RECORDS OF ARREST AND CONVICTION: A COMPARATIVE STUDY OF INSTITUTIONAL ABUSE

R. Paul Davis*

INTRODUCTION

The many legal and social consequences of conviction are well-documented. Social stigma of the convict or prisoner and his family,1 loss of civil rights and liberties on conviction,2 and difficulties in obtaining employment3 have been repeatedly noted amidst calls for reform or modification.4 A principal irritant to the person who has at some time been in contact with a law enforcement agency is the official record of arrest or conviction, generally held in a police data bank or in local records.

The relationship between police activity and record control is fundamental to the study of the problem of old records. In Canada and several American states, primary attention has been directed to the formal record in the expungement of convictions.5 While

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* Research Fellow, University of Ottawa, Faculty of Law. B.A. (Law), University of Cambridge, 1977; M. Phil. (Criminology), University of Cambridge Institute of Criminology, 1978; L.L.M. (Dist.), Dalhousie University, 1979. The author wishes to thank Professor Bruce Archibald of the Faculty of Law, Dalhousie University, for his generous assistance in the preparation of the thesis upon part of which this paper is based.


other sources—public memory, newspapers, or the activities of private investigators, for example—may result in embarrassment long after the original contact, it is the official record which shows the greatest potential for longevity, especially with the advent of computer storage.

To survey such effect in its entirety would be an undertaking far beyond the scope of this article. The purpose here is rather to explore the relationship between records of arrest and conviction and police practices in a comparative setting with Canada, England, and the United States as the primary foci of attention. A general hypothesis, argued in relation to the deprivation of civil rights and liberties elsewhere, that the United States treats its ex-offenders more harshly than do other common-law jurisdictions, may be examined in relation to the use of official records in police practice. This hypothesis is in part explained by elaboration of differential data-storage structures and is further strengthened by consideration of that peculiarly American phenomenon, use and abuse of the arrest record.

CRIMINAL DATA BANK ORGANIZATION

Canada

Data bank organization in Canada presently reflects both the insularity of, and cooperation between, the three types of Canadian police departments.

The Canadian Police Information Centre Computer

This project, now close to completion, is operated jointly by the Royal Canadian Mounted Police (RCMP) provincial and municipal police forces. A central data bank is linked to individual police units around the country through on-line terminals. The maintenance of a crime index is not the computer system's only function: it has diverse purposes, including administrative and or-

6. For a stringent indictment, see V. Packard, The Naked Society (1964). Packard concludes that "the use of detectives to pry into the private affairs of a candidate would seem to be a sad comment on the lack of respect for the individual that . . . firms are demonstrating." Id. at 72.
7. Davis, supra note 2.
8. Information on Canadian systems has been taken from: Interviews with officers of RCMP Halifax Detachment, in Halifax, Nova Scotia (Nov. 1978); RCMP Liaison Branch Leaflet No. 7610-21-878-3723, Canadian Police Information Centre/Centre d'information de la police canadienne; and M. Brown, Report of the Canadian Commission on Freedom of Information and Individual Privacy (preliminary draft).
ganizational programming, communications, and the filing of lost and stolen property.

However, there is a crime index on the computer used for statistical purposes and preliminary checks. An officer on the street can obtain, via his local base, a computer check on the existence of any outstanding warrants for a person. He may also obtain a record synopsis which gives a crude statement as to indictable offenses of which the person named has been convicted, without specifying the number of convictions or other details. There is thus no danger of “instant information” on petty crimes or arrests, unless a responding officer at his local base has personal knowledge of the subject of inquiry. A positive response on the Canadian Police Information Centre (CPIC) must be followed by an inquiry to the RCMP record system, detailed below.

There are considerable safeguards on the accuracy of information on the CPIC system, including spot-checks and an internal audit which goes through the corresponding files of each on-line police force at least every two years. Furthermore, all information on the file may be altered only by the originating force, and when a “hit”—the matching of a person to an outstanding warrant—is scored, the information must be confirmed with the originating force.

The Canadian Commission on Freedom of Information and Individual Privacy concluded that unauthorized release of information on the national level was highly limited; despite the lack of legal prohibition on release at local levels, the commission also found that “the authorized release of criminal record information to nonpolice agencies is limited.” It is pertinent to note this study’s finding that private investigators generally claim that they can get access to name-filed records. The Commission also concluded that there was a problem of access to both CPIC and RCMP records by ex-police officers working in security roles in the private sector.

**The Royal Canadian Mounted Police Crime Index**

The CPIC computer also carries a comprehensive index to a second central system, the RCMP crime index. Filed by name and

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9. The operative definition of “indictable” offense includes both serious offenses triable only on indictment and “hybrid” offenses of a less serious nature triable summarily or on indictment. Letter from Office of the Commissioner, RCMP to R. Paul Davis (June 1979).

10. See note 8 supra.

11. The author’s own informal interviews with private investigators in metropolitan areas across Canada strongly support this finding.
fingerprints, and cross-referenced for known associates, this record system includes only persons charged with an indictable offense: on these persons all information, including arrests, is stored. In cases where no charge is made, fingerprints taken are returned to the originating force, and no file is opened. With regard to those persons who are charged, substantial investigative information may be maintained with the justifiable rationale that it may eventually be used as court evidence. The RCMP in most areas will arrange for fingerprint records of persons acquitted to be given back to the person concerned, on request. Proportionately to the number of records kept, the number given back is rather low: "Most people who have just been tried and acquitted for an indictable offense are so relieved they don't bother about anything else."

An inquiry of this system is normally conducted through the mail, enclosing the fingerprints of the defendant. The RCMP, having received a request for information, in return requests details of the outcome of the charge from the requesting force. Police forces are required to submit details of subsequent trials on indictments to the RCMP system.

Provincial and Municipal Dossiers

Many local and some provincial forces keep their own indexes, although in a large number of cases they are being abandoned in favor of reliance on the RCMP system, which duplicates much of this information. Ontario Provincial Police, for example, have discontinued use of their system. Again, it is important that while some forces may index summary convictions, or particular summary offenses, no force keeps indexed records of arrests. Such information is, therefore, recorded only in daily logs and notebooks and rapidly becomes inaccessible to anyone not knowing the date of arrest and, in larger forces, the arresting officer's name.

ENGLAND

The English system is closely similar to that of Canada, mutatis mutandis for police organization. The National Police Computer, which gradually became operational in the early 1970's, records convictions of "serious offenses"; information from the computer is available on-line to "help policemen to reach decisions about arrests by providing information about suspects with a rec-

12. See note 9 supra.
13. Interview with Sergeant Byrne, Liaison Officer, RCMP Halifax Detachment (Nov. 1978).
In England, in contrast to Canada, there are no "parallel jurisdictions" of police departments. Each county force has its own exclusive area, with Scotland Yard providing specialized services where needed. Thus each county force is responsible for police functions in its general area. Of course, a complex network of interdependencies for laboratory services, overload assistance, etc., has developed. Each county force may keep its own records and indexes (many do), but for the most part it is envisaged that greater reliance will be placed upon the national computer, and a process of abandonment of local records, similar to that taking place in Canada, is under way. Again, a salient feature of the system is the disregard of arrest records, with the exception of daily notebooks and patrol reports.

