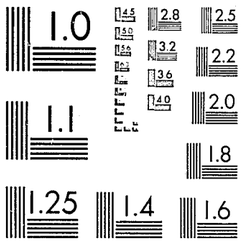

U.S. Department of Justice
Bureau of Justice Statistics

Information Policy and Crime Control Strategies

proceedings of a BJS/SEARCH conference

papers presented by

James Q. Wilson
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Bureau of Justice Statistics reports

(revised June 1984)

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Contents

Foreword

The papers presented here examine a simple but compelling premise--that crime-fighting program initiatives and criminal justice information policies are interdependent and should be considered in conjunction by legislative and administrative policymakers. Although it has come to be a normal part of the policymaking process today to explore the economic and environmental impacts of proposed new programs, too often little or no attention is given to the information impact of proposed criminal justice programs. Yet virtually every new crime-fighting program involves important information implications that can seriously affect the success of the program. First, in formulating new programs, policymakers need current and accurate statistical and operational information about the criminal justice system, especially about aspects of the system directly affected by the proposal. The availability of such information may be limited by shortcomings in information system capabilities or by sealing or purging standards or other criminal justice data retention standards. As a result, policymakers may lack the data they need to make sound policy judgments at the outset. Second, many crime-fighting programs rest on assumptions made by policymakers about the nature and extent of operational information that will be available to the practitioners who implement the new programs. For example, legislators may assume that complete and current criminal history records are available to prosecutors and judges for use in making charging and sentencing decisions under career criminal programs. In fact, such data may not be available for identifying repeat offenders and the success of selective prosecution and enhanced sentencing programs may be dependent upon significant changes in disposition reporting systems, sealing and purging policies or juvenile justice recordkeeping laws and policies. Finally, changes or improvements in the capabilities of criminal justice information systems may be needed to ensure the availability of accurate statistical data needed by policymakers to monitor the progress of new programs and to make effective adjustments by remedial legislation or further policy initiatives. Thus the process comes full circle.

The relationship between information policies and crime-fighting programs, from both an academic and a practitioner's point of view, are explored and highlighted in this collection of papers. Leading criminal justice scholars and researchers discuss a wide range of issues, problems and trends related to the impact of information law and policy on the effectiveness of criminal justice programs. And practitioners and policymakers from state and federal criminal justice agencies representing the full spectrum of the criminal justice system discuss some of the practical aspects of the interrelationship between information policy and such key crime-fighting initiatives as career criminal programs, correctional programs, victim assistance programs and juvenile offender programs.

This volume represents the first comprehensive treatment of this important subject at the national level. As such, the papers should constitute a valuable addition to the literature dealing with criminal justice program development and management and information law and policy, and hopefully will help to focus the attention of legislators and other policymakers, as well as criminal justice system practitioners, on the all-important relationship between accurate and complete information, on the one hand, and effective criminal justice program formulation and management, on the other hand.

The preparation of this volume and the conference upon which it is based were supported by a grant from the Bureau of Justice Statistics, U. S. Department of Justice. Special acknowledgement and thanks are due to Benjamin H. Renshaw, III, Deputy Director of BJS, and to Carol Kaplan, Director of the Federal Statistics and Information Policy Division of BJS, for their support and assistance in planning and holding the conference and defining the issues to be examined. Acknowledgement and thanks are also due to Professor Alan F. Westin, who assisted in planning the conference, chaired the proceedings, and edited the papers presented here.

Gary R. Cooper
Executive Director
SEARCH Group, Inc.

Editor's introduction

Alan F. Westin
Professor of Public Law and Government
Columbia University

The 1982 conference on which this collection of papers is based was the first national gathering to examine, as a broad general phenomenon, the role that information and information policies play in managing the criminal justice system in the United States. Two main groups were invited to participate. The first were scholars in law and the social sciences concerned with how information resources and uses affect the operation of our criminal justice system, its effectiveness, and its impact on citizens and society. The second group were practitioners from criminal justice agencies and support services, those with planning and operating responsibilities who have important experiences to recount and judgments to offer about how well we are developing and managing information for criminal justice programs.

The conference program was designed to explore four major areas:

1. How policymakers have defined the content of information required (or thought to be required) to administer the criminal justice system. This includes information to carry out particular criminal justice programs, to improve the integration of interagency activities, and to produce the data necessary to evaluate program operations and provide statistical resources for both participants and observers of criminal justice activities.

2. The organizational processes by which criminal justice agencies gather and use information. This concerns the procedures by which agencies collect information, how different types of information are valued and treated by system participants, the conflicts over information "ownership" and control that arise within and between criminal justice agencies, and how all these information-related activities of organizations affect the execution of criminal justice programs.

3. The ways that new information technologies are affecting traditional choices and practices in criminal justice. This includes not only tracing the impacts that adoption and operation of computers and communication systems have had on existing criminal justice agencies but also considering new types of agencies and interagency relationships that have arisen primarily because of new information-handling capacities made possible by EDP systems.

4. How information law and policies are affecting criminal justice programs. This concerns the ways that legal rules and organizational policies governing the collection, holding and dissemination of information are affecting criminal justice programs, in their formulation, development, administration, evaluation, and revision.

The call to the conference also asked participants to help identify and analyze problems that arise in the current criminal justice system because of different kinds of information inadequacies. The goal was to identify situations in which information critical to success of criminal justice programs has not been available because of legal or administrative constraints, poor data quality, ineffective utilization, or other causes.

The conference was asked to explore just why such information weaknesses occur:

- How often is this a failure of program proponents to consider and specify just what information will be needed to carry out their programs?

- How frequently do proponents fail to examine whether key bodies of information are legally or administratively available, or how much acquisition of such data will really cost?

- How conscious are legislators of these issues when they receive proposals for new programs?

- How much attention is given by administrators to drawing up information plans and creating efficient information-handling mechanisms to gather such information and achieve the quality of data needed to support program operations or decisions?

- How well do interest groups, the media, and the public understand these issues of information collection and boundaries, and are we generating adequate public expressions of value-choices to guide policymakers in weighing how to increase information resources for crime control and offender punishment without unduly infringing on basic citizens' rights?

In its Background Paper to participants, the SEARCH Group explained the way that the conference would be structured, and the kind of "information impact analysis" that the conference would explore:

"The first day of the conference will describe and evaluate the existing criminal justice and information policy environment. The second day of the conference will consider the information impact of key crime fighting programs, specifically (1) career offender programs; (2) correctional programs; (3) victim assistance programs; and (4) juvenile offender programs.

"These particular program areas were selected for discussion because they represent crime fighting programs that are presently in wide use and because they reflect a wide spectrum of criminal justice information relationships, such as local to state exchange of data, state to state exchange, state to federal exchange, criminal to non-criminal justice exchange and adult system to juvenile system exchange.

"Ideally, a complete analysis of these particular crime fighting programs would cover the following points: (1) the nature of the priority program, including the need for the program, a description of the mechanics of the program and a description of the experience to date with the program; (2) an identification of the demands made by policymakers for criminal justice statistics and information while formulating the program; (3) an identification of any legal or administrative impediments to meeting the policymakers' demands; (4) an identification of the assumptions about information resources and capabilities made by policymakers in formulating the program; (5) an identification and analysis of the information consequences of the program; and (6) recommendations for policymakers regarding a methodology for identifying the information impact in formulating future programs of this type, as well as other types of criminal justice priority program initiatives.

"This kind of structured 'information impact' analysis by experts in their fields is certain to be useful. For example, it will be helpful to understand what types of data policymakers typically seek or are presented with when they consider corrections legislation. Do policymakers seek and/or receive statistical projections of future prison populations? Do they seek and/or receive data about the behavior of offenders who participate in halfway house experiments or in various types of diversion programs?

"Similarly, it will be extremely useful to learn more about the legal and administrative impediments to data acquisition faced by legislators and other policymakers when they consider the adoption of new crime fighting programs. What effect, for example, do statutes which provide for the sealing or purging of juvenile offender information have upon the ability of policymakers to evaluate the extent and nature of juvenile crime? Do archival and data retention standards used by criminal justice agencies interfere with the development of statistics about career criminals?

"Many crime fighting programs also rest on assumptions about the nature and extent of available information. For example, some victim assistance programs may rest on the assumption that victim organizations or agencies, once they obtain victim data, can or will adequately protect the confidentiality of this data. Policymakers may assume that criminal history data is available to prosecutors and judges for use in sentencing decisions under career criminal programs.

"The adoption of crime fighting initiatives may also result in significant information consequences. If a career criminal program, for example, is to be successful, significant changes may have to be made in juvenile justice recordkeeping laws and procedures; in disposition reporting systems; in sealing and purging policies; in policies for the interstate exchange of criminal history data; and in the type and amount of non-conviction data retained on rap sheets. Without these kinds of changes, individual offenders may not be properly identified as repeat offenders.

"Information changes may also be required in order to produce complete and accurate statistical data about repeat offenders. Such statistical data is dependent upon the completeness and accuracy of individual criminal history records and upon the capabilities of criminal justice information systems. Without adequate statistics, policymakers cannot monitor the progress of remedial programs or make effective adjustments in those programs.

"These examples clearly indicate that when policymakers consider the adoption of crime fighting programs they need to be aware of the information requirements, assumptions and consequences of such programs. With such awareness, policymakers can gauge whether proposed crime fighting programs will be effective or will need restructuring, given existing information resources or given their potential to result in undesirable information consequences. Bringing these information impacts into focus will be the purpose of this conference."

The conference papers that have been revised and edited for this collection can be seen as representing something of a milestone. During the 1960's and 70's, the energies of leaders in the criminal justice community and scholars working in this field were focused heavily on ways to apply the new capacities of information technology to the goals of criminal justice, in an era of rapid social change and deepening crime-control problems. It was a time marked by soaring crime rates, growing public anxiety over protection of life and property, major changes in American constitutional and public law over race equality, privacy, and due process for persons in the criminal justice system, sharp debates among social analysts as to crime causes and effective crime-control strategies, and efforts by criminal justice leaders to define and develop a more "unified" criminal justice "system." There was also growing attention to the need to build broad state and federal data bases and to conduct better national surveys of crime and crime-related events, as the basis for coherent planning and evaluation of criminal justice programs by experts and society alike.

In the early 1980's, we were moving into a new situation, one that represented the departure point for the conference discussions. The conference design assumed that information technology has progressed to the point where problems of building and affording information processing capacities no longer represent a significant limitation. Dramatic reductions in the costs of computing and telecommunications, development of flexible software to manage data bases, and the emergence of a wide array of mini and microcomputers and distributed data processing options now permit organizational leaders to put powerful and affordable information-processing capabilities wherever the leaders want to locate them. Solutions no longer have to be twisted and tortured to fit the rigidities of early technology. In addition, the steady proliferation of computers throughout the various agencies of criminal justice means that more and more offices have the capacity to process information through EDP systems, creating a "universal potential" for systematic programs.

This means that information-system decisions today are preeminently policy choices rather than technological imperatives. The key issues are, as we noted earlier, what kinds of data ought to be collected? Who should collect these? How should the data be used? What effects would such data activities have on criminal justice programs? And, how would such data policies affect social values and institutional balances in our society?

These are the kinds of questions that both the academic experts and the criminal justice professionals gathered to explore in 1982. The papers that follow should be read as efforts to look back on our experiences of the last two decades to see what these can teach us about the relationships between information resources, policies, and program achievements; to look at current debates over information resources for criminal justice initiatives and proposals; and to discuss the role that research and statistical programs are playing and might play in operating our criminal justice system.

If one common theme emerged from the conference, and is reflected in these papers, it is that information-analysis and information-policy choices have become an area requiring conscious attention, and perhaps some concrete policy-addressing mechanisms. Such issues were present, of course, in earlier eras, and often surged up to become critical issues when a particular criminal justice program or policy was being debated. But these were generally latent rather than manifest issues in the design and evaluation of most criminal justice programs. What the papers presented here agree upon is that information policy issues now need to be an explicit, regular aspect of managing criminal justice functions. Hopefully, this represents the beginning of a decade in which we will not only learn what questions to ask, and how and when to ask them, but also how to develop experimental programs and solid evaluations that will serve us well as we move into larger-scale changes in crime prevention and control, in a high-technology, urban society.

INFORMATION RESOURCES AND CRIME-CONTROL STRATEGIES: TWO PERSPECTIVES

Problems in the Creation of Adequate Criminal Justice Information Systems

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In my experience, as a practical matter, the threat of information systems to civil liberties, except in certain specialized instances, is remote. It is remote because the problem of information-gathering in the criminal justice system is to get people to gather any information at all. If the amount of time that has been spent arguing over whether the FBI should operate its computer connecting state information systems had been devoted to inducing all members of the criminal justice system who have a need for the information to gather and use that information in an orderly manner, we might in fact have a criminal justice information system and therefore I might now be speaking about its implications for civil liberties.

I do not wish to deny that there have been real gains in the area of information systems since the 1960's. There have been important improvements on crime reports, victim surveys, offender-based transaction systems, and methods for prosecutors to obtain real-time information about cases they are handling. Though these gains are real and important, I think they fall well short of the needs of a mature crime control policy in the 1980's. As will become evident in a few minutes, I do not believe the needs of a mature crime control policy require a comprehensive, nationwide, systematic information system, but I do think such a policy requires something a little bit better than what we now have. A mature crime control policy includes, I believe, the need to increase the swiftness and certainty of sanctions for "serious offenders." I leave open for the moment the question of how we define the serious offender. In general I mean those persons who, when free on the streets, commit serious crimes at a relatively high rate, or those persons who, though they commit offenses at a relatively low rate, commit very serious ones. I think most people agree that such persons should be apprehended, prosecuted, and judged as expeditiously and as fairly as possible.

The focus of most of the debate about how best to do this over the last five or ten years has been on the sentencing decision. There is an argument, as you know, as to whether we should have presumptive sentences, mandatory sentences, or sentencing guidelines, and, if guidelines, whether they should be voluntary (developed and followed at the judges' pleasure) or imposed by a sentencing guideline commission. Some of the hopes as to what could be accomplished by sentencing reform were exaggerated initially, but nonetheless the debate about sentencing has been helpful--it has required us to expose our philosophical preferences and to look at the data. But I think that our real concern ought to be, not sentencing, but everything that precedes sentencing and to some degree everything that follows sentencing.

I would like to walk you through the criminal justice system, a system with which readers are familiar, indicating why in my judgment we have the following paradox: At the police level, the prosecutorial level, and at the judicial level, we find individual members of the criminal justice system agreeing that we ought to do better at getting serious offenders off the street in a fair and expeditious manner, and that to do this it is important to have good information that describes these offenders and that helps us form a judgment about their guilt or innocence. But though each individual member of the criminal justice system shares that view, the criminal justice system as a whole operates exactly opposite.

I call this a problem of perverse incentives. It is a problem that occurs in society at large as, for example, when people polled say they want both less government and increased federal expenditures on virtually every particular program. The same problem operates in the criminal justice system. The requirements of the jobs that the police perform on the street or prosecutors perform in the courtroom lead police and prosecutors to act in ways not consistent with the informational requirements of a serious career-criminal program. If the police wish to focus their scarce investigative and patrol resources on serious, repeat offenders, that can best be done if the police department as a whole gathers field interrogation data so that when a person is identified as a serious offender, his contacts, associates, and places where he is likely to be found can readily be found. Yet it is most unlikely that officers in many departments will make field contacts and fill out contact reports, because there is no immediate apparent benefit to the officer. On the contrary, getting such information often means leaving the squad car on a cold, unpleasant day and talking to people who are at best suspicious and at worst hostile, and then writing down something the officer may never see again.

There is evidence that police officers differ enormously in the effort they put into investigating certain kinds of offenses. Every officer, of course, will investigate every offense to some degree, and serious offenses to a great degree; but when a person suspected of being a serious or career offender is caught having committed a relatively minor act, there is a strong incentive to avoid the rigors of a full investigation, because again the immediate payoff to that officer is modest. Officers have an incentive, in short, to match their investigative efforts to the magnitude of the offense rather than to the record of the offender.

Officers also have some incentive to minimize paperwork. But analysts at the University of Pennsylvania found that for all of those children they studied who were born in Philadelphia in the 50's, grew up in the 1960's and had criminal careers follow into the 1970's, the full list of case descriptors that the arresting officer puts down is the best predictor of the actual seriousness of the offense. To state things more accurately, if you compare the predictive power of the offense on which this individual is charged by the prosecutor with the predictive power of the offense as fully described by the officer, the officer's description tends to reflect more accurately the seriousness of the offense and of the criminal career.

Finally, there are many jurisdictions in which the arresting officer receives little or no feedback on whether the person he has arrested was prosecuted and, if prosecuted, was sentenced, and if sentenced, for how long, and if he was not prosecuted, the reason why prosecution was declined. I know that in virtually every system, the grapevine tells the officer something about what happened to his arrest. But it is rare for there to be routine and systematic feedback of information to the arresting officer. As a result, he has relatively little incentive to improve on how he gathers information.

Let me turn now to the prosecutorial function. Here, as with police, there have been extraordinary gains made in the last ten years. We have seen the creation of career criminal programs. All this has been described at length in many publications. But there is more to do. I think we all remember the old days where in many jurisdictions the prosecutors lined people up for prosecution in the order in which the arrest was received. Then with the advent of the career criminal program, we saw the cases being lined up for prosecution in terms of the seriousness of the offense, so that armed robberies took priority over shoplifting. Then, because technology was making better information available through the techniques of PROMIS,[1] the prosecutors began lining people up for prosecution on the basis not only of the seriousness of the offense and the strength of the evidence, but now also on the basis of the prior felony record of the individual offender. Now prosecutors were putting at the head of the line serious offenders who had a serious rap sheet and against whom there was some reasonable evidence.

All well and good. But the question arises, are these criteria really sufficient if we assume that the goal of the criminal justice system is promptly, effectively, to dispose of the cases of serious career offenders? Research that has been done at Rand, at Carnegie-Mellon University, and at INSLAW suggests that present charge and prior felony convictions may not be good predictors of who is a high-rate offender on the street. There may be better criteria to use in deciding who to put at the head of this line waiting to be prosecuted, if your objective is to take the high-rate offenders off the street as early as possible. Among these better criteria (and there is substantial consensus among various research groups) we find the following: (1) age; (2) age at first offense--the younger at which a person began his criminal career, the greater the likelihood he was to be a high-rate offender; (3) drug use, especially heroin combined with other drugs; (4) prior arrest record; (5) employment record. In a moment I'll talk about some of the problems that arise in trying to devise and use improved criteria. Let me simply suggest that if we want to match information systems with the announced desire of the criminal justice system to serve the objective of getting the career criminal off the street as quickly as possible, then all of us and especially prosecutors have an obligation to look for criteria which will both identify with some reasonable accuracy persons who are high-rate offenders regardless of their present offense, and will do so without recourse to constitutionally suspect criteria.

One implication of this desire to use better criteria is that if prosecutors are to make the most rational use of records, they must have routine access to certain kinds of juvenile records. What components of that record ought to be available is a problem that ought to be carefully discussed without preconceptions. Today, access to juvenile records varies so greatly across the country that you really can't generalize at all about the circumstances under which prosecutors do or do not use such records.

At the judicial level the same kind of information about who is likely to be a high-rate offender or a low-rate offender should be available at sentencing. I cannot enter here into a full discussion of the circumstances under which this information ought to influence the sentence. Clearly the boundaries of the sentence-- the lower limit and the upper limit--have to be set by some notion of just deserts. The range between the lowest and highest limits should be sufficiently narrow so as to minimize the chance that sentences will be based on arbitrary, discriminatory, or unreasonable standards. But within those limits there is an opportunity to use information about whether a person is or is not a high-rate offender in order to select a longer or shorter sentence. At present, that information is not routinely used or accurately compiled. The evidence I see suggests that statistical predictions

[1] Prosecutor's Management Information System

are better than clinical predictions. That is, if one knows the category in which a person fits, based on his age, offense record, drug use, and some other factors, one can make a more reliable judgment about how this person will behave while free than one can using the kind of clinical data found in presentence investigation reports.

Since I've used the word "prediction" at several points, I should face up to the fact that this is a word that arouses concerns, even emotions. Let me say as a beginning to a full discussion of the matter that the issue of prediction is often falsely stated. We ask ourselves, "Is it fair to try to predict how a person will behave on the street if released from prison?" "Is it fair to make the length of the sentence depend in part upon predictions?" In answering such questions, we should not deceive ourselves into thinking that we are comparing predictions to a real-world system in which prediction does not occur. Quite the contrary. The criminal justice system is shot through with predictions at virtually every stage of the process, and necessarily so.

When a police officer arrests a juvenile suspected of shoplifting and then releases that juvenile on his own recognizance, the officer in most cases is making a prediction about whether that juvenile, if released into the custody of his parents, will or will not shoplift again. When the judge sets bail, he is explicitly making a prediction about who will or who will not appear for trial. He is charged by law with making that prediction. When a prosecutor and a judge decide jointly on a sentence, they are often making a prediction about how great a future threat to society the defendant may be. When parole boards consider whether to give early release to a person who is incarcerated, the parole board explicitly, and in many cases by statutory direction, is making a prediction.

The true issue of prediction involves comparing new proposals for new predictive patterns, not with an ideal and nonexistent world, but with the real world where prediction occurs all the time, often sub rosa, on the basis of poorly stated criteria. When we make that comparison we may discover that the predictions of the researchers are no better than the predictions of a prosecutor or judge or police officer. I do not think that's the way the results are going to turn out, but if that's the way they do turn out, then so be it.

Let me conclude by indicating some reasons why I think the criminal justice system is resistant to the improvement of information systems, even though, when polled individually its members say that more information is better than less information. One reason is that the members of the criminal justice system, like doctors and professors and other persons who are dealing with individuals one at a time, are essentially case-oriented practitioners. In talking with police officers or prosecutors or judges, one primarily hears a series of interesting anecdotes. You less frequently hear a police officer or prosecutor talk knowledgeably about how the system is functioning--e.g., what proportion of the cases resulted in arrest or resulted in conviction, and why. We have to deal with this case-orientation as a matter of nature. I doubt we can change the mindset of individuals in the criminal justice system because it reflects the nature of their work. That is to say, members of the criminal justice system are in the business of processing people, not processing information. If we bear this in mind, perhaps we will be less ambitious and less foolhardy in designing the kinds of information systems that will work. And we will worry much more than we have in the past about designing information systems that have, or seem to have, a payoff to the working members of the system as they go about their daily tasks.

A second reason is that the key operators in the criminal justice system--the police and the prosecutors--do not have a lot of confidence in information specialists. There is a general view among critics of law enforcement organizations that we ought to have more tactical and strategic intelligence. In this view, we ought to build a network of information so that when we are dealing with the serious offender, especially a criminal conspiracy, we can target our investigative efforts by using intelligence files. It often doesn't work because of the realities of the criminal justice system. People who are in the intelligence-gathering process often do not have the confidence of the working agents and their supervisors. An FBI agent, a police patrol officer, or a detective evaluates himself and believes he is evaluated by his professional peers, in terms of his ability to make a good arrest, to show street smarts, to be able to handle interrogation, and to live up to the code. People who shuffle papers off in some other part of the building and who are called intelligence specialists do not commend themselves to working agents. You may wish you could change this, but I am here to tell you that it is very hard to change it. As a result, intelligence work is segregated from the daily operational work of agency investigative personnel.

Finally, I think the criminal justice system resists information because of the fear of possible hostile evaluations. Judges may fear that an ongoing, on-line, comprehensive criminal justice information system will be used by police and prosecutors to accuse judges of being "soft." Similarly, if there were such an information system, police officers in the field may fear criticism for having made arrests which might have been necessary to control the situation but which did not lead to prosecution. Prosecutors might fear that their funding may be affected by the year's statistical record of the number of cases they're processing. The criminal justice system, as we've all said to each other many times, is not a system. There are very important reasons for this, including the Constitution of the United States that says we shall have an independent judiciary. A non-system will fear evaluation by adversaries, and thus there will be some resistance to an improved information system.

If information systems are to overcome these problems, they should be organized around the vital tasks of the members of the organization. They should not be perceived as impositions or luxury items. It is important to build an information system around what the police officer must do in making a car stop, getting quick license plate checks, making street identifications and warrant checks. The system should help an officer concerned about his or her safety on the street. A prosecutorial information system should be organized in such a way that it shows prosecutors how easily adult and juvenile records can be considered at one point in time in a way that will lead to a better identification of career criminals.

In short, start small and show a real payoff to the troops. One has to show rather persuasively that the benefits of going to the trouble of gathering the information are worth it because the information leads to more or better arrests and better sentences than the older system which placed far fewer demands on the individual to gather information. To do this, it is important to work in a collaborative way so that the information is built up out of working groups, task forces, that draw from all parts of the criminal justice system, so that as the system is built up, it is built up in a social setting in which people feel that the system is intended to help, not hurt them.

Research Agendas, Information Policies and Program Outcomes

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When Attorney General Saxbe announced in 1974 that ten thousand dangerous criminals would be the target of Federal assistance to State criminal justice, he was at once honoring earlier precedent and innovating in an important way.[1] Many years before, J. Edgar Hoover[2] wrote the Foreword of a book about Dangerous Criminals that varied little from Mr. Saxbe's tone or that of President Reagan, and habitual or repeat offenders have long been the target of special legislative and enforcement efforts. But the innovations that followed Attorney General Saxbe's initiative concerned the very different roles the Federal Government had in crime control by the 1970's.

Prior to the '70's, the Federal role in direct crime control was modest. Technical assistance was confined to matters such as fingerprints and information sharing of state and local arrest records. As a result of the establishment of the Law Enforcement Assistance Administration and its federal presence in research and evaluation, Attorney General Saxbe had more to offer states and cities than his predecessors in a war on the dangerous offender. There was grant money, the capacity to fund research, and the ability to produce evaluations of programs aimed at specially dangerous offenders. My goal in these pages is to examine the impact of these new tools on policy planning.

My version of the modern saga of the career criminal is intended as an illustration of larger themes. The first such larger issue is the relationship between federal resources for research and evaluation and changed priorities within state and local criminal justice. The second relationship is that between what has been called "information policy" and substantive changes in the performance and mission of criminal justice agencies that take place when information policy changes. The third issue I wish to address is the frequently innocent approach to information needs that may hamper innovation attempts.

The intellectual history of the career criminal emphasis is an admirable vehicle for teasing out Federal influence on substantive state policies and the interaction between information needs, research findings, and policy outcomes. In less than a decade, federal policy, federally funded research, and federally sponsored academic policy analysis have interacted to alter and broaden a relatively simple policy priority in ways that were not initially anticipated. The target institutions of initial policy were the police and prosecution units of the adult criminal courts. Later stages of research and analysis moved juvenile court processes and information practices closer to center stage. Figure I presents my version of the story in graphic form.

The Attorney General's special emphasis on dangerous offenders, the top left-hand square in my peculiar diagram, came at a propitious time. The target group for this initiative was repetitively violent street criminals. Federal law enforcement research funds had already underwritten the development of a computerized prosecutorial information management system that was designed to ease the quick identification of individuals with particularly serious instant charges or prior adult criminal records. As the computerized system came on line with 1974 District of Columbia suspects, the prospect of federally funded replications of the PROMIS system in other jurisdictions suggested that the early identification of serious repeat offenders for special prosecution programs was feasible and inexpensive.

The reader will note that the top line of Figure I has no entry under the heading of Information Policy. This omission reflects my view that the initial policy thrust of dangerous offender priority was conceived under the assumption that existing substantive policies of information sharing were all that was necessary for effective selective prosecution. The computer would deliver information that was already available, and this would prove effective in the selection of special emphasis cases for the federally assisted career criminal prosecution programs.

Contemporaneous with the movement to fund selective prosecution programs was a substantial commitment of the National Institute of Justice to fund research on what were called criminal careers. While a number of federally funded research projects had investigated the onset, duration and number of offenses associated with different types of offenders over time, the most prominent new research program associated with the dangerous offender initiative was a research agreement between the National Institute of Justice and the Rand Corporation in Santa Monica, California.

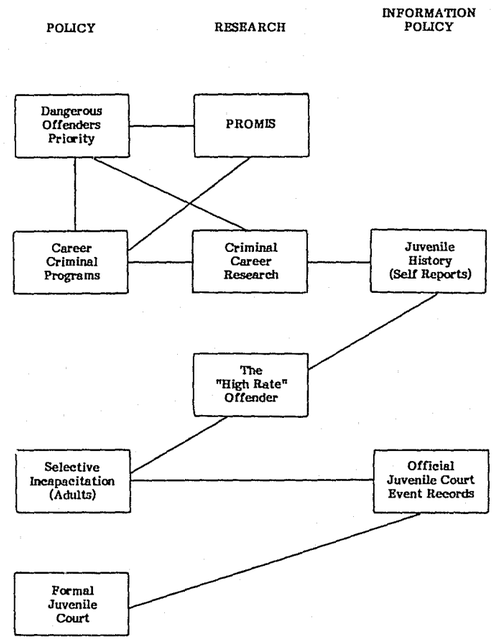
Using information obtained in interviews with 49 imprisoned California robbers with previous periods of imprisonment, the Rand research produced results that challenged the capacity of commonly available criminal record information to serve as an accurate indication of the frequency of law violation.[3] The 49 robbers in the aggregate accounted for a staggering quantity and substantial variety of criminal acts. However, disaggregating even amongst a small sample of the twice imprisoned produced a contrast between "intermittent" and "chronic" offenders. Off the offender's self reports, high rate offenders start committing crimes earlier, and commit crimes at high rates while young (and in the California juvenile justice system). These offenders display different life patterns and attitudes than the lower rate offenders. Subsequent research by the Rand group, using self-reports by cross sections of the prison population in three states essentially confirmed the pattern found in the pilot study.[4]

All the research in this sequence of studies was retrospective and therefore not a direct prediction of future levels of criminal activity.[5] However, the notion of the high rate offender, when combined with the assumption of persistent propensities toward offending that is implicit in the dangerous offender priority and career criminal prosecution programs, persuaded the researchers that focusing on those who have been high rate offenders before apprehension would achieve more crime control than programs that failed to discriminate between high and low rate offenders with the same offenses at conviction and prior official adult criminal records.

Thus was born the phrase "selective incapacitation" as a policy for sentencing adult offenders.[6] The selective incapacitation perspective differs from the initial criteria used by "career criminal"

Figure I

FACTORS IN THE EVOLUTION OF SENTENCING POLICY TOWARD REPEAT OFFENDERS



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[1] "Justice Officials Stress Priorities in IACP Speeches," 4 L.E.A.A. Newsletter 1, 5 (1974).

[2] J. E. Hoover, Foreword to Courtney Ryley Cooper, Ten Thousand Public Enemies (Boston: Little, Brown and Company, 1935).

[3] Joan Petersilia and Peter W. Greenwood, with Marvin Lavin, Criminal Careers of Habitual Felons (Santa Monica, California: The Rand Corporation, 1982).

[4] Mark A. Peterson and Harriet B. Braiker, with Suzanne M. Polich, Who Commits Crimes: A Survey of Prison Inmates (Cambridge, Massachusetts: Oelgeschlager, Gunn and Hain, Publishers, Inc., 1981), and Peter W. Greenwood, with Allan Abrahamse, Selective Incapacitation (Santa Monica, California: The Rand Corporation, 1982).

[5] See generally Mark H. Moore, Susan Estrich, and Daniel McGillis, Report of the Project on Public Danger, Dangerous Offenders and the Criminal Justice System--Volume I: The Final Report (1981).

[6] See Greenwood, above.

prosecution because it hopes to make further distinctions based on richer information. One recent treatment of selective incapacitation asserted that the use of this strategy could reduce California's prison popoulation at the same time as it would reduce crime. In an era of prison overcrowding, resource constraints, and high crime rates, I need not add that this happy combination has received enthusiastic support in the media and among many policy audiences.

The advantages of selective incapacitation over special emphasis policies that wait until offenders have accumulated lengthy adult records are said to be two: (1) more extensive facts about factors such as drug use and juvenile crime will enable a sentencing system to discriminate between "high rate" and lower rate offenders with similar criminal records, and (2) the sentencing system will be able to intervene with greater confidence earlier in the career of the high rate offender, thus saving the community large numbers of crimes that would otherwise be committed. The central problem is how can one use information systems to identify high rate criminals. For obvious reasons, the self-reporting strategy that was used in the career criminal research won't do. It requires more than a leap of faith to suppose that high rate offenders will volunteer their life histories prior to sentencing in the way the Rand sample was forthcoming. Assuming, therefore, that the data acquired by research is accurately predictive, there remains the question of how we acquire it for use in criminal sentencing.

Information available from juvenile arrest and juvenile court processing is plainly insufficient. Informality, child protective policies, and a lack of elaborate fact-finding in the vast majority of even serious cases renders the use of existing juvenile court statistics problematic. The problems may be grouped under two headings: accuracy and fairness. Both problems can be illustrated by a hypothetical case history that reflects frequent practice in urban juvenile courts.[7]

Assume that three offenders ages 17, 15 and 13 are arrested by the police for armed robbery and referred to the intake desk of the local juvenile court. The three had been trying to take a purse from a middle aged lady and the 17-year-old had brandished a knife. Believing the 13-year-old under the influence of his 17-year-old companion, the intake officer "adjusts the case" without filing formal charges of delinquency. Charges of delinquency, not of armed robbery, are filed against the 15-and 17-year-olds. The 15-year-old accepts an offer for informal probation and has his case "continued" in contemplation of eventual dismissal if he meets the terms of his probation. The 17-year-old is detained at juvenile hall and adjudicated delinquent.

The difficulty of accurately characterizing the behavior from the official records generated by this scenario seems obvious. Our 13-year-old was arrested for armed robbery but the charge is dismissed. If he is factually guilty, any measure of criminal involvement that requires more than arrest will miss the mark. Any accounting scheme that will assume guilt from arrests may capture our 13-year-old, but will make his behavior indistinguishable from an offender actually armed with a gun or a factually innocent 13-year-old who has his charges dismissed on the merits.

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[7]See Franklin E. Zimring, Background Paper to Confronting Youth Crime: Report of the Twentieth Century Fund Task Force on Sentencing Young Offenders, Chapter 2 (New York: Homes and Meier Publishers, 1978).

The juvenile court record of the 15-year-old is also ambiguous. There is no court record of what, if any, criminal behavior generated this informal disposition and no "conviction." The 17-year-old has been convicted of juvenile delinquency, that is, behavior that would be criminal if committed by an adult. But the nature of his criminality can only be determined if the information processor assumes the police charge represents the behavior that was the basis for the adjudication of delinquency. Frequently, this is unjustified.

For purposes of studying aggregate patterns of juvenile criminal behavior, the problems of record accuracy may not be lethal. Using police charges or even a simple counting of police contacts by age has some predictive efficiency in longitudinal studies of juvenile delinquency and adult crime.

However, using an individual's "criminal history" in making decisions about four versus two years of imprisonment strikes many as unfair. The recently completed report of the Project on Public Danger, Dangerous Offenders and the Criminal Justice System thus objects to current juvenile court records being used in the implementation of selective incapacitation but urges that recordkeeping within juvenile court should be upgraded so that its accuracy and reliability would make such records fair game for sentencing decisions made in adulthood.

The committee report summarizes the need for juvenile record information:

"[S]tudies of criminal careers indicate that those who've become dangerous offenders start their careers relatively early. They reveal themselves not only by committing minor crimes at very high rates, but also by committing fairly serious crimes even while juveniles. Perhaps even more significantly (at least from a point of view of assessing the crime control benefits of selective incapacitation), it seems fairly clear that the peak level of activity for dangerous offenders hits the late teens and early twenties."[8]

As a result of information gaps between juvenile and criminal courts, the criminal justice system "fails to identify the unusually dangerous offenders among the young offenders that come before it. Even worse, by the time it does identify the offenders as dangerous, the offenders are already beginning to decrease the level of criminal activity."

One indication of what kind of "upgrading" would be necessary before using juvenile records in selective incapacitation policies is this committee's list of specifications for a recordkeeping system that is so used. The committee calls for: (1) accuracy in imputing offenses to individual offenders, (2) less ambiguous descriptions of the events that underlie particular charges, and (3) what the committee terms "completeness" in criminal justice records.[9]

This kind of upgrading, to guarantee fairness in adult selective incapacitation sentencing decisions, goes far beyond traditional concerns about privacy and confidentiality in juvenile justice records. One would have to reformulate the processes and the mission of the juvenile court as it relates to many thousands of the cases on its delinquency docket to achieve this kind of information base.

Consider the most formally processed of our three accused delinquents discussed earlier, the 17-year-old who brandished the knife. The only formal finding emerging from that case is the adjudication of the juvenile as delinquent. Data on arrests or allegations in a pre-adjudication report might be used to infer the actual crime and level of involvement, but these are not findings of the court. One can imagine a system in which the delinquency label is either abolished or supplemented with specific findings of the juvenile's criminality. Abolition of the status of delinquency would appear to be the more radical of the two alternatives, but "supplementing" findings of delinquency with particular behavioral descriptions would make the delinquency label at least apparently redundant.

The substantive changes necessary for complete and accurate fact-finding are more profound when we come to the 15-year-old co-defendant who was placed in an informal probation program without any adjudication of the police charge. These informal programs are an integral part of contemporary juvenile justice reform agendas. And these kinds of placements number in the thousands even when the police charge is robbery. Should one require an acknowledgement of factual guilt to enter such programs, and use that acknowledgement as the information base for later sentencing decisions? If so, the occasion for acknowledging such guilt appears to call for the presence of a defense attorney, and this could be expected to require more resources and more formality even if the case never sees a courtroom.

