions (Smith et al., 1999). Since 1999, BJS has distributed crime victimization software to communities to assist them in conducting their own local crime and attitudinal surveys. The Crime Victimization Survey questions are modeled on those in the NCVS, but do not comprise the full NCVS instrument (U.S. Department of Justice, 1999).

“New” Crimes

To better understand using the NCVS to study new crimes, it is helpful to review the crimes about which the NCVS currently collects information. The NCS arose, in part, from the desire to better assess the accuracy of police data and to understand why victims did not report crimes to the police (Cantor & Lynch, 2000). As a result, the crimes included in the NCS and NCVS tend to parallel those collected by the UCR, which are primarily street crimes. The specific crimes collected by the NCVS are completed, attempted and threatened rape, sexual assault, aggravated assault, and simple assault as well as completed and threatened robbery, burglary, motor vehicle theft, property theft, and purse-snatching (BJS, 2004). The NCVS also collects information on vandalism and pick-pocketing.

Although the NCVS covers these particular crimes, the survey is well suited for gathering information about new types of crime. Three attributes in particular give the NCVS this flexibility. One quality is its collection of binary attributes from the victimization incident. Respondents are not asked direct victimization questions such as “were you robbed?”. Instead, they are asked a series of questions about the characteristics of the incident, and these attributes are combined using an algorithm into “Types of Crimes” that mirror the UCR crimes. These incident attributes also can be configured to collect information on previously unknown crimes like carjacking (e.g., Klaus, 2004; Rand, 1994). Another quality of the crime survey is its use of supplemental survey instruments. NCVS supplements are questions on particular topics that are asked in addition to the regular NCVS screener questions and incident report questions. Since its redesign, the NCVS has fielded supplements in the areas of school violence, stalking, public contact with the police, workplace violence, and identity theft (Rennison & Rand, 2007; personal communication with M. Rand). The third attribute is the crime survey’s ability to include additional questions. Recent examples of new questions include those that collect information about identity theft, hate crimes, and crimes against those with developmental disabilities (Rennison & Rand, 2007).

The list below provides examples of crimes that are of current concern to researchers but not captured by the NCVS. The examples illustrate crimes that could be included with the addition of new questions to the main NCVS survey instrument or in a periodic supplement.

Cyber Crimes

Increased access to the Internet has produced a new mode for committing traditional forms of victimization such as intimidation and bullying, stalking, identity theft, and fraud. These cyber crimes are receiving attention from researchers and policymakers (e.g., Finn, 2004). In 2001, NCVS included questions for household respondent on computer crimes such as fraud, viruses, and on-line threats (BJS,

2001). These questions were removed and replaced with identity theft questions in 2004 (Rennison & Rand, 2007). Currently the NCVS does not collect information about whether a reported victimization occurred on-line. Recent supplements to the NCVS have addressed identity theft and stalking and have included some questions related to on-line activities.¹¹

Fraud

Fraud affects a large number of individuals each year as actual or attempted victims (Titus, Heinzlmann & Boyle, 1995) and a large percentage of these victims are repeatedly victimized (Titus & Gover, 2001). As suggested by the cybercrime summary above, an examination of fraud victimization should include incidents occurring both on- and off-line. One particular form of fraud is identity theft. The NCVS currently includes questions about identity theft for household respondents (Baum, 2007) and has fielded a supplement on identity theft. Additional questions could be included to capture information about other types of fraud.

Bullying

Bullying has gained a tremendous amount of attention in the wake of well-publicized links between bullying and fatal school violence (U.S. Secret Service & U.S. Department of Education, 2002). In addition to this connection, bullying has received continued research attention because it affects a significant proportion of children and adolescents. More than a quarter of adolescents report being bullied each year (U.S. Department of Education, 2007). One study estimates that more than three-quarters of students have been bullied at some point in their school career (Arnette & Walsleben, 1998). Many of these victims suffer short- and long-term physical and psychological repercussions as a result (DeVoe & Kaffenberger, 2005; Arnette & Walsleben, 1998). The NCVS collects information about bullying as part of its School Crime Supplement (SCS). The SCS questions are asked of student-respondents age 12 to 18 every other year. These bullying questions include both physical and psychological bullying. Additional questions could cover cyberbullying, which is a growing problem due to the large number of adolescents who use the Internet for social networking purposes. The SCS examination of bullying misses students under the age of 12, who are ineligible for the NCVS in general. Information from younger children would allow comparisons of bullying between younger children and older adolescents.

Bullying also affects adults, especially in the workplace (e.g., Matthiesen & Einarsen, 2007). Adult bullying victims appear to suffer negative repercussions similar to those experienced

by adolescent victims. Overall, though, little is known about these adult victims because most attention is given to bullying among juveniles. Related forms of victimization such as intimidation also have been largely ignored among the adult population. Additional questions or a supplement would permit exploration of these incidents in the NCVS.

Explanations of Victimization

The preceding three sections have summarized particular “new” trends in victimization research. This section addresses a broader issue of current (and continued) concern for victimization researchers—the need to better understand victimization and explain why certain individuals are victimized. Gaining a more comprehensive understanding about victimization is essential both for academics to advance theoretical explanations of victimization, especially given the small number of victim-centered theories of crime (Cantor & Lynch, 2000), and for policymakers to target effective programs. The NCVS collects a tremendous amount of detail about the incident, but provides little explanatory context. This section focuses on how the NCVS could provide greater insight to understand and explain victimization. Much of this information could be collected within the existing structure of the NCVS through the addition of new questions or periodic supplements.

Asking Why the Respondent Was Victimized

The NCVS does not specifically ask respondents why they were victimized. The failure to ask this natural follow-up question greatly limits developing a more complete understanding of victimization. Making such an inquiry requires some caution especially with regard to how this question might be perceived. An original concern of the NCVS was the reaction that might be generated from governmental representatives asking overly sensitive or personal questions (Rennison & Rand, 2007). Here, asking why the respondent was victimized might raise concerns that the question might be interpreted as blaming the victim or is continuing a stereotype that somehow the respondent “asked” to be victimized. Concerns about possible negative perceptions need to be weighed against the risk of these perceptions being generated as well as the gains in information about victimization.

A few observations suggest a low risk of creating these negative perceptions. First, the nature of society in general has changed. It is important to remember that the NCS did not specifically ask about rape because of concerns that such questions were too sensitive to be asked especially by a government official. During the redesign, it was determined that societal norms had changed enough to permit directly asking questions about rape and sexual assault (Rennison & Rand, 2007). A similar argument could be made that today it is now appropriate to ask respondents why they were victimized. Respondents, especially young adults

¹¹Some police data also identify computer-related offenses. For example, NIBRS collects information as to whether a computer was used to perpetrate the crime. NIBRS, though, does not provide national data and cannot inform about victimizations that are not reported to the police.

and adolescents, engage in a much more open lifestyle as evidenced through the popularity of websites like YouTube and social networking sites like Facebook and MySpace. A second reason is that studies indicate victims are willing to provide this information. A recent study examined the NCVS incident narratives and revealed that many victims volunteered information as to why they had been victimized to the interviewer (Addington, 2004). Finally the NCVS already asks respondents why they were victimized with regard to hate crime and developmental disability questions. With the hate crime questions, the NCVS probes the respondent even further and asks for any “evidence” to support the respondent’s assessment that the victimization was a hate crime.

Responses to and Repercussion of Victimization

A comprehensive understanding of victimization requires studying what occurs after the incident. An original goal of the NCS was to obtain information about a particular response to victimization—whether the incident was reported to police (Penick & Owens, 1976). The NCS and NCVS have provided a great deal of insight as to police reporting. The NCVS could collect additional information from those who report by ascertaining the respondent’s satisfaction with police services. Studying immediate and long-term repercussions help provide an understanding about the consequences of victimization. The NCVS collects quite a bit of information with regard to the immediate repercussions of victimization including physical injuries, medical treatment and lost time at work. The NCVS, though, does not include psychological harm such as depression and post-traumatic stress disorder (Cantor & Lynch, 2000). The NCVS collects less information on repercussions that do not immediately follow the incident like repeat victimization, dropping out of school, and moving. Although these consequences would be best captured in a longitudinal design, the NCVS could collect some details through additional questions or supplements. A supplement, for example, could follow up on victimizations reported in the previous interview. A sample of victims could be identified and questioned as to long-term repercussions of the victimization.

Fear of Victimization

Fear could be included as a repercussion of victimization. Here fear is discussed separately to highlight the importance of gathering information about fear from all respondents, both direct victims and those not directly victimized. For direct victims, information could be gathered regarding the fear (if any) generated by the victimization as well as responses to the reported fear such as changes in behavior. For those not directly victimized, questions could include the fear of being the victim of various types of crimes (ranging from street crimes to terrorism) as well as fear generated in response to learning about victimizations that occurred

to those in their household, neighborhood, or community. Inquiring as to various places where victimization might occur (i.e., home, work, public transportation) would provide a context for understanding fear. The NCVS does not ask about fear as part of its main survey questions. Currently the NCVS’s School Crime Supplement asks fear questions of primary and secondary school students.¹² Fear questions also were asked as part of the attitudinal supplements in the 12-Cities Surveys (Smith et al., 1999).¹³

Alternatives to UCR Crime Classifications

To better understand victimization, it may be useful to look beyond the NCVS’s traditional categorization of crimes. As mentioned above, the NCVS collects binary attributes of incidents. These attributes are placed into an algorithm that creates “Types of Crimes,” most of which parallel the UCR crime classification system (such as rape, robbery, assault, burglary, and theft). The UCR classification scheme does not have to be replicated. Victimization could be classified using other attributes such as incidents that involve strangers, occur in public places, or occur with additional crimes. These alternative classifications could suggest new ways to explain victimization (Addington & Rennison, 2008).

Additional Independent or Explanatory Variables

While the NCVS can be used to study a variety of issues, its lack of adequate explanatory variables is a common complaint among researchers and may hinder the crime survey from reaching a larger audience of data users.¹⁴ Providing additional variables does not necessarily require asking more questions of respondents. Linking the NCVS to other federal datasets could provide relevant information. As mentioned above, including Industry and Occupation codes would allow the NCVS to benefit from BLS and Census data. Links to tract-level Census data could provide neighborhood details (Baumer et al., 2003; Lauritsen, 2001). Currently confidentiality concerns have limited the number of researchers who have analyzed the area-identified data since these data are accessible in only a small number of designated, secure locations.

¹²The SCS asks student-respondents how often they are afraid of being attacked at school, going to or from school, and away from school.

¹³The 12-Cities Surveys asked respondents about fear of crime in their neighborhood and city and whether this fear had changed over the past year.

¹⁴As discussed above, the NCVS traditionally has not collected much information that would help in developing and testing theories of victimization. For several years, the NCVS did ask certain lifestyle questions that researchers used to explore routine activity and opportunity theories of victimization. These questions were removed from the survey in 2000 (Lauritsen, 2005).

Changes to Address the Needs of NCVS Users

The current trends and issues in victimization research summarized above suggest two groups of changes. One directly addresses the NCVS and the data provided. The other group covers more general changes to ensure that the NCVS continues to meet the needs of its users. These suggested changes are described in rather broad terms in order to stimulate discussion about how the NCVS can best address meet the current needs of its users.

Changes to the Data Provided by the NCVS

Add Questions or Topical Supplements to the NCVS

The discussion of victimization trends indicated many areas where the NCVS could collect data on particular types of victims or crimes with new questions. These new questions can take one of two forms. One is adding questions to the main NCVS survey instrument, which would be asked of respondents every six months. The other is through topical supplements. Supplements are particularly useful for collecting information that does not need to be obtained during every fielding of the survey or from every respondent. Adding questions to the main survey would be useful for studying areas such as vicarious victims, fraud, cyber crimes and asking why the respondent was victimized. Other information might be best collected in periodic supplements, such as following up with previous reports of victimization and inquiring about various types of fear.

At first glance, asking a few more questions on the NCVS appears to be a fairly simple change to implement. The addition of new questions either to the main survey or as part of a supplement, however, raises another set of issues. One such issue is determining what questions to remove. Additional questions are costly. Even if BJS had unlimited financial resources,¹⁵ interviewers and respondents have finite amounts of time. Typically if one question is added to the survey, another needs to be removed (Lauritsen, 2005). A second issue is what information should be gathered and what specific questions should be asked. When studying victimization of the elderly, for example, should the concern be measuring how much victimization is occurring or obtaining an explanation of victimization among this population?

Adequately addressing these two issues requires a more comprehensive consideration about the survey and its overall role. Since the creation of the NCS, a basic question has been whether the survey should measure the amount of crime and victimization or should provide an explanation for what is occurring (Penick & Owens, 1976). As discussed above, the NCS and NCVS have tended to focus more on measuring victimization than explaining it. These two functions, though,

are not mutually exclusive. Striking a better balance between the two may be warranted now, especially in light of user needs for data that help explain victimization. The particular answer reached is not as important as the need to resolve the issue. A renewed and clearer understanding of the NCVS's current role would serve as a useful guide in determining the questions to add and remove, the information to collect, and the trends to explore.

Make Narrative Data Available to Researchers

Combining information gathered from the NCVS's structured questions with additional incident details could help illuminate new areas for study, trends, and explanations for criminal victimization. The narrative data collected for each NCVS incident could provide such insights. The narratives are incident summaries collected at the end of the NCVS interview. Currently the narratives are used only for quality control purposes and are not archived in a public-use format.¹⁶ Because of these restrictions, these data have been accessed by only a few researchers (Addington, 2004; Garofalo, Siegel & Laub, 1987). Their resulting studies indicate that the incident narratives provide details that can enhance the NCVS data and “capture some of the nuances of these events that highly structured surveys are not designed to expose” (Garofalo, Siegel & Laub, 1987, p. 337). For example, Addington (2004) found the narratives provide greater details about the weapons used as part of school victimizations and this information suggests a different context of school violence. Specifically the most common “other” weapons were weapons of convenience found at school such as sports equipment or shop tools rather than those imported from outside. It is important to emphasize that the narratives have their own set of limitations (see Addington, 2004), but researchers could determine for themselves the utility of these data for particular topics.

Changes to Ensure the NCVS Continues to Meet User Needs

Institute Periodic Reassessments

What is known about criminal victimization has changed a great deal, largely due to information provided by the NCS and NCVS. A mechanism for regular reassessment would help ensure that future gains in knowledge are identified and reinvested in a way to benefit the NCVS. Periodic reviews also would serve as an evaluation of whether the crime survey continues to address user needs. Topics for consideration could include macro considerations of new avenues of research and trends in the field as well as more specific examinations of the survey instrument such as the continued inclusion of particular questions.

¹⁵BJS's limited resources are a particularly relevant concern when discussing the NCVS. BJS has endured years of flat funding and budget cuts that have directly impacted the NCVS. To cut costs, tough decisions have been made such as reducing the NCVS's sample size (Lauritsen, 2005).

¹⁶With the increased use of computer-assisted interviewing (through personal interviews or “CAPI” and telephone interviews or “CATI”), archiving this data should become easier. Confidentiality concerns would still remain and need to be addressed so that personally identifying information is not disclosed in the narrative.

Create a Partnership with Researchers

This workshop provides a unique opportunity for researchers to interact with BJS and make suggestions about the data they frequently use. Creating a more formal partnership with researchers would encourage a regular exchange of ideas as well as institute a mechanism for suggesting new areas of research interest and providing feedback on the NCVS. Both BJS and the research community could benefit from the synergy generated from such collaboration. A partnership

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- with the research community could take different forms and varying levels of involvement. One format is that of an ongoing relationship, for example involving several researchers in an advisory group. In addition to researchers, this group could include other NCVS data users such as policymakers and practitioners. Alternatively this partnership could be a more discrete interaction and involve researchers on particular issues such as providing ideas for NCVS supplement topics.
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The Need for a National Civil Justice Survey of Incidence and Claiming Behavior

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Civil justice issues play a prominent role in society. Family law issues such as divorce¹ and child custody, consumer victimization issues raised by questionable trade practices,² and tort issues raised by surprisingly high estimated rates of medical malpractice,³ questionable prescription drug practices,⁴ and other behavior are part of the fabric of daily life. Policymakers and interest groups regularly debate and assess whether civil problems are best resolved by legislative action, agency action, litigation, other methods, or some combinations of actions. Yet we lack systematic quantitative knowledge about the primary events in daily life that generate civil justice issues. This paper explores the desirability of, and issues related to, creating what I will call a national civil justice survey (NCJS) analogous to the National Crime Victimization Survey (NCVS).

The NCVS is the primary source of information on criminal victimization.⁵ The survey enables the Bureau of Justice Statistics (BJS) to estimate the likelihood of many crimes “for the population as a whole as well as for segments of the population such as women, the elderly, members of various racial groups, city dwellers, or other groups.”⁶ In 2005,

U.S. residents age 12 or older experienced about 20 violent crimes per 1,000 people and about 150 property crimes per 1,000 people.⁷ In comparison, decades-old national research on incidence of civil problems suggests that adults experience a long-term risk of serious personal injury at the rate of 120 per 1,000 and a risk of serious property damage of 400 per 1,000.⁸ A more geographically limited early 1980s survey found a three-year risk of having a civil justice grievance of 416 per 1,000.⁹ The rate of civil justice incidents plainly is high enough to warrant systematic quantitative knowledge of their patterns.

The first part of this paper briefly reviews selected available civil justice data and their limitations. The second part provides a preliminary discussion of the kind of information about civil justice events that might be gathered in an NCJS. The third part reviews methodologies and results in prior civil justice surveys. The final part briefly suggests the benefits and feasibility of an NCJS.

Selected Available Civil Justice Data and Their Limitations.

Important and useful data exist that relate to civil justice. BJS projects as well as those of other federal agencies supply much of that information. BJS data tend to focus on the end point of the civil disputing process, litigation, and not on the underlying pattern of grievances and claiming behavior that generate observable disputes. Other data sets, such as divorce rates and patient safety data from the National Center for Health Statistics,¹⁰ might provide

¹E.g., Center for Disease Control, National Center for Health Statistics, National Vital Statistics Reports: Births, Marriages, Divorces, and Deaths: Provisional Data for 2006, vol. 55 no. 20, Aug. 28, 2007, available at http://www.cdc.gov/nchs/data/nvsr/nvsr55/nvsr55_20.pdf.

²E.g., Federal Trade Comm'n, Consumer Fraud and Identity Theft Complaint Data: January–December 2006 (2007), available at <http://www.consumer.gov/sentinel/pubs/Top10Fraud2006.pdf>.

³E.g., Chunliu Zhan & Marlene R. Miller, Excess Length of Stay, Charges, and Mortality Attributable to Medical Injuries During Hospitalization, 290 JAMA 1868 (2003)

⁴E.g., Editorial, N.Y. Times, Cholesterol Drug Bombs, Jan. 16, 2008 (“it was . . . very disturbing to learn this week that a heavily promoted cholesterol-lowering drug had flunked a clinical trial of its effectiveness in reducing fatty deposits in arteries. The two companies that reap billions from the drug had been cynically sitting on the results for more than a year.”); Gregory D. Curfman et al., Expression of Concern: Bombardier et al., “Comparison of Upper Gastrointestinal Toxicity of Rofecoxib and Naproxen in Patients with Rheumatoid Arthritis,” 343 N. Engl. J. Med. 1520 (2000) (“It now appears . . . from a memorandum dated July 5, 2000, that was obtained by subpoena in the Vioxx litigation and made available to the Journal, that at least two of the authors knew about the three additional myocardial infarctions at least two weeks before the authors submitted the first of two revisions and 4½ months before publication of the article.”).

⁵<http://www.ojp.gov/bjs/cvict.htm#Programs> (visited Feb. 2, 2008)

⁶Id.

⁷Shannan M. Catalano, National Crime Victimization Survey: Criminal Victimization, 2005, Bureau of Justice Statistics Bulletin, Sept. 2006, NCI 214644.

⁸Barbara A. Curran, The Legal Needs of the Public: The Final Report of a National Survey (1977).

⁹Richard E. Miller & Austin Sarat, Grievances, Claims, and Disputes: Assessing Adversary Culture, 15 Law & Soc’y Rev. 525, 527 (1980-81)

¹⁰National Center for Health Statistics, NCHS Data on Patient Safety, July 29, 2005, available at <http://www.cdc.gov/nchs/data/factsheets/patsafety1.pdf>; CDC, supra note .

adequate information about particular topics.¹¹ In general, however, other sources of civil justice data are sporadic and depend on reporting by intermediaries rather than by those experiencing the problems. As in the case of crime victimization, a household level survey could provide the most reliable information to assess the true level of civil-justice-related activity. For purposes of this paper, I try to include a reasonably comprehensive list of civil justice topics that might be included in an NCJS. If it is determined that satisfactory information is already systematically gathered about one or more of the topics, that would reduce the necessary scope of a national civil survey. For purposes of illustrating the utility of an NCJS, I first focus on how it might enhance the utility of existing BJS data relation to civil justice.

Leading Civil Justice Data Contains Surprises

Existing BJS civil justice initiatives have already established their value by providing significant insights into civil justice system performance. The BJS and the National Center for State Courts (NCSC) make available online and through reports the best existing information about state courts, including trial outcomes and filings. For example the BJS Report, Civil Trial Cases and Verdicts in Large Counties, 2001, reports time trends, from 1992 to 2001, in the number of civil trial cases and the amount of jury awards.¹² These data shed light on the operation of our civil justice system, in which the vast majority of cases and trials are adjudicated in state court.

Some core BJS-NCSC results are truly striking. In 1992, state courts in the nation's 75 largest counties are estimated to have concluded 22,451 trials. By 2001, state courts in these counties concluded only 11,908 trials, a reduction of 47.0 percent.¹³ The sharpest decreases came in products liability and real property cases, with reductions of 76.0 percent and 80.1 percent respectively.¹⁴ The BJS-NCSC data, through a methodology consistently applied over the course of a decade, thus conclusively established the reduction in trials in state courts. The vanishing trial and its implications for the justice system has been the topic of extended discussion.¹⁵ With respect to amounts awarded at trial,¹⁶ the results are equally interesting. In 1992 the median jury

award in all tort cases, adjusted for inflation, was \$64,000. In 2001, the median award was only \$28,000, a statistically significant decline.¹⁷ Awards were down in automobile and premises liability cases, and up in product liability and medical malpractice cases.¹⁸

NCSC data on time trends in case filings, though limited to the subset of states that report information on a consistent basis, also are noteworthy.¹⁹ For example, Figure 1 shows a long-term decline in tort filings, accompanied by a more modest decline in medical malpractice filings and little pattern in products liability filings.

Limitations of Existing Civil Justice Data and the Benefits of an NCJS.

So we have, as exemplified by torts, a downward trend in filings, a downward trend in the number of trials, and a downward trend in median awards.²⁰ As important as these data are, we cannot fully know what to make of them for many important purposes because we lack information about the possible number of grievances and disputes underlying them.

To show why, let's continue to pursue tort as an example. It is one thing if NCSC's declining tort filings are observed in light of a background of a stable rate of tort incidents over time. It is quite another if declining tort filings are observed and the rate of tort incidents per capita either has substantially increased or decreased. Unless we know about the number of underlying tort incidents, interpreting filings data is subject to unavoidable limitations. Policymakers cannot tell if legislative or other initiatives have had an effect in the expected direction or in the opposite direction to that intended. It may be that tort reforms reducing liability exposure increase the number of tort incidents. This would need to be balanced against the presumed litigation savings. This uncertainty is of course equally true of other civil justice subject areas, including consumer problems such as credit card and mortgage disputes.

Gathering systematic data over time about the rate of underlying tort and other civil justice incidents has another benefit that is also important, though not directly related to case filing and outcome patterns. Estimating the rate of tort incidents, and the rate at which incidents are satisfactorily resolved, would yield important knowledge about the needs for access to civil justice. Specifically, are civil legal services available to those who need them? Are they differentially available based on income, race, gender, or other factors? And how much access to civil justice is, in fact, needed?

¹¹The National Health Interview Survey (NHIS) provides information about injuries. The largest category of external injury cause codes in the NHIS is code E9288 or E9289 ("other" or "unspecified" accident). These constitute about 520,000 out of 3.6 million NHIS "Other" accidents in the 2005 NHIS, available through ICPDR. But these data do not readily allow one to assess if a civil grievance would be warranted.

¹²Thomas H. Cohen & Steven K. Smith, Civil Trial Cases and Verdicts in Large Counties, Bureau of Justice Statistics Bulletin, April 2004, NCJ 202803.

¹³Id. at 9 (tbl. 10).

¹⁴Id.

¹⁵E.g., Marc Galanter, The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts, 1 J. Empirical Legal Stud. (2004).

¹⁶Cohen & Smith, *supra* note , at 9.

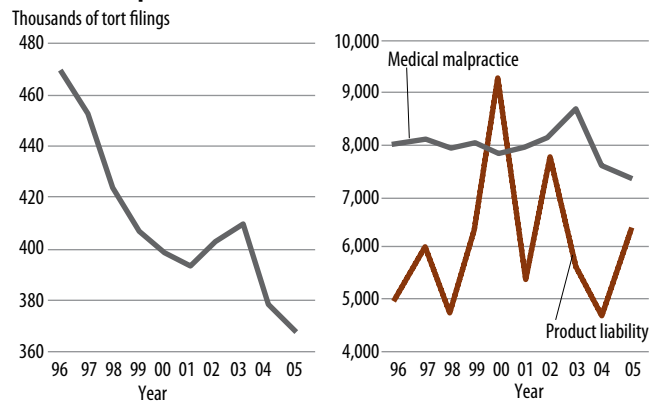
¹⁷Id. (tbl. 11).

¹⁸Id.

¹⁹These data are available at http://www.ncsconline.org/D_Research/csp/2006_files/CaseloadTrends.pdf.

²⁰These results will be enhanced when the 2005 iteration of the BJS-NCSC civil trial data is released.

Figure 1. State Court Filings Over Time, Tort, Product Liability, Medical Malpractice



Note: Tort data based on 30 states, product on 8 states, medical on 9 states

Thus, helping to understand the systematic civil justice data we do have, as well as identifying the civil justice needs of citizens, are among the benefits that a systematic time series of data, based on valid national samples, could help supply. My proposal is that BJS, in cooperation with other agencies if necessary, formulate and implement an NCJS analogous to its current NCVS. Such an undertaking would be substantial and the rest of this paper focuses on some of the issues that arise in developing such a survey.

What to Keep Track Of?

Since the contemplated NCJS cannot be based on objectively observable court activity such as filings or trials, the proposed survey generates questions of methodology about what a civil justice incident or need is. Designing a survey assessing civil justice needs requires identifying events or occurrences that count as needs. Such events and occurrences may not always be self-evident even to respondents.

The Nature of the Activities Generating Civil Justice Needs.

Fortunately, prior thoughtful relevant work exists and can be built on by BJS in designing an NCJS. The earliest, major modern study regarded as a touchstone in the field of the incidence of civil justice problems is the American Bar Association and American Bar Foundation (ABA/ABF) project published in Barbara A. Curran's 1977 book, *The Legal Needs of the Public: The Final Report of a National Survey*.²¹ One part of the survey used in Curran's study consisted of inquiring into "actual problem situations with which respondents might have been confronted at one or more times in their lives."²² The other part of the Curran survey that is also directly relevant for present purposes elicited information about the use of lawyers for the delivery

21 Curran, supra note , at 103-04.

22 Curran, supra note , at 20.

of legal services.²³ This included information about what the lawyer did on behalf of the respondent, including appearing in court or at some other hearing.²⁴

Richard Miller and Austin Sarat, writing in 1980 as part of the Wisconsin Civil Litigation Research Project (CLRP), provide a helpful and more formal discussion of the events that might lead to legal action. The litigated dispute that ends up in court must be the topic of an underlying grievance. Citing others, Miller and Sarat describe a grievance as, "an individual's belief that he or she 'is entitled to a resource which someone else may grant or deny . . .'"²⁵ A grievance is thus the beginning of a litigated dispute, but not all grievances lead to litigated disputes. The aggrieved party might not even communicate his or her belief about entitlement to the "someone else"—that is, no claim in or out of court is made. That would end the matter at the grievance stage. The aggrieved party might communicate the belief to the "someone else"—that is, a claim is made, at least out of court. The response in some cases will be satisfactory. That would end the matter at what might be called the claim stage. A claim may be made and no satisfactory response received. One would then have something worthy of the name "dispute." At the end of this stylized process, one might observe a formal civil dispute. Miller and Sarat provide the following useful chart to summarize this grievance to formal dispute process.

Table 1. Definitions of Disputing Stages

| | Belief that one is entitled to a resource controlled by another party | Voicing that belief to the other party | Rejection of claim | "Litigable" claims |
|---------------------|---|--|--------------------|--------------------|
| Grievance | X | | | |
| Claim | X | X | | |
| Dispute | X | X | X | |
| Civil legal dispute | X | X | X | X |

Source: Miller & Sarat (1980-81).

If the aggrieved party decides to pursue the matter, a lawyer or other appropriate third party might be consulted. An NCJS may want to ask not only about the grievance-claim-dispute and civil-legal-dispute stages but also about steps taken to consult lawyers or others at each stage. Many lawsuits are filed without counsel but one does not know which of the filed lawsuits were considered by counsel. Similar questions were included in the Curran study.²⁶

23 Curran, supra note , at 26-27.

24 Curran, supra note , at 349 (question 16).

25 Miller & Sarat, supra note , at 537.

26 Curran, supra note , at 341-53.

The Subject Areas of Civil Justice Activities.

In addition to tracking the activities beginning with a possible grievance that might lead to a civil dispute, a civil justice survey needs to disaggregate grievances by specific subject areas. The aggregated category “civil justice” problem is too general to provide the kind of information needed. Almost all legal phenomena vary by the subject matter of case categories²⁷ and so data on refined subsets of the civil justice “super category” are needed.

Different studies have taken different approaches to subdividing the possible range of civil justice areas. Table 2 reports the subject areas defined by Curran’s 1977 study (I exclude crimes from the list as beyond the scope of a civil justice survey):²⁸

Table 2. Curran ABF/ABA Subject Areas of Civil Subject Matter Areas

| |
|--|
| ownership of real property |
| rental of real property |
| purchase of real property |
| purchase of personal property |
| credit transactions |
| jobs and wages |
| violation of civil or constitutional rights |
| marital matters |
| problems involving state, local or federal governmental agencies |
| torts |
| problems involving children |
| wills and estate planning |
| estates |

Source: Curran (1977) at 21.

Important limitations attend using a fixed list to identify incident legal problems.²⁹ These include the survey instrument signaling the respondent that a problem is a legal one without the respondent having regarded it as such. The predefined list also risks limiting responses to problems previously defined as being legal. The actual legal needs may be new ones, not previously known, such as systematic identity theft. A list also risks under-reporting problems that are not on the list. The lengthier the list the more likely a respondent might not think he or she has a legal problem unless it appears on the list. And the survey methodology, of course, risks the reluctance of respondents to respond to

²⁷E.g., Theodore Eisenberg et al., *Juries, Judges, and Punitive Damages: Empirical Analyses Using the Civil Justice Survey of State Courts 1992, 1996, and 2001 Data*, 3 J. Empirical Legal Stud. 263, 279 (2006) (showing substantially different rates of punitive damages awards in motor vehicle cases and cases with and without bodily injury).

²⁸Curran, *supra* note , at 21.

²⁹Miller & Sarat, *supra* note , at 534 n.5.

Table 3. Miller/Sarat Aggregation of Specific Grievances Into Problem Types

| | |
|------------------------|---|
| 1. Tort | Auto accident, work injury, other injury to or damage to property of a household member |
| 2. Consumer | Problem with a major purchase, medical services or other services; problem with home builder (*) or a home repair or improvement contractor (*). |
| 3. Debt | Problem collecting money from an employer, debtor or insurance company; disagreement with a creditor or other problems paying debts; problems with a mortgage (*). |
| 4. Discrimination | Employment problems (denied a job or promotion, lost a job, problems with working conditions, harassment, or being paid less because of discrimination), problems in schooling or education, buying or renting housing, or any other problems because of discrimination. |
| 5. Property | Problems over what was permissible to build (*), boundary lines (*), someone else using the property (*), or other problems with ownership or use (*), excluding problems with business or rental property. |
| 6. Government | Problems collecting social security, veterans, or welfare benefits or tax refunds, obtaining services from local government, obtaining any other government benefits or services; problems with any agency which claimed household owed money; other problems with a government office or agency. |
| 7. Divorce (*) | Post-divorce problems: property division, alimony, and child support, visitation, or custody. |
| 8. Landlord-tenant (*) | Problems over rent, eviction, condition of the property, or other problems with a landlord. |
| 9. Other | Problems cited in response to a final, general probe for other problems; problems with the ownership or division of property jointly owned with someone outside of the household (*\$); problems involving violation of civil rights, other than discrimination. |

Based on Miller & Sarat (1980-81), Appendix I, p. 566

Note: * denotes grievances ascertained for households at risk.

strangers about important personal matters that they may regard as private. Some steps may be taken to ameliorate these concerns,³⁰ but some are inherent in the contemplated venture.

Information to Be Gathered About Civil Justice Incidents and Related Matters

For each purported civil justice grievance, one must decide how much information to gather as part of an NCJS. One must of course gather information about the actual civil justice grievances themselves. But additional information is clearly desirable. For example, both the ABA/ABF study and the CLRP study included information about respondent demographics.³¹ The pursuit and processing of the purported grievance is also important. Was a claim made, with or without a lawyer? Was counsel consulted? Was a legal action or other formal proceeding commenced?

³⁰Id.

³¹Curran, *supra* note , at 23, 122-30 (reporting incidence of legal problems by sex, race, education, income, and age); Miller & Sarat, *supra* note , at 552 (reporting associations between claim rates and income, race, sex, age, and education).

What was the resolution of the grievance? This information allows assessing the rate at which respondents seek redress of grievances and the role of counsel and the courts. Both the ABA/ABF and CLRP studies included such information,³² though the ABA/ABF study focused less on courts and more on the nature of lawyer use.

Another major civil justice study focused exclusively on accidental injuries and gathered more detail about those injuries than the ABA/ABF or CLRP studies. Deborah Hensler et al., in a RAND Institute for Civil Justice project, interviewed about 26,000 households by telephone, and about all sources of compensation and followed up with about 2,800 telephone interviews limited to liability claiming behavior.³³ The scale of the project was limited to one form of claiming behavior. RAND stated, “we did not have the resources to explore how Americans view and interact with other systems, such as workers’ compensation or their own insurance claims adjusters.”³⁴ Nevertheless, they gathered extensive information about claiming behavior with respect to accidental injuries. They gathered detailed information about the following aspects.³⁵

- accident circumstances
- nature and severity of the injury
- health care and other direct expenditures and work loss associated with the injury
- sources of compensation
- amount of compensation from all sources
- liability claiming behavior

The designers of an NCJS would have to decide whether such detail about each incident should be gathered given that the scope of civil justice problems in an NCJS would have to be broader than the narrower class of problems studied by RAND.

Prior Research Methodologies and Results on Civil Incidents

The Curran survey was intended to examine the legal needs of the public by interviewing a representative sample.³⁶ The target was 2,000 respondents and 2,064 completed interviews were conducted.³⁷ The complex survey design used a random sample of the continental United States Standard Metropolitan Statistical Areas (SMSAs) and of counties outside SMSAs. Within each selected SMSA or

county, a random sample of block groups was drawn and within these one sample of about 100 households was randomly selected.³⁸ The results reported in the study cannot reasonably be summarized in a short paper, but a key set of results for present purposes is reported in Table 4.

³⁸Curran, supra note , at 33.

Table 4. Results of ABA/ABF Curran Study

| Question | Problem Type | No. of Adults Who Had Problem Per 1,000 Adults in the Population | |
|------------------------------|---|--|----------------|
| | | At Least Once | At Least Twice |
| Real Property | | | |
| 7 | Acquisition | 710 | 400 |
| 8 | Interference with ownership | 50 | 10 |
| 10 | Serious dispute with home builder | 20 | <10 |
| 12 | Serious dispute on home repair contract | 40 | <10 |
| 14 | Serious dispute with mortgagee | 20 | 0 |
| Employment Matters | | | |
| 26 | Serious difficulty collecting pay (excl. garnishment) | 60 | 10 |
| 27 | Job discrimination | 90 | 30 |
| Consumer Matters | | | |
| 16 | Eviction | 40 | <10 |
| 17 | Serious dispute with landlord | 90 | 10 |
| 18 | Serious dispute on major purchase | 140 | 30 |
| 20 | Serious dispute with creditor | 50 | 10 |
| 21 | Repossession | 30 | <10 |
| Estate Planning | | | |
| 57 | Wills | 270 | -- |
| 61 | Inter vivos trust | 50 | 10 |
| Estate Settlement | | | |
| 52 | Death of spouse | 100 | 10 |
| Marital | | | |
| 52 | Divorce | 150 | 20 |
| 55 | Separation (custody/support) | 10 | -- |
| 56 | Alimony/support | 30 | -- |
| Governmental | | | |
| 34 | Serious difficulty with municipal service | 70 | -- |
| 35 | Serious difficulty with municipal/county agency | 50 | -- |
| 36 | Serious difficulty with state agency | 40 | -- |
| 37 | Serious difficulty with federal agency | 50 | -- |
| Torts | | | |
| 38 | Serious personal injury to respondent | 120 | 20 |
| 39 | Serious property damage to respondent | 400 | 190 |
| 40 | Serious personal injury or property damage by respondent | 60 | 10 |
| 49 | Serious injury to child of respondent | 80 | 10 |
| 40F, 41 | Crimes by respondent | 40 | 10 |
| Constitutional Rights | | | |
| 28 | Infringement of constitutional rights | 80 | 40 |
| Juvenile Matters | | | |
| 50 | Child of respondent had serious problem with juvenile authorities | 60 | 20 |

Source: Curran (1977) at 103-04 (tbl. 4.8)

³²Curran, supra note , at 134-62 (describing use of lawyer services); Miller & Sarat, supra note , at 551 et seq. (describing claim rates given a grievance, success rates, and more).

³³Deborah H. Hensler et al., Compensation for Accidental Injuries in the United States 3 (1991).

³⁴Id.

³⁵Id.

³⁶Curran, supra note , at 33.

³⁷Curran, supra note , at 34-35.

The leading problem area reported by respondents relates to real property acquisition. Over 70 percent of respondents reported at least one real property acquisition problem and 40 percent reported at least two such problems. Other areas with high rates of problems were major purchases, wills, divorce, serious personal injury, and serious damages to property.

Data for the CLRP were from a telephone survey. The geographic scope was narrower than the Curran study but the proportion of households surveyed within the selected geographic area was substantial. The survey was administered in January 1980 to approximately 1,000 randomly selected households in each of five federal judicial districts: South Carolina, Eastern Pennsylvania, Eastern Wisconsin, New Mexico, and Central California.³⁹ The major cities of Philadelphia and Los Angeles would be included in these districts. The time frame assessed was narrower than in Curran. The Miller-Sarat respondents were asked “whether anyone in their household had experienced one or more of a long list of problems within the past three years . . .”⁴⁰ So one expects problem rates to be lower. But for many problem types, substantial rates were reported. For present purposes, the key results are reported in Miller and Sarat’s Table 2, reconstructed on the next page.

Almost 16 percent of households reported a tort grievance within a three year period and almost 9 percent of consumers reported a grievance involving at least \$1,000 in the same period. The Miller-Sarat threshold for consumer grievances was \$1,000.⁴¹ Given the prominence of class action policy discussions and activity, the \$1,000 limitation might be ill-advised. In assessing aggregate litigation activity, it is important to know whether respondents believe they have a grievance about a matter, even if the matter is small. Many consumer and other class actions involve low stakes and recoveries per class member.⁴²

This table and the underlying study can make useful contributions to the design of a civil justice survey. First, note the range of topics covered. The table distinguishes among eight categories of civil justice grievances, of which torts is just one. The table could be expanded to include pre-divorce family related matters, including spousal or partner abuse.

Second, the quantitative results contain several important results. The “claims” rate is high, about 80 percent or more, for all categories other than discrimination, where it is only 29.4 percent. In other grievance categories, the claims rate is so high that there is little room for statistically significant

variation. In all categories other than torts, more than half of the claims resulted in disagreement or disputes. The torts dispute rate, 23.5 percent, is comparatively low. It would be desirable to separate the torts results by automobile and non-automobile claims. The massive, routinized automobile insurance system likely leads to satisfactory claims resolution in a higher percentage of cases than in less routine torts. Evidence from the RAND study confirms the need to separately consider motor vehicle accidents. RAND found that 89 percent of motor vehicle incidents lead to someone taking action compared to 16 percent of on-the-job products associated injuries and 7 percent of nonwork products associated injuries.⁴³

Given a dispute, the rate of lawyer use varies. In two areas, post-divorce matters and torts, lawyer use was over 50 percent, with a notably higher rate in post-divorce grievances than in torts grievances. This likely is because attorneys often had already been consulted in connection with the divorce itself and only 24 percent of households were at risk for post-divorce problems. The high lawyer use rate in torts cases may be related to the low dispute rate in torts cases. Most torts grievances led to claims but not to disputes. The substantial filtering process likely results in high stakes or quite contested matters ripening into disputes. These should be expected to lead to consultation with lawyers at unusually high rates, 57.9 percent in the case of torts disputes.

The process of consulting with lawyers tends to be associated with filtering disputes away from court filings. Across all categories of disputes, lawyers were used in 23 percent of disputes, and court filings resulted in 11.2 percent of disputes. Working from grievances to court filings can be done by noting that 71.8 percent of grievances led to claims, and that 62.6 percent of claims led to disputes, and that 11.2 percent of disputes led to court filings. Multiplying through yields about 4 percent of grievances ending in court filings. In the CLRP data, only about one torts dispute in three led to a court filing and only about four percent of torts claims led to a court filing. RAND found that “about one injury in ten leads to an attempt to collect liability compensation.”⁴⁴ Motor vehicle incidents tend to inflate the overall rate. In “nonwork, non-motor-vehicle accidents, only three injuries out of 100 lead to liability claims.”⁴⁵

RAND’s data on consulting attorneys is difficult to compare with CLRP data because the CLRP data do not separately report on motor vehicle cases. In motor vehicle cases, RAND reports that 18 percent of injured persons hire a lawyer. In occupational injuries, six percent hire a lawyer and in other injury contexts, one percent hire a lawyer.⁴⁶

³⁹Miller & Sarat, *supra* note , at 537.

⁴⁰Miller & Sarat, *supra* note , at 534.

⁴¹Miller & Sarat, *supra* note , at 566.

⁴²E.g., Theodore Eisenberg & Geoffrey P. Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study, 53 UCLA L. Rev. 1303, 1324 (2006) (fig. 1).

⁴³Hensler et al., *supra* note , at 121, 127.

⁴⁴Hensler et al., *supra* note , at 120.

⁴⁵Hensler et al., *supra* note , at 120.

⁴⁶Hensler et al., *supra* note , at 123.

Table 2. Grievances, Claims, and Outcomes: Rates by Type of Problem^a

| | All Grievances | Torts | Consumer | Debt | Discrimination | Property | Government | Post-Divorce | Landlord |
|--|----------------|--------------|-------------|-------------|----------------|--------------------------|-------------|---------------------------|---------------------------|
| Grievances ^b (Percents of Households) | 41.6% (5147) | 15.6% (5147) | 8.9% (5147) | 6.7% (5147) | 14.0% (5147) | 7.2% (3798) ^c | 9.1% (5147) | 10.9% (1238) ^c | 17.1% (2293) ^c |
| Claims (Percents of Terminated Grievances) | 71.8 (2491) | 85.7 (2491) | 87.3 (559) | 94.6 (303) | 29.4 (595) | 79.9 (193) | 84.9 (240) | 87.9 (51) | 87.2 (307) |
| Disputes: (Percents of Claims) | | | | | | | | | |
| a. No Agreement | 32.0 | 2.6 | 37.1 | 23.9 | 58.0 | 32.1 | 40.7 | 37.7 | 55.0 |
| b. Agreement After Difficulty | 30.6 | 20.9 | 37.9 | 60.6 | 15.5 | 21.8 | 41.4 | 49.3 | 26.7 |
| c. Dispute | 62.6 (1768) | 23.5 (467) | 75.0 (263) | 84.5 (142) | 73.5 (174) | 53.9 (154) | 82.1 (203) | 87.0 (45) | 81.7 (267) |
| Lawyer Used (Percent of Disputes) | 23.0 (1100) | 57.9 (107) | 20.3 (197) | 19.2 (120) | 13.3 (128) | 19.0 (84) | 12.3 (163) | 76.9 (39) | 14.7 (218) |
| Court Filing ^d (Percent of Disputes) | 11.2 (1093) | 18.7 (107) | 3.0 (197) | 7.6 (119) | 3.9 (128) | 13.4 (82) | 11.9 (159) | 59.0 (39) | 7.3 (218) |
| Success of Claims (Percent of Claims) | | | | | | | | | |
| a. No Agreement (0) | 32.0 | 2.6 | 37.1 | 23.9 | 58.0 | 32.1 | 40.7 | 37.7 | 55.0 |
| b. Compromise (1) | 34.2 | 85.4 | 15.2 | 23.5 | 11.3 | 9.7 | 18.3 | 35.5 | 10.3 |
| c. Obtained Whole Claim (2) | 33.8 | 11.9 | 47.7 | 52.6 | 30.7 | 58.3 | 41.0 | 26.8 | 34.6 |
| 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| d. Success Scale Mean ^e | 1.02 (1782) | 1.09 (479) | 1.11 (265) | 1.29 (142) | 0.73 (174) | 1.26 (154) | 1.00 (203) | 0.89 (45) | 0.80 (267) |

^aObservations were weighted by the population of each judicial district so that the five samples could be combined. Weights were calculated to preserve the actual number of observations. Numbers in parentheses are the total upon which the reported proportions are based. The miscellaneous "other" category is included in the "all grievances" column but omitted as a separate item from this and subsequent tables. (3.5% of households reported an "other" grievance.)

^bProportions are of households reporting one or more grievances of each type.

^cThese are proportions and numbers of households at risk. Households at risk of property problems are those owning their own home, apartment or land within the 3-year period (73.8% of all households). Households at risk of post-divorce problems were the 24% of all households that had a divorced member. The 44.2% of households threatened within the 3 years were at risk of landlord problems.

^dThe numbers in these rows differ slightly due to missing data.

^eThe success of claims was scaled 0, 1, or 2: 0 if no agreement was reached, 1 if the agreement was a compromise, and 2 if the entire claim was met.

As noted above, prior studies gather information on customary demographic categories and all of the results reported here could be subdivided by income, race, sex, age, and education.

Conclusion: the Benefits and Plausibility of a National Civil Justice Survey

The need for information about civil justice issues and the results of previous studies suggest that a major civil justice survey is warranted. Problems are prevalent enough to warrant systematic assessment of their presence and pursuit. The uses to which we could put systematic data about these areas are numerous. For example, over time, trends in serious personal injury or property damage could provide insight into the tort's system's effect on primary behavior, and the effect of policy initiatives on the tort system. An NCJS would also have synergistic effects with other datasets. Systematic knowledge about civil justice grievances over time would enhance the value of BJS-NCSC data about

case filings and trials. And an NCJS would provide the best available information about claiming rates and disputing rates by U.S. residents.

Studies reviewed here also suggest that an NCJS is feasible. The sample sizes in the ABA/ABF, CLRP, and RAND studies suggest that a civil justice survey of magnitude similar to the NCVS would yield highly meaningful results. The NCVS each year collects data from a nationally representative sample of 77,200 households comprising nearly 134,000 persons on the frequency, characteristics and consequences of criminal victimization in the United States.⁴⁷ A civil justice project of similar scope, building on BJS expertise, would dwarf prior efforts described here, which included a maximum of about 26,000 households. A sufficiently large sample would allow a breakdown of results by state or locality. Such a breakdown would be helpful here to assess whether interstate variation might reveal real property acquisition systems that are associated with a reduced incidence of problems.

⁴⁷ E.g., Catalano, *supra* note , at 11.

Improving Police Effectiveness and Transparency: National Information Needs on Law Enforcement

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If, as I believe, our ultimate task is to cooperate in bringing about the reduction of a crime rate that far exceeds that of other developed countries, then the presently available crime and law enforcement statistics are almost useless.

~ Hans Zeisel

Introduction

I have some good news and some bad news. First the good news: The 21st century finds the police more capable and effective than ever before. Police operations are also more transparent, along with the operations of most other public agencies. The law enforcement community is subjected to more scrutiny than was imaginable a few decades ago due to advances in information and communication technologies, a more aggressive and intrusive media, and elevated standards of public accountability.

The media attention on policing has been mostly sensational and exceptional. The Rodney King case in Los Angeles and the Amado Diallo and Abner Louima cases in New York exemplify the extremes of episodically intense probes into police operations. Video technology in the hands of private citizens has mushroomed beyond anyone's imagining of just 20 years ago, and the police have learned painfully that if they misbehave, their families may watch the event on the evening news.

But police transparency has advanced as well due to systematic information. Thanks largely to the work of the Bureau of Justice Statistics (BJS)—created not long after the President's Commission on Federal Statistics recommended the creation of such an agency¹—and that of the National Institute of Justice (NIJ), we know much more today about run-of-the-mill law enforcement practices that are of little interest to our hyperactive, attention-seeking media. We have much more comprehensive and reliable information about what works in policing now than we did 35 years ago,

¹BJS was established officially in its current form in 1979, but a precursor agency, the National Criminal Justice Information and Statistics Service, had been created in the early 1970s as the statistical arm of the Law Enforcement Assistance Administration. The research arm was the National Institute of Law Enforcement and Criminal Justice, precursor to the National Institute of Justice.

when James Q. Wilson asked us to think about crime more scientifically. As the media have fed the public's voyeuristic instincts, so have BJS and NIJ served our enlightened interests by providing reliable and valid knowledge about law enforcement.