THE UNITED STATES

America is characterized by the lack of a uniform pattern. Historically, various law enforcement agencies have kept their own records, according to internal or state regulation of the contents. The Federal Bureau of Investigation (FBI) maintained its own central record system, containing information from officials of state, federal, and local governments, under delegated authority from the Attorney General. Further, the FBI acted as a clearinghouse for identification information, and by January 1, 1974, had 158 million fingerprint cards with twenty-one million persons represented in the criminal section. As eighteen per cent of persons charged are acquitted or have their charges dismissed, and yearly arrests total over nine million, there are clearly a large number of records obtained as a result of activity never officially proven criminal.

The rapid computerization of American crime information systems has developed into a mirror image of the old manual organization: state and local agencies put information into the FBI's National Crime Information Center (NCIC), in return for use of the existing stocks. Several states have their own computer systems, many of which have been connected into the NCIC. The New York State Identification and Intelligence System (NYIIS)
contains data on individuals with arrest and conviction records. Massachusetts, on the other hand, made a policy decision to protect innocent arrestees by transferring to computer only records which resulted in conviction of a "serious offense." At all law enforcement levels, an incredible number of records of an arrest may be produced. One study showed that in a normal arrest, at least nineteen documents would reflect the fact that a person had once been arrested. This would not be so objectionable if the forms were followed up with a notation of the final disposition of the case; unfortunately, outcomes are less well documented. Roughly one-third of the FBI files are incomplete. Furthermore, a wide variety of "agencies" have access to the FBI files, and some local forces make their information available to employers and other private individuals. Examples of groups allowed access to NCIC data are railroad police and some banks.

It is apparent from the foregoing discussion that a massive amount of information is permanently filed in the United States, of such a nature that its retention seems unnecessary, particularly in view of the fact that other advanced societies see no need for such detail. The sheer bulk of files involved was fast becoming a problem when the computer stepped in to ease the burden. It is significant that as late as 1977 the Attorney General of California was able to say, "It is believed that California is the first major criminal record repository in this country to purge its files of outdated and irrelevant information." In outlining the proposals for a streamlined system, he said, "Records of misdemeanor arrests will be kept for seven years after the arrest if there is a conviction and five years where there is no conviction." Yet by the end of the latter period in England, a misdemeanor-type conviction would have been deemed never to have occurred!

20. See Comment, Guilt by Record, 1 Cal. W. L. Rev. 126, 130-31 (1965) [hereinafter cited as Guilt].
22. Id. at 630-31.
23. For a general discussion of the need for such a system leading up to the proposal for the NCIC, see United States President's Commission on Law Enforcement and Administration of Justice, Task Force Report, Science and Technology (1967).
25. Id. (emphasis added).
26. Rehabilitation of Offenders Act 1974, [Imp.], 1974, c.53. There has been
RECORDS OF ARREST AND CONVICTION

ABUSE OF RECORDS OF ARREST

The foregoing summary has highlighted the different treatment of records of mere arrest in, on the one hand, the United States, and on the other, Canada and England. While, as will be noted below, there is some potential for abuse in the latter nations also, it is nowhere near so severe as in the former. The roots of this problem lie in the natural tendency of employers, police, and others to regard a person with no record at all as "safer" than one who has been arrested. The development of private employers' practice of asking potential employees about arrests is difficult to trace historically, although the ease of accessibility to arrest records has undoubtedly played a major role. The United States Attorney General is required to exchange arrest information with a wide range of government agencies, and the FBI has a liberal exchange program calculated to facilitate the flow of criminal justice information. The NCIC is intended ultimately to link America's entire criminal justice data stock into one system. The availability of arrest records to those without official access to the system is so notorious that it has been noted and taken into account as a fact in litigation, despite the supposedly private nature of such data.

some outspoken criticism within the United States. However, police spokesman tend to reject attempts at control (which, it may be noted, is only necessary where police do not themselves take the initiative to exclude unnecessary information). See, e.g., The Erosion of Law Enforcement Intelligence Gathering Capabilities: Hearings Before the Subcommittee to Investigate the Administration of the Internal Security Laws of the Senate Committee on the Judiciary, 94th Cong., 2d Sess. (1976). See also Davis, Police Intelligence and the Right of Privacy, 3 CURRENT MUNICIPAL PROBLEMS 159 (1976) (articulation of the police point of view). 27. In one survey of 39 countries, 38, representing most types of political regime, were found not to countenance "the general discrimination against persons with records common in the United States." Hess & Le Poole, Abuse of the Record of Arrest Not Leading to Conviction, 13 CRIME & DELINQUENCY 494, 500 (1967). Interpol responded to an inquiry with the statement, "Even when official arrest or detention have been ordered by the authorities, the trial and verdict of the court can also declare the innocence of the accused and show that the arrest or detention prior to arrest were not justified." Id. 28. Alexander Solzhenitsyn, in Candle In The Wind, succinctly perceives the failure of acquittal or the dropping of charges to remove stigma entirely:

ALEX: As long as you're not ashamed— I have been acquitted. Someone else turned out to be guilty of the murder I was accused of.

THE GENERAL: You know you really shouldn't flaunt your "acquittal" in everyone's face. You shouldn't interpret it to mean that you weren't guilty at all.


The prejudice encountered by an individual bearing an arrest record may operate in several situations. Perhaps most important to the individual is the effect his record has on his chances of employment, empirically demonstrated by Schwartz and Skolnick.\textsuperscript{32} The Duncan Report\textsuperscript{33} found that 3500 arrest records per week were being given to employers, and Miller declared as a key finding in his study that in the field of civil service employment applications, "[a]n arrest record not followed by conviction is a substantial obstacle to employment."\textsuperscript{34}

A second case is that of the police officer reaching a decision as to whether he should arrest or charge an individual, particularly in marginal situations. The high potential for record abuse in this context has also been demonstrated empirically.\textsuperscript{35}

Thirdly, and perhaps most importantly in Canada, arrest records may affect the approach of prosecutors in plea negotiations and in the conduct of trial proceedings. In both Canada and the United States, records of arrest (in the former country, only those supported by fingerprint identification) are presented to prosecutors together with other police documents, with the obvious danger that more severe pressure may be brought to bear on the defendant in the bargaining process where the prosecutor feels that he "got off" several times previously.\textsuperscript{36}

Lastly, and perhaps worse still from the viewpoint of legal theory, one American author reports that presentence reports may

\textsuperscript{32} An experiment involved, inter alia, 25 approaches to an employer regarding the possibility of employing a man with a clean record, and 25 for a man with a record of arrest and charge followed by acquittal. The former resulted in nine offers of employment, the latter only three. See generally Schwartz & Skolnick, Two Studies of Legal Stigma, 10 Soc. Prob. 133 (1962).

