Buffalo Law Review

Volume 12
Number 3 *Symposium: New York Family Court Act*

Article 9

6-1-1963

The Role of Statistical Data in the Functioning of the Courts

John C. Scanlon
National Council on Crime and Delinquency

Kenneth Weingarten
National Council on Crime and Delinquency

THE ROLE OF STATISTICAL DATA IN THE FUNCTIONING OF THE COURTS

JOHN C. SCANLON*
KENNETH WEINGARTEN**

STATISTICAL data are frequently collected and stored with no clear conception of the use to which they can be put. They often seem, like many of the ubiquitous superfluities of modern life, to be designed more for show than for service. Their value is most clearly perceived, however, when a decision must be made whose ramifications may be far reaching and profound, a decision which, if it is to be a sound one, must be derived from the most careful analysis of detailed and accurate information. The value of relevant information is never more poignantly felt than in those instances when such a decision must be made and the information is lacking.

It is fortunate, therefore, that those responsible for the Family Court Act have provided the basis for the collection of sound statistical data on court functioning. In section 213 the law requires that certain specific items of information be submitted by the Family Court of each county.[1] The Administrative Board, in turn,[2] is required to include such information, by county, in its annual report to the Legislature. Further, in section 212, subdivision 3, and section 213, subdivision 3, in the Judiciary Law, as amended in 1962, the Administrative Board is given wide powers to require information and statistical data from personnel of the Family Court, county clerks and law enforcement officers.[3]

---

* Director, Research and Information Center, National Council on Crime and Delinquency.

** Research Sociologist, Research and Information Center, National Council on Crime and Delinquency.

1. N.Y. Family Court Act § 213(a) provides that the reports from each county shall include: 1. the number of children temporarily removed from homes in neglect proceedings under § 322 of the Act, where the court orders removal before a petition is filed; 2. the number of children temporarily removed from their homes under § 327 after a petition is filed; 3. the number of children placed on adjudication of neglect under Part 5 of Article 3 of the Act; 4. the number of children returned back home or detained on application to return the child temporarily removed from the home provided for in § 328; 5. the number of alleged juvenile delinquents released or detained after a filing of petition and prior to order of disposition as provided for in § 739; 6. the number of placements on adjudication of juvenile delinquency as authorized under § 756; 7. the number of those adjudicated delinquents on probation under § 757 and the period of probation; and 8. the number of delinquents committed to institutions under § 758(a) and those males committed to Elmira Reception Center and females committed to institutions such as the Valley Stream Wayside Home School for Girls under § 758(b). Other additional information as may be appropriate may be required under § 213(b).

2. The Administrative Board of the Judicial Conference, in whose hands the ultimate power of State-wide court administration lies under article VI of the New York Constitution, consists of the Chief Judge of the Court of Appeals and the Presiding Justices of each of the four Appellate Division Departments.

3. N.Y. Judiciary Law § 212(3) provides that the Administrative Board in consultation with the Judicial Conference may adopt, amend, rescind and make effective standards and general policies relating to "administrative methods, systems and activities of all officers and employees of such court system and their offices, the form, contents, main-

If the mandatory reports are wisely supplemented under the direction of the Administrative Board, the resulting body of information will serve both as a practical guide for administrative and legislative decisions relating to the courts and as a mechanism for providing that the intent of the law be carried out in actuality.

The authors of the present article were brought to a serious consideration of the role of statistical data in the functioning of the courts as a result of work done in consultation with the Joint Legislative Committee on Court Reorganization. The Committee had been charged with the responsibility of making recommendations to the Legislature on whether and in what manner the age of jurisdiction of the Family Court—presently terminating at fifteen—should be altered.[4] The Research and Information Center of the National Council on Crime and Delinquency was asked to help in the design of an inquiry which would clarify the issues involved. The present article, which is a result of our experience in this effort will concentrate on the relevance of adequate information or the lack thereof for the functioning of the court system. While we will not discuss at length the gaps in information we confronted while consulting with the committee, a few examples may be of interest to the reader:

> Detailed statistics on juveniles were not available in the five counties in New York City. The project was delayed while the necessary data was gleaned directly from the court dockets.
>
> Information concerning minor offenses for those sixteen and older was not available. (This was the result of the fact that fingerprint records are filed only when a major offense is charged on arrest.) In consequence, it was necessary to employ assumptions as to the ratio of minor to major offenses; this inevitably entails some degree of error.
>
> For offenders above fifteen years of age the reporting of dispositions is not mandatory; consequently large discrepancies between numbers of arrests and dispositions occurred frequently.
>
> There were frequently large numbers of cases wherein the disposition was not specified. (This was especially so for youths adjudicated as youthful offenders and wayward minors.) Again it was necessary to be content with estimates of the probable dispositions.
>
> Probation information is oriented to caseload and is insufficiently detailed, giving no indication of frequency and regularity of supervision consultation.
>
> Information on duration of probation, amount of fine, or length of institutionalization was not readily available.

