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Approaching career criminals with an intelligence cycle

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Monterey, California: Naval Postgraduate School

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NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

APPROACHING CAREER CRIMINALS WITH AN INTELLIGENCE CYCLE

by

Denis Francis O'Leary

December 2015

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REPORT DOCUMENTATION PAGE		*Form Approved OMB No. 0704-0188*
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington DC 20503.		
1. AGENCY USE ONLY *(Leave blank)*	**2. REPORT DATE** December 2015	**3. REPORT TYPE AND DATES COVERED** Master's thesis
4. TITLE AND SUBTITLE APPROACHING CAREER CRIMINALS WITH AN INTELLIGENCE CYCLE		**5. FUNDING NUMBERS**
6. AUTHOR(S) Denis Francis O'Leary		
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000		**8. PERFORMING ORGANIZATION REPORT NUMBER**
9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A		**10. SPONSORING / MONITORING AGENCY REPORT NUMBER**
11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government. IRB Protocol number ____N/A____.		
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distribution is unlimited		**12b. DISTRIBUTION CODE** A

13. ABSTRACT (maximum 200 words)

Career criminals have been responsible for a high number of crimes out of proportion to their small numbers. Efforts to reduce the recidivism rate through intervention programs have not been effective. American law enforcement could be more effective if career criminals were targeted for special attention. Many law enforcement formats, such as community policing, problem-oriented policing and intelligence-led policing, are currently in use by American state, local, and tribal law enforcement agencies, and applying the use of intelligence practices to crime in these communities has become a focus of its law enforcement agencies. Can American law enforcement agencies use an intelligence community tool—the intelligence cycle—to deal with career criminals effectively?

This thesis studies serious-offender programs and the use of the intelligence cycle by American intelligence agencies in order to create a model merging serious offender programs and intelligence cycles. It investigates serious-offender programs and finds that a lack of focus limited the use of the intelligence cycle within the American criminal justice system. This thesis concludes that the use of the intelligence cycle—specifically the FBI's intelligence cycle's six steps of requirements, planning and direction, collection, processing and exploitation, analysis and production, and dissemination—can assist a law enforcement agency in focusing its efforts on career criminals.

14. SUBJECT TERMS career criminal, habitual offender, habitual serious and violent juvenile offender programs, repeat offender programs, intelligence, intelligence cycle, recidivism			**15. NUMBER OF PAGES** 77
			16. PRICE CODE
17. SECURITY CLASSIFICATION OF REPORT Unclassified	**18. SECURITY CLASSIFICATION OF THIS PAGE** Unclassified	**19. SECURITY CLASSIFICATION OF ABSTRACT** Unclassified	**20. LIMITATION OF ABSTRACT** UU

NSN 7540-01-280-5500

Standard Form 298 (Rev. 2-89)
Prescribed by ANSI Std. 239-18

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APPROACHING CAREER CRIMINALS WITH AN INTELLIGENCE CYCLE

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Submitted in partial fulfillment of the
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES
(HOMELAND SECURITY AND DEFENSE)**

from the

**NAVAL POSTGRADUATE SCHOOL
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LIST OF ACRONYMS AND ABBREVIATIONS

AIR   American Institutes for Research

CCC   Career Criminal Command
CIA   Central Intelligence Agency

DHS   Department of Homeland Security
DNI   Director of National Intelligence
DOJ   Department of Justice

FBI   Federal Bureau of Investigation

HSVJOP   Habitual Serious and Violent Juvenile Offender Program

IC   intelligence community
ILP   intelligence-led policing

JTTF   Joint Terrorism Task Forces

NIJJDP   National Institute for Juvenile Justice and Delinquency Prevention

MTFC   Multidimensional Treatment Foster Care

NYPD   New York Police Department

OJJDP   Office of Juvenile Justice and Delinquency Prevention

ROP   Repeat Offender Program

SHOCAP   Serious Habitual Offender Comprehensive Action Program

UCR   Uniform Crime Reports

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EXECUTIVE SUMMARY

Implementation of intervention programs among felons in correctional institutions has not been effective in reducing the rate of recidivism in the United States; some criminals continue to break the law in spite of their convictions and imprisonment. Law enforcement could be more effective if career criminals were targeted for special attention.

Many law enforcement formats, such as community policing, problem-oriented policing and intelligence-led policing, are currently in use by American state, local, and tribal law enforcement agencies and applying the use of intelligence practices to crime in these communities has become a focus of its law enforcement agencies.

Intelligence consists of information, analysis, and intelligence products. Information is facts, analysis is looking at those facts and determining if they are credible and relevant, and the intelligence product is analyzed facts. Intelligence is the product of an intelligence cycle. An intelligence cycle is an ongoing process in which information can be added to an evidentiary picture.

Some types of intelligence-led policing incorporate a portion of the intelligence cycle into its methodology by using two steps of the cycle—collecting and analyzing crime information—in order to create an intelligence product for use in developing immediate law enforcement responses to crimes. With a structured and systematic process of information gathering integrated in American policing, the changing pattern of criminal acts committed by these habitual offenders can be predicted.

Within this context, this thesis explores the application of the intelligence cycle in policing as a response to the changing face of crime and the growing interest toward a data-driven approach in crime case prioritization. Its research hopes to determine if the law enforcement use of the intelligence cycle is an effective strategy in dealing with career criminals.

This thesis studies serious offender programs (Habitual Serious and Violent Juvenile Offender Programs and Repeat Offender Projects) and intelligence cycles

(Federal Bureau of Investigation, Central Intelligence Agency, and Department of Homeland Security), and concludes with a recommended model for using the intelligence cycle in dealing with career criminals. This model will incorporate the steps of the intelligence cycle with the best practices of existing serious offender programs to focus on prosecuting career criminals.

ACKNOWLEDGMENTS

I would like to express my deepest gratitude to my wife, Diane, for her constant support during the writing of this thesis. Special thanks goes to Chief Gregory P. Suhr, San Francisco Police Department, for his encouragement during this process.

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I.   CAN LAW ENFORCEMENT BE INTELLIGENT?

Gehring said that the ability of "specific institutional programs to keep offenders from reoffending is a measure of that program's success,"[1] and that the rate of recidivism that is used to judge the effectiveness of American criminal justice programs and institutions. Furthermore, in the absence of an estimate of the actual number of career criminals, the rate of recidivism is used to determine the estimated number of criminals committing habitual crimes.[2] Also, decreases in incarceration rates indicate a reduction in the general crime rate.[3] In fact, these imprisonment rates reflect a general decline in crime in America.

The theory of career criminals was posited over 100 years ago but in spite of the large impact on society by such a low number of offenders, that very fact—a small population—did not merit a separate policy within the American criminal justice system[4]and the implementation of intervention programs among felons in correctional institutions has not been effective in reducing the rate of recidivism in the United States (U.S.). For instance, almost 46 percent of felons released from prison were returned within three years, according to a study by the Pew Center on the States, which collected data over a 10-year period.[5]

Crime statistics alone "indicate that current law enforcement methods promote a high rate of violent crime by providing a small number of criminals with frequent

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[1] Thom Gehring, "Recidivism as a Measure of Correctional Education Program Success," *Journal of Correctional Education* 51, no. 2 (June 2000): 157.

[2] Kristen M. Zgoba and Leonore M. J. Simon, "Recidivism Rates of Sexual Offenders Up to 7 Years Later: Does Treatment Matter?" *Criminal Justice Review* 30, no. 2 (2005): 155.

[3] Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons* (Washington, DC: The Pew Charitable Trusts, 2011), 5.

[4] Matt DeLisis and Michael Vaughn, "The Gottfredson—Hirschi Critiques Revisited, Reconciling Self Control Theory, Criminal Careers and Career Criminals," *International Journal of Offender Therapy and Comparative Criminology* (2007).

[5] Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons* (Washington, DC: The Pew Charitable Trusts, 2011), 5.

opportunities to repeat their behavior."[6] That is, some criminals continue to break the law in spite of their convictions and imprisonment and the end of their incarceration gives these criminals the chance to return to their previous lifestyle. With a structured and systematic process of information gathering integrated into American policing, the pattern of criminal acts committed by these habitual offenders can be predicted.

Law enforcement could be more effective if offenders determined to be career criminals or habitual offenders were targeted for special attention in the form of intensive information gathering about their criminal behavior, surveillance, and close work with a prosecutor to ensure that subsequent arrests are presented in court.

Many law enforcement formats, such as community policing, problem-oriented policing and intelligence-led policing (ILP), are currently in use by American state, local, and tribal law enforcement agencies and applying the use of intelligence practices to crime in these communities has become a focus of its law enforcement agencies.[7] The intelligence cycle is a process of receiving direction from a client; the collection of information in response to the client's direction or question; the analyzing the collected information in order to determine its credibility and value to the client; and the production of a prediction in answer to the client's question.

Some types of intelligence-led policing incorporates a portion of the intelligence cycle into its methodology by using two steps of the cycle—collecting and analyzing crime information—in order to create an intelligence product for use in developing immediate law enforcement responses to crimes.[8] American intelligence agencies have developed intelligence cycles that use five or six steps and using all the steps of these cycles creates a product that is true to the client's needs. Using the intelligence cycle as an ongoing process seeks continuous input that meets rigorous professional standards

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[6] Philip Cohen, Stefan Possony, and B. Ray, "Repeat Offenders and Career Criminal Programs," *in Forgotten Victims—An Advocate's Anthology*, ed. George Nicholson, Thomas Condit, and Stuart Greenbaum (Sacramento, CA: California District Attorney's Association, 1977), 215.

[7] David L. Carter, *Law Enforcement Intelligence: a Guide for State, Local, and Tribal Law Enforcement Agencies*, 2nd ed. (Washington, DC: Community Oriented Policing Services, U.S. Department of Justice, 2009), 4.

[8] Ibid., 80.

thus adding new information to the overall evidentiary picture.[9] This evidentiary picture stands on data collected and used by law enforcement agencies to mainly determine where crime is occurring. However, the advent of intelligence-led policing has brought calls for its use in law enforcement standard operating procedures.

The United States National Criminal Intelligence-Sharing Plan advocates that every American Law enforcement agency—regardless of the number of officers or deputies within its ranks, or the size of the population or territory that it serves—refine its ability to analyze information and create actionable intelligence products.[10] There is no direction within the plan to use the intelligence cycle, though. But, a 2012 U.S. DOJ review of domestic law enforcement agencies engaged in intelligence-led policing found that successful intelligence-led programs included the "collection of critical information related to targeted criminality"[11] (a step of the intelligence cycle) while identifying "individuals for whom there is a reasonable suspicion of a relationship to a crime."[12]

A. QUESTION

Within this context, this thesis explores the application of the intelligence cycle in policing as a response to the changing face of crime and the growing interest in a data-driven approach in crime case prioritization.[13] Is the law enforcement use of the intelligence cycle an effective strategy when dealing with career criminals? Furthermore, can the application of the intelligence cycle in American law enforcement reduce crime?

B. METHOD

This thesis studies serious offender programs (Habitual Serious and Violent Juvenile Offender Programs (HSVJOP) and Repeat Offender Projects (ROP) and

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[9] Jerry Ratcliffe, *Intelligence-led Policing* (Cullompton Devon: Willian, 2003).

