U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

Juvenile and Adult Records: One System, One Record?

proceedings of a BJS/SEARCH conference

papers presented by

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Joseph M. Bessette
Acting Director

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Contents

PREFACE

In 1981 the U.S. Attorney General's Task Force on Violent Crime offered a series of recommendations for improving government's response to violent crime. Among its many findings, the Task Force concluded that statutory restrictions on the use of juvenile records in adult criminal courts impaired the ability of these courts to impose "appropriate sentences" for adults with juvenile criminal histories. The Task Force recommended that adult criminal history records include information on juveniles convicted of serious crimes.

Such a proposal poses a fundamental challenge to the traditional philosophy of the juvenile court regarding the confidentiality protections governing juvenile records. To encourage constructive and thoughtful discussion of this important issue, the Bureau of Justice Statistics joined with SEARCH Group, Inc. to cosponsor a national conference in Boston, Massachusetts on June 28-29, 1988. "Juvenile and Adult Records: One System, One Record?" was the first national conference to focus on the controversial issues surrounding the inclusion of juvenile offenses in adult criminal history records.

The conference brought together a diverse group of experts from the judiciary, the United States Congress, law enforcement, juvenile records management, and the academic community to consider the many issues surrounding consolidation of juvenile and adult criminal histories. The papers presented in *Juvenile and Adult Records: One System, One Record?: Proceedings of a BJS/SEARCH Conference* represent a range of alternative viewpoints on managing juvenile records covering the full spectrum of opinion on this important topic.

Providing a foundation for the conference was a BJS/SEARCH publication, *Juvenile Records and Recordkeeping Systems*, which documents the findings of a national study on law enforcement and court practices regarding juvenile records. The study and publication, the conference, and these *Proceedings* are part of BJS's continuing efforts to identify critical national justice issues and to analyze them within an information management framework.

As the debate over linking juvenile and adult records continues, we believe that these *Proceedings* will serve as an important resource for those faced with evaluating the future course of the juvenile justice system.

Joseph M. Bessette
Acting Director
Bureau of Justice Statistics

Introduction

The papers presented in *Juvenile and Adult Records: One System, One Record?: Proceedings of a BJS/ SEARCH Conference* represent a valuable compilation of knowledge and expertise provided by a roster of distinguished participants. Acknowledging that it is incumbent upon decisionmakers not to consider changes to juvenile records and recordkeeping policy in a vacuum, the conference presentations address the merits, policies and historical and philosophical considerations that must be reviewed before the justice system changes the way it uses and provides access to juvenile records and alters the operation of juvenile and adult recordkeeping systems.

The format of the *Proceedings* reflect the agenda of the national conference on *Juvenile and Adult Records* conducted in June 1988. In the "Welcome and Opening Remarks," Dr. Steven Schlesinger, former Bureau of Justice Statistics Director, emphasizes the difficulty and complexity of dealing with issues which affect the juvenile population of this country. His commentary is corroborated by Dr. Francis Carney, moderator for the Conference and Executive Director, Massachusetts Criminal History Board, who briefly delineates the purpose and goals of the Conference. This section is highlighted by the keynote address of Congressman Ralph Regula (R-OH).

The second section of the *Proceedings*, "Setting the Scene," provides the foundation upon which the subsequent presentations may be considered. A special address by Dr. Marvin Wolfgang, a distinguished criminologist and expert in juvenile delinquency, presents a summary of his birth cohort delinquency studies and discusses the nature of juvenile delinquency and recidivism. Stanley Adelman, General Counsel for the Massachusetts Executive Office of Public Safety and Chairman of the Massachusetts Criminal Offender Record Information Task Force, focuses on the considerations and processes of changing a record system. The final presentation in this section, by Sheila Barton, Director of the SEARCH Law and Policy Program, is a summary of the SEARCH national *Juvenile Records and Recordkeeping Systems* study. The report includes a review and a brief analysis of the study's findings regarding the creation, maintenance and dissemination of juvenile records held by law enforcement personnel and the juvenile courts.

Section three, "The Public Policy Perspective: Privacy and Security versus Society's Need to Know," examines the salient policy issues that arise when proposing changes to the juvenile record system. The special conference address by Dr. Alfred Blumstein, Dean of the School of Urban and Public Affairs at Carnegie-Mellon University and a pre-eminent authority in the field of career criminals and criminal careers, examines the implications of considering the records of juvenile delinquents when predicting their future criminal behavior. Judge Romae Powell, a nationally-known juvenile jurist and 1988-89 President of the National Council of Juvenile and Family Court Judges, provides the definitive statement on preserving the confidentiality of juvenile records. Judge Reggie Walton of the Criminal Division of the District of Columbia court system discusses the impact of the juvenile record in the sentencing process in adult court. Dr. Mark Moore, Professor of Criminal Justice Policy and Management, Kennedy School of Government, Harvard University, provides a cogent evaluation of the scope of the policy considerations involved in this issue and offers a formula for resolution.

The final section, "The Operational Perspective: Examining Juvenile Systems and Using the Records," presents the expertise of those who are confronted with the operational issues of managing and using the juvenile record. While Inspector Ken Moses, San Francisco Police Department, advocates the use of fingerprints in increasing the utility of the juvenile record to solve crimes, Dr. Howard Snyder of the National Center for Juvenile Justice cautions us to consider the philosophical implications. His address explores the progress in juvenile recordkeeping systems and the effect technological advances have had on the confidentiality debate. Ronald Castille, Philadelphia's District Attorney, provides a slightly different perspective as one who manages both chronic adult offender and chronic juvenile offender programs.

In addition to individual presentations, a panel of recordkeeping managers helped to identify operational issues for county and state recordkeepers and to explain how their recordkeeping systems support the goals of their respective juvenile justice systems. The panel members were: Susan Chase, Florida Department of Health and Rehabilitative Services; Ernesto Garcia, Director, Maricopa County Juvenile Court Center in Phoenix, Arizona; and Michael Phillips, Assistant Juvenile Court Administrator of Utah.

Finally, Robert Belair, SEARCH General Counsel and author of many documents on criminal justice information policy, concludes the *Proceedings* with a summary of the Conference presentations. Mr. Belair's discussion elucidates the critical questions for the future on the issue of reducing the confidentiality protections now afforded the juvenile record.

Although the conference was not designed to produce a consensus as to what future access to the juvenile record should be, there was general agreement that the states are not presently moving toward a one-record system and away from the current two-tier, adult and juvenile, justice system. Most participants also agreed that the sentencing judge in an adult court ought to be apprised of the juvenile record, although the form and the amount of information remain unresolved questions.

The paramount issue to emerge from the conference, and which ought to be debated and considered by policymakers throughout the country, is who, from either within or outside of the justice system, ought to have access to the juvenile record? It is imperative that as the adult criminal history record becomes more accessible, the effect upon the availability of the juvenile record is considered.

Government policy regulating the management of criminal justice information is critical, especially when the information regards the behavior of citizens. When these citizens are the young and the information affects decisions influencing their future, policysetting becomes highly sensitive. It is hoped that these *Proceedings*, and the deliberations they reflect, will help bring order and structure to that process.

Welcome and Opening Remarks

Welcome

STEVEN R. SCHLESINGER
*Director, Bureau of Justice Statistics**
U.S. Department of Justice

I am very pleased to have the opportunity to participate in this conference which addresses an issue which I believe is of increasing current concern: the use of juvenile records in our adult criminal justice system. In particular, I am pleased that the conference will be specifically addressing these questions: What is the quality of juvenile records currently being maintained? How complete are these juvenile records? To what extent are juvenile records theoretically available to the adult criminal justice system under existing statutes? To what extent do current administrative procedures preclude the exchange of juvenile data? And last, what are the policy implications associated with an increased use of juvenile data for adult criminal charging, sentencing and other decisions in the criminal justice system?

These questions have been raised for many years. I think, however, that they are particularly relevant now for several reasons. First, we have just released the second edition of the Bureau of Justice Statistics' *Report to the Nation on Crime and Justice*,[1] and the report notes that juveniles are involved in substantial amounts of crime. In 1985, for example, 17 percent of all arrests involved juveniles under the age of 18. More specifically, juveniles under age 18 had a higher likelihood of being arrested for robbery and the other Uniform Crime Report property crimes than any other age group. Beyond that, data for the years 1983 to 1985 indicate that arrest rates for violent crimes peak at age 18. Arrest rates for property crimes peak at age 16 and drop in half by age 22. The *Report to the Nation* also notes that over the 20-year period between 1961 and 1981, the most significant increase in arrest rates was for persons age 18 to 20. It is also true, I should point out, that total arrests of juveniles have decreased in recent years reflecting, to some extent, the decline in the size of that age group.

Finally, the *Report to the Nation* makes note of studies that have shown that over 90 percent of juveniles tried as adults are found guilty in the adult courts. Over half of the convicted juveniles, however, were sentenced to probation or a fine, probably indicating that adult criminal courts regarded these juveniles as first-time offenders or very close to first-time offenders.

Now taken together, what do these data indicate? At the very least, they indicate that the role of juveniles in the overall criminal justice system is significant; moreover, they make clear that the nature of juvenile offenses is serious. Arrests, as I indicated, for property and violent crimes peak at ages 16 and 18, respectively. I think that these data make clear that failure to consider juvenile records, to some degree, may seriously jeopardize the effectiveness of overall adult criminal justice strategies for prosecution and sentencing.

The second reason I think this conference is significant can be found in some recent recidivism studies that BJS has published. We have undertaken several studies of recidivism in response to the great interest in that topic in the criminal justice community. Most germane to this conference is our finding that the likelihood of returning to prison was greatest for offenders who were youngest at the time of first release. In the case of one particular study, we concentrated on 18-to-24-year-old parolees. Over 20 percent of them were reincarcerated after one year, over one-third after two years, and almost one-half by the end of five years. In another study, we found that almost 80 percent of parolees who were age 16 and younger when arrested were rearrested within six years. The rearrest rate dropped to 50 percent for parolees who were 20 years or older at the time of their first offense, and it drops even more as they get older. Once again, I think that these findings on the recidivism of young offenders supports the view that juvenile data must be considered when developing criminal justice strategies which can be expected to be effective in combatting crime. Decisions regarding the

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* Position held at the time of the conference.
[1] U.S., Department of Justice, Bureau of Justice Statistics, *Report to the Nation on Crime and Justice*, 2nd ed. (Washington, D.C.: U.S. Government Printing Office, 1988).

use of juvenile records are, of course, critical to any strategies which rely on juvenile data.

I want to note that this conference is very timely, because decisions regarding the use of juvenile records must, of necessity, focus on the legal status and the technical availability of these records. By this I mean the accuracy and completeness of the records, the timeliness of record availability and the extent to which records can be reliably identified with particular offenders. Such data quality factors are, of course, critical to ensuring the rights of the individuals to whom the records in fact refer. A recent survey by SEARCH Group, which has been a leader in this and so many other fields, addresses just these points. Although the details of the survey will be presented later in the program, I can summarize very briefly by noting that the survey clearly identifies areas in which major improvements should be made if juvenile records are to be regularly utilized. That report makes clear, I think, that the current status of juvenile records may reflect uncertainty regarding the appropriate role of such records outside the juvenile justice system.

Before I close, let me mention one other BJS effort which I think will be of interest to you: *Survey of Youth in Custody, 1987* is a study of long-term, state-operated juvenile facilities.[2] This is the first time such a study has been done and it provides a look at which young people are incarcerated in long-term correctional facilities, and looks at their criminal histories, their drug and alcohol patterns, and their socio-demographic characteristics. I think this is a pioneering study that will give us a sense of who is in these long-term public juvenile facilities and why they are there. For youth committed to these institutions for violent offenses, data were obtained on their victims and their use of weapons.

I believe that this conference will go far in analyzing the implications associated with the transfer of data from the juvenile to the adult criminal justice system. Most appropriately, the conference will focus on those elements of the system which make such exchanges possible, namely, the individual juvenile records and the juvenile recordkeeping system. This conference will consider these issues in some detail and will formulate thoughts and, ultimately, recommendations about how the criminal justice system should deal with, as Congressman Regula phrased it (and I agree with him), a "tough call."

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[2] U.S., Department of Justice, Bureau of Justice Statistics, *Survey of Youth in Custody, 1987*, by A. J. Beck, S. A. Kline and L. A. Greenfeld (Washington, D.C.: U.S. Government Printing Office, 1988).

Opening Remarks

FRANCIS J. CARNEY, Jr.
Executive Director
Massachusetts Criminal History Systems Board

On behalf of Governor Michael Dukakis and Secretary of Public Safety Charles Barry, I would like to extend a welcome to all. I hope that your stay in Boston is enjoyable as you get around the city, and productive as you participate in the conference.

I think that this conference is particularly timely. There is clearly a trend now toward greater openness of criminal records. We see it in the Security Clearance Information Act, which requires states to make criminal history record information available to certain federal agencies for security clearance purposes. We see it in *The Reporters Committee for Freedom of the Press* case, which would make all criminal record information held by the FBI available to the public and which will be reviewed by the Supreme Court in December 1988. We see it in the activities of the SEARCH Law and Policy Project Advisory Committee, which, at the last Membership meeting, had as its main focus a revision of *Technical Report No. 13: Standards for the Security and Privacy of Criminal History Record Information*, which would provide revised model standards for security and privacy of criminal record information. Those revisions will be taken up at the next SEARCH Membership Group meeting and will very likely be in the direction of greater openness. Here in Massachusetts, the Governor has recently appointed a Task Force to review the existing criminal history record statutes and regulations and to make recommendations regarding those. Massachusetts, which has traditionally been a state with a strong orientation towards privacy of criminal records, will be making recommendations in the direction of greater openness of criminal record information. We are striking a new balance, I think, between the individual's interest in privacy concerning criminal records and the public's interest in knowing about those records.

As we move in this direction of greater openness of criminal records, what are the implications for the juvenile record system? That, I think, is the main focus of this conference. Typically, the privacy interests have been heightened when it comes to juvenile records. I think that the goal of the conference, then, will be to try to raise questions and generate discussion which will lead to a better understanding of the key issues associated with merging juvenile and adult records. I believe that the conference provides an extraordinary blend of researchers, policymakers and practitioners who can provide us with insights on the nature of juvenile crime, the predictive power of juvenile records in relation to future criminality, and, more specifically, the results of the SEARCH survey on juvenile record systems across the nation.

On the public policy side, the appropriateness of a merged record will be an important issue to be addressed. Finally, on the operational side, the issues associated with establishing model juvenile recordkeeping systems and using the juvenile records for criminal justice purposes will be examined. Those are some of the issues that will be raised and discussed in this conference.

Keynote Address

Keynote Address

U.S. REPRESENTATIVE RALPH REGULA

Member, House Appropriations Committee
Subcommittee on Commerce, Justice, State and Judiciary

I want to be informal today and have a conversation with you and take some questions. I am not an expert on juvenile justice; I have had some experience with it as an educator and as a small-town lawyer. My staff person to the State Justice Subcommittee — in which we appropriate for the Justice Department, State Department, federal courts, Commerce Department, the United States Information Agency and other assorted agencies — is also an attorney who has worked in the juvenile justice system. We discussed this meeting today, regarding the confidentiality of juvenile, as opposed to adult, records. Our conclusion was that perhaps we should allow some dissemination of information if the juvenile committed a crime that would be a felony under the statutes of that state if committed by an adult. That is just an amateur's opinion on the subject, and I will be very interested and will read with great interest the results of this conference. I hope you can reach a conclusion because it is a significant problem, and we are in an era of being concerned about crime.

Crime Issues

I suspect that in the Presidential election this fall you are going to see both Dukakis and Bush trying to out-tough each other on criminal issues. It has already started to some extent because there is an awareness that the public is very much concerned about the impact of crime on their own lives. We all have a lot of ambivalence on the criminal issue.

There is a senator from Ohio who has long been an opponent of capital punishment and who has historically filibustered anything that came over from the House that had capital punishment as an element in the legislation. Yet I was at a meeting with police forces in Ohio recently in which he was one of the main speakers, and he said flat out that he was going to vote for capital punishment for drug lords if they are found guilty. This represents a dramatic switch. I think this illustrates a growing concern on the part of people, particularly with the drug issue. It seems to me that if you lose your life because of a criminal, whether it is the mafia or a drug lord, the punishment should be the same.

We operate on buzz words in Washington, and the new buzz word is "drugs." Any piece of legislation to spend money that has the word "drugs" in it just sails through the House. In fact, we are getting a whole series of amendments attached to appropriations bills which say that the agency in question has to have a drug-free environment, meaning that if any one individual in that agency is found to be using drugs, theoretically they could be cut off from funding.

Appropriations

I have an interest in the juvenile system and in state justice, so I have focused on that in the State Justice appropriation. I always make sure that the funding that affects the juvenile justice system is adequate, because there is a great tugging and pulling within a committee on priority judgments. For example, the State Justice Subcommittee of the House Appropriations Committee is dealing with approximately $10 billion, but we have demands far in excess of this amount. The FBI says it needs more money for drug enforcement. The federal courts say they need more money for recordkeeping and staff. The Commerce Department says trade is a big issue, the problem of the trade imbalance confronts the United States, it affects jobs. Yet, because of the constraints of the budget, we do not have much in the way of new money. We get an allocation in the Appropriations Committee each year and we have to work within that total. We each vote with a card and it is the world's greatest credit card. You can go over and put your card in the box, push a button, spend $20 billion or $100 billion, and let the next generation pay for it. It becomes a very difficult choice to work within those priorities, so it becomes extremely important to have an advocate for your position.

I urge all of you to at least get to know your Representative or a Representative in your state, particularly if that individual is on the Appropriations Committee and particularly if that individual is on a subcommittee that affects your areas

of responsibility. When we allocate resources, the subcommittee members get first crack. The full committee members get second crack, and the members of the House are pretty much left out in the sense that once we go to the floor with that bill, it is locked in; it is very difficult to tamper with the numbers once the bill is marked up, as we call it, and the package is put together. If you can get to the persons who are on the subcommittee or who will work with the subcommittee and have somebody on that subcommittee looking out for your interests, it is very important.

This is true in the state Legislature too. One person *can* make a difference. Candy Lightner in California, whose daughter was killed by a drunk driver, started Mothers Against Drunk Driving, and, as a result of her impact, state laws all across this nation have been changed and toughened on drunk driving.

What I am saying to you is do not underestimate the importance you have as an individual in having input into the system. If you get to state legislators, or if you get to members of Congress, make your point of view and the importance of your activity in SEARCH known; that in turn will translate into support for what you are trying to do. Again, we are in an era not only of concern about drugs, but in other areas, and what you are doing is important to this in the whole field of security and child care. "Child care" is another buzz word, and you will see the Presidential candidates sort of one-upmanshipping each other on who will have the best program for child care because the working mother is very much a part of our society in 1988. I think access to good quality information on individuals is very vital in the area of child care.

Security is also a tough problem for the United States in our open society.

...Congress is trying to rationalize the question of privacy and the right of the individual to have his or her record sacred versus the rights of society.

I think Washington is the leakiest town in the United States, perhaps in the world. There are absolutely no secrets, and it all goes to the question of security. Again, to have good security evaluation of people, you need statistical information. In addition, you need personal information that can be used in determining whether this individual should be involved in a child care facility or in a security position.

The Privacy Question

We always wrestle with the question of confidentiality. Members of Congress have an ambivalence on that question, and let me illustrate. We had a bill this year to prohibit the use of polygraphs. Well, of course, the small business people came to me — the people who operate enterprises, such as bread and milk delivery systems, where their employees handle a lot of cash — and said, "We have got to have the right to use polygraphs to test every individual as a pre-employment prerequisite." The unions come in and say, "Wait a minute, this invades the privacy of the individual. Some individuals are nervous; they will not do well on a polygraph test, and, therefore, to allow universal use of polygraph would violate privacy, would violate our Constitutional right." It's a tough call to weigh or to balance the needs of the small businessman — the grocer, the 7-11 store owner, the bread delivery people, the department stores — versus the right to privacy. That is essentially what you are dealing with. As we usually do, we compromised. We said polygraphs could be used under certain conditions: if it involved drugs, if it involved national security, if it involved banking, or if it involved after-the-fact examination. Again, however, you have the problem of whether you have competent polygraph operators. That, I think, is one of the difficulties. The polygraph legislation we have worked out reflects the ambivalence of Congress on the whole privacy question.

The same thing has occurred on drug testing. We have had a series of bills that said everybody should be drug tested, or at least the employer should be allowed to drug test, or we should require drug testing of airplane pilots, engineers on trains, people who work in security places and so on. Again, Congress is trying to rationalize the question of privacy and the right of the individual to have his or her record sacred versus the rights of society. That is what you are going to wrestle with today. I will be very interested in the outcome because I suspect that you are also going to develop some ambivalence on the whole topic in trying to reach some conclusion as to what is the best approach.

Statistical Impact

Let me just say that what you do is extremely important. It is not a very sexy topic when you talk about statistical analysis, but to make the kind of judgments we need to make in funding the criminal justice system, in creating the statutes that control that, we need to know the impacts. I am interested in the speaker who is going to be talking about the percentage of juveniles who move into adult crime. I think that will be a factor in deciding how much information should be allowed.

I spent two or three years on the Ohio Crime Commission as a state senator about 20 years ago. I remember three things. First, as we toured the prisons of Ohio, I never ran into anybody who was guilty; it was somebody's fault that they were there, not theirs. Second, I remember some experts testifying before our subcommittee saying that their 10-year statistical analysis found that a pattern of antisocial behavior was characteristic at the sixth grade level and that they could fairly well determine, based on behavior at the sixth grade level, whether an individual would be inclined toward adult crime. That struck me as a rather startling piece of information to the point that it stuck with me over the years, and I think it illustrates the importance of a good educational program in somehow avoiding that behavior. The third thing that sticks with me from that experience is that the rate of recidivism in our adult prisons is 75 percent; that illustrates that rehabilitation is a tough call to get results in the final analysis.

I think, overall, that we in the Congress, the state legislatures, and each of you, as you participate in this whole process called the criminal justice system, have a very important responsibility. We are living in a society where television, one-parent families and the speed at which society moves today, have collectively contributed to the problem of providing a secure place for people to live. We need federal leadership; I am willing to provide it on the State Justice Subcommittee to ensure that we get funding for the Bureau of Justice Statistics and the Justice Department. We did not fund it this year yet because it was not authorized, and the Chairman decided not to fund anything that was not authorized; but we have a reserve fund which for the Bureau of Justice Statistics is identical to 1988, and we are talking about fiscal 1989.

I think one of the problems in the area of funding is that we are limited in growth. I have never experienced as much lobbying as I have this year. Groups — farmers, bankers, union folks, postal workers, you name it — have come to my office, not to get more, but to keep what they have, because the Gramm-Rudman Bill requires the deficit to get down to zero by about 1992. We are working with less and less in the way of resources. In the federal budget you first take off the entitlements — that is, Medicare, Medicaid, Social Security, veterans' benefits — that is roughly half the budget. Then, you take out a big amount for the military, and we cannot really get a lot of reduction there because we do not want a draft in our country; we have a lot of weapons systems for which we already contracted that have to be paid for; and we cannot seem to close any bases. Then you have interest on the national debt; you cannot do anything about it. When we get down to the so-called discretionaries — transportation, education, the criminal justice system, etc. — all of those things are flexible, but not much, because you have to maintain them. The point is that the competition is fierce within that total amount that is left in discretionary, and that is the reason people are in my office constantly saying, "I want to protect what I have." That is why it is extremely important that you, as part of your responsibility, make those contacts with legislators, make those contacts with members of Congress, and point out to them how important it is to have a good system of criminal justice that will protect the rights of the law-abiding citizen, and how important what you do is to the success of that program. If you do that, you can more likely maintain what you have and perhaps get some expansion.

Crime and Rehabilitation

I look out for the criminal justice system because I believe that if there is any hope in reducing the overall rate of crime in this country, it has to start

with the young; it has to start in the school system; it has to start in the juvenile justice system and make every effort to rehabilitate. And to do that, we need a good statistical base. We talk about drug interdiction. I do not believe we will ever succeed in reducing the impact of drugs on our society to a great extent until we reduce demand. The thing that really drives this is demand. When a young individual in Washington, D.C. can testify in front of a subcommittee that he can make thousands of dollars a week peddling drugs, you can understand why he is willing to take the risk; the alternative is not very attractive in terms of his lifestyle. Consequently, that, along with the thousands of miles of border and with the enormous sums of money that are to be made in drugs, makes it extremely difficult to stop the flow, even though we get the Army and the Navy involved in interdiction. In the final analysis, it has to start with education of the young to just say no. That is the most important thing we can do in society to reduce the impact of drugs on all of us.

Likewise, in the juvenile justice system, we have to work hard at this question of rehabilitation. On the other side, in terms of statistical reporting, in terms of information flow, we have to be concerned about the rights of people to live with a degree of security in their homes and in the workplace and in their communities. So you have a very important role to play. Be an advocate. Be a lobbyist, if you will. The founding fathers really said that, in our system, if it works effectively, every person should be a lobbyist. Every person should have input in the way we do things. You need to develop your own technique to have an impact and get results from what you do as part of SEARCH Group.

It is a pleasure to be with you and to get your input. If you have something you want to get to the State Justice Subcommittee on the appropriations process, send it to me. I am your friend in court on that subcommittee; I have a great interest in it, and will ensure, to the degree that the funding is adequate, to get this job done of making an effective criminal justice system for John Q. Public who relies on us to provide the security that he or she feels they are entitled to as a citizen on this country. Thank you.

Setting the Scene

The Nature and Severity of Juvenile Crime and Recidivism

MARVIN E. WOLFGANG
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Some preparatory remarks: I shall not be going through a literature review of data regarding the movement from juvenile to adult status. I shall be concentrating on two longitudinal studies. We have two birth cohorts, and I shall affectionately refer to them as Cohort One and Cohort Two. There are also two books to which I will be referring. One is called *Delinquency in a Birth Cohort*, and the other is *From Boy to Man, from Delinquency to Crime.*[1]

Longitudinal Studies in Criminal Justice

Delinquency in a Birth Cohort is about the first birth cohort — the first longitudinal study conducted in the United States in the field of criminal justice. We took approximately 10,000 boys born in 1945 who lived in Philadelphia at least from age 10 to 18. Those were the only criteria. Most of the boys had been born in Philadelphia, and as many as 85 percent of those 10,000 entered first grade in Philadelphia.

Our criterion of having lived in Philadelphia from age 10 to 18 was an impressive one; it gave us a total enumeration, not a sample, but a total enumeration of all males who fit into that category. We found, to the surprise of many of our colleagues, that as high as 35 percent of the boys had at least one arrest as a juvenile before reaching age 18. That was a figure we did not know until having engaged in this retrospective longitudinal study. And another surprising thing, at least for us at the time, was that of the 3,500 boys, 6 percent were classified as chronic offenders (that is, they had five or more arrests before age 18). That 6 percent, the precious few, were committing the many, many thousands of offenses.

