

CHAPTER 3

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NCIC/CCH ISSUES LIST

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Issues

INFORMATION NEEDS

Criminal Justice Requirements

ISSUE

The requirements of the criminal justice system for Computerized Criminal History information are not identified sufficiently to support planning and evaluation of an interstate system.

SUMMARY

Criminal justice and law enforcement practitioners are virtually unanimous in their view that interstate exchange of criminal history information is necessary for the efficient and effective administration of justice. Criminal justice agencies at all functional levels, from police to prisons, could benefit. Interstate exchange of criminal history information could aid ongoing efforts to identify career criminals, to fit decisions and treatments to the individual criminal as well as the crime, and to reduce disparities in prosecution, sentencing, commitment, and parole decisions. The benefits of rapid access to out-of-State criminal history records are suggested, but not conclusively demonstrated, by preliminary studies. As many as 30 percent of individuals with criminal history records show arrests in more than one State, and many criminal justice agencies perceive a need for immediate access to criminal histories. As the mobility of the population increases in the next decade, this demand will also increase.

Yet attainment of these promised benefits requires that criminal history records themselves be complete, accurate, and current. Moreover, the mechanism to permit interstate exchange must be designed to conform to State and Federal restrictions on the dissemination of criminal histories. The value of out-of-State criminal history information might be limited if positive identification linking the subject with the record cannot be made promptly. The extent

or problems of the identification requirement are not well established.

Much more investigation is required to assess the merits of the proposed Computerized Criminal History (CCH) System and to evaluate alternatives.

QUESTIONS

1. In what ways do, or could, the various State criminal justice agencies use CCH information to support the administration of criminal justice including criminal justice decisionmaking?
2. How do, or could, the numerous Federal law enforcement agencies make use of CCH information?
3. To what extent do in-State criminal histories satisfy the needs of State criminal justice agencies?
4. To what extent, and for what types of crimes, would access to out-of-State CCH information on a regional basis satisfy the needs of State criminal justice agencies?
5. In what ways are the requirements for nationwide access to CCH of Federal law-enforcement agencies different from the needs of State and local agencies?
6. To what extent do differences in laws and practices among States constrain or limit the value of interstate dissemination of CCH information?
7. To what extent, and in what circumstances, could CCH needs of criminal justice agencies be satisfied by system response times of 1 or 2 days or a few hours?
8. Do police users of CCH information require significantly faster response times for investigatory purposes? Why?

To what extent is positive fingerprint identification required before using CCH information in criminal justice decision-making?

10. What will be the operational impact if identification bureaus cannot respond to identification requests within a few hours.

DISCUSSION

The criminal justice system has operated over the years with inadequate information, lacking completeness, accuracy, and timeliness. It is only in the last 10 years that any significant progress has been made towards improving the level of criminal justice information systems.

Despite its limitations, the law enforcement-criminal justice community has recognized the great value of criminal history information. Since 1924 the Federal Bureau of Investigation (FBI) Identification Division has maintained a manual file of arrests, and dispositions when supplied, based on records submitted by local, State, and Federal law enforcement agencies. Routinely, but on a voluntary basis, these agencies send arrest records accompanied by fingerprints of the individual involved to the FBI where a search for an existing record is conducted. If found, the record is augmented with the new information; otherwise a new record is created. At present, the Division's identification records represent over 21 million individuals. When supplied with a fingerprint card, the FBI is able to search its files and determine if the individual has a prior record on file. This major service of the FBI is routinely used by law enforcement. Inquiries and responses are made by mail with a response time of about 2 weeks. In addition to the FBI files, some States have maintained their own State criminal history files.

These manual criminal history records, or rap sheets, tend to be incomplete. Since the historic relationship is between the FBI and local police departments, and not with the prosecution or courts, there has been no guarantee that dispositions following an arrest will be reported to the FBI. One internal FBI study showed that less than 50 percent of entries examined contained

disposition data. Furthermore, of those records with dispositions, almost 20 percent were not posted until more than 18 months after the arrest. *

Criminal history information is used through-out the the justice system as a basis for decisioning. Police rely on criminal history information in evaluating potential suspects in cases under investigation. Prosecutors look to prior involvement with the justice system as a consideration in determining whether or not to prosecute a case. The information is used to determine whether an arrested individual should be detained, released on bail, or on his own recognition. Corrections workers and judges have similar mandates and the Defense Bar has, through discovery procedures, obtained background on their clients from criminal history records.

Federal law enforcement agencies both contribute to and use criminal history information. In addition to the FBI itself, there are 27 Federal agencies with law enforcement authority that have access to this information, including for example, the Bureau of Alcohol, Tobacco and Fire Arms, the U.S. Department of Agriculture, the State Department Passport Office, the Internal Revenue Service, and the various branches of the military service.²

In the past, obtaining this information could take 2 weeks or more. This often meant that it wasn't available for use at points such as arraignment occurring early in the adjudication process. More recently, in at least some States (e.g., California and New York) the magistrate before whom the subject must be brought without unnecessary delay has been required by statute to consider criminal history in making the decision whether to retain the subject in custody. The prosecution is similarly required to evaluate criminal history as part of the charging process. These uses of criminal history information require rapid access, usually within a few hours. In New York, there is a legal requirement for positive fingerprint identification before the information is used and the State has

¹Disposition Systems and Procedures—Feasibility Study, Final Report, Nov. 11, 1976, Identification Section, FBI.

*Some of these late disposition postings are no doubt attributable to long adjudication times rather than reporting delays.

²NCIC Mailing/Telephone List, Nov. 7, 1977.

installed a facsimile network to make this possible.

Studies have shown that about 30 percent of individuals with criminal history records show arrests in more than one State. This evidence, and a desire to speed up and improve the quality of criminal history reporting have been important motivations for the development of the CCH program. Efforts have gone both in the direction of improving the data-handling and reporting procedures, including automation, within the States, and developing a nationwide CCH program to make out-of-State criminal history information rapidly available.

A better and more quantitative assessment of the situations in which out-of-State data could be useful and the rapidity with which the information is needed would greatly assist the CCH planning process. Some survey should be conducted on the state of the law concerning the requirement that prior criminal history be considered in charging, receiving evidence, and passing sentence. Also useful would be an analysis of the extent to which interstate CCH information exchange would be regional in nature. It has been estimated, for instance, that more than 90 percent of the multiple-State offender records associated with people arrested in California come from contiguous States.

If positive fingerprint identification becomes a strict requirement before CCH information can be used in criminal justice decisionmaking, the utility of rapid access to out-of-State criminal history information may depend on the speed at which the identification process can be accomplished. The potential problem lies in the case where an arrest is made in State A where the person has no prior record and the CCH system discloses a record in State B. Unless a mechanism for interstate transmission and identification of fingerprints is created that will allow positive identification in a few hours, these out-of-State CCH records will either be unusable or will be used with less than positive identification.

There is no question that access to a subject's criminal history might be appropriate beyond the area of its occurrence: the Federal and State legislatures are increasingly requiring not only that the punishment fit the crime, but the prosecution fit the criminal. And on the face of it,

the criminal justice user is working with only part of potentially available information if out-of-State records are not available. But there have been no analyses performed to show the potential benefit to any criminal justice decisions of the use of out-of-State data. However, surveys of potential user's perceived needs do show a general desire to have this data available.³

The potential benefits of the timely availability of complete and accurate criminal history information come from the potential of improving the quality of decisionmaking. The first offender who might otherwise have been detained before trial would benefit. Society would benefit from the imprisonment of the individuals with multiple out-of-State convictions who otherwise might have been put on probation. But hard information on the potential benefits of timely availability of criminal history is lacking. The data quality needs of criminal justice decisionmaking are also not understood.

The consequences of defects in record quality such as incomplete, incorrect, or ambiguous criminal history entries on decisionmaking is simply not known. That the criminal history files presently in use are woefully incomplete seems clear. Undoubtedly a concerted effort must be undertaken to improve disposition reporting. But since no system can ever be made perfect, some level of error will always exist. Quantitative measures on data quality matters will be difficult to come by. However, the attempt is essential because of the apparent conflict between the perceived needs of the justice system and the concerns discussed in the next section that defects in record quality could lead to significant harm to individuals' rights to due process and privacy.

³Search Group Inc., "The American Criminal History Record," Sacramento, Calif., Technical Report No. 14, 1976.

Constitutional Rights

ISSUE

The threats to constitutional rights potentially posed by a CCH system are not sufficiently identified for planning and evaluation of an interstate system.

SUMMARY

The CCH system was conceived to enhance the administration and effectiveness of the criminal justice system. This objective is certainly in the public interest. Also certainly in the public interest are the protection of the privacy, civil liberties, and rights to due process, of individuals affected by the system together with rights of freedom of information. Harmonizing these parallel and sometimes conflicting interests will require public policy decisions. The present climate is clouded by the absence of well-established information on the completeness, ambiguities, and accuracy of criminal history data, and on the nature of injuries to individuals that could be caused by improper use of CCH records or inadequate CCH records. The extent of actual incidence of such injuries is also unknown.

It must be recognized that computerization can eliminate certain kinds of errors that plague existing manual records. Yet, because manual records are not disseminated widely, the errors tend to be localized. With computers, the transaction volume and dissemination will increase, as will the capacity to widely disseminate inaccurate or incomplete records. The potential for harm is therefore much greater with computerized systems. It is important for policy makers to understand the origins, frequency, and consequences of erroneous or incomplete records in order to strike a fair balance between potential harm and potential benefits.

CCH information is also used for evaluation of applicants for employment or licenses as permitted by Federal and State statutes. Since State practices differ considerably, the effect of interstate CCH could be significant. The harm to individuals' employability that can be caused by incomplete, inaccurate, or improperly disclosed records is recognized, but information on the extent of the problem is not available.

There has been considerable debate on the merits of purging or sealing criminal history information based on considerations such as age of record, or the principle that such information is unlikely to provide a reliable guide to the behavior of the individual. While a few States have established such procedures, present Federal regulations set no such requirements. Again, little hard information is available to guide policy on this matter.

Another viewpoint is that criminal history information is public record material that should be made available under freedom of information principles.

Dissemination of CCH information is limited and controlled by statute in some States and by Department of Justice regulations. However, individual State planning, modification of the regulations, and demonstration of compliance has moved very slowly. The Law Enforcement Assistance Administration (LEAA) extended the deadline for submission of State dissemination plans to March 1978, an extension of 2 years from the original schedule, an indication of the difficulties involved. Generally, the plans submitted are expressions of intent, not of compliance actually achieved.

Further information is needed to assess the potential danger to constitutional rights, as well as the needs and benefits of CCH discussed in the previous section, before conclusions as to the proper data quality standards and dissemination restrictions can be drawn.

