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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF GEORGIA
PROBATION OFFICE

May 13, 1986

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REPLY TO Macon

Honorable William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
Washington, D.C. 20530

Dear Judge Wilkins:

This is in response to your letter of April 29, 1986, in which you solicited information concerning the issue of the use of prior criminal record in the sentencing process. Before addressing the specific questions as outlined in your correspondence, some general comments are offered.

Within the Middle District of Georgia, the defendant's prior criminal record is considered one of the most important components of the presentence investigation and is one of the more heavily weighted factors used in determining appropriate sentence alternatives. It is generally agreed upon by probation officers within this district that the prior criminal record provides the sentencing court with helpful insight concerning the individual offender and is a useful tool in considering future behavior of the defendant when combined with other factors. As a result of the importance attached to this section of the presentence report, the probation officers within this district are required to thoroughly research prior criminal records in all cases pending sentence.

Although this information is considered most important to the sentencing process, one must remain sensitive to the type of information gleaned from the prior criminal record; for example, it is suggested that patterns of criminal behavior are as important as a sensational or major conviction as reflected in the individual's prior criminal record. Patterns of minor offenses may indicate an overall life-style, or may be indicative of the way the defendant has "earned" a living, etc. Records should be examined for patterns, or series of patterns, and appropriate credit given by the sentencing court at the time of sentence. It is also suggested that the circumstances of the offense be examined in detail when considering prior record. As I am sure the Commissioner is aware, many times offenses cited orally or in writing appear much more aggravated than when the true circumstances surrounding the offense are made known. The converse of this statement may also be true. It is important, therefore, that for sentencing purposes the Court have the details surrounding each of the major offenses.

The Middle District of Georgia is a rather large district composed of 72 of Georgia's total of 159 counties. A Superior (felony) court system, as well as a State and/or Probate (misdemeanor) court system, are located within each county. Juvenile courts may be operated separately or under the Superior court system in each of the counties. Many local police departments and sheriff's offices maintain records of misdemeanor and petty offenses.

Unfortunately, criminal records are not centralized in any of these counties and a record check necessitates travel to various courts and law enforcement agencies in each county. It is mandatory that the United States probation officers understand the court system in each county in which he conducts a record check. Although there are common threads throughout each of the county systems, there are local differences, policies, etc. concerning record keeping and access to various criminal records.

The availability and accessibility of accurate records concerning criminal offenses, convictions, etc. is generally greater in the larger counties who can financially afford more sophisticated methods of record keeping. Generally speaking, however, most counties and court systems in this area have become more sensitive to the maintenance of accurate records during the past 15 years, and it is suggested that more information is available at present time than in past years. On many occasions today the United States probation officer conducting a criminal record check may obtain a copy of the original warrant of arrest, investigative report, the court pleadings, sentence, etc. With the availability of these court records, the details of the actual criminal activity are usually available. Also available is information as to whether or not the defendant was represented by counsel or waived counsel in many instances. Again, I emphasize that the availability of this information is dependent on the size of the county and the sophistication of the record keeping methods within the county in which the record is located.

The availability and accessibility of this most important information is of concern, however. I have enclosed an article which appeared in the MACON TELEGRAPH AND NEWS, the local newspaper, on May 5, 1986, which reflects some of the problems of maintaining various court records that several of our larger counties are encountering. Of course this problem becomes the problem of the various court systems, to include the United States District Court, as accessibility to the various records is hampered when records are stored, and financial expenditure to retrieve records is anticipated possibly in the future.

Within the Middle District of Georgia, a close rapport and working relationship has been established with state authorities in the areas of probation and parole supervision. The State of Georgia operates separate probation and parole systems; each system maintaining offices throughout this Federal judicial district. Any information concerning the period of probation and parole supervision is usually available to United States probation officers conducting investigations. This information includes violations and revocations; termination dates, employment, family problems, or any other supervision problems or successes. As the Commission is aware, many persons under federal probation or parole supervision are jointly supervised by state probation and parole officers. Information is freely exchanged in accordance with United States probation officers' manual guidelines.

