



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

Criminal Justice in the 1990's: The Future of Information Management

proceedings of a BJS/SEARCH conference

papers presented by

Francis J. Carney, Jr.
Reggie B. Walton
Joseph M. Bessette

Charles P. Smith
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(Revised May 1990)

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Joseph M. Bessette
Acting Director

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PREFACE

The technological changes that have affected the work of all of us in criminal justice information management have been dramatic, particularly in the last 20 years. As we move into the final decade of this millenium, it is appropriate to take time to review the evolution of criminal justice information management policy and the effects on intergovernmental relations, and to explore future trends in this area. With an understanding of the policy, management and technical issues challenging the criminal justice system, practitioners will be better prepared to help fashion the information policy of the 21st century. Thus, the Bureau of Justice Statistics was pleased to cosponsor with SEARCH Group a national conference on "Criminal Justice in the 1990s: A Focus on the Future of Information Management Policy" and to publish the proceedings of that one-day conference. I believe the presentations in *Criminal Justice in the 1990s: A Focus on the Future of Information Management Policy, Proceedings of a Bureau of Justice Statistics/SEARCH Conference*, provide readers with a comprehensive overview of the most salient issues in information management policy. It is my hope that it will also serve as a common reference point as we consider our options and future actions in this dynamic and expanding field.

JOSEPH M. BESSETTE
Acting Director
Bureau of Justice Statistics

Introduction

The myriad computerized innovations developed since the late 1960s have dramatically transformed the way we live and conduct business. In particular, technology has changed forever the tools and methods used by criminal justice practitioners and has spurred corresponding adjustments in law and policy. Anticipating the effects of technology in the criminal justice arena, two legal experts recently offered their predictions for the 1990s. DuPage County (Illinois) State's Attorney James Ryan projects that because of technological and operational changes "law enforcement will expand the use of genetic testing and automated fingerprint identification to solve crimes once unsolvable."¹ In the same *Chicago Tribune* article, Harvard Law School Professor Laurence Tribe focuses on the legal and political implications of technology and warns that "telecommunications and biomedical technology will transform the shape of constitutional controversies ranging across the whole spectrum from birth to death." Clearly, advances in technology will affect intergovernmental relations and the whole of society, and will require a commitment from criminal justice practitioners to develop responsible information management policies appropriate for the decade ahead.

To gain perspective on the past 20 years, and to explore future possibilities in information technology and

criminal justice information management policy, the Bureau of Justice Statistics and SEARCH Group cosponsored a conference on July 19, 1989, called "Criminal Justice in the 1990s: A Focus on the Future of Information Management Policy." Drawing together a select body of experts, the conference examined the policy, management and technical issues that are most likely to challenge criminal justice practitioners in the next decade. These conference proceedings follow the format and content of the July conference.

Dr. Francis J. Carney, Jr., Executive Director, Massachusetts Criminal History Board and SEARCH's Vice Chair, was the conference moderator. Noting that the conference is part of SEARCH's 20th Anniversary celebration, Dr. Carney, in the "Welcome" speech, reflects on the many changes that have transpired in justice technology since the founding of the organization, a dichotomy between the past and future which many of the speakers also address. Dr. Carney encourages readers to consider the presentations a "view from the bridge" — an opportunity to "review past developments and

explore future challenges in criminal justice information technology"

The Honorable Reggie B. Walton, Associate Director, State and Local Affairs, Office of National Drug Control Policy, delivered the keynote address, "Strategies for Controlling Drug Abuse." Judge Walton discussed the pervasiveness of drug use and the many alternatives his office is considering in its fight to control the problem through solutions that are more than "a quick fix."

Following Judge Walton's keynote address is the "Federal Agendas" section wherein Dr. Joseph M. Bessette, Acting Director, Bureau of Justice Statistics, and Dr. Charles Smith, Director, Bureau of Justice Assistance, discuss their respective agency's activities, priorities and plans. Dr. Bessette reviews the many joint BJS/SEARCH endeavors and the ongoing projects that directly affect information systems, including the Offender-Based Transaction Statistics program and the National Incident-Based Reporting System. He also

notes BJS' recent study of recidivism as an example of the critical relationship between the quality of criminal history record data and the usefulness of that data for national statistical research. In his remarks, Dr. Smith considers the many projects and activities which still need to be accomplished within criminal justice over the course of the coming decade and urges local, state and federal agencies to identify and focus their efforts on a few critical priorities.

"Changes in Information Management" is the third segment of the proceedings and Dr. Alfred Blumstein, Dean of the School of Urban and Public Affairs at Carnegie-Mellon University, sets the scene for the presentations that follow in his address "A Retrospective and Future Challenges." Dr. Blumstein provides a brief history of developments in criminal justice technology, beginning in the late 1960s when technologically, "the criminal justice system was still very much in the era of the quill pen." He specifically notes the contributions of technology to the Uniform Crime Reports, the National Crime Survey and the accumulation of much-needed individual offenders' longitudinal records. Despite such

gains, however, major challenges for the 1990s will include closing the gap between technology available in industry and that available in criminal justice, connecting a fragmented justice system so that information can flow freely between the various disciplines and reconciling privacy issues with the public's need for information. Dr. Blumstein predicts that the issues that may require most of our energy, abilities and resources are found in demographic studies and socioeconomic indicators: the "echo-boomers" may cause a significant increase in criminal activity in the '90s, and unless we intervene and assume responsibility for remedying some basic social issues the trend may continue well into the 21st century.

Robert Marx, Systems Specialist, SEARCH Group, takes a look at information system developments from both the technical and political perspective in "Principles and Predictions for Justice Information Management Systems." Using the past as a framework for the future, and applying three broad principles, Marx makes predictions for developments in three information system areas: inter-AFIS communication, DNA identification and system integration. He completes his address with three simple but noteworthy conclusions applicable to the work of all who are involved with bringing technology to the justice arena.

Blending humor and urgency, Dr. Charles Friel, Dean and Director, Criminal Justice Center, Sam Houston State University, speaks to the "interplay between intergovernmental relations, public policy and information systems." Dr. Friel renders an animated discourse on "Intergovernmental Relations: Correctional Policy and the Great American Shell Game," presenting prison overcrowding as an example of one issue likely to drive justice policy and intergovernmental relations and thus affect future systems development. Ending on a somber note, he exhorts the public, justice practitioners and policymakers to demand honesty and accountability in public policy.

Carol Kaplan, Chief, Information Policy Branch, Bureau of Justice Statistics, helped to develop the original Law Enforcement Assistance Administration Regulations concerning the accuracy, privacy and security

of criminal history record information. Her presentation, "In the Beginning: A Review of Federal Information Law and Policy," outlines the history of the federal regulations and the critical role they played in initiating improvements in data quality. She also discusses simultaneous activity in the nation's courts, bringing the discussion up-to-date with an overview of *United States Department of Justice v. Reporters Committee for Freedom of the Press*, a recent landmark Supreme Court decision confirming confidentiality interests in criminal history records.

In the final presentation, Mark Gitenstein, Executive Director of the Foundation for Change, holds out the very real possibility of an electronic "Big Brother" society and the subsequent erosion of personal privacy rights. In his speech, "Integrating Technology and Human Values Through Responsible Law and Policy," Mr. Gitenstein lauds the work of criminal justice practitioners who, through SEARCH, have created model statutes and standards which protect "the individuality, autonomy and liberty of Americans," reconciling both technological and political concerns.

As we enter the 1990s, we can be assured that technological advances will continue to accelerate and that

the need for comprehensive information management policies will increase correspondingly. In presenting *Criminal Justice in the 1990s: A Focus on the Future of Information Management Policy, Proceedings of a Bureau of Justice Statistics/SEARCH Conference*, it is our intention to make available the thoughtful reflections and recommendations of experts in the field of criminal justice information management. It is also our purpose to stimulate discussion and to urge serious consideration of the wide range of pertinent issues surrounding information technology and policy.

The Editor

¹ "At Least 22 Ways to Look at the '90s" On the Law, Bill Grady, Merrill Gozner and John O'Brien, *Chicago Tribune*, January 2, 1990, sec. 3, p. 3.

Welcome

Welcome

DR. FRANCIS J. CARNEY, JR.

Executive Director

Massachusetts Criminal History Systems Board

Good Morning. As Vice Chair of SEARCH and conference moderator, I would like to welcome all of you to today's conference *Criminal Justice in the 1990s: A Focus on the Future of Information Management Policy*. This timely conference is jointly sponsored by the Bureau of Justice Statistics and SEARCH Group.

The Bureau of Justice Statistics is an agency within the U.S. Department of Justice, which among its many other responsibilities, has the specific statutory task of analyzing national information policy regarding criminal justice data. SEARCH Group is a non-profit consortium of the states with a governor-appointed representative from each state and eight at-large members who together comprise the SEARCH Membership Group.

The purpose of SEARCH is to improve the criminal justice system through the innovative application of technology. SEARCH operates three general programs: Law and Policy, which monitors legislative trends and, for example, coordinates conferences on policy issues such as the one presented today; Systems and Technology, under which SEARCH has developed a number of software packages, provides technical assistance and training; and Research and Statistics in which SEARCH works to enhance decision-making by making research and statistical data available for the criminal justice community.

This week we are celebrating the 20th anniversary of SEARCH, and I think it is fitting that this conference is occurring as one of the highlights of that anniversary celebration. Much has changed in criminal justice information technology and information policy over the past 20 years, and SEARCH has played a role in many of the advances that have occurred. For example, my first association with SEARCH was in the early 1970s through a program called OBSCIS, which was an Offender-Based State Corrections Information System. At that time the Massachusetts Department of Correction was collecting inmate data by keypunching it onto 45-column, round hole keypunch cards and generating all statistics by running those cards through a counter sorter. Times certainly have changed.

This conference, I believe, offers us an opportunity for a "view from the bridge" to review past developments and explore future challenges in criminal justice information technology and to discuss the implications of those challenges for public policy, for information management and for intergovernmental relations.

Also we have the opportunity to learn about the agendas of the key federal agencies that are working in this area. We are indebted to BJS and to SEARCH for putting together such a timely conference with presenters of such extraordinary expertise.

With that in mind, I would like to recognize individuals from BJS and from SEARCH who have helped to make this conference possible. From BJS, Dr. Joseph Bessette, the Acting Director of the Bureau of Justice Statistics and Carol Kaplan, Chief, Federal Statistics and Information Policy Branch. From the SEARCH Group, I would like to thank Gary Cooper, Executive Director; Gary Bush, Chair of the SEARCH Membership Group; and Sheila Barton, Director, Law and Policy program.

Keynote Address

Strategies for Controlling Drug Abuse

JUDGE REGGIE B. WALTON

*Associate Director for State and Local Affairs
Office of National Drug Control Policy*

Good morning. I am honored to be here because I believe the research community will play a significant role in helping to address the crime problems that will always be with us and will clearly be a part of America during the 1990s. I wish that were not true, but I do not think that crime and drugs are going to go away overnight. It is unfortunate that we have not developed our technical skills to the point where we know the best course to take in dealing with crime and drugs. A lot of unanswered questions remain as to what the best course is, and I find that extremely frustrating in my present position as a policymaker with the Office of National Drug Control Policy. Obviously, we want to be able to make decisions that have a positive impact on the drug problem. Many policies we have discussed seem to be the right course to take; unfortunately, there is little research that gives us the degree of guidance that I would like to have in formulating drug policy.

Also, I think it is very important for the research community to appreciate the importance of its role in our drug control mission. I would like to make two suggestions to improve the usefulness of research for policymakers. First, while I understand researchers employ sophisticated techniques to ensure valid results, the presentation of those results to policymakers like myself is often confusing. It is important that whatever the results and scientific methods are, that we understand what

is being said. We need a summary of the research and results so that we can immediately glean the conclusions from the research. Your readers have the intelligence to grasp very complicated material. But because of time constraints, many practitioners and policymakers may put aside research and never get back to it if it seems so complicated that it may take a lot of effort to comprehend. It is important that policymakers be guided, to a large degree, by what your research reveals; therefore, it is important that you present it in an easily comprehensible manner.

Second, I think it is very important for the research community to take a bold approach in the research and the conclusions they reach. Most researchers want to make a recommendation based upon hard facts that they can stand behind. Practitioners and policymakers do not have that luxury. We often have to make decisions without knowing whether our decision will give us the result we want. That happened to me frequently when, as a judge, I would impose a sentence. Intuitively, I knew my sentence was the right thing to do, but sometimes I did not have the facts to support my position. Sometimes research has not been developed to the point where researchers are confident enough in their findings to present something to us. Nonetheless, some knowledge is better than none.

Even though you may not have a definitive conclusion regarding an appropriate approach in a particular area, be bold enough to give us some guidance. I think that will be very helpful.

The office of National Drug Control Policy has often been characterized as the "drug czar's office." Unfortunately, that gives the perception that we will find all of the answers to solve this problem overnight. We know that is not going to happen. The drug problem did not develop overnight; it took years and years to get to this point as a result of misguided attitudes and a mindset that drug usage, at least using cocaine and marijuana, was all right. Dealing with the drug problem involves changing attitudes, and that takes time. We are not going to come up with any magical solutions tomorrow. Phrases like "the war on drugs" are not helpful, because wars involve winning and losing. When people talk about it being a war, in a sense it sets the Office up for failure because, as I said, I do not think we are going to solve the problem tomorrow. I believe we will come up with recommendations that will have a positive impact on the drug crisis and make it manageable. But the problem will not be solved anytime soon.

I think a good example of managing a crisis is the situation that occurred when I was prosecuting cases in the United States Attorneys Office. At the time, we had a severe problem with armed robberies. In response, we created career criminal units that focused on arresting, prosecuting and incarcerating recidivist offenders — those who kept committing armed robberies. As a result, we saw the number of armed robberies decrease substantially. Obviously, the crime of armed robbery did not disappear, but at least we made it manageable.

With drugs, we have to develop some accurate ways to measure whether or not our drug and crime control policies are successful. Unfortunately, I think that the measures we have used for too long do not give us any real guidance to gauge success or failure. For example, one measurement we have used is the amount of drugs seized. While it is important to maintain our interdiction efforts, we cannot merely measure the rate of seizures and claim to have an impact on drug trafficking if those numbers go up significantly. If drug-producing countries export more, then the number of seizures are also likely to rise; nonetheless, the amount of drugs coming into the country will continue to rise. Thus, we cannot say the rate of seizures is necessarily a sign that we are positively affecting the problem.

Another way we assess our drug-fighting efforts is to count the number of drug arrests made. Again, this is

Dealing with the drug problem involves changing attitudes, and that takes time.

not a good gauge. Here in the District of Columbia we ran Operation Clean Sweep where the police were able to arrest virtually as many people as they wanted. This would be very difficult in such neighborhoods as Georgetown, where there is a significant drug problem. We know from research done by the Rand Corporation and others that there is a significant drug problem in our suburban areas, but we do not see the same number of arrests taking place in those areas as we do in inner city areas. In the inner city, open-air drug markets operate and police can virtually make as many arrests as they want. Drug trafficking in the suburbs is less apparent. The District of Columbia Police Department made, I believe, over 44,000 arrests for drug offenses over a two- or three-year period. And the courts were flooded with those cases, yet the drug situation continued to flourish. Obviously, we need to come up with some different, more accurate ways to assess the effectiveness of our policies and procedures.

I would now like to raise some issues that I hope will become discussion points during this conference.

In drafting drug control policy, we want to establish a system that will have an overall affect on what I think is probably the number one concern of the American public: drugs. Such a system would take into account the effect of policies *after* a drug arrest is made. So far, our answers to the drug problem have not been very productive; this nation's get-tough sentencing position has flooded our jails and court systems with new cases. It is suggested that the get-tough approach has not worked.

We have to come up with alternatives to incarceration because we cannot continue to incarcerate people at the current rate — we cannot build enough prisons. For example, it is deplorable what has happened to the penal system in Florida and the effects of crime on the judicial system. Officials there are virtually letting people out the back door as they are letting them in the front door because of the ceiling caps that have been placed on the prisons by the federal court system. I do not think this is healthy for America. In many of our urban settings, the judicial structure has become basically impotent in its ability to deal with the crime problem. When you have a tri-party governmental system and one part of your system is not operating the way that it should, you have serious problems.

I spoke to legislators in Cincinnati recently. They said that one of their biggest problems is funding the construction of additional jail cells to house the influx of prisoners into the system. They are looking at alternatives to incarceration. I think alternatives are good because we cannot — and should not — lock up everybody. At the same time, we do not want alternatives that fail to prevent recidivism. Any alternative that we put in should have as an objective deterring people from committing further crime. Practitioners and policy-makers do not take that deterrent effect into consideration. If you look at some of the drug control policies being implemented, I do not think that we really can say that they are going to positively affect the problem.

For example, I believe, as does Dr. William Bennett, Director of the Office of National Drug Control Policy, that we need to look at the use of boot camps. Boot camps will not work for all segments of society who become involved in the criminal justice process, but they should be considered. A recent report from the Justice Department did focus on boot camps, but we need more research on the effectiveness of this alternative to prison. We need to have a greater understanding as to whether or not boot camps really do accomplish our goal — to change attitudes and provide discipline in a young person's life so that they will avoid a life of crime. We also need to address

community service as an alternative to jail time — does it really act as a deterrent to crime? If it doesn't, is it something that we should continue to invest in? If we are going to use community service, there are certain resources we are going to have to provide to make it effective, such as staff who can track whether the person is actually performing the service or who can place the person in a service that benefits the community. It is obvious that we have to look at effective alternatives.