Our 13-year-old defendant, at the periphery of the robbery incident, is an even more problematic issue for upgraded juvenile court records. Do we process this defendant? If so, how elaborate is the fact-finding necessary to make an efficient use of this incident as a predictive event while protecting a 13-year-old from the type of unwarranted inference that may accompany the label of armed robbery. Here, the nature of adolescent criminality puts demands on juvenile court processes that are distinct from many of the labeling decisions that have to be made in criminal courts. It may be the case that young offenders tend to play more trivial roles in heterogeneous group offenses currently categorized as robbery. At the same time, early involvement in criminal behavior may predict high rates of offense for those who do persist in criminal activities later in their careers. Under these circumstances, should we formalize fact-finding procedures for this 13-year-old? What is the proper trade-off between increased labeling in juvenile court and efficient prediction later on: 10 to 1, 2 to 1, or 20 to 1?

Two further observations on the formalization of marginal juvenile court cases merit mention: one concerns the volume of such cases coming before the agencies of juvenile justice; the other concerns the impact of that volume on relocating discretion. Approximately 3/4 of a million cases are informally handled in the juvenile justice system each year. Even if an information system was confined to violent offenses such as robbery and aggravated assault, thousands of cases in many urban juvenile courts would have to be shifted from informal to formal fact-finding processes to serve the interests of selective incapacitation in the criminal court. If the system also needs information on accused juvenile burglars, heightened formality would be necessary in hundreds of thousands of cases.

In a world where material and administrative resources are scarce, pressure toward investing in formality for some kinds of cases generates countervailing pressure to decrease the fact-finding costs in other kinds of cases. Implementing a decision, for example, for

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[8]Moore, et al, supra note 5, Chapter 8, pp. 10-11.

[9]Id at Chapter 8, pp. 2-12.

fact-finding procedures in all alleged serious crime against the person might decrease the resources invested in property crimes, including burglary, and increase the number of informal adjustments of burglary charges.

Upgrading the formality of fact-finding for serious robberies and burglaries might create pressure to weed out less serious cases even earlier in the system than is presently the case. Whether the mechanism is juvenile court intake or station adjustment on the part of the police, it is not unthinkable that efforts directed at enhancing information on juvenile criminal careers could lead to more information for a small number of cases and less information for a larger number of cases. Whether this would efficiently serve a selective incapacitation strategy in the criminal courts is not known. Because patterns of crime switching in adolescence are frequent, it is at least possible that a considerable number of high rate offenders would be missed because of the emphasis on particular crime categories. At the same time, the impact of this kind of priority shift on privacy and stigma from juvenile records is also indeterminate.

More formal processes in juvenile justice may be a fine idea, either in selected categories of cases or across the board. But recent discussion of juvenile record information in the context of selective incapacitation of adults gives every appearance of the tail wagging the dog.

Whether federal leadership in federally funded research will have lasting impact on the way in which states and localities choose to select out the dangerous for special penal treatment is an open question. If such efforts succeed, what I have loosely called "information policy" will play a major role. But the information available about individuals processed through agencies of government is not an independent variable. Frequently, the comprehensiveness, accuracy, and nature of information reflects the types of processes used by the agencies and the philosophical premises that lie behind them. Selective incapacitation strategies based on broad juvenile justice reforms will call for extensive and expensive restructuring of the juvenile justice system, not merely its recordkeeping component. Failing this, the low quality of juvenile record information will prove a source of permanent frustration for those who would use it in the construction of sentencing policy for adults. Those who would conduct such wide ranging experiments with the institutions of criminal justice are best advised to be aware of the broader implications of even targeted policy shifts.

Trends in State Crime-Control Legislation

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The purpose of this conference is to examine the impact of criminal justice program initiatives on information policy and information requirements. To set the stage for this examination, I would like to briefly summarize the trends of state legislative initiatives to fight crime over the last 15 years.

You will detect a common theme reflected in a majority of these legislative actions: a concern for identifying and incarcerating offenders who pose the greatest threat to society based on either the seriousness and violence of their criminal activity or the frequency of this activity. In part this concern no doubt arises from the increase in violent, random crime over the last decade and the shockwave that this has produced. In part the concern arises from a growing realization that a relatively small percentage of offenders account for a relatively high percentage of crime. And in part it arises from a need to ration criminal justice dollars so that those individuals who are causing the most serious problems receive the most attention.

These concerns are obvious in most of the major crime fighting initiatives by state legislatures in recent years. Efforts to alleviate prison overcrowding, for example, require corrections officials to distinguish the more dangerous and persistent offenders from other offenders so that the latter group can be released. Sentencing reforms provide tougher penalties, minimum penalties and mandatory sentences for targeted groups of high-risk offenders. As to these groups of offenders, the public is increasingly unwilling to permit judges to exercise discretion to minimize sentences. Violent and repeat offender programs are, of course, the classic example of efforts to identify high risk offender groups and to remove such offenders from society.

In addition, I will highlight legislative initiatives involving juvenile offenders and bail reform, arson and gun control. All of these programs are reflective of society's concern about high-risk offenders. For example, many states have amended their juvenile codes to permit serious juvenile offenders to be tried as adults. A great many states have also rewritten their standards for bail to require judges to take into account the danger to society posed by the bail applicant. Arson initiatives recognize the prevalence of this crime and the serious threat that it poses to both property and human life. Gun control programs are also reflective of the public's fear of violent crime and their determination to reduce such crime.

Finally, I will briefly discuss two popular initiatives--drunk driving programs and victim assistance programs--that are not aimed at increasing the likelihood or the degree of punishment for the serious offender. Drunk driving programs, for example, reflect the public's growing concern about the carnage on the nation's highways. Victim assistance programs represent a long overdue determination that victims should receive more attention from the criminal justice system and should be entitled to appropriate compensation for crime-related injuries and losses.

Corrections

Prison overcrowding has become a serious problem in many states. As the 1970's came to a close, the number of state and local prisoners had reached an all-time high. Increased prison disorders and court intervention have intensified the problem in many states. State legislatures have responded to this problem in a number of ways. Despite some evidence that building new facilities may not reduce overcrowding because the need for space may equal or exceed the new supply, there is no question that some new facilities are needed and that most of the nation's existing prison facilities are in need of replacement or renovation. Some states have appropriated funds or issued bonds for this purpose, but budget restraints have prevented many states from pursuing this alternative. As a result, they have had to fashion alternatives designed to release incarcerated persons sooner than normal and/or to send fewer people to prison.

Early release legislation

A number of states have provided by legislation for emergency procedures to reduce prison populations. These approaches generally provide for establishing, either legislatively or administratively, a capacity ceiling for state prison systems and requiring the early release of selected prisoners when the prison population exceeds capacity for a specified period. For example, Michigan's law provides that if the prison population exceeds established capacity for 30 days, the governor shall declare a state of emergency and order all minimum sentences (except those of certain more serious offenders) to be reduced by 90 days, thus creating a new pool of prisoners eligible for parole. If this does not reduce the prison population to 95 percent of capacity within 90 days, minimum sentences are reduced by an additional 90 days. Once the population is reduced to 95 percent of capacity the governor must rescind the state of emergency.

Other state prison systems use increased "good time" credits as a population release mechanism. For example, Illinois law permits

the granting of additional good time credits to accomplish the early release of inmates when the prison population exceeds system capacity. Prisoners in Illinois serve their court-imposed sentence minus good time. When overcrowding exists, eligible inmates who are within 30 days of mandatory release are granted 30 days of additional good time. If this does not bring the prison population below capacity, the same procedure is applied to those within 60 days of release and then to those within 90 days, if necessary.

Connecticut's new Prison and Jail Overcrowding Emergency Act sets a capacity ceiling and authorizes prison officials to petition the courts for release of both pretrial and post-conviction prisoners if overcrowding exists. Oklahoma's law sets institutional capacity ceilings and provides for accelerated parole eligibility (by six months) for all non-violent offenders when the prison population exceeds capacity. Oklahoma's law also bars the transfer of additional prisoners from county jails to state prisons when overcrowding exists. Maryland also has an early parole law to reduce overcrowding.

States also use a variety of community reintegration programs as early release mechanisms to reduce prison population when necessary. Connecticut's law permits re-entry furloughs of up to 120 days. Delaware law authorizes a supervised custody program to assist in offender reintegration as well as to reduce overcrowding. South Carolina law authorizes supervised furloughs, extended work release and earned work credits to accomplish these purposes.

Alternatives to incarceration

Other state legislatures have enacted measures for reducing prison populations by reducing the number of offenders sent to prison in the first place. Minnesota has adopted prescriptive sentencing guidelines which restrict incarceration to more serious offenders. Georgia and numerous other states have established community diversion centers as alternatives to imprisonment for selected persons.

Virginia's 1980 Community Diversion Incentive Act provides for state subsidies to local governments for adult offenders diverted from prison incarceration. Non-violent offenders who meet specific criteria are eligible for the program. At least fifteen states contract with local jails to hold sentenced offenders either until space becomes available in state institutions or as transitional placements for prisoners nearing release dates.[1]

Sentencing reform

Another major issue of legislative interest in the last decade has been the reform of laws relating to the sentencing of convicted offenders. There have been three main approaches: (1) a trend toward toughened penalties for serious offenses; (2) a trend toward mandatory or determinate sentencing; and (3) reform of death penalty laws.

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[1]This summary utilizes material from the following sources:

Reducing Prison Crowding: An Overview of Options, draft report, dated July 1981, submitted to the National Institute of Corrections by M. Kay Hanis, National Council on Crime and Delinquency.

Controlling Prison Populations: An Assessment of Current Mechanisms, draft report submitted to the National Institute of Corrections, May 1982, by Robert Mathias and Diane Stellman, National Council on Crime and Delinquency.

Criminal Justice Monitor, Vol. III, No. 7, dated Dec. 1980, entitled "Community Corrections," National Conference of State Legislatures.

Toughened penalties

During the last five or six years, practically every state has enacted or amended laws to provide tougher penalties for various types of crimes, particularly serious or violent offenses and drug-pushing offenses. For example, Georgia, Indiana and New Jersey have toughened penalties for drug pushers. Increased penalties for violent crimes have been provided for in California, Idaho, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oklahoma, Tennessee and numerous other states. Colorado, Illinois, Nevada and Pennsylvania are among the states that have provided for toughened penalties for crimes against the aged. Other states have tightened penalties for such "white collar" crimes as shoplifting, bribery and embezzlement.

Mandatory and determinate sentencing

Prior to the mid-1970's, most states operated under "indeterminate" sentencing laws that allowed considerable discretion to judges to fix sentences within wide limits, and vested broad authority in parole bodies to determine when offenders had been rehabilitated and should be released. As a result, great disparities in sentencing developed in many jurisdictions. This, in turn, has led to widespread criticism of the arbitrariness and unfairness of the system. In addition, many criminal justice authorities and policymakers have become disillusioned with rehabilitation methods in correctional institutions, which have not measurably reduced recidivism.

Consequently, a trend has developed toward punishing criminal behavior more severely. Numerous states have taken steps toward restructuring their sentencing laws to accomplish this purpose. Two trends are evident: mandatory sentencing laws and determinate sentencing structures. The Council of State Governments reported that by 1980, 24 states had adopted some form of mandatory imprisonment or determinate sentencing laws, especially for high-fear crimes.[2]

Mandatory sentencing laws eliminate judicial and parole board discretion by requiring imprisonment (often for "flat" fixed terms) for selected categories of offenses, usually those involving armed, violent, drug or repeat offenders. Determinate sentencing laws, on the other hand, reduce but do not eliminate sentencing discretion by (1) imposing fixed terms of imprisonment within narrow ranges for specified offenses, and (2) eliminating parole release discretion for these offenses. In 1976, California became the first state to enact a determinate sentencing law. According to published reports, 15 states have now adopted determinate sentencing laws (Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Maine, Minnesota, New Jersey, New Mexico, North Carolina, Pennsylvania and Tennessee).[3]

Reform of death penalty laws

In 1972 the U.S. Supreme Court ruled in Furman v. Georgia[4] that existing death penalty laws were unconstitutional because they could be applied in a capricious, discriminatory or arbitrary manner to persons convicted of similar offenses. Subsequently, several states enacted new capital punishment laws which made death a mandatory penalty for certain offenses. In 1976, in Woodson v. North Carolina,[5] the Supreme Court struck down mandatory death sentence laws which did not take into account aggravating or mitigating circumstances. However, later that same year, in Gregg v. Georgia,[6] the Court upheld death penalty statutes in Georgia, Florida and Texas which contained provisions for applying or withholding the death penalty in capital cases under certain aggravating or mitigating circumstances.

Since then, the state legislatures in many states have enacted death penalty laws patterned after the Georgia, Florida and Texas statutes. As of December 1981, 36 states had death penalty laws (Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wyoming.[7]

Violent and career offender statutes

A large number of states have in recent years enacted statutes which require or permit extended incarceration of certain violent or repeat criminal offenders.[8] The statutes generally include specific criteria relating to how many prior criminal convictions and what types of convictions and present offenses are required to support sentence enhancement. Some statutes make the violent or repeat offender charge mandatory if the criteria have been satisfied, but most laws vest discretion in the prosecuting attorney to invoke the sentence enhancement charge or not.

As of the end of the 1980 state legislative sessions, twenty-five states had statutes providing that one prior conviction can trigger the repeat criminal charge. Nineteen states invoke sentence enhancement only after two prior convictions, and two states invoke the statute only after three prior convictions. Many of the states have multiple increased penalties depending on the number of prior convictions. For example, although one prior conviction might invoke the repeat criminal charge, second and third prior convictions will permit progressively more serious sentence enhancements.

Twenty-nine states will consider only prior felony convictions to invoke the repeat criminal charge. Seven states will consider prior misdemeanors or petty offenses. The District of Columbia considers any prior crime sufficient to trigger its repeat offender statute. Of the states that consider only prior felony convictions, seven provide that the prior must have occurred within a specified time limit. Twenty-five states specify additional criteria such as requiring the past offense to have involved serious bodily injury or the use or presence of a deadly weapon. Twelve states specify that the offender must have been sentenced for a prior felony conviction.

The statutes also vary concerning the type of present offense that will invoke the sentence enhancement charge. Twenty-three states consider only specified felonies, often only those involving serious bodily injury or the use of a deadly weapon. Four states and the District of Columbia will consider any crime, although in three of these states the crime must be punishable by imprisonment. Seven states consider misdemeanors and petty offenses, and three states require that the present offense be of the same type as the prior conviction.

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[2]Book of the States, 1982-1983, p. 525.

[3]Determinate Sentencing Laws, A Comparison of the Provisions of State Determinate Sentencing Laws, NCSL, Sept. 1980 and the 1982-83 Book of the States, NCSL, p. 525.

[4]403 U.S. 952 (1972).

[5]428 U.S. 280 (1976).

[6]428 U.S. 153 (1976).

[7]Book of the States, 1982-1983, p. 536.

[8]This discussion is based upon material provided by the National Conference of State Legislatures.

Regarding sentencing, the statutes vary greatly. Thirteen states provide for either a determinate sentence or one that involves a mandatory minimum sentence. Seven jurisdictions use a computational formula to determine the sentence. Six states provide that the sentence shall be for the next higher class of felony. Seventeen states provide for indeterminate sentences. Fourteen states provide that habitual criminals can be sentenced to life terms, "life" ranging from 15 years to the end of the offender's natural life.

Insanity defense reforms

Virtually all jurisdictions provide for some form of insanity defense in criminal trials. The defense is based on the concept that criminal intent is an essential part of any crime. If a defendant is insane at the time of the commission of a crime, he cannot be held criminally responsible for the act.

In about half the states, the burden is placed on the prosecution to prove beyond a reasonable doubt that the defendant was sane at the time of the crime if the defense is raised. In the other states, the burden is on the defendant to prove insanity by a preponderance of the evidence. Requirements for confinement upon a finding of not guilty by reason of insanity also vary. In some jurisdictions, if the defendant is no longer affected by the mental disease at the time of trial, he is released.

Studies have indicated that only about 1 percent of all felony defendants successfully invoke the insanity defense. While this percentage is small, there is widespread opposition to the insanity defense, heightened by the insanity finding in the trial of John Hinkley, the man who attempted to assassinate President Reagan.

Many people believe that a person should be held responsible for his criminal conduct regardless of his mental state. Another common perception is that trial verdicts often turn on debating contests between prosecution and defense psychiatrists that have little valid relevance to an act committed months or years before. This dissatisfaction has led to increased legislative activity across the country to reform the insanity defense.

At least 20 states have considered or soon will propose legislation to abolish or amend the insanity defense. Of the states that have acted on this issue, nine have adopted new laws to create a verdict of "guilty but mentally ill," two have abolished the insanity defense entirely, and others have amended their laws to make it more difficult to invoke the insanity defense.

Michigan was the first state to establish the verdict of "guilty but mentally ill." Defendants found guilty but mentally ill are sentenced as if they had not been found mentally ill. Although they receive psychiatric treatment they are incarcerated to serve their sentences even if they are "cured." Other states with similar laws are Indiana, Kansas, New Mexico, Oklahoma, Georgia, Delaware, Kentucky and Illinois. In each case, guilty but mentally ill is a new verdict in addition to acquittal under the insanity defense. Montana and Idaho have repealed the insanity defense but permit evidence as to the defendant's state of mind to be introduced and considered at sentencing.

Other states (Hawaii, for example) have amended their laws to shift the burden of proof regarding the defendant's mental state from the prosecution to the defense. New York law makes the courts responsible for custody of persons acquitted of crimes due to insanity and requires hospitals to inform police and potential victims of the pending release of those found incompetent to stand trial.[9]

[9] This discussion is based substantially upon material provided by the National Conference of State Legislatures. Some information was taken from the Council of State Government's "Book of the States, 1982-1983," pp. 525-526.

Dangerous juvenile offenders

In recent years there has been growing public concern over the number of violent crimes committed by juveniles and the apparent failure of the juvenile courts to deal effectively with the problem of violent juvenile crime and recidivism through traditional juvenile justice methods. In response to those concerns, there has been a growing trend in the states to amend their laws to distinguish between delinquents who commit minor offenses and those who are charged with more serious offenses such as murder, rape, armed robbery and aggravated assault; increasingly, state laws permit such offenders to be dealt with as adults at an earlier age.[10]

The most common statutory approach permits juvenile courts to waive serious or violent offenders to criminal courts to be tried as adults if certain conditions are met. These conditions frequently include a finding of probable cause that the accused juvenile committed a felony, a minimum age requirement, and often a determination that, if guilty, the accused could not effectively be rehabilitated by treatment as a juvenile. As another option, a few states have vested in adult criminal courts original jurisdiction over juveniles charged with certain crimes--usually serious or violent felonies or capital offenses.

An analysis of state statutes prepared in 1981 for the National Center for Juvenile Justice[11] reported that all of the states except three (Nebraska, New York and Vermont) have adopted provisions for the waiver of certain juvenile offenders to adult criminal courts. Nebraska vests concurrent jurisdiction over certain crimes by juveniles in juvenile and criminal courts and the prosecutor decides where to file. In New York, juveniles accused of certain violent crimes are processed originally in adult criminal courts, but may be waived to juvenile court under certain circumstances.

[10] This discussion is based substantially on an analysis of dangerous juvenile offender laws set out on pp. 431-432 of the Book of the States, 1978-79.

[11] Juveniles as Criminals, 1981 Statutes Analysis, by Thomas S. Vereb and John L. Hutzler, National Center for Juvenile Justice, 701 Forbes Ave., Pittsburgh, PA 15219.

Gun control

The issue of gun control has been a major topic of interest in state legislatures for at least fifteen years. In the late 60's and early 70's, legislation to control guns dealt primarily with registration and licensing of handguns and restrictions on gun dealers. However, beginning in the mid-70's, the emphasis shifted to the enactment of laws providing for stiffer sentences for crimes committed with handguns. By early 1982, 24 states and the District of Columbia had enacted laws providing for mandatory or increased sentences for crimes committed with firearms.[12] The Maryland law provides for the imposition of a sentence of no less than five years, with no suspension and no probation, for use of a handgun in the commission of a felony. West Virginia's law provides that persons convicted of crimes involving the use of firearms may not be granted parole, probation or suspension of sentence. Wisconsin's law adds an additional sentence of six months to five years for the use of a dangerous weapon in the commission of a crime and New Jersey's law provides that an offender who uses a firearm in the commission of a serious crime must serve three years in addition to the sentence imposed for the crime, with longer additional sentences for repeat offenders.[13]

Some state legislatures have also remained active in setting standards for gun use and registration. Eight states require a permit to purchase a handgun (Hawaii, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina and South Dakota). Illinois requires a firearms owner identification card for the purchase of any firearm and criminal record checks are conducted on all individuals applying for such identification cards. Numerous states require the submission of written applications and a waiting period for the purchase of handguns, giving law enforcement officials time to check the criminal records of applicants.

[12] Alaska, California, Connecticut, Delaware, Georgia, Idaho, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, Tennessee, Washington, West Virginia and Wisconsin. Source: Firearms Control in the States: Mandatory Prison Sentences, State Government News, April 1982; Book of the States, 1982-1983, pp. 528-529.

[13] Book of the States, 1982-1983, NCSL, pp. 528-529.

Bail reform

Traditionally, the purpose of bail has been to assure the appearance of accused persons for trial; the question of the dangerousness of an accused person has not been permitted to affect bail determinations. In the last decade, however, and particularly within the last few years, there has been a trend toward amending state laws (or constitutions) to either deny pretrial release--generally referred to as "preventive detention"--or to place release restrictions upon persons who are deemed to pose a danger to the community. This trend has been the result of increased concern over persistently high rates of recidivism and the large numbers of persons who are arrested for new crimes while free on bail awaiting trial for previous offenses. In 1981, Chief Justice Burger called for changes in state bail laws to permit courts to consider dangerousness in pretrial release decisions and, in the same year, the President's Violent Crime Task Force made a similar recommendation.

As a result of all this, the majority of the states have amended their bail laws within the last decade. Several (including New York, Illinois, Hawaii and Tennessee) have acted within the last two years. Florida, Massachusetts, Wisconsin and Vermont have made major changes this year. Proposals are presently pending in several other states.

Three states (Hawaii, Michigan and Wisconsin) and the District of Columbia permit pretrial detention based upon the accused person's dangerousness. Twenty states provide for the revocation or limiting of bail if the defendant is arrested for a new crime while free awaiting trial. Five states provide that prior convictions may limit an accused person's right to bail. Fourteen states permit the imposition of conditions of release designed to limit the likelihood of further criminal conduct. Sixteen states permit the issue of dangerousness or community safety to be considered in making release decisions or in imposing conditions of release. And five states exclude certain crimes from automatic bail eligibility.[14]

It seems clear that this trend toward toughening bail laws will continue.

[14] Typology of State Laws Which Permit the Consideration of Danger in the Pretrial Release Division, Pretrial Services Resource Center, 918 F St., N.W., Suite 500, Washington, D.C. 20004. Some state laws fall in more than one category.

Arson

State concern about the increasing incidence of arson has been reflected in a number of legislative initiatives in the late 1970's. Thirty-six states have enacted laws that provide civil immunity for insurance companies that share information with law enforcement authorities in suspected arson cases.[15] Other initiatives have included programs to cancel insurance on buildings that are not properly maintained (New Jersey); programs to provide for better arson enforcement and prevention (Illinois); and programs to reduce vandalism-related arsons. Massachusetts has instituted an aggressive program to coordinate the activities of prosecutors, police, fire and local arson squad members to facilitate the investigation and prosecution of arson cases. This program and programs in several other states were supported by Department of Justice grants to improve arson investigation and prosecution, data collection, evidence analysis, and arson prevention and public education.

Drunk driving

In recent years much publicity has been given to the problem of drunk drivers and the number of deaths, injuries and property damage accidents that result from drunk driving. As a result, many states have enacted tough laws to crack down on drunk drivers.[16]

California, Florida, Wyoming, and Utah are among those states which have enacted laws providing for jail sentences for convicted drunk drivers. Florida's law provides for up to 50 hours of public service for first convictions, up to 10 days in jail for second convictions within 3 years, and up to 30 days in jail for third convictions within 5 years. California's law provides for a mandatory jail term of at least 48 hours for first offenses (with some exceptions) and for longer jail terms (in some cases mandatory) for subsequent offenses. Wyoming provides for discretionary jail terms for first offenses and for mandatory jail terms of at least 7 days for subsequent offenses within a 5-year period.

A number of states (including Florida, New Jersey and Wyoming) have either enacted or amended laws to increase the length of time a driver's license may be revoked or suspended for drunk driving convictions. These laws specify periods ranging from 30 days to a year for first convictions, up to 2 years for second convictions and up to 10 years for third and subsequent convictions.

Some states, including California, Florida, Illinois, Maryland, Minnesota, New Mexico, South Dakota and Utah, have passed laws specifying the blood alcohol level necessary to establish a presumption of drunk driving. Maryland, Minnesota, Florida and Illinois have enacted laws dealing with administrative and judicial aspects of processing drunk driving cases, including such things as the consequences of refusal to take a chemical or breath test for alcohol, the introduction of evidence of blood alcohol levels, and "implied consent" for urine, breath or blood tests.

Maryland has raised its drinking age from 18 to 21 and several other states (including Alabama, Arizona, New York and South Carolina) have bills pending to raise the drinking age. Illinois, Florida and several other states have also adopted statutes prohibiting the transportation of open liquor bottles or other containers in motor vehicles. Maryland's law provides for the establishment of alcohol education and treatment programs. Florida's law requires that questions about the consequences of driving under the influence of alcohol or drugs be included in drivers' license tests.

Victim assistance

Many states in recent years have placed a priority on legislation to provide financial assistance to victims of crime. Thirty-four states have programs that provide for compensation by the state to victims of violent crime.[17] Most states have laws permitting courts to order offenders to make financial restitution to their victims and some of these laws make restitution orders mandatory. A number of states (including Georgia, Illinois, New York, Oklahoma, South Carolina and Tennessee) have enacted so-called "Son of Sam" laws providing for victim access to income generated by offenders as a result of publicity about their crimes.

Many states have also adopted legislation to assist victims in dealing with the criminal justice system. Included in this category are programs for victim notification to keep them informed of the status of court proceedings against the defendant (California, Indiana, New York and Ohio); programs to protect victims from intimidation (California, Pennsylvania and Rhode Island); legislation expediting the return to victims of stolen or seized property (Kansas); and legislation to provide counsel to victims whose conduct is drawn into question (California).

Other states have enacted "special victim" legislation aimed at benefiting certain classes of individuals thought to be particularly vulnerable to crime, including the elderly, children, women, the handicapped and bus drivers. This legislation sometimes creates a new crime, such as child or elderly abuse, and sometimes institutes special procedures, such as protective orders, or funds programs to meet the needs of certain victims, such as rape or domestic violence victims.

Impact on information systems

As you will have concluded, many of the legislative initiatives summarized in this paper have significant implications for criminal justice information system administrators, and for many others concerned about the need of the criminal justice system for accurate and current information about offenders and about the system itself.

Clearly, the trend toward selective prosecution and incapacitation of violent and career offenders increases the need for accurate and up-to-date criminal history records. Prosecutors need such data to identify offenders with histories of violent or habitual criminal conduct, in order to make bail recommendations and charging decisions. Judges need complete and accurate criminal history data to make bail determinations and sentencing decisions that depend upon past criminal conduct. And corrections officials need such data in order to identify high-risk offenders for special treatment, and to select low-risk prisoners for early release to alleviate overcrowding.

Trends in the laws relating to the handling of certain juvenile delinquents suggest that revisions in law and policy are needed in the maintenance and availability of records concerning juveniles. Other papers in this volume describe recently-completed studies which indicate that juvenile conduct is an accurate predictor of adult criminal behavior. These studies may reinforce an already-apparent move to re-examine the body of law and policy relating to the confidentiality of juvenile delinquency records.

The victim and witness protection movement is perhaps the most important recent innovation in criminal justice policy for information system administrators. The new programs will require rapid availability of information about the criminal justice process, and on individuals involved as victims or witnesses. There will also be an added demand for statistical information about criminal victimization and victim and witness assistance programs. These demands will undoubtedly have a major impact on criminal justice information systems in the years ahead.

The legislative trends summarized above should underscore the need for those of us interested in criminal justice information policy to keep abreast of what is going on in the state legislatures. Often legislators are not aware of the impact that revisions in criminal laws will have on criminal justice information systems. Commonly, they do not provide the resources needed to meet the increased demand for information. And they often do not anticipate needed changes in laws relating to criminal records. We must educate them to the extent we can. And we must educate ourselves to insure that the nation's criminal justice information systems will continue to supply the information needs of the justice system.

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[15] Book of the States, 1982-83, p. 531.

[16] The information in this section is based upon an April, 1982 paper issued by the American Medical Association, entitled "Drunk Driving, An Overview of Recent State Legislative Enactments to Strengthen Drunk Driving Laws."

[17] Victim/Witness Legislation, Considerations for Policymakers, American Bar Association, Section of Criminal Justice, 1800 M. St., N.W., Washington, D.C. 20036.

Trends in Collecting and Using Crime Data

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Modern societies are organized to produce and communicate knowledge. Our interest here is in the production and communication of a specialized form of knowledge, statistical knowledge of trends in crime.

Knowledge when communicated is seen as information--as acquiring utility by informing. There are basically three different but related models for the utilization of knowledge: enlightenment, intelligence, and engineering models (Crawford and Biderman, 1969; Biderman, 1970). Each implies forms and modes of production and communication, and of demand and supply of information.

The statistical knowledge required for engineering models is most easily specified. Once specified, how that demand can be met can be determined. If, for example, we have a model of an instrument to select serious or violent offenders for incarceration, we can state the statistical requirements for developing and testing that model. We likewise can determine fairly easily the statistics required for a model that allocates police patrolmen to patrol beats according to the territorial distribution of crimes known to the police. It would be far more difficult, however, to determine whether these allocations of police patrolmen affected the crime rates in those districts.

The requirements of intelligence models for statistics are less easily determined. Intelligence requirements are closely linked to organizational demands for information in setting policies and in their administration. Because such models are less clearly specified, given the nature of organizational decisionmaking, their requirements for statistics are less easily determined. Crawford and Biderman have observed that intelligence forms of knowledge fit the requirements of adaptational--more than the manipulative strategies of engineering models (1969:240). From our perspective, it is more difficult to determine, for instance, what kind of knowledge judges might want for sentencing decisions or a parole board to release incarcerated offenders--intelligence requirements--than it is to determine those of our aforementioned selection instrument for incapacitation.

Statistics on crime matters also serve enlightenment purposes; indeed it may be one of their most important functions. The demand of citizens and their news media for information on how much crime there is in their community and whether it is changing, and of what are their chances of being a victim of crime is just as real and important in a democratic society as is the demand of those organizations of the law enforcement and criminal justice systems who have responsibilities for dealing with crime and of those from the scientific and engineering communities who seek new ways of dealing with the crime problem. Yet enlightenment demands are not easily specified and translated into statistical requirements or into the forms in which that information is wanted. Do citizens, for example, demand information on how their risk of being victimized by a particular kind of crime changes as they move about their daily routines? And, if so, in what form can they absorb and use that information? Is a simple rate enough or do they want to know their odds more specifically, as for example how much their risk changes if they go out alone as compared with being accompanied by someone?

Demand and supply of information

Given these three functions of information and the demand inherent in each function, one expects that the demand will always exceed the supply and that there will be lags in supply related to the demand. The more organized and bureaucratized the agencies responsible for the collection, processing, and dissemination of information, the more recalcitrant they are to changes in demand. Most of the systems responsible for the collection and processing of statistical information on crime have enormous lags in time between a definition of a new or changed demand for information and its supply. The reasons for this are several.

Some delay in responding to demand results when information rests in voluntary data collection systems that are centrally coordinated rather than controlled. Uniform Crime Reporting (UCR) in this country is such a voluntary reporting system, with some 15,000 law enforcement agencies voluntarily reporting aggregate statistics on crime known to them either directly to the FBI or by way of reporting to one of the 40 operational state-level UCR Programs (USDOJ, 1982:1-2). Although the individual police departments have case reports on crimes known to them, they prepare aggregate statistical reports to UCR. Aggregate reporting precludes further examination of the basic information in UCR. Additional unreported information contained in the case records can only be aggregated by each agency voluntarily submitting the additional information in an aggregate form, a procedure that takes considerable time to implement.

To comply with the Congressional mandate to report on the crime of arson, for example, it has taken UCR several years to develop the rules and forms for aggregate reporting crimes of arson. Almost one-fourth of the more than 15,000 agencies reporting index crimes to UCR moreover, still were not reporting the crime of arson in 1982 (USDOJ, 1981: 36). The substantial change in reported arsons between 1979 and 1981 was owing largely to an increase in voluntary reporting, going from some 8,500 agencies in 1979 to almost 11,048 in 1981 (USDOJ, 1982:34).

Both the voluntary and decentralized nature of reporting systems such as UCR makes them less responsive to changes in demand than do centralized ones. Still, centralized ones often are not organized to respond rapidly to changes in demand for information, especially where changes in data collection are required, largely owing to the fact that they are highly bureaucratized. Even though the National Crime Survey (NCS) is centrally organized and coordinated, by the Bureau of Justice Statistics (BJS) and the Bureau of the Census, it takes a considerable period of time for these Bureaus to begin new data collection for the NCS, owing largely to census bureaucratic requirements related to changing current practices and routines of survey organization. There are enormous lags due to such things as having a new questionnaire form developed and approved, printed and pre-tested, field personnel trained for administering the new questionnaire, and changes entered in the interviewer's manual. A conservative estimate would be at least a year's time to develop an operational questionnaire in response to the demand, followed by another year during which data are collected and a third for their preparation, analysis, and reporting.

One also should not minimize the difficulties inherent in designing new ways of collecting information or in capturing and analyzing information from existing collection systems in response to demand. It is very difficult, for example, to assemble information from the many different police, prosecution, court, and prison agencies from the individual files in their possession and even more difficult to match them for the unique individuals. These are more than matters of simple logistics since what often is at stake is taking into account differences in the law and its administration among jurisdictions.

Despite the magnitude of these difficulties, in responding to known demand, it is even more difficult to forecast the future nature of demand so that supply may anticipate demand. Assuming that we shall not make much headway in forecasting changes in the demand for information on crime and trends in it, we can do several things to prepare for changes in demand. Firstly, we can attempt to identify demand in its nascent state. Secondly, when demand is identified, we can try to reduce the responsiveness of the information production and dissemination system in supplying it. Thirdly, we can try to shape the nature of that demand by increasing our capacity to solve problems that are central to the systems of demand. This is partly a task for the research community but it is also a developmental task to enhance feedback that identifies the need for and requirements of information.

Perhaps the most important developmental task for criminal justice statistical information systems is that of institutionalizing a capability to respond to changes in demand and to increase the quality and quantity of the information that they supply. In recent years the Bureau of Justice Statistics (BJS) has made significant strides towards such institutionalization by creating a consortium to redesign the NCS and by contracting for the redesign of UCR. Both of these are among the most important steps taken to make these data collection systems more responsive to the demands placed upon them and to enhance the value of the information disseminated. They are important beginnings but a further step is required--to institutionalize such efforts on a continuing basis.

Institutionalization of redesign on a continuing basis is important for two reasons. One is that since the demand for information always exceeds the capacity of systems to meet the demand--though not necessarily the available supply of information--ways must be found to decrease the lag between the demand for information and its available or potential supply. And secondly, since there is an almost exponential growth in the technology for collecting, processing and analyzing information, there are important gains in doing so as well. Where redesign is a continuing element of an information system, it can be carried on as part of the regular processes of information collection, analysis, and dissemination, thereby effecting economies. Institutionalizing redesign within the agencies responsible for the collection and processing of information should reduce lags in changes considerably.

Meeting current and future demand and anticipating supply

One can easily demonstrate that the supply of available information is insufficient to meet demand from a variety of users: those responsible for operating programs in law enforcement and criminal justice; those responsible for designing them; and those responsible for the basic and applied research essential to rational planning and programming in criminal justice. Yet often, quite surprisingly, the information exists in some form somewhere in a data collection system. The basic problem often is to make information already collected available in a form that is responsive to the demand.

Consider, for example, the arcane and archaic organization of Uniform Crime Reporting which could be resolved by a fundamental transformation of the system of data reporting. The basic unit of data collection for crimes reported in UCR is a police report. Police reports typically contain a large amount of information on the crime and its consequences and on its victims and its offenders. There is a vast amount of information collected in police reports that could be more closely related to the information on victims in the NCS. In addition, we could learn far more about the relationship between victims and offenders in different types of crime were we to be able to aggregate crime known to the police. Such information often is tabulated and analyzed for individual police departments but it simply is impossible to aggregate that information for larger units such as state or the nation because of aggregate rather than case-based reporting in UCR. By transforming the UCR system to case reporting, we can enormously increase the available supply of information to meet changes in demand.

Arguments that this would be too costly and logistically impossible are without much merit, given the fact that both birth and death registration are reported on a case basis to the U.S. Office of Vital Statistics. What is easily forgotten is that UCR was developed in a day where computers and other modes of information processing did not exist. Were one to begin today, there is little doubt that one would begin with a case reporting system. Indeed, most police departments in the U.S. today have an EDP case-based capability. They produce their aggregate reports for UCR from that case reporting system; they could as easily and more economically transmit the tape of case reports as their monthly and annual reports. Very simply put, all of the information from all of the law enforcement agencies in the U.S. could readily be put in a standardized format and transmitted for aggregate analysis and reporting by the FBI or BJS. The major limits on supply of case report information then are those associated with producing the information in a form that is usable--a problem that is easily resolved in modern information processing.