From Boy to Man, from Delinquency to Crime, is a follow-up of this first birth cohort, those males born in 1945, up to age 30. We took a 10 percent sample and interviewed as many of those as we could find when they were 25 years old. We have, however, their arrest and dispositional data up to age 30.

Cohort Two is also situated in Philadelphia, only this time we have included females. Cohort Two is all persons born in 1958 who lived in Philadelphia at least from age 10 to 18. That yielded 13,160 males and exactly 14,000 females, a total of over 27,000 subjects. You can imagine the difficulties in obtaining these data from the private, public and parochial schools and then tracing the names through the Juvenile Aid Division of the Philadelphia Police Department. We have now subsequently received juvenile court disposition data and adult data. The manuscript for Cohort Two, those born in 1958, is still with the publisher, but I have some data that I will use here.

Since we introduced longitudinal studies in criminal justice, there have been more than a few continually operating. Studies have been done in Stockholm, Sweden; Copenhagen, Denmark; Racine, Wisconsin and a few other places.

Perhaps one of the best known is that conducted in London where Donald West and David Farrington from the University of Cambridge have been following 411 boys for many years. Let me quote — I said I am not doing a literature review — but let me quote from David Farrington's latest publication which appeared in a book called *Explaining Criminal Behavior*, in which he makes reference to the topic that is of particular concern to this conference.[2] Farrington says — remember this is dealing with only 411 boys — "Up to the twenty-fifth birthday, about one-third of the males were convicted of criminal offenses."

In Philadelphia, up to age 18, about a third were arrested at least once.

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[1] M. Wolfgang, R. Figlio and T. Sellin, *Delinquency in a Birth Cohort* (Chicago: University of Chicago Press, 1972) and M. Wolfgang, T. Thornberry and R. Figlio *From Boy to Man, from Delinquency to Crime* (Chicago: University of Chicago Press, 1987). Tables depicting the information discussed in this presentation are available, upon request, from the author.

[2] W. Buikuisent and S. Megnik, eds., *Explaining Criminal Behavior: Interdisciplinary Approaches* (London, England: E.J. Brill, 1988).

Farrington continues, "The peak age for the number of different persons convicted and for the total number of convictions was 17", which is the age at which a juvenile becomes an adult in English criminal law.

There was a strong relationship between juvenile and adult convictions. For example, 77 percent of those with four or more convictions as juveniles (they are called convictions in England) went on to have four or more convictions as adults. Conversely, 84 percent of those with no juvenile convictions also had no adult convictions.

Farrington then speaks about the concentration of the small number of boys committing the many offenses, which is exactly what we had found in Philadelphia. He says, "Only 23 boys out of the 411 (less than 6 percent of the sample) accounted for half of all the criminal convictions of the sample up to the twenty-fifth birthday. Every one of these boys was first convicted by age 18."

Cohort One: Males Born In 1945

Now let me march you through some of our data with the first birth cohort. I can take you up to age 30 with those born in 1945. The follow-up beyond age 18 was a 10 percent sample — 975 males whom we were able to trace from 18 up to age 30. (One of the reasons we could not do more than a 10 percent sample is that we had a monumental fire in 1968 at the University [of Pennsylvania] that destroyed all the records in the original birth cohort. We did, however have the sample on tape.) I can speak about the 10 percent sample as a true reflection of the total universe of just about 10,000 boys because it is a cross representation of delinquents, nondelinquents, recidivists, chronic offenders, etc., by types of offenses.

Of that follow-up sample, 459, or 47 percent, had an official recorded arrest for a non-traffic offense by age 30. As would be expected from the results of the previous studies, the offenders were more likely to be non-whites and to be drawn from the lower socioeconomic subjects. The differences are striking. Overall, the probability of being arrested by age 30 was, as I just mentioned, 47 percent, which is a considerable increase over the 35 percent probability observed up to age 18. For the non-whites, however, the probability of ever being arrested between birth and age 30 was just about 70 percent, compared with 38 percent for the white subjects. In other words, seven out of every ten non-white males in this urban community would have an official record, as either a delinquent or a criminal, by age 30. The difference between the lower and the higher socioeconomic subjects was also large, but not as large as the racial differences.

Offender Populations

Although the comparisons between offenders and nonoffenders is of interest, let me look at the differences within the offender population. Let me identify three groups of offenders: (1) *juvenile offenders* — juveniles who committed offenses only during their juvenile years and not as adults; (2) *adult offenders* — persons who committed offenses only during adulthood and who had no juvenile record; and (3) *persistent offenders* — those who committed offenses during both the juvenile and the adult periods. These three groups are approximately equal in size. Of the 459 offenders, 170, or 37 percent, were juvenile delinquents only; 24 percent were adult offenders only; and 30 percent were persistent offenders. Although the total offender group is almost equally divided on this single variable, this is not the case within various demographic subgroups.

Race and Offender Status

Looking at the relationship between race and offender status again, the association is pronounced and significant. We see, for example, that the major difference between white and non-white subjects occurred in the distinction between the juvenile offender only and the persistent offender groups. Of the white offenders, 47 percent were delinquent, having committed all their offenses before age 18. This compared with 22 percent of non-white offenders who committed all their offenses as juveniles. On the other hand, 30 percent of white offenders were classified as persistent — committing offenses in both periods — but 51 percent of non-white offenders were in the persistent group. Whites and non-whites who are adult offenders only, look very similar in their *proportions* but not in *persistency*. In general, the offense careers of the non-white subjects were more likely to persist over both the juvenile and adult years, whereas whites were more likely to be juvenile delinquents only.

In addition to these proportions, we can also look at the frequency of violations and the average number of offenses in these different periods. In terms of frequency of violations, juvenile and adult offenders are very similar, with each group committing an average of slightly over two offenses per offender. On the other hand, persistent offenders, those who march right through these various age groups, commit far more offenses, — an average of nine per offender. This difference in frequency can also be seen in the proportion of subjects who were chronic offenders — those who had five or more arrests. One could be a chronic offender before age 18. As you may recall, I said 6 percent of the first cohort were chronic offenders before age 18 who, according to official arrests, committed 5,300 offenses. One can be a chronic offender by having a couple of offenses as a juvenile and then having an additional amount as an adult, or one can have no juvenile record and become a chronic offender from age 18 to 30. The proportion of subjects who were chronic offenders is 70 percent for the persistent offenders. A persistent offender is one who could have one offense at 16 and one offense at 22. He is persistent because he has crossed both of these age groups. The persistent offenders are 70 percent chronic offenders, at five or more.

The three groups, *juvenile only, adult only,* and *persistent,* have a different ordering with respect to seriousness of offenses. Juvenile offenders produced the lowest mean seriousness score.

Severity of Offenses

Let me say a word about seriousness score without going into great detail. The Bureau of Justice Statistics funded our research on the National Survey of Crime Severity. This was a survey involving nearly 60,000 interviews across the country, riding piggyback on the National Crime Survey. Respondents were asked to designate how serious they thought particular offenses were and to give a number to indicate the level of severity. So when I say "a mean seriousness score", it happens to be a geometric mean seriousness score for specific types of offenses based on the responses we received in this national representative sample of households.

Juvenile offenders have the lowest mean seriousness score: The score ranges from 1 to 2600. Ninety-four was the average seriousness score for juvenile offenses. Persistent offenders had an average score of 280, and adult offenders only had an average seriousness score of 368. You can see that offenses committed during adulthood are much more serious. The adult offenders committed the most serious offenses.

These figures are somewhat confounded by the fact that a persistent offender is one who has committed offenses while he is a juvenile as well, over the entire study period. So when we control for that factor, we find that the persistent offenders are much more serious. A persistent juvenile offender commits offenses twice as serious as juvenile offenders only. Adult persistent offenders, compared to other adult offenders, commit offenses about three times more serious. Again, it is the persistent delinquent criminal who commits the most serious offenses.

The juvenile delinquents who continue adult offense careers have the highest scores of all offender variables. During this period, the persistent offenders committed twice as many offenses, were three and a half times as likely to become chronic offenders by age 18, and had a mean seriousness score that was considerably higher than that of juvenile offenders alone or of adult offenders alone.

Patterns of Offenses

There are clusters of specific types of offenses, committed before age 18 and between 18 and 30. These offenses include injury, theft, damage alone, combinations (such as injury and a theft) and finally, non-Index offenses. Injury, theft, damage, and combination are FBI Index category offenses.[3] All the rest we classify as non-Index.

The percentages indicate that there are few differences between the patterns of offenses committed during the juvenile and adult years. In both periods, non-Index offenses were the most common — 62 percent of the juvenile offenses and 58 percent of the adult offenses. That is not a significant difference. Whether in childhood or adulthood, it is mostly non-Index offenses that are being committed.

[3] Index offenses are the types of Part 1 offenses reported by the FBI in the annual Uniform Crime Reports: willful homicide, arson, forcible rape, robbery, burglary, aggravated assault, larceny over $50, and motor-vehicle theft.

That difference is especially small when you consider that at the time we did this study, juvenile offenses included juvenile status offenses (offenses which by definition are non-Index offenses and cannot lead to the arrest of an adult). Nevertheless, non-Index offenses appeared in almost equal proportions in the juvenile and adult periods.

Injury offenses and combination offenses — that is, theft and injury mostly — were also equally distributed between the two time periods, each accounting for about 9 percent of the arrests. By injury, we mean aggravated assault and even simple assaults, and anything that falls within the category of a physical assault. Those were about equal in juvenile and adult periods. Theft offenses were much more likely to occur during the adult years; 22 percent of adult offenses involved theft compared to 16 percent of the juvenile offenses. Despite these slight differences, the overwhelming conclusion to be drawn from these data about offense types is that the distribution was almost identical for the two time periods. Regardless of age, the sample subjects were most likely to be arrested first for a non-Index offense followed in descending order by a theft, injury, combination and finally, damage offenses.

This does not mean that the quality of the offenses was the same over the offense careers during the two periods. For example, when we look at the total number of offenses, we see that substantial differences occur between these two age groups. Offenses committed during the juvenile period were significantly less serious than those committed during adulthood. I have said that before, but now I am talking about the particular types of offenses as well. The average juvenile offense had a seriousness score of 111 while the average adult offense had a score of 387; the score for adult offenses was approximately three and one half times as great as the score for juvenile offenses. When the five offense types (injury, theft, damage, combination and non-Index) are examined separately, this general result is replicated. In every case, the seriousness of the juvenile offenses is lower than the seriousness of the adult offenses, and the scores for the combined period fall in between these extremes.

Aside from the extreme categories of nonoffenders and chronic offenders, the data indicate a very strong, consistent relationship between juvenile and adult careers.

The most notable difference between the juvenile and adult period occurs for non-Index offenses. In this comparison, adult non-Index offenses are on the average nine times more serious than juvenile non-Index offenses. The average seriousness score for adult non-Index offenses is close to 300, and for juveniles it is only about 32. This comparison is significant; you cannot just look at the large categories. Even by legal codes, like disorderly conduct, in practically every minute examination by these five categories or by specific penal code offenses, the adult offending behavior, on the average, is much more serious than the juvenile behavior.

Let me conclude my comments on this first birth cohort with some generalizations. Of the persons in the first birth cohort who were nonoffenders during their juvenile years, 82 percent were classified as nonoffenders during adulthood. If you are not touched by the law during the juvenile years, the probability of not being touched, or doing anything that causes you to be touched by the law as an adult, is very high. Only 3 percent of nondelinquents were arrested five or more times, that is, became chronic offenders, after age 18. Although the absence of delinquent behavior is not completely related to adult offenses, it is clear that the absence of juvenile delinquency is a major correlate of continued absence from contact with the law.

At the other extreme, the subjects who were classified as chronic offenders, (arrested five or more times during their juvenile years) were likely to continue extensive patterns of

offensive behavior. Among the juvenile chronic offenders, 45 percent were also classified as chronic offenders during their adult years. Overall, about half of the chronic juvenile offenders had at least four adult arrests. I need to also note that about 22 percent of these chronic juveniles were nonoffenders during their adult years. I think that figure should be kept in mind in making calculations of what the order of business would be if we were to transfer the juvenile records to adults. Aside from the extreme categories of nonoffenders and chronic offenders, the data indicate a very strong, consistent relationship between juvenile and adult careers. As the number of juvenile arrests increased so too did the number of adult arrests. The likelihood of being a nonoffender during the adult years declined monotonically as the number of juvenile arrests increased.

Cohort Two: Males and Females Born In 1958

Let me now turn our attention to the second birth cohort. In Cohort Two, that is those males and females born in 1958, we are still in the stage of analyzing the official records. We have taken a sample of Cohort Two, those 27,160 persons, and currently are interviewing as many as we can find. We hope to have interviewed 1,000 of these subjects by the end of summer. We are at the half-way mark, and it appears that (among those persons we were able to find) there is no bias in the distribution in terms of offenders and nonoffenders in juvenile years, sex, race or socioeconomic status. I will share some preliminary data with you based upon the 27,000 cohort members. With 14,000 females compared to 13,160 males, there is a slight excess of females. Taking the sexes together, 29 percent of this cohort experienced at least one officially recorded police contact by age 27. At present, I can only take you up to age 27 with Cohort Two, but I do not think there are any significant differences between Cohort One and Cohort Two that will occur up to age 30.

Once having stepped over the threshold from law-abiding to law-violating behavior, the ratios between blacks and whites and between males and females begins to decline.

The difference between males and females, as we all know, is dramatic. Up to age 27, 42 percent of the males were arrested, and only 16 percent of the females were arrested. From the perspective of juvenile behavior, 63 percent of the males had no police contact up to age 18. Of this group, 14 percent were first arrested when they were adults, (between 18 and 27). Of those juveniles (about 33 percent) who experienced at least one arrest before age 18, 42 percent were also arrested in adult years. Not quite half of the juvenile offenders went on to be adult offenders.

I will add something else about Cohort Two that is a generalization. The prevalence rate of those persons born in 1958, 13 years later than the 1945 group, is just about the same; it was 35 percent in Cohort One, 33 percent in Cohort Two. The chronic offenders are just about the same — 7 percent compared to 6 percent. The incidence of offending and the degree of gravity of the offenses, however, are much greater in Cohort Two than in Cohort One. Many more offenses are being committed by the same proportion in Cohort Two, and the seriousness of the offenses is three times greater in the later cohort. We are currently exploring why this is the case.

Adults in Cohort Two who experienced a police contact during their juvenile years were three times more likely to have been arrested during adult years than were those cohort males who never experienced an official police contact. Overall, cohort males who were arrested only as adults represented 10 percent.

Female Criminal Careers

Eighty-six percent of the females never experienced a police contact during their childhood years. Of this group, only 2.5 percent were arrested

as adults only. The probability of becoming a female offender up to nearly 30 years of age, having had no juvenile record, is the lowest probability of any of the groupings that we discussed. Females who had a juvenile record of at least one arrest and who went on to commit some offense during adulthood constituted only 14 percent. For the whole female cohort, only a little over 2 percent were arrested only when they were adults, 12 percent when they were juveniles, and only 1.7 percent were arrested during both their juvenile and adult years. The female population's criminal career is miniscule compared to the juvenile and adult male. The sex ratios generally have been four or five males to one female in the juvenile years, and for adults going up as high as between five and ten to one, depending upon the type of offense. Here I am talking about longitudinal moving from juvenile to adult status — from a juvenile career to an adult career — and that ratio difference is considerably greater.

Again, the race differences emerge. Of the nearly 60 percent of non-whites who never experienced contact with the juvenile justice system, 19 percent were arrested during adult years. These proportions are substantially greater than the 77 percent of whites who were never contacted by the police as children and of whom only 11 percent were arrested during adult years. The same thing occurs in Cohort Two relative to the racial distribution. When we do regression analyses and look at these data in a multivariate way, we continue to find that the race variable between blacks and whites — relative to juvenile status, adult status, and persistency moving from juvenile to adult — is more significant than the socioeconomic status.

Desistance

One other thing about Cohort Two that I would like to mention is our transition matrices, that is, moving from one type of offense to another type of offense. In the literature, we generally talk about this as a stochastic process and whether it is a Markov chain, but our concern is the transition from juvenile to adult offending behavior and the extent to which people stop. We have used the term "desistance" to refer to those whose criminal careers have ended, at least now up to age 27 for Cohort Two and age 30 for Cohort One. We had desistance measured in Cohort One and in Cohort Two up to age 18; but remember that if you stop at age 18, all of life is truncated there, and it is quite different from looking at the continuation of careers.

I also have some data called the *next offense percents*, that is, the probability of being arrested for a type of offense, given the type of the previous offense. In symbolic language, we call this the *K minus 1 offense*. An offender is defined as having desisted or dropped out from further criminal activity known to the police during this period up to age 27. Among males who had an adult police record but no juvenile contacts, 47 percent were charged with an adult Index offense as their first offense. The probability is nearly 50 percent that a nondelinquent who commits an adult criminal act will commit a serious FBI Index offense. Fifty-three percent will be non-Index offenses. Of those whose last juvenile offense was an Index offense — and that can include homicide, forcible rape, aggravated assault, robbery, burglary, larceny and motor vehicle theft — 61 percent committed an Index offense as the first adult offense, and only 39 percent committed a non-Index offense. The probability, therefore, of committing a serious Index crime in adulthood after age 18 is significantly higher if the last offense was a juvenile Index offense.

In general, throughout the matrix of male repeats, there is a tendency for like offenses to be repeated. Index repeats elevate from 39 percent at the first adult transition to 47 percent, 53 percent and 54 percent at the fifth adult transition. There is a slight tendency to increase the commission of Index crimes. Similarly, non-Index offenders are slightly more likely to repeat non-Index offenses, and those transitions are fairly stable. Index repeaters are somewhat less likely to desist after each offense. If you look at the dropout rates for persons whose last offense was an Index offense, then you see that the next transition is desistant. About half of them are going to drop out, but then if it is not a desistant stage that they go to, it is some other offense, then the dropout rate declines as the number of offenses increases, out to the fifteenth offense. There is a slight propensity to stop or

desist after the first adult offense, but beyond that event, the desistant rates decline. From these simple offense classifications, it can be concluded that about 70 percent of adult offenders continue after each repeat, that Index offenders are more likely to continue Index offending, but that a substantial number do cross-switch after each offense.

Female offenders, again, are different in the sense that they are most likely to commit non-Index crimes as their first adult arrest if they have no juvenile record. Among females whose prior juvenile crime was an Index offense, 65 percent went on to commit another Index offense as an adult. In that sense, males and females are similar. In that same sense, whites and non-whites are also similar. The probability of becoming an offender is very, very high if you are a black male and if you are a black lower socioeconomic status [SES] male. The probability of becoming an offender if you are a white female is extremely low. Once having stepped over the threshold from law-abiding to law-violating behavior, the ratios between blacks and whites and between males and females begins to decline. By the time we get to the repeat offender who is a four-time recidivist and especially a chronic offender, the differences in the seriousness of crimes, using our scale, and the differences in the frequency of offending, become almost *nil*, racially and by gender.

These kinds of analyses will be undertaken in the later part of our follow-up of Cohort Two. As I said, we are interviewing our subjects now. The interview is about an hour to an hour and one half, including topics such as family characteristics, work history, victimization experiences, childhood traumas — both physiological and psychological — drug and alcohol abuse, child abuse, criminal justice interventions, and various other demographic and criminological characteristics. Even though juvenile desistance rates exhibit the now well-accepted peak after about the third offense, this study shows clearly that juvenile delinquency is strongly related to adult criminality, particularly pronounced among males of all racial and income groups. Looking at the problem from a predictive perspective, the probability that a male juvenile who has had a police record will be arrested when he is an adult is 42 percent. For females it is 12 percent.

The dual system of juvenile and criminal justice that prevents the sharing of information and permits a serious, chronic violent juvenile to become a virgin offender after his 18th birthday is a strange cultural invention. ... [H]owever ... highly selective sharing of a juvenile record should be used only to inform.

Opposition to Predicting the Future

I will end on a slightly prescriptive note. The panel of the National Academy of Sciences on Criminal Careers and Career Criminals, of which I was a member, recommends that upon conviction of a felony in criminal court, the defendant's juvenile record should be available to the sentencing judge. The dual system of juvenile and criminal justice that prevents the sharing of information and permits a serious, chronic violent juvenile to become a virgin offender after his eighteenth birthday is a strange cultural invention. Let me hasten to add, however, that highly selective sharing of a juvenile record should be used only to inform. If it is used at all, it should be used only to inform the criminal court judge that the convicted felon is not a first offender, and thereby should not enjoy any statutory or judicial benefit of a first-offender status. So long as a prior record is taken into account in either system, the prior record should be taken into account across systems.

The sharing of information, however, should not be used to augment the sanction because of the likelihood of future recidivism. I am opposed to using the prior juvenile record as a basis for increasing the sanction in the adult court, if it is a future-oriented perspective that is applied. That the sanction may be heavier because first-offender status might be denied is generally recognized, but under that condition the sanction is still past-oriented, and thereby less tarnishing to the just deserts or retributive model. This model, in any case, should always be tempered with noncoercive rehabilitative efforts by the juvenile system to intervene; so you have caught the note of my concern about sharing juvenile records in the adult court if there is a predictive model. In reference to predictive models, this is what I personally, ethically and professionally oppose, not only because of our poor capacity to predict the future, but because I think it is not an ethically sound principle.

Re-evaluating Massachusetts' Criminal History Record Statute

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My presentation focuses on the adult record system in Massachusetts, the law governing the dissemination, storage and use of adult records in our state, and suggestions for change that the working group reporting to Governor Dukakis and the Anti-Crime Council have come up with.

First, I would like to mention a word about the working group of the Governor's Statewide Anti-Crime Council. Governor Dukakis created the Governor's Statewide Anti-Crime Council in 1983 via Executive Order. This is a first-of-its-kind enterprise in the nation, where, by Executive Order, once a month, the Governor convenes and personally chairs a meeting of the Council which is an assemblage of leaders from all three branches of government. The Council includes state representatives and senators who sit on key committees dealing with criminal justice legislation; chief judges from the superior and district court departments; administrative justices; the administrative justice of the juvenile court department; the heads of probation, parole, corrections and youth services; defense counsel and prosecutors; county sheriffs; police; and victims. The objective of the Crime Council is to make our oftentimes fragmented criminal justice system function as an integrated whole.

The Anti-Crime Council is an effort to convene leaders from all three branches in one room once a month to exchange ideas on common issues and to try to develop commonly held, commonly arrived at policy. Within the Anti-Crime Council is the CORI Working Group. CORI is an acronym for the Massachusetts statute, enacted in 1972, that governs use of, access to and dissemination of Criminal Offender Record Information. The CORI Working Group was created to re-evaluate the Massachusetts criminal history record statute top to bottom and develop a detailed set of recommendations for the Governor and the Anti-Crime Council which we hope will shortly be taking the form of proposed legislation. The Working Group first convened in November 1987 and met over the last nine months, culminating in a report and presentation to Governor Dukakis and the Anti-Crime Council two weeks ago, at which time our recommendations engendered quite a lively discussion, but on the whole, were very well received. I am hopeful that there will be legislation filed with the Massachusetts Legislature very shortly along the lines of the recommendations in our report.[1]

Criminal Record Law

Why do we have a CORI law in Massachusetts? There are a variety of reasons. The two major reasons we refer to in the report are, number one, the chaotic state of criminal justice records up through the 1970s and the need for quality control. There was no such thing as quality control, uniform policy or uniform practice. Everything was relatively haphazard, and there were what came to be known in Massachusetts as the notorious "shoe boxes." The Commissioner of Probation's office, which was more or less a central repository for records, ran out of filing space and a newspaper account of a visit to that office made reference to voluminous records being kept in shoe boxes for lack of storage space. One could get records — and this is, I am sure, not unique to Massachusetts — one could pull a record of an arrest not followed by a disposition and, given the fairly free access to that record, the potential for harm and mischief was considerable. Second, also in the 1970s, there was a

[1] On August 31, 1988, Governor Dukakis filed the CORI Working Group's proposed legislation as *House Bill 6161*.

push in the direction of rehabilitation, toward community reintegration, toward enabling ex-offenders to reintegrate into the community, and that sense reflects itself very strongly in the Massachusetts CORI law because the law does state very severe limitations on access to criminal record information.

The third motivation for the law — which we did not refer to in the report and which reflects how times have changed — is the late LEAA, the Law Enforcement Assistance Administration. Guidelines from Washington coerced states, via the carrot and the stick of federal funding, to enact statutory schemes governing or limiting access to and use of criminal record information. All those things coalesced to produce the Massachusetts CORI law.

The original CORI law in 1972 provided that criminal records were available only to two kinds of persons or agencies: either criminal justice or noncriminal justice agencies which had some kind of statutory need to have or use that information, such as a bank which might be prohibited by federal law from hiring a former felon or a local town board of selectmen which, in Massachusetts, has liquor licensing authority. In 1977, the Legislature moved strongly in the direction of opening access to records following a highly publicized crime committed by a person who had a record of sex offenses, gained employment as a school bus driver and subsequently committed more offenses against those with whom he had contact in his employment.

In 1977, a third category of people or agencies that can use CORI information was added to the Massachusetts law: the so-called public interest category. This is defined solely as those persons or agencies as to whom it is determined that the public interest in disclosure outweighs the individual privacy interest. Who makes those decisions? Who makes that tough call?

Checks and Balances

The Massachusetts statute sets up two bodies — in some ways they check and balance each other. One is called the Criminal History Systems Board which is comprised of ex-officio agency heads, or their designees, from primarily criminal justice agencies. This Board writes the CORI regulations prescribing access as a general rule, and also decides who shall meet the requirements of the various kinds of certifications — criminal justice, noncriminal justice or public interest. There is a second body in Massachusetts called the Security and Privacy Council which is set up in some ways as a counterbalance — it has been described as a privacy watchdog — that meets to advise the Criminal History Systems Board. The approval of the Security and Privacy Council is required before public interest certification for CORI, either individually or as a class, can be granted.

Since this third category was added in 1977, both the Board and the Security and Privacy Council have shown strong concern for particularly vulnerable populations and individuals at risk in the Commonwealth. The certifications have been granted almost on a classwide basis for victims of crime. It is not automatic, but in practice it is almost automatic upon request. A crime victim may get more information than the general public; by making application for certification, the crime victim can be notified of a prisoner's upcoming parole release date, custody status or impending termination of sentence. That information is readily available to victims.

The Security and Privacy Council and the Criminal History Systems Board have also by practice and policy made available criminal record information regarding persons who work with populations at risk, such as employees of daycare providers; school bus drivers; door-to-door solicitors; and people who might have unsupervised access to private homes. These are the kinds of employment situations to which the administrative apparatus has traditionally been responsive.

