

UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, D.C. 20004
(202) 662-8800



May 14, 1986

Honorable Strom Thurmond
Chairman
Senate Judiciary Committee
U.S. Senate
Washington, D.C. 20510
ATTENTION: Mr. Dennis Shedd
Chief Counsel

Dear Senator Thurmond:

After a productive hearing on offense seriousness, the U.S. Sentencing Commission is holding a second hearing May 22 to discuss the availability and reliability of prior record information and how that prior record information should affect sentencing.

Testimony will address the weighting of felony convictions, appropriateness of a decay factor, inclusion of juvenile, tribal or military convictions and other issues affecting the development of sentencing guidelines. The Commission would be pleased to have you or a member of your staff attend the hearing.

Testifying will be a federal prosecutor, public defender, the chief of the probation division, three probation officers and an FBI records expert. The hearing will begin at 10 a.m. in the Commission's hearing room, 14th Floor of the North Office Tower at National Place, 1331 Pennsylvania Avenue, N.W. Washington, D.C. 20004.

Enclosed please find an agenda for the hearing.

Sincerely,

A handwritten signature in cursive script that reads "Billy".

William W. Wilkins, Jr.
Chairman

UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, D.C. 20004
(202) 662-8800



AGENDA

**United States Sentencing Commission
Hearing on the Treatment of Prior Criminal Record**

May 22, 1986

10 a.m.	Chairman William W. Wilkins, Jr. Opening Remarks
10:15 a.m.	United States Attorneys Speaker: William F. Weld, U.S. Attorney, Boston, MA
10:30 a.m.	Federal Public Defenders Association Speaker: Thomas W. Hillier, Federal Public Defender, Seattle, WA
10:45 a.m.	Federal Bureau of Investigation Speaker: Melvin D. Mercer, Jr., Section Chief, Recording and Posting Division
BREAK	
11:30 a.m.	Probation Division, Administrative Office of the United States Courts Speaker: Donald L. Chamlee, Director
12 noon	United States Probation Officers - Panel * William "Dan" D. Broome, Chief USPO, Fargo, ND * Robert C. Hughes, Jr., Supervising USPO, Macon, GA * Joel Weber, USPO, New York, NY
1:00 p.m.	Chairman Wilkins Closing Remarks



U.S. Department of Justice

*United States Attorney
District of Massachusetts*

*1107 J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109*

May 14, 1986

EXPRESS MAIL

Hon. William W. Wilkins, Jr.
Chairman, The United States
Sentencing Commission
1331 Pennsylvania Avenue, N.W., Suite 1400
Washington, DC 20004

Dear Judge Wilkins:

This is in response to your letter dated May 2, 1986 (copy enclosed for ease of reference), and sets forth some thoughts concerning the use of prior records in sentencing.

-- Available to the U. S. Attorney's Office in the District of Massachusetts at the time of sentencing is a presentence report prepared by the U. S. Probation Department which details the defendant's prior known record. This record information contains the dates of all known arrests or convictions, adult and juvenile, the court involved, the offense charged, the sentence, a brief description of the offense and whether or not the defendant was represented by counsel. This record is compiled from information provided by the Massachusetts Criminal History Systems Board (Massachusetts Probation Department), other state probation departments and the FBI Identification Division.

-- As a general rule, the defendant's prior record which is contained in the presentence report is reliable. However, gaps do occur. Information is solicited from those states in which the defendant has told the probation department he has resided or been arrested. There have been instances where a defendant did not reveal his prior contact with a particular state and a prior conviction has escaped detection. The FBI criminal history of a defendant is not always complete since it depends upon the various police departments and courts throughout the United States to provide it with information. Since such police departments and courts are not penalized for failing to provide relevant information, they sometimes do not do so.

In many instances, the version of the prior offense for which a defendant was arrested or convicted shows a lack of uniformity, since the source material for the version varies, i.e., the defendant, local police reports, court records, etc. It would be helpful if the source of the information was noted.

Finally, the seriousness of the prior offense cannot always be clearly discerned because of the diversity of statutes and sentencing procedures among the various states.

Ordinarily, if the probation officer or investigative agent or Assistant U. S. Attorney takes the time to follow through, it is possible to distinguish between prior misdemeanors and felonies, and between adult and juvenile adjudications.

-- Great weight is not normally given to minor arrests not resulting in convictions or a conviction for a relatively minor offense followed by a lengthy period of lawful conduct. As concerns juvenile convictions and incarcerations, it is useful to determine whether the incarceration was to assist the offender or to punish for past conduct in assigning weight to such factors.

-- Prior record information which we emphasize includes related convictions; whether the defendant has previously been on probation or parole and whether he was on probation or parole at the time of the present offense; frequency of offenses (a pattern of recidivism); recent custody; nature of prior offenses (violent, victim or victimless, etc.); and the defendant's attitude toward his prior convictions.

-- Because of the differences existing among states as to what constitutes a felony or a misdemeanor, the distinction between the two should be avoided for sentencing purposes. The focus should be on the nature or seriousness of the prior offense. A larceny of \$150 should receive the same weight for federal purposes whether it was committed in Wisconsin or Georgia or Colorado. As a fallback guide, statutory maximums (which also vary from state to state) would be a more acceptable standard than the actual sentence imposed since the maximum normally bears some relation to the seriousness of the crime, whereas the sentence imposed is totally discretionary and great disparity can exist.

-- Although the passage of time should have some effect on the weight placed upon a prior conviction, it is important in the sentencing process to consider most prior convictions. Such convictions can be demonstrative of a long-existing personality disorder, a prior drug problem or the like. (This effect should

of course vary depending upon the nature of the old offense and its relation to the current offense.) I personally am of the view that a longer period than ten years record-free should be required before a prior conviction is viewed as so "ancient" as to be disregarded. Fifteen years seems to me a more appropriate figure.

The starting point in the decay period should be the supervision release date.

-- Prior juvenile offenses should be considered, but the weight given should differ from adult convictions since the juvenile system is different. The age of the defendant at the time of the juvenile conviction as well as the circumstances of the offense would be important considerations in the weighing process. It must be kept in mind, however, that the defendant, now an adult offender, did receive a prior break by being treated as a juvenile.

"Status" juvenile offenses such as truancy, runaway, and stubborn child, which would not be offenses if committed by an adult, should not be considered.

I would be content to adhere to a ten-year "decay" period for juvenile offenses (as opposed to a longer period for adult offenses).

-- Likewise, prior arrests should be considered. Arrests result in no conviction for many reasons other than innocence. Among others, some reasons for dismissals are plea-bargaining, the victim of the crime being unwilling to testify, pre-trial diversion, legal technicalities, and, unfortunately, a defendant's influence in a local court system, or ability to intimidate witnesses. It would be important, therefore, to know the underlying facts of the arrest and what led to the decision not to prosecute. A shorter "decay" period might be appropriate for arrests than for convictions.

-- Another relevant factor in the sentencing process is that as one continues to commit crimes, the punishment should become more severe. Recidivists and career criminals should know that they will be incarcerated and for increasingly longer periods of time. Also, as one continues to commit the same type of offense, a greater sentence of incarceration may be necessary for purposes of specific deterrence.

I hope that the foregoing is of assistance to the Commission in developing sentencing guidelines. I look forward to appearing before you on May 22 to answer any questions you may have.

Very truly yours,

William F. Weld

WILLIAM F. WELD
United States Attorney

FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF WASHINGTON

May 14, 1986

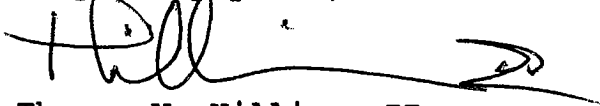
Hon. William W. Wilkins, Jr., Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue, NW
Suite 1400
Washington, D.C. 20004

Dear Judge Wilkins:

Enclosed is a written submission addressing questions you sent to Ed Marek in anticipation of the hearing on a defendant's criminal record. As you noted in your letter, the Federal Defenders have previously addressed some of the issues which undoubtedly will be discussed at the May 22nd hearing. The enclosure speaks more specifically to your questions. Positions advanced in this supplemental submission are succinct due to time constraints.

Ed Marek has asked that I represent the Federal Public Defenders at the May 22nd hearing. I happily accepted his invitation and look forward to elaborating on positions advanced in our papers and answering any questions the Sentencing Commission may have concerning this most important topic. We appreciate the opportunity to appear and hope that we will be able to provide information which will assist you in accomplishing your considerable task.

Very truly yours,



Thomas W. Hillier, II
Federal Public Defender

TWH,II::klw/H0029

SUPPLEMENTAL SUBMISSION FROM FEDERAL DEFENDERS ON
DEFINITION OF "CRIMINAL HISTORY"; 28 U.S.C. §994(d)(10)

I

INTRODUCTION

On February 14, 1986, the Federal Defenders submitted a position paper addressing our thoughts on what information should be considered when determining an individual's "criminal history", as that term is used in 28 U.S.C. § 994(d)(10). The United States Sentencing Commission has scheduled a hearing on May 22, 1986 to discuss how a defendant's criminal record should affect his or her sentence. In anticipation of that hearing, Judge William W. Wilkins wrote the Federal Defenders inviting additional written input and requesting that we address specific questions set forth in the body of his letter. The purpose of this submission is to address the inquiries of Judge Wilkins and to refine thoughts presented in our paper of February 14, 1986.

II

DISCUSSION

In our first paper, we proposed that the Sentencing Commission narrowly define the term "criminal history", limiting the term to felony convictions. We then went on to suggest and discuss certain refinements, some of which are the subject of the questions presented in Judge Wilkins letter of April 29th. In the weeks since we presented our original paper, we have not altered our position that the term "criminal history" should be narrowly defined. We believe that our proposal will further the Sentencing Commission's goal of limiting sentencing disparity and will act to

limit litigation concerning sentencing issues.

A. Sources of Information Concerning a Defendant's Criminal History

Judge Wilkins has asked about the sources of information purporting to record a defendant's prior record and the reliability of that information. Time constraints have limited our ability to canvas all Federal Defenders concerning this question. However, it is the general experience of Federal Defenders that information concerning a defendant's prior record will generally come from FBI "rap sheets", printouts from the National Crime Information Center (NCIC), and similar printouts from information repositories located in each state. These informational sources are highly unreliable. "Rap sheet" entries rarely differentiate between misdemeanors and felonies. Arrests are usually listed without regard to whether or not a conviction followed. Information concerning disposition is generally vague and incomplete if provided at all. Entries include "administrative bookings". These entries reflect neither an arrest nor a conviction, but may indicate a transfer of a prisoner from one institution to another or the processing (fingerprinting) of an individual for federal employment purposes.

The task of providing a sentencing judge with reliable information concerning a defendant's prior record usually falls to the probation officer in charge of the presentence investigation. Unfortunately, that investigator usually begins his or her task with the defendant's "rap sheet". The ability to verify information

varies from case to case. Generally, the more serious the misconduct indicated on the "rap sheet", the easier it is to verify. Recordkeeping in courts of limited jurisdiction is often erratic and confusing. Thus, information concerning misdemeanor entries is often unverifiable and unreliable. It is with these difficulties in mind that we have suggested that the Sentencing Commission adopt a definition of criminal history which does not include misdemeanor convictions. We foresee protracted and unnecessary litigation if misdemeanors are to be considered. In addition, consideration of misdemeanors will necessarily require devising a scoring system for prior convictions which will be complex and possibly unmanageable. For example, the State of Minnesota has devised a system wherein misdemeanor convictions are assigned a fraction of a point for the purpose of calculating a defendant's criminal history score. See: Minnesota Sentencing Guidelines and Commentary, revised August 1, 1985, § II.B.301. Under the Minnesota plan, misdemeanor convictions can result in no more than one point total. However, the Minnesota Supreme Court has ruled that fractions of a point cannot be used in computing the criminal history score and therefore, cannot be used as a basis for departing from the guidelines. State v. Erickson, 313 N.W. 2nd 16 Minn. 1981). It is with these complexities and problems in mind that the State of New York determined that it would not use misdemeanor convictions when calculating a defendant's criminal history. We believe that there is sufficient flexibility under 28 U.S.C. § 994(b) to address a defendant's misdemeanor record in fashioning an appropriate sentence.

B. Felony and Misdemeanor Definitions

Judge Wilkins has asked how the Sentencing Commission should define felony and misdemeanor offenses in light of definitional disparity among states and between states and the federal system. It is our position that if an offense is classified as a misdemeanor in the jurisdiction where the conviction occurs, then it should remain a misdemeanor under the guideline adopted by the Sentencing Commission. Fundamental fairness requires this result.

In those cases where misconduct under state law results in a felony conviction that would have been a misdemeanor for the same misconduct in federal court, we believe that the misconduct should be classified as a misdemeanor under the Sentencing Commission's guidelines. A contrary approach would simply further a pre-existing disparity. For example, a particular state may classify certain misconduct as felonious despite the fact that most other states and the federal system classify the same misconduct as a misdemeanor. Should the Sentencing Commission fail to take into account such vagaries, similarly situated individuals will receive disparate sentences under our sentencing guidelines, a result which is at odds with the Commission's goal.

C. The "Decay Factor"

In our submission of February 14, 1986, we suggested that the Sentencing Commission adopt a system which would discount a conviction after 10 years of felony-free behavior in the community. This position is in accord with present Parole Commission policies.

The starting point for calculating the 10-year period should be the date on which the defendant is released from prison or, in cases where imprisonment is not imposed, the date of sentencing. We strongly oppose calculating the decay factor from the point of release from parole or probation supervision. While on probation or parole, an individual is interacting in the community. If the community conduct is crime-free, an individual should be given credit.

D. Juvenile Records

We have previously submitted thoughts concerning consideration of a juvenile record in calculating a defendant's "criminal history". We suggested certain limitations on consideration of juvenile records in an effort to assure sentencing uniformity. In that respect, Judge Wilkins asks whether juvenile convictions should be weighed the same as adult convictions. We have suggested that your guidelines include only juvenile convictions involving violent felonies. This suggestion speaks to Judge Wilkins' question. Oftentimes, non-violent juvenile misconduct results from peer pressure and immaturity which is "outgrown" in time. Such convictions should not be weighed in the same manner as an adult who is guilty of similar misconduct.

