APPENDIX B

Pertinent excerpts from the Department of Justice Report: *Representative Viewpoints of State Criminal Justice Officials Regarding the Need for a Nationwide Interchange Facility.* March 6,1978

QUESTIONS PRESENTED AND SOURCES OF INFORMATION

In order to ascertain the needs of the criminal justice community, the Department of Justice and subcommittee staff officials visited 10 States during the period November 1977 through February 1978. The States visited were California, Florida, Georgia, Illinois, Massachusetts, Minnesota, New York, North Carolina, Texas, and Wisconsin. Department of Justice and subcommittee staff officials believed these States to have both representative qualities and relevant experiences in terms of the issues to be considered.

Specifically, while all of the States routinely used National Crime Information Center (NCIC) facilities in acquiring information for wanted persons, wanted properties, etc., all of the States also had fully developed State capabilities for the intrastate exchange of this type of information. All of the States had regular access to the NCIC-Computerized Criminal History (CCH) file, but only five States were "full" NCIC-CCH participants in that they were NCIC-CCH record contributors. Conversely, and for various reasons, five of the States were not contributing records to the NCIC-CCH file.

Indeed, these 10 States offered particularly valuable insights with respect to the NCIC-CCH issues because of the variety of experiences they had acquired in dealing with the CCH program at the State level; e.g., some States had a high degree of success in implementing the present CCH concept while other States had less success; some States were eager to participate in the NCIC-CCH program, while other States conditioned future participation on the need for a clear position being taken by the Federal Government, i.e., an unqualified commitment to the CCH concept.

Further, these States possessed representative qualities in terms of requisite criminal identification capabilities. Specifically, several States had already adopted and implemented progressive measures and capabilities, such as the: *single source* submission of fingerprint cards to the Federal Bureau of Investigation (FBI) Identification Division; the *single card* submission (i.e., the submission of a card only when the identity of the subject was questionable, etc.); while other States were only beginning to recently address the need for a modern State-level identification facility as a corollary to the effective statewide management of criminal records.

In the course of these visits, the Department of Justice and subcommittee staff officials asked State criminal justice officials a series of questions dealing with the needs of the specific State which the officials represented, and how such needs might best be satisfied. The principal questions were:

1. In discharging intrastate criminal justice responsibilities, is it necessary to acquire out-of-State criminal justice **data for (a) wanted persons, (b) wanted properties, and (c) prior criminal offenses?**

2. If it is necessary to obtain out-of-State information for (a) wanted persons, (b) wanted properties, or (c) prior criminal offenses, which data could be obtained satisfactorily by means of bilateral agreement between States? Which of this data could be obtained reasonably by means of regional arrangements? Must any of this data be the subject of a routine nationwide inquiry?

3. If a nationwide information interchange facility is required to exchange criminal justice information for (a) wanted persons, (b) wanted properties, or (c) prior criminal offenses, what is the proper and preferred role of any participating Federal agency? That is, should the role and responsibility of a participating Federal agency be similar to that of a participating State, or should the participating Federal agency have responsibility for the administration of the nationwide criminal justice information interchange facility?

4. If a Federal agency is to be responsible for the administration of a nationwide criminal justice information interchange facility, should that agency be one which does not have operational law enforcement responsibilities? More specifically, if a Federal agency is a proper and preferred agency to administer such a facility, should that responsibility be vested in the FBI?

5. What changes, improvements, etc., are needed in terms of the existing capabilities, procedures, etc., which govern the inter jurisdictional exchange of criminal justice information? What problems, if any, are associated with the present criminal identification process in which local criminal justice agencies submit identification requests directly to the FBI? Are the present methods of processing such requests adequate and responsive to the needs of the State criminal justice community? What alternative methods would be preferable?

6. Do the present methods associated with the collection, storage, and exchange of criminal records afford State officials adequate control over access to, and dissemination of criminal records? What, if anything, must be done to remedy any existing shortcomings?

RESPONSES OF STATE CRIMINAL JUSTICE OFFICIALS

Without exception, all of the State officials agreed that the convenient and rapid acquisition of out-of-State data pertaining to wanted persons, wanted properties, and prior criminal offenses was essential to the proper discharge of their statewide responsibilities. State officials emphasized the increasing level of contact between criminal justice authorities in their States with nonresidents, and offered convincing arguments that the equal treatment of offenders is in part dependent upon the equal availability of appropriate and relevant information at all stages of the criminal justice process,

With respect to the acquisition of criminal justice information, State officials emphatically rejected bilateral or regional arrangements for a variety of reasons. Frequently, the State officials cited shifting priorities within many States as a result of changes in administration, the tensions which occasionally arise between neighboring States, the fact that offenders with whom State criminal justice officials come in contact are not exclusively from any particular grouping of States, the constraining experiences and limited success associated with previous localized or regional undertakings, etc.