Professor Egon Bittner, a 20th century giant on the study of policing, must be pleased that more light now shines on law enforcement, revealing both the sensational and the ordinary. He observed in 1970 that the law enforcement function is, itself, extraordinary: the police have a monopoly on the authority to use non-negotiable coercive force.² Given such power, scrutiny is essential to making the police more accountable and effective, and to giving it legitimacy. Transparency serves the political interests of democratic society, but Bittner made clear that in a democracy more police transparency makes for a more vibrant and just society too. (Bittner; Brodeur)

Now for the bad news: Over the past 20 years or so, gains in knowledge about what works in policing have not kept pace with gains in information technology. Contemporary textbooks on policing reflect the generation of substantially greater knowledge about how to make the police more effective in the 1970s and 1980s, in the early days of the information explosion, than in the past 20 years. In the 1970s and 1980s, we learned that:

- What the police do is much more important than how many are on the street.
- Purposeful activities aimed both at identifying and resolving problems before they blossom into full-blown crimes and at building working relationships with members of the community are more productive than random patrols and speedy responses to calls for service.
- Two-officer patrols are more likely than one to make problems for the police in many situations, with no offsetting benefit in the reduction or solution of crimes.

²Bittner's observation follows that of Max Weber, who asserted in a 1919 lecture, "Politics as a Vocation," that the state had a monopoly on legitimate violence ("Gewaltmonopol des Staates"). (See Warner.)

- The police play a critical role in determining whether an arrest ends in conviction, based on the witnesses and evidence they manage to bring to the prosecutor and the extent and quality of their follow-up work.

Much of this research was done at the Police Foundation and the Institute for Law and Social Research, nearly all of it under support from NIJ and BJS. The RAND Corporation, meanwhile, was doing ground breaking research on offenders and corrections, also with substantial support from the federal Department of Justice.

Since 1990, laptop and squad car computers with precise information about the distribution of crime by place and time—instantly available to the police for tactical uses—have made police operations more information-driven and effective than ever before, with sophisticated analyses of crime mapping data and in-house crime analysis.

Although we do not know the precise extent, we can be fairly sure that these tactical uses of advanced information technology have contributed significantly to the decline in serious crimes since 1990. But the widespread, systematic dissemination of this information and uses of the data for research and policy assessment purposes—to permit a more thorough understanding of relationships between the inputs of policing and police performance in various settings nationwide—have been exceedingly limited.

We have witnessed other important reforms in policing since 1985, especially with the development of community- and problem-oriented policing and the widespread use of new systems of police accountability, such as COMPSTAT—all of which have contributed to police transparency and, by most accounts, to effectiveness—but we really don't know much more about what works in policing today than we did in the mid-1980s. The words of Hans Zeisel that open this essay still resonate nearly 40 years later.

Police and the Criminal Justice Sieve

Consider, in particular, the fundamental role of the police as the official front-line agents to protect society against crime. Most of us are familiar with elaborate diagrams of the criminal justice “funnel” depicting the channeling of crimes through the criminal justice system. But when numbers are attached to the diagram, it becomes clear that this is more of a sieve than a funnel. About 8 to 10 million felonies are reported to the police each year, and the National Crime Victimization Survey (NCVS) tells us that about as many go unreported. So we have something like 15 to 20 million felony victimizations annually in the United States, and fewer than 1 million of these cases end in conviction. The police are precisely in the middle of this extraordinarily leaky sieve. Yet, we have little by way of reliable empirical evidence on the relationships between police operations, tactics, and policies on the one hand, and the leakages at each stage, on the other—from victimization to reporting to recording to arrest to conviction—which the police could conceivably do much more to close.

Thanks again to BJS, we do know a good deal more from the NCVS than we used to about why so many serious crimes still go unreported, but we stand to learn much more still about what the police could do to reduce victimization levels and to further increase the reporting rate. With reliable information about the characteristics of the cases that end in arrest and those that do not, together with reliable information about what the police do—and fail to do—in each case, we could also learn more about why so many reported felonies fail to end in arrest, and what law enforcement officials could do to help the prosecutor convict more culpable felony offenders, with stronger evidence and witnesses. Some of these relationships are likely to hold more generally across the major offense categories and the various stages from victimization to conviction than others, and it is extremely important to know how these factors interact.

In today's world of information and the ready availability of statistical tools to analyze it, one can only marvel at how little we know about what the police could do to raise the rate at which victimizations end in conviction from well below 10% to perhaps 20% or more.³ We rarely bother even to consider the prospect. It seems somehow negligent that we have failed to seize opportunities to learn what the police can do at each stage to reduce the enormous social costs associated with this vast, largely ignored sequence of justice lapses between crimes and convictions. BJS can help by providing statistical indicators of lapses at each of these stages, and its data sets can be exploited creatively for another purpose: to permit in-depth research about what works to reduce the leakages. (While research is more clearly within the domain of NIJ rather than that of BJS, the roles do occasionally overlap, and BJS should encourage research uses of the data it produces for other purposes. A modest degree of competition between these two agencies in this domain of natural overlap is probably a good thing.)

These are not just leaks; they are lapses of justice. They are costly, and they demand more attention. Police lose legitimacy when they engage in brutality and corruption, but they lose legitimacy as well when they fail to bring the vast majority of serious offenders to justice. And following Blackstone's rule (“better that ten guilty persons escape than one innocent person suffer”), the police lose even more legitimacy when they arrest the wrong people, while the real offenders remain at large. (Forst) Lapses in justice of both kinds—wrongful arrests and failures to arrest—are surely more pervasive in the neighborhoods and communities plagued with chronically high crime rates, if only because the concentration of crimes is so much greater in those places. Affluent communities not only can lavish more resources on their police departments, but they can and

³Of course, many offenders who fail to get arrested and convicted for a given crime eventually get convicted for another crime, but that is likely to provide little consolation to the victim in a given case. This explanation, moreover, does little to contribute to the legitimacy of the police and courts. It is an exceedingly low standard. Imagine the flip side of the same logic: Suppose we awarded degrees to students who failed most of their courses but eventually passed one.

often do supplement those resources with private security services. (Forst and Manning) The media tend to focus more these days on coeds missing in the Caribbean than on inner-city crime, but inner-city victims are all too familiar with lapses of justice in their neighborhoods, in terms of both wrongful arrests and failures to arrest and convict.

This is not a criticism of the police. The law enforcement community generally does the best it can with what it has, and it does so usually with commitment and professionalism, often against great odds and in the face of peril. Moreover, we would not be better off if all victimizations ended in conviction. Some victimizations—even felony crimes—are better resolved through informal social control mechanisms than through formal criminal punishment. But I have yet to hear a compelling explanation for how justice is done in a system in which just 5 to 10% of all felony victimizations end in conviction.⁴

It is a criticism of the sharp, avoidable disparity between how little we know about relationships between aspects of police operations and case leakages and how much we stand to learn, given today's advanced information and analytic technologies. Do affluent areas experience the same levels of leakages at each stage as poor ones? How different are they? Do the leakages tend to vary with variation in policing practices? Which ones and under what circumstances? The opportunities are vast for federal, state, and local officials to learn more about the leakages at each stage and how they vary across communities. Much greater efforts are made today to understand service lapses elsewhere, especially in the private sector, typically in settings where the stakes and social costs are considerably smaller.

How might the Bureau of Justice Statistics work to reduce these lapses of justice and the associated social costs? How should BJS weigh its contributions to the control of crime against other responsibilities of the law enforcement community: "all hazards" policing requirements, quality of life issues under police control, and fear of crime? What information, if any, should BJS collect, organize and analyze to deal with emerging problems such as terrorism, human trafficking, identity theft, and cybercrime? How much should it allocate to the collection and maintenance of data bases, data series, special reports, and for on-line and print media? How should it apportion its spending on data collection and organization, descriptive analysis, the identification of key indicators, explanatory and evaluation analysis of law enforcement policy, and the dissemination of information and findings? At what levels of aggregation and disaggregation should it report each series? Might data sets that emerge from new systems, such as COMPSTAT, provide useful information if collected and organized on a nationwide basis? What if many jurisdictions either cannot participate or choose not to? How do the answers to these

⁴Perhaps the most compelling explanation is that some 25% of all felony arrests involve juvenile offenders, and few of these should end in conviction. But even removing all the juvenile cases, we still end up with fewer than 10% of felony victimizations committed by adult offenders ending in conviction.

questions vary by type of user: practitioner, policy maker, researcher, and so on? These questions warrant more serious attention and better answers than we have provided.

Many of the questions have been addressed before, but not much movement has been made to improve the availability of the data needed to address them more systematically and coherently. Private individuals and institutions have, in some cases, taken the lead in organizing data to provide a basis for this work. Richard Rosenfeld, for one, has identified police agencies that post useful summary data on their websites. (Rosenfeld, 2006) The data are organized not only to make the work of the departments more accessible, but to allow the departments to avoid having to answer the same questions from reporters, representatives of public interest groups, and others over and over. Some of the data elements and structures are uniform and comparable because they are developed to comply with the Uniform Crime Reports (UCR) requirements. They are comparable also because departments often look over their shoulders to see what their counterparts are doing elsewhere, and they often adopt what they regard as best practices. The data that are available from these voluntary efforts may not be fully representative of the universe of police departments, but many of these biases can be assessed using other data. The police department data, in any case, could provide a key ingredient for the development of a "policy evaluation infrastructure that would support the continuous monitoring of crime rates, generate knowledge of crime-producing conditions, and link evaluation research findings to one another and to expected policy outcomes, notably crime reduction." (Rosenfeld, 2006, p. 309)

In the remainder of this essay, we consider first what information BJS currently collects, organizes, and makes available about law enforcement operations and outcomes, and then we examine how it might improve on its current program.

BJS Data on Law Enforcement

The Bureau of Justice Statistics supports the law enforcement community by acquiring, organizing, updating, and disseminating information with the aim of serving policy makers, practitioners, and researchers. This is consistent with the larger BJS mission statement:

To collect, analyze, publish, and disseminate information on crime, criminal offenders, victims of crime, and the operation of justice systems at all levels of government. These data are critical to Federal, State, and local policymakers in combating crime and ensuring that justice is both efficient and evenhanded.

There is some overlap with what the National Institute of Justice does in the production and analysis of data, but in law enforcement as in other aspects of the criminal justice system, the primary division of labor is that BJS focuses more on the data and on the Nation as an entity, while NIJ emphasizes the research, most of which is not conducted on the U.S. as a whole. BJS serves the law enforcement community in two broad areas: federal law enforcement and state and local policing.

Federal Law Enforcement

The BJS federal law enforcement series includes information on suspects in initiated investigations (by federal investigative department, offense category, month and year the matter was received, and most serious charge), persons arrested and booked (by age of arrestee, citizenship, sex, race, arresting agency, offense category and most serious charge, and federal district and circuit), and suspects in concluded investigations (by federal investigative department, offense category, case outcome, and number of days in the process). Aggregate statistics of these series are reported in the Compendium of Federal Justice Statistics. The Compendium is available online from 1992 through 2004, and in hard copy for selected years prior to 1991. These data have been reorganized in a 10-year time series in the Federal Criminal Justice Trends for 1994-2003. The report summarizes the activities of agencies at each stage of the federal criminal case process, including the number of persons arrested (with details on drug offenses) and the number and dispositions of suspects investigated by U.S. attorneys.

What we know from these series is, first, that the federal law enforcement community is large and growing. Today there are over 100,000 sworn federal officers, the majority (63%) of whom are in four agencies: Customs, the Federal Bureau of Prisons, the Federal Bureau of Investigation, and the Immigration and Naturalization Service. We know also that drug cases represent the largest category of federal cases brought to U.S. attorneys. In 2003 there were 37,000 drug cases (29% of the total), followed by property (21%), public order (19%), immigration (16%), weapon (11%), and violent crimes (4%).

State and Local Law Enforcement

Two of the centerpieces of the state and local law enforcement data maintained by BJS are the Law Enforcement Management and Administrative Statistics (LEMAS) and the Sourcebook of Criminal Justice Statistics—Arrests, Clearances and Seizures (Section 4). The LEMAS information, published every 3 or 4 years, provides statistics from over 3,000 state and local law enforcement agencies, including all employing at least 100 sworn officers, plus a representative sample of smaller agencies. It is organized along several dimensions: personnel; budgets, expenditures and pay; operations (patrol units by type, investigation units); equipment; computers and information systems (including information on vehicle-mounted computers, digital imaging systems); and policies and programs (including information about community policing, special operations and special unit programs, and training). LEMAS provides useful information about current operation norms for law enforcement agencies of particular sizes and settings, and data with which policy analysts and scholars can investigate relationships between the inputs of law enforcement and performance measures for agencies in various categories.

The Sourcebook of Criminal Justice Statistics is organized in six sections: criminal justice system characteristics, public attitudes toward crime and justice, the nature and distribution of known offenses, characteristics and distribution of persons arrested and goods seized, judicial processing and sentencing of defendants, and persons under correctional supervision. Data are obtained on the organization and administration of police and sheriffs' departments including agency responsibilities, operating expenditures, job functions of sworn and civilian employees, officer salaries and special pay, demographic characteristics of officers, weapons and armor policies, education and training requirements, computers and information systems, vehicles, special units, and community policing activities.

BJS also provides numerous data sets and codebooks, including the Census of State and Local Law Enforcement Agencies and the Police-Public Contact Survey. The former has provided information every 4 years since 1992 on all state and local law enforcement agencies in the United States. The information collected and reported includes the number of sworn and civilian personnel by state and type of agency. The Police-Public Contact Survey, reported every 3 years since 1996, provides detailed information on salient aspects of face-to-face contacts between police and the public, including the reason for and outcome of the contact. Every 3 years, the PPCS interviews a nationally representative sample of over 60,000 residents (age 16 or older) as a supplement to the NCVS. The PPCS enables BJS to estimate the likelihood that a driver will be pulled over in a traffic stop and the percentage of all contacts that involved the use of force by police.

Until 2004, BJS regularly provided periodic bulletins and occasional special reports on law enforcement topics of interest, many based on LEMAS and Sourcebook data. Each bulletin and special report gave both summary statistics and narrative information to explain and interpret the data. I am told that the publication of these reports may be resumed. In the meantime, BJS makes much of its information available through its website. BJS also coordinates with other federal justice information agencies, including the Federal Bureau of Investigation in its maintenance of the UCR and the National Archive of Criminal Justice Data (ICPSR) in its development of the National Incident-Based Reporting System (NIBRS).

Could BJS Provide More Useful Information About Law Enforcement?

Could the law enforcement share of the Bureau of Justice Statistics budget be better spent? How?

The BJS knapsack problem

Historically, the law enforcement share of the annual BJS budget has run in the neighborhood of under 5% of the BJS budget, which today amounts to less than \$6 million. Most of us would prefer that it be much larger, and the existence

of a crime load costing the nation an estimated one trillion dollars annually (Anderson; Cohen) makes a strong case for a substantial increase. However, today's politics make this a dubious prospect, at least in the short term. In the meantime, we can think about how the funds might be spent. The problem of allocating a budget of any particular size to a set of competing demands is one that has been addressed by operations researchers and economists as a problem of constrained optimization, commonly known as "the knapsack problem," as it is confronted by anyone who has ever puzzled over how much to carry on a very long trek in the woods: Given a set of goods, each with a unique cost and a value, how much of each should be included in a collection so that the total cost is within a given budget and the total value of the benefits is maximized, accounting for complementarities among the goods?

Value to whom? For BJS, as with other federal statistics agencies, the knapsack problem is complicated by several factors. The first of these is the identification of users, each of whom might perceive different values and incur different costs for each item in the knapsack. These perceptions are likely to vary both across various classes of users and within each class. The 1971 President's Commission on Federal Statistics identified the following classes of users of federal statistics:

- Policy makers
- Program managers
- Evaluators of government programs
- Researchers
- State and local governments
- Industry and trade associations
- The public

These different groups tend to have different data needs and goals—and often have interests at different levels of aggregation—so it is no trivial matter to establish how much weight to assign to each user and to various levels of detail in establishing values for prospective items to be included in the knapsack. Practitioners tend to be more interested in the process issues and aspects of service delivery—inputs—while politicians and the general public tend to be more interested in outcomes. Evaluators and researchers tend to be interested in relationships between inputs and outcomes. All users should be interested in transparency. Sorting out these issues can begin with surveys of each class of user to establish their information priorities and the worth of each item to each user.

Determining costs and values of each item

Establishing the true cost of each item in the BJS information portfolio is no trivial matter, since the amounts BJS pays to federal, state and local information providers do not always fully compensate the providing agencies for

the costs they incur in the transaction. The providers do get "public good" benefits in the end that would not otherwise manifest, but those benefits are often offset by political costs of a jurisdiction turning up with numbers perceived—often correctly—as failures. Some information is "bundled in" as an inexpensive by-product of essential information that is more expensive to produce, and it is no trivial exercise to establish the precise cost of each item of information given such complications.

But it is vastly more difficult to establish the value of each item in the BJS knapsack, given the range of stakeholders who make use of the information and the array of other providers of relevant information. Of course, the ultimate recipient is the general public, but citizens are rarely aware that they derive benefits from better policing practices that are based on BJS information. Even the police may be unaware of the connection when it is real. Others who serve the public derive value from different items of information in varying amounts: those who set law enforcement policies and procedures and researchers who analyze the data—ultimately in the public service, but immediately to contribute to our collective body of knowledge and in service to the police, students, and others. Much as a fiscal stimulus has a multiplier effect on the economy, so can information and its production have a multiplier effect through the academic, policy making, and practitioner communities as they serve the public.

There is also the problem of accounting for complementarities and redundancies among items in the BJS law enforcement information knapsack. Some of this is basic, like the need for a can opener in the knapsack only if there are cans to be opened. For example, information about computer software used in policing is dependent on information about the hardware requirements. Some of the variation in value of information derives from the principle of diminishing marginal benefits: The marginal value of data on any particular aspect of law enforcement or any particular offense category declines as more and more of such information is provided. The usual solution to this problem is to select, at the margin and across all available options, the item that maximizes the marginal benefit. But this cannot be done explicitly due to the prohibitive costs of assessing the incomprehensibly large number of values of marginal benefits for each combination of items already in the knapsack.

If this all seems a bit technical and abstract, it is nonetheless pertinent. We may not be able to find a formula with the accurate weights to establish precisely which items of information belong in the BJS portfolio, but to the extent that we can identify the primary stakeholders and obtain rough estimates of the value of each major item of information about the police and policing to each stakeholder, we can begin to make more systematic assessments to determine what should be in the BJS knapsack.

Candidate items for the BJS knapsack. Just as we have categories of items to put in a knapsack to support a 5-day trek in the woods—food, clothing, tent, sleeping bag, tools, and so on—so do we have categories of items that are candidates for the BJS law enforcement portfolio. Here is a list of some of the major candidate categories:

- Federal versus state and local operations
- Crime versus noncrime aspects of policing
- Crime prevention versus response activities
- Public versus private security personnel, expenditures, and applications
- Patrol operations versus investigative operations
- The effects of police practices on levels and leakages from victimization to conviction
- Police administration, organization, management, and resources
- Police accountability systems (e.g., COMPSTAT) and data
- Comparative U.S. and cross-national data (e.g., European Sourcebook on policing)⁵
- Miscellaneous topics:
 - . Special interest offenses: drugs, guns, domestic violence, gang crimes, hate crimes
 - . Homicide clearances, cold cases
 - . Homeland security and terrorism
 - . Police misbehavior: administrative actions against use of force, searches, corruption
 - . Issues of race: profiling, minority employment in law enforcement
 - . Use of technology for crime prevention and investigation
 - . Emerging issues: human trafficking, identity theft, cybercrime

Several of these items are already in the BJS knapsack. Some are available in BJS data bases, but not readily accessible to prospective users. One solution might be to permit users to drill down from aggregates they see in BJS reports to more finely tuned categories of interest on their own, i.e. online access, to better accommodate the needs of individual users.

Other items on the above list not currently available might be unearthed through an expansion of the NCVS. We have learned, for example, that positive prior contacts with the police are more influential than is the seriousness of the offense in inducing victims to report crimes to the police. (Xie, et al.) More could be learned about distinctions

⁵Tavares and Barclay describe the European Sourcebook of Crime and Criminal Justice Statistics (3rd edition, 2006) as the largest collection of crime and criminal justice data covering Europe. Its statistics on policing include crimes reported by the police (homicides, assaults, thefts, and drug offenses), suspected offenders, and police personnel. The European Sourcebook also has sections on prosecutions, convictions, and correctional statistics.

between repeat victimizations by the same and by different offenders and relationships between these various types of repeat victimizations, whether the victim reports to the police, and victims' and nonvictims' attitudes about the police. We could learn more, as well, about special interest offenses, police misbehavior, fear of crime, fear of terrorism, and perceptions of police performance and responsiveness through the NCVS, if funding were made available. Information about reporting rates and public opinions about the police would be especially valuable at the jurisdiction level, if still more funding were to come forth. Regional variation in victimization and related factors are already reported periodically in Great Britain and Holland. Analyses of variation in reporting rates and levels of citizen cooperation with the police and prosecutors across jurisdictions in the United States are likely to produce important insights into police practices.⁶

A 1993 BJS monograph, Performance Measures for the Criminal Justice System, considered several of the issues related to the BJS portfolio on law enforcement, noting that the criminal justice system had been moving away from conventional measures of performance to measures that corresponded more closely to other legitimate public interests. In the chapter on police, Geoffrey Alpert and Mark Moore argued that the traditional emphasis on crime and arrest rates had been excessive, and that the police could serve the public more effectively by assigning greater weight to such indicators as the use of force, incidence of complaints about brutality, rudeness, corruption, and fear of crime. They suggested that more attention be given as well to police activities that aim to improve the quality of life, such as foot patrols, bikes, ministations, door-to-door contacts, and so on. Documentation on these activities could be complemented with files on problems identified and solutions attempted, and what the outcomes were. Alpert and Moore identified specific goals for this "new" paradigm of policing: doing justice, promoting secure communities, restoring crime victims, and promoting noncriminal options.

Organizing the information

One can easily be put to sleep by long lists and details, however useful and important they may be. The no-dose antidote is to stay focused on the basics. The fundamental mission of the police is to protect and serve. The law enforcement community can be supported both to protect and serve if we give them indicators that reveal how the police, both locally and nationwide:

⁶Consider the prospective return on investment from such an expansion of the NCVS, toward a better understanding of effective policing practices and resource allocations. It seems entirely conceivable that a \$100 million investment in the expansion of the NCVS to accomplish these information goals would yield a one percent reduction in the victimization rate through increases in reporting, arrest, and conviction rates. A one percent reduction in the costs of crime amounts to well over a billion dollars of benefit to crime victims. (Anderson; Cohen.)

- Contribute to public safety, the overarching concern of law enforcement, and do so:
- Effectively (measures of crime, public order, satisfaction)
- Fairly (measures of equity, by neighborhood, income, race/ethnicity)
- Efficiently (measures of effectiveness adjusted for cost)
- Exercise discretion prudently and equitably (in cases of domestic violence, traffic stops, gang disturbances, etc., based on variation by officer, neighborhood, SES)
- Serve the unique needs of the community (surveys of the community and the police); and
- Contribute to perceived legitimacy (survey data on satisfaction, lapses).

BJS could make a considerable contribution to the law enforcement community by selecting and organizing the contents of its information portfolio—and providing indicators of police performance and trends—by categories that speak to the overarching themes of law enforcement. The ones shown here strike me as worthy candidates.

Dealing with change. The perceived importance of each prospective item of information is likely to continue to change as the world continues to turn. In the meantime, assigning precise costs and values to each of these information items, accounting for complementarities among them, will always seem to be out of practical reach. Yet, if the choices are to be made in a systematic and fairly comprehensive way, some amount of such assessment is unavoidable.

Even if we could all agree that the BJS portfolio should be changed in a particular way, it is no trivial matter to establish something that resembles an optimal path from where BJS is now to the new place. And there is no guarantee that today's assessment will hold up over the long term or even the intermediate term. Some flexibility should be built in to the BJS portfolio to accommodate a changing set of demands.

Dealing with politics

One of the great challenges we face is to protect the integrity of the process of determining what to report about law enforcement and how to report it against the backdrop of political influences. One such political problem is the result of territorial boundaries at the federal level. We have noted the existence of some tension in the slightly overlapping roles of BJS and NIJ. A much greater tension is that between the FBI and every other justice information gathering and generating arm of the federal government, especially BJS and ICPSR, in its development of NIBRS. The FBI has been responsible for the collection, organization, and dissemination of the UCR for three quarters of a century, and while much good has come from this monopoly of independent control (some would argue that “little good” is a more accurate description) the arrangement is not healthy. We might all be better off if the UCR were transferred to BJS, as others have argued, so that

the FBI could focus on matters more central to their mission and expertise. Richard Rosenfeld observed recently (2007) that the sophisticated approaches used by social scientists to identify patterns in the UCR would permit more powerful and timely projections of emerging crime trends than are presently available under the FBI's glacial stewardship of the UCR—other federal agencies have demonstrated a facility for making reliable data publicly available much more quickly than the FBI does. Rosenfeld contrasts the FBI's nearly year-long delay in making crime data available with the Bureau of Labor Statistics' (BLS) making detailed data on unemployment for one month available the next month on the BLS website, concluding: “The nation's crime monitoring patchwork lags by decades in the sophistication, coherence, and capacity for rapid response of the information infrastructure that supports economic policy making.” (p. 829)

The UCR is not as comprehensive as it could be, either. Rosenfeld observes that the FBI created its Supplementary Homicide Report in the 1970s to provide richer information about homicides than was available in the UCR, but did not do so for other important crime categories, which gave rise to NIBRS in the 1980s. After two decades, however, NIBRS covers just 20% of the U.S. population, a fact that some have attributed to the FBI's resistance to sample-based implementation.

Another, perhaps more serious, political conflict is that between federal and state or local authorities. We might expect our federal system to be uniquely effective in providing a check against local partisan pressures. Yet, other countries have been much more effective in using victimization surveys to hold their local police accountable for protecting the public against crime.⁷ The Civil Rights Division of the Department of Justice has been a shining exception to this general rule, especially with its successful use of the victimization survey to hold local law enforcement agencies accountable for the problem of discrimination in the exercise of discretion in making routine traffic stops. This sort of independence to insulate the collection, analysis, and reporting of federal statistics against intrusions—typically, by local officials calling or paying visits to influential friends in Washington—should apply to everything BJS does, to ensure that the needs of the nation's law enforcement community and the general public are served legitimately and professionally. This integrity is likely to be maintained when everyone realizes that attempts to breach the insulation of federal statistics against political pressure are always more newsworthy than the items of information that trouble some local official in the first place.

⁷I thank Jim Lynch for making this point.

Conclusion

James Q. Wilson, a critic of many programs of the federal government, has argued that the provision of statistics and research on crime and justice is an important exception: the production of information needed to improve the public's safety is an essential federal function. In 2002, for example, he observed that local criminal justice authorities do not do research very well because they are too attached to the results, and they do not do enough of it because individual jurisdictions that derive the benefits of such collective efforts would not adequately fund them if the participation were voluntary. He concludes that in matters pertaining to the criminal justice system, there is simply "... something wrong with not trying to find out what works ... The chief federal role in domestic law enforcement should be to encourage and fund such research. No one else will do it." (pp. 556-7)

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- Wilson's words should provide some assurance as we move ahead to determine what information is most needed and why it is needed. If we can arrive at a consensus that certain changes are bound to improve policing, it will be more difficult for partisan politics to interfere. Political debate these days is preoccupied with tax policy and the economy, terrorism and Middle East policy, health care policy, oil prices and energy policy, abortion and the meaning of marriage. With crime off of the political radar screen, this could be the perfect moment to make substantive improvements in the production of information about crime and justice, to return to the knowledge-building trajectory of the 1970s and '80s, taking advantage of new information and communication technologies. It is to the credit of Jeff Sedgwick and the other organizers of this workshop that we are here today pursuing such a prospect. Policing could become even more transparent in the process.
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Understanding Violence Against Women Using the NCVS: What We Know and Where We Need to Go

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Women accounted for 44% of simple assault, 34% of aggravated assault, 33% of robbery victimizations, and the vast majority of rapes and sexual assaults in 2004 (Bureau of Justice Statistics 2006). Efforts to study violence against women have increased over the past couple of decades, yet research on the issue still lags behind research on male violence. Indeed, research on violence against women often remains segregated within both academic and policy circles, treated more as a “special interest topic” than an issue of core importance for any discussion of violence in the United States (see Kruttschnitt, McLaughlin and Petrie 2004).

The National Crime Victimization Survey offers a resource for moving the topic of violence against women to center stage in research and policy discussions of crime. The NCVS produces information on patterns of female victimization nationally and allows us to view these against the backdrop of male victimization. It includes a wide array of variables over time and a large sample size. These attributes afford possibilities for rigorous research on the shape and causes of violence against women.

Yet, research on violence against women using the NCVS has not reached its potential. There have been sustained efforts by the Bureau of Justice Statistics and some academic researchers to assess the levels of violence against women and describe distributions of victimization across subgroups of women over time. This descriptive research is a necessary first step. Although important questions remain to be answered in this first step, the major gap in research using the NCVS is in “explanatory” research. That is, research using rigorous analytic techniques to tease apart the complex patterns of individual characteristics and social contexts associated with violence against women. The accumulation of explanatory research and the development of theoretical perspectives that may ensue are necessary for building sound policies to address violence against women (see Crowell and Burgess 1996; Kruttschnitt et al. 2004).

The purpose of this paper is to assess the role of the NCVS in furthering our knowledge about violence against women—to assess where we have been and suggest where we might go. I therefore focus primarily on studies of women's victimization using the NCVS and give limited attention to research based on other large surveys (although that research is at a

similar point in development). I do not discuss the excellent qualitative research that exists on violence against women (e.g. Richie 1996; Miller, 2008). I also do not address the literature on police response to domestic, intimate partner, and sexual violence, some of which uses the NCVS. These tasks are beyond the scope of the present paper. Rather, I focus on what the NCVS has offered to the study of female victimization and how we might work within the parameters of the survey to move forward.

The paper first sketches the outlines of our current knowledge of patterns of women's victimization produced by the NCVS and identifies remaining issues to be addressed. The paper then discusses recent research (using the NCVS) that has begun to explore the complex interplay between individual, social context, and situational factors that might explain violence against women. I argue that we have only begun to scratch the surface with recent explanatory research and that this is the area in greatest need of intensified efforts. The paper then offers a brief discussion of the major critiques of the NCVS for studying violence against women. The paper closes by offering some suggestions for future research using the NCVS to better understand violence against women.

The Distribution of Violence Against Women

The National Crime Victimization Survey provides an essential source of data on rates of nonlethal violent victimization among women.¹ At this time, we have a reasonably good understanding of many patterns of violence against women. Of course, questions remain to be answered. Describing distributions of violence against women—across crime types, victim-offender relationships, race/ethnicity, over time, and across geographical space—are especially key to our understanding of women's victimization. Indeed, studying these distributions constitutes the essential first step for research. The following review highlights some of the most basic and important findings regarding these patterns,

¹It is important to examine carefully distributions of nonlethal violence against women, as well homicides of women because there may be important variation in the patterning of lethal and nonlethal violence (Lauritsen and Heimer 2008).

and identifies some of the important questions remaining.

Distributions Across Gender and Violent Crime Type

Data from the NCVS show that males have had higher victimization rates than females since the survey began, and that this holds for all violent crime types except for rape (Bureau of Justice Statistics 2006). However, the gender gap in violent victimizations has narrowed in recent years. The most recent figures show that in 2006, men experienced a rate of 26.5 violent victimizations per 1000 males, while women experienced about 23 violent victimizations per 1000 females (Rand and Catalano 2008). Disaggregation of the 2005 NCVS data by gender and crime type shows that female victimization rates were lower than male rates for aggravated assault (3.1 as compared to 5.6 per 1000, respectively), simple assault (11.2 as compared to 15.9 per 1000) and robbery (1.4 as compared to 3.8 per 1000) (Bureau of Justice Statistics 2006). Yet, despite the consistent finding that males are more likely to be victims of violence, it is striking that the gender differences are so small given the large differences between male and female violent offending; indeed, female and male rates have become fairly similar for some types of violent victimizations (see discussion of trends over time, below).

An important gender difference, of course, occurs in rape victimization. In 2005, women experienced 1.4 rapes and sexual assaults per 1000, while men experienced 0.1 per 1000. Clearly, rape and sexual assault are primarily crimes against women and constitute an important part of the story of violence against women. There has been some criticism of the NCVS measurement of rape and sexual assault, with charges that reported rates are underestimated. These issues will be addressed briefly toward the end of this paper. For now, the point is that women account for a substantial portion of all violent victimizations, with female rates of overall violent victimization being almost 87% of male rates (23 and 25.6 per 1000, respectively, as noted above). Discussions of violent crime in the United States clearly should address violent victimizations of women as well as men.

This raises an important point about research on patterns of violence against women. It is essential that research be comparative across gender, and not focus only on women's victimization (see Kruttschnitt, McLaughlin and Petrie 2004). Indeed, patterns in one group are not meaningful in the absence of information about the other group. This becomes even more evident in the discussion of trends in violence, which follows.

Patterning by Victim-Offender Relationship

Violence by intimate partners (IPV) has received more research attention than any other aspect of women's victimization. The Bureau of Justice Statistics regularly produces reports on intimate partner violence, with the

most recent appearing last February (Catalano 2007). This report shows that from 2001 through 2005, 22% of nonfatal violence against women was committed by intimate partners (4.2 per 1000) while only about 4% of nonfatal violence against men was by intimate partners (0.9 per 1000).² Women's victimization clearly is more likely than men's victimization to be at the hands of intimate partners. The ability of the NCVS to provide information on this form of violence—which is so often hidden from officials and other outsiders—has been an important contribution of the survey since the redesign was completed. Knowledge of the incidence and patterning of IPV is of great significance in research on violence against women, as well as in the development of programs and policies aimed at reducing violence.

Data from the NCVS also reveal that women's risk of being victimized by strangers and friends or acquaintances is greater than their risk of being victimized by an intimate partner. Violence by strangers accounted for 33% and violence by friends or acquaintances accounted for 36% of all violence against women between 2001 and 2005 (Catalano 2007). This makes clear that although violence against women by intimate partners is significant, it is less pervasive than violence by strangers and nonstrangers other than intimate partners. Researchers and policy makers, however, often focus rather exclusively on violence by intimates, thereby ignoring other very significant sources of violence in women's lives (Lauritsen and Heimer 2008). A complete understanding of violence against women will require consideration of victimization by intimates, other nonstrangers, and strangers.

Comparison with males highlights another key point: While men also are more likely to be victimized by strangers and friends or acquaintances (57% and 34% of all male victimizations respectively) than intimate partners (4% of all male victimizations), the discrepancy in rates between intimate partner and other victimizations is much more pronounced among men than women (figures from Catalano 2007). Thus, more fully understanding violence against women requires that researchers continue to study intimate partner violence, but also step up efforts to understand violence against women by other nonstrangers as well as strangers.

Variation across Race and Ethnicity

Data from the NCVS reveal significant differences across race in both women's and men's violent victimization. Blacks and Native Americans in particular have higher rates of violence than other race groups. In 2005, the rate of violence against black females was almost 50% higher than the rate of violence against white females, and the rate of black male victimization was about 30% higher than the rate for white males (Bureau of Justice Statistics 2006). Greenfield and

²This general pattern occurs in homicides as well, with 30% of female and 5% of male homicides being perpetrated by intimate partners (Catalano 2007).

Smith (1999) examine NCVS data from 1992 to 1996 and report that Native Americans experience the highest rates of violent victimization, and this holds among females as well as males. Indeed, their report shows that the rate of violence against Native American women is 50% higher than the rate for black men. Dugan and Apel (2003), using NCVS data for 1992 to 2000, also report that Native American women suffer higher rates of violent victimization than any other race/ethnic group.

There also is a striking race difference in intimate partner violence against women. Native American women's rates of nonfatal intimate partner victimization are more than twice as high from 2001 to 2005 (averaging 11.1 per 1000) as black and white women's rates (Catalano 2007). Interestingly, black and white women experienced similar rates of nonfatal IPV during this period (5 per 1000 and 4 per 1000, respectively) (Catalano 2007). The high rate of IPV among Native American women emphasizes the strength of a large sample survey that allows for the reliable estimation of rates in small subgroups of the population. Smaller scale non-stratified surveys, which contain more sampling error may not be able to generate reliable estimates of nonfatal IPV rates among Native American women, which would preclude statistical comparisons. Clearly, identifying such patterns is important for appropriately determining resources and policies to reduce intimate partner violence.

Data from the NCVS also reveal that in 2005, Latino males and females were more likely than their non-Latino counterparts to be victims of violent crime (Bureau of Justice Statistics 2006). However, rates of intimate partner violence show little difference between Latino and non-Latino women, or between Latino and non-Latino men (Rennison and Welchans 2000; Rand and Rennison 2004; Catalano 2007). This suggests a potentially interesting interaction between ethnicity and type of victim-offender relationship. However, these reports do not disaggregate rates by ethnicity, race, and gender simultaneously. Recent research has shown that comparing white and black non-Latino rates with Latino rates within gender is important and can produce very different conclusions and policy implications (see Lauritsen and Heimer 2007).

Thus, future work on the distribution of violence against women must go beyond the black-white race dichotomy. We need more information on gendered patterns of victimization among Native Americans, Latinos, non-Latino whites and non-Latino blacks, as well as Asian Americans. Adequately assessing patterns across race and ethnic subgroups, however, would greatly benefit from either increasing sample sizes or oversampling minorities.

Trends over Time

One of the original goals and great strengths of the NCVS is the measurement of crime trends that are unaffected by shifts in criminal justice system policies and practices. The Bureau of Justice Statistics regularly reports on trends in

intimate partner violence and the victimization of women as compared to men. Studying these trends is important because patterns that occur in any given snapshot of time may or may not emerge at other times. In addition, it is important to know how violence against women is changing to facilitate our explanations of causes and to inform policy. The NCVS is the only data source that provides information on national trends in women's and men's victimization.

Reports comparing shifts in women's and men's violent victimization have focused on the period since the redesign of the NCVS, from 1993 onward. Little is known about longer-term trends in gendered victimization, which is identified as a major issue in need of research by the National Research Council's most recent report on violence against women (Kruttschnitt, et al. 2004). Indeed, most researchers would agree that examining long-term trends is essential for contextualizing shorter-term spikes and drops in victimization rates and for understanding trends within historical context.

Kruttschnitt et al. (2004) maintain that the gap in our knowledge about trends in women's victimization is due to the difficulty of finding measures of violent victimization that are reasonably valid and reliable over time. Estimates of women's and men's victimization are available from 1973 through 1992 in the National Crime Survey (NCS) and from 1992 onward in the redesigned National Crime Victimization Survey (NCVS). But treating the data as a single series requires specific computational procedures (see Lynch 2002).

Lauritsen and Heimer (2008) use these procedures to generate long-term trends in violent victimization for women and men, from 1973 to 2004. The focus of this work is the change in the gender gap in violent victimization over time.³ The paper shows that (1) female rates of violent victimization have approached male rates for some crime categories, including aggravated assaults by strangers as well as nonstrangers; (2) men benefited more than women from the "great crime decline" of the 1990s; and (3) the gender gap in nonlethal intimate partner violence closed somewhat because male rates were stable whereas female rates increased between 1979 and 1993 and then declined substantially after the early 1990s, around the same time that male criminal offending declined and domestic violence intervention programs became more readily available.⁴

These trend analyses can be extended to examine long-term trends in violence against subgroups of women and men, as well. For example, Lauritsen and Heimer (2007) construct serious violent victimization rates for Latinas/os,

³These patterns differ substantially from homicide victimization, which offered the major long-term data on gendered victimization. Lauritsen and Heimer conclude that this underscores the need to examine the more common, nonlethal forms of violence for understanding trends in violence against women.

⁴Despite the recent decline in intimate partner violence against women this form of women's victimization may have decreased a bit less than violence by strangers and by non-strangers.

non-Latina/o blacks and non-Latina/o white females and males for the period 1973 to 2005, using data smoothed over 3-year periods.⁵ (This study was unable to assess trends in Native American victimization because of the very small number of cases in each year.) These trends over time reveal some very interesting patterns that are not apparent in victimization trends since 1993. First, whereas Latina and non-Latina white victimization has been at similar levels since the mid-1990s, the long term trends show Latina victimization was about halfway between the victimization of whites and blacks. Moreover, during the well-known periods of crime increases (e.g., the late 1970s and the late 1980s-early 1990s), non-Latina black and Latina women were affected much more dramatically. During these periods, minority women were more affected by upswings in crime than were non-Latina white women. A similar pattern emerges for males.

Together these findings illustrate the importance of viewing victimization in a long-term perspective, moving beyond black-white comparisons in trend analysis, and comparing trends in female and male victimization. It is possible to use the combined NCS-NCVS to examine long term trends in gendered victimization, and the insights gained may be important for understanding violent crime trends more generally, violence against women more specifically, and the impact of large-scale policy interventions.⁶ Research is needed on gendered trends in victimization across other subgroups—such as subgroups of rural/urban/suburban, age, age-by-race, marital status, and so on.

Variation across Sub-National Geographic Units

Social scientists are increasingly concerned with sub-national analyses—with variation in social phenomena across and within geographic units such as states, cities, and metropolitan statistical areas (MSAs). The NCVS has been used mainly to address national patterns of violent victimization. However, some research sponsored by the Bureau of Justice Statistics has examined trends in victimization in the largest MSAs, namely Chicago, Los Angeles, and New York (Lauritsen and Schaum 2005). Although non-existent to date, research could employ the NCVS to investigate patterns of violence against women across the large MSAs and within MSAs over time. These patterns could be assessed vis-a-vis demographic characteristics of the MSAs. Moreover, they could be used to assess the impact over time of policy interventions occurring in certain MSAs but not others.

⁵This research was supported by Award No. 2007-IJ-CX-0026 awarded by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this presentation are those of the authors and do not necessarily reflect those of the Department of Justice.

⁶Dugan, Nagin and Rosenfeld (1999, 2003) have taken this approach and assessed the impact of changing domestic violence policies on intimate partner homicides.

Explanatory Research on Violence Against Women: Individual Characteristics and Social Contexts

Research has identified both individual characteristics and features of social context that may be important for understanding violence against women. To date, most of this research has examined marginal relationships (like those described earlier), assessing variations in patterns of women's violent victimization across characteristics and social contexts. Research has revealed variation in the distributions of violence against women across individual characteristics such as race, ethnicity, and age; it also has revealed variation in women's victimization across dimensions of social context, including household economic status, family composition, urban/suburban/rural residence, alcohol or drug use at the time of the offense, and the kinds of places in which victimization occurs (see Bureau of Justice Statistics 2006; Tjaden and Thoennes 2000, 2006).

It certainly is useful to know how violence is distributed across individual characteristics and social contexts—to know the bivariate relationships. However, it also is important that research move to the next stage, to study how sets of individual characteristics and social contexts combine to explain the likelihood of violent victimization. It may be that the association between certain factors (e.g. race, ethnicity) and violence can change dramatically when other factors are taken into account (e.g. income). Indeed, this is precisely what researchers find when they adopt multivariate approaches and consider the combined and unique contributions of a variety of factors. This approach takes us one step closer to causal explanations.

A good example of this occurs in recent studies of race differences in violence against women. Black women experience higher rates of victimization than white women, whether perpetrated by strangers, nonstrangers or intimate partners (Lauritsen and Rennison 2006; Catalano 2006; Lauritsen and Heimer 2007). Yet, research shows that once income (Rennison and Planty 2003) and other factors such as family composition and community disadvantage are considered, differences in nonlethal violent victimizations between blacks, whites and Latinas disappear (Lauritsen and Schuam 2004). This study concludes that inequalities and structural factors explain differential risks for violence across race and ethnic groups. Another question that can be asked is whether structural inequalities have the same impact across different race-ethnic groups of women. This, in effect, asks whether there is a statistical difference in the magnitude of effects across race-ethnic groups (i.e. an interaction effect). One study that examines this question (Lauritsen and Rennison 2006) finds that while there are some differences in effects of social context variables across race, on balance the effects are more similar than different. (For another analysis, see Dugan and Apel 2003.) For example, the protective effects of being married as compared to living alone were similar among blacks, whites and Latinas (Lauritsen and Rennison 2006: 316).

Another important issue is whether community characteristics, an important part of social context, shape violent victimization above and beyond the effects of individual characteristics and more proximal social context variables. Some researchers have made use of the area-identified NCVS (for 1995) to assess the role of community-level variables, including neighborhood poverty, race and ethnic composition, and concentration of female-headed households. These studies have considered whether such community context variables combine with individual-level characteristics and other social context factors to explain violent victimization [rates? Trends? Patterns?]. Lauritsen and White (2001), for example, show that community and individual characteristics together account for the difference in black and white females' violent victimization. They suggest that intervention resources should be targeted at communities with high levels of poverty and female-headed families. In another study, Lauritsen and Schaum (2004) show that women's violent victimization is most strongly associated with family structure (female-headed households with children) and the proportion of female-headed households in the neighborhood (although age and residential mobility are also significantly associated with the outcome), while factors such as race, ethnicity, and socioeconomic status are relatively unimportant in and of themselves. These patterns hold for stranger, nonstranger, and intimate partner violence, and may be strongest for intimate partner violence ([Lauritsen and Schaum 2004?], p. 349). Studies using the area-identified NCVS thus demonstrate the importance of community context as well as more immediate social context (eg. family structure) and individual characteristics (e.g. age).

Numerous studies using a variety of sources of data have reported that marriage is a protective factor for women. This may be particularly true in cases of intimate partner violence, with victimization risk being higher in cohabiting or unmarried couples than in married couples or unmarried individuals (see Tjaden and Thoennes 2000: 34). However, the Lauritsen and Schaum (2004) findings reported above suggest that the presence of children in the household increases victimization risks for unmarried women. There is a clear need for further research assessing the contributions of marital status and household composition in the context of other factors. Moreover, understanding the association between cohabitation and violence against women is key at present and may become even more important over time. This may be particularly relevant for understanding differences across race/ethnic groups who differ in rates of cohabitation versus marriage. The NCVS currently does not ask respondents if they are cohabiting with an intimate partner; the addition of such a measure is necessary.

Another important aspect of social context, of course, is the place in which the victimization occurred. Analyses of the NCVS demonstrate that intimate partner violence against both women and men most often occurs at home and next most often at a friend or neighbor's home (Catalano 2007).

It may be that violent victimization of women by strangers and nonstrangers (besides intimate partners) is more likely in other settings, such as parking areas, commercial places, schools, or on the street. Some research has begun to explore violent victimization by non-intimates in the workplace (Tjaden and Thoennes 2001; Fisher and Gunnison 2001). However, multivariate research has not considered how place may combine with or condition the effects of other factors, such as age, race/ethnicity, or household composition.

Alcohol use is another dimension of social context that requires further analysis. Tjaden and Thoennes (2006) document an association between the presence of alcohol and drugs and victimization of women, particularly rape, using data from the National Violence Against Women Survey. They find that 67% of women who reported that they had been raped as an adult said that the rapist had used alcohol or drugs at the time of the event (2006: 27). This bivariate association between drug/alcohol use and victimization outcomes is certainly important for informing policy interventions. But it is also important to know whether this important social context factor is associated with victimization outcomes once individual characteristics and other aspects of social context are taken into account. Martin and Bachman (1998) use data from the 1992 to 1994 NCVS to show that alcohol use is associated with rape completion and injury even after other variables, like income, victim's race, presence of a weapon, place, and physical resistance are controlled, although the association is quite small and not statistically significant at conventional levels. Substance use seems to have some association with seriousness of outcomes even after other individual characteristics and aspects of social context are taken into account. Yet, given the small number of studies of this effect, more research is necessary. In addition, it would be important to make distinctions between alcohol use by offenders and by victims, although this is not possible with NCVS data at present.

Finally, Clay-Warner (2002, 2003) has used the NCVS to examine how self-protective behaviors by victims may influence the outcomes of sexual violence. She reports that women's use of physically protective actions—such as fighting and trying to flee—is associated with lower chances that the rape will be completed (2002). Certain aspects of social context, including the occurrence of the attack at nighttime, the presence of a weapon, and attack by an intimate partner, reduce the chances that women will fight back (2003). In addition to having clear policy implications, this research raises other important dimensions of social context that can be assessed in research seeking to better understand how individual and social context variables combine to explain violence against women.

In short, recent research has begun to explore the complex associations between individual characteristics and social contexts. But these studies are too few in number. The picture painted, therefore, is far from clear. Typically, this type of research is the domain of scholars in academia.

Yet the NCVS data have been underused by academic researchers interested in violence against women. This is puzzling, if not troubling, given the strengths of the data—consistent measurement of most constructs over time, wide array of individual and contextual variables, possibilities for linking data to Census tract information, and a large sample size that affords good statistical power for detecting effects in multivariate models. An important goal would be to encourage researchers—through a variety of mechanisms—to conduct rigorous studies of the interplay between women’s violent victimization outcomes and the many individual and social context variables available in the NCVS.