We believe that a "decay factor" is appropriate in considering juvenile records. We have already suggested that juvenile records involving misconduct before the defendant has reached the age of 16 should not be considered. Minnesota goes a step further. Under the Minnesota plan, prior juvenile felonies may

be considered provided that the offender has not attained the age of twenty-one at the time the felony was committed for which he or she is presenting being sentenced. This rapid "decay" of juvenile records would seem to further the general rehabilitative orientation of the juvenile process.

E. Arrest without Conviction Should not be Considered in a Defendant's Criminal History

The Federal Defenders strongly oppose a definition of criminal history which includes arrests. We have addressed this concern in our February 14th paper. Disparity and unfairness will prevail if this limitation is not adopted. Moreover, sentencing hearings will become protracted and appellate review will increase significantly. This litigation will occur because arrest records are grossly unreliable as indicators of criminal orientation. An arrest may be the result of negligence, harassment or mistake. Unquestionably, innocent citizens are arrested daily. To the extent that an individual's arrest record reliably shows antisocial behavior, the sentencing judge is left with sufficient flexibility under 28 U.S.C. § 994(b) to consider the same.

F. Multiple Convictions

Another area of concern involves those cases where multiple convictions flow from a single course of misconduct. Indictments frequently contain several charges even though the misconduct involved a single course of activity. For example, a drug importation may result in three felony charges: conspiracy, importation and possession with intent to deliver. It is possible

that a defendant will be treated differently from jurisdiction to jurisdiction depending upon plea and charge bargaining policies of the United States Attorney. An individual in New York may strike a bargain which allows him to plead to a single count of the indictment. In Texas, the "bargain" may require pleading to three counts. It is our position that multiple convictions flowing from a single course of conduct should be counted as only one conviction. Neither the number of convictions nor the type of sentence imposed should control. A contrary guideline will necessarily factor the prior disparity into the present practice. In cases involving multiple convictions flowing from a single course of conduct, the most serious conviction should be used in calculating the criminal history score.

JUN 13 1986

RECEIVED JUN 13 1986
FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF WASHINGTON

June 10, 1986

Hon. William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue N.W.
Suite 1400
Washington, D.C. 20004

Dear Judge Wilkins:

Enclosed is a follow-up to testimony presented at the May 22, 1986 hearing concerning a defendant's prior record. I am sorry for the delay -- circulation of my comments to other Federal Defenders invariably causes a time lag. I hope your Committee has not been inconvenienced and will have an opportunity to consider the enclosure.

Please let me know if there is need for additional input.

Very truly yours,



Thomas W. Hillier, II
Federal Public Defender

TWH,II:klw/W0043

FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF WASHINGTON

June 10, 1986

Hon. William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue N.W.
Suite 1400
Washington, D.C. 20004

Dear Judge Wilkins:

I am writing as a follow-up to testimony recently presented on behalf of the Federal Defenders concerning scoring of a defendant's prior criminal history. First, I would like to again express my thanks for having had the opportunity to appear and discuss this important issue. It was an educational and rewarding experience, one I will not soon forget.

One important area of concern was not addressed during written or oral testimony presented on behalf of the Federal Defenders. After I had testified, a panel of probation officers appeared. Several Commissioners asked the panel for opinions as to whether scoring of a prior conviction should be based upon the offense of conviction or upon information "reflecting the overall circumstances" of the prior offense. At least two of the probation officers seemed to support a guideline which would take into account the overall circumstances of the prior conviction. The Federal Public Defenders believe that such an approach would be grossly unfair and would pose the probability of substantial litigation and controversy at the sentencing hearing. We emphatically favor a guideline system which scores only the prior offense of conviction. Our reasons are as follows.

First, through submission dated February 14, 1986 concerning "fact finding in guideline sentencing," we discussed several constitutional and practical problems involved in using unadjudicated facts as a basis for determining a particular guideline. In that paper, we were discussing the use of unadjudicated facts in assessing a guideline for the offense of conviction presently under consideration by the sentencing court. The constitutional and practical arguments set forth in that paper are equally relevant here. In that paper we

argued that, absent an admission by the defendant or a finding of guilt following trial, unadjudicated facts must not be used to enhance a sentence.

Constitutional and practical concerns related to scoring of prior convictions are even more acute and require a more restrictive scoring system. Defendants appearing before sentencing courts often have records which include convictions which are five, ten or fifteen years old. Probation officers who testified on May 22 indicated that the older a prior offense, the more difficult it is to develop reliable information concerning the circumstances of the offense. If the Sentencing Commission establishes a policy which takes into consideration the "overall circumstances" of the prior offense, then the presentence reporter will be left with the unenviable and perhaps impossible task of uncovering uncontested facts related to those "overall circumstances." This would seem an impractical approach.

Second, as all who have had contact with the criminal justice system are aware, prosecutors frequently "overcharge" cases knowing full well that the overcharging will encourage plea bargaining. Thus, a homicide charged as murder in the first degree may be properly disposed of as murder in the second degree or some lesser offense. Probation officers testifying on May 22nd voiced some concern over the scoring of offenses which have been "bargained down." There seemed to be an assumption that the greater offense was more truly indicative of the misbehavior. However, our experience is the opposite. Rarely, if ever, do plea bargains result from prosecutorial generosity, improper influence or the like. More frequently, plea bargains result from the prosecutor's accurate evaluation of the strength of his/her case.

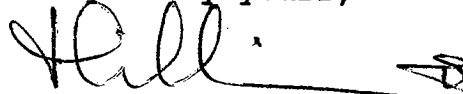
It is difficult to imagine the complexity of sentencing hearings should the Sentencing Commission require the examination of the "overall circumstances" of a defendant's prior criminal history. For example, are prosecutors and defense counsel going to be required to appear to explain why it is that certain plea agreements were struck? It would seem that such an approach would effectively challenge the integrity of the prior proceeding. How will the sentencing court evaluate challenged facts when witnesses are no longer available

Hon. William W. Wilkins, Jr.
June 10, 1986
Page 3

to testify concerning older prior convictions? If a charge is reduced because of "proof problems", should the sentencing court consider the possibility that the defendant would have been acquitted but for the plea bargain? (This result would seem as fair as assuming the defendant guilty of the greater offense.)

These inevitable problems speak loudly in favor of our suggestion that the offense of conviction and not the "overall circumstances" of that prior conviction should control the evaluation of a defendant's criminal history. Such an approach is consistent with fairness and the entire fiber of our criminal justice system. It is a practical approach and the one which we feel would best promote the Sentencing Commission's objective of preparing the best possible determinant sentencing system.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Hillier", followed by a horizontal line and a small flourish.

Thomas W. Hillier, II
Federal Public Defender

TWH,II:klw/W0040

OPENING STATEMENT

OF

SPECIAL AGENT MELVIN D. MERCER, JR.
CHIEF, RECORDING AND POSTING SECTIONS
IDENTIFICATION DIVISION
FEDERAL BUREAU OF INVESTIGATION

BEFORE THE
UNITED STATES SENTENCING
COMMISSION

REGARDING
THE CAPACITY AND LIMITATIONS OF THE CRIMINAL HISTORY
INFORMATION SYSTEM MAINTAINED BY THE
FBI IDENTIFICATION DIVISION

The FBI's Identification Division was established by an Act of Congress in 1924, at the urging of the International Association of Chiefs of Police. Two developments at the turn of the century were instrumental in the Division's creation. The first was the adoption by criminal justice authorities of the use of fingerprints as a positive means of identifying criminals. The second was the increasing mobility of criminals. Efficiency and economy made it imperative that there be a national index where a single inquiry could be made to determine whether a person had a prior criminal record. The alternative would be to poll each of the numerous criminal justice jurisdictions throughout the United States to make that determination.

The Identification Division operates in the following manner: Federal, state and local criminal justice agencies voluntarily mail in arrest fingerprint cards and disposition reports, which the Division uses to compile its criminal history records. Inquiries regarding these records are received in the form of subsequent arrest and applicant fingerprint cards and name-check requests. Name-check requests are restricted almost exclusively for criminal justice agency use. The Division also acts as the national repository for fingerprint cards taken in connection with employment in the Federal Government, service in the United States Armed Forces, alien registration, and personal identification, including missing persons and unidentified living and deceased persons. As of May 1, 1986, the Division's fingerprint card holdings totaled 177.2 million cards, including 92.9 million criminal cards relating to 23.4 million persons, and 84.3 million civil cards relating to 35.9 million persons. Two separate

files are maintained for criminal and civil records. Over 22,000 authorized users are presently provided with identification services.

During Fiscal Year (FY) 1985, the Identification Division received 6.9 million fingerprint cards of which 3.4 million involved criminal matters, i.e., arrests, confinements, probations, etc. Our average time for processing a fingerprint card through the system is 13 workdays. We receive about 27,000 fingerprint cards each day. About ten percent of the criminal submissions are rejected because either the fingerprints are illegible or the cards lack essential information necessary to process them.

As previously noted, participation (forwarding arrest and disposition data for inclusion in our system) is voluntary. Criminal history information in our system is routinely purged only when the subject of the record becomes 80 years old. We do honor state and Federal court orders directing the expungement of specific criminal history information; however, these orders relate to a small percentage of the file. Therefore, criminal history information relating to offenses committed ten (or more) years ago is generally available. The arrest charges appearing in the records generally are not identified as felonies or misdemeanors, unless the contributor of the charge data indicates this information. Most contributors do not indicate whether the charge is a felony or misdemeanor.

Our record is constructed from the information on the arrest fingerprint card and final disposition form submitted after the case is disposed of. Disposition reporting has increased substantially during

the past few years. During FY 1983 we received 1,600,465 dispositions, while in FY 1985 we received 2,942,943 dispositions.

Juvenile criminal history information is not maintained in our system unless the juvenile was tried as an adult. Military and foreign criminal record information is maintained when the arrest fingerprint cards are forwarded to us. We receive substantially less than complete reporting in regard to military arrests, although the actual level of reporting is unknown. An individual's probation or parole status will be shown in the record when such information is furnished. Again, the dates, as they relate to the arrest, conviction or release, would be shown on the record if such information is forwarded to us.

One final aspect of our record system that deserves mention is the immediate availability of about ten million of our 23 million records via the National Crime Information Center (NCIC) Interstate Identification Index (III, pronounced Triple Eye). All criminal records on individuals born after January 1, 1956, have been automated and are immediately available via the NCIC communications network. These records contain substantially the same criminal history that is furnished via the mail by the Identification Division.

To further describe our system, provide additional information on its capacity and limitations, and aid the Commission in formulating additional questions, the following items are enclosed:

1. System description published in the "Federal Register" on January 23, 1981.
2. Enabling legislation for the system (28 United States Code

534).

3. Delegation of Authority Statement (28 Code of Federal Regulations 0.85 (b)) (two pages).

4. Listing of Nonserious Offenses not retained in our system.

5. Manual FBI Identification Record under FBI Number 777 533 F.

6. Automated FBI Identification Record under FBI Number 259 975 T11 (two copies--one with descriptive data (two pages) and one without descriptive data).

7. This same FBI Identification Record (Attachment 6) in NCIC III format.

8. Our "Letter to All Fingerprint Contributors" dated March 29, 1984, describing the III.

9. Our latest Letter to All Fingerprint Contributors dated March 17, 1986, wherein the initial article is intended to briefly describe our system and show how the system's capacity and limitations are dependent on its users.

Enclosures (9)

Justice/FBI-009

SYSTEM NAME:

Identification Division Records System.

SYSTEM LOCATION:

Federal Bureau of Investigation; J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue NW., Washington, D.C. 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals fingerprinted as a result of arrest or incarceration.

B. Persons fingerprinted as a result of Federal employment applications, military service, alien registration and naturalization purposes and individuals desiring to have their fingerprints placed on record with the FBI for personal identification purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Criminal fingerprint cards and related criminal justice information submitted by authorized agencies having criminal justice responsibilities.

B. Civil fingerprint cards submitted by Federal agencies and civil fingerprint cards submitted by persons desiring to have their fingerprints placed on record for personal identification purposes.

C. Identification records sometimes referred to as "rap sheets" which are compilations of criminal history information pertaining to individuals who have criminal fingerprint cards maintained in the system.

D. An alphabetical name index pertaining to all individuals whose fingerprints are maintained in the system. The criminal records and the civil records are maintained in separate files and each file has an alphabetical name index related to the data contained therein.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established, maintained and used under authority granted by 28 U.S.C. 534, 15 U.S.C. 789, 7 U.S.C. 122, and Pub. L. No. 92-544 (88 Stat. 1115). The authority is also codified in 28 CFR 0.85 (b), and (j).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

The FBI operates the Identification Division Records System to perform identification and criminal history record information functions for federal, state, local, and foreign criminal justice agencies, and for noncriminal justice agencies, and other entities where authorized by Federal statute, state statute pursuant to Public Law 92-544 (88 Stat. 1115), Presidential executive order, or regulation of the Attorney General of the United States. In addition, identification assistance is provided in disasters and for other humanitarian purposes.

Release of information to the news media: *Guidelines applicable for the release of information to the news media and the public are set forth in 28 CFR 20.33(c)(4), 20.33(c), and 50.2.*

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management and inspections conducted under the authority of 44 U.S.C. 2904 and 2908.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is stored manually in file cabinets either in its natural state or on microfilm. In addition, some of the information is stored in computerized data storage devices.

RETRIEVABILITY:

(1) All information in the system is retrievable by technical fingerprint classification and positive identification is effected only by comparison of the unique identifying characteristics appearing in fingerprint impressions submitted for search against the fingerprint cards maintained within the system.

(2) An auxiliary means of retrieval is through alphabetical name indexes which contain names of the individuals, their birth date, other physical descriptors, and the individuals' technical fingerprint classifications and FBI numbers, if such have been assigned.

SAFEGUARDS:

Information in the system is unclassified. Disclosure of information from the system is made only to authorized recipients upon authentication and verification of the right to access the system by such persons and agencies. The physical security and maintenance of information within the system is provided by FBI rules, regulations and procedures.

RETENTION AND DISPOSAL:

(1) The Archivist of the United States has approved the destruction of records maintained in the criminal file when the records indicate individuals have reached 80 years of age, and the destruction of records maintained in the civil file when the records indicate individuals have reached 75 years of age.

(2) Fingerprint cards and related arrest data in the system are destroyed seven years following notification of the death of an individual whose record is maintained in the system.