[10] Bureau of Justice Programs, *Reducing Crime Through Intelligence Led Policing* (Washington, DC: U.S. Department of Justice, 2012), 13.

[11] Ibid., 4.

[12] Ibid.

[13] Carter, *Law Enforcement Intelligence: A Guide for State, Local, and Tribal Law Enforcement Agencies*, 74.

intelligence cycles (Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA), and Department of Homeland Security (DHS).

These programs and intelligence cycles were chosen because they are used by American law enforcement agencies and therefore their universal features create opportunities to find similarities and differences. While "one model of the intelligence cycle is not 'better' than the other; rather, they are just slightly different approaches based on" an agency's client's needs.[14]

For the sake of this thesis, intelligence consists of information, analysis, and intelligence products. Information is facts, analysis is looking at those facts and determining if they are credible and relevant, and the intelligence product is analyzed facts. Intelligence is the product of an intelligence cycle. An intelligence cycle is an ongoing process that meets set standards in which information can be added to an evidentiary picture.

With these comparisons, this researcher created a model that merges serious offender programs and intelligence cycles, which will incorporate the best practices found and lessons learned from this study.

C.   LITERATURE REVIEW

Literature about domestic intelligence in the United States can be broken into two areas of study: federal intelligence operations and law enforcement intelligence operations. Researcher Andrew Miller bemoaned the "broad and eclectic nature of intelligence research,"[15] which reflects the varied ends sought in intelligence. Law enforcement seeks to prosecute crimes with the intelligence it gathers while the federal intelligence community (IC) seeks to prevent crimes (terrorism) with the intelligence it gathers.

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[14] Carter, *Law Enforcement Intelligence: A Guide for State, Local, and Tribal Law Enforcement Agencies*, 74.

[15] Andrew Miller, "Homeland Security Intelligence: To What End*?*"(master's thesis, Naval Postgraduate School, 2010).

David Carter warns that the intelligence process should not be confused with intelligence product. He described intelligence product as the "end product of an analytic process that evaluates information collected from diverse sources; integrates the relevant information into a logical package; and produces a conclusion, estimate, or forecast about a criminal phenomenon by using the scientific approach to problem solving."[16] The base description of the intelligence process is found in the intelligence cycle.

Variations of the intelligence process exist but the National Criminal Intelligence Sharing Plan was cited by Carter: (1) planning and direction, (2) collection, (3) processing/collation, (4) analysis, (5) dissemination, and (6) reevaluation.[17] These steps are found in the intelligence cycle. Regardless, all intelligence practitioners—federal or local—need to use the same terms, this paper will show that this is not so.

Literary descriptions of federal domestic intelligence operations tend to be limited to the FBI and the CIA. The FBI's counter terrorism mission is highlighted in the material, as is the CIA's limited ability to engage in its counter terrorism mission in the United States in that the CIA is limited in its mission as it can only operate in America to recruit foreign citizens in the United States for its efforts abroad.

There are accounts as to what went wrong in the U.S. IC prior to September 11, 2001. The 9/11 Commission Report stated that "institutions charged with protecting our borders, civil aviation, and national security did not understand how grave this (terrorism) threat could be and did not adjust their policies, plans, and practices to deter and defeat it."[18]

Much was written about leadership, or the lack thereof in the federal intelligence arena. Jennifer Sims and Burton Gerber found that the need for leadership was critical in

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[16] Carter, *Law Enforcement Intelligence: A Guide for State Local, and Tribal Law Enforcement Agencies*, 9.

[17] Ibid., 57.

[18] National Commission on Terrorist Attacks, *Final Report of the National Commission of Terrorist Attacks upon the United States* (New York: W.W. Norton and Co., 2004), xvi.

the "difficult domain of domestic intelligence."[19] Henry Crumpton also found a lack of leadership in U.S. domestic intelligence. He said that the United States public responded to a need for domestic intelligence by: (1) ignoring it, (2) seeking ad hoc arrangements without clear authority or oversight, (3) allowing our foreign intelligence arm, the CIA, to operate illegally within the United States, and (4) allowing law enforcement (federal, state, and or local) to substitute for intelligence operations.[20]

Descriptions of U.S. domestic intelligence operations include comparisons to other countries' efforts. James Burch compared the British, Indian, and Australian domestic intelligence agencies to a proposed American domestic intelligence agency. He chose these three countries because they are democracies comparable to the United States' government. Burch proposed that such an American agency should have (1) oversight by the executive, judicial, and legislative branches, (2) coordination by the executive branch, and (3) a separation of foreign and domestic intelligence within the agency.[21] It is interesting to note that, despite the separate missions of the CIA and the FBI, Burch's recommendations are carried out in the United States. He just argued for one domestic intelligence agency to fulfill the mission.

Crumpton also argued for a federal intelligence system within the domestic arena.[22] Former CIA Deputy Director Mark Lowenthal said that such a system started with Joint Terrorism Task Forces (JTTF), "which improved relationships between federal counter terrorism efforts and local law enforcement,"[23] though he found that most of America's JTTFs tended to be staffed with state law enforcement personnel, thus

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[19] Gerber Burton and Jennifer Sims, "Meeting the Challenge: Action Now," in *Transforming U.S. Intelligence*, ed. Gerber Buron and Jennifer Sims (Washington, DC: Georgetown University Press, 2005), 268.

[20] Henry Crumpton, "Intelligence and Homeland Defense," *in Transforming U.S. Intelligence*, ed. Gerber Buron and Jennifer Sims (Washington, DC: Georgetown University Press, 2005), 206.

[21] James Burch, "A Domestic Intelligence Agency for the United States? A Comparative Analysis of Domestic Intelligence Agencies and Their Implications for Homeland Security) *Homeland Security Affairs* 3, art. 2 (2007), www.hsaj.org.

[22] Crumpton, "Intelligence and Homeland Defense," 207.

[23] Mark Lowenthal, *Intelligence from Secrets to Policy* (Los Angeles: Sage CQ Press, 2012), 284.

defeating a local and federal liaison. However, Crumpton found that the JTTF was more "global than local."[24]

Scott and Jackson said that "intelligence and security issues are now more prominent than ever in Western political discourse, as well as the wider public consciousness."[25] Carter wrote, "effective law enforcement intelligence operations are sometimes confusing to understand, frequently controversial, and often challenging to implement."[26]

Carter found that law enforcement intelligence operations are "confusing" because many Americans do not find the differences "between law enforcement intelligence and national security intelligence."[27] Intelligence is a generic term used by the media, among others, to describe a wide body of activities.

Carter said that law enforcement intelligence was "controversial…because of a checkered history of intelligence activities"[28] and that law enforcement intelligence was difficult because of the need to change processes and interagency relationships to maximize effective information sharing. Lowenthal wondered if the IC was "doing its job, why have congressional hearings?"[29]

Policing in the United States followed several models in 20th century: traditional policing, problem solving policing, community policing and intelligence-led policing. Traditional policing incorporated a professional police department that stood distant from the public in an effort to reduce corruption. Problem solving policing focused on identifying people or places that contributed to disorder and used analysis in restoring order. Community policing used problem solving policing and community members and or associations to restore order. ILP is discussed below.

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[24] Crumpton, "Intelligence and Homeland Defense," 207.

[25] Peter Jackson and Len Scott, "The Study of Intelligence in Theory and Practice," *Intelligence and National Security* 19, no. 2 (2004): 139.

[26] Carter, *Law Enforcement Intelligence: A Guide for State Local, and Tribal Law Enforcement Agencies*, 413.

[27] Ibid.

[28] Ibid.

[29] Lowenthal, *Intelligence from Secrets to Policy*, 47.

In recent years, police chiefs and sheriffs across the nation have asserted that local law enforcement is first "in the effort to keep our nation safe from terrorism,"[30] meaning that local law enforcement is now obliged to understand homeland security and to apply its tenets in daily operations.

Most information about local law enforcement intelligence operations is found in the category of ILP. While the origins of ILP are indistinct, the first references to the subject were found in the United Kingdom in the 1980s when there were calls for "more effective and more cost-efficient"[31] policing. Mark Reibling describes ILP as an Israeli policing initiative in which investigating an incident is secondary to collecting intelligence.[32]

The U.S. Bureau of Justice Assistance, a component of the Office of Justice Programs, within the U.S. Department of Justice (DOJ) defined ILP as a "collaborative law enforcement approach combining problem solving policing, information sharing and police accountability, with enhanced intelligence operations."[33] David Carter wrote that ILP "provides strategic integration of intelligence into the overall mission"[34] of the law enforcement organization. However, Nina Cope warned that analysis was the most crucial component of intelligence-led policing.[35]

An analysis of the themes found in this literature review shows a lack of study in the field of domestic intelligence. This lack may be the result of confusion about the difference between process and product. The application of the intelligence process is

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[30] Matthew Simeone, "Integrating Virtual Public-Private Partnerships into Local Law Enforcement for Enhanced Intelligence-Led Policing," in *Homeland Security Affairs*, Proceedings of the Center for the Homeland Defense and Security Annual Conference (April 2008), http://www.hsaj.org/articles/135.

[31] Jerry Ratcliffe, *Intelligence Led Policing* (Trends and Issues in Crime and Criminal Justice, no. 248) (Canberra: Australian Institute of Criminology, 2003), 241–260.

[32] Mark Reibling, *Hard Won Lessons: The New Paradigm—Merging Law Enforcement and Counterterrorism Strategies* (New York: Manhattan Institute for Policy Research, 2006), 3.

[33] Global Justice Information Sharing Initiative, *Navigating Your Agency's Path to Intelligence Led Policing* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice, 2009).

[34] Carter, *Law Enforcement Intelligence: A Guide for State Local, and Tribal Law Enforcement Agencies*, 79.

[35] Nina Cope, "Intelligence Led Policing or Policing Led Intelligence," *British Journal of Criminology* 44, no 2 (2004): 189.

found in the intelligence cycle, while the application of intelligence product is not clear in the literature. This may be due to the lack of public knowledge about successes and failures within the American intelligence community. The review highlighted the limited roles of the FBI and the CIA in domestic intelligence operations. Burch proposed a remedy to these limitations in the creation of one American domestic intelligence agency. Lowenthal claimed that America is on its way to a better domestic intelligence operation using Joint Terrorism Task Forces.

Leadership is the second theme found in this literature review: it was deemed crucial to success and found not to be up to expectations.

This review found much knowledge about the intelligence process and its attendant procedures. This is logical because the use of process and procedures leads to increased understanding and definitions within the intelligence community, such understanding lessens mystery and the release of these processes and procedures into the public domain does not threaten intelligence operations.

The review did not find much reporting about the magnitude of the American Intelligence Community's successes and failures. This, too, is logical as broadcasting intelligence failures and successes jeopardizes current intelligence operations as such knowledge could confirm foreign countries' and non-state entities' suspicions of American intelligence community's methods and operations.

The second chapter will look at crime, laws, criminal theory, and the career criminal.

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II.   CRIME AND SOCIETY

Societies exist in order for their members to benefit from collective efforts that individual efforts cannot attain. Universal societal collective efforts include institutions, such as family, religion, schools, transportation, and government, among other things. Institutions, such as criminal justice and national defense, are products of government efforts to protect society and its members from harm. This chapter addresses an intersection of criminal justice—in the form of dealing with career criminals—and national security—in the form of the intelligence cycle.