What is needed is healthy competition among researchers using appropriate statistical methods to identify a standard array of important individual and social context variables that researchers agree should be included routinely in all analyses. The existing explanatory studies include different sets of variables, making it difficult to compare findings across studies, which is necessary for building a solid knowledge base. For example, some studies include as covariates age, race, income, marital status, and alcohol use, while others include age, race, and household composition. Because the variables in the two analyses differ, the partial effects of the covariates—indeed the general patterns of findings—are not directly comparable. Reaching consensus over a standard set of important variables to be included in analyses would be a very important step forward.

Beyond this, it would be useful to add new measures of some features of social contexts. Some information could be added with minimal cost; for example, cohabitation should be included in the information on household composition, as indicated above. It also would be useful to have data on household composition and/or marital status at the time of each incident.⁷ There are other aspects of social context and situations of violence that could be tapped by the NCVS, as well, particularly if the survey were to move toward including annual supplements that target particular issues (Groves and Cork 2008). For example, relationship conflict, partner dynamics, and other family process variables may be key for explaining intimate partner violence. (See for examples, Felson and Messner 2000; Benson et al. 2003; Van Wyk, et al. 2003). Similarly, mutually supportive relationships in women’s neighborhoods or communities (i.e. collective efficacy) may be important in protecting women from violence and/or encouraging them to seek help (Browning 2002; Van Wyk et al. 2003).

In short, encouraging additional scholarly research—which would likely lead to some consensus over core variables to include in analyses—and augmenting the array of social context information in the NCVS would boost our empirical knowledge of women’s violent victimization. This increased knowledge, in turn, could foster the development of innovative theoretical perspectives on violence against

⁷This is important given that there is nontrivial change in marital status between the victimization incident and the interview (Rennison 2001).

women. And, importantly, boosting our empirical knowledge is critical for developing appropriate policies and programs targeting the correct subgroups.

Methodology for Measuring Violence Against Women

These studies of distributions and explanations of violence occur against a backdrop of methodological issues concerning the measurement of violence against women. The National Crime Survey (NCS), which began in 1973, was criticized for inadequate measurement of women’s victimization, particularly sexual and intimate partner violence. NCS respondents were not asked direct questions about intimate partner, family or victimization by others known to them. The redesign of the survey as the NCVS, completed in 1993, added screen questions to cue respondents for information [on crimes?] committed in different locations by different offenders, including by relatives and intimates; it also asked more explicitly about rape, attempted rape, forced or unwanted sexual acts (see discussions in Bachman and Taylor 1994; Bachman 2000; Fisher and Cullen 2000). In the NCVS, the screen questions are asked first, and then the interviewer administers an incident report for each event mentioned during the screening. The NCVS uses the incident report to count events, and the screen questions as memory cues. This two step process allows for the incident to be validated, which is an important strength of the survey (see Fisher and Cullen 2000).

However, some scholars have argued that the content of the screen questions is critical; the NCVS does not give enough behavioral and graphic detail, and thus misses potential victimizations (see Tjaden and Thoennes 1998a; also discussed in Fisher and Cullen 2000).⁸ Tjaden and Thoennes (1998a, 2000, 2006) address this issue in the National Violence Against Women Survey (NVAWS), a cross-sectional survey of 8000 women and 8000 men, by including detailed and graphically worded questions about sexual victimization (Tjaden and Thoennes 1998a). The estimates of sexual victimization from this survey are quite a bit higher than the estimates from the NCVS. Fisher, Cullen and Turner’s (2000) National College Women Victimization Survey (NCWVS) compared the methodology used in the NCVS with a similar methodology using more behavioral and graphic screening questions, and found that the use of these screening questions produced higher estimates of sexual victimization.

This issue is not yet fully resolved. Rand and Rennison (2005) recently published a comparison of NVAWS and NCVS estimates in the *Journal of Quantitative Criminology*, which recomputed rates from the NCVS using counting procedures

⁸Some also maintain that the NCVS produces lower estimates of intimate partner and sexual violence because its focus on “crime” rather than experiences with personal safety or other topics leads to underreporting (see Tjaden and Thoennes 1998b).

more similar to those used in the reports from the NVAWS. The differences included restricting the NCVS estimates to persons 18 and older and counting series victimizations as multiple offenses rather than as one series, as is typically done in reporting from the NCVS.⁹ Using these procedures (and adjusting for sampling error), Rand and Rennison show that the estimates of rape, assault, intimate partner rape, and intimate partner assault are not statistically different across the two surveys. However, they also argue that the procedure of counting serial victimizations as multiple events is inadvisable and introduces error in the estimates. The higher estimates in the NVAWS appear to be largely due to very high estimates by very few respondents. They conclude that, at present, more reliable estimates are generated by continuing to treat series victimizations as single incidents; however, more research is clearly needed on the question of how to count repeated victimization over a short period (p. 288-289). In addition, questions regarding the optimal screening procedures still linger.

Nevertheless, the NCVS appears to offer reasonable estimates of violence against women. The survey also includes many other variables that can be examined to move toward explanations of the social contexts that may underlie observed patterns of women's victimization.

Summary of Suggestions for Moving Forward

This paper has examined research on violence against women in an attempt to develop suggestions for future work. These are summarized here. This discussion is not intended to be either exhaustive or definitive, but simply to stimulate discussion of how research on women's victimization using the NCVS might proceed.

General suggestions.

More researchers must be encouraged to use the NCVS to study violence against women. There clearly are many important empirical questions that can be assessed using these data. The issue is how best to encourage the necessary research activity by a wider range of investigators. Two suggestions are:

- Make the NCVS data files more accessible to researchers with knowledge of advanced statistical methods but little knowledge of the specifics of structuring NCVS data files for analysis.
- Develop funding competitions and workshops explicitly targeting research using the NCVS to study violence against women, using state-of-the-art statistical methods and addressing core questions regarding violence against women.

⁹Note that the NCVS uses a bounding procedure to avoid problems of memory such as telescoping (recalling that a victimization incident occurred more recently than it did in reality). The NVAWS does not include such a procedure. This is a clear advantage of the NCVS methodology.

Increase our substantive knowledge and inform social policy with descriptive research on the distribution of violence against women

As indicated in this paper, there are unanswered questions about the distributions of violence across various subgroups of victims over time and across geographical locations. Indeed, differential distributions of violence against women are important for showing which groups are most disadvantaged in terms of violence and how this may have changed over time as well as how it may vary across region or even MSA. This substantive knowledge certainly would be useful in considerations of where to allocate resources for prevention, intervention, and response. Moreover, if an intervention based on this substantive knowledge were enacted broadly in a particular MSA, for example, researchers could evaluate the impact of the intervention by examining change over time in comparison with change in other large MSAs that did not have the policy/program. Similarly, multivariate research targeting the explanatory processes underlying differences in violence against women across subgroups and over time would be important for increasing our understanding of mechanisms, which in turn would inform policy and program development.

This paper has suggested some specific issues in need of further study. These include the following:

- Continue to assess intimate partner violence, but do not overlook violence against women by strangers and nonstrangers other than intimates.
- Produce more information on distributions of violent victimization across race, ethnic, and gender groups. We need more detailed analyses of violence against Native American women. We also need to disaggregate race and ethnicity within gender because overall white rates are very different than white non-Latino rates. In short, future work on the distribution of violence against women must go beyond the black-white race dichotomy.
- Research long-term trends of gendered violence, including long-term trends across subgroups such as subgroups of rural/urban/suburban, age, age-by-race, marital status, and others.
- Research sub-national variation in violence against women—such as variation across MSAs—to assess how characteristics of geographical areas and policies and programs implemented in certain areas are associated with women's victimization rates.

Explaining Differences in Distributions of Violence Against Women

We must foster high quality research using appropriate statistical methods to assess the importance of the combined and unique contributions of individual characteristics and social contexts. Research needs to move beyond studying marginal distributions and bivariate relationships, to understand the underlying sources of differential risk.

Funding such research could be made a priority, through contracts or grants to researchers outside of federal government and by working with select federal agencies to develop funding initiatives targeting this type of research. The value of success in developing this body of research would be a substantial increase in our empirical knowledge about how individual characteristics and social contexts combine to explain women's violent victimization. This increased knowledge, in turn, is critical for developing effective policies and programs.

Perhaps the most critical task of this research will be the identification of a standard set of variables that researchers agree (through healthy debate) should be included routinely in analyses of violence against women. At present, studies include different sets of explanatory variables, making comparisons of effects across studies very difficult. Moving ahead will require concerted effort among researchers to achieve consensus through careful and sustained empirical research. And the NCVS offers the best available source of data for accomplishing this effort because of its sample size, content, rigorous methodology, and longitudinal design.

The groundwork for this task has been laid by previous research using the NCVS, which identifies a large set of potentially important variables, including race, ethnicity, age, marital status, victim-offender relationships, community-level characteristics (e.g. proportion of female headed households, average income), alcohol and substance use, characteristics of the places in which victimizations of women occur, and the use of self-protective behaviors (e.g. fighting back), to name a few. This paper suggests that the collection of additional information also be considered. Some of this information could be gathered at low cost (e.g. cohabitation, marital status at the time of the incident). Collecting other information (e.g. measures of relationship conflict, partner dynamics, family process, social ties to others outside the home) may well require the addition of a supplement to the NCVS in select years. The pay-off of such an endeavor may well be worth the cost.

Addressing Methodological Issues

Although the survey methodology of the NCVS is rigorous, there are some issues of particular relevance to violence against women that should be addressed. There should be further study of the screening issue, especially with regard to sexual violence. Thorough research needs to assess whether a change is necessary and, if so, how the change could be implemented without disrupting our ability to examine trends over time.

- The issue of how to treat series victimizations requires further study, as discussed in Rand and Rennison (2006), especially with regard to intimate partner and sexual violence.
- The use of sampling strategies designed to increase the sample size of groups at high risk for victimization would make it possible to study gender and victimization in subgroups that heretofore have received too little attention due to restricted sample sizes (e.g. Native Americans). There should be an attempt to make sub-national data from the NCVS available to researchers. For example, the area-identified NCVS could be made available, in a user-friendly format, to more researchers under strict guidelines for use. Making more years of area-identified data available also would foster research on the neighborhood contexts of violence against women.

In sum, the NCVS offers great promise for moving forward in the study of violence against women. We must decide whether to invest the resources necessary to realize this promise.

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Dr. Heimer’s paper assesses use of the NCVS to further knowledge about violence against women. Women account for a substantial portion of all violent victimizations, with female rates of overall violent victimization being almost 87% of male rates (23 and 25.6 per 1000, respectively) and the gender gap closing. The NCVS collects information that can be used to reveal patterns of female victimization nationally. Dr. Heimer suggests that the NCVS’ wide array of variables over time and large sample size afford possibilities for more rigorous research on the shape and causes of violence against women. For instance, Dr. Heimer describes “explanatory” research that could help researchers glean the complex patterns of individual characteristics and social contexts associated with violence against women—across crime types, victim-offender relationships, race/ethnicity, over time, and across geographical location.

Dr. Heimer discusses the increased understanding of victimization at the hands of intimate partners—which is so often hidden from officials and other outsiders—as an important contribution of the NCVS. However, she advises stepping up efforts to understand violence against women by non-strangers and strangers, as well. She also suggests that increasing sample sizes or over-sampling minorities would be beneficial to help adequately assess patterns across race and ethnic subgroups. She also notes the importance of studying trends in women’s victimization as knowledge about how violence against women is changing will help us explain causes and will help to inform policy. She concludes her paper with specific suggestions for improving the NCVS and the way researchers use it.

United States Department of Justice
Office of Justice Programs
Bureau of Justice Statistics
DATA USERS WORKSHOP

Tuesday, February 12, 2008

Present:

Jeffrey Sedgwick, Ph.D., BJS
Edward J. Spar, COPAFS
Brian Reaves, Ph.D., BJS
Brian Forst, Ph.D., American University
Carl Peed, U.S. Department of Justice
Tom Frazier, Major Cities Chiefs Association
Gerard Ramker, Ph.D., BJS
Joan Weiss, Justice Research and Statistics Association
Lynn Addington, J.D., Ph.D., American University
Karen Heimer, Ph.D., University of Iowa
Mary Lou Leary, National Center for Victims of Crime
Jacquelyn C. Campbell, Ph.D., RN, Johns Hopkins University
Thomas Cohen, J.D., Ph.D., BJS
Theodore Eisenberg, Cornell Law School
Richard Schauffler, National Center for State Courts
Donald D. Goodnow, Administrative Office of the Courts,
State of New Hampshire
Allen J. Beck, Ph.D., BJS

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Director, BJS

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[What BJS Has Learned and Next Steps](#)

Allen J. Beck, Ph.D.
Senior Statistical Advisor
BJS

1 Welcome by BJS and COPAFS

2 **Mr. Sedgwick:** Good morning. I want to start off. I'm Jeff Sedgwick.
3 I'm the Director of the Bureau of Justice Statistics, and I wanted to begin
4 by thanking you all for taking time out of your busy schedules to be here
5 today.

6 For BJS, today is an extremely important day. I wanted to share
7 with you all a little bit about the context of today's activity, and how it
8 fits into a larger program at BJS, and try to do that in the impossible task
9 of about five minutes. It's impossible because I'm a professor, and we
10 speak in 50-minute sound bites.

11 One of the things that we're doing at BJS right now is what we
12 are characterizing internally as trying to put in place a culture of
13 continuous improvement, and a big part of that is changing the way that
14 we think about what we do, and particularly the way we relate to the
15 external environment.

16 Kind of traditionally in statistical agencies, you design surveys,
17 you put them out in the field, you collect data, you get the data back, you
18 clean it, you look at it, you decide what kind of a report you can write,
19 you write a report, you release it, and you hope to high heavens that
20 somebody reads it—that it has some impact—that somebody out there
21 comes to love it.

22 One of the things that we're doing in BJS now is we are kind of
23 reversing that process. For those of you who have spent any time in
24 education theory, you may have run across a book called Understanding
25 by Design, which now every member of BJS has a copy of sitting on
26 their desk, and essentially the kind of point of that book is simply the
27 way in which academicians design curricula, and to a considerable
28 extent, the traditional way statisticians design statistical programs and
29 publications and dissemination is, in fact, exactly backwards, that what
30 we should be doing is beginning with an understanding of what the
31 information needs are of our audience. That is, we should be asking the
32 question of people like you: what is it that you would like to do that you
33 currently can't do because you're lacking some crucial piece of
34 information?

35 Then once we know that, we can ask ourselves the question,
36 what type of a product would provide that type of information to you to
37 empower you to do the things that you want and need to do? And then,
38 once we know what the product looks like, we would then know what
39 kind of analysis we need to do, and once we knew what the analysis was,
40 we'd know what kind of data we'd need to do that kind of analysis.

41 Once we knew what the data is, then we'd know what the
42 survey should look like. So in fact, we should be kind of approaching the
43 process pretty much 180 degrees in the opposite direction of the way we
44 traditionally do things. So, you are all here at the inauguration of kind of
45 a spinning an agency 180 degrees on its axis, and getting it to think
46 backwards. So, help us do that, but I promise you I will not speak
47 backwards to you today.

1 The other piece of this whole process of kind of embedding a
2 culture of continuous improvement in BJS, and kind of changing the way
3 that we relate to the external world and think about what we do, we also
4 have scattered among you a number of people who are currently hard at
5 work halfway through a two-year project by the National Academy of
6 Sciences, and the Committee on National Statistics, and the Committee
7 on Law and Justice, where I've asked them to do a comprehensive review
8 of the BJS program.

9 We are pretty much victims of our own success in the sense that
10 everything that we seem to have done in the past people like and expect
11 us to do again, people expect us to continue to tackle new problems, and
12 nobody tells us that any of the things that we've done in the past are no
13 longer necessary.

14 So what we find is increasing responsibilities, and increasing
15 expectations of the issues that we'll cover with our statistical series
16 without, of course, a parallel increase in our resources to do it.

17 So, we've asked the Committee on National Statistics and the
18 Committee on Law and Justice jointly to do an evaluation of BJS that, to
19 speak like an economist for a moment, fundamentally boils down to the
20 following question: is the value of the least important thing that BJS does
21 greater than the value of the most important thing that BJS doesn't do?

22 And we're looking for your input on that today. So, in a
23 nutshell, that's why you're here. First, we need to know what your
24 information needs are so that we can better understand what our
25 statistical series should look like, and what our product should look like,
26 and second of all, we want to know from you, are we doing the right
27 things? How do you use our data? How would like to be able to use our
28 data? What kinds of data should we be thinking about collecting, and
29 then, not coincidentally, what forms should we disseminate it in? What
30 should a BJS product look like?

31 Now, the other thing I'll say to you, and then I promise I will
32 stop is, you're not all alike quite deliberately. First of all, we've divided
33 up the audience between three different focus areas for BJS in the coming
34 year.

35 One is law enforcement, one is adjudication, and one is
36 victimization. Okay? Within each one of those communities of interest,
37 we've very carefully tried to pick people who are researchers,
38 policymakers, practitioners, advocates, and we've also added in people
39 that we think of as gatekeepers—reference librarians, media specialists,
40 people who stand between us and our audiences.

41 Our point here is we want to get a finely textured sense of what
42 the various stakeholder communities are that we serve, and we want to
43 understand the needs each of you have, and our expectation is your needs
44 are going to be quite different.

45 So what we're looking for at the end of this whole process is a
46 rich agenda for us to go back and think through as we try to put in place,
47 as I said to begin with, this culture of continuous improvement.

48 So, you're terribly important to us today, and not just today, but
49 every day. And I hope this just begins a process of conversation between

1 you and us, and at the end of this meeting, you feel like you know who to
2 call when you've got an idea or you have a need that BJS might be able
3 to respond to, and that you don't leave the room today with any thoughts
4 unspoken, and any questions unasked, and that down the road in the
5 future, any time you've got a question or a thought, you feel comfortable
6 picking up the phone and getting in touch with us.

7 So with that, I'm going to turn it over to Ed Spar, who has a few
8 comments, and wish you the very best today. I'm looking forward to it,
9 and I hope you are, too.

10 So thank you.

11 **Mr. Spar:** Hi. I am Ed Spar, the Executive Director of the Council of
12 Professional Associations on Federal Statistics, and I always have to take
13 a deep breath after I say that. From here on out, it's COPAFS. It's been a
14 pleasure working to put this seminar on, and on behalf of the Council, of
15 course, welcome.

16 I want to thank a couple of people who've worked very hard to
17 get this going. My own assistant, Leanne Sklar, and three people from
18 BJS, without whom this couldn't have taken place: Josephine Palma,
19 Patrick Campbell, and Maureen Henneberg. Thank you, all of you, for
20 making this happen.

21 So, with that, allow me to turn the program over to Brian
22 Reaves, statistician from the Bureau of Justice Statistics, who will
23 introduce our first speaker.

24 Thank you all.

25 ()

26

27 **Mr. Reaves:** Thanks, Ed. I've been with the Bureau of Justice Statistics
28 for about 20 years or so now, and despite that lengthy tenure, I've never
29 had a chance to participate in anything quite like this. So I'm really
30 looking forward to it. I expect to learn a lot, and I just want to personally
31 thank everyone for volunteering your time as we try to explore new
32 directions for our data collections, and our analytical efforts at BJS.

33 This morning, we begin in the area of law enforcement, and we
34 have a distinguished panel today. We'll start with our presentation by
35 Brian Forst, who is Professor of Justice, Law and Society at American
36 University. He's been there since 1992.

37 Previously, he served as Director of Research at the Institute for
38 Law and Social Research in the Police Foundation, and he was also a
39 faculty member at George Washington University.

40 In 2006, Mr. Forst wrote *Errors of Justice, Nature Sources and*
41 *Remedies*, won the Book of The Year Award from the Academy of
42 Criminal Justice Sciences.

43 He has also published notable books on terrorism, including
44 *Terrorism, Crime and Public Policy*, which will be published this year.
45 He also, in the spring of 2009, will have another book published,

1 Criminologist on Terrorism and Homeland Security. That's along with
2 James Lynch and Jack Greene.

3 His current research and teaching focuses on justice, policy,
4 terrorism, errors of justice, and research methods. He is a member of the
5 American University Faculty Senate, and he chairs the Department of
6 Justice Law and Society's Doctoral Program. He's also a voting member
7 of the District of Columbia Sentencing Commission.

8 Mr. Forst will present his paper today on Police Transparency:
9 National Information Needs on Law Enforcement. He will have about 30
10 minutes to present that, and then we'll have two discussants to discuss
11 the presentation.

12 Carl Peed and Tom Frazier are our discussants. I'll give you a
13 brief bio on them, as well, so we can move from the paper right into the
14 discussion.

15 The first discussant, Carl Peed, was appointed by Attorney
16 General John Ashcroft in 2001 to head the Justice Department's Office of
17 Community Oriented Policing Services, also known as the COPS Office.
18 Before he joined the COPS Office, Director Peed was Director of the
19 Virginia Department of Juvenile Justice. Prior to that, from 1990 to
20 1999, he was the Sheriff of Fairfax County, Virginia, where he gained
21 national recognition for developing model policies and procedures in
22 criminal justice administration.

23 During his tenure as sheriff, Director Peed was instrumental in
24 the advancement of new technologies to the criminal justice system.
25 Prior to that, he served as chief deputy in the Sheriff's Office, and he
26 developed several national award-winning programs during his 20-year
27 career there, and he also has served as a consultant for the National
28 Sheriffs' Association, the American Correctional Association, and the
29 Justice Department.

30 Our second discussant will be Tom Frazier. He is President of
31 Frazier Group, LLC, a consortium of America's leading law enforcement
32 and homeland security leaders.

33 He also serves as Executive Director of the Major Cities Police
34 Chiefs Association, which represents the chiefs of the 64 largest police
35 agencies in the U.S. and Canada. Prior to creation of the Frazier Group,
36 he was also a director of the COPS Office, he preceded Director Peed,
37 and prior to that, he was the Police Commissioner for the City of
38 Baltimore. While at the Baltimore Police Department as commissioner,
39 he developed signature programs, including 3-1-1, a department
40 reorganization, and CrimeStat.

41 Prior to that, he served in every rank through deputy chief in the
42 San Jose Police Department. He's also served as President of the Board
43 of Directors of the Police Executive Research Forum, and was Chairman
44 of the Board of the Baltimore-Washington High-Intensity Drug
45 Trafficking Area Program. He currently serves on a number of advisory
46 boards to the Department of Justice, and the Department of Homeland
47 Security.

48 So, I think we have an outstanding panel of law enforcement
49 experts for you, and I'm going to turn it over to Brian Forst now for his

1 presentation.

2 **Session 1: Law Enforcement**

3 **Improving Police Effectiveness and Transparency: National** 4 **Information Needs on Law Enforcement**

5 **Mr. Forst:** Good morning. I wish first to thank Jeff Sedgwick and his
6 staff and COPAFS for organizing this workshop and for bringing
7 together all of you, and to BJS staff members Patrick Campbell, Matthew
8 Durose, Maureen Henneberg, Mark Motivans, and Brian Reaves here for
9 their help in fact checking a draft of this paper.

10 Helping law enforcement is a critical business, and I look
11 forward to working with you all this morning to see how BJS can
12 contribute even more than it already has to serving the nation's law
13 enforcement community with useful information.

14 I'd like to begin with a story, which is probably apocryphal, but
15 which nonetheless makes a useful point about our conventional way of
16 measuring crime.

17 The story is about Nobel Laureate Nils Bohr when he was
18 taking a physics examination at the University of Copenhagen in 1905.
19 He was asked, "how would you measure the height of a building using a
20 barometer?" He's alleged to have given this answer. "Well, I guess you
21 want me to say that you could measure the air pressure at the top and the
22 bottom of the building and, knowing that difference and how air pressure
23 diminishes with altitude, you could estimate the height of the building,
24 but given the likely errors in measurement using such an approach, that
25 would be a terribly inaccurate way to do it, so I propose the following
26 options, all of which make use of the barometer and are surely more
27 accurate.

28 "First, you could wait for the sun to come out and measure the
29 length of the shadow cast by the building and by the barometer, and then
30 measure the length of the barometer, and deduce the height of the
31 building knowing that the ratios are going to be the same for the two
32 objects. Or you could walk to the top of the building with the barometer
33 and a stop watch, drop the barometer, time how long it takes to land on
34 the ground and then, knowing S equals one-half GT squared 32 feet per
35 second, you could calculate more accurately the height of the building.
36 Or you could tie the barometer to a string, walk up to the top of the
37 building and let it down until it touches the ground, come back, measure
38 the length of the string, add the length of the barometer, and that would
39 give you an accurate measure of the building. Or, if the building has an
40 outside fire escape, you could walk up the fire escape and measure the
41 number of barometer lengths to the top of the building, and then multiply
42 that by the length of the barometer, and that would give you an estimate
43 of the height of the building. But the quickest way would be to go to the
44 building's engineer and say, if I give you this shiny new barometer, will
45 you tell me the height of this building?"

46 Well, imagine if Professor Bohr had offered the building
47 engineer the latest copy of the UCR instead of a shiny new barometer.
48 "Deal or No Deal?"

49 Now, especially in this day of extraordinary advances in the

1 technologies of information gathering, information processing, analysis
2 and instant dissemination, I'm holding in my hand a flash drive that has
3 memory on it—you could put encyclopedias on here. That speaks to the
4 extraordinary advances we've made over the last 20 or 30 years.

5 It seems a shame that we do not know more than we do, given
6 all of that, about how to reduce crime.

7 Law enforcement today is more transparent and more effective,
8 too, because of these technologies. It's more transparent, also, because of
9 a more aggressive and intrusive electronic and print media industry. The
10 police today are surely influenced more than ever before by the prospect
11 that serious lapses in their behavior could air on the evening news, and
12 policing is more transparent, as well, because of new systems of
13 accountability, such as COMPSTAT.

14 Policing is also more effective because of tactical uses of the
15 new information and communication technologies, such as laptop
16 computers with geocoded information about hot spots, and the
17 availability of new technologies for surveillance (for example, acoustic
18 technology to pinpoint the origin of gunfire) and in forensic analysis.

19 But we are not where we could be. One of my heroes and
20 mentors, Hans Zeisel, wrote this 37 years ago: "Almost useless." Hans
21 was alluding here both to our measurement of crime, and to our
22 understanding of how to reduce it.

23 Policing is clearly more effective and more transparent in many
24 ways than in 1971. This is especially important because of the
25 extraordinary mandate of police in society. The police have a monopoly
26 on the authority to use non-negotiably coercive force, as Agan Bitner
27 observed in 1970, which lends special significance to the values of
28 transparency and legitimacy. But service delivery today is more
29 transparent in virtually every sector of our society, and more effective,
30 too, because of the technology revolution, and improved systems of
31 accountability.

32 While the police have been successful in exploiting technology
33 in its tactical operations, it's clear that, over the past 20 years or so, gains
34 in knowledge about what works in policing, which were quite substantial
35 during the 1970s and 1980s, have not kept pace with gains in information
36 technology.

37 Let's review just a few of the highlights from the 1970s and '80s
38 that had an impact on policing, making it not only more efficient, but also
39 much safer. It was learned in the study of San Diego by the Police
40 Foundation 35 years ago or so, that two cops were more likely to get into
41 trouble—much more likely than one; more than twice as likely.

42 All of this research was done under support from the Federal
43 Department of Justice, the National Institute of Justice and BJS, and four
44 other agencies. While information technologies have made police
45 operations more effective than ever before, and undoubtedly contributed
46 to the decline in serious crime since 1990, the uses of data for research
47 and policy assessment purposes to permit a more thorough understanding
48 of relationships between the inputs of policing and police performance in
49 various settings nationwide have been exceedingly limited.

1 We really don't have much more systematic evidence about
2 what works in policing today than we did in the mid 1980s. The words of
3 Hans Zeisel cited a moment ago still resonate nearly 40 years later.

4 Consider, in particular, the fundamental role of the police as the
5 official front line agents to protect society against crime. Now, most of us
6 are familiar with the elaborate diagrams of the criminal justice funnel
7 depicting the channeling of crimes through the criminal justice system.
8 You've all seen this in any textbook of criminal justice, and at many
9 presentations that you go, you see this. But when numbers are attached to
10 the diagram, it becomes clear that this is much more of a sieve than a
11 funnel.

12 The UCR reports about 8 to 10 million felony offenses
13 annually—about half of which go unreported. So, we have something in
14 the neighborhood of 15 to 20 million felony victimizations annually, with
15 just one and a half to two million arrests annually, and about half of those
16 end in conviction.

17 The police are precisely in the middle of this extraordinarily
18 leaky sieve. Yet we have little by way of reliable empirical evidence on
19 the relationships between police operations, tactics, and policies on the
20 one hand, and the leakages at each stage on the other—from
21 victimization to reporting, to recording, to arrest and conviction—which
22 the police could conceivably do more to close.

23 Now thanks to BJS, we do know a good deal more from the
24 NCVS than we used to know about why so many serious crimes still go
25 unreported. But we stand to learn much more still about what the police
26 could do to reduce victimization levels and to increase the reporting rate
27 further with reliable information about the characteristics of the cases
28 that end in arrest and those that do not, together with reliable information
29 about what the police do and fail to do in each case.

30 We could also learn more about why so many reported felonies
31 fail to end in arrest, and what law enforcement officials could do to help
32 the prosecutor convict more culpable felony offenders with stronger
33 evidence and witnesses.

34 Some of these relationships are likely to hold more generally
35 across the major offense categories, and the various stages from
36 victimization to conviction than others, and it's extremely important to
37 know how these various factors interact with one another.

38 Today's world of information and the ready availability of
39 statistical tools to analyze the data make this entirely feasible. Such
40 knowledge could help us to know more about what the police could do to
41 raise the rate at which victimizations end in conviction from well below
42 10 percent to perhaps 20 percent or more.

43 BJS can help by providing statistical indicators of lapses at each
44 of these stages, and as datasets can be exploited creatively for another
45 purpose, to permit in-depth research about what works to reduce the
46 leakages.

47 While research is more clearly in the domain of NIJ rather than
48 that of BJS, the roles do occasionally overlap, and BJS should encourage
49 research uses of data it produces for other purposes. A modest degree of

1 competition between NIJ and BJS in this domain of natural overlap is
2 probably a good thing.

3 Now back to the sieve that we call the criminal justice system.
4 These are not just leaks; they are lapses of justice. They are costly, and
5 they demand more attention than we've given them.

6 Police lose legitimacy when they fail to bring the vast majority
7 of serious offenders to justice. Lapses in justice of both kinds, failures to
8 arrest and wrongful arrests, are surely more pervasive in the
9 neighborhoods and communities plagued with chronically high crime
10 rates, if only because the concentration of crimes is so much greater in
11 those places.

12 Affluent communities not only can lavish more resources on
13 their police departments, but they can and often do supplement those
14 resources with private security services.

15 The media tend to focus more these days on coeds missing in
16 the Caribbean than on inner city crime, but inner city residents are all too
17 familiar with lapses of justice in their neighborhoods, in terms of both
18 wrongful arrests, and failures to convict.

19 This is not a criticism of the police. The law enforcement
20 community generally does the best it can with what it has, and it does so
21 usually with commitment and professionalism, often against great odds,
22 and in the face of peril.

23 We would not be better off if all victimizations ended in
24 conviction. Some crimes, even some felonies, are better resolved through
25 informal social sanctions than through formal criminal sanctions, but I
26 have yet to hear a convincing argument for how justice is done in a
27 system in which just 5 to 10 percent of all felony victimizations end in
28 conviction.

29 This is a criticism of the sharp, avoidable disparity between how
30 little we know about relationships between aspects of police operations
31 and case leakages, and how much we stand to learn given today's
32 advanced information and analytic technologies.

33 Do affluent areas experience the same levels of leakages at each
34 stage as poor ones? How different are they? Do the leakages tend to vary
35 with variation in policing practices? Which ones? And under what
36 circumstances?

37 The opportunities are vast for federal, state and local officials to
38 learn more about the leakages at each stage, and how they vary across
39 communities. Much greater efforts are made today to understand service
40 lapses elsewhere, especially in the private sector, typically in settings
41 where the stakes and social costs are considerably smaller.

42 Now, several people have stepped up and offered suggestions as
43 to how we can begin to improve matters. One concern relates to the joke
44 about the barometer and the Uniform Crime Reports. Rick Rosenfeld, for
45 one, has suggested that the UCR is much less timely than information
46 obtained from the websites of individual police departments, and the FBI
47 is not as responsive to the evaluation of law enforcement policy and
48 related research questions as BJS would be if it managed the UCR.

1 The Bureau of Justice Statistics supports the law enforcement
2 community today by acquiring, organizing, updating and disseminating
3 information, with the aim of serving policymakers, practitioners, and
4 researchers. This is consistent with the larger BJS mission statement.

5 Notice that analysis is one of the items here which, again,
6 speaks to the overlap between NIJ and BJS.

7 There is some overlap with what the NIJ does in the production
8 and analysis of data. But in law enforcement, as in other aspects of the
9 criminal justice system, the primary division of labor is that BJS focuses
10 more on the data and on the nation as a whole, while NIJ emphasizes
11 research, typically on single jurisdictions or handfuls of jurisdictions,
12 rather than for the United States as an entity.

13 BJS serves the law enforcement community in two broad areas,
14 federal law enforcement and state-local policing. In federal law
15 enforcement, BJS tracks suspects in initiated investigations, persons
16 arrested and booked, and suspects in concluded investigations. It
17 compiles aggregate statistics in its compendium of federal justice
18 statistics, and it reorganizes this in a 10-year time series in the federal
19 criminal justice trends.

20 Now, BJS does more on the state and local level law
21 enforcement, including its Law Enforcement Management and
22 Administrative Statistics (or LEMAS) Series and its Source Book of
23 Criminal Justice Statistics, particularly Section 4 on Arrests, Clearances,
24 and Seizures.

25 The LEMAS Information, published every 3 or 4 years,
26 provides statistics from all 3,000 (or more) state and local law
27 enforcement agencies employing at least a hundred sworn officers, plus a
28 representative sample of smaller agencies, including information on
29 personnel; budgets; expenditures and pay; operations, including patrol
30 and investigation; equipment, including computers and information
31 systems; and policies and programs, including information about
32 community policing and special operations and specialty unit programs.

33 LEMAS provides useful information about current operating
34 norms for law enforcement agencies of particular sizes and settings, and
35 data with which policy analysts and scholars can investigate relationships
36 between the inputs of law enforcement and performance measures for
37 agencies in various categories.

38 BJS also manages numerous datasets, including the census of
39 state and local law enforcement agencies, which includes information on
40 the number of sworn and civilian personnel by state and type of agency,
41 and the Police-Public Contact Survey, which gives detailed information
42 on salient aspects of face-to-face contacts between the police and the
43 public, including the reason for an outcome of the contact.

44 The PPCS, Police-Public Contact Survey, enables BJS to
45 estimate the likelihood that a driver will be pulled over in a traffic stop,
46 and the percentage of all contacts that involve the use of force by the
47 police. BJS makes this information available through its website.

48 So, the central question before us this morning is, how might
49 BJS do more for law enforcement? Well, to begin with, the law

1 enforcement share of the annual BJS budget is in the neighborhood of 2
2 to 5 million dollars, and this doesn't go very far in today's world of oil at
3 \$100 a barrel.

4 Consider the \$59 million Bill and Melinda Gates Foundation. It
5 earns over 2 million dollars in interest every 4 hours. Think about that.
6 The entire BJS budget, 4 hours.

7 Given that crime costs the nation about a trillion dollars
8 annually, 2 to 5 million dollars is pretty puny. Consider this: a 1 percent
9 reduction in crime amounts to benefits in the neighborhood of \$10
10 billion. So a strong case can be made to go to the Bill and Melinda Gates
11 Foundation if the federal government doesn't come through.

12 As we work to increase the BJS budget, however, we can think
13 about how this 2 to 5 million dollar "bit of change" might be better spent.
14 The problem with allocating a budget of any particular size to a set of
15 competing demands is one that is commonly known as the knapsack
16 problem by operations research analysts and economists, as it is
17 confronted by anyone who's ever puzzled over how much to carry on an
18 overnight trek in the woods.

19 So, this is (stated too simply) the problem that BJS confronts.
20 For BJS, as with other federal statistics agencies, the knapsack problem is
21 complicated by several factors.

22 The first of these is the identification of users, as Jeff noted in
23 his opening remarks, each of whom might perceive different values, and
24 incur different costs for each item in the knapsack. These perceptions are
25 likely to vary, both across various classes of users, and within each class.

26 The 1971 President's Commission on Federal Statistics (which
27 provided the Hans Zeisel quote) identified users of federal statistics, and
28 their list is easily adapted to the law enforcement community as follows.

29 How much weight should be attached to each of these different
30 user groups? Practitioners, recognizing that all of them ultimately serve
31 the bottom line here—literally the bottom line—practitioners tend to be
32 more interested in the process issues and aspects of service delivery
33 inputs, while politicians and the general public tend to be more interested
34 in outcomes and transparency.

35 Evaluators and researchers typically focus on relationships
36 between inputs and outputs. Sorting these issues can begin with surveys
37 of each class of user to establish their information priorities, and the
38 worth of each item to each user.

39 Establishing the costs and values of each item in the BJS
40 information portfolio or knapsack is more difficult given that they vary
41 across users and given the complications associated with
42 complementarities and redundancies among the items in the portfolio.
43 The ultimate recipient is the general public but citizens are rarely aware
44 of how they benefit from better policing practices that have been based
45 on BJS information.

46 What, then, are the primary candidate items for the BJS
47 knapsack? Just as we have categories of items to put in a knapsack to
48 support a 5-day trek in the woods: we have food, we have clothing, we

1 have a tent, we have a sleeping bag, we have tools, and so on, so do we
2 have categories of items that are candidates for the BJS law enforcement
3 portfolio.

4 The first grouping is by dichotomy. So, we have federal versus
5 state and local operations, and this is already a major dichotomy within
6 the BJS law enforcement holdings.

7 There are crime and non-crime aspects of policing. We're
8 interested in both prevention and response. We're interested in
9 information that would support, not only the public law enforcement, but
10 also private security, and there is now a European Source Book which
11 compares nations of Europe. We could, presumably, assemble
12 comparable data for the United States, and compare U.S. operations in
13 law enforcement with law enforcement operations elsewhere throughout
14 the world.

15 Another grouping is by process. So, we could begin with the
16 leakage question. What are the levels, and then, what are the leakages
17 between levels?

18 We have the LEMAS type of data, which are really quite good
19 as they stand. I've not heard a lot of complaints about LEMAS, but I'm
20 not in that loop, so if some of you have complaints we can hear about
21 them this morning.

22 And we also have this emergence of systems of accountability,
23 like COMPSTAT, which would seem, on its face, to be potentially useful
24 to bring together and analyze.

25 And we also have the ubiquitous miscellaneous, special-interest
26 offenses, drugs, guns, hate crimes, questions about homicide clearances
27 and cold cases, and, of course, homeland security and terrorism.
28 Misbehavior is a big, very difficult issue to get into because transparency
29 on that is, for obvious reasons, hard to bring forth.

30 Questions of race, including profiling and minority employment,
31 technology for crime prevention investigation, and emerging issues, like
32 human trafficking and so on.

33 Now, several of these items are already in the BJS knapsack.
34 Some are available in the BJS databases, but not readily accessible to
35 prospective users.

36 One solution might be to permit users to drill down from
37 aggregates they see in BJS reports to more finely-tuned categories of
38 interest online to better accommodate the needs of individual users. Other
39 items on the above lists that are not currently available might be
40 unearthed through an expansion of the National Crime Victimization
41 Survey.

42 Jim Lynch and his associates have learned, for example, that
43 positive prior contacts with the police are more influential than is the
44 seriousness of the offense in inducing victims to report crimes to the
45 police.

46 More could be learned about distinctions between repeat
47 victimizations by the same and by different offenders, and relationships

1 between these various types of repeat victimizations, whether the victim
2 reports to the police, and attitudes about the police.

3 We could learn more, as well, about special interest offenses,
4 fear of crime, fear of terrorism, and perceptions of police performance
5 through the NCVS, if funding were made available. Information about
6 reporting rates and satisfaction with the police would be especially
7 valuable at the jurisdiction level if still more funding were available.

8 Regional variation in victimization and related factors are
9 already reported periodically in Great Britain and Holland. Analyses of
10 variation in reporting rates and levels of citizen cooperation with the
11 police and prosecutors across jurisdictions in the U.S. are likely to
12 produce important insights into police practices.

13 Such lists tend to numb the senses. We can organize our
14 thinking about them by staying focused on the basics. The fundamental
15 mission of the police is to protect and serve.

16 The law enforcement community can be supported both to
17 protect and serve if we give them indicators that reveal how the police—
18 both locally and nationwide—think about information that will help serve
19 and protect effectively, fairly and efficiently, but that’s not all. The police
20 must earn and sustain the public’s trust.

21 They do so not only by securing domestic tranquility, as is
22 written in the Constitution, in terms of effectiveness and efficiency, but
23 also by exercising discretion prudently, by serving the unique needs of
24 the community (and community policing has been a major development
25 in the last 20 years on this front) and contributing to the perceived
26 legitimacy of law enforcement—again, earning the public’s trust.

27 One of the great challenges we face is to protect the integrity of
28 the process of determining what to report about law enforcement, and
29 how to report it in the face of political influence.

30 We’ve noted the need to move the UCR from the FBI to BJS in
31 the interests of both timeliness and substance, and the example of the
32 richness of the supplementary homicide report is a paradigm that would
33 be useful for other crimes as well.

34 This may be a Herculean task, but one of the more compelling
35 arguments is to help the FBI to perform its primary mission without
36 diversions or distractions, and its primary mission is not the collection of
37 state and local policing data.

38 Another common problem is that of balancing local-level
39 accountability with the willingness of locals to participate. Other
40 countries have been more effective in using victimization surveys to hold
41 their local police accountable for protecting the public against crime, as I
42 noted in the longer paper.

43 James Q. Wilson has argued that the provision of statistics and
44 research on crime and justice is an important exception to his criticism of
45 many federal programs. He argues that the production of information
46 needed to improve the public safety is an “essential federal function.”
47 (This from one of the nation’s leading conservatives.)

1 He has observed that local criminal justice authorities do not do
2 research very well, because they're too attached to the results, and you
3 only need recall the DARE episode of 20 years ago, and so many other
4 things to get a sense of what I'm talking about here.

5 They're too attached to the results, and they do not do enough of
6 it because individual jurisdictions that derive the benefits of such
7 collective efforts would underfund them if the participation were
8 voluntary.

9 He concludes that, in matters pertaining to the criminal justice
10 system, there is simply something wrong with not trying to find out what
11 works. The chief federal role in domestic law enforcement should be to
12 encourage and fund such research. No one else will do it. Now, maybe
13 we haven't tried the Bill and Melinda Gates Foundation, and that might
14 be something worth thinking about. Maybe they'll do it.

15 Wilson's words should provide some assurance as we move
16 ahead to determine what information is most needed, and why it is
17 needed. Perhaps we can arrive at a consensus on a few essential items to
18 provide an opening for changes that will improve policing. With crime
19 off the political radar screen for now, we may have a window of
20 opportunity to make substantive improvements in the production of
21 information about crime and justice, to return to the knowledge-building
22 trajectory of the 1970s and 1980s, to take advantage of new information
23 and new communication technologies. It would be a shame if we failed to
24 seize this opportunity. Perhaps we can make law enforcement even more
25 effective and, in the process, more transparent, too. And we should be
26 able to do so without having to negotiate with the building engineer.

27 So, thank you.

28 **Mr. Forst:** My friend Carl Peed is next.

29 **Mr. Reaves:** Okay. Thank you, Brian, for an excellent presentation, and
30 now our first discussant, Carl Peed.

31 **Discussants**

32 **Mr. Peed:** Good morning. I've known Brian for a long time, and I read
33 his article a number of times, and I tell you, it is over my head, but he
34 was asked to be provocative, and I think he has been.

35 I'd like to start off by thanking Jeff Sedgwick for holding this
36 event. There's a mixed group of people in the room. I've talked to some
37 of my counterparts, in particular in the law enforcement field, and they're
38 saying, "there are so many people in here I've never seen before." So, I
39 think it's an interesting group.

40 And also, I'd like to thank Mr. Sedgwick and all of the BJS staff
41 for having been very helpful to the COPS Office over the years when
42 we've wanted certain statistical analysis of things like campuses and
43 academies in the country. They've been very helpful, and been very
44 responsive in helping us meet those needs.

45 I'd like to address Brian's issue of the sieve and the leakages
46 from my experience, both as a sheriff in Fairfax County, where we ran a
47 large facility, as well as Director of Juvenile Justice with the State of

1 Virginia. I think he's right on track about this sieve.

2 My experience is that, if you take a hundred felonies, you're
3 going to find almost two thirds of them that are getting nol. pros.'d or
4 dismissed for various reasons. If you take a hundred felonies, you're
5 going to find that probably a very small percentage (3, 4, or 5 percent)
6 actually end up serving time or going into custody. So, I think that part is
7 right on track.

8 As Director of Juvenile Justice, I had a large organization, 2,700
9 employees. We had 100,000 intakes into the juvenile justice system each
10 year, and I saw the same thing in the Virginia Department of Juvenile
11 Justice—people falling through the cracks. The sieves, the leakages, and
12 so forth.

13 I was appointed by Governor Allen to look at the prison
14 population in the state of Virginia back in the early '90s. Governor Allen
15 was looking at the truth in sentencing, no parole, three strikes and you're
16 out-type strategies. They had a prison population projection and at that
17 time I thought their projections were way too high. I felt that they were
18 predicting too many prison beds because I think if you overlay prison
19 projections, and the economy and unemployment, you're going to end up
20 with same trend lines.

21 As it turns out, I was right. I was also on the Juvenile Justice
22 Reform Commission at that time, and I felt like the juvenile justice
23 system, on the other hand, probably had too few beds.

24 If you look at some case studies in both the Washington area
25 and the state of Virginia, it drives me nuts to find an offender that's
26 committed very harsh, harsh crimes—like the case in Virginia where two
27 families were totally wiped out by two defendants—you look at those
28 two defendants and their history. They've been arrested many, many
29 times and in addition to that, if you look at their history in custody, they
30 were bad people in custody. Sometimes I think the prosecutors don't look
31 at in-custody-type offenses.

32 So that's an area I think BJS could take a look at: How many
33 crimes are being committed while people are in custody? Prosecutors are
34 generally quick to say, "I'll handle that case administratively," and
35 "don't bring that to the court system's attention." Or they're quick to plea
36 bargain what would ordinarily be an aggravated assault or a felony case
37 down to a misdemeanor, and give them time served, or run the time
38 concurrent. So you end up with some bad people that are bad on the
39 street, they're bad in custody, and then we turn them loose, and they
40 commit offenses in Washington, D.C., or the state of Virginia, or
41 somewhere else in the country.

42 So, I think we need to take a very good look at who's in
43 custody, and what kind of offenses are being committed while they're in
44 custody. And as we know that 10 percent of the people commit 90
45 percent of the crime—in L.A. they call them the "10 percenters." I think
46 we need to do a lot more research on exactly who's committing the
47 offenses.

48 In addition, we need to look at victims and perpetrators and
49 places where crime is being committed. As they say in some circles, it's
50 the same place. In other words, repeat places. Crimes are committed in

1 the same place more than any other place. We know that. We refer to
2 those as hot spots.

3 Also, we need to look at who the victims are today, because the
4 victim today is the perpetrator tomorrow. So, it's victims killing other
5 perpetrators, or perpetrators killing victims, whether retaliatory or not.
6 We find, in some cases, the victim and perpetrator are from one and the
7 same type group.

8 We can't ignore black on black crime, and youth on youth
9 crime. It's young people killing young people and black people killing
10 black people. John Timoney, the chief out of Miami, would say, "if these
11 were white people killing white people, you'd hear more out of
12 Washington, and more out of the country as a whole." But, in many
13 cases, these are young people and disproportionate numbers of minorities
14 killing minorities. So, I think we need to take a look at that.

15 Another issue is the issue of mobility, how mobility has come
16 into our trends and patterns of crime throughout the country. An example
17 is Las Vegas. People come from Los Angeles, commit crimes in Las
18 Vegas, and then go back to Los Angeles the same day. Or, in some cases,
19 they commit very serious offenses and go back across the border into
20 Mexico.

21 So I think mobility is much different today than it was 30 years
22 ago. People are going from jurisdiction to jurisdiction, region to region,
23 and committing offenses right here. The Washington, D.C., area is a great
24 example. A third of the offenders in Washington, D.C., are wanted in
25 other jurisdictions. And you've got a quarter of the offenders having
26 detainers and/or cases where they're wanted in one jurisdiction under one
27 name and wanted in another jurisdiction under another name.

28 So, those are some very critical issues. And finally there is the
29 question of who are our policymakers, and who benefits from those
30 policies? The chiefs across the country want actionable research, and
31 that means the research, like we get from IACP and PERF, which is
32 short-term research.

33 The average tenure of a chief is 3 years or so. So chiefs need
34 quick, actionable-type research, research like we conducted with the
35 Police Executive Research Forum on the homicide investigations, or
36 tasers, for instance. They need that information today. They can't wait for
37 3 or 4 years to get that kind of actionable-type research. They're going to
38 be gone by then. So, chiefs want actionable research done in a very quick
39 manner.

40 Those are my comments, and I look forward to any questions
41 you might have.

42 Thank you.

43 **Mr. Reaves:** Thank you, Carl, and now our second discussant, Tom
44 Frazier.

45 **Mr. Frazier:** Good morning. Thanks for the opportunity to be here.