There is a basic point in this example of UCR reporting that should not be lost sight of in developing information policy for criminal justice statistics. A case-based system of data collection and reporting provides the maximum flexibility in supplying changes in demand for information. A closely related point is that the technology of preparing and processing information associated with information processing systems (computers in their popular form) can handle vast amounts of information so that if it is built into those information systems it can readily be supplied. Our major problem lies in achieving a level of standardization in data collection and reporting since the capacity to aggregate and process case-based information is a relatively simple and inexpensive matter when such systems already exist in standard form in local data collection systems.

To meet demand in the future one must also be aware of the fact that there are fluctuations in demands for information from the different intelligence communities. The enlightenment function is driven largely by media agendas and the beats of journalists and reporters. The release of Uniform Crime Reports semi-annually and annually is bound to be an occasion not only for stories on the crime rate--particularly if it can be politicized as information--and an occasion for experts and others to unburden themselves of the currently favorite explanation of rate changes. There ordinarily is little solid research for such speculations since the one thing the knowledge system rarely produces is empirical studies that explain changes in the crime rate. There are only relatively few studies that apportion changes in the crime rate to changes in the birth rate--though the explanation is now common and accepted for explaining some of the changes in crime rates. What is less commonly understood is that changes in the rate for some crimes such as burglary are related to changes in the size of the population of households, population that has grown rapidly in the past decade (Reiss, 1981; Biderman, Lynch, and Peterson, 1982).

What are particularly needed for enlightenment are explanations of changes in crime rates which we lack for the most part. Part of the problem lies in the fact that few explanatory theories attempt to explain changes in rates of deviance such as crime. But part of the problem lies also in that most of the variables for explaining change have very little to do with crime events. Of those that do--such as deterrence theory and the effect of sentencing policies and practices on crime rates-- statistical information for appropriate tests is lacking. We must depend upon other statistical information systems for measures of our explanatory variables since, for the most part, crime information systems are not designed to produce them. One of the major goals in redesign of the NCS is to explain changes in victimization rates. The NCS can be particularly useful in providing information that is closely tied to crime events--from what are the consequences of particular victim strategies when confronted by a possible crime event or in the process of being victimized to preventive strategies that help explain the absence of victimization or repeat victimization. But the NCS does not now produce much information on those who are not victimized that might explain propensities to victimization.

At other times there is a much greater emphasis on obtaining information for intelligence and engineering purposes. We are in such a period now. When one looks back upon the development of major innovations in criminal justice and its information system, one sees they are associated with major public movements that challenge the current status quo of criminal justice. Uniform Crime Reporting was born of the National Commission on Law Observance and Enforcement and parole prediction of the state commissions of the same period. The National Crime Survey was born of the crisis over the rapidly rising crime rate and the work of the task force on the causes of crime for the President's Commission on Law Enforcement and the Administration of Justice. The PROMIS system has its origins in the presumed crisis of an overload in the criminal justice system and the engineering demands for offender and treatment information result from a major concern with the failure to bring the crime rate down.

In brief, the production of knowledge through research and development is not currently institutionalized in the Department of Justice in the way that it is in the Department of Defense. Hence the lags in supplying information are greater in Justice. It seems strange to suggest that every police department and every law enforcement agency might well spend part of its annual budget on research and development (though it might contribute to R&D rather than operate its own shop); yet it would be anomalous to suggest that we try to run any but our most stable industries or the Department of Defense without an R&D system.

We shall explore below a number of areas where there is convergence of demand from different interests for the same information from different interests and where that demand can be expected to grow and diversify.

Is the crime rate changing?

Perhaps no question is of greater concern from the intelligence and enlightenment perspectives than that of whether the crime rate is changing its course, particularly whether it continues to rise. Special interest attaches to this question since the two major indicators of crime in the United States--the UCR Crime Index and the NCS prevalence and incidence rates of victimization by crime--display divergent trends in the crime rate from 1973 to 1980. Although measuring different things-- crimes and victimizations by crime respectively--the basic trends should be the same because of their common derivation in crime events.

This seeming absence of uniformity in the behavior of two related rates easily provides opportunities for arguing the merits of one or the other and why they diverge. What is easily lost sight of is that while small differences in the amount of change in UCR and NCS rates can be attributed to differences in what is being measured, much of the difference between the trends in the two rates are artifactual--a consequence of the way that we currently organize data collection, classify and count this data, and what we take into account in the base for the rates in the two systems.

Recently Biderman, Lynch and Peterson (1982) have shown that comparisons between UCR and NCS crime rates from 1973-79 lead to much the same conclusion about changes in the crime rate in the United States during this period when comparisons are confined to the same universe of crime matters, when the same units are used for crime counts, and when the same population base is used to calculate the crime rate. A number of major sources account for these divergences in the crime rate which must be taken into account in analysis and reporting of the two crime rates. Among these are: (1) changes in rates of reporting to the police and of police-initiated crimes; (2) changes in the population of young persons who have both high rates of victimization and low rates of reporting to the police; (3) changes in the population of households (the population of households has been growing at a steeper rate than the population of persons owing to changes in labor force participation and family formation and dissolution by divorce or separation); (4) underestimation of the growth of the U.S. population between 1970 and 1980 which had its greatest effect on rates towards the close of the decade; and (5) the inclusion of crimes against organizations in UCR but not NCS rates.

There is an important lesson here for information policy. That is, caution must prevail both in interpreting changes in crime rates and in comparing crime rates for different information systems unless one understands how the trends are measured in reporting systems and their comparability. One might add that jurisdictional comparisons within a particular reporting system, such as comparisons for the UCR Crime Index among U.S. cities, must similarly be approached with caution since jurisdictions have different population growth rates, formation of family and household rates, differences in net migration, and differences in organizational composition--to mention only some of the sources of difference among jurisdictions that affect crime rates and comparisons among them within a reporting system.

The seriousness of crimes

There is a growing demand for information on serious crimes, their victims and their offenders. Programs concerned with victim assistance or incorporating victims into prosecution strategies seek information on the nature and consequences of harms for victims. Programs designed to select offenders for incapacitation now focus on selecting those that commit serious crimes against persons but one can anticipate that increasingly

there will be a demand for selecting offenders according to the kind and amount of injury they inflict on victims. And programs aimed at preventing harm and its consequences seek information on how harms are caused in encounters between victims and offenders or in social settings.

Our current systems of reporting provide information on the harm caused by crime to victims of crime, both in terms of physical injury and economic losses. More of such information is available from the NCS than from UCR. We can summarize what we learn about harm and its consequences from these reporting systems as follows:

Firstly, not all of the major crimes against the person result in physical harm for a majority of their victims. All crimes of homicide involve the severest of physical harm--loss of life. Parenthetically we note that many homicides may also have involved severe physical harm in addition to that considered the leading cause of death; there may have been physical torture or a rape assault prior to a strangulation or shooting, for example. We know little of such injury though it is not unimportant in conviction and sentencing of offenders, particularly as it establishes intent to harm.

The NCS considers all crimes of rape as involving physical harm to victims, although we know little about the kinds of physical harm caused in rapes in addition to that considered the sexual assault. Studies of rapes using police records indicate that a majority of rapes involve no additional physical harm (Amir, 1971).

For the other major crimes against the person--those of assault and robbery, there is no physical harm to the majority of victims. For all assaults (aggravated and simple) and for all robberies, about three in ten victimizations involve physical injury. Somewhat surprisingly, perhaps, the probability of injury in an assault is greater when the offender is a relative, friend or acquaintance than a stranger or known to the victim only by sight. Probabilities of bodily injury vary only slightly by the social characteristics of victims, a somewhat surprising result.

The amount of physical harm inflicted on victims is another measure of the harm to victims of crime. Whether the victim sought medical treatment and the nature of such treatment are two of the measures of amount of physical harm reported by the NCS. Of the thirty-four percent of all robbery victimizations in which the victim sustained some physical injury, fewer than one-third required emergency room or hospital care--about 10 percent of all robbery victims. A substantial majority of those victims required only emergency room care but a sizeable minority of 14 percent required hospitalization of four days or more. The profile is similar for assault victims.

Secondly, the probability of some economic loss resulting from a major crime is substantially greater on the whole than is the risk of physical injury. A minority of crimes against persons involve economic losses not only because of the property that may be lost directly in a crime such as robbery, but because of the time lost from work in dealing with the crime and its consequences and the expenses associated with medical care and recovery. Although for most victims these medical care expenses are relatively small--under $50 for three in ten victims of robbery and assault and between $50 and $200 for an additional 40 percent--for many, such costs are substantial relative to their incomes.

Thirdly, economic loss, while characterizing a substantial proportion of all crimes against property, is absent in a substantial minority of all such offenses, and is minor in actual dollar losses in a majority of such offenses. This is so for a number of reasons. Attempted crimes are less likely to involve financial loss than are actual crimes. Where there is loss, moreover, it usually is minor, often resulting from damage to property in an attempt, e.g., damage to a lock in an attempted burglary. Where actual property is taken, as in a burglary, larceny, or robbery, the modal loss is under $50.

The information we have provided on the consequences of harm to victims of crime seems more germane to enlightenment than to intelligence or engineering demands for information. We can anticipate, however, increased demand for information on the harmful consequences of crime for all of these sources of demand in the future for a number of reasons.

To begin with, note how little we know about offenders and the harms they cause to victims. Of particular interest for purposes of processing offenders in the criminal justice system is systematic knowledge of the amount of harm offenders cause during their offending career. Most of what we know is in terms of how many serious crimes they commit in terms of legal definitions of crime. But since we know that most serious crimes against persons do not produce physical harm or economic loss in a majority of cases, legal designations are inadequate measures of the harm caused by an offender. What we will want to know more of in the future is whether some offenders are largely responsible for the major harms and consequences to victims--an imagery brought up in the terminology of violent offenders.

We, likewise, shall want to know a great deal more about the psychological consequences of crime, to nonvictims as well as to victims. Of special concern is the fear engendered by crime and the extent to which victim experiences define that fear and account for their taking precautionary strategies--strategies that may themselves have harmful consequences. The NCS does not currently gather information on psychological and social consequences for nonvictims, largely owing to the fact that the NCS design does not now ask for information on fear of crime and of victimization by crime. We know relatively little about fear and its consequences for victims owing to the fact that the current NCS design does not seek follow-up information on those consequences for victims.

All of the information currently available on harms from crime and their consequences to victims are reported almost entirely in absolute rather than relative consequences for victims. Although we know that dollar losses from crime vary by income of families with the better-off having higher mean dollar losses, it seems apparent that relative losses are the reverse of this. Yet we have not developed the measures or the measurements to assess the relative magnitude of losses and, in turn, their consequences. The more we turn to consider forms of victim assistance or programs for dealing with harmful consequences, the more demand there will be for such information.

The seriousness of crime, as we have noted, tends to be judged in terms of the legal offense profile of crimes known to the police, of victimizations by type of crime, or of official arrests for offenses in police statistics or offender profiles of arrest. There is little social reporting of the harmful consequences of crime apart from aggregate reporting of physical harm in the NCS and of economic losses in UCR and NCS. All of that national reporting is based on aggregating individual records of crimes or victimizations. The situation is somewhat different for local police reporting but even there the tendency is to report only aggregate statistics on offenses or arrests and not the harmful consequences of crime.

There is a growing demand, nevertheless, for information on the harmful consequences to organized forms of social life--to organizations as well as persons and to neighborhoods and communities as well as to persons and their households. Although it is commonly recognized that crime is concentrated in territorial space and much of the statistical information on crime is originally attached to a place of occurrence, we have done little to look at crime and its consequences for neighborhoods and communities. There is a need to examine the careers that neighborhoods and communities have in crime as well as that of individuals. Recent research indicates that it takes only a relatively short period of time for a neighborhood to move from a low to a high crime rate community and that crimes against property may signal a later rise in crimes against persons (Kobrin and Scheurman, 1981). Since local law enforcement efforts are territorially based, it is obvious that we need to enhance their capability for understanding and intervening in community as well as individual careers in crime.

The NCS originally measured organizational as well as individual victimization for selected types of crime and primarily for business organizations. UCR includes reports of offenses against organizations as well as individual victims. The current reporting system of UCR makes it difficult to separate offenses against organizations from those against persons and their households. We can make some separations for offenses of arson, robbery, and burglary but not for motor-vehicle theft. Moreover, we do not calculate crime rates for organizations as a base population and currently UCR does not calculate crime rates for the U.S. population excluding offenses against organizations. What we know from prior research (Reiss, 1982) is that victimization rates are far greater for organizations than for persons and for all types of crime.

We could elaborate further on how NCS and UCR--the major systems of crime reporting--as well as our police, prosecution, court, and corrections agencies fail either to collect or report information on the kind and amount of harm caused victims and its consequences for which there is a growing demand. Much of that demand can be met by exploiting more fully the existing reservoirs of data underlying the NCS and UCR--especially UCR, since we rely now largely on the NCS. Police records now contain much of the information on victims and their immediate harms that could become part of a UCR reporting system. And the NCS data can be mined for additional information on the cumulative nature of harms in repeat victimization. But additional data will have to be obtained.

Data collection on crime statistics now is enormously enhanced for obtained information on victims and offenders in offenses owing to both the NCS and the police case-based UCR systems of data collection, analysis, and reporting. These infrastructures of the survey for NCS and of police information systems for UCR are fundamental and important sources for acquiring additional information. For the NCS, additional information can be acquired with the redesign of its current survey and by the use of supplemental surveys much as occurs with the Current Population Survey (CPS). A pattern of supplements now is being designed for the NCS, though additional funding is essential to carry out such a program. To both reconcile NCS and UCR systems of common reporting matters and to increase the availability of information collected by local police agencies, a fundamental restructuring of

UCR reporting is essential. It is to be hoped that current redesign efforts will move in that direction. UCR redesigned to count the victim, offender, and crime characteristics of crime events will be a more flexible source of supply than the current system. Strategically, then, there are two fundamental structures in place for meeting at least a substantial proportion of the demand for information on victims and offenders in offenses.

We lack, unfortunately, comparable information systems that are offender and offense based as they move through the criminal justice system. Such systems are growing quite rapidly, however, and perhaps in the not too distant future a comparable infrastructure may be in place.

Repeat victimization and repeat offending

Perhaps the two greatest unmet demands for information at the present time are the demand for information on repeat victimization and repeat offending. Repeat offending is characterized in terms of individual rates of offending and in terms of criminal careers. One of the largest sources of demand for such information is that stemming from programs for selective law enforcement, prosecution, and sentencing, especially by incapacitation. Ideally, information must be collated on repeat offending not only across the principal agencies that are hierarchically organized in a criminal justice network, but for juvenile and adult systems of justice as well. Such systems depend upon developing systems that further process information on uniquely identified suspects/offenders.

There is the parallel problem, however, of measuring repeat victimization by crime and the cumulative nature of crime for victims, both individual and collective. The NCS potentially can provide information on repeat victimization and its consequences but to do so requires some major redesign, increasing the capability to follow individuals and households that move while in sample and by increasing the kind and amount of information on harms by victimization and their consequences. Victim compensation and preventive programs depend very much on acquiring information on patterns of victimization over time.

Group offending

A substantial proportion of all offenses are committed by persons in groups. Whether or not one commits crime offenses as a member of a group depends in part upon one's age; the younger the offender, the more likely one is to commit all or a substantial proportion of one's offenses with others. An individual's rate of offending often is a combination, then, of both individual and group offenses; the sum of offenses in individual crime rates thus always is greater than the number of offenses committed by a population of offenders, the amount being a function of the size of groups in offending. The amount of crime saved by policies such as selective incapacitation depends, then, upon whether or not incapacitating a single member involved in a group offense reduces a group's propensity for offending. This is a major empirical question and one unfortunately where we must currently rely on estimates from the NCS on size of groups in different types of offenses to estimate those effects. As we attempt to measure the effects of policies towards offenders and offending, there will be a growing demand for information on how group participation contributes to individual rates of offending and whether and in what ways policies towards a group offender have consequences for offending by other members of groups. Indeed, we will need to know more about how stable is the composition of such offending groups and whether offenders stabilize such relationships for offending.

Summary and conclusions

There is no simple solution to the problem of keeping the supply of information responsive to the demand for it or for reducing the lag in meeting demand. Several matters seem quite clear, however, if we are to meet the changes in demand for information on changes in crime rates.

Firstly we must redesign and develop further our current information systems so that the supply of information currently collected is more accessible upon demand. We especially need to reorganize the state and national reporting systems for Uniform Crime Reporting so that it is a case-based system of reporting. By standardizing the form of national case reporting we would soon have a significant body of information on the major elements in crime events: offenses, offenders, and victims.

Although we could develop UCR on a sample jurisdictional basis, much is to be gained by maintaining it as a census rather than a sample reporting system, given substantial interest in local community as well as national demands for information. Indeed, it is important from an information policy perspective to develop local and state as well as national indicators of crime, not only because we organize criminal justice systems along jurisdictional lines but also because we seek local as well as national solutions to the problems of crime. Unless we have local indicators to deal with local problems, we shall mistakenly apply extra-local criteria to them.

Secondly, we must institutionalize the redesign of our national systems of data collection and analysis for crime statistics so that they may be more responsive to changes in demand. Of particular importance is the institutionalization of ways of collecting new information rapidly, as for example by provision of supplementary surveys to the National Crime Survey.

Thirdly, there is reason to conclude that aggregate crime reporting in terms of crime indexes and highly aggregated measures of crime is misleading, particularly in the absence of disaggregated reporting. To understand changes in crime rates we need multiple measures of change and multiple measures of what is changing. We cannot understand changes in the crime rate by observing only changes in an index of crime, since the specific crimes in the index may not all be changing in the same way. Often they do not. Even observing changes in the specific crime of the index may be insufficient grounds for explaining changes, since crimes are very heterogeneous categories of behavior. Attempted crimes are not the same as completed crimes in terms of their consequences for victims, for example.

Finally, it should be apparent that information based on legal definitions of crime often mask important information about crimes and changes in crime rates. Legal definitions of crimes as serious, for example, exaggerate the seriousness of crimes in terms of their physical and economic consequences. We need to continue to develop measures of crime that address more closely the enlightenment, engineering and intelligence demands for information. Measures of the risk of victimization and of the consequences of crime for persons, households, and communities seem more closely related to the demand for information than is provided by our present supply of indicators of the crime rate.

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Public and Group Attitudes Toward Information Policies and Boundaries for Criminal Justice

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Introduction

Why is it so difficult to obtain comprehensive, high-quality information for the criminal justice function in American society? In virtually every paper in this collection, managers of criminal justice agencies and experts on criminal justice issues have documented serious problems with the collection, exchange, and use of information for criminal justice functions.

First, there are problems with the scope of information collected about individuals or groups. Key elements of information are often not available about persons arrested and tried for criminal offenses; about the victims of crime; about convicted offenders while imprisoned or on parole; and about various other groups involved in criminal justice processes, such as drunk drivers, "career criminals," or "high-risk potential offenders."

There are also problems in the quality of information produced in the criminal justice system. Criminal history records are often incomplete, sometimes inaccurate, and frequently late in availability for key decisions involving record subjects. Intelligence information about groups suspected of engaging in criminal conspiracies, violence, and terrorism is weaker than most experts believe necessary for adequate public protection.

Finally, there are problems in the integration of information. Despite extensive computerization within many criminal justice agencies, and the creation of various automated inter-agency information systems over the past two decades, information collected by individual agencies of criminal justice is still not shared with different types of criminal justice agencies or across jurisdictional levels in a fashion needed for optimum program operations. And, in too few situations is there the integration of data on people, actions, and outcomes that would allow in-depth evaluation of how well criminal justice functions are being performed.

Given the enormous amounts of money spent on criminal justice functions in the United States, the size of the professional criminal justice workforce, the availability of high-quality technical and administrative expertise, and the great importance that the public assigns to crime prevention and control, how do we explain these all-too-apparent weaknesses in criminal justice information resources?

As with any situation of this complexity and magnitude, there are multiple causes. The most common explanations cite factors such as federal-state jurisdictional conflicts; inter-agency competition for achievement and recognition; continuing traditionalist approaches on the part of some law enforcement agencies, courts, and other criminal justice agencies; the husbanding of agency information as a valuable maintenance resource; laws and judicial decisions that limit the collection or exchange of information; and similar forces. Cost is also involved, though the sharp drop in the costs of computing power in recent years and the general spread of computer resources among criminal justice agencies has reduced "big dollars" as a prime explanation.

Without minimizing the importance of these factors, I want to present two additional reasons that deserve our attention. These are impediments to comprehensive criminal justice information systems arising from:

1. The American public's classic but recently expanded mistrust of government, including criminal justice agencies; and

2. The American public's ambivalence about the use of computers and information technology to process personal data for government programs, including criminal justice functions.

In my presentation, I want to explore how these factors have affected recent criminal justice information policies. I also want to speculate on whether these constraints are likely to become stronger or weaker in the next few years, and whether there are actions by criminal justice officials, public policymakers, and key groups in American society that might significantly affect those constraints.

A good way to begin our discussion is to present a broad portrait of how the American public--measured by opinion surveys--currently views problems of crime, the operations of criminal justice agencies, and some key issues of criminal justice information policy. We will compare these attitudes, as we go along, with public opinion data from the late 1960's and 1970's, and explore some explanations for the direction of these public opinions. Then, we will relate the opinion trends to the way criminal justice agencies approached using information technology in those two decades, and also the way that larger social forces have shaped both governmental actions and public-opinion shifts in this period. Having presented these materials, we should be in a good position, at the end, to examine how mistrust of government and fears about technology have affected criminal justice information systems and policies, and what options we may have to work on these issues in the middle to late 1980's.

Public attitudes toward criminal justice activities

A wealth of survey data shows that crime is a major concern for Americans today, with fears over threats to personal safety and property something that permeates the consciousness of the population. Forty-seven percent in a national survey, for example, told the National Opinion Research Center they were "afraid to walk alone at night."[1]

Public attitudes toward crime

Louis Harris and Associates has been conducting surveys for 15 years on such issues of crime and criminal justice activities. As part of a broad 1982 survey in this area, the Harris organization asked respondents, "In the past year, do you feel the crime rate in your area has been increasing, decreasing, or has it remained the same as it was before?"[2] The results, along with data on the same question from earlier surveys, are shown in Table 1. The 1982 results show 59% of the public feels that crime is increasing, a reduction of popular perceptions from the 68% who held that view in 1981. While there has been something of a see-sawing pattern in public perception of crime rates over the years since 1967, the 1982 figures are substantially higher than the two baseline years of 1967 and 1978 that we will be using frequently for analysis.

Table 1

FEELING ABOUT CRIME RATE	Increasing	Decreasing	Same	Not Sure
1982	59%	6%	34%	1%
1981	68	4	27	1
1978	46	7	42	5
1975	70	3	24	3
1967	46	4	43	7

Confidence in criminal justice agencies

The Harris survey asked respondents to rate the job being done by various levels of law enforcement--local, state, and federal--with the following question: "How would you rate the job done by (this particular level of) law enforcement officials--excellent, pretty good, only fair, or poor?"

Table 2

RATING OF LAW ENFORCEMENT AGENCIES	Positive ("Excellent" or "Pretty Good")	Negative ("Only fair" or "Poor")	Not Sure
Local Agencies			
1982	62%	37%	1%
1978	55	42	3
1967	64	30	6
State Agencies			
1982	56	40	4
1978	51	37	12
1967	62	24	14
Federal Agencies			
1982	47	46	7
1978	37	43	20
1967	58	23	19

The results, with earlier data on the same question, are shown in Table 2. These figures indicate that the public in 1982 feels significantly more positive about local law enforcement than either state or federal agencies, with federal officials drawing the lowest approval rating. As for changes since the late 1960's, the 1982 survey shows an overall rise in confidence in all three levels of law enforcement compared to 1978, but none of these agencies draws an approval rating as high as its jurisdiction enjoyed in 1967.

[1] National Opinion Research Center, 1982. Quoted in New York Times, January 29, 1984, Section 4, p. 1.

[2] "Public Attitudes Toward Crime and Law Enforcement," The Harris Survey, #41, 1982, ISSN9273-1037, May 24, 1982.

Does the law enforcement system discourage crime?

Another question on the Harris survey asked: "From what you know or have heard, do you feel that our system of law enforcement works to really discourage people from committing crimes, or don't you feel it discourages them much?" As Table 3 shows, almost four out of five people--79%-- do not believe that current law enforcement discourages people from committing crime. This is an all-time high in public skepticism since 1967 about the crime-prevention or crime-deterrent effects of the "law enforcement system."

Courts and criminals

Turning to the judiciary, the Harris survey asked: "Generally, do you feel the courts have been too easy in dealing with criminals, too severe, or do you think they have treated criminals fairly?" Table 4 documents the sharp drop in the public's belief over the past 15 years that courts are striking the right balance in their handling of criminal cases. In contrast to the rise in public-confidence ratings that law enforcement agencies recorded between 1978 and 1982, public displeasure with the judiciary is continuing to rise, with four out of five Americans now critical of the judiciary's "leniency."

Correctional philosophy

Finally, the Harris survey asked a pair of questions about correctional policy: "Do you think the main emphasis in most prisons is on punishing the individual convicted of crime, trying to rehabilitate the individual so that he might return to society as a productive citizen, or protecting society from future crimes he might commit?" Following this question on what current correctional policies are, respondents were asked what they believed should be "the main emphasis in most prisons." The same three choices were specified.

Table 3

EFFECT OF LAW ENFORCEMENT SYSTEM	Really Discourages	Does Not Discourage	Encourages Crime	Not Sure
1982	16%	79%	2%	3%
1978	14	73	4	9
1967	26	56	6	12

Table 4

COURT TREATMENT OF CRIMINALS	Too Easy	Too Severe	Fair	It Varies	Not Sure
1982	81%	1%	14%	2%	2%
1978	77	1	10	8	4
1967	49	1	15	29	6

Table 5

MAIN EMPHASIS OF PRISONS	IS TODAY				SHOULD BE			
	Punish	Rehabilitate	Protect	Not Sure	Punish	Rehabilitate	Protect	Not Sure
1982	21%	30%	38%	11%	19%	44%	32%	5%
1978	23	33	31	13	23	48	21	8
1970	27	25	36	12	8	73	12	7

The two sets of responses, and earlier data on the same questions, are shown in Table 5. The answers suggest a fairly constant division of public opinion over 12 years as to the different policies that it is believed prison officials are following. But, the 1982 results show a dramatic drop over this 12 years in the public's belief that prisons should try to rehabilitate prisoners (73% in 1970, 44% in 1982). This is accompanied by a parallel rise in public desires that protection of the public and punishment of offenders should be adopted as our basic correctional philosophy.

Public priorities and federal spending on crime

In 1981, an ABC News-Washington Post survey[3] asked a national sample for their feelings about federal spending in five areas: education, the military, poverty, health care, and crime. Seventy-four percent of the public approved of increasing federal spending either "a great deal" or "somewhat" to fight crime, the largest majority for increased expenditure. The 74% majority edged out approval for increased military spending (72%) and was a much larger majority than favored increased federal spending for the three social programs: education 43%; anti-poverty 49%; and health care 49%.

The death penalty

In 1981, Gallup Poll results showed that 66% of the public favor the death penalty for persons convicted of murder. (25% oppose this, and 9% have no opinion.)[4] This approval was up four points from the time the same question was asked in 1978 (62%) and had risen twenty-four points compared to 1966 (42% approval).

Overview

Putting these survey data together, we find that:

(1) The public is widely concerned about crime directly affecting them and their communities, with 3 out of 5 people believing that crime rates are still increasing and 4 out of 5 feeling that the "law enforcement system" does not discourage crime.

(2) The public is only moderately positive toward the job being done by law enforcement agencies; it is highly critical of the role currently being played by courts; and it is divided almost evenly in whether it wants the primary role of correctional institutions to be to "rehabilitate" convicted offenders (44%) or to "punish them" or "protect society" (51% combined).

(3) The public is strongly willing to spend more money to fight crime, and strongly favors using the death penalty to punish convicted murderers.

The signal that such data would suggest to a foreign traveler visiting the United States is that the American public wants more vigorous, tougher, and more effective anti-crime efforts by all parts of the criminal justice community. This would seem also to indicate public support for highly active and energetic uses of information system resources and technologically advanced information-sharing activities for criminal justice. So, let us turn to what the surveys suggest as to public attitudes toward those information policy issues.

Public attitudes toward government uses of information technology

Surveys from 1970 to the present record a steadily rising concern by the public over the collection of personal information by government and business, the processing and exchange of such information by computers, the lack of adequate safeguards over such uses of information, and the desire for more vigorous laws and organizational policies to control abuses of information by authorities. These attitudes are linked to a well-known decline of confidence in both government and private institutions during the 1960's and 70's, a "confidence gap" which has moderated slightly but still persists in the early 1980's.[5]

The most useful source of data on these issues is also Louis Harris and Associates, which has conducted surveys from 1970 to 1983 on key issues of privacy, computers, confidence in government institutions, and government handling of information.[6]

Concern over threats to personal privacy

From the first time that Harris asked a question about threats to one's own personal privacy, in 1970, the percentage of Americans who report that they feel threatened has risen dramatically. From a concern held by one out of three Americans in 1970, this has risen in 1983 to a concern of over three out of four people. The 1978 and 1983 responses to the question, "Now let me ask you about technology and privacy. How concerned are you about threats to your personal privacy in America today?", are shown in Table 6.

In response to the question, "Do you believe that personal information about yourself is being kept in some files somewhere for purposes not known to you, or don't you believe that is so?", two out of three Americans believe that personal information is being collected about them and used in ways that they are not informed about (Table 7).

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[3] ABC News-Washington Post Poll, Survey No. 0029, February, 1982, Question 18, reprinted in Sourcebook of Criminal Justice Statistics, U.S. Department of Justice, Bureau of Justice Statistics, 1982, p. 190.

[4] The Gallup Poll, Princeton, N.J., March 1, 1981, p. 3; reprinted in Sourcebook of Criminal Justice Statistics, 1981, op. cit., p. 209.

[5] For a thorough discussion of the opinion data and their possible meanings, see Seymour Martin Lipset and William Schneider, The Confidence Gap: Business, Labor, and Government in the Public Mind (N.Y.: Columbia University Press, 1983).

[6] The two principal surveys we will be drawing on are: "The Dimensions of Privacy," A National Opinion Research Survey of Attitudes Toward Privacy, Conducted for Sentry Insurance by Louis Harris and Associates, Inc. and Dr. Alan F. Westin, 1979, and "The Road After 1984: The Impact of Technology on Society," a study by Louis Harris and Associates for Southern New England Telephone Company, 1983. Data from both studies used with permission of Louis Harris and Associates, Sentry Insurance, and Southern New England Telephone.

Table 6

	1978	1983
Very or somewhat concerned	64%	77%
Only a little concerned	17	15
Not concerned at all	19	7

Table 7

	1974	1978	1983
Believe this is so	44%	54%	67%
Don't believe this is so	44	32	30
Not sure	12	14	3

Table 8

	1974	1978	1983
Are an actual threat	38%	54%	51%
Are not an actual threat	41	33	42
Not sure	21	12	6

Table 9

	1978	1983
Agree	27%	34%
Disagree	52	60

Table 10

	1974	1978	1983
Believe it is so	44%	54%	67%
Do not believe it is so	44	32	30
Not sure	12	14	3

Almost two out of three people reject the statement that "most people who complain about their privacy are engaged in immoral or illegal conduct." One in five Americans report that they have "personally been the victim" of what they "felt was an improper invasion of privacy." The most frequently cited "organization or authority involved in this invasion of privacy" in the 1978 survey was the police.

Almost half of the public (48%) say that they are "worried" about how the federal government will use the personal information it gathers on individuals, only 3% less than are worried about how business uses the personal data it collects.

Finally, 72% of the public agree that "most organizations that collect information about people ask for more sensitive information than is necessary."

Attitudes toward computers, privacy, and confidentiality

In response to the question, "Do you feel that the present uses of computers are an actual threat to personal privacy in this country, or not?", a slight majority of the public (51%) now believes that current computer uses by government and the private sector pose an "actual threat" (Table 8). To the question, "In general, the privacy of personal information in computers is adequately safeguarded today," a stronger majority (60%) believes that computerized information about people is not sufficiently protected today (Table 9). The majority continues to increase when people are asked, "Do you believe that personal information about yourself is being kept in some files somewhere for purposes not known to you, or don't you believe that is so?" (Table 10).

Desire for controls and safeguards over computerized information systems

When asked, "If privacy is to be preserved, the use of computers must be sharply restricted in the future," two out of three Americans believe as a general matter that strong limits over computer use should be instituted in the interests of privacy (Table 11). A similar two-thirds majority have faith that "new laws and organizational procedures could go a long way to help preserve our privacy." In 1983, there is what the Harris analysts call "virtual consensus proportions" of support for strong new federal laws to deal with "information abuse" by public agencies or private organizations using computerized information systems. Table 12 shows public approval rates for six types of new federal laws.

Specific attitudes toward criminal justice agencies information policy issues

One of the key issues over the past half century has been whether law enforcement agencies should be allowed to engage in various covert investigative practices under internal executive authority or whether they should be required to obtain independent authorization in ex parte judicial proceedings, through court orders. The Harris survey in 1978 gave respondents a list of police practices and asked what "the police" should be allowed to do "without obtaining a court order" when they believe that "members of an organization never convicted of a crime might engage in illegal acts in the future."

- 55% believe the police should be able to keep the movements of such persons under surveillance without getting a court order, with 42% opposed.

Table 11

	1978	1983
Agree	63%	68%
Disagree	20	30
Not sure	17	2

Table 12

POTENTIAL FEDERAL LAWS THAT WOULD:	Favor (1983)
Require "double-checking" computerized information before using in ways that might be damaging to people	92%
Make federal offense for information-collecting organization to violate privacy of individual	83
Impeach public official who uses confidential information to violate privacy of individual or group without court order or trial	81
Punish authority responsible for "computer mistakes" that hurt peoples' credit ratings, harm companies, or endanger lives	71
Put companies out of business that share confidential information in violation of privacy	68
Set regulations on what kind of information about an individual could be combined with other information about the same individual	66

- Only 48% believe the police should be able to put undercover agents into the organization without getting a court order, with 45% opposed.

- 81% are opposed to the police looking into the bank records of such suspects without getting a court order. (15% favor)

- 87% would oppose the police tapping their telephones without a court order. (11% favor)

- 92% would oppose the police opening their mail without a court order. (7% favor)

Also in 1978, 72% of the public said that the police should not have the right to stop anyone on the street and demand to see some identification if the person is not doing anything illegal.

Fifty-seven percent of the American public in 1978 were opposed to issuing an identity card to all Americans "so that it would be easier to find suspected criminals and illegal aliens."

Overview

Summing up the results of national opinion on this group of questions,

we see that strong majorities of the public are worried about threats to their personal privacy; are concerned about the collection and use of personal information by law enforcement agencies (and other government bodies); favor requiring court orders for most forms of police investigative work, and would place strict controls, with various criminal penalties, on use of computerized information systems in ways that violate individual privacy or break promises of confidentiality. Taken together, these attitudes would seem to signal strong public support for limiting the scope of government information collection, including criminal justice agencies, and controlling exchanges of information between public agencies and also the private sector unless done under strict regulations, especially if computers are involved.

Technological, organizational, and socio-political trends

What our presentation has shown so far is the presence of two somewhat competing trends in American public opinion over the past two decades. We have the public deeply concerned about crime (an objective reaction to high crime levels in this era), ready to spend more to fight crime, and supporting stronger measures by criminal justice agencies. We also have a large majority of the public concerned about threats to their personal privacy, worried about government's use of computers, and supporting a variety of controls and limits on information-gathering and information-sharing by criminal justice agencies.

Before trying to analyze what these two trends mean and what they suggest for the mid-1980's, we should look at how information technology unfolded in the criminal justice area during the past two decades, and the socio-political milieu in which this took place. Since this audience will be familiar with these events, my treatment will be brief and the emphasis on judgments rather than extended description.

Three periods of information-technology activities

Phase One: early 1960's to early 1970's

The early to middle 1960's saw the arrival of third-generation computers, and the enthusiastic adoption of information-technology and systems approaches by a small but leading-edge sector of the law enforcement community, at local, state, and federal levels. This was the initial period for the FBI's NCIC system, the New York State Identification and Intelligence System, Alameda County, California's PIN System, and similar experiments, and the organization of the SEARCH Group to foster automation and exchange of criminal history records by the states. Computerization of individual records and automation of trend data were applied to administrative or operational functions of law enforcement; to some intelligence activity, especially involving organized crime; and to some statistical and research activities. Federal funding of these efforts was provided by LEAA after 1969, at increasing dollar levels and in widening scope as to types of criminal justice agencies aided.

The public was supportive of these efforts, viewing them as a "space age" modernization of law enforcement efforts and an enhancement of functions for a still publicly-trusted sector of American governmental activity. This was true despite the early-warning alarms about invasion of privacy and threats from databanks that began to be sounded in the middle 1960's, and which were picked up as part of the civil rights, anti-war, and student-protest movements of the late 1960's and early 70's. Only one in three Americans in 1970, as already noted,[7] told Louis Harris that they were worried about threats to their privacy. And, at the height of liberal and radical protests over FBI, Army, and local-police surveillance of their activities, a Gallup Poll in 1971 found that 80% of the public gave the FBI a "highly favorable" or "moderately favorable" rating; 11% reported a "neutral" judgment and only 4% rated the FBI "unfavorably;" 64% of the public gave favorable ratings to local law enforcement.[8]

Phase Two: 1974-1980

In this period, spurred by a combination of strong LEAA funding, improvements in computer software, and lessening cost for computing power, criminal justice agencies continued to adopt and apply information technology to their operations. Automation spread into the prosecutive, judicial, and correctional areas, especially for administrative processing activities.