\textsuperscript{33} COMMITTEE TO INVESTIGATE THE EFFECT OF POLICE RECORDS ON EMPLOYMENT OPPORTUNITIES IN THE DISTRICT OF COLUMBIA, REPORT OF THE COMMITTEE TO INVESTIGATE THE EFFECT OF POLICE RECORDS ON EMPLOYMENT OPPORTUNITIES IN THE DISTRICT OF COLUMBIA (1967).


\textsuperscript{35} The experiment by Smith et al, see text accompanying notes 86 & 87 infra, shows as its example of unfavorable background information details of officer interviews and arrest. Nothing so positive as a conviction was apparently needed to sway the officers in favor of arresting an individual in discretionary circumstances. The mirror-image finding with the same result is that lack of a record is often a reason for charge reduction. D. Newman, CONVICTION: THE DETERMINATION OF GUILT OR INNOCENCE WITHOUT TRIAL 116 (1966).
contain reference to arrests not followed by conviction.37 The United States Courts Administrative Office actually recommends their inclusion.38 If these are taken into account by sentencing agents, the conclusion is irresistible that the convicted person is being sentenced for crimes which were never proved judicially to be his doing. In case this possibility sounds fanciful, it may be noted that in 1963, in People v. Griffin,39 the court chose the death sentence in preference to life imprisonment on the basis of a prior rape charge for which the defendant had been acquitted.40

**Judicial and Legislative Intervention**

It appears elementary that the discriminatory use of arrest records is a direct affront to the principle that a person is innocent until proven guilty. Yet American courts have been reluctant to interfere with police discretion in the matter of their retention.41 The rationale of the Indiana court in Voelker v. Tyndall,42 that the purpose of retention is to promote the public safety and welfare, and the duty of the police is to retain records to prevent crime and apprehend criminals, has been echoed repeatedly.43 Similarly, al-
though some claims based on the right of privacy have succeeded, the notion of the applicability of the right to arrest records has not been generally accepted.\footnote{45}

A different approach was taken by the California District Court in \textit{Gregory v. Litton Systems, Inc.}\footnote{46} where it was found that discrimination against a black applicant on the basis of an employment application requesting arrest information was illegal under the Civil Rights Act.\footnote{47} The basis of the court’s reasoning was the fact that blacks are arrested more often than whites, thus the rejection operated as \textit{racially} discriminatory.\footnote{48} However, much as one might admire the court’s ingenuity in this case, the decision is clearly limited to constitutionally protected minority groups and would not be applicable to the general public.

\begin{itemize}
\item \textit{See} \textit{Davidson v. Dill: A Compelling State Interest in Retaining Arrest Records}, 35 U. PPR. L. Rev. 205 (1973). The court was apparently impressed by the legislative safeguards to prevent abuse, but the empirical evidence does not support their optimism. \textit{See} \textit{Younger, supra} note 34. The district court for Puerto Rico, in United States v. Kalish, 271 F. Supp. 968 (D.P.R. 1967) also thought otherwise: when an accused is acquitted or discharged without conviction, “no public good is accomplished by the retention of criminal identification records. On the other hand, a great imposition is placed upon the citizen.” \textit{Id.} at 970; \textit{see} \textit{Comment, The Expungement or Restriction of Arrest Records}, 23 Clev. St. L. Rev. 123, 127 (1974).
\item United States v. Kalish, 271 F. Supp. 968, 970 (D.P.R. 1967). For a discussion of arrest records in relation to the law of privacy, see \textit{Comment, Removing the Stigma of Arrest: The Courts, the Legislatures and Unconvicted Arrestees}, 47 Wash. L. Rev. 659, 665-68 (1972). In Morrow v. District of Columbia, 417 F.2d 728 (D.C. Cir. 1969), the court restrained dissemination of arrest record information other than to law enforcement agencies. \textit{Id.} at 743. The case was decided on other grounds, but is interesting for its comment that arrest record dissemination “might” infringe the right of privacy. \textit{Id.} at 742; \textit{see} \textit{Moenssens, Admissibility of Fingerprint Evidence and Constitutional Objections to Fingerprint Evidence and Constitutional Objections to Fingerprinting Raised in Criminal and Civil Cases}, 40 Chi.-Kent L. Rev. 85, 114-15 (1963). However, in Paul v. Davis, 424 U.S. 693 (1976), the Supreme Court held that the right of privacy did not constitutionally protect an individual from a state’s decision to publicize his or her arrest, but left open the question of whether a state may make arrest records private. \textit{Id.} at 713. \textit{See also} \textit{Comment, Arrest and Credit Records: Can the Right of Privacy Survive?}, 24 U. Fla. L. Rev. 681 (1972); \textit{Comment, Constitutional Law—Maintenance and Dissemination of Arrest Records versus the Right to Privacy}, 17 Wayne L. Rev. 905 (1971).
\item \textit{Id.} at 403; 42 U.S.C. § 2000e (1976).
\item \textit{For a discussion of the court’s reasoning, see} \textit{Comment, Arrest Records as a Racially Discriminatory Employment Criterion}, 6 Harv. Civ. Rights - Civ. Lib. L. Rev. 165 (1970). The case has been followed in several decisions of the Equal Employment Opportunities Commission, which has held that where there is no evidence of business necessity for asking about arrest records on an application form, the practice will be found racially discriminatory. \textit{See} \textit{Zatzkis, The Legality of the Arrest-Conviction Record Inquiry Under Title VII}, 28 Lab. L.J. 572, 574 (1977). The rationale was also extended to unnecessary conviction inquiries by the Eighth Circuit Court of Appeals in \textit{Green v. Missouri Pac. R.R. Co.}, 523 F.2d 1290, 1235-96 (8th Cir. 1975).}
\end{itemize}
Another inventive compromise has been developed in the District of Columbia courts. Recognizing that one of the major problems in arrest record dissemination is that frequently notation is made only of the arrest, with no mention of outcome, the courts have fashioned a policy of ordering amplification in certain circumstances—that is, the placing on the record of an entry which explains that the person was later found to be not guilty.\textsuperscript{49}

With only these sporadic attempts at intervention on the part of the judiciary, legislation is clearly called for to remove bias on the basis of arrest records. Legislatures in at least thirteen states have attempted to alleviate the arrest record problem, although their provisions may in most cases be described with justification as halfhearted.\textsuperscript{50} Most provisions apply only to arrest where followed by acquittal or dismissal of charges, thus leaving on record the large majority of arrests which are not followed by the preliminary filing of a charge. Many also do not apply to copies of arrest records which may have been sent on to other agencies or police departments.\textsuperscript{51}

\textbf{APPRAISAL OF THE AMERICAN SITUATION}

Despite these minor inroads into the prejudicial effects of arrest record dissemination, the problem remains one of the most fundamental and illogical invasions of personal freedom in the American system. The President's Commission on Law Enforcement stated that about seventy-five per cent of employment applicants were still at a disadvantage three times greater than that of clean applicants. See generally Schwartz & Skolnick, supra note 32.