(3) Fingerprint cards submitted by state and local criminal justice agencies are returned upon the request of the submitting agencies. The return of a fingerprint card under this procedure results in the deletion from the system of all arrest information related to that fingerprint card.

(4) Fingerprint cards and related arrest data are removed from the Identification Division Records System upon receipt of Federal court orders for expunctions when accompanied by necessary identifying information. Recognizing lack of jurisdiction of local and state courts over an entity of the Federal Government, the Identification Division Records System, as a matter of comity, returns fingerprint cards and related arrest data to local and state criminal justice agencies upon receipt of orders of expunction directed to such agencies by local and state courts when accompanied by necessary identifying information.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 10th and Pennsylvania Avenue N.W., Washington, D.C. 20535.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURE:

The Attorney General has exempted the Identification Division Records System from compliance with subsection (d) of the Act. However, pursuant to 28 C.F.R. 16.30-34, and Rules and Regulations promulgated by the Department of Justice on May 20, 1975 at 40 Fed. Reg. 22114 (Section 20.34) for Criminal Justice Information Systems, an individual is permitted access to his identification record maintained in the Identification Division Records System and procedures are furnished for correcting or challenging alleged deficiencies appearing therein.

CONTESTING RECORD PROCEDURE:

Same as the above.

RECORD SOURCE CATEGORIES:

See Categories of Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (4)(G) and (H), (5) and (8); (f); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 81-2171 Filed 1-23-81; 846 cml]

BILLING CODE 4410-09-01

(Attachment 1)

Act (31 U.S.C. 869(a) [section 869(a) of Title 31])."

Notes of Decisions

Duty of investigative officials 7
 Liability of officials 6
 Prosecutorial function 5

2. Scope of investigatory powers

Where Federal Bureau of Investigation knew that federal crime had been committed when Ku Klux Klan and local officials conspired to violate "Freedom Riders'" right to travel, that conspiracy was still active and that further criminal activity was likely to occur, Federal Bureau of Investigation was required to do more than listen and take notes under this section. *Bergman v. U.S.*, D.C.Mich.1983, 565 F.Supp. 1353.

FBI's investigative authority extends to authorized national security investigation involving foreign influences. *Jabara v. Kelley*, D.C.Mich. 1979, 476 F.Supp. 561, vacated on other grounds 691 F.2d 272, certiorari denied 104 S.Ct. 193.

In view of complex problems of Indian Tribal Court jurisdiction, uncertainty of the law and fact that neither the tribe nor tribal court would, if aware of limitations on their power, exceed it, district court would not issue preliminary injunction to restrain the tribe and its officers from further proceedings with contempt citations or interfering with the Federal Bureau of Investigation in the investigation of violations of federal statutes on their reservation. *U.S. v. Blackfeet Tribe of Blackfeet Indian Reservation*, D.C.Mont. 1973, 364 F.Supp. 192, reaffirmed 369 F.Supp. 562.

It is beyond the power of Indian tribe to in any way regulate, limit, or restrict federal law officer, including FBI agent, in the performance of his duties. *Id.*

5. Prosecutorial function

Prosecutorial function of Federal Bureau of Investigation official under this section is not merely limited to aiding United States attorneys but, rather, definition of term "prosecute" and this section implies that some affirmative action on part of official will be effectuated. *Bergman v. U.S.*, D.C.Mich.1982, 551 F.Supp. 407.

6. Liability of officials

Complainants, who alleged willful failure of named and unnamed Federal Bureau of Investigation agents to detect or to report existence of civil rights conspiracy and planned violence against "Freedom Riders" in derogation of duty to prevent crime and to protect United States citizens, had stated claim for relief under Federal Tort Claims Act, sections 1346(b) and 2671 et seq. of this title where Federal Bureau of Investigation had undertaken, pursuant to this section, to "detect and prosecute crimes against the United States," and it was thus possible that complainants could demonstrate actionable duty on part of United States under Alabama law. *Bergman v. U.S.*, D.C.Mich.1982, 551 F.Supp. 407.

7. Duty of investigative officials

Where Federal Bureau of Investigation had detected violations of section 371 of Title 18, and Federal Bureau of Investigation's informant assisted in execution of conspiracy and was instrumental in planning that conspiracy, Bureau had duty to timely inform competent prosecutorial authorities in Department of Justice of those violations. *Bergman v. U.S.*, D.C.Mich.1983, 565 F.Supp. 1353.

§ 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

(a) The Attorney General shall—

(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records;

(2) acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;

(3) acquire, collect, classify, and preserve any information which would assist in the location of any missing person (including an unemancipated person as defined by the laws of the place of residence of such person) and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person (and the Attorney General may acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin);

(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions.

(b) The exchange of records and information authorized by subsection (a) (4) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) The Attorney General may appoint officials to perform the functions authorized by this section.

(As amended Pub.L. 97-292, §§ 2, 3(a), Oct. 12, 1982, 96 Stat. 1259.)

by this Subpart O. Existing redelegations by the Assistant Attorney General for Administration shall continue in force and effect until modified or revoked.

(Order No. 543-73, 38 FR 29585, Oct. 26, 1973. Redesignated by Order No. 565-74, 39 FR 15876, May 6, 1974, and further redesignated by Order No. 832-79, 44 FR 29891, May 23, 1979)

Subpart P—Federal Bureau of Investigation

CROSS REFERENCE: For regulations pertaining to the Federal Bureau of Investigation, see Part 3 of this chapter.

§ 0.85 General functions.

The Director of the Federal Bureau of Investigation shall:

(a) Investigate violations of the laws, including the criminal drug laws, of the United States and collect evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency. The Director's authority to investigate violations of and collect evidence in cases involving the criminal drug laws of the United States is concurrent with such authority of the Administrator of the Drug Enforcement Administration under § 0.100 of this part. In investigating violations of such laws and in collecting evidence in such cases, the Director may exercise so much of the authority vested in the Attorney General by sections 1 and 2 of Reorganization Plan No. 1 of 1968, section 1 of Reorganization Plan No. 2 of 1973 and the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, as he determines is necessary. He may also release FBI information on the same terms and for the same purposes that the Administrator of the Drug Enforcement Administration may disclose DEA information under § 0.103 of this part. The Director and his authorized delegates may seize, forfeit and remit or mitigate the forfeiture of property in accordance with 21 U.S.C. 881, 21 CFR 1316.71 through 1316.81, and 28 CFR 9.1 through 9.7.

(b) Conduct the acquisition, collection, exchange, classification and preservation of fingerprint cards and identification records from criminal justice and other governmental agencies, including fingerprint cards voluntarily submitted by individuals for personal identification purposes; provide expert testimony in Federal, State and local courts as to fingerprint examinations; and provide fingerprint training and provide identification assistance in disasters and for other humanitarian purposes.

(c) Conduct personnel investigations requisite to the work of the Department of Justice and whenever required by statute or otherwise.

(d) Carry out the Presidential directive of September 6, 1939, as reaffirmed by Presidential directives of January 8, 1943, July 24, 1950, and December 15, 1953, designating the Federal Bureau of Investigation to take charge of investigative work in matters relating to espionage, sabotage, subversive activities, and related matters.

(e) Establish and conduct law enforcement training programs to provide training for State and local law enforcement personnel; operate the Federal Bureau of Investigation National Academy; develop new approaches, techniques, systems, equipment, and devices to improve and strengthen law enforcement and assist in conducting State and local training programs, pursuant to section 404 of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 204.

(f) Operate a central clearinghouse for police statistics under the Uniform Crime Reporting Program, and a computerized nationwide index of law enforcement information under the National Crime Information Center.

(g) Operate the Federal Bureau of Investigation Laboratory to serve not only the Federal Bureau of Investigation, but also to provide, without cost, technical and scientific assistance, including expert testimony in Federal or local courts, for all duly constituted law enforcement agencies, other organizational units of the Department of Justice, and other Federal agencies, which may desire to avail themselves of the service. As provided for in pro-

§ 0.85a

cedures agreed upon between the Secretary of State and the Attorney General, the services of the Federal Bureau of Investigation Laboratory may also be made available to foreign law enforcement agencies and courts.

(h) Make recommendations to the Office of Personnel Management in connection with applications for retirement under 5 U.S.C. 8336(c).

(i) Investigate alleged fraudulent conduct in connection with operations of the Department of Housing and Urban Development and other alleged violations of the criminal provisions of the National Housing Act, including 18 U.S.C. 1010.

(j) Exercise the power and authority vested in the Attorney General to approve and conduct exchanges of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions and, if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing; and exercise the power and authority vested in the Attorney General by 15 U.S.C. 78q(f)(2) and 7 U.S.C. 12a, to approve and conduct exchanges of identification records with certain segments of the securities industry and the Commodity Futures Trading Commission, respectively.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 884-80, 45 FR 22023, Apr. 3, 1980; Order No. 960-81, 46 FR 52347, Oct. 27, 1981; Order No. 967-82, 47 FR 4513, Feb. 1, 1982; Order No. 968-82, 47 FR 4989, Feb. 3, 1982; Order No. 1024-83, 48 FR 35088, Aug. 3, 1983]

§ 0.85a Criminal justice policy coordination.

The Federal Bureau of Investigation shall report to the Attorney General on all its activities.

[Order No. 960-81, 46 FR 52347, Oct. 27, 1981]

§ 0.86 Seizure of gambling devices.

The Director, Associate Director, Assistants to the Director, Executive Assistant Directors, Assistant Directors, inspectors and agents of the Federal Bureau of Investigation are authorized to exercise the power and authority

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vested in the Attorney General to make seizures of gambling devices (18 U.S.C. 1955(d), 15 U.S.C. 1171 *et seq.*) and wire or oral communication intercepting devices (18 U.S.C. 2513).

[Order No. 960-81, 46 FR 52347, Oct. 27, 1981]

§ 0.87 Representation on committee for visit-exchange.

The Director of the Federal Bureau of Investigation shall be a member of the committee which represents the Department of Justice in the development and implementation of plans for exchanging visits between the Iron Curtain countries and the United States and shall have authority to designate an alternate to serve on such committee.

§ 0.88 Certificates for expenses of unforeseen emergencies.

The Director of the Federal Bureau of Investigation is authorized to exercise the power and authority vested in the Attorney General by 28 U.S.C. 537, to make certificates with respect to expenses of unforeseen emergencies of a confidential character: *Provided*, That each such certificate made by the Director of the Federal Bureau of Investigation shall be approved by the Attorney General.

§ 0.89 Authority to seize arms and munitions of war.

The Director of the Federal Bureau of Investigation is authorized to exercise the authority conferred upon the Attorney General by section 1 of E.O. No. 10863 of February 18, 1960 (25 FR 1507), relating to the seizure of arms and munitions of war, and other articles, pursuant to section 1 of title VI of the act of June 15, 1917, 40 Stat. 223, as amended by section 1 of the act of August 13, 1953, 67 Stat. 577 (22 U.S.C. 401).

§ 0.89a Delegations respecting claims against the FBI.

(a) The Director of the Federal Bureau of Investigation is authorized to exercise the power and authority vested in the Attorney General under 28 U.S.C. 2672 to consider, ascertain, adjust, determine, and settle any claim

NONSERIOUS OFFENSES

Abusive Language	Mandatory Appearance
Alms Solicitation	Material Witness
Amnesia	Medical Treatment
Begging	Mental
Breach of Peace	Minor in Bar
Card Game Playing	Minor in Consumption
Careless or Reckless Driving (as long as driving under influence of drugs or liquor, hit and run, vehicular manslaughter, involun- tary manslaughter or manslaughter not involved)	Minor in Gambling House
Civil Commitment	Minor in Possession Alcohol
Criminal Registration	Misrepresenting Age (liquor)
Curfew Violation	Mooching
Detention Only	Narcotics Registration
Detoxification	Negligent Driving
Dice Game Playing	No Driver's License - Note: Operating Auto with Altered License Considered as Serious Charge)
Disregarding Traffic Signals	No Inspection Sticker or Expired Sticker
Disturbance	No Visible Means
Disturbing Public Worship	Obstructing Traffic
Disturbing the Peace	Operating Auto without License
Dog Laws	Panhandling
Drag Racing	Parking Warrants
Driving while License Suspended or Revoked	Patient - Note: Unless print pertains to MAJOR Charge, i.e., murder, rape, etc.
Drunk (not traffic charges)	Peace Bond
Drunk in or about Auto	Peace Warrant
Drunk in Public Restroom or Restaurant	Possession of Lottery Tickets, Policy Slips, or Numbers
Drunk on Highway	Possession of Open Bottle or Container
Ex-Con Registration	Probation or Parole Check
Failure to Give Good Account	Profane Language
Failure to Identify	Public Intoxication
Failure to Operate in Prudent Manner (auto)	Public Nuisance
Failure to Register in Hotel or Register in Hotel with Someone Other than Husband or Wife	Purchasing Liquor as a Minor
Failure to Yield for Emergency Vehicle, Blue Light, or Siren	Rebooked on Suspicion
False Fire Alarm	Runaway
Felony Registration	Safekeeping, Skusm, Sak
Fireworks	Sex Registration
Fishing without a License	Sleeper
For Identification Purposes	Sleeping in a Subway
General Principles	Speeding
Going thru Red Light	State Work Furlough
Hitchhiking	Suspect
Illegal Consumption of Beer	Suspicion (unaccompanied by criterion charge)
Illegal Possession of Beer	Suspicious Person
Inadequate Brakes	Traffic Violations (minor traffic, vehicle and licensing charges)
Inquiry (unaccompanied by criterion charge)	Trainriding (hobo)
Interview	Tramp
Intoxication	Transient
Investigation (unaccompanied by criterion charge)	Truancy
Investigation Mental	Trusty Commitment
Jaywalking	Urinating in Public
Juvenile Charge	Uninsured Motor Vehicle
Juvenile Commitment	Unlawful Blood Alcohol Content or Count (alone only-not with driving charges)
Juvenile Offender	Vagabond or Rogue
Late Hours	Vagrancy
Loafer	Venereal Control Registration
Lodger	Visiting a Common Nuisance
Loitering	Voluntary Commitment
Lottery Playing	Walking on Highway
Lunacy (unless print pertains to major charge)	Wayward

(Attachment 4)

**UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
IDENTIFICATION DIVISION
WASHINGTON, D.C. 20537**

Use of the following FBI record, NUMBER **777 533 F**, is **REGULATED BY LAW**. It is furnished **FOR OFFICIAL USE ONLY** and should **ONLY BE USED FOR PURPOSE REQUESTED**. When further explanation of arrest charge or disposition is needed, communicate directly with the agency that contributed the fingerprints.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
Navy	[REDACTED] [REDACTED] [REDACTED]	3-18-59	Non-arrest entry	Disch 4-25-63
PD Pasadena TX	[REDACTED] [REDACTED] 15008	9-27-66	traff arr indec exposure	12-1-67 P/G. to exposing; sentenced to 5 yrs prob.
PD Pasadena TX	[REDACTED] [REDACTED] SID 1 376 599 #15008	5-21-75	carrying prohib weapon	12-17-75, pled guilty to misdemeanor offense of carrying a weapon; sentenced to 3 das in jl and fined \$600 plus \$49 Court Costs; time served, fine & costs paid
PD Waco TX	[REDACTED] [REDACTED] 26298	FP 8-20-78	aggravated ADW	9-6-78, Charge reduced to misdemeanor offense of terroristic threat; fined \$300 only in Co Crt-at Law #1 McLennan Co, TX D61942

**UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
IDENTIFICATION DIVISION
WASHINGTON, D.C. 20537**

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Use of the following FBI record, NUMBER 777 533 F, is REGULATED BY LAW. It is furnished FOR OFFICIAL USE ONLY and should ONLY BE USED FOR PURPOSE REQUESTED. When further explanation of arrest charge or disposition is needed, communicate directly with the agency that contributed the fingerprints.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD Austin TX	[REDACTED] [REDACTED] 113104	10-4-79	criminal mischief felony	11-29-79 dismissed
SO Dallas TX	[REDACTED] [REDACTED] 359878 SID 1376599	10-27-81	Agg robbery (1299)	Convicted; sentenced to 10 years
Dept of Corr Huntsville TX	[REDACTED] [REDACTED] 330007 SID 1376599	1-21-82	agg robbery (1)	10 yrs

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
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WASHINGTON, D.C. 20537

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05/06/86

Use of the following FBI record, NUMBER 259 975 T11 is REGULATED BY LAW. It is furnished FOR OFFICIAL USE ONLY and should ONLY BE USED FOR PURPOSE REQUESTED. When further explanation of arrest charge or disposition is needed, communicate directly with the agency that contributed the fingerprints. 0

Contributor: Identifier (ORI) Name Case Number (OCA)	Subject: Name State Number (SID)	Arrested or Received	C - Charge D - Disposition
THE SUBJECT'S IDENTIFICATION RECORD APPEARING HEREUNDER HAS BEEN RETRIEVED FROM THE IDENTIFICATION DIVISION FILES BASED ON DESCRIPTORS FURNISHED IN YOUR REQUEST WHICH MATCHED THOSE ON FILE.			
DESCRIPTORS ON FILE ARE LISTED BELOW:			
TYPE OF DESCRIPTOR	ON FILE	TYPE OF DESCRIPTOR	ON FILE
RACE	WHITE	BIRTH DATE	08/19/59
SEX	MALE	BIRTH CITY	MUNCIE
HEIGHT	601	BIRTH PLACE	INDIANA
WEIGHT	130	SOC SEC NO.	
HAIR	BROWN	MISC ID NO.	
EYES	BROWN		
SCARS ETC.	SCAR ON CHIN TATTOO ON RIGHT FOREARM TATTOO ON LEFT FOREARM		
NATIONAL CRIME INFORMATION CENTER FGPT. CLASS: PO 52 CI PI 14 14 14 12 CI 12			
IN0180000 SHERIFF'S OFFICE MUNCIE, IN		02/25/78	C-BURGLARY-CLASS C FELONY D-CONVICTED- CONFINEMENT-2Y
IN990400Z RECEPTION&DIAGN CTR. PLAINFIELD, IN 14367		10/02/78	C-BURGLARY CLASS C FELONY D-CONVICTED- CONFINEMENT-2Y
INISP2500 STATE POLICE REDKEY, IN BE1457		03/31/82	C-DWI SECOND OFFENSE CLASS D FELONY D-FG SENT 1Y IND STATE FARM, EXECUTED D-01/25/83 ORDERED TO PAY \$52 CRT. COSTS, DRIVERS LIC SUSP 1Y
CONTINUED NEXT PAGE			

99999-49307

(Attachment 6)

UNITED STATES DEPARTMENT OF JUSTICE
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IDENTIFICATION DIVISION
WASHINGTON, D.C. 20537

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05/06/86

Use of the following FBI record, NUMBER 259 975 T11 is REGULATED BY LAW. It is furnished FOR OFFICIAL USE ONLY and should ONLY BE USED FOR PURPOSE REQUESTED. When further explanation of arrest charge or disposition is needed, communicate directly with the agency that contributed the fingerprints.

Contributor: Identifier (ORI) Name Case Number (OCA)	Subject: Name State Number (SID)	Arrested or Received	C - Charge D - Disposition
NATIONAL CRIME INFORMATION CENTER FGPT.		CLASS:	PO 52 CI PI 14 14 14 12 CI 12
IN0180000 SHERIFF'S OFFICE MUNCIE, IN	[REDACTED], [REDACTED]	02/25/78	C-BURGLARY-CLASS C FELONY D-CONVICTED- CONFINEMENT-2Y
IN99040CZ RECEPTION & DIAGN CTR PLAINFIELD, IN 14367	[REDACTED], [REDACTED]	10/02/78	C-BURGLARY CLASS C FELONY D-CONVICTED- CONFINEMENT-2Y
IN18P2500 STATE POLICE REDKEY, IN BE1457	[REDACTED], [REDACTED]	03/31/82	C-DWI SECOND OFFENSE CLASS D FELONY D-FG SENT 1Y IND STATE FARM, EXECUTED D-01/25/83 ORDERED TO PAY \$52 CRT COSTS, DRIVERS LIC SUSP 1Y
IN0180000 SHERIFF'S OFFICE MUNCIE, IN C54-83	[REDACTED], [REDACTED]	11/07/83	C-FELONY THEFT D-02/14/84 DISMISSED SENTENCED ON ANOTHER CHARGE
IN032035C REC & DIAGNOSTIC CTR PLAINFIELD, IN 14367-2	[REDACTED], [REDACTED]	02/16/84	C-BURGLARY CLASS C D-CONVICTED- CONFINEMENT-5Y
FBI INTERNAL COPY DCFBIWA1Z FBI RECORDING SECT WASHINGTON, DC			
99999-49307			

(Attachment 6)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
IDENTIFICATION DIVISION
WASHINGTON, D.C. 20537

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05/06/86

Use of the following FBI record, NUMBER 259 975 T11 is REGULATED BY LAW. It is furnished FOR OFFICIAL USE ONLY and should ONLY BE USED FOR PURPOSE REQUESTED. When further explanation of arrest charge or disposition is needed, communicate directly with the agency that contributed the fingerprints.

Contributor: Identifier (ORI) Name Case Number (OCA)	Subject: Name State Number (SID)	Arrested or Received	C - Charge D - Disposition
CONTINUED FROM PREVIOUS PAGE IN0180000 SHERIFF'S OFFICE MUNCIE, IN C54-83 IN0320350 REC & DIAGNOSTIC CTR PLAINFIELD, IN 14367-2 FBI INTERNAL COPY DCFBIWA1Z FBI RECORDING SECT WASHINGTON, DC	[REDACTED], [REDACTED] [REDACTED], [REDACTED]	11/07/83 02/16/84	C-FELONY THEFT D-02/14/84 DISMISSED SENTENCED ON ANOTHER CHARGE C-BURGLARY CLASS C D-CONVICTED- CONFINEMENT-5Y

2L01XXX02.GR.DCFBIWA10.FBI/259975T11.FUR/C.ATN/MERCER
2L01XXX02
DCFBWA10
REC

FLO1XXX02
DCFBWA10
THIS INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
RECORD REQUEST FOR FBI/259975T11. THE FOLLOWING WILL RESPOND
TO YOUR AGENCY:

FBI
- FBI/259975T11
END

4L01XXX02
DCFBWA10
THE FOLLOWING RECORD IS IN RESPONSE TO YOUR INQUIRY ON FBI/259975T11

- FBI IDENTIFICATION RECORD -

NAME	FBI NO.	INQUIRY DATE					
[REDACTED]	259975T11	05/06/86					
SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	BIRTH PLACE
M	W	08/19/59	601	130	BRO	BRO	INDIANA

FINGERPRINT CLASS
P0 52 CI PI 14
14 14 12 CI 12

1-ARRESTED OR RECEIVED 02/25/78
AGENCY-SHERIFF'S OFFICE MUNCIE IN (IN0180000)
NAME USED-[REDACTED]
CHARGE 1-BURGLARY-CLASS C FELONY

COURT-
DISPOSITION-CONVICTED
OFFENSE-BURGLARY-CLASS C FELONY
SENTENCE-2Y CONFINEMENT

2-ARRESTED OR RECEIVED 10/02/78
AGENCY-RECEPTION&DIAGN CTR PLAINFIELD IN (IN99040CZ)
AGENCY CASE-14367 NAME USED-[REDACTED]
CHARGE 1-BURGLARY CLASS C FELONY

COURT-

DISPOSITION-CONVICTED

3-ARRESTED OR RECEIVED 03/31/82
AGENCY-STATE POLICE REDKEY IN (INISF2500)
AGENCY CASE-BE1457 NAME USED-[REDACTED]
CHARGE 1-DWI SECOND OFFENSE CLASS D FELONY

COURT-
DISPOSITION-
OFFENSE-DWI SECOND OFFENSE CLASS D FELONY
SENTENCE-
OTHER COURT PROVISIONS-FG SENT 1Y IND STATE FARM, EXECUTED

SUPP COURT-
01/25/83 DISPOSITION-
OFFENSE-DWI SECOND OFFENSE CLASS D FELONY
SENTENCE-
OTHER COURT PROVISIONS-ORDERED TO PAY \$52 CRT COSTS, DRIVERS LIC
SUSP 1Y

4-ARRESTED OR RECEIVED 11/07/83
AGENCY-SHERIFF'S OFFICE MUNCIE IN (IN0180000)
AGENCY CASE-CS4-83 NAME USED-[REDACTED]
CHARGE 1-FELONY THEFT

COURT-
02/14/84 DISPOSITION-
OFFENSE-FELONY THEFT
SENTENCE-
OTHER COURT PROVISIONS-DISMISSED SENTENCED ON ANOTHER CHARGE

5-ARRESTED OR RECEIVED 02/16/84
AGENCY-REC & DIAGNOSTIC CTR PLAINFIELD IN (IN032035C)
AGENCY CASE-14367-2 NAME USED-[REDACTED]
CHARGE 1-BURGLARY CLASS C

COURT-
DISPOSITION-CONVICTED
OFFENSE-BURGLARY CLASS C
SENTENCE-5Y CONFINEMENT

RECORD UPDATED 02/27/86

BASED ON FBI NUMBER ONLY

THIS RECORD MAY BE USED ONLY FOR CRIMINAL JUSTICE PURPOSES AS DEFINED
BY THE NCIC ADVISORY POLICY BOARD.
END



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20537

March 29, 1984

Letter to All Fingerprint Contributors

RE: INTERSTATE IDENTIFICATION INDEX (III)

Dear Contributor:

In my November 10, 1983, Letter to All Fingerprint Contributors, I wrote regarding the "Use of the NCIC Interstate Identification Index (III) for Record Requests." That article has generated numerous inquiries from contributors concerning the operation of the III. The III is an automated system which provides for the decentralized storage and interstate exchange of criminal history record information. It functions as a part of the National Crime Information Center (NCIC) and presently includes the personal identification data of over eight million individuals who have been arrested for serious crimes. At the present time, 14 states are participating in the III program whereby they are responsible for furnishing the criminal records for all new arrests and certain older arrests in their state when a record request is made via the III. Seven more states plan to begin similar participation in the near future. The III will increasingly serve users of criminal history records as their comments regarding the new system have been highly complimentary. Therefore, I want to take this opportunity to briefly explain its concept and operation and to request your cooperation in a study which is being conducted regarding the III.

The name index portion of the III is maintained in the NCIC computer. This index was initially established by using the identification data of records in the FBI's Automated Identification Division System (AIDS) and records previously included in the NCIC's Computerized Criminal History (CCH) File, now referred to as the "Federal Offender File." This identification data was compared with the automated arrest records of the 14 participating states to create the III name index representing over eight million individuals. About one half of the records are indexed for state dissemination, while the FBI is responsible for disseminating the other half. Records available via the III include: records on arrestees with years of birth of 1956 or later; records on persons arrested for the first time on or after July 1, 1974, regardless of their dates of birth; most persons with a Federal arrest since January 1, 1970; and some additional older arrest records which have been

FINGERPRINT CONTRIBUTOR LETTER 84-1

(Attachment 8)

automated because of the subjects' recent involvement with the law enforcement community. As new records are created in AIDS, corresponding index records are automatically added to the III. The number of records is increasing at the rate of over 16,000 a week.

Authorized criminal justice agencies in 49 states, the District of Columbia, and Puerto Rico, have "on-line" access to the III via their computer terminals. Inquiries are made based on names and numeric identifiers (i.e., date of birth, Social Security Number, FBI Number, etc.) to determine if criminal history records are available on the subjects of the inquiries. Upon receipt and review of the response(s), the inquiring agency can request the specific criminal record desired via its terminal. The actual criminal history information will be provided from the data bases identified as maintaining such information. As pointed out previously, 14 states are presently fully participating in the III in that they have taken on the responsibility for responding to requests for all new and selected older arrest data which originated in their state. Once a state has accepted this responsibility, the request for a record via the III results in an automatic notification to the state(s) which will respond directly to the requesting agency. The FBI is responsible for disseminating Federal arrest data and non-Federal arrest data not indexed to a participating state.