While public concern about the fact of rising crime rates continued to provide support for the idea of technologically-improved criminal justice activities, public opinion in this period was dominated by Watergate and Watergate-related developments. Most Americans were strongly and negatively affected by the exposure of controversial police, FBI, CIA, and other intelligence and surveillance activities. More generally, the public was disturbed by the misuses of information and information-gathering activities symbolized by the wiretap break-in at Democratic Party headquarters; the ransacking of Daniel Ellsburg's psychiatrist's files; the White House "enemies list;" the effort to enlist the IRS in selective audits of political opponents; J. Edgar Hoover's dissemination of wiretap-based data involving Dr. Martin Luther King's personal conduct; and a host of similar activities.

These activities provided advocates of privacy laws and data-bank controls with the answer to the question that had previously weakened their position with the general public: "OK, the potential for intrusion may be there but show me public officials who are actually abusing their powers and their new technological tools." In that sense, the Watergate-related events may go down in history as the catalyst of our modern privacy and freedom-of-information laws; they provided the "smoking gun" that made privacy-invasion real to the average American, and made the enactment of controls politically possible.

Thus between 1974 and 1980 we saw passage of the Federal Privacy Act of 1974 and its counterpart in some states; creation of the U.S. Privacy Protection Study Commission to look into private-sector privacy issues; promulgation of the LEAA regulations governing privacy and security in automated systems for law enforcement; major expansion of the federal Freedom of Information Act in 1974, giving individuals increased access to their own files held by government agencies; the federal Financial Right to Privacy Act of 1978; state laws to protect privacy in various private-sector areas; and many other such developments. In addition, to meet public concerns, many governmental and private agencies voluntarily formulated privacy, confidentiality, and subject-access codes to govern the operations of their EDP systems, providing standards even where legislation did not mandate this.

The spirit of this period was captured in a question on the FBI asked by the Harris survey in 1978, as part of the omnibus survey on privacy we have already drawn on heavily.[9] The question was:

"The FBI has to try and balance its respect for the individual's constitutional rights against the need to conduct surveillance to protect society. Would you say that it has got the balance about right, or that it is not doing enough to protect individuals' constitutional rights, or that it is not doing enough to protect society?"

Only 26% of the public in 1978 felt that the FBI had the balance "about right," a dramatic decline from the 80% favorable rating at the start of the 1970's. Thirty-four percent of the public felt the FBI was not doing enough to protect individuals' rights, and 21% felt it should be doing more to protect society. (17% were not sure)

Phase Three: 1980 to the present

The early 1980's saw the end of LEAA funding for information-technology activities by state and local criminal justice agencies, and a general reassessment among leaders and experts as to the performance of various EDP-related efforts in criminal justice. As other essays in this collection have discussed, many of the efforts to create large, omnibus-file criminal justice information systems proved difficult or impossible; systems to revolutionize command-and-control functions have proved disappointing; many of the ambitious intelligence-oriented EDP systems of Phases One and Two have not lasted beyond their experimental stages; and many proposals to develop richer, more powerful data systems to improve decisions involving post-juvenile young offenders or prime candidates for parole have been forestalled by privacy and confidentiality restrictions on collection or exchange of personal data.

On the other hand, administrative systems for handling wants-and-warrants, criminal history records, fingerprint identification, and various other functions have performed well and are under continued development, and there are significant new plans for expanded information systems, such as the FBI's proposal for interstate exchange of automated criminal history records.

Regarding public policies, this period has been marked by what could be called a "second generation" approach to privacy and information-system controls. We are continuing to apply the "fair information practices" (FIP) approach of Phase Two to new areas of information activity, as in new state laws protecting subscriber privacy in cable TV systems, and setting an FIP code for insurance, and organizations are instituting internal policies to apply privacy and confidentiality rules to office automation and organizational uses of personal computers. The early 80's has also brought a readiness to assess some of the specific approaches of the "first-generation" privacy-protection and freedom-of-information laws of the 70's, suggesting that revisions designed to improve the administration and effectiveness of such laws may well be in the offing. Finally, there has been a renewed interest among pro-privacy groups and privacy-oriented legislators in creating some kind of governmental body to monitor privacy developments, publicize new issues, and recommend new of public policies concerning privacy where these seem to be called for, especially as a result of major new applications of information technologies.

As far as public opinion is concerned, 1980-83 witnessed public attitudes toward crime control and privacy/information protection that we have outlined earlier in this essay. However, there are some important demographic-group patterns of this phase that we should now note.

Demographic-group changes

In Phase Two, the period of maximum loss of public confidence in government and private institutions across the 1950-1984 time frame, American society was divided into some clear group sectors. The data we presented on crime and privacy-protection attitudes between 1967 and 1979 show important differences by age (greater disaffection by those 18-26); race

[7] See 1970 data referred to in Harris/Sentry, 1979.

[8] Quoted in Alan F. Westin and Michael A. Baker, Databanks in a Free Society (N.Y.: Quadrangle, 1972), 474-475.

[9] Harris/Sentry, 1979.

(greater disaffection among non-whites); education (greater disaffection among the better-educated); religion (greater disaffection among Jews than Catholics and Protestants); income (greater disaffection among lower income groups); and ideology (greater disaffection among liberals than moderates or conservatives).

In 1980-83, both the crime-related and the privacy-oriented surveys show a moderation of demographic differences. Whatever the division of opinion on the merits of issues, most of the significant demographic differences in Phase Two have either disappeared or declined to relatively low levels. The three demographic factors that still produce differences at the 10-19 point level on some questions are race, age, and education, and even these do not remain consistent as different issues are posed involving crime or privacy. The overall point is that most demographic segments of the population at present are not significantly out of line with overall public opinions, in either of the two policy clusters we have been discussing. Put more positively, this means that, as demographic groups, young people, liberals, women, non-whites, lower-income earners, and the higher educated now generally share the dominant attitudes of the general public in the areas we are examining, rather than being in sharp disagreement.

Alienation as a possible prime factor

During the design of the 1978 Harris/Sentry survey on privacy, for which I served as the academic advisor, it seemed to me that the source of people's attitudes toward privacy issues and what needs to be done about privacy protection might not be related as directly to group differences, or personal experiences, or even political philosophy, as much as to the degree of alienation that individuals might feel toward the organizational leadership and institutions of American society. As already noted, opinion polls since the mid-1960's have steadily recorded a drop in public confidence and trust in both institutions and leaders. This alienation soared during and after the Watergate exposures, and while there were signs of modest recovery of confidence in the later 1970's, surveys in 1977 and 1978 had not yet shown a substantial return of approval by the public.

Table 13

Item	Agree	Disagree	Not Sure
"Government can generally be trusted to look after our interests"	34%	58%	8%
"The way one votes has no effect on what the government does"	38	54	8
"Technology has almost gotten out of control"	43	41	16
"In general, business helps us more than it harms us"	72	19	10

Table 14

Level of Alienation		
High	(3 or 4 "negatives")	21%
Moderate	(2 "negatives")	28%
Low	(1 "negative")	34%
Not Alienated	(no "negatives")	17%

To test whether there was a relation between alienation levels and privacy views, we included in the survey four questions that measured public confidence in various processes and institutions of American society. We asked respondents to agree or disagree with four statements, two cast in "positive" terms and two worded "negatively," in order to avoid a bias toward either position. The statements and the answers are shown in Table 13.

We then made up an index of alienation by ranking the survey respondents according to how many alienated or "negative" answers they had made. This breakdown is shown in Table 14.

Analysis of these figures along demographic lines reveals that almost all major groups in American society have a segment of highly alienated members that is close to the national norm of one person out of five. The only groups that went somewhat above the 21% public average for high alienation were Jews (32%), blacks (29%), and liberals (26%). The only group that went slightly below was professionals (16%).

This means that high alienation is distributed very generally in the population rather than being bunched up--one way or the other--in various demographic categories. Thus no significant differences in percentage of highly alienated individuals was shown as between high and low income groups, high school and college graduates, laborers and executives, or young and old.

The same situation is true for the 17% of Americans who record strong affirmation in the operations of American society, our "Not Alienated" category. Only two groups--those with 8th grade educations and those making over $25 thousand--were somewhat higher than the national average in non-alienation. Thus "non-alienation" is widely distributed in the population as well, and not centered in a few demographic categories.

We then analyzed the answers to the survey according to the alienation level of each respondent. We found that in about 200 of the 245 items on the survey, the answers followed a regular pattern: the more alienated the respondent, the more pro-privacy the response. The opposite was also true: the less alienated, the less concerned about privacy invasion, less supportive of new privacy policies or laws, etc. In each of the areas tapped by the survey--personal experiences, social values, institutional practices, and regulatory philosophy--most of the views of the High, Moderate, Low, and Not Alienated were in a perfect scale. A sample of answers illustrating this phenomenon is shown in Table 15.

The alienation index proved to hold also for a large majority of the questions relating to law enforcement and criminal justice, and trust in government-information activities. Table 16 shows the pattern.

Elites and information policy issues

A solid body of evidence indicates that, overall, the legal elite, the media elite, and national-opinion leaders hold views on civil liberties issues that are more libertarian than those of the general public.[10] This is especially true of

Table 15
Alienation and Privacy Issues

ITEM	PUBLIC	ALIENATION LEVEL			
		High	Moderate	Low	Not
Very concerned about threats to personal privacy	31%	47%	30%	27%	21%
Very close to a 1984 society today or already there	34	55	35	29	13
Have personally been a victim of invasion of privacy	19	24	20	17	13
Most organizations collect more personal information than really necessary	72	87	72	68	62
Use of computers will have to be sharply restricted in future to protect privacy	63	80	65	59	47
Law should be passed forbidding psychological tests for employment	48	60	50	45	38
Favor the creation of a National Privacy Protection Agency	37	45	36	34	32
Congress should pass legislation to protect privacy in insurance	65	72	66	63	61

[10] Herbert McCloskey and Alida Brill, Dimensions of Tolerance (N.Y.: Russell Sage Foundation, 1983).

privacy, databank, and information-policy issues. Local community elites also tend to be more generally libertarian than the public, though not as strongly as the legal, media, and national elites. Business leaders and law enforcement groups tend to score below the public level in support for privacy and due process rights in information systems, but not in major deviations.

This is illustrated by items from the 1978-1979 national survey reported in McCloskey and Brill, in Dimensions of Tolerance (1983),[11] set out in Table 17.

Parallel findings are illustrated by the 1983 Harris survey, reflected in Table 18.

Implications of public and group opinion trends for criminal justice information policies in the 80's

To summarize, we have made the following points so far:

- There is apparent conflict, or at least, ambivalence, in group and public attitudes relating to criminal justice uses of information and, especially, information technology. The public clearly wants a tougher fight against crime, and is willing to pay more for this. But it is also worried about intrusions into privacy, misuse of computers, and a lack of "adequate safegards" over computer systems today.

- These attitudes are shared today across demographic groups, rather than representing sharp cleavages by ideology, class, age, race, sex, etc.

- Concern over limiting abuses and safeguarding computer systems is held even more strongly than the public level by many of the key elites that the criminal justice

Table 16
Alienation Level and Attitudes
Toward Criminal Justice Information Policy Issues

ITEM	PUBLIC	ALIENATION LEVEL			
		High	Moderate	Low	Not
Worried about whether "federal government" can be trusted to use information it collects about people properly	48%	67%	54%	43%	27%
FBI asks for too much personal information	31	44	36	28	21
Local police ask for too much personal information	23	31	25	18	13
FBI should be doing more to keep their information confidential	35	46	36	33	23
Local police should be doing more to keep their information confidential	34	45	35	30	25
FBI is not doing enough to protect individual rights	34	39	38	34	24
Police should not be able to open mail without court order	92	94	93	91	89
Police should not be able to look at individual's bank record without court order	81	83	82	81	74
Police should not be able to tap telephones without court order	87	89	88	86	83
Disagree that "in order to have effective law enforcement everyone should be prepared to accept some intrusions into their personal lives"	36	45	38	36	28

[11] Ibid., 193.

Table 17

ITEM	Mass Public	Community Leaders	Legal Elite	Police Officials
A student's high school and college records should be released by school officials:				
- only with the consent of the student.	63%	77%	83%	57%
- to any government agencies or potential employers who ask to see them.	29	19	12	39
- Neither/Undecided	8	4	5	4
Should students have the right to inspect all records and letters of recommendation in their school files?				
- Yes, to make sure the information in them is correct.	66	67	73	69
- No, because otherwise the people who write the letters may not say what they really think.	20	22	19	19
- Neither/Undecided	15	10	9	12
Should government authorities be allowed to open the mail of people suspected of being in contact with fugitives?				
- No, it would violate a person's right to correspond with his friends.	50	55	57	34
- Yes, as it may help the police catch criminals they have been looking for.	31	28	22	46
- Neither/Undecided	20	17	21	21
A person's credit rating:				
- should not be given to anyone without his consent.	44	47	46	38
- should be made available to his creditors, since they stand to lose if he fails to pay his debts.	50	50	47	59
- Neither/Undecided	6	4	6	3
The use of computers by the government to maintain central records on the health, employment, housing, and income of private citizens:				
- is dangerous to individual liberty and privacy and should be forbidden by law.	33	43	49	29
- would help the government fight organized crime and provide emergency assistance and other services to people who need them.	31	23	21	34
- Neither/Undecided	36	34	31	37

Table 18

ITEM	Public	Congressmen and Top Aides	Media: Science Editors	Corporate Executives
Very or somewhat concerned about threats to their personal privacy	77%	79%	79%	69%
Present uses of computers in actual threat to personal privacy	51	55	65	43
Believe privacy of personal information in computers not adequately safeguarded today	60	72	76	58
Have personally been the victim of an improper invasion of privacy	19	26	25	18
Favor federal regulations on combining information on individual from different files	66	77	81	65

community must deal with for future authorization, funding, and review of its information policies and systems legislators, the media, the legal elite, and local-community leaders.

o Alienation from authority, or lack of confidence in leaders (as some analysts phrase this) is the strongest explanation for and predictor of group and public opinions about government information policies and uses of information technology.

In this section, we will analyze these findings from the opinion data, and explore their implications for criminal justice information policies in the middle and late 1980's.

Explaining the "ambivalence" toward government information practices

One explanation for the ambivalence in public and group opinion we have described is to see this as a prime example of the American public's readiness to express support for civil libertarian positions or constitutional-rights principles in the abstract, but to depart from those principles and support restrictive or law-and-order oriented programs when protection of various social interests seems to be involved, and when people considered dangerous or unpopular are the targets of the government actions. While this tension between ideal-rule and practical-solution is present in our society (and in every other one, regardless of ideology), I do not think its essentially negative and critical judgment about American public opinion is correct, especially in our area of inquiry.

Rather, I read the opinion data as indicating that the American public wants criminal justice agencies to deal with crime more firmly--that is, more effectively--but through programs and procedures that also protect individual-rights interests and include safeguards against potential government abuse of power. When survey questions are constructed that pose these balancing judgments in clear and correct fashion--that is, by capturing the concrete programmatic choices about safeguards and limits--the opinion data consistently show the public to be highly pragmatic and common-sensical in their positions.[12]

To be specific, I read the survey data as indicating that the public has four values or concerns in mind that it wants satisfied when criminal justice agencies collect and use sensitive personal information:

1. Privacy and confidentiality: that attention be paid to limiting the scope of collection of sensitive personal data to what is really essential for carrying out a particular criminal justice program; that once such data are collected, they be known and used only by those inside the organization that need to see them; and that such data not be shared outside the organization unless authorized by law or justified by socially-accepted use patterns.

2. Record-subject due process: that individuals about whom criminal justice agencies collect information for administrative purposes know that the records are being compiled, have the opportunity to examine them for accuracy and completeness, and have procedures available for correcting alleged errors or challenging the propriety of the data and how it is used.

[12] See "Privacy and the Future" and "Privacy and Future Legislation," in Harris/Sentry, 1979, and McCloskey and Brill, op.cit., passim.

Different safeguards would be sought for statistical or intelligence systems, taking into account the special features and purposes of those systems.

3. Public visibility and accountability: that freedom of information rules provide broad access by the media, public-interest groups, and others to the operations of criminal justice systems, with a few exceptions for intelligence work or to protect special privacy of certain record subjects (such as juveniles), in order to allow public judgments to be formulated as to the work of criminal justice agencies and their adherence to privacy and due process safeguards in their information systems.

4. Separation-of-powers review: that court orders be required in almost all investigative or surveillance activities to prevent improper intrusion into privacy, and that regular legislative reviews be institutionalized to monitor the effectiveness of privacy and due process safeguards in information systems.

Obviously, reasonable people can differ as to how those standards and procedures should be applied, depending on the issue, the context, the type of criminal justice agency involved, etc. But the public opinion data, in my judgment, show that these are the kinds of "balance-of-interest" approaches to fighting crime and preventing abuses of power that have evolved over the past 15 years in public opinion as a result of the experiences of our society.

The impact of public and group attitudes on law enforcement and other criminal justice functions

There is special irony in the charges of "dangerously enhanced powers" that have been leveled at law enforcement agencies using computers, such as the FBI and its NCIC system, the New York State Identification and Intelligence System, or the Kansas City Alert System. In my judgment, there has been a steady loss of effectiveness and power by law enforcement agencies over the past 30 years, not a net increase.

My reasoning is as follows. Taking the 1950's as our baseline, it is clear that the wide confidence enjoyed by governmental authorities (always within the parameters of the classic American suspicions about abuse of government power), plus the strength of the social consensus among the then-dominant national political and civic majority, provided law enforcement agencies (and other functions of criminal justice) with widespread cooperation by other institutions in society and by most of the public. This was the age of what has been called the "information buddy" system. Law enforcement officers could count on getting information easily about individuals or events from other government agencies; from employers; from credit bureaus and insurance companies; from schools and universities; and even from doctors and hospitals or from journalists. Such organizations were oriented in this era toward helping law enforcement, not keeping it at arm's length. While there were always particular situations or particular demands that might be turned away in the interest of confidentiality, usually with "regrets," widespread provision of accurate and detailed information was the norm. As a result, law enforcement officers using the technology of the day--telephones, paper records, electric accounting machinery, and facsimile transmission--were able to collect, on a specific transaction basis, about as much investigative or administratively-needed information as they desired.

The 1960's and 70's brought a series of new developments. These included: the move by law enforcement agencies and other criminal justice bodies to large-scale computerized information systems which depended on detailed and explicit rules of information collection, use, and dissemination; the sharp social cleavages that accompanied the racial, anti-war, student-protest, women's rights, sexual-freedom, and "pleasure drug" movements of these decades, resulting in the adoption of an "anti-authority" and "anti-law enforcement" orientation by many significant groups in the population; and the overall drop in public confidence toward government and institutions already described. The result was an individual-rights orientation, often with an anti-establishment sentiment, and the development of legal liabilities or legislative prohibitions on organizations giving information informally to law enforcement agencies. These were coupled with deepening public concerns over privacy and databanks, and, all together, led to the virtual end of the "information buddy" system.

Now, through organizational rules, new privacy and freedom of information laws, and close media coverage of how private and public institutions responded to law enforcement requests for information, a new "information environment" was created in the 1970's and early 80's. Criminal justice agencies had powerful new machines for collecting, processing, and exchanging information. But the sharp curtailment in informal information collection, and its virtual shutdown in some organizational sectors, left law enforcement and other criminal justice agencies with what was often the most formal and low-quality data about criminals and crime events, a far cry from the high-quality information that the "buddy system" usually could provide for specific investigations. And, the ability to expand the formal automated information systems in scope or depth was also checked, because of the legal or political constraints imposed against such actions by the spirit of this era, especially after Watergate.

That is why it is not far-fetched to say that, in the socio-political context of the past 30 years, the shift to computerized information systems has resulted in a good deal less rather than more information power for many of the critical

functions of criminal justice, from investigation of crimes to decisions about sentences or parole.

What this suggests is that the most important factors in the 1980's that will affect the availability of good information resources for criminal justice will not be buying more computers, or creating new "information impact statements" per se. Rather, the critical factor will be the degree to which we recover general public confidence in governmental authority and responsibility, and win back the allegiance of most of the recently disaffected and alienated sectors of the population. Even with such a development, the old "information buddy system" will not be restored. But, we could expect to see greater willingness by legislatures and executives to authorize more comprehensive information systems and greater interorganizational exchanges of data, accompanied by a greater willingness by private organizations to cooperate with information requests when they met proper procedures.

If this analysis is sound, then the key question is what would it take for criminal justice agencies to obtain such a restoration of trust and confidence? Clearly, much of the answer lies in larger issues of economics, social policy, foreign and defense affairs, and similar over-arching political issues, along with the quality of national and civic leadership and even the "spirit of the times." But there are aspects of the quest for renewed confidence that relate directly to information policy developments, and it is to these that we turn for a final comment.

Some policy-oriented conclusions

The theme of the conference that produced this collection of essays was that information policy issues have come to rank with program authority, budget levels, and personal resources as a critical ingredient of program planning and evaluation in criminal justice activities. In a democratic society, information policy issues raise two questions: (1) what information is needed to carry out the program effectively (a topic that many of the other conference speakers have addressed) and (2) what limitations on information collection or safeguards for the handling of sensitive information does public policy require before it will (or should) authorize the collection of such information.

It is the second question, obviously, that this essay has addressed. My premise has been that setting boundaries for information collection and use is at the heart of a constitutional system and of democratic politics. Only in totalitarian societies can government and its police authorities demand access to all the personal information it wants about individuals and groups, and even there, totalitarian systems are often thwarted in practice though they cannot be denied in terms of legal claims or institutionalized opposition.

After two decades of realignments and changes in public and group opinions about crime fighting and individual-rights protections, I believe that we are moving, slowly but surely, toward a new consensus on many information policy issues (though not all) that will confront criminal justice agencies in the coming years. I believe the public, influential elites, and public-policy-makers will support an approach to new information policies by criminal justice agencies that embodies these characteristics:

1. Programmatically-focused information systems, designed to deal with specific issues through well-focused information policies, as opposed to the big, omnibus, multi-purpose databank models advocated and experimented with in the late 1960's and early 70's, and sometimes proposed today. Federal funding support for experimentation with such well-focused local and state systems should enjoy public support, if the other conditions mentioned here are also met.

2. Reconsideration and modification of some of the current limitations on information-sharing among criminal justice agencies, and revision of some of the "first generation" privacy rules. For example, this might include carefully defined access to juvenile offender records for both law enforcement and program research purposes; penetration of more ownership, tax, and other records for purposes of arson prevention and prosecution; and acceptance of computer file-matching if this is done under rules that specify parameters of investigation and require individual-case investigation or verification before any adverse actions are taken affecting individuals.

3. A more explicit process of "information-impact analysis" when new systems are proposed for authorization or for expansion of current systems in criminal justice, so that issues of privacy-protection, social-equity, and due process can be explored in detail and basic standards evolved from the 1970's can be adopted before such systems are authorized.

4. Independent-agency reviews of the privacy and due process safeguards in criminal justice information systems, to examine the effectiveness with which information-protection safeguards are enforced.

Obviously, not every information system or program proposed by criminal justice agencies will choose to adopt such an approach. Nor will every system or program that does follow these suggestions automatically win legislative or public support as a result of that position. But it does seem to me that the middle and late 1980's could be a time of solid, constructive action if we understand how to implement the informational needs of effective anti-crime programs and, at the same time, to answer the public's well-founded insistence that these programs be pursued only through systems that are grounded in protection of individual rights and controls over potential abuse of government power.

Legal Rules and Policy Initiatives in the Use of Criminal Justice Information

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Introduction

This paper reviews the status and direction of law and policy as it relates to criminal history record information.[1] Criminal history record information, and related offense reports, are the raw materials that permit many criminal justice intervention strategies to operate effectively. Bail reform programs, career offender programs, violent offender programs, special sentencing programs, parole reform programs, and other innovative intervention strategies require criminal justice agencies to know a great deal about an offender's prior criminal history. Therefore, it makes particular sense to take a close look at law and policy as it relates to criminal history information.

We begin by reviewing the status of current law concerning the collection, maintenance and dissemination of criminal history record information. Next, we look at the trends in law and policy. Third, and finally, we identify controversial issues that need additional attention.

[1]The term criminal history record information, as well as other terms used in this paper, are defined in the regulations of the Department of Justice at 28 C.F.R. Part 20. Criminal history record information means, "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release." 28 C.F.R. § 20.3(b).

Current status of the law

Perhaps the most striking feature about current law is the considerable degree of national uniformity and consensus. Just 10 to 15 years ago, Congress could, and did, decry the lack of uniformity among the states and the absence of an articulate, coherent system for the collection, maintenance and exchange of criminal history record information.

Legal and congressional developments in the 1970's

As the 1970's began, few states had adopted comprehensive criminal history information statutes. Today almost half have done so. As the 1970's began, most states gave their police agencies broad discretion to release criminal history data on a "need to know" basis. Today few do. And, as the 1970's began, only a few states required that the subject of a criminal history record be allowed to review that record; or that the information in the record be accurate or complete; or that the record be kept in a secure environment. Today almost every state does.

In the early 1970's Congress attempted, but failed, to make order out of this situation. the Congress considered, but did not adopt, several pieces of legislation that would have imposed a comprehensive information management scheme for state and local handling of criminal history record information. Work on this legislation was done at a time when the concern about privacy, automation and mushrooming information systems was at its height. Although Congress failed to adopt comprehensive legislation, it did adopt an amendment to the Omnibus Crime Control Act of 1968, 42 U.S.C. § 3771(b), sometimes called the Kennedy Amendment, which ultimately had the effect of creating national standards for the handling of criminal history record information.

That Amendment requires that all criminal history record information collected, maintained or disseminated by state and local criminal justice agencies with support from what was then the Law Enforcement Assistance Administration (LEAA), "must be kept complete and secure, must be made available for review and challenge by record subjects, and must be used only for law enforcement and other lawful purposes."

This relatively broad language gave birth to what came to be known as the LEAA Regulations. These regulations, at 28 C.F.R. Part 20, now usually referred to as the Department of Justice Regulations (DOJ Regulations), in turn, brought comprehensive and uniform standards to criminal justice agencies across the nation.

The DOJ Regulations

The DOJ Regulations cover every state and local criminal justice agency which is collecting, storing or disseminating criminal history record information with monies, in whole or in part, received from LEAA. As a practical matter, this means that virtually all state criminal justice agencies, and perhaps one-half of the local criminal justice agencies, including most of the large local agencies, are covered.

However, the DOJ Regulations cover only criminal history record data. Investigative and intelligence information is not covered, nor is wanted person information, original records of entry, court records, or traffic offense records.

Data quality and subject access standards

The DOJ Regulations impose four types of standards, two of which are now the near-universal law of the land. First, the DOJ Regulations require agencies to meet certain data quality standards. Specifically, the Regulations require that criminal history record information be complete and accurate.

To be complete under the Regulations, a criminal history record system must contain information about in-state dispositions within 90 days of their occurrence. To be accurate, the system must employ procedures which minimize the possibility of storing inaccurate data.

Second, the Regulations require that criminal justice agencies give record subjects a right to review their criminal history records. This means that, upon request, a record subject can review all of his criminal history record. The Regulations also permit the subject to challenge the accuracy or completeness of his record, and if he does so, he is entitled to a copy of the record to assist him in that effort.

Today 49 states have adopted standards for accuracy and completeness that mirror the standards in the DOJ Regulations. This includes 46 jurisdictions which have mandatory disposition reporting laws. In those 46 jurisdictions criminal justice agencies are required to report dispositions to the state criminal history record repository. Forty-two states have adopted standards for subject review of their records which mirror the DOJ standards.

By any calculation, this is an impressive record of accomplishment. Of course, it does not mean that these standards are always met. Indeed, the completeness of records in the nation's criminal history record systems continues to be one of the major problems confronting the criminal justice system. Because disposition reporting depends on the cooperation of a separate branch of government--the courts--as well as cooperation among many different police agencies, disposition reporting is the system's "Achilles Heel."

At the same time, there is little reason to be sanguine about the accuracy of criminal history record information. One of the factors which contributes to this problem is that agencies may not be devoting enough attention to audit and quality control. Today only 25 jurisdictions require annual audits to ensure compliance with the accuracy and completeness and other standards in the DOJ Regulations or in state law.

Security standards

The DOJ Regulations also contain two other types of standards: security standards and dissemination standards. The notion that criminal history data should be maintained in a secure environment has been widely accepted in principle, but is not always followed in practice. Virtually all criminal justice officials agree that criminal history data ought to be maintained in a secure environment. Otherwise, the system lacks integrity and, in a very real sense, it cannot keep its promises to the record subject or to society.

However, not everyone agrees on the specific measures that ought to be employed to ensure such security. The DOJ Regulations require comprehensive and ambitious measures. Specifically, the DOJ Regulations require state and local criminal justice agencies to maintain criminal history record information in a system using technologically advanced software; in a system that records penetration attempts (if an automated system); in a system that has controls on remote terminal access and use; in a system that employs physical security protections; and in a system that meets personnel screening standards.

Thus far, 32 states have adopted security standards that are at least similar to the standards imposed by the DOJ Regulations.

Dissemination standards

The fourth, and the most important type of standards cover dissemination. In a sense, the DOJ Regulations have failed when it comes to setting dissemination standards. However, this failure merely reflects society's failure to reach agreement about this very controversial issue.

Dissemination among criminal justice agencies

The DOJ Regulations do not place significant restrictions upon the dissemination of criminal history record information among criminal justice agencies. This is a critical point. As noted earlier, the implementation of criminal justice initiatives depends upon a free flow of criminal history record information within the criminal justice system.

The notion that criminal history record information should be freely exchanged among criminal justice agencies is a near-universal principle. It is widely believed that a free flow of criminal history data is warranted because these records were created in the first place so that they could be used for criminal justice purposes. It is also felt that criminal justice agencies, unlike some governmental non-criminal justice agencies or private entities, will be more likely to use the information in a responsible and appropriate manner.

Today there are three primary circumstances under which prosecutors, courts or law enforcement agencies are restricted from obtaining access to criminal history data. First, where a criminal history record has been purged or sealed--and this is an increasingly common circumstance that will be discussed further on--the record is unavailable, if purged, and may be unavailable, if sealed.

Second, if the criminal history information pertains to a juvenile (and in this case it is not technically criminal history record information, but rather, juvenile justice record information), there are some legal restrictions, and even more often, practical restrictions, on criminal justice agency access.

Third, persistent and vexing problems associated with the interstate exchange of criminal history data make it more difficult to obtain information if the individual has an out-of-state record than if all of his criminal activity has been in-state.

Dissemination of conviction data

In addition to the principle that criminal history information should be freely available among criminal justice agencies, a second dissemination principle that has gained wide acceptance is that conviction data should be disseminated largely without restriction. At present, two-thirds of the states permit the dissemination of conviction data without restriction. In other words, this information is available to the public as well as to criminal justice agencies. Importantly, the DOJ Regulations do not place restrictions upon the dissemination of conviction data.

This policy is often justified by the argument that if an individual is convicted of violating a criminal law, with all the due process safeguards criminal convictions provide, he is thought to have waived his right to privacy; moreover, the public has a pressing interest in information about individuals who are convicted of violating criminal laws.

Dissemination of current information

A third principle that guides dissemination policy is that if the individual is currently in the system (in other words, charges are still actively pending), there ought not to be restrictions on the dissemination of information about the event for which he is currently in the system. This is the approach taken in the DOJ Regulations and it is the approach reflected in most state law. The rationale which supports this principle is that the recency of the individual's conduct makes the public's interest in the individual and the event very high.

Dissemination of non-conviction information

When it comes to what is perhaps the most difficult dissemination issue--the dissemination of non-conviction information[2] to non-criminal justice organizations--the DOJ Regulations do not take a position. LEAA retreated from an early draft of the Regulations which would have placed restrictions on the dissemination of non-conviction information to non-criminal justice agencies. Instead, the DOJ Regulations permit non-conviction data to be disseminated to any person as authorized by statute, ordinance, executive order, court rule, decision or order, as interpreted by state or local officials. Thus, the existing formulation leaves it up to the states to set policy for non-criminal justice agency access.

Dissemination policies beset by uncertainties

State legislatures, like LEAA, have struggled to define a policy for the dissemination of non-conviction data to non-criminal justice agencies. There are a number of very good reasons for their confusion. First, most people are not sure how they feel about the probity and reliability of arrest information. The Supreme Court has said that an arrest is not probative of criminal conduct. Schware v. Board of Bar Examiners of the State of New Mexico, 333 U.S. 232, 241 (1957). Indeed, if the individual is factually innocent, most people would agree that he should not be stigmatized by the dissemination of arrest record information.

However, given the uncertainties of disposition reporting, an arrest-only record may often be incomplete. An individual who has been arrested may in fact have been convicted and the rap sheet will simply not reflect that event. Moreover, it is beyond dispute that the reason for the absence of a conviction is not always the arrestee's innocence, but rather a factual or legal development unrelated to the arrestee's conduct. For all of these reasons, there is a strong sentiment that arrest information should be available.

Moreover, most people are not convinced that maintaining the confidentiality of non-conviction information serves a valid purpose. Confidentiality, for example, is not necessary to promote the relationship between criminal record subjects and criminal justice agencies. In this respect, the relationship between an arrested individual and a criminal justice agency is sharply distinguishable from a doctor-patient relationship, or a lawyer-client relationship. In those relationships confidentiality promotes, indeed, is essential to the relationship.

Furthermore, criminal history record data is not akin to information about sexual conduct, religious practices, or information about other private activities which virtually everyone agrees ought not to be available publicly. Arrest events and subsequent adjudications simply are not private events. Thus there is not a consensus that the information about these events ought to be private.

Perhaps the best reasons offered in support of placing limits on the dissemination of non-conviction data are fairness and rehabilitation: fairness because if an individual is not convicted, he should not bear the same stigma as an individual who is convicted; and rehabilitation because if society brands an arrestee as an offender, it may be self-fulfilling. However, the perceived epidemic of crime probably reduces the number of people willing to extend themselves to ensure fairness to arrestees. Furthermore, given the seeming inability of the corrections system to rehabilitate and the related high levels of recidivism, fewer people may place value upon the contribution that confidentiality makes to prospects for rehabilitation.

[2] Non-conviction information means arrest data which is more than one year old without a disposition and no active charge is pending, plus nolle prosequi, dismissals and acquittals. 28 C.F.R. § 20.3(k).

It also needs to be noted that most people are not sure how they feel about the desirability and utility of permitting non-criminal justice entities to obtain access to criminal history record data. For one thing, there are so many different types of non-criminal justice entities that it is hard to generalize about the utility of their access. At the same time, there is a concern about the manner in which these entities may use non-conviction data once it gets into their hands. Furthermore, once such data is shared with non-criminal justice agencies, it is often thought that there is a significant risk that the data will eventually end up in the public domain.

Trends in information law and policy

Given all of this uncertainty about dissemination, are there discernible trends in law and policy for criminal history record data? There appear to be a few.

Sealing and purging

First, it is increasingly the case that where a record subject demonstrates to a court that he is factually innocent of the conduct for which he was arrested, the arrest record will be purged or sealed. For example, if an arrestee can demonstrate that the police arrested the wrong person, a purge or seal order is available in over 40 states.

In addition, in cases where the subject can demonstrate that he has been rehabilitated--by showing that he has been free of criminal involvement for a period of years (usually 7 to 10 years)--a purge or seal order is available in a substantial minority of the states.

However, there is a problem with this approach. In most states the remedy is a purge (destruction) and not a seal. Thirty-five states authorize the purging of criminal history records, versus only 20 states that authorize a seal. The glaring shortcoming of a purge, of course, is that it means that the record is lost forever. Thus, regardless of whether the record is sought by a court, a prosecutor, a police agency or a private employer, and regardless of the reason for which the record is sought, it is unavailable. This unavailability can play havoc with repeat offender programs and other selective or special incapacitation programs, as well as research programs.

Increased dissemination of criminal history data

Second, criminal history record information--at least if it is recent enough to be considered relevant (and assuming it is not purged or sealed)--is increasingly available outside of the criminal justice system. Even non-conviction data is now being made available to non-criminal justice agencies. Twenty-seven states have adopted open record or freedom of information statutes which cover criminal history record data. This does not mean that criminal history data is available in these states to the public in all circumstances, but it does means that the data is more available than it previously was.

As a part of this trend, a majority of the states now recognize claims by at least some types of non-criminal justice agencies and private entities for special access rights. For example, special access rights are routinely accorded to licensing boards, governmental agencies with national security missions, and private employers. Ten states, for instance, have adopted statutes which expressly provide for the release of both conviction and non-conviction data to private employers in certain circumstances.

At the same time, 81 percent of the states permit the disclosure of conviction data and 66 percent of the states permit the disclosure of non-conviction data to governmental non-criminal justice agencies in certain circumstances. This trend toward openness, which in the last five years seems to have displaced an earlier trend toward confidentiality, is generally thought to be the result of both pressure from the media and a loss of faith in the notion that offenders will become constructive citizens if only we avoid branding them as criminals.

Juvenile justice data more available

Third, a perceived dramatic increase in juvenile crime (crimes by children 17 and younger now account for close to 40 percent of serious property crime and 20 percent of violent crime) and a perceived increase in the amount of juvenile recidivism, appear to have fueled a trend toward the increased availability of juvenile justice data. This development threatens the survival of the oft-criticized two-track system of justice: one track for juvenile offenders and a second track for adult offenders.