QUESTIONS

1. To what extent do the records submitted by the individual States and the Federal Government comply with the existing standards of accuracy, completeness, security, currency, etc., established in Title 28 CFR?
2. What sorts of injury to individuals can result from the use of incomplete or inaccurate CCH information in any category of criminal justice decisionmaking?
3. To what extent do these injuries occur?
4. What other uses of the CCH files or inquiries, such as "flagging" the names of individuals involved in activities protected

- by the first amendment, for example, might present a threat to individual rights or civil liberties?
5. To what extent, if any, might the interstate dissemination of CCH information create or increase civil liberties problems in:
 - a. differences among States in definition of crimes causing error or confusion in criminal justice decisionmaking based on out-of-State CCH information;
 - b. Disclosure of out-of-State information to employers or others that would not be permissible in the State record?
 6. What purging or sealing policy, if any, should be established to limit the "memory" of the CCH system for individuals who have had no recent arrest history?
 7. Are existing access controls and logging requirements sufficient to control unauthorized use of CCH data?
 8. How can the system be effectively monitored and audited to ensure that the system standards are met?
 9. What monitoring and auditing mechanisms can ensure that actual occurrences of injury to individual liberties will become known to the system and to the public?
 10. Which local, State, or Federal programs for handling CCH information have been most effective in protecting constitutional rights? How might other National Crime Information Center (NCIC) participants be encouraged to consider adoption of these programs?
 11. What changes, if any, should be considered in standards regarding listing of arrest charges, CCH disposition entries, investigative uses of CCH records, and validation of CCH records to protect the civil rights and liberties of persons whose records are contained in the system?
 12. What changes, if any, to existing Federal resolutions or laws, should be considered for protection of individual rights when CCH information is used for preemployment or licensing purposes?

13. If the privacy act is amended to cover criminal investigatory records, if Federal agencies lose their sovereign immunity protection, and/or State courts decide to remove such immunity for State governments, to what extent will there be less need for congressional action regarding NCIC privacy safeguards?

DISCUSSION

A variety of concerns have been expressed regarding the effect of the CCH program on constitutional rights. The most immediate concerns deal with the possibilities of direct harm to individuals involved in the criminal justice process through the use of CCH information to support decisionmaking. Similarly, the prospective effects on individuals of dissemination of CCH information for preemployment and licensing purposes has raised concerns. These are the main subjects discussed in this section. Less immediate civil liberties issues such as potential long-term effects of CCH on the criminal justice system, or the potential of the system to be manipulated illegally are discussed under Social Impacts (p. 44.)

CCH AND CRIMINAL JUSTICE DECISIONMAKING

Criminal history records are used by all segments of the criminal justice community for a variety of purposes. During the investigation of a crime, police may examine criminal history records of potential suspects under the belief that a prior history of arrests for crimes similar to the one in question, or the lack thereof, is suggestive of the subject's likely involvement. Criminal histories can provide useful leads to an investigator such as aliases and prior addresses.

After arrest, if available in time, criminal history records are commonly used to evaluate the defendant's right to release on bail. In many jurisdictions, criminal history records influence the district attorney's decisions as to obtaining a felony indictment, or willingness to accept a misdemeanor disposition. In some States, laws specify that prior convictions raise to the felony level a crime that otherwise would have been a misdemeanor.

After conviction, most State laws require the court to consider the defendant's criminal his-

tory record in determining the sentence. Probation officers and officials in many other programs use criminal histories to assist in their decisionmaking. Correctional officials use the information to assist in assigning the individual while he is institutionalized. Finally, parole boards in some States request criminal history records when determining whether an inmate should be released on parole.

The speed of response needed for these different uses of criminal history records varies widely. Response time measured in hours is probably adequate for most purposes. Law enforcement agencies have expressed a need for much faster response times,⁴ but strong substantiating arguments have not been presented.

This pervasive use of criminal history information throughout the justice system was one of the motivating forces for development of CCH so that the information would be available in a timely manner, and to improve the tracking of events in the processing of each case so that the criminal history record would reflect the final disposition. Following the recommendations of a Presidential Commission in 1967,⁵ rapid development of State computerized criminal history programs took place. According to the FBI, 20 States are now either full participants in the NCIC/CCH program or in the final stages of program development.

CRIMINAL HISTORY RECORD QUALITY

The operations of the criminal justice system impose some limitations on the quality of criminal history records. First, an offender's record is not necessarily representative of the behavior which mandated the creation of (or additions to) his record; and second, some criminal justice agencies are more cooperative and responsive than others in furnishing the data. Both of these situations affect fundamental aspects of data quality. Other important aspects would include policies on who can enter or change data, how can the data be changed, when data are to be sealed, and to what extent they are sealed from different users,

⁴Ibid.

⁵President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, U.S. Government Printing Office, 1967.

The ability of the written record to accurately document the past criminal behavior of an offender is poor and will remain so for the foreseeable future. First, not all of the offender's known offenses result in conviction. A rule of thumb is that it takes about three arrests before a conviction is secured, because of formal and informal diversion programs. Second, even when a conviction is secured, plea bargaining often makes it unlikely that the charge at conviction reflects the nature of the criminal event. And since plea bargaining is more prevalent in urban than rural areas, this means that a rural offender committing the same offenses as an urban offender will probably look a lot worse on paper (or on CCH) than his urban counterpart. On the other hand, the charges at arrest may exaggerate the nature of the event. The police may overcharge an individual, knowing that it will probably be bargained down to a lesser charge.

Criminal history records are often incomplete. Arrests are recorded quickly, while dispositions are recorded more leisurely, if at all (in some jurisdictions). Part of the reason is the fact that the police are responsible for supplying arrest data to the FBI, while the prosecutor and courts have the disposition data and do not have as strong a relationship with the FBI as the police. Furthermore, the judiciary is a separate branch of Government, so its cooperation in a CCH system run primarily by and for enforcement agencies has been limited.

There is evidence that disposition reporting is slowly improving. Certainly the intent is clear. The LEAA regulations mandate disposition reporting within 90 days. The States are now preparing plans setting forth their operational procedures to comply with this requirement. Successful implementation of prompt and complete disposition reporting is of utmost importance to any future success of CCH systems.

RECORD QUALITY DEFICIENCIES

The implementations of CCH has brought into focus a number of concerns about criminal justice decisionmaking, most of which relate to claimed deficiencies in some aspect of record quality, e.g., accuracy, currency, or completeness. The most apparent of these deficiencies is absence of disposition information associated with arrest entries in the record. Because of delays and gaps in the reporting procedures it

has been estimated that 50 percent of the arrest records do not have disposition information. * Other alleged deficiencies include partial, erroneous, and ambiguous disposition listings.

Many of the civil liberties questions regarding CCH—in particular questions of due process—center on the effects of record deficiencies on criminal justice decisionmaking. The criminal justice process is characterized by the exercise of great discretion and bargaining at key points. Much of this discretion is exercised informally, and is in part influenced by the criminal history record of individuals. In some urban areas, more than 50 percent of those arrested by police are screened out of the judicial process before formal accusation; of those who do make a court appearance, the vast majority plead guilty in accordance with pre-arranged bargains struck between defendants, prosecutors, and police. (This topic is discussed in more detail in the Social Impacts section of this report.)

Those questioning the CCH system have argued that an individual's prior arrests count against him in the bargaining process even where the arrest charges were eventually dropped or the case resulted in an acquittal because this information is often not contained in the criminal history. The argument is made that the situation is so serious that entries without dispositions should not be permitted to be used, even by criminal justice agencies, unless the case is definitely known to be still pending. Others argue that this measure would deny highly useful information to officials who are fully competent to understand the limitations of the data, and would result in saturation of the system.

This debate is now being argued in the courts. At least one major case⁶ is in process at this time arguing that the State CCH records maintained and disseminated by the New York State Division of Criminal Justice Services and supplied by the New York Police Department have poor

*The FBI, in a recent internal study (see footnote 1) found that less than 50 percent of the entries in their manual criminal history file contained disposition data. A recent sample of New York State records (see footnote 6) showed a blank disposition column in .57.3 percent of listed arrest events since Jan. 1, 1973.

⁶Taturn, et al. vs. Rogers, 75 Civ. 2782 (S.D.N.Y.) Plaintiff's Pre-Trial Memorandum of Law, Sept. 9, 1977.

data quality with the consequence that constitutional rights of individuals have been violated. Although the issues in this case are directed entirely at New York State's own CCH system, its outcome may have profound implications on all aspects of interstate CCH.

This whole issue is badly clouded by lack of information. We need to know the real extent of quality deficiencies in both the existing manual and computerized criminal history systems. It is unfortunate that so little assessment of data quality has taken place. Neither the State CCH repositories nor the FBI have conducted the kinds of audits that would supply this information. Nor is there much documentation other than anecdotal evidence of the extent to which individual rights are actually being affected by the present system. Also, the data is not available to estimate the relative extent of undercharging (plea bargaining, etc.) and overcharging and the conditions under which each occur.

Standards for access and security and privacy have been the subject of extensive debate.^{7 8 9} But in the absence of quantitative information about the weaknesses of existing practices, and an understanding of the obstacles to their improvement, the necessary discussion of what standards should be becomes very difficult.

PREEMPLOYMENT AND LICENSING USE OF CCH

Criminal history record information is also disseminated for local and State employment or licensing purposes to the extent that it is authorized by Federal or State statutes. It is estimated¹⁰ that 20 percent of the requests for State CCH information originate from noncriminal justice agencies. By present regulations, " arrest data more than 1 year old is not disseminated for

⁷Search Group Inc., "Standards for Security and Privacy of Criminal Justice Information, " Sacramento, Calif., Technical Report No. 13 (Revised), January 1978.

⁸Search Group Inc., "Access to Criminal Justice Information, " Sacramento, Calif., Technical Memorandum No. 14, October 1977.

⁹M. D. Maltz, "Privacy, Criminal Records and Information Systems, " in *Operations Research in Law Enforcement, Justice, and Societal Security*, Lexington Books, 1976.

¹⁰Search Group Inc., "The American Criminal History Record. "

¹¹28 CFR—Judicial Administration, 20.33(3).

these purposes without accompanying disposition information unless active prosecution of the charge is known to be pending. Federal agencies authorized to obtain information for employment background checks under authority of Federal Executive Order receive criminal history information without restriction and generally have access to Federal investigative and intelligence information as well.

Individual States have their own regulations and statutes to govern dissemination for these purposes. The State regulations vary drastically regarding the types of employments and licensing for which criminal histories can be used.¹² Furthermore, some regulations contain procedures for deleting information not deemed relevant to these uses of the data. As a consequence of the diversity of State regulations, it is likely that information may be obtainable from another State that is not permissible for use in the inquiring State. Furthermore, information now available for Federal agency background checks through the FBI files might become unavailable if the inquiry is made directly to the State of origin. Careful control and monitoring over interstate dissemination for these purposes may thus be required to ensure that all appropriate regulations are being met.

One member of the working group felt that the private sector is entitled to more access to CCH information and that denial of this access only forces the use of illegal or roundabout ap-

¹²American Bar Association, "Laws, Licenses, and the Offender's Right to Work," National Clearing House on Offender Employment Restrictions, 1974.

preaches to obtain access.¹³ For example, in Illinois, a Firearms Ownership Identification Card (FOIC) is required for an individual who wishes to own a gun legally. Grounds for denying an individual an FOIC include conviction of a criminal offense. Some firms require a prospective employee to obtain an FOIC (at the firm's expense) as a precondition of employment. In this way, they find out if the prospective employee has a criminal record. Numerous examples of illegal disclosure of criminal history information by police personnel have also been reported.

He further argues that too stringent restrictions on access by private sector employers could make matters worse, especially in light of the liberal access permitted Federal Government employers. As the law presently stands, the Department of Labor can check the record of every clerk-typist it considers hiring, but the Potomac Electric Power Company cannot determine if its prospective meter readers have records of home invasion or rape; the Social Security Administration can prevent those with criminal records from becoming janitors, but a small business cannot ensure that it is not hiring a newly released embezzler as a bookkeeper.