Criticisms of CORI Law

Yet there have remained criticisms of the Massachusetts CORI law, and this again reiterates to some degree the debate that has been going on in other

states and nationwide. I will go into the most resonant criticism. What we call the "CORI curtain" comes down over the individual's criminal record information either at the moment of conviction and sentence or the day after. If you were not in court at the time sentence was imposed, if it is not reported in the newspaper, and if you are not a criminal justice agency or one of those agencies that are individually certified to get CORI for various purposes, you do not get that information; that information is screened from public view. What was public one day, the day before sentencing, becomes nonpublic the day after. And to carry the metaphor of the CORI curtain one step further, it has been suggested that the CORI law drops the curtain not only over individual records, but also over the entire criminal justice system because neither the press nor members of the public who want to know what went on in a criminal justice setting (be that a judicial or administrative setting, in a penal institution or the supervising agency such as parole or probation) have access to that information.

The main motivations for Governor Dukakis to convene this group to reassess the CORI law was a concern for accountability and public access and public knowledge about the system. In convening the CORI Working Group, we tried to form a mini Anti-Crime Council. We had a 35-member group, and as chairman I can tell you it is a rather unwieldy size to try and pull to consensus. We went in the direction of inclusiveness, and we had representation from all segments of the criminal justice system, including the judicial branch. We also had three newspaper editors and publishers on the Working Group.

[The task of the Working Group] was to reassess the balance in the CORI law between public access on one hand and individual privacy on the other.

The press traditionally regards any restriction on information, be that criminal or noncriminal information, as anathema, and the press point of view tended to be, although not monolithically, that CORI should either be repealed or significantly scaled back. We also augmented our group with some individuals who had been involved either in the drafting of the original CORI law or people who had proven records as privacy advocates. We were set up to represent the entire spectrum of opinion on the CORI law. Our task was to reassess the balance in the CORI law between public access on the one hand and individual privacy on the other.

The typology we used at the outset was that there are three kinds of records systems nationwide, to oversimplify somewhat. First, there is an open record system where anyone can get any record. In the middle is what we call the "controlled record system" where some people under some conditions — it may be set by statute, regulation or administrative decision — can get criminal records. At the far end of the spectrum is what we call the "closed record system" where basically only law enforcement can get criminal record information. The proposed shift in Massachusetts — it is not an immediate shift, it is more of an evolution — has been from more of a closed record state to a controlled record state; the legislation we are proposing would go more in the direction of, but not all the way to, an open record system.

Calls For Repeal

There have been in recent months some calls from certain quarters of the press in Massachusetts and certain legislative quarters to repeal the CORI law altogether. Thus, one of the first things we did is look at the repeal option, and we came almost to a unanimous view that, although there should be changes in the system, repeal was neither a very practical option nor would it make for sound policy. From a national perspective, we found that Massachusetts presently is fairly close to the mainstream. Our recommendations, however, would push us more toward the front, toward the cutting edge, but again not all the way, toward completely open records.

There were two main reasons why the group decided not to recommend outright repeal. First, we went back to the reasons why there was a CORI law in the first place. Even if one were to go to a completely open record system, there would still be a need for the kind of data quality and security control that CORI provides. If you

did away with the CORI law completely, you would do away with 16 years of progress. We have come a long way from the days of shoe boxes; there is still a long, long way to go in Massachusetts, but we have made some progress in this area which we did not want to see undone. It is to no one's interest — it is not in the interest of privacy of a present or former offender; it is certainly not in the interest of law enforcement — to have inaccurate, incomplete, inaccessible records.

The second reason not to repeal was that, having heard from the whole spectrum of opinion, the CORI Working Group was of the view that there was and remains a legitimate role for individual privacy. The conclusion we reached was that the point at which the curtain drops should be moved significantly — from the front end of the system when conviction and sentence are imposed to the back end of the system which, in effect, is beyond the point where the individual returns to society. Our view with respect to where the curtain presently comes down in Massachusetts is expressed in our report as follows: "The Working Group finds no justification in law, policy or logic to draw a curtain down when the prosecution is completed, as the law presently does. Just as the events between arrest and conviction and sentence merit public scrutiny, so also do the subsequent events within the criminal justice system. Consequently, the Working Group is of the strong view that the lowering of the CORI curtain should be moved to the back end of the criminal justice process, thereby laying open events within the criminal justice system that are presently closed from public view." That summarizes the essence of our recommendations.

We recommend that the curtain remain open throughout an individual's incarceration or any period of time on probation or parole. Depending on whether it was a misdemeanor or a felony or a person discharged upon completing a state sentence as a serious offender without parole, the curtain should remain open one, two or four years beyond that. After that point, the curtain should fall and the privacy interest come into play to facilitate the reintegration of former offenders. This takes into account some of the concerns we are hearing from private employers who see a need to protect their businesses, as well as protect themselves from a lawsuit if a negligent hiring decision is made and an employee commits a serious offense. It was a compromise, a balancing of interests; we could have sliced it up any one of a number of different ways. There were some suggestions that the curtain should be up for a longer period depending on the severity of the offense, particularly violent sex offenses and violent offenses where personal injury occurs. The way we took care of that was to factor in the length of sentence — the longer the sentence the judge imposes, the longer, by definition, the curtain will remain up.

Implementation Issues

To make such a system happen, we have to deal with some serious practical implementation issues. We are recommending that there be one central repository for all criminal records in the Commonwealth. To the extent that we have had one, it has tended to be the Commissioner of Probation's office in Massachusetts. We are recommending that, ultimately, this would be the function of the Criminal History Systems Board, which is the gatekeeper to the system. We have a long way to go to get our records in shape to make a system like that work. If we are going to use this notion of a CORI curtain, there has to be an agency to determine whether the curtain is up or whether the curtain is down. If the curtain is up, anyone can get that information; if the curtain is down, access to the information is limited, as it is under present law, to criminal justice agencies and those other persons or agencies who are certified for access. There is a need, more than ever, for accuracy of records; there has to be quality control; and there has to be a way to objectively determine whether the curtain is up or whether the curtain is down. It is also anticipated that if we go in the direction of more open records, there will be a much greater volume of requests. That is going to require additional personnel, additional equipment and perhaps upgrading of the mainframe criminal information computer. We are talking about some dollars here in an era when it is not popular to talk about additional dollars. All those issues have to be resolved to try to make this system work.

We are also recommending that the process for certification to access be streamlined. It was very tempting to do away with what we call the A, B and C certification system. The C certification is the public interest certification where the Privacy and Security Council and Criminal History Systems Board determine whether the interest in publicity outweighs the interest in privacy. It was our group's decision that — as an additional fail-safe for when the curtain is down — if there is a legitimate public interest need, the public interest certification process should remain, although it should be streamlined. Going through both boards can take an excessive period of time and can be discouraging to an applicant. We are recommending merging the two boards into one, but keeping the check and balance, keeping privacy representation on the reorganized Criminal History Systems Board which would continue to make those balancing decisions.

Given our diversity in the Working Group, it was amazing that we agreed on anything at all. It was particularly difficult at the first couple of meetings where positions were fairly polarized and views were very strongly held. The group as a whole evolved toward a common position to recommend to the Governor and the Anti-Crime Council. We did have a couple of dissensions, which primarily had to do with fine-tuning — exactly where the curtain should come down, when the curtain should come back up. Most of the dissenters, with one exception, did not disagree with the basic approach, the basic typology we are using. There were also some assenters who endorsed the idea of what we are doing, but, in one case, raised a couple of caveats in terms of making sure that what we propose is going to be workable and will have the resources to succeed. There was one caution that maybe we have not gone far enough in protecting the public in instances where the offender has either a particularly long or serious record. Again, we tried to factor that into our recommendations.

Proposed Legislation

The result, we are hoping, will take the form of legislation. We are hopeful that the system we recommended, if we can bring it about in a workable way, will produce a system that is better balanced in favor of more public access, yet recognizes the legitimate role of privacy and ultimately results in better public understanding of the criminal justice system's policies. The end product we hope will be a greater degree of public confidence in the entire criminal justice system. Our report was the subject of a very lively debate before Governor Dukakis and the full Anti-Crime Council two weeks ago. We found a lot of our Working Group's arguments echoed among the full Anti-Crime Council. I can say optimistically that where there had been calls in the press and in the Legislature for outright repeal of the CORI law, those calls now seem to have been tempered; some of the newspapers that were editorializing most strongly to abolish CORI have endorsed our set of recommendations. We are hopeful that this results in a change in Massachusetts law and practice which will put Massachusetts right on the cutting edge of where the states in the nation as a whole seem to be going in terms of criminal history record access.

Juvenile Records and Recordkeeping Systems: Summary of a National Survey

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Gang-style ferocity — once the evil domain of hardened adult criminals — now centers chiefly in cliques of teen-age brigands. Their individual and gang exploits rival the savagery of the veteran desperadoes of bygone days.

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Publicizing of names, as well as crimes, for public scrutiny, releases of past records to appropriate law enforcement officials, and fingerprinting for future identification are all necessary procedures in the war on flagrant violators, regardless of age. Local police and citizens have a right to know the identities of the potential threats to public order within their communities.[1]

That call for a change in the course of juvenile confidentiality protections was made 31 years ago by J. Edgar Hoover. In the three decades since then — during which time juvenile crime has reached unprecedented heights and has been perceived to be of epidemic proportions — it should probably not be surprising to us that the once near-universal acceptance and support of confidentiality and restricted use of juvenile records is now being more carefully and widely scrutinized.

Early in the establishment of the juvenile justice system, a compelling demand for confidentiality and restricted use of the juvenile record evolved. This was based on the principles of rehabilitation and non-culpability which served as the foundations of the juvenile justice system. As this treatment-oriented philosophy of the juvenile system has come under attack, questions have arisen regarding the rationale for continued confidentiality and restricted use of the juvenile record. These questions, and the conflicts among the competing philosophies, set the stage for what SEARCH recognized as an information management concern.

The study conducted by SEARCH and published under the title *Juvenile Records and Recordkeeping Systems* was undertaken as part of a grant from the Bureau of Justice Statistics. The study is part of SEARCH's continuing efforts to identify issues from an information management perspective. My remarks will be directed at summarizing some of the aspects of that report. Over the course of this conference, you will be hearing several speakers address the policy implications of change, should decisionmakers decide to redefine the function of the juvenile record. What SEARCH has attempted to do in our report, however, is to simply identify some basic information which will help these decisionmakers in their deliberations.

Law Enforcement Records

When we began our research, we realized that a great deal of information already existed about juvenile *court* records. What was lacking, however, was information about juvenile *law enforcement* records. The focus of the SEARCH study is law enforcement records because they are generally the initial record of entry in the juvenile process and certainly have an impact on the course that any juvenile will take through the justice system. Realizing, however, that you cannot examine any part of the justice system in a vacuum, we did follow up with more limited research on juvenile court records and on juvenile records held by state criminal history repositories.

The study was a baseline study aimed at answering some very elementary questions about the records:

- How does the record look? What is contained in the record?
- Where are the records maintained? Are there any repositories for juvenile histories?
- How long are the records maintained?

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[1] G. Geis, "Publicity and Juvenile Court Proceedings," *Rocky Mountain Law Review* 30 (1958), p.p. 101, 120, quoting *FBI Law Enforcement Bulletin* 26 (February 1957).

- Are there methods used to ensure the accuracy and completeness of juvenile records?
- Are juvenile records shared within the juvenile justice system? Outside of the juvenile justice system? With the adult criminal justice system?

With these questions in mind, surveys were sent to 500 law enforcement agencies in the country. Half of those surveys were sent to police departments in large metropolitan areas serving populations of 100,000 or more. Two hundred of the surveys were sent to medium-sized jurisdictions serving populations of 10,000 to 100,000, and the third group of surveys — a set of 50 — was sent to randomly selected small jurisdictions or jurisdictions serving counties with populations of 25,000 or less.

The number of agencies in any particular state which participated in the survey varied (participated agencies are those which actually returned a completed survey which was then included in the analysis). The greatest number of responses were received from the states of California, Texas and Florida. There were some states from which no responses were received. Although all states had at least one agency which received a survey, not all states returned the surveys, or for other reasons, responses were deemed inappropriate for analysis. Thus, there are a few states that are not included in the final results, and a number of states which have a greater concentration of survey respondents.

A second survey instrument was sent to the Metropolitan Judges Committee of the National Council of Juvenile and Family Court Judges. The membership of this Committee consists of the 45 largest juvenile court jurisdictions in the country. The purpose of the second survey was very similar to that of the first in that we wanted to find out what the juvenile court record was like: What did it contain? How was the information reported? This survey, as I noted, was conducted on a much more limited basis.

Finally, the state criminal history repositories — the states' recordkeepers — were surveyed, again on a limited basis. The goal of this survey instrument was to attempt to determine where and to what extent juvenile histories are maintained at a state-level, centralized operation.

Turning to the focus of the study, the law enforcement records of juveniles, we concentrated on eight areas in the survey instrument in order to help answer the questions we had posed: fingerprinting of juveniles; written reports relating to juvenile contacts — are they mandatory, are they discretionary, how is the policy set; the content of the law enforcement records; sealing and expungement practices of law enforcement agencies; tracking of juvenile histories; access to and dissemination of juvenile law enforcement records; audits of juvenile records; and automated recordkeeping systems. In addition to the surveys, a state-by-state review of the statutes regarding juvenile law enforcement records is included in the report. The statutory review is more inclusive than the surveys; it includes a review of all 50 states, the District of Columbia, and the federal code.

When looking at law enforcement records, we need to recognize that the creation and maintenance of juvenile records by law enforcement agencies remains essentially an informal act. Police departments still have a great deal of discretion in determining what goes into a record. State legislatures generally have not dictated the circumstances under which a record must or can be created, nor have they set standards for what must be included in a juvenile law enforcement record. The notable exceptions are fingerprinting and photographing of juveniles. I would now like to highlight some of the findings and information which the surveys and the statutory review elicited.

Data Quality

First, there is a problem with the data quality of juvenile records. What can you say about data quality that has not already been said, except that where juvenile records are concerned, it is even worse than the state of most adult records. Less than half of the law enforcement agencies responding to our survey indicated that they even had a way of finding out the prosecution or court dispositions of their juvenile cases. Of those, some indicated that even though they were able to get

the information, they simply did not have the manpower or the resources to devote to the task of putting that information into their recordkeeping systems.

Second, while the juvenile is certainly receiving more attention from the state legislatures, the quality of the record created *about* the juvenile has received little attention. One of the recognized ways of best ensuring the correctness of a record is to allow the record subject to review his own record and then to petition the court or the agency to correct the record. Unfortunately, only two states, Indiana and Washington, have statutes for this procedure. I have a sense that it probably occurs more frequently than in just these two states, but state legislative mandates for the procedure are virtually unheard of. Audits of juvenile records are very informal. They usually take place only as an editing or proofreading procedure rather than as any kind of formal audit.

Finally, only three states — Arizona, California and Pennsylvania — require dispositions to be included on juvenile records that are disseminated outside of their agencies. Given the number of contacts a juvenile may have with a law enforcement agency and the number which may never reach the formal disposition stage (some estimates are as high as eight out of 10), records that are disseminated without the inclusion of the disposition must raise questions about the reliability of the profile these records give of any particular juvenile. You might obtain a rap sheet of a juvenile who has had 10 contacts with a law enforcement agency, but only two of those contacts include a disposition. The other eight may have gone by the wayside for whatever reason: deferral, unconstitutional detention, insufficient evidence, whatever. The question then becomes, with what kind of juvenile are we really dealing?

Regardless of the use that policymakers decide to make of the juvenile record ... more attention needs to be given to the quality of the record that is being relied upon to make decisions about an individual.

Perhaps one of the consequential benefits of increased use of the juvenile record will be increased attention to the quality of the record. Regardless of the use that policymakers decide to make of the juvenile record — whether for more broad dissemination, sentencing decisions, or simply the retention of the traditional confidentiality protections — it became very clear from our survey that more attention needs to be given to the quality of the record that is being relied upon to make decisions about an individual.

On the other hand, in one important respect, the survey indicated that the content of law enforcement records may be more useful in compiling a juvenile history, and, subsequently, an adult criminal history, than previously thought. The survey indicated that the great majority of law enforcement agencies (87 percent) define juvenile violations or juvenile conduct by using penal code terminology. Nine out of ten of the respondents also indicated that penal code terminology is used in their jurisdictions in delinquency petitions filed in the juvenile court. More than half of the agencies stated that it was possible to determine a disposition for each "arrest"[2] or at least to determine which arrest became the basis for the juvenile adjudication. It appears, then, that in most jurisdictions, you should be able to clearly tell what the juvenile's offense was and why the court adjudicated him. To the extent that that information actually makes its way onto a juvenile history record, the information could prove useful for sentencing or other disposition decisions.

Fingerprinting

Another issue on which the study focused was fingerprinting of juveniles by law enforcement agencies. Fingerprinting and photographing juveniles are still considered two of the most intrusive acts in a juvenile's contact with the justice system. With regard to record management or the usefulness of a record, the absence of positive identification (fingerprints) severely limits its utility.

[2] The term "arrest" as used in this presentation and in the survey refers to any "custodial detention" of a juvenile.

Fingerprinting juveniles is, by and large, regulated by state statute. Only a minority of states lack provisions for destroying or sealing records of juvenile fingerprints. For those states in which fingerprints are forwarded to the state central repository, it is done so under limited circumstances. It is probably safe to assume that if juvenile records are going to receive more attention and use in the adult courts or a wider dissemination to noncriminal justice requesters, the statutory provisions covering the positive identification or fingerprinting element of juvenile records will have to undergo some rather wholesale revisions. If we are to learn anything from the adult system about the use of fingerprints, it is that fingerprinting is universally considered a critical element of maintaining the integrity and reliability of a criminal history record system.

Sealing and Expungement

The two practices of sealing and expungement account for the most efficient ways to ensure confidentiality of a juvenile record. Sealing means the removal of a record from the customary juvenile files and securing it so that access is permitted only under very restricted conditions; expunging means the total obliteration or destruction of any trace of a record.

Most law enforcement agencies do have policies for sealing law enforcement records of juveniles. Typically, it is pursuant to a state statute, and the state statute usually provides for a court order allowing sealing under circumstances that range from a clean record period, to the age of the juvenile, to the type of the offense, to the death of the record subject.

Similarly, most law enforcement agencies have policies for expunging juvenile records, which are also typically based on a state statute and on a broad range of circumstances. When considering the usefulness of the juvenile record in the adult system, I think you have to recognize that the policy of expungement is the real underpinning of the two-tier, juvenile-adult system. It is the expungement of the juvenile record that allows the offender to start over with a clean record. On the other hand, this policy also allows the minor or one-time offender to walk out into the adult world without the misdeeds of his youth plaguing his adult life. Sealing and expungement, like fingerprinting, would have to undergo more than just a little revision, should policymakers opt for broader uses of the juvenile record.

Dissemination

The last area that I will briefly review is the dissemination of the juvenile record — Who has access to the juvenile record and why? There is also a follow-up question to that: Is anyone who has a *demonstrated need* for the records now being denied access? Access to juvenile law enforcement records is governed to a lesser extent than juvenile court records; nevertheless, the statutes of almost all of the states make some mention of the dissemination of unsealed juvenile law enforcement records. There are, however, some gaps in the statutorily authorized access to juvenile records. States vary on permitting disclosure to schools, to institutions to which the juvenile is committed, to probation and parole agencies, to military recruiters, to national security authorities and other categories of users. The way you would answer that follow-up question — Is anyone who has a *demonstrated need* for the records now being denied access? — would, of course, depend on your perspective as to whether you think any particular category really has a demonstrated need for the juvenile record. It may also depend upon whether you believe that need, compelling as it may be, outweighs the juvenile's interest in maintaining the confidentiality of his record.

An interesting issue — from the viewpoint of an attorney — is the use of the juvenile record in the adult system for other than sentencing or bailsetting decisions; that is, for use in the guilt phase of the trial when the record might be used for impeachment or to show bias of the defendant or a witness. This issue seems to have received limited attention in the statutes. There are only five states (Illinois, Indiana, New Jersey, Pennsylvania and Washington) which provide any explicit statutory information about using the juvenile court record for these reasons.

There has been some limited case law in this area. One case of note is the 1974 case of *Davis v. Alaska*.[3] In that case, the United States Supreme

[3] 415 U.S. 308 (1974).

Court held that an adult defendant, who had been prosecuted for grand larceny and burglary, had been denied his constitutional right of confrontation when the trial court refused to allow him to cross-examine a juvenile prosecution witness. The cross-examination would have revealed that the witness was on probation, having previously been adjudicated delinquent.

A similar issue was considered by the Massachusetts courts a year later. In the case of *Commonwealth v. Ferrara,*[4] a criminal defendant convicted of manslaughter appealed his case, based in part on the trial court's refusal to allow the defendant to cross-examine the principal prosecution witness, a juvenile, in regard to the witness' juvenile record. The defendant had been tried for murder and was convicted of the lesser offense of manslaughter. The only witness who claimed to have seen the shooting was a 14-year-old with a significant juvenile record. The defendant wanted to use the juvenile record to show that the witness was biased and prejudiced. The trial court denied the motion for production of the juvenile records on the basis of their statutory confidentiality.

On appeal, the Supreme Court of Massachusetts held that the relevant statute clearly intended to confer broad confidentiality on juvenile records and that the trial judge had not erred in denying the records to the defendant on statutory grounds. The court then considered the constitutional issue of whether the statute operated to deprive the defendant of his Sixth Amendment right of confrontation. On constitutional grounds, however, the Massachusetts court, relying on the reasoning of the *Davis*[5] court, held that the statutory mandate must yield to constitutional considerations and ordered a new trial in the case.

This issue of permissible uses of the juvenile record in adult court trials is yet another area which may receive greater attention if and when confidentiality protections of the juvenile record are removed. It will predictably be an issue which arises not only in criminal proceedings, but also in the litigation of civil matters.

Conclusion

The desire to increase the uses of the juvenile record in the adult system must contemplate some significant changes, notably in the areas of fingerprinting and record expungement. The current restraints on the integration of the juvenile record into the adult criminal history record do frustrate career offender and sentencing programs. They also create some interesting challenges to statistical and other research efforts.

Any attempt, however, to modify or redefine the existing confidentiality restrictions and recordkeeping practices is going to be in conflict with the traditional approach and mission of the juvenile justice system and the juvenile court. Resolving this conflict is the task which faces information management policymakers. It is a task which is difficult and is certainly of no small proportion.

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[4] 330 N.E.2d 837 (Mass. 1975).

[5] *Supra.*

The Public Policy Perspective:
Privacy and Security versus Society's Need to Know

The Utility of the Juvenile Record in Predicting the Career Criminal

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First, I would like to talk about several aspects of criminal careers, and, in particular, about some of the ways in which the emerging knowledge about criminal careers affects juvenile record requirements.

Let me start by defining what we mean by a "criminal career." The term characterizes a longitudinal sequence of crimes committed by a particular individual. The criminal career perspective focuses on individual offenders, as opposed to aggregate statistics like crime rates. A criminal career involves individual *active* offenders — people who are in a criminal career.

The important contribution of the criminal career perspective is the distinction it makes from much of what we know from criminological research on correlates of crime. Different jurisdictions have different crime rates, and the correlation of the characteristics of those jurisdictions with their crime rates leads to certain factors that are associated with higher or lower crime rates. Those correlates of crime may not apply to individual offenders, and it is those distinctions that I want to address.

Thinking about this issue requires partitioning the aggregate crime rate — *crimes per capita per year* — into two major factors. The first is *participation rate* or what is sometimes called prevalence; this is measured by the *number of criminals per capita.* The second factor is the annual *frequency* which is measured by annual *crimes per active criminal.* This factor focuses on active criminals and tries to develop information about the particular characteristics of their criminal careers.

This distinction is terribly important to public policy. We know, for example, that in a jurisdiction that has 5,000 Uniform Crime Report (UCR) crimes per 100,000 population, those crimes could be committed, say, by 5,000 criminals per 100,000 population, each of whom commits one crime a year. Or, it could be committed by 50 criminals per 100,000 population, each of whom commits 100 crimes a year. Those two situations are, of course, very different, but they are indistinguishable if all we know is the UCR number of 5,000 crimes per 100,000. If we have 100 jail cells, then we might reasonably deal with the crime problem by incarcerating the 50 criminals, each of whom would take 100 crimes per year off the street with him. On the other hand, if we were trying to deal with the crimes committed by the 5,000 people, then we could not make a dent in the problem with our 100 jail cells. Obviously, the true cases are nowhere as simplistic as these, but my examples highlight the importance of addressing these distinctions.

It is then important to know what affects participation rate and what affects individual frequency. If the factors that affect participation are different from those that affect frequency, then both groups could show up in the correlates of crime. Thus, correlates of crime could be misleading as a guide to decisions made within the criminal justice system. To a large degree, the criminal justice system cannot easily influence factors that affect who becomes a criminal or who does not, but it does, however, have much to say about what you do with the individual offenders. Thus, the criminal justice system is particularly interested in isolating those factors that lead to high frequency (the relatively more serious criminals) compared to those that lead to low frequency (the relatively less serious criminals).

Why do we want to know this? First, we know that crime is committed by individuals, even when they function in groups, and the criminal justice system makes decisions about individuals. We know that a criminal career is a longitudinal process that starts at some point — and that may be at a very young age — and then evolves in some, still only defined, way. Eventually, for everybody, the career terminates. This may be only at death, but in the great majority of cases it is well before death.

Career Criminals and Criminal Careers

It is important not to confuse a criminal career with a "career criminal". The criminal career can be linked to a job career, but does not require that the individuals earn a living that way. One can have mating careers, marital careers, educational careers and so on. The "career criminal" is one whose criminal career is particularly severe, primarily

because it extends over a long duration, but also because the annual frequency of offending is high. These are the people of deepest concern to the criminal justice system.

One primary characteristic of a criminal career is the individual offending frequency, that is, the number of crimes committed in a year by an active offender. This is designated by the Greek letter lambda (λ). When we deal with sanction policy, particularly sanction policy regarding incapacitation, we particularly want to know something about the nature of criminal careers and the individual's offending frequency. And we would prefer to have an individual with a high value of λ in prison compared to a person with a low λ, all else being equal. For example, if an individual offender is committing 10 crimes a year, and if he is sentenced to two years in prison, then that provides an opportunity to avert 20 crimes. There are a few ifs, however, that we have to take into account. First, there is the concern that, if this individual were removed from the street, then the crimes would leave the street with him. We are quite confident that this will *not* occur for drug sales. We are quite confident that if we take a drug seller off the street, another drug seller will be ready to fill the market demand almost immediately. Thus, incarcerating drug sellers will not achieve incapacitative effects. On the other hand, it is very likely to be true for the pathological rapist who carries his crimes with him. If we take *him* off the street (unless he is part of a gang that is engaging in this as part of a gang activity), the chances are very good that we would avert those 20 crimes, provided, of course, that the career would last the duration of that two-year sentence.