\textsuperscript{49} Spock v. District of Columbia, 283 A.2d 14, 20 (D.C. Cir. 1971); see Comment, Amplification of Arrest Records by Criminal Courts: A Judicial Compromise, 13 Am. Crim. L. Rev. 139, 147-48 (1975). Needless to say, for the purpose advocated here this does not go far enough. Even with a letter from a judge emphasizing the presumption of innocence, job applicants were still at a disadvantage three times greater than that of clean applicants. See generally Schwartz & Skolnick, supra note 32.

\textsuperscript{50} A bill introduced by Senator Edwards of California, to "provide for dissemination and use of arrest records in a manner that insures their security and privacy" failed mainly due to the press lobby. For detailed evidence, see United States Congress, House, Committee on the Judiciary, Subcommittee on Civil Rights of the Committee on Judicial Hearings, Dissemination of Criminal Justice Information (1974).

\textsuperscript{51} For a list of these provisions, see DeWeese, Reforming Our "Record Prisons": A Proposal For the Federal Regulation of Crime Data Banks, 8 Rut.-Cam. L.J. 27, 42-43 n.86 (1974); Comment, Arrest Record Expungement—A Function of The Criminal Court, 1971 Utah L. Rev. 381, 386 n.27. For details of particular state legislation, see Comment, The Press and Criminal Record Privacy, 20 St. Louis U. L. J. 509 (1976) (Missouri). The Missouri legislation is interesting in that it allows an arrestee whose record has been expunged to lie in response to any question concerning arrests and unsuccessful charges. Id. at 509 n.1. See generally Stark, Expungement and Sealing of Arrest And Conviction Records: The New Jersey Response, 5 Seton Hall L. Rev. 864 (1974) (New Jersey).
cies in a New York City sample asked applicants about arrest records, and as a matter of regular procedure do not refer any applicant with a record, regardless of whether the arrest was followed by a conviction. "The fact that the majority of slum males (estimates vary from 50 to 90 per cent) have some sort of arrest record accentuates this problem."

Only one or two branches of the criminal justice system can be responsible for this widespread dissemination of arrest information, and most commentators, apparently correctly, hold the police to blame. Their claim that the records are necessary as investigative aids may be justified. The better view is that an arrest record not followed by conviction indicates one of two things: either the police made the arrest on the basis of evidence insufficient for a conviction, or the police simply decided to release the arrestee and no charges were filed.

In reality, an arresting officer is the first "judge" in a criminal proceeding, and the first trial court may be regarded, in a defended action, as a first court of appeal. In the large majority of cases where a guilty plea is lodged, the court is effectively doing little more than rubberstamping the police decision as to the defendant's guilt. This notion presents a clear challenge to the traditional belief that the police role is to bring a person, innocent until proven guilty, to trial. Given the reality of the situation, it is all the more important that police power to "punish" outside the official system be closely circumscribed where the totally effective removal of arrest records is impossible. Where the police decide not to take a matter to trial, their decision should be absolute, and reflected by a removal of the record of arrest; and where the charge fails in court, the accused should have no further stain on his character. Presently, of course, these are mere ideals.

The fears that arrest records can never be forgotten by a computer are unfounded. On the contrary, it is arguable that the centralized data storage bank may hold the answer to the arrest record dilemma. With one easily accessible central bank, and terminals in all police departments, there is no need for mass reproduction of information in files and folders. Where lost information

52. The New York Human Rights Commission had declared this practice by employers unlawful. It would be too much to hope that all questions about arrest might have stopped since that date!
54. Id. Another author demonstrates the injustice done by arrest records against a background of figures from California. In 1962, more than 750,000 adults were arrested; 570,000 people acquired a record even though no case was ever brought against them. Guilt, supra note 20, at 126.
would threaten security, it can be duplicated in the system. It seems inconceivable that the modern computer, containing in its design many safeguards against accidental erasure, cannot be told to lose information. Nor, surely, is the ingenuity of those who design electronic data processing equipment incapable of devising a means of total erasure.

The proposal is this: except in cases where a conviction is subsequently obtained, all records should be erased permanently on the application of an arrestee whenever he or she wishes. However, if the police maintain that arrest records are a necessary aid to crime detection, and it is politically expedient to allow them their record-keeping privileges, the onus is squarely upon the police to insure that the records are not used for improper or illegal purposes. If they prove incapable of fulfilling this mandate, then it is suggested that the privilege be taken away: the total loss to law enforcement, of not being allowed this indulgence, is small in comparison to the total loss to presumably innocent individuals prejudiced by the existence of arrest records.

In the absence of security improvements in the record system, the balance of all other arguments is against maintenance of arrest records. Since nearly every other civilized country in the world seems to maintain an equal or better crime rate than the United States without the assistance of arrest record discrimination, there seems to be no clear justification for the continuation of the present American system. Perhaps the maintenance and use of arrest records are a frank admission that whatever the public is led to believe, the presumption of innocence until guilt is proven "beyond a reasonable doubt" is too high a social standard to maintain outside the courtroom.

POLICE USE OF ENFORCEMENT RECORDS

The retention and dissemination of records of arrest are characterized as unwarranted and unduly oppressive in light of the severe doubts raised as to their continuing usefulness in enforcement policy. Slightly different considerations apply to the retention of records of conviction. As there has been a formal adjudication or finding of guilt, the label "unjust" is not so easily applied to retention: nevertheless, offenders are surely entitled to

55. It would perhaps be too radical altogether to suggest that the arrestee should be given an official report of the arrest to help substantiate any claim for false arrest or imprisonment. Houts' estimate that 75% of arrests in the United States are illegal adds weight to the argument against record maintenance at the behest of the police. M. HOUTS, FROM ARREST TO RELEASE: AN ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE 24 (1958).
live down their offense, at least after a substantial demonstration of reform.

In combination with certain aspects of the legal superstructure, police practices in relation to the use of criminal records vary in the countries under consideration in this article. In the interaction between the police and former offenders, the delicate problem of the need to maintain a balance between individual liberty and adequate enforcement is posed in a particularly acute form.\textsuperscript{56} With the above mentioned rapid computerization of criminal justice data systems, and consequent greater accessibility of record information by working policemen,\textsuperscript{57} the situation is further exacerbated. It is the contention of this article that the problem is generally resolved more firmly against the offender in American jurisdictions than in either Canada or England.