The Office of National Drug Control Policy's position is that we need to make drug users more accountable for their actions even though we cannot incarcerate every user. We need to find the best mechanism for discouraging drug use, and we have some impressions about what those methods would be. For example, we believe that a positive way to deter drug use is to publish the names of users in the newspaper. We considered a policy of whether to notify employers of their employees' drug use — assuming that the employer is going to positively address that drug use. We are also looking at community service, increasing fines and so forth. But we need studies that will tell us what policies will have the effect of deterring drug use. I suspect

that, to some degree, the greater awareness of the drug problem in general and the users' affect on the crime problem in particular may be having an effect on the amount of use, especially casual use. If that is happening, we need to know that, because we need some ideas on policies that have an effect on drug usage in the inner city where the greatest problem exists and where it manifests itself in the most negative sense.

We have to do something about those young people who are at high risk for involvement in drug activity. We have to do something to provide a sense of hope in the future for them, and ensure that they receive a high-quality education, marketable skills and other things necessary to prevent their entrance into the drug culture. But do I have scientific data that I can point to and say, "If we do these things we have some assurance that they're going to work?" To some degree yes, but not to the degree that I would like. I encourage you to provide us with that research because I think you play an instrumental role in assisting us in dealing with the crime problem.

It will be very interesting to see what affect we can have during the '90s on the crime problem and to try and do it in the most cost-efficient way possible. I wish that we did not have economic problems so that conceivably it would be a lot easier to put more money into fighting crime. Realistically, while some degree of increased resources is going to be necessary, I do not know exactly what level we will have.

I think it would be interesting to find out whether or not additional police is the answer to fighting crime. Per capita, the District of Columbia has probably the highest number of police officers than any other jurisdiction in the country. I know that there are some bills pending before Congress now which allocate funds to the District of Columbia to hire additional police. To a certain degree, we need additional police, but I think we have to make an assessment as to what the appropriate level is because we do not have unrestricted funds to put into the crime problem.

I do not profess to be a researcher, but I do respect the research community and your efforts in trying to deal with the crime problem. In the future, I hope practitioners and policymakers will be more thoughtful in how they approach the drug problem. In the District of Columbia, there was a rush to come up with "quick fixes" and we enacted legislation that provided for mandatory sentencing. At the same

time, we did not provide additional resources in the U.S. Attorneys Office, in the court system and in the

The Office of National Drug Control Policy's position is that we need to make drug users more accountable for their actions even though we cannot incarcerate every user.

prison system to deal with that additional influx of cases. That was poor management on the part of policymakers and, as a result, we now see some of the problems that are being created within our judicial system. I do not think that it is positive for the judicial system to be in a position where it does not have the ability to mete out the punishment that is appropriate in a given case because of constraints on the prison system.

We also ought to look at finding the best mechanism of incarcerating people that deters them from committing crimes after they are released. We really do not know what type of incarceration deters future criminal conduct. I have a feeling that what we are doing in some of our prisons is not constructive because we have young people who go into the prison system — many of whom do not have a good value system or work ethic —

and we do not do much while they are incarcerated to instill those values. I know that in the District of Columbia prison system — I am not being particularly critical of our system because I think it is endemic to a lot of systems — we have people in the Lorton facility who basically do not do much while they are there. They are not required to work. Most of them exercise and watch T.V. and I do not think that is a positive way for them to spend their time. We need to know from the research community whether or not enforced labor positively impacts prisoners' conduct after they are released. I say this because one of the things we must do to incorporate prison labor is to convince the unions that they must change their opposition to using prison manpower in order for us to do some things that we need to do in the community. I think it would be positive if we could take low-risk criminals into drug-plagued communities and force them to clean up those areas that have been devastated by the drug problem. But we really cannot say — based upon the research that I am familiar with — whether such a program will positively impact the prison population and reduce recidivism.

I encourage you to continue to do some innovative research and provide practitioners and policymakers with some of the answers we need in order to implement policies that are more than "a quick fix," which I think we have done all too often.

Federal Agendas

BJS: A Statistical Portrait of Crime

DR. JOSEPH BESSETTE
Acting Director
Bureau of Justice Statistics

Let me begin by adding my welcome to all of you attending this conference co-sponsored by the Bureau of Justice Statistics and SEARCH Group. This is an excellent turnout and is testimony to the fine work of the people at SEARCH who organized the conference.

I have been the Acting Director of BJS since September 1988. Before that I was the Deputy Director for Data Analysis at BJS for almost four years. In that capacity, my work was almost totally on the analytical and statistical side of BJS. I did not have much to do with systems development, data quality issues and the BJS funding programs that support these activities. So the past 10 months have been a learning period for me.

But there is one fact that I learned long before I became Acting Director and that is the vital importance of accurate and timely criminal justice information, especially criminal history records, for success in fighting crime. The police and prosecutors on the front lines know this, those of you whose job it is to manage criminal justice information systems know this, and those of us at the federal government who assist your efforts know this.

If we can all be immodest for a minute, I think we can reflect proudly on the lasting contributions that the longstanding cooperation between SEARCH Group and BJS has made in this essential enterprise. All of us here know the kinds of advances that have taken place during the past two decades, especially in the automation of criminal history information systems, and how those advances have benefited law enforcement. And all of us know how important it is that these advances continue into the 1990s.

As most of you know, BJS has supported a variety of important SEARCH projects in the area of information systems and data quality. During the past three years, for example, BJS has sponsored two SEARCH conferences on the policy and technical aspects of data quality. Proceedings of these conferences were published and are currently available. In addition, SEARCH prepared a comprehensive review of statutory and case law relating to data quality, and this was published as a BJS document. More recently, and in response to public requests, SEARCH prepared and BJS published a manual describing technical, administrative and legislative approaches for improving information systems, data quality and information exchange. On a related issue, BJS has funded several recent SEARCH projects on Automated Fingerprint Identification Systems — known as AFIS — a technology that promises to dramatically improve the functioning of the criminal justice system.

These are some of the highlights of what we have done recently in the areas of information systems and data quality. They reflect a firm commitment on the part of BJS to assist state and local efforts to improve the completeness and accuracy of criminal history record information and to promote its ready availability to authorized law enforcement personnel.

What about the future?

Obviously, as acting director I cannot speak authoritatively about the future direction of BJS. Nonetheless, I can tell you about some of the ongoing programs that directly affect information systems and that, depending on resources, are likely to continue for some years.

One is our Offender-Based Transaction Statistics program — better known as OBTS. Currently, about 15 states, covering 35 percent of the nation's population, provide BJS with OBTS data each year tracking about one-half million felony cases. This is a huge database. Just a few years ago only five to six states participated. We have been trying to add one or two new states each year by providing a modest amount of funding to interested states. Because OBTS data reporting requires a sound criminal history record system, BJS' interest in generating useful and accurate data has had the additional effect of improving data systems within the states.

The other program that is promoting criminal justice information systems is the new UCR system, called the National Incident-Based Reporting System, or NIBRS. Over the past several years BJS has funded implementation efforts for this new system in 24 states, nearly half the states in the country now. Other applications are currently in-house and additional funds will be made available during fiscal 1990. This BJS program supports the automation of incident and arrest data, as well as the improved audit capabilities that the NIBRS system will provide. We are hopeful that these new audit capabilities will greatly enhance the quality of criminal records throughout the states.

Having said all this, however, I do not want to leave the impression that activities and programs designed to improve information systems and data quality are the main business of BJS. After all, the primary purpose of BJS is in our name: statistics. Most of the staff at BJS and most of the money is devoted directly to the collection, analysis and dissemination of policy-relevant data on all aspects of the criminal justice system. Yet even here there is a close connection between what we do at BJS and the activities of SEARCH and its Members within the states.

I would like to illustrate this point by citing brief examples of two criminal careers from two different states.

One is the criminal career of Warren James Bland from California, and the other is the career of Johnnie Lee Evans from Illinois. I have a news clip from the *Los Angeles Times* of July 10, 1989, that describes the criminal career of Warren James Bland.

Bland first answered for doing harm to others in 1958 when he was convicted of felony assault in Los Angeles for stabbing a man in the stomach. He was given no prison time and instead was granted five years probation. That was his first incident. Second, in 1960 he was convicted of rape and kidnapping in a series of sexual assaults on women in Los Angeles County. He was sent to a state hospital, and after seven years of treatment he was back on the streets of Los Angeles. Less than a year later another series of sexual attacks occurred. A schoolteacher was raped at knife point. A 31-year-old woman was awakened when a man's gloved hand reached through her bedroom window and covered her mouth. She was dragged out the window, into the backyard and raped. Bland was convicted of rape, kidnapping and burglary for the two crimes. He served seven years and was paroled. Then he struck again. The victims

were an 11-year-old girl and her mother who were accosted while walking down the street of a Los Angeles suburb. Both were molested; the girl was tortured. Bland pleaded guilty to kidnapping and assault with intent to commit rape and he was sentenced to an indeterminate term in state prison. He served three years and then was paroled back into the community.

The crimes continued and Bland was back in jail within eight months, this time convicted of sexually assaulting an 11-year-old Torrance boy. The boy had been tortured with wire, clothespins, pliers and vice grips. Bland pleaded guilty and was sentenced to nine years. After serving less than five of the nine years, he was paroled in January 1986. Subsequent to his release, he was implicated in three additional crimes. All were sexual assaults. All ended in the murder of the victim: one was a 7-year-old girl, the second was a 14-year-old girl, and the third was an 81-year-old woman. Bland has been charged in the first case and he is a prime suspect in the other two. His case is currently before the courts.

The other example is that of Johnnie Lee Evans, a case that came to my attention when I was working for the Cook County State's Attorneys Office in Chicago, Illinois. Evans was released from an Illinois prison on December 23, 1982. He had been serving a 10-year sentence for raping a woman in an elevator in a public housing project in Chicago. He served four years and seven months for this crime. Nine days before he committed the rape, he had been released from an Illinois prison, after serving three years and three months of a four- to six-year sentence for the rapes of two women in elevators in the same housing project in two separate incidents. These two rapes had occurred within 27 days of Evans' release from jail after charges were dismissed for another rape of a woman in an elevator of a Chicago public housing project.

Twenty-four days after he was released from prison in December 1982, Evans attempted to rape a woman in an elevator in the Stateway Gardens public housing project in Chicago. Two days later he raped and committed a deviate sexual assault against a woman in an elevator in the same housing project. Four days later, in an elevator in the same project, he first tried to rape, and then, stabbing her 22 times, murdered a 16-year-old pregnant high school student. He was subsequently sentenced to death for this crime and he is now on death row in Illinois.

These are two particularly dramatic cases of one of the most deep-seated, and perhaps intractable,

At BJS our job is not to identify and publicize specific cases, but rather to present a broad statistical portrait of crime: its victims, its perpetrators and how the system responds.

problems confronting criminal justice practitioners — recidivism. A simple listing of the facts in these cases shows how the problem of recidivism raises issues about punishment, rehabilitation, judicial discretion versus mandatory sentencing, probation, parole policies, good time and, most important, the impact of criminal justice policies on public safety. It is hardly surprising that egregious cases like these sap public confidence in the ability of our governing institutions to protect law-abiding citizens from those who will not respect the lives and property of others.

Of course, at BJS our job is not to identify and publicize specific cases, but rather to present a broad statistical portrait of crime: its victims, its perpetrators and how the system responds. In recent years one of our major priorities has been furthering our understanding of the central issue of recidivism.

To date, our most comprehensive study on recidivism has been a Special Report titled *Recidivism of Prisoners Released in 1983*, which we published in April 1989. In this most extensive recidivism study ever conducted matching state and federal records, Allen Beck and Bernie Shipley of BJS generated statistical data on 108,000 offenders released from prisons in 11 states in 1983 — more than half of all state prisoners released that year. By examining a sample of 16,000 individuals and tracking their criminal justice contacts after release from prison, Beck and Shipley found that 63 percent of released prisoners were rearrested for a felony or serious misdemeanor within three years. Forty-seven percent were reconvicted and 41 percent were returned to prison or jail. Including arrests which occurred both before and after their 1983 prison release, the 108,000 offenders accounted for nearly 1.7 million arrest charges for serious crimes through the three-year follow-up period (including 265,000 arrest charges for violent crimes). Altogether, 77 percent of the released prisoners had at least one arrest for a violent crime at sometime during their criminal careers.

The two variables that were most strongly associated with high recidivism rates were (1) the prisoner's age when released and (2) the number of prior adult arrests. We found, for example, that 94 percent of young prisoners — those ages 18 to 24 — who had 11 or more prior adult arrests were rearrested within three years of their release from prison.

I have elaborated a bit on this recidivism project and this most recent report not only because we are proud of what we have been able to accomplish in this study, but also because, as some of you may know, this study was based almost completely on state criminal history record data. And indeed some of you here may have been data providers in this project, for which we at BJS are extremely grateful. A study of this scale would simply not have been possible prior to the development of computerized criminal history records or, equally important, without the enthusiastic cooperation of state and federal officials. Our recidivism project is an outstanding example, although not the only one, of how your work to improve the accuracy and timeliness of criminal history record information can also serve valuable research purposes and thus help us all to better understand crime, its consequences and how to combat it.

In closing I would like to add my personal congratulations to SEARCH and its Members for 20 years of public service devoted to one of the

great aims of free government in the United States: to provide citizens with the opportunity to live in their homes and communities with safety and security, or as the Preamble to the U.S. Constitution puts it "to insure domestic tranquility." This noble goal is made even more difficult by the constraints placed on criminal justice practitioners by severe limitations in resources. As you may know, less than 3 percent of all public spending in the United States at all levels of government is devoted to criminal justice purposes. All the police, prosecutors, criminal court systems, jails, prisons and probation and parole programs together have to manage on less than three cents of every public dollar spent in this country. Given these limitations, it is remarkable how much you have been able to accomplish in the past several decades. We at BJS have played a small part in that success and we look forward to a continuation of this very fruitful partnership between federal and state officials in the years ahead.

BJA: Evaluating Priorities

DR. CHARLES P. SMITH

Director

Bureau of Justice Assistance

I first became involved with SEARCH about 20 years ago when I worked for California, and Bud Hawkins and I were approached by the federal government to see if we could begin Project SEARCH. As I have watched over the years, SEARCH certainly has exceeded the expectations I originally had for it.

BJA appreciates the role that SEARCH plays in providing advice to us and helping us with standards and various other activities. SEARCH provides leadership in system development to the country. I think it is also important for us to recognize that, given the changes in society and the changes in technology, we may really need to re-evaluate what SEARCH has done and may do in the future.

Is it possible, for example, for one organization which has performed so well in the past to continue to do things on as broad a basis as in the past in areas such as new technologies, including biometrics; the complexities of the policy issues; advances in public domain system requirements; and management information systems? What about the special needs of intelligence systems? What about the unusual potential for expert systems? What about the

possibilities associated with positive identification, and the complexities of trying to implement what the technology offers in that area? What about electronic monitoring? What about all of these things which are potentially related to information technology, but that may be beyond the scope of things that SEARCH alone is able to do?

It is important, I think, to recognize that BJA has used SEARCH to enable criminal justice agencies to have access to information systems technology, particularly in the criminal history area. Our constituency tends to be principally smaller agencies, so we try, in terms of state and local government, to deal with not only the large states but also the smaller states. We have worked with SEARCH to provide education and have worked with SEARCH to provide a laboratory that enables people to draw upon the capacities of the system.

We need to be proud of what we have accomplished but by the same token there is still a substantial amount to be done. Anybody who worked in criminal histories 30 years ago, 20 years ago, 10 years ago, recognizes that there are a lot of things that we thought could be done which still cannot be done.

The dispositional gap in the data is one of the most significant things that everyone of us needs to recognize. If you want to deal with a criminal history and you are at a state or local

agency, or you are a gun store owner who is setting up a system — if you are going to access a database, you need to understand that it is only a partial database in terms of who is in it and in terms of the dispositional information. What you have is a situation similar to a meteorologist trying to predict the weather on the basis of 10 percent of the information available in the sky. We need to recognize that, in spite of the fact that the technology has been there and the need has been recognized, there is still a significant gap at the local, state and federal levels in dispositional capacities. That problem involves definitions, the willingness to record data, and costs. All that I am saying is that even in the criminal history area alone, there is a significant gap between what we can do and what we thought we could do. And I think we need to recognize that.

BJA has attempted to implement not only the *Justice Assistance Act*, but also the *Anti-Drug Abuse Act*. And we are chartered to enhance criminal justice information systems. We must, however, recognize that that must be done in relation to funding availability, policy objectives and the proper role of federal, state and local government. I think it is the kind of thing that we each need to sort out as we deal with system issues at the federal, state and local level.

The President has made clear that he sees that the swift and certain apprehension of lawbreakers is an underlying principle of the civil and criminal justice system. The President has also stated that timely and accurate information — reporting the case disposition record on people dealt with by the criminal justice system — is fundamental to the effective performance of the criminal justice system. The Congress has asked BJA to spend some time dealing with the priority review and the involvement of certain kinds of criminal histories and criminal justice systems in the federal, state and local government, and certainly we will undertake to do these things in the context of these priorities.

I am suggesting that I have seen substantial success as a result of what SEARCH has done. But by the same token, if I were to suggest what we might do at SEARCH or in the area of state criminal history record activities, I would suggest we not get too far afield in doing everything for everybody. There is so much left to do in the criminal history area in your agency, in your state and in the federal government (even in our FBI systems and anything that BJA does) that I think the potential for improvement there is substantial. That may in fact be a particularly significant priority for all of us. With a common agreement among federal, state and local government, we may be able to achieve even more success as a result of this concentration in the next 10 years than we have seen in the last 20.