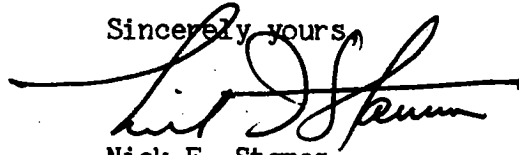
When an agency makes a III request for a record which is indexed to the AIDS File, the record is mailed to the requestor the following workday. However, by mid-summer 1984, the FBI will be furnishing AIDS records "on-line" over the NCIC telecommunications network. The Federal Offender File already provides "on-line" records, as do 12 of the 14 states. The states' records are returned to the requesting terminal via the National Law Enforcement Telecommunications System, Inc. (NLETS). The two remaining states advise the requestors via NLETS that the record is being placed in the mail. By the end of 1984, it is expected that all responses will be over telecommunication lines. Therefore, requesting agencies may receive portions of an individual's record from different sources in varying formats.

A "National Fingerprint File (NFF)" maintained by the FBI's Identification Division (ID) is included in the ultimate concept for the III. Pending the implementation of the NFF, the ID continues to provide criminal records in response to all fingerprint card submissions for both criminal justice and authorized licensing and employment purposes. The NFF would receive and maintain only the initial criminal fingerprint card from each state wherein an individual is arrested. Any subsequent fingerprint card(s) on the individual generated within the same state would be stopped at the State Bureau of Identification. The NFF, as it relates to the states, would provide the national fingerprint index on all persons represented in the III System; and, through its technical fingerprint searching capability, furnish positive identifications or nonidentifications based on searches of this File. Thus, only those criminal fingerprint cards which the states could not identify, i.e., "nonidents," would be submitted to the ID. The ID would no longer maintain the entire criminal records for these individuals since their records would be available from the states via the III. The ID would continue to maintain and provide records concerning persons arrested by Federal agencies. In addition, the ID would receive and retain all criminal fingerprint cards for states not fully participating in the III.

The use of the III is currently limited to criminal justice agencies for criminal justice purposes. This includes criminal justice employment. A study is ongoing to examine the ramifications it will have upon present users of criminal history record information for employment and licensing purposes, and on whether these users can be accommodated in the new III environment. A contract has been awarded to SEARCH Group Incorporated (SGI) to study state and local noncriminal justice users' access to criminal history record information, and a similar contract has been awarded to Mr. Raymond J. Young, a Virginia attorney who is a retired Special Agent with many years experience in the NCIC system, to study the Federal noncriminal justice users' access to criminal history record information. It is anticipated that these studies will be finished during early September 1984. The results will then be evaluated and a course of action decided upon.

I hope this brief description of the III has been informative and request you give the above-mentioned contractors your complete cooperation. Your input to the study will be helpful in ensuring a national criminal history record information system that will serve the needs of all authorized users.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Nick F. Stanes", with a long horizontal flourish extending to the left.

Nick F. Stanes
Assistant Director
Identification Division



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20537

March 17, 1986

Letter to All Fingerprint Contributors

RE: FBI IDENTIFICATION DIVISION SERVICES

Dear Contributor:

Since this is my first "Letter to All Fingerprint Contributors" as the Assistant Director in Charge of the Identification Division, I want to emphasize that the Division's main goal will be to continue providing the best possible service to all contributors. To provide this service, we must have complete records on file. Complete means not just having final dispositions for the arrests shown on the record, but having the record show all the serious and/or significant arrests and corresponding final dispositions associated with a particular person.

Our identification records are based entirely on voluntary contributions of arrest fingerprint cards and final disposition reports from more than 22,000 criminal justice agencies worldwide. There is no Federal law that mandates reporting by local, state, and Federal law enforcement agencies and penal institutions. Law enforcement agencies and penal institutions forward information to us for their mutual benefit and the benefit of others authorized to check the criminal records in our system. I am aware of only one major law enforcement agency (Metropolitan Police Department in Washington, D. C.) that is not routinely forwarding arrest fingerprint cards at this time.

We now have criminal records on more than 23 million individuals. About ten million of these records are stored in our Automated Identification Division System (AIDS), and are indexed in the National Crime Information Center's (NCIC) Interstate Identification Index (III). By combining the resources of AIDS, NCIC, and the 17 state agencies fully participating in the III program, criminal records on the most active offenders have been placed at the investigator's fingertips. Records available via the III include: records on arrestees with years of birth of 1956 or later; records on persons arrested for the first time on or after July 1, 1974, regardless of their dates of birth; and many selected older arrest records which have been automated because of the subject's recent involvement with the law enforcement community.

All criminal justice agencies may use III to obtain criminal records for criminal justice purposes (includes employment with a criminal justice agency). When a criminal record is needed for a criminal justice

FINGERPRINT CONTRIBUTOR LETTER 86-1

(Attachment 9)

purpose, the use of III is encouraged to reduce the number of requests mailed to us. An NCIC inquiry should be made regardless of the age of the individual. If there is no matching record on file in III, a follow-up written request should be made only when (1) the person was born prior to 1956, or (2) you have fingerprints that can be searched through our files to possibly locate a criminal record established under a different name. For a more detailed explanation of how III works, refer to Fingerprint Contributor Letter 84-1, dated March 29, 1984.

Non-Federal law enforcement agencies and penal institutions in 31 states are presently required to submit FBI arrest fingerprint cards to us through their respective state identification bureaus. This method of submission can be mutually beneficial to both the states and the FBI. It helps to ensure that the criminal records in our systems are compatible. State identification bureaus add information to the cards to assist us in processing them, e.g., FBI number, state identification number, etc. These same state bureaus have the benefit of the FBI card for classification purposes or they can make a copy of the state card available to the FBI, when necessary, to assist us with fingerprint classification. For our criminal record systems to function effectively, it is essential that both a state and an FBI arrest fingerprint card be submitted for each arrest that meets Federal retention criteria. A list of nonserious offenses not retainable by the FBI has previously been furnished to your state identification bureau for distribution. If you are unsure about the offenses that cannot be kept by us, copies of the list are available upon request.

The key to having an effective criminal record system starts with the officer making the arrest. At least two good sets of fingerprints should be taken -- one for your state bureau and one for the FBI. The FBI card will be used to establish the arrestee's record unless a prior criminal record exists, get him/her assigned an FBI number, and get the record indexed in III so it is immediately available to all criminal justice agencies. These procedures result in an effective system for law enforcement use. However, the Identification Division must still process approximately three million noncriminal justice applicant fingerprint cards submitted to us annually. Since III can only be used for criminal justice purposes, our identification record must be used to respond to noncriminal justice requests. Therefore, our record should contain all of the individual's criterion arrests. An arrest entry is added to our record only after an arrest fingerprint card is received and processed through our system, as all arrest entries must be supported by fingerprints. It is also extremely important to follow the arrest card with a final disposition report, since arrest information over one year old lacking a disposition cannot be provided for noncriminal justice purposes. I have recently implemented a disposition follow-up program; however, this program is limited by resources. Your cooperation in furnishing final dispositions is certainly appreciated. These additional procedures make the system equally effective for our noncriminal justice contributors.

Mutual cooperation reaps mutual benefits, thereby making it possible to provide the best service to all contributors.

HELPFUL HINTS TO IMPROVE THE PROCESSING OF YOUR DOCUMENTS

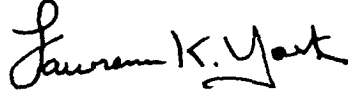
- Include the subject's date of birth or approximate age on all fingerprint card/correspondence submissions. This is especially important for deceased individuals.
- Never submit a folded fingerprint card -- use a larger envelope.
- Include the Originating Agency Identifier Number (ORI#) for all agencies designated to receive copies of records from the FBI. This is especially important in the "Send Copy To" block on the fingerprint card.
- Do not lend your preaddressed fingerprint card to another agency unless you change all of the information in the "Contributor" block first.
- If your new "+4 Zip Code" is not shown in the address block of this letter, furnish it to us (Attention: Recording Section), as it expedites mail delivery. Our "+4 Zip Code" is 20537-9700.
- Do not submit a follow-up expungement request for at least 120 days, as it takes that long to process your initial request.
- Use the standard "Personal Identification" card (FD-353) when fingerprinting a child.
- Use the standard "FBI Criminal Fingerprint" card (FD-249) when fingerprinting a deceased person.
- Include the literal or narrative charge, not penal code citation in the "Charge" block of the criminal card.
- Forward final dispositions.

UNLAWFUL FLIGHT TO AVOID PROSECUTION OR CONFINEMENT (UFAP/UFAC) CHARGES

When local/state/Federal law enforcement agencies arrest an individual, they are strongly encouraged to show both the substantive charge(s), e.g., burglary, bank robbery, theft, etc., and any UFAP/UFAC charge, if such Federal process is outstanding at the time of arrest, in the "Charge" block on the criminal fingerprint card. Even though the

UFAP/UFAC charge is usually routinely dismissed, having this information on the criminal's record can be extremely beneficial for law enforcement officers investigating/apprehending this subject at a later date. The UFAP/UFAC charge information may help to identify someone who is a bond default or escape risk.

Sincerely yours,



Lawrence K. York
Assistant Director in Charge
Identification Division

U.S. Department of Justice
Federal Bureau of Investigation

Washington, D.C. 20537-9700

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PREPARED STATEMENT

OF

**DONALD L. CHAMLEE
CHIEF, DIVISION OF PROBATION
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS**

ON

DEFENDANTS' CRIMINAL RECORDS

BEFORE

**UNITED STATES SENTENCING COMMISSION
WASHINGTON, D. C.**

MAY 22, 1986

Chairman and Members of the United States Sentencing Commission

Mr. Chairman, I am Donald L. Chamlee, Chief of the Division of Probation of the Administrative Office of the United States Courts. I appreciate the opportunity to appear today and address the Commission's concerns about how a defendant's criminal record should affect his sentence.

To briefly describe my background, I entered the Federal Probation System in 1961 as a U.S. Probation Officer in Sacramento, California. Prior to that time I worked as a county probation officer and state parole officer in California. I came to Washington, D.C. in 1968 and have held a variety of positions in the Probation Division, including Editor of Federal Probation Quarterly and Deputy Chief. I assumed my present position in December 1983. I hold Bachelor's and Master's degrees in Criminology from the University of California at Berkeley and in 1972 completed a 1-year criminal justice fellowship at Harvard Law School.

My remarks today cover three major areas: the current standards in the Federal Probation System relating to prior criminal records, how those standards translate into statistical information that is currently available, and what can we tell you about availability and reliability of prior criminal record information - the questions raised by the Chairman in his May 1, 1986 letter inviting this appearance. To better respond to the last question our office has conducted a telephone survey of 39 probation offices and I will report on those results.

CURRENT STANDARDS

Much of the investigative activities of the Federal Probation System involve the preparation of presentence investigation reports to aid the court in imposing sentence. Critical to that process is the assembly of a complete and verified prior criminal record for a convicted defendant. Rule 32(c) of the Federal Rules of Criminal Procedure is the probation officer's authorization for preparing presentence reports. It specifies what the presentence report shall contain, i.e., "(A) any prior criminal record of the defendant; (B) a statement of the circumstances of the commission of the offense and circumstances affecting the defendant's behavior; (C) information concerning any harm, including financial, social, psychological, and physical harm, done to or loss suffered by any victim of the offense; and (D) any other information that may aid the court in sentencing, including the restitution needs of any victim of the offense." Rule 32 does not exclude any specific kinds of information. Case law has imposed, however, some limitations on the information contained in the presentence report. In making its sentencing decision the court is prohibited from considering prior convictions of a defendant that were invalid because, in violation of his sixth amendment right to counsel, he had not been represented by counsel or had not properly waived counsel. Similarly, the court is prohibited from treating as a conviction any previous criminal charges against the defendant that resulted in dismissal or acquittal.

Leading appellate decisions hold that information to be used in imposing sentence, including the prior criminal record, must be inherently reliable. In United States v. Tucker, 404 U.S. 443 (1972), the Supreme Court ruled that it was unconstitutional for a court to consider in its sentencing decision prior convictions of the defendant that were invalid because counsel had not represented the defendant or no waiver of counsel had been made (violation of sixth amendment). Prior criminal record is a determinative factor in sentencing; however, unconstitutional convictions may not serve to enhance the sentence an offender receives. The rationale of Tucker is that consideration of invalid prior convictions in sentencing misinforms rather than informs the court's discretionary judgment.

Accordingly, since convictions obtained in violation of a defendant's sixth amendment rights are improperly relied on as prior record, it is incumbent on the probation officer preparing the presentence report to verify, during the course of his investigation, whether the defendant's previous convictions 1/ were obtained when the defendant was represented by or waived counsel.

1/Under present constitutional doctrine no criminal defendant may be deprived of his liberty as the result of any criminal conviction, whether felony or misdemeanor, unless he was afforded the right to counsel. See Argersinger v. Hamlin, 407 U.S. 25, 37 (1972). As a general rule, a defendant has a right to counsel in all felony cases and in all other offenses for which incarceration is a potential penalty.

Examination of the court record relating to such convictions ordinarily provides the requisite information. The verification and its results should be listed for each prior conviction. It is the court's responsibility to disclaim on the record reliance on invalid convictions at the time of imposing sentence.

A second limitation which the Supreme Court has placed on sentencing information is found in Townsend v. Burke, 334 U.S. 736 (1948). In Townsend the Court ruled invalid the sentencing of a defendant based on assumptions about his criminal record that were materially false. For example, the sentencing court in Townsend had treated as convictions previous criminal charges against the defendant that either had been dismissed or had resulted in acquittals. This rule of accuracy applies to all data in a presentence report because it is a patent violation of due process to sentence on the basis of materially false information.

Probation officers are required to verify the facts contained in the presentence investigation report. Any unverified information is to be clearly labeled as such. The standards to be followed by probation officers are set forth in a monograph, The Presentence Investigation Report, Publication 105, Probation Division, Administrative Office of the United States Courts, April 1984. The current standards relative to the prior criminal record are contained in Appendix A.

Before moving on to the second major topic, I will discuss a special case, juvenile adjudication records. As described in Appendix A, the prior record section of presentence investigation reports contains only records of referrals to juvenile court for acts which, if committed by an adult, would constitute a crime. "Status offenses," such as runaways, truant, beyond parental control, are not considered crimes and are described in the Personal and Family Data Section of the report. Juvenile adjudication records in the report are limited, therefore, to crimes or alleged crimes.