In strongly endorsing the need for a nationwide reference (index) capability for wanted persons, wanted properties, and prior criminal offenses, State officials repeatedly and without exception expressed a preference for a federally administered facility. The State officials frequently pointed out that a federally administered facility is “neutral” in terms of its dealings

with State agencies and tends to be uniformly responsive to all States. Further, recognizing the sensitivity of the subject matter which would be processed by such a facility, many State officials expressed the view that a federally administered facility would be subject to greater scrutiny and hence, would more likely be in compliance with existing laws, regulations, and policies than a facility administered by a non-Federal entity, such as a consortium of States, etc., (In responding to this particular question, State officials were asked to assume that Federal funds would be available to any nationwide servicing facility, whether administered by a Federal agency, or otherwise.)

While many State officials expressly or implicitly recognized that in the longer term a Federal **agency** other than the FBI could provide the services expected of a nationwide criminal justice information interchange facility, there was a clear consensus that the FBI should continue to provide such services in the foreseeable future. The State officials repeatedly stated that notwithstanding creditability problems which the FBI might have with some public or private organizations, officials, etc., it enjoys substantial creditability within the criminal justice community in terms of professional qualifications and capabilities. Some State officials appeared to be of the opinion that the question of the FBI's lack of creditability within the community at large is exaggerated, and insofar as they were concerned or insofar as the citizens of their State might be concerned, it was not a significant public issue. Nevertheless, virtually all of the State officials recognized the problems confronting the FBI, but believed that the establishment of proper oversight measures would be an appropriate response to most criticism of present or future servicing arrangements.

However, State officials were outspokenly critical of the Federal Government generally, and specifically of the Department of Justice, the FBI, and to a lessor extent, LEAA. Each of the following criticisms was frequently expressed by officials in many of the 10 States which were visited, and in some instances, the criticism was encountered in every State. The most important criticisms addressed:

1. The indecisiveness of the Federal Government in terms of its support for both NCIC generally, and the CCH program specifically. State officials frequently spoke of the degradation of NCIC services in recent years, and the apparent inability of the Department of Justice to establish a clear direction for the CCH program, In this regard it was learned that a number of States which are not presently contributing CCH records to the national system have already established operational CCH capabilities at the State level and are ready to participate in a decentralized CCH program. However, they will not do so until a clear policy decision is reached by the Federal Government.
2. State officials were critical of fragmented responsibility within the FBI with respect to criminal history records. Some were particularly critical of the fact that the Identification Division "rap sheet" operations was organizationally separated from CCH program operations; that neither the Identification Division, the CCH program, nor the NCIC Section of the FBI had authority to establish effective and binding priorities for system services; that the automatic data processing services, telecommunications services, etc., which support the activities of the States were subject to a decision process in which internal FBI needs were addressed *vis-a-vis* the needs of the States, etc.
3. The need to remedy a long-standing source of difficulty associated with the direct, routine, and frequently unnecessary submission of fingerprint cards from the arresting agency to the FBI Identification Division. Specifically, officials in every State endorsed an improved procedure by which arresting agencies within their State would submit fingerprint cards to the *State Identification Bureau,* and the State Identification Bureau would only forward to the FBI Identification Division fingerprint cards pertaining to persons whom the State Identification Bureau could not definitively identify (first-time offenders within that State, persons using an alias, etc). State officials strongly supported the proposal that where the identity of the arrestee was not at issue because of a prior contact with State

criminal justice authorities, etc., the practice of routinely submitting fingerprint cards to the FBI should be discontinued. (State officials did recognize that this would, in many instances, require States to accept increased responsibility for managing the criminal identification process as well as increased responsibilities in terms of criminal records operations. State officials also pointed out that this would require the cooperation of the FBI Identification Division. Various State officials acknowledged that the FBI had been generally supportive of such efforts, but several officials indicated that occasionally the FBI Identification Division has been less than fully supportive of innovations of this kind.)