We know that careers do terminate. A very long sentence that puts an offender away for longer than his career would last is not very useful in incapacitative terms. It might be desirable for retribution, it might be useful as a deterrent, but it will not be very useful in terms of averting crimes through incapacitation. The time in prison after the career ends is wasted from the viewpoint of incapacitation. Of course, this also ignores any post-release effect of prison, and prison might well serve to increase or reduce post-release criminality. The rehabilitation research, however, probably suggests that, on the average, there is not much effect one way or another.

Recidivism and Criminal Careers

We are all familiar with the issue of recidivism, and so I would like to link the notions of recidivism with some of the concepts of criminal careers. There will be no recidivism if the career terminates. Also, if the individual's offending frequency is very low, then there could be no recidivism during any observation period — it would be too long before the individual offender commits his next crime. Or, if the observation period during which one is observing the recidivism is very short, again, no recidivist event will occur. Recidivism, like aggregate crime rate, bundles together these different aspects of a criminal career; the criminal career approach provides the opportunity to sort them out more carefully.

The most striking aspect of criminal careers that we want to deal with explicitly is the enormous diversity one sees in the values of individual offending frequency or λ. A Rand Corporation prisoner survey that was conducted a few years ago reported these results.[1] For example, the data show that half of the imprisoned people who committed burglary indicated that they committed fewer than four burglaries a year, but the worst 10 percent said they committed more than 158 burglaries a year. This is an enormous range, with a large number of individuals doing relatively few things, and a small number accounting for a large amount of crime. A very similar pattern occurred with people who committed robberies. Half of them said they committed three or fewer robberies, *but* 10 percent said they committed more than 37 robberies. The enormous variability — many people committing very few crimes and a very small number of people committing many crimes — raises that very important question of whether we can distinguish these high-rate offenders from the low-rate offenders. If we could reliably identify the relatively few 10 percent

[1] J. M. Chaiken and M. R. Chaiken, *Varieties of Criminal Behavior*. Report to the National Institute of Justice (Santa Monica, CA: Rand Corporation, 1982).

who do the most harm, it would be desirable because those are the ones whom the criminal justice system would most like to be able to remove from the street.

A Question of Selectivity

Obviously, this question is relevant to the question of selectivity. It raises some ethical issues over the legitimacy of trying to distinguish high-frequency offenders from low-frequency offenders. Many judges have no ethical problem with this — they report that they indeed look for indications of high-rate offenders. The ethical questions relate to when this distinction should be pursued, what variables should or should not be used to make the distinctions, what cut-point of "high λ" should be used, and what rate of error — both false positives as well as false negatives — can be tolerated. These questions relate to decisions about imprisoning people who have been convicted of a serious offense, and are otherwise legitimate candidates for prison.

Most of our traditional criminological knowledge — correlates of crime — relate to factors associated with participation in crime, but do not tell us very much about individual frequency of offenders. We are all familiar with the very strong age affect in arrest rates. We know that a very sharp peak occurs, particularly for robbery and property crimes. For robbery, there is a sharp peak of offending at age 17 and a rapid decline. Twenty-three-year-olds get arrested at half the rate as 17-year-olds. The question then arises: How much of this peakedness is associated with changes in participation — entry at the early ages and termination of the career — compared to changes in frequency by active offenders, that is, committing crimes faster and faster (with higher and higher frequency) until age 17, and then slowing down after age 17? Most of the evidence suggests that for those criminals who are active, the rate at which they commit robberies does not change very much while they are active. Some are high-rate robbers, some are low-rate robbers, but the average rate among a robber is fairly stable over his career. That is not to say that the rate does not change at all, but those chances are fairly small compared to the enormous change with age in the aggregate rate. This suggests that the sharp "peakedness" is attributable to recruitment or initiation of careers as people move into their teens, and then termination of careers, with most of them stopping and relatively few hanging on into their late twenties.

The record, however, does contain information that can be useful to the adult system. ... It would be useful, at a bare minimum, to know something about the age of initiation, which does seem to be relevant to forecasting something about the offending frequency of the adult offender.

The Race Variable

Another variable I want to address is race. This is particularly interesting, and I think also important. Let us examine black/white arrest ratios for different kinds of crimes. For all Index crimes, the ratio is about 4 1/2-to-1, blacks versus whites. The ratio goes up to a factor of five for violent crimes and a factor of 10 for robbery. If we look at frequency, the difference between the races becomes much smaller, much closer to equivalent. This distinction can be thought of in terms of a filter between the general population and those who become involved or participate in crime. More blacks cross this filter to participate in crime than do whites. When we look at the offenders on the other side of the filter, they look much more similar in terms of the rate at which they commit crimes. We know there should be no racial discrimination. This information also tells us that discrimination on the basis of race is not useful. The criminal justice system is primarily concerned with those who are active offenders, and race seems to matter little across the active offender.

We still know very little about factors that affect individual offending frequency. Most of the things that we know about criminogenic factors, such as poor family structure or low income, seem to be linked to participation rate, but not to frequency of offending. An important exception is intensity of drug use. It has been shown that, for active offenders who

use drugs (almost all of whom have periods of high intensity with almost daily use and also periods of low intensity use of about once a week or less), the frequency with which they commit crimes varies by factors of as much as five to 10, with very high rates during the period of active drug involvement and relatively low rates during periods of nonactive drug involvement.

To the extent that decisionmakers in the system view drug use as a mitigating factor for retributive sentencing, they would argue in opposition to its use as an incapacitative consideration. If a judge believes only in sentencing an individual offender because of the individual's blameworthiness, then, because the intense drug abuser has diminished capacity, he can be viewed as less blameworthy than the individual who is not an intense drug user. On the other hand, the judge who is concerned with reducing crimes on the street ought to take into account the fact that if the individual before him is currently an intense drug user, then that would indicate that this offender is very likely committing crimes at a high rate. Therefore, that judge ought to use drug use as an aggravating factor. Obviously, this issue highlights some of the inherent philosophical conflicts in purposes that affect the sanction decisions that a particular judge uses with a particular convicted offender.

The other variable that I want to discuss is the age of initiation. People who start early and who stay active tend to have a higher frequency than those who start later. That is not to say that the frequency at the age of initiation is necessarily higher. Many people can start early and terminate their careers early. There is an indication from two major cohort studies — one in Philadelphia and one in London[2] — that highlights the fact that of those who stay active, the frequency of offending is higher for those who start early. This is an issue that is obviously relevant to questions of juvenile records because juvenile records provide a basis for knowing, among adult offenders, those who were active juvenile offenders, and when they started offending as juveniles.

Implications for the Juvenile System

Let me say a word, then, about what some of this discussion might imply about juvenile records. Clearly, the restrictions we have for juvenile records are there to protect children. That protection is an important value that I think is widespread and appropriate in society. We particularly want to protect children who are involved in some juvenile escapade, who get it out of their system, and then do not continue in a criminal career beyond that period.

That protection is enhanced because juvenile records in their current configuration are difficult to use. They tend to be located in a different place than the adult records. The protection is also needed because they will often contain sensitive information obtained from teachers or counselors, and that raises questions about the appropriateness of that information being transferred into the adult system. Juvenile records also have the ambiguity of identity because fingerprints are rarely used in the juvenile system. They tend not to be machine-readable in adult systems that are increasingly machine-readable. Those of you who have looked at juvenile records will know that the notations are often ambiguous: a notation of "delinquency" refers to a broad, generic category rather than a particular one.

The record, however, does contain information that can be useful to the adult system. This is particularly the case for the young adult, the 18-year-old who may have no juvenile record. (Indeed, 40 percent of adults who are arrested have no juvenile records.) It could be useful at that point for distinguishing the individual with an extensive record from the individual with a clean record, and this could involve an issue of fairness to the 18-year-old who is before an adult judge. The adult judge does not presume that the absence of a juvenile record means that there is truly no record. If records are withheld, the judge seeing an 18-year-old is uncertain whether that 18-year-old is clean or has an extensive record. Judges presumably make their own guesses or their own inferences about the nature of the individual's prior record as they think about what sanction to apply to that offender. If they make those inferences, it would be useful, on the average, to provide prior record information to reduce the mistaken inferences. It would be useful, at a bare minimum, to know

[2] M. Wolfgang, R. Figlio and T. Sellin, *Delinquency in a Birth Cohort* (Chicago: University of Chicago Press, 1972) and D. P. Farrington and D.J. West, *Who Becomes Delinquent?* (London: Heinemann, 1973).

something about the age of initiation, which does seem to be relevant to forecasting something about the offending frequency of the adult offender. Those who have been in their careers longer, who started earlier, are more likely to have a higher frequency.

It would certainly be useful information, because aside from the current offense, the second most important variable in dictating sentences in the adult system is the prior record. Certainly one should not ignore the continuity between what happened at age 17 years, 11 months and the case now before the judge that occurred at age 18 years, one month.

Recommendations

We face a clear tension between bringing juvenile records into the adult system, and what we can do to appropriately protect children who stay clean.

First, it seems to make sense that for those juvenile offenders who are accused of a serious crime, fingerprinting should be considered to avoid ambiguous identification.

Second, it makes sense to maintain a separate repository for juvenile records to keep from contaminating or disclosing the records of children who do go straight as adults.

Third, it seems to make sense that the adult system have limited access to the juvenile record. This was an issue that was wrestled with by a panel on research on criminal careers at the National Academy of Sciences that a number of today's speakers — Judge Walton, Professor Wolfgang and I — were involved with a few years ago.[3] The group recommended that the adult system should have access to the juvenile record at the first serious adult involvement. We recognized also that different jurisdictions will want to set different thresholds of what we mean by "serious adult involvement." There ought to be some threshold of crime, and, for example, the first adult felony might well be the appropriate one. Different jurisdictions might set different thresholds on the kinds of crime when that access occurs.

A second threshold that has to be considered is how far into the criminal justice system the individual ought to penetrate before that access is provided. I think there is widespread agreement that access ought to be provided upon conviction because the judge ought to have that information to decide on sanctions. On the other hand, because conviction in trial is relatively rare, and most convictions result from plea bargains, the prosecutor ought to have that information to provide some guidance in plea bargain negotiations. In that event, if the record is provided but the defendant is then not convicted, we concluded that the record should *not* be appended to the adult record. If the defendant is convicted, however, then the juvenile record should be appended to the adult record. The individual now does have a significant adult record and the appropriateness of protecting the child is no longer a relevant consideration for this person who is now designated as a serious adult offender.

Using Records for Research Purposes

Regardless of how the system chooses to use the juvenile record for operational decisions, the information should certainly be used for research purposes. It is amazing how fragmented is our knowledge about criminal careers, particularly our knowledge about the evolution of criminal careers and the transition between the juvenile and the adult periods. We have many studies of the juvenile period until age 18. We have studies drawn from official records from age 18 on up, but the linkage is very difficult to establish. We ought to find ways to connect these juvenile and adult records so that they can at least, in a continuing way, be useful as a vehicle for research. Thus, however isolated we keep the juvenile repository from the adult criminal justice system, we should make the linked records available in anonymous form for research on criminal careers.

[3] The official report of the National Academy of Sciences' Panel on Research on Criminal Careers has been published. See A. Blumstein, J. Cohen, J. Roth and C. Visher, eds., *Criminal Careers and "Career Criminals,"* vol.1-2 (Washington, D.C.: National Academy Press, 1986).

The Impact of a Merged Record on the Mission of the Court

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When I accepted the invitation to speak at this conference, I began to talk with a variety of people to get their feelings and comments about having one system and one record. I talked with persons who are outside of the justice system — professionals, plain ordinary people, and parents and friends of juveniles who were reported to and referred to the juvenile justice system. I talked also to persons who are working in the juvenile justice system — the probation officers, court services workers, public defenders and prosecutors who represent children and families, and persons who had come through the system as offenders. I even talked to children who are presently within the system to see just what they thought about this one record, one system concept. These children cannot verbalize or articulate as we can, but they would say to me, "Well, it ain't right, I wouldn't like to see that happen." I discussed the subject with many of my colleagues: judges who preside over the juvenile courts of our country, and I talked with persons who are advisors to judges of the National Council of Juvenile and Family Court Judges, including psychologists, psychiatrists, community workers and business people, to see what advice they would give us about the one record, one system concept. At one point, the remark was made that I was coming to a conference where the deck was already stacked in favor of the one record concept. As this was said, I thought to myself and I pondered that certainly this could not be true.

I hope that those of you who came to this conference with bills already written and prepared to present to the United States Congress or to your various legislatures, that you really have not completely made up your mind that one record is the way in which we should go. Perhaps you have come here with the votes necessary to have legislation passed. Again, I hope this is not so, and I hope that you will listen to my comments with an open mind so that when you make a determination about the one record, one system concept, you will do so with all of the facts as they are presented at this conference.

My presentation provides a view from the juvenile court standpoint and discusses the impact merged records may have on the mission of the juvenile court. The age jurisdiction of juvenile courts in this country ranges from birth to age 15 in three states, from birth to age 16 in eight states, from birth to age 17 in 38 states and the District of Columbia, and 18 years in one state. The jurisdiction of the court extends not only to delinquent acts — acts which would be crimes if committed by adults — but also to unruly or ungovernable behavior referred to as "status offenses." The juvenile court has jurisdiction over status offenders, that is, children who use alcohol or who are truant, who are disobedient to the rules of their parents, guardians or custodians. The court's jurisdiction also extends to children who are abused, deprived, neglected or abandoned by their parents, guardians or custodians. I assume that when we discuss and deliberate on the one system, one record concept, that the intent is to combine juvenile *delinquent* records with adult criminal history records, rather than include with adult records all of the records over which the juvenile court exercises jurisdiction.

If you recall the history and development of the juvenile justice system in our country, in early times there was only one system and one record. Children who engaged in criminal conduct or behavior were treated as adults. They were detained and locked up as adults, they received sanctions as adults, and they were shipped off and required to do hard labor as adults. It was strictly a punitive system. Very little, if any, effort was made to educate, direct or teach the child that this behavior was unacceptable.

Creation of a Juvenile Justice System

Social scientists then began to demonstrate how behavior in human beings progressed. The human mind did not remain the same through all stages of development. Society began to realize this fact and that the *mens rea* of the child was not the same as an adult's. Children were not hardened criminals with criminal minds forming criminal intentions to behave in a criminal manner. It was realized that

childrens' minds could be developed to reject criminal intent and criminal and antisocial behavior, that children could be taught to change, were amenable to change and could change if given an opportunity to do so. It was also realized that the family of a child should be involved in the maturation process and development of the child. Based on these beliefs and premises, a separate, *juvenile* justice system was created. The beliefs and premises which created the juvenile system are true and viable today, and are still the principles and premises upon which the juvenile justice system operates and exists.

In examining the state statutes which created juvenile courts of our country, we see that the state legislatures mandated the mission and purpose of the juvenile court. The mandate, as set out in the statutes, says that the juvenile should not be treated as a criminal but as a misdirected and misguided individual in need of aid, encouragement, assistance and counselling and that such assistance should preferably be provided in his or her home. Care, guidance and control that is conducive to the child's welfare and well being, as well as to the best interests of the state, should also be provided. The mandate further asserted that a child whose well being is threatened should be assisted, protected and restored, if possible, to become a secure law-abiding member of society. This means that when the child has to be removed from the control of his or her parents, that the court should secure for him or her such care as nearly possible equivalent to that which the parents should have given to him or her.

In analyzing state statutes, the language and phrases which I have just stated appear in almost all of them. I suppose that the legislators not only sought the advice of social scientists and psychologists in creating the particular mandate and mission of the juvenile court, but that they also consulted with their constituents whom they represented in Congress as well as the various state legislatures. I imagine also that Biblical principle and doctrine — to train a child in the way he should go and when he is old he would not depart from it — was also a motivating factor which caused the legislators to create the juvenile justice system with such a mandate.

The juvenile justice system's goal is to use their records to rehabilitate, treat, supervise, protect and change children .... One record, one system, then, in my opinion, will destroy this mandate ....

The Beijing Rules, the United Nations standard, minimum rules for the administration of justice, have also stated the mission of the juvenile justice system. These general principles proclaim that member states shall seek, in conformity with their respective general interests, to further the well-being of the juvenile in his or her family. Member states shall endeavor to develop conditions that will ensure for the juvenile a meaningful life in the community, during that period in life when he or she is most susceptible to deviant behavior. Also, member states will foster a process of personal development and education that is as free from crime and delinquency as possible. In defining a juvenile, these Beijing Rules define the juvenile as a child or young person who, under their respective legal system, may be dealt with for an offense in a manner which is different from an adult.

Adult vs. Juvenile Records

The adult criminal justice system has as its mission punishment, retribution and the payment of debt back to society for having committed a crime. It basically rejects rehabilitation or changes in an individual. The criminal laws of most states specify the age of criminal responsibility. This age is also used as that age when criminal intent is considered as capable of being formed. This age of criminal intent/responsibility is basically between 13 and 14, with some states providing that there is a rebuttable presumption that the age of criminal responsibility could be lowered to 10.

Criminal history records are generally used by law enforcement officers and agencies for investigating and apprehending criminals, both intrastate and interstate; for determining operational and administrative needs of law enforcement agencies and correctional institutions; for providing general information to the

public; and for conducting statistical research and data collection. They are also used to investigate employment histories for sensitive or security types of jobs and professions. Records are also used by the courts for sentencing, and by prosecutors for career criminal determination, prosecution and selective incapacitation considerations. Prosecutors may use criminal history records to help them decide whether to prosecute a person or make a case against that person.

The information contained in adult criminal history records basically concerns the individual who is arrested. Information such as the name and address of a spouse or parents might be included to assist law enforcement officers in locating or tracing the arrestee.

In contrast, juvenile history records and data sheets include information on the entire family. This is in keeping with the legislative mandate to keep families together and to work with children and families in their own homes. In addition to exhaustive information on the child, information about the mother, the father, their work or business is included in these records. Any kind of contact between a social agency and the family is included. The names, ages, dates of birth and addresses of siblings — those in the home as well as those outside of the home, young persons as well as adults, those who married and those who are single — are generally included in the juvenile history record. Oftentimes included in these records are the names and addresses of grandparents, aunts and uncles and perhaps something about their homes. Information about the income of the family, and the educational level and religious affiliations of the child and the immediate family are included. The juvenile social history record is even more detailed and more exhaustive about the history of a child and the family.

The reason for such detail is so that the family can be kept together and can be worked with to maintain the family structure while rehabilitation is taking place. The goals of the juvenile justice system, while holding the child accountable for the delinquent acts, are different from the goals of the adult system. The juvenile justice systems' goals are to use their records to rehabilitate, treat, supervise, protect and change children, their behavior and their lives, and to develop programs and resources for meeting these needs. One record, one system then, in my opinion, will destroy this mandate of the juvenile justice system.

Destroying Rehabilitation

First, the system would destroy it because it would have the effect of destroying the ability to rehabilitate children who have made an error in judgment by making it impossible to develop resources to work with these children. To have one record, one system, the public will perceive children as criminals and equate them as adult criminals committing crimes in the community. This will have the effect of decreasing, if not eliminating, funds which would be available to develop programs and resources to rehabilitate children. Money that generally is appropriated or used in the adult system is rarely used for this particular purpose. It is used to build bigger and larger jails and prisons. Rarely do you hear about the money being used for programs for rehabilitation.

Many children engage in conduct without actually knowing or realizing that their behavior is criminal. In neighborhoods you see toilet paper thrown all over the yard. You find mail boxes knocked down. Youths go out and shoplift for the purpose of getting into a prestigious organization of which they feel they want to be a part. They go joy riding (unknowingly) in cars which have been stolen because their friends say, "Let's go down to the corner and get a hamburger" or "Let's go to the movies"; or they fight with a child because he looked at another in the wrong way or did not like what was said; or they carry a gun or some other kind of weapon just to be the big person on the block or in the neighborhood (oftentimes not using the weapon, but just having it for that particular purpose); or they may go into somebody's yard and take an item out of the yard, and they just want to experiment with it to see how it works; or they may take some fruit off of a tree because it is there. Their behavior may be impartially done, or done on a dare or a threat, or because

somebody else is doing it, or for a thrill, or out of ignorance. Oftentimes, when the courts ask why it was done, the answer is, "I don't know, I really had no reason for doing it."

In most of these cases there is no predetermined design, no predetermined plot, no predetermined plan which is calculated by the child as it is with adults. There is no *mens rea* to behave criminally. Some children get involved with the criminal justice system because this is the only way they know how to cry out for help. They are children who are living in deplorable situations in their homes, who live with alcoholic or drug-addicted parents, who are physically, mentally and sexually abused, who are having problems in school. This is one way of crying out and saying, "Look at me; I need some help. I don't know what it is that I need, but I'm not functioning like I should; I'm not functioning like my teachers want me to, and I need help." They cannot articulate and say, "This is wrong with me; my parents are abusing me." In some instances, they do not want to give this information, but it is a cry for help. I dare say if you would reflect back on your early life, you may have had an escapade or tried antics similar to the ones I have mentioned. Maybe you were not arrested, but these same acts done by children today end in arrest and referral to the court.

Creating An Unfair System

Second, one record would create an unfair and discriminatory system for minority youth. Included in this definition of minority youth are Blacks, Hispanics and the poor white child. According to the Department of Justice's statistics, in 1984 law enforcement officers were responsible for 75 percent of referrals to the juvenile justice system. Law enforcement officers now have great powers in deciding whom they will or will not arrest. There are very few, if any, known and printed and enforceable guidelines on how or when such discretion and determination is made or exercised. Presently, the discretion of law enforcement officers to arrest a minority child is exercised more often than the discretion of arresting a white child. The law enforcement officer is very careful and deliberate not to give a white child a record. With one record, one system, where the records will be merged, discretion to arrest a white child will be even less than it is now.

Merchants and citizens are constantly complaining about the juvenile criminal behavior in their communities and in their neighborhoods where predominantly white and affluent families live. Still there are very, very few referrals from these communities for delinquent behavior. This selective arrest power of law enforcement officers carries with it an erroneous belief and a perceived notion that only the black child, only the minority child, is committing a crime, while the white children are delinquent-free. Yet referrals in the same areas for traffic violators and traffic offenses are very high.

In any event, law enforcement officers are careful not to arrest a white child, although they know that the juvenile justice records are secure, private, confidential and can be sealed. This is fundamentally unfair to all minority children. The minority juvenile in a merged record system, considering the current use of criminal history records — open to the public and following persons for the rest of their lives — would never get an opportunity to develop any kind of life or to develop or learn any kind of skills or training. As in the adult system, the ability to become a law-abiding citizen is almost nil once you commit a crime.

I am sure you have observed the change of attitude toward adult ex-offenders when they apply for employment, job training, housing or a loan. Doors are closed and few offenders are capable of opening those doors. Thus, you have the revolving criminals in the adult system. Contrast that with the current attitude toward juvenile ex-offenders seeking employment or training, which is to give them a chance and help them grow into law-abiding citizens.

Chronic Offenders

Third, the serious or chronic juvenile offender is, for the most part, already in the adult system, through transfer, bind over or waiver procedures. In many instances, state legislatures have provided that the adult system be the jurisdiction of first resort for certain ages and offenses

committed by juveniles. If this is your targeted group, you already have the information you are seeking in this one record, one system — for sentencing purposes, for selective incapacitation, or for prosecution as a career criminal — you receive this information from the juvenile justice system as part of a pre-sentence investigation in the adult system.

In the FBI's 1984 report, *Crime in the United States*,[1] statistics show that there were 1,304,000 cases referred to the juvenile justice system, or 17.2 percent of all arrests for that year. Of this number of juveniles, 4.7 percent, or 61,400 cases, were for index violent offenses; 34 percent, or 442,400, were for index property offenses; 529,000, or 40.6 percent, were for non-index offenses; and 270,500, or 20.7 percent, were for status offenses. The adults during this same year accounted for 82.8 percent of all arrests made in the country, or 7,384,020. I give the numbers along with the percentages because a lot of times you listen to percentages and if they are very high, you look at the figures and they put into perspective the actual numbers of people or numbers of offenses.

Of the total number of index violent and index property crimes committed by juveniles, 8 percent, or 9,432 cases, were referred to the adult criminal justice system. This may not mean many children, but it does mean many cases, simply because the child may be transferred to the adult system for having committed multiple offenses. Again, if this is your targeted group of juveniles whom you are seeking to include in the adult process with all of its ramifications and uses, you already have this child in your system. I think that the juvenile justice system concedes, when it transfers over to the adult system, that there is not much it can do with this child, and perhaps punishment and what the adult criminal justice system provides is what is needed for that child. I see no reason for involving the other 1,294,568 juveniles in the adult system.

Privacy Concerns

Fourth, information about family and family members should never be made public or open to the public. You may say, "Well, delete this information that you have on family and family members, we don't need that anyway. All we want in our one system is the record of convictions, maybe arrests without convictions, so just delete all that other social stuff and let's get on to the one system." I would submit to you that to delete this information, or to require that it goes into some other data collecting system, would defeat the mission of the court. It would increase the system's workload and it would be economically prohibitive.

The adult recordkeeping system has not solved many of the problems that are inherent in the system: data quality, data control, security, privacy and confidentiality. We know that information about some family members, if known, could destroy that person, could destroy their lives. Imagine a police officer whose daughter or son is referred to the court for shoplifting, what would this mean to that officer on his or her job; or suppose there is a very high government official or a corporate executive whose child is referred to the system. Can you imagine what revealing that information would do to that person or that family? Imagine also what it does to a poor working mother who is seeking to instill honesty and integrity in her child or children, or to that mother in the ghetto who tries very hard and is successful in keeping her child away from the undesirable elements in that community and in that neighborhood. Can you imagine what the one record, one system could do to destroy that family?

I am reminded, when I talk about this, of several years ago when the mayor of our city was running for re-election, and it became public knowledge that his brother was involved in some criminal activities in Florida. This was an adult with an adult record in Florida who did not live with this mayor, and had not lived with him for a number of years. The mere knowledge of this information, however, was one of the factors in defeating this candidate. Family members should have their security, privacy and confidentiality safeguarded and not exposed for public information. Yet this information should be made available in the juvenile justice system to assist in rehabilitation and treatment.

Effectiveness of Juvenile Justice

Fifth, it has not been shown by any data that the juvenile justice system is totally ineffective and does not work, and therefore the records should be

[1] U.S., Department of Justice, Federal Bureau of Investigation, *Crime in the United States* (Washington, D.C.: U.S. Government Printing Office, 1984). See Tables 32, 35, 36 and 37.

merged so as to provide whatever is needed in the system. To measure the effectiveness of the juvenile justice system is to determine how many children from the juvenile justice system end up in the adult system. There is no statistical data to show that there is a large percentage of adult offenders who were in the juvenile justice system. What logic is there then to saddle the majority of persons who are in the juvenile justice system, who never end up in the adult criminal justice system, with adult-type records when they are not ever going to be in the adult system? Is this end justifiable?