Both institutions, the criminal justice system and the national security apparatus, appear to be monoliths, but casual study shows that there are local influences on both. For instance, one can be incarcerated in jail for one year and or fined up to $6,000 for possessing any amount (for personal use as opposed to possession with the intent to sell) of marijuana in Alabama,[36] while that same person can legally possess up to one ounce of marijuana in Colorado.

In another example, in California, federal (DHS) transportation security agents screen passengers and their baggage at the Los Angeles International Airport, while 350 miles to the north the same service is conducted by a private security company, Covenant Aviation Security, at the San Francisco International Airport. In the first case, the federal government itself – with its bureaucracy and its chain of command—protects the flying public, and in the second case a private company—with presumed allegiances to its owners – provides the same protection.

Rules, or better yet, laws, based on values and norms are the foundation of a criminal justice system. Values, "the collective conception of what is considered good, desirable and proper,"[37] are the foundation of norms within a society. Values identify what is judged as good or evil within a society. Values are components of norms, the

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[36] Alabama Code, Section 13A-12-214: Unlawful Possession of Marihuana in the Second Degree.

[37] J. Richard Hackman, "Group Influences on Individuals in Organizations," in *Handbook of Industrial and Organizational Psychology*, ed. Marvin D. Dunette and Leatta M. Hough, 2nd ed., vol. 3 (Palo Alto, CA: Consulting Psychologists Press, 1992), 234.

latter being "group held beliefs about how (its) members should behave in a given context."[38]

Norms promote social control by giving individuals physical or psychological resources from group membership. Members of groups "internalize norms by accepting them."[39] Norms are not traditions, but are "beliefs passed down within a group or society with symbolic meaning or special significance with origins in the past."[40]

Norms are a source of laws[41] and some laws describe crimes: "any act committed in violation of a law that prohibits it and authorizes punishment for its commission."[42] Crimes can be classified into at least two general categories: "*malum in se*" and "*malum prohibitum.*" *Malum in se* (Latin for wrong in itself) offenses are "naturally evil, as adjudged by the sense of a civilized community,"[43] and are acts traditionally considered as crimes because they violate the principles of a civilized society. A *malum prohibitum* (Latin for wrong [as] prohibited) "offense is wrong because a statute makes it so."[44] One can see how some of these distinctions apply in the FBI's Uniform Crime Reports (UCR), which lists criminal offenses into two major groups: Part I offenses and Part II offenses.[45]

The first half (four of eight) of the UCR's Part I offenses—criminal homicide, forcible rape, robbery, and aggravated assault—are obvious *malum in se* crimes in that they clearly violate principals of civilized society by taking another's life, or by sexually

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[38] "Norm (Social)," accessed October 15, 2015, www.worldheritage.org/article/whebn0000043851/norm%20(social).

[39] Hackman, "Group Influences on Individuals in Organizations," 234.

[40] Thomas Green, ed. *Folklore, An Encyclopedia of Beliefs, Customs, Tales, Music, Art* (Santa Barbara, CA: ABC-CLIO, 1997), 800.

[41] Richard A. Posner, "Social Norms and the Law: An Economic Approach," *The American Economic Review* 87, no. 2 (May 1997): 365.

[42] James Q. Wilson and Richard J. Herrnstein, *Crime and Human Nature, The Defensive Study of the Causes of Crime* (New York: The Free Press, 1985), 22.

[43] State of Washington v. Thaddius X. Anderson, Supreme Court of the State of Washington, 67826-0, (August 2000).

[44] Ibid.

[45] Federal Bureau of Investigation, *Uniform Crime Reporting Handbook* (Washington, DC: United States Department of Justice, 2004).

assaulting another person, or by taking another's property by force, or by creating serious injury.

The repercussions of these crimes resonate within civil society by causing alarm to victims and their families as well to the general public. The UCR 21 Part II offenses range from forgery to runaway juveniles and can be considered *malum prohibitum* offenses in that they generally do not involve immediate injury or damage to others.

Moreover, what was a crime yesterday is not a crime today. The path to that end varies: decriminalization and legalization are two methods of changing laws. Decriminalization is a process of removing criminal charges for certain actions, while leaving associated laws and regulations in effect and legalization removes a prohibition from the illegal act.

For instance, the Eighteenth Amendment to the U.S. Constitution created Prohibition, a "nationwide ban on the sale, production, importation, and transportation of alcoholic beverages from 1920 to 1933."[46] The U.S. Senate proposed Prohibition in 1917 and thirty-six states approved the amendment within thirteen months, thus ratifying it. The amendment went into effect in January 1920 and remained a law until December 1933 when the Twenty-first Amendment repealed it. Today, the UCR crimes pertaining to alcohol—driving under the influence, liquor laws, drunkenness, and disorderly conduct—are *malum prohibitum* offenses. However, why do people commit crimes, regardless of universal proscription or manmade rules?

Wilson and Herrnstein theorized that a "person will do that thing the consequences of which are perceived by him or her to be preferable to the consequences of doing something else."[47] In other words, at any given time, a person can choose between committing a crime and not committing a crime if the reward in committing the crime is desirable. While other factors contribute to crime—employment, the effectiveness of social institutions (such as the criminal justice system, schools, and

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[46] Dwight Vick and Elizabeth Rhoades, *Drugs and Alcohol in the 21st Century: Theory, Behavior and Policy* (Sudbury, MA: Jones and Bartlett Learning, 2010), 128.

[47] Wilson and Herrnstein, *Crime and Human Nature, The Defensive Study of the Causes of Crime*, 43.

family), and drug use—it is a person's sense of the potential consequences suffered in committing a crime that is the most powerful factor in explaining crime. Wilson and Herrnstein argue that people develop their own "human nature…out of a complex interaction of…social factors" and that "this nature affects how people choose between the consequences of crime and its alternatives."[48]

And so, society treats crimes distinctly by enacting differing punishments. The most serious punishment—death—is used for murder, although California law allows an inmate serving a life sentence "who commits an assault with a deadly weapon or instrument or by any means of force likely to produce great bodily injury to suffer capital punishment."[49] In effect, this law allows the State of California to use the death penalty in a case that did not result in a death. Regardless, it is safe to assume that all of the inmates on California's death row are there for murder, not assault. One suspects that the norms and values of the California correctional officers were applied in creating this law as it protects prison guards from being assaulted by prisoners on Death Row with nothing to lose.

Some crimes do not merit incarceration and are punishable by fines; these infractions are at the lower end of the spectrum of crimes. Moreover, while there are different degrees of murder on the books, there are different degrees of criminals as well. While the distinction between felons and misdemeanants is found in the place and length of punishment, there are criminals who repeatedly offend and are labeled habitual offenders or career criminals.

In a 2003 case, *Gary Ewing v. the State of California*, U.S. Supreme Court Justice Sandra Day O'Connor found that the career criminals posed the "greatest threat to society."[50] The U.S. Supreme Court's decision in that case went on to declare that "the state of California has a reasonable basis for believing that dramatically enhanced sentences for habitual felons advances the goals of its criminal justice system in a

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[48] Wilson and Herrnstein, *Crime and Human Nature, The Defensive Study of the Causes of Crime*, 508.

[49] Section 4500 of the California Penal Code.

[50] Ewing v. California, United States Supreme Court, 538 U.S. 11 (2003).

substantial way because it reflects a rational legislative judgment that offenders who have committed serious or violent felonies must be incapacitated."[51] While this case defended California's right to imprison an offender for continually committing crimes, it did not define the career criminal.

The State of California describes the career criminal as a person who has served two or more prior separate prison terms for a variety of crimes that include murder, attempted murder, manslaughter, rape, oral copulation, sodomy, arson, escape, and or bombing.[52] New York State's penal article 70.10 declares that a "persistent felony offender is a person convicted of a felony having previously been convicted of two or more felonies."[53] Matt DeLisis wrote that the "gold standard marker to delineate whether one is a habitual or career criminal is five or more police contacts or arrests."[54] Since 1965, New York has had a discretionary "Three Strikes and You're Out" statute, which allows a judge to sentence a convicted defendant to life in prison and or parole for life if that person had been convicted of two non-violent felonies.[55]

It was Wolfgang's *Delinquency in a Birth Cohort* that increased mid-20th century knowledge of habitual offenders by studying almost 10,000 Philadelphia males, all born in 1945, who lived in that city during their preteen and teenage years. Wolfgang and his associates declared that a person with "five or more police contacts" were "chronic or habitual offenders."[56] As stated above, DeLisis agreed with Wolfgang.

As to the impact of career criminals on society, research has found that a fair share of crime is committed by "less than ten percent of the population,"[57] and anywhere from seventy to one hundred percent of America's serious crimes—murder, rape, kidnapping, robbery, burglary and aggravated assault—are committed by this ten

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[51] Ewing v. California, United States Supreme Court, 538 U.S. 11 (2003).

[52] Section 667.7 of the California Penal Code.

[53] Section 70.10 of the New York State Penal Code.

[54] Matt DeLisis, *Career Criminals in Society* (Thousand Oaks, CA, Sage Publications, 2005), 22.

[55] Joseph E. Fahey, "Discretionary Persistent Felony Offender Sentencing in New York: Can It Survive Apprendi?" *Syracuse University of Law*, 2012.

[56] DeLisis, *Career Criminals in Society*, 26–27.

[57] Ibid., 5.

percent.[58] In conclusion, a criminal justice system that focuses on these ten percent would be beneficial to society as this group accounts for most of America's serious crime.[59]

The next chapter will discuss intelligence as a process and a product; the intelligence cycle; and the use of intelligence by American law enforcement agencies.

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[58] DeLisis, *Career Criminals in Society*, 5.

[59] Ibid., 6.

III. INTELLIGENCE AND THE INTELLIGENCE CYCLE

Intelligence cycles are the foundation for intelligence operations. An intelligence operation for an agency is an on-going operation and should contain a mission statement, oversight procedures, a nexus to hazards, a process for collecting information, and a records retention policy.

A mission statement should state the purpose of the operation; typically answered in the intelligence cycle's requirements step. An oversight procedure could include civilian review of law enforcement intelligence cycles, or a U.S. Attorney General review in the FBI's case. A nexus to a hazard—a threat to national security or a criminal act— should be established in the intelligence operation.

The intelligence cycle's requirements step describes the standing needs of the agency and or the needs of its client (the President of the United States is the first client of the CIA). This would guide the intelligence operation's process for collecting information through open sources or covert means.

A good records retention policy is important in maintaining public trust as the question of what is done with the information once it is analyzed is answered in such a policy: it defines classification of intelligence, sets a records destruction schedule, and obeys court evidentiary rules.