4. The present methods governing the interjurisdictional exchange of criminal records, stressing that it is not meeting the needs of State and local criminal justice agencies. That is, when an arresting agency forwards a fingerprint card to the FBI, the typical elapsed time before the arresting agency receives any response is in excess of 2 weeks. State officials time and time again stressed the growing needs of criminal justice officials such as prosecutors, magistrates, judges, etc., for more timely responses. The officials emphasized that such responses were no longer expected in timeframes such as weeks, days, or even hours; rather, some officials expressed the view that data pertaining to prior out-of-State criminal offenses must be immediately available. While not all State officials set so formidable a requirement, all State officials did express the view that such data must be available within hours if they are to comply with the emerging expectations of the States which they serve. (It should be noted that this level of system response was discussed in terms of prior *criminal offense data only.)* All State officials believed that virtually instantaneous access/response was absolutely essential in terms of wanted persons, wanted properties, etc. And, in this regard, all of the officials believed that the Federal Government generally, and specifically the Department of Justice, the FBI, NCIC, etc., were failing to support properly the various State criminal justice communities which NCIC was established to serve.

5. The lack of State control over State criminal records presently held in the central repository maintained by the FBI Identification Division. In this regard, it is necessary to recognize that the manually maintained criminal record, or "rap sheet, " now held in the central repository, is a composite chronological listing of offenses/dispositions associated with a particular individual. Offenses/disposition from multiple jurisdictions may be included in any particular record, and this criminal record is updated and released by the FBI whenever an authorized agency makes a request for the records. This practice has become particularly objectionable to officials in States which have enacted legislation mandating strict State control over access and dissemination of criminal records.

6. Many, although not all State officials, were critical of the composition of the NCIC Advisory Policy Board. It was frequently pointed out that while the various NCIC "want" files are of principal interest to the law enforcement community, the CCH program is of interest to the entire criminal justice community and that the NCIC Advisory Policy Board is not properly constituted for addressing CCH program requirements. (Indeed, some State law enforcement officials acknowledged that CCH was of primary interest to prosecutors, judges, court personnel associated with pretrial diversion programs, correction officials, etc., and was of only limited interest to law enforcement agencies, *per se*.)

7. Dissatisfaction with LEAA funding concepts, particularly with the "bundling" of numerous functions within the LEAA Comprehensive Data Systems (CDS) program. This program required States which wished to undertake a CCH implementation plan with LEAA funds to agree to engage in other program activities which, at least in some instances, were of interest to LEAA rather than to the State which LEAA was purporting to assist. Further in

the course of the visits to the various States, it became quite clear that LEAA never adequately comprehended or addressed programmatically the critical relationship between the criminal identification process and the interjurisdictional exchange of criminal records.

A CONSENSUS CONCEPT

Possibly because of the lingering impasse, and the spreading and intensifying dissatisfaction among officials in all of the States, officials in the 10 States eagerly analyzed and commented on alternative concepts for a nationwide criminal justice information interchange facility. There was marked agreement as to what conceptual arrangement would best satisfy the needs of the States. The concept which enjoyed the unanimous support of State officials is most easily described by a discussion of the process and procedures associated with the concept. Specifically:

Identification Procedures

1. Following an arrest the arresting agency would send/transmit the subject's fingerprint card to the State Identification Bureau. If this arrest was the first contact between the subject and the criminal justice authorities of that State, a definitive identification could not be made as the subject might have engaged in criminal activities in either the same jurisdiction under a different name or in another jurisdiction under either the same or a different name. (Note: If the State had a fully developed "technical" fingerprint search capability it would be able to make a definitive identification of all subjects who had previous contact with the criminal justice authorities of that State.) Accordingly, the State Identification Bureau would forward/retransmit the fingerprint card for each first offender (within the jurisdiction) to the FBI Identification Division in order to establish the definitive identification of the subject. In all such instances, the response from the FBI would consist of the FBI identification number assigned to the subject, and any other identities which the subject is known to have previously used.
2. The FBI identification number and such identification information as is necessary to establish the identity of the subject would be transmitted by the most rapid means to the State Identification Bureau. At that point, the State identification record could be completed, and thereafter would contain both the State identification number and the FBI identification number. State officials would then determine whether the offense was of such a nature that the existence of the criminal record should be reflected in a nationwide index. If the offense met both State and national criteria for entry in a nationwide index of decentralized criminal history records, then the State authorities would transmit, for index entry purposes only, the identification segment of the record established at the State level.
3. On all subsequent and appropriate contacts between the criminal justice authorities of that State and a person for whom the State Identification Bureau has previously created a record, the arresting agency would continue to send/transmit the subject's fingerprint card to the State Identification Bureau. However, since the State would ordinarily be able to make a definitive identification based upon prior contact, it would not be necessary to forward/retransmit the subject's fingerprint card to the FBI, nor ordinarily would the State have to take any action with respect to the nationwide index (unless there was a significant change in the identification data contained in the index, e.g., amputations, etc.)

