

Mining Criminal History Records to Shape the Future of Criminal Justice

Plenary Address

by

Jeremy Travis, Executive Vice President of Criminal Justice

Arnold Ventures

2019 SEARCH Symposium on Justice Information Technology, Policy and Research

July 23, 2019

Washington, DC

Dear Colleagues:

It is a genuine honor to be invited to speak to this symposium celebrating the 50 years since SEARCH was founded. It is a personal pleasure to be on this opening program with two good friends – Bob Belair and Dave Roberts. Bob and I have known each other for the better part of the last quarter-century. He has been a national thought leader on the critical issues of data privacy and data infrastructure as they affect the creation of our nation’s criminal justice information systems. Soon after I was named President of John Jay College, I reconnected with Bob in his capacity as a government affairs expert and we spent many glorious days walking the halls of Congress urging—with some success—our elected officials to make investments in the research centers at John Jay College.

I am grateful for this opportunity to pay a special tribute to Dave Roberts. Soon after Amy Solomon and I joined the Arnold Foundation, our colleague Shawn Bushway, who had joined our team as a research fellow, suggested we reach out to Dave to discuss his vision for a re-energized and revitalized SEARCH. We have met with him several times, provided support for the planning session of the research working group, and are so impressed with his leadership and the willingness of SEARCH and the professionals assembled here to embrace a new and modern mission for this critically important organization. Leadership matters -- and sometimes the most valuable leadership requires a simultaneous recommitment to the core mission of an organization while updating of that mission to align with the demands and opportunities of a new era. For SEARCH, Dave Roberts and the SEARCH board are providing that leadership. Today, at your 50th anniversary of the founding of SEARCH, you have a unique opportunity to challenge each other to make sure that you remain true to your original mission while providing leadership on tackling the challenges on the horizon.

Dave asked me to share some thoughts about the research dimensions of the SEARCH mission. That’s a great assignment because the research potential represented by the data repositories of the SEARCH membership is enormous. Simply put, few if any other data sources hold as much potential for shedding light on critical questions in our field as those represented in this room. But before addressing that part of my assignment I would like to offer some observations that extend beyond your research mandate.

I. The Realities of the Reform Era

We live in an era in which the fundamental operations and assumptions of our approach to crime and justice are being questioned. We are witnessing a reform movement that holds the potential for profound changes. The rallying cries of this movement are sharp and critical. Reform advocates are calling for an “end to the era of mass incarceration.” There’s a national movement – with the hashtag “#cut50” – with a goal of reducing the prison population in half.¹ Activists are marching under the banner “Black Lives Matter,” demanding significant changes in policing policy, particularly regarding the use of force.² Drug policy reformers are calling, sometimes successfully, for the legalization of marijuana. Others demand that sex work no longer be criminalized. Youth justice reformers have coalesced around the goal of “no more juvenile prisons.”

In the presidential campaign now underway, support for the 1994 Crime Act is seen by many as an albatross on a candidate’s neck, and experience as a prosecutor, once thought a badge of honor, is often viewed as a sign of complicity in the ramp-up to mass incarceration. For some, the reform movement itself is too slow, too timid and represents an accommodation with the status quo. Some of these voices seek to launch a modern abolition movement – calling for abolition of prisons, abolition of ICE, abolition of parole, and abolition of the police.³ I am excited to be affiliated with the Square One Project at the Columbia Justice Lab, which takes a different approach but is also dedicated to the task of “reimagining justice.”⁴ Working with colleagues across the country, we are asking what we call the Square One question: “how we would respond to crime if we did not rely so much on the traditional systems of law enforcement, adjudication and punishment?”

It’s still too early to know where these calls for fundamental reform will take us, but what is clear today is that the foundations of the last half-century of criminal justice policy are being called into question and the edifice called the criminal justice system that has been created during our professional lives is showing cracks.

When we peer more closely through the fog created by these multiple calls for reform we can discern that some of the critiques of the status quo land close to the core mission of SEARCH. Allow me to cite two examples. In my home state, the New York legislature recently voted to decriminalize small amounts of drug possession and simultaneously voted to expunge prior arrest and conviction records for those crimes.⁵ In Pennsylvania and Utah, lawmakers have voted to automatically clear the criminal records of people convicted of some non-violent offenses that remain crime free for certain periods of time.^{6,7} For this symposium, the question posed by this type of “clean slate” reform is more than

¹ <https://www.cut50.org>

² <https://blacklivesmatter.com/about/what-we-believe>

³ <https://www.themarshallproject.org/2019/06/13/what-do-abolitionists-really-want>