In this view, a better balance of access is needed and might be obtained through a less restrictive approach to the private sector's information needs.

¹³M.D. Maltzitz, "privacy, criminal Records and Information Systems," in *Operations Research in Law Enforcement, Justice, and Societal Security*, Lexington Books, 1976.

FEDERALISM

Division of Authority

ISSUE

What authority should be allocated among the units of Government to control the contemplated CCH system in terms of efficacy, legality, and accountability?

SUMMARY

Because of the decentralized nature of the U.S. criminal justice system and because the generation and use of criminal history information occurs mostly at the State and local levels of government, the States have a primary stake in establishing standards and procedures for the keeping and dissemination of criminal history information. On the other hand, minimum national standards also are required for an interstate CCH system. Attempts at comprehensive Federal legislation to control the collection and dissemination of criminal justice information have failed to produce legislation or a consensus as to how authority for this important area of control of the system should be allocated. The lack of resolution of this issue is a very serious obstacle to the successful development of CCH.

QUESTIONS

1. How should the authority for establishing dissemination constraints, and purging or sealing requirements be allocated between the Federal and State governments?
2. To what extent can control of operational procedures, including access control and employment standards be left to the discretion of the States?
3. What provisions shall be made for resolution of intergovernmental and interagency conflicts over system control?
4. How best can audit responsibilities be apportioned among levels of government, participating agencies, and representatives of the general public?
5. How should authority be divided between Federal and State governments for deter-

mination of violations and imposition of sanctions?

The extent to which interstate dissemination of CCH data presents civil liberties problems because of the diversity in State regulations is difficult to assess without more information on current practices. The questions about data quality raised regarding criminal justice uses of the data apply here as well. Since it is required that entries without disposition are not to be distributed for employment and licensing purposes, the data quality questions here focus on the clarity, accuracy, and completeness of disposition listings.

DISCUSSION

Almost every aspect of the NCIC/CCH problem encounters difficulties resulting from the historic, constitutional division of powers and duties in our Federal system. This division, while providing protection against tyranny, corruption, and other abuses, nevertheless invites conflict, error, and confusion in the accomplishment of valid governmental purposes. With respect to criminal justice, the foundations of the federalism issues are:

- State governments have basic jurisdiction over law enforcement and criminal justice within their borders, under their constitutionally reserved powers. Within that system, local governments play a strong role.
- Due to the mobility of both State and Federal law violators, effective law enforcement increasingly requires exchange of information among States and between States and the Federal Government.
- The Federal Government's superior taxing power and its expanded functions under the commerce clause have led to its involvement in law enforcement at local and State levels; many an intrastate crime is a Federal crime.

The sheer existence of the technical capability that can speed information across existing political-organizational barriers challenges a political structure inherited from a previous era. Organizational problems arise because a chang-

ing political environment increasingly is sensitive to the information policies of executive agencies. More traditional questions arise concerned with the sharing of costs among State and Federal levels of government, interstate relationships, and the relation between Federal and State criminal justice functions.

Given this diversity of American political and administrative culture, the CCH system is very ambitious when compared to other Federal computer systems of national scope. Compared to the Internal Revenue Service's Tax Administration System, which administers a uniform Federal tax code with personnel trained in accordance with uniform standards and criteria, the CCH system seeks to coordinate the law enforcement activities of a very diverse group of agencies, whose personnel and indeed whose laws are very different from one another.

If it is going to work, the CCH system will require data and procedures that meet prescribed minimum nationwide standards of quality and uniformity. At the same time most of the basic source records originate within local and State law enforcement agencies. State and local governments vary in their resources, their philosophies of privacy and publicity, and their sophistication in data systems technology. Decisions that are necessary to assure an effective nationwide system may conflict head-on with State laws and rules governing access to criminal justice records, the format and content of such records, and their modification or expungement. Such decisions may require State and local governments to adopt procedures inconsistent with or excess to their own operating necessities. Both levels of government could be pressured to appropriate money, install equipment, and employ personnel against their will. Court systems, despite long-standing, cherished traditions of independence, would have to conform to bureaucratic reporting requirements imposed by others. Some of these conflicts could result in litigation, which would be time-consuming and which could result in over-narrow decisions necessarily based on the issues brought to trial in specific cases.

Many of the system management problems will call for accommodations among States, between State and local governments, between Federal and State governments, among Federal agencies, and among components of the crimi-

nal justice system at all three levels. This argues for control by a representative intergovernmental consortium, which would present its own problems of management, funding, and oversight.

Further complexity is added by the need for protection of civil liberties and privacy. No governmental mechanism well-designed for such a purpose now exists, and it may be necessary to invent one.

The issue is complicated even further by the apparent need for legislative oversight. The Judiciary Committees of both Houses of Congress, among others, can logically claim such responsibility. However, their ability to oversee adequately a complex, sensitive, and detailed system may be questioned, particularly when they are compelled to turn their attention from old and continuing responsibilities to newly urgent problems.

State legislatures may also legitimately claim the right to oversee the participation of their own governments in the contemplated system. They will be concerned with costs, operational effectiveness, security, and protection of citizens' rights under their own laws.

Another aspect of control is audit. There will be a need to review the system for fiscal integrity, general effectiveness in achieving States' objectives, and quality of management. There may also need to be a detailed operational audit, using sampling techniques, of the completeness, accuracy, and currency of the data in the file and in selected transmissions. Both announced and unannounced audits may be required. Systems users should participate in the conceptual planning and review of such audits. There must also be provision for audits of costs and effectiveness.

The issue of how authority should be divided is closely related to questions of management and oversight and can directly affect the technical configuration of CCH. Those who see the responsibility for maintaining and disseminating criminal history records falling primarily with the States, for example, will argue for viewing of CCH as many different State systems with a need to exchange information. * This State-

*The SEARCH Group Inc., Board of Directors has recently adopted a position paper that articulates this viewpoint, entitled "A Framework for Constructing an Improved National Criminal History System."

centered concept implies a minimum of Federal oversight. It also would have no compelling reason to remain affiliated with NCIC.

Some of these unresolved problems of overlapping authority in the system will be settled only by the disposition of individual conflicts as they come up. Others may be solvable by cooperative effort among the levels of government in the planning process. (See *The Planning Process*, p.35) The question remains, however, whether sufficient consensus on these matters exist to permit resolution at this time.

Cost Apportionment

ISSUE

How shall the costs of developing and operating the contemplated system be apportioned among Federal, State, and local governments?

SUMMARY

When all of the system development, data conversion, and operating costs associated with CCH are considered, the costs to all levels of government have been estimated to amount to several hundred millions of dollars over a 10-year period. Costs of related activities, such as building capability in State identification bureaus could considerably raise the overall expenditures that will be required to achieve a fully operational CCH system.

It has been Government policy to support the development of CCH in part through the Department of Justice Comprehensive Data System Program (CDS). However, the great bulk of the anticipated expenditures are operating costs that will be incurred in the State and local criminal justice agencies. The ability or willingness of the States and local jurisdictions to provide these operating funds will in large part determine the actual rate at which a nationwide CCH system can become operational.

The issue of equity in funding is particularly knotty. Some States will perceive a high benefit from the system; others may feel that they are burdened with excessive expenses to provide information to other States and Federal agencies. Finally, some argue that the costs of complying with regulations imposed by higher levels of

Government, whether State or Federal, should be subsidized.

Since funding policy will have a crucial role in the rate and success of CCH implementation, it is an issue that should be dealt with at this time.

QUESTIONS

1. What will it cost to develop a satisfactory system covering all States?
2. What are estimated annual operating costs?
3. On what basis should development and operating costs be apportioned among the three levels of Government?
4. To what extent should funding plans take into account the variation in capabilities and resources among State and local governments?
5. To what extent should Federal funding be provided to State and local agencies to cover operating expenses which these agencies feel are federally mandated?
6. What advantages, if any, would a system of user charges offer in the management of this system? What charging mechanisms might be employed?

DISCUSSION

The very modest initial conversion costs estimated in the FBI memoranda are trickles that will lead to a flood of expenditures.¹⁴ Any local jurisdiction participating in the contemplated system will have to provide for complete, timely reporting by all components of the criminal justice system; an information system fully congruent with the State and Federal systems; and sufficient trained staff to assure reliable operations and to maintain data quality to established standards. The State agency concerned, whether it is a criminal justice planning and coordinating agency or a bureau of investigation, will also have to maintain a congruent system, including thoroughly effective data collection and follow-up procedures. To the extent States handle data and reporting matters through sub-state regional criminal justice

¹⁴U. S. Senate. Hearings: Criminal Justice Data Banks, Subcommittee on Constitutional Rights, Committee on the Judiciary, 1974, volume 11.

organizations, system modifications will have to be made at that level. A 1975 study¹⁵ for LEAA concluded that the 10-year development and operating costs for CCH would be \$361 million of which \$241 million will be incurred in the participating States. This report also presents detailed models of the processing of CCH information and estimates transaction costs. However, the analysis assumed away a number of State costs such as development of full State identification bureau capabilities. Thus the total dollar cost will be much higher.

Criminal justice expenditures in total are met 60 percent by local governments, 27 percent by State governments, and 13 percent by the Federal Government (1975 figures). Such an inter-governmental division, however, is probably a poor guide for financing system developments, for the system improvements in the past decade are attributable in large measure to LEAA money, particularly at the local level. Typical city governments claim, usually with good evidence, to be hard-pressed financially, and incapable of financing improvements in information systems. They and their State governments will look to the Federal Government to pay the costs of the contemplated system. It can be argued on the other hand that State and local governments should pay a significant share, despite fiscal strains—if they have a stake in the game they will play better than if they do not. Yet this is a time when some fiscally troubled local governments are unwilling to put up the “match” money required to obtain some Federal grants.

Significant implementation costs for participation by all States will be incurred even if the smaller States are not forced to fully automate their criminal history records.

If the State and local governments are required to participate in financing the system the strain of finding “new money” for this purpose or of cutting back other expenses to pay for it may lead to nonparticipation or inadequate participation in the system. On the other hand, system operations could well be handicapped if it is looked at as a “big brother pays all” operation—

¹⁵ Institute for Law and Social Research, “Costs and Benefits of the Comprehensive Data System Program,” Washington, D. C., June 1975.

in a nation where States are in many respects sovereign and where crime control is a local responsibility.

A difficult subissue which must be explored in an assessment of CCH, is how to assure equity in interstate funding in relationship to benefits received. States vary as enormously in the sophistication of their criminal justice information systems as they do in geography, population, and finances. The “have-nets” will argue that if the Federal Government wants them to participate in the contemplated system it should pay the developmental costs. The “haves” will contend that a disproportionate share of Federal money should not go to States with underdeveloped systems. The States themselves have a similar problem in apportioning funds to local governments which vary greatly in systems development, as in their own resources. And again, the problem is complicated if planning and financing are accomplished through sub-state regional organizations.

Furthermore, States which expect great benefits from the system may be more willing to shoulder the costs than States not similarly situated. It is apparent that there are enormous regional differences in the volume of interstate criminal movements. Some States, such as California and New York are the unfortunate victims of large numbers of criminals immigrating from other States; significant numbers of criminals leave these same States to prey in other States. Yet States like Vermont, New Hampshire, and South Dakota, do not experience significant migration of criminals. Put in other words, the FBI reports large regional variations in arrest activity with 8 States accounting for 62 percent of the arrests (Director of FBI, letter dated April 16, 1976; and Hearings, S. 2008, p. 306). The FBI believes there is a high correlation between arrest activity and future use of CCH message switching.