Record-Accessing Procedures

4. In contrast to present procedures whereby each arresting agency, or authorized crim-

inal justice agency now routinely obtains "rap sheet" or CCH record data from the one or both of the centralized FBI repositories (Identification Division or NCIC-CCH files), under the revised procedures access to the criminal records of all States would be subject to multiple, albeit increasingly automated review processes. Specifically, any time an arresting agency—or a criminal justice agency making an inquiry under nonarrest procedures—wished to access a criminal record it would transmit the inquiry to its State crime information center. Each such inquiry would contain a "purpose" code as well as a "scope of search" code—indicating whether a statewide or a nationwide search was desired.

5. If a statewide search was requested or otherwise indicated, the State crime information center would process the request in accordance with State law, regulation, and policy and respond directly to the inquiring agency. No search of the nationwide index would be necessary and there would be no interjurisdictional (interstate) exchange of data.

6. If a nationwide search was requested, the State crime information center would determine whether a nationwide search for the purposes specified was consistent with State law, regulation, and policy. If so, it would log the request and retransmit it to the nationwide criminal justice information interchange facility (nationwide servicing facility). Upon receipt, message-control data associated with the inquiry would be logged at the nationwide servicing facility and a search would be executed against the nationwide index data—providing that the purpose of the search conformed to Federal law, regulation, and policy, If the nationwide index search revealed no prior entry, the inquiring State crime information center would be notified promptly, and they in turn would furnish the inquiring agency of the results of the search of State records, as well as the "no record" result of the nationwide index search.

7. If the search of the nationwide index revealed a prior entry, the nationwide criminal justice information interchange facility would further retransmit the request for the subject's criminal record (along with the identity of the requesting agency and the purpose for which the record is being requested) to each of the States to which the index "points" as being in possession of relevant criminal record information. No response would be made by the nationwide servicing facility at this stage of the process to the inquiring State crime information center, nor by it to the agency which initiated the inquiry.

8. Upon receipt of a record request from the nationwide criminal justice information interchange facility, each State crime information center which had been "pointed" to as holding relevant criminal record data on the subject would log the request and determine whether the release of the data to the inquiring State crime information center (and the inquiring agency) for the indicated purpose was consistent with its State laws, regulations, and policies. If the request met the release criteria of the State(s) holding the record, and if the data met the standards (which must be established or validated in each State) of accuracy, completeness, and currency, then the State crime information center(s) would transmit back to the nationwide servicing facility the requested information in a standardized format. Conversely, if for any reason any State holding a record declined to release a record upon which an inquiry was made, an appropriate response would be transmitted to the nationwide servicing facility. In either event each State crime information center would log its reply transmission.

9. Upon receipt of responses from the State(s) to which the nationwide index had pointed, the nationwide criminal justice information interchange facility would log message-control data associated with all replies, modify the index pointers (as necessary to conform to certain negative responses), and assemble the replies into a single integrated response to be transmitted back to the inquiring State crime information center. Message-control data associated with the integrated

response from the nationwide servicing facility, and the receipt of the message by the inquiring State crime information center would be logged.

10. Upon receipt, the inquiring State information center would further assemble the integrated response from the nationwide servicing center with any relevant data held in the subject's State record, and forward the final response to the inquiring agency.

This conceptual design of a decentralized nationwide system of criminal history records provides State officials with maximum control over State records while permitting the reasonable exchange of these records between identifiable agencies for known purposes. If implemented, State officials would be in a position to ensure compliance with State law, regulations, and policies. Most importantly, however, it pinpoints responsibility, and affords maximum auditability of either the entire system or any component part of the system.

CONCLUDING OBSERVATIONS

The brief description of a consensus concept and the accompanying procedural changes are not intended to be a definitive systems design. Rather, they are indicative of the principal features of a system which would restore a balance of responsibility among the States and the Federal Government. This balance has been absent for the past half-century in the areas of criminal identification and criminal records.

But the purpose of restoring a balance long lost is not the principal reason why corrective action should be taken immediately. Rather, the more compelling reasons arise from the indefensible situation which presently exists; that is, a situation in which State criminal records are maintained in a fashion which does not put State and local criminal justice agencies in the best position to ensure the accuracy, completeness, and currency of State criminal records; a situation in which the response to a record request is so lengthy in term of elapsed time that it works to the advantage of the career criminal and to the disadvantage of the first offender; and a situation which affords State officials virtually no effective control over dissemination of State criminal justice data.

If this situation existed under circumstances where it was the best that our society could do, it would be unfortunate; for it to exist in a society such as ours, where we know we can do much better, there is no reason for further delaying the necessary corrective efforts.

