

REPORT OF THE BJS/SEARCH NATIONAL
TASK FORCE ON PRIVACY, TECHNOLOGY
AND CRIMINAL JUSTICE INFORMATION

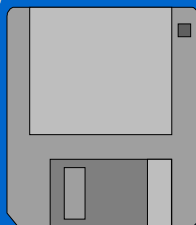
May 29, 2001

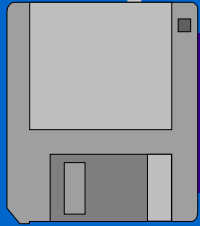
Seminar on Privacy and Access Involving
Criminal Justice Records

Annapolis, MD

Presented by

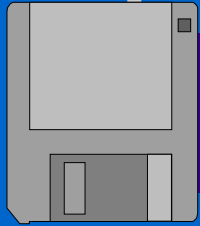
Robert R. Belair





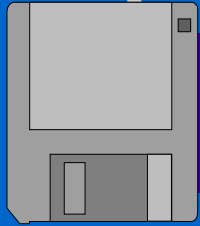
Public Opinion Surveys

- **Public opinion surveys indicate that over 90 percent of the public are concerned or very concerned about privacy**
- **Just over 50 percent worry most about governmental threats; about 45 percent worry most about private sector threats**
- ***Wall Street Journal* poll: Privacy is top concern over world war, terrorism, over-population**



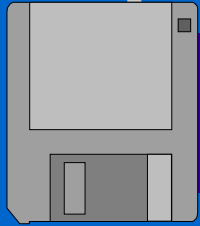
The New Privacy Environment: Basic Causes

- **Rise of personalized marketing, data mining and in-depth profiles**
- **Multi-industry mergers and potentially unified databases**
- **Commercialization of public record information about individuals**
- **The Internet, consumer tracking and technology**



Consumer Privacy Activism

- **78 percent refused information to business because not really needed or too personal**
- **58 percent asked company to remove name/address from marketing lists**
- **54 percent didn't use company or buy because unsure of how information would be used**
- **21 percent look to see whether businesses have privacy policies**



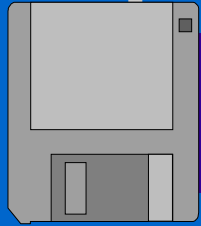
Privacy Now Bipartisan and Trans-Ideological

- **Mass media “horror stories” drive privacy fears**
- **Politicians read the stories and surveys; women 10-20 percent more privacy-concerned than men**
- **Republicans join Democrats at federal and state levels -- demand legislation**
- **Conservative and liberal interest groups unite in strong coalitions for laws**



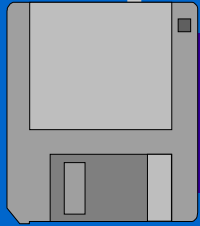
Major Legislation Arrives

- **Children's Online Privacy Protection Act**
- **GLB financial privacy**
- **Health privacy: HIPAA**
- **Opt-in for drivers record privacy**



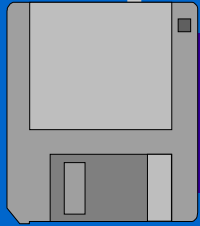
Major Legislation Pending

- **Social security number privacy**
- **Online Privacy**
- **Privacy study commission**



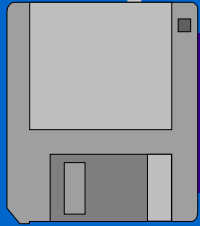
Agency Enforcement and Litigation

- **FTC assumes privacy leadership role**
- **State Attorneys General and consumer protection agencies begin privacy enforcement campaigns**
- **Plaintiff lawyers discover privacy litigation -- class actions and punitive damages sought**



Report of the National Task Force on Privacy, Technology and Criminal Justice Information

- **SEARCH conducted extensive research for a 200+ page report**
 - **History of information privacy**
 - **Structure of criminal justice information system**
 - **History of constitutional, common law and state and federal statutory CHRI standards**
 - **Three case studies -- Florida, Washington, Massachusetts**



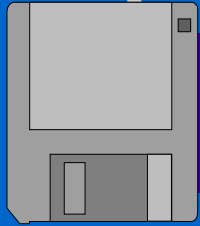
National Task Force

- **Established a National Task Force comprised of experts from:**
 - **Criminal history record repositories**
 - **Courts**
 - **Commercial compilers of CHRI**
 - **Criminal justice and non-criminal justice users**
 - **The media/open records advocates**
 - **Privacy advocates**
 - **Academics**
 - **Government officials**