46 I think, and Carl just spoke of it, about the pace that issues come
47 at a police chief. I went from San Jose to Baltimore to be the police

1 commissioner. I was there 6 years, and there are some differences
2 between the way it looks to me, and the way it looks in statistical review.

3 I've got all sorts of things coming at me every day, every night
4 in community meetings, and it requires fairly immediate action, whether
5 it is strategic decision making, or tactical decision making.

6 I know I'm going to be there 2 years and 10 months. Actually, I
7 beat the average. I was there 6 years but, by and large, you're going to
8 see big city chiefs turning over at an incredibly rapid pace—some of it
9 self-inflicted, some of it politics, a lot of different reasons. Some chiefs
10 go to bigger and better things, but the fact of the matter is, it's a fairly
11 short-term opportunity. As a chief I was on the front end of a system that
12 has long-term implications, particularly on the research side.

13 So, when I have to answer in a community meeting about
14 slinging drugs in the alley behind the 2600 block of Pennsylvania
15 Avenue, that gets at drugs, and that gets at gun violence, and that gets at
16 gangs and a lot of other things that we don't have 10 years to figure out. I
17 have to make decisions.

18 I had 3,100 police officers. The way I looked at it, I had nine
19 precincts, and I said, I'm going to empower, I'm going to take my very
20 best people and make them district commanders, because that's who I'm
21 going to call into COMPSTAT and grill about how well they're doing in
22 their little corner of the world.

23 But I have to give them the resources they need to do what I ask
24 them to do. So I said, imagine yourself as the chief of a 200- to 240-
25 officer department, depending on which precinct, (which is larger than
26 probably 90 percent of the police departments in the country). There are
27 18,000 departments, 85 percent of which have less than 25 officers.

28 So, you've got these 240 officers, and I expect you to problem
29 solve in your precinct, and come back here to COMPSTAT and have
30 answers for me about what you're doing and why you're doing it.

31 Now, the guy who followed me came from NYPD, which has a
32 more centralized model. He took 40 officers out of each precinct, created
33 a 350-officer "organized crime unit" and ran a more centralized kind of
34 an operation.

35 Now the district commanders would say, "You took all our
36 resources away." That model says, "yes, but we have crime analysts, and
37 we can effectively deploy them." Then it starts to get complicated
38 because of scheduling and union issues, and these guys are locking
39 people up and going to court and working 18 hours a day, and don't get a
40 day off, and all of that kind of stuff.

41 So you've got all kinds of things in motion all the time. My
42 point is that we need data that we can use in the short term. So, if we're
43 going to look at things that we can use in the short term, what would that
44 be?

45 Now we're starting to hear, "well, what about intelligence-led
46 policing," or "information led policing" (whichever term you prefer) and
47 "how does that fit into community policing?" I mean, we are the
48 community-oriented policing generation.

1 I ran the COPS Office before Carl. I believe in it. It's part of
2 everything that I think is good. It's how you work with your greater
3 community to identify and work together to define problems, and come
4 up with solutions that work for everyone, and gain trust, and the kinds of
5 things you need for citizens to report, and to serve on juries, and to do all
6 the other things that make a democracy healthy. And then all of a sudden
7 comes 9/11, and intelligence infusion. Now you can't afford to put too
8 many officers in an intelligence center, because you've got all these other
9 problems that you already had, so fusion turns into all crimes, and how
10 does all this fit into community policing?

11 So, there's a lot of people speculating that that's a strategic
12 decision. Centralized or decentralized is strategic. Community policing
13 versus information-led policing is strategic. And then the iterations of it
14 as you put it into practice are more tactical. But you need information.

15 So, it seems to me the questions are, "where do you need it" and
16 "what do you need information about?" I would like to see information
17 about who's doing the damage. I know when David Simon wrote
18 *Homicide* and *The Wire* and all that, he was a Baltimore Sun reporter. He
19 stood on the worst corner in town, and he came to me and said, "You
20 know, I can tell you just from talking to the people on the street, there's
21 like 300 people on these two blocks that could go to jail for something.
22 There are only a handful of people really afraid of you. There's a handful
23 that are violent, nasty mean people that everybody on that street's afraid
24 of. Why don't you target them?"

25 Well, that's kind of information-led policing. That's not
26 informant led—this is drug enforcement. Informant led drug
27 enforcement. There are a lot of reasons for an informant to be an
28 informant. (Getting rid of your competition is one. Personal vendetta is
29 another.) You're certainly not going to snitch off the baddest dude on the
30 block, because if you get caught, you know what's going to happen to
31 you.

32 So the violent ones are sometimes the ones that don't get law
33 enforcement attention in the informant driven model, versus the
34 intelligence or information led models.

35 So we've particularly worked with ATF on that one, and in the
36 housing projects with the housing police, and we very specifically
37 targeted violence. Let's take the violent offenders out, because what I had
38 to tackle, my problem, was the homicide rate.

39 There were 354 murders in Baltimore the year before I got there.
40 I think there were 38 in San Jose. There are enormous differences, and
41 so, if we're going to deal with the violence, that's what we need
42 information on.

43 I think there are areas that we need to look at in the future. I
44 mean, what do we see that we didn't use to see? Well, we see gangs in
45 places that we didn't previously see them. I know MS13 because I'm
46 from California, and MS13 has been there awhile. But it is a big deal in
47 the National Capital Region. The kind of gang influence and terror that
48 goes with MS13, and Bloods, and Crips, and the national organization
49 and training that goes into these outfits is a new thing. In Midwestern
50 states, gangs are a problem. We're talking with some Ohio chiefs, and the
51 issues that arise in agencies of all sizes across this country—gangs is one

1 of them.

2 I don't think gangs are incidental, or not of a level of interest
3 that we need to know about.

4 I think elderly victimization is on the rise when you look at the
5 demographics. I don't know what offends me so much about crime
6 against the elderly, but it does, and I think there's going to be more of
7 that. That's something I'd like to know about.

8 Cybercrime. There is so much fraud, theft, identity theft, and
9 other kinds of cyber crime. A lot of it's international. It's very difficult to
10 resolve. In Canada, the private sector is funding a thing called Cyberpol
11 out of the University of Calgary. It will be an equivalent to Interpol, but
12 only for cyber crime. It will address financial, child pornography, identity
13 theft. Cyber crime entails a lot of different things, but I think that's an
14 area that we just have to have information on.

15 I think private sector partnerships are a way to proceed. We do a
16 lot more with the private sector than we did before, and that's a function
17 of 9/11. So much of the infrastructure is privately held. They have good
18 security, good information. I see the relationship of law enforcement to
19 the private sector at a magnitude that we haven't seen it before.

20 Now I'm sort of going to get into random thoughts. (Those
21 weren't random, based on the paper.) Fear is important. People who are
22 afraid won't cooperate. Snitching. (Home is in Baltimore, and all the stop
23 snitching stuff.)

24 The fact that citizens feel disempowered is important. Bullying
25 is important—when your kids are afraid at school. Campus violence is
26 important, and where all this goes is, if I were to make a suggestion for
27 data collection, my suggestion would be data collection at the federal
28 level takes a long time to [allow us to] recognize the problem. Then it
29 takes a long time to get funding. Then it takes a long time to write the
30 research methodology and collect it, and analyze it and all that. And I'm
31 three chiefs ago by then. So that doesn't really help me.

32 What would be helpful to me is to have an array of templates
33 that I could go into a school and take my own survey on bullying, or
34 intimidation, or—I wrote a couple of others down here—things such as
35 “how happy are you with the police service?”

36 We used to do a really informal one, and it kind of went like
37 this. “You had an impression of the Baltimore Police Department before
38 you spoke with Officer Wexler. Is your impression after that contact
39 better or worse than it was before?” Very simple. “Do you think more of
40 us or less of us, based on that contact?” And then, if you start getting
41 negatives, then you start to track back why. But those are things that we
42 need to know right now. Those aren't things that we need to know 10
43 years from now.

44 The fusion center issue is getting an awful lot of attention. They
45 have to be all crimes. Police chiefs can't afford to just work intelligence
46 or information that's counter-terrorism related. It has to be all the things
47 that help support it, the fundraising, and all the different ways that all
48 those things occur. But in that, the methodologies that are used become
49 really important, and it's important to us to know more about those.

1 This all sort of gets into data inter-operability. I don't know if
2 that's within your purview or not, but take San Jose, for instance. We had
3 a records management system, a computer-aided dispatch system, a
4 parolee system, a gang system, a field interview system, a car crash
5 system, you name it. We had about a dozen systems, as did the other 14
6 agencies in the county.

7 So, if I wanted to search those databases for any relationship
8 between anybody named Tom and anybody named Chuck, I needed a
9 detective friend in 14 departments who would take the time to hit all their
10 systems. How we can connect and search the data that we have is a
11 problem that we all struggle with.

12 Some of the systems that the federal entities run, particularly the
13 FBI, work really well. Motor vehicles works well, warrants works well,
14 and missing persons works well. Others, (and I think it's probably as
15 much responsibility of the locals as anything else) don't work as well.
16 Stolen property and gang files come to mind right away—and that's
17 because the data isn't entered. So, if it's not entered, it makes me wonder
18 if it's that valuable.

19 So, I think after it's all said and done, survey templates (which
20 sort of gets at rapid turnaround) would be important to me. I really did
21 look at the LEMAS information. That was, in my view, an accurate
22 comparator. We looked at it for a lot of different reasons, particularly in
23 terms of hiring and ratios and minority hiring. We found that to be really
24 helpful.

25 I think my last comment would be; I appreciate the fact that I'm
26 here and in our meetings there's a lot of chatter about index and NIBRs
27 and how and who is going to pay for that if we do in fact implement it
28 (which makes it problematic to implement because nobody in my world
29 has that kind of money).

30 But we have representatives on CEGIS Advisory Board and
31 these two guys are always available to you. You can get at them through
32 me or just call them yourself. Deputy Superintendent Bill Casey in
33 Boston, Deputy Chief Chris Warren in San Jose, or our reps to the data
34 side of CEGIS have forgotten more about this stuff than I'll ever know.
35 They're available to you as well.

36 The roundtable meetings we hold with the chiefs talking about
37 what's important to them, what's going on in their department, what
38 works well for them, what's a problem for them, what they need help on.
39 It's very instructive.

40 I thank you for the opportunity to be here with you this morning.

41 Thanks.

42 **Mr. Reaves:** Thank you, Tom. I think now we move to the next phase
43 after hearing from our law enforcement experts. We will open the
44 discussion to the floor. We'd love to hear your reactions, comments, and
45 suggestions.

46 **Open Discussion**

47 **Ms. Deck:** Hi, My name is Elaine Deck. I represent the IACP,

1 International Association of Chiefs of Police.

2 If we're looking at outcome measures for the local police to do
3 things differently, why don't we look at and evaluate the way they are
4 trained?

5 We haven't changed much in the way police are trained, but
6 we're expecting new things from them. I know that BJS looked at
7 designing some evaluation of training academies a number of years ago.
8 I'd be interested in the status of that.

9 **Mr. Forst:** I'll presume to be able to answer the question.

10 I agree with you. Training is one important area. I talked about
11 the importance of discretion. Regarding the question, "how can we
12 ensure that our officers exercise discretion prudently?" Well, one element
13 that's very critical is training.

14 In addition, of course, there's screening, recruitment,
15 supervision, systems of accountability, and then the question, "what rules
16 are in place that leave opportunities to exercise discretion?"

17 So, training should clearly help to gear the officer to be able to
18 exercise discretion prudently. How do we evaluate training? Well, we
19 can do it. Researchers go about it in two ways. You can do it
20 quantitatively or you can do it qualitatively.

21 The quantitative approach would be to look at the inputs of
22 training and look at the outputs of training. Measuring the effectiveness
23 of training is tricky because there is training for use of force and for all
24 kinds of things, and each of those requires a different kind of assessment
25 tool. But how police departments evaluate their own training programs
26 varies as much as the training programs themselves.

27 **Ms. Deck:** I'm actually talking about basic training.

28 **Mr. Forst:** Academy training?

29 **Ms. Deck:** Rather than in-service training, yes.

30 **Mr. Forst:** Okay. Well, there the question is, "how long is the academy
31 training?" And it varies from just a couple of months to 6 months or even
32 more in some jurisdictions.

33 So, there are questions about length of training but also
34 substance. "What elements are in the training program, and how much
35 OJT then follows the academy training?" The joke is always that as soon
36 as the officer graduates from the academy, he or she is given a lecture
37 from the field officer: "Forget everything you just learned because now
38 you're going to learn the real world of policing."

39 So, with those kinds of mixed messages, how do officers
40 operate? There are quantitative ways to assess training, but there are also
41 qualitative ways. There's wonderful research by John van Madden who
42 went through academy and studied and learned from the inside what
43 happened at the academy and how that was processed by his fellow
44 trainees.

1 So, assessing training is indeed a critical issue and it relates, I
2 think, in an important way to the question of discretion and how it's
3 exercised and also the question of effectiveness. It has to be parsed out
4 by the component of training. What is it that we're training for? How do
5 you measure performance?

6 It's really tricky. It's a challenging area. It's a critically
7 important area. We certainly could do a lot more and I would encourage
8 BJS to consider simple ways of perhaps beginning with the LEMAS data
9 which does have some information about training to provide some
10 answers to your questions.

11 **Mr. Reaves:** We do have a new report on the basic law enforcement
12 training academies coming out this year. We did a census of law
13 enforcement training academies in 2002 and one in 2006.

14 This doesn't really get at the issue of how we provide quick
15 turnaround of data, if we can only do something like that every 4 years,
16 and I heard a lot from our discussants about how they want quicker
17 turnaround of data. But I think we can look at some issues about how
18 training is changing.

19 I'm not sure whether we can really get at the issue of
20 effectiveness. Maybe that's where we need to take it to the next level.

21 **Mr. Wexler:** My name is Chuck Wexler. I'm with the Police Executive
22 Research Forum.

23 Brian, I really liked your presentation. It was really helpful to
24 kind of put everything in perspective and the other panelists as well.

25 I have just a couple of comments. It's interesting. As you went
26 back and you looked at what policing has done in the past 20 years, it
27 gave me sort of a sense of what we've learned.

28 Probably the biggest change, I think, in policing that goes back
29 to '93, when a guy named Jack Maple in the New York City Police
30 Department said we need accurate timely information to make decisions.

31 Now, Jack Maple wasn't a researcher. Jack Maple was a
32 lieutenant in the Transit Police and somehow Bill Bratton got in touch
33 with him and the rest is history in terms of COMPSTAT.

34 As you look back and you think, "what were the changes in
35 policing?" a big part of that was this notion of accurate timely
36 information to make decisions. And I think that's how the field has really
37 changed. I think the challenge to BJS is how do you get that information
38 into the hands of the users in an accurate timely way, so that they can
39 make decisions?

40 I used to think, "why is accurate timely information so
41 important?" Why does COMPSTAT work and why does it not (and in
42 some places, COMPSTAT really doesn't work because in some places,
43 COMPSTAT is more like providing information sharing, there's no
44 analysis) but the reason COMPSTAT works is this. I once asked John
45 Timoney, "What is it about COMPSTAT?" He answered, "If a guy
46 commits a bunch of robberies in a short period of time and you don't
47 know about that for 8 months, then by the time you finally know about

1 the information, you can't really intercept that pattern."

2 So that's why COMPSTAT became so interesting, is because
3 what they had to do in New York City is they had to re-engineer how
4 they got information. When I worked in the Boston Police Department
5 and I would look at crime statistics, I'd say, well, isn't this interesting?
6 Nine months ago, we had this really serious rapist. I wonder if we're
7 doing anything about that.

8 Well, if you were looking back 9 months, it was very hard to
9 know if that was still happening. Or, as one of you talked about, the
10 whole regionalization issue. Carl Peed talked about the regionalization
11 issue, and how crime moves from one area to another and if we're not
12 sharing information, and so forth.

13 Anyhow, I think this is a really great conversation—to explore
14 how you get information into the hands of the users in an accurately
15 timely way.

16 Now, one of the biggest challenges, I think, is getting mind-
17 share of police chiefs around this topic. Herman Goldstein once said
18 something very interesting to me. He said, "You go into a police
19 department and they have a crime prevention office. It has two or three
20 officers." For a gigantic organization—I worked in the Boston Police
21 Department—we had this office on the first floor. There were two guys
22 that did crime prevention for the City of Boston. And Herman Goldstein
23 used to say, "This is how the department thinks about crime prevention?"
24 The two officers do lots of things and do surveys and that's how they
25 thought about crime prevention."

26 Today, there's not a police chief alive who's doing a good job
27 who isn't thinking about how to prevent the next crime. I think the same
28 could be said about crime analysis.

29 In police departments today you have crime analysts. Where are
30 they? They're in the crime prevention unit. They're usually civilians, and
31 when there are cutbacks, they're the first to go. So, here's an entire police
32 department delegating their crime analysis to these analysts down here
33 who are driving policy? No, they're not. Maybe they're providing input
34 to the chief, but the chief is making the decisions.

35 So, my challenge to BJS would be how do you get mind share?
36 How do you get police chiefs to do this analysis? How do you get them
37 to think about your victimization study?

38 Your victimization study is fascinating. There's a lot of
39 information in there. But I'd venture to say most police chiefs aren't
40 looking at victimization studies. They're looking at the UCR. They're
41 looking at reported crime and the impact on immigration when
42 unreported crime goes through the roof because people are afraid to
43 report crime. And then the media reports that crime has actually gone
44 down in these areas of stricter immigration policy when, in fact,
45 unreported crime has gone up through the roof, but you're not even going
46 to be able to calculate unreported crime because no one's going to speak
47 to you because they'll be afraid to speak to you because they'll think
48 you're the government.

49 So, all of these issues, I think, are great. My message today to

1 you is to say how do you get the police chiefs to use BJS information and
2 to understand the value of it? Because I don't think the problem is they
3 don't have enough information, I think the problem is they have too
4 much information and they don't know how to analyze it and use it.

5 **Mr. Peed:** I think a good area for BJS to take a look at is the number of
6 crime analysts in the country. In November 2007 we concluded a
7 discussion on intelligence for the IACP. Working with IACP, we brought
8 about 130 people from the intelligence community and state and local
9 law enforcement. One of the six breakout sessions was about fusion
10 centers. The other one was building analytical capacity. And there's very
11 little information on exactly how many intel analysts and/or crime
12 analysts there are in the country.

13 In addition, the Police Foundation has just published a book
14 discussing the need to combine these responsibilities. In some cases, as
15 Chuck is saying, the chiefs aren't listening to the crime analyst data, but
16 it's the little crimes out there that might end up making the big
17 difference. For instance, there was the cigarette smuggling case identified
18 in Southern Virginia that was a funding mechanism for Hezbollah and
19 the recent case in South Carolina where a state trooper or a deputy sheriff
20 stopped two kids from Saudi Arabia who had material to construct a
21 bomb in the back of the car. They went to school down in Florida.

22 So, I think it would be useful to look and see how many crime
23 analysts there are and how many intel analysts there are. I think you've
24 got to elevate the importance of crime analysts in the country.

25 In some cases, they're told to "go sit over there and enter data,"
26 versus, as Chuck is saying, being a valuable part of analyzing the data
27 and giving good information to the chiefs and the tactical operational
28 people.

29 Just to comment about Tom's recent meeting up in Vancouver.
30 Two of the most important police chiefs in the country, Bill Bratton and
31 Lee Baca, were at that meeting, and they discussed whether they're going
32 to move forward on intelligence-led policing and information-led
33 policing. I thought Bill Bratton made a great comment. He said, "Before
34 we go anywhere, you've got to have a good solid community policing
35 foundation."

36 **Mr. Frazier:** And interestingly enough, they jointly operate an analysis
37 center called JRIC in L.A. that's probably one of the better ones in the
38 country. So, there is a lot of room for discussion.

39 A comment I forgot to make in the realm of the desire for fairly
40 immediate information. I can tell by who comes to our meetings and the
41 comments of the chiefs what really resonates in their cities.

42 We have a new sponsor called Public Engines and what they do
43 is put real-time crime data on the departmental websites which sort of
44 gets at another thing that was in the earlier comments about how we're at
45 the mercy of the media.

46 Basically, what's going on in the big departments is an effort to
47 change our communications strategy, and it's funded by the COPS
48 Office. We truly appreciate it. So we can create our own public image
49 and move away from the talking head who talks about the latest thing

1 that happened.

2 Most of the time, they use an ex TV reporter who's good on
3 camera. But there's a much bigger strategy in terms of creating public
4 awareness and public image and that's the direction that we're going
5 because we're at the mercy of the media any other way. There's a lot of
6 interest in that.

7 Another strategy becoming very, very popular with the
8 department and in the community is computer programs that allow you to
9 type in your address and see crime that's happened there. It's called
10 Crime Reports. In your location you zoom it in, zoom it out, look at
11 whatever you want. Those are very, very popular and that says to me that
12 the departments are responding to a community insistence on real-time
13 information. That, I think, is instructive as well.

14 **Mr. Bruce:** I'm Christopher Bruce. I'm the President of the International
15 Association of Crime Analysts. So, I thank you for all the comments
16 you've made about crime analysis. It wasn't why I stood up, but I
17 appreciate it, and I'd just offer two quick things about that.

18 This year, our association is conducting the first global crime
19 analysis census hoping to measure for the first time how many crime
20 analysts and intelligence analysts are working around the world, exactly
21 what they do, and how much they get paid, issues that are very important
22 to us.

23 I work for a fairly small agency in Danvers, Massachusetts, and
24 many of us who work in agencies like mine try to see ourselves as sort of
25 a clearinghouse for external research and external data.

26 So, one of the questions you asked is, "how do you get that
27 information into the hands of the chief?" Obviously there is so much out
28 there that even I, acting as that clearinghouse for my agency, can't
29 possibly review it all. But just by virtue of being here I'm certainly going
30 to be much more aware of the publications that this organization puts
31 together and how they might affect my particular agency.

32 But the reason I stood up was actually to ask a question about
33 police effectiveness because this is an issue that's really dear to my heart.

34 Every year about this time, I have to prepare an annual report
35 for my agency—most crime analysts around the country do—in which
36 we review what crimes have gone up, which have gone down, and which
37 decreases we should take credit for or increases we should take blame
38 for. It's a matter of crime analysis ethics. It's a matter of police ethics not
39 to be spurious in our claims of effectiveness.

40 We have all seen agencies around the country in the last 15
41 years that have benefited enormously from demographic trends, from
42 social trends, from economic trends, where crime has gone down
43 significantly—taking credit for that when they might have been due
44 credit for part of that, maybe none of it. (We don't really know.)

45 We've also seen agencies that have seen increases in crime
46 through no fault of their own, again the same types of demographic
47 trends or layoffs.

1 In a small agency like mine, anything—the opening of a new
2 Home Depot could cause crime to go up 20 percent and there’s not much
3 that we can do about that sort of thing as a police department.

4 I guess my point is that we are aware in policing that we only
5 control a certain percentage of what goes on. We can only be effective to
6 a certain degree and the rest is dependent on these social trends, these
7 economic trends over which we have very little control. These trends can
8 either accelerate a decrease in crime (for which we should not take full
9 credit) or they can obliterate any decrease that we’ve managed to achieve
10 (for which we cannot take full blame.)

11 Is there any movement, any work towards a model that might
12 help agencies to determine what crime they actually have control over?

13 I can’t imagine. It would be an enormously complex model that
14 would have to take into consideration demographics, economics,
15 employment rates, and residential and commercial development rates, but
16 this is something that thousands of agencies have to struggle with on a
17 yearly basis and end up most of the time making fairly spurious
18 judgments even when we don’t want to, about them. So that’s the
19 question I put to you.

20 **Mr. Forst:** It’s a great question. Researchers have ways of trying to
21 estimate how much of the variation in crime is attributable to the police.
22 There are various ways of doing that and they usually come up with
23 unsatisfying answers because of measurement problems, because of
24 unexplained variation, because of a whole lot of things. It reminds me of
25 the conversation we have about the importance of the president in
26 controlling the economy and we have people like James Carville saying,
27 “It’s the economy, stupid. That’s what you should be talking about.”

28 And there is no question but that presidents can harm the
29 economy. And if police really knew how little control over crime they
30 had, as you suggest—because it’s attributable to the Home Depot that’s
31 built or the one-man crime wave phenomena that’s largely out of police
32 control—I’m not sure that would be a good thing. Because it might make
33 them throw up their hands and say, “well, there’s not much we can do
34 about it.” So, it’s probably healthy to believe that they have more to do
35 with crime than they really do.

36 There has been some looking at what police chiefs say about it
37 when crime goes up. You could do content analysis about that. To what
38 extent do they say, “it was out of our control”? To what extent when it
39 goes down do they take credit for it?

40 So, I’m not sure that that’s very useful. What’s more useful is to
41 refine our measures, to focus less on how many police there are and more
42 on what they’re doing. And we’ve already seen that what police do
43 matters more than how many there are. So, there’s a whole lot of room to
44 refine our estimates of how police make a difference in various kinds of
45 crime.

46 They can have a bigger impact on outdoor crimes than on indoor
47 crimes. That’s been found again and again. So, all we can do is just keep
48 picking away at this—analysts, researchers, and others—but good data
49 are critical, and so is more and more analysis.

1 **Mr. Mahoney:** I'm Barry Mahoney with the Justice Management
2 Institute, Denver, Colorado.

3 First, thanks to BJS for organizing this extremely useful
4 conference, especially so that people can gather who are interested in,
5 and use, this data from a variety of perspectives and different aspects in
6 criminal justice.

7 Particular thanks to Brian for what I thought was a really good
8 and thoughtful paper. I want to pick up on one particular piece of it. He
9 mentioned the desirability of getting more data on regional variations and
10 you also identified what, it seems to me, is a big gap.

11 BJS tends to focus on statistical data on the nation as an entity.
12 NIJ tends to focus on particular research topics generally built around
13 research in one or a few jurisdictions. There's a real gap around
14 comparative research.

15 So, it seems two people have mentioned COMPSTAT.
16 COMPSTAT's especially valuable, it seems to me, for two reasons. One,
17 it's timely. It gives you something that's actionable right away. Second,
18 it's comparative. It tells you where the problems are, where you don't
19 have to spend a lot of resources right now.

20 To what extent is it feasible for BJS to move towards both more
21 timely information (taking advantage of the advances in communications
22 and information technology) and more comparative information?

23 For example, I'm familiar with the SCPS research, State Court
24 Processing Statistics. It's interesting to know that, say, if there's a failure
25 to appear rate of 20 percent across the nation, it's far more useful to
26 know that it's four percent in one jurisdiction and 65 percent in another
27 jurisdiction and then to find out what makes the difference.

28 To what extent can BJS retool itself to move in that direction so
29 that you get more timely and more useful information to let you compare
30 and find out who's doing well, who's not doing so well, and why, so you
31 can make that useful in your own jurisdiction?

32 **Mr. Forst:** That's an excellent suggestion, Barry. It brings to mind the
33 term Jeff used earlier, the 180 degree turn in the way we collect data.

34 I think when we started LEMAS more than 20 years ago, we
35 just asked for basically raw data to be sent in by the departments and we
36 would analyze it, compile it, and give them a report at which they could
37 look to see where they stood. But now there's so much analysis being
38 done by the departments themselves. It's analysis that really wouldn't
39 make sense at the national level, but it makes a lot of sense at the local
40 level. If we could get our hands on that data and somehow bring it all
41 together that might be useful. If we were asking, "what makes crime go
42 up and what makes it go down?" and we could say, this makes it go up in
43 50 out of 60 cities that we've studied, that might be useful.

44 So, how do we get to that level? How do we get our hands on
45 the COMPSTAT data (whatever you want to call it) or the crime analysis
46 work that's going on out there? I think that's the real challenge.

47 **Mr. Mastrofski:** I'm Stephen Mastrofski. I'm with George Mason

1 University.

2 I was very taken with the analogy that Brian used about the
3 knapsack problem. I think that is one very important problem, but it made
4 me think of another problem that I'd like you to think about, and maybe
5 some ways of dealing with it.

6 After you've decided what you want to put in the knapsack, you
7 have to figure out where to get it. And I think that, too, is a challenge
8 that's worthy of consideration. So, let me use another analogy on the
9 knapsack problem: the problem of getting oil, which is something that we
10 all need a lot of. Of course, you go where the oil is and the oil is getting
11 scarcer—you have to go deeper and deeper to get it.

12 I think this analogy holds in dealing with understanding all the
13 things you want to put in the knapsack about policing. You have to drill
14 deeper and deeper.

15 Let me be less abstract and tell you what I mean. I think that if
16 you really want to take a look at variation in crime, that is high crime
17 versus low crime, or variation in policing, good policing or bad policing
18 or not so good policing, you're probably going to find more variation
19 within any given jurisdiction, particularly large jurisdictions, than
20 between jurisdictions.

21 We all know that there are tough parts of town and not so tough
22 parts of town. I spent some time years ago studying in Richmond,
23 Virginia, and was struck by the great difference not just in wealth but in
24 order and the style of policing that went on in the west part of town
25 versus the south and the east part of town, that can make crime control
26 less effective. And yet, a lot of the way that we gather information is also
27 piecemeal. Let me pick on LEMAS for just a minute.

28 Even though they're not measuring crime, they are measuring
29 things like police inputs and police activities. It's at the jurisdiction level.
30 So, particularly with large departments, we are comparing departments
31 that overall look a fair amount like each other. But when you go inside
32 the department, you find there's a huge variation between what you get
33 on the right side of the tracks and the wrong side of the tracks or even the
34 same side of the tracks that varies, and yet we're not getting information
35 at that level.

36 We're not going where the oil is. One of the suggestions that I
37 would make to BJS is that you need to go where the oil is and I think we
38 are beginning to hear some recommendations to that effect here.

39 When you're talking about COMPSTAT, what are you talking
40 about? You're not talking about the department, generally. You're
41 talking about beats or precincts and not only that, you're talking about
42 hot spots and is this hot spot getting the appropriate treatment or not?

43 So, if you really want to understand what works and what
44 doesn't, what research is telling us these days is that it's how you manage
45 the resources you have in a pretty small area, not the department,
46 generally. So one of the things that BJS might do to get a better handle
47 on that question for the police, for policymakers, is to try to find ways to
48 drill down, maybe not in every department, that's way too many—you
49 have over 3,000 in LEMAS. That's way too many to do, but some sub-

1 sample, so that you can find out what's going on at that critical level.
2 And that goes for the decisions that officers make, too.

3 It's pretty standard operating procedure in academia and on the
4 street to say that the lonely police officer exercises the most discretion.
5 That's something we don't gather much information on, with the
6 exception of the Police Contact Survey, which gives us the perception
7 from the citizen's perspective, not the officer's perspective, and so I
8 guess my recommendation is it's fine to have that general stuff at the
9 departmental level, the jurisdiction level, but when you can drill down
10 and understand what's happening at the micro level, you're going to be
11 able to improve policing a whole lot more.

12 **Mr. Frazier:** Steve, that reminds me of a series of events in Baltimore. I
13 went into a housing commissioner's office and they had a big map up on
14 the wall and I said, "Danny, where'd you get my crime map?" He said,
15 "That's not the crime map. That's the Section 8 housing map."

16 I went into the health commissioner's office. I said, "Peter,
17 where'd you get my crime map?" He said, "That's not the crime map.
18 That's the AIDS map."

19 Now, I don't know where all this goes, but to define a smaller
20 area—it goes to a larger governmental strategy and what I tried to do is
21 to work it within the local government, to have a coordinated
22 geographically-based strategy so that I wasn't one place and housing was
23 doing a big project in another place and health was doing another project
24 in another place, so we'd all be in the same place at the same time, so that
25 we could take territory back.

26 One of the principles of community-oriented policing is
27 regaining public spaces, parks and things like that come to mind right
28 away, but we literally color coded blocks green, yellow, red, and when
29 you look at your city that way, you want to connect green to green and,
30 you know, stop blight.

31 There are larger strategies—and that may be bigger than what
32 we're able to do—but I very much agree with your concept that it has to
33 be more narrowly defined or the more narrowly defined it is, the more
34 useful it is.

35 **Mr. Lynch:** My name is Jim Lynch. I'm from John Jay College, and I
36 really come at this differently than most of the speakers so far because I
37 come at it more from the statistical point of view.

38 Some of the things that Tom and Carl said, as well as what
39 Brian has said, made me think about two things.

40 Many of the things that people talked about here have really to
41 do with—and I think Chuck Wexler said it—really to do with data that
42 you all have on your own (that is to say, local problems, local issues)
43 when really one of the BJS roles—is to think, as Barry Mahoney says,
44 comparatively in some ways. They collect data not to tell police
45 departments about their own jurisdiction—which would be kind of
46 foolish—but to tell police departments about other jurisdictions and
47 provide useful comparative information.

48 So, I'd like to know from people who have been there, what

1 kind of comparative information, (be it at the jurisdiction level or what
2 Steve said in terms of drilling down below that) what kind of
3 comparative information would be most valuable to you?

4 I say this with an eye towards the controversy in the Quizno
5 business in Detroit and all the rest of that stuff where comparison did not
6 seem to go well for certain jurisdictions.

7 So, what comparative information is most important to you?

8 The second thing. Carl I think—or maybe it was Tom—
9 mentioned templates. One useful way for technological transfer from the
10 Feds to the locals would be templates, and I think that's an interesting
11 idea, but BJS has had a template for the National Crime Survey for years,
12 and I don't know, maybe, Brian, you can tell me how much that's been
13 used.

14 I'm a little skeptical of templates in terms of actually getting
15 into using them and if you all had any thoughts about how you might
16 facilitate that, I'd like to hear it.

17 **Mr. Frazier:** I think an interesting national comparison would be gang
18 population in the prison system. I think that would track the gang issue
19 state to state.

20 Templates. I was always reluctant to have somebody inside
21 write a survey because just the way things are worded skews them, and
22 you always wonder if your data's right and you don't want to be
23 criticized for all that and maybe you're just better off leaving it alone.

24 But a well-crafted survey in key areas, I think if they're not
25 getting used, it's a marketing problem. Everybody knows what areas
26 we're concerned about and if you have a good survey on something, I'd
27 invite you to our meeting and you can pitch it and I guarantee you they'll
28 use it.

29 **Mr. Peed:** We have had community survey software available to police
30 departments that they could download and use for free—a template-type
31 product. I'm not sure where that stands currently. I know there have been
32 some funding issues with it, but I think it would be an area we should
33 look at maybe expanding on. I think it was somewhat popular. I don't
34 have any numbers on how many departments were using it, but I know
35 there were quite a few requests for it.

36 **Mr. McDevitt:** This is Jack McDevitt from Northeastern University in
37 Boston.

38 Two questions. Brian, I'm intrigued with the sieve analogy. I
39 think it's correct. It's intriguing. What drives me to a couple of troubling
40 places I'd like to talk about is this. Do we want all the next 80 percent or
41 90 percent of those cases brought into the system? What would that do?
42 Would it be equitable? Should all those cases be in the system?

43 The question is; there's some really important research to be
44 done about which cases we are missing and which cases we should be
45 bringing in and moving. And that again speaks to BJS data. Which ones
46 would give us the best return and not raise questions of equity and
47 justice? It would be interesting to think through that a little bit more and

1 hear your comments on that.

2 I guess regarding the issue of “we can’t wait for a research
3 study”—I think we know that. We know, we’ve heard that forever. You
4 can’t take 3 years to do an NIJ study and then come back and help the
5 department.

6 I think we’re past that. I think right now the question is: “how
7 can the techniques and the people who do the research work with
8 departments on a day-to-day basis improve the information?”

9 It isn’t a question of going out and doing another 3-year study
10 and coming back to the department, but are there ways that you collect
11 your COMPSTAT data that can be better? Are there ways that you
12 analyze your data—comparisons to your data that could come from
13 national estimates that we’re talking about—that could improve your
14 ability to understand your jurisdiction in a real-time basis?

15 That’s where researchers have to move. They have to move out
16 of the paradigm that a researcher is someone who takes my data, goes
17 back to his office, comes back 3 years later and tells me that I did it
18 wrong. And that’s sort of the model that has existed for so long. I share
19 the feeling that—Jim’s point—that templates are important, but that’s not
20 the culture of police departments, to pick up a template and say, “oh, go
21 do this.” The culture is, “let’s talk it through and make it work for our
22 jurisdiction” because every police department thinks their jurisdiction is
23 unique in the world, and they have their problems, and nobody else
24 shares them.

25 So, I think that the templates could work with a process where
26 you can get people talking about something that fits within that
27 jurisdiction.

28 We’ve got to think of a new paradigm, not the old research
29 paradigm. We need a new paradigm where we think of this as more of
30 partners working together rather than supposing that we all have our
31 separate worlds.

32 **Mr. Frazier:** I think that is a great idea. We meet 3 times a year and real-
33 time data are presented. We just met in Vancouver last week and those
34 data were current as of February 1st. Everybody brings their own [data]
35 and so you can sort of determine how you’re doing in 4-month
36 increments which is moderately instructive.

37 If somebody’s numbers are more than a standard deviation or
38 two out, they talk about it and I think it is instructive. I think most chiefs
39 would welcome an academic look at that. Some are more research
40 oriented than others.

41 Our president, Gill Kurlakowsky, is very receptive to that kind
42 of thinking. Darrel Stephens in Charlotte, the outgoing president,
43 likewise, and I think that’s a great idea.

44 The template stuff is more situational. Some kids get beat up on
45 a school bus, and [you wonder] is bullying an issue? That’s sort of a
46 reactive kind of a thing where you may want to go in and run it in a
47 particular school or particular grade level and maybe compare school to
48 school.

1 I think it would be a great tool to have that doesn't exist now
2 (that's more a reactive than a long-term look) but I agree with what
3 you're saying.

4 The other comment that came to my mind, as we heard
5 COMPSTAT a couple of times, I have a couple of COMPSTAT stories
6 that I really like: It was around May and residential burglaries went up
7 and so I was sitting there beating on the Northern District commander
8 where I live, saying, "why is this?" And he said, "Well, if you really
9 want to know the truth, I'll tell it to you. They had riots in the prison last
10 summer because the prison was overcrowded. They don't want to have
11 riots in the prison again, so they're cutting all the non-violent offenders
12 loose. So, auto thefts are up and burglaries are up."

13 Now, that's clearly out of our control, but it didn't mean there
14 was nothing we could do about it. So I asked, "have you gotten with
15 adult parole? I mean, who has been paroled to your precinct and has
16 anybody hooked up with him to go out and see who's using and who's—
17 there are things you can do."

18 I think that's a good COMPSTAT example. The other one
19 escapes me now, so I'll spare you.

20 **Mr. Forst:** If I could address the first half of your question, Jack. It's a
21 great question and one that I tried to address in the paper, but it's hard to
22 get our hands around because it's so huge.

23 I quite agree. It's impossible. We wouldn't want all felony
24 victimizations to end in conviction. But my point was simply that we've
25 got a problem that's more serious than most of us are aware, that when
26 only 5 percent or so of felony victimizations end in conviction, very few
27 would step up and say, "well, I think that's about the right number."

28 What we need is information about what's going on. How much
29 does it vary from affluent neighborhoods to poor neighborhoods? How
30 does it vary by socioeconomic status? How does it vary by jurisdiction
31 regionally? How does it vary and how does it vary at each stage from
32 victimization to report, from report to recording, from recording to arrest
33 and from arrest to conviction?

34 We don't know enough about the variation jurisdictionally or by
35 socioeconomic status or other factors regionally and so on at each stage. I
36 have no clue what the optimal level is, but I'm sure that it's higher than
37 five percent and it's lower than a hundred percent. And we could do
38 some sort of social cost calculus to try to figure out what the right
39 number is, and we're not going to get there overnight, but the solution
40 begins with understanding the dimensions of the problem by stage and by
41 major factor. And we can start with jurisdictional differences because
42 that one is manageable and then find out what it is about this jurisdiction
43 that the reporting rate or the arrest rate is so much higher or so much
44 lower than elsewhere.

45 It's like a big detective problem, really, and we want to solve
46 this problem. But it begins with getting the right information and we have
47 a long way to go. We need to take steps and we hear about so many fads
48 that seem important. I don't mean to make light of them, but community
49 policing has become a buzzword—there's a lot of meat there, but a lot of
50 it is just talk, and it diverts us from the fundamental issues of securing

1 public safety.

2 This strikes me as keeping our eye on the ball here, that the
3 problem is a huge amount of leakage from victimization to conviction.
4 We need to get our hands around where the leaks are. How much does
5 leakage vary from place to place? Why does it vary? So, my pitch is for
6 more information, more research.

7 **Mr. Frazier:** I think one of the reasons Carl and I are here is to help you
8 better understand how departments really work, and you are the
9 researchers that I hope will trigger research concepts. The other
10 COMPSTAT example occurred in that same residential burglary
11 discussion I mentioned earlier. I said, "the clearance rate's low; are you
12 guys taking prints?" They said, "Yes, we're taking prints, but the backlog
13 is several months." I said, "Why?" They said, "Because it's so difficult to
14 find and train fingerprint examiners. And then we're so close to
15 Washington D.C., where they pay so much more, that we can't retain
16 them."

17 So, we had a salary inequity issue that meant we were losing all
18 our fingerprint examiners and couldn't analyze our physical evidence.
19 That raised [awareness of] a process problem inside our government.

20 Another area where I think it's important and becoming more
21 widespread and more relevant is DNA examination. So, if DNA-related
22 research is on your screen, I think that's a good thing. I think that would
23 be helpful.

24 **Mr. Peed:** I think Brian's paper was right on target, and I think it's a
25 challenge not only to the police departments across the country, the law
26 enforcement agencies. I think he throws out a challenge to the entire
27 criminal justice community because when looking at prosecution, you
28 have to look at the courts, probation and parole, the magistrates, all the
29 little players in the system that might have a big impact on public safety
30 in a police department.

31 So, I think Brian's right on track there, and I think we're facing,
32 potentially, some upcoming challenges with the policies of the '90s
33 which included the, "three strikes you're out, no parole, truth in
34 sentencing"-type strategies that built up the 600,000 people in prison.

35 Well, they are now getting ready to be released and so it may be
36 an opportunity for BJS to look at that population. Furthermore, there is
37 the recent decision on crack cocaine offenders, reversing or allowing
38 crack cocaine dealers or people under the influence of crack cocaine to
39 be released now. And I don't know how many that's going to be, but it
40 could be a substantial number of people that got caught up in that
41 600,000 back in the '90s that could go back into the community.

42 Given our experience in terms of repeat offenders and
43 recidivists, you could be facing some challenges within the police
44 community as a result of the other groups making important decisions
45 that impact police and/or our public safety. The final comment for Brian,
46 I think, was "more research is needed." And that's true.

47 **Mr. Schaffler:** My name is Richard Schaffler. I'm from the National
48 Center for State Courts. I think one of the immediate benefits of this
49 workshop is the cross-pollinating across our justice system silos. I'm

1 sitting here thinking that clearly law enforcement's very preoccupied
2 appropriately with crime analysis, crime rates, geographic distribution of
3 crime, and courts are (oddly) not. Ultimately our end users, the public,
4 the taxpayers, victims of crime—at the end of the day, they're not real
5 interested in this kind of finger pointing exercise. For example, tragically
6 in the Virginia Tech case, the court ordered the offender to mental health
7 treatment.

8 The mental health treatment provider didn't realize they had an
9 obligation to report to the court when that offender did not show up and
10 complete treatment. The court didn't have the information systems or the
11 business processes in place to recognize when they had not received that
12 information and so back and forth.

13 So, at the end of the day, who's responsible for this problem or
14 who's responsible on a daily basis for recidivism, for the crime rate?

15 There are courts that will say, "well, we're not taking
16 responsibility for recidivism because we don't control probation and
17 parole." And again, I don't think the public cares. They want the system
18 to work. And, in thinking about complementary relationships and
19 complementarities that were mentioned earlier, I think one of the things
20 that we're all going to need to digest and certainly BJS will is: what are
21 these issues that move across all of these silos?

22 Probably almost all of them in some form, but when you think
23 about this issue of crime, if you're a judge, you want to know: what
24 sentence is going to be effective and appropriate? Is the goal to
25 incapacitate the seriously bad people, the six guys in the two blocks? Do
26 I have a different strategy for them than I do for the 294 others where I'm
27 maybe appropriately diverting some, maybe appropriately trying to fix
28 whatever their underlying drug or other problem is?

29 I think the problem is that we don't share that information and
30 understanding and in the sense that it all comes down to what the
31 prosecutor decides to do and how the crime is going to be charged. Is it
32 going to be plea bargained? Is it going to be charged as a felony? Is it
33 going to be charged and then pled down? And part of the problem we
34 have in the funnel is that there aren't resources to charge everything and
35 adjudicate everything, so everybody's making decisions.

36 The problem is we aren't always sharing the criteria that we're
37 using in making sure that there are at least some that are [charged].

38 So, I guess a question then to the law enforcement folks would
39 be: you've talked about the crime data on the front end which is what
40 you're looking at and managing. I'm wondering if information you had
41 from the back end—the adjudication end of it—coming back to you,
42 whether that would help you in what you do.

43 In other words, what is it that courts and/or probation do that
44 needs to come back to you that would help shape what your practices
45 are?

46 **Mr. Forst:** What we are talking about here is lapses in information that
47 produce lapses in justice. It has occurred to me that we have sophisticated
48 systems for managing errors or lapses in other domains in a production
49 process. We look at the cost of a faulty product and we look at the cost of

1 improving the machinery so that we reduce faulty product and we
2 balance the two areas one against the other. It's self-contained and so it's
3 manageable.

4 As you pointed out, in the criminal justice system we have
5 different players. So, the problem of Virginia Tech as with the problem
6 of 9/11, which could have been stopped, too, "if only." And you have
7 20/20 hindsight, if only we had done this, or if only we had done that, we
8 could have prevented it.

9 The question is: how can we manage errors so as to minimize
10 the social costs of the lapses against the social costs of doing too much
11 security at the expense of liberty and privacy?

12 It's hard to do because the system is atomized from
13 victimization to corrections. There's that dimension. There's also the
14 spatial dimension—we have 17,000 police departments that talk little to
15 one another.

16 We have 3,000 counties with district attorneys that seldom talk
17 to their own police departments and that talk even less to each other and
18 so on.

19 So, it's easy to talk about managing errors and lapses in a self-
20 contained system, but ours is not at all self-contained and this is where
21 BJS comes in.

22 BJS is the unifying framework within which we have data and
23 the question is: how can BJS contribute to this problem of managing
24 lapses, not just single ones like Virginia Tech, but all of them, taking into
25 account all of them?

26 It's almost too much to think about. It *is* too much to think
27 about, but we have to begin somewhere and it seems to me that to raise
28 these questions is to begin to think about how to resolve them. It seems to
29 me that we're in the right place to start.

30 We can't handle them all for sure. There will always be a
31 Virginia Tech kind of episode, but we should be able to manage them so
32 that the public has some assurance that we're doing the best we can with
33 what we have, and getting the information we need, drilling down is the
34 word of the day, to make sure that we're getting down to the oil. The
35 metaphors are interesting, but they're somewhat appropriate here.

36 So, we have to do what we can and start with the most
37 accessible, manageable, solvable problem, I think, and continue to be
38 clear about what the big picture and the big problems are and then work
39 from there.

40 **Mr. Peed:** I believe one issue is that sometimes the courts don't get all
41 the information at the earliest part of the process. So, you have tunnel or
42 stovepipe-type systems. They may not get the information early on in the
43 stages of arrest, arraignment, prosecution, et cetera, et cetera.

44 So, I think better coordination and centralized criminal justice
45 information systems at the state and local level, are very beneficial.

46 When I was director of Juvenile Justice for the State of Virginia,

1 we created risk assessment instruments, risk assessment at every intake.
2 The purpose of that risk assessment was to ensure the judge got good
3 information with which to make early decisions, so he could make
4 decisions about releasing to parents (or to not release) and those kind of
5 decisions.

6 Secondly, we implemented risk assessments upon exit. Again,
7 not all people getting out of the system need the same level of
8 supervision. Somebody who's involved in a domestic dispute or domestic
9 crime rather than, say, a robbery, a violent crime, or assault may not need
10 much supervision. So, we were able to assign probation staff, parole staff
11 caseloads based on who needed the most supervision.

12 So, I happen to be a believer in risk assessment kinds of
13 instruments to give the courts information and to give probation and
14 parole information.

15 **Mr. Reaves:** Would that type of information be useful to the police,
16 also? Would they have access to that?

17 **Mr. Peed:** I would imagine that kind of information would always be
18 helpful. And I think the Boston model, where probation and parole
19 teamed up there because sometimes probationers, probation officers, and
20 parole officers have more information about a defendant than do police
21 departments. Also, they have greater latitude in terms of drug screens and
22 searching and so forth than police officers.

23 **Mr. Frazier:** Just thinking out loud here, I had a perpetual problem with
24 my prosecutor's office and it ended up that if we had somebody we really
25 wanted to dial in on, it went EXILE, went into the federal system.
26 There's a limit to how many you can do. There's a reason they call those
27 "federal cases." They're very labor intensive. They're not popular with
28 the federal judges and so you're limited in how many you can really
29 bring.

30 What that doesn't speak to is all the other 90 [percent] that fell
31 out in the sieve process and turned into a finger pointing exercise where
32 the prosecutor said there were procedural errors in evidence collection or
33 interrogation or things fell out because of flaws in discovery. There are
34 so many of those cases that just go nowhere.

35 You read in the local papers over and over and over again
36 what's wrong. This guy's been arrested so many times for violent
37 offenses that you really almost have to—it's sort of the new thing.