Indeed, seven states now make juvenile delinquency data available to the public. In many other states juveniles are being prosecuted as adults at earlier ages or for a broader category of crimes. Invariably, if juveniles are prosecuted as adults the record of the arrest and prosecution is treated as an adult record.

In theory, juvenile data is already relatively freely available within the adult criminal justice system. However, as a practical matter, juvenile data is often unavailable because of the frequency of purge or seal orders, and because differences in personnel, geographic location, and administrative organization combine to establish barriers to the transfer of juvenile records to adult criminal justice authorities.

Court decisions support openness

The trend in state legislation toward openness has been buttressed by numerous recent court decisions. Prior to 1976, a relatively robust body of case law held that dissemination of arrest record information to the public could violate a subject's constitutional right of privacy if the arrest ended in acquittal or dismissal of charges, or if there was no disposition. See, for example, Menard v. Mitchell, 430 F.2d 486 (D.C. Cir. 1970).

All that changed with the Supreme Court's decision in Paul v. Davis, 424 U.S. 693 (1976). In Paul, the police chiefs in the Louisville, Kentucky metropolitan area decided to attempt to reduce shoplifting during the Christmas season by circulating and posting a flyer in major shopping centers which identified a group of so-called "active shoplifters," including the plaintiff. The plaintiff had been arrested for shoplifting, but charges were still pending 18 months later--at the time that the flyer was circulated. Davis claimed that the circulation of his arrest record information to these merchants was, among other things, a violation of his constitutional right of privacy.

The Supreme Court, much to the surprise of many observers, disagreed. It held that the right of privacy protects certain kinds of private conduct, but an arrest is not one of them. The Court found that the Constitution does not require the police to keep confidential matters, such as an arrest, that are recorded in official records.

Court opinions since Paul v. Davis have followed and expanded the decision. Today, as the California Supreme Court has said, "there is apparently no right of privacy in arrest records under the Federal Constitution." Loder v. Municipal Court, 553 P.2d 624 (Cal. 1976).

This is not to say that the doctrine of the constitutional right of privacy has been banished fully from the criminal history record arena. Today, if a record subject can show (1) that his record is inaccurate or inappropriate (not just incomplete); and (2) that its maintenance or dissemination does him some tangible harm (not "just" harm to his reputation or to his privacy interest), then the record subject may be able to get a court, based on either the Constitution or the Court's inherent equity powers, to purge or seal his record. See, District of Columbia v. Hudson, 404 A.2d 175 (D.C. 1979), and Pruett v. Levi, 622 F.2d 256 (6th Cir. 1980).

It is also important to note that the Court's retreat from a constitutional privacy standard does not mean that the Court has said that the Constitution now favors disclosure. Rather, the net effect of the Supreme Court's decision in Paul v. Davis is to make the Constitution neutral. The Court has said that the Constitution, and specifically the First Amendment, protects the right of individuals to gather and use newsworthy information which is a matter of public record. Cox Broadcasting v. Cohn, 420 U.S. 469 (1975). However, if a legislature or agency chooses not to make criminal history record information a matter of public record, there is no First Amendment right of access or dissemination. In other words, from a constitutional standpoint, a state legislature, or a criminal justice agency, is free to withhold criminal history record information, or to disclose criminal history record information, at its discretion.

In many respects the retreat of the courts from a policymaking role provides the criminal justice community with an opportunity. Information policy is now a matter of federal and state statutory law, supplemented by implementing regulations and agency discretion. Therefore, policymakers in legislatures and criminal justice agencies have an opportunity to fashion effective and comprehensive policies for the collection, maintenance and dissemination of criminal history record information.

Issues in controversy

Naturally, real controversy remains concerning a number of fundamental issues that relate to the handling of criminal history record information. Perhaps the most important of these issues is the identification and balancing of the interests that are to be served in framing policies for dissemination. To what extent, for example, should dissemination policies work to protect the record subject's interest in his reputation, or his interest in privacy? Or, should such policies only seek to protect record subjects against disclosures which result in some tangible harm to a record subject?

It must certainly be the case that until policymakers determine the interests that dissemination policies are intended to serve, it will not be possible to set a coherent, comprehensive policy for the dissemination of criminal history record information. Put another way, what purpose are confidentiality protections intended to serve? Is it fairness to the alleged offender; is it rehabilitation of the offender; or, instead, is it societal safety that is paramount?

A second area of controversy involves the need to define, and refine, the nature of special access claims by non-criminal justice agencies. Which entities should be accorded special status in making requests for access to criminal history record information? Furthermore, where access is provided, how do we ensure that the recipients will handle the data responsibly and how do we hold them accountable?

A third unresolved issue is the extent to which juvenile and adult records should continue to be treated differently. At present, in virtually every state, juvenile justice information is not combined with adult criminal history data to create a comprehensive record. Thus, offenders have an opportunity for two criminal careers. The arguments in support of placing special confidentiality protections upon juvenile data are especially strong. Both fairness and rehabilitation concerns argue in favor of confidentiality. And yet, perceived increases in juvenile crime and the seeming failure of the juvenile system to rehabilitate its offenders appears to be driving a move toward relaxation of juvenile confidentiality standards.

A fourth concern involves a principle, well enshrined in current law, that the more recent the criminal event the more public its treatment. Should this principle be preserved in the face of new information technologies, such as automated police blotters, automated newspaper morgues, and other automated information systems? Thanks to new information technologies, once information is put in the public domain, it now remains readily available to the public even after the information is no longer recent or relevant to the individual.

Fifth, should dissemination policies be based upon fine-grained distinctions among types of offenders? To date, dissemination policies have been based on relatively gross characteristics: was the individual convicted; was he acquitted; is his crime a felony or a misdemeanor; is he an adult or a juvenile? However, the criminal justice system is capable of making far more sensitive and sophisticated distinctions that identify repeat offenders, violent offenders, drug offenders, and so forth. A very good case can be made that these distinctions ought to be reflected in dissemination policies. Perhaps, at some point, data about repeat offenders or dangerous offenders should be more publicly available than data about "average" offenders. Certainly data about individuals who are acquitted should not be treated in the same manner as data about individuals with arrest-only records.

Sixth, on what basis can an effective, satisfactory system for the interstate exchange of criminal history data be constructed? Traditionally there have been two obstacles to the creation of such a system: one, concerns about federalism; and two, concerns about personal privacy. However, in the absence of an effective interstate criminal history exchange system, the nation's ability to track and prosecute criminals and, in particular, to implement new crime fighting initiatives effectively is compromised.

It may be that the Federal Bureau of Investigation's current experiment with what has come to be known as the "Triple I" system will provide an answer. That system, relying as it does on a federal index to state maintained and controlled records, allays many concerns about both federalism and, to some extent, individual privacy.

Seventh, there needs to be more thought given to the information implications of victim and witness assistance programs. How much information, and what kind of information, should be collected about victims; how should this data be stored; to what extent should it be commingled with data about the offender; and what should the policy be concerning dissemination of this information?

Eighth, and finally, to what extent does purging have a legitimate role in criminal history record policy? Should criminal history record policy instead emphasize effective sealing procedures? At present the notion of sealing has been muddied because in many jurisdictions sealing a record does not substantially restrict its subsequent availability. However, if effective sealing policies were implemented which prohibited access to the sealed record except on the basis of a court order and in certain extreme circumstances, it might substantially reduce pressures to adopt and apply purge policies.

Conclusion

An enormous amount has been accomplished over the last 15 years in the development of law and policy for the handling of criminal history record information. Of course, policymakers are still sorting out competing claims and interests; this process is never completed.

Today the criminal justice information community is in a good position to meet law enforcement needs, including the needs of special, innovative intervention programs, because the community has firmly established the principle that criminal history record information should be freely disseminated among criminal justice agencies. More work needs to be done so that the criminal justice information community can serve the needs of non-criminal justice agencies, while at the same time protecting privacy and due process interests.

THE ROLE OF INFORMATION IN FEDERAL POLICYMAKING FOR CRIMINAL JUSTICE

Information Needs in Federal Program Formulation

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New criminal justice program initiatives and new proposed federal or state legislation inevitably create demands on the information capabilities of operating criminal justice agencies either in terms of (1) data related to the formulation of the initiative or legislation, or (2) impact on informational systems as a result of the implementation of intervention strategies.

I offer here a brief introduction to the information policy implications of specific programs to be discussed here later: violent crime and career criminal, correctional, victim assistance, arson, and juvenile offender programs. My remarks are intended to provide an overview, from the perspective of a national center for criminal justice statistics, on what policy officials in the executive and legislative branches should consider as they formulate programs and legislation that impact criminal justice administration at all levels of government.

My thesis is simply that more attention in executive branch program formulation and legislative branch bill drafting must be given to information and data issues. In a field--criminal justice administration--where decisions with enormous human consequences are continually made on the basis of administrative records, that is a serious fault. At a time when computer technology makes possible a substantial improvement in the accuracy and timely retrieval of such records, the error of law enforcement officers, prosecutors, and judges in ignoring information considerations is compounded. While for many now in Washington the environmental impact statements of the 1960's and 1970's are an administrative anathema, my thesis would argue for information impact reviews being addressed in any program or legislation designed to intervene in the administration of criminal justice.

Let me suggest what would seem to be the lowest common denominator for the conduct of such reviews.

Data required in program formulation

First, with relation to the thought processes involved in program formulation, there are five steps that seem obligatory in this information impact review: (1) to state a very obvious but still neglected step, the analysis of data concerning the nature of the problem to be addressed; (2) a statement of the assumptions that are being made concerning the availability of data necessary to implement the program; (3) some form of prediction or forecast concerning the consequences of implementing the program under consideration; (4) review of data drawn from evaluations, critiques and assessments of earlier, similar type programs and projects; and (5) identification of data required to design and conduct an evaluation of the given program initiative or legislation.

For the executive branch bureaucrat or Congressional staff member being pressed by either a new Presidential appointee or a newly elected Senator or Representative to launch new initiatives or legislation, even taking the time to research these five areas may appear to be onerous. Yet the experience of the Bureau of Justice Statistics over the decade-plus life of the Law Enforcement Assistance Administration, and events dating back to the Presidential Commission of the late 1960's, suggests that the failure to touch these bases contributes to problems in federal and state/local initiatives dealing with the administration of justice.

One example may serve to suggest the hazards in ignoring these statistical and informational requirements for program formulation. With relation to the nature of the problem, let me pick a constituency for whom there is considerable concern in Washington--specifically those complaining of crime against aged Americans. When Congressional hearings were held several years back on crime against the elderly, we were obligated to point out that, based on our National Crime Survey of victimization, older citizens were not disproportionately victimized. We, of course, advanced the caveats that the elderly may be experiencing a constricted and limited life style in order to reduce the extent of their victimization. But the solid statistical evidence was that the elderly are not victimized at anywhere near the rate of young, black males and this fact does usefully frame the debate as to what national legislation might be advanced in behalf of the older American citizen. Congress was willing to consider these data in deciding the extent of financial support for the proposed programs.

If I had to choose the single most critical of the five items enumerated here--critical in the sense of the consequences of neglecting a thorough appraisal--it is the failure to state the assumptions concerning the availability of data essential to the conduct of programs or the implementation of legislation. For an example, let me follow the presentation of James Q. Wilson and mention computerized criminal histories.

Over a decade that has seen a national and local focus on the serious, recidivistic, and mobile career criminal, and a new decade that has commenced with a focus on what is being called selective incapacitation, accurate criminal histories are an essential undergirding of programs aimed at interdicting criminal careers. Yet few if any of these proposed programs or legislation have taken into consideration what the current federal and state repositories can provide by way of accurate and reliable criminal history information. Quite simply, many of these efforts assume a national repository that contains information on sentenced offenders in federal courts and the courts of all fifty states. Suffice it to say, such a data base does not exist.

Turning to the necessity of undertaking elemental forecasts, my point is that such forecasts permit a focus on the frequently neglected and now overwhelmed criminal justice function of operating correctional institutions in this nation. Efforts at criminal justice comprehensive planning in the 1970's early arrived at the conclusion that it was imperative to assess the downstream impact on corrections of providing additional resources to police chiefs and court administrators. Yet the failure to obtain information that anticipates--through simulation or other analysis techniques--the consequences for corrections of many otherwise meritorious intervention strategies will haunt the 1980's in the form of prison conditions that may foster riots and institutional disorder. Having a concern with the systemic impact of program initiatives would provide a bridge to the oft-debated issue of the merit of new prison construction.

Another obvious but neglected data source is formal or semi-formal evaluations that have been conducted of like programs. With the incredible range of programs and projects funded by the Law Enforcement Assistance Administration and fifty state planning agencies during the 1970's--and the strong emphasis that LEAA did place on evaluation--there is a body of data that can be used in undertaking serious program formulation. As only one example, much has been learned about the relative success of bail and pretrial release programs.

Finally, the flip side of the evaluation coin is to define and mandate, or at a minimum identify, the kinds of data needed to design and conduct a reasonably thorough evaluation of the program. One type of a favored Department of Justice intervention--task forces and strike forces--would have benefitted from pre-implementation decisions on the data to be used to judge various efforts as successes or failures.

Implementation consequences

Once a decision has been made to proceed with a criminal justice intervention--with or without my five suggested data inputs--our experience suggests that there are a like number of implementation consequences for informational policy broadly defined.

First--and very real though sounding amorphous--are shifting boundaries with reference to access and public disclosure of information. A perfect example is expanded use of juvenile records in adult criminal proceedings. Whichever view one may have on this issue, the debate clearly results from concern with the violent recidivistic offender.

A second implementation impact is the additional budgetary resources necessary to obtain data required by programs or legislation. Recent examples here--both of which impacted on the Federal Bureau of Investigation--are the addition of arson as an index crime under the Uniform Crime Reporting (UCR) Program and of missing children to the National Crime Information Center's (NCIC) responsibilities.

A third and corollary impact is the new or additional burden on persons, institutions and record systems necessary to provide the data that may be mandated by legislation or programs. Any alteration in national data requirements places new requirements on states and local criminal justice agencies to collect, process, and return information to the federal government. Even modest reprogramming of state and local information and record systems is difficult to accommodate in times of extreme financial pressures on operational law enforcement.

Next is the more technical identification of the limits of available data and of the constraints imposed by information policies. Implementation of many intervention strategies leads to re-examination of sealing, purging, data retention, and confidentiality standards and requirements.

Finally the implementation of programs may lead to new opportunities to acquire data from the administrative records of new operational efforts. One of the vital issues to be discussed is the new societal concern with victim assistance. As victim assistance and compensation programs expand at the state and local level, it is imperative that data be systematically acquired to supplement information available from the National Crime Survey of victimizations sponsored by the Bureau of Justice Statistics.

This brief exposition of program formulation and implementation in terms of information impacts is intended to provide a framework for the discussions of career offender, corrections, victim and arson, and juvenile offender programs which follow.

Project SEARCH: An Information Bridge Between Federal and State Criminal Justice Programs

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U.S. Senate Judiciary Committee

Introduction

For a period of eight years, I was the LEAA representative to Project SEARCH and its successor organization, SEARCH Group, Inc. In that capacity, I received a gold star with seven oak leaf clusters for perfect attendance at the SEARCH Group meetings. I attended all those meetings, not because I needed an excuse to travel about the country, nor to get away from Washington. I went because I believe in the importance of the goals and objectives of that organization. I knew first hand of the competence and enthusiasm its members brought to those gatherings, and I knew that long-range improvements in this country's criminal justice system could come only if a sound base of criminal justice information and identification systems were developed and implemented at the federal, state and local levels.

Project SEARCH has become a shining example of the abilities of state and local governments to work together and tackle technically complex projects and politically controversial issues and to develop effective programs, procedures and policies. In the intervening years, they have proved to be indispensable to the orderly development of criminal justice in this country and, indeed, to serve as a model for widespread emulation throughout the world.

It is my purpose here to review, quite summarily, the development of the Project SEARCH concept, to discuss the current dimensions, from a federal perspective, of criminal justice information and identification systems, and, finally, to suggest some future directions.

Where we have been

Project SEARCH had its inception in LEAA in the Spring of 1969, within a few months after the agency was created. Because of the wide-scale publicity given to the program, applications for project funding literally swamped our fledgling organization. Applications for support of projects in the information field alone far exceeded the total of the $4.5 million dollars of discretionary funds that was available for all purposes for the fiscal year. It was decided to focus on one project in the information field and attempt to meet the need most often expressed in the grant applications. The President's Crime Commission, the FBI and others had recommended that an attempt be made to develop a computer-compatible format for criminal history records. This proposal was consistent with several of the applications that were received. Harry Bratt, Paul Nejelski and I formed a small task force within LEAA to develop, fund and support this effort. $600,000 was allocated for the project, a very substantial share of the total available funds.

I was strongly of the opinion that the project should be developed by the states themselves and not handed to them on a silver platter from on high in Washington. The LEAA role would be to provide financial and organizational assistance, but, in the main, to let the states manage and control the project themselves. This was entirely consistent with the mandate of the Congress to LEAA: to provide assistance and leadership but not to preempt, dominate, or control state and local crime control efforts.

We decided that this effort would go somewhat beyond the scope of the original suggestion. Not only would the automated format be developed by a consortium of states, but there would be actual conversion of "rap sheets" and an on-line demonstration of the interstate exchange of these records. Two other objectives were also defined. First, due consideration must be given to protection of privacy of the individuals who were subjects of these files and safeguards should be developed to protect the system security of participating agencies. Second, the feasibility should be explored of utilizing these rap sheets as a basis for the development of a statistical series utilizing transactional data generated from the individual offender's step-by-step acquaintance with the criminal justice system.

Project SEARCH grew out of this concept. Six states were selected to form the original consortium from the twenty-five or so that expressed interest in participation. The California Crime Technological Research Foundation was chosen to serve as project coordinator with Paul Wormeli as its first Executive Director and Bud Hawkins as the first Project Group Chairman. The effort took one year, and was completed on time. All original project objectives were met or exceeded. The rap sheet format was developed, records converted and a central index or pointer system was developed to facilitate computer-to-computer interface and on-line, real-time exchange of criminal history information. The FBI had participated initially and attended the first meetings, but then withdrew from further participation out of "operational necessity." Once the initial project was successfully demonstrated, however, the Bureau requested and received permission from the Attorney General to develop an operational system. This request generated a long period of controversy between LEAA and the FBI. I will not recount the gory details of that struggle today. Perhaps it will suffice to say, however, that the current FBI demonstration effort, the Interstate Identification Index (Triple I) is indistinguishable from the conceptual design of the original SEARCH demonstration.

In the intervening twelve years, the several states, under the leadership of Project SEARCH and with LEAA funding assistance, have developed state, regional and local criminal identification, information and statistical systems to the point where all but a few are now operational. They are operating under enabling state legislation, modeled by Project SEARCH and using low-cost and efficient hardware and software packages developed jointly by Project SEARCH, LEAA and its successor agency in this regard, the Bureau of Justice Statistics.

Project SEARCH added many other activities to its active project portfolio. These cut across the entire gamut of criminal justice information activities in police, prosecution, courts, corrections and other areas. The SEARCH Group has been at the leading edge of applications of new technology of information science to criminal justice and their intelligent, cost-effective utilization by hundreds of criminal justice agencies. These SEARCH activities and results were fully articulated and incorporated into the Information Systems Task Force Report of LEAA's National Advisory Commission on Criminal Justice Standards and Goals in 1973.

In one concise volume, in black letter recommendations, the report identified and outlined standards for the development of state and local criminal justice systems. Included in the standards was a call for the establishment of services for the following:

1. On-line files for wanted persons and stolen property

2. Computerized criminal history files for serious offenders

3. Computer interface to vehicle and driver files

4. High-speed interface with NCIC

5. Statewide uniform crime report generation

In addition, detailed recommendations were made for local police, court and correction operational systems. These recommendations have now been widely implemented at the state and local level; but more about that later.

The original Project SEARCH concept grew to encompass representatives of all the states with all the disciplines of criminal justice. Almost 30 technical reports have now been issued which explore the feasibility or evaluate the potential of applications for a whole gamut of criminal justice information software and hardware packaging. SEARCH looked at the feasibility of satellite transmission of fingerprint images. SEARCH designed a model state identification bureau as well as standardized crime reporting systems. It surveyed the state-of-the-art in computer technology and made definitive recommendations for the application of new technology to chronic criminal justice problems. In short, SEARCH has provided the leadership and the continuity through the years that have brought us to where we are today.

Where we are now

In preparation for this analysis, I sought to reacquaint myself with the real world of criminal justice operational systems. I visited a local police department dispatch center and rode in a patrol car for an eight-hour shift. This car was equipped with an on-board computer. It was tied into the police department's POSSE-style computer-assisted dispatch system. For me, it was a classic case of deja-vu. The car was almost identically equipped to the prototype unit I rode in in New Orleans in the Spring of 1976 as a demonstration of the much maligned LEAA police patrol car project. There was one major difference: in this car, everything worked. The officer on the beat, Corporal Greg Brewer of the Arlington, Virginia Police Department literally had at his fingertips in his patrol car, on-line, real-time access to a variety of federal, state, regional and local databases and systems. These systems assist, monitor, and even evaluate his actions in the performance of his duties. Officer Brewer was on-line to the FBI's National Crime Information Center. He could instantly check on wanted persons and stolen cars. He could check with the state of Virginia to obtain information on licensed drivers and automobiles registered in the state. He could check with the WALES system of metropolitan Washington to get up-to-the-minute status reports on criminal activity in the Washington area. And, of course, he was responding to calls for assistance that were being dispatched by computerized message switching from the Northern Virginia "911" emergency response system.

The systems available to the Arlington Police Department are representative of those now widely being implemented or already in use throughout the country. Turn-key systems are now universally available for police, courts and corrections that are unbelievably cheap by standards of just three or four years ago. A complete police dispatch system with hardware and software is now available for under $20,000. All states but one now have fully operational state criminal identification bureaus. In most states, the fingerprint files are already, or are in the process of being, automated. Most states have fully functional state criminal justice statistics bureaus with mandatory reporting systems authorized by state law. There is a dedicated high-speed telecommunications system--NLETS--linking more than 5,000 criminal justice agencies. This system, now fully funded and supported by the participating agencies, serves a wide range of information needs for criminal justice. And, of course, the FBI's NCIC system is fully operational and offers a variety of real-time operational files for police use. It is with personal pride and satisfaction that I can now safely claim

that the goals and dreams of the Project SEARCH pioneers a decade ago are being realized and implemented. Along the way, of course, there was an LEAA investment of more than one-half billion dollars to assist state and local agencies in building this system. The state and local investments have surely been many times greater than the federal commitment.

This is hardly the time, however, for complacency and self-contentment. The technology and the problems of criminal justice are evolving dramatically. New challenges and opportunities lie ahead. Let's explore for a moment the dimensions of this change. First, is the ongoing revolution in microelectronics. Project SEARCH has just published a guide to microcomputers for criminal justice. Included in this guide is a summary of the state of the state-of-the-art hardware that is available at low cost for microcomputer systems. The home computer of today, which sells for a few hundred dollars, is the equivalent of a minicomputer system selling for tens of thousands of dollars just three or four years ago. The minicomputer system of today selling for under $100,000 has the power and capacity of the largest computer of a decade ago which sold in the millions. We should not overlook the fact, however, that the largest computer of one year ago, a computer capable of two million calculations per second, has now been replaced by a computer with five to ten times the computing power that sells for the same price of last year's largest computer. The two million dollar computer of one year ago now goes begging at $500,000. There are also dramatic breakthroughs and cost reductions in mass memory. It will be a year or two at most before video disks are available like those now being sold for home movies in which a single disk the size of a record album can store two to four billion bits of information--the contents of a complete set of Encyclopedia Britannica. It won't be too long before Officer Brewer's on-board patrol car computer could have the capacity to store the equivalent of millions of fingerprint cards or the information in all existing federal and state operational files. This capability will be low cost and highly reliable.

At the same time, new demands and requirements are being developed in a bewildering variety of applications for criminal justice identification and other related information. Let me highlight a few of the federal legislative proposals that have recently been enacted or which will be shortly. This list is by no means all inclusive:

1. On October 12, 1982 President Reagan signed into law the Missing Children Act, which directs the FBI's NCIC to expand its missing and wanted persons file to accommodate information on the more than 1.8 million children who are reported missing every year. The NCIC is to be a clearinghouse to give parents access to the information through cooperating state and local police agencies.

2. The Congress has cleared for Presidential approval legislation to simplify the prosecution of federal arson cases. Included in that legislation is the elevation of arson to the status of a Part I offense for the FBI's Uniform Crime Reports. Obviously, state and local law enforcement agencies currently participating voluntarily in the UCR system will be expected to provide data on arson.

3. The President is expected to sign into law shortly legislation dealing with drunk drivers. Included in this package is an 18-month pilot project to develop an automated national registry of drivers with poor records. State and local motor vehicle authorities will be expected to participate in this program but law enforcement agencies will be excluded.

4. The Congress has almost completed final action on legislation designed to curb the spread of false identification documents such as drivers licenses and birth certificates. The fraudulent use of these forms of identification as well as misuse of passports, social security identification cards, food stamp identity cards, etc. have become a 25 billion dollar a year rip-off of federal, state and local entitlements programs.

5. The Senate has already passed, and the House could well complete action on this year, comprehensive immigration reform legislation. Under the Senate version of the bill, the President would be directed to develop in three years, a "secure" system of identification for all persons, either U.S. citizens or lawfully admitted aliens, who comprise our one hundred million man and woman workforce. Legislative history was added on the Senate floor to ensure that the design and study effort look at and evaluate existing federal, state and local identification systems to assess their suitability for utilization for this purpose, or their potential interface with the immigration identification system.

A number of other examples come to mind. The State Department has recently developed a new passport document with a magnetic tape incorporated into the document. The Department of Agriculture is developing new food stamp identification documents which include photographs and thumbprints. The Social Security Administration is beginning to issue a new "tamperproof" social security identity card. Qualifications for this system rest primarily on the birth certificates issued by more than 7,000 state and local vital records agencies which currently issue birth certificates in more than a thousand different formats. Many of these documents include footprints of infants which are seldom used again for identification purposes. The parent locator system of the Department of Health and Human Services is currently providing social security withholding information to participating state and local agencies trying to locate parents who are delinquent in alimony or child support payments.

These developments and activities as well as the ongoing evolution of criminal justice information systems suggest some of the dimensions of the potential for expanding the role of federal, state and local criminal identification agencies. It may also serve to underscore the need for coordinated, informed response for developing strategies in its systems for the changing and evolving needs for criminal justice information.

For these efforts to be worth the time and expense involved, they must be reliable. Error rates more than a few percentage points should not be tolerated. This means the data in them must be based on fingerprint identification. As these systems are built, there must be reliance on and interface with criminal justice identification systems.

Where should we be going

On the basis of the foregoing analysis, and resting on my laurels as a sometime participant in, and observer of, the development of justice systems over a period of years, allow me now to submit some suggestions and recommendations relevant to the course of criminal justice information for the coming years. Again, the list is not all inclusive. It is meant to be a point of departure for further discussion, refinement and modifications by those who are the movers and shakers in this business.

First, the time has now come for a second phase of an Information Systems Task Force to set standards and goals for the evolution of criminal justice information and statistics systems for the decade of the 80's. It would be highly desirable if this effort could build on the original effort in a way that would involve a representative cross section of practitioners, observers and critics in the field. There should be federal, state and local governmental involvement. The efforts should be balanced and not skewed towards any one particular approach or perspective. The effort should take no more than one year. It would be nice to have federal funding assistance if available, but certainly not federal domination or control.

Second, new developments and breakthroughs in the state-of-the-art of information hardware and software must be continually monitored, evaluated and assessed. These findings should be disseminated to user agencies.

Third, most states have now passed enabling legislation governing access, privacy, security and sanctions for criminal justice information systems. At the federal level the LEAA-promulgated regulations must be replaced by comprehensive federal legislation governing interstate exchange of and access to criminal justice information. This is something that should have been done a decade ago. Should Congress and the federal executive branch fail to assume responsibility, then the states, in the alternative, should generate interstate compacts to accomplish the same objectives. These compacts would then be ratified by the Congress.

Fourth, state and local governments should participate effectively and as equal partners in the development of the identification systems described above. After all, in virtually every case, the federal systems rest on primary data bases that are established, maintained and regulated by state and local authorities. Without coordination and interface, the only results will be needless expense and duplication of effort.

I recall quite vividly the first SEARCH meeting in Minneapolis in June of 1969. I for one did not foresee what the future would hold in the wake of that meeting. No one could have reasonably anticipated the "multi-headed monster" that was created at that time. I would be less than candid if I did not display a small bit of parental pride in what was spawned. I have every confidence that you will meet the challenges of today and will prepare, intelligently, for the opportunities of tomorrow.

Data Aspects of Federal Program Initiatives

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I'm a representative of a community that is vitally interested in the work that you are doing in the federal criminal justice enforcement system.

Obviously the impact of crime in this country has been a cause of major concern to the federal government over many decades. Recent statistics issued by our department indicate that close to 25,000,000 households were touched by violent crime and theft in 1981. This represents approximately 30 percent of our nation's households. Of this total 11 percent were touched by crimes of major concern--household burglary, or violent crime by strangers. Over 20 percent of our population were victims of at least one larceny. Indeed, in the last 20 years the proportion of crimes in major cities has risen from approximately 300 to more than 1,200 per hundred thousand citizens.

These statistics demonstrate more than anything else could the need for continued efforts to upgrade our criminal justice system--to control criminal activity and protect the rights of our nation's law abiding citizens. This will involve the development of new cooperative strategies for new legislation and implicitly a greater reliance on information resources to better target our nation's anti-crime programs to insure the maximum impact.

In recognition of this the Attorney General's Violent Crime Task Force was appointed to review and make recommendations concerning criminal justice operations, administration and legislation. The report contained over 60 specific recommendations and identified major areas in which further actions have been taken. This conference was convened to review the extent to which new criminal justice strategies at the federal and state level assume the need for prior statistical research or comprehensive data resources or require modifications in policies regulating the collection, storage and release of data.

Therefore, in discussing current federal policies and initiatives, I will attempt to identify those informational implications which are inherent in our current priorities for the federal criminal justice system. We also made an effort to identify those initiatives which illustrate particular data problems or which are particularly dependent upon data resources. Since data implications are not involved in all areas of federal concern, however, some additional initiatives and policies serve to indicate the full range of our concerns. First, our major priorities:

Bail reform proposals

We have a series of proposals in the specific area of bail reform. These are particularly critical in terms of the harm done to society by persons released from the criminal justice system, by the frequent failure of such persons to return for sentencing, and also by the development of criminal funding sources to support bail payments. These issues are all addressed in recommendations and proposals of the federal government currently pending on Capitol Hill.

Of particular relevance regarding the informational concerns of this meeting, however, are proposals requiring that bail be denied if convincing evidence indicates that the individual presents a danger to the community, or where an individual accused of serious crimes has been previously convicted of serious criminal offenses while on pretrial release. The information implications and necessities of these proposals are obvious.

First, the key aspect of the proposals will require that an evaluation regarding the potential danger of specified individuals be made within a short period of time. Thus, in light of the time constraints on pretrial release decisions, it is clear that these legislative proposals will require timely access to data on individuals. Second, this data must be accurate, with positive identification, in light of the constitutional implications of pretrial release decisions. Third, a comprehensive data base including information which reveals violence or danger factors is critical since standard rap sheet items may not always incorporate data of this type. Fourth, there is a need for access to and positive identification linkage to juvenile record data, as will be discussed below. Finally, we must develop violence or public danger predictors based upon statistical analysis and records of recidivism activity. In light of the importance of bail and the overall control of criminal activity it is critical that the supporting data be made available at a high level of accuracy.

Juvenile offender policies

A major area of current criminal policy concern is the disproportionate extent to which dangerous and violent crimes are being committed by individuals qualifying as juveniles, and hence not held to the standards of responsibility otherwise established under the adult criminal justice system. The extent to which juvenile offenses are not currently considered as a factor in decisions regarding the individual within the adult criminal justice system is of particular concern. This is especially significant in one of the new strategies which attempts to chart repeat offenders and to establish corresponding correctional policies.

In light of the serious level of juvenile crime, this administration supports proposals which would allow federal courts to proceed against juveniles committing federal crimes. Of possibly greater significance in the context of this meeting, we also support the position of authorized fingerprinting and photographing of all juveniles convicted of serious offenses in federal courts.

These proposals are intended to rectify serious informational problems which prevented more effective juvenile offender data control, and specifically to make possible the flow of juvenile data for appropriate use in the adult system. In this regard the proposed fingerprinting and related identification proposals are especially critical since the major current limitation to the use of juvenile record data--even where it is legislatively authorized--is the inability to link juvenile and adult records in the absence of positive identifiers. In addition, we have problems in rapidly accessing juvenile record data since repositories may not accept data without positive identification.

Yet another problem lies in the difficulty in developing accurate predictors of juvenile recidivism because of problems in research or access to juvenile data. Finally, we support the revision of current information policies concerning the sealing and fingerprinting of juvenile records in order to prevent the continued escape from criminal responsibility by those persons which statistics indicate are responsible for a disproportionate level of criminal and violent acts.

Career criminal programs

Our career criminal programs, which are intended to target limited resources on repeat offenders, have had a substantial impact on the incidence of crime. These programs have been shown to be very successful and are considered to be a key resource in upgrading the impact of prosecution resources. A key concept in the programs is the ability to identify repeat offenders or persons involved in multiple crime prosecutions. In order for the cases involving such persons to be directed to specially trained personnel within prosecution offices, these programs require complete and accurate criminal history data which is positively identifiable to the specific individual being evaluated by the system. In particular, this requires identifiable data describing current cases within a given jurisdiction. Finally, there is a need for inter-jurisdictional data coordination to insure the rapid development of a comprehensive record on the alleged offender. To some extent, the success of these programs represents an example of the type of program whose success is critically tied to the availability of required data resources.

Law Enforcement Coordinating Committees (LECC's)

These committees were established in response to recommendations from the Attorney General's Task Force on Violent Crime. They represent major efforts to support federal/state cooperation in order to preclude the potential duplication of effort and to insure that criminal cases do not slip between the cracks resulting from different case prosecution policies at the federal and state level. These committees also represent a federal commitment to insure that the federal records in each jurisdiction are developed for those issues of primary concern for the overall law enforcement community in that given area. Achievement of these goals, however, is to some extent dependent on the collection and analysis of both current and historical administrative data. Such data is needed to evaluate the impact of different case acceptance policies by the different jurisdictions. It is used to estimate the changing workload factors to project future caseloads at federal and state levels.

Finally, the development of such data requires the collection of parallel case defendant information at both federal and state levels. At least implicitly, therefore, this addresses the underlying need for coordination of information collection practices across federal and state lines.

Arson and organized crime programs

The problems of organized crime, narcotics control and arson are very high federal priorities. The social costs of criminal activities in these areas is overwhelming, and expanded prosecution efforts relating to apprehension, prosecution and sentencing in these areas must be undertaken. Program initiatives in these areas, however, present clear informational requirements, both within the criminal justice community and in the private sector. Specifically, criminal justice actions to control these activities may require access to private sector data describing non-criminal activities such as real estate and insurance records. Expanded organized crime arrests and prosecution may require that a wide variety of information resources be examined and that such data be protected from subsequent publication. Relevant information policies are therefore critical to the success of such programs, and as all of you well know there is substantial debate as to whether such data ought to be made available to enforcement authorities.

Other federal policy initiatives

I have just mentioned some examples of current federal priority initiatives which have a substantial data and informational requirement. Fulfillment of the goals to be achieved in these areas will depend upon the extent to which such information is both technically available and subject to collection and disclosure policies which permit ready use for criminal justice purposes.

Other areas not having direct information implications, however, include the proposed establishment of the strict uniform standard for insanity defense and our proposed modifications to the exclusionary rule. On the insanity defense, legislation has been proposed strictly limiting that defense to insure that the defendant's awareness of the criminal act is not excluded from the consideration of criminal responsibility. Such uniform double standards are intended to insure that the psychiatric process does not undermine the concepts of justice upon which our criminal justice system is based.

Similarly, important modifications have been proposed with respect to the exclusionary rule. Under these proposals the true deterrent objective of the rule would be realized without the severe social costs arising out of the current application. This would be accomplished by modifying the rule to permit a reasonable good faith exception.

Taken together, these and other federal criminal justice policy initiatives are, we believe, major steps toward the control of our nation's crime problem. As indicated, the success of such a program would greatly depend upon the extent to which the informational resources are available to meet these legislative and policy goals.

The Role of Information in State Criminal Justice Activities

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I'd like to share with you some of my thoughts on and experience with state criminal justice decision-making and initiatives, and their relationship to information availability. To do this, I want to cover some history, because I think it can give us a perspective on the context in which most of us are operating these days. That context, in my view, is one of increasing awareness of the value which complete, well-analyzed and presented information has for any criminal justice improvement effort. Part of that context is also the realization that sometimes even the hardest, most conclusive information will be left unused and ignored during consideration of some crucial policy decision, because no groundwork has been laid with those who should be using it.

Bear with me for a few moments while I go back to the days when the LEAA program was being formulated, debated, amended and finally enacted into law. You'll recall that LEAA embodied what was, at that time, the novel idea of providing federal aid in so-called block grants to the states. The states, in turn, would have the responsibility of--and here was another novel idea--doing the necessary coordination, planning and analyses to see that the funds were used in the most effective way, from a criminal justice system perspective. The states and localities were the ones who had to deal with the bulk of the nation's crime problems, so they should be the ones to decide how best to use their federal block grant monies to deal with those problems. They would be encouraged to use the same coordination, planning and analysis processes in deciding how best to use their own resources as well. The point was (and still is) that crime should be approached from the perspective of the criminal justice system as a whole and not viewed as a law enforcement problem, or a court or corrections problem. Further, decisions on how to deal with crime problems should be based on careful analysis of accurate information which would help to identify and define problems and suggest possible solutions.