Changes in Information Management

A Retrospective and Future Challenges

DR. ALFRED BLUMSTEIN

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The past 20 years have been an exciting time of change in management information systems, in the criminal justice system and in SEARCH. To provide some context for my remarks today, I started by thinking back to the setting that existed about 20 years ago when SEARCH Group was created. SEARCH, as you know, resulted from the Law Enforcement Assistance Administration (LEAA), which was created by the Omnibus Crime Control Act of 1968, which really was an outgrowth of the report by President Lyndon Johnson's Crime Commission.¹ One of the observations in that 1967 report was that, from the viewpoint of technology and information systems, the criminal justice system was still very much in the era of the quill pen.

Twenty years ago we were just starting to see the emergence of on-line inquiry systems such as the National Crime Information Center (NCIC), which allowed police on the street to call up and get information about wanted felons, wanted property and the like. One of the striking technical observations of the state of technology even at that time was that almost anything that anyone could want to do was technically feasible. The real choice was whether one wanted to do it or not in terms of cost, due process concerns, and the surrounding legal issues. The one striking exception to that statement of technical feasibility was automatic fingerprint identification; that simply was not technically feasible at the time, and it is important to note that one technical barrier has since been hurdled.

One of the interesting technical ideas that we played with was the notion of the "beeper": an electronic monitor to enable the authorities to know where a felon was at any time, and also to confine the felon to home or some other designated location. That was technically feasible, and it was indeed being discussed, but it was clearly objectionable to many who were concerned about due process, cruel and unusual punishment, and individual privacy. Of course, there has been a considerable change since then in what is considered to be an appropriate standard of privacy and what is considered cruel and unusual punishment. Then, it was viewed as cruel and unusual punishment to impose a beeper on somebody; in view of today's crowded prisons, we have changed our views considerably on that aspect of individual protection.

Twenty years ago, the only data resource available for conducting research on the criminal justice system was the Uniform Crime Reports (UCR), and that was widely viewed as very unreliable. Everyone knew that police were biased, and so the very large race differences in arrest rates were discounted and attributed to police bias. Everyone knew that the police were anxious to get larger budgets, and so the growth in crime rates was attributed to machinations by the police pumping up the data. When there was only one data source,

with no independent verification, it was very easy to castigate the UCR and to dismiss its evidence.

Twenty years ago, resulting largely from the work of the President's Crime Commission — and reflected in the Crime Control Act — we saw the emergence of the concept of the criminal justice system as a system: We saw for the first time a recognition that, even though this system is intentionally constructed to be fragmented, it nevertheless must be dealt with as a sequence of interacting, mutually supporting, and mutually influencing agencies. The system is fragmented because no democracy wants a monolithic entity — wherever it might be located — single-handedly determining matters of life and liberty for individual citizens. A democracy demands internal checks and balances. But that system must also be able to operate with the knowledge and information about its mutually affecting parts.

This was the major thinking that gave rise to the creation of the state criminal justice planning agencies that were a major theme of the Crime Control Act and the LEAA program. Unfortunately, our knowledge base at the time did not help us terribly much

in understanding the upstream effects (on crime) of what we did downstream (by the police, or in the courts or corrections). And that was the critical problem of the time — courts were relatively uncongested and incarceration rates were below 100 per 100,000. We had very little knowledge of the deterrent effects of any of the actions taken; we had very little knowledge of the incapacitative effects because we knew so little about the nature of criminal careers. On the other hand, we could reasonably make downstream estimates because those were resource impacts and we did start to deal with those in the 70s as the relevant data and methods became available.

As we move forward 20 years to the current time period, we see the widespread availability of police inquiry systems. The manual criminal history records are today maintained largely in machine-readable form and are readily communicated by electronic means, even if that is not always done. AFIS is here and operating, even if only in a few states. From the knowledge viewpoint — to correct what the Crime Commission pointed out as the dominant deficiency: the lack of information — we have now emerged with a diversity of data sources and a significant body of new and policy-relevant research.

The UCR is running well, and we are now moving into the era of micro-records within the UCR, which will

A democracy demands internal checks and balances. But that system must also be able to operate with the knowledge and information about its mutually affecting parts.

represent a major step forward. We have as a calibration the victim reports that are part of the National Crime Survey (NCS). As one compares UCR data with NCS data, the most striking observation is the fundamental consistency between those two data sources. They tell us different information and they cover different kinds of events, but the NCS has enhanced our confidence in the UCR data because of their consistency — the NCS does not devastate or highlight important failings of the UCR.

We have accumulated a significant volume of research that goes one step further. Whereas the NCS looks at victims and their personal experiences, we now have a good amount of research on offender self reports.

Again, this provides another calibration with UCR arrest data. We now also have an accumulation of that which we desperately need — the longitudinal records of individual offenders. These are derived from official records through the automation of the criminal history records, but also from longitudinal follow-up studies that include self reports. We are now able, with considerable sophistication, to dig into factors associated with criminal careers of individual offenders. We can look behind official statistics and see to what extent differences in crime rates are attributable to more frequent activity by existing offenders versus more individuals becoming active offenders — greater participation as opposed to higher frequency.

We are seeing much more research and have greater insight into, for example, the effects of age. We know there is a very sharp peak of offending in the 15- to-18-year-old age range but previously we did not know how much of that is attributable to an increase in the frequency of offending by current youthful offenders and how much is attributable to youths entering the offending population and then quickly dropping out. We now see that it is much more the latter than it was the former. We now have much richer questions and much more confidence in the kinds of information we are getting. All of this contributes to better decisionmaking and a closer link between research and decisions made in the criminal justice system.

We have to recognize, however, that this is an inherently tough area

within which to do useful research. There are still people and agencies who have a strong interest in distorting the data and, because much of these data are not generally recorded, there are a lot of recall errors.

As we look today, the one striking thing about information systems is the enormous ubiquity of computing throughout society — in schools and universities and in industry. Computing capacity that was totally unavailable 20 years ago is now available directly in very many people's offices. Computers essentially double their capability in speed and in memory every three years. Ten to 100 megabyte memories are commonly available today. Twenty years ago, we designed a JUSSIM system that had to be constrained because the time-sharing system we used would only allow us to use 32K memory. The transitions have been profound in computing.

Perhaps most important, these computers are not just stand-alone computers — they are being networked. For example, at Carnegie-Mellon, our network serves 8,000 computers so that all of them can ship files to each other very rapidly. And operating systems are moving toward compatibility. We see a widespread installed base with MS-DOS, large numbers of Apples that can also use DOS, and as we look to the next generation most people seem to agree that everyone will be sharing some version of UNIX. Thus, a major part of the Tower of Babel that has been a problem over the last 20 years is on

its way to resolution. We are also seeing widespread use of common software: Lotus or clones of Lotus, dBase or clones of dBase. The technology is moving ahead very rapidly.

Closing the Technology Gap

As we turn from the present to the next 20 years, let's talk about where I see some of the major challenges. The industry that most lags in the distribution of computing is government, and the most needy is probably the criminal justice system. Thus, the most important challenge is closing the gap between the technology used in industry and the technology used in the criminal justice system. This gap most directly affects the smaller agencies. The state-level agencies, whether they are an integrated court system or a department of corrections, are large and have access to resources and expertise. To a large degree, they are already moving forward into the 21st century. As we look to the smaller agencies, particularly jails, police departments (other than the major metropolitan ones), prosecutors' offices and county courts, an astonishing number are *still* operating in the quill pen era, and we have to find ways to bring them up to speed. Their ability to do so is partly financial, but I also think it is in large part because of the limited technical skills they are able to bear on their purchase choices.

One thing we might look to is a "consumer-reports" service that provides information on available packages. I think there should also emerge a variety of public domain systems developed at the state or federal level, for distribution throughout the local agencies. In Pennsylvania, for example, the Pennsylvania Commission on Crime and Delinquency (the state criminal justice planning agency) has been working with SEARCH to develop PA-LEMIS, a public domain management information system for police departments of medium size. That system will enable individual departments to avoid making the hard choices out of ignorance or of being vulnerable to exploitation by vendors.

SEARCH has developed public domain systems for prosecutors' offices and for jails. Such systems may require local agencies to be responsible for installing and updating but there should be some aggregate responsibility for creating the systems. The Bureau of Justice Assistance, as well as the Bureau of Justice Statistics, took responsibility for doing just that. It is with the cooperation of BJA that we in Pennsylvania were able to establish a relationship with SEARCH to develop a public use system. It is clear that when that system is available, it

should meet most of the needs of police departments in Ohio, Utah, and the rest of the country. We made it a point to make sure that whatever system we developed was based on an MS-DOS operating system to capitalize on the large installed base of software available to support it. PA-LEMIS is in modular form, and any department that wants a module or any subset of the modules can take those. This is the kind of development that clearly is needed to bring the weakest parts of the criminal justice system into the management information systems of the future.

Connecting the Justice System

The second issue that continues to loom is the fragmentation of the criminal justice system, not only of its operation but also in its willingness and ability to transfer information. It is our task to connect the criminal justice system. We want it fragmented because we want the checks and balances. But we do not have to destroy the checks and balances if we provide the wherewithal for shifting information around so that decisions are made on the richest amount of information rather than on that which happens to be available at the site — which often is less than the best available and not always the most appropriate for dealing with a particular disposition. We see this situation particularly when we deal with very young adult offenders. The juvenile court may be in a different location and the judge or the prosecutor may not have information about the juvenile record. I think the

decisions would be much fairer, both to those who have a clean juvenile record as well as to those who have an

The industry that most lags in the distribution of computing is government, and the most needy is probably the criminal justice system.

extensive juvenile record, if the juvenile record were available at the time of disposition.

The keystone linking the criminal justice system is the court. Because of the courts' insistence on independence, many are reluctant to participate in any of these joint endeavors. I think it is in their interest to participate so that the decisions they make are better informed and the information that derives from the courts can be used to update offender records and provide information for those who bring individuals to the court as well as for those who receive them from the court.

We have seen a start on these efforts through the Offender-Based Transaction Statistics (OBTS) program, but it is impressive how slowly the OBTS implementation has occurred. The issues are much less

technical and much more operational, political and institutional; the technology is lying there, waiting for better implementation of these kinds of programs. There is going to have to be a means of getting better agreement on common identifiers and common data elements.

We will have to improve our ability to provide unique identification quickly and easily. Whether we continue to rely on the thumbprint (and AFIS certainly encourages that) or whether it will be displaced by DNA profiling is still an open question. Within five to 10 years, one of these approaches will allow us to make unique identification of an individual quickly and inexpensively.

New Technologies

An area in which there is some important emerging technology that will not do very much for courts or corrections, but can be terribly important for policing is the development of geographic information systems. As the amount of memory increases and as processing speeds go up we can now readily incorporate into a computer the full geographic database of a city, county or region, and that database can provide very important pattern information. This

can replace the tedious process of sticking pins in maps by which police used to generate geographic pattern information. The National Institute of Justice's solicitation of proposals for using computers for drug enforcement use by police was a particularly important step in that direction. Under the thrust of drug enforcement, implementation of geographic information systems can move significantly forward.

One of the hot-shot areas of the last five to 10 years has been "expert systems," something we used to call "rules of thumb." This area suffers most from having been vastly oversold, but I also think there are some important capabilities to draw on people's expertise and converting that expertise to a series of rules. If we use expert systems as an automatic decisionmaker, then we are in for some tough times. But we can use expert systems in the same way that we use computers for computer-aided design and computer-aided auditing. We can use the constructs of expert systems to try to develop computer aids that will permit scanning of large volumes of information, test large numbers of possible rules, generate candidate alternatives, and then quickly assess and rank those alternatives. Used in this way, expert systems can represent an important contribution in enhancing the effectiveness of decisionmaking within the criminal justice system. They provide an opportunity to accumulate information on patterns — whether they be patterns in M.O. searches or patterns

of criminal careers to forecast future criminality.

Our criminal justice system is effective in retrospectively knowing when poor decisions were made. We know retrospectively who were the serious criminals with heinous records. That is easy when the full record is available. The real decisions that people in the criminal justice system have to make are the prospective ones: forecasting the locations of crimes or, in dealing with a particular offender, about what that individual's future criminal career is going to look like. So far, the technology for making prospective assessments is still terribly limited, and we have to look for ways to enhance it.

Privacy and Criminal Records

A continuing key issue that was much more in the fore in the 1960s is the issue of privacy. The dominant discussion at the meetings of the Advisory Committee of the President's Crime Commission's Task Force on Science and Technology was the concern over what computers might do to individual privacy. In many ways, however, computers can do a much better job of protecting privacy than is possible with manual records. Computer records, for example, can be purged. Computer records can be validated. Computer records can maintain audit trails to identify who gets access to what information.

Today almost all records are computerized. The criminal justice system has a continuing obligation to protect individual privacy where that is appropriate. The unanimous decision of the Supreme Court in *U.S. Department of Justice v. Reporters Committee for Freedom of the Press* was particularly appropriate in noting the qualitative difference between an individual recording of a public-record event and a compiled sequence of such events into an individual's criminal history. Even though an individual record may be a matter of public record, the court recognized the inhibiting effect of the enormous effort that one would have to go through in manually compiling an individual's criminal history. The court also recognized the appropriateness of protecting that kind of information when it is automatically compiled, as can be done so easily now. The court noted the qualitative difference between the two and the necessity that imposes on maintaining control over such records, partly to permit their accumulation, and partly to assure that they are available to those who do need them and who are also responsible for protecting them.

It was argued 20 years ago that computers do not know the principle of redemption, which is a concept that ought to be reflected in the criminal justice system. Many people do bad things and then they go straight, and it is important that redemption be possible for them. Indeed, manual record systems usually did not recognize redemption until after death, if then. Computers can be purged and people should think much more consciously about purging rules so that after some reasonable amount of time a record is sealed.

We can generate very clear, very explicit access rules to determine who may and who may not have access to computerized criminal history record information, and that access can be audited. The criminal justice system has only a small fraction of the information that will enable it to make meaningful identification of serious offenders and it still needs more and better information. There is the important potential of linking juvenile-justice records to records of misconduct in school and records of social service agencies to try to develop better indicators of the serious delinquent and to use that information in individualizing treatment. All such uses will have to be approached with care and judiciousness. But I think the benefits of doing more appreciably outweigh the risks.

Demographic Influences

Probably the biggest challenge of the next decade has very little to do with computers but does have a lot to do with information. It is information that has been derived from various studies highlighting the importance of the demographic influences on the crime problem. As we look to the 1990s, the key problem we will see will be the movement into the high-crime ages of 15 to 18 of the group known as the "echo boomers." They are largely the children of the post-World War II baby boomers, but in many cases they may be the grandchildren of the early baby boomers. The trough in the age composition in the United States is in the 1976 cohort; that is, the smallest age cohort in the United States now are those who were born in 1976, who are 13 years old now. Crime rises rapidly from age 12 to 15, reaches a peak somewhere around 15 to 18, depending on the crime type, and then falls off rapidly. As we see the leading edge of the echo boom group — kids born after 1976 — starting to move into the high crime ages, I think they will represent the start of some very significant growth in the crime problem in the 90s.

That age shift is going to be exacerbated by the socioeconomic composition of those cohorts. There is a very strong negative association between fertility and level of education. This is augmented by a relatively small race effect: fertility is slightly higher among blacks than among whites when you control for education. There is, however, a large education effect: women with less than a high school education have twice as many children as women with post-graduate education. And the distressing part, of course, is that education is highly associated with involvement in crime. To make matters worse, we are seeing that 25 percent of children under age six are raised under the poverty line, and about 20 percent of the children born these days are born to unwed mothers, many of whom have enough trouble getting their own lives together, and so are not going to be the ideal socializers of the children they are raising.

The concern, therefore, is that we are going to see in the next decade a major growth in the crime problem. For much of that, we do not have very much opportunity to affect it because it is on its way. But there are young children for whom we do have some responsibility, and with whom we do have much more opportunity for intervention. The commitment to their education is starting to show itself in rhetoric, but must still show itself in additional resources. It will require that education be expanded beyond merely K-12. There is an

important role for preschool responsibility. There is a role for dealing with the teenage mothers — who are a distressingly large fraction of society — and getting them into school, providing day care centers in the schools so that the children can be cared for and can receive nutritious meals, and so that their mothers can be taught the rudiments of parenting skills. This would be an important expansion of the role of the schools.

As we look to the criminal justice system, analysis has also shown us that when an age shift is contributing to the crime problem, there is about a 10-year lag until that age shift shows itself in prison problems. Throughout the country we are now seeing profound overcrowding within the state and federal prisons. Part of that is attributable to the toughening of laws and sentencing practices within the criminal justice system. A big part of that is also attributable to the fact that the baby boomers have just recently come through the peak imprisonment ages of the mid-20s. We ought to start seeing *some* slackening of that age effect in the prisons, although there are other forces afoot that will keep the prison populations from coming down very much: two examples are the heavy

use of prisons for drug offenders, and the stiffer sanctions by judges who are increasingly responsive to the political mood. Prison populations may stabilize, perhaps grow at a slower rate over the next decade. But you can certainly anticipate that in the early years of the next century, there will be a significant growth in prison populations. Unless we start paying attention to some of the issues that have been talked about this morning — such as doing better in using information systems and in managing the criminal justice system, but much more fundamentally, dealing better with the socialization burden in our society — the first two decades of the next century, at least, will see a major growth in prison populations. We have an opportunity now to start doing a better job of handling the responsibilities of the criminal justice system as well as of the society. I hope we take both more seriously in the future than we do currently.