Intelligence can be many things. Sherman Kent wrote that intelligence has three separate definitions: knowledge (the information that one must have for proper decision making); institution (the physical organizations of people who are pursuing a certain type of knowledge); and activity (the actions of collection, evaluation, research, analysis, study and presentation).[60] While all three are necessary for institutional success, "intelligence is best described as an analytic process that evaluates information collected from diverse sources; integrates the relevant information into a logical package; and

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[60] United Stated Intelligence, *An Encyclopedia*, ed. Bruce W. Watson, Susan M. Watson, and Gerald W. Hopple (New York: Garland Publishers, 1990), 296.

produces a conclusion, estimate, or forecast about a phenomenon by using the scientific approach to problem solving."[61]

In seeking the history of intelligence Jock Haswell found that the earliest recorded intelligence report, dated some 2,000 years before Christ, was written on a clay tablet by a man named Bannum, commanding a desert patrol, to his lord in Mari, beside the Euphrates River, where it (the tablet) was found. It stated that the border villages of the Benjamites were exchanging fire signals, and though the significance of them was not yet known, Bannum intended to find out what was going on. He recommended that the guards on Mari's city walls should be strengthened.[62]

Among similar records found in the Hittite capital of Chattusas was a tablet of about 1370 BCE relating to the widow of Tutankhamun who had suggested that the Hittites, menacing the Egyptian frontier, might provide her with another husband. The Hittite Prince Mursilis dispatched his chamberlain Hattu-Zitis to Egypt with instructions to find out whether the request was genuine or part of a plot. "Bring me back reliable information,"[63] wrote Mursilis.

Intelligence should be differentiated from information. Information is unevaluated material of every type, while intelligence is the product that is derived from the cyclical processing of information, but it is not evidence.[64] Ormand wrote that prediction is the desired end of intelligence activity, as the basic purpose of intelligence today is to help "improve the quality of decision making by reducing ignorance."[65] Intelligence work encompasses all the processes that ensure that as much as possible of the right information is available at the right time.

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[61] Carter, *Law Enforcement Intelligence: a Guide for State, Local, and Tribal Law Enforcement Agencies*, 9.

[62] Jock Haswell, *Spies and Spymasters: A Concise History of Intelligence* (London: Thames and Hudson, 1977), 7.

[63] Ibid.

[64] David Omand, "Is It Time to Move beyond the Intelligence Cycle: A United Kingdom Practitioner's Perspective," *in Understanding the Intelligence Cycle*, ed. Mark Phytian (London: Routledge–Taylor and Francis Group, 2013), 137.

[65] Ibid., 145–146.

So, if intelligence is "when a wide array of new information is assessed for validity and reliability, reviewed for materiality to the issues at question and given meaning through the application of inductive or deductive logic,"[66] and given Carter's claim that American criminal justice intelligence is "the product of an analytic process that provides an integrated perspective to disparate information about crime, crime trends, crime and security threats and conditions associated with criminality,"[67] then all American law enforcement agencies (local, regional, tribal, and federal) engage in domestic intelligence operations.

Of course, the FBI and the DHS routinely carry out American federal domestic intelligence operations and fusion centers—information-sharing centers—participate in domestic intelligence operations by receiving, reviewing and disseminating intelligence requests and products from and to federal, state, regional and local law enforcement agencies.[68]

However, there are circumstances wherein American law enforcement agencies engage in intelligence operations and do not call their efforts intelligence operations. For instance, American custodial (prisons and jails) agencies routinely question new inmates about gang affiliations during intake interviews.[69] Furthermore, American police and sheriff departments monitor organized crime, prison gangs, street gangs and narcotics traffickers; yet these operations are not deemed intelligence operations because intelligence operations have been cause for governmental scrutiny.[70]

This scrutiny may have caused American law enforcement agencies to refrain from truly owning their intelligence operations. Media and politicians sometimes posture

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[66] Carter, *Law Enforcement Intelligence: A Guide for State Local, and Tribal Law Enforcement Agencies*, 12.

[67] Ibid.

[68] David L. Carter and Jeremy G. Carter, "The Intelligence Fusion Process for State, Local and Tribal Law Enforcement," *Criminal and Justice Behavior* 36, no. 12 (December 2009): 1323–1339.

[69] James Austin, Patricia Hardyman, and Johnette Peyton, *Prisoner Intake Systems: Assessing Needs and Classifying Prisoners* (Washington, DC: National Institute of Corrections, 2004), 9.

[70] Carter, *Law Enforcement Intelligence: A Guide for State Local, and Tribal Law Enforcement Agencies*, 34.

at the expense of law enforcement intelligence operations and so the intelligence operations may be hidden in gang task forces and narcotics operations.

Allen Dulles wrote that an intelligence agency has so many interests that logic dictates some form of order is necessary to collect information.[71] The use of the intelligence cycle creates such order. Michael Warner found the first mention of the intelligence cycle in Robert R. Glass and Philip B. Davidson's "Intelligence is for Commanders."[72] Their cycle consisted of directing the collection effort, processing the collected information, and using the resulting intelligence products. The steps of the contemporary intelligence cycle—direction by policy makers, collection of information (electronically or personally), processing of the information (interpretation of data generated by collection activities and systems), analysis of the information (identifying data's implications for wider judgments and contextual issues that the collected "raw" information is supposed to clarify) and dissemination (giving the policy makers an intelligence product)—have been in use for almost three quarters of a century in America.[73] A better description of the process is that the steps of the cycle are the core functions of the intelligence process.

The intelligence cycle may appear to be a simple process of following one step at a time but these steps may overlap, double back and jump over each other.[74] Intelligence staffs are confronted with increased risks of intelligence overload because of the volume of data increasingly available and the availability of information does not conform to traditional military or law enforcement staff silos or chains of command.[75] In spite of these qualifications, the steady application of the intelligence cycle's basic activities of

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[71] Allen W. Dulles, *The Craft of Intelligence, America's Legendary Spymaster on the Fundamentals of Intelligence Gathering for a Free World* (Guilford, CT: Lyons Press, 2006), 75.

[72] Robert R. Glass and Philip B. Davidson, *Intelligence Is for Commanders* (Harrisburg, PA: Military Service Publishing, 1948), 5.

[73] Kristan J. Wheaton, "Part 8—Tweaking the Intelligence Cycle (Let's Kill The Intelligence Cycle), June 1, 2011, http://sourcesandmethods.blogspot.com/search?q=traditional+intelligence+cycle.

[74] Philip H. J. Davies, Kristian Gustafson, and Ian Rigden, "The Intelligence Cycle is Dead, Long Live the Intelligence Cycle: Rethinking Intelligence Fundamentals for a New Intelligence Doctrine," in *Understanding the Intelligence Cycle*, ed. Mark Phytian (London: Routledge–Taylor and Francis, 2013), 62.

[75] Ibid.

direction, collection, analyzing, and production may work for long standing social ills such as chronic crime in a particular neighborhood.[76]

A quick glance at the CIA, FBI, and DHS websites show that they use the intelligence cycle but Hulnick argues, "it is not a particularly good model since the cyclical pattern does not describe what really happens."[77] He wrote that "policy officials rarely give collection guidance,"[78] and he found that two of the primary steps of the intelligence cycle—collection and analysis—work more efficiently simultaneously rather than sequentially. Hulnick worried that policy makers failed to wait for a thorough analysis of the information collected and that today's decision makers "seem to want intelligence to support policy"[79] rather than waiting for the intelligence cycle's analysis to inform policy. The CIA's Allen Dulles found that policy-makers tend to become wedded to the policy for which they are responsible.[80]

The CIA and the FBI use two similar intelligence cycles. The CIA intelligence cycle contains five steps: planning and direction, collection, processing, analysis and production, and dissemination.[81] The FBI intelligence cycle contains six steps: requirements, planning and direction, collection, processing and exploitation, analysis and production, and dissemination.[82] The FBI intelligence cycle has subsets within half of its steps; it is a richer and deeper process.

Past domestic intelligence operations in the United States had questionable or no oversight, no direction in the form of mission statements, questionable uses of

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[76] Davies, Gustafson, and Rigden, "The Intelligence Cycle is Dead, Long Live the Intelligence Cycle: Rethinking Intelligence Fundamentals for a New Intelligence Doctrine," 62.

[77] Arthur S. Hulnick, "What's Wrong with the Intelligence Cycle," *Intelligence and National Security* 21, no. 6 (2006): 959, doi:10.1080/02684520601046291.

[78] Ibid., 960.

[79] Ibid., 959.

[80] Dulles, *The Craft of Intelligence, America's Legendary Spymaster on the Fundamentals of Intelligence Gathering for a Free World*, 45.

[81] W. Thomas Smith, *Encyclopedia of the Central Intelligence Agency* (New York: Infobase Publishing, 2003), 137.

[82] Jan Goldman, *Words of Intelligence: An Intelligence Professional's Lexicon for Domestic and Foreign Threats* (Lanham, MD: Scarecrow Press, 2011), 157.

information, and a lack of structured analysis of gathered information in an attempt to create intelligence.

Publicized successes of intelligence operations, when practicable, concerning threats to public safety and national security engenders respect for intelligence and law enforcement agencies and thus intelligence operations and there are intelligence operations that occur routinely within American law enforcement without acknowledgement, too.

These routine domestic intelligence operations occur in the realm of correctional security: prison and jail intake interviews in order to reduce inmate attacks and escapes. And intelligence operations aimed at criminal gangs—motorcycle gangs, African American gangs, Hispanic gangs, prison gangs—or narcotics intelligence operations are not questioned by the public.

Most importantly, transparency makes domestic intelligence operations acceptable to the American public. Transparency engenders trust when people can see that there is oversight and a well-defined records retention policy.

In spite of misgivings, such as Hulnick's, about the intelligence cycle, let us not forget the United States National Criminal Intelligence-Sharing Plan, which implicitly calls for the use of the intelligence cycle.

So, we see the dynamics of the intelligence cycle in intelligence-led policing, which can eventually render "analytic products related to (criminal) threats"[83] for distribution to law enforcement officers and investigators for use in preventing crime and arresting offenders.

Also, using the intelligence cycle to focus law enforcement efforts on career criminals can fall in line with the national criminal intelligence-sharing plan: Denise O'Donnell, Director of the United States Department of Justice's Bureau of Justice Assistance wrote that "successful data driven strategies such as hot-spot policing, problem-oriented policing and intelligence-led policing use the work of crime analysts to

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[83] Goldman, *Words of Intelligence: An Intelligence Professional's Lexicon for Domestic and Foreign Threats*, 157.

reduce crime by focusing resources on high-crime places, high-risk offenders, and repeat victims."[84]

This point is reminiscent of Cohen and Felson's routine activity approach to criminality,[85] which has been explained with a crime triangle—each leg representing crime's location, perpetrator, and victim—just as O'Donnell's three focal points. This illuminates the basic elements of criminal theory: crime occurs somewhere and is perpetrated by someone on another being or place. Using the intelligence cycle to guide law enforcement agencies in their endeavor to address crime may be effective.

The next chapter will look at an American juvenile habitual offender program—the HSVJOP—which closely models adult serious offender programs, and later determine the practicality of using the program in conjunction with the intelligence cycle in addressing juvenile crime.

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[84] Carl Matthies and Tina Chiu, *Putting a Value on Crime Analysts* (New York: Vera Institute of Justice, 2014), 1.

[85] Laurence Cohen and Marcus Felson, "Social Change and Crime Rate Trends: A Routine Activity Approach," *American Sociological Review* 44, no. 4 (1979): 585–605.