One of the most common consequences of such and other inadequate information is that, in discussions concerning the courts, assumptions are

tenance, preservation, and disposition of files and other records." Under § 213 (3) of the Judiciary Law, the Board has additional power to require all personnel of the court system, county clerks, and law enforcement officers to comply with any request by the Board for statistical data and other information "as may reflect the business transacted by them."

4. N.Y. Joint Legis. Committee on Court Reorganization, Rep. VII (Young Offenders and Court Reorganization) (1963).

substituted for facts, eventuating in the polarization of opinion based on unsupported preconceptions. Here are a few examples of typical polemical arguments involving the question of whether the age jurisdiction of the Family Court should be raised:

Pro—The Family Court is more effective as a rehabilitative agency.

Con—The Family Court "coddles" youngsters and thereby indirectly encourages delinquency.

Pro—The Family Court is more humane than the criminal courts in treatment of adolescents.

Con—Under the guise of *parens patriae* the Family Court is more likely to violate the rights of those who come before it than is the criminal court.

Pro—The Family Court, by resorting to institutionalization less frequently, will eventuate in a saving of scarce funds and facilities.

Con—Transferring sixteen-year-olds to the Family Court will overburden the resources available to that court.

Not only is the data lacking with which to support or refute these arguments; but absence of adequate information also encourages the formulation of these arguments in terms which are not readily amenable to empirical examination. For example, people often speak of "coddling" or of "rehabilitation" in connection with the courts, but what these terms stand for is not clear; they seem to be more nearly ideological residues than descriptions of behavior.

Despite the non-empirical quality of these arguments, they do, nevertheless, focus on several of the central problems of court functioning: goals of the courts, norms of treatment, and costs of operation. The value of accurate and detailed information in improving the courts in these areas may be clarified by spelling out some general properties of the system.

Both the family and the criminal courts are assigned the task of controlling crime; that is, either through rehabilitation or deterrence, a major *goal* of these courts is to discourage crime by altering the motivation of actual and potential offenders.

In order to accomplish this goal the courts have certain *means* at their disposal with respect to ascertaining the facts of the case and in the event of a criminal conviction or civil adjudication, a variety of dispositional alternatives—discharge, fine, probation, institutionalization, etc.[5]

The means available to the courts are limited to two sets of factors, the first being the *practical conditions* with which the courts are faced, for example, the varying amounts of pressure resulting from differential court loads, available funds, personnel, facilities, and public attitudes. The second set of factors limiting the means available to the court are *normative constraints*. These constraints are embodied in statutory enactments, constitutional guarantees, legal traditions, and more vague philosophical guides.

5. See generally N.Y. Family Ct. Act, art. VII, part 5.

When the public or the Legislature suggests either slight or substantial changes in the structure of the courts, the arguments are grounded in assumptions that the goals of the courts are not presently being attained, that treatment of offenders in exceeding normative constraints, that normative constraints or limiting conditions are inhibiting the attainment of goals, and that certain suggested modifications would serve to correct this situation.

It must be stressed once again that at present arguments of this sort must rely to a great extent on *assumption*, and that while there is no reason to believe that assumptions regarding court functioning are less reliable than are assumptions in other fields, neither is there any reason to assume that they are more reliable. Without factual substantiation neither the current state of affairs nor the effect of changes, should they be instituted, can be gauged.

One area where assumptions have played a major role and where facts are very few is the relation of court action to goals. It is generally supposed that courts are capable of coping with the crime problem, and that with minor modification the situation would be well in hand. Thus, passionate arguments are made for more deterrence or more rehabilitation in spite of substantial evidence that crime and delinquency are produced by other sectors of society and that it is only by dealing with these sectors, which are beyond the purview of the courts, that progress can be made.

This suggests that the courts are faced with unrealistic goals, that is, goals which cannot be achieved by any alteration of the courts being currently contemplated. Thus, one function of research is to establish more realistic goals. This might be done by correlating court actions and characteristics of offenders, on the one hand, with rates of recidivism, for example, on the other.