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Unfortunately, information concerning prior periods of incarceration with the State of Georgia prison system is somewhat more difficult to obtain. Upon discharge from a period of imprisonment, inmate records are centralized in Atlanta, Georgia (Northern District of Georgia), and for these records to be perused, a collateral investigation must be conducted by the United States Probation Office, Northern District of Georgia. As mentioned above, should an individual be released under parole or mandatorily released and returned to a county within this district, institutional records may be available through the state parole officer. If, however, the state parole officer does not possess these records, then a collateral request must be forwarded to the Northern District of Georgia.

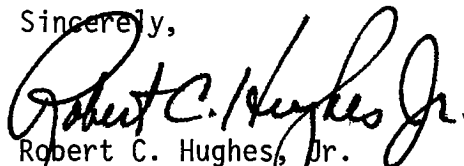
As stated earlier, Juvenile court records are maintained by the clerks of Superior courts in smaller counties, and by Juvenile courts in larger metropolitan areas. Generally, juvenile records are destroyed by the court if the defendant petitions the court requesting such action at the time he or she reaches majority; otherwise, retention of records becomes an individual court policy. Availability of these records, as well as the court policy concerning review by the United States probation officer, varies throughout counties of this district.

The need to obtain foreign criminal records has been minimal within this district. Occasionally the need has arisen to obtain information from Japan and South America, at which time the services of Interpol were used. Information obtained through Interpol was quite helpful, although the information was supplied after the defendant had been sentenced in the case.

In closing several thoughts are provided concerning the use of prior criminal records for sentencing purposes. It is suggested that a clear distinction be made between arrest and conviction when considering the offense for sentence purposes. It is also suggested that when reviewing military convictions, offenses against military discipline; i.e., AWOL, failure to obey in a lawful order, etc., be excluded from use as prior criminal record as they should be more appropriately considered as indicative of the defendant's personality, stability, etc. It is also suggested that foreign convictions presumptively be given the same weight as a corresponding conviction in United States District Court. Finally, if an offender was under probation or parole supervision at the time the offense was committed, consideration should be given by the sentencing court to increasing the sentence.

I appreciate the opportunity to respond to your letter and look forward to attending the hearing scheduled for May 22, 1986.

Sincerely,



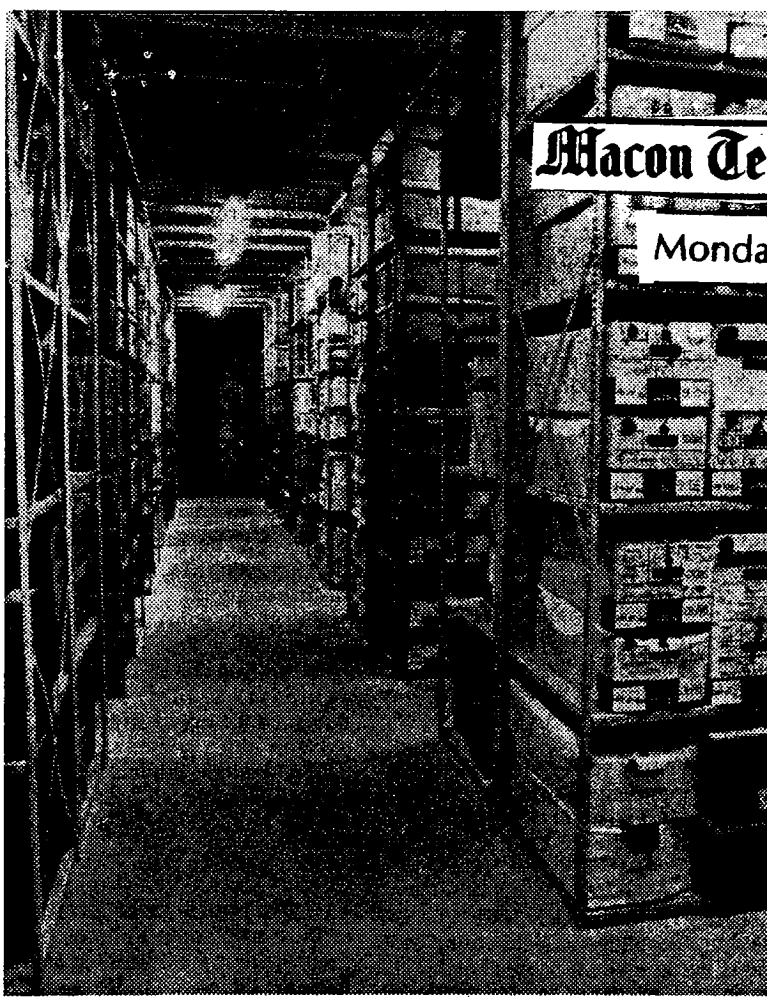
Robert C. Hughes, Jr.
Supervising U. S. Probation Officer