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IV. THE JUVENILE OFFENDER

There are many reasons for paying attention to juvenile delinquency; it "puts a youth at risk for drug use and dependency, school drop-out, incarceration, injury, early pregnancy, and adult criminality."[86] As most adults who have been incarcerated started their criminal careers as juveniles, it would behoove society to prevent juvenile delinquency in order to "reduce the burden of crime on its victims and society"[87] Juvenile crime is differentiated from juvenile delinquency, in that crime, an act prohibited by written law, becomes known when it is reported to authorities and delinquency is merely failing to do what duty or law requires. Crime is tangible in many ways including arrest statistics and "arrest statistics have been used as the main barometer of juvenile delinquent activity, (but) many juvenile offenses go unreported and do not become a part of the national statistical picture."[88] This may be so because "offenses committed by juveniles are considered part of growing up and are handled informally, rather than by arrest and adjudication."[89] Nevertheless, juveniles were involved in one quarter of serious violent crimes (incidents involving rape and other sexual assaults; robbery and aggravated assaults) over the past twenty-five years. While homicide was not included in that data set, it was reported that an estimated 14,212 persons were murdered in the United States[90] in 2011 and that juvenile offenders were involved in at least 680 of those murders.[91] There are many theories about criminality: poverty versus riches, nature versus nurture, etc., but there are fewer about juvenile delinquency.

Peter Greenwood, Executive Director of the Association for the Advancement of Evidence Based Practices, stated that past efforts to frustrate delinquency were mostly

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[86] Peter Greenwood, "Prevention and Intervention Programs for Juvenile Offenders," *The Future of Children*, 13, no. 4 (2008): 187.

[87] Ibid., 185.

[88] "OJJDP Statistical Briefing Book," released August 5, 2013, 187, http://www.ojjdp.gov/ojstatbb/ offenders/qa03105.asp?qaDate=2011.

[89] Ibid.

[90] Federal Bureau of Investigation, *Supplementary Homicide Reports for the Years 1980–2011* (Washington, DC: Federal Bureau of Investigation, 2013).

[91] "OJJDP Statistical Briefing Book," 187.

guided by theories about the causes of delinquent behavior, but there was no determination if those efforts achieved the desired effects. Greenwood found that "the primary causes of delinquency were the juvenile's homes or neighborhood, or lack of socializing experiences, or lack of job opportunities, or the labeling effects of the juvenile justice system."[92] He said that these four factors plus one's offense history are the major predictors of a juvenile's recidivism.[93] This re-offending is the bane of our society because, for as stated earlier, juvenile delinquency leads to adult criminality.

In 1992, the American violent crime rate hit a peak of 757.7 per 100,000 population—it has since declined to 386.9 per 100,000 population[94]—and during the early 1990s there was no clarity in preventing or stopping juvenile delinquency. Greenwood wrote, "the preventive strategies promoted by (past) theories included the removal of urban children to rural settings, enrollment in residential training schools, industrial schools, summer camps, job programs, and diversion from juvenile justice systems."[95] He found that none of these strategies was helpful. A 1994 systemic review of the nation's juvenile justice systems conducted by the National Research Council concurred with Greenwood.[96]

Howell and Lipsey wrote that by the beginning of the 21st century "every state had enacted laws that made their juvenile justice systems more punitive or made it easier"[97] to transfer youthful offenders from juvenile courts to adult courts and that these changes in the law also brought more the young offenders in the states juvenile justice systems, thus designating more of these defendants as "serious and violent offenders," which resulted in the "incarceration of more juveniles."[98]

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[92] Greenwood, "Prevention and Intervention Programs for Juvenile Offenders," 187.

[93] James C. Howell and Mark W. Lipsey, A Practical Approach to Evaluating and Improving Juvenile Justice Programs," *Juvenile and Family Court Journal*, 2004, 37.

[94] "Welcome to a New Way to Access UCR Statistics," accessed January 2, 2016, www.ucrdatatool. gov.

[95] Greenwood, "Prevention and Intervention Programs for Juvenile Offenders," 187.

[96] Ibid.

[97] Howell and Lipsey. "A Practical Approach to Evaluating and Improving Juvenile Justice Programs," 37.

[98] Ibid.

These changes "extended periods of confinement" for juvenile offenders and "expanded the lists of crimes" for which juvenile offenders could be considered as adult offenders. At the same time, other changes "lowered the ages at which juvenile offenders could be transferred to the adult criminal justice system, thus excluding more juvenile offenders from juvenile court jurisdictions."[99] The more punitive approaches had not been effective in reducing juvenile delinquency; in fact, "some of them—shock incarceration and boot camp—actually increased antisocial behavior and recidivism."[100]

One juvenile offender program that occurred in the 1980s was the HSVJOP. The HSVJOP reduced crime at the time by incarcerating juveniles (in the past a perceived juvenile crime problem had been dealt with by increasing punishment[101]) but the reactive policies inherent in it did nothing to prevent delinquency.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP), under the U.S. DOJ, established the JSVJOP in 1984. The program was designed to allow the selective criminal prosecution of serious, repeat juvenile offenders. It was modeled in part after career criminal programs designed to prosecute chronic adult offenders. Under the HSVJOP, experienced prosecutors handled serious juvenile cases with vertical and accelerated prosecutions.

The program also put forward improved notification of courts and crime victims; consultation with probation officers and defense counsel; and assistance for those victimized by chronic juvenile delinquents. The initiative encouraged greater use of victim impact statements, a process by which a person or persons most directly affected by the perpetrator's actions to directly or indirectly address the trier of the fact during decision-making activity. The program was also designed to provide special services that

[99] Howell and Lipsey. "A Practical Approach to Evaluating and Improving Juvenile Justice Programs," 36.

[100] Ibid.

[101] Ibid.

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would lead to the improved diagnostic assessment, treatment planning, and continuous case management for offenders.[102]

HSVJOP was geared toward youth with at least one record of adjudication for a serious offense and charged with a serious felony.[103] Serious felonies included residential burglary, robbery, aggravated assault, sexual assault, and murder. Multiple jurisdictions used the program and each project had its own selection criteria in relation to these general guidelines. The HSVJOP lasted two years. Local prosecutors' offices in thirteen jurisdictions implemented it in jurisdictions with populations ranging from five hundred thousand to five million.

The HSVJOP was evaluated by the American Institutes for Research (AIR), a not for profit social science research organization, with the National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP), a U.S. DOJ research, development and evaluation agency.[104] The AIR/NIJJDP report stated that the program was effective in addressing the issue of chronic juvenile delinquents. Specifically, the report found that prosecutors' offices could effectively put into place programs targeting youth who were habitual serious and violent juvenile offenders.[105] Note that these programs were prosecutorial and not preventative programs carried out by law enforcement agencies or juvenile probation departments.

Key elements of successful targeted prosecution programs involved experienced prosecutors, sufficient resources for effective case preparation, continuity of prosecution in serious cases, and greater interaction with victims and witnesses. In some jurisdictions, targeted prosecutions programs also brought faster resolutions of chronic juvenile offender cases because habitual and serious offenders were prosecuted at a quicker pace.

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[102] Ruberta Cronin et al., *Evaluation of the Habitual Serious and Violent Juvenile Offender Program, Final Report: Executive Summary* (Washington, DC: U.S. Department of Justice, National Criminal Justice Reference Service, 1998), 1.

[103] Ibid.

[104] Ibid.

[105] Ibid., 7.

In certain locations, these programs also lessened the severity of consequences through plea-bargaining. The targeted prosecution programs also brought more convictions.[106]

However, there were some limitations to the programs. The AIR/NIJJDP report recommended that the mechanisms used to screen and determine cases suited for targeted prosecution should be given more attention during program design and implementation because linking targeted prosecution projects with special correctional efforts for youths being prosecuted for habitual and serious crimes is functional only in theory, and therefore difficult to put into practice.[107]

The AIR/NIJJDP report highlighted four jurisdictions: Miami, Florida; Milwaukee, Wisconsin; Seattle, Washington; and Washington, DC. Miami's HSVJOP project led to transfers of juveniles to adult court; however, the program did not reduce dismissal rates. Miami's project increased vertical prosecutions and state continuances (rather than defense dismissals).

The Milwaukee project was brought about increased transfers of juveniles into the adult court system and the imposition of more correctional (rather than probation) sentences. The number of charges also increased during case filings. Milwaukee's project cases concluded earlier and involved less defense continuances. Juvenile offenders in Milwaukee were more likely to be vertically prosecuted, too. Milwaukee Assistant District Attorney David Robles attributed sentences given to juveniles in Milwaukee County adult courts to be more severe than sentences given to juveniles in juvenile court. He said that of the juveniles appearing in adult courts, forty percent were sent to adult prisons, thirty-six percent were sent to county jails, thirteen percent were given probation and jail terms, and less than ten percent were given probation. Robles said that most of these juveniles were male, seventeen years old, and had been arrested and charged at least ten times before the project's cases.[108]

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[106] Cronin et al., *Evaluation of the Habitual Serious and Violent Juvenile Offender Program, Final Report: Executive Summary*, 7.

[107] Ibid.

[108] Milwaukee Sentinel, "Most Youths Tried as Adults Found Guilty, Study Finds," April 21, 1987, 6.

Seattle's efforts did not intend for adult transfers and so the project focused on vertical prosecutions that brought lower dismissal rates and quicker dispositions. During the Washington, DC project, there were higher conviction rates and lower dismissal rates.

However, the AIR/NIJJDP report concluded that in the four sites it studied, vertical prosecution was not successfully attained. This may have been caused by the program's faulty screening process described above. Nevertheless, the sites acted as sufficient cross sections of the participants under the HSVJOP initiative because these sites contained demographically diverse populations, and they presented various statutory and procedural environments for the program to be implemented and evaluated.

The AIR/NIJJDP report stated that the HSVJOP program was slow in getting started as it was too challenging to integrate with other prosecution services. The program was also criticized for being too small to serve all eligible offenders effectively and the AIR/NIJJDP report did not state how the HSVJOP reduced crime. The presumption here is that the incarceration bought about through the HSVJOP reduced crime.

Reducing crime itself is one measure of a juvenile criminal justice program's benefits, but there are many other measures of success. Increasingly, America has demanded evidence-based practices in determining the value of crime reduction programs. One measure of a best practice may be in reducing costs, as spending money on programs that prevent juvenile delinquency has been found to save "seven to ten dollars for every dollar invested"[109] by reducing cost of incarcerating juveniles in adult prisons. Another gauge of a best practice deems that the most successful programs are those that prevent delinquent behaviors by emphasizing, "family interactions and teaching life skills to the adults who supervise and train at risk children."[110]
However, the most evidence-based comparison of juvenile delinquency reduction programs is the statistical meta-analysis (a systematic synthesis of quantitative research results) of program evaluations. Greenwood wrote that in theory a meta-analysis should be one of the best ways "to determine what to expect in the way of effectiveness,

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[109] Greenwood, "Prevention and Intervention Programs for Juvenile Offenders," 185.

[110] Ibid.

particularly if it tests for any effect of timing, thus giving more weight to more recent evaluations."[111] Of course, once a program has demonstrated that it can be evaluated accurately, it follows that others can replicate that accuracy. Greenwood found that "meta-analysis is the best method for sorting this out,"[112] but he warned that measuring "the effects of delinquency prevention programs is challenging because the behavior" that "programs attempt to change is often covert and the full benefits extend over long periods of time."[113]

James C. Howell's and Mark W. Lipsey's meta-analysis work found that the average juvenile justice programs had elements that improved youthful offender treatment and rehabilitation programs by focusing on developing effective combinations of services.[114] In this context, best practice refers to a "differentiated set of program elements, many combinations of which are associated with positive outcomes."[115]

The major features of good juvenile delinquency treatment programs identified in Howell's and Lipsey's meta-analysis were the "effectiveness of the focus of a program" its service delivery; and some of the "characteristics of the juvenile clients," as "some programs are more effective for high-risk juveniles than low-risk offenders."[116] They also found that the best delinquency prevention and juvenile justice system programs included:

- Interpersonal skills training;

- Behavior management and counseling;

- Parent and family training;

- Mentoring of the juvenile;

- Drug and health education;

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[111] Greenwood, "Prevention and Intervention Programs for Juvenile Offenders," 185.