As the Commission is aware, juvenile records are not uniformly available, and state laws vary considerably, affecting a Federal Probation officer's access to sealed, expunged, terminated, and active records. In 1982, the General Accounting Office reported on this problem in its report, Federal Parole Practices: Better Management and Legislative Changes Are Needed, GAO, July 16, 1982. The report notes that 94 judicial districts were surveyed, 90 responded, and 58 reported some problems in obtaining juvenile reports. The pertinent pages from the report are attached as Appendix B. Not only do state laws vary, there are differences between Federal circuits. Also, at Appendix B, is an opinion of the Eighth Circuit, U.S. v. Slipka, 735 F.2d 1064 (8th Cir. 1984), which extends the ruling of U.S. v. Tucker, cited above, to juvenile adjudications. In the Eighth Circuit therefore, district courts may not use a juvenile adjudication where there was no meaningful right to counsel, even if the adjudication was

made prior to the 1967 Gault 2/ decision. Other circuits have not ruled on this issue, and presumably pre-1967 uncounselled juvenile adjudications would still appear in presentence reports in those circuits.

CURRENTLY AVAILABLE STATISTICAL INFORMATION

Prior criminal record information is collected principally for the presentence investigation report. That is the core, and a number of additional uses flow from it. Criminal record data are used in actuarial predictive devices that we rely on in assigning persons on probation or parole to high or low activity supervision. The record information also contributes to our statistical information system. In 1983, in anticipation of the creation of the Sentencing Commission, the Federal Probation System initiated a new and expanded data collection system. Known as FPSSIS, the Federal Probation Sentencing and Statistical Information System, this system collects substantially more data about offenses and offenders than the previous statistical system. FPSSIS was designed to provide support for the creation of sentencing guidelines.

2/In Re Gault, 387 U.S. 1 (1967) (Juvenile must be advised of his right to be represented by counsel and, if he is unable to afford counsel, that counsel will be appointed.)

After sentencing, the probation officer reports a summary of prior record information to the FPSSIS database in Washington, D.C. This information includes:

- the number of prior juvenile adjudications
- the number of prior adult convictions
- the number of major and minor prior commitments.

Also reported is:

- whether any of the prior conviction offenses were substantially the same as the instant offense
- whether the defendant experienced prior revocation of supervised terms of probation, parole, or pretrial release
- whether the defendant was under criminal justice jurisdiction, such as bail release, probation, or in escape status, for another offense at the time of the instant offense or sentencing for the instant offense
- whether the defendant was in prison within the past 60 months.

Because of the need to limit the complexity of the coding, much potentially useful information is not captured. For instance, one cannot learn of the nature of prior offenses from FPSSIS. Hence we cannot know if there is a history of violence or whether the prior record is ancient. Moreover, we cannot know whether the defendant adjusted well to prior terms of probation or terms in prison.

For the past 8 years we have also been developing the Probation Information Management System (PIMS) which is currently in pilot testing in the Northern District of Ohio. This system was also designed with the presumed needs of the Sentencing Commission in mind. PIMS captures far more detailed prior record information than does FPSSIS. Through it we can know the nature of prior offenses, how long

ago they occurred, whether violence was involved, and adjustment to previous terms of community supervision.

I shall now turn to the third, and final, part of my remarks - the results of our telephone survey of 39 probation offices.

To determine the availability of prior record information to probation officers conducting presentence investigation reports, the Division conducted a survey of 39 of the 94 Federal court districts. At least one district was contacted in most states. The survey instrument was structured to cover accessibility of all aspects of the nature of prior convictions (see Appendix C). Due to time constraints the survey sought to elicit a representative sampling for the Commission's inquiry and is not presented as a scientifically valid study. The survey was taken by telephone and handled by two officers with current field experience. The questions were posed in a consistent manner. The chief in each district was the principal respondent and the areas covered were:

- felony vs. misdemeanor vs. petty offense
- availability of offense description details
- representation by counsel
- subsequent supervision revocation
- type of supervision termination and date
- availability of juvenile offense data
- tribal offense data
- foreign offense data.

A tabulation of the survey results (see Appendix C) shows that 31 of the 39 respondent districts have access to centralized criminal history facilities usually at the state level of government. These

facilities most often provide a listing of the charges for which an individual was arrested. Details of the incident (offense) and the disposition or adjudication of the charges often is not provided. Although a centralized system is available in virtually all the districts surveyed, it was only as reliable as the local agencies' degree of participation. Generally, participation is at a high level in metropolitan areas and progressively diminishes as one goes to the more rural communities. Thus in predominantly rural districts participation is so inconsistent or minimal that a "no" response was the more accurate one. The centralized system in the best of cases is still only a starting point for a record search, and followup with the local agencies and jurisdictions is an absolute necessity.

The recording by agencies and courts of offenses into categories of felony, misdemeanor, and petty offenses, is not uniform and much of the survey responses were probably influenced by the officers' own independent knowledge of the state criminal code and the jurisdiction and practices of the local felony and misdemeanor courts.

Records are readily available in most felony cases and some serious misdemeanors but diminish with the age of the occurrence and/or seriousness of the charge. It should also be noted that "ancient" criminal offense information (that is, arrests occurring more than 15 years previously) is oftentimes difficult to obtain.

Recovery of information on juvenile offenses is also a problem and becomes more so as the offender grows older. Twenty-four of the 39 respondents responded that juvenile records are purged ranging from the time the defendant reaches his 18th birthday to an extreme of 20 years after the record is posted. Juvenile records will often be

purged by the time the defendant reaches his 25th or 26th birthday. In the responses to the purging practice and accessibility to records, it is not entirely clear if a distinction exists or was being made in juvenile records maintained by the local probation department and the official records of the juvenile court. In retrospect this question could have been better defined. In any event the survey suggests no reliable pattern except that the jurisdiction is centralized at the county level and requires more specific defendant information to begin a search. At least a few of the respondents offered the opinion, based on their view of current laws, practices, and trends, that in the future access to juvenile criminal records may be diminished.

The survey was unable to cover some western region districts having significant reservation caseloads. Of the 12 districts reporting Native American reservations within their boundaries, 8 have tribal courts. Six of these eight seldom have difficulty determining tribal records, while two reported they could sometimes recover these records. Two cautions are noted in regard to reliability and utility of tribal court information. Recordkeeping among tribal courts varies. Some tribal court records contain inadequate information. At least one respondent noted that tribal court adjudications are not always consistent with the practices found in the U. S. court system. For example, the record detailing an "adjudication" of a case involving an assault may not clearly cite a finding of guilt but may only report the accused is to compensate the victim monetarily. Disposition of serious crimes may thus be informal and even civil in nature. Tribal courts for the most part do not afford the opportunity for legal representation, yet most districts believe that inclusion of

this record is nonetheless critical in informing the court of the defendant's overall behavior.

Only eight respondents indicated a frequent need to obtain foreign offense history information and reported little difficulty in so doing. Most of these districts border Canada and have developed a good routine for record checks. A significant number of respondents noted they receive criminal record information from foreign countries after the presentence report. Much of this information involved countries other than Canada and came by way of Interpol.

Reliable, accurate, and timely prior record information results only from active and sometimes aggressive search by the probation officer. The most comprehensive results come from officers knowledgeable in the peculiarities of the local keepers of the record. Even then, ferreting out and making sense of the raw information can be time-consuming and, at times, the most trying task for the officer who perseveres in his assignment.

Mr. Chairman, this completes my formal presentation. I shall be pleased to respond to any questions the Commission may have.

A P P E N D I X A

APPENDIX A

PRIOR RECORD

Juvenile Adjudications

Essential Data:

Date, charge, location, disposition, and representation by counsel of all referrals to juvenile court by law enforcement officials.

Comment.--The probation officer should report all referrals to the juvenile court involving acts which would, if committed by an adult, constitute a crime. Status offenses, e.g., runaway, incorrigible, truant, beyond parental control, etc., are more properly described in the Personal and Family Data section.

Each entry, in chronological order, should include the date of referral, the name and location of the juvenile court, whether or not the juvenile was represented by counsel, the juvenile's age, the charge, and the disposition.

Example:

10/1/66	Shoplifting	Marion County	10/20/66:
Age 14		Juvenile Court	Informal Probation
		Salem, Oregon	Supervision (6 mos.)

Defendant was represented by counsel.

A subsequent paragraph may be appropriate to describe circumstances surrounding serious violations, the defendant's performance under supervision, or the defendant's institutional adjustment.

An offender's past is often highly relevant to the sentencing inquiry. Hence a court may consider an offender's juvenile history including any juvenile court dispositions. There are, however, several caveats to observe. **First, juvenile delinquency adjudications are not criminal convictions and should not be identified as such.** Second, even though state laws generally limit the use of juvenile records as evidence in any court proceedings, the weight of authority is that sentencing use is permissible. The presentence should also report, however, whether the juvenile record is a set-aside or sealed court record or whether such information is of a confidential nature. If a juvenile court disposition has been **destroyed**, then a probation officer should not refer to it in the presentence report.

Finally, **juvenile delinquency proceedings in which a juvenile was not afforded his right to counsel are invalid and may not be relied upon by the sentencing judge.** During the presentence investigation the officer should verify whether the juvenile had counsel or waived his right to counsel with respect to each juvenile disposition.

ADULT RECORD

Essential Data:

Date of arrest, charge, location, date and disposition of all arrests, and representation by counsel.

Include if Pertinent:

Detainers and details of charges lodged against defendant. Defendant's explanation of why he was involved in previous offenses. Codefendants in previous offenses. Details of arrests occurring subsequent to present offense. For serious offenses include a summary of the offense and prior probation, parole, or institution adjustments and dates.

Comment.--The identification record (fingerprint record) of the Federal Bureau of Investigation is a good source of information on the arrest record of a defendant. The FBI record is not always complete, and the probation officer should also make inquiry from state and local identification bureaus, police departments, and sheriffs' offices in those cities and communities in which the defendant has worked or resided. The defendant can also be a valuable source of knowledge and may provide information regarding missing dispositions or pending charges and whether or not he was represented by counsel.

The sixth amendment to the Constitution provides the right to counsel in all criminal cases, other than petty offenses where a fine is the only penalty. In 1972 the Supreme Court in U. S. v. Tucker (Appendix C) made it essential, for sentencing purposes, to determine whether or not the defendant was represented by counsel or had legally waived counsel in any prior convictions where the right to counsel applied. Only convictions in which the constitutional right to counsel was provided are valid. Invalid convictions may not be considered when determining the sentence. It must be stated in the report whether or not the defendant was represented by counsel. If it cannot be determined whether or not the defendant was legally represented, this circumstance must also be stated. (Generally, for offenses committed subsequent to the Tucker decision, the defendant should have been represented by counsel.)

Where the FBI fingerprint record does not give the disposition of a case, the probation officer should communicate with the law enforcement office which filed the print or the court in which the

case was tried to determine the outcome. Arrests without dispositions are not convictions and should be clearly identified.

Many times one offense will result in multiple entries on the fingerprint record. When this duplication occurs, make only one entry for each offense. If the defendant admits arrests which are not reflected in official arrest records, indicate they are by his or her admission.

If the defendant has an institutional record, ascertain the date of commitment and release, the institutional adjustment, and the present release status. When available, include information about prior probation or parole adjustment and dates of supervision.

All military courts-martial are reported in a Military subsection. Serious military offenses with a civilian counterpart may be cross referenced in the prior record section.

List all prior arrests in chronological order, including the date of arrest, age of the defendant, charge, arresting agency, court disposition, and the source(s) providing the information. If there are a number of sources, they may be included in the summary of the offense.

Example:

Age 27	4/6/69	Multnomah County	7/13/69:
	Burglary I	Portland, Oregon	3 years State Prison
		(Multnomah	released: 7/12/71;
		Sheriff's Office)	parole supervision
			expired: 7/6/72

Not determined whether represented by counsel.

According to the Sheriff's office report, sheriff's deputies were called by neighbors who had seen the subject break a back window and then enter the house next door. When the deputies arrived subject was apprehended while fleeing the premises with a camera, silverware, and jewelry.

According to his state parole officer, subject cooperated and satisfactorily completed his period of parole supervision.

For serious offenses summarize the circumstances of the offense. If the defendant has compiled a lengthy history of misdemeanor and/or traffic arrests, these may be summarized in a narrative form. Data should include the time period involved, the general type(s) of offenses, and the range of dispositions.

Example:

From 1968 to 1977, Mr. Jones was arrested five times for drunkenness and four times for minor traffic violations resulting in bail forfeitures or fines ranging up to \$50, and two jail terms of less than 10 days (both for drunkenness). He was represented by counsel for only three of the intoxication offenses.

Arrests subsequent to the present offense are to be recorded in the same manner as those set forth in the Adult section. They should be clearly labeled because they may reflect persistent problems. Further, the interest of other jurisdictions may have an impact on disposition of the present case.

A P P E N D I X B

APPENDIX B

Probation officers frequently experienced problems in gaining access to offenders' juvenile records

The Commission relies on the probation officer to furnish complete information in the presentence report on an offender's juvenile record because this information is used to calculate the individual's salient factor score. Thus, the absence or presence of this information in the presentence report can have a significant impact on the number of months an offender will serve in prison before release. In most judicial districts, probation officers are unable to obtain complete information on offenders' juvenile convictions because the records have either been destroyed or state and local authorities will not release the information. Without complete access to all juvenile records, the Commission cannot consistently calculate salient factor scores for all offenders.

When the Commission's hearing examiners calculate an offender's salient factor score, a juvenile record can adversely affect four of the seven categories. These categories include the number of prior convictions and commitments, age at behavior leading to first commitment, and probation or parole violation. Also, juvenile records can affect 8 of the 11 possible salient factor score points. If information on juvenile records were available, salient factor scores could change from very good to poor and result in the offender being placed in a more severe parole guideline range. For example, consider

a simple bank robbery case in which the offender had a serious juvenile record. If the information were not available, the parole guideline range would be 24 to 36 months. If it were, the proper parole guideline range would be 60 to 72 months.

In January 1981, we asked the Probation Division to contact all judicial districts to identify any problems experienced in obtaining access to juvenile records when preparing presentence reports. The results of this survey showed that 58 of the 90 judicial districts reported some problem in obtaining juvenile records. 1/ The two principal problems encountered by probation officers in gaining access to juvenile records are that records are destroyed after certain periods of time, or states and localities have placed prohibitions on releasing this information to anyone. The following examples illustrate some of the problems encountered by probation officers in obtaining access to juvenile records.