Police use of information regarding past conduct is found in two groups of situations. The first is where police officers, as a re-


\textsuperscript{57} One major concern of modern commentators on the growing number of data banks is not for their existence but for the accuracy of information contained therein. See Karst, \textit{"The Files": Legal Controls over the Accuracy and Accessibility of Stored Personal Data}, 31 L. & CONTEMP. PROB. 342, 343 (1966). In Canada the problem of accuracy was partly affected by sections 52-56 of the Canadian Human Rights Act, which entitles individuals to have access to federal records concerning themselves "for any purpose including the purpose of ensuring accuracy and completeness . . ." and to request corrections where he believes there is an omission or error, or require notation of the request where it is not granted. Canadian Human Rights Act, c. 33 CAN. STAT. § 52(1)(a), (d), (e) (1976-77). However, provisions in sections 53 and 54 allow the designated Minister to provide for section 52 (1) not to apply, inter alia, to information "obtained or prepared by any government institution or part of a government institution that is an investigative body," on various grounds. A number of orders have been promulgated under this authority, covering \textit{inter alia} criminal intelligence files, STAT. O. & R. NOS. 78-189, 78-416 (1978), customs and excise investigation, STAT. O. & R. NO. 78-189 (1978), customs intelligence files, STAT. O. & R. NO. 78-185 (1978), drug investigation files, STAT. O. & R. NO. 78-195 (1978), prosecution and extradition files, STAT. O. & R. NO. 78-183 (1978), and many others. Obviously, such a proliferation of detractions, although possibly desirable for security reasons, gives rebirth to the problems. A similar situation obtains in the United States, where 5 U.S.C. § 552 (1976) allows access to government records, but 5 U.S.C. § 552(b)(7)(1976) makes substantial exceptions for investigative and law enforcement files. In Tarlton v. Saxbe, 507 F.2d 1116 (D.C. Cir. 1974), the district court held that the FBI has an affirmative duty to take reasonable precautions to ensure the accuracy of the information contained in its files. \textit{Id.} at 1129. Again, exclusions from scrutiny may make the ideal of correct files in all cases where a party is interested less easily obtainable in practice. Nevertheless, under the two Acts the FBI and RCMP have been inundated with requests to see files, to the extent that special staff have been or are being deployed to consider the release of files. Interview with J.D. McCamus, Chairman, Commission on Freedom of Information and Individual Privacy, in Toronto (January 1979). The CPIC file is not available for consultation under the Human Rights Act as the RCMP maintain that the system is not a federal information bank within the meaning of the Act. TREASURY BOARD, INDEX OF FEDERAL INFORMATION BANKS 488 (1978).
result of police department, court or legislative instructions, deliberately “keep watch” over known offenders. The second group of situations involves what might be termed the “chance encounter”, where an officer encounters a member of the public involved in an activity which is viewed by the officer as questionable or criminal conduct, and utilizes background information in the forming of his decision of how to proceed. It is, of course, principally in the latter group of situations that computerization is having its most widespread effects: to the advantage of those whose record is free of arrests and charges, but, as will be shown, to the detriment of those who have previous contacts with enforcement agencies.

POLICE SURVEILLANCE OF KNOWN CRIMINALS

General Surveillance

According to Professor Damaska, police surveillance originated in the days of the European absolute monarchies, and was devised not as a watchdog technique for persons convicted of crime, but for those who could not be convicted due to lack of evidence:

Following trial, these persons were neither definitely acquitted nor convicted. Their case was only “tabled,” as it were, and a further mandatory consequence—police surveillance—was imposed. When the idea of the presumption of innocence became prevalent, police surveillance was restricted to those cases where the person was actually convicted of certain serious crimes. Even in this limited capacity, it was discarded by most European countries around the turn of the century.58

Modern European usage of surveillance is dependent upon conviction of the defendant, and attempts have been made to justify it in terms of nonpenal security measures (West Germany and Turkey) and promotion of the reintegration of the offender into society (Italy). Surveillance may still be ordered by the court in some countries if the case falls within certain narrow limits.59

The principal evidence of American practices is found in police manuals and legislation. Goldstein has collected an interesting selection of instructions to police officers.60 According to Goldstein,

59. Id. at 542-43.
patrolmen in San Francisco were instructed to "observe the con-
duct of all known criminals and bad characters, making such ob-
servations as will enable him to identify them at any time [and]  
. . . in particular [to observe] their actions and the places they fre-
quent and report all pertinent facts to his commanding officer."61

Until recently, the Sergeant of the Sioux City, Iowa police depart-
ment was instructed to "give particular attention to beer taverns,
pool halls, rooming houses, bowling alleys, dance halls, and other
places where bootleggers, gamblers, prostitutes, thieves, and nar-
cotic addicts may congregate, and . . . use every lawful means to
suppress, imprison and drive them from the city."62 Wilson's re-
production of section 1135.03 of the Portland, Maine, Police Depart-
ment Rules and Regulations, contains the opposite instruction:
"Members shall not taunt or persecute ex-convicts. When a con-
victed man has paid his penalty for his offense, he is entitled to
start life anew and should receive encouragement and cooperation
from the police in his efforts to live a law-abiding life."63

Instructions in police manuals which may contain hundreds of
sections or pages, and many mandates more optimistic than realis-
tic, are of course scarcely probative of actual practice. The limits
of time and mobility on the present study have precluded any de-
tailed investigation of police practice in relation to allegedly notori-
ous criminals, although conversations with police in England,
Denmark and Canada have reinforced the commonsense idea that
a policeman, like every intelligent worker, acquires in the course of
his employment a stock of working knowledge, which of course in-
cludes the identities and appearances of serious offenders in his
neighborhood. The need to allocate scarce labor resources to se-
cure maximum efficiency makes it unlikely that police time will be

61. Id. at 591 (citing SAN FRANCISCO, CAL., POLICE DEPARTMENT RULES AND
REGULATIONS § 206 at 43 (1951)). In response to an enquiry to the San Francisco
Police Department, however, the following statement was received: "The citations
which you sent concerning the section and page of the [Rules] do not match any
rule books which were extant in this Department or which were promulgated in
1951. We do not have any such rule and in fact, there would be a problem as a
matter of law with the type of rule you quoted." Letter from Lt. H.R. Trueb, Officer
in Charge, Planning and Research Division, S.F. Police to R. Paul Davis (Feb. 16,
1979).

62. POLICE DEPARTMENT MANUAL § 3, at 54 (1956). The latest revision of the
Manual has removed this paragraph from the list of duties of the sergeant, but it
remains as an historical example. Letter from Capt. R.L. Peterson, Professional
Standards Division, Sioux City Police Department to R. Paul Davis (Feb. 1, 1979).