Underlying this emphasis on coordination, planning, and analysis was the assumption that someone or some group--a governor, at the local level, a city manager, or mayor, or perhaps the legislature--would be ready and willing to act, to lead the disparate parts of the criminal justice system.

Well, as we all know, the idea of planning, analysis and focused decisionmaking does not usually head the list of things which people remember when they think of the late LEAA. More likely, ideas like PROMIS, career criminal programs, "STING" operations, ICAP or McGruff come to mind.

Regrettably, planning under the LEAA program became for many an exercise in complying with a constantly increasing list of congressionally mandated requirements attached to the federal funds. It was not perceived or used as a tool in some sort of national decisionmaking process. It was simply something one had to do, motions which had to be gone through, to get the federal dollars.

I don't mean to imply that the concept was totally ignored, or that it wasn't successfully implemented in some states. That is certainly not the case, as an American Academy of Public Administration study documented a couple of years back. The academy found several states which engaged in the criminal justice planning and coordination activities espoused by LEAA and extended them beyond the confines of simply going through the motions in order to get federal aid.

But, overall, I don't believe the concept took hold as much as it should have. Why? Perhaps because it was associated with "red tape" as I noted a moment ago. Perhaps also the traditional fragmentation and division of the criminal justice system were just too difficult to overcome or change sufficiently so that some sort of coordination and planning could take place in an ongoing way.

I mention this because I believe it relates to our present situation in a very important way. Here in 1982, the biggest problem facing our criminal justice system seems to be prison crowding. I know that's the case in my state and, from what I've heard and read, it is true in most other states as well. The prison population nationally has continued to increase at an alarming rate; prisons are bursting at the seams. Virginia, for example, is building five new institutions this decade and yet will still be some 3,000 beds short by 1990, if current trends continue. And, while states are scrambling just to keep up with their growing inmate populations, the courts are intervening with greater frequency in response to the conditions caused by crowding.

Add to this equation the generally poor condition of the economy and the resulting diminished revenues facing most states and you have a situation which has brought corrections crowding problems to the forefront in many jurisdictions. With no money, the states can't just keep building new institutions, and most states have already become sufficiently alarmed at the cost of constructing and operating prisons that new facilities wouldn't be considered a viable option even if funds weren't so scarce.

As a result, the states are searching for solutions to their crowding problems, for ways and means to cope with offenders without having to build more cells. Their efforts have taken several directions. One is to place an upper limit on the number of inmates which can be held in a state's prison system,

usually linked to the system's rated capacity. If that limit is met or exceeded, then parole eligibility is accelerated, extra good time is awarded, or mandatory release dates are moved up. Another is to look at alternatives to incarceration such as restitution and community service, for certain types of offenders.

I point to overcrowding not only because of its prominence as an issue facing criminal justice today but because, in my view, it demonstrates very well the importance of the systemwide approach to planning and problem solving which first gained currency during the LEAA program. It very clearly illustrates the need for accurate, complete, well-analyzed and presented information as an essential tool for planning and decisionmaking: something many of us have been harping on for the past 12 years or so.

Prison and jail crowding is one of those problems which has its roots in many aspects of the criminal justice process. It is, in other words, an effect, a result of a variety of factors ranging from the types of arrests and prosecutions made, to sentences imposed by judges or the legislature, to statutory requirements regarding parole eligibility. So, dealing with it in a manner other than just a stop gap, "band aid" approach requires coordination, planning and analysis.

It also requires a commitment to maintaining a flow of information useful not only to individual operating agencies but also to the governors, the legislators and the administrators who must make policy decisions and try to exercise leadership.

Virginia, like other states, is facing the prospect of a serious deficit of bedspace in its prisons in the coming years, as I noted. The magnitude of that problem became evident to us with the projection of the 3,000 bed shortfall by 1990. We have begun to look at a variety of ways to address the problem, besides building more prisons.

One of them is our recently passed Community Diversion Incentive Act. The statute encourages localities to create programs which divert certain offenders who would otherwise go to prison; and it offers state funding support. The legislature was clearly motivated by the crowding situation when it enacted this law and hoped that this type of diversion would develop as one solution to the problem. On the other hand, the legislature must also respond to public resistance to the idea of letting convicted offenders back out on the streets "too soon." As we all know, this is a time when everyone wants to "get tough" on crime. In order for the community diversion program to receive support and funding, the legislature will have to be convinced that it works, that the crowding situation is alleviated and that the public safety isn't jeopardized in the process.

That requires information: on the clients of the program and their recidivism rates after diversion, compared to those of people released on probation or parole; on potential clients of the program to determine their suitability, according to program criteria, so that only those with the best prospects of success will be diverted.

This is not the type of information which has been readily available for these purposes in the past, chiefly because this type of decisionmaking on offenders and program evaluation wasn't done. So a large part of the effort to make this program work revolves around someone, in this case, our Secretary of Public Safety, taking the lead in seeing that this information is obtained and made available to judges, legislators and others who need it.

Looking beyond the diversion program, the administration has undertaken an examination of the areas of sentencing, parole eligibility, and alternatives to incarceration. This entails the obtaining of information on what the present practices are and how decisions are made by judges, the parole board and others involved in the process, followed by consideration of ways to bring changes which would make it possible to screen more offenders away from crowded prisons. Again, leadership and coordination is necessary to see that the needed information is obtained and analyzed, that any changes which may be forthcoming are accompanied by appropriate changes in information policy and practice.

I mention this, in the context of what we are doing in Virginia, because I believe this particular issue illustrates the point I was making about the need for a coordinated planned approach to criminal justice problems. It further illustrates the importance of a planned, coordinated and focused approach to the development and operation of information systems in criminal justice. It seems to me that you can't have one without the other.

On the one hand, there must be a commitment by an individual or agency in a leadership position to an ongoing analysis: an effort to identify problems and seek solutions, and in so doing, to force (if necessary) the production of the type of information which will facilitate intelligent inquiry and decisionmaking. This, in turn, will lead to the taking of intelligent initiatives, grounded in an accurate assessment of the present situation and what needs to be done.

On the other hand, even the best information and analysis will have no impact without a leadership structure committed to inquiry, to identifying problems, seeking solutions and developing them. It is, in a very real sense, the knowledge and ability to get and use information intelligently which leads to successful criminal justice initiatives.

I have already seen the value of using good descriptive information to demonstrate a need for action in our effort to deal with our corrections problems. In taking the all-important step of laying the groundwork for the work we are doing on sentencing, we have undertaken, with the Secretary of Public Safety, a series of presentations to judges, sheriffs, legislators, prosecutors and others. These have been intended to illustrate just where the state's corrections system is headed if current practices continue, and perhaps to challenge some of their assumptions about the relationship between crime rates and incarceration rates. We have, possibly for the first time, exposed some of those whose decisions directly affect the state's prison system, and thus its budget, to statistical information about the impact of their decisions in terms of demands for bedspace in jails and prisons.

The purpose has been to raise their consciousness at this point, rather than to request specific actions or changes. Our ultimate success, therefore, remains to be seen. But I believe that we have certainly gotten their attention. For many had not had this type of information presented to them before and were frankly surprised and alarmed at the situation Virginia faces in corrections.

As Virginia and the other states deal with criminal justice problems such as overcrowded prisons, I believe the importance of the intelligent use of information in understanding their problems, developing solutions and making those solutions work will continue to be evident. And I also believe it must be accompanied by a commitment to coordinated, well-planned approaches to dealing with problems. At no time has this type of leadership been more important in criminal justice than the present.

New Initiatives and the Criminal Justice Environment: A Case Study of the Interstate Identification Index

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The success or failure of new crime-fighting programs and legislation is dependent upon the capability of existing criminal justice information systems and policy to respond to the demands of those initiatives. To evaluate the nature and extent of the activity of a juvenile offender for purposes of administering a new juvenile justice program, for instance, policymakers have to be aware of statutes which provide for sealing and purging of juvenile offender information. For initiatives on career criminal programs, policymakers have to assess the impact of archival and data retention standards, since criminal history record information can, by statute or procedure, be made inaccessible or expunged from existing records. For an initiative designed to collect offender-based transaction statistics, policymakers need an understanding of the impacts involved in creating highly sophisticated statistical tracking systems, with linkages among law enforcement, prosecution, courts, corrections, probation and parole.

My purpose here is to describe the environment of criminal justice information, to examine its structure, and to show the intricate relationship of its components. This examination will show how a new initiative impacts the existing structure and what must be done to allow the structure to respond effectively. As a case study, we will look at the development of the Interstate Identification Index (III), a computerized national system for exchanging criminal histories that is based on a decentralized concept. We will see that the III has evidenced a very careful awareness of the information impacts of its program, and has established the necessary dialogue among all of the parties involved in its design and phased implementation.

The environment of criminal justice information

Criminal justice information exists in the dynamic environment of high-technology information systems, and a rapidly changing body of law and policy governing the handling of criminal justice information. The components of this environment form an integrated structure that, over the last 25 years, has evolved into a sophisticated capability for processing massive amounts of criminal justice information. It is a system that is assaulted constantly by new demands for information, by hundreds of new laws and policies each year, and by rapid changes in technology. A new program may call upon the structure to collect information not within the current capability of the information systems. The structure has to adapt; modifications must be made. The new program may also impact existing policy. If information is exchanged across state lines, for example, can the state receiving the information disseminate the information to a third state? Existing policies may have to be re-examined; new policies may have to be developed.

Like the rippling effect of a stone cast into a pool of water, the introduction of one new element of information that must be collected or disseminated is felt throughout the criminal justice information structure. Under such constant assault, it is amazing that the system functions as well as it does. It is evidence of the flexibility of the structure, of its ability to respond. What we must understand is that, as flexible as the system is, it is finite; it has limits. If we know and understand the system, we will better understand the extent of systems and policy impacts. We will then be in a position to know what fiscal, technological, managerial, and policy modifications will have to be made.

The nation's perception of crime is derived largely from the statistical data generated by state and local criminal justice information systems. Being able to generate accurate and reliable statistics has greatly improved our understanding of crime in America. We know where crime is being committed, who is committing it, who are its victims, and how frequently it occurs. If we look at the statistics developed in the Uniform Crime Reports and the National Crime Statistics for the year 1979, for example, we get a picture that tells us that approximately 90% of those arrested for violent crimes were male. We learn also that the offenders were young: while juveniles age 10-17 represented only 13.6% of the population, they accounted for 20% of violent crime; and that persons under 25, in fact, accounted for 57% of violent crime.

The picture shows that crime is disproportionately a problem of large major metropolitan areas. Violent crime occurs more often in the central cities of metropolitan areas than in the suburban sections. And we get a comparable picture of the victims: they are young, members of minority groups, and they are predominately male. It is with this kind of statistical information that we know how to allocate our scarce resources. We use it to develop new crime fighting programs and information tools for the administration of justice. What we need to recognize in this information capability is that it is a structure defined by the programs we have already developed, and that new initiatives may call for programming modifications and the resolution of policy conflicts. Very often, the demand for extensive new information may exceed the staff and financial resources of the operational agencies at the state and local levels.

A closer look at the development and implementation of criminal justice information systems and policy will give us a better appreciation of the existing information environment that is impacted by new program and legislative initiatives. From 1967, when the President's Commission on Law Enforcement and Administration of Justice succeeded in identifying only 45 agencies using data processing in their operations, to today, when SEARCH's Automated Index of Criminal Justice Information Systems contains over 850 systems, we can see that the growth has been phenomenal. Criminal justice information law and policy grew at much the same rate, to the point that today virtually every state and territory has legislation governing the handling of criminal justice information.

The impetus for this phenomenal growth came largely from the federal government. In 1968, the Congress adopted the Omnibus Crime Control and Safe Streets Act, out of which was created the Law Enforcement Assistance Administration (LEAA). To provide a focal point for the development of criminal justice information systems and policy, LEAA created the National Criminal Justice Information and Statistics Service (NCJISS). By providing substantial funding to state and local agencies for the development and operation of criminal justice information systems, the NCJISS fostered an era of technological advancement in criminal justice information processing.

The major systems development programs of the 1970's centered on the offender. At the national level, such programs included the Offender-Based Transaction Statistics System (OBTS), the State Judicial Information System (SJIS), the Prosecutor's Management Information System (PROMIS), and the Offender-Based Corrections Information System (OBSCIS). All are systems aimed at establishing a capability for tracking an offender's status in the criminal justice system, from arrest to release. The national computerized criminal history program of the time, the National Crime Information Center's Computerized Criminal History program, sought to insure that a complete and accurate record of an offender's involvement with the criminal justice system would be readily available.

Agencies during this period were also encouraged to adopt systems developed by other agencies having similar operational needs. SEARCH's National Clearinghouse for Criminal Justice Information Systems assisted state and local agencies in identifying and transferring compatible systems and provided the expertise and technical support in the transfer process. The MORGAN Data Management and Crime Analysis System is an example of an outstanding system that was packaged for transfer. SEARCH's Jail Administrators Management System (JAMS-II) is another.

Information systems development in state and local agencies followed the national lead. The majority of systems were designed to organize, maintain and disseminate information about a particular group of offenders which comprise an agency's workload. Thus, law enforcement agencies developed criminal history and intelligence systems; the courts developed systems for scheduling and for records management; corrections agencies sought to implement systems that would help to manage their inmate populations.

The most significant development on the state level during these years was the creation of state central repositories. Forty-nine of the 50 states and two of the three territories have a central state repository. The repositories gather information on offenders from law enforcement, prosecution, courts and corrections agencies. The information collected includes personal data, arrest and subsequent charges, and intermediate and final disposition of each charge, including sentencing and commitment information where pertinent. All information is keyed to personal identifiers, to create an historical record of all criminal justice involvement for an offender.

Near the close of the 1970's, we began to see offender information in the systems being used to improve resource management and decisionmaking. It was about this time also that the microcomputer had sufficiently increased in capability and decreased in cost so that even the smallest of agencies could benefit from computer technology. Microcomputers also offered the advantage of standardized operating systems, which would open the door for packaged applications. Software packages that will run on a variety of microcomputers with compatibie operating systems promise to increase standardization of data elements among agencies using the same package. Telecommunications also advanced in this era, not only in support of the National Crime Information Center, but also in the form of the state-operated National Law Enforcement Telecommunciations System (NLETS). Finally, advances in criminal justice systems technology were aided by the growth in sophistication of the practitioners in the field of criminal justice. In 15 short years, then, information systems capability in criminal justice had come a long way in creating systems, using telecommunications, and encouraging professional expertise.

What we need to be aware of in this description of the development and proliferation of criminal justice information systems is that fifteen years represents only the infancy of what many hope one day will be a fully coordinated criminal justice system. We are not there yet. What we have at present is an information system capability that is defined for the most part by the operational needs of particular agencies. Moreover, the information capability of those systems is limited to their existing technology. For example, the vast majority of the systems in SEARCH's Automated Index are of the large mainframe and minicomputer variety. What this means is that we are often confronted with the situation where new program initiatives are predicated on a conception

of existing systems as "state-of-the-art" or "cutting edge" technology.

Often this is not the existing situation. Today's informational demands are often being made on yesterday's technology. Thus, a call for new information to be collected and reported may mean new programming, a process that can be both extensive and costly. While existing systems are flexible, they are flexible within limits. The systems have been defined to process specific information for specific operational needs and for current statistical reporting programs. In the future, we can look forward to greater flexibility in computer technology, allowing initiatives to be more easily absorbed into the justice system. Microcomputers, for example, are exploding on the information environment today with sophisticated report generators and twice the computing power of yesterday's minicomputer.

The information capabilities of existing criminal justice information systems are also defined by existing law and policy. Data processing systems which have been programmed to capture, format, disseminate and aggregate for statistical purposes are defined to implement existing criminal justice information law and policies. The informational demands of a new program initiative, then, impact the system's capability not only in terms of the technical capability of the hardware and software, but also of the limitations placed on the system by policy and law, which differ among the states to a considerable degree.

The development of criminal justice information law and policy also has its roots at the federal level, taking us back to the enactment of Section 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, now Section 818(B) of the Justice Systems Improvement Act of 1979. This provides for the security and privacy of criminal history record information collected, stored or disseminated with support from LEAA. The Department of Justice issued regulations to implement Section 524(b), imposing minimum general requirements for the maintenance, use and dissemination of criminal history record information, but left to the states the development of comprehensive programs and specific procedures to implement the regulations. From the outset, LEAA demonstrated great concern about the effects of information systems on personal privacy, encouraging policymakers to be sensitive to the privacy and security issues involved in information systems initiatives.

The federal legislation also stimulated many states to enact their own criminal history standards laws. While only a few states had legislation governing criminal records in 1974, all of the states by 1981 had enacted some legislation. And 42% of the legislation on the books in 1981 was enacted in the years 1976-1977, the two years following the publication of the LEAA final regulations. The regulations had set standards for data quality, dissemination, security, access by record subjects, and audits, which applied to all state and local agencies which received funds in support of their information systems. By 1977, state legislation had more than doubled in all of the major categories. And by 1981, the majority of the states and territories had enacted laws covering virtually every category. In addition to providing the impetus for the creation of state laws, the regulations triggered a reassessment of existing state privacy and security laws, resulting in many states going well beyond compliance to enact comprehensive criminal history laws.

How intricate a network of state laws has been enacted to create the existing information policy environment, and the scope and diversity of this environment, is illustrated by the findings and trends of a recent survey conducted by SEARCH for the Bureau of Justice Statistics. (An analysis of the laws compiled in the survey is contained in the Bureau of Justice Statistics Bulletin, June 1982.) That analysis gives us the following picture of legislative trends:

- Twenty-four jurisdictions (45%) have enacted comprehensive privacy and security laws. Most of these laws deal with all aspects of record policy covered in the Department of Justice regulations, and many of them are stricter than the regulations.

- Most jurisdictions distinguish between original records (police blotters, court dockets, and other chronological entries) and summary criminal histories, which are compilations of information indexed to individuals by name or other identifiers. Even when information in criminal histories is restricted, the original records usually remain available--although in most cases it would be difficult to search for them. This seems to be a popular way to provide privacy protection while not completely restricting historical records.

- The concept that restrictions should be placed on the release of nonconviction information (acquittals, dismissals, and arrests without dispositions) is generally accepted. Although the Federal regulations allow states to disseminate such information pursuant to state law, many states choose not to make nonconviction information available outside the criminal justice system.

- In forty-two jurisdictions (81%), statutes allow record subjects to inspect their criminal history records. Thirty-six jurisdictions (68%) specifically provide for amendment or correction of challenged information. These measures are regarded as essential privacy rights because they permit record subjects to know what data are recorded, and give individuals a role in monitoring the accuracy of their records.

- Twenty-nine jurisdictions (55%) require that dissemination logs be maintained to record the disclosure of criminal history information. Further, the jurisdictions usually require that corrected information be forwarded to agencies that have received erroneous or incomplete records.

- Forty-six jurisdictions (87%) have established or designated a state regulatory authority to provide general oversight of criminal history record management policy. Twenty-one jurisdictions (40%) have established privacy and security councils.

- Fifty-two jurisdictions (98%) have established central repositories. A central repository, mandatory disposition reporting, and requiring a query prior to dissemination (to verify completeness) are the principal techniques to insure validity of criminal records.

- During the 8 years covered by surveys, the largest gain in record management regulation has been related to accuracy and completeness requirements. Now 49 jurisdictions (92%) have such provisions, although only 14 dealt with this matter as of 1974. Most jurisdictions specifically address accuracy and completeness of records; some merely require that criminal justice agencies establish procedures encouraging accuracy.

- Thirty-two jurisdictions (60%) have laws or regulations providing for information system security, and often such requirements are precise and strict. Laws on this subject deal with computer security, physical security of data and facilities, and screening and supervision of employees with access to criminal records.

- Remedies and penalties for failure to comply with laws or regulations for privacy and security may include civil or criminal sanctions or both. The survey found that 33 jurisdictions (62%) provide civil remedies that may include punitive as well as compensatory damages and sometimes recovery of attorney fees. Civil penalties against agency personnel who have disregarded their duties may include job transfer, suspension, or dismissal. Thirty-nine jurisdictions (74%) provide criminal penalties for willful transgressions. These laws usually classify such conduct as a misdemeanor that could entail a fine or imprisonment.

- It is customary for state law to authorize disclosure of criminal history information to a variety of non-criminal-justice government agencies for employment purposes, security investigations, and other purposes. Private-sector access for such purposes is specifically permitted by statute in some states, barred in others, and left undefined in other states.

- Forty-three jurisdictions (81%) permit disclosure of conviction information to government non-criminal-justice agencies.

- Thirty-five jurisdictions (66%) permit disclosure of nonconviction information to such agencies.

- Thirty-seven jurisidictions (70%) permit disclosure of arrest information to such agencies. On the other hand, relatively few states prohibit the release of criminal records to government non-criminal-justice agencies. Four states prohibit disclosure of conviction records, 10 states prohibit disclosure of nonconviction records, and 8 states prohibit disclosure of arrest information to government non-criminal-justice agencies.

- With very few exceptions, the states are much more restrictive in their dissemination policies toward private-sector agencies and individuals, particularly with respect to nonconviction records and open arrest records. The laws of 32 jurisdictions (60%) may be construed as authorizing disclosure of conviction records to private persons.

On the other hand, seven jurisdictions prohibit disclosure of conviction records to the private sector. With respect to other types of data, restrictions are even more common. Twenty-five jurisdictions (47%) specifically authorize dissemination of nonconviction records for specified private purposes, and 27 (51%) authorize disclosure of arrest records. However, 14 jurisdictions (26%) prohibit disclosure of nonconviction records for any purpose to the private sector, and 12 (23%) prohibit disclosure of arrest records to private persons.

Interstate Identification Index (III)

Having sketched the current status of criminal justice information systems and their now detailed legal policy environments, let us turn to the case study of the III.

For those not familiar with the work of SEARCH, let me preface my remarks on the Interstate Identification Index with a word about SEARCH. Our interest in the development of a decentralized criminal history program goes back to the inception of Project SEARCH in 1969. Project SEARCH was born out of the newly created Law Enforcement Assistance Administration as a six-state effort to explore the feasibility of the electronic exchange of criminal histories. The acronym SEARCH stands for System for Electronic Analysis and Retrieval of Criminal Histories. All project goals were met or exceeded in the development of a computer-compatible format, the conversion of records into a central index or pointer system, and an on-line demonstration of the exchange of criminal histories. In its conceptual design, that original SEARCH demonstration is virtually identical to the current Interstate Identification Index.

Following that successful demonstration, SEARCH and LEAA worked in partnership to establish an agenda for the development of an effective information network that would serve as a foundation for the interstate exchange of criminal histories. That agenda included

further exploration of the technology involved in interstate exchange; formulation of criminal justice policies to govern the collection, access and dissemination of criminal history information; establishment of state identification bureaus as the central repository for each state's records; parallel development of a statistical series utilizing data derived from operational criminal justice information systems; and the creation of a national organization of the states dedicated to representing the states' viewpoint, setting policy on national issues affecting the states, and translating developments in information technology into criminal justice applications.

In 1974, that national organization became SEARCH Group, Inc., the National Consortium for Justice Information and Statistics. In the decade of the 1970's, SEARCH would provide the needed continuity and leadership that have led to the development of much of the information systems capability and information policy safeguards we have today. Through all of these years, SEARCH has monitored the progress of and contributed to the development of the III.

Let us now look at the development and testing of the Interstate Identification Index (III), as an example of how a new program initiative impacts the existing criminal justice system. The III is a particularly good example to use because the criminal history record is the fundamental information thread that weaves together the components of law enforcement: prosecutors, defense, courts, corrections, probation and parole. The trend in many states toward career criminal programs and differential sentencing is going to increase the need for exchanging criminal histories. In addition, III will have to deal with the fact that the states have differing laws and policies regarding the handling of criminal history record information, and individual state systems will have to be modified in terms of procedures, and often in terms of programming, to successfully interface with the III.

The III was conceived as a response to the need for a national system permitting the exchange of criminal histories among the states and the federal government on a decentralized basis. The basic concept of the III is to make complete and accurate criminal history records available in a timely manner while allowing the states to maintain control of their own records. It has been estimated, for example, as a future impact of the III, that 65% of the single state records submitted to the FBI could be eliminated by using identification through the III and single-state response through the National Crime Information Center Telecommuncations Network. Individual states would maintain their own records of state offenders, and the federal government would maintain only the records of federal offenders.

Housed within the FBI/NCIC would be an Index, containing personal identifiers of the record subject, an FBI number, and the State Identification Number (SID) of any state that has reported that it holds a record on a subject. A fingerprint card would be maintained in the propsed National Fingerprint File (NFF) to be operated by the FBI on all offenders in the Index. State and local criminal justice agencies may query the Index via NCIC. Entries in the Index could be removed at the request of the submitting state. The FBI would submit identifying information on federal record subjects in the same manner as the states. The record holding state, based upon its own laws and/or administrative regulations on criminal history record dissemination, would then forward the record to the inquiring agency. Thus, the Index would contain the personal identifiers of record subjects and a pointer to the location of state-maintained data bases of criminal history record information.

To insure that the impacts of the III are carefully monitored and addressed during the testing phase, the NCIC Advisory Policy Board (APB) has created the III Evaluation Committee. The composition of the III Evaluation Committee includes representatives from some of the participating states and representatives of groups with an interest in the interstate exchange of criminal history information but which have not been involved previously in the development of such a nationwide system, including the American Civil Liberties Union and the Judiciary Committees of the U.S. Congress. The Evaluation Committee is charged with examining the operational, technical, fiscal, managerial and legislative/policy impacts of the III throughout its phased testing. In recognition of its eclectic composition, the Committee has the freedom to evaluate and comment on any pertinent aspects necessary to the development of a workable system for providing justice users with timely criminal history record information. Within the evaluation process, the Committee's reports are reviewed by the Advisory Policy Board's III Subcommittee, which incorporates the Committee's evaluation in its report to the APB. The APB then makes its evaluation of III progress and makes recommendations to the FBI for further testing and development of the III concept.

The test methodology for the III consists of a phased approach. The III will be fully implemented in multiple phases, each of which is designed to assess technical, systems, policy, fiscal, managerial, and administrative impacts. It is precisely this kind of systematic approach to impacts that will insure the greatest chance of success for a program of this magnitude.

Phase I

Phase I tested the feasibility and impacts of the III using single-state records (records of persons with arrests in only one state) from states participating in NCIC/CCH. Pilot-state testing began on June 29, 1981, when the criminal history records of the State of Florida were placed in the III and made accessible to participating states.

The background and results of this test, which ran from July through September 1981, are recorded in the Interstate Identification Index, Background and Findings for July-September 1981--Pilot Project, December 4, 1981.

Following the Florida experience, the seven remaining CCH states were invited to join Florida in Phase I testing. Five states--Michigan, North Carolina, South Carolina, Texas and Virginia--accepted. Conducted in February-March 1982, Phase I testing involved approximately 1.25 million single-state records of the six states. NCIC inquiries of the Index from 39 states resulted in criminal records being provided by the participating states via the National Law Enforcement Telecommunications System (NLETS) or by mail. The background and results of this period of testing are contained in the Interstate Identification Index, Phase 1 Findings for February-March 1982, Federal Bureau of Investigation, National Crime Information Center, May 10, 1982.

Based upon a review of the Phase I Findings, the III Evaluation Committee prepared its Phase I report entitled Phase I Test, Interstate Identification Index, Report of the III Evaluation Committee, June 1982. In the report, the Committee stated that: "On the basis of a review of data collected by the FBI and relying on comments from both users and suppliers of criminal history record information, the III Evaluation Committee concludes that the objectives of this phase have been accomplished with little difficulty, and that the feasibility of the III concept is being demonstrated." On the subject of impacts, the Committee stated that the fiscal impacts to participating states were marginal, managerial impacts were negligible, and technical impacts were limited to normal program start-up difficulties. The scope of the test limited the impact on existing information systems and policy: III queries were of existing CCH systems and system users did not have to alter their method of inquiry; responses could be delivered in the format already existing in the state; and existing policies and regulations governed system access, use of records and security. Thus, major systems and policy impacts were deferred to later testing in Phase II.

Notwithstanding the limitations placed on systems and policy issues in Phase 1, the test was an unqualified success. Participating states were able to receive notification of an III inquiry which matched one of their records and to respond with a summary or complete record in the prescribed manner. In most cases, summary responses were delivered in a matter of seconds and the requestor was usually satisfied with the information received. Message traffic was handled via NLETS with no perceptible difficulty. NLETS, in fact, anticipates no difficulty accommodating additional states. Officials of the state repositories participating in the test were unanimous in their comments on the ease of initiating the program and on the smoothness of its operation. On the basis of the test data collected, the conclusion is that the objectives have been met and the feasibility of computerized exchange of criminal history record information has been successfully demonstrated.

It is important to note here that while many impacts on the states and the federal government were anticipated, the III Evaluation Committee concluded that certain impacts were unforseen. This fact shows just how extensively a new program can affect the existing justice system. In its report on Phase I testing, the Committee recommended that for future testing there be an exploration of a variety of subjects, including record standardization, the mechanism for creating index records, purpose codes, data completeness, record dissemination policies, individual challenges, non-criminal justice usage, telecommunications, and establishment of policy.

Phase II

Phase II, scheduled for early 1983, will be a much more ambitious test. Fifteen states will be involved in the interstate exchange of both single-state and multi-state records. The participating states scheduled for the test are California, Colorado, Florida, Georgia, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Texas, Virginia and Wyoming. These 15 states currently constitute two-thirds of the fingerprints received by the FBI. Using the III, arresting agencies in participating states will not have to wait for the FBI to process the fingerprint to determine if a record exists. This phase will see extensive changes in the method of operation that existed in Phase I. Phase II calls for the establishment of an Index file of single and multi-state records that will number in the millions, the implementation of an advanced method for name searching, new response formats, and the establishment of interfaces between the participating state systems and the Index.

The Index records in III for Phase II will be established using identification records in the FBI's Automated Identification Division System (AIDS). Contained in the AIDS data base are all criminal records submitted to the FBI for persons born in 1956 or later, or arrested for the first time after July 1974. AIDS is an internal processing system that is not accessible to outside agencies via telecommunications.

It is possible that as many as 8 million records will be indexed in the III in Phase II. The records themselves will be contained in one or more of the following data bases: (1) the state files of a III participating state; (2) the Federal Offender File (FOF); or (3) AIDS (for states not participating in III). The FOF will replace current CCH files and be used to provide federal records for persons arrested by a federal agency. Prior to the Phase II test, the participating

states will be given a magnetic tape of records contained in AIDS for their respective states. The states will then compare the AIDS data against their state files to determine which records they want their state to be solely responsible for maintaining and disseminating. Once those decisions are made, the states send their tapes to the FBI, where the records are given a State Identification Number (SID) in the Index. The states then receive a computer tape to synchronize the state file with the Index and set corresponding single-state/multi-state flags in the state records.

With the Index, the states and the FBI will be able to offer agencies three essential services:

1. Inquiry. An authorized criminal justice agency (from any state) can make an inquiry based on name and numeric identifiers (date of birth, Social Security Number, etc.) to determine if a criminal record for the individual is indexed in the III. A positive III response will contain additional identifying data (height, weight, race, fingerprint classification, tattoos, etc.) to associate the record more accurately with the person of the inquiry. Upon receipt and review of a positive response, the inquiring agency can decide whether to request the actual criminal history information from the data bases identified as maintaining such information.

2. Record Requests. The III provides a means for requesting a criminal history record once a person has been associated with an Index record, or when the person has been positively identified with a prior record through fingerprint comparison at the state or local level. Requests made on-line via III result in automatic notification to the record holder(s) and provide sufficient information enabling the holder(s) to respond directly to the requesting agency via NLETS or mail.

3. File Maintenance. The III continually interfaces with participating state systems to provide status information regarding the states' records. When a person is arrested for the first time in a participating state, the state is advised if the record is single-state (no Federal arrests or arrests in other states) or multi-state (arrests have occurred in other than the participating state). If the status subsequently changes from single-state to multi-state or multi-state to single-state, the participating state is automatically advised. The status information is provided by the FBI Identification Division from fingerprint cards submitted by arresting agencies.

To provide these services, the existing criminal history system will require major changes in its method of operation. If we look at some of those changes, we can see how pervasive the rippling effects will be on information systems and policy. On the technical side, Phase II will require major changes in existing systems operation and capability for dealing with an Index of 8 million records. Some of the more significant changes that will have to be accommodated by the FBI include:

- An entirely new on-line index file capable of handling millions of records and accompanying supplemental identifiers.
- An interface between III and AIDS for automatic entry and updating of records.
- Conversion programs to establish an initial index from AIDS, participating state input tapes, and the Computerized Criminal History (CCH) File.
- An interface with participating states to provide notification of new records being entered, records being expunged or consolidated, and record status changes.
- Interface capability for participating states to update III records and add, delete or change state identification numbers.
- New response formats for III and Federal Offender File (FOF) records.
- A new method for record matching (name searching).
- Numerous administrative programs for logging, backup and recovery, and statistics.
- States without automated systems in place will have to bear the costs of hardware acquisition and software development.

On the policy side of the III, the impacts on state laws will be extensive. Let us examine three--Data Quality, Record Dissemination, and Non-Criminal Justice Usage.

It is anticipated that one of the greatest benefits that will result from the establishment of the III will be improved data quality. It will result mainly from the careful validation and correlation of records prior to inclusion in the Index, and from the capability for ongoing record updating and maintenance by both NCIC and the participating states. Participating states will have to agree to Minimum Standards for III Participation that have been proposed by the APB. Those Standards require that "record completeness, accuracy and timeliness are considered by the state to be of primary importance and are maintained at the highest level possible." However, no specific guidance has yet been formulated to accomplish these objectives. Policy needs to be formulated here that will impact existing disposition reporting, an area sorely in need of reform. It will be an extensive undertaking, but the benefits derived will be considerable. The III, then, will send tremendous reverberations through the existing laws of 50 states and 3 territories. For every law and policy impact of III, multiply it by a factor of 53.

Record dissemination by III will have immense impact on existing state and federal criminal justice information law and policy. Many of the participating states plan to include a notice on their records limiting use of the record to its intended purpose and with the provision that it not be retained in the files of the recipient state. Each new purpose will require a new inquiry. At present, no formal policy exists on the subject and states are left to make their own policies. Given the different laws and policies that govern each state's criminal history records, the potential for policy impacts is great. Let's say, for instance, that State A, which has an open-public-access records policy, requests a criminal history record from State B, which releases criminal records only to criminal justice agencies. If it is a legitimate criminal justice request, State B will release the record. What regulations govern that record while it is in the possession of State A? Is it now an open record there? This issue of secondary dissemination is only one of myriad possible policy conflicts among the states. It is our hope and recommendation that formal policies governing dissemination be adopted and that, as a condition of participation, states be required to agree that dissemination of records be governed by the law and policy of the state of origin.

The phase II test will be limited to criminal justice uses, but we will have to anticipate that sometime in the future III policy will have to address the issue of non-criminal justice uses. Again, the statutory complexities will be enormous. Some states honor non-criminal justice access requests for such purpose as employment, licensing, and gun permits, while others do not. And different states do it in different ways. Some release only conviction data for non-criminal justice purposes and others give both conviction and non-conviction data. Some states restrict access to certain types of agencies, perhaps only to public as opposed to private agencies. Employment screening for certain types of law enforcement agencies is treated as a criminal justice purpose in some states and a non-criminal justice purpose in others. The III will have to accommodate all of these variables, the most critical of which are the purpose for which the information is to be used, the type of data that is disseminated, the type of recipient, whether a fee should be assessed, and whether a fingerprint should serve as confirmation of positive identification in the search. In addition to recognizing and accommodating all of the variables among the states, the III will have to establish policy governing the variables, whether it be by standardized law or interstate compact.

If all goes well in Phase II--and we have every reason to believe it will--the states and the federal government will have taken a quantum step toward the implementation of a workable national system for the exchange of criminal history records. There undoubtedly will be a third phase to III testing; the magnitude of the program almost guarantees it. It is guaranteed also by the systems and policy impacts that will eventually reach into the smallest corners of the existing criminal justice environment.

Let me close this discussion of III impacts with a note on its potential for statistics: it is our recommendation that a statistics capability be built into the design as soon as possible. Because the III is a national system touching upon every component of the justice system via the criminal history record, it has the potential to be the basis for the creation of a national statistical picture of crime.

Conclusion

Looking at the III from the vantage point of this conference--the impact of program or legislative initiatives on existing criminal justice information systems and policy--the success of the III is due to the careful testing of the feasibility of the concept, to the phased approach to testing and implementation, and to the formal mechanisms that have been established to address the impacts of the program.

As such, the III example illustrates how much attention needs to be paid to the reciprocal influences of policy initiatives and information-system capacities. It also demonstrates the need to make this a conscious area of planning and analysis by legislators, executives, administrators, program directors, users, and social analysts--everyone with a primary stake in how well our criminal justice system will operate in the years ahead.

THE ROLE OF INFORMATION IN SPECIFIC CRIMINAL JUSTICE PROGRAM AREAS

Violent and Career Offender Programs

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I would like to focus here on an issue that is generating increasing attention and concern: the concept and use of "selective incapacitation" as a means of dealing with career offenders. I would like to start by providing some background on the motivations for the use of selective incapacitation, and then move into some of the technical and analytical issues associated with selective-incapacitation policies. That discussion will then provide a basis for addressing some of the information issues that are necessary for the development and use of a policy of selective incapacitation.