Under a decentralized CCH system, the States that are large, automated, and characterized by transient populations would bear the largest burden of out-of-State inquiries. If out-of-State inquiry volume is significant compared to the inquiries from within the State, questions of priority of service will arise, and the costs of service to out-of-State inquiries will likely be seen as an inequitable burden by the State legislature. Pressure for Federal subsidies or interstate

charges to cover these costs would be likely to develop.

It is apparent therefore that States differ in terms of perceived benefits, and will continue to differ on the distribution of costs between Federal and State levels, and among the States themselves.

Generally, it is assumed that costs will be met directly through appropriated funds—from whatever levels of government. It may be feasible and desirable, however, to impose user charges on agencies (at whatever level) seeking information through the system. Such charges

could serve to relieve inequities in the system due to disproportionate demands on the various States. Charges would also provide a mechanism for limiting the volume of system traffic, as users would not see CCH information as a free good. However, the differences in ability to pay might result in less affluent agencies being discouraged from using the system.

The very process of seeking legislative approval and appropriations at possibly all three levels of government will lead to public debate over costs, effectiveness, controls, civil rights, privacy, and the entire range of issues.

ORGANIZATION, MANAGEMENT, AND OVERSIGHT

Management Responsibilities

ISSUE

Considering the decentralized nature of the criminal justice system, what sort of management structure is required for CCH?

SUMMARY

It is generally assumed that the FBI runs the NCIC/CCH system and has full responsibility for its activities. Actually the FBI's role is very limited since it must deal with the individual States as autonomous entities. The responsibility for accuracy, completeness, and currency of records lies with the States as does the responsibility for an annual audit. Both the FBI and State criminal history repositories have tended to view themselves as conduits for records provided to them by others. Thus, the chain of management responsibility is weak and ambiguous.

This loose, decentralized, assignment of responsibilities is in part a direct consequence of our decentralized criminal justice system and a persistent national concern over concentrating too much power in a Federal law enforcement agency. On the other hand, serious questions arise about accountability in such a decentralized system, that would apply no matter what agency is assigned the responsibility for system management.

This question was also addressed under Federalism. (See p. 25.)

QUESTIONS

1. What authority should be allocated among the units of government to control the CCH system?
2. To what extent would the centralization of management lead to excessive Federal control over State and local criminal justice activities?
3. What would be the advantages of separating CCH from the NCIC system?
4. Is there a need to designate a single agency to have overall responsibility for the administration of the CCH system? If so, what responsibilities should be assigned to the agency responsible for managing the CCH system to ensure and validate CCH data quality?
 - a. What responsibility should be placed on the system management agency to ensure that data disseminated through the CCH system is used properly?
 - b. What responsibility should be placed on the system management agency to report to Congress and the public on the "health" of the system?

c. What authority for audit and monitoring of data submitted by the States and Federal user agencies is required to satisfy these responsibilities?

d. What sanctions should be provided for violations of standards or procedures?

e. What appeal mechanism should be established?

f. What would be the merits of restructuring the Advisory Board for CCH to include representation of noncriminal justice public interest groups?

g. What new Federal legislation, if any, would be required to provide authority for the system management agency?

DISCUSSION

DECENTRALIZATION OF MANAGEMENT

The responsibility for interstate CCH dissemination is distributed rather widely at present. The FBI runs the NCIC central facility and is responsible for the NCIC procedures governing access to the system. The LEAA has established regulations on collection, storage, and dissemination of criminal history information that apply to all criminal justice agencies receiving LEAA funds directly or indirectly—covering essentially all participants in NCIC/CCH. These regulations in turn call on the **States** to submit a Criminal History Record Information Plan setting forth each State's CCH operational procedures. As of the latest revision of the regulations, these State plans must be submitted by March 1978. The regulations are explicit in allowing a wide variation among States in their dissemination policies including freedom to limit dissemination of both conviction and non-conviction information as each State sees fit.

The existing Federal law and regulations also place the responsibility for annual audit of the operation of every State's system with each State and limit the Federal involvement primarily to approval or disapproval of each State's plan. On the other hand, considerable concern about the need for congressional oversight and Federal supervision of the system has been ex-

pressed in Congress in numerous hearings^{16 17} on the subject of criminal justice information, resulting in a number of bills attempting to establish Federal standards and procedures to control collection and dissemination of such information, as well as providing for Federal audit authority.

The Federal Government's role in the day-to-day management of the NCIC/CCH system is therefore somewhat ambiguous, and neither the FBI nor the States are sure what their responsibilities are. The management solution to this dilemma may require imagination and new forms of Federal/State cooperation.

ROLE OF AN ADVISORY BOARD

The primary operational link between the FBI function as NCIC system manager and the State participants is through the NCIC Advisory Policy Board. The decentralized nature of the system's regulations argues for a strong accountability of the central operation to the users of the system. Yet the historical experience with the use of advisory boards as the formal liaison between system users and the system executive suggest that this arrangement provides for only weak accountability.¹⁸

Typically, members of the advisory board are not familiar with the operational intricacies of the computer system, and often are not familiar with the day-to-day system failures which become apparent to lower level, ultimate end-users. Typically, the advisory board meets infrequently; its members are only engaged part-time in monitoring the system's activities. Moreover, the operational staff of the computer system is responsible to the executive director, not the advisory board. Therefore, advisory boards have little knowledge or authority with respect to operation of the system.

¹⁶U.S. Senate, Hearings: Subcommittee on Constitutional Rights, Committee on the Judiciary, S. 2542, S. 2810, S. 2963, and S. 2964, March 5, 1974. 93rd Congress, 2d session.

¹⁷U.S. Senate, Hearings: Subcommittee on Constitutional Rights, Committee on the Judiciary, S. 2008, S. 1427, and S. 1428. July 15 and 16, 1975. 94th Congress, 1st session. "Criminal Justice Information and Protection of Privacy Act of 1975."

¹⁸Kenneth C. Laudon, *Computer-s and Bureaucratic Reform*, New York: Wiley, 1974.

Oversight

For all of these reasons the advisory board method of attaining accountability to users is structurally weak. Instead of representing ultimate users to an executive, they are just as likely to function in reverse to represent and explain executive policy to lower level users.

A second issue of accountability raised by the existing NCIC Advisory Policy Board concerns the question of defining users: who are users and how shall they be defined? The current arrangement recognizes users as those directly involved in the creation of the data base and who ultimately use the data base. This confines the definition of users to the criminal justice community, and within that community, it is largely law enforcement agencies who are represented on the Advisory Policy Board. The historical insistence on law enforcement agencies for complete control over their information processes is reflected in the existing definition of user.

But CCH is not primarily for law enforcement users. Whether or not CCH continues to be part of NCIC, some means of strengthening the advisory role of the rest of the criminal justice system for CCH is needed. Furthermore, additional participation may also be desirable. Several local criminal justice agencies (Alameda County, California's CORPUS System, for example) have appointed citizens not employed by criminal justice agencies to their advisory boards. Their experience has been that inclusion of such groups is initially uncomfortable, in that issues that might otherwise be avoided in a club-like atmosphere of like-minded individuals are forced onto the board's agenda. But, on the other hand, generally acceptable solutions have been found that have stood the test of the inevitable public scrutiny.

Thus, it may be fruitful to examine alternatives to the present advisory board. At the opposite extreme would be an independent Executive Policy Board with substantial authority over policy decisions and ultimate responsibility for system operations. There are many alternatives between the extremes which might be explored in a future assessment.

ISSUE

What oversight mechanisms are needed to ensure that the CCH system will operate in the overall public interest?

SUMMARY

The history of computer systems parallels that of other institutions; they routinely fail to record and analyze their failures. In large systems it is difficult to assign responsibility for system shortcomings. Exercising effective oversight over such a system challenges the intellect of experts and the patience of ordinary citizens.

The purpose of oversight is first, to assure political executives, managers, Congress, courts, and the public that the system is operating within boundaries defined by Congress. Second, oversight mechanisms can alert Congress and the public to system problems which emerge in the course of operation.

Oversight is closely linked to system audit since audit is one of the strong mechanisms available for disclosing system problems. The present NCIC regulations do not provide for Federal audit of NCIC operation. Beyond Privacy Act reporting requirements for system uses and new systems involving personal records, no public disclosure of system operations is mandated. Therefore, it is difficult to believe that there is adequate information available for effective executive branch, congressional, press, or public oversight of the system's activities. Justice Department and FBI officials, however, believe this problem is met by public relations activities for purposes of educating the public through speeches, lectures, films, and invited public observance of meetings of the NCIC Advisory Policy Board.

Among the mechanisms which could provide Congress with additional information by which to judge system operation are mandated management reports on system operations and ran-

dom audits of CCH files and transactions by an external group of auditors, such as the GAO. However, additional legislative authority may be required to provide for audit and access to records held by State or regional criminal history repositories.

QUESTIONS

1. What provisions should be made for legislative oversight, apart from normal Federal and State appropriation processes?
2. Is establishment of a special legislative watchdog agency for this purpose justifiable?
3. What monitoring and reporting procedures regarding system operation and audits are required to allow effective congressional or public oversight?
4. What audit mechanisms should be established for the system?
5. What further legislative authority, if any, is required to support audit requirements?

DISCUSSION

The history of computer systems parallels that of other institutions; they routinely fail to record and analyze their failures. A survey¹⁹ of the American Federation of Information Processing Societies conducted in 1971 found that 34 percent of the American adult public had problems in the recent past with a computer. Most of the problems related to computer billing errors. Yet a visit to any of the major credit card companies in the United States and Canada would find none had ever analyzed why the errors occur.²⁰ The attitude is widespread that errors simply don't occur, if they do occur, they are too insignificant and random in character to worry about. Errors are commonly attributed to "human problems," not system design. Rarely is it publicly recognized that system errors are frequent, and that they are systematic, related to system design and corporate cost-decisions of senior management.

¹⁹ American Federation Of Information Processing Societies, *A National Survey of the Public's Attitudes Towards Computers*, Montvale, N. J., 1971.

²⁰Theodore Sterling and Kenneth C. Laudon, "Humanizing Information Systems," *Datamation Magazine*, December 1976.

In large systems it is increasingly difficult to find individuals responsible for system errors. Exercising effective oversight over such systems challenges the intellect of experts and the patience of ordinary citizens victimized by poor systems.

The present FBI message-switching plan²¹ does not clearly specify oversight mechanisms. The purpose of such oversight: 1.) to assure Congress and the public that the proposed system is operating within boundaries defined by Congress; and 2.) to alert Congress and the public to system problems which emerge in the course of operation.

The FBI plan suggests two internal audit mechanisms. One is an internal audit team "which will travel to the States to work with State representatives to ensure that the State is complying with established rules and procedures." Secondly, routine reports are mailed to each State of CCH records deleted from the CCH file by the FBI which, presumably, States can check against their own records and inform the FBI of errors. The proposed internal audits do not authorize public disclosure of system activity or system errors and difficulties. Therefore, it is difficult to believe these internal audits would allow effective congressional or public oversight of the system's activities.

Assessment of the NCIC/CCH plan should consider if the proposed internal audit mechanisms are sufficient to permit effective oversight of the system's operation by Congress and/or the public. The assessment should consider alternative audit mechanisms which may provide Congress with additional information to judge system operation. Two approaches seem possible here.