[112] Ibid., 189.

[113] Ibid., 187.

[114] Howell and Lipsey, *A Practical Approach to Evaluating and Improving Juvenile Justice Programs*, 42.

[115] Ibid.

[116] Ibid.

- Restitution;

- Academic enhancement;

- Intensive supervision; and

- Employment training.[117]

Howell and Lipsey warned that one must consider the empirical benefits of a program when considering the costs of crime prevention strategies, as well. Punishment alone may be one method of dealing with juvenile delinquency, but using intervention in a treatment setting—as opposed to a correctional setting—has been shown to be effective in creating changes in juvenile offenders because treatment addresses the multiple underlying problems that manifest themselves in the offenders' communities, families, schools, and peer groups.

Under the standard of preventing juvenile delinquency, rather than incarcerating juvenile offenders, one best practice in addressing habitual juvenile offenders that reduced the number of days that juveniles were incarcerated by sixty percent is the Oregon Social Learning Center's Multidimensional Treatment Foster Care.

The Oregon Social Learning Center, a non-profit research center dedicated to healthy child development and family functioning created its Multidimensional Treatment Foster Care (MTFC) Program as an "alternative to institutional, residential, and group care placement for teenagers with histories of chronic and severe criminal behavior," using the MTFC Program "is a cost effective alternative to incarceration for adolescents who have problems with chronic antisocial behavior, emotional disturbance, and delinquency."[118]

In the MTFC program, "community foster families are recruited, trained, and closely supervised to provide adolescents with treatment and intensive supervision at home, in school, and in the community,"[119] as well as giving positive reinforcement for

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[117] Howell and Lipsey, *A Practical Approach to Evaluating and Improving Juvenile Justice Programs*, 42.

[118] "Treatment Foster Care Oregon," 1, accessed April 23, 2015, http://www.blueprintsprograms. com/.

[119] "Treatment Foster Care Oregon."

appropriate behavior; making mentoring adults available to juveniles within the program; and separation of program subjects from their delinquent peers.

MTFC utilizes a behavior modification program by which youths in the program are provided with structured daily feedback. The MTFC program utilizes a behavior modification plan by which youths in the program are placed in foster homes for about 180 days, during these six months the youths and their foster parents receive structural feedback through daily phone contact and weekly contact at parent meetings. The program emphasizes development of interpersonal skills and participation in sporting activities. Aftercare services remain in place for as long as the parents want. MTFC is a "community-based placement that can be used in lieu of residential or group care"[120] and the program is less expensive than placement in institutional settings.

When comparing MTFC to the HSVJOP, which in Milwaukee led to increased juvenile incarcerations, the costs of the foster program were less because foster care has shown itself to be cheaper than imprisonment.

In summary, singling out juvenile offenders for scrutiny and applying the intelligence cycle to their activities may reduce crime. The question of how to winnow a serious habitual juvenile offender from the fold is of import. Law enforcement could do so by scrutinizing their own records to determine what juvenile offenders within their jurisdiction merit attention by using the HSVJOP's criteria of youths with a juvenile or adult court record of one adjudication for a serious offense.

The steps of the contemporary intelligence cycle—the tasking of criminal justice personnel to identify the habitual juvenile offender (requirements); the gathering of pertinent information about the offender (collection); the interpretation of data generated by collection activities (processing), the identifying of the data's implications for wider judgments and contextual issues that the collected "raw" information is supposed to clarify (analysis) and giving the policy makers an intelligence product (dissemination)— may lead to the singling out of the most serious juvenile offenders for juvenile justice system attention.

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[120] "Treatment Foster Care Oregon."

Regardless, if such attention brings a prosecution or enrollment in a behavior modification program, the information gathered and presented with the aid of the intelligence cycle would benefit the offender by calling him or her to account for his or her behavior. Let us not forget that Howell and Lipsey's meta-analysis study showed that intervention has a greater effect on ending juvenile criminal careers[121]than incarceration.

The next chapter will discuss the career criminal in the context of legislation, reporting crime, and crime control programs.

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[121] Howell and Lipsey, *A Practical Approach to Evaluating and Improving Juvenile Justice Programs*, 42.

V.   THE CAREER CRIMINAL

The elements of crime are countless and the terms used to define their degrees are just as numerous. The use of terms, such as career criminal, professional criminal, habitual offender or serious offender, varies in context and definition. While scholars disagree, legislation and judicial decisions seek common ground.

In spite of American efforts of crime control—mass incarceration, that of the 1980s and 1990s, which is now being questioned—crime still occurs. Simply put, one becomes an offender by participating in crime and about fifteen percent of urban males are arrested for a serious crime (FBI Part I index offense) by the age of eighteen and somewhere between twenty-five to thirty-five percent of urban males will be arrested for a serious crime sometime in their lifetime.[122] The most active ten percent of criminals offend at rates that may exceed 100 offenses per year, almost two crimes per week. Such gross characterizations need to be broken down in order to understand crime, to react to crime, and to create useful public policy to respond to crime.

It is important to identify variables associated with the most serious offenders in order to anticipate future criminal activity; to improve the identification of serious offenders and thereby design programs and policies likely to be effective for these offenders; to assess the scale and extent of incarceration in order to make efficient use of limited prison space; and to create research programs that build on existing knowledge in order to create effective policies and crime control programs.

Blumstein highlighted that the "four key dimensions that characterize criminal careers are: participation (the distinction between those who engage in crime and those who do not); frequency (the rate of criminal activity of those who offend); the seriousness of the offenses committed; and the length of time an offender is active."[123] While the most active criminals commit a variety of crimes, there is a tendency for some offenders to "repeat the same crime or to reiterate within a group of property crimes or violent

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[122] Alfred Blumstein, ed., *Criminal Careers and Career Criminals*, vol. 2 (Washington, DC: National Academies, 1986), 53.

[123] Ibid., x.

crimes"[124] and Edelstein found that career criminals committed more crimes in their youth: the frequency of the offenses increases during a criminal's teen years and declines as he or she (but mostly he) ages.[125]

About half of those ever arrested during their lifetime were first arrested before the age of eighteen and participant rates of high school age males are influenced by various factors such as the type of the data used (aggregate statistics, official records, or self-reports), the type of crimes measured (Part I crimes versus status offenses), and the level of the subject's involvement (police contact, arrest, referral to court, and or a conviction).[126] Each factor reflects documentation of criminal justice contact suffered by juveniles, but for self-reporting. The spirit of the law versus the letter of the law is reflected in the final factor – a law enforcement officer's discretion, a juvenile probation officer's discretion, or a prosecutor's discretion – and can be seen in decisions that result in the forwarding of the juvenile along the criminal justice system.

The difference in criminal frequency rates amongst criminals can be attributed to the age of the offender at the beginning of a criminal career; drug use; employment; and previous criminal acts (whether reported or not)[127] and the lengths of criminal careers vary with the age of the offender at the beginning of his career, the duration of the career, and the early termination of some careers.[128] Many careers are short due to brief teenage adventures. The expected time remaining is a criminal career is five years for active offenders in their late teens while the expected time remaining for active offenders in their thirties is 10 years.[129] These 10 years of criminal careers of those thirty-year-old offenders might exist because the termination of criminal careers in the early years of young offenders may leave the older offender group more densely populated with criminals who now have longer careers. It is safe to assume that those criminal who

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[124] Blumstein, *Criminal Careers and Career Criminals*, 5.

[125] Arnon Edelstein, "Rethinking Conceptual Definitions of the Criminal Career and Serial Criminality," *Trauma Violence Abuse*, January 2015, 70.

[126] Blumstein, *Criminal Careers and Career Criminals*, 40–42.

[127] Edelstein, "Rethinking Conceptual Definitions of the Criminal Career and Serial Criminality," 76.

[128] Ibid.

[129] Blumstein, *Criminal Careers and Career Criminals*, 5.

started offending when they were young and who remain active in their thirties will have the lowest criminal career termination rates.

While frequency—the number of crimes committed per year by an active offender—evokes an image of constant criminality, one must realize that at one extreme are offenders convicted or alleged to have committed only one offense and at the other extreme are career criminals who are seen as "dangerous, habitual, or chronic offenders who commit serious offenses with high frequency over extended periods of time."[130]

Blumstein called for studying the short careers of those who commit very few offenses because of the prudence in identifying factors that led to the end of such careers,[131] and he found that these factors could be of great use in designing crime control policies that could include crime prevention, which may be achieved through the imposition of sanctions for deterrent purposes.[132]

Crime control consists of dissuasion, restoration, and incapacitation. Deterring "actual and potential offenders by imposing punishment on identified offenders fulfills dissuasion."[133] Restoration in the form of rehabilitation is the changing of a criminal's behavior. Incapacitation is the imprisonment of the offender. Career criminals, by the nature of their history, do not respond to deterrence, nor do they respond to the rehabilitative efforts of the criminal justice system.

The duty of crime control is implicitly in the hands of the government, although London's third Metropolitan Police Commissioner, Sir Robert Peel, espoused the theory that the "police are the public and the public are the police."[134] That thought is still embraced by some of today's prominent police executives, such as New York's police commissioner, William Bratton.[135]

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[130] Edelstein, "Rethinking Conceptual Definitions of the Criminal Career and Serial Criminality," 76.

[131] Ibid.

[132] Blumstein, *Criminal Careers and Career Criminals*, 1.

[133] Edelstein, "Rethinking Conceptual Definitions of the Criminal Career and Serial Criminality," 76.

[134] "Sir Robert Peel's Nine Principles of Policing," April 16, 2014, http://www.nytimes.com/2014/04/16/nyregion/sir-robert-peels-nine-principles-of-policing.html?_r=0.

[135] Ibid.

Efforts to control crime can be found in all branches of American government: laws created by its legislatures (legislative branch); investigations and arrests by law enforcement officers (executive branch); prosecutions by district attorneys or attorneys general (executive branch); adjudication by court (judicial branch); and rehabilitation—probation or parole—or incapacitation through incarceration by the correctional system (executive branch). Academic research of the criminal justice system can assist in creating policy for these three branches of American government.

Research on criminal careers tends to focus on three areas: the beginning of an offender's criminal career; what crimes and criminal patterns have occurred; and when an offender stops committing crimes.[136] There is a dearth of research on law enforcement's use of career criminal programs; this may be due to faulty police presumptions about criminal career trajectories,[137] if you lock them up and throw away the key, you have done your job.

Regardless of the lack of research on the use of career criminals programs, American law enforcement addresses career criminals by using legislation aimed at stiffer penalties and enforcement programs. These penalties and programs use information about an offender's past to inform decisions within the criminal justice system. Every stage of decision-making within the criminal justice system uses information about an individual's criminal career. Law enforcement officers use this information when deciding whether to arrest. Prosecutors use it when deciding whether to move on a case presented by law enforcement. Judges use this information in setting a suspect's pretrial release conditions and weighing the danger to a community when punishing a defendant.[138]

Law enforcement decisions are based on the seriousness of the offense, the hostile behavior of the suspect, the victim's preference, the relationship between the victim and the perpetrator (do they know each other or are they strangers to each other), the arresting

[136] Blumstein, *Criminal Careers and Career Criminals*, 104.