Sixth, adult criminal records are more socially disabling than juvenile records. It has not been proven that the adult criminal record system is the best method to handle crimes in our country. The keeping and sharing of the criminal history record all over the country and opening these records almost to everyone has not deterred the commission of crimes nor the reduction or elimination of crimes. Of course, you know it carries with it a lot of social implications in regard to holding public office and applying for and holding certain kinds of jobs. The adult recordkeeping process perpetuates crime, in my opinion. Even though the individual arrested is tried and convicted and pays his debt to society, that criminal history record is maintained, and that individual pays and pays and continues to pay, and society seldom lets that person get off that merry-go-round.

Making The System Work

The juvenile justice system has demonstrated limited success with meager limited resources, resources which have been provided by the community for work within the system. It has shown that it *can* rehabilitate children and *can* be effective in reducing crime. Almost with one voice in our country, there is the acknowledgment that our children are our most valuable and greatest asset. One record, one system destroys the possibility of that greatest and most valuable asset from growing, developing and expanding into productive, law-abiding citizens of society. The general public is demanding safe streets and safe communities; they are requiring that the criminal justice community develop ways and means of eliminating crime, not perpetuating crime. The public is asking that some method or technique or procedure be implemented to eliminate the threat and fear of becoming a victim of crime. One record, one system, in my opinion, does not provide an answer to these demands. It does not and is not designed to address the reasons or causes for the commission of crime (i.e., racism, drugs, the lack of adequate housing, employment, education, affordable and wholesome recreation, and quality health delivery systems).

The juvenile justice system, by its mission, must address these issues and must find solutions to eliminate as many of these problems for an individual child and for an individual family as the community provides resources for us to do. Our recordkeeping process, with its security, privacy and confidentiality of records and its sealing and purging provisions, encourages rehabilitation of the child. It provides the motivation for a family to assist in the rehabilitative process so that child's criminal behavior and activities can be eliminated. I submit that with expanded resources and a separate juvenile record system from the adult criminal history record system, the legislatively-mandated mission of the juvenile justice system can be accomplished, and we can continue to work toward restoring children as law-abiding citizens in our society.

Utilization of Juvenile Records in Adult Criminal Proceedings — a Judge's Perspective

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The question as to whether there should be greater utilization of juvenile records in adult criminal proceedings requires a balancing: a balancing of the need to protect an individual from the use of information acquired during the person's tender years, against the need for such records and information in the adult process.[1] While abuses can occur, it cannot be seriously suggested that juvenile records might not be a valuable tool to decisionmakers in adult proceedings. Often such records provide a thorough indication of the reasons a person has experienced difficulty conforming his or her conduct to the laws of our society. Moreover, a history of juvenile involvement and the steps, if any, taken to address the individual's problems may be a good indicator of his or her present dangerousness and receptivity to supervision or treatment. For these reasons, greater utilization of juvenile records is warranted,[2] so long as measures have been taken to guard against abuses.

In a society that has been experiencing an increasing crime rate, spurred to a large degree by an incredible jump in the use of illegal drugs, the potential of becoming a crime victim has become the number one concern of most Americans. Many of the crimes committed today are perpetrated by juveniles or young adults with lengthy juvenile records. To the crime victim, and society as a whole, it matters not whether the offender is 16 or 17, or has just turned 18 and, therefore, in the eyes of the law, is an adult. What is important is that a crime has been committed, an injury has been sustained and protection against further acts by the perpetrator are taken if and when the offender is apprehended. With this view in mind, we must look to how accessibility to juvenile records can have an impact on the decision-making process in adult criminal proceedings.

The Bail Decision

When a person has been identified as an offender and is brought before the court following an arrest, a judicial officer must assess whether the person is likely to reappear for future court proceedings and whether the person may pose a threat to the community if released. Often the detention or release decision is dictated by statute, but discretion nevertheless plays an important role in the decision. In exercising discretion on such an important issue, the judicial officer should have at his or her disposal as much information as possible to make an informed decision.

All too often, individuals on pretrial release perpetrate additional offenses. When that occurs, the individual victim and society often feel that the law has failed to provide the degree of protection which it should. Although no one can ever predict with absolute certainty whether an individual will commit another crime, to have authorized release when unavailable information in a juvenile record would have strongly suggested the potential for future criminality, is unacceptable. It cannot seriously be debated that the release decision is not affected by the criminal history of the person before the court. A first-time offender, regardless of the nature of the crime, is more likely to be released on bond than the multiple recidivist. This being a given, should not the judicial officer be aware of not only the adult record, but also the juvenile history? Aberrant behavior, whether committed at 17, when the person is still a juvenile, or 18 when the person becomes an adult,[3] is of equal value when assessing potential flight or dangerousness, especially when the prior event occurred within a

[1] This address is limited to the use of juvenile records in adult criminal proceedings.

[2] Throughout this address, use of the term "juvenile record" refers to actual adjudications of guilt. Because innocent people are often arrested, arrest records alone — absent several exceptions which will be addressed in the Trial section of this address — should not be used.

[3] In the District of Columbia, an offender does not automatically qualify as an adult until the age of 18. Individuals who are 15 through 17 can be certified as an adult by the Family Division of the District of Columbia Superior Court under certain circumstances.

reasonable period of time before the commission of the present offense. To make a distinction, considering the potential harm which can occur, is wholly unjustified in the minds of many people.

Judicial officers, strapped with the difficult responsibility of deciding whether an offender should be released or detained, must be put in the position to make the most informed decision possible. For this reason, juvenile records, like adult records, should be available to judicial officers required to make such decisions.

Sentencing

Although not the next step in the progression through the criminal justice system, sentencing will be addressed at this point because many of the considerations applicable to the bail decision are equally applicable to the sentencing decision.

Even more than the bail decision, the sentencing decision poses the most difficult decision a judge will ever have to make. Deciding whether a person should be placed on probation, and, if not, how much time he or she should spend in jail, is an awesome task. Even when armed with all available information about a person, the sentencing decision brings fear to the best of judges.

Judicial officers, strapped with the difficult responsibility of deciding whether an offender should be released or detained, must be put in the position to make the most informed decision possible.

Incarcerating someone who could be adequately supervised in the community, like placing someone on probation who then commits a serious offense, is a judge's greatest fear. The potential for error must be minimized, and one of the most effective means of doing so is to provide the judge with all available information about an individual's background. Sentencing a first-time rapist, murderer or child molester is quite different than sentencing an individual with a history of such offenses. No one would suggest that a judge should not be made aware that an individual who has been convicted of such an offense also has a prior adult record. This is especially true if the prior conviction was for the commission of a like offense. This being true, what difference should it make if a 25-year-old child molester was also convicted at the age of 15, 16 or 17 of molesting a substantially younger child,[4] as opposed to having been previously convicted of such an offense at the age of 18 or 20? Such information would be vitally important in assessing the potential for future criminal conduct and to deprive a sentencing judge of an individual's juvenile record, when such information exists, potentially places a risk on the community, which it should not be required to bear.

Sentencing, to be most effective from the overall community's perspective, is best accomplished when the decisionmaker, that is, the judge, knows as much information about the offender as possible. For this reason, juvenile records should be made available to the sentencing authority in all cases.

[4] This point is made because there is an obvious difference between a 17-year-old male who had sexual contact with a 15-year-old female, as opposed to a similarly-aged male who had sexual contact with a six-year-old child.

Use of Juvenile Records During the Trial

Inaccessibility to juvenile records can have constitutional or statutory implications. For example in *Davis v. Alaska*,[5] the United States Supreme Court ruled that the confrontation clause of the Sixth Amendment to the Constitution was paramount to the government's policy of protecting a juvenile witness against the disclosure of his or her juvenile record. Thus, the Supreme Court reversed Davis' conviction because he had been denied access to the juvenile witness' record which would have revealed that the witness was on probation at the time he allegedly witnessed the events he testified about and also at the time he presented his testimony. This information, the Court reasoned, might have adversely affected the witness' credibility: the witness' probationary status may have caused him to present favorable testimony for the government because of his "vulnerable status as a probationer . . . as well as [the witness'] possible concern that he might be a suspect in the investigation" for which the defendant was being prosecuted.[6] The District of Columbia Court of Appeals has ruled that the due process clause of the Fifth Amendment may require the disclosure of a juvenile adjudication, even if it merely relates to general credibility as opposed to suggesting bias.[7]

These court decisions clearly indicate that the constitutional rights of the accused may override the confidentiality interest of a juvenile. This conclusion makes good sense. In all courts in this country, an adult's prior convictions may appropriately be considered in assessing a witness' general credibility. Why should there be a different result merely because the witness is a juvenile or is an adult with a juvenile record? For example, if a witness has been convicted of perjury, this fact has serious implications as to whether the witness can be believed; therefore, this information should be presented to the fact-finder, irrespective of whether the witness is a government or defense witness. A trial being a quest for the truth, and considering the grave consequences to a defendant who is wrongfully convicted and the potential danger to the community if a guilty person goes free, the fact-finder must have the ability to accurately assess all witnesses' credibility. To deny access to juvenile records which might adversely impact on a witness' credibility undermines the effectiveness of the fact-finding process, which is one of the essential elements of our judicial system.

In conclusion, the rules of disclosure applicable to adult witnesses should be equally applicable to witnesses with juvenile records. The outcome of a trial should not be manipulated by the confidentiality of juvenile records. Justice for the parties before the court must override the rights of the witness with a juvenile record.

Protecting Access

Obviously, protective measures must be in place to avoid abuses. Therefore, when juvenile records are being sought, they should only be made available if authorized by a court order. Moreover, any request for the records should be placed under seal by the court and the judge should first satisfy himself or herself that producing the records is tantamount to the confidentiality interest applicable to juvenile records. In addition, even when disclosure is ordered, the party receiving the information should be instructed to use the records only for the purpose for which they were disclosed and sanctions for abuses should be imposed. Finally, after the proceedings have been completed, all records which were disclosed should be returned to the court and again placed under seal. With such protective measures, the potential for abuse is minimized and the rights of the parties involved in the litigation are not adversely affected by non-disclosure.

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[5] 415 U.S. 308 (1974).

[6] Id. at 318. See also *Pennsylvania v. Ritchie*, 480 U.S. ____, 107 S.Ct. 989 (1987). The case was remanded to the trial court with instructions to the judge to review the sexual assault victim's confidential files to see if they contained information that may have suggested the defendant's innocence.

[7] *Tabron v. United States*, 410 A.2d 209 (D.C. 1979).

The Public Policy Considerations of a Merged Record

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I found the afternoon's presentations so interesting that I have set aside the official presentation I was going to make. Instead, I would like to take this opportunity to see if I could define the areas of agreement and disagreement that we have heard among the speakers.

From what we have heard from the speakers so far, it seems to me the following things could be said. First, it seems that none of the speakers believe that there should be "one record, one system." Everybody sees that the distinctions between the adult court and the juvenile court are sufficiently great, their data gathering requirements sufficiently different, and their style of operating sufficiently diverse, that the idea of merging these systems and having only one record commands no support. What everybody has been arguing about is exactly what kind of information the adult system might be able to claim from the juvenile court system. They are interested in both the justice and efficacy of claiming that information from the juvenile system.

It also seemed to me that Dr. Blumstein and Judge Walton agreed with each other. Their basic conclusion was that when someone appeared in the adult court, the adult court should have the benefit of juvenile justice records for deliberations as to sentencing. I think that they believe in this idea and tried to persuade the rest of us that that was a good idea, principally because they felt there were important crime control benefits that could be claimed from having that information available. There is a very large research base supporting this view; you have heard pieces of that today that indicate that it really does matter if we can identify the highest rate, most active, most dangerous offenders. It does turn out that records of prior criminal offenses are correlated with that. In the interest of both conserving prison capacity and accomplishing crime control benefits, therefore, both Judge Walton and Dr. Blumstein were persuaded that there were substantial benefits in the area of community protection to be garnered by having access to juvenile court records.

They also alluded to the fairness of making the records available. I take it they meant that it was fair to offenders who did not have a prior juvenile court record and who would benefit from that situation as distinguished from the offender who did have a record and who would therefore presumably have to pay some additional price. I think their notion of fairness is that somehow the relevance and weight of that prior record ought to count in the sentencing decisions in the adult court, and it would be as wrong to deprive the people without records of the benefit of their innocence as it would be to protect the people who did have a record from the additional liability that that would have created in the adult court.

Juvenile Record Access

It seems to me that there are a couple of additional points about why it would be both appropriate and fair for the adult court to have access to the juvenile record. Once a person has been convicted in adult court, one of the principal justifications for sealing the juvenile court record — that this person would go through life without the stigma of any criminal record or conviction — has already been lost. With the creation of an adult arrest record, whatever practical benefit we thought we were going to get by allowing a person who had committed youthful indiscretions to avoid being tarred with that label for the rest of his life, has been sacrificed.

The second point is more complicated. In many respects (and this I think is a question of fairness), if you have a person who has shown up in an adult court convicted of a serious offense — and I will restrict myself to serious offenses here — not only has he lost the benefit of having been given a second chance by sealing the prior court record, but he also raises in our minds doubts about our interpretations of his prior juvenile offenses. In other words, when a juvenile commits a crime, according to the prevailing notions of the juvenile justice system, we cannot be sure that there was an appropriate *mens rea* behind it — an intentionality to commit the offense. We are more likely to see it as the product of a variety of chance circumstances, provocations in the situation, encouragement by peers, a temporary moment of bravado and enthusiasm, all those things that come under the category of youthful indiscretions.

We are likely to see in the criminal act of a juvenile, then, no criminal intent and no indication as to bad motivations or character that portends badly for the future. The crime could have happened for lots of reasons other than the fact that the juvenile wanted to do it or has the sort of character that is going to keep him committing offenses in the future.

Past and Future Conduct

On the other hand, once a person has a cumulative record of offenses — the idea that this person is like everybody else in terms of his enthusiasm for guarding other people's lives and properties, and he was just unlucky enough to find himself in six different circumstances that turned out to be provoking and difficult as opposed to the idea that there is something a little bit different about this child — one's views of that person change as a result of his showing up in court again. As Judge Walton suggested, when the offender had a second, third or fourth offense, the Judge began to think of that individual as a totally different person than somebody who had one offense. One way to think about it is that past conduct predicts future conduct. The other thing that you could see is that, in some sense, the past conduct is revealing something important about the intentions and character of the person before us. Not only does that make it easier to predict that crimes are going to be committed in the future, but it also makes us tend to see those crimes as products that the individual created and meant to create rather than as accidental things that happened to him. When the person shows up in an adult court, not only have you lost, as a practical matter, the benefits of guarding him against stigma, but also he has caused you, as the judge, or we, as the public viewing the judge's action and the judge acting on our behalf, to reconsider the question of whether the juvenile offenses that that person committed were really youthful indiscretions or whether they were early indicators of a person who was, to use Judge Walton's phrase, a "different kind of person," a person who was willing over a period of time to sustain his criminal activity even in the face of public action against it.

... [T]he proposal for "one record, one system" would make a hash of either one of the other systems, and perhaps both of them, because they are founded on different philosophies.

Judge Powell was much more reluctant and much more uncertain about the value of all this. I think her reluctance was based on her view of the special mission of the juvenile court. It is a view that I happen to share. I have recently written a book[1] trying to explicate the image of the juvenile court that she laid out, which is now treated as not only a failing idea but also an unjust idea, but is, in fact, both just and successful. Judge Powell's view of the mission of the juvenile court is a vision that requires a broader investigation of the causes of crimes and offenses, and the provision of a different remedy than simply jailing the offender. That naturally produces a lot more information in juvenile court files. It is also a mission that in her view requires confidentiality, not only to protect the child against stigma, but also to protect the interests of all the others about whom we gathered information in this search for both the cause and the remedy of criminality among the youth. There is a special need for confidentiality.

Balance of Interests

I think it is also important that there is a different balance of interests between the juvenile court and the adult court. Juvenile court is a little bit more hopeful about the prospects of rehabilitation than is the adult court, because juvenile courts think of the person's character as being less well formed. There is, therefore, a greater willingness to run risks with community security in the interests of achieving the benefits of rehabilitation. I think that different balance of interests is appropriate for people at different stages of life, but I think it also creates a certain amount of suspicion and anger between the adult court and the juvenile court. They have different value systems. When the issue is raised for a juvenile court judge, whether the juvenile judge would like the adult court system to have access to the juvenile court records, the instinctive reaction is,

[1] M. H. Moore, *From Children to Citizens*, vol. 1: *The Mandate for Juvenile Justice* (New York, Springer-Verlag, 1987).

"No, those guys cannot be trusted with them." If you ask an adult court judge whether it would be appropriate to handle an adult case in the juvenile justice system, the judge would say, "No, they cannot be trusted with that case because they have got the wrong set of values and are prepared to run too high a risk with community security on behalf of individual rehabilitation."

I think that there is a cultural divide that makes it hard for juvenile court judges to imagine surrendering any of their information or, for that matter, their charges, to the adult criminal court. I think the core of Judge Powell's argument was essentially that she regarded the potential intrusion of the claims of the adult court as potentially damaging to the relationships and processes within the juvenile court. That would clearly be true if the only things that the juvenile court were allowed to examine were the same things that the adult court could examine. It would clearly be true if the threat to confidentiality made it harder for the juvenile court to gather the information that it needed to make its findings and propose its remedies. Judge Powell is quite right in imagining that the proposal for "one record, one system" would make a hash of either one of the other systems, and perhaps both of them, because they are founded on such different philosophies.

Given this debate, let me propose a solution. I should tell you that this proposal about a solution was made in the context of a discussion that we were having at Harvard on the appropriateness and practical value of selective incapacitation as a policy. I should also tell you that this proposal was made by Lloyd Ohlin[2] — a person whose commitment to the juvenile justice system and protecting youth from the burdens of stigma is unquestioned. Basically the proposal was this: if a person committed a crime shortly after graduating from the juvenile justice system, that record of serious criminal offenses committed as a juvenile should be available to the adult court. It is a more limited proposal than the proposal that Dr. Blumstein and Judge Walton offered, and it is limited both because it is time limited — it was only offenses that happened shortly after the person graduated from the juvenile court that would trigger this response — and it is limited in that the only information made available to the adult court from the juvenile court would be the record of serious criminal offenses. The proposal is designed to protect the interest, and I think the appropriate interest, of the adult court in being able to distinguish high-rate, dangerous offenders, both for practical crime control benefits which Judge Walton emphasized, and for justice and retribution. It is fair to hold people accountable for a sustained period of offending — it is fair to them individually, as well as important and valuable to the community to do that. I think that the adult court should have access to juvenile records for the purpose of accomplishing those goals. At the same time, this proposal serves the interests of the juvenile court by protecting the opportunity for rehabilitation for those young offenders who seize the opportunity and, by seizing the opportunity, show that their juvenile crimes were mere indiscretions, not indicative of character for the future. My proposal is designed to serve the interests of both the adult court and the juvenile court while sacrificing the essence of neither.

[2] Lloyd E. Ohlin, Touroff-Glueck Professor of Criminal Justice, Emeritus, Law School, Harvard University.

The Operational Perspective: Examining Juvenile Systems and Using the Records

Maintaining and Using Juvenile Fingerprints

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The type of record that I am going to discuss has undergone a revolution in its use in the last few years. This is a kind of record that, beyond its application to individual cases, has an application to the safety of society. The type of record that I am talking about is benefitting society as a whole because it is doing what the police could never do before — actually *lowering* crime rates on specific types of offenses. This is revolutionary. Years ago, the adage was that the police really do nothing about crime because it is caused by socioeconomic factors. Now we have proven that assumption to be false; something can be done by automating a type of record that we have had for a long time but have been paralyzed in using — the fingerprint.

Positive Identification

The biological nature of fingerprints makes them unique. They are formed while the embryo is still in the womb, and they remain unchanged until decomposition after death. They are always positive identification. This is a form of nonscripted identification; that is, it is not a handwritten record, but a biologically-generated geometric figure, and, therefore, there is almost no way such a record can be forged. It cannot be perjurious. It cannot say it is one person when in fact it is another. A fingerprint exists in one of two forms: as an inked print in a database or as a latent print at a crime scene. Automated Fingerprint Identification Systems (AFIS) are computers that store and rapidly search both kinds of prints. I will briefly explain what AFIS does, and, conversely, what it does not do.

First, AFIS scans a fingerprint and reduces it to a digital image. The computer then goes through a series of steps to identify certain characteristics in the fingerprint, assigning them numbers and giving them a relationship to each other. The numbered characteristics (called minutiae) are joined point-to-point, resulting in a unique geometric figure which can easily be stored and searched.

When given an unknown fingerprint, the computer searches its geometric pattern against the database for another figure which is like it. It almost never finds one exactly the same because skin stretches and the geometric figure is always a little distorted. The computer provides a list of probables — fingerprints whose geometric patterns in the database most closely resemble the original — which must then be manually checked for identity by a fingerprint expert. The results of a fingerprint search do not include demographic information — only a criminal identification number (CID).

AFIS Benefits Society

What has AFIS done for society? It has taken the fingerprint record and turned it into an extremely productive investigative tool. In San Francisco, we used to make about 60 identifications of crime scene prints a year by manually searching fingerprint files. The day we turned on our AFIS — February 28, 1984 — fingerprint identifications shot up dramatically: as of December 1987, we had searched over 12,000 crime scene fingerprints resulting in 2,500 criminal identifications. This dramatic rise in identifications has been true in every agency that has installed an automated fingerprint system.

Ninety-three percent of San Francisco's identifications end up as convictions in court. A fingerprint is extremely good evidence because it cuts through conflicting stories and delivers the facts to both the defense and the prosecution right at the beginning. There are very rare instances when the fingerprint will not be the single most incriminating piece of evidence in the case.

Nationwide, 95 percent of the crime scenes that are processed for fingerprints are residential burglaries; therefore, we can truly measure the effect of AFIS by looking at a jurisdiction's residential burglary rate. Each burglar commits an average of 50 to 100 burglaries a year (conservatively speaking). If you put one of these burglars in prison, you have prevented 50 to 100 burglaries in the coming year. Since AFIS was put on-line, burglary in San Francisco has gone down 28.6 percent. This is the largest drop in a major crime category in any major city in the United States in the history of crime statistics. There has also been an overall decline in burglary over the last 10 years nationwide. For the first time in history, however, the burglary rate in San Francisco is below not only the state

average, but also the national average. It is the only major city in the United States that has accomplished that.

Inclusion of Juvenile Prints

Whose fingerprints are in the AFIS database will vary according to jurisdiction. In the AFIS database in San Francisco, we include all adult offenders and all juveniles arrested for felony-equivalent offenses or a second misdemeanor. We also have certain civilian (both juvenile and adult) prints in our files: applicants for certain city jobs, police officers, applicants for city permits, persons paroled to the city, and prints from outside agencies.

Most AFIS databases are similar to this. But some jurisdictions keep juvenile prints out of the AFIS database, which, in my mind, is a major catastrophe. Any exclusion of criminal fingerprints from such a file is counterproductive, not only to society but also to the interests of juvenile justice. Let me explain.

The setup of the automated criminal record system in the San Francisco Police Department is very similar to automated systems in most police departments across the country and in a lot of state agencies. The incident case or the report file, together with the criminal history, court management and administrative files, are usually shared by one computer system. There may be built-in barriers, such as limiting access to the court management file or to the juvenile files, but all of the records are still in one computer system. Therein lies the rub. If the records are in one computer system, they are accessible.

... [S]ome jurisdictions keep juvenile prints out of the AFIS database, which, in my mind, is a major catastrophe. Any exclusion of criminal fingerprints from such a file is counterproductive, not only to society but also to the interests of juvenile justice.

AFIS, however, is a separate computer. There is no link between AFIS and these other automated files. This is extremely important because the product of an AFIS search is only a CID number. To find out to whom that number belongs, you must go to the other system. Police can make a fingerprint search in an outside jurisdiction and hit on a juvenile print from another city, but they do not know to whom that print belongs. In order to find the person's name, they have to go to that jurisdiction and operate under their rules regarding the protection of juveniles or the dissemination of records. This becomes an extremely valuable safeguard for these kinds of records. The AFIS fingerprint records are extremely secure. Even computer hacks cannot get into them, and even if they could, all they could extract would be strings of mathematical data.

The identification of a fingerprint is based on scientific method. There are only two events that lead to an involuntary fingerprint search: custody or a crime scene. An AFIS search will lead only to a number, so unless these two events occur, nobody can get into the records, nobody can examine them, nobody can do anything to them.

Guaranteeing Accuracy

A unified AFIS database guarantees accuracy for the rest of the criminal justice record systems. (The ten print accuracy rate for AFIS is 99.9 percent, whereas the accuracy rate on a manual fingerprint search is about 60-70 percent.) An AFIS search is critical to invoking the protective measures of juvenile law at the earliest stages of the process. There are daily occurrences of juveniles being booked into the adult jail, having their fingerprints searched, and, when the AFIS search comes back, the juvenile record is discovered. The opposite is also true. Many adult offenders would rather go through the juvenile court than the adult court, so they claim they are younger than they are. (An AFIS search, however, quickly reveals their true identity and age.)

The fingerprint record is also secure and accurate because of the need to have expert interpretation.

The fingerprint expert is not caught up in the emotion of the arrest or investigation, and, therefore, his testimony tends to be more objective than those of the arresting or investigating officers. There is no such thing as an unreliable fingerprint. A fingerprint is either readable or it is not readable; it is clear or it is smudged; it is positive or it is not positive; and, therefore, these records are special.

Now, as never before, fingerprint records, because of automation, can contribute to the welfare of society like no other record. We should, therefore, have all arrestees, juveniles and adults, in an AFIS.

Conclusion

In closing, I would like to make three points. First when looking at the good of society, we have to also consider the good of the individual. In a juvenile system, identification must precede treatment. How can you treat a juvenile offender if you have not identified him or her in the first place? A fingerprint system does a good job of identifying offenders. When a person is arrested for the first time, the AFIS searches every unsolved crime that has occurred in your city or your state over the period of the statute of limitations. (That search takes about 40 seconds.) You, therefore, find out not only who the person is, but what additional offenses he may have committed in the past. This provides leverage. If you want to treat an offender, and you have this kind of leverage in the juvenile system, you are more apt to meet with success than if you have a single offense on a first arrest, which is almost no leverage at all. The state can do nothing to help an offender until he is identified.

Second, I have read a lot in the literature about restricting fingerprint data because of the stigma of fingerprinting. Certainly the arrest has a lot more stigma attached to it. Certainly being pulled out of school has a lot more stigma attached to it. Compared to the other records generated by an arrest, a fingerprint record is probably the most innocuous type of record you can have. A name is not even attached in an automated fingerprint file. I see a lot of states that hamstring the creation of their AFIS by disallowing juvenile prints. Sometimes state law prohibits it but most often it is an overly strict interpretation of the law or policy that prohibits including juvenile fingerprints in automated databases.