¹ The President's Commission on Law Enforcement and Administration of Justice, *Commission Report: The Challenge of Crime in a Free Society* (Washington, D.C.: U.S. Government Printing Office, 1967).

Principles and Predictions for Justice Information Management Systems

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If I had known 20 years ago that I would be giving a speech today on a topic which includes the word "retrospective," I would have taken notes. And if I had known two months ago that my comments would immediately follow lunch and immediately precede a speech by Charlie Friel, who always manages to be both thought-provoking and amusing, I would have thrown away the notes and pleaded a headache. There are no notes; I shall have to rely on my memories of the past two decades. My memory is probably as distorted as anyone else's — I tend to remember the good times and not the bad. So those of you who are parts of my memories and who do not recognize yourself, see me later and I will tell you which parts of the stories are about you.

A retrospective is not just a nostalgic walk down memory lane, it is a method of understanding where we are and where we are going. The word "retrospective" means "to look back" and it almost immediately brings to mind its companion word "prospective," meaning "to look forward." Together, the two words imply an understanding of where we are now, looking back on the decisions already made, and looking forward to the decisions of the future. The future is not, as my namesake Karl Marx would have us believe, *completely* determined by the past, but it is in some sense determined by the past. That is why we can project future workloads, crime rates or prison needs or presume to speak on the prospective of technology. It is

worthwhile to look at the past not only for the nostalgia but also to gain some understanding of where we are going. Let us begin.

Those of you who know me know that I have a reputation of approaching things in a rational and structured way and so I have developed an algorithm for creating speeches at SEARCH meetings which I will share with you today. In future conferences we will not have to have speakers at all. We will just load this algorithm (which is displayed on the overhead projector) on the PC and we will do the SEARCH Annual Meeting at our desks! You can tell this is a high-tech algorithm; it has loops and nested loops and other things that techies like me like to have around.

Let me describe how I intend to proceed. I intend to discuss three memories from two projects that I have loved over the years and which are generally deemed to have been successful. One project is the original Project SEARCH, which demonstrated the feasibility of interstate criminal history exchange, and the other is the NLETS upgrade project, which carried the National Law Enforcement Telecommunications System from the teletype era to essentially the form it has today.

I shall distort the three incidents as necessary in order to make a story out of them; that is, I will end up looking good in these memories. I will then generalize the specific facts into a principle applicable to present and future developments in criminal justice information systems. In the second area of the algorithm I intend to consider, in turn, each of three information system development areas. I will present the principle, distort it as necessary to fit the way I want it to come out in the prediction, and then apply the principle to predict the future in these development areas. Thus, one feature of the algorithm is that our prediction of the future is based on a distorted principle which is a distortion of a story which is a distortion of a memory which is a distortion of the real world. I suggest to you that that is pretty much the way we always do it. At the end of that nested loop, then, we will drop out of the loops and end the speech. This is only fair; you know where you are in this speech at all times.

The first memory I would like to share with you can be called "Bob and the Chief." It comes from the earliest days of Project SEARCH when we were always meeting — it seemed — in committees. Project SEARCH was the most committee-oriented project in the history of the world, I expect. This particular committee was trying to select the

data elements and coding structure for various parts of the criminal history record. Two members of the committee were Bob Gallati, then the head of the New York State identification bureau, and Chief McFarling of the Texas Department of Public Safety (who, although I am sure had a first name, we always called Chief). Bob was a Ph.D. and tended to approach everything in a rather cerebral way. Chief McFarling, on the other hand, was a pointy-booted, silver-buckled, Stetson-hatted Texas lawman who approached everything in a very pragmatic way.

The topic under discussion was the codes to be used for the Race data element in the identification segment of the criminal history file. Bob Gallati announced that he had hired an anthropologist to consult on the matter. The anthropologist had said that the only proper race distinctions were Caucasoid, Negroid and Mongoloid, and so Bob proposed those three race codes be used in the identification segment. There was silence in the room after this announcement. Then Chief McFarling leaned forward, took his boots off the table, tipped back his Stetson hat and said, "Dr. Gallati, if you need those three codes, then I say you should have those three codes. In return, I need two codes to do the job where I come from, and I hope you'll let me have those two." And he turned to me — I was the chairman of the committee — and he said, "Mr. Chairman, I move that the codes for Race be

Mexinoid and Puerto Ricanoid." There was some additional discussion and we eventually compromised on a coding structure, the same Race codes that are now used in the Interstate Identification Index.

The point of the story is this: Bob Gallati needed something and Chief McFarling needed something. Bob needed the system to be defensible in anthropological terms; Chief needed the system to be useful in operational terms. They had needs which were different, although not necessarily in conflict. And it was only when we recognized that both of their needs had to be met that we could move on and make some progress. So from this memory I will develop my first principle which we will use later to evaluate the future. The first principle is this: *Progress is most likely when all the players believe they have received what they need.* We too often forget this, I think, and we too often try to impose our will on our users, on our colleagues or on people at other levels of government. We will be coming back to this.

My second recollection also comes from the earliest days of Project SEARCH and is undoubtedly more subjective than the first one because I am not only going to tell you *what* people did but I am also going to try to tell you *why* they did it. If I have

misunderstood your motives — and some of the people involved are here in this room — we can discuss that later.

There were several meetings just before the grant came from the Law Enforcement Assistance Administration (LEAA) that funded Project SEARCH. Pete Velde was at most of those meetings. He was then Associate Administrator of LEAA. He wanted interstate exchange of criminal histories, of course, but what he *needed* was direct access to high-level state law enforcement persons. So he backed Project SEARCH to fulfill that need.

Jerry Daunt was at many of those meetings. He was an inspector in the FBI and the head of the then-infant National Crime Information Center (NCIC). He wanted interstate exchange of criminal history records, of course, but what he *needed* was a way of expanding the NCIC. He had just finished the early implementation of the warrant files and the other classic "hot file" applications of NCIC, and he needed a way of expanding into areas that would fulfill the promise of NCIC. So he also supported SEARCH.

Kai Martensen was at several of those meetings. Kai was the Executive Director of the newly-formed California Crime Technological Research Foundation, a very strange half-private, half-governmental beast that was created by the California Legislature. It could be a private company when that was appropriate and it could be a governmental agency when that was appropriate. Its goal was to bring high-tech solutions to the criminal justice problems of urban America. Kai wanted interstate exchange of criminal history records, of course, but what Kai *needed* was a high-visibility project in which his new agency could take a leadership role and become visible to the California Legislature and other agencies and organizations that were important to his future. So he also supported SEARCH.

Paul Wormeli and I were co-founders of a brand-new consulting organization; in fact, the very first sales call we made was to Kai Martensen. When Kai agreed to see us, we did not have business cards, so we ran out that afternoon, had cards printed and drove up to Sacramento the next morning. As I met Kai, I handed him my business card, and as he pulled it through my fingers, the ink all stayed on my thumb and he held a blank white pasteboard in his hand. Paul and I wanted the interstate exchange of criminal history records, of course, but what *we needed* was very simple — cash flow.

The point of this story is to elicit my second principle, which is this: *All players do not need the same things, but everybody needs something.* And so when we look at what needs are being fulfilled, we should understand that it is not evil or wrong for people to have motives that are not purely aimed at the objective of our project. People have personal needs, they have agency needs, they have needs at many levels and those needs have to be satisfied if progress is going to occur.

My third and final memory is drawn from the project to upgrade the capabilities of the National Law Enforcement Telecommunications System (NLETS). At that time, line speeds for NLETS were 10 characters per second; they were set by the teletype equipment that was the only terminal equipment used on the network at that time. In fact, the "T" in NLETS at that time stood for teletype rather than telecommunications, as it does now. We all knew that increasing the line speeds by a factor of 20 or more was going to dramatically increase the amount of traffic on the network, but how would we quantify that impact? We *had* to quantify the message volume because we were writing the specifications for the switching computer and the total message traffic is one of the key specifications to size the computer. And so we applied science and technology to the task.

We created a mathematical model of the NLETS. No expense was spared. The model took account of populations in each state, the number of sworn officers, the size of the criminal history database and the number of licensed cars and drivers in the state. It was a wonderful model. It cost tens of thousands of dollars, perhaps a hundred thousand dollars. It ran for hours on the computer and spewed forth mountains of paper and yet we were uncomfortable with the results of the model. We left the NLETS headquarters in Phoenix and went to a nearby conference room where each of us ordered a Leinenkugel Beer. (For those of you who are not familiar with Leinenkugel Beer, it is Wisconsin's gift to a thirsty nation.) It immediately cleared our minds of the rubble that had collected there because of this immense mathematical model. One person in our group asked, "What was the highest message-count day we have ever had?" We had that data and quickly retrieved it. We specified that peak *daily* workload as the peak *hourly* workload requirement for the new system. We thought this was a marvelous idea: it had the kind of simplicity that true science brings to a question. We improved on it by having a second Leinenkugel and quickly realized that we had been much too conservative, and so we changed the rule. The present *peak day load* on the old system became the new *average hourly load* on the new system and then we doubled that to get the new peak hourly load. That is how the NLETS system was sized.

The point of this story, and my third principle, is this: *No matter how difficult the technical problems are, they are never the most difficult problems.* When science and technology took us as far as we could, it was only Leinenkugel that got us past the difficult area. The mathematical modeling could assure us that its results were internally consistent with the assumptions on which it was built, but it could not be "right," because we were stepping into a new era.

Let us now restate the three principles by which we will fashion our prospective for criminal justice information systems. Principle one: Progress is most likely when all players believe they have received what they need. Principle two: All players do not need the same thing, but each player needs something. Principle three: *No matter how difficult the technical problems are, they are never the most difficult problems.* We have completed the first half of our algorithm. Now the question is, we have these marvelous analytic tools in the sense of these principles but to what shall we apply them to foretell the future? There are several broad technical trends for which the general outlines are still fuzzy but which will broadly influence information system design in the coming decade. I do not intend to cover them at length because the specific form in which they will influence us is too sketchy, but I want to mention them just to get on the record so that 20 years from now

when we meet I can say, "Yes, I knew that this was coming."

Technological Trends

I would call these three trends the three "Won't cares." Ten years from now we "won't care" where data are located. We already see the beginning of that. Some databases will be centralized, some will be distributed, and most users will not know one way or the other. A company called Oracle, which is the fastest-growing software firm in the United States, makes its enormous income simply by distributing databases anywhere you want. You can have part of your database on an IBM PC in Massachusetts and the other part on a Digital mainframe in Connecticut. Another company in Silicon Valley called Metaphor Systems actually wrote a software package that simply finds the data for you. You ask questions of Metaphor and it calls up computers asking them what they have, assembles the answer and gives it back to you. A third product of that same kind, more in the conceptual stage, has recently been talked about a lot by John Sculley, Chairman of Apple Computer; he calls the concept the "Knowledge Navigator." In the future it will not be important to know where data are. If you know enough to ask for it, a computer will find it for you.

Ten years from now we "won't care" whether the data we handle are image or text. The beginnings of that are clear at this time. Most high-end word processors for microcomputers now handle merged text and data. Last November, CCITT — which is the standard-setting branch of the United Nations — set a standard for something called Group 4 Class 3 Facsimile, where facsimile machines will move mixed text and data and treat text as text and image as image. And, of course, products like Page-Maker, Postscript and Word Perfect have already given us that capability.

Ten years from now we "won't care" how much data are needed. We see the beginnings of that already in the ISDN (Integrated Service Digital Network) and fiber optic networks where the information bandwidth is so enormous that it will not matter any more how we move things around. We are seeing data compression that is so successful that large amounts of data can be moved around through very narrow pipes. For example, the "DVI" standard for motion picture-type data compression compresses data 100-to-one. You can put a full-length motion picture on a compact disk.

I would like to apply the principles to three areas which are already on the agenda for criminal justice system improvements. The first one is the intercommunication between Automated Fingerprint Identification Systems (AFIS) of different vendors; second, the area of DNA identification; and third, information system integration.

Inter-AFIS Communication

AFIS technology has already dramatically changed law enforcement identification. By the end of this procurement cycle, that is, 12 months or so from now, 33 states will be served by an AFIS with a total of 76 percent of the national population. The technology has moved incredibly quickly; after 20 years of languishing, it suddenly blew up a few years ago. Further installations for purposes such as motor vehicle registration, welfare cost control and, possibly, firearm purchases, will be coming and already are being seriously talked about, and seed money is being planted in these areas. There is a widespread perception that the sharing of data among such systems would be a "good thing." For example, crime scene investigators in Kansas City, Missouri, may want to search the state fingerprint files of both Kansas and Missouri. It may be desirable at some point for the flow of fingerprint data from state identification bureaus to the FBI Identification Division to be electronic rather than on paper.

The situation at present is that an AFIS by a single vendor can talk to another AFIS of that same vendor. But in operational terms, no two systems from different vendors can talk to each other. The problem is not at heart a technical problem, although it has very interesting and challenging

technical dimensions to it. We already have a standard format for the exchange of such records. It was adopted by ANSI, the American National Standards Institute, in 1986. A communications protocol which is different from the format standardization has not been agreed upon and it will be a very difficult area in which to get agreement; however, we have plenty of standards from which to choose — it is not that we need a new standard. If we lay out this interchange as a form of electronic mail, we have excellent, fully developed standards in that field. If we lay it out as a transaction-processing concept, we have excellent standards in that area. If we choose to consider it a peer-to-peer computer liaison, we have standards for that. So it is not a lack of standards or a lack of available technology, it is the problem of richness and of selecting from available alternatives. If we have the technology we need to provide this communication, why has it not happened? Why don't we have this capability of inter-system communication? The answer lies in the three principles, of course. So we are going to apply the three principles to see where this goes.

Principle One: *Progress is most likely when all the players believe they have received what they need.* Although there has been much talk about the need for inter-AFIS communications, there has been little rigorous thinking about what that means. This is something that still

has to be done: how much interaction is required, how fast would be the turnaround time, how many searches have to be allowed, what kind of data transfers are to be expected? Nevertheless, we know that there are agency needs. In short order, I should think, we will be able to describe the information needs, for example, at the interface between state identification bureaus and the FBI Identification Division. That is a quantifiable answer to the questions of what do we need, what kind of turnaround time would be satisfactory, what are the volumes of data, and so on. Similarly, between arresting agencies and the state identification bureaus, the numbers and the needs would be different, but they are quantifiable. It is not a question of being difficult; it simply has not been done yet.

In the case of the vendors, it has been commonly assumed that the vendors would be very resistant to inter-AFIS compatibility because it would hurt their ability to market their solution as basically a monopoly provider of the system. And indeed what we have seen up to this point are regional clusters of a certain vendor; that is, there is a Midwest axis for NEC, there is another axis on the West Coast and there is a Printrak axis that runs up the Southeast and the East Coast. This is because, in part, people do believe that interaction is important and they expect it to be easier to interact in the same-vendor environment than in a multi-vendor environment. So it has been assumed — including by myself, perhaps — that vendors would be resistant to changes in this direction. I think we

have received very clear information within the last several weeks that that is not the case. Vendors seem to have decided that the market is different than it was several years ago. It may be time for one vendor to "poach" on the territory of another vendor's customers. Therefore, compatibility and interchangeability in communications are probably in the best marketing interests of all the vendors. I do not mean that to sound cynical; that is an important need that has to be met.

Principle Two: *Are different things needed by some of the players?* I think so. The state identification bureaus have very special relationships that they perceive as being desirable and worthy of being maintained — the role as sole contributor of fingerprint cards to the FBI, for example. And anything that seems to damage that special relationship would be resisted by state identification bureaus. They have special relationships with local agencies in the same way, of being the sole repository and the sole first source for fingerprint identification within the state, and they would be very reluctant to see that relationship disposed of or altered. On the other hand, local agencies may want to launch a single search into their own system, or may want direct relationships with another city within the state, another city in a neighboring state, and with the FBI if a national

latent print file is created. AFIS manufacturers will be satisfied when there is enough compatibility to allow

In general, the technical problems [of inter-AFIS communication] are not those requiring breakthroughs, but rather those requiring choices from among available alternatives.

them to make marketing forays into their competitors' turf, but not so much compatibility that customers view AFIS as a commodity product to be sold on price alone. There are tricky non-technical relationship areas where needs exist that have to be acknowledged and met, and technology has to serve to fulfill those needs and not be a damage point.

Principle Three: *Can the non-technical problems be solved?* There are some problems: the allocation of costs, for example. I fully recall 20 years ago when people were saying, "Well, if we have this interstate exchange of criminal histories, I am afraid that other states are going to be calling into my computer and using valuable computer time and I should be able to charge them for that." That sounds strange to us today, but this was a real consideration. Computer

time was expensive, rare and scarce, and people were worried about rationing that time in some way. We hear the same thing about AFIS today; it is certainly more true about AFIS. AFIS is a glutton for computer time; it just sucks it up. If telecommunications facilities are required, whose shall they be: NCIC, NLETS, a new network, a commercial packet-switching service? What new inter-agency relationships will have to be forged between cities, between states, between cities and states, between cities and states and the FBI? Will new governing and consulting bodies be needed and, if so, where will the power reside?

There is cause for concern and that fear must be acknowledged. I expect, however, that when we get into operational use, we will see a self limitation of demand for AFIS services — the same kind of self limitation that restricts the use of out-of-state vehicle registration checks, for example. There are self-limiting features already built into the criminal justice system.

If we look at the three principles together, we can be rather optimistic in saying that inter-AFIS communications will be a reality in the reasonable future. In general, the technical problems are not those requiring breakthroughs, but rather those requiring choices from among available alternatives. The differing needs of all levels of AFIS users and providers will pose difficult problems, but not necessarily at the earliest stages of compatibility implementation. SEARCH has been involved in preliminary meetings with the vendors who are very interested in moving forward and have been extremely cooperative. There were concerns about anti-trust violations, about proprietary data, and about losing the ability to market the advantages of their system if there was too much standardization imposed, but they are not concerns that should stop progress in this area.