38 For instance, one of the things that came out of L.A.'s consent
39 decree is a very effective audit unit. They can go in and track a case from
40 beginning to end and see where things fell apart, although the result of
41 that [could vary]. It would almost have to be an interdisciplinary audit.
42 But the fact that [cases fall apart so often] is a very relevant fact.

43 Why is the sieve so leaky? I don't know if that's within the
44 purview of this organization or not, but it's a big problem. Prison
45 overcrowding's the other one. Our judges say prisons are already
46 overcrowded. Where are we going to put them?

47 **Mr. Reaves:** I'm just looking back at Brian's suggestions of things to
48 look at. He suggests we look at the relationship between police practices

1 and the leakage rate. I just wonder if these police information systems,
2 like COMPSTAT, tell us that much about the police practices. Or do they
3 really tell us more about crime and what's going on in the community?
4 I'm just wondering if we can evaluate what the police are doing through
5 this information that we would like to get.

6 **Mr. Frazier:** I think you'd have to go to the prosecutors' offices and ask
7 them why they declined or plea bargained or what have you. I don't
8 think police practice is all of it; it's half of it.

9 **Mr. Forst:** LEMAS provides a lot of the input information, and if we
10 could match the LEMAS input data with lapses at each stage—the
11 performance measure would be leakage at each stage—then we could
12 separate those out and parse out the analysis. But I think that it really
13 comes down to inputs versus outputs at each stage and the data are there
14 but it would require some effort to merge them appropriately, and there
15 are going to be different kinds of merging for different kinds of issues.

16 But it seems like there are enough smart people in this room to
17 be able to start to figure out some solutions and, as I say, just take it one
18 step at a time.

19 What can we do with what we have that we're not doing and
20 that will solve some of these problems? The opportunity for improvement
21 is so huge, it would seem a shame not to exploit the opportunities that are
22 there.

23 **Mr. Reaves:** So, you feel like a lot of the information we get in LEMAS
24 really does get at this issue of police practices already?

25 **Mr. Forst:** Yes, and to the extent that it doesn't, we would [make
26 progress] just in asking the question, at this stage, "what is it that's
27 needed?" And detectives know what they need to solve a crime and make
28 an arrest. They know what it takes to make an arrest into a conviction
29 working with a prosecutor. They know what kinds of witnesses are most
30 important, what kinds of tangible evidence are most important at each
31 stage. They know whether there's enough capacity in the court system to
32 be able to effectively use all this information.

33 So, very often the information's there, but the capacity at some
34 adjacent level in the system is not appropriate. And the story differs from
35 place to place. So, it's complicated, but some things are pretty universal
36 and one thing that keeps emerging here is fear—fear of victims to come
37 forward and help the police to know about crimes and then solve them.
38 And that's a problem that can be addressed as well.

39 How can we reduce fear? What is it that the police can do about
40 that problem? What is it the prosecutors can do? And certainly we need
41 to know more about focusing on offenders who are particularly bad and
42 are creating a lot more fear in the community than others. How pervasive
43 is that? What can be done about it?

44 But there are clearly solutions to a lot of these
45 problems. There are just so many different problems, it's hard to know
46 where to begin. But we know the dimensions of the problem at each stage
47 and we should start large and then drill our way down, it seems to me.

48 **Ms. McCoy:** I am Candace McCoy from the City University of New

1 York.

2 I was struck, when I was preparing to come here today, with
3 how well Brian's paper spoke to Ted Eisenberg's paper. If you're going
4 to talk about leakages and what happens to cases and the assumption that
5 we just don't know once these cases leak out of the system—they get
6 dismissed; is that good or bad? And we don't know why, we don't know
7 what happened to the victim, we don't know how the victim feels. If we,
8 in a perfect world, could listen also to the civil justice system, which
9 Professor Eisenberg is going to talk about this afternoon, on the lower
10 level of crime seriousness in the crime funnel (I'm not talking about the
11 really violent guys and the recidivist violent guys—that's a different
12 thing but on the lower level—especially property crimes and drug
13 crimes—we might find that once the cases leak from the criminal system,
14 they get addressed in other systems: civil justice systems, naming,
15 blaming, claiming, insurance, health systems, mental health controls.

16 We just don't know. So, the leakage problem is real but I just
17 would suggest listening to other database people about non-criminal
18 statistics that could really help explain.

19 **Mr. Forst:** I agree.

20 **Mr. Reaves:** Well, it brings up the issue that we know that all this fits
21 together somehow from the police through to the courts, but do our
22 datasets really link together in any way?

23 I think the only example that comes to mind is the Police Public
24 Contact Survey where we use the NCVS to look at what the police are
25 doing—police practices—but I get the idea here we need to do a lot
26 better job of somehow fitting these different pieces together. Maybe
27 that's overwhelming to think about right now, but something we'll need
28 to look at, I think.

29

30 **Mr. Ramker:** Good afternoon. My name is Gerry Ramker. I'm with BJS.
31 It's my pleasure to introduce the luncheon speaker today. Her name is
32 Joan Weiss, the current Executive Director of the Justice Research and
33 Statistics Association.

34 Joan has been in that position for a number of years. It is a professional
35 association of the state statistical analysis centers, and I think Joan will
36 give a little background on that, as well.

37 **State Statistical Analysis Center (SAC) Uses of BJS Data**

38 **Ms. Weiss:** Thank you, Gerry. It's a pleasure to be here, and I really
39 appreciate BJS putting on this workshop, and the opportunity to talk to
40 all of you for a few minutes.

41 This is a luncheon presentation, is what Gerry said, and when
42 Maureen called me and asked me to do this, she said, "Would you give a
43 presentation at lunch?" and I hesitated before I said yes, which she will
44 attest to.

45 I've put on national conferences for almost 25 years. And I can
46 tell you that one of the key things about putting on a national conference,

1 or putting on any kind of meeting like this—to make it successful—is
2 you want a luncheon speaker who’s going to be scintillating,
3 entertaining, who’s going to be inspiring, right? You want a lunch
4 presentation that’s going to capture the audience.

5 So, here’s my topic. State Statistical Analysis Center Uses of
6 BJS Data. Now, that’ll do it, right? So, you see how I got you to laugh?
7 That’s it for the presentation. That’s the last laugh, right?

8 I do think the topic is important, but this is an informal
9 presentation. Informal means brief and no PowerPoint slides. I’m just
10 going to talk to you. But before I get into the topic I do want to say a
11 couple of words about things that came up for me this morning listening
12 to the law enforcement issues.

13 I’m fortunate to know a lot of you in this room, many through
14 JRSA, but some of you from my prior life where I ran another national
15 organization, and I worked with law enforcement agencies throughout the
16 country, and it’s interesting.

17 When I was listening, there are a number of things that came up
18 for me, but one of the things that I remembered—and you know how it is
19 when something comes to you that you haven’t thought of in years, and
20 you just needed something to trigger it?

21 There was discussion this morning about the things that law
22 enforcement agencies have no control over. Crime goes up, crime goes
23 down, police are blamed or they take credit. And so many things they
24 have no control over: the economy, demographic changes, etc. I
25 remembered something from a course I took as an undergraduate. It was
26 a sociology course. I can’t remember whether the book was Talley’s
27 Corner or Street Corner Society, but there was a footnote in the book
28 about a tremendous increase in crime in D.C. after a certain event. A
29 question was asked about the footnote on the exam (which was why I
30 always remembered it). The question asked what event triggered the
31 crime.

32 You had to pick which event. I had read the footnote (because
33 I’m compulsive) and so I knew the answer, but very few students did.
34 The correct answer was that the surge occurred after 3 weeks of non-stop
35 rain.

36 No one this morning mentioned weather as something the police
37 have no control over, but in fact, anybody who’s ever dealt with crime
38 knows that, if people in a city are cooped up for 3 weeks straight, the
39 minute the rain stops, you’re going to have an increase in crime. Now, if
40 you’re smart, then you’ll do something to prepare for that. Otherwise,
41 you can get sunk.

42 Okay. I do think that the topic of state uses of data by statistical
43 analysis centers is an important one, and I want to share a little bit about
44 it for two reasons.

45 One, I have a feeling that a lot of you in the audience don’t
46 know anything about SACs, and you should (I have no bias on that topic,
47 of course) but the other is because we talk a lot about federal-level data,
48 and a lot about local data, and we’re talking about police departments,
49 but there’s not a lot of discussion about state-level data.

1 JRSA, as Gerry said, is the organization of state statistical
2 analysis centers. There are 53 of them, all 50 states and D.C., Puerto
3 Rico, and Northern Mariana Islands. We have four SAC directors here
4 today, I'm pleased to say, and from my right to left is Phil Stevenson
5 from Arizona, and Kim English from Colorado, and Bill Clements from
6 Vermont, and Sue Burton from Florida. Sue is the current president of
7 JRSA, and I invite all of them to get up to the mics and give examples
8 after I finish talking, if they have ideas that they want to share.

9 The SACs are unique in that they cut across the justice system.
10 The purpose of the SACs is to collect, analyze, and disseminate justice
11 system information for policy purposes.

12 They are located in different places. About two thirds are
13 located in the state administrative agencies, and they are co-located with
14 a lot of other functions. In some states, they're actually located in
15 academia, and in some states, they're located in departments of law
16 enforcement or public safety. It just so happens we have all the different
17 representations here today in the four SACs who are here.

18 What they have in common is that, unlike individual justice
19 system agencies, they cut across the system. Someone this morning, I
20 think it was Richard Schaufler, mentioned that one of the advantages of
21 this discussion today is the cross-pollinating of ideas.

22 So often, we're only with people who are involved in the same
23 aspects of the justice system that we are. Well, the SACs provide cross-
24 fertilizing and cross-pollinating at the state level. They don't deal just
25 with law enforcement data, or court data, or corrections data. They deal
26 with all of the above for policy purposes.

27 We have a very close working relationship with BJS. In fact, in
28 1974, BJS and the handful of SACs created JRSA, then called the
29 Criminal Justice Statistics Association, and the BJS legislative mandate
30 includes providing support for state statistical services. And therein lies a
31 close affiliation, and we do a lot of work together.

32 SACs use BJS data in many ways. When we e-mailed SACs a
33 couple of months ago to provide some information to the National
34 Academy of Sciences panel, we asked them for specific examples. Many
35 SACs responded with a blanket, "we use BJS data all the time." Now this
36 is at the state level. We use data all the time. They find BJS data critical
37 to their work.

38 So, what are the ways in which SACs use data? (Because I think
39 that those ways are instructive.) First and foremost, for national and state-
40 to-state comparisons, that is, as benchmarks. SACs use these
41 comparisons in legislative briefings for the state legislatures, for fiscal
42 and other impact statements. They use them in annual reports for public
43 dissemination or for education. They use them to provide policymakers
44 in their states with information, to advisory councils.

45 The BJS data provide a context for the data at the state level—a
46 context and a perspective. The SACs use arrest and victimization data. I
47 know Colorado and Florida specifically mentioned that. They use
48 corrections data, such as the Census of Jail Inmates. Kentucky mentioned
49 they use that all the time. Probation and parole data, the Prosecutor
50 Survey, LEMAS, court case processing.

1 I'm going to highlight a couple of examples just so you can see,
2 how these data are used. In Illinois, they recently published "Trends and
3 Issues," which is something they've published for, I don't know, 25 years
4 or something like that. Both Gerry and Phil are former Illinois SAC
5 directors, and the Illinois SAC director said they used several different
6 BJS publications in the publication of their 2007 "Trends and Issues."

7 They used the data to fill in correctional information that was
8 not reported by the Illinois Department of Corrections, or was reported,
9 but not necessarily reported using the same measure; and they
10 commented that BJS publications and research are very good at that. The
11 BJS reports provided data on prison capacity, mental health, HIV, parole,
12 and federal prisoners that the SAC could not find anywhere else.

13 Arizona: I know Phil mentioned to me that they used BJS data
14 recently to fill an information request, because they had someone
15 requesting information on incarceration rates and counts that they did not
16 have available. BJS data did have the information available.

17 So, the single most prevalent use by SACs really is national
18 comparisons—comparing with the national data. In fact, some states said,
19 "when we do something new, we look at BJS data to see if we're in the
20 ballpark, to see if our data makes sense." It's almost the first check for us
21 of whether we can trust our data. So benchmarks, the national and state
22 comparison is primary.

23 Next, BJS data are used as a model at the state level as a basis
24 for doing state level research. So the Victimization Survey is one place.
25 A lot of states use the NCVS (National Crime Victimization Survey) as a
26 guide for their own state Victimization Surveys, and in fact, some states,
27 such as Vermont, actually use the BJS NCVS software to do its statewide
28 Victimization Survey.

29 BJS data collections inform and guide Wyoming in their
30 Governor's Substance Abuse and Violent Crime Advisory Council
31 concerning the needs. They used BJS data to tell the Governor's
32 Advisory Council what the needs would be so that they can plan on the
33 state level.

34 So, it's modeling the data collection efforts that BJS is doing,
35 and also to provide guidance to existing bodies in the state, and also to
36 copy the research methodologies, quite frankly. No one wants to reinvent
37 the wheel, and BJS has spent a lot of time and effort developing these
38 methodologies.

39 So benchmarks, as a model, and third, planning and forecasting
40 for state estimates. In Oklahoma, they had a bill. I'm going to read this
41 verbatim.

42 "We had a bill that would require an offender to serve 85
43 percent of his or her sentence before parole eligibility, if that offender
44 was in possession of a firearm at the time of a crime. The sentencing data
45 we collect for Oklahoma do not often contain information on firearm
46 possession. So we applied an estimate from a BJS report to our
47 conviction data. The Firearm Use by Offenders, November 2001. We're
48 finding more and more that we can utilize the estimates from BJS studies,
49 and apply them to our bill impacts."

1 So planning at the state level, in spite of the fact we're talking
2 about national data—just as with national level you have tremendous
3 budget constraints, and if you have data that you can extrapolate from,
4 you do. So that's benchmarks as a model for planning and forecasting for
5 estimates.

6 Four. Quality control. Several states use the Records Quality
7 Index to assess the quality of the criminal history records, and to make
8 improvements in their criminal history records.

9 It's critical to have quality control. And we're working very
10 hard, and we actually have two multistate studies with BJS right now to
11 improve criminal history records. There are 11 states involved in this
12 effort.

13 We must have accurate criminal history records (and they're
14 really abysmal in terms of quality in many states). I don't know how
15 many of you have used criminal history records, but unless we have
16 accurate information in the criminal histories—and eventually, hopefully,
17 comparable data across states—then we're going to be missing a major
18 piece that is critical for this decision making. We're making decisions
19 based on information that is inaccurate, and that makes the decisions that
20 we make inadequate. So that's four, quality control.

21 The fifth is to tackle new topics and issues. Many states said,
22 and Idaho was an example, when they talked about the impact of
23 mentally ill offenders on the system, a lot of SACs go to BJS data first,
24 go to the reports that BJS publishes in order to look at, "what do we need
25 to be doing that we're not doing and what are the issues we need to be
26 focusing on?"

27 Cybercrime and identity theft were mentioned this morning, but
28 the truth is there are a lot of issues—the elderly, mentally ill offenders—a
29 lot of issues that a lot of states are behind in tackling. That sounds strange
30 because there is a lag time in terms of BJS data being published. But the
31 fact of the matter is, it is critical to the states to be able to look at the
32 decisions that have been made at the federal level to see what they should
33 do in terms of tackling new topics at the state level.

34 Could the data be more valuable to the SACs? Of course. Many
35 ways were mentioned this morning. Several reports. I mean, Karen
36 Heimer in her report talking about violence against women, and Brian
37 this morning talked about the importance of policing, and Lynn, in her
38 report, will talk about enhancing the utility of NCVS.

39 Barry Mahoney this morning spoke in terms of court state
40 processing, and Steve Mastrofski talked about police data. All of these
41 mentions had to do with having the data be more applicable at the state
42 and local level. Everybody who has talked about this emphasizes how
43 critical it is, and how useful it would be to be able to disaggregate BJS
44 information at the state and local levels.

45 That would be ideal. It would be a tremendous advantage. And
46 if all the datasets, or a good portion of the datasets made that possible,
47 then a lot of research questions would be more accessible, and a lot of
48 comparability issues could be addressed.

49 So we would like to see that as a goal, too. However, the

1 primary message that I wanted you to hear from me is about the
2 importance of BJS data, and the importance of the BJS mission to the
3 states. There is no other resource that meets the wide range of state needs
4 that BJS data address.

5 This is particularly true of the ongoing data collection series,
6 and it is critical that all of us who appreciate this fact continue to make
7 the point to those who have the power to do something about it.

8 We also have a responsibility to educate our own communities
9 of constituents about the uses of BJS data. I am intrigued by the fact that
10 I frequently will get a call because JRSA comes up on somebody's
11 Google search. If you Google a lot of subjects, I'm glad to say that JRSA
12 comes up; and, by the way, the JRSA website provides access to all the
13 state statistical analysis centers at www.jrsa.org. Easy to remember. We
14 don't collect and analyze data, except for some multistate studies,
15 ourselves. We actually defer to the states. What we do is link to states.

16 We get a lot of information requests. People all over the country
17 calling or e-mailing, and saying, "where do I find this, and where do I
18 find that?" And even SACs call because it's easier for them to call me
19 many a times than to go on our website and look for something. One of
20 the things that intrigue me is how few people know the data that are
21 available on the BJS website, and even more that many of the datasets are
22 now searchable online.

23 People are fascinated when I tell them. They didn't know that. It
24 is incumbent upon all of us who use BJS data, and know what's available
25 through BJS, to educate our communities of constituents. This is, after
26 all, a data users workshop. So those of us in this room who represent a lot
27 of different groups, I think, have a responsibility to do that.

28 I also want to make a pitch for not assuming that tight budgets
29 and budget cuts mean that we can't expand what BJS is doing. The
30 typical answer in response to, "let's be able to get more of BJS data at the
31 state level, let's make the data able to be disaggregated for the local
32 police departments," the response (and Brian said it in his paper) is that
33 you've got all these competing needs. Jeff Sedgwick this morning talked
34 about increasing responsibility without accompanying increase in budget.

35 And yes, that's true. But that doesn't mean we can't hope, and it
36 doesn't mean that we can't try. This year, the 2009 budget, everybody
37 else got slammed, and what do you know, BJS, at least on the first round,
38 BJS has a little bit of an increase. That would be very nice if it would
39 happen.

40 I think that level funding over all the years of BJS history,
41 coupled with the kinds of examples that we've heard today and will
42 continue to hear today, provide a powerful argument for expanding the
43 scope of BJS data collection efforts.

44 All of us in this room know that BJS is a bargain. The return for
45 the money, the amount of money that BJS has—someone—I can't
46 remember who it was this morning that used the analogy. Brian, maybe
47 it was you.

48 If we solve the crime rate, if we decrease crime, the savings
49 would be well worth it in terms of the kind of expenditures we're talking

1 about; but the fact of the matter is, we currently get tremendous value for
2 federal dollars out of BJS, and there is the incredible potential of having
3 more.

4 We've heard some ideas. We will hear some more ideas.
5 There's no reason that we have to assume that, just because budgets are
6 tight, that we have to accept that BJS can't be a recipient of expanded
7 mission, and expanded funding. It just takes the right arguments to the
8 right people at the right time, or over a period of time. I want to end on a
9 hopeful note by saying that, anytime I think about all these competing
10 needs for money, I think, instead of trying to decide how to use best the
11 money that BJS does have, and giving them ideas, why shouldn't we
12 shoot for expanded funding, and expanded capability?

13 There's a story, probably apocryphal, about a president, early in
14 our history, who wanted to plant a tree on the lawn of the White House.
15 He called the official gardener and said, "I read about this Japanese tree,
16 this flowering tree that I think is just beautiful. I've seen pictures of it,
17 and I want to plant one of those on the lawn of the White House." And
18 the gardener said, "well, I need to do some research on that," and came
19 back to the President and said, "I'm sorry, Mr. President, this is really not
20 a good idea, because this tree takes a hundred years to bear fruit." So the
21 president said, "well, we better begin immediately."

22 The truth is that it could be incremental. It may be that we won't
23 get everything we want all at the same time, and we have to work for it
24 for a long time, but that doesn't mean that we shouldn't make the case for
25 it.

26 I really appreciate your letting me tell you a little bit about the
27 state use of data, and I invite the SAC directors to chime in, and add
28 some examples of their own.

29 Thank you.

30 **Session 2: Victimization**

31 **Current Issues in Victimization Research and the NCVS's Ability to** 32 **Study Them**

33 **Mr. Rand:** Good afternoon. Hi, I'm Michael Rand. I am Chief of
34 Victimization Statistics Unit at BJS, and Victimization is the topic for
35 this afternoon's first discussion.

36 I think the papers, the focus of the papers is going to be
37 primarily the National Crime Victimization Survey, which is, of course,
38 the BJS premier program in that area.

39 We're celebrating the survey's 36th year in the field this year.
40 We've undergone one redesign back in 1992. In recent years, the
41 survey's been plagued by issues related to budget cuts—we've had to
42 make changes to keep the survey in the field because of these financial
43 pressures.

44 As a result of that, in order to keep it viable into the future,
45 we're beginning a process of redesigning the survey—not just the subject
46 matter, but also the methodology. Toward that end, we asked CN STAT
47 to do a review of the survey and make some recommendations for us, and

1 we received the report late in December.

2 We're in the process now of developing a program to do some
3 research toward improving and changing the methodology. We want to
4 help the survey do better what it does, and this effort today, I think, is a
5 good extension of that—looking, not necessarily at the methodology, but
6 at what the survey measures, and how we can improve the coverage in
7 the kinds of crimes, the kinds of events, the kinds of information about
8 crimes and victims that we collect.

9 And we've got four great people on the panel. Lynn
10 Addington is an Assistant Professor at the Department of Justice, Law
11 and Society at American University. She holds a Ph.D. in Criminal
12 Justice from the University of Albany, a JD from the University of
13 Pennsylvania Law School, and a B.S. from Northwestern University.

14 Her research interests include the nature of violent crime, and its
15 impact on victims, the measurement of crime and the utilization of
16 national crime statistics, and she's the co-author with Jim Lynch of a
17 great volume on the Divergence of NCVS and UCR, of which they very
18 nicely asked me to contribute a chapter. So, there's my disclosure for the
19 day.

20 She's the lead author of Are America's Schools Safe: Students
21 Speak Out, which was published by the Department of Education, and
22 her articles have appeared in numerous journals, including JQC,
23 Homicide Studies, Journal of Contemporary Criminal Justice, and Justice
24 Research and Policy.

25 Second paper is by Karen Heimer, who's a Professor of
26 Sociology and Public Policy at the University of Iowa. She received her
27 Ph.D. from the University of Wisconsin-Madison, and has conducted
28 research on juvenile delinquency, imprisonment trends in the United
29 States, women and crime, and violence against women.

30 She's the co-editor with Candace Kruttschnitt of Gender and
31 Crime: Patterns of Victimization and Offending.

32 Recently, she and Janet Lauritsen received a 2-year grant from
33 NIJ to study trends in violence against women.

34 And we have two great discussants, as well. Mary Lou Leary is
35 Executive Director of the National Center for Victims of Crime, the
36 nation's leading resource and advocacy organization for victims of crime,
37 and we're thrilled to have her here to give that perspective.

38 She joined that organization in December of 2004, after
39 spending time as the Acting Assistant Attorney General at OJP, and held
40 many other functions in that organization, as well, where she oversaw the
41 Department's Office of Victims of Crime and the Office of Violence
42 Against Women.

43 And finally, Ms. Jacquelyn Campbell, who's at the Johns
44 Hopkins University School of Nursing. She's a national leader in
45 research and advocacy in the field of domestic and intimate partner
46 violence, and her studies have paved the way for a growing body of
47 interdisciplinary work in the disciplines of nursing, medicine, and public
48 health, and she's written more than 150 articles and seven books, and her

1 history with BJS goes back many years when she helped us conduct a
2 study of injuries treated at hospital emergency departments.

3 And without further ado, first paper is by Lynn:
4 Current Issues in Victimization Research and the NCVS's Ability to
5 Study Them.

6 **Ms. Addington:** Great. Thanks a lot, Mike, for that introduction, and my
7 goal is to keep my remarks short, because I want to stimulate discussion,
8 not monopolize it. But then I'm an academic, so give me a little leeway
9 there, as Jeff was talking about this morning.

10 And I'm hoping that you'll notice there are a number of themes
11 that will be developed continuing from this morning that will continue
12 with our panel, as well, which I find very encouraging in some ways—
13 that we're all like-minded in these various topics that we're dealing with.
14 Also I'm planning on just basically giving an overview of my paper,
15 since people had those papers already, but I also know, if you're like me,
16 your best intentions of reading papers aren't necessarily what actually
17 happens.

18 So, I'll give a little bit of an overview, and highlight a few
19 themes that I think are particularly important, and I also want to thank
20 BJS for this opportunity to step back and look at the research more
21 broadly. It's unique, as an academic, as a researcher, to really look at the
22 field more broadly, and with the idea that we don't usually have of
23 improving data sources that we use. So, I thank BJS for this opportunity.

24 Given the 35 years that Mike had mentioned, the 36 years that
25 the Crime Survey has been in the field, and the 15 years since the
26 redesign, I think this workshop is a very good, and a very much needed
27 opportunity to examine how the survey has been and could be used in its
28 current form, as well as possible ways to change the survey, to explore
29 new areas of data users' needs.

30 When Allen Beck contacted me to participate, he said, "Would
31 you please look at current issues and trends in victimization research?"
32 And I said, "Okay." He said, "Well, but Karen Heimer will do violence
33 against women, so that narrows it down." And I said, "Oh, okay. No
34 problem then."

35 So, since I have that rather broad charge of looking at
36 victimization research trends and current issues, and how the NCVS can
37 address those, my presentation will be more examples and illustrations of
38 how it can be used, rather than an exhaustive dissertation of uses of the
39 survey, and I'm hoping it provides a launching point for our discussion
40 this afternoon.

41 Also, I'm going to focus on new areas for the NCVS. My
42 concern is that this isn't meant to be negative towards the NCVS. Full
43 disclosure: I've received two grants from ASA and BJS to look at the
44 NCVS. I am an enthusiastic user of the data, and so my feeling is that the
45 NCVS has given us a lot of the information we know about victimization
46 to date, and in order for it to continue to be the centerpiece of what we
47 know about victimization research, it really needs to change.

48 It needs to facilitate what the data users' needs are, and I think
49 this is a great opportunity for it to do so. So my comments are made in

1 that spirit.

2 As I said, what I want to do is look at the current issues, and
3 how we can implement changes. So, by way of a roadmap, I want to look
4 at trends in research in victimization to date. I'll look at four "new" areas,
5 and I put new in quotations, not to suggest that these are actually new
6 victims, or new types of victimization, but that the attention given to
7 them is new.

8 So, when we talk about new victims, I think an important
9 consideration for this workshop is to assess the NCVS's ability to study
10 these victims, and to do that, I've subdivided the new victims into three
11 groups: 1.) those victims who are captured by the NCVS Survey as it
12 stands now, 2.) those who are not, but could be in the format of the
13 NCVS or household-based survey, and 3.) those victims who are not
14 captured in the NCVS, and could not be captured in a household survey
15 like the NCVS. (To the extent that we're interested in the third group of
16 victims, BJS would have to consider alternative forms of data collection.)

17 For all of the elderly repeat victims, vicarious victims, and
18 immigrants, the idea is that the NCVS captures these victims, but if this
19 is a victim group that is important to focus upon, we might need changes
20 in the NCVS to better access these data.

21 So, for example, the elderly were mentioned this morning. Elder
22 abuse, victimization against the elderly, is becoming of greater concern
23 nationally as well as at the state and local level. NCVS captures
24 information about adults of all ages—anyone over age 12—in the
25 household. So we have those over age 65 traditionally defined as the
26 elderly, but the NCVS, because of how it characterizes the household
27 sample, does not include family members who are nursing home
28 residents. So those very vulnerable individuals are not included in the
29 Crime Survey.

30 Also, with the sample size, we might not capture enough elderly
31 individuals to really do comparisons, maybe across where they live, those
32 who live at home, those who live with a caretaker, those that live in
33 assisted living, or non-traditional nursing home facilities that would be in
34 the NCVS sample.

35 We might want to enlarge the sample to allow multivariate
36 modeling comparison across subgroups, or that sort of thing, and also,
37 with regards to crimes that are relevant to this population.

38 We'll talk about new types of crime in just a second, but fraud,
39 abuse, neglect, that sort of thing—those might be important to capture in
40 the NCVS. So while we capture the elderly, that type of information
41 might be important to access that we don't get right now.

42 And similarly with repeat victims, I won't go into too many
43 details about that. We do get serious victimization, but we don't get a lot
44 of information as to how those incidents are linked together, for example.

45 Vicarious victims are identified and included in the NCVS, but
46 individuals who are in a household with somebody else who's victimized
47 aren't asked any questions to follow-up. How did that victimization
48 affect you? How did that victimization affect your household? Because
49 there are effects of the victimization beyond the direct victim. And

1 consider immigrants, certainly around the D.C. area there have been a lot
2 of headlines about people being targeted because of their perceived
3 illegal immigration status.

4 Of course, these people are included in the survey, not
5 identified. We don't ask citizenship questions in the Crime Survey. One
6 could question whether starting out a federal survey, "Hi, I'm from the
7 government. I'd like to know if you're an illegal immigrant." might be
8 the best way of accessing this information. But still, I include that just as
9 an example there.

10 And then also with victims within the scope of the NCVS, but
11 not currently collected, children under age 12. Would we want to lower
12 that? Are we interested in issues about bullying, childhood victimization,
13 maybe some kind of abbreviated NCVS-type instrument to get at these
14 individuals, or for particular issues, like bullying. Right now, we only ask
15 questions of those in the household above age 12.

16 With regard to victims who are not captured by the NCVS, or
17 are outside the scope of a household survey, again—if we want to study
18 these issues—it would just mean that we'll have to find an alternative
19 data source, that these individuals aren't necessarily best captured in a
20 household survey.

21 Take, for example, highly mobile individuals. These are a very
22 important group to look at because initial research suggests that those
23 who are more mobile—move more frequently than every 6 months,
24 which is what would be captured in the NCVS—experience a greater
25 level of victimization than those who are more stable. And those who are
26 more stable are the ones in the Crime Survey.

27 Understanding this population group would be important to give
28 a better picture about a high-risk group. But because this crime survey is
29 a survey of households, we don't follow people who move in and out of
30 the household. We would need to follow individuals to do that. So, we'd
31 need to change to a longitudinal survey.

32 This suggestion, of course, is not new. It's been around since the
33 redesign, and probably before that. So that's something to consider,
34 whether to change to a longitudinal survey, or even a supplement of
35 individuals—take a sample of individuals and follow them and see
36 whether this is something that we'd want to explore with the Crime
37 Victimization Survey.

38 Other victims outside the scope of the NCVS include
39 individuals in jail. BJS does a wonderful job with the prison data but
40 individuals in local jails are, by and large, excluded from these data
41 sources, as are businesses.

42 Originally, the National Crime Survey was a series of surveys,
43 one of which continued on as NCS, and then NCVS. But it also included
44 a business crime survey aspect that was discontinued for a number of
45 reasons. The question is, should we revisit this? Is underreporting by
46 businesses or particular businesses important?

47 BJS is including this with regard, or starting to look at this with
48 regard to computer crimes, but it's something to consider, again, as a new
49 trend.

1 With regard to new places, most of these aren't new. It's mostly
2 a renewed interest, and a continued need for data in these areas. We do
3 have NCVS data for, actually, most of these, but I think that changes
4 need to be made to make this data even more effective to study these
5 places.

6 Campus crime has longstanding interest of researchers. With the
7 Virginia Tech shootings there is renewed interest in campus crime and
8 what's going on there.

9 Workplace violence. There is increased interest in low-level
10 types of violence that affect the environment of the workplace because of
11 threats, because of bullying that's going on at work. And this is no
12 surprise, given our discussion this morning. Some national estimates of
13 crime, and also Joan's discussion over lunch, indicate that this is very
14 important to understand local crime patterns, local victimization patterns.

15 What's going on at these levels that will help us both target
16 effective policies and also evaluate those policies? Are they effective in
17 what we want done to lower crime and victimization?

18 And how about national trends? We're seeing some areas
19 increasing in crime and some areas decreasing in crime. Understanding
20 local types of crime would help us understand and get a better read on
21 national trends of what's going on with our crime data and criminal
22 activity.

23 And again, this is something where the NCVS and BJS have
24 provided some data, but not a great deal of it, and not very consistently.
25 For example, with the NCVS, because of sampling procedures, we are
26 able to drill down (to use that terminology) for the three largest MSAs,
27 but beyond that, we really can't do too much with the Crime Survey.
28 There was the 12-City Survey, which basically took the Crime Survey
29 into 12 jurisdictions in 1998. That hasn't been replicated, but did lead to
30 the Crime Victimization Survey software, which has had some areas
31 utilizing it, as Joan mentioned, but other jurisdictions not being too aware
32 of that kind of resource.

33 And, just briefly, there are the new crimes. You could probably
34 pick any new crime that you'd like to add to this list, because everyone
35 has their particular favorite here, but the NCVS does have a few
36 attributes that let us access or create—gather information on new crimes
37 that aren't currently covered by the Crime Survey.

38 One is its binary attributes. It doesn't ask you, "were you
39 robbed?" but asks you characteristics of that victimization incident, and
40 allows us to characterize new crimes that aren't necessarily the UCR
41 traditional crimes, such as carjacking, that was done in the 1990s.

42 And also, it collects additional information through
43 supplements, and the ability to add new questions. So, that's a few of
44 those that we could study with additional questions.

45 The cybercrime issues: fraud and identity theft. The NCVS has
46 added questions to the household survey about identity theft, but there
47 are other forms of fraud, as well and bullying. The school crime
48 supplement to the NCVS does include bullying questions for juveniles.
49 As I mentioned before with workplace violence, the ideas about bullying,

1 intimidation, stalking, might be worthwhile to explore for adults, as well.

2 I want to spend a little bit of time talking about explanations of
3 victimization. Unlike the prior three trends, this is really a broader issue
4 of current and continued interest for victimization researchers—the
5 ability to better understand victimization and explain why certain
6 individuals are victimized. Getting at this information allows for better
7 theoretical explanations, and more effective policies.

8 The problem is that, traditionally and currently, the NCVS
9 doesn't provide much explanatory context. And so the suggestions that I
10 have here are ones that would help explain victimization, and could be
11 implemented in the survey with additional questions, either new
12 questions, or a supplement.

13 The first one is asking the respondent why he or she was
14 victimized. Surprisingly, this follow-up question has never been asked on
15 the NCVS, and is important to provide a context for victimization. Was
16 the person victimized because they were randomly attacked on the street?
17 Was it an ongoing dispute? Was it a victim who actually was going to the
18 assistance of somebody else? This provides a different context for
19 victimization and explanations of criminal victimization.

20 The repercussions of and responses to victimization. The NCVS
21 does get quite a bit of information about the immediate repercussions of
22 victimization, but what about long-term repercussions of victimization?
23 Fear, mobility, dropping out of school, those kinds of ramifications of
24 being victimized.

25 Fear of victimization. We talked about this earlier this morning
26 with regard to reporting to police, being willing to be a witness, and
27 giving information to police.

28 I include fear separately as its own category rather than a
29 repercussion, in order to emphasize the fact that it's important to gather
30 this information from both direct victims, and those not directly
31 victimized. In this way we will have a better picture as to what's
32 generated from the victimization incident, and what's generated from just
33 more general fear of street crime, of terrorism, of going to the mall,
34 staying at home, going out at night, that sort of thing.

35 And there are alternative crime classifications to provide ways
36 of comparing victimization in different contexts (outside of the
37 traditional UCR crimes) and additional explanatory variables.

38 This is a perennial problem when you talk to victimization
39 researchers. They say, "why don't you use the NCVS?" And I ask my
40 colleagues, "why don't you use the NCVS?" The answer is that there's
41 nothing to explain victimization. There aren't enough independent
42 variables.

43 So, getting additional information for explaining victimization is
44 really essential to increase the number of users, and increase the utility of
45 these data.

46 With regard to my suggested changes for the NCVS, two
47 categories: one targeting more the NCVS and the data provided, and one,
48 if I'm bold enough to say, change to the BJS.

1 With regard to changes to the NCVS itself, add questions to the
2 survey. Many of the examples I've provided suggest that we could get
3 this information with more questions, or topical supplements.

4 Now I know this sounds simple, and it's easy for me to say,
5 "hey, add a few more questions." I also realize that this is difficult. Not
6 only, as Joan mentioned, if we could get more money for BJS, but
7 respondents and interviewers have a finite amount of time, as well. We
8 can't just ask a five-hour survey instrument of people and expect them to
9 come back in 6 months and respond again.

10 So I understand that there's a trade-off. If we add something, we
11 should drop something. And also, I understand that we need to determine
12 what questions we should ask. Do we want to know issues about why
13 people were victimized? Do we want to know the amount of
14 victimization? Specifically, what information do we want to know, which
15 leads to a more comprehensive consideration about the NCVS and its
16 role.

17 I think it is essential at this point to consider what the NCVS
18 should be doing. Should the NCVS be collecting and measuring crime
19 and criminal victimization? Or should it be trying to explain
20 victimization? Or could it do both? The two aren't mutually exclusive.

21 Traditionally, the NCVS has been focused on measuring crime.
22 But given the trends, and the need for data to explain crime, I think now
23 is the time to consider seeking more of a balance between the two, and I
24 say this to 1.) prompt a consideration of what the purposes, are because I
25 think that's important and 2.) to serve as a roadmap for what questions
26 we should add, what questions to drop, how to frame questions, that sort
27 of thing.

28 Also, I feel like a number of changes have been implemented to
29 the NCVS due to external pressures—Congress, legislation, study this.
30 The NCVS does a great job, now do more, which is wonderful, but I also
31 think some of our knowledge should be guided by science and the needs
32 of data users, as well as legislators.

33 Just a few other things with regard to changes to the NCVS to
34 study these new issues. Increase the sample size. As I mentioned with
35 studying the elderly or particular populations, consider a longitudinal
36 design with regard to studying repeat victims, as well as the
37 repercussions of victimization, highly mobile victims and, (as I discuss in
38 my paper) provide access to narrative data to allow researchers to explore
39 new trends, and new possible explanations for victimization experiences.

40 Two changes that I recommended with regard to BJS (mostly to
41 ensure that the survey continues to meet user needs). The first is to
42 institute periodic reassessments to ensure that what we're learning in the
43 data and what we're learning as researchers, as policymakers, as
44 practitioners, can be reinvested into the survey itself, so that the survey
45 can benefit from the information that we've gained. Secondly, ensure that
46 the survey still meets user needs, and finally, create a partnership with
47 the data user community.

48 This workshop is unique, and it shouldn't have been, as Brian
49 Reaves mentioned, in the 20 years he's been at BJS, the first time it's
50 happened. I think it's important to continue this kind of collaboration into

1 the future.

2 If I were to pick my list of selected recommendations, these are
3 the ones I would focus on: explanatory contacts for victimization,
4 collaboration between BJS and the community of data users, and the
5 periodic reassessments of NCVS.

6 **Mr. Rand:** Thanks, Lynn. Karen Heimer will now switch focus a little
7 bit to Violence Against Women.

8 **Understanding Violence Against Women Using the NCVS: What We**
9 **Know and Where We Need to Go**

10 **Ms. Heimer:** Thank you. I was asked to write a little discussion paper on
11 the topic of studying violence against women using the NCVS, and I'm
12 actually a relative newcomer to using the NCVS. I've used lots of other
13 different kinds of datasets, and I'm pretty new to the NCVS, but I've
14 become a wholehearted supporter, so I'll kind of give you that caveat
15 first. I think it's a great dataset that offers a lot.

16 I was interested to see that Lynn and I actually came up with
17 some pretty similar thoughts about ways to improve the data, and what
18 the data can offer.

19 I think that the NCVS offers a really useful tool for drawing
20 attention to violence against women. I think I have a sort of personal
21 bias, and feel like our discussions of crime in the United States—and
22 particularly crime trends—tend to overlook the importance of women in
23 this equation. I think that the NCVS can be very useful in drawing
24 attention to studies of violence against women, but we haven't really
25 reached our potential here.

26 The data haven't been used in the way that they could be, and
27 some of that has to do with accessibility, I think, and some of it has to do
28 with content. And I'll say some things about that.

29 I want to give you a little bit of an overview of the kinds of
30 research that have been done using the NCVS, and then, as part of that,
31 discuss where we might go from there.

32 The research tends to have taken two forms. Most of the
33 research has been about describing distributions. That's great. That's a
34 first step. We need to know what violence looks like across all different
35 kinds of categories. A lot of that work has been done by BJS, (a lot by
36 Mike himself,) and this is really great. It's a great start. We still have
37 some places we can go here.

38 The second stage of research, though, should always be research
39 that's aimed at explaining these distributions. And I think that is actually
40 the purview of academic researchers, and I think we've really fallen
41 down here, and I think there are a couple of reasons for that.

42 I also want to give a little caveat, and say that this isn't an
43 exhaustive review. There's only so much I can do in the time, and so
44 there's actually quite good literature on police response to domestic
45 violence using the NCVS, but I'm not going to talk about that today.

46 And I'm incapable of doing any kind of talk without numbers,

1 so you'll get a little bit of those. First of all, I want to point out a few
2 things. In describing distribution, we look first at how violence against
3 women is distributed across crime type, and I think that is something
4 very important to just sort of start with. What you see here is that the
5 victimization patterns are not really all that different across men and
6 women, except in the case of rape.

7 What I mean by that is: the most common kind of violence
8 against women is the same as the most common kind of violence against
9 men, which is simple assault, followed by aggravated assault, and then
10 robbery. The male rates are a little bit higher. Rape is different, and we
11 all know that. Women are much, much more likely to be affected by rape.

12 The other thing I want to point out is that, if you look at the total
13 violent victimization rate, (this information comes from a BJS report) if
14 you look at the total violent victimization rate, you see that there is a
15 gender gap, males are victimized more than females, but that gender gap
16 is not nearly what you would expect if you compare that to the gender
17 gap in violent offending.

18 So, given women's much lower levels of involvement in
19 offending, they certainly are affected when we talk about victimization. I
20 think the reason that women have not been included in discussions of
21 violent crime in the United States in terms of trends and patterns has been
22 that we focus on offending. We focus on official data, and we ignore the
23 victimization side of it. But if you really want to talk about crime, you
24 want to talk about both sides of the coin.

25 There are a couple of areas where we could use some more
26 information, areas we don't have enough information on. We could use
27 some more information on the crime of stalking, and Bonnie Fisher has
28 done a lot of great research on this. This may even be something that we
29 could study in particular subgroups. There is ongoing information on
30 stalking in the NCVS.

31 Another area, which I know is very difficult to study, but in
32 terms of kind of the pain and suffering that it causes in people's lives, is
33 the issue of sexual harassment and unwanted physical contact.

34 I just finished reading a book that's coming out soon by a friend
35 of mine named Jody Miller on the violent victimization of inner city
36 African-American girls in St. Louis. It's hard to get through the book
37 without crying, but when you read the book, you're just struck by the fact
38 that life is so hard in terms of the constant physical harassment that these
39 girls experience in school and on the streets. Girls talk about being afraid
40 to go outside, and the girls who do go outside and get victimized are
41 blamed for the victimization because they chose to go out of their house,
42 or walked home alone from work.

43 A lot of these kinds of things are not going to show up in
44 surveys of crime because unwanted physical contact may not be reported
45 as an assault, but I do think it's very important. I don't know if that's an
46 issue that can be dealt with in the NCVS, but I would love it if it were.

47 Another way that we can look at distributions of violence
48 against women is across victim-offender relationships, that is, non-fatal
49 violence against women.

1 Also, people have done a lot of research using homicide data in
2 terms of violence against women, but in terms of non-fatal violence
3 against women, a lot of the research has been devoted to intimate partner
4 violence. I think that's wonderful—intimate partner violence is certainly
5 much higher among females than it is among males. That's no surprise
6 because males are the main violent offenders, but this type of
7 victimization [non-fatal intimate partner violence] is much higher among
8 females than it is among males.

9 This is definitely a big problem in our country, but I get a little
10 concerned, somehow, when we think about violence against women in
11 terms only of intimate partner violence. Because 33 percent of all violent
12 victimization of women is by strangers, and 36 percent by friends and
13 acquaintances.

14 So this is something that the NCVS does well. It captures kind
15 of this wide range of violence, and I think that's very, very important. In
16 fact, I think this survey is really the best and only way to look at these,
17 even in the cross section, not even getting to the longitudinal issues.

18 The other very important factor to think about when we think
19 about distributions of violence is race. Blacks and Native Americans, we
20 know from the NCVS, have higher rates than other race groups.

21 The rate of violence against Native American women is very,
22 very high. This is something that's very difficult to study because of the
23 small numbers in the population. The studies using the NCVS that have
24 been conducted have had to pool several years of data across years.

25 So I think if there were some ways to kind of target particular
26 populations, like Native Americans, maybe oversample and get some
27 more information on this, this would be a worthwhile endeavor.

28 It also turns out that, when we look at violence against women,
29 again, to the intimate partner versus other kinds of offender issues,
30 violence against women among blacks and Native Americans is higher
31 than other race groups. But if you look at intimate partner violence, and
32 you compare blacks and whites, there's not a huge difference according
33 to a report by Shannan Catalano, a BJS statistician. This information
34 comes from her 2007 report.

35 I think that this is an issue that we really need to think a little bit
36 more about. And the same thing happens with ethnicity. Latinos, Latinas,
37 much more likely to be victims of violence than non-Latinas, Latinos.
38 This doesn't hold in the case of intimate partner violence, and so there's
39 something going on here and it could be because minorities are more
40 likely to be victimized on the street and in other kinds of public settings,
41 but with no big difference in the home. Anyway, very interesting, and I
42 haven't seen a lot of research on that. So this is something that definitely
43 needs more study, and that's actually a call to researchers.

44 The NCVS is very important for studying violence against
45 women in terms of longitudinal trends. It is uniquely suited to look at
46 long-term trends. You can study long-term trends using correct
47 procedures, which Jim Lynch and others have developed.

48 People haven't done this very often, or haven't done this at all,
49 and we need to figure out ways to make this more possible for

1 researchers to do in the case of violence against women.

2 Janet Lauritsen and I have been doing a little bit of this work,
3 and I just want to show you some pictures, because I love pictures [slides
4 from presentation are not included here]. The blue line is males, the red
5 line is females, and this starts in 1973.

6 The issue is that, in 1993, the redesign took effect completely in
7 the NCVS, and there were big changes. So you can't just compare the
8 early years of data with the later years of data without going through
9 some very complicated computational procedures. And when we've done
10 this, and adjusted for these differences due to the redesign, what we see is
11 that the gap in violent victimization has started to close. And it's
12 primarily because the male rate has been coming down more quickly than
13 the female rate.

14 What we've concluded from this is that males have benefited
15 more than females from the long-term declines in crime.

16 Looking at intimate partner data. This is intimate partner non-
17 lethal violence from '79, first year we could do that, through 2004. What
18 you see is that the gender gap is also beginning to close here.

19 Females have always had higher rates in the direction of the
20 gender ratio line changes, but what you see here is that the reason that the
21 gap, the primary reason that the gap began to close is that the rates of
22 violence against women declined in the '90s, and perhaps that just has to
23 do with other factors that are related to declining violence during this
24 period in general. We don't know for sure. We need more study on this.

25 And I just want to show you one other quick picture [slide not
26 included]. We did a conference presentation recently, and we've done the
27 same kind of trend lines, but pulled apart the non-Latina black, the
28 Latinas, and the non-Latina whites.

29 A lot of the research to date has looked at only the period from
30 '93 on. So basically, if you just look at this period, what the research
31 tended to show is that Latinas' [data] don't look that different than non-
32 Latina whites' [data] do they? Blacks look really different, but if you
33 look over the long series, one of the things you see is that's not the case.
34 Latinas are very different from non-Latina whites over the period since
35 the early 1970s.

36 The other thing you see is that Latinas, and non-Latina blacks
37 were much more affected than non-Latina whites by periods of increasing
38 crime, and so they're not as protected as non-Latina whites. I don't have
39 time to talk about the males, but that's even prettier.

40 Another way that we can think about these distributions is
41 across sub-national geographic units. The potential for doing MSA-level
42 trend analysis is really exciting. We could study long-term trends in
43 women's victimizations across the large MSAs, and this would give us a
44 chance, I think, to kind of look at [the influence of] policy changes.

45 You could look at what's happening in one MSA in terms of
46 policy compared to another MSA over time and see whether there were a
47 set of policies enacted in one, and not the other, and then whether we get
48 any kind of difference in the measures of violence against women.

1 Again, part of the problem here for researchers has been access
2 to data and actually knowing how to use the data. The other thing that we
3 really need to see, as people keep calling for now, are other kinds of sub-
4 national analyses with geocoding. With all kinds of geographical
5 analyses becoming all the rage in social science, that's going to filter in
6 here.

7 Let me just say a little bit about explanatory research. There's
8 less to say here because there's less of it. We know, basically, that all
9 these kinds of factors, and a bunch of other factors, are related to
10 violence against women in the bivariate case, meaning that the
11 distribution of violence against women differs, whites to blacks, across
12 age groups, and across economic status groups.

13 We know that, but we really have no idea how these things
14 combine to explain violence against women, and that's what I mean by
15 explanatory research.

16 So do these things have independent effects? How and why do
17 they matter? That's what we need in order to develop targeted policies.