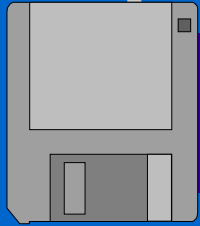
National Task Force

- **Task Force held three multi-day meetings**
- **Task Force reviewed content of report and provided extensive input, especially about change drivers**
- **Task Force commissioned first-ever public opinion survey, reviewed survey and provided input**
- **Task Force debated and adopted principles/recommendations for CHRI**



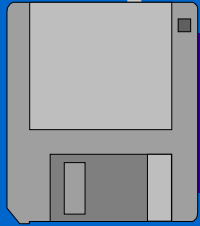
National Task Force

- **In May of 2000, SEARCH and BJS convened a National Conference**
 - **Input from speakers and discussions**
 - **Survey reaction/validation**
 - **Reaction to recommendations**



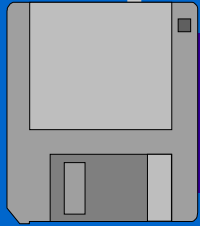
Report Findings: Public Opinion Survey

- **Opinion Research Corporation and Alan Westin conducted survey**
 - **68-79 percent rate CJ system as effective**
 - **70 percent say respects civil liberties**
 - **Only 12 percent say law enforcement agency violated their privacy**



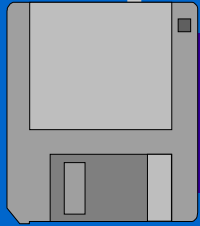
Report Findings: Public Opinion Survey

- **Comparison: “only some” or “hardly any” confidence in “the people running”**
 - **Congress 82 percent; Federal Exec. Branch 79 percent**
 - **White House 76 percent; Supreme Ct. 64 percent**
 - **Military 48 percent**



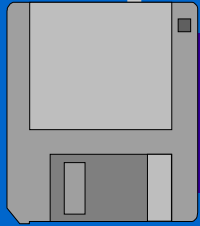
Report Findings: Public Opinion Survey

- **Type of system favored for uses of CHRI outside of CJ**
 - Only 12 percent favor state open-record systems
 - Almost a majority -- 47 percent -- favor a system completely open for conviction records
 - 37 percent favor a selected-user system for both conviction and arrest-only records
 - 84 percent want some CHRI limits -- either content of CHRI record or type of use or both



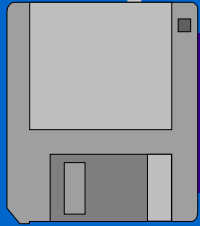
Report Findings: Public Opinion Survey

- **Access based on content and use**
 - Majorities support employers (55 percent) and government licensing agencies (57 percent) access to conviction records, depending on sensitivity of jobs and licenses
 - For arrest-only records, sensitivity of job draws 49 percent for employers and 50 percent for licensing agencies



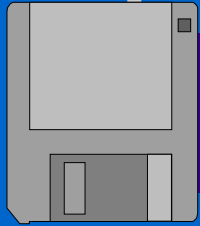
Report Findings: Public Opinion Survey

- **Access for other CHRI seekers**
 - Majorities relate access justification to sense of need and relevance
 - **Conviction: heavy support for groups working with children, military, insurers fighting fraud. No majorities for media, banks for loans, neighbors and credit card issuers**
 - **Arrest-only: groups working with children drew majority support; no others**



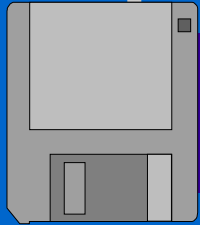
Report Findings: Public Opinion Survey

- **Fingerprinting gets wide support**
 - **Heavy majorities say fingerprinting acceptable**
 - **80-94 percent support for arrests, sensitive job licenses, welfare recipients and drivers licenses (to prevent fraudulent ID use)**
 - **68-71 percent support for check cashing, airline ticket buying (to prevent terrorism) and job applicants (to enable CHRI search)**