RCHjr:mae

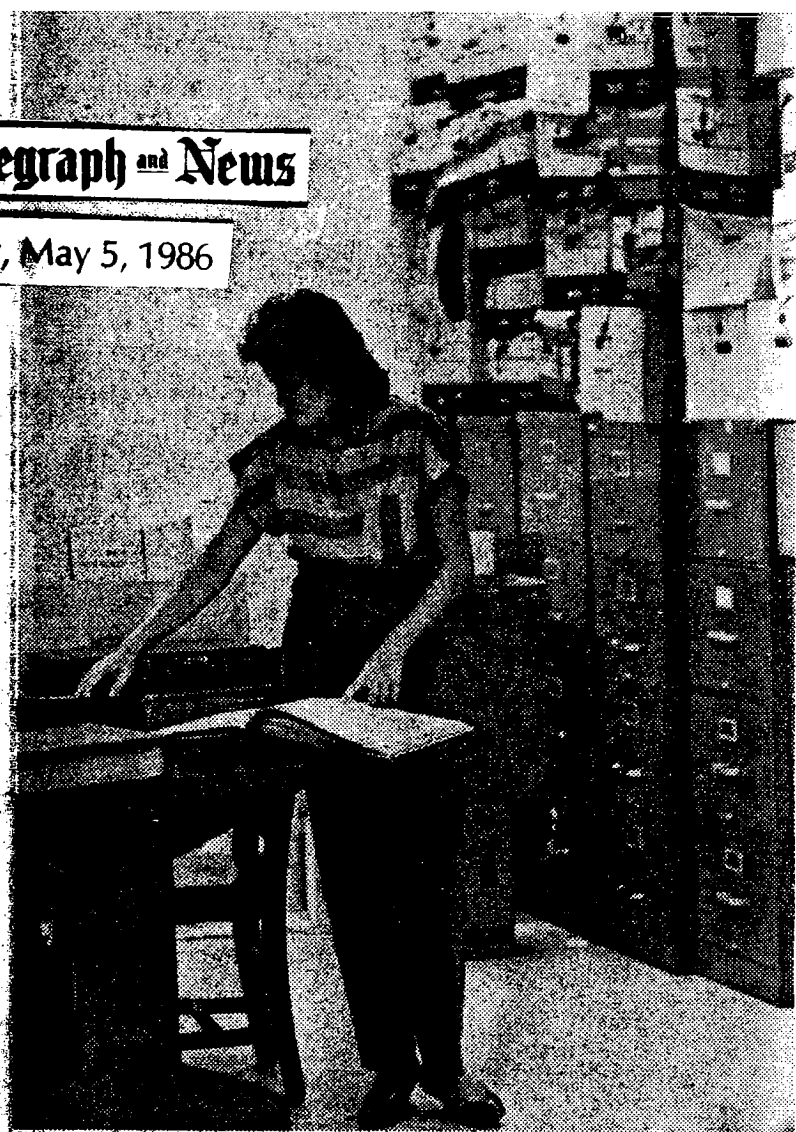
Enclosure

Macon Telegraph and News

Monday, May 5, 1986



MARYANN BATES/Macon Telegraph and News



BEAU CABELL/Macon Telegraph and News

bove, records vault at Data Management Co.;
ght, Sherry Brown works amid the clutter
Houston County State Court Clerk's Office

From beneath a mountain of paper, governments reach for helping hand

by Eric Velasco
Macon Telegraph and News

The stacks of records at Bibb County government offices were becoming a problem, especially the courthouse.