18 I'm not saying there's no research, but there's not very much.
19 One example of some research that's been done, again, largely by Janet
20 Lauritsen and some other folks, has been to say, okay, we know there's
21 this race difference in violence against women. Let's look more deeply at
22 that, and in looking a little bit more deeply at that, they've discovered
23 that it's not about race. It's about what you might expect. It's about what
24 your neighborhood's like, it's about socioeconomic status, it's about a
25 variety of factors, like family structure, it's about a variety of factors that
26 really aren't about race. And if we want to develop policy, we really want
27 to know what the complexities are.

28 This research has really lagged behind. And when I was trying
29 to read all this stuff and piece it together, one of the things making me
30 pull my hair out was that even the research that exists—every study—has
31 a different set of explanatory variables.

32 The problem with that is you absolutely cannot compare the
33 effect of race in a study that controls for income and family structure
34 with the effect of race in a study that doesn't control for family structure.
35 So I think what we really need, as researchers, is to do more research
36 using the NCVS, come to some consensus over the standard set of
37 variables that should be in any study, and this happens in all areas of
38 criminology.

39 It's sort of a natural progression, and maybe because violence
40 against women is just a newer area, relatively speaking, it hasn't
41 happened. But I think it's been a little slower than it should be, and this is
42 the only way we're going to really start accumulating knowledge about
43 the complexities of the situations in which violence against women
44 occurs.

45 The other thing that becomes apparent when you read the
46 literature is that we really do need to have other measures of social
47 contexts that are specific to violence against women.

48 We need to have measures of relationship conflict, family
49 process, cohabitation. That would be easy. I think you could just put that

1 in the household roster. Some of these others would be more complex.
2 Community ties and social support from the community are not so easy,
3 and may require something like a supplement in certain years.

4 I think the biggest call here is maybe to the academic
5 community. We need more research by a wider range of researchers, and
6 I think, as an academic, I take full responsibility for not doing a better job
7 of this.

8 However, there are some things that BJS can do to make sure
9 that this happens, and using the data, after all, is very important for the
10 future funding of the data (and the increased funding of the data, we
11 hope).

12 One of the things is to make the data more accessible to a wider
13 range of folks, and more available. For example, why can't we convince
14 Census to let us have the area identified codes with the NCVS so that we
15 can look at issues of neighborhood in the long term? They're available
16 for 1995, and that's it.

17 There are other very, very sensitive datasets, like the Adolescent
18 Health Survey data, in which people are located in Census Tract. In
19 sociology, my home discipline, you cannot walk across a room with
20 sociologists without falling over the top of five people who are using the
21 Adolescent Health Survey.

22 Now why is that not the case for the NCVS? I think that we can
23 trust researchers to [protect] the data. So, if we could somehow convince
24 whoever makes these decisions that we can actually trust researchers to
25 [protect] the data For instance, my Ad Health Data's in a locked room
26 with a computer that has no internet connection.

27 The other thing is that I think additions to content, as Lynn said,
28 are absolutely critical. This might have to come in with the supplements,
29 but for understanding violence against women, there are unique issues
30 that will need to come in through supplements. Finally, I think that
31 government, BJS, NIJ, other organizations could help us along this
32 road—could help push academics—because, after all, we all know that
33 academics go where the money is. At universities, once you get promoted
34 to full professor, all they really care about is how many dollars you bring
35 in. And so, if we could foster this research through some funding
36 competitions, and also the more people we can get involved in these
37 competitions, the higher quality the research is going to be. And
38 workshops like this may be targeted on this issue.

39 We do need some more work on the distributions (as I
40 mentioned) adding crime types; more data on race, ethnic, and minorities;
41 trend analyses, sub-national analyses, and I think I have belabored the
42 issue of needing more explanatory research on the subject, and really
43 good research, too. Good research that's using high-quality statistical
44 analyses, using the data appropriately, so that Janet and I don't get all hot
45 under the collar about people using the data wrong, and the issue of
46 collecting additional data again.

47 I didn't talk about the methodological issues, because I didn't
48 think this was the right place for that, but there's a lot of debate about the
49 measurement of violence against women in the NCVS. The redesign was,
50 in part, responding to that.

1 Mike and Cali Renesen have what I think is a super paper in
2 2005 in Journal of Quantitative Criminology that compares estimates
3 from the—the issue has been that the estimates from the NCVS are lower
4 than from other surveys, like the National Violence Against Women
5 Survey—and they do a great job of comparing and showing where there
6 are some methodological differences, and in the end they conclude that
7 what is important are the screening, the cues that people are given for
8 reporting the crimes, and the treatment of serious victimizations.

9 I won't go through all that, but the other methodological issues,
10 I think Lynn also spoke to. A report that the National Academy of
11 Sciences Committee wrote speaks to the idea that we can try and think
12 about some alternative sampling strategies, and oversampling some
13 subgroups to get some more information that we might need, and trying
14 to figure out how to do some sub-national research.

15 Thank you.

16 ()

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18 **Mr. Rand:** Thank you, Karen. Our first discussant is Mary Lou Leary.

19 **Discussants**

20 **Ms. Leary:** Thanks, Mike. I want to thank BJS for inviting me here
21 today. I kind of feel like all the smart kids are sitting out there, and I'm
22 just a practitioner and an advocate, so I'm really pleased to be here, and I
23 thought the papers were really interesting, and quite understandable. So
24 that was very nice.

25 And I appreciate BJS calling us all together. I think it's fabulous
26 to bring this kind of a group together where you have, not only
27 statisticians and researchers, but we have policymakers, we have
28 practitioners here in the room, and that, to me, speaks volumes about how
29 sincere, and really how aggressive BJS is going to be about making the
30 NCVS useful to all of us, and honestly trying to serve the users.

31 I spent 20 years in law enforcement, and many of those years I
32 was the Assistant DA, and then an Assistant U.S. Attorney in D.C., and I
33 spent many of those years working with police, and complaining about
34 how NCVS was too old, too slow, wouldn't tell us what was happening
35 here on the ground in D.C.

36 There's the old expression of where you stand depends on where
37 you sit, so now I sit as a victim's advocate at the National Center for
38 Victims of Crime, and I have a completely different perspective on
39 NCVS, particularly because it is, in my view, the only tool we have to
40 really understand the extent of victimization, and the context of it, and
41 the repercussions, both for victims, and for society.

42 I can't tell you how much we at the National Center for Victims
43 of Crime depend on it and use it every single day. So I want to thank you
44 for that, as well.

45 My real interest in NCVS really is how we can better use it to
46 prevent victimization, and to help victims of crime rebuild their lives

1 after they have been victimized.

2 Brian Forst gave us some kind of shocking statistics this
3 morning, and I appreciated the way he wove victimization into his
4 presentation, but he told us that only 50 percent of the felonies are
5 reported. You cut that in half when it comes to all crimes, not just
6 felonies. In my view, this is one of the critical questions that we could
7 and should be answering with NCVS, and the question is, why aren't
8 those crimes reported? What's going on?

9 If you believe that effective investigation and prosecution and
10 punishment will ultimately benefit victims and society as a whole, why
11 don't we have a handle on this question?

12 NCVS, I think, could be a very powerful tool. They are already
13 working towards that. We ask if the crime was reported. But we really
14 are not making an effective effort to get a more nuanced understanding
15 of, why not. Why isn't it reported? Is it fear? Is it prior bad experiences
16 with the police? Is it self-blame? Is it, well, I was drinking, I was doing
17 drugs, I was doing whatever, and so it's really kind of my fault?

18 I think it's critically important to find out why victims are not
19 reporting these crimes, and I think that will also help law enforcement. If
20 you want to increase the trust between law enforcement and the
21 community, you better find out why they're not talking to you. Critical
22 information.

23 You know, the answers to these questions can help us craft
24 policies and services for victims that will help them rebuild their lives
25 after crime.

26 In addition, it gives us an opportunity to explore the differences
27 between informal help-seeking that victims engage in and the more
28 formal help-seeking, which would be you report the crime, get a victim
29 advocate from the prosecutor's office or police department or whatever.
30 But the kinds of informal help-seeking mechanisms that victims use to
31 rebuild their lives matter. We could ask questions through NCVS about
32 what victims are doing: What kind of services are they reaching out for?
33 What kind of help do they want and need? Then we can also bolster that
34 informal help-seeking network, which is always going to be there and
35 which, frankly, is really the support system on which most victims rely.
36 That, of course, doesn't account for all the victims who get no help at all.
37 But we can support that informal help, and we can use our findings to
38 build it, and strengthen it.

39 The other thing is, there's an opportunity, (I think it was pointed
40 out in the two papers) to get a more nuanced understanding of the actual
41 impact of victimization.

42 We ask a number of questions about the experience of
43 victimization. But one of the areas that we neglect is what I think of, in
44 my non-researcher/non-statistician way, as the functional impact of
45 victimization.

46 What impact does victimization have on things like marital
47 status, work status, social relationships, and missed opportunities due to
48 crime? You maybe could use some of those qualifications—indicators of
49 quality of life might help craft those kinds of questions.

1 But then there's also an opportunity to look at the flip side here,
2 and something that we at the National Center think is really important.
3 We can look at the resiliency of victims.

4 This kind of gives us a framework to look at, believe it or not,
5 positive changes that occur over people's life after victimization. Victims
6 primarily are relying on themselves over a long-term process of recovery.
7 That takes a bedrock of resilience that we could be exploring, learning
8 more about, and again, crafting policies to strengthen and support.

9 I want to talk a little bit about NCVS and the search for
10 predictors of victimization, which was addressed in both of the papers.

11 What do we want to know when we ask a victim, "why were
12 you victimized?" We're looking at race, we're looking at socioeconomic
13 factors, and all of that. We're trying to figure out how we could predict
14 the next victim.

15 I remember one time when I was an AUSA, and I was on a ride-
16 along with one of the D.C. cops. We're up on Capitol Hill, and this
17 woman comes along in a fur coat, carrying a big purse and about 15
18 packages, bags, shopping bags and so on in her arms. We're sitting there
19 and the cop says, "Now you watch. That's the ultimate predictor of
20 crime. That woman is a victim waiting to happen." Sure enough, two
21 seconds later, some guy comes along, and just snatches it all away from
22 her, pushes her down, and someone grabs her purse, and then he's gone.
23 But it's not quite that simple when it comes to the NCVS.

24 I appreciate the need to predict victimization, but I must say the
25 idea—I don't think that the idea of asking somebody, "why were you
26 victimized?" will help us answer that question.

27 You have to understand that, on the National Crime Victim Help
28 Line that we run at the National Crime Victim Center where victims of
29 all types of crimes all over the country call us—24,000 calls a year—one
30 of the most poignant and ever-present discussions that we have with
31 victims who call has to do with self-blame.

32 If you ask—nobody gets up in the morning expecting to be
33 victimized. There isn't a rational explanation for it in most cases. We
34 can't really ask victims to step back, be objective, be rational, and
35 explain why. I was walking my dog and I got raped. I was at a party and I
36 had a few too many drinks, and I was mugged, whatever.

37 I really fear that victims who are so quick to blame themselves
38 in the first place could really be revictimized by a question like that.

39 There are a lot of smart people in this room, so let's think about
40 other ways to get that information. Maybe we can ask—and I'm quite
41 serious—ask perpetrators how they chose their victims and why. NCVS
42 is probably not the way to do that, but there are other ways to get at that
43 question, and I feel really strongly about that.

44 A couple of quick points that I want to make with respect to the
45 violence against women paper, which I really thought was excellent.

46 The National Center for Victims of Crime has a stalking
47 resource center, and it's our view that stalking is one of the emerging

1 crimes of our day. We're kind of where we were with domestic violence
2 20 years ago in terms of awareness and understanding of how to deal
3 with victims, understanding how to investigate, and so on.

4 I couldn't agree with you more that we need much more
5 information about stalking: What is it? How does it impact your life?
6 How is technology being used? Because it's no longer the guy jumping
7 out from behind the bushes with his trench coat on, it's the person at his
8 computer using spyware, it's the GPS, it's all the forms of technology
9 and, as usual, the perps are way, way ahead of law enforcement when it
10 comes to using technology to perpetrate crimes.

11 So I hope that we do get more information about that, and about
12 victimization by perpetrators other than intimate partners. It is a good
13 opportunity for BJS, actually, to call attention to the fact that women are
14 more often victimized by others.

15 There's still a lingering public perception that women get into
16 these bad relationships or they're provoking their intimate partner, and
17 that's why they get victimized. I think that's so important.

18 Alcohol use is a major, major issue, and I applaud your
19 reference to that in the paper. Its use could be by the perpetrator or by the
20 victim. Dean Kilpatrick has done some very interesting work on how the
21 use of alcohol fits in, for instance, in forcible or incapacitated rape. Over
22 70 percent of those cases involve alcohol only, and then there are others
23 that involve drug-facilitated rape and so on, but alcohol is a huge factor.

24 And now that my son is a freshman in college, I really want to
25 know more about alcohol and crime. It's a really critical point.

26 And finally, again, I want to thank Dean Kilpatrick for some of
27 the work he's done. I noticed there was a reference to the kinds of
28 screening questions we use when talking to victims about sexual assault,
29 and I know that NCVS has done some work on this to try to elicit more
30 information.

31 When we did a study at the National Center, (when Ann
32 Seymour was there years ago) a study called Rape in America, our
33 numbers were much higher than NCVS. And it's our belief that it's
34 because of the kinds of screening questions we asked.

35 Even if you work for the U.S. Bureau of Census, you can ask
36 straightforward, graphic kinds of questions, so that people will
37 understand what it is you want to know. And if we want to base what we
38 do on what we know then we've got to ask the right questions.

39 Thank you for those two wonderful papers, and for the
40 opportunity to comment.

41

42 **Mr. Rand:** The second discussant is Ms. Jackie Campbell.

43 **Ms. Campbell:** I also welcome the opportunity to say something about
44 these papers and the work that BJS does in this area, the importance of
45 what we've heard. A lot of what I've prepared to say has already been
46 said. But I do want to reiterate a couple of things—and slightly

1 differently.

2 First of all, in terms of Lynn's paper, I really want to echo the
3 importance of us using the NCVS, and improving the NCVS around the
4 issue of elder abuse. If there's ever been a neglected form of
5 victimization and violence, it's elder abuse. And, of course, elder abuse
6 crosses over the intimate partner violence issues because some of the
7 elder abuse is actually couples that have gotten older, and are continuing
8 some of the intimate partner violence patterns. So it's important to
9 consider that possibility. But all the forms of elder abuse are incredibly
10 underreported, understudied, and it's really an area where we could do
11 better.

12 Also, in terms of the issues for immigrants. My area of research
13 is intimate partner violence, violence against women, so I'm particularly
14 interested in the violence against immigrant women—the apparent
15 increase in intimate partner violence amongst immigrant women, the
16 apparent increase in intimate partner homicide for immigrant women.
17 And one of the things that we have learned is that we are not going to get
18 anywhere with “I'm from the government, and we want to check on you,
19 we're doing a survey and, by the way, what's your citizenship?”

20 However, we can ask where people were born, and that's what
21 we've found in our studies. If you ask the state and country where people
22 were born, you at least get foreign-born. You don't have any information
23 on actual citizenship, but we're not sure that has anything to do with the
24 increase in victimization, that it's more in terms of immigrant population.

25 Obviously, that necessitates us being able to conduct some of
26 these surveys, at least in Spanish, and I think that is done. (I wanted to
27 verify that.) Of course, when you conduct a survey in Spanish, another
28 thing we've learned—through painful sessions with people that speak
29 Spanish from different countries and from different origins—that
30 especially when you're asking about sensitive information, like sexual
31 assault, and forced sex, for instance, you have to figure out some
32 language in Spanish that will translate and will be conceptually
33 equivalent in Mexican dialects, and Central American dialects, and
34 Puerto Rican dialects. You have to really work on the conceptual
35 equivalents as well as the word equivalents. Translation, back translation
36 is not enough when you're thinking about some of these very sensitive
37 acts.

38 It's also important to think about, not only the screening
39 questions, and I agree with what's been said in terms of the issues,
40 especially for things like intimate partner violence, in terms of how you
41 ask the screening questions, but it's also important how you frame the
42 whole survey. One of the things that we have found, for instance, is that
43 you get a much higher prevalence of intimate partner violence when you
44 say that this is a study about women's health and relationships.

45 Now that doesn't mean that that's the way we ought to introduce
46 the NCVS. But we need to think about what that means—especially for
47 prevalence of intimate partner violence—when you're thinking in terms
48 of even using the words “violent victimization.” At least we got away
49 from the just crime notions in the original thing, and that helps. But one
50 of the things, for instance, that the data from the NCVS suggests is that
51 marriage is a protective factor for intimate partner violence.

1 I've got a lot of things to say about that. But first of all, one of
2 the things to think about is that, when you have left or divorced this man
3 because he was violent towards you, after you've done that, you're much
4 more likely to define what happened to you as violence. And you're
5 much more likely to put him in the category of a perpetrator of violence
6 than when you're still with him or still married to him, because when
7 you're still with him or still married to him, you're trying to think about
8 it in terms of conflict, in terms of those kinds of things.

9 For instance, the original National Family Violence Survey used
10 the Conflict Tactic Scale that Murray Strauss and Richard Gellis
11 developed. The way they open up that survey is that it's about marriage
12 and relationships between men and women. And the way they frame the
13 questions about violence is, "all couples have disagreements. When you
14 and your spouse disagree ..." Then they ask, "how many times in the past
15 year did you argue and discuss the issue calmly?" First of all, it's discuss
16 the issue calmly. Then, "how many times did you argue and call each
17 other names?"

18 It gradually gets into violence. And that's one of the highest
19 prevalence studies that we've had in terms of intimate partner violence.
20 Why is that? It may be because it was done a long time ago, and
21 hopefully, things have gotten better. But it also may be the way the whole
22 survey was framed, and so that's one of the things to think about when
23 we look at the prevalence and incidence that we find from the National
24 Crime Victimization Survey—that, yes, it's going to be lower in terms of
25 intimate partner violence than we find in other surveys. And, yes, we're
26 going to have an even higher increase amongst ex-partners—divorced
27 and separated women—and that that increase is going to be even higher
28 because of the way they're thinking about what happened to them. You
29 know, 6 months ago when they were with him: Yes, he was a serious
30 perpetrator.

31 So it's also in the terms of the way we frame the entire survey.
32 The National Crime Victimization Survey, I think, is terrific for looking
33 at trends over time and for disaggregating, but I always think to myself,
34 that the people that say "yes" to intimate partner violence questions in the
35 National Crime Victimization Survey are the people whose situation is
36 really pretty bad and/or they have left the relationship.

37 Now again, around the implications for policy, the notion that
38 marriage is a protective factor for domestic violence. We have to be
39 really careful that we don't then say, "well, the cure for domestic
40 violence is get everybody married," because for couples that are already
41 violent, marriage is not going to fix their violence.

42 But there are some—the policy things that have been taken
43 away from data from the National Crime Victimization Survey to say,
44 "yes, see, we need to get everybody married, and that'll cure the
45 domestic violence problem."

46 So, we have to be really careful about how this kind of data is
47 used, in terms of policy recommendations. (Not that Michael ever would
48 say that in any of his policy implications, but some people have.) I think
49 we have to be really careful when we explain some of these results, that
50 we do it in ways that policymakers don't leap to wrong conclusions,
51 especially around that one.

1 I also agree about the need for a lot more disaggregation in race
2 and ethnicity. Some of the data that comes out of the National Crime
3 Victimization Survey is somewhat difficult to interpret, somewhat
4 different from other incidence prevalence studies around intimate partner
5 violence.

6 I was looking at the results that just came out from the
7 Behavioral Risk Factor Surveillance System around intimate partner
8 violence. They show some really different findings, both in terms of a
9 much higher prevalence than the National Crime Victimization Survey
10 shows, and also some differences around the apparent increases among
11 some of the minority ethnic groups.

12 However, no matter which survey you look at, those
13 differences—especially between African American and white—always
14 become much less (or in some places disappear) when we do control for
15 some of the structural factors, such as income. Household composition is
16 also an interesting one to control for.

17 However, the increased prevalence amongst Native American
18 couples continues, no matter what we do in terms of controlling for some
19 of those other factors. And oftentimes that group is left out of our
20 analysis. In the National Crime Victimization Survey, we tend to
21 concentrate analysis on blacks, whites, and Hispanics because we have
22 sufficient numbers. and I think it's really important that we start to look
23 at what's happening amongst Native American communities, and include
24 them in our analyses.

25 I just want to say two other things quickly. The notion of
26 funding competitions is really important. That would be enormously
27 helpful in terms of generating, stimulating some of the kinds of complex
28 analysis that we need. It would also be really helpful for some of the
29 students that are trying to do dissertation work using these big databases,
30 if at least a little bit of funding could be offered for that. And I know that
31 there are ways to get it through NIJ, but oftentimes, that's really
32 competitive. So part of that funding might be set aside for dissertation
33 research.

34 One last thing about the help-seeking. One of the things that the
35 National Crime Victimization Survey shows is that African American
36 women are more likely to call the police than white women for intimate
37 partner violence. That goes against all of the research that's been done,
38 particularly with African American women. They talk about their
39 reluctance to call the police, and so forth.

40 I've always found that very interesting. Some of the things that
41 Mary Lou has said resonate in terms of disentangling not only the things
42 on the risk factor side (the structural risk factors) and race and ethnicity,
43 but also working to disentangle some of the help-seeking kinds of
44 findings—working with African American and ethnic minority women to
45 learn how we can have calling the police be a helpful response. And also
46 working with our police units in terms of their response to domestic
47 violence around some of those issues.

48 I think some of the issues are also true for foreign-born
49 women—in terms of reluctance to call the police and what that may end
50 up with.

1 I think part of what can be looked at there is state-level data
2 about responses. Because in some states, if you call the police, one thing
3 that may happen is an automatic call to child protective services around
4 issues for the children. So women are afraid that if they call the police for
5 the domestic violence, that their kids will get taken away from them.

6 So, looking at some of those state law, and state-specific
7 responses related to some of those findings around help-seeking might be
8 another way to really use this data to inform policy.

9 Thanks.

10 **Open Discussion**

11 **Mr. Rand:** I'd like to thank you all for some really valuable insights in
12 how we can move the research forward, and move our program forward.

13 I'd like to open it up for comments, questions, and suggestions
14 from the floor. While most of what we've been talking about has
15 pertained to the Victimization Survey, I think some of the issues and
16 questions really are larger than that—pertaining to victimization in
17 general—and maybe speak to other programs, other ways of getting at
18 the data.

19 So, I really would love to get some input on that, as well—not
20 necessarily restricting it just to how we can improve the survey to
21 measure the kind of things that we've been discussing, but how we can
22 get at some of the answers in other ways, as well—ways that maybe
23 don't pertain to or don't involve the survey.

24 **Mr. Lynch:** They said I get two shots at the microphone. This is the last
25 one. I've been looking at the NCVS forever, it seems. And I really see an
26 instance of domestic violence. The link between the NCVS and the
27 victim's movement is probably one of the worst marriages I've ever seen.
28 It seems very polite in this discussion, but if you look at it, I don't think
29 that I recall any single supplement, and this could be to the NCVS, by the
30 victims.

31 There's been a real pronounced preference to go around the
32 NCVS and so I guess I have two questions. One is, is that perception
33 correct (because it could be right or wrong)?

34 **Mr. Rand:** Recently, it's incorrect. You've been working with us.

35 **Mr. Lynch:** I'm talking about over a long span of time, and also, one: is
36 it correct? And the second thing is: if it is correct, what kind of
37 institutional changes could you see for that marriage to get better?

38 I think a few things were mentioned here, prevalence estimates.
39 There are a lot of technical issues that may be insurmountable. Mary
40 Lou used the nice term "nuanced" and so there's only so much nuance
41 you're going to build into a household survey.

42 So, I'd like to get your feelings on both of those issues, about
43 whether the perception is correct in spite of what Mike said and the other
44 thing is, if it is correct, what kind of institutional arrangements could be
45 put in place to make it a better marriage?

1 **Ms. Leary:** Well, I can't speak to the historical aspect of that. (I assume
2 you're talking about the Office on Victims of Crime working with BJS
3 on the supplement.)

4 I haven't seen that happen in the years that I have been looking
5 at it, and I think it could be enormously helpful. But in my view, I think
6 that's an issue for OJP overall.

7 There should be a lot more collaboration amongst the bureaus
8 and the Office on Violence Against Women and the Office on Victims of
9 Crime ought to be sitting down—and probably BJA—too, with BJS the
10 same way that we are all sitting here now. How can this be more useful?
11 That should be happening internally within DOJ, as well.

12 It's just critical. There's such a wealth of information there. So,
13 I wholeheartedly support that and would encourage inclusion of all. I'm
14 thrilled to be included here today as a representative of the victims
15 community and there are other folks that I have worked with on victim
16 issues here in the room that could provide great insight for that.

17 So, the institutional changes? I think you would start with a
18 collaborative spirit at the department and build in structural
19 opportunities. (I see Barry is chuckling back there.) Structural
20 opportunities for the bureaus to work together and we need an AAG with
21 the moral or statutory authority to make that happen.

22 **Mr. Rand:** In 2006, the Office on Violence Against Women funded a
23 stalking supplement to the NCVS. And in the field right now is an
24 identity theft supplement that is being funded by a number of different
25 agencies, many of them in OJP, NIJ, BJA, and OVC, as well as the
26 Federal Trade Commission. So I think that we are getting some
27 improvements in those areas.

28 **Ms. Pierce:** Hi. I'm Catherine Pierce with the Office on Violence
29 Against Women, and I do want to thank BJS because we have had, I
30 think, a good working relationship over the years and continue to enjoy
31 that.

32 But I also want to thank Lynn and Karen for their papers. In
33 particular, Lynn, you specifically mentioned partnerships with data users.
34 I think one of the things that we'd like to be able to use this data for is to
35 help us drive our grant programs more effectively and more efficiently—
36 to look at the data, to have an opportunity to work with staff at BJS more
37 closely, to analyze it, to give us some ideas about what directions we're
38 headed in. So thank you for that suggestion.

39 I have a number of things I'd just like to respond to because I
40 really felt so many important ideas were raised.

41 I want to reiterate what Mary Lou said about not asking victims
42 why they were victimized—especially when it comes to rape, domestic
43 violence, any kind of crime of violence against women. I would really
44 like us not to go there for the reasons I think that Mary Lou described
45 really well; but I think that asking them about what the repercussions
46 have been is actually a very interesting and important question that we
47 could really learn a lot from.

48 I also think that we need to tie that to the other comment that

1 Mary Lou made about looking at resiliency and, what can we learn from
2 the experience of survivors and, how do we tie those questions about how
3 their lives and the quality of their lives have changed to what we know
4 about how they have healed and come out of it. So, I thought that was
5 really excellent.

6 I don't want to hog the mike. I just have so many thoughts, but I
7 guess my other major comment would be, I agree with Karen entirely
8 that we need to foster more research. We need to bring more young, new
9 academics into this field. We need to make this work attractive for them.
10 We need to engage them as practitioners and as policymakers, and I think
11 we have a responsibility there that we can act on more.

12 But I also want to underscore the importance of always
13 engaging the advocacy community when identifying research priorities
14 and when looking at the kinds of questions that we want to add or
15 subtract from the NCVS.

16 I think that there are emerging issues in the field and the
17 advocacy community has their hands on that pulse. I think that we always
18 need to remember to engage them.

19 **Ms. Addington:** Since I am getting ripped here – (just kidding). I want to
20 say something about the small amount of victimization research and
21 making it a more attractive area. When I first was a graduate student—
22 which wasn't that long ago—and I said that I was going to characterize
23 my area of research as victimization research, I was told not to do that
24 because: nobody studies that area, that's not a strong area to study, that's
25 not a good way of characterizing your work, and don't do it. I guess in
26 my paper early on, I noted the small amount of research attention,
27 especially in our most respected journals in criminology given to
28 victimization research.

29 So, I would echo that as a really important area to improve the
30 visibility of victimization research and to encourage more people to get
31 in this area because certainly there's plenty of work to be done for many
32 more researchers.

33 But with regard to asking the victim or the respondent why they
34 were victimized, I'm not envisioning questions like: "what were you
35 wearing?" "were you asking for it?" I'd hope we could find more
36 appropriate questions to ask. And the reason I suggested it is because, in
37 my own work, looking at the NCVS summaries—their own summaries—
38 many respondents volunteer this information. It provides a context and
39 it's a much different context of stranger victimization versus somebody
40 that they know versus assisting another person.

41 I think it's just a missing context that's provided and I do
42 appreciate the fact that there might be certain victims we don't want to
43 ask it to. Maybe this is a skip pattern kind of question.

44 If there are particular characteristics about the victimization,
45 maybe, then we don't ask. But that certainly is something that should be
46 explored—the appropriateness of asking these questions, whether to a
47 particular group of victims or by type of incident. And don't forget that
48 we ask victims these questions already in the NCVS with regard to the
49 developmental disability questions and the hate crime questions. And,
50 with the hate crime questions, we furthermore ask them, "what's the

1 evidence?" It's almost as if we don't believe them.

2 So, we do ask sensitive questions in certain contexts. And I
3 think it's important to consider why a person was victimized. I think it's
4 important to provide that context and provide an appropriate way of
5 asking those questions and getting that information.

6 **Mr. Forst:** I'm wearing a tie with triangles on it and my question is
7 about triangulation—specifically, with regard to fraud, cybercrime, and
8 identity theft, which are hugely emerging crimes that we're dealing with
9 today. I'm reminded also of something Donald Rumsfeld said that made
10 sense: Things about things that we know, things that we don't know, and
11 things that we know we don't know and things that we don't know that
12 we don't know.

13 In the area of fraud, for example, we're often defrauded, don't
14 know about it, but we find out about it through other sources. We catch
15 somebody who's doing fraud and find out all of the frauds that, usually,
16 he or she has done and so we can triangulate in that way.

17 My question is: what is being done at BJS to learn more about
18 these serious emerging crime areas, and is anything being done to
19 triangulate, so that we can find out about things that we don't know from
20 the Victimization Survey?

21 **Mr. Rand:** I can only speak to the identity theft portion of that and what
22 we're working on it now. We added some questions on identity theft to
23 the core survey in 2004. It's a very short battery of questions and,
24 basically, it asks people if they discovered that they were a victim within
25 the past 6 months as opposed to actually experiencing it in the past 6
26 months. So, the theft could have occurred prior to that but they
27 discovered it within that time frame.

28 We've taken that and translated that into a supplement where we
29 actually ask about a 1 year period and that's in the field right now. So,
30 we're learning about how people learn about their being victimized, and
31 we ask them if they know how long prior to their discovery they were
32 victimized.

33 So, we're trying to get some of that information as it pertains to
34 identity theft. We really haven't taken that into the other fields of
35 cybercrime or fraud. We have a business survey actually on cyber crime
36 and I can't really speak to that. That's not my baby. I'll have to talk to
37 Mona Rantala on our staff to learn about that. I don't think we've gotten
38 into fraud in general, but certainly these are areas that we need to look
39 into.

40 **Ms. Cole:** I'm Christine Cole, and I'm the Executive Director of the
41 Criminal Justice Program at the Harvard Kennedy School.

42 I'm interested in the question of why people report and don't
43 report and particularly as it relates to the issue you raised. I'm hearing
44 more and more from police executives that elderly people often are
45 victimized with credit card fraud. So, they're giving their information to
46 somebody who then gets money out of their accounts and then they're
47 notified by the bank or the corporation and are explicitly told, you don't
48 need to report this to the police.

1 So, because we draw inferences on trust and relationships from
2 the numbers of crimes that are reported to the police, and because we
3 draw inferences on the relationships and the lack of trust in police with
4 the failure to report, and we have a whole population with this particular
5 kind of crime being explicitly instructed not to report, it seems to me that
6 following up on that question is important.

7 **Mr. Rand:** We do have questions on the survey asking people who
8 reported why they reported and people who didn't why they didn't
9 report, although I think it was Karen's suggestion that we needed a more
10 nuanced explanation. I think it was a good one because we get some
11 basic information, but we probably aren't digging deep enough into
12 getting at the underlying reasons for reporting or not reporting.

13 So, I think we need to be more nuanced and more complete and
14 not just have the two questions. We have what is the most important
15 reason, but still they're very broad categories and they're forced.

16 **Ms. Addington:** So, you get things like "other" for a schoolchild and
17 other's the principal who can actually do something about it. Somebody
18 else, but it doesn't say who. So, it's not the parent or that. So, you know,
19 the "nuancing."

20 **Mr. Rand:** It's an important question.

21 **Ms. English:** Hi. I'm Kim English, Research Director of the Colorado
22 Division of Criminal Justice, and I just wanted to say that I love the
23 NCVS and I really appreciated your papers and appreciated your
24 comments.

25 I just think it's important to separate out what kinds of research
26 questions can be answered with something akin to the NCVS, even with
27 modifications, versus another type of investigation that wouldn't look
28 like the NCVS, because it's a different research study.

29 As BJS moves forward, I just think it's important to take that
30 into consideration—and I think you've been incredibly gracious in
31 accepting the feedback—I think lots of times the NCVS and any kind of
32 large-scale data collection activity like that can't dig deep enough to
33 answer some of these questions.

34 I appreciated, Lynn, your clarification about asking about the
35 victimization piece and I remember reading that you said that lots of
36 times people volunteer that, but that data is not actually available for
37 analysis all the time, is that right, or is it?

38 **Ms. Addington:** Very rarely, if at all.

39 **Mr. Rand:** We actually have more capability to do that now. The
40 limitation in past years was that the questionnaire was paper and pencil
41 and so the narratives were hand written and they were never transcribed
42 or computerized. We now have a computerized survey. So now we do
43 have them on a file.

44 The problem now is that they may contain personally
45 identifying information. So, before we can make that kind of file
46 available and actually link it to the data file, Census has to go through
47 and read every single case and delete personally identifying information.

1 We could just make it available as narratives, but to be useful, it's got to
2 be linked to the data.

3 **Ms. English:** Yes, a major task.

4 **Mr. Rand:** I think that that's certainly something that I would have liked
5 to have done years and years ago, if we didn't have the expense—if it
6 was feasible. But it certainly is one of the things that we should be
7 looking into and will be looking into—how do we facilitate that, because
8 it is a valuable. I've used it myself and so I know how valuable it is.

9 **Ms. English:** Well, I think sometimes the data collectors on-site can
10 translate some information into a box. That's what we do when we're
11 doing data collection. Or you can tell them to exclude the identifying
12 information.

13 **Mr. Rand:** Some of the information in the narratives can't be. I mean,
14 you want it because it's not put into the box. You really want the
15 narrative because it's really a lot more rich than it could be if you put it
16 in a box. So, there is a value to that.

17 **Ms. English:** Yes, because I go back to agree with Mary Lou and
18 Catherine about not wanting to ask victims directly, even though I know
19 that you were assuming (and I would make the same assumption) that
20 BJS and the Census Bureau would not do that in an intrusive way.

21 I do know, though, from our own experience that we can get that
22 [contextual] data pretty easily from the offender, if we ask them. So that
23 may be something for another survey when you're surveying offenders in
24 prison or something or a more targeted study, to ask about the
25 victimization and why they might have been the object of a crime.

26 Two more things. I would love to have state-level data. I know
27 that everybody probably feels that way and it is a huge disadvantage. I
28 use this data all the time. It's just a huge disadvantage and I'm from
29 Colorado. So, I'll never be in one of the top-most populated areas.

30 And finally, I know that BJS has thought this through for years
31 and years, but I still think that a qualifier on every publication regarding
32 the NCVS would still be helpful, which would just say it doesn't capture
33 crimes against children. I know that there could be lots and lots of other
34 qualifiers, but as we see bullying getting more attention and schools
35 probably being a much more scary place than they were when I went to
36 school, I still think a qualifier that specifically says that would be really
37 helpful to readers, so that they don't draw those policy conclusions so off
38 the cuff.

39 **Ms. Addington:** Just to follow up on what Kim said—the initial thing
40 about different types of data collection sources for different purposes—
41 NCVS can't do everything. And I'll put a plug in here for something that
42 Jim Lynch and I have mentioned and Rick Rosenfeld has mentioned—
43 about really doing a purposeful national crime data collection system that
44 includes police data, UCR type of data, NBRIS, which is part of the UCR
45 collection, the NCVS, and looking at other vehicles to collect
46 information about people in jails.

47 Maybe there's something better to do (with children, for
48 example) that might not be appropriate for a household survey but

1 another type of survey. How can we get at the crime data issue? Not
2 every data instrument should have to do everything itself, but what can it
3 do best? So, I think that that point is very well taken.

4 **Ms. D'Addacio-Fobian:** Hi. I'm Jasmine from the Office for Victims of
5 Crime. I have sort of a status track question and it's also about specific
6 population.

7 I know you have questions that you've added to the NCVS
8 about victims with disabilities, and we were just wondering when that
9 kind of data might be available.

10 As Mary Lou knows, there's going to be a large conference on
11 victims with disabilities in the next 18 months through an OVC project
12 and it would be really great to sort of be able to share that data with the
13 field and then get feedback from the field about how useful it is, what
14 else is needed, and that kind of thing.

15 **Mr. Rand:** Thank you. We added those questions some time ago, but it's
16 taken us a long time to develop them because we didn't get any funding
17 to actually add the questions.

18 We revised the questions in 2007. We didn't have enough money
19 to put the questions on both the screener and the incident report. So, we
20 chose to put it on the incident report and get the information about the
21 population information from another source.

22 At the time we originally did this, we didn't have any set of
23 identical questions that we could do this with. American Community
24 Survey has a set of questions that we're now using to get the population
25 estimates, and we have an identical set of questions on NCVS that
26 identify people with disabilities.

27 Those were implemented in 2007. So, we're awaiting those data
28 from the Census Bureau. We'll be doing the analysis this year and we
29 hope to get a report out this year. It's on our publication schedule for
30 2008.

31 **Mr. Stevenson:** Philip Stevenson. I'm Director of the Arizona Statistical
32 Analysis Center, Arizona Criminal Justice Commission in Phoenix.

33 Two questions about some areas the NCVS might be able to
34 add. I just want to ask the panel's opinion of whether or not NCVS is the
35 appropriate instrument, or if this is even possible. One is related to your
36 section, Lynn, on vicarious victims.

37 There's an opportunity to collect some information about
38 homicide, homicide incidents, the context of homicide, obviously not
39 specifically from the victim but from those who have certainly been
40 impacted and have some information about the incident and the context
41 in which it happened.

42 The second area is, it seems to me that we're asking questions
43 about satisfaction with police and victim's experience with police, and do
44 you think it's a missed opportunity for us to learn more about victim's
45 experiences with other components of the criminal justice system?
46 Digging a little bit deeper, prosecution, the courts, the judges, specific
47 roles in the criminal justice system process?

1 **Ms. Leary:** I would say that I think those are incredible opportunities for
2 NCVS and important areas for us to learn about.

3 From a perspective of working in an organization that tries to
4 help victims rebuild their lives after crime, the point you raised, for
5 instance, about various intersections along the road in the criminal justice
6 system, where the victims interact and with whom, every single one of
7 those points of interaction has a potential to have tremendously positive
8 or tremendously negative impact on the victim's ability to recover from
9 crime.

10 I was on a panel at John Jay College a couple weeks ago and
11 one of the panelists is a woman who's a sexual assault nurse examiner.
12 She's also a survivor of rape and she told us her own personal story about
13 the rape and she lived right near the hospital where she works. That, in
14 and of itself was traumatic, going to the hospital, but a neighbor came to
15 help her. Somebody else took her to the hospital. All the people she
16 worked with met her at the hospital, and everybody made her feel worse
17 all the way up to the point in time where she met the detective who came
18 in and said, "I am so sorry this happened to you." She was so articulate in
19 saying, "that was the point at which my recovery began."

20 It's powerful. You just can't imagine what an impact those
21 intersections have—to go to the prosecutor's office, the way that you're
22 treated, whether you're believed, whether people are kind of looking
23 askance at you—has a huge impact for all victims. It's not just rape
24 victims, it's all victims of crime.

25 So, I think we could learn so much, and we could improve our
26 practices in the criminal justice system.

27 **Mr. Rand:** I think these are important issues and they speak to the
28 different pulls that you get for trying to get different kinds of
29 information. And each has implications for the structure of the survey,
30 whether it's the NCVS or whatever data collection survey.

31 For example, with homicide victims, you would probably need
32 something other than a probability sample to get at that because, even if
33 you look at people impacted by homicide, the numbers are too small
34 (thank goodness) to really be able to develop a survey using a probability
35 sample like the NCVS.

36 I think data about satisfaction with other components of the
37 criminal justice system are really valuable, but that would speak to a
38 different kind of structure in terms of looking longitudinally—following
39 a victim.

40 The NCVS now uses a 6-month window. CN STAT asked us to
41 look at maybe expanding that to a 12-month window—looking at crimes
42 that occurred in the previous 12 months. But even that may not be
43 enough time to follow somebody through a case that may be 2 or 3 or
44 even more years in the making from start to finish as it progresses
45 through the criminal justice system.

46 So, each of these are important questions and we'll speak to
47 what the survey might look like in the future as we begin to develop a
48 comprehensive plan for how we want to structure it based on what we
49 think the goals are and what the impact from the groups such as this are.

1 **Mr. Simon:** Good afternoon. My name is Tom Simon, and I work for the
2 Centers for Disease Control and Prevention, the National Center for
3 Injury Prevention and Control, and we're particularly interested in the
4 public health burden associated with violence and injuries that result
5 from violence.

6 The National Crime Victimization Survey is a very valuable tool
7 in terms of documenting the prevalence of victimization and the injuries
8 that follow, and I thought the panel did an excellent job today of
9 highlighting several key ways that the tool can be improved, and one of
10 those that resonated with me and that several panelists touched on was
11 this issue of non-disclosure. That is, because of the way the NCVS is
12 framed, because of the stigma associated with certain types of
13 victimization, intimate partner violence, sexual violence, or because of
14 fear of retaliation, victims may be reluctant to disclose, even within the
15 semi-protective context of the NCVS.

16 I think the reality and the perception of this, as several panelists
17 mentioned, is playing a role in the field's willingness to accept the NCVS
18 data, and I was wondering if this is something that the panelists would be
19 interested in elaborating on a little bit more in terms of suggestions for
20 ways to improve the disclosure, but also then the acceptability of the
21 NCVS data as it relates to issues of disclosure.

22 **Mr. Rand:** Panel? Well, from my perspective, I think it has been a
23 concern because I think I've seen that—I believe that one of the reasons
24 the NCVS has not been used is because some of the studies that have
25 been done from other perspectives, the public health perspective,
26 National Violence Against Women Surveys, have produced higher
27 estimates and so I think the NCVS, for whatever reason, and I think that
28 Jackie's comment is something that I've said for a long time, that women
29 who are in a relationship and don't report are more likely to report once
30 they leave the relationship.

31 It's not the safety of marriage, it's just a changing of perception
32 and looking back at what's happened to them in the past from a different
33 status and I don't think that you can get that from a crime survey. I don't
34 think that you can ever get the kinds of estimates from a crime
35 perspective that you may get from a public health or safety study or a
36 study of family dynamics; and so that's going to be a concern.

37 I don't know how you improve the disclosure within the Crime
38 Survey, other than trying to refine our methods within that context. I'm
39 not sure that's an answer.

40 **Ms. Campbell:** Michael, I used to know this and I apologize, but when
41 the phone is answered, what is the opening context?

42 **Mr. Rand:** It's a crime context. Hi, I'm so and so from the Bureau of
43 Justice, Bureau of Census, and we're conducting a survey for the
44 Department of Justice about crime.

45 **Ms. Campbell:** So, it frames it around crime?

46 **Mr. Rand:** Yes, it's framed around crime and the name of the survey is
47 the National Crime Victimization Survey.

48 **Ms. Campbell:** I know, yes. I think that just starting there, people get the

1 mindset, “I’m going to be asked questions about crime.” There’s so much
2 intimate partner violence that—whether they’re married or not—the
3 people just aren’t thinking of it as a crime.

4 **Mr. Rand:** Well, if you think “crime,” you have to think that the person
5 who did something to you was a criminal and then you have to begin
6 thinking, “well, am I married or in a relationship?”

7 **Ms. Campbell:** Yes, right, exactly. So, I know the National Violence
8 Against Women Survey opens up talking about violence against women.
9 Maybe if it [NCVS] could start out framed around “victimization” versus
10 using the word “crime” that wouldn’t affect the name of the survey.

11 **Mr. Rand:** The British have it now broken into pieces. They have a
12 general crime survey and then they have a special violence against
13 women survey that’s separate and has a different context, I believe, and a
14 different methodology. It’s usually self-administered and so --

15 **Ms. Campbell:** Yes, but it’s given to the same households?

16 **Mr. Rand:** No.

17 **Ms. Campbell:** No.

18 **Mr. Rand:** It’s a separate proposal. They can’t reconcile the two
19 estimates and I think they’re getting estimates at what, about five times
20 as high? Is that what it is, Jim?

21 **Mr. Lynch:** I don’t know.

22 **Mr. Rand:** Well, anyway, they’re getting higher estimates of violence
23 against women from the separate surveys.

24 **Ms. Campbell:** It’s almost like they should do some corrective thing—
25 who’s going to fund this, I don’t know—but if you did the same
26 households or a subset of the same households then you would have
27 something to base a corrective factor on.

28 **Ms. Heimer:** Because the methodology—you raise the bounding issue,
29 Jim—the methodology is a great methodology and I think, Bonnie, in
30 your paper in that Criminal Justice 2000 Volume, you talk about the rigor
31 and about using the first interview as kind of the starting point—not
32 using the data. You use the first interview as an anchor and then when we
33 look 6 months later, we know that event actually happened in those 6
34 months and not eight months before.

35 That’s a huge issue when comparing these surveys because the
36 National Violence Against Women Survey does not do that. In fact, a lot
37 of the estimates that get reported places are erroneously reported, I think,
38 because they don’t clarify that this is lifetime prevalence.

39 A lot of times, they’ll just be comparison of numbers. You’re
40 not even talking about apples and oranges. So, the methodology’s great,
41 if we could figure out how to --

42 **Ms. Heimer:** The issue is the screening and the pitch, not the
43 methodology.

1 **Ms. Campbell:** That's right, yes.

2 **Ms. Heimer:** The other surveys have great screening and pitch, but the
3 methodology's not as good.

4 **Ms. Campbell:** That's right. There's not as much repetition, is part of
5 the issue.

6 **Ms. Addington:** I think Jack McDermott was talking about this earlier
7 this morning. If we want more, what's more going to get us? Do we just
8 want more? Taking it out of Violence Against Women, although I know
9 there's a lot of contention about Violence Against Women and it's an
10 important issue, but when they take these binary attributes—and an
11 aggravated assault can be “with a sharp object” and I've seen cases
12 where the sharp object was a pencil.

13 I'm sorry, Mike, but I teach undergrad, so I kind of get a little
14 dramatic here. But I think the important question is, “are we getting the
15 information that we want?” I think that is what Tom was talking about.
16 We want to make sure we're capturing the serious victimization that
17 people might have some hesitancy to report—even on a victimization
18 survey—whether it's a sexual assault or rape or aggravated assault—
19 because the offender's in the next room and is going to hear [the victim]
20 on the phone answering these questions or something like that. It's about
21 finding a way of just not capturing more information, but capturing the
22 information that is important for policymaking.

23 **Mr. Simon:** A valid report.

24 **Ms. Addington:** Yes.

25 **Mr. Derene:** I'm Steve Derene with the National Association of VOCA
26 Assistance Administrators, and our members are the ones that dole out
27 state assistance grants among the 56 jurisdictions, and I appreciate this
28 session.

29 I guess as a general observation, we heard this morning about
30 how law enforcement needs the data now that they can use, and I guess
31 we'd have a comparable challenge here.

32 A couple of years ago at a conference, we tried to develop a
33 field-generated research agenda. What do state administrators both for
34 assistance and crime victim compensation programs need? What would
35 we like to see researched? What data would we like? What analysis
36 would we like so we can do our jobs better?

37 Frankly, it was very disappointing. We got very little response,
38 which sort of told me that the people who are actually on the front lines
39 (with a few exceptions) don't know what's there, don't know how to use
40 it, and don't even know what questions to ask.

41 I think, obviously, it's been mentioned before, I'll repeat it,
42 state-level data, local-level data would be critical. About 20 years ago, I
43 worked for OVC doing a report to Congress on VOCA when it started. I
44 met with BJS and we couldn't use [the data].

45 I know the Center for Victims of Crime have looked at crime
46 victim compensation and the disparity there. The data just isn't there to

1 even make basic comparisons.

2 So, my only message here is that this kind of conversation needs
3 to go on. We need to educate the field as to what's there, so they know
4 what questions to ask. It was almost embarrassing to see the dearth of
5 response. And there are some notable exceptions, but I think the
6 application of the data, the usefulness of the analysis would be really
7 helpful to those of us who are involved in actually providing support for
8 direct services.

9 So, I don't know if there's a comment or response to that, but I
10 think that thinking in terms of how you apply this information to the
11 actual implementation of services—and what the people in that process
12 need to know—would be a real helpful conversation and probably
13 mutually beneficial to help direct the data and help direct the analysis.

14 **Mr. Rand:** One of the areas for research that we are looking into right
15 now is how to improve our ability to provide smaller-area data from the
16 NCVS, either as it's configured now or as it might be configured in the
17 future. So, we're hoping to make it more useful as far as that goes.