⁴ <https://www.squareonejustice.org>

⁵ <https://www.nytimes.com/2019/06/20/nyregion/marijuana-laws-ny.html>

⁶ https://www.washingtonpost.com/nation/2019/07/01/criminal-records-can-be-life-sentence-poverty-this-state-is-automatically-sealing-some/?utm_term=.c2690cc0f137

⁷ <https://www.sltrib.com/news/2019/03/14/utah-lawmakers-pass-clean>

technical. Of course, all state criminal history repositories will need to figure out how to comply with these laws, but the larger question is how we should think about criminal histories in an era when many criminal justice reformers are calling upon the country to engage in a process of “reckoning” with our past. If we are now living in what many scholars call an era of “punitive excess”⁸, and believe that evolving into a new era of more humane criminal justice policies requires a truth-telling process and reconciliation with our punitive past, what obligation do we have to those who have been subjected to policies we now longer consider humane and just?

As legislatures and advocates wrestle with the challenges of retroactive application of new sentencing statutes and decriminalization reforms, we should ask whether SEARCH and its allies have a role in those discussions. After all, by managing the repositories of criminal history records, you are the custodians of the history of the earlier era. Does this reality create special responsibilities for you? What is the role that SEARCH should play in these policy discussions? What technical advice do you provide to government officials? What reforms are required in your relationship with private vendors who market criminal history information? What technologies should you support that will allow individuals to clear their records? How do you preserve the records of the past for research purposes while creating a “clean slate” for justice purposes? What policy advice do you offer, if any, to those reformers who believe this sort of historical reckoning is critical to the demands of the reform era?

(I call to your attention a workshop at this symposium on this topic: “Legislative and Policy Proposals on Expungement and Sealing: Trends in Criminal History Records Management” at 3:30 this afternoon.)

A second example also implicates the role of criminal histories in the current reform agenda, in this case, the call to reform our cash bail system and reduce the rate of pretrial detention. One of the thorniest issues in that movement is the role of risk assessment instruments. (Let me quickly recognize that my organization, Arnold Ventures, has been an advocate for the use of risk assessment instruments in the context of a jurisdiction’s overall bail reform agenda.⁹) Some civil rights organizations have called for a ban on their use.¹⁰ Interestingly, on occasion, the bail industry has also embraced these arguments to buttress their opposition to bail reform. Some bail reform statutes are placing very high burdens on the use of risk assessment instruments, virtually sidelining them. I find these developments highly ironic, because the historic bail reform movement—which began in the 1960s with the Manhattan Bail Project—was based in part on the notion that objective, validated point systems could guide the exercise of judicial discretion.¹¹

From the perspective of SEARCH, the question is whether you as an organization, or as individuals, can contribute to the debates swirling around this topic. Big questions are implicated: Do risk assessment

⁸ <https://nylssites.wpengine.com/citylandnyc/wp-content/uploads/sites/14/2019/03/AV-Trends-in-Crime-and-Justice-Jeremy-Travis.pdf>

⁹ <https://craftmediabucket.s3.amazonaws.com/uploads/Arnold-Ventures-Statement-of-Principles-on-Pretrial-Justice.pdf>

¹⁰ <http://civilrightsdocs.info/pdf/criminal-justice/Pretrial-Risk-Assessment-Short.pdf>;
https://www.aclu.org/sites/default/files/field_document/aclu_pretrial_reform_toplines_positions_report.pdf

¹¹ For more context on this history of bail reform, see here:
<https://craftmediabucket.s3.amazonaws.com/uploads/Jeremy-Travis-PI-Con-Keynote.pdf>

instruments perpetuate the racial disparities of the criminal justice system? How should these algorithms be validated? What are the transparency requirements? What is the role of the public, especially impacted communities, in the implementation and use of these instruments? Should algorithms ever be developed by private companies and maintained as proprietary products? In an era where science is often distrusted, and governmental data systems are suspect, the idea of an algorithm that assesses the likelihood of future behavior raises the specter of The Matrix, what is the role of organizations such as SEARCH in informing this critical public discussion?

(I am pleased to note that this conference will host a discussion on these questions titled “Criminal Justice Reform and Reentry: Understanding Risk, Recidivism and Redemption” also at 3:30 today.)

I cite these examples to make three simple and interrelated points. First, we should recognize that we have entered a new era of deep criminal justice reform that is challenging the policies of the past as never before. Second, in this new reform era, we are witnessing a deep skepticism about the role of science, the objectivity of data, and the value of research. In some quarters, these are viewed as having supported damaging policies of the past and providing little guidance for the future. Third, if these first two statements are true, then these realities create an opportunity – and perhaps an obligation – for an organization such as SEARCH and the individuals at this symposium to engage in, and shape, this critically important national discourse.