Our fearless forecast for AFIS is this: Within two years, users of systems developed by different vendors will be able to share AFIS data, at least on a limited basis, subject to the terms of interagency agreements.

DNA Identification

DNA identification is the second area I want to discuss today. The technical situation here is much different from that of fingerprint identification in a couple of ways. We have about 100 years experience in fingerprint identification; we have less than 10 years experience in DNA identification. Until the last 20 years

or so, the whole fingerprint identification process was performed by law enforcement practitioners without much intrusion by scientists; scientists came in on top of an already mature system and built the AFIS superstructure that is so helpful to us today. DNA, on the other hand, has been basically an academic scientific scene only recently applied to the law enforcement world, and therein lies some major differences.

I recall when the national scientific laboratories became interested in fingerprints in the late 60s or early 70s. They were excited, exciting people. I met with many of the scientists and they looked at the detail of these fingerprint ridges, and they talked about the enormous "information content" of fingerprints; of the almost limitless "sorting power" of pattern analyses; and of the similarity between fingerprints and other pattern recognition tasks that had already been solved. They were excited and they did wonderful work; it never went anywhere, but it was wonderful work.

A few years later many of those scientists had moved on to other interests. They had discovered that the "information content" that so excited them at the beginning was dependent on perfectly rolled, unscarred fingers on perfectly white paper with perfectly black ink, perfectly stored and perfectly analyzed and that the information content

dropped to scientifically uninteresting levels when one had to rely on dirty, smudged, faint, partial latent prints on uneven backgrounds. So they became uninterested, with some notable exceptions, of course. They had discovered that the "sorting power" they thought they had observed in pattern analyses depended on the assumption of statistical independence between fingers, an assumption unjustified by the data.

I believe that DNA identification is at a similar stage now. There was an enormous excitement of a new tool. We heard the numbers and saw the Sunday supplement articles on it: DNA profiling had a one-in-a-billion sorting power — the accuracy of selecting one person out of the population of the world. These sweeping claims are giving way. It is already changing, of course, as we get into court and as defense attorneys and prosecutors start building the case law that is going to be so important to the future of DNA. They are seeing that the DNA samples are often mixed between the victim and the perpetrator, that heat, dirt, dampness and light and a lot of other environmental factors which are controlled in laboratory environments are not controlled in a law enforcement

environment. They know that technicians make procedural mistakes and mislabel containers and transpose numbers and generally act like human beings.

The bloom is going to come off the rose a bit. What we will be left with a few years from now is a very useful law enforcement tool, but not the panacea that some people outside law enforcement are perhaps envisioning it as today. This metamorphosis from "science-as-infallible" to "science-as-useful-tool" is a necessary and beneficial stage in the development of this potentially useful law enforcement aid.

So let us apply the three principles to DNA and we will predict its future. DNA is a much simpler situation than AFIS. Principle One: *Success depends on all believing that they have received what they need.* Who are the players in DNA? They are the managers of crime laboratories at the local, state and federal levels. And they are the people who approve the budgets for new scientific tools and toys. I will call them the attorneys general as a group, because that is one place where the crime labs tend to be located. The crime lab managers need to feel that they are on the cutting edge of applied science, so they very much want not to be left behind in the DNA parade. The attorneys general want to be able to say truthfully that they have been instrumental in providing law enforcement with a tool that solves crimes that would be otherwise unsolvable with present technology.

There will be very strong agreement, it seems to me, to move toward rapid and widespread implementation of DNA labs.

The one concern I would have [about DNA technology in a forensic setting] is that there may be too early a move toward standardization that takes diversity out of the system.

Principle Two: *Different players may need different things but all players need something and those different needs must be reconciled.* This is not so much the case with DNA because I cannot identify any great conflicting areas. Forensic scientists want the latest tools, and persons who buy the tools want to feel they are making a difference. Relationships between local crime labs and state crime labs may change in the future. If, in fact, we are talking about DNA files — not just matching specimens to captured suspects, but matching specimens to a specimen bank — we may experience centralization at the state level, caused by the need for a statewide specimen

bank or DNA tracing bank. (California actually has a specimen bank with the expectation that at some future time the data will be computerized.) Thus, there may be changing relationships between local and state crime labs, and between state crime labs and the FBI crime lab.

The third principle states that the technical questions are never as difficult as the nontechnical ones. That is true. But there are still some very powerful technical questions. "Restriction fragment length polymorphism" (RFLP) — which is the technical term for the predominate way DNA profiling is done in the forensic area — does not have the level of scientific underpinning that some people think it does. I think there may be some really serious technical work that still has to be done — not because it will change the outcome, but because it will change the defensibility of the outcome. Putting DNA in a forensic setting is going to change things considerably.

The most serious potential problem under this principle relates to control. In the fingerprint case, where the technology is relatively mature, the need is to assure compatibility while preserving proprietary differences between systems. In the DNA case, where technology and practice are

much less mature, it is important to limit the natural desire to control and to set standards. The one concern I would have is that there may be too early a move toward standardization that takes diversity out of the system. I would suggest that it might be well to "let a thousand flowers bloom" for a while before we nail down the one way to do DNA profiling for the entire country. If not letting a thousand flowers bloom — since these are very expensive flowers — at least let a half-dozen flowers bloom for a while until we really understand the long term use of DNA technology in law enforcement.

And now for the fearless forecast: I believe that DNA identification in 10 years will be a standard law enforcement tool available in all state crime laboratories and in major local crime labs. I think there is an early spurt of implementation now. I believe that that will die off for a short time, for a year or two until appellate case law on this technology is firmly settled. Then there will be gradual implementation, probably taking around 10 years to fill the country with state and local level services. It is possible, even likely, that RFLP, the method used to analyze DNA, will seem hopelessly archaic 10 years from now; but in some form, and for some crime types, DNA identification has a bright future.

Information System Integration

The third and final technology area is information system integration. I shall begin by attempting to distinguish information integration as it is generally understood today from the same term as used 20 years ago. In the early days, there was a recognition that the criminal history record was nothing more than the archival remains of subject-in-process systems; that dispositions in the criminal history record were, in fact, the end points of case-tracking systems in other agencies. There were many attempts in the middle and late 60s to build "super systems" that would serve the information needs of prosecutors, courts, corrections, police and probation agencies, and there have been a couple of successes on that path, but very few. It is a concept that required so much agreement from so many agencies who are unaccustomed to agreeing with each other that I think it fell of its own weight. So I am not talking about integration at the super main-frame level of integration.

The development of relatively inexpensive minicomputers, and more recently of networked microcomputers, has effectively eliminated the need for this kind of system integration. What is happening now, in some places, is a lower level of integration where agencies have the power to control their own system configurations; where they can set their own data elements; where they can set their own reporting standards;

where they can set their own protocols and disciplines and user groups and so on, but where, at a modest level of cooperation, they can connect with other similar, independently run systems for mutual benefit. I am thinking now of some of the micro-computer systems that SEARCH has developed in the last year, LOCK-DOWN™ (a jail management system) and D.A.'s ASSISTANT™ (a prosecutor's management support system), for example.

D.A.'s ASSISTANT™, in particular, contains the disposition data that are so crucially needed by criminal history systems and are so difficult to obtain. It does not require that these systems be on real-time, interactive, high-level protocol connective networks. It is perhaps required that once a day or once a week or at some predescribed interval, a telephone connection is made and some data are dumped. And it is, of course, essential that there be cooperation at the level of providing what has been so cogently called the "glue elements": the state identification numbers, the arrest cycle number, the kind of numbers that let us glue the prosecutor record onto the criminal

history record, and glue the court record onto the criminal history record. That level of cooperation, especially when you are at the reprogramming level, is not impossible to obtain.

The technical hurdles, formidable as they are, either have been overcome or are being overcome. They are being overcome by network protocols and by highly disbursed network software systems which run on many different computers under dozens of different operating systems, and which provide for the construction and use of distributed databases. Let us examine the three principles and see what non-technical hurdles may still exist.

Principle One: Progress is most likely when all the players believe they are getting what they need. Now what is it the players need here? I would suggest to you that the one overwhelming need that all the players have is control over their own destiny. It is very uncomfortable to be responsible, for example, for a criminal history system and not see source documents coming in where you can time stamp them, queue them up, microfilm them and shred them. It is a difficult leap of control to basically allow your destiny to be affected by somebody else's system and reporting habits. Integration, while it would increase overall efficiency and provide more timely and accurate information, does not increase the element of control. Thus, on the basis of the first principle, integration seems to be a hard sell.

Principle two: Players sometimes have different and conflicting needs. In those areas in which there is a

[S]imple inter-system communication which does not threaten control and independence may become commonplace in the next few years.

"data czar," the kind of integration that I am talking about can proceed rather smoothly because a history and consciousness of control exists and you do not have to build new relationships so much. With a "data czar" agency, there may be a push toward integration as a way of bolstering centralization. In cases where there are strong user committees which maintain effective control over information systems, there may be pressure toward integration as a way to improve data timeliness. In situations where several affected information systems are within the same super-agency, such as a Department of Public Safety which includes criminal history and parole and corrections, there may be pressure to

integrate in order to cut overall labor costs. In areas where that is not the case, where there is not a strong central computing authority, I suggest to you that building those relationships is going to be very, very difficult. We all know the difficulties of getting disposition data from courts; we know the constitutional arguments against it; we also know the profound feelings of independence that judges and court clerks have for serving the courts rather than some nebulous criminal justice community. That exists at all other levels: it exists in prosecution, it exists in correctional agencies. It is going to be very, very difficult to form these new relationships if there is not already some structure that they can be hung on — not impossible, but difficult.

Principle Three: The technical problems are never the most important problems. That is certainly the case here. The technical problems are not really very profound; they are at the level of sort/merge operations. Integrated databases are technically feasible now, and are being implemented in corporate America at an increasing pace. If you have these "glue elements," it is a matter of gathering them and glueing them on

the proper place in the records. It is not a technical problem so much as it is a relationship problem. The non-technical issues — loss of control and possible loss of independence — are just as real but are being overcome by hierarchical management structures with simple profit-oriented goals.

My last fearless forecast is frankly somewhat less positive than it is in the other two areas. I believe that integrated criminal justice information systems will occur in special circumstances, but will not become commonplace during the next decade. On the other hand, simple inter-system communication which does not threaten control and independence may become commonplace in the next few years. For example, correctional systems will perform bulk transfers of records concerning persons entering or leaving prisons using tape transfer, some form of on-line file transfer or a form of electronic mail. I think that integration is the future of the criminal history system, but it is going to be a very hard sell except when there are dramatic changes already being made. That is why I think that when you pick products like D.A.'s ASSISTANT™ or when your prosecutors are opting for a new release of PROMIS software, those are the times to cut your deals and establish system integration. It is going to be much easier at that time than to walk in cold and bring this up as a fresh topic. I am less optimistic about this area, but I am not pessimistic either.

We are now at the end of the algorithm. I would like to round this off by laying out for you three conclusions that I believe can properly be hung on these distorted principles of distorted stories of distorted memories of distorted reality.

The first conclusion is this: Technical change influences the criminal justice community but does not control it. We can do things only if technology allows us to do it, but there are many technologically feasible things that we cannot do because we are a community of approximately equal partners. Second conclusion: Technological change occurs in the criminal justice community only when a broad consensus forms among the members of the community. And that is, I think, what takes so much time. The Interstate Identification Index has taken 19 years since the first report of SEARCH, not because it is *technically* difficult; but because it is difficult in the ways of the three principles that I have talked about, which are all *non-technical* problems. And third: Achieving consensus is always difficult, and we should not think of achieving consensus as being an inconvenient part of our jobs. I would suggest to you that it *is* our job.

Intergovernmental Relations: Correctional Policy and the Great American Shell Game

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As you notice in your program, the title of this session is *Retrospective and Future of Intergovernmental Relations*. I know some of you do not know what that means, and you are going to be further depressed when I tell you I do not know what it means either, but I am going to talk for 45 minutes about what it *could* mean!

When the planning committee for this conference met to discuss the agenda, I suggested it would be well to have part of the program dedicated to the interplay between inter-governmental relations, public policy and information systems. They said, "That's a good idea, what do you want to call it?" I responded with *Whizzy, Whizzy, Whizzy, Get Tough on Crime, No New Taxes: The Great American Shell Game*. The staff, in exercising their prerogative of good taste, threw that out and substituted this exciting title, *Retrospective and Future of Intergovernmental Relations*, which I have no intention of talking about. I want to talk about *Whizzy, Whizzy, Whizzy, Get Tough on Crime, No New Taxes: The Great American Shell Game* for reasons that hopefully will be obvious to you when I finish.

A few weeks ago I was musing on what I was going to say and two generalizations about public policy in America came to mind. (By the way, for those of you who are not from east Texas, I want to tell you how to say that word right, America: "Amrka." That is a word used by guys named Bubba. It is one syllable long and it comes out of the left nostril, "Amrka." Love it or leave it!)

It is very difficult to generalize about our pluralistic society but two generalizations about America struck me. First, there is a lot of government in the United States. Unlike most other countries which have unified systems of government, we have a very decentralized one. We have federal government, state government, regional government, county government, municipal government, and we have legislative, executive and judicial branches. When you talk about intergovernmental relations, you are talking about the numerous combinations of ways that levels of government can relate in the "schizophrenia" we call the American democracy.

Second, intergovernmental relations change, I suppose, from day to day and year to year and decade to decade, and they vary from issue to issue. Whether federal, state, regional, county, local or legislative, executive or judicial government takes the lead on any particular issue changes, depending on whether you are talking about housing, the environment, transportation, education, public safety or criminal justice. Therefore, if you are going to prognosticate about intergovernmental relations in justice and how that will affect information systems development and statistical applications in the future, the first thing you need to do is to figure out which issues are going to drive justice policy through the year 2000.

Now I suppose every one of you has a short list of what you think the driving policy issues are going to be over the next 10 years. If we all "fessed up" and I showed you my short list and you showed me yours, I think we would find that they would be very similar. For example, I think that the problem of drugs is going to be a driving issue. I am all for interdiction, drug education, asset seizure and demand reduction — all the things that we are doing now. I favor all of these things because I have two teenage children. I take the drug problem personally and seriously.

But I have little faith that we are going to be successful in reducing that problem in the next 10 years. I am supportive of these public gestures, and maybe the government will spend a lot of money on these initiatives just to convince the people that it is doing something, but I do not think that problem is going to go away. I do think the drug problem is going to drive public policy and the budgets in criminal justice for a long time to come.

Another issue that I think is going to drive justice policy and intergovernmental relations over the next few years is something that Dr. Blumstein

addressed this morning — the shifting demography in this country. We have more people over age 65 today than we have teenagers. That has never happened in our nation before.

Another problem that I think is going to be a primary determinant of justice policy, intergovernmental relations, and information systems development is prison overcrowding. The real problem is the system and what to do with the ever-increasing numbers of people who we have the capacity to arrest and successfully convict. It is that issue that I want to use as an exemplar of how intergovernmental relations and intergovernmental policy is likely to affect the development of information systems over the balance of this millennia.

I have found it instructive in my life . . . (Academics say such things; we don't really think this way, but it sounds good.) I have found it instructive in my life in trying to understand a contemporary issue and where it is likely to go, to first try to understand historically how we came to be in the situation in the first place. Somehow, understanding the history of the issue — even our revisionist versions of it — makes living with the present problem more comfortable and provides more security in trying to project the future. This afternoon I would like to present to you my revisionist, historical analysis of how we came to be in the correctional

mess that we are in in this country and, taking that as a given, to share with you the direction I think that issue is likely to go in the 1990s, and how it may affect those of you involved in information systems development, statistical applications or intergovernmental policy development.

In sharing with you my revisionist generalizations, I know some of you are going to say, "Where did he get that stuff? That is not the way it is back home!" What I am going to say, however, is not true of any one jurisdiction, but the generalizations, in part or in whole or from time to time, have occurred in all jurisdictions. I am painting a stereotype of what I think has happened, and parts are probably more or less true in the various jurisdictions from which you come.

If I go back 30 years and compare correctional policy then and now, and look at how we got from where we were to where we are, and ask how the change is a product of intergovernmental relations and how it has affected information systems development, I would say that I see it in three pieces. There is a period from approximately the end of World War II to about 1964 which I call "The Good Old Days." Then there is a period from somewhere around 1965-67 to 1975, that I characterize as the age of "The War on Crime." Finally, is the age that begins somewhere around 1975 and extends to the present that I call the age of "The Great American Shell Game."

The Good Old Days

Twenty-five or 30 years ago there were five clearly defined, distinct and generally accepted correctional sentencing options in this country: fines, probation, jail, prison and parole. Probation and parole were considered legitimate sanctions in their own right. You cannot find language 30 years ago that said the purpose of parole was to control prison overcrowding. You cannot find language that says the purpose of probation was to take the huddled masses yearning to be free and keep them out of prison because it is cheaper.

The philosophy of probation 25 or 30 years ago went something like this: You messed up, but you have some things working for you: you live here, you have a job, you have a wife and some kids, so we are willing to take a chance on you. And my job is to supervise you in the community and do what I can to turn you around into a John-Do-Good citizen. And if you mess up, I am going to throw the ultimate trump card on your life: you are going to prison.