- The District of Connecticut reported that probation officers could not obtain access to any juvenile records on individuals who have reached their 21st birthday because all records are destroyed. In those cases where the defendant has pleaded guilty to a felony and is under 21, the probation officer may have access to juvenile records if the defendant signs a release form.
- The Middle District of Florida reported that its probation officers did not actively seek and use juvenile records because such records were supposed to be destroyed under Florida state law once an offender reaches 21 years of age. Also, this district reported that it was useless to make any inquiry concerning juvenile records because most defendants sentenced in this court were adults.

1/The Probation Division obtained responses from 90 of the 94 judicial districts.

--The Southern District of West Virginia reported that state law prevents anyone, including probation officers, from obtaining access to juvenile records. Also, this district reported that all juvenile records were destroyed after an individual reached the age of 18.

--The District of Wyoming reported that state law makes no provision or exceptions on the disclosure of juvenile records without the consent of the court. The chief probation officer also reported that several state judges interpret the law to mean that juvenile records cannot even be released to the Federal district courts or any law enforcement agencies.

The Commission's parole guidelines were established to promote consistency in parole release determinations. One essential ingredient for consistent parole release determinations is uniform access to the information necessary to formulate offenders' salient factor scores. When probation officers are unable to obtain access to juvenile records, the Commission will not have all the information it needs to properly and consistently implement parole guidelines. Thus, offenders with juvenile records may be treated inequitably depending upon whether probation officers can obtain access to this information and furnish it to the Parole Commission.

Our analysis of the 342 presentence reports included a determination of the impact that the absence of juvenile records might have on an offender's parole prognosis. We ignored all references to juvenile records and recomputed the salient factor scores to establish new parole prognosis ratings for the 342 cases. We found that in 97 cases, the parole prognosis improved by at least one category. For 104 cases, the elimination of juvenile records had no impact on the original parole prognosis. In the remaining 141 cases, there was no change in the parole prognosis because no juvenile records were reported in the presentence reports.

The following case illustrates the impact of the availability of juvenile records on an offender's parole release date.

--Ed had a serious juvenile record including five felony convictions and four incarcerations. Also, he violated parole as a juvenile. In October 1978, Ed was given a 10-year regular adult sentence in the Southern District of Ohio for armed bank robbery. The presentence report included information on Ed's juvenile record. Using the presentence report, the Commission's hearing examiners determined the offense severity as very high and his salient factor score as 1. The offense severity of very high and a salient factor score of 1 equates to a parole guidelines range of 60 to 72 months. In the event the probation officer had been unable to obtain access to the juvenile records, Ed's salient factor score would have increased to 8. The parole guidelines range for a very high offense and a salient factor score of 8 calls for 36 to 48 months. Thus, the absence of juvenile records could result in 2 to 3 years' difference in the amount of time served for the same offense.

Several chief probation officers told us that steps should be taken to make juvenile records available to probation officers preparing presentence reports for Federal district courts. One chief probation officer stated:

It would appear that many or most states have enacted very restrictive and overprotective laws on juvenile records which were intended for the protection of the juvenile who came into conflict with the law by immaturity and poor judgment, and deserves to have a "second chance" without that juvenile incident and record being held against him or her as a handicap in future life. I doubt that such legislative intent was to conceal and overprotect the juvenile who continues to violate the law and shows no sign of rehabilitation, but that has been one of the unexpected results of such laws. If the state laws would permit exception disclosures to other courts and agencies preparing presentence reports, such as Federal law under Title 18, Section 5038(1) and (2), a more evenhanded administration of justice could be administered for both the protection of the juvenile and society.

He also stated that he had recently testified on this matter before the state legislature in an attempt to get the state law revised.

APPENDIX C

TELEPHONE SURVEY QUESTIONNAIRE

District: _____ Officer: _____ Title: _____

1. Are adult records centralized? Yes 31 No 8
2. If yes, at what level? State 23 County 8
3. Do record searches require going to:
law enforcement agencies 36
juvenile courts 34
other courts 36
parole/probation offices 36
institutions 10
4. Do available records indicate if offense is felony or misdemeanor?
Usually 16 Sometimes 8 Rarely 15
5. Are reliable records available for misdemeanors and petty offenses?
Usually 17 Sometimes 21 Rarely 1
6. Are reliable records available for felony offenses?
Usually 38 Sometimes 1 Rarely 0
7. Are details of the offense available on misdemeanors?
Usually 17 Sometimes 14 Rarely 8
8. Are details of felony offenses available?
Usually 37 Sometimes 2 Rarely 0
9. Is representation of counsel or waiver of same available?
Usually 29 Sometimes 7 Rarely 3
10. Do records reflect offense of conviction as misdemeanor or felony?
Usually 23 Sometimes 9 Rarely 7
11. Is reliable information available as to probation violations/revocations?
Usually 27 Sometimes 11 Rarely 1
12. Are termination dates on probation terms available?
Usually 33 Sometimes 4 Rarely 2
13. Is reliable information available on method of release on incarcerated cases, i.e., parole, mandatory release, EGT?
Usually 34 Sometimes 3 Rarely 2
14. Is reliable information available on parole violations/revocations?
Usually 30 Sometimes 6 Rarely 3
15. Is information available on date of parole termination?
Usually 34 Sometimes 3 Rarely 2
16. Are juvenile records centralized? Yes 31 No 4

17. If yes, at what level? County - 26; State - 3; District (Circuit) - 2
18. Are reliable juvenile records available and accessible?
Usually 19 Sometimes 11 Rarely 5
19. Are juvenile records purged? Yes 24 No 9
Unknown 1
20. If yes, when? After 5 yrs. [1], 7 yrs. [1], 10 yrs. [2], 14 yrs. [1],
20 yrs. [1]. At age 18 [3], age 21 [7], age 26 [1].
Varies [3]. Unknown [4].
21. Does your district have Indian reservations? Yes 12 No 27
22. Do they have tribal courts? Yes 8 No 2
Unknown 2
23. Are records relating to tribal court convictions available?
Usually 6 Sometimes 2 Rarely 0
24. If so, what types: details of offense 7
conviction (judgments) 7
representation 5
other 0
25. What concerns do you have regarding use or lack of use of prior
record relating to offenses on the reservation?
1. None [3]
2. Not afforded opportunity for legal representation [4]
3. Records not completely reliable [2]
4. Tribal record is critically necessary despite inherent
problems [3]
26. Do you have regular need to check for foreign criminal record?
Yes 8 No 31
27. If so, what countries are usually involved?
Canada [4] Colombia [1]
INS [1] Nigeria [1]
Interpol [3] Central/South America [2]
28. Could you get accurate foreign records to meet dictation date?
Yes 4 No 2
29. What are the major difficulties in interpreting or utilizing foreign
records?
1. None [2]
2. Authenticating for evidentiary purposes [1]
3. Locating court of jurisdiction for disposition and
legal representation [4]
4. Not detailed enough [1]
5. Determining offense comparability [1]
6. Delay in receipt [1]

RECEIVED MAY 14 1986

U.S. PROBATION OFFICE
Box 1817
Fargo, North Dakota 58107-1817

May 12, 1986

Mr. William W. Wilkins, Jr.
Chairman, U.S. Sentencing Commission
1331 Pennsylvania Avenue, NW, Suite 1400
Washington, D.C. 20004

Dear Chairman Wilkins:

This is in response to your letter of April 29, 1986, regarding my appearance before the Sentencing Commission on May 22, to discuss how a defendant's criminal record should affect sentencing. In your letter you ask a number of questions thematically related to arrest record information, i.e., availability, accuracy, details of offense, disposition, etc. Effective sentencing guidelines that promote sentencing equity and fairness depend heavily on the accuracy, completeness and availability of adult and juvenile history and other criminal records. This is no small task given the heterogeneity of the American criminal justice system.

The federal criminal justice system, notwithstanding its considerable resources of court and investigative agencies, is largely dependent upon state repositories of criminal records. Routinely in North Dakota we send requests on all defendants for arrest record information to the North Dakota Bureau of Criminal Investigations or similar state agencies charged with maintaining a repository of arrest record information, as well as to police departments, courts, probation offices, and correctional institutions. Of course, the extent of and the number of inquiries sent depends on a defendant's prior criminal justice involvement. When requesting prior record information from a law enforcement agency, our NCIC number is used to show the authority and investigative necessity for the information.

In a manner of speaking, we employ a shotgun approach, sending a number of requests out because experience has taught us that in many cases responses provide nominal information. For instance, an inquiry sent to the North Dakota Bureau of Criminal Investigations may come back with arrest record data showing an arrest and conviction but no details of the offense. Requests for arrest record information sent to a police department or criminal investigative agency may provide details of the offense, but nothing on disposition. Court records usually provide scanty details of the offense, but do show the offense of conviction, disposition and whether or not the defendant was represented by

counsel. Probation, parole and correctional institution information generates the most complete source of criminal record data on a defendant, however, these records are sometimes incomplete and fail to show fully a defendants arrest history.

Generally speaking in my experience, the quality of criminal records vary significantly from state-to-state and from system-to-system; thus, requests for information about multi-state offenders may be compromised by reliance on data from low-quality systems. There are other difficulties irrespective of the informational source used: descriptions of arrest charges are not as likely to be retained as are descriptions of formal charges; disposition information cannot always be linked to either arrest or formal charges; and data may not be available promptly enough to be used in a presentence report or in computing sentencing guidelines. These problems reflect insufficient intra-governmental coordination, inadequate financial support, gaps in automation and failure to implement programs (such as dispositional monitoring) that improves data quality.

A couple of comments about juvenile records. Much of the recent research on offender risk prediction and classification has indicated a strong causal relationship between delinquency and adult crime. A growing reliance on juvenile data reflects a change in philosophy regarding juvenile offenses and puts special emphasis on the status and availability of juvenile records. The problems associated with using juvenile justice records to enhance adult criminal justice records relates primarily to deficiencies in the quality of juvenile records and their availability both as a matter of law and practice.

North Dakota is one of the few federal jurisdictions in the country that because of federal jurisdiction on Indian reservations in the state handles juvenile or young adult offenders with identifiable juvenile arrests on or off the reservation. Some of the problems I've encountered when attempting to locate and use juvenile records have included: juvenile arrest charges may not be recorded where the charges were informally adjusted and formal charges of delinquency aren't filed; the seriousness and number of arrest charges may not be reflected on the juvenile criminal history record, the euphemism "delinquency" is often used to mask or replace the substantive delinquent act; juvenile record information is often sealed or expunged and is therefore, as a matter of law, unavailable; absence of positive "fingerprint" identification on juvenile records precludes linkage with adult records; and lack of automation limits transfer of juvenile data or the retention of such data in essential criminal information repositories within the state. There appears to be a growing public inclination to hold juveniles criminally culpable with many states, including the federal government, recently strengthening statutes to permit juvenile offenders to be tried as adults in certain circumstances. Nevertheless, given the historical background governing the development and use of juvenile courts, any expected changes will happen slowly, and until they do, there are likely to be limits on the adequacy and availability of juvenile prior records.

Although juvenile records may be difficult to obtain, at least the

juvenile justice system operates somewhat parallel to the adult system. This is not true with arrest and convictions handled on Indian reservations. Most Indian tribes operate their own court systems, and except to the extent demanded by the Indian Civil Rights Act of 1968, the structure and procedure of such courts is determined by the tribes themselves. Many emulate in varying degrees, the Anglo-American system while employing some of their own traditional procedures and sanctions while others are essentially traditional in make up. The use of tribal languages, which still predominate on many reservations, is a significant tie to traditional ways. Legal methods also depend on unspoken practices and norms. As direct Bureau of Indian Affairs control over tribal institutions has waned, the influence of tribal values has increased.

Although most tribes have adopted courts as distinct government institutions, the tribal courts haven't required the authority associated with the concept of separation of powers to declare legislative enactments invalid or to enjoin administrative action found to be illegal. In practice, tribal courts are often subordinate to the political branches of tribal government, primarily the executive branch, the tribal council.

The Indian Civil Rights Act of 1968 provides many of the due process and other limitations imposed by the constitution on state and federal governments. However, and this is a most important point when considering criminal arrest information and convictions involving Indians, the Indian Civil Rights Act does not require counsel for indigent defendants. The legislative history of the Act indicates this omission reflects a deliberate choice by Congress to limit its intrusions into judicial tribal independence. Many of the offenses described in tribal codes are offenses found in any English common law jurisdiction; assault, embezzlement, fraud, forgery, extortion, disorderly conduct, vandalism, liquor violations, fish and game violations, failure to support dependents, compulsory school attendance, etc. The Indian Civil Rights Act prohibits tribes from imposing on anyone punishments exceeding six months imprisonment and a \$500 fine. When tribal courts have exclusive jurisdiction over members residing on the reservation with the enactment of the Major Crimes Act, federal jurisdiction over Indians in Indian country was expanded. The fact that a person is tried for a federal crime does not preclude a subsequent prosecution for a similar or included offense by tribal court. In my experience there have been instances where a tribal arrest was listed in the prior record section of a presentence report that formed the basis for the federal prosecution.

Based on my experience in working on reservations in Arizona and North Dakota, tribal arrest records rarely provide detailed information; jury trials and legal representation are extremely rare with criminal sanctions directly proportional to income or wealth. Those offenders who are well-off usually forfeit bond or pay a fine. Less advantaged offenders are usually given an opportunity to pay off a fine or serve short-stints in tribal jail. Most tribes now depend largely on the same punishments as Anglo society, fines and imprisonment. Given the unique features of tribal court it is my view that tribal convictions should

not be shown in the prior arrest section of a presentence report unless it can be established the defendant was represented by legal counsel admitted to the bar of the state. This is the position of the U.S. Parole Commission and the one that I feel is most correct under the circumstances.

In conclusion, the development of accurate, complete and high quality criminal record data is a key factor in developing sentencing guidelines. While I have personal misgivings about a prospective sentencing model based on a retrospective analysis of a defendant's criminal record as well as other offender characteristics, I recognize the need for a more uniform and systemic approach to sentencing both to maximize the deterrent affect of sanctions applied and to incapacitate those whose criminal records indicate they are serious recidivistic offenders.

I want to thank you and members of the Sentencing Commission for providing me an opportunity to share my thoughts on the use of a defendant's criminal record. I look forward to discussing the matter further on May 22.