In terms of corrective measures, the next logical step would be for the Department of Justice to acquire validating endorsements of the conceptual and procedural features indicated in this report. This might best be done by the broad circulation of this report to all relevant Federal and State agencies, appropriate public and private organizations, etc. Thereafter, the next logical step would be for the Department of Justice to obtain Program and System Design Proposals. In this respect, the Department, in concert with the cognizant congressional authorities, could select a distinguished panel of State officials to develop and present for appropriate consideration the required Program and System Design Proposals. Alternately, the Department, in similar concert with the cognizant congressional authorities, could commission several qualified private organizations to develop and submit the required Program and System Design Proposals.

In either event, an unrelated panel of Department officials, congressional authorities, State officials, and other public representatives should be constituted to review and recommend implementation of the most suitable approach.

SEVERAL FOOTNOTES

This report, apart from its conclusions nd recommendations, attempts to set forth faithfully the views of many State officials on a highly controversial and important criminal justice matter. It obviously will not be pleasing to all, nor is it so intended. Nevertheless, to the degree that it reflects accurately the prevailing situation and the views of the officials in the 10 States which were visited, the public is well served.

In the interest of furthering the readability of a report dealing with a highly complex situation, detailed distinctions, amplifying commentaries, etc., have been avoided throughout the body of this report. However, several important footnotes are appropriate at this point; specifically :

1. Not mentioned elsewhere in this report is the fact that these issues were discussed with a number of general government State officials, as well as municipal and county officials, including Mr. Doug Cunningham and his associates in the California Governor's Office, Assistant Sheriffs Tom Anthony and Robert Edmonds of Los Angeles County, and Messrs. Frederick Gustin, Victor Riesau, and Richard Humphries of the Los Angeles County Sheriff's Office Technical and Detective Divisions, respectively. Further, the findings contained in this report were reported to the Board of Directors of the National Law Enforcement Telecommunications System (NLETS), Inc., and an *ad hoc* meeting of SEARCH Group, Inc., representatives. While it would be presumptuous to attribute a position on this matter to either organization, it appeared that there was a considerable level of support for the same concept and procedures which appears preferable to State officials.

2. All State officials were asked to comment on the possibility of using NLETS services in lieu of NCIC generally, or in lieu of NCIC-CCH services specifically. All officials considered such a proposal totally unacceptable and endorsed the June 12, 1975 agreement between the NCIC Advisory Policy Board and the NLETS Board of Directors. This agreement dealt with the proposed distribution of service responsibilities between the two systems. One State (Illinois) suggested, however, a minor modification to the agreement in one area, that associated with NCIC "hit" confirmation messages.

3. Most, if not all State officials believed that LEAA must address more directly the needs of the State identification functions, and the relationship between the identification process and criminal record operations. Notwithstanding the fact that LEAA has funded several attempts at innovation in this area, its contribution to the improvement of State identification capabilities is generally regarded as modest, if not meager in nature.

4. One prominent State official astutely pointed out that the NCIC Advisory Policy Board may serve a valid purpose as an advisory instrument for the Director of the FBI and might be left undisturbed so that it can provide continuing operational insights. However, this official stressed that it lacks the broad public and criminal justice community representation which is appropriate for the formulation of national policy in this sensitive area. This official recommended consideration be given to the establishment of a truly independent regulatory commission.

5. Although the description of the consensus concept in this report does not address the readiness of the various States to participate in the improved conceptual arrangement, attention has been given to this in the meetings which were held with State officials. There is no prohibitive or even formidable reason that would prevent the consensus concept from being implemented promptly by all States.

6. The representatives of the Federal Government who participated in this fact-finding effort included Messrs. T. Breen and R. Starek of the staff of the House Judiciary Subcommittee on Civil and Constitutional Rights; E. DoIan of the Department of

Justice; J. Daunt in the capacity of special consultant to the Department of Justice; J. Cochran, F. Still, F. Buell, and R. Young of the FBI; H. Bratt, and S. Ashton of LEAA; L. Bastian of the Department of Justice, and M. Lane of the Department of Treasury. Both Mr. Bastian and Mr. Lane are presently serving with the President's Reorganization Project for Law Enforcement.

7. Since footnotes have not been employed in the preparation of this report each of the participating officials indicated in footnote 6, above, have reviewed this report and have been invited to provide individual concurring, dissenting, or amplifying comments. By and large, the comments which have been received were orally communicated, and have resulted in modifications to the language employed in earlier drafts of this report. Written comments received by March 3, 1978, are attached.