63. O. WILSON, POLICE PLANNING 375 (2d ed. 1957). Section 5.15.7-8 of the cur-
rent regulations contains a similar mandate, of impartiality towards all persons
coming to the attention of the department. Letter from Lt. William F. Kearns, Com-
mander, Technical Services Section, City of Portland Police Department, to R. Paul
Davis (Feb. 8, 1979).
specifically directed to observation of one individual unless he is suspected of a particular offense; however, it is inevitable that a well-known offender will be watched carefully, and possibly subjected to a more rigorous examination, should he be found in suspicious circumstances at any time. It is human nature to put a little more effort into a situation which one feels has a better chance than usual of paying dividends.

Registration of Criminals

There is a considerable difficulty in drawing, in practice, a line between deliberate surveillance and chance encounter. Although the extreme cases are clearly defined, their interrelationship is close and the division distinctly unclear. The division is breached in particular by the peculiarly American practice, born of the organized crime scares of the 1930s, of requiring registration of certain classes of criminals. Whether the registration ordinances result in police surveillance of individuals, or merely provide a pool of information available to police in the event of the commission of a serious crime, their mere existence is without doubt an inconvenience to those governed by them when entering a state or locality requiring registration. The need to register reinforces the offender's self-image as a criminal, sex-offender, or felon—in some cases for the rest of his life.

The duty to register is imposed on various groups by all levels of legislative body. Narcotics violators are required by federal legislation to register with customs officials when leaving the United States; and in California, for example, persons convicted of certain sex crimes or narcotics offences are required to register with local police, and notify them of a change of address. Under many municipal ordinances, felons, sex or narcotics offenders, and multiple recidivists are usually required to register if they stay within a locality for longer than twenty-four hours or a specified number of days.

64. Much of the following discussion is based on material which is, in legal terms, relatively old. Little writing on this topic has appeared since the flurry of interest surrounding the cases discussed in the text. The article cited in note 66, infra, is so thorough in an area which is difficult to research that academics and judges alike have since been content to rely on its conclusions rather than to advance new propositions.


Litigation concerning the registration ordinances has been sparse, although California has presented several interpretative problems to the courts. In *Kelly v. Municipal Court*, the registration duty was held to be perpetual, in that, in the absence of administrative removal of the duty, the offender carries it to his death. The district court of appeals in *Kelly* also succumbed to the irresistible conclusion that the registration provision is punitive in nature.

In the earlier case of *Lambert v. California*, the United States Supreme Court held a Los Angeles Felon Registration Ordinance unconstitutional as a denial of due process in violation of the fourteenth amendment, in so far as it applied to someone who did not know of the rules. Thus the appellant, who had previously been convicted of forgery, was found not guilty of a violation of the ordinance.

The existence of an excellent survey of registration ordinances renders detailed discussion here unnecessary; however, it is pertinent to note that forty-seven localities were found to have ordinances, as were five states. The sample canvassed was by no means exhaustive.

It is thus likely that substantial numbers of ex-offenders are affected adversely by the cumbersome requirements of these ordinances, including duties to re-register on change of address, and police rights to fingerprint, photograph, and in some cases ques-

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70. For other California cases not discussed here (mainly concerning the Los Angeles Ordinance), see Comment, *supra* note 66, at 95.
72. Id. at ---, 324 P.2d at 992; see Comment, The Effect of Expungement on a Criminal Conviction, 40 S. CAL. L. REV. 127, 135 (1967). See also CAL. PENAL CODE § 1203 (West 1970).
74. 355 U.S. 225 (1957).
75. Id. at 229-30.
76. Justice Douglas delivered the majority opinion in a 5-4 division of the Supreme Court. The decision may be limited in its practical application by the defendant's need in other cases to prove absence of knowledge of the law. Lambert succeeded because she had attempted to adduce evidence of her ignorance, which had been excluded by the trial court. The Supreme Court was thus able to assume that she lacked actual knowledge. 355 U.S. at 227. The judgement was criticized for its brevity and for leaving several questions unanswered. Aside of the constitutionality question, the case adds a new dimension to discussions of *mens rea* in the context of criminal omissions and strict liability. See Dubin, *Mens Rea Reconsidered: A Plea for a Due Process Concept of Criminal Responsibility*, 18 STAN. L. REV. 322, 382 n.273 (1966); Hughes, *Criminal Omissions*, 67 YALE L. J. 590, 618-20 (1958); Mueller, *On Common Law Mens Rea*, 42 MINN. L. REV. 1043, 1043 (1958).
77. *See generally* Criminal, *supra* note 66. Another study revealed fifteen states in which localities had local ordinances, Oklahoma alone stating that most (as opposed to some) towns had ordinances. Wilson, McPhee, & Magleby, *Are Criminal Registration Laws Sound?* 4 CRIME & DELINQUENCY 271, 273 (1958).
tion or search without warrant. Yet the laws are highly unsatisfactory from many points of view. With respect to policy, the imposition of duties and liabilities after sentence amounts to undue retribution against the offender, and the statutes can hardly be construed as aids to rehabilitation. The law enforcer's reply that registration increases police efficiency by making police aware of the presence and nature of certain types of offenders in a locality, and deterring such offenders from further criminality due to the greater likelihood of suspicion poses once again the great dilemma—efficient law enforcement versus personal freedom. Overriding this is the consideration that despite a long history—the first ordinances were enacted in 1933—they are of doubtful constitutionality.

**USE OF RECORDS IN FIELD INTERACTION, INTERROGATION, AND DETECTION**

American police practices, at least so far as is demonstrated by the literature, rely far more on the use of records of all types. The foregoing discussion on registration is but one example. Although the use of modus operandi and description records (including fingerprints) is almost universal in police practice, it is unusual in England and Canada for an individual's arrest record to emerge before charges are filed. Exception must, of course, be allowed for the case where the man is already known to the police officer dealing with him.

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78. For a full discussion of the impositions placed upon a registered felon, see Comment, supra note 66, at 76-79.

79. Academic commentators in fact usually reach the conclusion that Registration Ordinances are used for neither of the purposes advanced as arguments for their retention in this paragraph, but to harass known criminals, and provide charges (failure to register) allowing the police to secure conviction where other suspected offenses cannot be proved. Vagrancy laws provide a similar means of "getting criminals off the streets." See Foote, Vagrancy-type Law and Its Administration, 104 U. Pa. L. Rev. 603, 649 (1956).

80. See Criminal, supra note 66, at 96-106. Individual ordinances may also be subject to attack under state constitutions. For one example of such arguments, see Wenger, The Legality or Constitutionality of the Philadelphia Ordinance Requiring the Registration of Convicted Criminals Whether on Parole, At Large, or on Suspended Sentence, or Who Have Served their Term of Imprisonment, 11 Temple L.Q. 551 (1937). An opinion of the Utah Attorney General rendered during the debate in 1956 on the possibility of introducing registration in that state declared: "The imposition of the registration requirements upon persons merely because they have been convicted of a single crime, the fact that persons in some cases are subjected to the registration requirement for the rest of their lives, and especially the manner in which these laws are often used, leads to the conclusion that these ordinances are of questionable constitutionality." Wilson, McPhee, & Magleby, supra note 77, at 272.