First, a management report on system operation with specific categories of information specified in advance by Congress. Such a report would, of course, include tallies of routine system activity, e.g., numbers of cases on file, participation levels of States (inquiries and submissions), etc. More important, the report should account for system irregularities, errors, and abuses. A report of legal actions against the FBI

²¹U.S. Senate. Hearings Criminal Justice Data Banks, Subcommittee on Constitutional Rights, Committee on the Judiciary, 1974, volume II. p. 992.

or State CCH repositories involving the NCIC/CCH file, an account of internal audit results concerned with data quality, confidentiality and security. The question of data accuracy seems especially important here. In light of the FBI approach to the CCH records, that, basically, it has custody of State records, it appears that, for purposes of auditing, the FBI would in practice construe "accuracy" as the degree to which FBI and State computer files agree. * But equally, if not more important, is the extent to which CCH files agree with local police arrest and court disposition data.

A second possible congressional oversight measure is a random audit of both NCIC/CCH and State CCH files by an external group of auditors such as the General Accounting Office (GAO). Banks are routinely required to file such reports, and in certain circumstances are subject to Federal audits on demand. If criminal records are thought to be as important as bank records, if the potential for abuse is large, then such a Federal audit is in order.

However, Federal legislation may be necessary to provide the GAO with adequate authority to carry such an audit. In a letter²² to the Senate Subcommittee on Constitutional Rights, Committee on the Judiciary. The Comptroller General advised:

we believe explicit access to the necessary criminal history data should be provided to our office in this legislation because of the sensitive nature of the data involved. We also need access to the records of all non-Federal criminal justice information systems subject to the legislation for the purpose of evaluating the Attorney General's or the Federal Information Systems Board's operations under the legislation. An explicit statement of congressional intent regarding this matter should preclude future executive agency reluctance to allow us access to documents we believe we must review to properly discharge our responsibilities. "

*According to the FBI, for their purposes, "the accuracy of a CCH record is based upon the original source document, i.e., the fingerprint card submitted by the arresting agency, conviction data submitted by the courts and confinement data submitted by the corrections facility. The source document is the basis upon which the CCH record is prepared and submitted and remains in the custody of the original agency for ultimate verification if required. "

²²Federal Bureau of Investigation, "National Crime Information Center—Proposed Limited Message-Switching Implementation Plan, " April 14, 1975 (Revised).

Managing Agency

ISSUE

What are the requirements for an agency to manage the CCH System?

SYSTEM

By some standards, the FBI is uniquely qualified to run the CCH program; they have the advantage of the cooperation and respect of law enforcement agencies throughout the country; they have an extensive fingerprint identification function which is necessary to support effective use of CCH where identity is in question; and the transfer of CCH to some other Government agency might be viewed with some concern by the law enforcement community. By other standards, and in light of changing public attitudes towards privacy, civil liberties, and governmental controls, the FBI is placed in a position of great conflict of interest in bearing these records management responsibilities in addition to its primary investigatory responsibilities and its responsibilities for other non-criminal records. An argument can be made that higher public confidence would be attained by placing CCH operations in a more neutral agency.

The responsiveness of FBI management to the needs and priorities of the State and local criminal justice agencies is also in question. Some feel that NCIC is at a disadvantage since it must compete for priority with internal FBI data processing applications because it is run, by and large, as an internal FBI operation. The NCIC Advisory Policy Board is supposed to provide guidance to the FBI Director on the relationships of NCIC with local and State systems. It has been suggested that the Board could carry out those functions better if it were given a more direct role in setting system priorities and direction.

QUESTIONS

1. To what extent, if any, do the FBI's responsibilities as an investigatory agency conflict with its responsibilities for the maintenance of noncriminal files, records of criminal history, and the production of criminal statistics?

2. To what extent, if any, would separation of these functions into relatively autonomous organizations reduce the potential for abuse of power?
3. Does the investigatory nature of the FBI inhibit individuals in the exercise of their rights to examine and challenge information in their files?
4. To what extent, if any, does the FBI's extensive identification capability argue for keeping CCH organizationally within the FBI?
5. To what extent, if any, does the respect and cooperation afforded the FBI by law enforcement agencies throughout the country give them important advantages as CCH system manager?
6. When all of NCIC is considered, what additional advantages of FBI operation come forth?
7. Could the FBI's management of CCH be more responsive to the user community?
8. Is NCIC in conflict with internal FBI data processing requirements with regard to priority and budget to the disadvantage of NCIC users?
9. Is there a need to increase the authority of the NCIC Advisory Policy Board to make it independent of the FBI?
10. What advantages and disadvantages would be associated with placing management responsibility for CCH in: another part of the Department of Justice; a congressional board or corporation; or an entity established by a consortium of States. What other organizational options are feasible?

DISCUSSION

Currently, the NCIC (which includes eight other files besides CCH) is organizationally located within the FBI and operates much as a division of the FBI whose director is responsible to the Director of the FBI. There is an Advisory Policy Board composed of 26 members, 20 of whom are representatives of local, State, and regional users, and the other 6 members are appointed by the FBI. The Advisory Policy Board reports directly to the Director of the FBI.

The historical experience in the United States is that law enforcement agencies demand control over their investigative and other information handling procedures. Unlike other agencies at State and local levels, such as welfare, health, employment, and other information gathering State agencies, police, and to a lesser extent the other criminal justice agencies, have vigorously guarded against the intrusion of civilian oversight, handling, or control over law enforcement information. During the early computer years, and continuing to the present, this demand for near complete autonomy and total control has meant computer operators, even programmers, were required to be employees of law enforcement agencies. The demand for autonomy and control by law enforcement agencies in the handling of criminal information was generated in part by their desire to ensure the timely availability of the information. But it has also reflected a broader societal concern that said, in effect, only the police would be trusted with this information.

There are a number of reasons why both public opinion and the opinion of experts have begun to challenge the notion that law enforcement agencies (particularly the FBI) should be solely entrusted with the responsibility of gathering, storing, and retrieving criminal information. There has been (and likely will continue to be) a change in the political environment: recent history suggests that the FBI and other law enforcement agencies have used information systems (both manual and automated) for the pursuit of political goals.

The changing political environment has caused many to wonder if there can be sufficient public acceptance of the FBI's role as developer and manager of a national message-switching capability for criminal histories. If, as the FBI proposed, the CCH message-switching capability is added onto the current FBI-NCIC operation, what will prevent future misuse of the system? How will Congress exercise control and oversight, and how can such a system be made accountable to both Congress and the public?

These concerns, which essentially involve questions of political trust, are relevant to organizational issues because some ways of organizing the proposed message-switching capability may be efficacious from the point of

view of control, oversight, and accountability, than other forms of organization.

A second set of concerns argues for serious consideration of the organizational location question. It has been argued that the FBI is burdened with too many contradictory—or at least conflicting—responsibilities. The FBI is an investigatory agency which also bears a heavy responsibility for the maintenance of criminal records, stolen property records, and the production of criminal statistics. It is also involved in a number of programs involving training of State police officials, maintenance of an extensive forensic laboratory, and significant local aid programs.

A widely respected principle of organization suggests that unique functions (like investigation as opposed to criminal statistics) be embedded in specialized and relatively autonomous social units. Separation of the CCH system from FBI management would have serious implications without doubt. Firstly, there are the operational problems that may be incurred by organizational separation of CCH from the fingerprint identification services of the FBI. Close technical coordination with the rest of NCIC would have to be maintained to prevent awkward and expensive interface problems for the users (unless all of NCIC were moved to other management). The benefits of

the FBI's long involvement and rapport with local law enforcement agencies would be lost. Perhaps most important, the implied criticism and official endorsement of various group's suspicions of the FBI might have very high political costs. Nevertheless, because of the fundamental issues discussed above, other management structures should be examined.

The alternatives considered need not be limited on the basis that NCIC requires law enforcement management. If the system is regarded as a utility to the criminal justice system and the communities which it serves, the alternatives of control might be considerably greater. Some readily apparent alternatives are: the criminal information function might be continued as a responsibility of the FBI; it could be separated entirely from the FBI and organized as an autonomous division within the Department of Justice; it might be organized as a congressional board or corporation; and finally it could be developed as a consortium of States.

The relevant criteria on which to judge these or other organizational alternatives would include the following: degree and likelihood of effective accountability, oversight, and responsiveness of the criminal justice information process; convenience of funding; and appropriate division of authority between States and the Federal Government.

THE PLANNING PROCESS

Participation in Planning

ISSUE

How can the needs and interests of the various levels of Government, the law enforcement-criminal justice community and other stakeholder groups best be accommodated in the planning and design of the contemplated system?

SUMMARY

The Justice Department is now in the process of developing a blueprint for CCH. It is anticipated that this blueprint will present a new pro-

posal for decentralized CCH, and will include a plan for telecommunication,

However, the essence of the CCH system is that the primary sources and users of the data are the State and local law enforcement and criminal justice agencies. The history of CCH development has shown the importance of the States' participation in the planning process. It is questionable that a blueprint for a workable system can be created without their playing a direct, perhaps even principal role in the planning. This should be through a process which includes and integrates the views of a broad cross-section of interest groups and categories of citizens and decisionmakers in Government and

elsewhere in society who will likely be affected by the future development and use of the CCH system and related information systems.

The nature of the information in the CCH system has raised public concern and debate about privacy and due process. Special interest groups and others have had the opportunity to express their views at several congressional hearings. But there has not been any mechanism for involving these groups in the planning process. Such involvement may be necessary to the development of a workable system,

Also to be considered in the planning process should be the public at large. It would be valuable to disseminate information on the proposed CCH system and to assess the views of the public through various forms of citizen participation.

QUESTION

1. To what extent should the Federal Government dominate the CCH planning process?
2. How can rich States and municipalities, poor States and municipalities, and advanced and backward criminal justice systems be properly represented in the planning and design process?
3. Has there been any citizen or public interest group participation in the development of CCH?
4. What participation by citizens or public interest groups might be appropriate in future CCH planning?
5. What mechanisms for informing the public about CCH and obtaining participation in planning might be appropriate in the future?

DISCUSSION

Two major themes have reappeared throughout this report. Firstly, the State and local agencies of the criminal justice system; police, courts, prosecution, and corrections, are the primary users of criminal history information in the system. They are also the basic source of the data entries that make up these records. Furthermore, the serious problems of data quality plaguing criminal justice recordkeeping can be solved only by the efforts by these agencies. The

second theme has been that the CCH system cannot be considered the exclusive province of the criminal justice community. The general public has a direct interest in it because of the very nature of the data and its use in decision-making for criminal justice, employment, licensing, and other noncriminal justice purposes both public and private, as well as the access afforded to the press in varying degrees by the various States.

At the Federal level, there are three additional stakeholders. The FBI, as operator of NCIC/CCH, has a clear interest. The LEAA, with its major Comprehensive Data Systems Program for stimulating and funding the development of a State and local information system infrastructure, and its responsibilities for promulgating and ensuring compliance with regulations for criminal justice information systems is an additional stakeholder. In addition to these two components of the Department of Justice, there are the numerous Federal agencies with law enforcement powers who have an interest in the system as users.

With all of these diverse stakeholders, it should be obvious that the type of process employed for system planning, system modifications, and decisionmaking can have a very significant impact on the acceptance of the system, on the speed and smoothness of its implementation, and on its ultimate viability.