II. Implications of the Reform Era for the Core Mission of SEARCH

The power of the reform agenda provides new urgency to some of the traditional challenges that SEARCH has faced over the years. I think it also provides new opportunities to address these age-old questions. Let’s take as an example the imperative you face to provide criminal history records that are as accurate and complete as possible. On one level this is a straightforward question of financial resources and institutional commitment. But as you know better than anyone, creating complete and accurate criminal histories is a political, not simply a technical issue. Many of you have fought the difficult fights seeking to secure necessary financial resources and institutional support. Unfortunately, the call for accurate and complete criminal history records has a difficult time fighting for a moment in the political spotlight. But it sure is important. So the strategic question is whether it’s possible to leverage the power of the reform era to find common cause with those who are decrying the use of those records because they are incomplete. Many reformers cite examples of individuals who are denied housing, jobs, or other benefits because their criminal history records are inaccurate or do not reflect final dispositions. Could these critics become allies in advocacy strategies to secure funding for your work?

To illustrate this point I would cite examples from two states – Florida and Connecticut. In both states, the legislature has supported initiatives designed to provide accurate and timely criminal justice data. In both states, these initiatives were backed by justice reform advocates. You may be familiar with the work of Measures for Justice, an organization which transforms how we measure and understand local criminal justice systems in America by measuring every stage of the criminal justice process across the

3,000+ counties in the U.S.¹² [Full disclosure: Arnold Ventures is a funder of Measures for Justice.] Last year saw a remarkable victory in the MFJ campaign to create criminal justice data systems across the country. Legislation was enacted in Florida requiring every county to collect and report the same robust set of data elements, including pretrial release decisions, along with data on indigence, ethnicity, and what type of offenders are being convicted for new offenses. Since securing that victory, Measures for Justice has also worked with the National Center for State Courts to create comprehensive data standards for state and local courts.¹³ Connecticut provides a second example. This year, the Connecticut legislature passed a law making it the first in the country to collect prosecutorial data, and hopes to use the data to study racial bias and increase prosecutor accountability and transparency.¹⁴ This legislation was proposed by the American Civil Liberties Union.

You may know of other examples of state legislatures taking steps to modernize criminal justice data. But I think we are seeing the emergence of a strong trend, backed by newspaper editorials, good government groups, and advocacy organizations such as ALEC, the national conservative group who has crafted model legislation on uniform criminal data collection.¹⁵ The challenges for SEARCH is how to align with this reform energy.

Another strand of the reform era – the call for transparency and democratization of data – also has profound implications for the work of SEARCH. So many criminal justice agencies now post their administrative data on their websites. The demand for transparency and accountability should go hand in hand with a demand for accuracy and completeness.

Finally, as this audience knows well, the extensive use of criminal history records in public and private employment decisions poses significant challenges for accuracy, completeness, and timeliness of data. But the public discourse now extends far beyond those rather technical issues. In the modern era, when advocates are describing the lifetime burdens of criminal convictions and the impact of criminal histories on employment and earnings, the cause of justice requires much more than accuracy of those records. Imagine that individuals in this room were organized – with others – to call for systematic expungement of those records after a certain time, or total exclusion of those records except for law enforcement or research purposes? My sense is that the reform agenda is moving in this direction and that thoughtful leaders such as those at this symposium can help inform that national discussion.

III. Implications of the Reform Era for the SEARCH Research Agenda.

When we think of the implications of the modern criminal justice reform era for the research agenda of SEARCH we can easily see a world of possibilities. It is my sincere hope that the research community sees this potential, and that SEARCH can find a way to facilitate this exciting new research agenda.

¹² <https://measuresforjustice.org>

¹³ <https://measuresforjustice.org/news/2018-06-26.html>

¹⁴ <https://www.aclu.org/press-releases/aclu-connecticut-applauds-governor-lamonts-introduction-prosecutorial-transparency>

¹⁵ <https://www.alec.org/model-policy/criminal-justice-data-transparency-model>

(I am delighted to see that Shawn Bushway is hosting a discussion at 11:00 on Wednesday with the perfect title, “Exploiting the Value of Criminal History Records – Establishing a Research Agenda.” I encourage you to attend and contribute.)

Everyone in this room will have their list of favorite research questions, but let me nominate my list of five big topics for your consideration. I recognize that answering some of these questions will necessarily require access to data beyond criminal history records, and in some case beyond administrative data, but that’s precisely my point. You are sitting on top of a treasure trove of data that, when combined with other data, can shed light on some of the important issues facing our field.