The philosophy of parole was: You are in prison and you can serve all your time, but if you get your stuff right and go along with the rules, regulations, procedures and policies and invest in your education, participate in the work programs and do not

buck the program, we will let you out early. We will supervise you and try to help you get your life turned around and turn you into a John-Do-Good citizen.

There is not much doubt that this was the purpose of those two sanctions. Probation and parole officers' jobs were substantively challenging but conceptually simple: to supervise people and try to treat whatever was wrong with them, turn them around and return them to society. Officers had confidence in their intuitive skills in diagnosing and classifying people. They did not use scientific methods like risk-needs assessments and instruments with little grids and boxes. They viewed themselves as intuitively competent to do that. Probationers were far less risky people than they are today — typically property offenders and first offenders. You did not have as many mentally retarded, mentally ill, potentially violent, chemically dependent people as we have today. Probation and parole officers were drawn to the field because they were interested in people, took pride in their intuitive and personal skills, worked with offenders in both the office and the field (almost unheard of today), came from a background in the social sciences, and believed that they had the capacity to substantively change other people.

Probation and parole administrators came from the ranks of good probation and parole officers. They were good role models of what probation and parole stood for, and

people understood what those institutions were and what their core technology was. These managers were people who rose to the top because they could supervise the supervisors of probationers and parolees. The mission of the prison was clear. They received and held people; they had clout; they had rules and regulations; there was an emphasis on the work ethic — be it in agriculture or industry — and there was interest in education and training.

The War on Crime

Come 1965, '66 or '67, this whole scenario began to change very rapidly. As a product of the violence we saw in the civil rights movement, the anti-war movement and the rising crime rate of the mid- and late-60s — a lot of it attributable to the baby boom generation hitting puberty and coming into the crime-prone years — people began to see an America that was violent. At the same time that we were sending men to the moon and astronauts were the greatest heroes in American life, you could also turn on television and see violence in the street, and that bothered people. And so we enter this period of "The War on Crime." At the time, President Johnson was — and I voted for him — declaring war on everything. We had a war in Vietnam, a war on poverty, a war on illiteracy, a war on

crime. That rhetoric is interesting because inherent in that is the idea that in a war there are good guys and bad guys, there are strategies and battles, and there is ultimate victory — all of which I think is a myth when you talk about crime, because we have had it since Cain killed Abel.

We enacted the Omnibus Crime Control and Safe Streets Act and created the Law Enforcement Assistance Administration (LEAA). It was the first time in our history that there was a massive infusion of federal money to deal with what is essentially a local problem: crime control and public safety. The public demanded governmental action and the government acted. Yet while we initiated the war on crime — with federal, state, regional, county and municipal leadership, as well as leadership in the executive, legislative and judicial branches — there were several counter-trends triggered during the same period that ultimately led to the enormous train wreck in correctional policy that we saw in the 1980s.

These counter-trends included the so-called moratorium on prison construction. Some folks said prisons were a defunct concept; they were expensive and do not work, and argued not to build anymore. They described in great detail all that was

wrong with prisons. We asked, "What do we do as an alternative?"

They said, "Let's invest in community corrections."

Of course we asked, "What's that?" and they answered, "We'll tell you about that later."

Now policymakers who were facing demands to replace antiquated prisons liked the moratorium on prison construction because they did not have to spend money on prisons, which really do not bring in any votes, notwithstanding the call to "Get tough on crime and no new taxes." And so many states lagged behind in the replacement of antiquated jails and prisons at the very time when crime was beginning to spiral.

Another counter-trend that started in the early 1970s was the demise of the "hands-off" doctrine. Throughout most of our history when the judiciary received letters from prisoners saying "I'm being held here against my will in cruel and unusual circumstances and they're abusing my right of equal protection and due process," the judiciary's response has been that a prison is supposed to be punitive, we keep our hands off. But as an outgrowth of the civil rights movement, a growing sense of concern about individual rights and liberty, and the challenge by the young to the autocratic establishment, federal judges — beginning with *Holt v. Sarver*¹ in the early 70s in Arkansas and culminating in the massive case in Texas, *Ruiz v. Estelle*² — said no, even people in prison have basic constitutional rights, and we and our special court

masters are going to intrude and tell the executive branch how to run prisons because, quite obviously, they do not know how to do it.

And so we enter this period of "The War on Crime."... That rhetoric is interesting because inherent in that is the idea that in a war there are good guys and bad guys, there are strategies and battles, and there is ultimate victory — all of which I think is a myth when you talk about crime...

A third counter-trend was the advent of correctional nihilism. There was a fellow named Martinson³ who, after the Attica riots, sat down with some of his friends and asked the question, "This correctional treatment stuff — the medical model: we get them, we diagnose them, and then we treat them and turn them into John-Do-Good citizens. Does any of this

work? Is there any scientific evidence that correctional treatment reduces recidivism?" They did a study — around the same period in the early 70s when the war on crime was being waged, the moratorium on prison construction was on, and the federal courts were intervening in prisons — and do you know what they said? Nothing works! Well, that was a bombshell; it was like a cannonball dropped in the punch bowl of corrections.

Interestingly enough, the very people in corrections who had a vested interest in defending the system agreed! Probation, parole and institutional corrections that 15 years before supervised and treated said, "We are not going to treat anymore because it does not work; we will just supervise."

Supervision was reduced to "we provide surveillance" and over the next 10 or 15 years, with the treatment component out as well, the function of community corrections has become indistinguishable from police work. Police also surveil. Thus has developed a fuzzier and fuzzier line between community corrections surveillance and police driving around playing "Adam 12" surveillance. In fact, one could argue that we ought to do away with community supervision and corrections altogether and give it to the police because they are already driving around 24 hours a day

anyway, so let them do it. That comes as a shock to both constituencies, but it makes wonderful economic sense to me. So around 1975, depending upon where you lived in the United States, conditions were set up with trends and counter-trends that I think produced the catastrophic policy in corrections that we have today.

The Great American Shell Game

Around 1975 we entered a period which I characterize as "The Great American Shell Game." In 1975 we had a situation where crime continued to escalate. The number of people who were touched by crime was increasing at a geometric rate, because not only were citizens victims of crime, but they knew others who were also victims. Fear of crime accelerated and the public was beginning to get mad. The American public does not change its mind quickly; it is very slow to change. But when it gets mad, it is real. Elected officials and policymakers are no fools, they can sense that. By the mid-70s you began to hear something called "Get tough on crime. You do the crime, you do the time" and officials began to get elected on that issue.

We saw an escalation in the demand for tougher sentences. We had all kinds of enhancements to the criminal code. We had "granny-basher" bills — if the victim is over 65, an additional five years was added

to the sentence. If you had a weapon, even though you did not use it — an additional 10 years. If you were a two-time, three-time loser, no matter what you did — maybe the sum total of your whole criminal career was \$800 in bad checks: life in prison! Habitual criminal! Clutch your children to your breast, the times are dangerous.

The federal courts became more and more intrusive. We were packing criminals into prisons. The courts were stepping in to say, "You had better not pack too many. This is how you are going to run the prison, and if you do not run it this way, we will turn everybody loose."

State government was saying, "Federal courts cannot tell us how to run prisons," yet the lawyers were saying, "Yes they can, and they will put a million-dollar-a-day fine on you if you do not follow the court's dictates."

By the late-1970s, policymakers in jurisdictions around the United States were in a real dilemma. They were elected on "Get tough on crime and no new taxes." Yet they could not pack offenders into prisons anymore because the courts said they could not do it. And if they let everybody go, then there would be real political trouble. Policymakers were thinking, thinking, thinking, thinking — what are we going to do? Prisons cost \$75,000 a bed for a maximum security facility, \$25,000 for minimum security, and about \$25-\$50 a day per prisoner in upkeep. You can send kids to Harvard a lot cheaper than that. You could buy condominiums in the Mediterranean, a one-way

ticket and a body servant for less. I kid you not! As a condition of probation, you just ask them never to come back. So policymakers were in a real dilemma. We got elected on the "Get tough on crime" platform. We have enhanced criminal penalties but we cannot continue packing criminals in the prisons; the federal courts are not going to permit it. The public is saying, "You get tough on crime and take this guy out of my community and lock him up forever." But we cannot afford to pay for it. The economy was pretty good in the late 70s but we went through a hell of a recession in the early 80s. And inflation was rampant. If you do not build it this year, remember that inflation is running 10 percent a year, 100 percent a decade; if you put it off for five years, then you are going to pay 50 percent more for that \$75,000-per-bed facility. Policymakers were asking, "What are we going to do, what are we going to do?"

Some smart guy offers, "I've got a solution for you. There are two institutions: one called probation, the other parole; they watch guys for 50 cents a day."

The politician says, "That's the greatest thing I've ever heard!"

Probation and parole have been the traditional step-children of American corrections; the dominant feature in American corrections, politically and financially, has always been institutional corrections. These two ugly step-daughters (one called probation and one called parole) have always been starved for attention.

And then some policymaker in state government says, "You're a probation administrator? Psst, come here. You watch guys for 50 cents a day?"

The probation administrator offers to watch *two* of them for 50 cents a day!

This is the shell game, and probation and parole administrators are getting sucked in by policymakers who have painted themselves in a corner with "Get tough on crime, no new taxes." The policymakers say to the probation and parole community, "Look, we have a dilemma here. We cannot afford to build what the public wants, but we were elected to get tough on crime without new taxes. If you watch these guys for me, I will give you big bucks."

The probation and parole administrators are now dreaming of rubber tree plants, big offices, cellular phones. And do you know what they did? They trashed out their core technology; they trashed out the definition of their profession, and they were hoodwinked into the shell game. They made a trade.

The policymakers said to the probation administrators: "We will give you more money, but your function is no longer 'you messed up, but we will take a chance on you and we are going to supervise you and try to get your life turned around.' That is not the job anymore."

"What we are going to do," said the policymakers, "is to take all the people we cannot fit in prison and have you watch them. We are going to judge you on how well you divert the huddled masses yearning to breathe free who are chemically dependent, mentally retarded, potentially violent, unskilled and illiterate."

Then the policymakers said, "Psst, parole guy, come here parole guy. I don't know what you do, but they tell me you watch guys for 50 cents a day; here is what I want you to do. Every time we need a bed in the prison, you get a guy out. Around midnight, you slip him out and you keep him out. You take this huddled mass yearning to breathe free, drug-dependent, mentally retarded, illiterate with no work ethic, psychopathic deviant, and you just keep him out there, right? We will tell the public we are tough on crime and no new taxes. OK? Everybody agree?"

Everybody says, "Yeah, that's a good deal. There is something in it for everybody."

Probation accepts its diversionary role and parole accepts its population control role. Mind you, neither of these professions had developed any technology for these roles because they are foreign and alien roles to

them. Neither is given sufficient resources. And two years later these humanists are saying, "But you promised you'd give us money," and the policymakers say, "Go away and divert; go away and control population; we are not giving you any more money. Probation and parole throw out a hundred years of core technologies, and are now scrambling like mad figuring out where to get the core technologies to perform their new functions.

Where did all the research and development money go? Did it go into helping probation and parole manage its new responsibilities? No. It went into prison expansion. Americans are very good at that. We know how to build walls where the bricks are straight. We invested in risk-assessment instruments and classification instruments and forecasting technology — all of which is a joke because in a crowded prison, you put the worst ones in maximum and you put the least worst in minimum, even though they are all terrible. Sentencing guidelines? Like rubber bands. Where do you want the guy to go? I will stretch the guidelines any way you want it to go. It's part of the shell game.

By 1981 or so — because of these trends and counter-trends, hypocrisy, political expediency, and the inordinate attention to form and the total disregard for substance — we ended up in a shell game. Now you all know what a shell game is. A guy has a little pea and three shells and he hides the pea under one of the shells, mixes the shells up (*whizzy, whizzy, whizzy*) and asks where the pea is. You say, "I think it is under number two," and he says, "You're wrong!" What happened in this country, what policymakers precipitated unintentionally, and people in the criminal justice community allowed themselves to be sucked into because of greed, was what I call "The Great American Shell Game," and it goes something like this.

You are the public, an outraged 245 million people saying, "Get tough on crime and no new taxes! Give them the death penalty, life!" And the politicians say, "OK, OK, vote for me, I'm tough on crime, no new taxes."

"You see this guy, this offender, this low-life yearning to breathe free, chemically dependent, mentally retarded, illiterate, no work ethic, violent individual? I'll put him under the shell. Now watch this. *Whizzy, whizzy, whizzy, whizzy, whizzy, whizzy, whizzy, whizzy, whizzy, whizzy, where do you think he is now?*"

The public says, "Well listen, I voted for you because you are tough on crime, no new taxes, you do the

crime, you do the time: you either executed him or he is in prison for life, right?"

Probation and parole have essentially shifted from legitimate correctional options in their own right to temporary diversionary strategies that we are using while we are trying to figure out how to "Get tough on crime, no new taxes, and not pay for any prisons at all, or to pay as little as we can, or pass it off to another generation."

And the policymaker says, "Wrong . . . he is in your garage stealing your car!" Thus we take "Get tough on crime, no new taxes" and we add *whizzy, whizzy, whizzy*, and you put the two together and you get The Great American Shell Game.

Now it gets even worse because not only did we not want to spend the money for prisons (we like to bond them, so that the real costs can be passed to our children at triple the cost), but we also found that we had a financial shortfall because in many jurisdictions in this country, the 80s were tough, and there just was not the public revenue.

Even though we have guys babysitting criminals for 50 cents a day — we could not afford the supervision costs at 50 cents, 75 cents, \$1 a day. I was elected on "Get tough on crime, no new taxes, you do the crime, you do the time," but how are we going to finance community corrections?

The smart guy goes to the legislator or to the analyst, and he says, "Psst, psst, come here, I have an idea for you. We cannot look soft on crime, we cannot tax the people, and we do not have the tax revenue for education, retarded kids, parks and the environment — the whole thing is going down the toilet. I will tell you how we can finance it — the only guy left who we have not taxed is the offender."

Then we say, "Guess what! You are on probation, you pay for it."

I kid you not. Here we take the huddled mass yearning to breathe free, chemically dependent, mentally retarded, mentally ill guy who has no proven track record of having earned any money legitimately. He has a work ethic, however, because he can hustle selling drugs or steal. And we say to him, "Guess what? You have got to go straight *and* pay fines, restitution, court costs, fees for probation,

fees for drug testing, drug and alcohol treatment and electronic monitoring — it is \$175 a day! If you don't do it, we will send you to prison."

The guy is saying, could I *please* go to prison?

You see in this scenario that the ultimate trump card, prison — the big stick that we scared everybody with — is becoming the most desirable sentencing alternative for the offender. If I am on probation, then I have guys watching me, I have a monitoring wristlet on me, they are doing random telephone calls to my house, they are checking with my employer, I am paying the victim, my wife, my kids, my taxes, and I am paying for you to supervise me. I am carrying the whole load, and I have to steal or sell dope so my probation is not revoked!

So where are we? The number of at-risk potential delinquents and the needs of offenders who we have in the community have increased astronomically. We have some very, very loose screws out on the street. But still we hear, "Get tough on crime and no new taxes."

Probation and parole have essentially shifted from legitimate correctional options in their own right to temporary diversionary strategies that we are using while we are trying to figure out how to "Get tough on crime, no new taxes, and not pay for any prisons at all, or to pay as little as we can, or pass it off to another generation." We are asked to do more

with less, and those who we are asked to do it for are much more complex and highly volatile offenders who have fewer inner human resources with which to work. The interesting thing is that part of the core technology of probation and parole was treatment. You know what we do with that now? We contract it all out to the private sector. The agencies left over after the Great Society programs have coalesced and are now not-for-profit corporations that do presentence investigations, drug treatment, DWI driving instruction and so forth. If you think about it, a head of a probation or parole agency should not be a guy with a degree in social science; he ought to be an MBA or an accountant or a lawyer. The primary problems probation and parole agencies deal with now are getting money from the offenders and paying it back to the victims or the court, and dealing with the ever-increasing litigation wherein offenders are suing line officers and line officers are suing their supervisors.

Summary

Where are we today then? We come from five legitimate options in corrections through a period where "Get tough on crime and no new taxes, you do the crime, you do the

time, whizzy, whizzy, whizzy" is public policy in the United States, and that determines intergovernmental relations with respect to corrections.

Tough on crime . . . now listen to this. Tough on crime means that we return as many criminals to your community as is humanly possible. Tough on crime means, in effect, because of all these subterfuges, trends and counter-trends, that we will return an ever-increasing proportion of the criminal population to your community and inadequately fund their surveillance. No new taxes means that a substantial amount of the cost of that supervision is going to be borne by those people in society least able to come up with the money. I have every reason to believe we have generated a whole secondary crime industry, in theft and selling drugs and other things, to support community supervision. Community corrections is seen to be failing because we give them an increasingly risky population to supervise and we do not give them the resources with which to do it. They revoke people and we punish their budgets for sending offenders to prison, because the whole point of getting tough on crime is to send as few people to prison as is humanly possible.

I am reminded of the story where Brer Rabbit runs into Tar Baby and says, "Hi, I'm Brer Rabbit," and Tar Baby does not say anything, and Brer Rabbit says, "Hey, are you rude? I'm Brer Rabbit, how do you do?" And Tar Baby doesn't say anything, so Brer Rabbit smacks him upside the

head and then gets stuck, and he tries to get loose but he gets his whole self stuck to Tar Baby. And then Brer Rabbit says this wonderful thing — the great comment on life — “The harder I tries, the stucker up I get!”