"We didn't realize that the paperwork was eating us alive," said Bibb County Commission Chairman Emory Greene. "As we grew, we got more and more paperwork."

The situation was particularly bad in the courthouse's fourth-floor records room, where docket books dating back to the 1850s were stored. A column of 90-pound docket books 40 feet long and up to 10 feet high endangered both employees and the building, Greene said.

A structural engineer warned that the weight of the books could cause the floor to collapse. The Bibb County fire marshal was threatening to condemn the courthouse.

Bibb County was facing a crisis common to local governments. Storing records, and being able to retrieve them when needed, is a growing problem for county and some city governments in Georgia.

State law requires that governments retain

most of their records for certain periods of time before they may be destroyed. Many records — including birth and death certificates, marriage licenses and court papers — must be kept forever.

BIBB OFFICIALS chose a solution that's becoming popular with other governments: paying a private company to take the problem off their hands.

In September, Bibb County hired Macon-based Data Management Co. to catalog and store most of the county's records.

The company pulled 66 tons of paper from the courthouse alone, said company manager Jeff White. When the docket books were pulled out of the storage room, floor tiles stuck to the bottom books, he said.

In all, records were removed from 22 departments in 36 locations, and consolidated at the company's office on Dove Street off Mercer University Drive.

"I was reluctant at first to hire (the company), but I was amazed at the results," Greene said. "It's made all the difference in the world."

Not only did the county head off a dangerous problem, but it also saved a bundle of money, Greene said. Data Management was paid \$15,000 to store the inactive records, and the county saved \$34,000 that had been budgeted for filing cabinets and microfilm this fiscal year. Moving the inactive files also freed storage space at county offices for active files.

Now the company is negotiating with Houston County officials to store about 1,200 cubic feet — some 18 tons — of records now kept in offices in Perry and Warner Robins.

THE STATE LEGISLATURE requires local governments to have a records management system, but leaves the type up to those governments, explained Jack Sinks, spokesman for the Georgia Department of Archives and History.

Many smaller counties microfilm their inactive records to free space for current files, Sinks said. They contract with private companies called "service bureaus" or use microfilm equipment and training provided by the Georgia Secretary of State's Office.

(See RECORDS, page 8B)

Records From page 1B

But microfilming can be very expensive, especially for a county with a small tax base, White said, since microfilming 150 cubic feet of records can cost up to \$10,000.

Larger governments, such as Fulton County's, are buying filming equipment and running their own central records facilities, Sinks said.

Self-storage also has been tried on a regional basis in Floyd County, where four governmental bodies pitched in on a storage room in an abandoned mill in Rome, said Floyd County Clerk Sue Broome. The governments — the County Commission, county school board and Rome city government and schools — found it would be cheaper to pool their resources than to create separate storage systems, Broome said.

They hired a person with experience in records management and outfitted the old mill — which the county school board was using — as a stor-

age room.

Moving into an existing structure, instead of building an expensive new one, "was the key" to the governments' decision to share storage space, said records curator Steve Mull.

HOUSTON COUNTY considered building its own records center two years ago but found it would be too expensive, said County Commissioner Jay Walker. The county would have to construct a fireproof, high-security building and hire at least three full-time employees — a secretary, records retrieval person and a courier — Walker said. And the courier would need a car, since county offices are about 15 miles apart.

"We got no final figures (on the cost of building a storage facility), but it was obvious to me that the cost of the building, maintenance, transportation and staff — that's the big expense — would be very expensive," Walker said.

The commission found that a private company could provide a cheaper solution to the paper crunch.

When the Macon company is hired, Houston County will join a growing number of larger county governments turning to private records-management companies, Sinks said.

BUT CONTRACTS with private companies for records storage may be an interim step, some county officials say. Many will choose the service with an eye on eventually building their own facilities.

When those governments are able to store their own records, the time-consuming step of organizing their files already will have been taken by the private company. All they have to do then is take the neatly packed boxes of records to the new building, along with the indexes compiled by the company.

Greene said Bibb County probably will take that route, "but that's a few years down the line."