18 **Mr. Shaw:** Richard Shaw from the National Center for State Courts.
19 Following up on earlier points about trying to connect the dots across
20 these domains and the comment about roles: I think one of the things that
21 courts would like to get a better understanding of—and I'm curious as to
22 your thoughts on whether this instrument can carry this weight or at least
23 provide an initial high-level look at this issue—is the use and/or efficacy
24 of various programs that are integrated into the adjudication process to
25 address victim issues.

26 For example, do victim impact statements seem to matter to
27 victims? State courts also have, in appropriate circumstances, victim-
28 offender reconciliation programs as part of the processes. These
29 programs are typically started because somebody becomes a champion
30 and they have a very sincere and heartfelt belief that this is a good thing,
31 or it works, or they know it's the right thing. And typically there's not a
32 lot of money for rigorous evaluation and so forth.

33 So, I'm just curious whether you think we're dreaming big in
34 thinking of adding questions or whether just even knowing what the
35 incidence of these is, and for which kind of victims, for what kind of
36 offenses the programs seem to matter or not.

37 Even having a very high-level view would provide a starting
38 point for a different research agenda, but it at least would give a nice
39 panoramic view. So, I'm curious whether you think that makes any sense.

40 **Ms. Leary:** I think what you're really asking is a question that pertains to
41 victims' rights in general with respect to the criminal justice system.
42 Anyway, the right to be notified about court proceedings, the right to be
43 present, the right to be heard, the right to deliver a victim impact
44 statement orally or in writing, is that correct? Yes.

45 I'm not sure the NCVS is the right vehicle for this. Bear in mind
46 that only about 20 percent of crime victims ever walk through a
47 courthouse door (or send paperwork through a courthouse door if they
48 don't show up themselves).

1 So, I'm not sure really that that's the right instrument, although I
2 would say that I think it's an area that we definitely need more research
3 on. From my perspective, that kind of research is particularly important
4 because the criminal justice system has historically been all about the
5 defendant and protecting due process—and it should protect due process.

6 But the victim, from my perspective, is just kind of treated like a
7 piece of evidence—an exhibit entered into evidence. And then you ship
8 them off to the case file. Over the past few years, we're beginning to
9 recognize that victims are a very critical, important part of the whole
10 criminal justice system and have a parallel set of rights that do not
11 undercut the defendant's rights.

12 So, research, I think, would give us a better understanding of
13 that and bear that out. In any event—regardless of what the findings
14 would be—I think it's important to understand the exercise of those
15 rights. What does it mean for victims? What does it mean for the criminal
16 justice system? Does it have an impact on due process? It would be great
17 to have research on that.

18 **Mr. Perry:** My name is Steven Perry from BJS.

19 I'd like to ask a question regarding the methodology issue that
20 was raised earlier. Having worked at the Census Bureau and at BJS, we
21 have a longitudinal survey looking at or tracking the persons versus the
22 households.

23 Is that something that's been realistically thought about,
24 considering the cost, and also I wanted to raise a question about web data
25 collection—the feasibility. Will it work?

26 Working in Census, one of the surveys coming to mind in the
27 Demographics Survey Division is what they call SIB, a longitudinal
28 survey.

29 One early methodological issue was non-response, because it
30 was so long—I think 4 years. For 4 years, every 6 months (5 or 6
31 months) they were going to someone's house. But they developed
32 another survey based off of those non-respondents. It was smaller and
33 cross-sectional in type.

34 Is there a way without making NCVS bigger every time there's
35 an emerging issue (like computer crime)? Maybe a core NCVS but [with]
36 these other type web-based modules that can be updated?

37 For instance, if a respondent said yes, I was a victim of a sexual
38 assault, rather than going into detail, could there be another stand-alone
39 website where they could go and log in (in privacy) and answer those
40 specific and sensitive questions and then submit it in some sort of
41 fashion?

42 I'm just raising the question because I know it's really
43 expensive having the interviewers to go out there and if we add five
44 questions, it adds a large amount of money.

45 **Mr. Rand:** These are all things that we are beginning to look at as we
46 move to redesign the survey. How do we decrease the need for personal
47 visit? How do we increase other alternative modes, either by telephone or

1 by self-administered, possibly on the Web—as well as the structure of the
2 survey?

3 Should it be a core with a lot of supplements? Should it be a
4 core with follow-ons, you know, longitudinally?

5 We're just at the very beginning of this process. There's a lot of
6 research that we're initiating right now to look at a number of these
7 different issues. So, the structure of the survey 5 years from now will
8 probably be very different from what it is now, although it's too early to
9 tell exactly what it will look like.

10 Any other questions or comments?

11 **Mr. Hartley:** I'm Dan Hartley from the National Institute for
12 Occupational Safety and Health, NIOSH.

13 We quote NCVS data in our publications quite a bit. One of the
14 concerns we have is the limited number of industry and occupational
15 codes that get reported. I know Lynn's paper mentioned they do collect it
16 for all respondents.

17 So, are there plans in the works to get an SOC code for
18 occupations and mixed codes for industries for all of the respondents so
19 we could have more to report from NCVS in our publications?

20 **Mr. Rand:** There are two issues. One is related to that. We actually get
21 those codes for victims. We have a set of pre-coded items in the screener
22 to get the population estimates, and so we have to do a crosswalk
23 between the mixed and the SOC codes to get numerators and
24 denominators and tie those together.

25 One of the limitations, though, in using the codes is the small
26 numbers of cases we get for individual codes. They have to be
27 aggregated up into broader categories when Census produces a public use
28 tape.

29 So, there are limitations—even when you get those codes—in
30 the level of detail in the occupations. And that's something that we are
31 looking into right now. Lynn, I think, is working with us on that, on
32 aggregating the codes into useful categories and we expect to be able to
33 get those on the public use very shortly.

34 Well, if there are no other questions, I would like to thank the
35 panel. You did a terrific job. We really appreciate it and also thank you
36 all for all your comments and suggestions and questions.

37 **Mr. Cohen:** Thank you. Good afternoon. My name is Thomas Cohen,
38 and I've been a statistician at the Bureau of Justice Statistics for nearly 5
39 years.

40 Most of my work at BJS focuses on courts and adjudications
41 and I'm going to be introducing the Courts and Adjudications part of our
42 Data Users Workshop.

43 We have a panel of three distinguished experts here to discuss
44 Courts and Adjudications. The first of these is Professor Theodore
45 Eisenberg.

1 Professor Eisenberg will be presenting on the paper titled The
2 Need for a National Civil Justice Survey of Incidence and Claiming
3 Behavior.

4 Professor Eisenberg is the Henry Allen Mark Professor of Law
5 at Cornell Law School. Professor Eisenberg has emerged in recent years
6 to become one of the foremost authorities on the use of empirical analysis
7 and legal scholarship.

8 After graduating from the University of Pennsylvania Law
9 School, Professor Eisenberg clerked for the U.S. Court of Appeals in the
10 District of Columbia and for Chief Justice Earl Warren of the U.S.
11 Supreme Court.

12 Professor Eisenberg has become a groundbreaking scholar,
13 using innovative statistical methodologies to examine such diverse legal
14 topics as punitive damages, victim impact statements, bias for and against
15 litigants, and chances of success on appeal.

16 Professor Eisenberg currently teaches classes on federal income
17 taxation, bankruptcy and constitutional law.

18 One of our two discussants will be Mr. Richard Schauffler. Mr.
19 Schauffler is the Director of Research Services at the National Center for
20 State Courts and also heads the Court Statistics Project.

21 At the National Center, Mr. Schauffler has worked on the Court
22 Performance Measurement Project and has helped develop the Core
23 Tools Trial Court Performance Standards.

24 Prior to joining the National Center, Mr. Schauffler was the
25 head of the Research Unit for the Administrative Office of the Courts in
26 California and headed the California AOC's Data Integrity Project.

27 Our other discussant will be Don Goodnow. Mr. Goodnow is
28 the Director of the Administrative Office of the Courts in New
29 Hampshire and has been in that position for 12 years. Mr. Goodnow also
30 chairs the Court Statistics Project Advisory Board Committee.

31 Mr. Goodnow, prior to becoming Administrative Director of the
32 New Hampshire Courts, served as the Clerk of the New Hampshire
33 General Jurisdiction Trial Courts for 14 years.

34 Professor Eisenberg will have 20 to 30 minutes to present on his
35 paper and then Mr. Schauffler and Mr. Goodnow will each have 15
36 minutes to respond to the ideas raised by Professor Eisenberg and also to
37 comment on the BJS Courts and Adjudication Statistical Programs.

38 Before we get started, I'd like to thank our panel here for
39 attending this session. I think we have a really interesting panel and an
40 interesting paper here.

41 **Session 3: Courts and Adjudication**

42 **The Need for a National Civil Justice Survey of Incidence and** 43 **Claiming Behavior**

44 **Mr. Eisenberg:** That's me. Okay. Well, thank you, Thomas, and thank

1 BJS for inviting me to speak today.

2 I prepared the slides (slides not included here) earlier today and
3 it's been a long day, so they'll be as fresh to me as they are to you as we
4 look at them. I have to say listening to a lot of the presentations
5 throughout the day, the civil side feels a little bit like it doesn't belong.
6 That is, BJS historically has tended to focus on criminal stuff. (I think
7 studies of law-related problems outside the law schools generally do
8 that.)

9 But if one has to connect things to criminal, I think it's not that
10 hard; that is, people are rarely born committing crimes out of the womb.

11 Something in the processing of people through society leads
12 them to commit crimes, and it seems to me we can't understand crime
13 just by studying victims of crime. We have to understand the causes of
14 crime. You really have to understand the civil society in which people
15 grow up—the problems at home and the problems with debt and other
16 problems that may be associated and that generate the crimes that wind
17 up being studied.

18 So, we all face a range of civil justice issues throughout our
19 lives. Maybe you've been involved in an automobile accident. Maybe, if
20 you're like me, you've had disputes with credit card companies. Maybe
21 you've had disputes with merchants. Maybe you've had debt collection
22 people call you up when you owe money every day—every few hours of
23 every day and they won't leave you alone. Maybe you've been the victim
24 of some form of race, sex, or other discrimination. Maybe you've had
25 trouble on a house closing. Maybe you've had trouble with a lawyer.
26 Maybe the government hasn't always performed perfectly in its dealings
27 with you. Maybe you've had marital problems leading to divorce or child
28 custody battles. Maybe a landlord didn't treat you perfectly and basically
29 life sucks.

30 And yet none of these are necessarily crimes, so they tend to fall
31 through the cracks of serious academic and government study. Yet civil
32 justice issues are probably more common than criminal issues.

33 If we look at the National Crime Victimization Survey of 2005,
34 it reports 20 violent crimes per thousand people and 150 property crimes
35 per thousand people.

36 If we look at the limited data we have about the incidence of
37 civil justice problems, going back to when American Bar Association,
38 American Bar Foundation study in 1977, 120 per thousand suffered a
39 long-term risk of serious personal injury, much higher than the violent
40 crime rate, and 400 per thousand suffered a risk of serious property
41 damage.

42 Another incidence study from the Civil Litigation Research
43 Project of Wisconsin Law School in 1980-81 found a 3-year risk rate of
44 416 per thousand of having a civil justice grievance. And so civil
45 justice—like the crap we encounter in daily life—is encountered by
46 everyone else in daily life, and maybe we should start being systematic
47 about quantifying how often it happens.

48 How important can it be to have civil justice data? Well, I think
49 that, although crime is important, the quality of life for those not

1 involved in the criminal justice system as well as those involved in the
2 criminal justice system depends on a well-functioning system of civil
3 justice, that is, the non-criminal aspects.

4 Civil justice problems can lead to devastating consequences—
5 consequences important as, say, a major crime wave which we wouldn't
6 hesitate to study. For example, leaks in our system of regulating drugs
7 can lead to many unnecessary deaths or injuries or incredibly increased
8 health care costs.

9 Perhaps you've heard about Vioxx. I think that settlement is still
10 pending, where somehow the Food and Drug Administration approved a
11 drug that increased the risk of heart attacks.

12 In defense of the FDA, the company, Merck, withheld the data
13 on heart attacks from the New England Journal of Medicine when they
14 published the leading study on it, and the New England Journal of
15 Medicine politely published something called an expression of concern
16 when they learned that the heart attacks data had been withheld.

17 So, lots of people simply died because we didn't have an
18 effective system of regulating drugs.

19 If you're a female and reached a certain age, you were told to go
20 on hormone replacement therapy. That turned out to be a mistake and
21 that, too, got approved and leaked through the system.

22 One of the things I like to do—you're not a uniformly old
23 enough audience, but of those who think they're about my age—

24 **Mr. Forst:** How old is that?

25 **Ms. McCoy:** I'm not saying anything.

26 **Mr. Eisenberg:** It's double digits. Firmly into double digits.

27 If you think you're about my age—you don't have to reveal
28 your own medical history, you can just know someone—do you know or
29 are you on a statin drug, like Lipitor?

30 **Ms. McCoy:** I know someone.

31 **Mr. Eisenberg:** You know someone. You're not on it, I understand.
32 Okay. I think at least for the otherwise healthy females in the crowd,
33 there's absolutely no evidence that it produces a reduction in the risk of
34 heart attacks which, probably, you haven't been told. That will come
35 later.

36 So, random control studies, the RCT, random control trials are
37 done on selected groups by people funding the studies. They did not
38 reach the broad household level and so we don't really have great
39 incidence reports on use of drugs or adverse effects of drugs. We simply
40 are relying on the random control trials done by people seeking to sell
41 drugs, and the adverse side effects are, likely, systematically
42 underreported.

43 If you followed the latest news on Lipitor and statins, you've
44 probably seen many things. I now get an e-mail, when I'm on the road, I

1 get an e-mail every day from my wife saying did you see the one today?
2 Today's one, I can't put it up, memory loss, right.

3 So, if you're on a statin, maybe you want to read, search the
4 Internet for all the possible side effects, although probably you should
5 hesitate before acting, consult your doctor because maybe they know
6 more and maybe they don't.

7 Other civil justice problems: We all have debt. Late discovery
8 of the scope of debt burdens at the household level. Well, we have
9 something called the subprime lending crisis which suddenly emerged
10 last year and seems to be able to sweep the whole world under in
11 something close to possibly a worldwide recession or even depression
12 already having major effects. Well, those are mere civil problems, right,
13 but they're not unimportant, right.

14 Discrimination incidents that do not show up in the criminal
15 system can show up in the civil system and lead to widely different
16 attitudes towards civil justice and criminal justice on the part of racial or
17 ethnic groups and, in general, we simply have no idea of what we need in
18 the way of civil justice services.

19 We used to have the Legal Services Corporation and maybe they
20 would assess it, but now we just don't know what the civil justice
21 problems of Americans are and it's not a trivial gap in our knowledge.

22 We can't really assess the function of a civil justice system
23 without household-level data about what's going on and the talk this
24 morning let me prepare this little slide because we have a pyramid or a
25 sieve system in civil justice that's just like the one on the criminal justice
26 side; that is, concepts of leakage from remedying the baseline of
27 incidents are fully analogous to the civil justice system.

28 If I work backwards with that first stage 4, why do I start there?
29 Because that's where law schools educate people, right? We start by
30 reading the published opinion.

31 If we start at stage 1, we'll have a thousand civil incidents.
32 Maybe 1 in 10 of those will actually lead to a lawsuit filing. Maybe 1 in
33 20 (roughly 1 in 20) of those will actually get to a trial in federal court, a
34 lower incidence in federal court. Maybe in state court, you get 5 out of
35 100 filings leading to a trial and 1 of those trials will lead to appeal.

36 So, 1 filing in 1000 is actually studied by law students and most
37 of us have absolutely no information about the other 999 filings, the
38 actual civil incidents that are going on in society.

39 The other role I think knowledge of civil justice incidents can
40 play is to supplement data we do have on what's going on in courts. So,
41 you can hang this on: "gee, we really can't understand what's going on in
42 courts unless we understand what's going on outside of court."

43 For example, BJS and the National Center for State Courts have
44 produced wonderful civil justice data and—to many people's surprise—
45 the number of tort filings in the states (how much we can get systematic
46 and roughly comparable data) has declined rather substantially over the
47 last 10 years. Although many people claim we're forever in the midst of a
48 liability crisis, filings are actually down quite a bit.

1 If we look at product liability filings, they fluctuate all over the
2 place. And if we look at medical malpractice filings, they have one peak
3 but they're down since 1996.

4 So, I think that's important because when people claim litigation
5 explosion or endless liability or how litigious people are, it's nice to
6 know the facts. Most people probably think these graphs go the other
7 way and they haven't for years.

8 But even then, knowing the number of filings, what are we to
9 make of it? That is, what do these time patterns mean unless we know
10 the underlying incidence of tort, medical malpractice and other possible
11 civil justice problems?

12 The decline in tort filings means one thing if it occurred against
13 a stable background rate of tort incidents. People might be less inclined
14 to sue. Maybe they just take their lumps when they suffer adverse events,
15 like most of us do. Maybe they have difficulty finding counsel because
16 it's very expensive to bring cases on a contingency fee basis. Or maybe
17 they're finding their remedies outside the civil justice system through
18 insurance, worker's comp, and the like.

19 We have no idea. So, we don't know if the decline in tort filings
20 is because of constant behavior, changed behavior, or anything else. It's
21 consistent with all kinds of outputs. The only thing we do know is filings
22 are down, but, of course, if incidents are way up, that's one story. If
23 incidents are way down, the filings per incident may in fact be up, and so
24 we have no idea how the tort system is even handling the number of
25 incidents in society.

26 In one respect, I think there's even more need for neutral data;
27 that is, associate government-based with neutral, BJS-based with neutral.
28 There's more need for neutral data in the civil side than there is on the
29 criminal side. That is, there's not a lobby for the criminals, except for
30 those liberals out there who always want to do things for them.

31 But nobody will show up in the room and say we haven't heard
32 the criminal side, right. There's nobody—there's no national criminal
33 survey—looking for the poor downtrodden problems of the criminal.

34 So, no credible interest group systematically puts out self-
35 interested information about the wonderful behavior of criminal
36 defendants. They just don't have a Washington lobby.

37 On the civil side, much of our information comes from self-
38 interested groups with an axe to grind and that information dominates the
39 media and dominates our perceptions.

40 If you were surprised by the decline in tort filings, then you
41 were a victim of publicity about the civil justice system.

42 Consider this. I'll turn to Lipitor—the world's best-selling
43 drug—and what we know about it. There's a major random control trial
44 supporting the claim that it reduces heart attacks.

45 How many of you have seen an ad for Lipitor?

46 (Show of hands.)

1 I don't know how many hundreds of millions of dollars are
2 behind those hands but it's a lot, enough to fund several dozen major
3 medical studies.

4 So, it's the world's best selling drug and everyone's probably
5 seen Robert Jarvik, who lost his father to a heart attack. And while you're
6 weeping for him, he's rowing. And now you've probably seen that
7 Representative Dingell is maybe subpoenaing him because he's not a real
8 doctor or something like that. But what's lost in this is what the results of
9 the actual random control trials are that are leading to the advertising for
10 Lipitor, right?

11 The article published in Lancet, a very respectful journal, and
12 I'm sorry for the medical language, I don't write it, the title of the article
13 is "Prevention of Coronary and Stroke Events with Atorvastatin," (that's
14 Lipitor) "In Hypertensive Patients Who Have Average or Lower-than-
15 Average Cholesterol Concentrations in the AngloScandinavian Cardiac
16 Outcomes Lipid-Lowering Arm, a Multicenter Randomized Control
17 Trial."

18 That's the title. (Those of us in academia or government might
19 feel rather succinct at this point.) So, because their titles are so long, they
20 have to name the studies, so they call this one ASCOT. The background
21 of ASCOT, this is quoted from the article, "the lowering of cholesterol
22 concentrations in individuals at high risk of cardiovascular disease
23 improves outcome. No study, however, has assessed benefits of
24 cholesterol lowering in the primary prevention of coronary heart disease
25 in hypertensive patients who are not conventionally deemed
26 dyslipidemic." I guess that's bad cholesterol.

27 Interpretation. I didn't give you the results, but here's their
28 interpretation. "The reductions in major cardiovascular events with
29 Lipitor are large."

30 So, this is the study, the random control study on which the
31 Jarvik ads are based and maybe some of you have seen the 36 percent
32 reduction in heart attack study. This is the random control trial from
33 which those numbers come.

34 What does it really say? What does it, in fact, say? Well, here's
35 a quote from the article in Lancet. "No benefit was apparent among
36 women." I don't think that's made it into the advertising.

37 In fact, here's the table from the article and I brilliantly
38 highlighted it in yellow where they break out the male and the female
39 results and you'll see—well, I thought this was a quasi-statistical
40 audience, so I actually put up the raw table.

41 So the unadjusted hazard rate column is the one we want to look
42 at and what you see for men, the 0.59, so in fact for men, it reduced heart
43 attack, bad heart outcomes more than 36 percent. It reduced them 41
44 percent.

45 Now look for women. Look down this column. Everything with
46 a zero in front of it means it improved outcomes. For women, there was
47 an increased risk of heart attacks. Not statistically significant, right.

48 So, you're a woman. Your cholesterol has shot up (perhaps post

1 menopause). You go to your doctor. He says, hey, your cholesterol shot
2 up. Why don't you get on Lipitor? Does your doctor say, "well, I'd like
3 to tell you it actually increased the risk for women, although not
4 significantly"? Or does your doctor just say get on Lipitor? That is, does
5 the ad say, "women, you might want to know that Lipitor, if anything,
6 increased the risk"? Or does the ad say 36 percent reduction in heart
7 attack?

8 What's interesting is that I've now completed an analysis of all
9 the statin random control trial studies where you can break out results for
10 men and women. There is no study in which an effect was shown for
11 women. And in every study, an effect was shown for men. Right. This
12 pattern is replicated for all the other statin drugs. There's not a single
13 study showing a reduction in heart attacks, and people who haven't had a
14 previous heart attack as a primary prevention method for statins.

15 I'm not sure how this plugs into the topic, but it's very
16 interesting. That is, civil justice problems—well, the civil justice
17 problem, I think people face that's easy to describe, is you've been sold
18 snake oil. If these numbers are right and you weren't told that your risk
19 might go up, albeit insignificantly, then you might not have taken that
20 drug and you should get your money back, right? So, you have a civil
21 justice problem, but we have no idea of the scope of that problem either.

22 We don't have any otherwise healthy women that are on statins
23 because their doctor told them to be because lowering cholesterol is an
24 unabashed good (we are told) or because they really are worried about
25 getting heart attacks rather than simply lowering their cholesterol. That
26 litigation will be very complicated. It will be nice to know how much of
27 this is going on.

28 We're talking about wastes of tens of billions of health care
29 dollars for drugs that are not needed.

30 Okay. Concluding thoughts. I think if a National Civil Justice
31 Survey is to be useful—and I understand it competes for dollars with
32 everything else and it is really hard to compete with crime, crime sells—
33 civil justice: well, when you say "justice," you hear "crime," right?

34 You have to say "civil justice" to make it clear that you're not
35 talking about crime. And so (with all apologies for competing for dollars
36 with other entities) if a National Civil Justice Survey is to be useful, it
37 has to be big. It has to be done regularly. And I think only the
38 government would be capable of actually pulling this off. It's a BJS-
39 level, Census-level type endeavor.

40 We need to know about geographic variation. We need to know
41 about demographic variation. Civil justice problems afflict men and
42 women and blacks and whites at different rates and we truly have no idea
43 about most of them.

44 Again analogous to crime incidents, we've heard a lot about
45 different patterns of crime incidents for men and women and racial
46 groups. That same thing goes on in the civil justice system. We just
47 don't know about it.

48 I think, on the other side, a National Incidence Survey would tell
49 us something about where we need lawyers, where the government might

1 actually be usefully applying legal services.

2 We know that on the criminal side we're massively underfunded
3 and that public defenders are overworked and underpaid, and most
4 people have to plea bargain because if they go to trial, they'll get a bigger
5 sentence and all that.

6 We have no idea what the true civil justice needs of society are,
7 even though the incidence level of civil justice problems is incredibly
8 high. We just don't know what it is.

9 So, my proposal—and it's easy to propose and I'll let BJS work
10 out the details—my proposal is that we regularly survey society for some
11 intelligent assessment of the incidence of civil justice problems.

12 Thank you.

13 **Mr. Cohen:** Thank you very much, Professor Eisenberg. Our first
14 discussant actually will be Don Goodnow discussing the topics of
15 Professor Eisenberg's paper and also other issues related to the BJS
16 Court Programs.

17 **Discussants**

18 **Mr. Goodnow:** Thank you, Thomas. I'd like to begin by announcing that
19 I am not on a statin drug, although I did find Professor Eisenberg's
20 comments very interesting.

21 I'll make a couple of quick comments about courts, a couple of
22 comments about areas of study that I think would be helpful, and I will
23 have a couple of brief comments about Professor Eisenberg's paper.

24 First, though, I want to thank the BJS for having all of us here.
25 This is a very valuable gathering, and I want to thank BJS especially for
26 including representatives of courts and people interested in courts.

27 This is a huge opportunity for us and I think that there is an
28 enormous appetite in the court system for more empirical data—not only
29 about what happens specifically in the courts—but also about the sorts of
30 things that Professor Eisenberg is talking about and the issues we
31 discussed this morning.

32 My comments come to you as those of a practitioner. I echo the
33 comments made this morning by Director Carl Peed when he said he was
34 interested in actionable research. That's the perspective that most of my
35 colleagues, state court administrators, bring to the table.

36 We are less interested in advancing the sum total of human
37 knowledge for abstract reasons and much, much more interested in
38 learning what we can about courts or about our society with an eye on
39 making changes to the courts so that we can operate those court systems
40 more effectively and more quickly, deliver dispute resolution services
41 more quickly, so that we can be more fair to those who bring their
42 disputes to court, and especially so that we can be more accessible to
43 those with disputes.

44 The culture, I think it's fair to say, in state courts in the United
45 States is changing, albeit very slowly. If you were transplanted from the

1 18th Century, either in the United States or from Great Britain, to a
2 courtroom in the United States, you would feel right at home. You would
3 recognize the surroundings. You would identify with the different players
4 in the system. There would be very little that would be foreign to you.

5 I think you can say that of very few other institutions—maybe
6 the exception is some religious institutions—but that certainly is
7 characteristic of the courts.

8 Nonetheless, there is a cultural change afoot. While, in the past,
9 I think courts focused specifically on doing individual justice in
10 individual cases—focused almost exclusively on that—I think the change
11 is occurring where judges and court administrators are seeing themselves
12 as part of a larger societal institution with other responsibilities than to
13 focus on what's going on in a particular case before them at that time.

14 This shift from a sort of micro interest to a macro interest, I
15 think, is part of the source of the appetite for more empirical data about
16 courts. I think there is huge interest in court operations. I think there's
17 huge interest in outcomes of litigation or of dispute resolution, and I
18 think there's great interest in the constituents that bring those disputes to
19 courts.

20 I have five areas that I think might be worthy of consideration
21 for research. The first, and probably the first on the minds of most state
22 court administrators, is finances.

23 We need to know more about the costs of litigation—and let me
24 take a little digression here. The background to this is obviously that
25 public resources are not expanding as fast as our enthusiasm for spending
26 them is. Whether it has to do with mischief in the Middle East or
27 problems related to the cost of health care or other federal entitlements,
28 the handwriting is on the wall.

29 Courts need to be more cautious and more attentive to the costs
30 of their operations and more specifically to the costs of litigation.

31 Actually, while we talk about the costs of litigation—and this is
32 a feature in Professor Eisenberg's paper—courts are really not about
33 litigation. Too frequently, we think of courts as dealing with litigation,
34 but if you reflect on the Professor's comment about 2 percent of the cases
35 that are brought into court going to trial, you've got to ask at some point
36 what happened to the other 98 percent. And to the extent we focus
37 entirely on trials and trial outcomes, we're missing the boat because
38 courts are not trial institutions, they are dispute resolution institutions.

39 I say that because I think a great deal of attention is needed to
40 what goes on to that other 98 percent of cases after they've been filed in
41 court.

42 Another aspect of the costs of court operations is both fines and
43 fees. I was surprised when a number of my colleagues expressed an
44 interest in studying court filing fees, until I learned that in Indiana, the
45 state court administrator says there are some 36 special surcharges or
46 penalty assessments or whatever collected by the courts and they all go to
47 fund other institutions around the state of Indiana.

48 It seems a small matter, but it resonated with my colleagues, so I

1 share it with you.

2 Another area of interest in terms of finance is fine collections,
3 the capacity of courts or the capacity of state governments to enforce the
4 orders issued by judges in terms of criminal penalties.

5 In New Hampshire, we report that we collect over 90 percent of
6 fines ordered within 3 years of a judge imposing that fine. I know there
7 are other states where court administrators report collecting between 60
8 and 70 percent of fines imposed.

9 There's clearly plenty of opportunity for serious investigation
10 into that. Either we're counting very different things or somebody is not
11 tending shop and those fines are going uncollected.

12 Another huge interest in state court administration is in specialty
13 courts. Courts in the 21st Century are actively collaborating with our
14 colleagues and our counterparts in executive branches of government as
15 well as in other agencies that are addressing social issues around the
16 country. Hence, we have drug courts, we have mental health courts,
17 domestic violence courts, firearms courts, business courts, teen courts,
18 and there are many, many more.

19 Many of those court special dockets are already analyzed and
20 studied and evaluated. However, I think we can all agree that BJS as an
21 independent institution with nationwide impact could certainly improve
22 those analyses.

23 It's not going to be a secret to anybody that too often the people
24 doing the study of the success or failure of the outcomes from these
25 specialty courts are actually heavily invested in the results. So, the
26 independence of the Bureau of Justice Statistics would be very helpful in
27 that regard.

28 Another huge challenge in the court system is one we can't even
29 agree on a name for—whether to call these people self-represented
30 litigants, unrepresented litigants or pro se litigants, and I'm sure there are
31 other terms. I know there are other terms the judges have used for them
32 that I won't share with you.

33 By all reports, this is an issue that is growing dramatically in
34 state courts as well as in the federal courts but, as I say, we lack even a
35 common vocabulary. We certainly lack a consistent and objective way—
36 a dependable way of counting self-represented litigants. We certainly
37 have no way of measuring their impact on state court systems, and we
38 don't even understand who they are, why they are, or what types of cases
39 they are most active in.

40 The fourth area that I would suggest deserves attention is
41 timeliness in courts. Both the American Bar Association and the
42 Conference of State Court Administrators have developed guidelines for
43 time standards for court operations and those time standards typically are
44 structured such that a court (to be effective) should dispose of 90 percent
45 of its docket within a certain number of days, and then a hundred percent
46 of the docket after another period of time has expired.

47 Well, many states around the country have adopted those
48 standards, but I don't believe we have a national assessment of how well

1 courts are doing in addressing either the standards of the American Bar
2 Association or the standards of the Conference of State Court
3 Administrators. Nor do we know if the standards established by different
4 state court systems have anything in common with the two proposals by
5 the groups I've mentioned.

6 The last area that I'll mention that I think deserves attention is
7 the area of the linguistic diversity of our community.

8 Most court administrators view this matter as an issue of
9 fundamental access to justice. It ought to be obvious to all of us that if
10 you cannot speak English or understand English well, your access to
11 justice, at least in state courts in the United States, is going to be limited.

12 We don't know the scope of the issue. It certainly cuts across
13 civil and criminal boundaries. It certainly has a huge impact in marital
14 cases, domestic relations cases. We don't know the costs. We don't know
15 the percentage of cases. We don't know the impact of interpreters on the
16 workload for judges and for staff.

17 We do know the issue is growing very quickly. We don't know
18 that it's a problem. While New Hampshire is among probably the three or
19 four most homogenous states in the country, our budget for court
20 interpreter services has been increasing in the last few years at an annual
21 rate of over 30 percent. It has finally leveled off but that level of increase
22 obviously cannot be sustained.

23 As regards Professor Eisenberg's proposal, I'd like to endorse it.
24 I think that state courts can only benefit from learning more about our
25 constituency. As I said earlier, state court systems are performing some
26 of the 180 degree turn that Mr. Sedgwick mentioned earlier.

27 I think that instead of focusing entirely on the case before us, I
28 think courts are viewing themselves and court administrators are viewing
29 their institutions as having a larger role and viewing themselves
30 increasingly as being customer service organizations.

31 Well, we cannot be effective customer service organizations if
32 we don't know more about the claims both made and, as Professor
33 Eisenberg mentions, the claims not made.

34 I would like to amplify a little bit a comment that I made earlier.
35 Professor Eisenberg talked about the 2 percent of cases that go to trial,
36 again leaving unanswered questions of what happens to the 98 percent
37 that do not go to trial.

38 I think we need research on how those cases are disposed. I
39 think we need—as I've said, I think we need to begin thinking of courts
40 not as trial organizations but as dispute resolution organizations. We need
41 to know the impact of alternative dispute resolution. It's sweeping the
42 country. We're spending huge sums of money on ADR and we really
43 don't know, I think, definitively what the impact is in terms of the time it
44 saves or in terms of the dollars it saves for litigants and for would-be
45 litigants.

46 I'd like to conclude by thanking Mr. Sedgwick and the Bureau
47 of Justice Statistics for convening this group. You are doing valuable and
48 very important work, and I look forward to seeing the outcome of the

1 good work done here today.

2 Thank you very much.

3 **Mr. Cohen:** Thanks, Don. So, our last discussant is Mr. Richard
4 Schauffler.

5 **Mr. Schauffler:** Thank you, Thomas, and thanks to BJS for convening
6 this. It's been very thought-provoking already and I hope to continue in
7 that vein, recognizing the perilous position I occupy as the last thing
8 between you and a cold beverage of your choice today.

9 On behalf of the National Center, we've worked closely with
10 BJS for a number of years on a number of projects: the Court Statistics
11 Project, the Civil Justice Survey, the gathering of state court organization
12 cases on appeal, and BJS has demonstrated a real commitment to
13 empirical data and helping understand, as was alluded to earlier, the
14 evidential basis of what's going on in the courts.

15 Ted's paper raises a number of important questions about civil
16 litigation. A way you might ask those again is, "what kinds of grievances
17 end up in disputes in courts?" And once we know that, we could ask the
18 questions, "what do we make of that? Who's in? Who's out?"

19 Obviously not all disputes belong in court. There are probably
20 better informal and other ways to resolve them. But we don't know
21 whether there are a lot of wrong reasons they might be disappearing out
22 of the system—because the process is too expensive, because the process
23 is too time-consuming, because the overall length of time to get any
24 resolution is too long, because once you get a judgment it's hard to
25 enforce, because the process favors the big and the wealthy against the
26 small and the poor.

27 All those might be perception or they might be fact. They might
28 be a mix. But the point is that we don't have an empirical basis for
29 understanding those [issues] as you go through all the different case
30 types, either on the civil or criminal side, small claims and so forth.

31 So, part of what we're trying to do at the National Center—in
32 addition to gathering all this data—is to really figure out how to
33 transform it into knowledge thereby, as Don alluded to, really
34 transforming the management culture of the Judicial Branch of
35 government.

36 It's largely based on gut feeling, anecdote, knowing the right
37 thing, looking someone in the eye, years of experience, some of which
38 probably would be confirmed by empirical evidence but some of which
39 probably not.

40 So, what don't we know? Well, almost anything you could think
41 of we don't know. We don't know who the litigants are. We don't know
42 what the causes of action on a fine enough level of detail are in these
43 cases. We don't know what it is about the legal process that shapes
44 settlements and all those points along the way.

45 What does the addition of an alternative dispute resolution
46 process do to the caseload? How about mediation? How about
47 mandatory mediation versus voluntary? The use of programs, like short

1 trials or limited discovery. What do those practices do?

2 Courts can hope for the best when they implement these
3 programs but really don't know. It's equally probable they could be
4 creating perverse incentives. There are claims of private judging, the rise
5 of private judging whereby let's say two large corporations having a
6 dispute will hire an American Arbitration Association or another private
7 dispute resolution firm, get a retired judge who has experience in that
8 area and construct a dispute resolution process on their own—removing
9 that case and whatever settlement comes out of it from the public
10 domain.

11 Is that a good thing? Bad thing? Does it matter? Is there a brain
12 drain from the bench for these more highly compensated positions? All
13 that is a matter of speculation, but no one really knows the answer.

14 All of these things lead to a number of important policy
15 questions, such as: Should legal services be unbundled? If so, how?

16 Also, who are these self-represented litigants? There's a lot of
17 stereotyping. Oh, these are the honest poor, the indigent who really just
18 can't afford a lawyer. Well, there's some anecdotal evidence that
19 suggests it's really a bimodal population, those folks and a lot of college
20 grads who are the ones on the self-help websites downloading forms and
21 doing all that other stuff that we think works. Well, it might work well
22 for them. I really doubt it works well for folks on the other end, but again
23 these are belief systems that are out there and not empirically-based
24 management decisions.

25 So, because we're thinking big today, I want to add to the list
26 and build out on the work. BJS has done a number of things which are
27 detailed here, both on the civil and criminal side, the prosecution and
28 defense side, but because the list should be longer, I'll try to add to it.

29 Don alluded to alternative dispute resolution. That's a big, big
30 area in terms of understanding what it is, how it works, which case types
31 does it work for, and in what forms—mandatory, voluntary—using what
32 kinds of neutrals, and the same is true for other forms of non-trial
33 dispositions.

34 We simply don't know what they are. They haven't been studied
35 in any depth since, I think, the 1992 BJS Survey of State Courts.

36 Class action and mass torts. It's curious that states have these,
37 but there's no common definition of even what one of these things is.
38 How many defendants constitute a mass tort? 20? 40? 15? Is the cause of
39 action the thing that triggers that classification? Which of those cases
40 actually end up getting certified as such? What are the rules that govern
41 those decisions? Are they the same across the country? We don't know
42 that either.

43 There's a lot of advertising about "judicial hell holes," they're
44 called in the advertising, claiming that there are places where you don't
45 want your big case to go because the juries are giving away the store, or
46 the judges. True? False? Who knows?

47 It's never been the subject of systematic action and it's a source
48 of great tension between the federal courts and state courts as to who has

1 jurisdiction over these and some movement to attempt to remove more of
2 those to federal courts.

3 Similarly, effective practices. Don as a practitioner, and his
4 colleagues are trying to manage limited resources. So, some things have
5 been done to try to do that, to tailor civil processes down, make short
6 trials, smaller juries, limited discovery, limits on the number of
7 witnesses.

8 We don't know if those work or not or in what cases they work
9 and are seen as appropriate. In many states, people look at those and opt
10 out into the higher court and why limit myself now? If I discover some
11 fact down the road, I don't want to be prematurely limited in what I can
12 do. So, are these rules working? Do they make any sense? We don't
13 know.

14 There are some specific research opportunities that, as one
15 discovers datasets around the country, (Florida, Michigan to a lesser
16 extent, Texas) have databases of closed medical malpractice claims. You
17 could actually get the real number, the actual costs of these cases and
18 find out what they actually cost. It's like Ted's trend line. I would be
19 willing to bet it's a little bit different than the perception and there are
20 some folks at Duke University that have been doing that, Neil Vidmar
21 and others.

22 Similarly, South Carolina implemented a procedure in 2003 that
23 requires public disclosure of terms of settlement in cases. Well, it would
24 be nice to do it pre-2003 and post-2003 to see what happened as a result
25 of that, what effect that had on civil litigation. So, in a way, one cost of
26 using the court to enforce your judgment is disclosure of the terms of that
27 settlement, an interesting public policy idea. We need to know if it made
28 any sense.

29 A handful of states (maybe about 10) have moved their court
30 data into data warehouse environments. This creates a possibility of
31 doing some interesting case-level data mining and greatly reducing the
32 costs of that data collection which is now done quite manually in these
33 large studies. We need to look at what those data warehouses have in
34 them and try to figure out what they're ripe for studying.

35 We mentioned today, I think maybe the loudest steam that
36 echoed across all these domains was the issue of elders in some form or
37 fashion; whether that's law enforcement, as victims, and certainly in the
38 courts. It's referred to as elder abuse. Elder abuse is the tip of a very
39 gigantic iceberg of people who are under the care of the court, who have
40 been appointed guardians, for whom the court is legally responsible to
41 ensure that their physical, mental and other well-being is provided.

42 This is a gigantic pig in the python demographically that's
43 moving through the system. Right now courts can't manage these cases. I
44 was just in L.A. looking over 2,000 files and there's nothing in some of
45 them or obvious malfeasance in some of them. The court is unable to
46 review these because it doesn't have the business rules, processes,
47 information systems to support this, and that problem is going to get
48 exponentially worse.

49 So, this whole issue of counting these cases; adjudicating them;
50 how you connect courts, law enforcement, and victim services all

1 together to deal with that is just an enormous issue that is coming down
2 the pike.

3 Lastly, the impact of jurisdictional limits. As states try to figure
4 out, for instance, small claims, should that be a \$3,000, \$5,000, \$7,000,
5 up to \$10,000? Where's the right point? No one really knows. What
6 happens when you create concurrent jurisdiction at those levels and you
7 could file in more than in one place? That's another big issue and that's
8 ripe for some additional empirical research.

9 Small claims itself is a huge area. Stereotypically, that's where
10 you're going to go with your \$500 suit because your neighbor's tree fell
11 on your fence, but maybe that [docket] is full of Verizon and Sears going
12 after consumer debtors. Maybe that's all that's left of small claims
13 anymore. We don't know that. Again, there's some anecdotal evidence to
14 suggest that there's a lot of pressure moving it in that direction.

15 Then you have to ask yourself why the public should pay for
16 debt collection for large corporations? It's a policy question, but it
17 deserves an empirical answer.

18 On the criminal side, there's a need to do a comparable appeals
19 study on the criminal cases just as BJS has done on the civil side. We
20 don't know which cases get appealed, why they get appealed, what the
21 win rates are, reversal rates, affirmation rates, and so forth. It's important
22 to know that if you're trying to manage the system as a system. Knowing
23 what those appeal rates are and why they're taking place is important.

24 Don already brought up the fees and fines issue. For instance,
25 the driver's fines in Virginia are just maybe the most egregious example
26 of this form of extreme taxation that's going on through the courts. And
27 what's happening, frankly, is judges increasingly refuse to impose these
28 big penalties. So then we're all just going in a big wasteful circle here, as
29 they become so unreasonable that—in the interest of justice—the judge is
30 really just adjusting it back to where it used to be. So that's a big waste of
31 everybody's time. Why don't we figure out what's reasonable?

32 Sentencing. Similar. We talked about this earlier this morning,
33 but judges want to know which sentences work, which are appropriate.
34 How do you integrate risk assessment into criminal sentencing in a
35 meaningful way?

36 Virginia has a great risk assessment program for judges. There's
37 not one other state—with the possible exception of Colorado—that has
38 the data and the justice system integrated at the individual level to give
39 you the information needed on an individual defendant to make an
40 informed risk assessment decision. Never mind the political issue the
41 judges have to face about letting criminals go when they avoid an
42 incarceration determination.

43 So that's a small list of some additional topics for consideration.
44 I think for all of us who continue to believe that there is—or should be—
45 a connection between empirical research and information and policy, that
46 BJS has been a beacon of hope for us in supporting these studies and for
47 continuing to expand its agenda.

48 Those agendas have to be a combination of practitioner issues as
49 well as exploratory, forward-looking issues. And I think one of the

1 themes today has been an attempt to look for ways to leverage issues and
2 topics across the different domains and really integrate the effort. If you
3 have limited resources, it makes sense.

4 One of the things in your knapsack should be a leatherman. It
5 does 12 things at once, not a dedicated pair of pliers which only does
6 one.

7 So, we need to look for those things that work like that. I think,
8 at a time when court judicial elections, appointments, decisions are being
9 increasingly politicized across the country, we need empirical
10 information that's germane to the real purpose and work of courts. We
11 need information that judges and courts can point to in order to change
12 the discourse from one about individual decisions to one about what
13 courts are for and how they are serving the public and who uses the
14 courts. That information is critical for the future of Judicial Branch
15 function.

16 Thank you.

17 **Open Discussion**

18 **Mr. Cohen:** Thanks, Richard. Now we're going to open up the forum for
19 discussion, but before we start, I'd like to add a little clarification here. I
20 think there were some statements made about not having good trial data.
21 At BJS we do have some fairly good national studies in the criminal area
22 that look at how felony cases end up in a trial and a non-trial. So that we
23 have a pretty good handle on.

24 In the civil area we're weaker in the non-trials. We have a very
25 good series giving detailed information on civil trials, but it's been a real
26 challenge to try to get information on those civil cases that were not
27 concluded by trial.

28 Richard mentioned Neil Vidmar's work in medical malpractice
29 insurance claims research. We've also looked at that issue, and we were
30 able to produce a report looking at medical malpractice insurance claims
31 closed in seven states and that was our first foray into these non-trial civil
32 cases. But that is going to be a challenge for us as well, as we continue in
33 this area.

34 **Mr. Ment:** Thank you, Thomas. My name is Aaron Ment, and I'm from
35 Connecticut. I have a brief comment concerning Richard's last few words
36 about data warehousing.

37 We get into the criminal area there because we have found that
38 the data mining is not only done by researchers but done by people who
39 are interested in identity fraud. That really is an issue that transcends the
40 civil justice issue but is an important issue and will become increasingly
41 important as we continue.

42 I don't think any one of our panelists has mentioned the family
43 side of the civil side which is a real problem for many of us. And some of
44 the issues that we're facing there are brand new.

45 I'll just list one issue. Child custody is a problem. We not only
46 have married partners, we have unmarried partners and we have same sex
47 either married or unmarried partners and the issue for the courts is trying

1 to decide which, if any, of these are different than the others with respect
2 to child custody.

3 So, I would suggest that, in addition to what we normally
4 consider the civil side, the family side of the court, whether it would be
5 custody, support, whatever, should also be studied by BJS and those
6 interested.

7 **Mr. Schauffler:** Yes, I think the legal definition of what constitutes a
8 family is a huge one right now.

9 Actually, this came up yesterday in a discussion with the FBI
10 about domestic misdemeanor crimes with an element of domestic
11 violence because, as it turns out, the definition of who's inside that circle
12 varies widely from state to state. And grandparents—I would throw into
13 that mix that you listed, Aaron, as well, for asserting legal rights for
14 custody in some states. It's becoming quite confusing.

15 So, there is no standard across the states, and it shows up in
16 many areas.

17 **Mr. Goodnow:** I would agree with Aaron's call for further analysis of
18 family courts and domestic relations outcomes. We all, or at least those
19 of us in the courts, know that there is huge interest in who gets custody
20 and in the amount of child support and in whether that child support is
21 collected.

22 Those are fiercely contested, intensely personal issues and
23 greater empirical evidence data would be very, very helpful in
24 formulating policy because now it's driven almost entirely by anecdote
25 and tragedy.

26 **Mr. Cohen:** Through the Court Statistics Project we do have information
27 on how many domestic relations cases are filed and disposed in state
28 courts but that's it. We never have collected individualized case
29 processing data on divorce, support, paternity cases. We've only focused
30 in the CSP area on torts, contracts, real property trials.

31 **Mr. Forst:** This is my third session, so I'll make it brief. Just as Robert
32 Jackson reported famously, I don't know, 50 or 60 years ago, the
33 prosecutor has more power than any other public official, and I was very
34 happy that between the mid '70s until 1992, BJS took the lead in
35 reporting data on what happens after arrest, jurisdiction-by-jurisdiction,
36 large cities, small jurisdictions, the huge variation in declination rates in
37 screening from jurisdiction-to-jurisdiction and then what happens
38 afterwards and the reasons for declinations, both nol processed and
39 subsequent dismissals, how many cases went to trial, how many got pled
40 out, how many went into the juvenile system and so on by jurisdiction.
41 And it was a system that was growing between 1976, when there were, I
42 don't know, maybe six to 10 jurisdictions, until 1992, when there were
43 scores of them.

44 We were really learning about prosecution in ways that I think
45 would have made Justice Jackson pleased, but today, I'm not aware of
46 any cross-jurisdictional information on what happens after arrest.

47 We knew in 1992 that jurisdictions that had high rates of
48 declination in the screening room also took a higher percentage of the

1 cases they accepted to trial and we knew which jurisdictions they were.

2 Washington, D.C. and New Orleans were jurisdictions that had a
3 tougher evidentiary standard in the screening room, and they took a
4 higher percentage of cases to trial. New York and some other
5 jurisdictions, on the other hand, accepted almost everything that came in
6 from the police and then had a ratio of pleas to trials that were much
7 higher. And those are two different models of justice and we knew about
8 that. Today we don't. I lament that and would like to put in a plea, if you
9 will, for some sort of a return for that valuable information so that we can
10 shed more light on what happens after arrest than we do now. Again, my
11 point earlier was that we knew a lot about stuff in the 1970s and 1980s
12 and in some respects, there has not been a continuation of that trajectory
13 and this is one area that I think we could use some help.

14 **Mr. Cohen:** Starting in the early '90s, in the criminal area, I think we
15 moved away from these jurisdiction-specific examinations of criminal
16 cases and toward studies that aggregated all the urban jurisdictions or did
17 a national estimate of felony case processing or sentencing. But I think
18 you make an interesting point, that we lost a certain amount of detailed
19 information about what's going on at the jurisdictional level when we did
20 that.

21 And I'll turn it over to our discussants and Professor Eisenberg.
22 To me, it seems as if a lot of urban courts today are collecting detailed
23 case processing information on criminal cases. In the court community,
24 what interest would there be in trying to collaborate to a greater extent
25 with BJS to try to revive some of these jurisdiction criminal case
26 processing studies?