Third, fingerprint identification is the most objective and democratic type of criminal investigation in our society today. Examination by fingerprints is completely emotionally detached. In any criminal investigation, police will focus upon not one suspect, but usually on a group of possible suspects. For example, if a crime was committed by a gang member, the police investigation would typically intrude on the lives of a lot of individuals, all of whom, except one, may be innocent of that particular crime. A fingerprint, however, will lead right to the guilty individual, minimizing the number of negative police contacts. Fingerprints exonerate far more people than they incriminate.

In conclusion, the fingerprint is a special category of record. Automated fingerprint files can offer a way of protecting society while maintaining a fair and objective means of identifying criminals.

Thoughts on the Development of and Access to an Automated Juvenile History System

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My presentation addresses some of the technical problems that will be encountered when creating an information system that contains both juvenile and adult legal records. I will concentrate first on the development of an automated juvenile history system and then on the process and concerns in merging the juvenile information with corresponding adult criminal history records.

The techniques and procedures developed by the National Juvenile Court Data Archive to merge the case records of the nation's juvenile courts can serve as a model for constructing a more generic juvenile history system. I would like to tell you a little about the work of the Archive. Currently, more than 7 million automated case records are housed in the Archive. They are used to support research and policy studies at the federal, state and local level and serve as the base for the annual national report of juvenile court activity, titled *Juvenile Court Statistics*. Recent *Juvenile Court Statistics* reports have been based on a merged data file containing 500,000 case records from nearly 1,600 courts.

Disparate Records

Unlike the FBI's Uniform Crime Reporting program, which requests law enforcement agencies to submit summary data in a common format, we ask courts to send us their automated case records in whatever form they are collected. The court information systems differ widely in the logic and structure of their databases and the variables and codes they use to capture information. In addition, the responsibility of the courts differ across jurisdictions. In some jurisdictions, cases are initially screened by a prosecutor's office or some other executive branch agency and, consequently, the court only handles formal cases. In other jurisdictions the juvenile court controls its own intake and diversion programs. There are other structural differences among courts. Some courts process, track and adjudicate charges separately, even though they were referred at the same time and in many ways, handled as a unit. Others courts process, track and adjudicate cases. A case may contain several charges, but the adjudication decision and the disposition are assigned at the case level and, consequently, it is not always possible to determine the judicial finding on an individual charge.

The Archive takes these disparate records, which often reflect the differences in court structure and responsibility, and converts them to a common structure (a common unit of count, if you will) with shared variables and coding values. This is accomplished through individually designed conversion software which we have developed to transform each court's automated records into a common (a national) format.

There are two main advantages of our approach to national data collection. First, the data are generated by the court for its own use and, consequently, the people who enter and review the data have a personal stake in its accuracy. Second, the courts' support of the national data system is, at worst, a minor inconvenience; in essence, the courts simply send us copies of the data files they created to meet their own information needs. As a result of this approach, the Archive contains information from a large number of courts which is very detailed, timely and accurate.

It must be pointed out, however, that dependence on existing data has its costs. Because no set standard for juvenile court information systems has been adopted, some courts contribute more detailed information than others and, at times, the available data are incompatible across courts. For example, without a common approach to offense coding the data from some courts do not cleanly distinguish between forcible rape and other violent sexual assaults. These data, therefore, cannot be converted into some offense coding structures, such as the traditional FBI Uniform Crime Report offense categories. Dependence on existing data from information systems that have not incorporated a shared set of coding criteria does, at times, require us to compromise detail when we decide to compile data from the largest possible set of courts.

As you can see, in our work at the Archive we have faced many of the same problems that one would encounter in merging data across the different branches of the juvenile justice system: different counting procedures, different coding procedures, and different informational concerns. From this experience, I believe it is possible to construct a

juvenile history system — a system that merges juvenile records from a range of juvenile justice agencies and enables all parties to access this merged information. Such a system could record and monitor the activity on a juvenile arrest, know if the youth was referred to court, know if the case was still active and know if a disposition had been rendered. In other words, a complete accounting of the juvenile's interactions with the justice system.

The value of this approach can be seen when comparing it with the current adult criminal history system. The quality of the adult records stored in the current criminal history system is generally considered to be poor, some have even described it as abominable. The system contains only a portion of adult felony arrests. Even those records are often missing key information, most notably disposition information. A record often shows an arrest, but not whether the charge was dismissed or if it led to a conviction. This opens the system to misuse and opens the individual involved to unfair consequences and inappropriate prejudices. One reason the information is missing is because system actors are not obligated to provide their data to this external recordkeeping system. The system is redundant, running parallel to the primary information systems used daily by law enforcement agencies and the courts. As long as the local information needs are being met, it is very unlikely that staff will duplicate their efforts and enter the data into a secondary system.

I believe if a juvenile history system is to be established, its design must follow the approach we use to produce our national collection of juvenile court case records, that is, the secondary utilization of existing primary data — specifically, the data routinely collected by law enforcement agencies and juvenile courts (or their surrogates). A juvenile history system based on the secondary use of data permits law enforcement agencies and the courts to design, install and maintain their own information systems. This approach accepts the reality of federal, state and local funding patterns and turf conflicts. In addition, the design recognizes the reality that law enforcement and court personnel will not maintain an external reporting system with the same sense of ownership and the same care for accuracy that they have for their own primary recordkeeping system.

...[T]he considerations in merging juvenile and adult legal records are both technical and philosophical. The technical problems are easily addressed; the philosophical ones require us to take a careful look at why this nation has established a separate juvenile justice system.

Strategic Data-Planning

A juvenile history system that receives or extracts data from other information systems (police, juvenile court and possibly even corrections) requires the separate systems to have a common approach to identifying individuals, a compatible unit of count and consistent definitions of shared data elements. To achieve this goal, a first step in the development of a juvenile history system is strategic data-planning. There must be an agreement among the parties involved to design compatible information systems that use a commonly defined set of data elements and coding categories. With this in hand, the various information systems that feed the juvenile history system could go off on their own, designing and modifying their information systems to meet their individual needs, capturing all the detail they need, just as long as these feeder systems continue to be able to provide the agreed upon information in the agreed upon format to the master history system.

Let us take a look at some of the problems that the strategic data-planning group will encounter. First, how will the systems jointly identify individuals? Certainly, systems designed to monitor activity across a county and even across most states could identify a youth based on a combination of name, address and birth date. The Utah juvenile court system, for example, which serves a state of over 1.5 million people, has been successful tracking their youth based on this information. Some very large counties, large states and, certainly, a national system, however, would need a more definitive identification technique. Fingerprinting is the common answer, although many states

currently have some prohibitions against the fingerprinting of juveniles.

We have a separate juvenile justice system because our society has adopted the belief that the individual is not the same across all stages of development. All components of the juvenile justice system should be assumed to function in the child's best interest. Decisions about what the juvenile justice system should do should be based on what is best for the child.

From this point of view, I personally believe that the fingerprinting of juveniles for identification within and across the various components of the juvenile justice system is appropriate. With juvenile fingerprints, law enforcement and the courts would be able to maintain a complete record on each youth's interaction with the system and be able to positively determine a youth's current status within the system. Fingerprinting for use within the juvenile system is a useful tool for providing effective treatment.

With the individual positively identified, a second problem for the strategic data planners is the adoption of a compatible unit of count. The most straightforward example of this problem is the difference between a police arrest (or in the near future an incident, if and when the FBI's new incident-based reporting protocol is adopted) and a court referral. A court referral may be composed of more than one arrest, charges may be modified, and one charge from an arrest may be dismissed while another results in an adjudication with probation and restitution imposed.

It is a relatively simple task to read an arrest report and the related court documents and interpret the sequence of events, but to do this automatically requires carefully designed and linked computer records and extraction software that can accommodate the range of possible combinations. This can be done — we have written such software in our work in Pittsburgh. It requires, more than anything else, a detailed understanding of the data. We have, however, come across some data sets which, because of their structure and logic, resist linkage with other data sets. This is what systemwide data-planning would protect against. It is not a difficult task to merge data from different information systems to produce a composite record if the planning is done first; trying to combine pre-existing, incompatible systems will be much more difficult, if not impossible.

Standard Data Elements

A third, though related, issue addresses the content, not the structure, of the contributing systems. For example, to combine their records, the juvenile court's offense coding must be compatible with coding used by the police. Each must agree to use, for example, the state's criminal code (or a common translation of it) as a base for their offense coding. The same would be true for the other data elements or information items that would link the systems together.

To this issue, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is currently planning to support a program which will have, as one of its products, recommended data elements to be contained in a juvenile history system. The OJJDP Juvenile Justice Statistics and System Development Program is designed to produce a series of prototype information systems, and this juvenile history system is likely to be one of them. It is hoped that in the near future a recommended standard record structure will be available for all those serious about establishing a juvenile history system.

To summarize, by using an approach of automatically combining existing data from the various juvenile justice components, we could have a juvenile history system that captures a complete record of all arrests and a partial record of all on-going cases in the system. With the proper hardware and software, access to this information could be immediate for all system actors. Exception reports — reports telling the data suppliers that some information that should be there is missing — should be routinely generated to ensure the accuracy and timeliness of the information. Interested parties (that is, the youth, his attorney and parents or guardians) should have access to the records to check their accuracy. Also sealing or expungement statutes should be implemented which permit or automatically require the destruction of these records or the obliteration of the individual identifier, so that the data can still be used for management and research purposes.

Controlled Access

Access to this information should be provided to police, prosecutors, juvenile courts, detention centers and corrections on a "need to know" basis. I strongly believe, however, that these juvenile records should not be public

records; all standards projects have agreed on this point. Access to and use of these records should be strictly controlled to limit risk of disclosure, the unnecessary denial of opportunities and benefits, and potential interference with the juvenile justice system's goal of treatment. To ensure confidentiality and to bring theory and practice in accord, strict control over access to these records must be established. Access to the system should be carefully monitored and randomly audited to assure that the access that occurs is appropriate. Access by those outside the official juvenile justice system should be carefully controlled by a single gatekeeper, probably the court.

Now we have reached the question, if and under what conditions should these juvenile history records be combined with those of a similar adult tracking system? I believe the same principle applies to this question as was used before to argue for the collection of juvenile fingerprints. Treatment is the goal of the juvenile justice system. Fingerprinting, I would argue, is in the child's best interest because it provides the treatment-oriented justice system with more information on the child and, hopefully, enables the system to deliver a better treatment plan. Applying this principle, the juvenile justice system should open its records to the criminal justice system and the public only if it is in the best interest of the child; and I have serious doubts that it ever would be.

The existence of a juvenile justice system is evidence for the fact that our society believes children are different from adults. We might argue where the dividing line is, but the fact still remains that the juvenile justice system is based on the premise that juveniles are different from adults and amenable to treatment. A youth is handled by the juvenile justice system because someone, a juvenile justice professional, believes that this youth is amenable to treatment. If we were different at age 14 than we are at age 21, should our juvenile anti-social behaviors haunt us into adulthood?

Recently the U.S. Justice Department considered proposals aimed at denying student loans to any individual ever convicted of drug use. Is it fair to continue to restrict the freedom of an individual for a crime he committed as a juvenile when, by definition, society judged him to be amenable to treatment at the time of the offense? Why should these misconducts follow a person when there is every reason to believe the treatment was effective, or that over time, the individual has changed? Certainly, if the individual is convicted in criminal court (and possibly even if he is just charged), I would then argue that all his legal records should be automatically transferred to the adult history system to support the criminal court's decisionmaking processes. Until that occurs, however, the juvenile records should be kept separate and screened from public view.

If the juvenile justice system provides its records to the public in general, then the juvenile justice community is implicitly saying that this action has no effect on the youth or his treatment plan. How many of us would feel comfortable still linked with our juvenile misdeeds? I would argue that an individual would have to prove his continuing involvement in criminal behavior before the juvenile justice system should willingly reveal his juvenile records; and even then, they should be viewed in light of our society's perception of juvenile behavior.

With this said, when the situation arises that juvenile and adult records are to be combined, the process should be relatively straightforward using the approach just described. With fingerprints as the positive individual identifier, the juvenile and adult legal records can be linked together. If the strategic data-planning is comprehensive, the merger of the juvenile and adult history records should be no more difficult than the creation of the original juvenile records.

In conclusion, the considerations in merging juvenile and adult legal records are both technical and philosophical. The technical problems are easily addressed; the philosophical ones require us to take a careful look at why this nation has established a separate juvenile justice system. The birth of the juvenile justice system marked a new social attitude toward the problems of the young. The juvenile justice system is currently being pressured to change, to voluntarily lessen the differences between itself and the adult system, and in doing so abandon the principles on which it was established. There are good reasons to maintain separate juvenile and adult records. In the past, the merger of the two records was fraught with technical complications. But the new technologies make the merger feasible. In the past, technical barriers protected the tenets of the juvenile justice system; now they must be protected on their own merits.

The Prosecutor's Need for Juvenile Records in the Adult Court

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I should tell you up front that I am glad to hear that there is some agreement about the limited use of juvenile records in adult court. I would like to go one step further, however, and advocate unlimited use of juvenile court records in the adult court.

When I became the District Attorney of Philadelphia, the theory in vogue in juvenile court was *parens patriae,* meaning that because of their age, juveniles could not be held responsible for their actions. Society was to blame, and it was believed that every juvenile entering the system could be treated and rehabilitated.

Our experience in Philadelphia, however, has taught us some different lessons. Unlike smaller jurisdictions, we have a high rate of juvenile crime. Out of the 50,000 cases per year that we try in my office, about 9,000 involve juvenile offenders and a significant number of that group are committing serious crimes.

We are fortunate in Philadelphia to have had an in-depth study of our entire juvenile population conducted not once, but twice, by Dr. Marvin Wolfgang. As a result of that study and of my 17 years of experience in the District Attorney's Office, I share a number of his views.

A Change in Philosophy

Based on Dr. Wolfgang's and other similar studies, Philadelphia and Pennsylvania are now discarding the *parens patriae* theory and are gradually adopting the responsibility or accountability theory of juvenile prosecution. In other words, we are going to hold juveniles accountable in the more traditional sense for their acts. We are not going to treat the worst juvenile offenders as persons who can be easily rehabilitated to become law-abiding citizens.

In Philadelphia, juveniles have a full-fledged panoply of rights. Juveniles may have a public defender if they cannot afford their own attorney. They have full hearings in front of judges. Essentially, they are prosecuted in the same fashion as adults, and they have all the same rights as adults, except the rights to bail and to a jury trial.

But there are advocates who agree that they should have these rights as well. They are saying that if we are going to have essentially the same system for both adults and juveniles, give the latter similar rights. It may come to that at some period in time.

Youth Aid Panels

I believe that it is important that we have early intervention for juveniles. Studies show that when a child is 14 years of age and has had three contacts with the police without any meaningful intervention, then he or she has a significant chance of becoming an adult offender.

As part of our early intervention effort in Philadelphia, we have instituted a citywide volunteer program that allows us to take cases completely out of the juvenile justice system and put them before community-based volunteer panels, called Youth Aid Panels. The youthful offenders, in essence, say, "Yes, I did the crime." They do not have a lawyer. There are no rights guaranteed. If they want the program and they go before a panel, the panel will administer the appropriate community sanction — not a criminal sanction. The panels may order restitution to someone whose house was defaced with paint, or they may order the offenders to write essays, do community service, clean up a yard or clean up the YMCA. First offenders are told early on by their own community that their conduct will not be tolerated. Our goal is to take about 1,000 out of the 9,000 juvenile offenders a year and put them into the Youth Aid Panel program.

We think it is very important to have this diversion program so that we do not clog court dockets with relatively minor cases. There is less strain on the juvenile court system and more focus on the serious offenders. It also allows the community to become involved, helping to prevent these youth from becoming career criminals.

Access to Juvenile Records

In Philadelphia, criminal charges must be approved by the District Attorney's Office. Very early in the process, I have assistant D.A.'s review all the information that comes to them from the police. We have access to computerized juvenile records, which are separate from the adult computer records. (This is done pursuant to state law, a law which we hope to change sometime in the very near future.)

We have to have information immediately so that we can divert eligible juveniles into our Youth Aid Panel program. And we have to have liberal access to a juvenile's history because the only persons we let into the program are those who have no prior convictions or have only minor convictions, such as truancy or other status offenses.

The police department also has limited access to juvenile records early in the charging process. I am sure everyone here would agree that it is important for law enforcement agencies, social service agencies, and other people who are dealing with juveniles as they pass through the juvenile system to have access to all the records. In this way, the proper decisions can be made as to treatment, custody and holding prior to adjudication.

Pennsylvania law now permits inspection of juvenile records by the court, all the parties to the proceedings, supervisory and custody agencies, presentence agencies, the administrative offices of the courts of Pennsylvania and, I quote, "any other person or agency or institution having a legitimate interest in the proceedings. . ."[1] That broad section of our juvenile code really gives access to anyone with a legitimate interest in the proceedings.

...we ought to have liberal access to all records to make informed decisions about the disposition of both juvenile and adult cases.

Theoretically — although I do not believe it has ever happened — the newspapers could argue that they have a legitimate interest in the proceedings based upon First Amendment rights. Under Section 6307 of our Juvenile Act, which I just cited, they conceivably could have the right to come in and inspect court files and records. Our family court, however, still would not release names of juveniles.

We also have school records when we make our prosecution decisions. A school representative comes into juvenile court and presents the records of youthful offenders. This is important. We can make sure that the child is in school, which is a factor in making the proper decision as to what to do with the juvenile offender.

The controversy that arises and gives cause to today's conference involves the use of records for other than strictly juvenile court proceedings; for example, court proceedings for adult offenders. Some of the concerns are: Should juvenile records be used by anyone once the child reaches the age of majority? Should they be used in the adult system for any purpose whatsoever? Should we have access to them at all, or should it be just a clean erasing of the slate? Should these records be made available to the public, either prior to or after juveniles assume adulthood?

Those are some of the tough questions facing a lot of jurisdictions around the United States. In keeping with the accountability theory in Pennsylvania, we have been pushing for greater access to juvenile records. As a prosecutor, I believe we ought to have liberal access to all records to make informed decisions about the disposition of both juvenile and adult cases.

Pennsylvania law has always granted liberal access to records by county law enforcement agencies. A 1986 amendment to the state law that was written by my office and passed in the legislature in Harrisburg, in fact, embodies the responsibility theory I have discussed. That amendment permits juvenile court and law enforcement records to be available to "law enforcement officers of other jurisdictions when necessary for the discharge of their official duties."[2] What that means is that in our state a police agency from another county no longer has to have a court order to inspect a juvenile record. They now can obtain records from our police department or from the family court to use for investigative and other

[1] 42 Pa. Cons. Stat. Ann. § 6307(6).
[2] 42 Pa. Cons. Stats. § 6308(a) (1988 Cum. Supp.)

legitimate purposes. I personally agree that these records should be available to law enforcement agencies since it is in the interest of the public safety to be able to efficiently investigate and prosecute juvenile crime, especially violent juvenile crime.

This amended statute also includes a change that allows us to fingerprint and photograph any juvenile who is charged with any felony or a violation of the uniform firearms act — basically possession or use of a firearm. That information can be specifically disseminated to other jurisdictions, the Pennsylvania State Police and the FBI.

Limited Release to the Public

Juvenile accountability is extremely important to us in our large city because it is hard to keep track of the 9,000 offenders we process each year. Two years ago, we had an 18-year-old offender with 35 aliases who had a juvenile record that included at least 87 crimes, most of which were felonies. The reason he was able to compile such a record was because the previous law did not permit us to fingerprint or photograph youthful offenders. Our new juvenile act contains a provision permitting the contents of law enforcement records and files to be released to the public if the child is 14 years of age or older and has been an adjudicated delinquent for acts that include the elements of rape, kidnapping, murder, robbery, arson, burglary, or any other act involving the use of, or threat of, serious bodily harm. The first time a child is arrested by the police and charged with one of those crimes, no information can be released to the newspapers or anyone else until the child is, in essence "convicted".

Furthermore, if a second delinquent petition charging crimes is filed against this first-time offender, then the mere fact that he is arrested and charged can now be released to the public. The state Legislature has made a policy determination that it is more important for the community to be aware of the violent nature of some juveniles than it is to protect the privacy rights of those juveniles. Once again, it is the recognition of the accountability, or responsibility, theory by the Legislature.

Although we say that the juvenile court records and law enforcement information can be released to the public or to other agencies, this does not include all available information: the release must conform to the same protections that exist for adults. Basically, the information can include the facts of the crimes charged, the crimes themselves, the dispositions of the crimes charged, any other court disposition and escapes from institutions. We cannot release to the public information considered confidential for adults.

For example, we cannot release medical or psychiatric information. We cannot release employment history. We cannot release family or personal history and we cannot release presentence information. Therapeutic-type information is still private, much as it is for adults, unless it is on the record in adult court. Juvenile court proceedings involving placement or treatment of juveniles are still generally closed to the public.

Let us consider the disposition of juvenile records once a person is beyond the jurisdiction of the juvenile court. If the offender is transferred to adult court, or he reaches the age of maturity, it is my contention that the record should be available on the adult side in the same manner that it is available on the juvenile side. There are some extremely important decisions that prosecutors and court agencies have to make which involve the best interests of the community and the best interests of the defendant.

For example, we have to be able to make accurate bail decisions, which we cannot do unless we know the previous history of the juveniles, especially for 18-, 19- and 21-year-olds who do not have an adult criminal record, but may have serious juvenile records. We would also like to have that information available to us when we consider which of the 41,000 or 42,000 annual criminal cases in Philadelphia will be sent to our special pre-trial diversion program.

We divert approximately 6,500 to 7,000 cases to these special programs, such as pre-indictment probation. If these offenders finish that program in six months and undergo therapy and restitution, then we expunge their records completely, and destroy the adult fingerprints and photographs — giving them a clean slate. We make those decisions shortly after arrest and, therefore, need to have adult and juvenile records available immediately so that we can make the proper diversion decisions.

Interestingly enough, even in Pennsylvania were it sounds like we have unlimited access to juvenile records, there are still some vestiges of the old *parens patriae* theory that cause problems for prosecutors. For example, under our statutes, we are rarely able to use a juvenile adjudication at trial in adult court. The only time we can use it on the adult side is in the dispositional proceeding, after conviction of a felony. If the defendant is an 18-year-old convicted of a misdemeanor and he or she has 100 juvenile adjudications, the judge cannot take those into consideration when sentencing the adult misdemeanor.

Youth can take the witness stand at 18 or 19 years of age and we cannot use juvenile adjudications, even for crimes of dishonesty, to impeach their credibility. They could have ten perjury adjudications as a juvenile and yet this information could not be used on the adult side because of the anomaly in the statute. The statute, however, does say that we can use juvenile adjudications against a defendant when he becomes an adult if the youth's reputation or character becomes an issue in a *civil* matter.[3] We cannot use the record in a criminal matter except for sentencing in felony cases, but we can use it in civil proceedings.

Habitual Offenders

I would say that the most controversial use of juvenile records by my office involves the juvenile habitual offender program, which is similar in concept to our adult career criminal program. The laws in Pennsylvania require that juvenile records be kept separate from adult records, but as I noted earlier, we have computer access to both. In the career criminal program in Philadelphia, habitual adult criminals receive special attention. To be classified as an adult career criminal, you would have to have three prior convictions for any of the following crimes: rape, robbery, murder, aggravated assault, burglary of a private home or involuntary, deviant sexual intercourse. In Philadelphia, we prosecute approximately 280 to 300 such career criminals a year.

The juvenile habitual offender may be similarly classified: a youth with three prior convictions who is waiting to commit his fourth of the felonies I have enumerated. Our computer lists about 1,500 juveniles in that category. Whenever those juveniles are arrested, their cases are prosecuted by the juvenile habitual offender unit, a team of experienced prosecutors.

The adult career criminal unit and the juvenile habitual offender unit previously existed separately and their records were not commingled. When considering someone for possible inclusion in the adult career criminal category, we view the individual in the same fashion as does the court system. We give them a clean slate at age 18 regardless of the number of juvenile adjudications. However, through a federal grant, we were able to merge the juvenile record with the adult record in the career criminal area. Now in our jurisdiction, once a juvenile turns 18 and has the requisite number of adjudications as a juvenile, he carries those adjudications with him into the adult system. We treat the adjudications like any other adult conviction and target the individual for vertical prosecution. We seek the maximum against the offender to take him out of circulation for as long as we possibly can.

Although we do not have a single, merged juvenile and adult record, the effect is the same because of computers. We have had some battles over this effort with defense lawyers and child advocates who contend that we are not supposed to use the juveniles' records against them, but we have changed our statutes so that we can. I think it is extremely important because we have to be informed about adult criminals and we have to know the entire juvenile record to be able to do that. As for permitting the public dissemination of juvenile records, that is a policy decision that our legislature has made and with which I agree.

The fact that our state has found that a juvenile adjudication has standing as a crime is evidenced in our sentencing guidelines. We have sentencing guidelines that apply to every adult criminal. Defendants receive a score based on their criminal history and the particular crime involved. A sentence is handed down based on that score. In Pennsylvania, that score includes juvenile adjudications when the defendant is being sentenced for adult crimes. Accordingly, we have been able to isolate serious recidivists during the prime crime-producing years of their career, age 16 through 23. As far as I am concerned, that translates into less crime and a safer public.

[3] 42 Pa. Cons. Stats. Ann. § 6354.

Panel Presentation
Prototype Juvenile Recordkeeping Systems

Florida's Client Information System

SUSAN K. CHASE
Information Systems Supervisor
Florida Department of Health and Rehabilitative Services

Today I will be talking about the nature of juvenile justice in Florida, the state's juvenile record system, and some of the things that the system is designed to do as well as some of the things that it is not designed to do.

I work for the Department of Health and Rehabilitative Services (HRS), the largest state agency in Florida. It is an umbrella agency which includes all of the social welfare and health services in Florida. The department was created by the Governmental Reorganization Act of 1969 and reorganized in 1975. It is a state-administered system operating in 11 geographic districts. At the state level, we have an Assistant Secretary for Administration, an Assistant Secretary for Programs and the Deputy Secretary for Operations. All of the district operations or direct service provisions are handled by the Deputy Secretary and staff who have line authority.

Children, Youth and Families Program

Under the Assistant Secretary for Programs are the program offices, one of which is Children, Youth and Families — the office in which I work. As an agency, we administer and operate all of the service and treatment programs that are offered to juveniles in the state. Children, Youth and Families was created in 1981 and includes the following programs: Child Welfare Services, Families in Need of Services, Juvenile Justice Services and Family Support Services. The Children, Youth and Families program was created to consolidate all of the children and family services in Florida.

Within the Juvenile Justice Continuum, the HRS-administered programs include delinquency intake, detention programs (both secure and non-secure), pretrial intervention, in-home services (juvenile probation and parole), and delinquency commitment programs (both non-residential and residential, community-based and secure institutions).