At the present time, the primary mechanism for system planning is the "blueprint" activity in the Department of Justice. This effort is being conducted by Justice and FBI staff, although it has had the benefit of visits to numerous State and local user agencies. * However, any plan, no matter how well founded, is bound to have controversial elements. Therefore, some thought should be given now as to the extent to which other stakeholders should be included as principals in this planning process and as to the nature and extent of a ratification process among the stakeholders will be required.

The question of participation by stakeholders arise from another consideration as well. As discussed under the section on Transition Planning

● See appendix B for a summary prepared by the Justice Department of the viewpoints expressed by State officials during these visits.

(see p. 40.), there will be a long transition path between today's criminal records system and an eventual smoothly functioning CCH system. Numerous pitfalls are inevitable along this path and modifications in system operation, procedures, and design, perhaps large ones, are inevitable. There appears to be a need therefore to have a continuing planning process rather than a one shot "blueprint." The nature of this process, and its relationship to the operation of the system also needs further examination.

Technical Alternatives

ISSUE

What technical alternatives to the proposed message-switching system might offer advantages when the full range of system requirements and social concerns are considered?

SUMMARY

The need for message traffic between States is inherent in any system based on decentralized CCH files. The proposed FBI message switching would provide telecommunications for this message traffic in a manner that would route all traffic through a "hub" under control of the FBI. This approach would integrate the CCH traffic into the existing NCIC communications network and would provide the service at no charge to the States. However, the message-switching concept has raised a furor, in part because of concern that the resulting CCH system would be equivalent to a national data bank even though the files are physically decentralized, and that control of the message switch would give the FBI excessive control over the user agencies.

Alternative approaches to managing message traffic are available that might relieve some of these concerns, while raising questions of their own. Grouping of States for CCH exchange into a number of regional networks rather than one national network may also have some advantages that should be explored.

The need for positive identification of individuals before criminal history records can be applied with confidence to criminal justice decisionmaking has been discussed since the early days of project SEARCH. At least one State,

New York, requires positive fingerprint identification and has set up an intra-state facsimile network to facilitate identification within 3 hours. Projection of this requirement nationwide could lead to extensive additional telecommunications requirements. New technology offers some promise, and needs further exploration.

QUESTIONS

1. To what extent could the message-switching system be designed to prevent or detect illicit monitoring of CCH message traffic by the message switch operating agency?
2. To what extent might the system be vulnerable to monitoring or tampering with CCH files by unauthorized persons; requiring additional physical and data security measures?
3. What are the advantages and disadvantages in cost, operational characteristics, and auditability of a multinode distributed data network which would not require all messages to be routed through Washington?
4. What advantages and disadvantages, if any, would regional systems have with regard to economy, ease of management, responsiveness to local needs, protection of privacy and accountability and resolution of conflicts between units of Government?
5. Might a regional configuration obviate the need for a national pointer index by permitting economical broadcast inquiry to the regional systems?
6. If some smaller States chose to remain with manual criminal history records, would regional or national computerized pointer to these records adequately serve the needs of the other States?
7. How soon would the fingerprint and facsimile technologies be available for criminal justice use in a cost-effective manner to satisfy the identification requirements accompanying CCH?
8. What are the likely changes in cost of these technologies with time?

9. **What will be the effect of these technologies on the optimum national fingerprint system with regard to centralization or decentralization?**
10. **What consideration, if any, should Present CCH system planners give to these technologies?**

DISCUSSION

There is no doubt that present technology in data processing and communications is adequate to meet NCIC system performance requirements. Furthermore, over the past 10 years, the cost of data processing technology has been decreasing continuously. In particular, the technology associated with digital communications has undergone major changes which make the concept of distributed data processing more realizable from a cost point of view.

However, it is not so clear that present technology and system design and development tools and techniques are able to ensure adequate controls and protection to ensure the confidentiality of the information as it passes through the system, is stored on tapes and discs for rapid access, or is archived for historical purposes.

At this time, when the alternatives for implementation of CCH are being re-examined, some time should be given to looking at the possibility that newer technology could provide a more effective means of meeting the systems requirements or relieve some of the serious problems of social concern about the system.

MESSAGE SWITCHING

Message traffic between NCIC user agencies is a fundamental aspect of the system. In addition to routine administrative traffic, there are two important sources of operational message traffic between NCIC user agencies. The first is concerned with validation of NCIC "hits." For example, if a routine NCIC inquiry about a person reveals that the NCIC wanted person file lists him as the subject of an arrest warrant held by the Chicago Police Department, the inquiring agency must contact the Chicago PD directly to determine if the warrant is still valid before it can take action. Rapid and direct communica-

tions for this purpose is obviously necessary and can minimize the likelihood of a stale or inaccurate record leading to an improper action on the part of the recipient agency. A second source of message traffic between user agencies is associated with any concept of decentralized CCH, in which criminal histories on file in one State must be communicated in response to inquiry from another State. These messages are presently handled either on the National Law Enforcement Telecommunications System (NLETS), by mail, or by direct telephone communication.

The FBI's proposed Limited Message-Switching Plan would provide for transmission of these types of messages over the NCIC telecommunications network in addition to the current traffic of messages transmitted to and from the NCIC files. The term "message switching" refers to the routing of messages between user criminal justice agencies by means of the NCIC communications network and its central computer. The communications network can be viewed as a wheel with the FBI computer as the hub and the communications lines leading to each of the States as spokes. Transmission of data messages between agencies over this network therefore requires transmission from the inquiring agency to the hub and then retransmission to the addressed agency. Replies would operate the same way. Use of the NCIC communications network in this fashion could be a rapid and economical way of managing the system's message traffic.

Although the message-switching approach to data communications is becoming quite common, it has encountered potent opposition when applied to the NCIC situation. One primary reason for this opposition is concern that the FBI, in managing the message switch, would obtain excessive control over the user agencies and an opportunity to monitor the traffic for political purposes. This opposition is also fed by a fear that message switching would provide the capability of integrating CCH data held by the States for purposes not intended for the system and that consequently CCH could become an uncontrollable national data bank. In this respect message switching for NCIC has become associated with more 'generalized concerns about the creation and abuse of national data banks in our society.

The choice of technological configurations for the CCH system can have a very strong interaction with the organizational and social architecture of the system. The centrally controlled features of the proposed message-switching plan are inextricably linked with the organizational assumption that the system is to be operated by the FBI and funded by the Federal Government.

Other technical approaches to managing message traffic between users may be feasible that would not require traffic between States to be routed through a central hub, with its overtones of Federal control. At the same time, such a configuration would be likely to place more responsibility on the States for traffic logging and for identifying and correcting errors in the CCH index. Also, removal of the Washington hub for message traffic would tend to focus oversight attention towards the States.

With all of these interactions as well as considerations of security and economy in mind, alternative technical approaches to message switching should be explored.

ALTERNATIVE SYSTEMS CONFIGURATIONS

Three general configurations for a "national" CCH system can be contemplated. On one extreme is the centralized data base; on the other, the completely decentralized system in which record segments, identified from a central index, are collected from the various States and assembled at the site of the inquirer. In the middle is the 1975 FBI proposal of State-held records on single-State offenders and centralized records on multi-State and Federal offenders, all controlled through a centralized index.

The centralized data base concept is the one presently in operation. Its deficiencies are well demonstrated. It requires complete duplication of records at the central location and a means of maintaining their currency in addition to the maintenance of the State files. The States lose operational control of the dissemination of their data. For both political and economic reasons, many States have not joined the national system.

The completely decentralized system would leave all criminal history records in State repositories with only Federal offender records and a pointer index at the national level. Local crimi-

nal justice officials argue that the State is best qualified to interpret information on offenses occurring within the State, and consequently it is the most appropriate and effective repository for such records. Furthermore, decentralization would retain for the States much more effective control over the dissemination of records than is possible with a centralized system.

On the other hand, the fully decentralized system with centralized message switching would have the maximum amount of, and expense for, message traffic of all alternatives.

The middle ground involving centralization of multi-State offender records has the potential advantage of reducing the amount of message traffic as compared to the fully decentralized concept. However, it also partakes of the disadvantages of the fully centralized system discussed above.

A concept of regional sharing of information, with regional criminal history repositories interconnected in a national system, appears to have few, if any, advocates at the present time. However, if criminal activity has a regional character, as the fragmentary data available suggests, then suitably chosen regional repositories would find that most inquiries are intraregional. Most inquiries to the national pointer index would indicate no out-of-region record, and national message traffic could be significantly reduced. Existence of regional repositories might also benefit smaller States that otherwise would be reluctant to computerize their own records.

The political, organizational, administrative, and economic dimensions of regionalization have not been explored, however.

Considering the interplay already discussed between the technological, political, organizational, and social architectures of this system, detailed examination of these alternatives should be explored further before a choice is made.

IDENTIFICATION TECHNOLOGY

Identification technology is an area in which future technology developments could make a significant difference. As discussed previously in this report, one of the weaknesses of the CCH system as currently conceived is that rapid identification by fingerprints is not available on a

routine basis. The two bottlenecks to achieving this are the time-consuming and expensive process of manual technical search of fingerprint files, and the present high cost of facsimile transmission of fingerprints.

Technology offers the prospect of solving both of these problems. The FBI has invested heavily in the past 10 years in the development of the FINDER system for fingerprint encoding and search. This system, now being installed in the FBI Identification Division, is almost completely automated. Total equipment and software costs until completion have been estimated at \$57.2 million. In addition, the training and skills required to operate the system are extensive. Nevertheless, a highly automated fingerprint identification system is on the verge of being demonstrated to be economical, at least for the FBI's very large collection. More recently the Canadian Government has ordered a similar system to be installed at the RCMP headquarters in Ottawa. This system, with a file of 2 million fingerprint records is about the size that would be required by a State identification bureau. The problem of economical fingerprint transmission still remains. But here too, recent developments in digital facsimile systems, including some technology developed with LEAA support, shows promise of leading to practical and economical hardware.

It is not clear without further study how soon these technologies are likely to be available and economical enough for widespread use. Furthermore, depending on the relative costs of the FINDER and facsimile technologies, they could have the effect of encouraging either centralization or decentralization of the Nation's fingerprint identification activities.

Transition Planning

ISSUE

Considering the significant change in criminal justice recordkeeping that CCH implies and the long transition period before it can be implemented fully, what aspects of this transitional period require planning now?

SUMMARY

Much discussion of CCH tends either to criticize problems and imbalances of today's system environment or to focus on design of an ultimate system operating at some time in the future. It is tacitly assumed that a transition path between the two can be found. However, explicit planning will be necessary to avoid dangerous pitfalls along this path.

The gradual conversion from manual to automated criminal justice recordkeeping is accomplishing a steady improvement in both the accuracy and completeness of records. At the same time, more extensive use of the records has been made possible. There is good reason to question whether the quality of today's records is adequate to support the uses to which they are beginning to be put in criminal justice decision-making. System planning should recognize that there will be an extended period in which most criminal history records do not meet standards of quality. Interim procedures and monitoring may be desirable, as is coordination of the pace of implementation of improved intrastate information systems with the rate of interstate CCH implementation.

A large number of cost-related questions not currently addressed by the FBI need to be addressed. The rate of development of State systems needed to support CCH is in large part determined by Department of Justice policies and funding which affect systems development primarily. Yet the States have concerns about the operating cost impact of the new systems and may resist Federal requirements, such as audit, that could add to their operating costs.