The necessity for efficient use of prison capacity

The current imbalance between prison population and prison capacity in the United States represents the primary motivation for finding means of using the limited capacity more efficiently. As is well known, U.S. prisons are full. At the end of 1982, there were more than 400,000 persons in state and federal prisons, and an additional 200,000 in local jails. For prison alone, that represents one prisoner per 700 persons in the United States. That incarceration rate is quite large--larger than all the countries of Western Europe and smaller only than the Soviet Union and South Africa. If one focuses on the population group that has the greatest risk of imprisonment--black males in their twenties--the incarceration rate increases astonishingly; about one of every thirty such men is in a state or federal prison on any given day.[1]

This congestion of prisons represents a major concern to state governments generally and, in particular, to the managers of correctional institutions. The congestion leads to erosion of management control, transfer of control to the inmates, and unacceptable increase in the risk of riot.

Of course, one possible response to the congestion problem is to provide additional capacity. But that additional capacity is quite expensive; construction costs about $50-75,000 per cell and operation costs about $10-15,000 per inmate per year. These are costs that state governments are extremely reluctant to undertake at a time when their budgets are severely stressed, largely in response to the transfer of an increasing share of social services from the federal budget to the state budgets. This is occurring in the face of growing taxpayer resistance to increasing tax revenues, as demonstrated, for example, by California's adoption of Proposition 13. In recent years, voters in Michigan and New York explicitly rejected bond issues to provide additional prison capacity, even in the face of demands for increased punishment of offenders and, in the case of Michigan, voter elimination of good time procedures for early release of prisoners.

Any decision on construction should also take account of the anticipated pattern of growth of prison populations. This pattern can be expected to be strongly affected by the changing demographic mix associated with the post-war "baby boom," those people born in the 15 year interval from 1947 to 1962. Some projections[2] suggest that prison populations should be increasing through the period of the 1980's, reaching a peak in about 1990 and declining thereafter. Those projections were made using data from Pennsylvania, but the demographic situation is very similar in most of the Northeast and Midwest, so that projection should apply more broadly. The projection recognizes that the peak prison age is about 25; after the tail of the baby boom passes this peak age, prison populations should decline.

An interesting finding in this projection is the observation that the crime rate was expected to peak in about 1980, ten years earlier than the prison peak. This shift occurs because the peak crime ages are 16-18, but juveniles are not ordinarily sent to prison, nor are first-time adult offenders for most offenses.

This projection of a peak in crime rate in 1980 was made with some degree of trepidation in 1978, at a time when reported crime rates had been rising fairly steadily continuously for two decades. It does turn out, however, that crime rates, both in Pennsylvania and the United States as a whole, did reach a peak in 1980, with a slight decline in 1981 (for all crimes other than robbery) and with a larger decrease in the first half of 1982. The 1982 decrease occurred for all crime types. Furthermore, the decrease was larger in the property crimes, whose age-specific rates do decline faster with age than the violent-crime rates. Also, the decline was larger in the Northeast and the Midwest with their stable and aging populations, and less in the South and the West, which are more subject to immigration.

[1] For the details of this estimate, see Blumstein, Alfred, "On the Racial Disproportionality of United States Prison Populations," Journal of Criminal Law and Criminology, Vol. 73, No. 3 (Fall, 1982), pp. 301-322.

[2] See Blumstein, Alfred with Jacqueline Cohen and Harold D. Miller, "Demographically Disaggregated Projections of Prison Populations," (1980), Journal of Criminal Justice, Vol. 8, No. 1, Jan-Feb., pp. 1-25.

This projection that prison populations will continue to grow through the 1980's, but reach a peak in 1990, and decline thereafter, raises some serious questions about the appropriateness of a construction strategy as a response to the current prison overcrowding problem. There is a significant time lag from a decision to build additional capacity until its actual availability. That period requires time to appropriate the money, to locate a site that is acceptable to the neighbors, to design the facility, and to construct it. That time could take from about 4 to 10 years. Thus, in view of those time lags, it is reasonable to anticipate that additional capacity would become available after it is no longer needed to respond to current pressures.

Thus one should look to other means of dealing with prison congestion, particularly for the short run. Those other means could include finding alternatives to incarceration for marginal offenders; finding means of shortening the time served through use of "good time" or earlier parole release; adopting a prison "safety valve" like that used in Michigan, which makes use of temporary facilities--such as the largely vacated state mental hospitals--that could serve as minimum security institutions for the next few years. All of these represent reasonable strategies for getting through this period of the 1980's with their severe prison congestion problem.

One other approach, which is the theme I want to pursue here, is to find ways to use the limited prison capacity more efficiently by maximizing its incapacitative effort. That might be done by consciously seeking to allocate the limited prison cells to the most serious offenders, those "career criminals" who are most likely to commit the largest number of the most serious crimes in the future. This approach of "selective incapacitation" inherently involves making some predictions about the future criminality of individual offenders and tries to assign to prison for the longest time those offenders who represent the most serious threat in the future.

Selective incapacitation

The principle of selective incapacitation suggests the desirability of identifying the "marginal offenders," those of least concern, and moving those out of prison (either by diversion or by shortening their time served) and, identifying the "career criminals," those of most concern, and assuring that they do go into prison, perhaps for a longer time than otherwise would be the case. This strategy is focused on maximizing the incapacitation effectiveness of imprisonment. The incapacitation effect refers to the crimes averted by isolating within prison and away from the rest of society those individuals who would otherwise be committing crimes on the street.

In considering incapacitation, it is important to recognize that many offenders engage in crimes that will not be averted if those individuals are incarcerated. We know, for example, that locking up drug dealers is not likely to avert their drug sales; there is a labor market that recruits replacements for those drug dealers, and so the incapacitation effect on drug crimes is small, even if those individuals are incarcerated. On the other hand, a pathological rapist does engage in individual crime and incapacitation can be expected to avert his crimes. For burglars, the situation is more subtle. If they are operating on their own, incarceration might well avert their crime, but if they work for a fence, then the fence can nullify the incapacitation effect by recruiting replacements.

Whatever the sentencing policy, even if there is no consideration of offender future criminality, there is a "general" incapacitation effect. This effect is positive as long as some of the individuals in prison would have committed non-replaced crime on the outside.

The concept of "selective incapacitation" tries to improve on that by taking account of the differential criminality among the different offenders, and selectively imprisoning those who are predicted to be the worse, and reducing the sentence for those who are predicted to be the least serious in the future.

Any such policy invokes the notion of an individual "criminal career" and the parameters that characterize that criminal career. The parameter of greatest significance is the individual crime rate, i.e., the number of crimes per year committed by an active offender on the outside. This parameter has come to be designated by the Greek letter lambda (λ), a designation that derives from the literature on stochastic processes, where λ is used to designate the rate at which some sporadic or random event occurs. In this context, an offender's crimes are viewed as such events which occur at a rate of λ crimes per year.

Knowledge of this parameter, including its distribution across offenders and its variation across time or age for a particular offender, is a question of fundamental interest to criminology, comparable in importance to the speed of light in physics. It is thus striking that it was not addressed in the literature until the 1970's.

Part of the reason so little is known about λ is that it is extremely difficult to measure. If one could find a representative set of cooperative offenders who would keep careful logs of their criminal activity, then one might be able to develop accurate estimates of λ. In the absence of such cooperation, there are two approaches to estimating λ. One is through the use of self reports--asking criminals how many crimes they commit in a given period. The other involves looking at arrest histories, computing an individual arrest rate, and then dividing that rate by an appropriate measure related to the probability of arrest to calculate the individual crime rate. Both of these approaches have

important sources of error, and the errors in each approach are very different. When the two approaches present consistent results, then it may well be that the magnitude of the respective errors is not excessive.

One important finding about individual crime rates is a recognition of considerable skewness in the individual distributions, that is, the great bulk of offenders have very low crime rates and a relatively small number have very high rates. Finding this skewness is an important motivator for consideration of selective incapacitation. If one could only identify those relatively few individuals with the high crime rate, they are the ones who are the prime candidates for incapacitation.

That problem of identifying those candidates represents a challenge even more difficult than that associated with discerning the distribution across offenders. The problem here is compounded by the fact that the Fifth Amendment (at a minimum) precludes use of self-reported rates of offending as a basis for making incarceration decisions. The court is restricted, therefore, in the information it may use. At a minimum, it may use information that is a matter of official record such as prior conviction history.

The fundamental task, however, is one of estimating an individual's future propensity to commit crime. And that must be done with variables that are legally and ethically legitimate, and that have strong predictive power. And those variables must be reliably recorded and readily available to the prosecutor and the judge for their respective roles in the sentencing process.

Unless one can specify in advance the profiles of the individuals who will display the high criminality, then the knowledge of the existence of the high skewness in individual criminality is of little predictive or policy relevance. Ideally, one would like those profiles to reflect detailed patterns of behavior accompanied by insightful theory that helps to explain the relationships reflected in the patterns and why the individuals with those patterns do end up at the high end of criminal activity. Once those patterns have been identified from retrospective analysis of criminal activity, then there has to be empirical verification of their validity in a prospective sample.

On the other hand, the kind of identification that is least satisfying is that which derives simply from finding variables which correlate well with individual criminality, or, equivalently, variables that have large regression coefficients in a simple regression equation with reported crime rate or arrest rate as the dependent variable. Thus, the fundamental task is one of identifying the variables that distinguish the high-rate and low-rate offenders in ways that can be used prospectively. There is a strong correlation among many variables that are related to criminality; where the information is to be used in deciding on individual punishment, one wants to be sure that one is invoking the relevant variables rather than spurious correlates.

The most important work on measuring individual criminality is that of Jan and Marcia Chaiken[3] and of Peter Greenwood[4] at the Rand Corporation. Their work is based on interviews with prisoners in California, Texas, and Michigan. Their work is retrospective in that their estimates have been derived from data, but not yet tested on a new sample of data. They also are derived from highly selected populations--state prisoners--individuals who had survived all filters to reach the last stage of the criminal justice system. It remains to be seen whether the patterns that distinguish among prisoners are also applicable to the larger group of offenders who are convicted, and whom a judge must sentence. Also, "shrinkage" (i.e., reduction in the quality of the fit) inevitably occurs whenever statistical estimates are applied to new data, and the magnitude of that "shrinkage" has yet to be determined.

[3] Chaiken, Jan M. and Marcia R., "Varieties of Criminal Behavior," Rand Corp. Report No. R-2814-NIJ, August, 1982.

[4] Greenwood, Peter, "Selective Incapacitation," Rand Corp. Report No. R-2815-NIJ, August, 1982.

Some policy concerns

As we consider translating findings on patterns of individual offending into a policy instrument that will be used for selective incapacitation, a number of interrelated policy and technical questions must be addressed. The most central policy questions involve the basic philosophical and legal challenges to the legitimacy of incarcerating--and therefore punishing--an individual for crimes he might commit in the future. This would be the dominant issue if selective incapacitation were proposed for anyone other than convicted offenders. Any candidate for selective incapacitation, however, is already vulnerable to punishment because he has already been convicted of an offense that warrants imprisonment. Furthermore, it is reasonable to require that no punishment should be imposed that is more severe than the reasonable range that is normally imposed for the convicted offense. Within those limitations, the punishment imposed might well take account of the risk an offender poses; any sentencing judge will acknowledge--in private if not in public--that such considerations do enter his sentencing decisions.

The intensity of the concern over adjusting an individual's sentence to reflect consideration of his future crimes is particularly surprising when contrasted to the much more readily accepted principle of general deterrence. Under the deterrence principle, individuals are punished in order to avert other people's future crimes. Certainly, in contrast, the principle of incapacitation--and even selective incapacitation if the prediction can be good enough--and the concern over his future crimes seems not at all unreasonable.

Thus, it seems reasonable to conclude that if a very effective discrimination instrument were available, and if it were applied only to convicted offenders, and if the imposed punishment were no more severe than could reasonably be applied for that offense, then most of the legal and philosophical objections to selective incapacitation can be accommodated. The crucial technical question, however, relates to the potential effectiveness of the instrument.

A central question in considering that instrument is the set of variables used to provide the discrimination. One view holds that the only information beyond the current conviction offense that can legitimately be used to decide on punishment is information on the offender's prior convictions. If that restriction is maintained, then the benefits of selective incapacitation are likely to be small even though positive. Convictions are sufficiently infrequent and sufficiently loosely related to aggregate patterns of offending that their information content is relatively marginal. The common practice of invoking a wide variety of other information in presentence investigation reports reflects the acceptability heretofore of using such information in sentencing, and, by implication, the inadequacy of restricting consideration to only conviction records.

As the scope of the variables to be considered in identifying the candidates for incarceration is expanded, then the degree of objection also increases. One extension involves considering various degrees of intervention by the criminal justice system short of conviction (say, arrests or indictments). The extreme of this range of other variables could extend to an inherently unacceptable variable like race. Even if race is precluded as an explicit variable, it might be introduced implicitly by using other socioeconomic status variables (like income or educational attainment) which are correlated with race. These raise serious questions of legitimacy that will have to be addressed if such variables are found to be predictive.

It is important, however, that the prediction questions be addressed with respect to the relevant populations. Socioeconomic variables correlated with race are associated with participation in criminal activity, but they only distinguish between criminals and non-criminals. That is not the relevant comparison, however. All candidates for selective incapacitation are convicted, and so have already passed through that filter. The distinction between the more and the less serious criminals is not likely to invoke the same characteristics that distinguish criminals from non-criminals. Blumstein and Graddy[5] have shown, for example, that race is an important factor influencing the chance of a city male ever being arrested for an index crime (i.e., prevalence), but it is not an important factor associated with recidivism--and recidivism of those convicted is the relevant consideration in selective incapacitation.

One of the fundamental concerns that pervades all decisions in the criminal justice system is the avoidance of "false positives," i.e., subjecting someone to punishment when that is not warranted. This concern is reflected in the requirement for conviction of "guilty beyond a reasonable doubt," and in the principle that "better a hundred guilty men go free than one innocent man be punished." Thus, in seeking to identify the serious offenders, it is particularly important to indicate also how many individuals who are not serious offenders also satisfy the discrimination pattern. To the extent that serious offending patterns are rare, and have a low base rate, then this false positive rate will become undesirably large. Here again, however, the concern for the false positive problem would be more intense if the candidates for selective incapacitation were not convicted (if they were candidates for pre-trial preventive detention, for example).

As the results of research on criminal careers identify improved selection criteria for candidates for incarceration, those criteria must be compared to those used in current practice. One would want to compare the variables used by the best practitioners and test the outcomes under a decision rule that derives from the research compared to the judgments of the best practitioners. In particular, one would want to compare the performance of career criminal units in prosecutors' offices--and especially the more successful ones--in identifying the "career criminals" who should be prime candidates for incarceration.

It can reasonably be anticipated that the results of the selective incapacitation research will serve much more for marginal than for significant improvement in crime control. The benefits of that improvement must still be weighed against the many policy, legal, and ethical problems raised by such approaches. Most likely, no good sentencing rules or formulas will emerge; rather, as the insights emerge on the important variables, they will serve simply to heighten the awareness of judges and prosecutors to those variables, and--perhaps more valuable--direct their attention away from those they currently think are important but are not.

[5] Blumstein, Alfred and Graddy, Elizabeth, "Prevalence and Recidivism in Index Arrests: A Feedback Model," Law & Society Review, Vol. 16, No. 2 (1981-82), pp. 265-290.

Prevalence and incidence

As we do move into variables that are to be used for predictions, it is crucial that we maintain a clear distinction between the variables associated with prevalence and those associated with incidence. When we talk about crime rates, or crimes per capita, that crime rate is a product of two terms. One is the criminals per capita, or prevalence; the other is the crimes per criminal, or incidence. Prevalence is the number of criminals per capita, or how many criminals there are within a population group. Incidence refers to the number of crimes committed per criminal per year, and that is λ, the individual crime rate.

It is important that we distinguish the factors that are associated with prevalence and the factors that are associated with incidence. Prevalence refers to which groups are over- or under-represented in a criminal population--the criminal population within which selective incapacitation is to be applied. Incidence is the relevant variable to think about in deciding on selective incapacitation. Age-specific arrest rate may help to illustrate the issue. That rate reflects a mixture of the propensity to be criminals at any age and rate of crimes committed by a criminal of a particular age. Age-specific arrest rates are quite low by age 30, and that recognition has impelled some people to suggest 30-year-olds should not be imprisoned because they are about to terminate their criminal careers. But that is not the relevant consideration with respect to subsequent criminality. We have been doing some research lately looking at the variable that is relevant, the mean residual career length, or how much longer on the average a person of a particular age is going to continue his criminal activity, if we know that he is currently active. In the early twenties, residual career length is relatively low. And as we weed out the "weak of heart," and are left with the relatively few "career criminals" by age 30, the mean residual career length goes up, and, indeed, the mean residual career length reaches its maximum in the thirties. A person who is a criminal in his thirties is likely to continue to be a criminal. Then, there is a wear-out process going on beyond the forties, and the residual career length comes down.

Similar considerations apply to the issue of race. Race is clearly an important discriminator associated with involvement in crime and non-involvement in crime. We know that arrest rates for blacks are appreciably higher than arrest rates for whites. However, the incidence of crime among black criminals (who are a small subset of the black population) and among white criminals (who are an even smaller subset of the white population) is likely to be similar. Thus, it is important that we focus on the incidence variables that distinguish future criminality of those who are in the relevant class--those who have been convicted of a particular offense. And the incidence must be distinguished from the prevalence. Much of what we know about crime with respect to age or race derives from the correlates of crime rate or the correlates of arrest rate, and those correlates combine incidence and prevalence. Our task in selective incapacitation is separating them.

Implications for information systems

One of the more striking observations regarding the reports by Greenwood and by the Chaikens--both of whom based their analyses on identical survey data--is the major difference in their public presentations. Greenwood has identified seven variables that he suggests do discriminate to a reasonable degree between the high- and low-λ persons in his prisoner sample (and so, he suggests, may discriminate in a conviction sample). Four of Greenwood's variables (juvenile and adult convictions and incarcerations) are matters of official record that were reported by the prisoners in their self-reports. The Chaikens also found that self-reported convictions did provide some discrimination, but they also found that the information that was available from the official records themselves provided extremely poor discrimination.

Thus, while accurately recorded record variables may provide some helpful selectivity, these results suggest that the errors in the recording processes--particularly errors in recording and retention of matters of record--probably militate against fair and effective use of such information until there is significant improvement in the quality of the recorded information. And one would expect that the records of individuals serving time in prisons would be better than the records of a more representative population. Most of them had pre-sentence investigation reports, and there was sufficient time and sufficient incentive to warrant collecting as complete and accurate a criminal history as administrative records systems could reasonably provide. As one moves to convicted defendants or even to arrested persons about whom prosecutors must make charging decisions, one can expect the record quality to degrade appreciably.

As long as decisions are made privately by a judge or a prosecutor, the legal environment puts negligible stress on the quality of the information used by the decision-maker or on the considerations that enter his decision. And certainly interviews with these officials make clear that considerations of selective incapacitation enter their decisions. As the sentencing system shifts to make those decisions on identifying the "career criminals" explicit, however, by means such as a scoring system of weighted predictor variables, then the burden of demonstrable validity becomes much more severe. The correctness of the information used to calculate such a score becomes subject to legal challenge, and the validity of the score as a discriminator must be justified.

It is entirely conceivable that all such scoring systems will be precluded. There are some who will argue that the only legitimate variable is the offense of which the defendant has been convicted. Even that variable, however, contains information that has predictive qualities. People convicted of robbery can have different predicted future crime propensity than people convicted of burglary. To the extent that one does predict higher subsequent criminality for robbers, then a sentencing policy might augment the retributive component of the robbery sentence by an additional predictive component. That would push robbery sentences up, and in return it would bring burglary sentences down in our example.

It is also important that the information system provide its information in time. This is of particular concern for the police or the prosecutor, where the information needed to make initial career-criminal decisions should be available for a bail hearing or a preliminary hearing. It is important that the prosecutor be able to know early in the charging process whether the individual charged with a robbery or a burglary does or does not have a serious criminal record. It is astonishing, in this year when electronic mail carries trivial chit-chat across the nation through computerized networks, that police departments must wait several weeks to receive an offender's rap sheet through the mails. Fingerprints can readily be sent by facsimile transmission and the rap sheet returned electronically. Certainly the networks and the technology are readily available for such communications and such use seems to be eminently reasonable.

Summary

In reviewing the potential for selective incapacitation, there do appear to be strong reasons for jurisdictions to consider such formal policies for sentencing decisions, building on their use in parole decisionmaking for at least a decade. The state of knowledge for identifying the career criminals who are the prime candidates for selective incapacitation is still at a primitive level, however. There has been no valid prospective study that identifies valid and appropriate variables that distinguish among convicted persons the few serious career criminals from the many lower-risk individuals. Thus, considerable retrospective research and prospective validation is still required before such a capability is sufficiently developed to be demonstrably better than the judgments of the judges and prosecutors who make such decisions currently. Even when well developed, that research is not likely to provide a sentencing formula, but rather to call attention to appropriate variables and away from inappropriate variables that may be taken into account currently. Even when such capability does become available, information bases on prior criminal record of much better quality than currently available will be required on a timely basis.

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The evolution of contemporary corrections

In the 5th Century B.C., the Greek philosopher Heraclitus taught that the only lasting aspect of human experience is change itself. He argued that "all is flux, nothing stays still," and "nothing endures but change."[1]

Notwithstanding metaphysical considerations, change seems to have been the only permanent characteristic of American corrections over the last two decades. Whatever corrections was at the dawn of the 60's, it is irrevocably different as we enter the decade of the 80's.[2]

What happened? Could these changes have been anticipated--have they been for good or ill?

To the consternation of many, the last ten years has witnessed the convergence of innumerable forces which are molding the future character of corrections. Among the more noticeable are prison overcrowding, judicial intervention, the death of the treatment model, rising institutional costs during a time of declining resources, antiquated facilities, and an angry public which demands that offenders be sent to prison for the sole purpose of punishment.[3]

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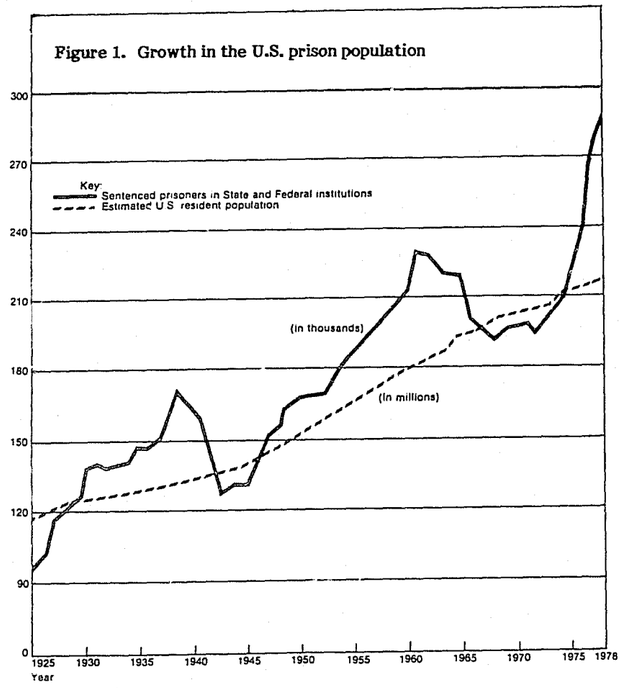
[1] Diogenes, Laertius, Book IX, Sec. 8.

[2] Herein corrections is taken to mean institutional corrections.

[3] Critical Issues in Corrections, Problems, Trends and Prospects, ed. R. R. Roberg & V. J. Webb (West Publishing Co., 1982).

Figure 1. Growth in the U.S. prison population



There are several curious observations that could be made about a "mental list" of all the social, political, legal, and economic factors that have shaped corrections in recent years. First, the list is astonishingly long. Secondly, many of the elements in the list are contradictory. For example, emerging case law requires that correctional administrators keep prisoners in safe, clean surroundings respective of human dignity. The public's expectations are quite different, and in recent years, many states have either been unable or unwilling to provide the wherewithal to achieve these laudatory objectives.

Although the list is long and somewhat antithetic, the elements can be reduced to four areas of influence:

- Population growth
- Ambiguity in penological philosophy
- Legislative activism
- Judicial intervention

Population growth

By midyear 1982, the United States' prison population (Cf. Figure 1) had swollen to 394,380 offenders, dramatically in excess of current prison capacity.[4] Overcrowding, however, is a recent, not perennial problem. Interestingly, prison populations declined in the later part of the 60's, and bottomed out in the early 70's. To the naive observer, this seems inconsistent with the fact that reported crime and arrests increased alarmingly throughout the 60's and early 70's. Why would prison commitments be declining at the same time that crime and arrests were increasing? Equally confusing is the fact that prison populations have been climbing since the mid 70's, while both the victimization statistics and reported crime have leveled out.[5]

Although a definitive answer may be a quixotic quest, several tentative explanations are offered. Rising crime in the 60's led to the enactment of the Omnibus Crime Control and Safe Streets Act and the creation of the Law Enforcement Assistance Administration (LEAA). With the infusion of funds from Washington primarily earmarked for law enforcement, arrest capacity increased and so did the number of offenders flowing from the courts into corrections. While one might have expected an immediate increase in prison populations, it should be recalled that most offenders are placed on probation, particularly those convicted for the first time. Obviously, there is some lag between increases in arrests and increases in institutional populations. If recidivism from probation is 50% or so, and many offenders are placed on probation several times, it's not surprising to find a three to five-year lag between increases in convictions and increases in institutional populations.

Other factors which probably accounted for the decline of prison populations in the late 60's include the war in Viet Nam, the moratorium on prison construction, the spawning of community-based correctional problems, and the decriminalization of some victimless offenses.

Prison populations were declining at the same time that the United States approached its maximum effort in Viet Nam. Substantial numbers of young men in the crimonogenic age range were drafted and removed from the civilian population. Interestingly, about the same time that the country withdrew from the war, prison populations began to increase, possibly reflecting the increase in the number of young males within the crimonogenic age range.

With the advent of LEAA and the availability of increasing federal funds, many hoped for a correctional renaissance in the late 60's. As prison populations declined, it seemed reasonable to answer the call for a moratorium on prison construction and the encouragement of community-based alternatives which appeared both more humane and less costly. Concerned advocates promoted the decriminalization of many offenses, particularly those involving chemical abuse and sexual activity, which also contributed to the depopulation of prisons.

By the early 70's, these forces were well in place and the interaction of their effects produced the devastating overcrowding problem which began later in the decade. With the end of the war, the at-risk population increased. In addition, the baby-boom, which passed through puberty in the 60's, resulting in substantial increases in youth crime, entered adulthood in the 70's. The deviant portion, which found itself before the juvenile court in the 60's, began to appear in the adult system in the 70's. Probated at first, the recidivating portion represented new admissions to prison by the mid 70's.

Increases in crime in the 60's produced fear of crime in the 70's, and the public's tolerance for community alternatives has been growing colder ever since. While decriminalization and community alternatives may have been the vogue trends in the beginning of the decade, more punitive sanctions and longer sentences subsequently became the spirit of the times.

As these trends converged in the mid 70's, many states found themselves with limited and antiquated facilities, unable to adequately hold the ever increasing number of commitments. The net result is the current dilemma of corrections, overcrowded and understaffed institutions, violent prone populations, insufficient public and legislative support, civil litigation, and administration by judicial fiat.

Ambiguity in penological philosophy

For almost half of a century, a cardinal assumption of many American criminologists has been that criminal behavior is irrational and offenders therefore abnormal. Although there is disagreement as to the source of the pathology, some arguing that it's cultural vs. economic, social, or psychological, most agree that criminals are somehow different.[6] Inherent in this assumption is the notion that the key to crime control is the identification and treatment of the offender's pathology. Obviously, if criminals are abnormal or irrational, punishment could not be a deterrent. Thus diagnosis and treatment must be the only viable alternative.

This criminological assumption is reflected in the penological reforms begun in the 1950's, which pundits have dubbed the medical model. Prisons and penitentiaries became known as correctional institutions or rehabilitation centers, and guards as correctional officers. Diagnostic centers were created to test newly admitted prisoners, identify disorders, and recommend treatment programs.

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[4] "Prisoners at Midyear 1982," Bureau of Justice Statistics Bulletin (U.S. Department of Justice, Washington, D.C., 1982) NCJ - 84875.

[5] Cf. "Criminal Victimization in the United States: Summary Findings of 1977-1978, Changes in Crime and Trends Since 1973" (U.S. Department of Justice, Bureau of Justice Statistics, 1980). SD-NCS-13A. See also, Uniform Crime Reports (U.S. Department of Justice, Washington, D.C., 1970-1980).

[6] Cf. G. Nettler, Explaining Crime (New York: McGraw Hill, 1974). See also, I. Taylor, P. Walton, and J. Young, The New Criminology: For a Social Theory of Deviance (New York: Harper and Row, 1973).

Throughout the 50's and 60's, the medical model constituted the dream of correctional administrators and actually came to fruition in some states with the creation of substantive rehabilitation and educational programs. When critics pointed to recidivism statistics as evidence of failure, enthusiasts countered that recidivism is evidence that not enough rehabilitation had been tried.

While the spirit of rehabilitation was at the core of correctional philosophy during the age of the medical model, most historical observers would agree that theory outpaced practice due to a traditional lack of programmatic funds. It is understandable, therefore, why correctional reformers experienced heightened enthusiasm in the early 70's when LEAA began to infuse millions of federal dollars into the American correctional community. At last, the opportunity existed to demonstrate the philosophic and programmatic benefits of rehabilitative penology.

Indeed programmatic changes were made. Laws were changed, and variations on community corrections were tried. Educational, vocational and treatment programs were established. However, the clouds of doubt had already begun to gather before the spring of 1974, when Professor Martinson published his controversial article, "What Works? Questions and Answers about Prison Reform."[7] He claimed to have reviewed all empirical studies published since 1945 on the relationship between treatment and recidivism and concluded that, "With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism."[8] In short, he suggested that nothing works.

[7] R. Martinson, "What Works? Questions and Answers about Prison Reform," The Public Interest, No. 35 (Spring 1974) pp. 22-54.

[8] Ibid., p. 25.

The reaction by medical modelers was vociferous and Martinson's conclusions judged anathema. As expected, the rejoinders were many, suggesting that his conclusions were biased, that many effective programs had never been documented, that his analysis stopped at 1967 before many current programs had been initiated, and so on.[9]

For better or for worse, however, the Martinson controversy seemed to be the death knell for the medical model. Prison populations began to grow beyond capacity. Resources normally dedicated to programs had to be expended for custody. An angry public, genuinely afraid of being victimized, was not interested in rehabilitation, just deterrence and punishment. By the late 70's, correctional administrators seemed to be losing control of correctional philosophy, and crisis management replaced rehabilitation as the overriding managerial concern. Corrections seems to be entering a philosophic hiatus, the medical model all but abandoned for political and economic reasons, and no readily discernible alternative noticeable in the wings. Without a well-conceived philosophy to guide its future, corrections has simply drifted in recent years, tussling with legislative and judicial initiatives, with little control over its own future.

[9] W. C. Bailey, "Correctional Outcome: An Evolution of 100 Reports," Journal of Criminal Law, Criminology and Police Science, 57, (June 1966) pp. 153-160.

Legislative activism

By the mid 1970's, the confluence of all these factors produced a legislative dilemma. On the one hand, angry citizens demanded that something be done about crime. If rehabilitation didn't work, then use prisons for punishment. Econometricians, newly arrived on the scene, suggested that their mathematical models demonstrated that punishment did deter crime, and that the answer to the correctional problem was not more treatment, but longer sentences.[10]

On the other hand, most get-tough-on-crime proposals had the effect of placing more people in prison for longer periods of time. While attractive in theory, most policymakers found that getting tough translated into either hazardous overcrowding or prison construction at the tune of $50 to $80 thousand a bed.

In the absence of any systemic view of the problem, the dilemma had to be resolved by the legislative process. Regrettably, the results suffer from all the liabilities of trying to have one's cake and eat it too. Numerous punitive laws were enacted which simply contributed to the already overcrowded condition of American prisons. Popular examples of these get-tough provisions included: curbing parole discretion, restricting good time laws, determinate sentencing, aggravated enhancements for any offense committed with a weapon, "granny bills" that mandated enhanced sentences if the victim was a senior citizen, reinstatement of the death penalty, mandatory minimums for violent offenses, and so forth. Whether these policies deter crime remains to be seen, but they certainly contribute to prison overcrowding.

As this legislative agenda unfolded, correctional administrators sought some form of relief. New construction was needed, but policymakers balked at the price. Some less expensive safety valves had to be found. Pressed by economic necessity, legislatures began creating mechanisms to relieve prison overcrowding such as mandatory release, more extensive use of halfway houses, intensive supervision of high-risk probationers, shock probation, restitution, community service programs, capping legislation, and emergency powers authority to release prisoners as populations approached capacities.

[10] Cf. D. A. Hellman, The Economics of Crime (St. Martin's Press, Inc., 1980). See also, L. Phillips and H. L. Votey, The Economics of Crime Control (Sage Publications, 1981).

This double-edged legislative activism has produced a bundle of correctional contradictions. On the one hand, policymakers want to be tough on crime and assume that punishment is a deterrent: more offenders should be placed in prison and for longer periods of time. On the other hand, pressure from overcrowding and mandates from the federal courts have compelled the creation of a variety of release mechanisms which, if successful, would result in fewer people going to prison for shorter periods of time. Corrections has evolved into a crucible of contradictions, the result of policy initiatives which some observers characterized as nothing more than "cold patching" the system.

Judicial intervention

The fourth, and probably the most profound factor currently shaping the destiny of American corrections, is judicial intervention. For almost 200 years, courts espoused the hands-off doctrine. Prisoners were not seen to have rights before the law. It was assumed that correctional administrators knew best how to administer prisons.

Traditionally, administrators enjoyed great discretion in either granting or taking away privileges. A typical expression of this doctrine is found in the 1871 case of Ruffin v. Commonwealth of Virginia in which the court ruled that ". . . a prisoner is a slave of the state."[11] As late as 1952, in the case of Williams v. Steele, the court ruled that ". . . since the prison system of the United States is entrusted to the Bureau of Prisons under the direction of the Attorney General . . . the courts have no right to supervise the discipline of prisoners, nor to interfere with that discipline. . ."[12]

The hands-off doctrine saw its demise in the 1970's as the spirit of the civil rights movement discovered the arbitrary practices in American prisons. Prisoners rights groups threw down the gauntlet of Section 1983 of the Civil Rights Act of 1871, and the 14th Amendment which provided that: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." After almost 100 years, the word "person" came to include the prisoner.[13]

Beginning in the early 70's with cases like Johnson v. Avery and Holt v. Sarver, and culminating most recently in the massive case of Ruiz v. Estelle, the courts have intervened in almost every area of correctional administration.[14] This is not to say that intervention was neither unnecessary or untimely. Indeed the conditions and practices litigated in many suits should not be tolerated in a civilized society. What's been problematic about judicial intervention is that it happened suddenly, grew rapidly, and placed demands on the correctional system which could not be easily, quickly, nor inexpensively resolved. Recall that during the same period, correctional administrators had been attempting to juggle overcrowded conditions exacerbated by changing social values and legislative activism without any strategic philosophy to guide them through the maelstrom. Understandably the current situation is confused, with vested interests working at cross purposes, vain searching for quick solutions, and no clear picture of what the future might portend.

[11] Ruffin v. Commonwealth of Virginia, 62 Va., 790, 796 (1871).

[12] Williams v. Steele, 194 F.2d (1952).

[13] Prisoners Rights Sourcebook, Vol. II, ed. I. P. Robbins (Clark Boardman Co., Ltd., 1980).

[14] Johnson v. Avery, 393 U.S. 483 (1969); Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark, 1970); Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Tex. 1980).

Effect of policy changes on future correctional informational systems

To gain the initiative, growth in correctional populations must be stabilized and a systemic penological philosophy developed which can realistically balance the public's concerns about crime with fiscal realities. The situation is complex and not easily grasped on the basis of intuition or casual experience.

Although the problem is difficult to define and systemic in origin, a significant part of the solution is technical and tedious. Information is needed to understand the problem--information to estimate the future consequences of the hard decisions which must be made in the next few years. Appropriate information is required--timely, accurate, valid and readily accessible.

What is the adequacy of existing information systems to support these current and future needs? Will the millions expended on computerization over the last decade pay off in the next? And what of the correctional planners, researchers, and analysts who benefited from the Federal largess in the 70's--do they have viable alternatives for the eighties?

Informational paradox

The current condition of correctional information systems is largely a product of developments which took place over the past ten years. As might be expected, the architecture of these systems reflects the pervading philosophy of corrections during the decade, namely the medical model. Not surprisingly, existing systems are primarily offender-based. For the most part they process information about offenders: criminal history data, social, educational, and work records, results of psychological tests, etc.

Rarely has automation been extended to capture and describe administrative practice or procedure. As a result, most current systems are ill-designed to support the complex array of contemporary informational needs, namely: policy analysis, defense in litigation, demonstration of compliance with court orders, population forecasting, legislative impact analysis, and the construction of alternative scenarios for the future.

Through no one's fault, the information systems developed in the early 70's prove to be a poor match for the emerging policy issues of the 80's. The OBSCIS model, developed by SEARCH Group, Inc. and promulgated by LEAA, is a good example of this informational paradox.[15] The designers of OBSCIS were substantially influenced by the medical model; diagnosis, classification, and treatment. Most of the data elements associated with each of the eight application areas are inmate characteristics.[16] Only a paucity of information is included about administrative procedure. Thus, offender-based systems like OBSCIS, which have a substantial potential for providing sophisticated information about "who's in prison," have been of little help in staving off litigation, showing compliance to court orders, or defending administrative practice. As a result, there is a paradox in contemporary correctional information systems; a mismatch between informational capability and informational needs.