When you think about it, through no mal-intent, over 25 years we have come on a course that says “Get tough on crime, no new taxes, you do the crime, you do the time, whizzy, whizzy, whizzy, Great American Shell Game,” and the net result is (1) the tougher you get on crime, proportionately, the fewer people go to prison; (2) the tougher you get on crime, those who do go to prison are serving proportionately less and less of their time in prison; and (3) the sentence of choice of gourmet offenders is prison. The toughest sanction you can get today in the United States is deferred adjudication.

Now how did we get in this mess? We have been dishonest in policy and we have been more concerned with what the thing looks like — its form, its external image — than with substance, quality and real intention. Is that not a description of the 80s? There are guys, and I am one, who have \$70 jogging suits and who would not sweat for money. But I look good. I look like an athlete, right? I wear clothes with advertising on the outside, so that you know my clothes cost more than yours.

Everything is about form, nothing about substance. Read the newspapers — what is happening in govern-

ment? It is falling apart in many, many sectors because all we do is make sure the forms are right; nobody

We have been dishonest in policy and we have been more concerned with what the thing looks like — its form, its external image — than with substance, quality and real intention.

is minding the substance of what we were doing, the real intent. Elected officials today who were elected on the principle of “Get tough on crime, no new taxes, you do the crime, you do the time, whizzy, whizzy, whizzy, Great American Shell Game” know that they are wrong. They know this philosophy is not working, and there is not a damn thing they can do about it. Because what elected official can go back out to that aggrieved public who said “Get tough on crime, punish those guys, throw away the key,” and say, “Well, I know you elected me on that, but we really made a mess of it, we really screwed up, and I want to go back there and straighten it out. I want to go back out there and do something about front-end solutions — about family violence, about the enormous illiteracy rate among the most impoverished sectors of our society, and about teenage mothers without husbands.”

Fifty percent of the children in the United States are growing up in single parent households, and that is even higher for the most impoverished part of our society. The largest single cause of death in the ghettos among black males is homicide. We say, “We know that, but let’s build prisons as cheap as we can and then we will have a room for them if they ever survive to age 21.” Insane economics! But how could a policymaker who was elected on “Get tough on crime and no new taxes” ever go back to his or her constituency and say, “Rewind your tape, we were wrong, let’s start again.”

What is going to happen in the 1990s in intergovernmental relations and in correctional policy, which I think is one of several key factors, that is going to drive criminal justice policy through the decade? Crime is going to increase, I am convinced. Even though the baby boom generation is aging, the smaller echo boom behind them — their kids — is more impoverished, increasingly ethnic, and has access to fewer and fewer opportunities in our society. Drugs are going to rip us apart. I know of only two countries that have effectively eliminated the drug problem, and if I told you how they did it, their methods would be totally unacceptable to you.

Drugs will be with us. Crime will go up. Even today if we said, "All right, let's put some money on the back-end of this system, and let's put some money on the front-end to deal with the conditions that are producing the crime," we are not going to go back in one year and correct impoverished conditions in which millions of future citizens are growing up today. We are not going to eliminate the teenage pregnancy problem in a year. You do not declare war on pregnancy and win. Policymakers cannot afford to tell the truth because they would not be elected again, and they know it — they have painted themselves into a corner.

In the 90s, how are policymakers going to deal with the fact that the tougher you get on crime, proportionately fewer people go to prison, and that the toughest sentence is a diversionary strategy? Are they going to "fess up" and come clean? I do not think so. That is not in the nature of elected politics. I think what they are going to do is make accountability the scapegoat. They are going to come back to Mr. Probation Administrator and Mr. Parole Administrator and say, "We gave you all that money and you were supposed to divert, and I read your numbers and you failed. So you're wrong!" And then they are going to say to the public, "Let's go hang that guy, let's get tough on his case."

As soon as you introduce increased accountability for a policy gone wrong as a way of covering your backside, what is the response of people running those agencies who can see that accountability coming down? They are going to shift from qualitative objectives, which are very hard to measure, to quantitative ones; from substance to style.

What does that portend for the information systems business that we are in? It is going to be a good day for us. When the heat is on and the public begins to suspect that this "Whizzy, whizzy, whizzy, get tough on crime" policy failed, nobody is going to take responsibility for it; everybody is going to cover it up by generating tons and tons and tons of numbers. I would think that over the next 10 years there will be a great demand for correctional accounting systems. There will be a resurrection of the idea of offender tracking systems for impact analysis and cost assessment, and changes in policy and legislation.

However, I think public confidence in government and particularly in criminal justice — which has already slipped — will erode even further. A very important mechanism in this country is that people believe in the

rule of law and that when they say, "Get tough on crime," and government says that it did, it is very important that people believe that is true. Now you know and I know it has been a great fraud. People are going to find out about it, and when courts and corrections and police and prosecutors are seen as nothing more than bumbling bureaucrats who will do anything to get elected and stay there, or do anything to get money to build bigger staffs and buy more rubber tree plants, the erosion of public confidence in our system of justice will be very dangerous. I am a great believer in what the Pope said: if you want peace, seek justice first, and if justice is a sham, that is very dangerous.

Today we stand at a point of decision. We either go on with business as usual, "Whizzy, whizzy, whizzy, get tough on crime, no new taxes, you do the crime, you do the time: The Great American Shell Game," knowing full well it does not work, but not being able to "fess up" politically that we failed, *or* we start to introduce truth in policy. That, in fact, we design policy not to appeal to

the public so it looks like it fights crime when we know full well it doesn't, but we design policy in which we admit the truth. If you want to get tough on crime, then by God pay for it!

People who sit around saying, "I believe in get tough on crime, no new taxes, and I served you well" are liars. That is highly destructive public policy. It creates fraud. If you want to execute people for dealing in drugs, then do it; but you pay for it. Do not put offenders on death row for 10 years, jerk them around, and play games up and down the court. If you want to talk about front-end solutions, about illiteracy and poverty, violence in the family, a decrepit education system that will graduate illiterates from high school, and if you want to do something about it, then by God pay for it! But do not say "I'm for education, no new taxes; I'm for the environment, no new taxes." Those are highly destructive public policies.

If I could leave you with one thought, I would say this to you — that no one wins the "Whizzy, whizzy, whizzy, get tough on crime, no new taxes" shell game. Everybody loses. The public lost, policymakers lost, elected officials lost, the offenders lost. OK? It is a disaster. The next time someone comes to you and asks if you would like to play "whizzy, whizzy, whizzy" for money, tell them, "No, I am dedicated to honesty in public policy."

¹ Holt v. Sarver 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd* 442 F. 2d 304 (8th Cir. 1971).

² Ruiz v. Estelle, 405 U.S. 1042 (1983).

³ Robert Martinson, "What Works? Questions and Answers About Prison Reform," 35 *The Public Interest* (Spring, 1974).

In the Beginning: A Review of Federal/State Information Law and Policies

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I have been asked to give a brief review of the history of information law and policy — “information policy” being interpreted to mean the issues relating to data accuracy, data quality and standards for releasing criminal history information, both to the public and private sector. I have also been asked to discuss the involvement of the Law Enforcement Assistance Administration (LEAA) and its successor agencies, National Criminal Justice Information and Statistics Service (NCJISS) and the Bureau of Justice Statistics (BJS) in the long-term development of these policies.

When then, did it all begin?

In the beginning... there was basically nothing: no law, no policy and very little technology. Records were maintained on 3 x 5 cards, logs were written by hand, and offenders had unequalled privacy resulting from the impossibility of linking, or even finding, records held by other criminal agencies and certainly the impossibility of finding records that were held by other states.

Issues of data quality did not exist (in part because less data was available and fewer decisions hinged on historical data) and disclosure of criminal history data, according to a study by Alan Westin, was basically at the discretion, or lack thereof, of the police chief.

And then, on the first day (basically the late 1960s) ... computers appeared on the criminal justice horizon.

And on the second day (1968) ... SEARCH appeared on the California horizon.

On the third day ... the LEAA Regulations were promulgated and made applicable to all 50 states.

And things have not been the same since.

The LEAA Regulations (Regs.), as many of you know, implemented a section of the 1973 Omnibus Crime Control Act which, for the first time, required that data maintained in criminal justice systems supported with DOJ funds (virtually all systems in the country) be, to the maximum extent feasible, accurate and complete; that disclosure be limited to “law enforcement and criminal justice and other lawful purposes;” that administrative and physical security procedures be adopted; and that individuals have the right to inspect and request corrections in their records.

Those of us who are historical relics will probably recall that this legislation was regarded by Congress as an interim measure, pending passage of more specific legislation defining the limits on disclosure of data by the states. The FBI already had some limits in effect: disclosure of federal data by the FBI to the general public had been legislatively prohibited since 1924.

Only those of us who were there, however, can know the degree of consternation and furor regarding the imposition of such limits. Two attempts at further federal legislation failed after numerous months on Capitol Hill. LEAA held many heated hearings to address the specific, and complex, issues of data disclosure and system security. And SEARCH, in 1975, issued what was basically the first comprehensive guide to data management policies applicable to criminal justice systems — *Technical Report No. 13*.

In many ways, this was probably one of the most exciting periods in LEAA's history. Out of it came the LEAA Regs., applicable to all states and requiring that all states submit a plan describing how the five objectives outlined in the legislation would be met in (and this gives some view of our mistaken federal omnipotence) one year. We were prepared, however, to give extensions when necessary.

In retrospect, and even at the time, it was clear that legislative requirements, even when tied to substantial funds, could not in reality automatically impose change on system operations. It was equally clear, however, that the Regs. and the immediate requirements they imposed on the states could serve as the critical catalyst to initiate change in the wide variety of areas necessary to meet data quality standards. And indeed they did.

Surveys of state legislation, conducted by SEARCH as part of its regular update of the *Compendium of State Privacy Legislation*, show that during the period between 1974 (which was before the Regs. were implemented) and 1981 (four years after the Regs. were issued) dramatic changes had been made in the legislation enacted by states. Specifically, during this period the number of states imposing limits on dissemination of criminal history information more than doubled, from 24 in 1974 to 51 in 1981. The number of states with requirements relating to accuracy and completeness (and most of these were mandatory reporting requirements) almost tripled, from 14 in 1974 to 49 in 1981. Security requirements were imposed by 32 states, an increase from 12 in 1974; and rights of individual inspection and challenge were ensured in 53 states, an increase from 12 in 1971. Subsequent changes have been fairly minimal, probably indicative of the fact that major legislation is already in place and is only being fine-tuned. By 1987, virtually all states had legislation or regulations pertaining to all aspects of data quality specified in the 1973 legislation.

Given the extensive legislative activity at the state level since 1974, what, then can be said about the direction taken with respect to the availability and disclosure of data? On the basis of a SEARCH review completed in 1987, it appears that several trends have emerged.

First, a sharp distinction is generally made between conviction records (frequently defined to include open arrests of less than one year) which are generally available, and nonconviction records, which are, for the most part, only available for criminal justice and other specified purposes.

Second, the legislation in many cases ranks the priority of noncriminal justice users, with governmental authorities, such as the military and state licensing boards, at the apex; private employers, particularly of child and elderly care workers, in the middle; and the remainder of the public and the press at the bottom.

Lastly, it appears that most states still allow some discretion at the central repository to determine the scope of noncriminal justice access, or more specifically, to limit such access. For this reason, the extent of actual access may be less than would appear by a literal reading of the statute.

Federal legislation has also affected state disclosure for noncriminal justice purposes, most notably in the areas of national defense. The *1985 Security Clearance Information Act (SCIA)*, for example, specifically requires that state data be made available for federal security clearances conducted by the Department of Defense, Central Intelligence Agency,

Federal Bureau of Investigation, and Office of Personnel Management. Prior to this time, release of data was dependent on individual state law, and accordingly, varied among states. Under the SCIA, however, data is only available where the subject's written consent has been obtained and only if the state has not sealed the data. Additionally, the data may not be disclosed for other purposes.

Activity in the Courts

Paralleling this legislative activity was activity in the courts. Most notable, until this year and the decision in *United States Department of Justice v. Reporters Committee for Freedom of the Press*, was the landmark U.S. Supreme Court case of *Paul v. Davis* which, in 1976, effectively removed the constitutional basis for limits on disclosure by declaring that arrest records did not relate to private conduct and thus did not raise constitutional privacy issues. Additionally, although it did not directly deal with data quality, the *Paul v. Davis* opinion criticized an earlier opinion (*Tarlton v. Saxbe*) which had implied a constitutional basis for requiring agencies which collect criminal justice data to adopt procedures ensuring the accuracy of such data.

Subsequent to 1976, and again, prior to this year, courts almost consistently applied *Paul v. Davis* to rule, for example, that arrestees whose charges were dropped had no constitutional right to record purging and that criminal record background checks were constitutional because no

constitutional protection was attached to an individual's arrest record.

On the issue of data quality, the courts — although in many cases finding a duty to adopt procedures to ensure accuracy — generally hedged on identifying the basis of the decision as statutory, constitutional or common law.

Against this background the U.S. Supreme Court, on March 22, 1989, decided *United States Department of Justice v. Reporters Committee for Freedom of the Press* which is possibly the most significant case on criminal justice privacy and record management to be decided since *Paul v. Davis*. It is clearly the most important case to give credence and recognition not only to the nature of the subject's interest in specific types of personal information, but also to consider as equally important, *the technological format in which the data is maintained and from which it is sought to be retrieved.*

In simple terms, the case revolved around a request by the Reporters Committee and a CBS News correspondent, under the Federal Freedom of Information Act (FOIA), for a FBI "rap" sheet pertaining to an alleged organized crime figure. The FBI refused the request and the U.S. District Court for the District of Columbia upheld the denial on several grounds, including that "rap"

sheet data was protected by Exemption 7 (C) of the FOIA, which excludes from disclosure records or

The Supreme Court ... may well have redefined the course of FOIA and privacy law to better reflect current record-keeping practices...

information compiled for law enforcement purposes "to the extent that the production of such (materials) ... could reasonably be expected to constitute an unwarranted invasion of personal privacy."

The Court of Appeals reversed the decision, holding that an individual's privacy interest in criminal history information that is a matter of public record is minimal. The court further noted that, in the absence of federal standards, state and local policies — which generally make such data publicly available — would be influential. Accordingly, Exemption 6 (for personal, medical and similar files, the disclosure of which would constitute an unwarranted invasion of privacy) and Exemption 7 (C) were inapplicable.

In response to rehearing petitions advising the court that summary "rap" sheet data was not in fact available in most states, the Court of Appeals

modified its holding and remanded the case to the District Court. The Court of Appeals assumed that the withheld information was publicly available at the source, and it stated that any legitimate privacy interest in a "rap" sheet would be minimal.

A petition for rehearing was denied and the Supreme Court granted a *writ of certiorari*.

The Supreme Court, in an opinion that may well have redefined the course of FOIA and privacy law to better reflect current recordkeeping practices, reversed the Court of Appeals and held, among other things, that a clear privacy interest in centralized, computerized "rap" sheets exists, even though the arrest and conviction data contained therein do not qualify as intimate details, and even though the records of each individual event may be available publicly at the source.

Moreover, the Supreme Court noted that

where, as here, the subject of a "rap" sheet is a private citizen and the information is in the government's control as a compilation, rather than as a record of what the government is up to, the privacy interest in maintaining the "rap" sheet's practical obscurity is always at its apex while the FOIA-based public interest in disclosure is at its nadir.

The Court thus concluded that in such circumstances, as a categorical matter, "rap" sheets are excluded from disclosure.

What is particularly relevant in the context of this meeting on the nexus between automation and information policy, however, is the Court's clearly stated recognition of the increase in privacy interests which may occur when data is compiled and made readily available through modern technological methods. In this case, the Supreme Court specifically raised as an issue "whether the compilation of otherwise hard to obtain information alters the privacy interest implicated by disclosure of the information ... (and concluded that) ... there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information."

The Court further noted that statutes limiting FBI disclosure of "rap" sheet data also reflect recognition of the "power of compilations to effect personal privacy ... (to a degree) ... that outstrips the combined power of the bits of information contained therein."

In considering this case, remember that the *Reporters* case does not

represent the first time that the Supreme Court has alluded to threats posed by computerized or centralized files. It does, however, appear to represent the first time that the Court has found that a privacy interest arises primarily from the recordkeeping *environment* rather than from the nature of the data itself or from the extent to which that the data has been previously revealed.

What then do we conclude about the status of law and policy as we approach the 1990s? As in all areas, the situation is somewhat of a mixed bag. On the one hand, state-legislative activity appears to have settled down, with legislation regulating data dissemination and addressing data quality issues now in place in almost all states. The impact of the *Reporters Committee* opinion, however, may be substantial, both at the federal level and in the many states where FOIA statutes closely parallel the federal statute.

It is clear, also, that many new areas remain to be addressed relating, for example, to the policy implications of positive identification requirements, liability issues arising out of data quality failures, and the exchange of data among states with differing disclosure standards. These issues, however, will provide a forum for a future conference which no doubt will be billed as the conference of the 21st Century. And you are all invited. Thank you.

Integrating Technology and Human Values Through Responsible Law and Policy

MARK H. GITENSTEIN
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I was reminiscing about the first time I ever spoke at a SEARCH meeting, which I believe was in October of 1972. Some of the old SEARCH relics like me will probably remember that meeting; it was in New Orleans. It was the first time that I had ever spoken publicly at any large gathering, and Senator Sam Ervin, whom you may recall from the Watergate days, told me that he could not make it to the meeting to give the speech and he asked me to come in his place. He said, "Mark, it'll be a little seminar." I expected there would be about 10 or 15 people but we were in the Marriott Hotel and there must have been 2,000 people. My voice went dry and everything, but that will not happen today.