Also related to CCH planning is the relationship between the FBI's Identification Division, the State Identification Bureaus and CCH. For the next 5 years or more, until CCH is substantially operational, the manual rap sheet activities of the Identification Division will have to be continued. In the long run, maintenance of the two systems will obviously be duplicative. There is no FBI plan dealing with this question.

Finally, there are some questions about poor response time in the existing NCIC system. FBI statistics made available to the working group

support the inference that long delays in system response have been caused by system outages resulting from both hardware and software failures. While a long-term solution to these problems should be addressed as part of the overall planning process, it will be 3 to 4 years, if not longer, before longer term plans can have effect.

It will be highly desirable if all of these transition questions are addressed in the blueprint for NCIC/CCH now being developed by the Justice Department.

QUESTIONS

1. What planning exists or will be developed in the CCH blueprint for ensuring the improvement of CCH data quality and adequately minimizing the effects of poor data quality?
2. What is the proper balance of emphasis between building intrastate CCH capability and stimulating interstate dissemination?
3. Are special audit procedures required to monitor the social risks of CCH during the early years of operation?
4. How will the CCH blueprint plan to incorporate States that choose not to computerize their criminal history records?
5. Will the CCH blueprint include cost estimates and a financing plan for the system?
6. What will be the short- and long-term relationship between the FBI Identification Division and the CCH program?
7. What is the relevance, if any, to dissemination of criminal history information from the Identification Division files of questions that have been raised regarding CCH dissemination?
8. What would be the advantages and disadvantages of integrating CCH and Identification Division record formats?
9. What would be the advantages and disadvantages of making CCH an integral part of the Identification Division data base?
10. What would be the advantages and disadvantages of allowing State Identification

Bureaus to have remote online **access to** the Automated Identification Division System (AIDS)?

DISCUSSION

The Justice Department is now in the process of developing a blueprint for CCH. It is anticipated that this blueprint will present a new proposal for decentralized CCH, and will include a plan for the necessary telecommunications.

Because of the significant change in criminal justice recordkeeping that CCH implies, and the long transition period that will be required before the system can be fully implemented, it is crucial that the CCH blueprint should lay out a plan dealing explicitly with how the transition will be managed.

The following pages deal with several transition issues: the problem of poor data quality during the transition period; the problem of managing a mix of manual and computerized record systems in different States; the issue of system costs and financing; the relationship between the CCH program and the FBI Identification Division; and finally, the issue of response-time problems in the existing systems.

TRANSITION FROM MANUAL TO COMPUTERIZED RECORDS

In the typical system with a large data base, the transition from manual records to computer-based records is a period in which many errors and gaps in the manual records are systematically uncovered. System managements differ in the treatment of deficient records: the files may be expunged entirely, they may be flagged but entered in the system, or they may be reconstructed and then entered. Each strategy presents certain costs and benefits to management. The transition to computerized records offers management the opportunity to significantly increase the quality of the data base. This process is occurring as States and local agencies convert their criminal history records to computerized form. The quality of criminal history records is certainly being improved. The problem of poor disposition reporting, for example, was far worse before CCH.

Interstate message switching differs from other existing and proposed national data banks because the potential for harm to individual

citizens is very large. While erroneous and incomplete information in private credit data banks may lead to credit difficulties, criminal history data of poor quality can lead to arrest and incarceration.

Even if development of an interstate message-switching capability eventually may improve data quality, there will be a transition period of several years during which the system will have to rely on data of varying quality. Consequently, the role of the CCH program in improving the quality of criminal history data should be recognized explicitly in the planning process. A plan to bring the data up to acceptable standards, to monitor the quality of data over time, and to minimize the effects of data imperfections is needed. Without such a plan, it will be reasonable for critics to question whether the system's data quality will ever come under control.

MIX OF MANUAL AND COMPUTERIZED RECORDS

The rate of records automation has varied widely among the States because of their wide differences in size, funding, and priorities. Some smaller States will probably not computerize their criminal history records for many years, if ever. A systems approach is required to deal with this difference in the speed of implementation. Allowing the computerized pointer file to contain pointers to records held by both computerized and manual states might be desirable. In any case, the CCH blueprint should deal with this aspect of the system.

SYSTEM COSTS AND FINANCING

The blueprint for the proposed system must answer a large number of cost and cost-related questions not currently addressed by the FBI. In the first instance, an estimate of costs for *all* system participants (or total system cost) must be included. The cost projections should distinguish between fixed costs and operational costs (entry and file maintenance costs, programing and personnel costs, and audit costs).

Second, acceptable use-cost concepts must be established. Questions of equity arise when some States who do not develop extensive CCH capability will nevertheless be able to use the

files of other States who have invested heavily in a State CCH capability.

Third, the blueprint should clarify the Federal funding for the operational costs of maintaining CCH files in a manner acceptable to the existing Federal standards. Clearly, the States are resisting acceptance of Federal dedication standards, and may well resist Federal auditing requirements. Therefore, these costs may have to be assumed by the Federal Government. The current FBI plan makes only a cursory remark about auditing costs. The Department of Justice has estimated that when CCH is fully operational a permanent FBI audit staff of five people could perform the audit function, with an annual travel cost of \$90,000. This estimate does not include any of the State and local auditing costs, which are likely to be much larger.

Fourth, there is an obvious relationship between distribution of costs and organizational/accountability issues which must be explored. If the States are expected to shoulder a major part of the fixed and operational costs, and if they are to bear ultimate responsibility for the adequacy of the data base with respect to a variety of criteria, then it would seem that States should have a higher level of control or authority in operation of the system than currently envisaged by the FBI. Otherwise States will be in the position of being held accountable for system shortcomings without having the authority to remedy the defects. Thus questions of cost, organization, and accountability are inextricably linked.

THE FBI IDENTIFICATION DIVISION

The FBI's Identification Division has maintained a central index of fingerprint records on criminals and manual criminal history records or "rap sheets" since 1924. These files now contain records on over 22 million people. They include not only arrestees and offenders, but military personnel, Government employees, aliens, people with security clearances, and those with voluntary personal identification cards. Until CCH, these FBI files provided the only mechanism for determining if an individual had a criminal history when an inquiring agency could find no prior record in its own State files,

The FBI will continue to respond to inquiries to the Identification Division file until "a suffi-

cient number of CCH records are amassed to satisfy operational law enforcement needs. ²³ Even if the States begin to join CCH at an accelerated rate, this period is likely to be a minimum of 5, perhaps 10, years.

Even with a decentralized CCH program, the FBI Identification Division will play a central role. While States with their own records of offender fingerprints will be able to identify offenders with prior records in the State, checks with the master fingerprint file will still be necessary if no fingerprints are on file in the State. Thus the procedure of submitting fingerprint cards to the FBI on offenders with no State record must be continued. Only in the unlikely event of extreme improvement in accuracy and cost of electronic processing of fingerprints could a centralized national file be eliminated in favor of multiple search of all State files.

The FBI is in the process of automating its identification process through a program called "AIDS" (Automated Identification Division System). AIDS will eventually provide for automatic name and fingerprint searching at the national level. While discussions with FBI representatives have clearly identified the close link between the Identification Division program and CCH, OTA is not aware of any long-term FBI plan encompassing both activities. Since it does appear that the two criminal history files will eventually become duplicative, and the fingerprint search function is so central to both, it seems necessary that long-term planning in the FBI and the Department of Justice should describe the eventual relationships. This would apply particularly to the blueprint for CCH now being prepared by the Department of Justice.

Another reason for examining both activities together is that the arguments concerning oversight and accountability for protection of individual liberties may apply with equal force to both systems. Special auditing and management procedures that may be determined to be needed for control of CCH information dissemination may therefore apply equally to dissemination of Identification Division criminal history files as well.

²³Federal Bureau of Investigation, "National Crime Information Center—Proposed Limited Message-Switching Implementation Plan," April 14, 1975 (Revised).

NCIC RESPONSE TIME AND DOWNTIME

There have been numerous reports of long delays, some 10 minutes or more, in response to NCIC inquiries. Furthermore, the system's downtime level is thought to be excessive. The working group received from the FBI some statistics regarding both response time and downtime." This data indicated that the NCIC central facility was unavailable to process transactions because of unscheduled downtime of an average 23.9 hours per month during the first 9 months of 1977, for an average in-service availability of 96.7 percent. There were an average of 57 outages in excess of 2 minutes in the average month. The average duration of these outages was therefore 25 minutes.

From the viewpoint of the user making inquiries to the system, this downtime results in delays at least as long as the outage. Consequently, the data suggests that over 3 percent of the NCIC transactions may have incurred delays of several minutes because of system outage. The local agency experiencing this delay receives no message explaining the nature of the problem or the delay to be expected. The user is thus left with uncertainty about the delay that is probably as operationally serious as the delay itself.

When the central processor is in service, the data provided by the FBI suggests that on the average, response time should be quite good. However, data on the peak busy period processing load would be needed to confirm this impression.

A long-term solution to NCIC'S response time and downtime problems should be addressed as part of the current FBI computer system planning and the NCIC "blueprint" exercise under way in the Department of Justice. However, it should be recognized that it is likely to be 3 to 4 years, if not longer, before these longer term plans begin to have their effect.

In the interim, the FBI has submitted a Request for Proposal (RFP) for a front-end communications controller which would be used in conjunction with the IBM 360/65 central proc-

²⁴Letter from Jay Cochran, Jr., Assistant Director, FBI Technical Services Division, Nov. 10, 1977.

essor for the purpose of relieving that machine of the burden of managing the NCIC communications traffic. OTA's working group members did not conduct an investigation into the reasons for the alleged downtime and response time. However, given the data provided in the RFP and the explanation which FBI officials made of their problems, and given the technical purpose of front-end processing, and its widespread use to perform economically the general housekeeping functions associated with message control, such a procurement request would be a common technological solution toward relief of such communications problems as are described for NCIC. The procurement, however, contained a provision for message switching as a mandatory option. The FBI's stated argument

for this was primarily economic: if message switching were to be authorized later, the option would have ensured minimum cost to its implementation. Inclusion of this option met strong opposition, as some saw it as a possible subterfuge to obtain message switching without authorization. The inclusion of the message-switching option ties this RFP into the CCH debate, and therefore delayed the procurement. The RFP was rewritten by the Bureau to remove all references to message switching and on April 24, 1978, was presented to the General Services Administration. As of December, procurement authority had so far been withheld pending resolution of a difference of interpretation surrounding the question of the exact nature of the procurement and procedures for obtaining it.

SOCIAL IMPACTS

Effects on the Criminal Justice System

ISSUE

In what ways, desirable or undesirable, might CCH cause, or contribute to, changes in the operation or organization of the criminal justice system?

SUMMARY

Practitioners and critics of the criminal justice system suggest that the traditional "due process" or "adversary" model of criminal justice is no longer appropriate for describing the reality of criminal justice decisionmaking. Organizational resource constraints and opportunities for discretion have increased the importance of administrative decisions in managing the workload of criminal justice agencies. CCH is an important tool supporting these mechanisms.

In the long term, CCH has the potential either to improve the quality of criminal justice decisionmaking or to introduce further inequities in the system. Careful investigation of its potential impact on administrative procedures is required.