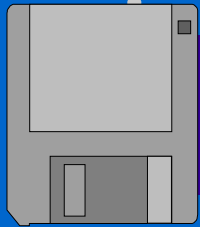
Report Findings: Public Opinion Survey

- **Privacy policies heavily supported**
 - **To protect individual rights of persons with CHRI in government files, heavy support for**
 - **Right to see and have corrections made (98 percent)**
 - **Impartial dispute resolution procedure (94 percent)**
 - **Information procedures explained and policies followed (90 percent)**
 - **85 percent say commercial services should follow same rules**



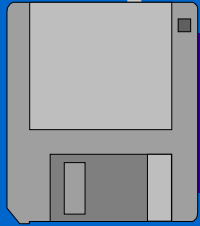
Report Findings: Public Opinion Survey

- **Other findings to note**
 - **90 percent oppose open CHRI records on Net**
 - **Slim majority (53 percent) say keep disclosure restrictions on juvenile records**
 - **Slim majority (52 percent) feel criminal records should not be sealed but kept open for employers and licensing agencies**
 - **69 percent favor CHRI records being provided by government, not commercial services**



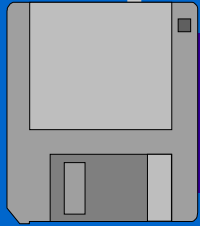
Report Findings: Current Law

- **Law and policy for CHRI has changed little since mid 1980s**
 - **Smokestacks: Current law and policy focuses on source, not content**
 - **Information held by law enforcement**
 - **Information held by courts**
 - **Information held by commercial compilers**



Report Findings: Current Law

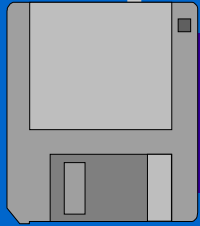
- **Current status of CHRI law and policy**
 - Subject access and correction
 - Accuracy, completeness and timeliness
 - Fingerprint requirements
 - Disposition reporting requirements
 - Sealing and purging requirements
 - Security standards
 - Use and dissemination standards for criminal justice, non-criminal justice and the public



Report Findings: Change Drivers

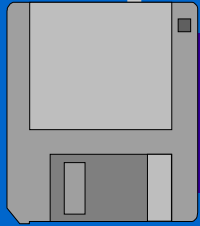
- **SEARCH report identifies ten “change drivers”**
 - **Public concern about privacy**
 - **The information culture**
 - **Technological change**
 - **System integration**
 - **Criminal justice “business models”**
 - **Non-criminal justice demand**
 - **Commercial compilation and sale**
 - **Government statutes and initiatives**
 - **Juvenile justice reform**
 - **Intelligence systems**

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Report Findings: Commercialization

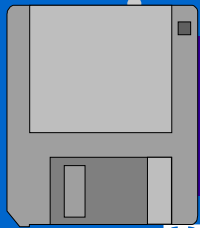
- **Criminal justice record information has become a commercial product with a definable marketplace**
 - **The CHRI product is today reliable and accurate enough to be attractive to buy and safe to sell**
 - **The CHRI product today, thanks to automation, can be “harvested” and resold at price points that are attractive**



Report Findings: Commercialization

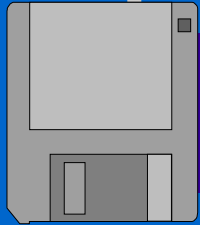
- **There is a robust and growing demand/marketplace for criminal history record information and other CHRI products in part because of IT changes and in part because of the need for the information in a litigious, mobile and increasingly risk-averse society**
 - **Employment uses**
 - **Insurance uses**
 - **Credit uses**
 - **Other risk management uses**

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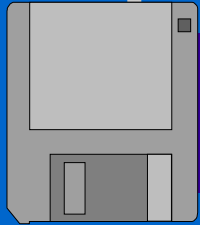
Report Findings: Commercialization

- **The new CHRI information marketplace has led to the emergence of commercial information vendors supplying CHRI products**
 - **No longer confined to private investigators or “mom and pop” local shops**
 - **Highly automated**
 - **Name-based**
 - **Emphasize cost effective and timely delivery of a reliable product**
 - **One of the largest markets for this commercial CHRI product is both civil and criminal law enforcement agencies**



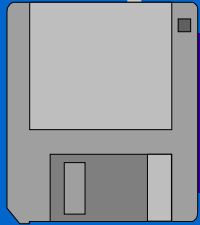
Report Findings: Commercialization

- **Commercial information vendors operate in an extremely unforgiving privacy environment**
 - **Federal Fair Credit Reporting Act**
 - **State Fair Credit Reporting Acts**
 - **State labor laws**
 - **CHRI statutes aimed at commercial vendors**
 - **Self-regulatory codes**