[137] Jason Roach, "Police Overestimation of Criminal Career Homogeneity," *Journal of Investigative Psychology and Offender Profiling* 11, no. 2 (2014): 164.

[138] Blumstein, *Criminal Careers and Career Criminals*, 155.

officer's knowledge of the victim and the criminal, and the location of the crime (e.g. a low socioeconomic neighborhood).

Prosecution decisions are based on the seriousness of the offense, the victim's preference, the victim's relationship with the defendant, and the quality of the evidence (physical and testimonial); all of which determine the strength of the case.

Judicial decisions in determining pretrial release and sentencing are usually directed by established guidelines, which have been created in order to dispense fairness to defendants in similar circumstances.

These facets of decision-making are the frame for the three-legged stool— deterrence, rehabilitation, and incapacitation—of crime control, and we shall see how such information has been used in dealing with career criminals. However, there are times when the age of the offender is a primary consideration in making decisions and creating policy in the criminal justice system. Career criminals have been depicted as dangerous or chronic offenders; they are those "who commit serious offenses with high frequency over extended periods of time,"[139] whereas juveniles who do the same are deemed serious habitual offenders.

As discussed in chapter one, Wolfgang defined chronic juvenile offenders as those had been arrested five or more times by the time, they turned eighteen years of age. He found that these chronic offenders made up only six percent of his Philadelphia cohort, but that they accounted for fifty-two percent of all the cohort's arrests.[140] Here we find the inconsistency of labels. While Wolfgang labeled his wards as chronic, Blumstein found that delinquency is more difficult to define: "it can refer to traditional youth crimes, such as truancy or underage drinking" or delinquency, "can refer to any crime committed by someone under the age of majority."[141] The worst label that the criminal justice system legislatively gives to juvenile offenders is serious habitual offender, not career criminal.

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[139] Blumstein, *Criminal Careers and Career Criminals*, 1.

[140] Ibid., 89.

[141] Ibid., 19.

Adult career criminals are not serious habitual offenders in the eyes of the U.S. DOJ. The DOJ Serious Habitual Offender Comprehensive Action Program (SHOCAP) is a criminal justice system-wide approach to handling juveniles only; its Juvenile Serious Offender effort is a directed intervention program that obviously targets juveniles; and its HSVJOP does not focus on adults. Given the funding that the U.S. DOJ provides to state and local criminal programs, it bodes well for criminal justice agencies to abide by these definitions.

However, what comes first, the research, the legislation, the funding, or the programs? Literature reviews on crime finds a focus on results: crime rates and incarceration rates. Whereas Blumstein studied the activities of those who offend by looking at those who commit crime, what crimes are committed, and how often crimes are committed. In doing so, Blumstein looked at the percentage of the population who committed crime and how they committed crimes.

By examining the elemental components of career crime—participation, frequency, seriousness of crime, and criminal career length—a responsive criminal justice policy can be crafted. Criminal justice policy could focus on the prevention of one's taking part in a criminal life, or crime's frequency (the rate of criminal activity of those who are active in that lifestyle), or the seriousness of the offenses committed, or the offender's career length.

Partitioning these dimensions is important because the components themselves are the results of multiple factors and these factors may need different criminal justice system policies. If a response addresses participation, the reaction would be associated with efforts to prevent individuals from committing crimes. If a response focused on the frequency of crime, the seriousness of the offense, or a criminal career length, the reaction would be central to the day-to-day decisions within the criminal justice system in dealing with crime by using police and prosecutorial resources or with court adjudications or sentencing.

Again, information is necessary in creating criminal justice system responses, and policy cannot escape counting crimes. Self-reports and official records are currently the

best available methods for obtaining longitudinal data on individual criminal careers. Self-reporting one's own crime is likely to be affected by the significance and recency of the event, with more salient events to be remembered.[142] These two methods for creating an inventory of criminal acts committed by an offender are subject to error: under and over self-reporting and the criminal justice system's discretion in recording offender contacts. Self-reporting is subject to flawed recall or misrepresentation[143] and official records show that there are few arrests compared to many crimes.[144]

Self-reporting by inmates is questionable because of researchers' inability to verify the number of crimes claimed. For example, inmates in California and Michigan who were active in robbery before their incarceration reported that they had committed fifteen to twenty robberies per year and inmates active in burglary in that same prisoner population reported that they had committed forty-five to fifty burglaries per year. These self-reports were not consistent with official tallies of crime in those two states. Whereas Texas inmates reported numbers closer to those of offenders still at large. Nevertheless, the "median offender commits only a handful of crimes per year, while a small percentage of offenders commit more than 100 crimes per year."[145] This finding is an important fact in developing crime control policies and programs that concentrate on career criminals.

While law enforcement can target individuals, career criminals, before a crime, other agencies concentrate resources on places and behavior: high crime areas and certain types of offenses. Typically, career criminal units focus on the identification of career criminals and hopefully their incapacitation. The Washington, DC Metropolitan Police Department, the New York Police Department (NYPD), and the U.S. Attorney's Office have used various methods in targeting career criminals for investigation.

Washington, DC's Metropolitan Police Department's repeat offender program (ROP) focused on active felons. These felons were considered for surveillance by a panel

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[142] Blumstein, *Criminal Careers and Career Criminals*, 196.

[143] Ibid., 33.

[144] Ibid., 55.

[145] Ibid., 4.

of police detectives. While surveillance of these offenders was ROP's primary tactic, it yielded few arrests. DC Metro changed its tactics by adopting other methods: targeting the offender in a buy/bust narcotics operation, using informants to entice the offender into committing a crime (without entrapping the suspect), or locating the offender and arresting him/her on an existing arrest warrant.[146]

The results of the ROP included an increase in ROP officers' arrest of offenders with serious criminal histories, an increase in the seriousness of the charges in new cases, a greater likelihood of felony prosecutions of those arrested by ROP officers, and a decrease in the overall number of arrests by ROP officers.[147]

The New York Police Department's Career Criminal Command (CCC) was established in 1980 and approached career criminals with an effort to augment arrests of known career criminals by strengthening the cases against them. The effort began with a mutual definition of a career criminal by prosecutors and police. The CCC then focused on the pre-arrest and post-arrest status of these known criminals through maximum quality of evidence (testimonial and physical) that resulted in stronger sentences upon conviction.

Using Wolfgang's Philadelphia study, which showed that a small percentage of criminals committed a large percentage of crime, the CCC identified career criminals at large and created biographical files on each subject based on rap sheets, police reports, and modus operandi with a focus on weapons use, violence and criminal threats.

The biographical file would be forwarded to prosecutors upon the arrest of the career criminal. The file would help prosecutors to determine whether to prosecute the case, whether or not to argue for release on bail, and in setting a priority for the case.

The CCC would be responsible for pre-arrest surveillance and apprehension of targeted career criminals and post-arrest investigations. One target list of 1,100 subjects

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[146] Susan Martin and Lawrence W. Sherman, *Catching Career Criminals: The Washington, D.C., Repeat Offender Project* (Washington, DC: National Institute of Justice, United States Department of Justice, 1986), 6.

[147] Susan Martin, "Policing Career Criminals: An Examination of an Innovative Crime Control Program," *Journal of Criminal Law and Criminology* 77, no. 4 (Winter 1986): 1159.

in the 1980s was based on a criterion of two robbery arrests or one robbery arrest plus one arrest for violence within the prior three years. CCC detectives would take over the investigation of a patrol arrest of a targeted career criminal and seek additional witnesses and physical evidence. Detectives would also attempt to tie the career criminal in question to open cases. CCC detectives would proactively search for career criminals listed by their command in order to conduct surveillance of them.

An analysis of the CCC by the NYPD, prosecutors, and judges found that the command had arrested fifty-nine percent of those listed as career criminals and that those defendants suffered a higher rate of indictments, felony charges and incarceration.[148] However, not only police departments used career criminal units, prosecutors used them as well.

The United States Attorney's office uses formal selection rules for assignment of cases to its career criminal units. A scale was developed that classified offenders on federal probation or parole. The scale considered the subject's alcohol and or heroin use; the subject's age at the time of the arrest in question; the length of the subject's criminal career plus any arrests in the five years prior to the arrest (crime of violence, crimes against property, and or narcotics sales were given greater weight in this part of the analysis); the longest single term hat the subject ever served in custody; probation sentences; and whether the offense being considered by the U.S. Attorney's career criminal unit is violent, a weapons violation, or a status violation (did it occur while on pretrial release, probation, parole, or military service).

In conclusion, this paper focuses on applying the intelligence cycle to the career criminal before an arrest, before a prosecution, before adjudication, and before incarceration. However, the difficulty in targeting a career criminal is in finding that subject before he or she offends. More importantly, there is a need for the prosecutor and law enforcement to work together in identifying the serious repeat offenders who commit

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[148] Robert McGuire, "Crime Control in New York: Two Strategies," *Journal of Criminal Law and Criminology* 37, no. 3 (1982): 985.

a disproportionate amount of crime.[149] The use of predictive policing, as described in the paragraphs above about Washington, DC's ROP and New York City's CCC, in targeting a known offender may be objectionable if he or she had shown no predisposition to commit a crime but commits a crime at the insistence of a police informant or an undercover police officer.[150] The defense of entrapment is a response to this concern.

The next chapter will explore how people think, how bureaucracies organize information, how intelligence agencies contemplate their mission by organizing information through the intelligence cycle and finish with a model for American law enforcement agencies to consider in using the intelligence cycle to deal with career criminals.

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[149] Eleanor Chelimsky and Judith Dahmann, "The Mitre Corporations' National Evaluation of the Career Criminal Program: A Discussion of Findings," *Journal of Criminal Law and Criminology* 71, no. 2, art. 6 (1980): 102.

[150] Blumstein, *Criminal Careers and Career Criminals*, x.

VI.   A RECOMMENDATION

Bostrom and Clawson theorized that people process the world around them through their senses and that their brains handle this information, which results in a "response to the situation."[151] They labeled the information taken in as input and the resulting behavior as output. Bostrom and Clawson further found that everyone has the "same brain circuits and sensory systems,"[152] yet people behave differently in the same circumstances. These different reactions were explained through the way the mind processes the input received.

This processing is the result of selecting and arranging the way "we see reality"[153] by using a "mental pattern or template"[154] that allows understanding. Bostrom and Clawson called this framing, and they wrote that people establish their framing with beliefs and criteria.[155] They found that beliefs are what people "think is true or possible in the world" and criteria are "the standards by which (people) evaluate (their) experience(s)."[156] We shall see how the first step of the intelligence cycle—requirements —uses framing to initiate the process.

Laudon and Laudon looked at the way in which bureaucracies organized information and described a pyramid with transactional processing systems supporting management information systems, then decision support systems, with executive information systems at its peak.[157]

Transactional processing systems are "information processing systems for business transactions involving the collection, modification, and retrieval of all

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[151] Bob Bostrom and Vikki Clawson, "How People Think: Human Information Processing," 2000, 1, http://www.terry.uga.edu/~bostrom/How%20People%20think.doc.