Our agency is involved in all areas as juveniles move through the juvenile justice system in Florida. We interact with other actors in the system at the point of intake. The first point of contact is with law enforcement personnel who make the arrests and bring children to our attention — either physically bringing them to us for detention, or sending in the arrest report. The decision to detain a child involves interaction with both law enforcement and the State Attorney's Office. The State Attorney is also involved in recommending which cases will go to juvenile court and which, under certain circumstances, may be filed directly into the adult system. We also interact with the Juvenile Court which may also waive jurisdiction over the case to the adult system.

Other state-level agencies that are involved in Florida's juvenile justice system are the Florida Department of Law Enforcement, the State Court Administrator's Office, and the Department of Corrections. There are also police and sheriffs' associations and the prosecutors' association at the state level. Although the Florida Department of Law Enforcement does receive fingerprint and photograph cards on juveniles who are found by the court to have committed an offense which would be a felony if they were adults, the only information that is sent in with those cards is the juveniles' name, address, date of birth, sex and race — not the entire record. The law enforcement and the court records are maintained at the local level, and only aggregate data are reported to their state-level agencies.

Client Information System

The HRS is the only state agency to have a statewide record system on juveniles. This department-wide automated information system — the Client Information System — maintains information on all clients of the various social welfare programs, as well as the health and juvenile justice system. In our department, because of the nature of our work, the hard-copy file that is maintained on a juvenile has a case management and social work orientation. There is one master file which follows the juvenile through any of our state-operated, in-home types of services.

At the point of delinquency intake or probation and parole, the field unit will maintain a single copy of the record that is passed from one unit to another as the child moves from intake to probation and later on to a parole unit. If the child is placed in a residential program, a duplicate file will be created in the detention center or the commitment facility, containing only the documentation that is necessary to have during the time the child is in the program. Because the records maintained at a residential facility are duplicates, and are not

subject to any retention period, the facility may destroy them at any time.

The "copy of record" is the file that is maintained on the child through our field units. This file will include social workers' assessments, school paperwork, psychological evaluations, narrative field notes and medical paperwork, as well as the legal paperwork and the copies of court files. When a child is no longer active in the system, the copy of record is maintained according to the storage procedures in place at the local unit that last served the child. There is law and policy regarding retention procedures, but the practice of how the records are stored is widely divergent. The likelihood of retrieving a record at some later point depends on the practice of the local unit that is storing that record.

The Client Information System was created when, in 1975, our department was reorganized and the state Legislature mandated that we have an integrated, automated information system for the whole department. The intent behind the mandate was to facilitate the integration of service delivery and to identify and improve services to multi-problem clients. The information system was implemented statewide in 1978. It has a basic generic design which was intended to cover all of the different types of services that the department provides. The generic components include client demographic information, provider information, service and worker directories, family information and service information. In addition, the design was expected to include a program-specific component to capture the data specific to the type of services that that program provides. Many of the programs within our department still do not have any program-specific data collection as part of this automated system. They maintain manual or other separate automated systems to record this information. In the Juvenile Justice continuum, however, we do have a subcomponent to the Client Information System that collects juvenile justice data: the Dependency and Delinquency Referral Subsystem (DDR).

The Legislature also wanted to have available a statewide, on-line index of both delinquent children and children who had a history of abuse and neglect.

Delinquency Subsystem

Implemented statewide in 1982, the DDR required a nearly $2 million appropriation act of the Legislature. The Legislature had a very specific purpose and intent in giving our department the money to implement the system statewide. State legislation had mandatory criteria regarding the detention of a child. One had to know certain information about the child's history — including the number of previous adjudications and the types of charges — to be used in the detention decision.

The Legislature also wanted to have available a statewide, on-line index of both delinquent children and children who had a history of abuse and neglect. The reason for this was that generally, we have a very mobile population in Florida and a large migrant worker population. Specific cases where a child or family had been seen in one county, moved to another county, and no one knew anything about them, had come to the attention of individual legislators. There were serious problems, both in terms of juvenile delinquency and child abuse.

Today, the system is on-line 24 hours a day and there is local access from hundreds of sites statewide. All of our detention centers have on-line terminals and the local field units have, or have access to, on-line terminals. A record is entered into the system for each allegation about each child in juvenile justice, child abuse and neglect cases, and also in status offense cases. Each client identifier is unique: we use either a Social Security number or a pseudo-identifier to link all of the history on one child together. The system has an alphabetic search capability, and it can search for aliases or "street names" that a child is known to use.

The HRS uses a Client Information/Case Management and Child Welfare data input form for all our children's programs, not just our juvenile justice intake. Generic demographic information is collected by the Client Information System throughout the department. The form also provides for the collection of data by such facilities as detention centers and commitment programs, and by our dependency and delinquency intake programs.

The delinquency intake programs record referral information: the "reason for referral" and the "referral received date" are initially entered into the system when a case comes in. When the case goes to final disposition, additional information will be

entered: the intake counselor's recommendation to the State Attorney; the action taken by the State Attorney; who, if anyone, requested detention; interim placement; the adjudication; the case disposition; the Uniform Crime Number (UCN) (an optional field that is used only by some of our local jurisdictions); the arrest date; the date of the recommendation to the State Attorney; the disposition date; and the date the referral closed.

An important thing to recognize about this data is that the coding of the delinquency "reason for referral" contains broad, general categories; it is not coded by statutory number, and it is not coded by the Uniform Crime Reporting index. It is broken down into felonies and misdemeanors and other delinquent acts which would not be considered felonies or misdemeanors if committed by an adult.

We also capture other juvenile justice information on the same computerized database. We have registered the servicing unit that provided the service, whether it was a detention facility or a unit that provided probation services, and the beginning date that service was provided. We are also capturing minimal information on commitment programs. We will be implementing, as part of this same database, a new subsystem for our commitment programs which will capture a much larger amount of data on juveniles who are committed as delinquents, whether they are placed in a non-residential program or in our most secure institutions. We will be capturing specific information on the circumstances of the child at the time of commitment, the assessment and classification, the decision on where to place the child, the actual placement and any transfers that occur.

Juvenile Record Statutes

I want to review the Florida statutes that relate to juvenile records and confidentiality. The Florida statutes are not very clear and the issue is addressed in a number of different chapters of Florida law.

In Florida law we have Chapter 119, commonly referred to as the "Government in Sunshine Act." It states that the general policy concerning public records is that all state, county and municipal records shall be open at all times for personal inspection by any person. It continues, however, by stating that all public records that are presently provided by law to be confidential, are exempt. That exemption includes all juvenile records: they are not open to public inspection.

We also have Chapter 39, which primarily speaks to court records. It provides for the retention of records until the subject is age 19, or five years after the date of last entry, or three years after the child's death, whichever is reached first. It establishes the records as confidential, not to be disclosed to anyone other than the child, parents or legal custodians, their attorneys, law enforcement agencies, the HRS Department and its designees, the Parole and Probation Commission and the Department of Corrections. Effective October 1988, we have new legislation which will add school superintendents to this list.

Chapter 959 of the Florida law speaks to HRS' records. It provides retention to age 21, establishes those records as confidential, and states that they are to be inspected only upon order of the Secretary of the department or the Secretary's authorized designee. We generally follow the same regulations that apply to court records and make our records available to the same agencies.

In 1985, a major legislative act was passed in Florida: Chapter 110 concerns state employment; that is, employee security checks. This provision is for caretaker screening. Any individuals in Florida who desire to care for children, the elderly or disabled, must be subject to a screening when they apply for employment. This screening includes a records check through local law enforcement, the Florida Department of Law Enforcement and the FBI, and it also includes a juvenile records check. In connection with this law change, both Chapters 39 and 959 require that in certain criminal offenses, the juvenile record is not to be destroyed when the individual reaches age 18, 19 or 21, but will be retained until the death of the child. That has been interpreted to be age 75; it is assumed that the record can then be destroyed.

Because of the technical aspects of trying to separate records for certain violent offenses or offenses against children, from other juvenile records when we do not go by statute number in our information system, we are currently not destroying any juvenile records. In the last few years we have been looking at ways to separate the records and start destroying those that do not have to be maintained for purposes of this law. I expect we will implement some procedure to accomplish this within the next few years. The legislative intent of retaining those records, which are retained until age 75, was solely for caretaker screening.

An Integrated County Court System

ERNESTO GARCIA
Director of Court Services
Maricopa County Juvenile Court Center

Let's move now from a statewide perspective to a county perspective. The Maricopa County Juvenile Court Center in Phoenix, Arizona, serves a population of about 1.9 million. We receive 25,000 referrals per year involving 17,000 children who are referred to the court for delinquency and incorrigibility. The Juvenile Court Center has an integrated court system in which the presiding judge has jurisdiction over all functions of the juvenile court, including intake, probation and detention, as well as some ancillary functions. We have an integrated data and word processing system containing about 68,000 records on under-18 children; 26,000 records on over-18 persons; and research tapes that contain about 150,000 case histories.

A Common Database

Our county attorney, public defender and court clerk are all served by the same database and have access to all of the information accessed by the probation staff and the judges. As Director of Court Services for the juvenile court, I, in turn, have access to the county attorney's file on any case. If I want to know what the county attorney did on a particular case, I simply punch up the county attorney's file and I see the attorney who made the decision and generally what decision was made. If I want to pursue it further, then I am free to call the prosecutor and ask him to pull his file and give me the information.

There is one main theme on which our information system was developed, and that is to share all of the information with everybody who is allowed access by law and who will be helped by it. A lot of people think that giving prosecutors access to all of the detailed information in our data file is a capital crime. In our court, the philosophy of juvenile court is rehabilitation and because our prosecutors follow that philosophy, we have never had a serious problem with sharing information.

Arizona law states that juvenile records cannot be used in any other court, whether before or after the defendant reaches the age of jurisdiction. Not being a lawyer, I take that to mean that the prosecutors cannot allege priors for things that happened in juvenile court, even though they have a complete history on what the person did when he was under 18 or prior to being transferred to adult court.

Releasing Information

The law also requires that we release all of our information to three different entities upon action as an adult or action in the Superior Court. First, we must release everything we have to the adult probation department upon conviction of an individual in Superior Court. The information that we give to the adult probation department is very extensive. Second, if a person is charged as an adult in Superior Court, we must release to law enforcement personnel and prosecutors (both local and state) all offense information and the disposition of those offenses. Finally, once a person becomes an adult and is jailed, we must make available to other court departments and magistrates all of our information to help them make their release decisions.

Let me discuss a little bit about the everyday information-sharing practices of the juvenile court. We receive more than 100 calls a day from individual police agents who want to know: Is the juvenile on probation? Has he ever been arrested for a burglary? Is he a first offender? If he is on probation, who is his probation officer, and how can I reach him? Has he had any involvement in drugs? Can you tell me what school he last attended or where I might find him? These types of requests for information probably total more than 10,000 a year. Our view is that we build our database on the information provided by police. They are entitled to it, and we give it back to them upon demand.

Second, we have, as I mentioned earlier, a responsibility under the law to provide the adult probation department with information. In 1987, we had 4,700 inquiries from the adult probation department. Twelve hundred of those youth, or approximately 25 percent, had a juvenile record which was shared with the adult probation department.

Adult Felony Records

About half of the males in Maricopa County will have some involvement with the juvenile court system before they turn 18. The staff who run the computer department and do the research for us did an analysis to determine the probability an individual who lives in our community has of becoming an adult felon. The results showed that for every 100,000 adults in our population, male and female, one-third have had juvenile contact with our court system. Of those 33,333 persons, approximately 8,366, or 25 percent, were actually adjudicated and placed on probation or the case had some other formal court disposition. Of the 8,366, approximately 1,372, or 16 percent, have adult felony records.

I give you that perspective to help explain my position on the one system, one record approach: I do not support it. I think there are ways to satisfy the needs of protecting the community, supporting the police and their job, and supporting the prosecution of hardened delinquents, without hanging around the juvenile's neck a record that he is going to have to explain for the rest of his life.

When you consider that of every 100,000 adults, about 1,400 are adult felons with juvenile records, you begin to question whether anything, even politics, could justify unifying the adult and juvenile records. I do not believe that there is. I think the destruction of juvenile records and the opportunity for a fresh start is what makes the juvenile court worth fighting to preserve.

... [T]here are ways to satisfy the needs of protecting the community, supporting the police and their job, and supporting the prosecution of hardened delinquents, without hanging around the juvenile's neck a record that he is going to have to explain for the rest of his life.

The vast majority of the youth who come to juvenile court get in trouble once. The next significant number get into trouble twice, and it drops way off after that. During this conference you heard from the prosecutors and others that a very small number of the juveniles account for a great number of offenses. I think that is true in every jurisdiction; I know it is true in ours. When you think about that, you wonder whether the cost of selective incapacitation is worth it. My view is that it is not. I do not think it is necessary to keep records on 33,333 people to make sure that 1,400 answer to the adult system. Keep in mind, at least in our jurisdiction, that the average age of a juvenile who is first referred to juvenile court and is subsequently adjudicated, is two months less than age 14. I cannot understand why we would want to use the marvelous advances in computer technology to wrap that kind of a millstone around 33,333 necks to ensure that those 1,400 who become adult offenders are held accountable.

The first juvenile code in Arizona was formally adopted in 1939. Only a few years later, in the famous Arizona case, *State v. Guerrero*,[1] the issue of using juvenile records in adult court was raised. It was a rape case and the defense was attempting to impeach the prosecution witness by bringing in the juvenile record. The court held that, "The policy of the juvenile law is to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past".[2] I believe that is still applicable today, and I do not think by following that philosophy we are jeopardizing the protection of the community or hindering the prosecution of the career criminal.

[1] 58 Ariz. 121, 120 P. 2d 798 (1942).
[2] 120 P 2d at 802.

A State Index of Juvenile Records

MICHAEL R. PHILLIPS
Deputy Juvenile Court Administrator
Utah Administrative Office of the Courts

We are not one justice system in the organizational sense, and probably never will be because of public fears of a large single entity dealing with basic freedoms and individual rights. Even though we may be one system that deals with criminal justice issues — a system that includes police, prosecutors, courts and corrections — we are a disparate group of agencies responding to our own set of directives and limits, some of which create conflict among us. Some of this conflict is constitutionally engineered to limit government and protect rights. Some of it creates a healthy tension among criminal justice agencies that stimulates innovation and results in better service to the public. In any event, such fragmentation significantly reduces the probability that there will ever be one record that combines adult and juvenile information.

It is not likely that we will ever have one record, but many of the advantages that one record might bring to the criminal justice system can be achieved through mutual written agreements and the use of existing technology. In Utah, the criminal and juvenile justice systems do exchange and share records. Before I review how we accomplish this, I would like to note some of the advantages and disadvantages of record sharing.

Advantages and Disadvantages

The advantages to sharing a single record include:

- A reduction of the clerical burden, the result of reducing the amount of redundant data entry as cases move among agencies;
- A reduction of the frustration experienced by many clients who are repeatedly asked the same questions or are requested to complete several forms which ask for the same information;
- An improvement in data accuracy and timeliness: by allowing sister agencies to edit and correct shared information, the data will reflect the most recent contact;
- The protection of staff and clients' lives is facilitated when, through due process or mutual agreement of various justice agencies, information about armed or otherwise dangerous individuals is shared. In addition, information concerning physical disabilities or other conditions that might affect a detention should be shared;
- The establishment of the proper tone for justice in our communities can be accomplished by uniformly enforcing court orders based on a common, up-to-date warrants file;
- The development of a more uniform terminology among criminal justice agencies; and
- The assembly of accurate information about how the whole system works helps decisionmakers make more informed processing decisions about individuals and enables policymakers to more efficiently and effectively deploy resources, identify problems and improve operations in general.

There are also disadvantages to sharing a single record for both juveniles and adults. These include:

- The potential for a juvenile record to be maintained and later misused, negatively affecting an individual's adult life;
- The creation of a large record database that, despite the fact that almost 60 percent of referred youth are only referred once for a minor offense, would need to be maintained over an extended period for no useful purpose;
- The partial defeat of specialized juvenile justice systems which are based on the principle of diminished capacity: the records could potentially be used in the adult system;
- The fear of an all-knowing, all-powerful police state with a single record from which to monitor the private citizen without checks or balances;
- The potential for confusion and misunderstanding among criminal justice agencies due to the lack of a common terminology or an understanding of each others' informal policies and procedures. For example, if a juvenile contact shows no court disposition, it may mean that nothing

"officially" happened on the court record, but a youth and his family may have been counseled or some other informal action may have taken place; and

• Inconsistencies with the verification process. In the juvenile court there are legal ways, other than by fingerprints, to establish identification, such as by parental identification of the juvenile.

Perhaps, without creating a single record (which we seem to fear), some of the noted disadvantages can be overcome and some of the advantages can be achieved through the use of modern technology.

A State System

In Utah we have a statewide Juvenile Justice Information System. It is run locally but is based on a statewide index, probably the only one in the United States. It is an operational system that produces dockets, petitions, summons, hearing notices, rap sheets and intake face sheets. The information on these documents is updated as part of normal case handling and returned for computer posting of updates and corrections at appropriate intervals, thus improving database accuracy.

The Juvenile Justice Information System is characterized by a unique identifying number to which all referrals, bookings, correctional placements, accounts and critical messages are linked. This identifier stays with the youth regardless of where he or she is referred in the state. As I said earlier, the various segments of the Utah criminal and juvenile justice system exchange and share records internally, and have been doing so for many years.

The Juvenile Justice Information System is characterized by a unique identifying number ... This identifier stays with the youth regardless of where he or she is referred in the state.

Law Enforcement

Over 250 law enforcement agencies exist in Utah, ranging in size from large metropolitan police forces to one-person operations in remote areas. Although they are part of the criminal justice system, they certainly do not share one record for adults and juveniles. Each keeps arrest and intelligence records in their own way and shares information over the National Law Enforcement Telecommunications System (NLETS) or other links with other law enforcement agencies. Since 1983, law enforcement agencies, through their computerized dispatch terminals, have had access to the juvenile court's statewide juvenile index in order to check the court's critical message file. This file contains the statewide juvenile warrants and pick-up orders and other comments about specific juveniles. As of June 27, 1988, they have had access to the complete rap sheet via the same process. Review of a youth's complete court record is allowed regardless of where the youth was arrested or referred in the state. The only qualifications are:

• The record check should be made only during the arrest process; or

• As part of an official investigation by a law enforcement agency; and

• Hard copies (printouts) of the record are not authorized.

Dispositions on the referrals police have previously made to the court are shared with each law enforcement agency quarterly. No law in Utah prohibits law enforcement agencies from sharing juvenile information in their records or to release any information on juveniles to anyone who wants it.

Adult Probation and Parole

The Board of Juvenile Court Judges has authorized adult probation and parole officers on-line access to juvenile court records when they are preparing a presentence report for Utah's adult courts.

News Media

No legal prohibition exists in Utah law against the use of a juvenile's name in connection with any incident deemed newsworthy by the press; the press can go in, get the information they want and publish the names if

they want. But by mutual agreement among themselves, the news media do not use the names of juveniles in their news coverage. The rules established by the court allow news media to attend court sessions with the judge's approval, and the court can release names it determines appropriate.

Researchers

Rules of the Board of Juvenile Court Judges allow juvenile records to be examined by qualified researchers with legitimate research needs. Over the years, no research request has been denied when, in accordance with the rules, a letter of request has been submitted to the Board. Utah regularly shares information with the National Center for Juvenile Justice and those researching Utah's portion of the National Data Archive.

Parents and Youth

A youth and his or her parents may review most of the juvenile's record and may petition the court to alter the record if they determine it is not accurate. Some portions of the record determined sensitive and potentially damaging to the youth or parents may be withheld from the family, but defense counsel are permitted to review those portions if the information has been submitted as evidence for the adjudicatory or dispositional phase of the proceedings.

Custodial Agencies

Agencies given custody of a youth are allowed full access to the court records but they are limited in their right to redisseminate the record.

Military Authorities

If recruiters request a juvenile's record and have a release signed by the youth, then the record will be provided; otherwise, no information is provided. A problem exists if the record was expunged and then subsequently requested. Future litigation may be required to clarify this legal issue, because a youth can be charged with fraudulent enlistment if he or she does not report the expungement — which then reveals the record's existence. The youth is caught in a "Catch-22." If the government were to charge a youth with fraudulent enlistment, could it prove the case if the state refused to produce the record?

Victims

Victims are requested to submit claims for losses to the court; in some instances they are allowed to attend hearings. They are normally advised of the disposition of the case and of the restitution that has been awarded.

You can see that we share records extensively within Utah's criminal justice system and I believe this makes all segments more efficient and effective. I am concerned about the external exchange of records and hope that out of this conference will come a set of guidelines that will facilitate appropriate sharing.

Summary Remarks

The Future Availability of the Juvenile Record

ROBERT R. BELAIR
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As I looked at my notes last night, I have to confess that I became a little bit depressed about the conference. Not because the speakers were not terrific — they were. Not because the conference was not substantive, because it has been. The reason to be depressed is that I think most of us would like to agree with Judge Powell and with some of the other speakers who argue that we can and should maintain a high degree of confidentiality with respect to juvenile records. The real issue for this conference — and for the nation — is determining *how* much confidentiality should be preserved with respect to juvenile records.

Judge Powell presented a wonderfully persuasive case for confidentiality. First, she argued that these record subjects, after all, are only children and they really do not have the same volitional quality, the same *mens rea*, as adults. Second, Judge Powell and others, including Dr. Snyder, demonstrated that a juvenile record can do real harm to these children as they try to build their lives. Third, Judge Powell and others emphasized that there is desistance; that is, most of these children do stop committing crimes. A tiny number of juvenile offenders, approximately 4 percent, go on to commit felonies as adults.

But, as someone who has spent most of his professional life arguing in favor of the confidentiality of various types of records, I must tell you that the fight to retain confidentiality for juvenile records looks like a loser. A quick review of several of the presentations at this conference will explain why.

Juvenile Crime Statistics

First, there is no question that there is a great deal of juvenile crime. We have heard lots of statistics. Professor Wolfgang told us that 35 percent of the boys in his "Cohort One" study were arrested by age 18. Mr. Castille told us that 9,000 out of 50,000 criminal trials in Philadelphia involve juveniles. Other statistics indicate that about half of all males have some contact with the juvenile system by the time they reach 18.

Second, everyone who has ever looked at the issue — including a number of our speakers — assures us that there is a very strong correlation between juvenile delinquency and adult crime. According to Professor Wolfgang, for instance, 45 percent of juvenile chronic offenders become adult chronic offenders. Mr. Garcia reported that 1,400 out of 33,333 juvenile offenders go on to acquire adult felony records. It does not sound like a big number, but it represents a large enough population that policymakers and decisionmakers want to have that information. What is most depressing, though, is to look at who these juveniles are — they are minorities, and they are from the very poorest of our homes. Without doubt, they are exactly the children whom we want to help; that we ought to help; and who need our help. Congressman Regula began the conference by sharing with us his instinctual feeling that if juvenile offenders commit crimes as adults, their juvenile records ought to be made available. Can we argue with that? What kinds of arguments do we make to policymakers, to people like Congressman Regula, who have a responsibility to protect society? Certainly, you cannot argue to withhold juvenile records in order to avoid a stigma for these juvenile offenders because, as Dr. Moore said, if they have an adult record, they are going to have a stigma anyway.

Can you argue rehabilitation? It is reasonably clear that we really do not know what rehabilitates. We simply do not do a good job of rehabilitating chronic, juvenile offenders. Perhaps the rehabilitation argument does make sense for first offenders — and there are a lot of juvenile first offenders. Mr. Phillips made that point extraordinarily well. With respect to chronic offenders, however, there is no evidence that we do much of a job of rehabilitation.

Can we argue that juvenile arrests and adjudications are private events in which the public does not have a legitimate interest? No. This argument is a loser — a loser both as a matter of logic and as a matter of law.

There is a lot of juvenile crime, and there is a lot of juvenile recidivism. This is a serious problem, and, like it or not, there are very good reasons why society wants to fingerprint juvenile offenders and establish, maintain and disseminate a record. This morning, for example, Inspector Ken Moses made a powerful case for including juvenile fingerprints in an automated fingerprint identification system database.

We probably ought not to be so worried about using juvenile records in the adult process. For one thing, these juveniles have already come to the attention of the adult justice system; there is reason to believe that these juveniles have not been rehabilitated. The point was made that they have, in effect, waived their privacy claim, and there is some merit to that argument. Moreover, the adult process can make compelling claims as to it's need for access. Judge Walton noted that judges make very important decisions regarding offenders: decisions that affect public safety and which have a tremendous impact upon record subjects. Judges want to have offenders' juvenile records in front of them. Who would not?

Access For Whom?

I think the real issue to emerge from this conference is: "Who, other than agencies in the adult criminal justice system, is going to have access to juvenile records?" Many agencies and individuals outside of the adult criminal justice system are charged with making tough decisions that affect public safety. What about the person making a decision allowing entrance into the military? That individual has to make judgments about 18-year-olds who may be assigned to guard nuclear warheads. What about the person who determines entitlement to security clearances? What about persons hiring bus drivers for our school systems or troop leaders for our Boy Scouts? What about a licensing board making a determination about a license to carry a concealed weapon? These people make compelling claims for access to juvenile records. They make the point that the public safety is at risk and that the information contained in juvenile records is arguably relevant.

... We cannot rely, as we have in the past, on the primitive condition of juvenile record systems to provide de facto confidentiality and privacy safeguards. ... We are going to have systems that work; and we are going to have to make hard policy choices.

The thrust of Judge Walton's argument is that juvenile information gives insight into the character of the person before him, and that he will use the information wisely, knowing that it is not dispositive, and that there are other factors to be taken into account. Let me assure you, however, that if we, as a society, honor Judge Walton's requests, then how do we reject requests from people charged with making the kind of decisions I just mentioned?

Where does it all lead? It leads to the type of law in Pennsylvania that District Attorney Castille discussed which permits disclosure of juvenile records to the public under certain circumstances. It even leads to *The Reporters Committee for Freedom of the Press*[1] decision, which, if it is not overturned by the Supreme Court, will effectively make all adult criminal history records available in this country to any person for any purpose at any time, and no positive identification will be required.

For those of us who have spent our lives standing at the ramparts making the case for confidentiality, this is all a bit depressing. This is not to say that there are not good reasons to make this information available. It does say, however, that we may not be able to strike a balance with which many of us will be comfortable. I think it recognizes what we all must admit — juvenile crime is a terribly serious problem in this country.

There are, of course, practical problems with using juvenile justice records. In highlighting the SEARCH study, Ms. Barton talked about a number of problems with juvenile records: the breadth of police discretion regarding juvenile arrests and adjudications; the quality of juvenile records and the absence of dispositions; the lack of audit standards; the lack of positive identification; and

[1] *The Reporters Committee for Freedom of the Press v. United States Department of Justice*, 816 F.2d 730 (D.C. Cir. 1987), *cert. granted 108 S.Ct.* 1467 (1988).

differences in terminology. (Although the SEARCH study, as Ms. Barton pointed out, suggests that the use of terminology may be more uniform than we thought.)