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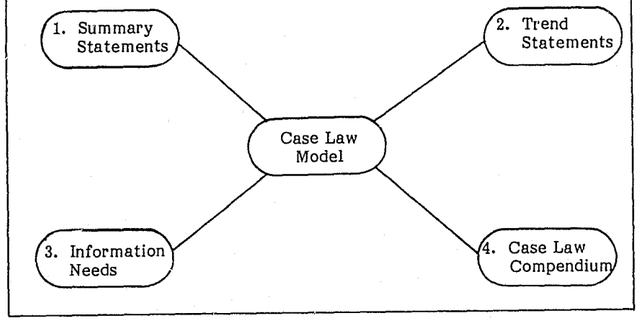
[15] OBSCIS: Offender-Based State Corrections Information System, Vol. 1, The OBSCIS Approach, Technical Report No. 10 (Sacramento, California: SEARCH Group, Inc., 1975).

[16] Ibid., Vol. 3, OBSCIS Data Dictionary, and Vol. 7, OBSCIS Data Dictionary (Revised, August 1977) 1975 and 1977.

Figure 2. Correctional case law information systems model



Future informational needs

Given the jurisprudential revolution of the last decade, how must contemporary systems be modified to meet evolving information needs? Which areas of administrative activity need to be monitored and documented? What data elements ought to be added to existing systems? What kinds of reports generated?

In an attempt to answer these questions, an extensive analysis of correctional case law was initiated with the following objectives in mind:[17]

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[17] C. M. Friel, H. J. Allie, B. L. Hart, and J. B. Moore, Correctional Data Analysis Systems (Bureau of Justice Statistics, U.S. Department of Justice, U.S. Government Printing Office, Washington, D.C., 1980).

- What are the appellate cases which comprise the corpus of correctional case law?
- What provisions have the courts laid down which affect correctional administration?
- Given current trends, where might the courts be headed in the future?
- Given current and evolving jurisprudence, how ought information systems be modified to assist administrators in avoiding litigation?

An outgrowth of this research was the development of the Correctional Case Law Model depicted in Figure 2. This model is composed of four modules, namely:

- Summary statements
- Trend statements
- Information needs
- Case law compendium

Table 1. Areas of correctional litigation

1. Court Access	11. Isolation
2. Access to Counsel	12. Search & Seizure
3. Media Access	13. Conditions of Confinement
4. Receipt of Publications	14. Staffing
5. Correspondence	14. Work/Idleness/Exercise
6. Visitation	16. Rehabilitation
7. Telephone Access	17. Grievance Procedures
8. Transfers	18. Discipline
9. Religion	19. Race & Sex Discrimination
10. Administrative Segregation	20. Civil Rights - Administrators' Defenses & Liabilities

For organizational purposes, the body of correctional case law was divided into twenty areas of litigation, as outlined in Table 1. Cases associated with each area were studied and summary statements derived which attempt to epitomize the courts' rulings in each area.

In tracing the evolution of these cases, judicial trends were noticed which provided a basis for forecasting the likely direction of future court rulings. These summary and trend statements constitute the first two modules of the model.

Subsequently, these summary and trend statements were submitted to a number of correctional lawyers and administrators to determine which items of information ought to be routinely automated to assist administrators in defending administrative procedures. This resulted in the third module of the Model, namely an identification of future informational needs.[18]

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[18] The following individuals were particularly helpful in identifying information needs: Richard Crane, Counsel, Louisiana Department of Corrections; Rolando del Carmen, Professor, Sam Houston State University; Robert DeLong, Counsel, Texas Department of Corrections; and Leonard Peck, Special Assistant to the Attorney General, State of Texas.

It is interesting to compare the informational needs derived from this case law analysis with those elements found in the typical medical model information system developed in the 1970's. Future informational needs involve policy analysis and the defense of administrative practice vis-a-vis description of the offender. Administrators must demonstrate that current procedures guarantee due process, equal protection, and freedom from cruel and unusual punishment. Medical model systems are primarily designed to provide inmates specific information to assist in the diagnostic, classification, and treatment process.

While these two informational philosophies give rise to essentially different data bases--process v. offender-based--they are not incompatible. Obviously, inmate based-information is still necessary, but when coupled with process data, the resulting system has substantially greater capability of supporting operational decisionmaking and long-range planning. In the 80's, correctional administrators will find that it is not sufficient to be able to describe "who's in prison" but, more importantly, "what's done to them while they are there." Are current procedures consistent with evolving case law? Is due process, equal protection, and freedom from cruel and unusual punishment inherent in the administrative practices of the department and can it be documented? In serving a compelling state need, are procedures more restrictive than necessary?[19]

The fourth module in the model is the Case Law Compendium which lists the precedential cases in each of the twenty areas of litigation. In each instance the case is cited and a precis presented summarizing the court rulings. As future cases emerge, they can be added to the compendium and the summary and trends statements modified accordingly.

Data as evidence

In a little over a hundred years, corrections has evolved from an institution in which an inmate was the slave of the state, to one in which correctional administrators must document and defend their actions. The responsibility of administrators to identify, describe, and defend their actions is inescapable. It is because of this change that automated process-based systems may prove to be invaluable in the future. Automation provides an objective, efficient, and readily retrievable means of documentation and defense. Whereas medical model systems have been used primarily for internal purposes, process oriented systems of the type described here will be used not only for internal purposes, but also for external purposes, primarily in litigation. In short, much of the information needed by the correctional agencies in the future will be used as evidence in courts of law and not solely to support internal administration. In designing future systems, therefore, architects must keep in mind not only conventional criteria of good information systems, but also the restrictions of rules of evidence.

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[19] R. V. del Carmen, Legal Responsibilities of Correctional Personnel (National Institute of Justice, U. S. Department of Justice, Washington, D.C., 1982).

A good guide in this regard is business records law, which provides minimum requirements for recordkeeping systems, if records are to be admissable as evidence.[20] First, if agencies are to use automated data in litigation, they need to demonstrate that this information is routinely and regularly gathered in the course of business. Secondly, it is critical to show that the data in the system is normally gathered at or near the time of the decision or process being defended. Timeliness and completeness are an evidentiary sine qua non of any reports introduced in court.

A third requirement stemming from business records law is that the information entered into the system be done by someone knowledgeable of the transaction being described. This suggests that future systems must include rigorous audit procedures to clearly identify the source and accuracy of the information and that the inclusion of second party or hearsay information be viewed with a good deal of skepticism. Finally, business records law requires that reports used as evidence be original records as opposed to secondary sources of information. This suggests that computerized records become more acceptable as evidence in defense of the administrator's actions insofar as they are used as primary documents in the routine business of the department.

These four standards stand in stark contrast to the current state of many correctional information systems. As documented elsewhere, many contemporary systems suffer from data bases containing incomplete, untimely and inaccurate information.[21] In addition, the lack of routine audits and automated editing capability renders much of the information that could be generated by many existing systems of little use as evidence in defense of the department.

Compelling interests and least restrictive methods

Several important conclusions can be derived from the analysis of the informationai needs generated by current correctional case law. First, the discretion of the correctional administrator has been drastically reduced and is not likely to increase in the future. Secondly, the ability to document and defend correctional policy will likely be the primary responsibility of administrators in the future.

While many carp that the courts are simply dictating correctional practice, this is not the case. What the courts have done is to require correctional administrators to document what they do and show that procedures which restrict inmates' rights satisfy a compelling state need. Arbitrarily restricting the inmate's rights because the administrator thinks it is a good practice is not sufficient. The burden is on the administrator to show that the deprivation of a right serves a compelling state need, and that it is done in the least restrictive manner possible. Given these underlying standards, it is evident that future information systems must not only incorporate substantially more information about administrative practice, but also demonstrate, statistically or otherwise, that these practices are the least restrictive possible in serving the state's needs.

[20] McCormick's Handbook of the Law of Evidence, ed. E. W. Cleary (West Publishing Co., 1972) p. 720.

[21] Friel, et. al. op, cit, p. 60.

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In a survey conducted last year by CBS and the New York Times on the subject of juvenile violence, the pollsters found that 51 percent of those surveyed thought that youths charged with violent crimes should be tried as criminals at age 16 or over. A similar survey conducted by the Opinion Research Center in April of 1982 found that 78 percent of those surveyed in a public opinion poll agreed with the statement, "Juvenile courts are too lenient on those found guilty of serious crimes." In this latter survey, 87 percent of the sample also agreed with the statement that, "There has been a steady and alarming increase in serious juvenile crime."

Significantly, these finds come at a time when the rate of growth in serious juvenile crime, as measured by arrest, has been at the zero growth level for seven years. If serious juvenile crime is not growing--and may even be decreasing--why do so many people in this country think that it is escalating in a rampant fashion?

One reason, and perhaps the greatest reason, is the unparalleled growth in juvenile crime between 1957 and 1975. The volume of delinquency cases referred to--and disposed of--by juvenile and family courts tripled during that time frame (from an estimated 420,000 cases in 1957 to over 1,400,000 cases in 1975). The fact that one-third of this growth can be explained by increases in youth population eligible to commit crimes may be comforting to academicians, but does nothing to alleviate the reality of the increase or assuage the fears of those victimized by youth.

Contrary to public perception, the proportion of serious youth crime as a function of total youth crime has not changed dramatically in the last two decades. When you control for non-criminal behavior, roughly one out of two (500,000 cases annually) referrals to juvenile court is for a Part One felony offense. However, there is some documentation for the fact that a smaller and smaller group of the youth are responsible for a greater amount of the serious crime, e.g., Marvin Wolfgang's second Birth Cohort study, thus tending to confirm the public view that we are in the grip of a crime wave engineered by an increasingly prevalent class of "predator youth."

Another reason for the public concern at this time has to do with the barrage of well-timed but poorly-documented criticisms of juvenile and family courts during the decade of the 1970's for failing to achieve proportionality in dispensing sanctions. When we finally began analyzing case dispositions of juvenile and family courts, controlling for current offense and prior referrals, we discovered that severity of sanction is indeed directly related to seriousness of offense charged and number of priors. But the damage was already done.

When the issue of our collective failure to predict violence on an individual case basis (one of four youths appearing before courts of juvenile and family jurisdiction, charged with an act of violence, have three or more prior referrals of some type, and the equivalent figure for courts of criminal jurisdiction--though unknown--is likely to be equally as dismal) is added to the foregoing events, public perception becomes more understandable.

Clearly, public opinion is rapidly changing across the country with regard to expected response of the State to persons who commit criminal law violations. This change in opinion is especially true for youth who commit serious crimes. If any of you are interested, there is an excellent overview of legislative trends, by John Hutzler, in a document entitled, Today's Delinquent. Most of the changes that are occurring are in the direction of incapacitating people as a means of preventing and controlling crime. The discrete form of the change will vary, depending on what state you're in, from wholesle revision of the purpose of juvenile and family courts [from the mission of protection and correction of youth to deterrence through punishment] to the exclusion of designated offenses and age groups from the jurisdiction of such courts.

Unfortunately, these changes are not the product of any documented efficacy for the new approaches but, rather, poorly-reasoned attempts to assuage the fears of constituent voters. Of course, voter opinion is the best of reasons for public policy in a democracy. However, most often the voter's opinion will be only as valid as the information she receives to use in her decisionmaking, and it appears that, during the past decade, the information we have chosen to share with our fellow citizens has been incomplete at best and, at worst, deceitful and quite calculated to produce fear and outrage. If we hope to avoid a perpetuation of this circumstance, there are several measures that we need to take.

Consider, if you will, the policy issue of selective incapacitation of the serious career criminal. If our policy recommendations are to be based on empirical documentation, policymakers must provide early and deliberate direction to those who design information systems on just what kind of information it is that we need. Do we need epidemiological data to draw crude circles around those groups who may be defined as serious career criminals? Or do we need person-specific data that can be used to predict the future of a given individual? Or do we need to gather information to measure the efficacy of our operational efforts-- whatever they may be? Or information to monitor how well we protect the rights of offenders? Or information that will tell us how well

we protect the rights of victims? Or do we want information to facilitate the efficiency of case processing? Or do we want all of these things and more? And what priority do we attach to each of these wants?

The approach to resolving the above-identified dilemma is rather straightforward. All we have to do is determine whether we want to control or protect the criminal or the public. To my knowledge, this very primary issue has not been adequately addressed.

It troubles me to hear that our rationale for career criminal prosecution programs or proposed sentencing programs for young offenders is "just desserts," followed by recommendations that we use prior criminal history and age to determine the period that an individual should be restrained, in order to receive his or her "just desserts." Nowhere, in my understanding of the philosophy of "just desserts," is there included any latitude for considering what you have done in the past and already received your "desserts" for, or what you may do in the future. It may be eminently wise and logical to consider such factors when confronted with sentencing decisions, but it is most important that we not delude ourselves and, consequently, our voters, into thinking that we are dispensing equal justice for equal offenses as we proceed to use these variables to predict for how long persons should be incapacitated. And neither should we throw up a smoke screen of retributive theory as a philosophical basis to guide our efforts at selective incapacitation of serious criminals. Classical retributive theory has all to do with affirming right and denying wrong, and has not a damned thing to do with what it is that you have done previously, or what it is that you may do in the future.

Both of these concepts have long been a part of our basis for criminal law, and both assume that we should prosecute on the basis of offense, not on the basis of people. If we are going to change the basis for administration of criminal law by attempting to predict which people will commit crimes in the future, and incapacitate those individuals for a period to be determined by the predictors, it is absolutely essential that these efforts not be confused with such traditional notions as equal punishment for equal offenses. We need to hitch up our integrity and say clearly for all to hear that we are weary of trying to prosecute equal offenses equally, and that we would like to prosecute equal criminals equally.

Once we do that, we can get rather precise about what data to collect and use in our predictions. We use those data that we have found to be predictive: age, sex, race, SES, multiple drug use, and prior criminal history. Other variables may be added as they are demonstrated to affect our predictive formula. Right? That's not right? Sex and race are taboo? Taboo for what? We don't want to discriminate against anyone. All we want to do is to incapacitate equal criminals for equal periods of time in order to protect the public and, using official data, sex and race are excellent predictors of who is going to commit crime, especially serious crime and violent crime, the kind that scares us.

I've heard repeated discussion about using age to predict career criminals, and to predict who should be selectively incapacitated to maximize public protection. The proposed use of age as a predictor for selective incapacitation is supported simply on the basis that it is a good predictor; crime--especially serious crime--is a young person's game, as we know the game from official records-- namely, arrest data. But it's not just a young person's game; it's a young male's game. But more than that, it is--to an astonishing degree--the activity of a young male who is Black or of Hispanic origin, with a history of multiple substance abuse and/or sale of drugs, and three prior felony arrests, at least one of which was for a violent offense. Using this set of variables, we can predict who will be arrested for and charged with a felony crime in the future, with an accuracy upwards of 90 percent.

But, alas, that's no good because we can't use race and sex to select our future incapacities. It's not ethical. It is not even lawful in the matter of race, which our Supreme Court has declared is a "suspect legal classification," and seems destined to accord sex the same rating before the decade is done, so we can't use these variables. We can't even talk about them. We can't even write about them. We have astutely avoided the mention of the words, even though we have been concerned with prediction of crime and both of these variables are excellent predictors. In fact, I just completed reading a research report prepared by the Rand Corporation where the authors (Jan and Marcia Chaiken) interviewed a large sample of prisoners in three state prisons in an effort to discern what variables were predictive of future crime, and that entire report avoided the use of the words "sex" and "race," but talked much about "age."

What is it about age that causes it to be ethical for use as a predictor, when race and sex are no-no's? Did I take the wrong Ethics course? Or perhaps I matriculated at the wrong campus. My birthdate (just like the color of my skin and the configuration of my genitalia) is predetermined without my advice or counsel; consequently, I have no ability to defend either my age, sex, or race. What makes it ethical to give a 20-year old ten years for robbery because he/she/it is just entering his/her/its crime-prone years, and to give a 50-year old a six-month sentence for the same crime because he/she/it is past his/her/its prime-crime time, but unethical to give a Black male felon (of any age) ten years, and a White female felon six months, if we are certain that the Black male felon is a far greater risk to commit future crimes?

Surely there is an easy answer to this question; it is just not apparent to me. Perhaps it is that I misunderstand what all of the selective incapacitation advocates are saying. Perhaps none of these prediction variables are ever going to be used to impact an individual case decision. Perhaps they're only going to be used for broad policy purposes. But, if that were the case, surely "race" and "sex" would not be taboo. Or maybe the ultimate goal of selective incapacitation is protection of individual freedoms, and that's why it's okay to use age. We've always used age as a predictor of whom we need to protect, but sex and race are also legitimate to use, if our intentions are protection rather than punishment. At any rate, I'm sure my confusion on this point will disappear as soon as someone gives me the word on whether we want to control or protect the criminal or the public.

Once I fully understood what it was that we wanted to do, to whom, for what reason, if the mission contained the word "seriousness," I think I would spend some time attempting to find out what the citizens of this country perceive as "serious" crime. We do not have an adequate "seriousness scale" in this country, one that can be used with any accuracy, and certainly not one that contains the precision demanded by empirical prediction incapacitation formulas. The first, and still most often used, seriousness scale was validated on a group of college students. Perhaps we might want to expand the sample this time around.

Having successfully negotiated the preceding hurdles, I don't think it would be wise to pay too much attention to predictors of any ilk, if we seek to predict in order to control crime, until Dr. Blumstein or someone truly finds lambda. We've been counting crime in this country for a long time, and we can tell you that six percent of a birth cohort accounted for 52 percent of the cohort's arrests, and that that number has less meaning because the six percent translates into 18 percent of the arrestees, and that what we really know from that analysis is that 18 percent of the persons, on whom we have data, have accounted for 52 percent of the crime officially attributed to arrestees. That information is of some value in prediction, but quite limited value in telling me or anyone else how much crime would be prevented if we locked up the whole 18 percent from here to eternity. The reason is that we don't know how many separate individuals are responsible for how many separate crimes. If you read the Uniform Crime Reports, you are led to believe that persons under 18 years of age account for some 21 to 22 percent of the arrests for violent crime. But, if you look further in the same reports, you will see--under the heading of Crimes Cleared by the Arrest of someone under 18--you will see that the violent crime clearance rate by the arrest of someone under 18 is 11 percent.

Now, it doesn't take an empiricist to figure out that (according to these figures) there are probably two arrests of a youth for every homicide charged to persons under 18. That probably means that, if you have ten bodies that can be traced to persons under 18, you're going to have 20 arrests. But we don't know how many separate individuals are represented by those 20 arrests. But even when we isolate that figure, it is not going to provide us with what we need to predict how much crime will be prevented by incapacitating the culprits. We must determine, from among the 20 arrests, whether a single arrestee is responsible for nine of the bodies, and the other 19 combine to pound the life out of the tenth one. The reason we need this information is obvious, if we seek to maximize crime control through selective incapacitation. If we incapacitate the right person, we can prevent 90 percent of the crime by locking up only one person--provided that arrestee had no undetected accomplices in carrying out his deeds (a considerable proviso, indeed).

I would also pay close heed to the observation that, "The only reliable data are data that possess operational utility." Researchers are notorious for their pursuit of "clean" data, and "uniform" data. The development of reliable cross-jurisdictional uniform data in this country occurs in one way and one way only--there must be sufficient reciprocal interest across governmental borders to make it happen, e.g., URESA. The general administration of criminal law in this country has not met the reciprocal interest test to date, and does not appear destined to do so in the near future, but there is something that can be done. What can be done is that we can get researchers like you and me off of our duffs and into the myriad documentation of state and local legislation and the documentation for the variables and values in existing management information systems that are used regularly for operational purposes. If we do the required work, we can develop reliable data that has common meaning across governmental borders.

Finally, I think we must be realistic about the matter of using data for "accountability" or "intelligence" as it has been variously referred to here. It is folly to think that we can get police officers, prosecutors, defenders, judges, probation officers, correctional officers, or--for that matter--university professors or government officials, to reliably collect data that can be used systematically to deprive them of their livelihood or--heaven forbid--prosecute them for a crime.

In summary, coherent information policy must grow directly from a clear statement of the philosophical basis for our actions. Failure to do so is to necessarily confuse the issue and effectively preclude the development of data that can be used to aid our decisionmaking. The end sought by "just desserts" is maximum preservation of individual freedom for the accused. The major means of achieving this end is equal punishment of offenses, following the principle of least

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1 OF 2

restrictive alternative in applying sanctions therefor. On the other hand, the end sought by career criminal prosecution programs is definitely maximum protection of society, and the major proposed means of achieving this goal is selective incapacitation of persons likely to commit future crimes, with emphasis on efficacy of deterrence in applying sanctions. Clearly, the philosophical basis we choose to guide our actions has import for information policy. The equation for distinguishing who (among persons equally charged with criminal acts) is most prone to commit crimes in the future is grossly different and, in many ways, the antithesis of the equation for determining how to maximally protect the individual freedom of accused persons.

If our goal is to protect society through selective incapacitation, the policy implications for information collectors are clear: "More information is better," especially information about the person, such as age, sex, race, prior criminal behavior, and social habits such as "toking and tippling." Conversely, if we use "just desserts" to ground our intervention, data policy is also clear, but in an opposite direction: "Less information is preferable," especially information about the person's "private behavior."

If we spend the requisite time up front to clearly identify the purpose of the operating system, it becomes far more possible to develop information that can be used to support achievement of that purpose.

In my view, the unfortunate element in many of the policy changes (with regard to the treatment of young people who violate the criminal law) implemented in the past three years and some of those proposed here is less the substance and direction of the change and more the poorly-reasoned process by which such change is occurring. To predicate a policy change on a demonstrably erroneous assumption out of ignorance is understandable, especially when the vacuous belief is passionately held; but to make such policy changes in the presence of documentation that the change will not produce the promised outcome is to court disaster. Such actions are not just bereft of integrity; their outcome is distressingly predictable. Inevitably, when the failure of the new policy becomes undeniable, and inquiry is conducted to reveal that public officials and their advisors--charged with the public trust--have abandoned that trust in pursuit of political popularity, public confidence in the justice system is further undermined, eroding the most basic requirement of the system we have established to maintain social order.

Victim Assistance Programs

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In the last decade we have seen the emergence of a new consciousness in the United States--a consciousness that the victims of crime deserve at least the same attention in our criminal justice system as offenders receive. That consciousness has risen out of a public demand that the criminal justice system serve more than just the criminal or some nebulous entity called the State.

The impact of the victim's movement was underscored in the appointment of the President's Task Force on Victims of Crime and the enactment of the federal Victim and Witness Protection Act of 1982. The latter event was made even more remarkable by the fact that the original proposal was introduced into the Senate in April, 1982 and was signed into law less than six months later.

While these events indeed are landmarks in the evolution of criminal justice policy, those of us who have worked in the victim's movement urge even more revolutionary changes--changes that would literally transform the traditional criminal justice system by establishing a new jurisprudence. That jurisprudence would include protections for rights of victims and witnesses at all phases of the criminal justice process as well as reaching out to ensure a proactive social-service response in providing other services.

What is interesting for information and systems scientists about the growth and the impact of the victim's movement is that the changes being effected will have profound influence on restructuring traditional information systems which have served as the backbone of the criminal justice system.

Currently, data collection and analysis is based on the central focus of traditional criminal justice: apprehension, conviction, and punishment or rehabilitation of the offender. We measure things like how much crime exists (based on police reports); characteristics of offenders; how many offenders end up in jail; how long do they spend in prison, etc. What traditional criminal justice does not ask for is information about the other side of crime: crime's casualties--the victim.

This paper will outline the nature of the victim programs, the demands for information which they create, and the barriers to generating or communicating such information. Finally, I will offer some policy recomendations for criminal justice agencies to facilitate the implementation and monitoring of a victim-oriented jurisprudence. A major dimension of the paper emphasizes the need for a different kind of information than what is generated by statistics. It is an information demand that may be quantifiable but is more often qualitative. The information need itself reflects a humanistic approach, going beyond surveys and numbers, to address the individuals who should be the central focus of social justice: the victims.

The nature of victim services

As indicated above, the recognition of the need for, and the provision of, victim services has only arisen in the last decade. More recently, this has been joined by a demand for victim rights. In light of the positive response victim advocates are now getting, we often feel stunned by the fact that it took our society centuries to acknowledge the catastrophic impact crime can have on its victims. Hence it is important in looking at the nature of services to review the basic needs of victims in order to understand the range of services that have developed.

The needs of victims

There are three primary injuries which victims may suffer: physical harm, financial loss, and emotional pain. While these injuries seem readily understandable, they are often minimized by society and the justice system because we have failed to record the seriousness of crime in terms of the impact on the victim. It is a telling reflection of our "victimless" perspective that we have always measured crime seriousness in terms of an "outside, objective, quantifiable" measure such as amount of dollar loss or immediate need for hospitalization. The following examples may illustrate the thoughtlessness of such analyses when seen from a victim's perspective.

- The broken wrist of Mary Lou Kent, a 72-year-old woman, resulting from a purse-snatch was not considered serious by the law enforcement officer who took her report. She died a short time later. The broken bone caused hospitalization and relocation to a nursing home, and the relocation preceded death--as is common with relocated older people, whatever the reason for their being forced to leave their homes.

- Misdemeanors called "criminal mischief" are usually ignored by our system. Florence Johnson was the victim of such mischief. Her windows were broken in the dead of winter. Without help, she lived for two weeks huddled in a back room under a mattress. Hospitalized as soon as she was found, she died after a couple of days. Vandalism was not serious enough for an initial police response and no one knew the social isolation in which Florence lived.

- Emotional injuries are a significant but unrecorded measure of crime's seriousness. Over 20 percent of all victims suffer lasting stress as a result of the crime, and at least 5 percent experience

a dysfunctional crisis reaction. Such injuries may disrupt home lives--like a subsequent divorce in cases of sexual assault, or moving to a new house in cases of burglary, causing relocation and at times divorce. Sustained levels of high stress often interfere with employment, causing loss of time from work and in some cases, loss of the job itself.

These primary injuries are often exacerbated by what many call the "second injury." These injuries arise out of the humiliation and injustices the victim may suffer at the hands of society and the justice system. Evidentiary investigations may presume on the victim's time, intrude on his privacy, and challenge his credibility. Lack of information about the status of the investigation or prosecution, or lack of notification about trial or hearing dates, may drive a victim or witness out of the judicial process altogether, typically causing the case to be dismissed.

- Leonard Jones, in reporting a fifth burglary victimization in one year, found that the police had no way of keeping track of his previous statements or "elimination" fingerprints, and swore he would never report again.

- Judy Lee discovered, after reporting a serious assault by her husband, that the police refused to make an arrest because it was a "domestic" case. Police in many jurisdictions do not keep records indicating the type of victimization in family violence cases despite the fact that one-fifth of all homicides develop out of the repetition of such violence.

- Ann Cohen was brutally raped. Her offender was convicted and imprisoned. Nine months later Ann met him face-to-face in a local shopping center. Ann was in shock for days. She had never been told that he was being considered for parole, much less that he had been released.

These examples represent only a few of the bizarre and cruel consequences of a system that has heretofore ignored the victim.

Services addressing victim needs

Having reviewed some illustrations of how victim injuries have been overlooked in ways that relate directly to information policy, it is important to examine the service network that has been designed to address those needs.

Over the last three years, the National Organization for Victim Assistance (NOVA) has conducted surveys and studies of existing services in the field. After analyzing the information collected, NOVA designed a model service system for responding to victims.

It is based on a chronology of victim needs precipitated by the criminal violation and exacerbated thereafter by personal problems, social tensions, and criminal justice demands. The following is a brief summary of each service stage addressing this sequence of needs.

1. Emergency response

These services involve the availability of immediate physical and emotional first aid from the first person to come in contact with the victim, either in person or by telephone.

2. Victim stabilization

This stage addresses the need to return some sense of order to the victim after a violation. Most victims suffer emotional shock in the aftermath of the victimization. A helper--a patrol officer or a crisis worker or both--should provide appropriate treatment for shock and acute stress. Simple actions are required, such as: providing the victim with a sense of security by waiting to question him until he has chosen a place in which he feels safe; helping the victim regain a sense of control by giving him small choices over, say, how he likes to be addressed, or whether he wants a drink of water; making the victim comfortable by sitting down before interviewing him; or, often most salutory of all, simply asking him how he feels.

What is interesting about these "personal services" is that they can improve the quality of vital information the police receive about the crime, improvements that will ultimately solve more cases. Crisis intervention programs repeatedly report cases of victims who remember critical details about the crime after having been given stabilizing support after the initial police interview. Conversely, police officers who have no training in stabilizing the victim often discover that a victim in trying to describe his assailant ends up describing the officer himself, because the victim's confusion prevented him from seeing or thinking of anyone other than the person in front of him.

In short, there is increasing evidence that "therapeutic interviewing" techniques, coupled with related stabilizing services to victims in distress, are excellent law enforcement investments.

3. Resource mobilization

This is the standard service for many programs. At this stage, the critical information obtained is an assessment of the victim's needs. The victim often needs assistance in obtaining the reparations due to him, medical assistance or physical therapy, and counseling. Further, he may need help in filling out forms, fighting red tape, and in reducing the chances for further victimization.

4. After arrest

While this stage is often overlooked by victims and service providers alike, it can have critical importance in providing protection and understanding to victims. The goal here is victim participation at the immediate post-arrest stage so that their fears can be considered in any bail hearing and so that their knowledge and concerns will be considered before a decision is made over what charges, if any, to file. Our emphasis on the rights of offenders has caused us to be blind to the need to protect victims and witnesses from intimidation and harassment. A condition of bail which states clearly that an offender must stay away from the victim and must avoid any kind of intimidating behavior can provide protection without interfering with his right to pre-trial release.

5. Pre-court appearance

Some people have suggested that this stage of service places the most information demands upon a system. Services needed by both victims and witnesses are: orientation to the criminal justice process; advance hearing notification; notices of schedule changes; intervention on behalf of witnesses with their employers; and counseling.

6. Court appearance

Needed services at this stage mainly involve personal support rather than information. It is ironic that the criminal justice system has failed to provide such support services in the past. This stage in the process can be the most costly for victims and witnesses, and the lack of support at this time is terribly counter-productive, because the most common reason for case failure in the United States is the failure of victims or key witnesses to appear at scheduled hearings or trials. Such failures have been reduced in a number of jurisdictions by providing services at this stage and in the pre-court appearance stage. Services which are needed include: transportation, separate waiting rooms for prosecution witnesses, escort services, child care facilities, and counseling about case outcomes.

7. Pre-sentence

Many people assume that when a verdict is obtained, the case is over. But rarely is it over for the victim. The post-trial period may be very important to a victim since the sentence may determine many of his basic rights. If the victim is not informed and consulted about the upcoming sentencing hearing, he may be unfairly denied the opportunity to express his opinions of the sentence or to be considered in a restitution plan.

8. Post-sentencing

Even the setting of sentence does not end a victim's need for service or information. Unless the system can track the status of the case after sentencing, and can notify the victim of any changes which affect him, gross injustices may result. Restitution may not be enforced or parole hearings and releases may take place without any concern about the victim's fears or problems.

Information needs

In reviewing the nature of victim assistance programs, it becomes clear that there are new informational needs inherent in this new way of administering justice. Some already have been mentioned. The following discussion outlines those needs in a more detailed way.

First, information is needed to provide a better understanding of the victim's needs at the emergency response stage. New standards are necessary for predicting and assessing the seriousness of crime--from the victim's perspective. It seems likely that a profile of victims could be developed that could help patrol officers and others identify which victims may be most vulnerable to serious crisis, financial distress, or prolonged physical debilitation. Likely data elements needed for such a profile are age, sex, race, previous victimization experience, economic status, location of home, relationship between the victim and offender, etc. It seems strange, for example, that 20 percent of all homicides are as a result of violence between intimates, yet most police departments fail to track or record systemized data on domestic assaults--particularly repeated assaults.

Second, there is little research which would help police and other intervenors identify victims at risk for crisis, diagnose the potential emotional reaction, and provide appropriate treatment.

Third, even simple information about existing social services, their availability and quality, is lacking in most jurisdictions. Even when this information is available, it is normally not organized in a useable way and there is little ability to monitor the effectiveness of referrals made through this system.

Fourth, information is needed to help in the processing of a case and the participation of the victim in the criminal justice system in a number of areas. Prosecutors need to let victims know of charging, bail, scheduling, plea-negotiating and court decisions. Judges need detailed information from victims at sentencing. Parole boards need the same information from victims and also need to notify victims of hearings and decisions.

The requirements of the new victim assistance programs have already outstripped the informational capacity of our traditional system. This problem is further complicated because the traditional system has barriers which prevent an easy overhaul.

Barriers to constructing an adequate system of victim services

The key barriers are obvious: the requisite information is not collected; where relevant information is collected, it is often not available or collated in a useable manner; and, in rare jurisdictions where appropriate data collection and analysis are done, the benefits are often restricted to only a relatively few victimizations.

The lack of information is traceable to the emphasis that we have placed upon the offender, his apprehension, and his protections. For example, too few police departments collect and store, much less use, information on the victim's age. This presents a clear problem to service workers who know from case studies that older people are often most vulnerable to crisis impact from crime.

Case files for police reports are normally kept chronologically and cross-filed by offender name so that modus operandi can be compared. But rarely are case files cross-filed by name of victim, so that the extent of multiple victimizations can be assessed.

Prosecution case files are equally likely to be kept by offender name, making it difficult to obtain information on a case based on the victim's identity and making it difficult to notify such victims and witnesses of changes in case status. Happily, this is one flaw in our information systems that is being corrected in many jurisdictions today; unhappily, one of the last bugs to be worked out of many a prosecutor's automated information system is its capability to generate witness-related information and services, like court-date notifications.

In many jurisdictions the family or social relationship of offender and victim is neither noted or catalogued. If information is collected, it may not be available to would-be service providers. Police reports are often kept under lock and key. Sometimes, service providers are denied access due to confidentiality laws of the state jurisdictions. Far more often, they are denied access because of mistrust of what they are seeking to do for victims.

Many jurisdictions have neither a manual nor a computerized system which tracks case status through to completion. In jurisdictions without vertical prosecution, it may be difficult to find out even what prosecutor is handling the case, let alone the time and place of hearings.

Policy recommendations for criminal justice leaders

While the demands for information are large and the task complicated, some general devices have already been developed in some jurisdictions that can contribute to this beginning. They give hope that the following recommendations are realistic:

1. Research should be conducted to create victim profiles so as to quickly assess the victim's crisis potential.

2. Research should be undertaken so that police officers and others can more accurately identify, diagnose, and treat the crisis symptoms found in crime victims.

3. An organized information system should be developed for identifying, assessing, and monitoring social services available to crime victims in every jurisdiction.

4. An organized information system should be developed that is easily accessible to potential helpers of crime victims.

5. Prosecutors and law enforcement officers should develop and use "victim intimidation statements" to communicate possible problems for the victim created by releasing a defendant pre-trial.

6. Judges should allow victim intimidation statements to be introduced at bail hearings.

7. Prosecutors should consult with the victim concerning charging decisions and dismissals.

8. Law enforcement officers should provide information to the victim about what they can expect in terms of case investigation prior to arrest.

9. Law enforcement agencies should track cases in the investigation stages by victim name, so that a victim can obtain information on case status easily.

10. Prosecutors should implement a case scheduling and notification system that takes into consideration a victim's other commitments, keeps the victim notified of case status, and minimizes the number of unnecessary appearances in court.

11. Prosecutors should consult with victims when they anticipate negotiating a plea.

12. Prosecutors should keep victims informed and notified concerning the progress of a trial--particularly when, as is most often the case, a victim is denied access to the trial itself.

13. Prosecutors should provide victims with an explanation of possible trial outcome so that the victim is not shocked by an unexpected verdict.

14. Prosecutors, probation officers, or other court officials should make sure the victim is notified of the sentencing hearing, has a chance for expressing his opinion (either through allocution or a victim impact statement), and has an opportunity to request restitution.

15. Judges should ensure a victim's right to be heard at sentencing by formalizing the use of allocution and victim impact statements in their deliberations.

16. Judges should include restitution in sentencing unless they can state reasons why it should not be included.

17. Probation officers should develop a system for tracking down and enforcing restitution orders, as well as keeping the victim informed of the status of the offender.

18. Probation officers should inform victims of all probation revocation hearings and offer the victim a chance to be heard.

19. Parole officers should develop a system for tracking cases so that victims can be informed of parole hearings, parole release, and conditions of parole.

20. Parole officers should ensure that due consideration is given to the victim's state of mind and his welfare when parole requests are heard.

These are only some of the more obvious policy implications created by the new need for information as a result of victim assistance programs. There are many who argue that there are too few resources to meet such needs. Such arguments fade into irrelevance for people who have suffered the shock of seeing their home vandalized and desecrated; for people who have survived the murder of a spouse or child. For these individuals we can do nothing to answer the pain of the criminal attack, but we can try to reduce, and not compound, the agonies of recovery. Our efforts must express our society's humane values--for compassion, dignity, and justice--else we lose the ethical rationale for the very existence of our bureaucracies of criminal justice.

One can take guidance from a line penned some years ago:

"The death of one man is a tragedy; The death of many, a statistic."

Information scientists must not forget the tragedies behind crime's statistics. Their obligations parallel those of the general public: to recognize the tragedy, to remember the victim, and to use their own skills to help make a better world for all who survive the pains and injustices of crime.

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