QUESTIONS

1. Will the proposed CCH system strengthen trends towards administrative justice as opposed to traditional conceptions of legal due process, presumption of innocence, and full, fair, and open hearings?
2. What is the likely effect of the proposed CCH system on the administrative process and relationships between criminal justice agencies?
3. Will the proposed CCH system make it more difficult for former offenders to reintegrate into society and thus impede their rehabilitation?
4. What is the likely impact of use of CCH in criminal justice decisionmaking on case-loads, detention and prison populations, and requirements for judges and attorneys?

DISCUSSION

It is widely recognized by those who have examined the criminal justice system in detail that traditional, legal definitions of "due process" no longer characterize the bulk of criminal justice system activities. Such conceptions would re-

quire a presumption of innocence and truly adversary proceedings, full, fair, and open judicial hearings, free from even the taint of coercion, threats, or considerations of advantage either to the accused or the justice system. While a few accused criminals do receive such treatment, the vast bulk of the 5 million or so persons reported arrested annually do not. In most jurisdictions, from Manhattan to rural Wisconsin, over 90 percent of the convictions result from guilty pleas.²⁵

Police officials, criminal lawyers, judges, and scholars, who have observed the reality of criminal justice decisionmaking have characterized this system, variously, as "bureaucratic due process,"^{26 27} organizational due process, "2⁸ the "crime control model,"²⁹ and in the popular press as "assembly line justice."³⁰

At the heart of each of these descriptions is the notion that the criminal justice process operates under a presumption of guilt. The goals of the criminal justice agencies are rational/instrumental goals. The criminal justice process—in this view—is seen as a screening process in which each successive stage—pre-arrest investigation, arrest, post-arrest investigation, preparation for trial, trial or entry of pleas, conviction, disposition—involves a series of routinized operations whose success is gauged by their tendency to efficiently pass along cases to the next agency.

The period of the 1960's is very important for understanding current trends in criminal justice administration. It was a period of growing public awareness and fear of crime. This in turn brought crime to the foreground as a political issue, resulting in, among other things, a Presidential Commission on Law Enforcement and Administration of Justice. It was a period of

social strife among whites and blacks, and between anti- and pro-Vietnam War proponents. The activities of the police in particular were a focus of national attention both by those who saw them as brutal defenders of the status quo, and others who wanted to solve the crime problem by removing all constraints from the police. It was also a period of increased reports of crime, increased arrest activity of police, and resultant pressures on prosecutors, courts, and prisons to administer the large caseloads. The President's Commission released a report in 1967, *The Challenge of Crime in a Free Society*, which itself became an important trend-setting document both in terms of future policies and value assumptions on the control of crime.

The report recognized that criminal justice administration in this country is highly fragmented. Each of the 60,000 agencies involved had its own recordkeeping practices and needs. This observation contributes to the pressure for computerized criminal histories as a management tool for tracking persons through the maze of the justice system.

The report also recognized the problem of recidivism. About 68 percent of persons arrested for felonies the first time will be arrested at least one more time for a subsequent felony. This has added impetus to a program of computerized criminal histories both at the State and national levels, and also has led to the development of "careers in crime" programs both at the FBI and local levels which seek to ensure that repeat offenders are dealt with severely by prosecutors and judges.

The Commission also reported a lack of information, poor management, and lack of cooperation among agencies. This encouraged the establishment of new funding mechanisms to entice local agencies into compliance with Federal and State executive branch programs.

The recommendations of the President's Commission led to the rapid development of State CCH programs; criminal histories have come to play a central role in the administrative justice process. The nature of the treatment that an individual receives from the criminal justice system has come to depend strongly on the administrative screening of his criminal history records at numerous points in the process. (See *Information Needs*, p. 17, for discussion of the

²⁵Donald J. Newman, "Pleading Guilty for Considerations: A Study of Bargain Justice," *Journal of Criminal Law, Criminology, and Police Science* 46 (1956): 780.

ZbAb,h,s. Blumberg, *Criminal Justice*, Chicago: Quadrangle Books, 1970.

"Arthur Niederhoffer, *Behind the Shield*, Garden City, N. Y.: Anchor Books, 1969.

"Jerome Skolnick, *Justice Without Trial*, New York: Wiley, 1967.

"Herbert L. Packer, *The Limits of the Criminal Sanction*, Stanford: Stanford University Press, 1968.

"Jerome Skolnick, *Justice Without Trial*, New York: Wiley, 1967.

constitutional rights and data quality issues involved here.) Thus, CCH is an important, and successful tool supporting the gradual shift towards bureaucratic criminal justice processes. As the use of computerized records becomes more widespread and the workload of criminal justice agencies continues to increase, further applications of CCH as a management tool can be anticipated.

The availability of criminal history records to support criminal justice decisionmaking will necessarily change the quality of those decisions. To take just one example, consider the use of CCH to aid the decision to set bail. This will operate to increase the probability that persons with criminal histories meeting certain criteria would be detained. Two alternative consequences would flow from this result. Either detention facilities would become increasingly overcrowded or incarcerating officials would adjust their decisionmaking process so that some people who would be detained under current procedures would be permitted bail.

This sort of shift in decisionmaking might be in the direction of a more rational, fair, and explicit system, allowing officials discretionary decisions to be factually based on appropriate information about the individual involved. Certainly studies show that, at present, great inequities are observable in decisions for reasons having to do with social class, ethnicity, and a host of other nonlegal social distinctions.³¹ But it is also possible that one set of inequities will be replaced by another. For example, use of incomplete, inaccurate criminal histories has been attacked as systematically unfair in a current court case.³² A future assessment could examine the effect of CCH on this trend.

The Dossier Society

ISSUE

To what extent, if any, might CCH contribute to the growth of Federal social control, or become an instrument for subversion of the democratic process?

³¹Charles Bahn, "Sentence Disparity and Civil Rights," U.S. Commission on Civil Rights, December 1977.
³²Tatum, et al. vs. Rogers.

SUMMARY

Some possible consequences of new technological systems are of such magnitude that, even though speculative and remote, they deserve serious attention, particularly if the consequences have the potential to be irreversible. Falling into this category is the possibility that CCH might become part of a drift in bureaucratic growth leading to ever larger instruments of Federal social control, or even to internal subversion of the normal democratic process.

More explicit technology contingency assessment is required to permit evaluation of this issue.

QUESTIONS

1. To what extent, if any, does the proposed CCH system in combination with other Federal systems in the Internal Revenue Service, Social Security, HEW, and other agencies expand the potential surveillance capacity of the Federal Government beyond reasonable limits?
2. To what extent, if any, will the development of a national interstate CCH capability expand criminal justice demand for and use of CCH records?
3. Given the potential for linkage between the proposed CCH system and the many other, new, massive Federal data banks, to what extent is it advisable for Congress to establish an agency specifically charged with monitoring or controlling these systems?
4. Are the available oversight and auditing mechanisms strong enough to alert society to adverse consequences in time to avoid or reverse them?

DISCUSSION

Although American society rejected the idea of a national statistical-administrative data bank, it is apparent that through incremental *decisions* in a number of areas—HEW, Internal Revenue, Social Security, Occupational Health, and so forth—the building blocks of a national data bank are, or shortly will be, in existence. It is well known that the demand for information is often encouraged by the supply of cheap, reasonable quality information. And it is con-

ceivable that through the pressure of day-to-day administration of large Federal programs, or through popular political pressure, certain groups of Americans will be routinely tracked through Federal data banks. Fathers who have abandoned their families provide an interesting example of a group thought particularly anti-social by Federal welfare officials, the public, and Congress. The recent program established by HEW to compare local welfare records with Federal social security files in order to track down these fathers illustrates how a combination of political and administrative forces responds to the supply of information. Such a program would be inconceivable without extensive computerization of State-local welfare files. Moreover, there are no inherent limits on this process: popular passions, fed by the technical capability and supply of information, may gradually extend the dossier society to many population subgroups.

In such a context, CCH must be considered another important building block for a national data bank. The extensive use of CCH in law enforcement, criminal justice, employment, and licensing could be extended beyond present limits under pressure of new perceived needs. For example, CCH and the NCIC wanted persons and missing persons files could be used to assist in tracking and locating individuals exercising first amendment rights, and identifying members of political groups.

In exploring these possibilities, perhaps the limiting case is the possible abuse of CCH, and other systems with files on individuals, through internal subversion of the democratic process and/or cultural draft towards a bureaucratic leviathan. In the recent past, reports and hearings show that the existence of FBI criminal files, as well as some other Federal Government files on individuals, has proven a powerful temptation for some political executives to abuse the democratic process and threaten the civil liberties of Americans. In some instances, Federal administrators and other personnel with direct responsibility for the integrity of these information systems have indicated they often felt powerless or acted in concert with the abuse of these systems.

These possibilities may seem remote, but the magnitude of their consequences could be catastrophic. Furthermore, the ability of our social

organization to recognize and control the incremental growth of data banks has not been firmly demonstrated to say the least.

A future assessment should examine the vulnerability of CCH to these abuses, and the prospects of strengthening safeguards against them.

Privacy and Civil Liberties Trends

ISSUE

Is there a conflict between maintaining national privacy and civil liberties trends and decentralizing responsibility for the CCH system?

SUMMARY

The national dialog on computerized criminal histories has produced some slow progress towards achieving a recognition of the need for restrictions on the dissemination of records. The effect on the health of this movement of a possible decentralization of CCH to the States is not clear. It may become more difficult to maintain a national spotlight on these sensitive questions.

QUESTIONS

1. What would be the impact of decentralization of CCH on the opportunity for oversight of constitutional rights protection throughout the country?
2. Would it be more or less possible for interested groups to focus attention on violations or patterns of governmental abuses?
3. Would a decentralized system be more or less responsive to the privacy concerns of individuals?

DISCUSSION

The creation of a computerized file with criminal histories under Federal auspices has offered a unique opportunity to make some slow national progress toward achieving social goals of fairness, privacy, and freedom of information through statutory and administrative restrictions on abuses in use of personal records and on careless or malicious or unwise dissemination of records. It allowed, indeed forced, a long-needed dialog on the need for relevancy,

accuracy, and timeliness of information on people when it was used by those agencies which most intensely exercised the force of government. Many hundreds of studies, articles, essays, and speeches have analyzed the implications of these issues which were inherent from the beginning of NCIC/CCH.

Although reflecting diversity, this dialog, and the laws, rules, and judicial decisions it generated, moved the Federal and many State governments very far along the way towards a national information policy. In itself, it has helped to weld together the diverse political arenas in our society where these issues were debated. It energized reforms in other areas of recordkeeping and many of these are documented in recent reports of the Privacy Protection Commission.

Some analysis needs to be given to the health of this movement insofar as **law** enforcement, criminal justice records and computerized systems are concerned. Returning CCH files to the States or to another entity, under different umbrellas, might reduce the opportunity for over-

sight of the way important constitutional rights interests are being protected throughout the country. It is not clear whether interested groups would find it easier or more difficult to turn a spotlight on a violation or pattern of governmental abuses with the intensity sufficient to effect changes. Restructuring of NCIC might result in throwing such political interest groups into an arena dominated by influential police chiefs and political executives in the law enforcement and criminal justice agencies of each State. On the other hand, such a scenario might make it easier to advocate changes and promote oversight in areas of concern to constitutional rights groups and others concerned with maintenance of effective criminal justice systems.

A future assessment of this issue should **take** notice of identifiable trends in public attitude concerning civil liberties, fear of scientific-technological development, and towards increased levels of powerlessness and alienation with regard to political institutions. Such trends are evidenced by numerous surveys, reports, and legislative activities.