We also talked about automation. The traditional view is that, while adult records are generally automated, juvenile records remain largely manual. Interestingly, most of the speakers today — and it just may be because our speakers are on the cutting edge of information systems — were here to tell us about automating juvenile records, and to point out that there is a good deal of automation in juvenile record systems.

The bottom line, and this point was made so well by Dr. Snyder, is that we now know how to build good juvenile record systems. We cannot rely, as we have in the past, on the primitive condition of juvenile record systems to provide *de facto* confidentiality and privacy safeguards. Previously, we could be content that the information could not be obtained anyway, so why worry about who should get it? We cannot do that anymore. We are going to have systems that work; and we are going to have to make hard policy choices.

I will conclude by identifying what I thought were some of the especially good ideas discussed at the conference. There appeared to be some consensus that if a juvenile "graduates" from the juvenile process and does not subsequently have an encounter with the adult process, society ought to seal the juvenile record within a short period of time after the juvenile graduates from the juvenile system. This seal, however, would not mean that the record could not be opened later if the individual subsequently has contact with the adult system. Professor Blumstein made a good point, suggesting that maybe we have to wait two or three years in that period between age 18 and 22 before we can know the individual's propensities. Is this a person who has been rehabilitated and is not going to be of concern to the criminal justice system, or is this a person who is going to be a frequent adult offender? Until we know the answer to those questions, the person's juvenile record should be available. After it has been determined that there have not been contacts with the adult system, it is reasonable to seal the record. Mr. Garcia said that Arizona is doing something similar to this, and, as a conference attendee pointed out, so is Canada.

Data Quality Issues

We also ought to think about sealing juvenile records that include minor crimes and, in particular, arrests for minor crimes. In addition, we ought to consider sealing first offender juvenile records and juvenile records which do not result in a juvenile adjudication.

Clearly, we have to improve the quality of the juvenile record. There seems to be a consensus that no matter how we use juvenile records, we need to go forward to fully automate and improve the quality of these records. We also need to obtain dispositions and use positive identification techniques. Data quality, of course, has been the refuge of those of us who have been concerned about the societal impact of releasing adult records. We have abandoned the notion that we can prevent adult records from being used by a good portion of the noncriminal justice sector; instead, we have concentrated over the last few years on improving the quality of the adult records and providing subject access rights. I found surprising Ms. Barton's point that juveniles do not always have a right to inspect their records. We need to provide juveniles with such access. However, I agree with her hunch that, as a practical matter, there may be more access by juvenile subjects than the law would indicate.

This is where the conference has brought us. We are not moving toward one record. We are going to have two different systems: a juvenile system and an adult system. But the adult system already has, as a legal matter, and will have, as a practical matter, wide access to juvenile records. The real question is going to be whether we can figure out some basis for convincing policymakers that there *are* certain juveniles who *are* a good risk for society and therefore, their juvenile record should be kept strictly confidential so as to improve their chances for rehabilitation. On the other hand, there are those juveniles who will continue their criminal career in a big way as an adult, and we are going to find that their records will be widely available over the next 10 years, not only within, but also outside of, the adult criminal justice system.

Contributors' Biographies

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Stanley E. Adelman

General Counsel for the Executive Office of Public Safety (EOPS), Commonwealth of Massachusetts. Coordinates the legal work of all EOPS agencies; renders advice regarding new statutory and case law; serves as liaison with Governor's Statewide Anti-Crime Council; and conducts litigation under designation as Special Assistant Attorney General. Prior positions include Legal Counsel for the Massachusetts Parole Board; Staff Member, Governor's Statewide Anti-Crime Council; and Consultant to the American Correctional Association.

Drafted the Parole Unification Act; participated in an intergovernmental task force convened by the Chief Justice of the Superior Court to study and propose changes in the Massachusetts Sexually Dangerous Persons Law, which culminated in statutory recodification; and conducted numerous lectures, workshops, and training programs on sentencing and parole. B.A., Columbia University; J.D., New York University School of Law. Member, Massachusetts Bar, Bar of the United States District Court for the District of Massachusetts, and Bar of the United States Court of Appeals for the First Circuit.

Sheila J. Barton

Director, Information Law and Policy Program, SEARCH Group, Inc. Responsible for public policy analysis; documenting state and federal information policy development; providing education and assistance to state and local policymakers; and conducting national conferences on justice information policy issues. Directs SEARCH's Criminal Justice Information Policy Resource Center, housing the nation's most extensive library of criminal justice security and privacy, and victim/witness materials, including state statutes, case law and regulations. Staffs the SEARCH Law & Policy Project Advisory Committee.

Previously served as a Municipal Judge, Cheyenne, Wyoming, and was engaged in a private law practice. Also has served as a City Public Defender, Cheyenne; staff attorney, Wyoming Supreme Court; and Legal Specialist, New York State Department of Correctional Services. Member, State Bar of California; United States District Court for the Eastern District of California; United States Court of Appeals, Tenth Circuit; United States District Court for the District of Wyoming; Wyoming Bar Association; Nebraska State Bar Association; and United States District Court for the District of Nebraska. She is a member of the Association of Trial Lawyers of America. B.A., Augustana College; J.D., University of Nebraska College of Law.

Robert R. Belair

General Counsel, SEARCH Group, Inc. and partner, Kirkpatrick & Lockhart, Washington, D.C. Has participated in SEARCH security and privacy programs and has authored many studies in the area of criminal justice information law and policy. Instrumental in developing SEARCH's revised *Standards for the Security and Privacy of Criminal History Record Information.*

Served as consultant to the National Telecommunications and Information Administration and the Commission on Federal Paperwork regarding the U.S. Freedom of Information Act and the U.S. Privacy Act. Former Acting General Counsel of the Domestic Council Committee on the Right of Privacy, Office of the President. B.A., Kalamazoo College; J.D., Columbia University School of Law.

Alfred Blumstein

Dean and J. Erik Jonsson Professor of Urban Systems and Operations Research, School of Urban and Public Affairs, Carnegie-Mellon University. Serves as Chair of the Pennsylvania Commission on Crime and Delinquency, the state criminal justice planning agency for Pennsylvania. Has served as Director of the Task Force on Science and Technology for the President's Commission on Law Enforcement and the Administration of Justice; Chair of the National Research Council's Committee on Research on Law Enforcement and the Administration of Justice, and Chair of that Committee's panels on deterrent and incapacitative effects and sentencing.

Fellow of the American Association for the Advancement of Science, the American Society of Criminology, and the Scientific Committee of the International Society of Criminology. Past President, Operations Research Society of America, and awarded its Kimball Medal. Recipient, Edwin H. Sutherland Award, given for outstanding scholarly contributions to the field by a North American criminologist. Associate editor of several journals in operations research and criminology, and author of numerous publications on sentencing, deterrence, incapacitation, and criminal careers. B.A. and Ph.D., Cornell University.

Francis J. Carney, Jr.

Executive Director of the Massachusetts Criminal History Systems Board, responsible for administering the Criminal Justice Information System, a computerized network serving 500 law enforcement and criminal justice agencies in the Commonwealth of Massachusetts. Previously served as Director of Planning and Research, Massachusetts Department of Correction; Liaison Planner between Department of Correction and Joint Correctional Planning Commission and Social Science Research specialist, Massachusetts Department of Correction.

Teaches course work on Corrections and Youth Crime Problems at Boston University, Metropolitan College, and has taught at the University of Massachusetts, Boston College, Boston University, and Boston State College. Has conducted training sessions on correctional philosophy, research and evaluation, planning, and the security and privacy of criminal records at the Department of Correction Training Academy, and has participated in the Municipal Police Officers Training Program at the State Police Training Academy and the New England Criminal Justice Training Institute at Babson College. B.A., Boston College; M.A. and Ph.D., Tufts University.

Ronald D. Castille

Elected Philadelphia's District Attorney in 1985; oversees staff of 240 attorneys that prosecute some 50,000 criminal cases annually. In 16 years of service, has handled over 180 jury trials, including first-degree murder and other major crimes. Previous service includes Chief of the Career Criminal Unit, which expedites the prosecution of repeat offenders, and Deputy District Attorney in charge of the Pre-trial Division, Philadelphia District Attorney's Office.

Has facilitated major changes in the city's juvenile justice system and was instrumental in the passing of state legislation strengthening laws concerning dangerous juvenile offenders. His office assumed responsibility for bringing charges against juvenile offenders, a task formally handled by the Family Court. Has also formed a volunteer program to try to rehabilitate first-time, nonviolent juvenile offenders. B.A., Auburn University; J.D., University of Virginia.

Susan K. Chase

Deputy Administrator for Information Management; Children, Youth and Families Program Office; Department of Health and Rehabilitative Services, Tallahassee, Florida. In addition to administrative duties, recently assumed responsibility for implementing the Client Outcome Evaluation System.

Primary responsibilities include information resources, data development, data analysis and data utilization, and has had lead responsibility for CYF involvement in the Client Information System and the Technology Resource Plan. Previously served as a Planning Manager, a Planner and Evaluator, and a Statistician, Health and Rehabilitative Services. B.S., Florida State University.

Ernesto Garcia

Director of Court Services, Maricopa County Juvenile Court Center, Arizona. Since 1959 has served in various capacities with the Court Center: Assistant Director, Director of Administrative Services, Supervisor of Intake, Intake Probation Officer and Institutional Probation Officer.

Has served on the Arizona State Legislature's Criminal Code Revision Commission; the National Council of Juvenile and Family Court Judges' Juvenile Information Systems Requirements Analysis Advisory Committee; as Chairman of the Arizona State Department of Corrections Advisory Planning Committee for Juvenile Services; and as a member of the Arizona Supreme Court's Council on Judicial Education and Training. Recipient of the Outstanding Criminal Justice Administrator Award presented by the Arizona State University Center of Criminal Justice. B.S. and M.B.A., Arizona State University.

Mark H. Moore

Guggenheim Professor of Criminal Justice Policy and Management, Kennedy School of Government, Harvard University. Chairman of the Kennedy School's Executive Training Programs and its Program in Criminal Justice Policy and Management. Coordinator of the Kennedy School's development of teaching and research in Public Management. Served as Special Assistant to the Administrator and Chief Planning Officer, Drug Enforcement Administration, U.S. Department of Justice. Chairman of a National Academy of Science Panel on Alcohol Control Policies. Author

of numerous articles on public policy and criminal justice; co-author of *Dealing with Dangerous Offenders: Vol. I; The Final Report*, National Institute of Justice, 1983. B.A., Yale University; M.P.P and Ph.D., Kennedy School of Government, Harvard University.

Ken Moses

Eighteen years as an Identification Specialist, San Francisco Police Crime Laboratory. Has testified as an expert witness in fingerprint identification in 1,000 adult and juvenile criminal cases. Inspector Moses was instrumental in the design and implementation of the first NEC fingerprint computer system in the United States. Under his direction, the San Francisco Police Department's Crime Scene Unit has used its Automated Fingerprint Identification System (AFIS) to revolutionize criminal identification in San Francisco, clearing over 2,000 cases, imprisoning over 900 burglars and reducing San Francisco's burglary rate by 26 percent.

Instructor in fingerprint evidence, California State Bar Continuing Education; visiting instructor in forensic evidence, University of San Francisco Law School; and consultant and advisor on the automation of criminal records to numerous law enforcement agencies throughout the United States. Member, International Association for Identification, the Fingerprint Society of England, and immediate past-President of the International NEC Fingerprint Users Group. He has published several articles on aspects of AFIS. B.A., Criminology, University of California, Berkeley, post graduate studies in Forensic Science.

Michael R. Phillips

Deputy Administrator for the Utah Juvenile Court. Has general administrative responsibility for Utah's statewide, multidistrict juvenile court, including both probation and clerical divisions. He was the project director for the design, development and implementation of Utah's statewide computerized juvenile information system. Former Assistant Administrator for the Utah Juvenile Court and Juvenile Probation Officer in the second District Juvenile Court.

Extensive experience in juvenile justice information systems development and general juvenile court management, having consulted for over a dozen major juvenile court systems in the United States. Has presented papers at numerous national symposia on Juvenile Court Systems. Member, National Council of Juvenile and Family Court Judges' Committee responsible for developing the national juvenile information system model — the Juvenile Information Systems and Records Access (JISRA). B.S., Weber State College; M.P.A., Brigham Young University; and graduate studies, University of Utah.

Romae T. Powell

Judge, Juvenile Court of Fulton County, Georgia. Previously a Senior Juvenile Court Referee, Fulton County Juvenile Court, and a practicing attorney engaged in the general practice of law.

At-large appointee to the SEARCH Membership Group, and member, SEARCH Board of Directors. 1988-89 President, the National Council of Juvenile and Family Court Judges. Professional memberships include the Gate City Bar Association; State Bar of Georgia; Atlanta Bar Association; Judicial Council of the National Bar Association; Georgia State Council of Juvenile Court Judges; and the National Council of Juvenile and Family Court Judges. Experience with the Court of Appeals, State of Georgia; Supreme Court, State of Georgia; United States District Court; United States Court of Appeals; and the Supreme Court of the United States.

Recipient, NAACP Award for Recognition and Contributions in the Field of Civil Rights; Special Achievement Award, National Association of Black Women Attorneys; Outstanding Jurist Award, Women's Division, National Bar Association; and selected as one of five Juvenile Court Judges for Critique by the Institute for Court Management, Denver, Colorado.

Judge Powell has written and lectured widely on numerous aspects of juvenile and family court subjects, including violent and repeat offenders, sealing of records in juvenile court, and due process in juvenile court proceedings. B.A., Spelman College; J.D., Howard University School of Law. Awarded an Honorary Degree of Doctor of Laws, Spelman College.

Ralph Regula

First elected to the United States House of Representatives in 1972 from Ohio's 16th Congressional District. Currently serves on the Appropriations Committee, where he is the ranking Republican of the Committee's Interior Subcommittee.

Member, Appropriations Committee, Subcommittee on Commerce, Justice, State and Judiciary, which has jurisdiction over a variety of federal agencies, including those responsible for formulating and implementing trade policies. Ranking Republican, Select Committee on Aging, Subcommittee on Health and Long-Term Care.

In 1984, joined a bipartisan delegation selected by the Speaker of the House to review the U.S. presence in Central America. Later that year, headed a presidential commission in Guatemala to observe the elections in that country. In 1985, he was part of a congressional delegation making the first visit to the Soviet Union since Mikhail Gorbachev took power. In 1986, was appointed by the Speaker of the House as a delegate to the North Atlantic Assembly.

Served eight years in the Ohio Senate and House of Representatives, seven years as a public educator and 20 years in a small-town law practice. B.A., Mount Union College; J.D., McKinley School of Law. Has received honorary degrees from Mount Union and Malone Colleges.

Steven R. Schlesinger

Director of the Bureau of Justice Statistics of the U.S. Department of Justice (1983-1988), appointed by President Ronald Reagan. Previously served as Associate Chairman and Associate Professor of the Department of Politics at the Catholic University of America.

Has written more than 25 articles on legal topics with an emphasis on American criminal justice, government and constitutional law. Author of *Exclusionary Injustice: The Problem of Illegally Obtained Evidence* and *The United States Supreme Court: Fact, Evidence and Law.*

Former Adjunct Scholar, National Legal Center for Public Interest and consultant to the U.S. Senate Judiciary Committee's Subcommittee on the Constitution.

Awarded the 1986 O.J. Hawkins Award, given by SEARCH Group for Innovative Leadership and Outstanding Contributions in Criminal Justice Information Systems, Policy and Statistics in the United States. B.A., Cornell University; M.A. and Ph.D., Claremont Graduate School.

Howard N. Snyder

Director of Systems Research, National Center for Juvenile Justice, Pittsburgh, Pennsylvania. Director, NCJJ National Juvenile Court Data Archive. The Archive, which is supported by the Office of Juvenile Justice and Delinquency Prevention, stores the automated case records of the nation's juvenile courts. These records are used by researchers and policymakers to study and monitor court activity and the youth appearing in juvenile court. Dr. Snyder has studied most of the major juvenile court information systems across the country, has been involved in the design of several juvenile court information systems and often consults with courts that are seeking to enhance their systems.

Dr. Snyder is also on the faculty of the National Council of Juvenile and Family Court Judges and teaches courses in research and court technology. He has published extensively on juvenile justice information technology issues. B.S., Westminster College; Ph.D., University of Pittsburgh.

Reggie B. Walton

Deputy Presiding Judge of the Criminal Division, Superior Court of the District of Columbia. Prior positions include Associate Judge, Superior Court of the District of Columbia; Executive Assistant, United States Attorney for the District of Columbia; Assistant United States Attorney for the District of Columbia, Chief, Career Criminal Unit; and Staff Attorney, Defender Association of Philadelphia.

Professional activities include: Panel on Research on Criminal Careers, National Academy of Sciences; Criminal Instructions Committee, District of Columbia Bar Association; American Bar Association Lawyer Competency Committee; Member, Joint Committee on Judicial Administration for the District of Columbia Courts; and Member, The National White House Conference for a Drug-Free America.

Member, District of Columbia Bar (unified); American Bar Association; Washington Bar Association; District of Columbia Bar Association; Black Assistant United States Attorneys Association; Judicial Conference for the District of Columbia; District of Columbia Criminal Justice Supervisory Board; and National Institute of Trial Advocacy Advocates Association. B.A., West Virginia State College Institute; J.D., Washington College of Law, American University.

Marvin E. Wolfgang

Professor of Criminology and Law; Director of the Sellin Center for Studies in Criminology and Criminal Law, The Wharton School, University of Pennsylvania; and President of the American Academy of Political and Social Science. Has also served as President, American Society of Criminology; Associate Secretary General, International Society of Criminology; Consultant, President's Commission

on Law Enforcement and the Administration of Justice; Director of Research, Commission on the Causes and Prevention of Violence; Member, U.S. Department of Health, Education and Welfare's Panel on Social Indicators; Advisory Committee on Reform of the Federal Criminal Law; and National Commission on Obscenity and Pornography.

Publications include *From Boy to Man, from Delinquency to Crime*; (with R. Figlio and T. Thornberry); "Penal Philosophy: A Return to 'Just Deserts' ", *The Key Reporter* [Phi Beta Kappa]; *The Measurement of Delinquency* (with T. Sellin); and *Delinquency in a Birth Cohort* (with R. Figlio and T. Sellin). M.A. and Ph.D., University of Pennsylvania.

*U.S.GOVERNMENT PRINTING OFFICE:1990-262-190:00024

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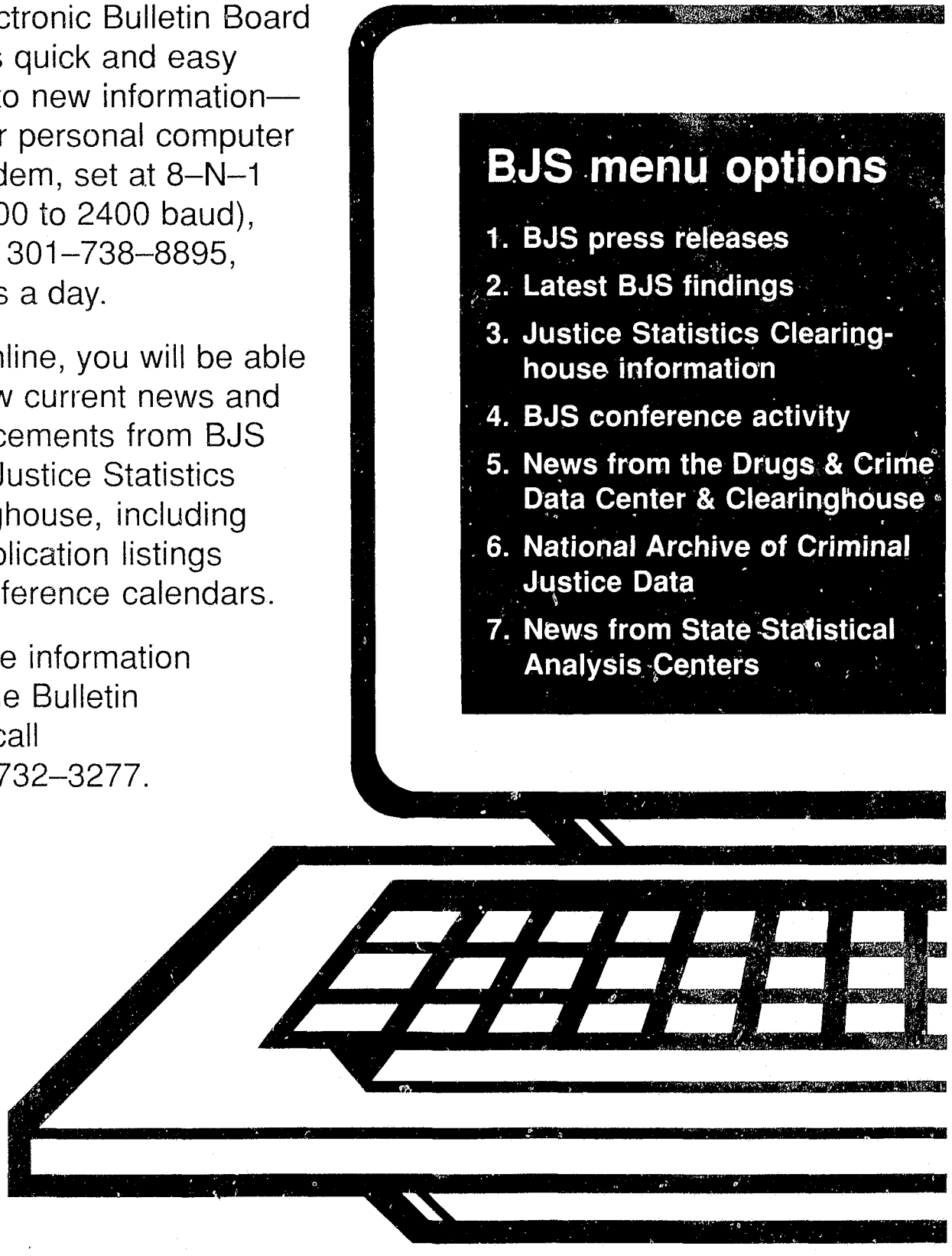

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National Crime Survey

Criminal victimization in the U.S.:
1987 (final report), NCJ-115524, 6/89
1986 (final report), NCJ-111456, 9/88

BJS special reports:
Hispanic victims, NCJ-120507, 12/89
The redesigned National Crime Survey: Selected new data, NCJ-114746, 1/89
Motor vehicle theft, NCJ-109978, 3/88
Elderly victims, NCJ-107676, 11/87
Violent crime trends, NCJ-107217, 11/87
Robbery victims, NCJ-104638, 4/87
Violent crime by strangers and nonstrangers, NCJ-103702, 1/87
Preventing domestic violence against women, NCJ-102037, 8/86
Crime prevention measures, NCJ-100438, 3/86
The use of weapons in committing crimes, NCJ-99643, 1/86
Reporting crimes to the police, NCJ-99432, 12/85
Locating city, suburban, and rural crime, NCJ-99535, 12/85
The risk of violent crime, NCJ-97119, 5/85
The economic cost of crime to victims, NCJ-93450, 4/84
Family violence, NCJ-93449, 4/84

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Criminal victimization 1988, NCJ-119845, 10/89
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The crime of rape, NCJ-96777, 3/85
Household burglary, NCJ-96021, 1/85
Measuring crime, NCJ-75710, 2/81

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New directions for the NCS, NCJ-115571, 3/89
Series crimes: Report of a field test, NCJ-104615, 4/87
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Preliminary data from the National Crime Survey, 1988 (press release), 4/89
Redesign of the National Crime Survey, NCJ-111457, 3/89
The seasonality of crime victimization, NCJ-111033, 6/88
Crime and older Americans information package, NCJ-104569, $10, 5/87
Teenage victims, NCJ-103138, 12/86
Victimization and fear of crime: World perspectives, NCJ-93872, 1/85, $9.15
The National Crime Survey: Working papers, vol. I: Current and historical perspectives, NCJ-75374, 8/82
vol. II: Methodological studies, NCJ-90307, 12/84, $9.50

Corrections

BJS bulletins and special reports:
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State and Federal prisoners, 1925-85, 102494, 11/86
Prison admissions and releases, 1983, NCJ-100582, 3/86
The prevalence of imprisonment, NCJ-93657, 7/85
Examining recidivism, NCJ-96501, 2/85

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1987, NCJ-118762, 12/89
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1985, NCJ-103957, 2/88
Historical statistics on prisoners in State and Federal institutions, yearend 1925-86, NCJ-111098, 6/88
1984 census of State adult correctional facilities, NCJ-105585, 7/87
Historical corrections statistics in the U.S., 1850-1984, NCJ-102529, 4/87

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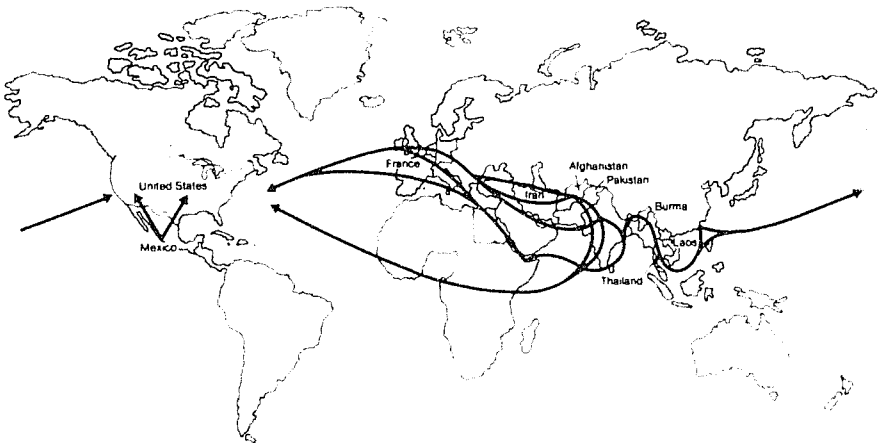

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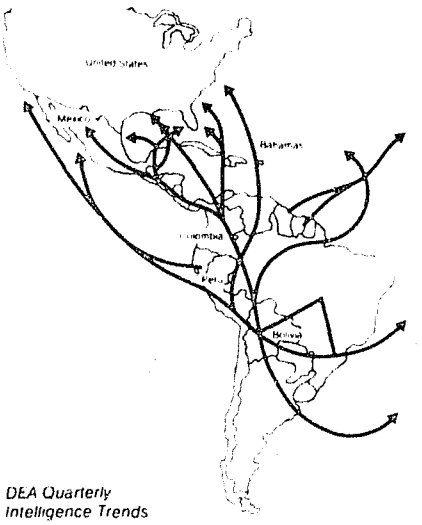

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