[152] Ibid.

[153] Ibid., 3.

[154] Ibid.

[155] Ibid., 5.

[156] Ibid.

[157] Kenneth C. Laudon and Jane P. Laudon, *Management Information Systems: Managing the Digital Firm* (Upper Saddle River, NJ: Prentice Hall, 1988), 31.

transactional data."[158] Management information systems are "computerized databases of financial information organized and programed in such a way that it produces regular reports on operations for every level of management in a company."[159] Decision support systems are "any information system that supports business or organizational decision making activities"[160] in an organization. And executive information systems "facilitate and support senior executive decision making needs."[161]

This pyramid does not reflect the intelligence cycle but its references to databases and the implications about its users logically shadow intelligence agency operations in that transactions are similar to intelligence agency contacts within communities of interest, and information and support systems in businesses and intelligence agencies are used to create reports for use by both organizations' personnel and leadership.

As shown in Chapter I, intelligence cycles generally have individual components such as direction, collection, analysis, processing, and dissemination.[162] The intelligence cycle generally begins with intelligence requirements, which are information needs. In some instances intelligence requirements result from "continuous evaluation and review or the requirements may result from planning and direction,"[163] and some agencies, such as the DHS, have standing requirements based on the nation's needs.[164]

The FBI's mission "includes protecting the United States from terrorist attacks; protecting the country from foreign intelligence or espionage operations, cyber-based or high tech crimes; fighting public corruption; protecting the civil rights and liberties of citizens; fighting international criminal organizations that threaten national security;

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[158] "Transaction Process System (TPS)," accessed November 30, 2015, https://www.techopedia.com/definition/707/transaction-process-system-tps.

[159] Laudon and Laudon, *Management Information Systems*, 31.

[160] Ralph Sprague, "A Framework for the Development of Decision Support Systems," *MIS Quarterly* 4, no. 4 (December 1980): 11.

[161] Daniel J. Power, *Decision Support Systems: Concepts and Resources for Managers* (Westport, CT: Quorum Books, 2008), 45.

[162] "Home," accessed November 16, 2015, https://www.fas.org.

[163] Ibid.

[164] "Office of Intelligence and Analysis Mission," updated June 29, 2015, http://www.dhs.gov/office-intelligence-and-analysis-mission.

combating white collar crimes, as well as violent crimes of significance; supporting international, federal, state, and local partners in the fight against crime, and using technology to improve the chances of success."[165]

The FBI's intelligence cycle is used as a process of developing "unrefined data into polished intelligence"[166] for the use of policymakers. As stated in chapter two its intelligence cycle contains six steps: "requirements, planning and direction, collection, processing and exploitation, analysis and production, and dissemination."[167] The FBI's intelligence cycle requirements are "identified information needs, which are established by the Director of National Intelligence (DNI)"[168] with the input from the president, the White House homeland security advisors, the U.S. Attorney General and the Director of the FBI.[169]

The FBI uses planning and direction to manage its intelligence cycle; "interviews, technical and physical surveillances, human source operations, searches, and liaison relationships"[170] to collect the information necessary to for analysis; "decryption, language translation, and data entry"[171] to process the information; evaluations of the information's credibility to analyze the information thus changing it into intelligence; and dissemination to distribute the intelligence.

The CIA's mission is to "preempt threats and to further United States national security objectives by collecting intelligence that matters, producing objective all-source analysis, conducting effective covert action as directed by the president, and safeguarding the secrets that help keep the nation safe."[172] Again, referring to chapter two, the CIA

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[165] "Home," November 15, 2015, http://www.fbi.gov.

[166] "Intelligence Branch," November 15, 2015, https://www.fbi.gov/about-us/intelligence/intelligence-cycle.

[167] Goldman, *Words of Intelligence: An Intelligence Professional's Lexicon for Domestic and Foreign Threats*, 157.

[168] "Intelligence Branch."

[169] Ibid.

[170] Ibid.

[171] Ibid.

[172] "CIA Vision, Mission, Ethos and Challenges," last modified December 16, 2013, https://www.cia.gov/about-cia/cia-vision-mission-values.

intelligence cycle contains five steps: "planning and direction, collection, processing, analysis and production, and dissemination."[173] The CIA's Collection Management Officers "establish and identify intelligence collection requirements, validate sources and evaluate intelligence production of human sources,"[174] its National Clandestine Service and the Directorate of Science and Technology collects information, and its Directorate of Intelligence creates the intelligence product.[175]

The DHS intelligence enterprise mission "is to provide valuable, actionable intelligence and intelligence-related information for and among the National leadership, all components of DHS, (its) federal partners, state, local, territorial, tribal, and private sector customers."[176]

The DHS intelligence cycle consists of five steps: "planning and direction, collection, processing, analysis, and production and dissemination."[177] The DHS stands separate from the FBI and the CIA and "does not generally engage in traditional foreign intelligence collection activities, such as imagery intelligence, signals intelligence, human intelligence, measurement and signatures intelligence, and foreign open source intelligence."[178]

Rather than using an intelligence requirement as the FBI and the CIA does, the DHS has "key intelligence questions"[179] which are "shaped by client needs, White House administration and DHS leadership priorities, and resources."[180] The DHS qualifies these

[173] Smith, *Encyclopedia of the Central Intelligence Agency*, 137.

[174] "Offices of CIA," last modified January 23, 2013, https://www.cia.gov/offices-of-cia/clandestine-service/careers/careers-collection-management-officer.html.

[175] "The Intelligence Cycle," last modified April 23, 2013, https://www.cia.gov/kids-page/6-12th-grade/who-we-are-what-we-do/the-intelligence-cycle.html.

[176] Todd Masse, *Homeland Security Intelligence: Perceptions, Statutory Definitions, and Approaches* (CRS Order Code RL33616) (Washington, DC: Congressional Research Service, 2006), 12.

[177] Jeffrey T. Richelson, *The U.S. Intelligence Community*, 5th ed, (Boulder, CO: Westview Press, 2008), 3–4.

[178] Mark A. Randol, *The Department of Homeland Security Intelligence Enterprise: Operational Overview and Oversight Challenges for Congress* (CRS Report No. R40602) (Washington, DC: Congressional Research Service, 2010), 5.

[179] Department of Homeland Security, "Office of Intelligence and Analysis Mission."

[180] Ibid.

key intelligence questions chronologically: imminent threats to the homeland, planned threats, and emerging threats.[181]

All three agencies use the intelligence cycle with the FBI using six steps as compared to the CIA's and DHS's five steps. The DHS makes an effort to distance itself from conventional intelligence work, and the CIA is prohibited from conducting its operations in the homeland, unless it is recruiting a foreign national. Table 1 shows the elements of the intelligence cycle as described by the three intelligence agencies.

Table 1.   Comparison of Intelligence Cycles

	Analysis	Collection	Direction	Dissemination	Exploitation	Planning	Processing	Production	Requirements
DHS	X	X	X	X		X	X	X	
FBI	X	X	X	X	X	X	X	X	X
CIA	X	X	X	X		X	X	X	

Using Bostrom and Clawson's framing—beliefs and criteria—the three intelligence agencies can be subject to the viewpoints and standards of the President of the USA, his or her national security advisors, the U.S. Attorney General, the Director of National Intelligence, the Director of the CIA, the Director of the FBI, the Secretary of the DHS, and CIA Collection Management Officers, among others.

This paper has looked at the intelligence cycle as it is used by American intelligence agencies and at career criminals. This paper's literature review did not find any American law enforcement agencies using the intelligence cycle to address the career criminal. This paper concludes with a recommended model using the intelligence cycle to address the career criminal.

Using the FBI's intelligence cycle's six steps – requirements, planning and direction, collection, processing and exploitation, analysis and production, and

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[181] Department of Homeland Security, "Office of Intelligence and Analysis Mission."

dissemination[182]—rather than the CIA's or the DHS's five steps because the FBI's first step—requirements—helps a law enforcement agency easily stay on task.

The first step of the model (requirements) would identify the subject of the intelligence cycle: a career criminal Using New York State's persistent felony offender definition (a person "convicted of a felony having previously been convicted of two or more" felonies[183]) would make the subject of the cycle a person who has three felony convictions. While this paper considered using the intelligence cycle on juveniles in the fourth chapter, this model would focus on adults only as Howell and Lipsey's meta-analysis study have shown that intervention has a greater effect on ending juvenile criminal careers[184] and the goal of this model is incarceration of adult career criminals. Another requirement qualification would be residence or know whereabouts. This could be determined through arrest records or law enforcement reports. A subject's residence or habitual presence in a law enforcement agency's jurisdiction or neighboring region would qualify a subject for consideration. Therefore, the requirement criteria can be met through the number of felony convictions (three) and the location of the subject. As described in chapter four, consideration must be given to the NYPD's CCC wherein local prosecutors and the police agreed to a mutual definition of a career criminal. Also, a spike in crime, such as robberies or burglaries, may temporarily narrow the requirements in that the first step may include known robbers or burglars who frequent the area where the spike occurred or is occurring.

The second step of the model (planning and direction) would begin to be satisfied with a mission statement, stating the purpose of the operation (as described in chapter two), and furthered with an identified chain of command. The model could be incorporated into an agency's operations or investigations division as a distinct and separate unit, and not a function that would be a duty to be considered by multiple personnel. Planning can be directed through identified goals with concrete deadlines.

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[182] Goldman, *Words of Intelligence: An Intelligence Professional's Lexicon for Domestic and Foreign Threats*, 157.

[183] Section 70.10 of the New York State Penal Code.

[184] Howell and Lipsey, *A Practical Approach to Evaluating and Improving Juvenile Justice Programs*, 42.

Constant evaluation can be used at this point, and in the next step, to determine if an identified subject should be the focus of the intelligence cycle as variables, such as the subject's death or incarceration for another crime, might remove the subject from consideration.

The third step of the model (collection) can also be dealt with in the fashion of the NYPD's CCC in that subjects meeting the model's criteria (three felony convictions) who frequent a law enforcement agency's area of responsibility could be identified and biographical case files could be established using open and closed sources to populate the files' data. Using the Federal Bureau of Investigations tactics of interviewing the subject, his family, known associates, informants, and probation and parole officers and conducting surveillances of the subject can further the third step.

The fourth step of the model (processing and exploitation) should follow a rigorous standard of data entry in order to maintain records that are easy to maintain, access, and use.

The fifth step of the model (analysis and production) may overlap the second step (planning and direction) and the third step (collection) as analysis of the information about a subject may lead to new demands for more information about the subject. Once an analysis is concluded, the resulting intelligence product is ready for the sixth step of the model (dissemination).

Care should be given to considering whether to distribute the information agency wide or unit wide. Once the information is disseminated, the agency should make an effort to locate the career criminal who is the subject of the agency's intelligence cycle and determine how to proceed in the matter. Consideration should be given to the Washington DC Metropolitan Police Department's ROP wherein surveillance was deemed inefficient and arresting the subject on existing warrants brought closure to the case file.

In conclusion, it is well established in criminological and sociological literature that a small number of criminals is responsible for a large number of crimes and that a law enforcement agency's focus on career criminals has resulted in the incarceration of

those habitual offenders. However, there has been no discussion about using the intelligence cycle to focus a law enforcement agency's efforts on the career criminal. This paper is the beginning of that discussion.

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