The prevalence of unrealistic goals may have far-reaching consequences.[6] These are of two sorts. First, there may be a tendency to go beyond the normative restraints in the mistaken belief that the constraints are responsible for failure to reach the goals. The second consequence of unrealistic goals is the transfer of commitment to goals that are easier to achieve, for example, a high conviction rate. These secondary goals are, in fact, more "realistic" than the primary one; however, they are also likely to be inimical to the intent of the law. One of the objectives of research, then, ought to be the establishment of goals which are consonant with the intent of the law, but, at the same time which may, in fact, be accomplished.

The third area of argument mentioned earlier focuses on costs of operation. Assertions heard with respect to proposals on court functioning generally deal with the assumed burdens and the implicit effect on efficiency that would result with respect to court, detention, institution and probation facilities, and personnel. Although assertions about efficiency are frequently heard, they are

6. For a provocative discussion of the social consequences of the inability to achieve goals by approved means, see Merton, *Social Structure and Anomie*, Social Theory and Social Structure 131-160 (rev. ed 1957).

often very misleading. *Efficiency* cannot be discussed meaningfully until preliminary questions as to the *effectiveness* of the courts in attaining goals are answered. Once realistic goals are established, it becomes possible to choose among alternative means those which minimize costs. If the effectiveness of the courts is not taken into account, it would appear that efficiency could be maximized by merely curtailing operations.

One of the ways that statistical data may be of use to the courts, then, is in establishing more realistic goals, and thereby enhancing conformity to legal norms while maximizing efficiency.

These are far-reaching functions of information on court operation. There are additional functions which are more immediate in application. A monitoring system makes visible the actions of the courts, providing a potent control mechanism. This visibility will promote a condition wherein commendation and criticism can be mobilized to move the courts further in the direction of the implementation of treatment norms. The need for such a mechanism is made more urgent as the range of discretion enjoyed by the courts becomes greater.[7] For example, it is inconceivable that the norm of equality before the law can be achieved without a careful monitoring of courts throughout the state. This is especially so insofar as the conception of equality before the law has become more sophisticated. This conception, transcending equality based simply on identity of offense, and including background factors such as age, sex, previous offense history, "emotional" or "mental" state, etc., requires a greater detailing of specific information than is presently available. Even in those instances where some of this information appears to be at hand, a closer scrutiny reveals a high degree of unreliability.

Another function of monitoring information on court operations is as a guide to public attitude and legislative action with respect to alterations of the courts, again replacing assumption with facts. If it is considered desirable that youths be treated in a certain way, it would be necessary to know whether court A or court B is more likely to treat them in this manner before the decision is made to place these youths under the jurisdiction of one or the other. It is not sufficient to be guided simply by the philosophy of the court, since philosophy and practice have been known to diverge, sometimes very dramatically.

One last function of detailed information on court operation is to overcome the tendency to attribute achievement or lack thereof to the undifferen-

7. While not directly relevant to our main discussion, we might mention that those who are distressed to see features in the Family Court Act that resemble procedural aspects of the Criminal Court should note that discretion, *unmonitored*, may lead to certain practices which could cause the imposition of legal safeguards which may be felt by many to be contradictory to their conception of the treatment norms of the Family Court. One might advise such groups that to insure the supremacy of their conception of treatment norms it must be assured that intent of the norms is realized in action. One technique for such assurance is "quality control" through the mechanism of statistical monitoring.

tiated totality of the system, rather than to those elements in the complex which are most directly responsible, thereby permitting meaningful alteration or repetition.

The need for a detailed statistical monitoring system which we have been advocating was aptly expressed by Thorsten Sellin:

> We have created a vast network of official agencies to bring offenders to justice to determine their guilt, to impose penalties, and to administer penal or correctional treatment. The operation of these agencies, the manner in which they apply policies dictated by law, and their relations to offenders in their charge are phenomena concerning which we are poorly informed. Some of the problems involved have been laid bare by various local and state surveys of criminal justice or by piecemeal research, but what is needed as a basis for administrative improvements is a permanent system of social accounting in this field. The statistical analysis of administrative processes offers the soundest basis for administrative reform. Archaic and ineffective methods of dealing with offenders would have less chance of survival in law and practice had their nature and operation been the object of continuous statistical scrutiny.[8]

8. Sellin, *The Uniform Criminal Statistics Act*, 40 J. Crim. L., C. & P.S. 679, 680 (1950).