- A. *Documenting the expansive reach of the justice system.* The most profound reality of the past half-century has been the dramatic expansion of the justice system. Over the past few decades, our nation has more than quadrupled the rate of both incarceration and community supervision.^{16,17} Since 1983, the rate of jail incarceration has gone up by 140 percent.¹⁸ Today, between 70 and 100 million Americans – one out of every three – have criminal records.¹⁹ Today, one out of five children have a parent who has been incarcerated.²⁰ One out of every two Americans has an immediate family member who has been incarcerated.²¹ Some communities have witnessed significant increases in arrests and pedestrian stops as policing has become more aggressive. These trends are quite well documented in the scholarly literature, but they are not well known at a state or local level. The SEARCH community, broadly defined -- specifically the agencies that serve as repositories of criminal history data and data on prisons and courts -- are uniquely positioned to support this kind of research.
- B. *Documenting the concentrations of the justice footprint.* The growth of the criminal justice system has not been uniformly distributed across all communities. In fact, the impact of the ramp-up in incarceration – both jails and prisons – as well as increased community supervision through probation and parole has been concentrated in a small number of neighborhoods, mostly communities of color. Years ago our colleague Eric Cadora documented the phenomenon of the “million-dollar block.”²² These are definable residential blocks where the taxpayers pay more than a million dollars a year to incarcerate the individuals who lived on that block prior to their incarceration. If we want to develop a full understanding of the “era of punitive excess”, we should examine the geographic concentrations of the reach of the justice apparatus. Because the criminal history records are typically created at an individual level, and the unit of analysis is an arrest and not a neighborhood, we do not think of these data as shedding light on the geographic concentrations of the justice system. But using geo-coded data could transform these individual arrest records into a community-level understanding of the operations of the justice system over time.

¹⁶ <https://www.splcenter.org/issues/mass-incarceration>

¹⁷ https://justicelab.columbia.edu/sites/default/files/content/Too_Big_to_Succeed_Report_FINAL.pdf

¹⁸ <https://www.vera.org/publications/in-our-own-backyard-confronting-growth-and-disparities-in-american-jails>

¹⁹ <https://www.brennancenter.org/blog/just-facts-many-americans-have-criminal-records-college-diplomas>

²⁰ <https://everysecond.fwd.us/downloads/EverySecond.fwd.us.pdf>

²¹ *ibid*

²² <https://www.justicemapping.org>

- C. *Documenting the racial disparities of the justice system.* The most pernicious dimension of our current reality of the overreach of the justice system is the impact of that system on communities of color. I think we are called upon to move beyond the age-old question, “Are there racial disparities in the operations of the criminal justice system?” I frankly think that simply answering this question, though important, misses a larger point, namely that the aggregate impact of our criminal justice system has resulted in deep harm to communities of color and has undermined our nation’s pursuit of racial justice. We can struggle mightily to reduce racial disparities in the operations of the justice system, but unless we examine the macro issue of the racial harms of the era of punitive excess we will miss the central reality of racial injustice. The SEARCH community should take up this challenge. Creative use of arrest records could document the concentration of enforcement activities in certain neighborhoods. Creative analyses of incarceration trends could document the impact of prison terms on the life course of men in communities of color. Creative analyses of the reach of probation and parole agencies, and the ways that revocation policies have undermined community well-being, would shed light on the damaging impact of these practices. No other data resource holds as much potential to answer these questions as the criminal history repositories.
- D. *Redefining success and failure beyond recidivism.* As my close colleagues can tell you, I have peculiar passion in my work – to encourage our field to move away from the use of recidivism as a measure of the success or failure of any program or any policy. Recidivism – whether defined as re-arrest, re-conviction or re-commitment to prison – is a poor measure of anything. There are definitional problems with recidivism – one failure is the same as multiple failures; one failure at the beginning of a three-year period is equated with a failure at the end; one failure for a serious crime is equated with a failure for a minor crime – but the larger problem with recidivism is that it does not measure success, nor does it measure anything known in the criminological literature to be associated with desistance. Imagine, instead, that we had regular measure of employment, success in school, health outcomes, familial relationships or community participation? The individuals and organizations represented in this room are uniquely positioned to advance this broader view of the appropriate measures of success and failure for individuals involved in the justice system. You have the ability to link criminal justice data with administrative records on employment, health, housing and social services. You can help reframe our definition of success for the justice-involved population.
- E. *Calculating the lives lost to incarceration.* When we look back at the era of punitive excess, we should ask how we can create an accounting of our excessive use of punishment, particularly through long prison terms. I have been thinking about this topic a lot recently, especially given the recent resurgence in interest in reparations for the damage done to African-Americans through the centuries of enslavement, the American apartheid known as Jim Crow, the reign of terror through lynching and the appropriation of wealth through residential segregation. If we think that the current era of punitive excess, with our overreliance on punishment as a response to crime, has been powered in large measure by the same forces of racial animus, then we face a moment of reckoning not too different from the call for reparations. The first challenge, in my