Sincerely,


William D. Broome
Chief Probation Officer

RECEIVED MAY 14 1986

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF GEORGIA
PROBATION OFFICE

May 13, 1986

U.S. POST OFFICE & COURT HOUSE
P.O. Box 1766, ALBANY 31702
912-439-9741

U.S. POST OFFICE & COURT HOUSE
P.O. Box 703, ATHENS 30603
404-546-2159

U.S. POST OFFICE & COURT HOUSE
P.O. Box 494, COLUMBUS 31902
404-322-6212

U.S. POST OFFICE & COURT HOUSE
P.O. Box 456, VALDOSTA 31601
912-247-0631

DANIEL C. LANFORD, JR.
CHIEF U.S. PROBATION OFFICER

ROBERT C. HUGHES, JR.
SUPERVISING PROBATION OFFICER

U.S. POST OFFICE & COURT HOUSE
P.O. Box 13, MACON 31202
912-743-6376

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.

May 13, 1986

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.

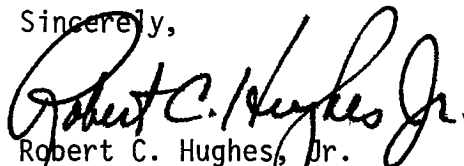
As stated earlier, Juvenile court records are maintained by the clerks of Superior courts in smaller counties, and by Juvenile courts in larger metropolitan areas. Generally, juvenile records are destroyed by the court if the defendant petitions the court requesting such action at the time he or she 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,



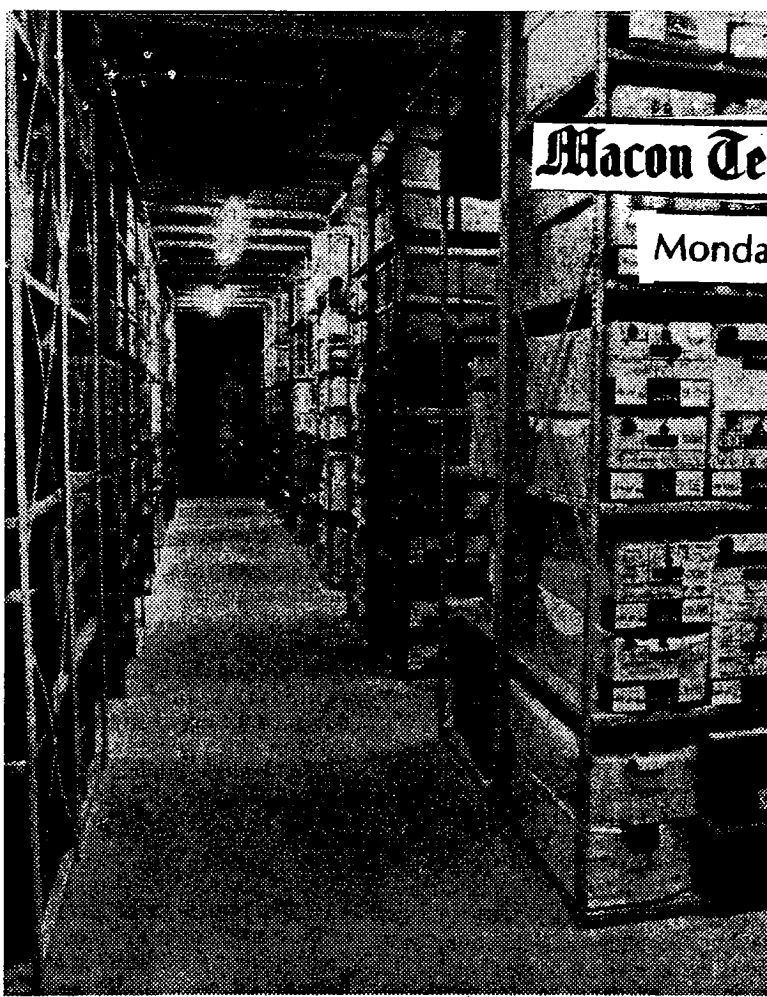
Robert C. Hughes, Jr.
Supervising U. S. Probation Officer

RCHjr:mae

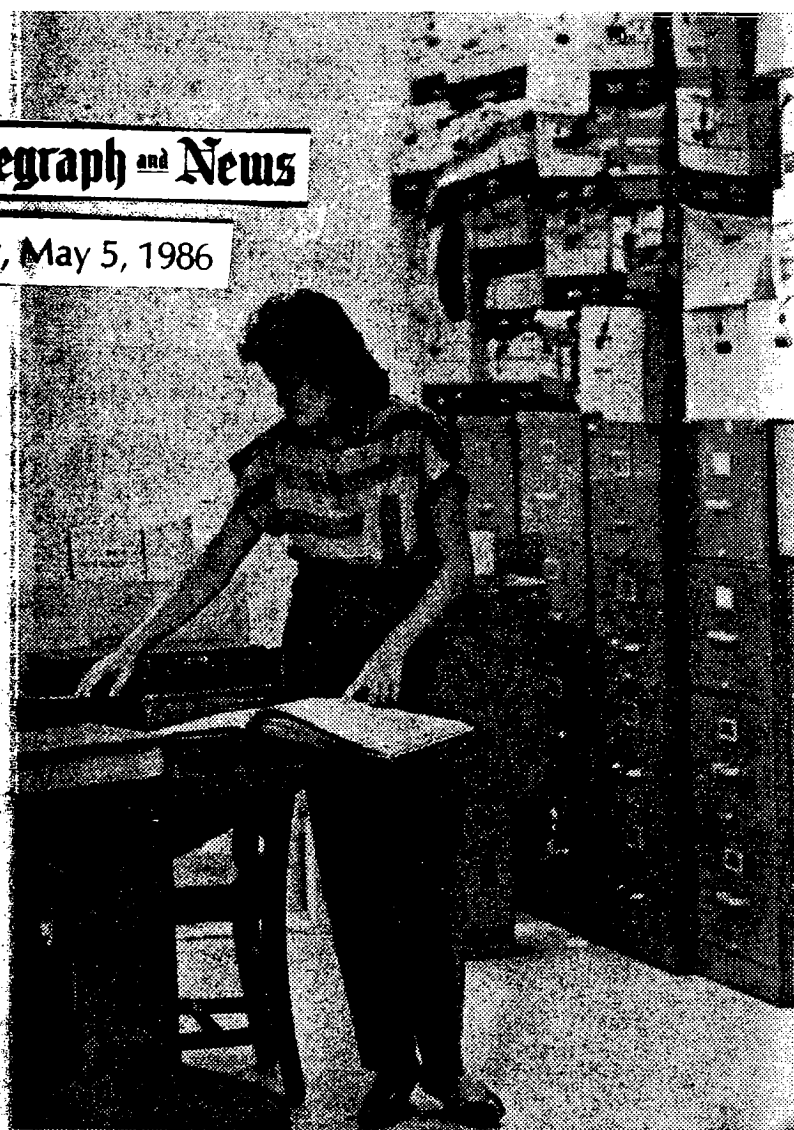
Enclosure

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 of the 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."

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
PROBATION OFFICE

MICHAEL J. LUCIANO
CHIEF PROBATION OFFICER

May 14, 1986

207 U. S. COURTHOUSE
FOLEY SQUARE
NEW YORK, N.Y. 10007
(212) 781-0088

Honorable William W. Wilkins, Jr.
Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue, N.W., Suite 1400
Washington, D.C. 20004

Dear Commissioner Wilkins:

Reference is made to your letter of April 29, 1986. In regard to your specific questions, for all adult arrests yielding convictions, records are centralized in New York State through fingerprints. However, to obtain detailed information as to the original allegations at the very least a trip to the Police Headquarters is necessary for the five counties of New York if a local arrest is involved. When more detailed information is needed, either in regard to the allegation or to the legal history of the case, trips to the Courts in each county are often necessary. Within the City, each county has a lower Court and a higher Court and outside of New York City, in addition to the County Court which handles felonies, there are many smaller jurisdictions which handle misdemeanors. The Probation Offices in the State are also divided by county and again by higher and lower Court within the five counties that comprise New York City.

Generally, there is no need to go to various law enforcement agencies in cases which resulted in convictions, although in rural areas and small jurisdictions, this is sometimes useful. (For example, in the case of a 1976 drunk-driving arrest which went before a Town Justice where the arresting agency was the State Police, it may be the State Police who have the better records.)

New York State has centralized records for their prisons which handle felony convictions. In New York City, there are central records for individuals institutionalized for misdemeanor offenses, but elsewhere in New York State the records are less centralized.

There are no centralized records available in regard to juvenile arrests and convictions, and for all practical purposes the only information available at all in regard to such matters is through the Probation Department in each County. Arrests occurring after the individual reached his 16th birthday are treated as adult arrests.

May 14, 1986

Accurate records are generally available and accessible on all criminal charges and arrests for adults which lead to convictions. The available records indicate clearly whether the offense was a misdemeanor or a felony. Recently, cases which result in dismissal or acquittal have been removed from the computerized central State filing system and access to such information is denied at both the Court and centralized police level. There is no problem in regard to determining whether or not a defendant was represented by counsel, inasmuch as such representation has been mandated in New York State for many years. Information is generally available on Probation sentences as to dates of termination and violations where revocations have resulted. On all felony sentences, accurate information is usually available and accessible as to the date and method of release from custody and the date of termination. Information is also readily available as to the dates of revocations, but information as to the details of the violations are usually available only if they occurred within the last few years.

In this District, there are no native American Indian reservations. We do have regular need to check criminal records in Mexico, Central America, South America, Great Britain, Europe, the Mid East, parts of Africa (Ghana, Nigeria, South Africa, Morrocco) India, Pakistan, Nepal, Thailand, the People's Republic of China, Hong Kong, Taiwan, South Korea and Japan. Response time, the amount of information provided and the usefulness of the information varies greatly, not only from country to country, but also depending on what method is used (that is, whether the request went to Interpol, the State Department, the Embassy of the country involved, etc.). Sometimes the significance of the case or the defendant to the country involved is a major determining factor as to whether or not useful information is provided. Interpreting and using the information once it has been provided is usually not a problem.

In regard to the issues raised in your April 25, 1986 letter, it is my opinion that it is the statutory maximum of the offense of conviction which should determine whether an offense is a misdemeanor or a felony. I know of no practical way of giving differential weights to more or less serious offenses. Although I have mixed feelings on the subject of including a decay factor, if one is included I believe that it should be ten years from the release from supervision to the beginning of the instant offense. I would apply a similar standard for juvenile offenses, but restrict those to be considered to only those offenses which would be offenses had the individual been an adult. I would suggest similar standards for military convictions in that only those convictions should count which would be for offenses prosecutable in State or Federal Courts had not the individual been in the military. All foreign convictions should count if the offense behavior would have been prosecutable had the individual committed the offense in the United States. As I have no experience with tribal convictions, I would not wish to offer an opinion on that subject.

May 14, 1986

I am quite comfortable with the current Parole Commission standards for weighing the fact that the defendant was on Probation or Parole at the time of the offense and the level of sentence aggravation for the number of convictions and periods of incarceration the defendant has. Although I feel very strongly that juvenile arrests and adult arrests which did not lead to conviction should be a part of the sentencing process*, since information in regard to these matters is often not available, it is difficult to include them in a guideline situation. However, I suggest that standards could be developed for use of such information when it is available as well as for the use of "ancient" prior record information if that has particular relevance to the sentence at hand.

Very truly yours,



JOEL WEBER
U.S. Probation Officer

*See Page Three A

(JW:map)

I would like to offer three examples of situations where the use of dismissed cases would be relevant in determining sentence. All three are actual examples.

Example #1: Defendant A was arrested for selling \$30.00 worth of Cocaine to a New York City Police Officer acting in an undercover capacity. He entered a plea of guilty to this offense on 1/29/86. On 3/1/86, he was arrested with others for openly hawking Cocaine. That case was dismissed when laboratory analysis revealed that the vials containing a substance which appeared to be Cocaine in fact contained no controlled substance. The arresting officer on the 3/1/86 matter indicated that the defendant had told him that he had purchased the Cocaine at that location and had not been selling it. The defendant had made a similar claim before the Court prior to entering his plea of Guilty on 1/29/86. The 3/1/86 arrest was dismissed prior to the date Defendant A was scheduled to be sentenced. During the course of the pre-sentence investigation, he denied current involvement with either the sale or abuse of drugs.

Example #2: John Gotti who has been frequently publicly identified as the reputed head of the largest organized crime family in the New York City area is currently facing Racketeering charges in the Eastern District of New York. During March 1986, prior to jury selection in the Federal Court, Gotti went to trial on local assault and robbery charges. The alleged victim in that case first did not appear in Court and then stated that he could no longer identify any of his attackers. The charges against Gotti were dismissed. It seemed quite apparent to anyone watching interviews with the alleged victim on television that he had been intimidated. In fact, on 5/13/86, the Honorable Eugene Nickerson in the Eastern District of New York revoked Gotti's bail, in part based upon testimony at a hearing which convinced the Court that the witness/victim in the assault and robbery case had been intimidated.

Example #3: On March 15, 1977, Leroy "Nicky" Barnes was arrested by federal authorities in New York and charged with the distribution of massive amounts of Heroin. Prior to his conviction later that year, a story regarding Barnes appeared in the magazine section of the New York Times with a picture of Barnes occupying the front page of that magazine section. He was described in that article as "Mr. Untouchable", in part because during the seven years prior to his federal arrest, he had seven cases against him either dismissed or result in acquittals. If the Court had only been allowed to consider prior convictions and periods of imprisonment or incarceration stemming from those countable convictions and the period for decay was judged to be from the time of last release to the present arrest, then Barnes would have had guidelines based upon no prior criminal record. In fact, prior to 1965, Barnes had six convictions, and during early 1966 he was convicted on Heroin charges and sentenced to fifteen to twenty years confinement. Although this was later overturned on appeal, Barnes was in custody from early 1966 to mid 1970. It should also be noted that while on Probation or Parole prior to 1965, Barnes had a number of revocations which lead to his return to prison. Some of these were for technical matters, and some of these were for new convictions. In the opinion of the undersigned, revocations which lead to incarceration or imprisonment of more than thirty (30) days should be counted as convictions.

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