27 **Mr. Schauffler:** I think for some issues, this is the 800-pound gorilla in
28 the middle of the room because it's prosecutor charging policies and
29 practices, plea practices that drive a huge extent of the court workload.

30 Now, courts are reluctant to say that. I'll say that here. It's a
31 risk-provoking controversy because they don't want to irritate the large
32 gorilla in the middle of the room, but it's a huge issue.

33 At the trivial level, it takes the form of things like, "I've got new
34 prosecutors. I'm going to try every misdemeanor because I need to give
35 them some practice." So, the whole court slows down. There's less
36 justice in cases that need it because resources are getting drained for
37 trivial things that are providing on-the-job training. And there's no
38 agreement about the appropriate use of resources as a system and, at the
39 most, at the higher levels, it leads to bigger problems.

40 For instance, with California's three strikes law, you had a few
41 prosecutors who were openly disavowing the law because they felt they
42 could do that in counties that hadn't passed it, although it was a statewide
43 election.

44 There were prosecutors who were publicly saying I'm only
45 using it for certain offenses, like sex crimes, thinking that would be
46 politically a good thing for them to do, and there were some that were
47 ignoring it but not publicly saying so. And there were some that were
48 overusing it, you might say, overcharging all these, "steal a piece of
49 pizza, it's your third strike." Because of the defect in California's version
50 in which the third strike is not [limited to] a serious or violent felony.

1 So, some of those people are comfortable having their positions
2 known and some of them aren't, and we could never get that study
3 published because of the fear of provoking reaction. But we have to kind
4 of get over that.

5 This is a huge system issue and, unfortunately, that's part of the
6 system that seems the most politicized and that drives a lot of dynamics
7 which are very unproductive and wasteful, frankly.

8 **Mr. Eisenberg:** And I think—just to reinforce the point—it goes from
9 the prosecution of misdemeanors to get experience, to the decision to
10 seek death which is also largely a prosecutorial decision. And what we
11 found in studying—as you know—there are lots of studies of errors in
12 death penalty convictions and rates.

13 There are a lot of—a higher rate than one would like of actual
14 innocence—but also rates of convictions being overturned. And what we
15 found was that one of the best predictors of the rate at which convictions
16 would be overturned was the rate at which states sought the death
17 penalty. That is, those with the loosest standard for seeking the death
18 penalty, in fact produced the least death-worthy set of cases, which got
19 reversed later on appeal and at enormous expense. Each death penalty
20 prosecution is a real expensive proposition for both sides usually.

21 **Mr. Goodnow:** I would add that the activities and policies of prosecutors
22 surely deserve some analysis.

23 I had an experience myself many years ago when the prosecutor
24 announced to the press that he was no longer going to participate in any
25 negotiated plea disposition in a court.

26 Well, the impact would be huge and, obviously, he could not
27 keep his promise. But there's a serious question of whether that would be
28 a valuable policy decision.

29 What would be the impact of failing to take a negotiated plea?
30 Would the criminal cases plead without a negotiation, or what would
31 happen? I think it's worthwhile.

32 **Mr. Cohen:** And just one additional point. At BJS, we do have the
33 Census of State Court Prosecutors, which obtains very good
34 administrative information about state court prosecutor officers. But
35 because most of our criminal case processing studies have gone national,
36 we've never really attempted to marry the Census of State Court
37 Prosecutors with a more localized view of criminal case processing. I
38 think on our end, that's something we need to think about doing more.

39 **Mr. Mahoney:** I'm Barry Mahoney from JMI (again).

40 Several thoughts. First, it seems to me that Ted's notion of
41 looking at incidents and claiming behavior to provide the context for
42 what happens in civil litigation and generally in civil societies is
43 extremely important. If you go back to the original history of the idea of
44 the National Institute of Justice, it was very much civil, including family,
45 as well as criminal and that probably ought to be revived.

46 The second thought is that there have been an awful lot of good
47 ideas here today. It seems to me, to go back to where Brian began this

1 morning, there's a big knapsack problem with a small knapsack. And
2 there's an awful lot that's important. As you start thinking about this, you
3 also get tied into what is and/or ought to be the role of the Bureau of
4 Justice Statistics. It seems to me it's not to try and explain every
5 variation. It is to try and provide basic statistical data that will enable at
6 least a start on comparisons and enable researchers and state and local
7 specific people to begin to make relevant comparisons, not to answer
8 every question.

9 But it is important. And to the extent that you make your data
10 relevant, timely, accurate, and useful, when used and comparable across
11 jurisdictions it will be that much more valuable. Indeed, I think that the
12 movement away from jurisdictional-specific data that Brian spoke of, and
13 that you mentioned, Thomas, in the 1990s really stifled innovation and
14 comparisons at local levels—certainly across the courts, trial court-level
15 courts in the United States.

16 Finally, we've had some suggestions of bringing in more
17 academic researchers and so forth, which is clearly desirable. But in
18 order to bring in more academic researchers who could build on the BJS
19 data, you might need to create a policymaker- and practitioner-level
20 demand for what researchers can produce.

21 It seems to me there's a role for BJS here—probably working
22 with NIJ, with JISA, and other organizations—to build back constituency
23 by demonstrating how that statistical data really can be used—finding
24 some examples of where and how. Probably the area in which we're most
25 lacking is in the courts because I think the police actually have done
26 much better than folks in the courts have in using statistical data and
27 empirical research.

28 So, I would say, BJS, think about how you can expand your
29 constituency group, both in the design of what you're doing and in the
30 utilization of the products, and I'd be interested in anybody's response.

31 The ideas I've heard from everyone on the panel are good. How
32 do you set the priorities? How do you engage the range of people you
33 need to have engaged?

34 **Mr. Eisenberg:** Addressing the limited resources of BJS and others'
35 problem—some samples are very useful, even if they're not done every
36 year. (We live with the Census every 10 years, with some inter-essential
37 information.) I don't know the answer. What would be the costs and
38 benefits of a National Crime Victimization Survey done in greater depth
39 every other year? It seems me to the long-term trends would be the same
40 and maybe with some of that saving, we could do a better job in the years
41 we do it and maybe add some civil components every other year as well.

42 We don't need it every year. If you look at what the National
43 Center for State Courts and BJS have done on trial outcomes, they've
44 been getting it every 5 years and it's wonderful. Maybe 5 years is too
45 long for many processes, but I'm not sure every year is necessary.

46 **Mr. Schauffler:** I think your point is well taken, that whether it's this
47 work or the Victimization Survey, we have to ask the question, how
48 much of a load can this particular project carry, and what's its purpose?

49 Is it to document unreported crime? Is it to explore why people

1 are victimized? Is it to explore the effect of being victimized on those
2 people? There are many different important dimensions to that, and I
3 guess the question is: what is each one of these things we do trying to do?

4 I don't disagree with you, but I think BJS's role is to create this
5 layer of as thick as possible description of these different landscapes,
6 which then set the stage for other more detailed studies.

7 I think it's one of the things we've tried to do. There are certain
8 things that can only be answered at the local jurisdictional level, I
9 wouldn't disagree. But then the cost of doing that is high, relatively
10 speaking.

11 We've been developing what we call the State Court Guide to
12 Statistical Reporting which contains things like definitions of case types,
13 definitions of what a jury trial is or a bench trial and when you start
14 counting, whether you have one or not, and all of those really nitty-gritty
15 classification and counting rules, trying to work with technology vendors
16 to implement those rules through their systems. Because until we do that,
17 so much of our effort is taking this national data and really trying to
18 figure out, of the 50 states that say this is their juvenile delinquency
19 caseload, which of them are really counting the same things?

20 We need to get to a more normalized situation where the right
21 things are in the right buckets, but I think there's another big issue that
22 you've raised and it raises a good question about what role different
23 players have in this. If you're talking about the utilization of this kind of
24 information to manage the courts, let's say, we focus a tremendous
25 amount of effort on getting the data, sorting it out, cleaning it, organizing
26 it, reflecting it back in visual displays of information that make some
27 sense, and then we say, "Here." And we get this blank look and the
28 judges or the court administrator or the state court administrator are
29 looking at us and saying, "What is this telling me? I have 5 minutes.
30 What's this telling me? What do I walk into that room and tell my chief
31 justice this means?"

32 Then you realize you're confronting decades of managing
33 without that information, and you're transforming the whole management
34 culture into one which is supposed to know, "if your clearance rate
35 diverged like this, what are the 10 things that you should ask yourself?"

36 Tom Frazier referred earlier to the need for the end user of this
37 data to have templates and tools and ways to use data and present it and
38 report it that are interpretable. This kind of "dashboard," which is a
39 metaphor I really don't like but I'll use anyway, "a high-level executive
40 dashboard" of management information.

41 Someone, some group of people and entities need to be working
42 on this together and trying to figure out what works. So there's an
43 interesting question: Is there a BJS role in that, or is that some other set
44 of actors for creating the user interface, you might say, to all that data?

45 **Mr. O'Donnell:** Good afternoon. My name is Patrick O'Donnell. I'm
46 with the California Administrative Office of the Courts, and I staff the
47 Civil Justice Center there.

48 Let me begin by saying I really support the proposal today for
49 the Civil Justice Survey, and before I jump in, sort of joining the chorus

1 of people who want to drill down and have practical stuff, I also want to
2 say a word about the existing Civil Justice Survey that goes on every 5
3 years.

4 I think that's been very useful. In some of the work we do, to be
5 able to say this is the trend, this is what's available nationally, this is
6 what's happening in terms of the amount of trials or the amount of
7 judgments or what's happening with punitive damages, it's very useful to
8 have that kind of information.

9 Indeed, if anything, I would say it would be good to have even
10 more information along those lines, such as what's happening with class
11 actions and other information about smaller counties. So, there's a range
12 of information there, but it's important to have those kinds of long-term
13 trends and eventually, even though I know this is a little bit slow, you'll
14 also discover changes in trends.

15 I had a call from a judge last week and he said, "Are you
16 noticing that civil cases are going up now?" I said, "No." He said, "Well,
17 they are in my court." So, there may be changes from the long-term
18 trend—or not.

19 Anyway, having said that, then let me talk now about the
20 discussion today. I think it really is important to drill down and some of
21 the drilling down people have mentioned includes getting to the county
22 level.

23 Why the county level? Because that's where the actual one
24 court's practice is different or one county's practice is different from
25 another. You can, therefore, make useful comparisons. So, if the data are
26 too aggregate—of national or metropolitan statistical area level—they
27 often are not useful for those who are trying to evaluate how well a
28 program in a particular county is happening versus another.

29 Another thing that was mentioned today is that it's important to
30 capture new categories of activity. Obviously elder abuse. I work in staff
31 on a working group on protective orders and there's certainly been a
32 growth. And in California, there's a civil cause of action and protective
33 order relief in elder abuse, workplace violence, and domestic violence,
34 and those are civil matters as well as criminal. And it's important to have
35 data in those areas which have not traditionally been captured.

36 Also mentioned was family law. Certainly the more data
37 available, the more helpful it is, especially for seeing kinds of growth
38 trends and new types of incidents that lead to different areas that we need
39 to look at and focus on from a policy point of view. And then we can ask
40 more questions about those as we collect the data.

41 Let me make two other final points. One has to do with an
42 implicit model cited in Professor Eisenberg's article, the old Curran and
43 Miller-Sarat Model. It seems funny talking about this as somebody from
44 the court, but it seemed rather old-fashioned and traditional. I think it was
45 being mentioned earlier, to have an adjudicatory model that essentially
46 collects information and data based on claims and they morph into formal
47 legal claims.

48 Many of the things we do now never get to the legal system
49 because of contractual arbitration agreements, because of other ways

1 they're diverted before they get to the courts and so we have to look at
2 that.

3 When they do get to the courts (that's sort of the step 1 to 2 in
4 the model) a lot happens there in courts: things go away, and we need to
5 understand why they go away, and then when they get to the courts,
6 again 90 percent of everything goes away.

7 Well, how much of that is because of effective settlement, use of
8 ADR? Is ADR and mediation being used extensively by the Courts? Is it
9 a good and effective device? How do we evaluate those?

10 So, certainly in California, we've spent a lot of effort trying to
11 look at pilot projects and how they work and so forth. So that's
12 important.

13 I think the model really has to be a little different than the model
14 of 25 years ago. We have to really understand all the different things that
15 happen in terms of case management, ADR, and so forth.

16 The final point I'd make is, I think maybe another way to come
17 at what the courts might need is more conceptual.

18 One of the things courts are looking at now is access. And that
19 may involve things like understanding the proportion of the population
20 whose primary language is not English. It may involve the costs of the
21 litigation. It may involve the possibility that there are simply no legal
22 services available but maybe, with unbundling and so forth, more people
23 can have access.

24 So, there's a range of access issues that certainly need to be
25 studied to understand which programs are working and how well. And
26 where they're not working, do we need to provide more interpreters? If
27 we're going to do that, at what costs, those kind of issues.

28 The second issue beyond access is performance. How is the
29 system—as it is—sort of moving people through not just adjudication but
30 through this court system? Is it working for them? Are there unnecessary
31 delays? Is the system effectively getting them to the right ADR or
32 settlement program? Is there assistance in, for example, a civil
33 harassment case where attorneys can help the judge work out, negotiate
34 certain things that could help the parties work out an agreement or
35 something?

36 There are ranges of kinds of activities in the process, as well as
37 the trial process itself, and finally, there are post-adjudication issues that
38 have often been ignored.

39 I'll give two examples. As I say, I work in the area of protective
40 orders. How effectively are those protective orders entered into the
41 criminal justice system out there? Are they readily available? Do law
42 enforcement [officials] know what's there?

43 On the civil side, if you get a small claims judgment, does the
44 small claims litigant have any ability to figure out how to collect on that
45 judgment? And who's going to provide that somewhere in the system?

46 So, those are the kind of issues that I think civil justice really

1 needs to be addressing. We certainly need lots of empirical information
2 and also some thinking about what kind of studies should be undertaken
3 and realizing this is a matter of limited resources. Some of these are long-
4 term projects but you've got to start somewhere.

5 Thank you.

6 **Mr. Schauffler:** Your comment brings to mind one thing. I was focusing
7 on the sort of household-level stuff outside the courts which might tell us
8 about ADR that never makes it. But even within the courts, it's still
9 surprising what we don't know.

10 We all agree that settlement is the dominant outcome for many
11 things, but for most places and most times, we have no idea of the
12 settlement rate. The National Center did a study in 1992 where you
13 actually could get some useful settlement rates, but other than that,
14 there's very little research, so when people say that 80 percent or 90
15 percent of the cases settle, they have no idea.

16 Actually, when I've looked intensely, drilled down within
17 federal courts, the settlement rate in employment discrimination is maybe
18 50 percent compared to maybe 70 percent in tort. And it's sort of
19 amazing, we have no information about the modal outcome of litigation.

20 **Mr. Cohen:** I think part of the challenge is also linking these different
21 pieces up. For example, you raised the point about post-adjudication
22 activity which is largely invisible.

23 Do court orders get enforced? Whose job it is to know that?
24 Does the information flow in the right direction to allow someone to
25 know that? But someone's compliance with court orders also has to do
26 with its use of access and fairness.

27 So, to the degree that the process is perceived as fair, Tom
28 Tyler's research has shown it's not just an issue of "it's a nice day in
29 court when it looks fair," it's that the person who perceived that will keep
30 paying their child support even if they "lost" longer than the person who
31 won and had a bad process.

32 And there's this huge disconnect in the courts between a focus
33 on outcomes—where typically judges and attorneys think, "well, if you
34 get the right outcome, the process sort of doesn't matter," and all of the
35 research which shows that, for litigants, it's really about the process.
36 Everybody doesn't expect to win. They do expect to be treated fairly and
37 with respect and so on.

38 So, somehow it's connecting up this kind of research on the
39 legal process itself and as Don was talking about, it used to be perceived
40 that there was nothing to study because it was simply once something got
41 there, there was a linear rule-bound process that you went from point A
42 to point L and it was over.

43 Well, that was never true. But to the degree that it was true, it's
44 far less true now because it's more of an issue that this is a dispute.
45 What's the appropriate way to resolve it, through therapeutic justice,
46 restorative justice, collaborative justice—all of these different modes of
47 adjudication and sanctions that are highly variable and which is creating
48 a big split in the judicial world—there's sort of a paradigm crisis.

1 Are we here doing legal work or are we doing social work (to
2 put it crudely)? There's a lot of debate back and forth about that—
3 revolving around questions of effect, I guess, as well.

4 What courts want to be able to do is compare the efficacy of
5 these different ways of doing business rather than have these very sterile
6 arguments that are just opinion. "It works." "No, it doesn't." "Well, I
7 know it does." "Well, I know it doesn't." "It's too expensive." "No, it's
8 not." Then everybody goes off and does whatever they do.

9 There's a higher order of discourse I think we could get to with
10 some better information.

11 **Mr. Goodnow:** I think your framework of access issues and performance
12 issues is a useful structure to consider much of what's been discussed
13 here today, in the morning as well.

14 As for post-adjudication matters, anybody working in the trial
15 courts knows that that's a huge part of what we do and it is largely
16 neglected. It's a significant unmet area we know very little about.

17 **Mr. Cohen:** Just to add one comment. We do have a study state court
18 organization which looks at the organizational structure of state courts,
19 but we've never looked at access to state courts. So, there might be a way
20 to marry the two different concepts together and, again, piggybacking off
21 the comments of guardianship, most of our civil studies have looked at
22 tort, contract, and real property and that's it.

23 So, it looks like there might be some interest in trying to go
24 beyond those big three case types.

25 **Ms. Waters:** I'm Nicole Waters from the National Center for State
26 Courts, and I think that the ideas that have been shared already are great
27 and I would back all of them.

28 I just have a couple more ideas that I wanted to share. One is: if
29 we think about the courts and what is the purpose of the courts, it's really
30 to serve the public. And one part of the citizenship that has to have a buy-
31 in to the courts—they have to have this, what we call in the court world
32 "public trust and confidence," is the jurors.

33 When they're the ones who are coming in to the courts and
34 they're not defendants, they're not witnesses, they're not litigants in any
35 way but they're also accessing the courts and coming into the courts as
36 jurors serving on duty or whether they're being selected or not is where I
37 want to go with this.

38 We have conducted something called a state of the states jury
39 improvement efforts study that was done a couple of years ago and it was
40 mostly funded through private foundations and private contributions and
41 it would be really nice to see this done on a larger scale, to really look at
42 some of the efficiency issues with juries.

43 Are the people who are coming into the courthouse, are they
44 really being effectively used? There's this utility in not having them sit
45 around and waste their time. I'm sure most of you have tried to get out of
46 jury duty or heard of somebody who tried to get out of jury duty at some
47 point, but also having representative juries.

1 We've created some different measures through our court tools,
2 but we really don't have a sense of whether or not the courts can even
3 measure this [jury efficiency], much less how they [courts] compare to
4 one another.

5 Oftentimes the courts want to compare themselves to their like
6 peers or to some national standards and we really don't have standards
7 developed for a lot of the jury measures.

8 On another unrelated note, I want to piggyback on what both
9 Ted and Richard have mentioned before: we've really had a problem
10 with getting the data out there to the users.

11 We talk about this as being the Data Users Group (which is a
12 wonderful group to bring together) but I think that we're missing a little
13 piece of that pie which is the fact that there are a lot of other folks out
14 there who'd like access to the data, but who do not understand statistical
15 analysis. They are not researchers, not trained in this, so what are they
16 going to do when they don't have the data? They're going to go wherever
17 the data is, whether it's quality data or not.

18 Some examples of that. Jury verdict reporter data is accessible—
19 the media can get access to this. Senators and congressmen have used
20 this information in their speeches, to make policy decisions. Attorneys
21 use these to try to weigh their particular clients' issues and how much to
22 settle for, and a lot of that data is just simply being used because it's
23 available and it's accessible.

24 So, I would urge BJS to consider how we can make our data
25 more usable and how to make it user friendly. We certainly have it
26 accessible in terms of the reports and we have the SPSS, for instance,
27 available through ICPSR, but what we don't have is something that's real
28 simple, like a query, where you can dial in and not have a lot of
29 background knowledge about the statistics, but we can set up some of
30 those restrictions within the query database to be able to access this.

31 Ted actually had (on his Cornell website) long ago some of the
32 civil data from years past, some of these projects from years past, and I
33 would love to be able to see some of those trends where we could put this
34 together in multiple years, lots of data, and just be able to kind of
35 embrace the new technology that the society is going into and that is this
36 quick access to data.

37 If we can restrict it and allow them to have access to do queries
38 online, I think that would be a really valuable tool, to use the data that we
39 have in the past as well as to upload data in a more quick fashion, so that
40 people can have a chance to react instead of waiting a couple of years
41 and then having to find a statistician to interpret the data.

42 **Mr. Eisenberg:** One thing, Nicole. The website I used to have it's still
43 up there, but it had both the federal administrative office data and one of
44 the National Center studies. That is being migrated to Wash U. at St.
45 Louis, but it's taken about 2 years, and it's not up yet.

46 They are very enthusiastic about doing it and I'm sure it will
47 look much slicker than what I did and so people recognize the value of
48 that quick ability to formulate a query for the large datasets.

1 One other thought that your comments triggered is on the
2 consumers of the data and users, and I think here, my part of the world
3 has a lot of deficiency. The law schools. A lot of this is law-related, right,
4 and it sometimes takes legal education or at least legal knowledge to
5 interpret even what we're talking about and the law schools sort of, I
6 think in general, fail miserably in requiring law-trained people who might
7 be the Congressmen and the like of the future to get any training at all in
8 evidence-based law making, for example, that we don't require anything
9 on data analysis or even understanding what it is.

10 I think the law schools could do a better job of requiring future
11 lawyers to actually be able to read data and interpret it—be intelligent
12 consumers.

13 **Mr. Goodnow:** I think Nicole makes a great suggestion about studying
14 jurors. They are the foundation of our fact-finding system and we know
15 very little about their experience or our experience with them.

16 **Ms. McLaughlin:** Hello. I'm Karen McLaughlin. I'm Director of the
17 Massachusetts Human Trafficking Task Force.

18 I wanted to echo what Steve Derene and a few other people have
19 commented about regarding lapses in education about using data.

20 I see the crime data, the National Victimization Survey, and the
21 other things that BJS is doing completely misrepresented in the media.
22 People quote the figures and don't have any idea of what they're really
23 saying.

24 I've been educated, I think, by BJS in the last several years
25 working on hate crime data and more recently on trafficking data. Also,
26 we were visited by people from BJS to look at Boston as one of 18 cities
27 that were looked at in terms of crime rates this year.

28 So, I feel like we've had a great education on specialized
29 victims issues and broadly on what's happening with crime issues in our
30 city, and I think that I just have to share the same concerns that Steve
31 Derene raised.

32 I think our community of victim assistance providers is really
33 very poorly educated on this, and I think it's also a combination of trying
34 to grasp what—they are trying to serve all these new victim categories as
35 they sort of become more a part of the public policy debate, child abuse,
36 rape, domestic violence, vehicular homicide.

37 It just goes on and on, and I think they're asked to be specialists
38 in these other areas and learn about what's happening with data in these
39 other areas and it's just very, very difficult.

40 There are a lot of victim assistance organizations here, national
41 and otherwise. I think we're usually in town in Washington for Victim
42 Rights Week and during the month of April. I think that would be a fine
43 time to try to coordinate.

44 I know we have no money to do anything, but I would love to
45 see even a small group of people continue on, and I'm also very
46 concerned, seeing the budget the way it is. And \$2 million for BJS, as we
47 were saying earlier, is just a pittance.

1 I look at what we're doing internationally with other
2 governments and this organization, this agency, can't possibly meet the
3 mandates of what is on their plate right now.

4 So, I'm just wondering—before we all leave here today—what
5 are our next steps? I think if we don't have a plan, we will have
6 generated a lot of good ideas for nothing.

7 I think the other sort of approach may be that when we're
8 looking at design issues and looking at when the data is released in the
9 National Victimization Survey or whatever, to bring people back in, to
10 have focus groups, to work with even a small cadre of people to work
11 together on the civil and criminal justice side. I'd like to see a little more
12 intersection between those issues and we referenced that earlier in the
13 panel and I think that's really an important area where they intersect.

14 I want to thank everybody for their time and thank BJS for
15 having the innovation to do this.

16 **Mr. Schaffler:** I'll leave 'next steps' to BJS, but I think you're right. In
17 today's information-saturated world, the true value-added for people who
18 analyze data is the ability to present it in an intelligible form to a non-
19 technical audience.

20 I don't know how to say it any clearer. There's the whole art and
21 science of information design and the way to make the data tell a story.
22 There's the saying, "data doesn't speak unless spoken to." You don't get
23 speech by looking at rows and columns. You get it by looking at pictures.
24 That expectation is being set over and over again everywhere else people
25 experience things and so we're no different. The expectation is, well,
26 show me something. Netflix can do it, Amazon can do it.
27 The Pew Research—Pew website does a nice job of taking little
28 information graphics and showing them to people. So, why can't you do
29 that? And we have to be able to.

30 Our support from BJS allows us to spend almost as much time
31 doing that with the caseload data that we get as we do collecting the data
32 in the first place, because if you don't do that, then it kind of doesn't
33 matter that it's there, and we struggle still with trying to find the
34 reasonable small set of interpretable graphics for some of these
35 fundamental management issues for busy non-technical people and that's
36 just ongoing work.

37 But I think you're right. Sharing strategies for that would be
38 useful.

39 **Mr. Lynch:** I'm sorry. I didn't want to be outdone by Brian. So, I
40 thought I'd speak.

41 I have a question for Professor Eisenberg. It's interesting that,
42 when you gave your presentation, you talked about a household-based
43 data collection. And all the discussants really started talking about the
44 courts afterwards. I think that in addition to Barbara Curran's work in
45 1997, there was another one you left out that was done by Temple
46 University, by the ABA, which I haven't seen any reports from but I
47 know was fielded.

48 You have a private group that's interested in this data, as well.

1 So my question is: is this household-based data collection really
2 essential? Because this civil justice system is largely private. Two
3 individuals disagree about something and when they bring it to the court,
4 it becomes public. And then we have a group of statistics that attempt to
5 monitor that once it's public.

6 On the victimization side, the police intervene quite early and
7 one of the reasons for a victimization survey is people wanted to monitor
8 that public service.

9 So, because it's largely private and because there is a group that
10 is interested in these data, why not leave it up to the ABA? Why should it
11 become a permanent feature of BJS to collect this kind of information?

12 **Mr. Eisenberg:** I think if the ABA did it regularly, that would be a great
13 answer. The study I quoted was from 1977.

14 **Mr. Lynch:** The other one was from the early '90s.

15 **Mr. Eisenberg:** Okay. So, is every 15 years enough? And they don't
16 have a common methodology. They don't have the resources to do it
17 more often. They're way too small to get any kind of demographic, really
18 good demographic breakdown—and other problems.

19 On the public-private, I guess it seems to me largely an artificial
20 line. If we think the court system supplies a public service and we want
21 to take it from the perspective of the court system, then one could say,
22 well, even to understand the court system, we have to understand the
23 universe of disputes that are not making it into the court system.

24 **Mr. Lynch:** Well, shouldn't we be—you could also say we rely on the
25 ABA, too.

26 **Mr. Eisenberg:** Yes, that would be valuable. I agree. I'd be happy if
27 someone else took it up, but what happens—including people like me—is
28 we crank up once a decade to study something and we go forward.

29 One thing the government supplies is sort of an institutional
30 infrastructure that's permanent, that will keep doing it, or I guess I could
31 put it another way.

32 Think about law: Is it important in society? I think law is a
33 distinct aspect of society that interacts with many other aspects of
34 society. but I would say government should strive to supply at least as
35 much information about the legal system, both disputes that make it to
36 court and not, as we do, say, about the economic system.

37 We almost gag at the notion of the government not keeping
38 track of inflation or the rate of bank loans or the rate of defaults on
39 mortgages or unemployment or all those other things. I don't know why
40 we don't gag at the notion that we don't have similar information about
41 the legal system and it seems to me it's a real gap in our knowledge about
42 society.

43 There are more economists than law professors, maybe.

44 **Mr. Schaffler:** I guess I would challenge the notion of this public-
45 private distinction in a couple of other ways.

1 In the first instance, when people come to court, they're making
2 use of public resources. So, the old paradigm was this is a private
3 dispute. You tell us when you're ready. You come into court and say
4 you're not ready, we'll say thank you, just let us know when you are, and
5 if you have to come back 48 times before you're ready, no problem.
6 We'll pull that file 48 times, we'll summon juries, we'll do all that stuff,
7 but if you're not ready, you're in charge. And that was the old "the
8 lawyers are in charge" paradigm.

9 I think courts went through a big shift, realizing that we're
10 stewards of public resources. We have a responsibility to make sure these
11 cases are adjudicated in an efficient and effective manner—on top of
12 which, you have the whole development of case law in our legal system.

13 Those civil cases are a public good because they create the
14 statutory framework that persists going forward. So, for that reason, also,
15 it's of great concern how those cases are adjudicated.

16 **Mr. Goodnow:** I would just echo the other two comments. I think it's a
17 fundamental role of government to provide a public dispute resolution
18 forum, and to simply relegate that to the private sector would be a huge
19 change in our society and, I think, problematic.

20 **Mr. Cohen:** Just to add one thing. We've only looked at trial court
21 outcomes because those are the outcomes that are most easily accessible
22 to the public. It's very difficult to get information on outcomes that end
23 in a settlement.

24 Typically a settlement outcome's not reported to the courts at
25 all, and so that's why the vast majority of our civil research really has
26 focused on those trials, to the exclusion of other dispositions.

27 **Mr. Davies:** Hi. I'm Mark Davies. I'm from the New Jersey
28 Administrative Office of the Courts, and mostly, I just wanted to let you
29 know that when you're initially making your comments, I had a list of
30 things that I was hoping that would be addressed and you hit on a lot of
31 them. I just wanted to affirm that the ideas of getting information about
32 self-representation, information about access—as far as language goes,
33 and getting information about time goals is pretty important.

34 We're looking at time goals right now. We rely on taking a look
35 at the court rules, and what our discovery rules are, and how long we can
36 reasonably expect things to take, but we are not really getting a public
37 view as to what the expectations are, and how that is affecting our filing
38 rates are. Maybe if the expectations don't meet what the court can
39 provide, maybe we aren't even reaching it.

40 The other thing. You can put up subprime as just kind of an
41 example of how it affects society and at least in New Jersey, we can't tie
42 it necessarily to subprime, but somebody else also mentioned the civil
43 filings going up.

44 In New Jersey, we have a million filings, and over 600,000 of
45 them are either civil or special civil under \$15,000. In the first 6 months
46 of this court year, we're seeing a 15 percent rise in the cases that are
47 under \$15,000. In particular, contract cases under \$15,000—which are
48 basically the debt cases that are being collected—are up 30 percent, and
49 we're assuming that that's partly to do with what's happening in the

1 economy and the sub prime. So the effect on the rest of what's happening
2 is quite important.

3 **Mr. Goodnow:** I think your addition of the public view of what is timely
4 and what is not is a great addition to the ABA and Conference of State
5 Court Administrator standards for timeliness in courts. Because I suspect
6 those standards (both developed several years ago) had too little input
7 from the public. I think that's a great addition.

8 **Mr. Schauffler:** As an example of the kind of expectation-setting that's
9 going on, many courts now have online payment or online checking of
10 the docket or online traffic school. But interestingly enough, in the U.K.,
11 there's a form of small debt dispute resolution which is essentially online
12 negotiation.

13 People are just talking to each other through the court's web
14 interface and negotiating back and forth. So no one wants to go to court.
15 That's the premise. That's a big waste of time. So, let's figure out this
16 other way to just get a conversation started that's cheap. I can do it at
17 midnight in my bathrobe and I can get it over with. When you do the
18 math on the economics of collecting those debts, you owe me \$1000 and
19 I collect \$700 and I'm good—because I'm going to spend a lot more than
20 that to get it.

21 So, these notions of public expectations are also part of what
22 courts [consider]. And this is a real shift in behavior at this end of the
23 litigation spectrum, which is (in volume) huge.

24 **Mr. Greene:** Steve Greene. In reading the paper, I was struck by the
25 almost arbitrary nature of the distinction that we're drawing between the
26 civil and the criminal, which is usually a function of what gets passed in
27 the legislature.

28 I think back to the Tylenol incident where all of a sudden,
29 product tampering became a crime. What really is the distinction?
30 Particularly in the notion of looking at our justice system as a dispute
31 resolution mechanism, it seems to me that there's another player
32 available which may or may not be appropriate to study.

33 It's another item to stuff in the knapsack, I guess. My
34 background is at the state level—particularly in administrative regulatory
35 areas—and so you have a whole realm of access to worker's comp, crime
36 victim's comp, and medical malpractice compensation programs at the
37 state level. There's a Federal Vaccine Injuries Compensation.

38 My city has a cable TV complaint guide I can call. So, it just
39 seems to me there's a whole spectrum of areas where government can
40 help fulfill that function. It's another form of alternative dispute
41 resolution that keeps it out of the courts in most cases, although there's
42 probably a right to appeal to the courts.

43 So, I just wanted to fill that in. If you're looking at a wide
44 spectrum of what we need to know about helping people resolve
45 complaints, that's another sector, I think, that's been overlooked. I don't
46 know if you have any thoughts about that.

47 **Mr. Schauffler:** One of the ways that we've tried to approach the issue
48 of performance measurement in courts at the National Center is to

1 promote the idea that you're trying to evaluate the performance of the
2 entire organization (which suggests, based on a few fundamental notions,
3 that all management decisions are trade-offs). So if you're going to go a
4 little slower to raise public satisfaction, you have to figure out where the
5 trade-off is that makes sense there. Or if you're going to take resources
6 out of the civil side in order to move the criminal cases and slow down
7 the civil, then you have to balance—make transparent that you're making
8 trade-offs and evaluate and measure the results of them. So, in that sense,
9 knowing that the civil time to disposition and the criminal time to
10 disposition in the court is mostly relevant insofar as it tells you how
11 you're doing at balancing the resources.

12 The civil division can't succeed at the expense of the criminal
13 division, but this is again a big shift in the mentality of the staff and
14 judicial officers doing those cases. They have been trained to think of
15 themselves as experts in the thing they do—with juvenile delinquency,
16 domestic relations cases, or whatever it is—and the idea is that you're not
17 trying to evaluate them individually but you're trying to get them to
18 participate in an exercise of managing the court. And operating
19 collectively is a huge part of the shift.

20 But I think you're right. These distinctions—especially now
21 when the courts are also involved in the business on the family side of
22 trying to bring all these cases together.

23 So, let's say mom and dad are getting a divorce and the kid has
24 a delinquency case and there's a civil judgment going against them. The
25 idea is one judge, one family trying to rein this in to reduce the
26 probability of conflicting judicial orders in these different cases, which
27 would just set the path for failure along the trajectory of these cases. So
28 they can coordinate these responses, which makes the point you're
29 making in a different form.

30 **Ms. McLaughlin:** Just to carry on this discussion of the civil-criminal
31 interface—because it's true, there are many people here that are
32 interested primarily in criminal matters and to bring up the civil matters
33 opens up a whole interesting new way of looking at things.

34 I looked at the victimization discussion earlier in the afternoon.
35 I'd just like to point out that there was a lot of police bashing going on
36 there, on the assumption that victims don't report their victimizations and
37 what can we do to find out why they're not doing it, and they must not be
38 reporting because they know the police will not be responsive.

39 What the civil side tells us is wait a minute, maybe victims
40 aren't reporting not because they're upset at the police but because they
41 have other alternatives for dealing with their victimizations. For instance,
42 civil justice. For instance, compensation boards. For instance, family
43 court. All kinds of different tools that courts can provide that are real
44 options for victims and so the point is, that we don't know.

45 We just don't know what victims are doing instead of reporting
46 to the police. Are they doing this? I would predict they are, but how
47 would we know? I guess BJS will find out for us.

48 Another point. This is more of a statement than a question. Hold
49 on to that question. My statement is I wanted to just thank Professor
50 Eisenberg for pointing out to us that in the crime-civil interface, we don't

1 study white collar crime.

2 When we talk about crime, we have to remember white collar
3 crime is really important, and the effects of white collar crime are
4 monstrous. Now, with crime statistics, generally we're still thinking of
5 the UCR or the National Crime Victim Survey.

6 A way to get at white collar crime is to look at civil litigation
7 and the whole tort liability structure. You say, well, that's not crime. To
8 the victims, it might be. It doesn't matter what you call it. There's been a
9 victimization.

10 So, my statement is that if people want to talk about being
11 criminologists and they want to study white collar crime, this is the way
12 perhaps to do it, but back to my question.

13 How would we know whether the victims are turning to the
14 courts?

15 **Mr. Schauffler:** How do we know if the victims of crime are turning to
16 the civil justice system?

17 **Mr. Eisenberg:** We need to ask them.

18 **Mr. Schauffler:** I don't think we know. I think that's sort of the premise
19 of Ted's proposal: until you ask that question, you don't know what
20 people are doing. and as to the other one of using the notion of white-
21 collar crime and torts interchangeably, I've taken enough risk [on] a
22 prosecutor issue—I'm not going there.

23 **Mr. Eisenberg:** I think that the line between civil and criminal is really
24 important. When did identity theft become a crime? Presumably when it
25 was bothering enough people that public policymakers got involved.

26 Crimes, except for the old common law-type crimes, don't just
27 spill down upon us from heaven. We've defined them, and one way to
28 consider whether we're making criminal the right things is finding out
29 what people view themselves as victimized by. So maybe some of the
30 things that are criminal should be made so, and some of the things that
31 are shouldn't be made so—depending on how people are feeling.

32 **Mr. Cohen:** And entering court data collections would never show if
33 these two subject areas are intermingling in any way. So something to
34 think about in the future.

35 **Ms. McLaughlin:** Regarding your point about what's going on with
36 victims: I was involved in a national survey, (I hesitate to say it was in
37 1975, but it was the first one where we were really looking at how many
38 victims were so-called defaulting from the system) and we discovered
39 that they were, as they were thought to be at that time, non-cooperative
40 throughout the whole process.

41 When we interviewed them (it was a major survey in
42 Wisconsin—I'm happy to give people the data, I think it's still relevant
43 today) they said that the police were the least problematic, that they felt
44 that there was a lack of sensitivity on the part of the prosecutors, but they
45 weren't nearly as bad as the courts.

1 So, they attacked judges. That level [of dissatisfaction] was the
2 highest of all three—criminal judges. There really wasn't a piece on the
3 civil side. There were a few questions that related to alternative dispute
4 resolution and things like that, but nothing elaborate on the [civil side]
5 much more on the criminal side. But I think it really shook our notions of
6 why people were not coming forward.

7 The other reason people said they weren't coming forward is
8 that they didn't see themselves as a crime victim and even after being
9 adjudicated a crime victim, some people said I don't self-identify as a
10 crime victim.

11 It's what we were saying earlier about the status as one sees
12 themselves as being opposed to what the courts might decide, what the
13 charge is, what the arrest is, anything that the court system's doing.

14 I think it's a real education process for victims to then believe
15 that in the final analysis, they were a victim. We had stalking cases and
16 people had no reference for what stalking actually is. Did they report that
17 crime? No, but they were on repeated charges of assaults later and they
18 didn't think stalking was a crime—and at that point, it really wasn't
19 identified as a crime in terms of how we think of it now with enhanced
20 penalties and various other things.

21 So, I think it's much more complex, and we have all those
22 instruments should you want to see them. We asked a lot of questions
23 about the courts.

24 **Mr. Cohen:** Well, I think this ends our Courts and Adjudications part of
25 the Data Users Workshop. Thank you very much. It was a great
26 discussion. I certainly learned a lot, and I'm going to take what I learned
27 back to BJS and go from there.

28 I think we turn the forum over to Mr. Allen Beck.

29 **What BJS Has Learned and Next Steps**

30 **Mr. Beck:** Well, I have the task of saying what we learned and what our
31 next steps are, and that certainly is a challenging task, but let me say this
32 has been a great day for BJS, and I hope you all feel similarly.

33 I think we got our money's worth in terms of putting together
34 this day. I must say it feels good to think big. It feels good to entertain
35 the array of options that perhaps we haven't entertained in the past (and
36 need to as we push forward in the future) and so we really have a
37 richness of ideas and recommendations and so the challenge now is to
38 sort all this out and determine what we do with these competing demands
39 and recommendations.

40 Obviously BJS is very fortunate in that we have the CN STAT
41 panel. The members are here today and certainly part of their challenge is
42 to help us sort this out, to kind of guide BJS into the future, provide
43 recommendations as to where we should go and perhaps how we should
44 do it, and I emphasize the "how we should do it" a little more than simply
45 the recommendations.

46 So, insofar as the CN STAT panel can fulfill that for us, we will
47 take it. We'll take their advice, but, of course, we're not going to sit still

1 in the meantime while the panel does its work.

2 I'd like to talk a bit about the next steps. The obvious one is to
3 keep talking. The obvious one is to keep talking to the users, to the
4 practitioners, to the data providers, to the policymakers, to really have a
5 more robust and active engagement of the entire set of stakeholders that
6 we have relative to BJS, and this is a great opportunity.

7 This is the first meeting but not the last. Obviously we can't do
8 this every month or perhaps every year, but we certainly understand the
9 principles of engagement.

10 We obviously need to integrate our users into the development
11 of our surveys, and let me say quite honestly we haven't done that in the
12 past. We haven't done that as fully and necessarily as we need to. So, we
13 really truly need to reach out in the process of reviewing our surveys. We
14 need to reach out to the users, but earlier than that, I think we need to
15 reach out to all the stakeholders as we develop the surveys themselves.
16 So that may mean we rely on focus groups or advisory groups.

17 Let me say that BJS does not have a strong history of relying on
18 focus groups or advisory groups, but I think the world is changing. The
19 world of information is changing and certainly the need to engage our
20 stakeholders to better inform our work is ever present as the dollars
21 become tighter and the competition for information increases, and so I
22 think the call here is to engage our users and all stakeholders in that
23 process.

24 Obviously we also need to enhance our dissemination and
25 monitor the use of our information to better inform the analysis, and
26 likewise, for that analysis to better inform the data collection and
27 ultimately that data collection to be informed by our data users as well as
28 our data providers. So, it is a very active engagement that we are setting
29 forth.

30 A second thing I think we learned here today is that we need to
31 find opportunities for teamwork. That is, we need to team up with
32 researchers, practitioners, and advocates because we can't simply rely on
33 in-house expertise to do everything, to address all issues. We really have
34 to reach out to get that expertise. We simply do not have the capacity to
35 expand staff nor retain staff for all purposes and to address all issues in a
36 more precise way.

37 So, I think we need to seek opportunities for that teamwork—
38 and there were expressions of that throughout the day—whether it be in
39 the law enforcement area or in NCVS, or in courts.

40 The real need is to team up with researchers to more fully
41 analyze the data, to team up with the data providers, the practitioners and
42 advocates to better inform the data that we collect.

43 A third point is that we need to sort out priorities and that, of
44 course, is the challenge when you have the opportunity to think big.
45 There necessarily is restraint that one has to impose simply because
46 although the opportunities are there, the capabilities may not be. And so
47 in thinking this through and sitting back and listening today, I think there
48 are some themes that have emerged as to how we do that.

1 One is to consider the BJS role, what BJS is and what BJS isn't,
2 what it can be and what it shouldn't be and what it can't be. Obviously,
3 BJS can't be all things to all people, can't address all issues, and this, I
4 think, finds its expression in the law enforcement area, for one.

5 Obviously there's great tension between the data providers of
6 UCR with analysts that may be beyond the control of the data providers
7 and so moving UCR over to BJS is not a simple task, otherwise it
8 probably would have been done a long time ago.

9 There are issues of ownership, there are issues of control, and so
10 how do we overcome those issues? I think we overcome those issues by
11 teaming up with those law enforcement agencies to show our stuff, to
12 show that we can analyze these data and what the data speak, not let the
13 policies that perhaps [dominate] our discussions of the day drive those
14 analyses.

15 So, part of our ability to reach out to the law enforcement
16 community and to enhance statistics is really about ensuring the
17 objectivity and integrity of the data analysis and what BJS should be.

18 We have issues that are related to our leadership in the field,
19 leadership related to providing social indicators. After all, BJS is in the
20 business of social indicators. NIJ typically (as we define them) does
21 research. In doing social indicators, we have—implicit in them—various
22 definitions and counting rules. So part of our role at BJS is to provide
23 that leadership to the law enforcement community, to the courts, to
24 corrections, to the wider world. I think some of the conversation we had
25 today about templates is really about that leadership—of providing that
26 direction for definitions, for concepts, for counting rules, for procedures,
27 things that we do pretty well, we hope we do pretty well, and certainly
28 have some expertise in.

29 Obviously there's a great deal of tension between BJS as a
30 national or federal statistical agency and collecting data that is in real
31 time, that's operational, and more limited in scope; that is, small area in
32 nature.

33 There is no tension in the sense that we provide aggregate
34 snapshots to the social indicators of research, but the information gets
35 more meaningful when we look at it in systems, in jurisdictions, in small
36 areas. It becomes more interpretable and more usable and so the tension
37 for a federal statistical agency is that national scope, that national
38 mandate versus the need for data that's more operational, more
39 interpretable and more usable.

40 I think we can have our cake and eat it, too. I think there's an
41 option that we have that can address those sub-national interests to get
42 data at a sub-national level, whether it be agency level or sub-agency
43 level. We even heard that today. Neighborhoods. That is to think of our
44 work in terms of national collections and supplements, national
45 collections and panels, national collections and then jurisdiction-specific
46 collections that may augment that national information.

47 One of the challenges is that information needs certainly outstrip
48 the ability to measure and provide information. The requests for
49 information come flying at us every day and the complexity is that
50 information oftentimes is not collectible, simply isn't. It's not collectible

1 because there are no centralized standards and uniform definitions and
2 counting rules out there.

3 We have a very complex world of criminal justice, that's a good
4 thing, and so we try to impose comparability when there isn't. We try to
5 collect data when oftentimes we can't and that's simply because the
6 information infrastructure isn't there. The capacity to respond to our
7 surveys is often very limited.

8 So, when we think about trying to make these data more useful
9 and trying to make them more interpretable, we really have to take
10 measurement seriously. I think the way to do that is to identify cities and
11 agencies that are perhaps more sophisticated, that perhaps have the
12 capacity to provide this information in comparable ways, and some of
13 that work has to do with taking inventories of that capacity, whether it be
14 law enforcement agencies or courts, and so we can learn the richness of
15 what we need in areas where perhaps the measurement is more possible.
16 But to do a complete enumeration of the 18,000 law enforcement
17 agencies on all the dimensions we talked about today simply is not
18 possible, nor should we do it.

19 So, we need to think about panel designs and implementing
20 those panel designs to complement our national collections and that is
21 one of the takeaways that I have here, one of the recommendations.
22 People may differ on that.

23 You know, there was discussion in the law enforcement panel
24 about the need for sub-national data and the need to drill down, and one
25 of the surprising things is there was never a discussion of the officer
26 perspective, the perspectives that law enforcement officers might have,
27 and I think it's somewhat surprising.

28 We know in the law enforcement agency there are critical issues
29 related to recruitment, retention, to the nature of the work, the challenges
30 of law enforcement agencies, and one way to flesh out some of our
31 understanding of that is to talk to the officers about their circumstances,
32 their challenges, how they do their work. (I just throw that out there as
33 something to think about.)

34 We certainly got a buffet of specialized studies today, in law
35 enforcement, NCVS, courts, and that's a great thing. That really helps us
36 as we think about what we might do on the cheap, what we might do that
37 might not be quite as expensive to do as some of the other things—data
38 on crime analysts, data on training, some specialized surveys on
39 community needs and police satisfaction, looking at emerging issues on
40 gangs and private sector policing—lots of richness there that I think we
41 take from this. And we'll go back to the office and kick these ideas
42 around a little bit. I think that's great—that's worth the day.

43 As a statistical agency, we always have the pressure of time and
44 timeliness and there's no simple solution to timeliness, but I don't think
45 we ever get to real-time data. Maybe some day everybody will be wired
46 in and keying it in and we'll have the latest crime statistics the next day.

47 Of course, if we expand the array of things we collect, we
48 should expect it to take longer, not shorter, to collect those data. If we
49 take timeliness seriously, we have to make choices. We have to decide
50 what we can do without, what is too burdensome, what will delay our

1 collection to enhance the timeliness and ultimately the utility.

2 So, one suggestion we have is to take the core and supplement
3 approach in which we trim the core collection for our big collections and
4 supplement it with the things that take a little more time to achieve
5 greater timeliness along the way.

6 One last thing. Let me say that all of the panels were fantastic,
7 really terrific. I feel that the time was extremely well spent.

8 One of the things I liked about the NCVS panel was it really
9 was a call to getting back to the original intent of NCVS—to deliver on
10 the promise of NCVS. And the promise—in my mind—is not simply
11 about measuring level and rates and comparing those levels and rates
12 over time, but to understand victimization and, in that understanding,
13 understand how to reduce it and also how to be more responsive to the
14 needs of victims.

15 That is what one of the big promises of NCVS always was, and I
16 heard that in there, the need for greater research, the need to understand
17 social context, and I think that gives us a good push for investing more in
18 those kinds of analysis.

19 We need to continue this dialogue, to get real about the new age
20 of information and we're not alone. The information world has changed.
21 It is not that of 25 years ago when I started at BJS, and so we need to be
22 far more engaged with our users, with our stakeholders, and to be more
23 thoughtful about why we do things and how we do them.

24 So, thank you. Thank you so much for coming.