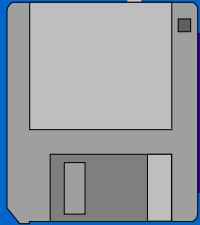
Report Findings: Task Force Recommendations

- **Universal Rules.** To the extent practicable, law enforcement, the courts and the private sector should be covered by the same rules for CHRI
- **Policy.** Insofar as possible, privacy policy should rest on the content and use of the information, not the source of the information
- **Remedies.** Legal remedies for misuse of CHRI should be re-examined



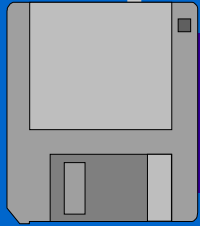
Report Findings: Task Force Recommendations

- **Fingerprints.** To the extent practicable, CHRI held by law enforcement, the courts and the private sector should be fingerprinted-supported and accessible
- **Sealing and purging.** CHRI should be sealed or purged when the record no longer services a public safety interest
- **Privacy rights.** Record subjects should have enhanced privacy rights, including notice and access to disclosure logs



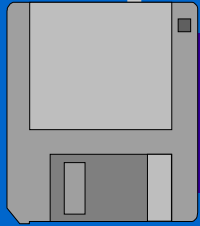
Report Findings: Task Force Recommendations

- **Juvenile records.** Where public safety considerations require, treat records of serious juvenile offenses the same way as adult records
- **Profiling.** CHRI databases should not include other types of sensitive personal information
- **Integration.** Integrated CJRI systems should be encouraged but should take privacy and profiling threats into account



Report Findings: Task Force Recommendations

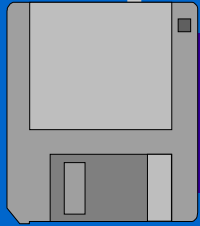
- **Conviction vs. arrest only.** The new generation of law and policy should continue to recognize a distinction between the two types of CHRI



CHRI Future

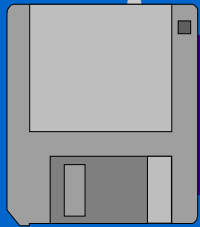
- **By 2010, law and policy for CHRI will look very different -- a new generation of law and policy is likely to be in place that will pay less attention to the source or distributor of the CHRI and more attention to its content and use**
 - **Content differentiators are likely to include**
 - **Conviction vs. non-conviction**
 - **Juvenile vs. adult**
 - **Intelligence and investigative vs. CHRI**
 - **Non-criminal justice (medical, financial, etc.) vs. CHRI**

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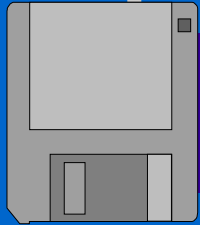
CHRI Future

- **By 2010:**
 - **“Permissible purpose” statutes are likely to emerge which give equal weight to various non-criminal justice purposes alongside of criminal justice purposes**



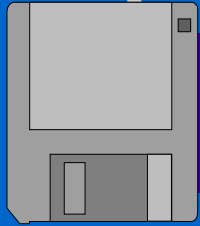
CHRI Future

- **By 2010:**
 - Privacy is likely to remain an important public policy value
 - FTC is emerging as a *de facto* privacy regulatory agency
 - Result is new regulatory players who are likely to have input into the way that CHRI is handled-- no longer a monopoly for criminal justice decision makers



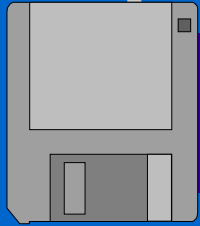
CHRI Future

- **By 2010:**
 - **Because privacy is of growing importance, there is likely to be pressure for more robust, fair information practice laws applicable to CHRI, to include**
 - **Notice**
 - **Subject access**
 - **Data quality**
 - **Meaningful and effective remedies**



CHRI Future

- **By 2010:**
 - **Full Internet or public display of CHRI is likely to continue to be resisted**



CHRI Future

- **Challenge for the first decade of the 21st century**
-- law and policy that encourages the effective and appropriate levels of use of CHRI while preserving appropriate levels of personal privacy