81. See note 8 and accompanying text supra.
Research has revealed two categories of record use apart from detection. Since they seem to be peculiarly American, they will be discussed briefly before a general review of record use in detection.

The Discretion to Arrest

Increased accessibility of background information to American patrol officers has substantially altered the basis upon which discretionary decisions may be made.

Principally, the situation in which records play their largest role might be termed marginal, or a "gray area". A man is found in suspicious circumstances but with no criminal act definitely committed, or is apprehended for a minor offense. In both these situations, police exercise discretion in deciding, in the former case, whether to investigate further, and in the latter, whether to proceed with charging the man. The officer's discovery that the man concerned has a bad record may prejudice the decision. LaFave gives an example which illustrates not only this process but also police use of arrest to punish an ex-offender where there is no possibility of charge:

The police learned of a minor property theft. As the victim was not interested in prosecution, the police, in accord with their usual policy, decided not to arrest. However, when they learned that the offender was known to the police department as a "bad actor," and that the police had been unsuccessful in obtaining his prosecution for other more serious offenses, they arrested him.\textsuperscript{82}

It is noteworthy that the prejudicial factor in this case was not even previous convictions, but merely police "knowledge" of prior offending. LaFave also found that in all three states he studied (Kansas, Michigan and Wisconsin), a Detroit Police Lieutenant's policy that, "it is desirable to arrest, notwithstanding the fact that the conduct usually does not call for such action, whenever the offender is 'a known criminal the police desire to get off the street',\textsuperscript{83} was followed in principle and practice. One could feel justified in alleging that this practice amounts to police manufacture of recidivism.\textsuperscript{84}

\textsuperscript{82} W. LaFave, Arrest: The Decision to Take a Suspect into Custody 149 (1965).
\textsuperscript{83} Id. at 150.
\textsuperscript{84} Japan was the only other country identified in the literature as using records in discretionary processes at this early stage:

Each prefecture, or major city, maintains an 'A-B-C' index listing wanted persons, stolen objects, and criminal records. Searching these lists takes at most ten minutes, allowing officers to hold people in conversation while
Impressionistic studies of police behavior are, in this case, supported by empirical evidence. For example, one such study presented questionnaires showing hypothetical situations to twenty-three police patrol officers, and varied systematically the presentation of good and bad background information (from record files) with the cases. Focusing the study on marginal cases, responses demonstrated a highly significant effect of good or bad background information. Of eight situations used in their final study, five displayed a definite trend to arrest with unfavorable background information.

On a larger scale, and dealing with real cases, a recent New York State Department of Mental Hygiene Study suggested that prior criminality, rather than mental illness, is the major reason for a higher arrest rate of former mental patients compared to that of the general public.

In Canada information on previous arrests and convictions is not available to police officers on patrol. Upon apprehending a person in suspicious circumstances, the only immediate information which can be obtained is whether there is an outstanding warrant for the individual from CPIC. Only if there is, may the police officer file a request for further information; a full account of arrests supported by fingerprint identification and information on convictions may only be obtained from the Ottawa fingerprint files through the mail, following submission of the apprehended person’s fingerprints.

Use of Records as Primers for Interrogation

In connection with the detection and solution of crimes, the previous record of a suspect may also place him at a disadvantage once he is in the hands of the police. Textbooks on police techniques commonly state that there are four principal phases in the investigation of an offense, namely: 1) the collection and preservation of information that will determine the policemen’s course of action. Use of two-way radios is often done so casually that interrogated persons are unaware that they are being investigated.


85. See generally Smith, Wehmeyer, Keating, & Berberick, Background Information: Does it Affect the Misdemeanor Arrest? 4 J. POLICE SCI. & AD. 111 (1976) (study included only that information readily available to police officers by radio communication with record center).

86. Id. at 113.


88. See text accompanying note 8 supra.

tion of evidence; 2) interview (of persons involved, witnesses, and suspects); 3) the use of records; and, 4) surveillance of the suspect, if necessary.

In steps two and three, previous criminal records may come to the fore. Policemen are frequently heard to complain of the unfairness, or, as they perceive it, underhandedness, of techniques used by advocates to discredit them in court. The following extract shows that police, too, have an armory of questionable practices at their disposal. In the final balance the defendant or suspect would seem to be the only participant with technique stacked against him. Perhaps in these circumstances it is no surprise that seasoned offenders seem to evolve an interview technique of their own:

When a suspect whose guilt is not known is being interviewed, the keynote of the interview is thoroughness. Nothing must be overlooked by the investigator when the person he is probing knows all the answers. One way that the officer can reach a degree of equality with the suspect is to know all about his background. With this information, he can occasionally inject a personal note into the interview just to test the suspect’s veracity. If he catches the suspect in a lie, he then has a wedge with which he can make further proddings and possibly, in the end, break down the suspect completely. . . . The most useful departmental records are the complaint and arrest records. These expose the criminal’s background and give the investigator his leads for the interviewing process. . . . It would be unwise for an officer to attempt an interrogation of a suspect without first ascertaining all he could about the suspect from these files. . . . Even the miscellaneous investigative records maintained by fellow officers will often prove helpful in obtaining a lead on a suspect.90

Use of Records as Aids to Detection

The filing of modus operandi and personal description information leads to increased police efficiency in identifying possible suspects in cases where a crime has been committed and the offender is not yet known. Apart from manual and keypunch methods of sorting through records, now fast becoming obsolete, two electronic processes with a common base are in widespread use.

Both operate by matching characteristics of the present crime and description of an offender to past records to see if they correspond with the characteristics of a previous offender, or, indeed, to

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the characteristics of a series of unsolved crimes. This process initially may be carried out by asking a computer system to check for matching information, or by the less sophisticated process of microfilm reading. Nevertheless, the Miracode (microfilm) system use in Tasmania, for example, is highly efficient, and has a capacity for checking some 350 records per second against tendered information.91

The dangers to the ex-offender are obvious. If his crime was highly idiosyncratic or if he has an unusual feature, he runs the risk of being strongly suspected, arrested, and possibly harassed by the police on the basis of a similarity between his crime and a subsequent offense, should a person with a similar style or feature offend. If his crime was of a common nature, moreover, and he has no peculiar characteristics, his file may continue to come up all over the country as other nondescript persons commit nondescript serious offenses. When an offense occurs in his locality he may well be visited by police, questioned, and even arrested,92 all of which serve to increase public, police, and personal visibility of his past offense, and reminding the ex-offender of his status.93

The so-called “dragnet arrest”, or “round-up”, best known in the United States, is a particularly distasteful aspect of the use of criminal records in solving crimes.94 LaFave gives a clear illustration:

Detectives investigating a safecracking took particular note of the means used to open the safe, as disclosed by the physical evidence at the scene. The officers studied the modus operandi file which had been prepared on past solved and unsolved safecrackings. Finding a similarity between the methods used in the case being investigated

91. TASMANIA POLICE FORCE, THE MIRACODE SYSTEM.
92. Foote, Law and Police Practice: Safeguards in the Law of Arrest 52 N.W.U.L. Rev. 16, 31 (1975). "It is natural, and perhaps inevitable, that police suspicion should be fastened upon those with criminal records . . . Police arrest practices may create hardships and bitterness in such situations which substantially impede . . . return to normality or even close the 'doors to reformation, repentance, or a new try at life.'" Id. (quoting People v. Pieri, 269 N.Y. 315, 327, 199 N.E. 495, 499 (1936)).
93. The dangers of a mistake in the use of records to a person who is identified therein are obvious. In Dallison v. Caffery, 2 All E.R. 610 (1964), the plaintiff, who was “well known to the police, having a long list of convictions for larceny,” was arrested, escorted several miles in a police car for the purpose of verifying his alibi, and charged. At committal proceedings, the magistrates’ court was not told of statements which supported the alibi. At the trial, the prosecution offered no evidence, saying that there had been a mistake. According to the shorthand note, the initial identification by the principal witness had been of someone other than the plaintiff.
94. British inquiries condemn this practice and generally find it nonexistent in Britain. See, e.g., ROYAL COMMISSION ON POLICE POWERS AND PROCEDURE, REPORT OF THE ROYAL COMMISSION ON POLICE POWERS AND PROCEDURE 51 (1929).
and those employed in the past by four different offenders currently living in the community, they decided to have the four men arrested.\textsuperscript{95}

LaFave goes on to describe the possibility that in localities where records of all sexual offenders are kept, substantial numbers may be rounded up when a serious offense occurs.

Despite the lack of specific legal guidance on the question, it is unfortunate that one's prior record alone may constitute probable cause for arrest where the offense is sufficiently serious and the known \textit{modus operandi}\textsuperscript{96} of that person bears a marked similarity to the present offense.\textsuperscript{97}

Again, the harsher United States position is shown in the provision of arrest powers on wider grounds, including prior record. The Supreme Court explained in \textit{Brinegar v. United States}\textsuperscript{98} that it is proper to consider prior police record, and that those rules of evidence which exclude probative evidence because of "possible misunderstanding or misuse by the jury" should not operate in the determination of probable cause: "[W]e deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved."\textsuperscript{99}

The Canadian and English rules of arrest are somewhat more restrictive, although it is noteworthy that section 450 of the Canadian Criminal Code provides:

\begin{quote}
(2) A peace officer shall not arrest a person without warrant for [various categories of offence] in any case where
\begin{itemize}
\item[(d)] he has reasonable and probable grounds to believe that the public interest . . . including the need to [achieve certain ends] may be satisfied without so arresting the person, and
\item[(e)] he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend
\end{itemize}
\end{quote}

\textsuperscript{95} W. LaFave, \textit{supra} note 82, at 288.


\textsuperscript{98} 338 U.S. 160 (1949).

\textsuperscript{99} \textit{Id.} at 175.
in court in order to be dealt with according to law. The section apparently contemplates some prior knowledge of the offender's character in the arresting officer.

CONCLUSION

The review of police-specific research is completed, but the most important question remains unanswered. Having identified some patterns and practices of police forces, it is necessary to evaluate what effects are felt by ex-offenders.

Guidance on this point has been difficult to find. Irvin Waller's sample of men released from a Canadian prison alluded to feelings of ex-inmates that they were discriminated against by the police, although 56% of dischargees and 68% of parolees said they would not feel threatened by suspicion if an offense were committed in their area. Twelve months after release, 50% of the men had spoken to the police; 20% of dischargees and 10% of parolees felt that police had been actively trailing them, and of those not arrested, 30% and 20% respectively said that the police had threatened to arrest them. Of course, some allowance must be made for the possibility that some suspicion arose from investigation of offenses in which the men were actually involved, and need not have arisen solely, or even indirectly, from their previous conviction.

It is instructive to compare these impressions with the findings of Martin and Webster in England, collected for a different purpose but nonetheless significant. They were interested in a sociometric-type impression of the relationships of ex-offenders, and asked police about the circles in which their sample moved. Seven categories, from “not known to the police prior to survey offense”, through “believed to be a major influence on crime in the locality” were employed, and local police were asked to state their knowledge of the offender and his contacts and acquaintances. From their analysis it is possible to extract the information that there is a definite trend towards increased police interest as a result of the offense and conviction. The authors summarize their findings as follows:

One-third of the criminals for whom we had before and after police ratings, by the end of the follow-up period were not believed to be associating with known criminals. Only

100. See CAN. REV. STAT. c.34, § 450 (1970).
102. Id.
103. J. MARTIN & D. WEBSTER, supra note 1.
7 per cent of the total had changed from being under suspicion to being free of it. Three-quarters were still in the same category as before, and the remaining charges tended to be for the worse.\textsuperscript{104}

They conclude:

\begin{quote}
It is difficult to know how much such classifications merely reflect a natural police policy of keeping an eye on those who have merited suspicion in the past, but it would certainly seem that men who continue to move in doubtful circles cannot live down police suspicion in a year.\textsuperscript{105}

If anything, it would appear that the effect of relations with the police is of relatively minor import in numerical terms, although particularly in the United States certain police practices may make major encroachments on individual privacy and dignity.

In the dissemination and use of arrest records, the registration of certain types of offenders, greater use of prior records in the discretionary process and as justification for arrest, the laws and practices of many American states seem shortsighted and self-defeating in the light of clear demonstration elsewhere that antisocial behaviors may be adequately policed by less rigorous oppression of former offenders. Where the law and legal institutions themselves reinforce the unofficial stigmatic continuation of the effect of arrest or conviction, it is not surprising that cooperation between police and public falls to a low ebb, or that criminal careers lengthen and develop to greater depths of involvement. While this virtual manufacture of recidivism may have pleasant implications for the careers of "conviction-getting" officers and prosecutors, it also contributes heavily to the vicious circle of reoffending and unemployment, and as such is unhealthy for the very society which spawns such prejudice. Not only may the formulation of criminal law, as the economic (conflict) theorists aver,\textsuperscript{106} be oppressive of the lower classes and perpetuate untenable distinctions, but the operation of laws and legal institutions may add significantly to the lifelong opprobrium of many persons who are entitled, from any philosophical or penological viewpoint,\textsuperscript{107} to a better consideration by the society of which they are a part.
\end{quote}

\textsuperscript{104} Id. at 112.
\textsuperscript{105} Id. at 109-10.
\textsuperscript{106} For a modern rendition, see R. QUINNEY, CLASS, STATE AND CRIME 31-105 (1977).