view, is a simple calculation of the lives lost to incarceration.²³ As our prisons increasingly resemble nursing homes, with geriatric wards and hospice centers, we must realize that our punitive impulses have come at a great cost. In the modern reform era we are beginning to hear calls for the retroactive application of sentencing reforms, recognizing that we have been too punitive. The agencies represented in this room can support analyses that document the lives lost to prison. Simple modeling exercises could help legislative committees, sentencing commissions, or advocacy groups understand the implications of significant reductions in prison populations, whether through parole reforms, second-look provisions, and retroactive applications of sentencing reforms such as seen in the federal system with the application of the new provisions for crack/powder. These straight-forward calculations would help our country come to a deeper understanding of the price we have paid for the tough on crime policies that we adopted over the past half-century. They would also support the call for a reversal of those policies in the name of justice.

I recognize that this research agenda extends beyond – in some cases, far beyond – the more traditional SEARCH research agenda. But I hasten to point out that our field can now draw upon a robust scholarly community that is ready to partner with you. Today we have more academicians than ever before—and from a range of scientific disciplines—taking a professional interest in criminal justice reform. The evidence they produce can be key to identifying underlying problems and creative reform-minded solutions. But if they don't have access to high quality data, or if they have to go through a painstaking process of accessing (and inspecting, cleaning, and combining) data agency-by-agency, then we're limiting our abilities to improve the lives of people touched by the system, as well as the lives of those whose safety is ensured, in part, by a fair and effective criminal justice enterprise.

To carry out this agenda, it will be necessary to create new data-sharing agreements with other government agencies. Publishing these findings will require a level of independence more commonly associated with academic institutions than with government agencies. But I think these are precisely the questions that SEARCH should be tackling over the next 50 years. I will even state this more boldly, and hope you don't take offense at this characterization. For SEARCH, and more generally for the operations of criminal history repositories to be relevant to the policy questions of the new era, beyond your indisputable centrality as an operational part of the justice system, I would submit that SEARCH MUST reach out to these partners and MUST view itself as supporting a new vision of research. In our world we have a tendency to become system-centric. We view the world through the lens of the operations of the justice system. We think of justice as the result of an assembly line that starts with the police and ends with the courts and corrections. Our unit of analysis is a case, not a conflict or a person. We rarely consider the family or the community of the accused. We rarely think of the victims of crime and the harms they have experienced. We should be more focused on people, families, and communities.

²³ I proposed such a calculation in a recent lecture at New York Law School:
<https://nylssites.wpengine.com/citylandnyc/wp-content/uploads/sites/14/2019/03/AV-Trends-in-Crime-and-Justice-Jeremy-Travis.pdf>

We should look at a person's "criminal history" as only one way of describing their life course, and sometimes a highly inadequate description. We should take seriously the literature on desistance, redemption, and the age-crime curve and become advocates for justice policies that reflect those realities. With full respect to our colleagues from another era, we should drop from our language the phrase "criminal career," and "career criminal", and recognize that people change and criminal activity coexists with pro-social activities in a person's life. And very importantly, we should examine all of our practices and assumptions through the lens of racial justice. As criminal justice agencies – from police to prosecutors, probation departments to diversion programs, courts to public defenders, to jails and prisons -- are increasingly asking (and being asked) whether their practices exacerbate racial disparities and whether the aggregate impact on communities of color is beneficial or harmful, the government agencies that maintain the data documenting those practices have a special obligation to support those analyses.

This is an exciting time to be working on these issues. I applaud SEARCH for rising to the challenge. I am particularly impressed by the efforts of the research working group that you have created, and the work already underway in Maine, South Carolina, New York, and New Jersey to create data dashboards with full criminal histories that will become resources to academics and other researchers. It is promising to see that SEARCH expects up to ten states to be among the first cohort that will define and carry out a new research agenda. This could not be happening at a better time, and there is no organization better positioned to lead this work than SEARCH. My colleagues at Arnold Ventures and I are delighted to be your partners in this effort and wish you every success. Your next 50 years are off to a great start!