I would like to begin by telling you what an honor it is to appear before you on your 20th anniversary. It is a distinct pleasure to see many of my old and cherished friends — men and women, who, I regret to say, I have seen far too little of in the past two decades, but whose courage and vision I admire. My first boss on Capitol Hill, the late Senator Ervin, introduced me to SEARCH the first month I was on the job. Ervin was one of the first in the Senate to attempt to grapple with the difficult issues presented by technology and privacy. Ervin was attracted as much by your federated structure as by the work you had done on security and privacy. As you might expect, he liked the fact that you were state officials with practical hands-on experience attempting to resolve these questions.

I have come to know SEARCH as a truly unique organization. SEARCH is, in effect, a relationship bonded by a number of central ideas, ideas to which those who entered the relationship were so committed that SEARCH has not only endured but thrived. Men like Bud Hawkins, Gary McAlvey, Bob Belair, Gary Cooper, Bob Gallati, Steve Kolodney, Paul Woodard, Paul Wormeli and others were committed to the notion that technology and the sanctity of the individual must be accommodated.

From its earliest days in the 1960s, SEARCH's leadership recognized a basic truth about Americans: they are terribly ambivalent about technology, especially technology in the hands of the state. Our "can-do" spirit as Americans generates tremendous fascination with technology and what it can do for us. But at the same time we have an innate and healthy skepticism, perhaps even a fear, of what technology can do to us as individuals. What drew me and Senator Ervin to SEARCH was not simply that you were interested in privacy and confidentiality, but that you saw in this technology a threat to the individuality, autonomy and liberty of Americans — a threat that should and could be reckoned with. Americans want control over information about themselves, even public information, especially inaccurate or summary information. But even more

fundamental than the threat to individuality, you recognized that you had to reckon with an innate, often irrational, fear of technology which many Americans do not comprehend.

Though it may not have been immediately obvious, once you began your work on privacy and security in 1970, you became more than simply an organization dedicated to building a nationwide system for the electronic analysis and retrieval of criminal histories. SEARCH became a unique forum in which the technological world engaged the policy world, so that both realms could not merely come to terms with each other but come to know and trust each other; in short, to flourish side-by-side. Well, what does this have to do with the future of SEARCH?

First, because of the manner in which you have worked assiduously to accommodate technology and human values, you have created an environment in which technology can be applied to the creation of a national criminal history information system. The component systems exist now in the states, and with the implementation of the Interstate Identification Index (III) at the National Crime Information Center (NCIC), your dream will be realized. Of course, the criminal history agenda is far from complete. Witness the issues raised by the NCIC 2000 study, or the whole question of open record systems — especially private criminal history systems and whether they ought to be regulated and what are the First Amendment implications. The Congress, the U.S. Department of

Justice, state governments and concerned citizens will continue to look to SEARCH for guidance in answering these kinds of questions.

A case in point is the gun sale issue and the study that you have been involved in with the U.S. Department of Justice. I stumbled across this while doing some news clipping research and I found it rather stunning. A national identification card, a \$10 billion commitment to developing criminal history systems, telephone checks and live scans of fingerprints.¹ You would think it would be a lot easier just to enact a seven-day waiting period, but obviously the National Rifle Association is not going to agree to that. It is an issue you are going to have to grapple with, and I am happy to see SEARCH's involvement.

Beyond information systems, the criminal justice community faces a whole host of new technology and public policy issues. I suggest to you an excellent summary of those issues in a 1988 report by the Office of Technology Assessment (OTA). Aside from issues with which SEARCH has already made a major contribution, such as data matching and automated fingerprint identification, the report describes new efforts in electronic surveillance, DNA typing, biometric security systems, less-than-lethal weapons, the use of social science for predictive models in bail and sentencing, artificial intelligence; and in corrections and rehabilitation, electronic monitoring, hormone manipulation, behavior

control or behavior modification.² I recognize that many of these issues may be well beyond your specific

Our "can-do" spirit as Americans generates tremendous fascination with technology and what it can do for us [as a society]. But at the same time we have an innate and healthy skepticism, perhaps even a fear, of what technology can do to us as individuals.

areas of technical and policy expertise on information systems, but SEARCH does provide a model on how these technological issues can be accommodated with policy concerns. At a minimum, SEARCH should be available on at least an informal basis to those engaged in that kind of work.

In the area of information systems and data collection, SEARCH has a role to play that is bigger than simply providing advice on government-run criminal history systems. For

example, take private data collection. One of the biggest changes I have seen in the last two decades is that the private sector has become much more of a threat to personal autonomy and liberty than has the government at any level. There has been, and will continue to be, a veritable revolution in personal data collection in the workplace. The AIDS and drug epidemics have created tremendous pressures on private enterprise to undertake sweeping medical testing. Some companies are engaged in genetic screening designed to detect vulnerability to certain diseases to which an employee might be exposed.³ Brain wave analysis is being developed to monitor concentration, productivity and honesty. Two million Americans are polygraphed each year and 98 percent of those polygraphs take place in the workplace.⁴ The OTA estimates that 7 million Americans have their telephones or PCs monitored to control abuse and waste. Records of unsurpassed sensitivity are being created by these endeavors; records which are much more damning in many cases than a rap sheet without a disposition; records that I would wager most employees are not even aware exist. Yet who would argue with the proposition that drug abuse in the workplace or the AIDS epidemic must be controlled, or that if we do not increase productivity in America we will fall irretrievably behind Japan and Germany?

Again, the challenge today is the same as it was for SEARCH 20 years ago. How do we achieve those goals without becoming an autocracy? A revolution in personal data collection is also underway in the marketplace. The private sector is engaged in massive data collection on consumers. For example, we give out tremendous amounts of personal information when we file warranty cards upon buying an appliance, or in applying for credit, or in filing a health insurance claim, or even when we use our ATM cards. A recent article in the *New York Times* described the development of a new ratings-gathering technique by the Nielsen Media Research Company in which television actually *watches* the viewer. The system uses a camera computer that can be programmed to store the facial images of each family member, recording when they are watching television, when they leave the room, or even when they avert their eyes to read a newspaper.⁵ Although participation in the Nielsen program is voluntary, the *Times* suggests that it is alarmingly similar to Orwell's prophetic vision of Big Brother. The *Times* article also notes that a more sophisticated image recognition system could be used by police to scan public places for known criminal suspects.

Some of this data collection is clearly regulated by state and federal law, but the specter raised recently by a professor at the Massachusetts Institute of Technology is not completely far-fetched.

Imagine the picture that would emerge if all of the following were combined: computerized records involving bank transactions; wage payments; purchases by credit cards, including travel and entertainment; books checked out from the library; television viewed on a cable system; telephone calls and electronic mail; and records involving medical history, property ownership, cars, homes, land, business, driving, arrests, taxes, military service, education and employment.⁶

If you have any doubt about how Americans feel about disclosure of this sort of data collection, just recall the outrage many of us felt — opponents as well as proponents of the Robert Bork nomination to the Supreme Court — when some wise guy in the press published a list of videos the judge had rented from a local video rental store. But again, what does all of this have to do with SEARCH and its future?

First, allow me to step back and remind you of how you have accomplished what you have. For years civil libertarians assumed that privacy and confidentiality and individual

liberties issues would be resolved by the courts. The Supreme Court would act as a brake on any excesses by the technocrats. It was wishful thinking, for in 1976, the Supreme Court, in the case of *Paul v. Davis*, resolved that question: they "deconstitutionalized" the issue. The constitutional right to privacy which the court recognized in 1965 in the case of *Griswald v. Connecticut* would not extend to the kind of records with which SEARCH dealt. Years earlier, civil libertarians had banked on Congress taking the lead with federal legislation. The problem here was that these were basically state issues, not susceptible to comprehensive federal legislation without incredible complexity. SEARCH jumped into the breach. Through your model statutes and standards you went where the Supreme Court and the Congress feared to tread. What I am suggesting is that increasingly, private enterprise, civil liberties groups, unions and consumer groups will look to you to help solve this conundrum.

How do we continue to foster the use of technology and at the same time harness it? In the words of a sociologist, 'how do we remain a mass society without becoming an authoritarian society?' There are many reasons why you might want to stay out of this thicket. At a minimum though, I hope you will make yourselves and your expertise available to those who seek to achieve this elusive goal. Nothing less is at stake than the future of your country as a technological super power which is the envy of the world because of her love of liberty.

Supervisor: New Technologies, New Tensions, (Washington, D.C.: U.S. Government Printing Office, September 1987) p. 128.

⁴ Harrison Donnelly, "Privacy in the Workplace," *Editorial Research Reports*, March 21, 1986, p. 214, (citing figures from the American Polygraph Association).

⁵ Bill Carter, "TV Viewers, Beware: Nielsen May Be Looking," *New York Times*, June 1, 1989, p. 1.

⁶ Gary Marx, "The Surveillance Society: The Threat of 1984-Style Techniques," *19 Futurist* (June 1985): 24.

¹ Ann Devroy, "Gun-Owner Card Among U.S. Options," *Washington Post*, June 28, 1989, p. A1.

² U.S. Congress, Office of Technology Assessment, *Criminal Justice, New Technologies and the Constitution*, (Washington, D.C.: U.S. Government Printing Office, May 1988). Much of the material in the report draws on SEARCH Group, Inc. "New Technologies in Criminal Justice: An Appraisal," David J. Roberts and Judith A. Ryder, Principal Authors, a contractor report prepared for the Office of Technology Assessment, March 1987.

³ U.S. Congress, Office of Technology Assessment, *The Electronic*

Contributors' Biographies

Contributors' Biographies

Dr. Joseph M. Bessette

Dr. Bessette is Acting Director of the Bureau of Justice Statistics, U.S. Department of Justice and has held this position since September 1988. Prior to his appointment, Dr. Bessette served, since January 1985, as BJS Deputy Director for Data Analysis. He was formerly the Director of Planning, Training and Management for the Cook County, Illinois Office of the State's Attorney.

Dr. Bessette has held teaching positions at the University of Virginia, Catholic University of America, and Georgetown University. He has also served as Research Associate and Acting Director of the Program on the Presidency at the White Burkett Miller Center of Public Affairs, University of Virginia, and as Director of the Congressional Studies Program, Catholic University.

In addition to other published writings on American government and politics, Dr. Bessette is co-author of *American Government Origins, Institutions, and Public Policy* and is co-editor and contributor to *The Presidency in the Constitutional Order*. Dr. Bessette received a B.S. in Physics from Boston College in 1970 and a Ph.D. in Political Science from the University of Chicago in 1978.

Dr. Alfred Blumstein

Dr. Blumstein is Dean and J. Erik Jonsson Professor of Urban Systems and Operations Research, School of Urban and Public Affairs, Carnegie-Mellon University. Dr. Blumstein serves as the Chair of the Pennsylvania Commission on Crime and Delinquency, the state's criminal justice planning agency. Since 1986 he has been a member of the Pennsylvania Commission on Sentencing and 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 Research on Deterrent and Incapacitative Effects, Research on Sentencing and Research on Criminal Careers.

Dr. Blumstein is a Fellow of the American Society of Criminology and was the 1987 recipient of the Sutherland Award for research contributions. He was the 1977-78 President of the Operations Research Society of America and was awarded its Kimball Medal "for service to the profession and the society" in 1985. He recently

was named an honorary member of Omega Rho, an international honor society dedicated to encouraging operations research and management science-related disciplines.

Dr. Blumstein has been associate editor of several journals in operations research and criminology and is author of numerous publications on sentencing deterrence, incapacitation and criminal careers. Dr. Blumstein has a B.A. in Engineering Physics and a Ph.D. in Operations Research from Cornell University.

Dr. Francis J. Carney, Jr.

Dr. Carney is Executive Director of the Massachusetts Criminal History Systems Board, which is responsible for administering the Criminal Justice Information System, a computerized network serving 500 law enforcement and criminal justice agencies in the Commonwealth of Massachusetts. He previously served as Director of Planning and Research, Massachusetts Department of Correction.

Dr. Carney also teaches courses on Corrections and Youth Crime Problems at Boston University, Metropolitan College. He has taught at the University of Massachusetts, Boston State College, Boston University School of Social Work, Boston College and Tufts University. He has lectured and 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.

Dr. Carney received his B.A. from Boston College and his M.A. and Ph.D. from Tufts University. He is currently Vice Chairman of the SEARCH Membership Group and Chairman of SEARCH's Law and Policy Project Advisory Committee.

Dr. Charles M. Friel

Dr. Friel is Director of the Criminal Justice Center and Dean of the College of Criminal Justice, Sam Houston State University, in Huntsville, Texas.

In 1978 and again in 1984, the Japanese Ministry of Justice invited Dr. Friel to study that nation's correctional system. Dr. Friel has also served as a visiting lecturer at the United Nations' Asia and Far East Institute in Fushu, Japan. In 1988, he was invited by the Ministry of Public Security of the People's Republic of China to lecture at various police colleges and to provide advice on police training and executive development.

Dr. Friel has lectured extensively throughout the United States and Canada on a variety of criminal justice topics. He is the author of numerous criminal justice information publications, particularly in the areas of correctional forecasting and policy analysis. He is the 1987 recipient of

SEARCH Group's *O.J. Hawkins Award for Innovative Leadership and Outstanding Contributions in Criminal Justice Information Systems, Policy and Statistics in the United States.*

Dr. Friel's undergraduate work at Maryknoll College included studies in philosophy and Latin; he completed a Ph.D. in experimental psychology at the Catholic University of America in Washington, D.C.

Mark H. Gitenstein

Mr. Gitenstein currently serves as Executive Director for The Foundation for Change, a not-for-profit research foundation established by United States Senators Joseph Biden and William Cohen. In addition, he is "Of Counsel" with the law firm of Mayer, Brown and Platt, specializing in legislative issues.

From January 1987 to April 1989, Mr. Gitenstein served as Chief Counsel to the Senate Judiciary Committee under its Chairman, Senator Biden. Prior to that, he had served as Minority Chief Counsel to the Judiciary Committee for six years.

Mr. Gitenstein's career serving the Senate began as Counsel to the Senate Subcommittee on Constitutional Rights, chaired by the late Senator Sam Ervin. He has also served as Chief Counsel for the Senate Subcommittee on Criminal Justice and has worked closely with SEARCH in

developing legislation designed to facilitate the development of interstate criminal history information systems and at the same time protect the privacy and integrity of records.

Mr. Gitenstein earned a B.A. in History from Duke University and is a graduate of Georgetown University Law Center.

Carol G. Kaplan

Ms. Kaplan is Chief of the Federal Statistics and Information Policy Branch of the Bureau of Justice Statistics, U.S. Department of Justice, and is responsible for all BJS programs in the area of federal criminal justice case processing. Additionally, she administers programs designed to identify and analyze criminal justice information policy and to ensure compliance with privacy, security and confidentiality regulations.

Ms. Kaplan has been involved with federal privacy, security and information policy since 1975, and in the mid-1970s participated in the development of the original national regulations in this area. She also participated in the initial efforts relating to interstate data exchange and in the development of guidelines governing the operation of intelligence systems.

Ms. Kaplan previously served as an attorney with the Department of Health, Education and Welfare and the Federal Communications Commission. She is a graduate of Radcliffe College and the Columbia University School of Law.

Robert L. Marx

Mr. Marx has been associated with Project SEARCH and SEARCH Group since its inception in 1969 and currently serves as a systems specialist, with particular emphasis on automated fingerprint identification systems (AFIS) and the design, analysis and evaluation of information systems in state identification bureaus. Mr. Marx has provided consulting services to numerous state and local governments, as well as to the United States Senate; the Congressional Office of Technology Assessment; the Office of Telecommunications Policy; the Law Enforcement Assistance Administration; and the Bureau of Justice Statistics.

Mr. Marx was on the faculty of SEARCH's "National Conference on Automated Fingerprint Identification Systems: Preparing for AFIS Procurement and Implementation." He also was the technical director of SEARCH's *Technical Report No. 6: An Experiment to Determine the Feasibility of Holographic Assistance to Fingerprint Identification; Technical Report No. 8: Design of a Model State Identification Bureau; Master Plan for Identification System Upgrade; and Guidelines for Evaluating Automated Fingerprinting Systems.*

Mr. Marx earned a B.S. in chemistry from Marquette University and completed graduate work in physics at the United States Naval Postgraduate School.

Dr. Charles P. Smith

Dr. Smith is Director of the Bureau of Justice Assistance, U.S. Department of Justice. He is also the Executive Secretary of the Department of Justice Research and Development Review Board.

During the Reagan Administration, Dr. Smith served in a variety of capacities, including Deputy Director of Planning and Evaluation in the White House and Director of Management Services for the State of California.

Dr. Smith's criminal justice experience also includes service as a Project Director for the American Justice Institute, parole agent for the California Youth Authority, and service with the Pima County, Arizona Sheriff's Department.

Dr. Smith earned his Bachelor's and Master's degrees at the University of Arizona. He received his Ph.D. in public administration from the University of Southern California.

Honorable Reggie B. Walton

Judge Walton is the Associate Director of State and Local Affairs in the Office of National Drug Control Policy, a position he was appointed to by President Bush in 1989. He is the former Deputy Presiding Judge of the Criminal Division, Superior Court of the District Columbia, a position he served since July 1986.

Judge Walton has previously served as 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 as staff attorney with the Defender Association of Philadelphia.

Judge Walton's professional activities include serving on the National Academy of Sciences' Panel on Research on Criminal Careers; 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. He is an instructor at the National Institute of Trial Advocacy, Georgetown University Law Center, and has taught numerous classes on various aspects of the law at seminars and legal clinics.

He is a graduate of West Virginia State College and earned his law degree at American University, Washington College of Law.

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