



Unlocking the Power of Data for Criminal Justice Research, Policy-Making and Practice



ACJRD 21st Annual Conference
5th October, 2018



Mission Statement

ACJRD informs the development of policy and practice in justice

Vision Statement

Innovation in justice

Founded in 1996, the Association for Criminal Justice Research and Development (ACJRD) seeks to promote reform, development and effective operation of the criminal justice system.

It does so mainly by providing a forum where experienced personnel can discuss ways of working in an informal setting, by promoting study and research in the field of criminal justice and by promoting the highest standards of practice by professionals associated with criminal justice.

Its activities are designed to lead to increased mutual understanding and provide insights into the problems with which all are confronted. In opening unofficial channels of communication, it improves cooperation between the different parts of the criminal justice system.

For more information on the ACJRD, please see our website www.acjrd.ie.

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Foreword from the Chairperson

Maura Butler, Chairperson, ACJRD

The 21st Annual ACJRD Conference “*Unlocking the Power of Data for Criminal Justice Research, Policy-Making and Practice*” featured distinguished speakers from Ireland, joined by speakers from the European Union and England.

In our collaborative Council discussions we wondered how potentially powerful are traditional, digital and automated data in Criminal Justice Policy, Practice and Research when that cumulative data is collated, analysed, compared, legislated for, accessed and disseminated within appropriate ethical parameters.

How has all such data been unlocked? How might it be utilised in the future -

- To develop policy in a national and international context on an evidence-based foundation, where its methodological validity is accepted?
- To motivate positive outcomes for prosecutors, juveniles, victims of crime, probation supervision, reintegration of offenders and a safer society?
- To impact crime prevention, human rights, fair trial procedures, access for researchers and appropriate data protection?

The conference structure facilitated the presentation of plenary sessions supported by workshops, where delegates from the criminal justice community shared their views, experiences and expertise.

ACJRD sincerely thanks the expert presenters for their contributions to the event and to all those who contributed during conference discussions. ACJRD is particularly grateful to plenary speakers who subsequently wrote a paper for this publication.

The conference plenary speakers included:

- Aidan O’Driscoll, Secretary General, Department of Justice and Equality
- Gurchand Singh, Chief Information Officer, Department of Justice and Equality
- Claire Loftus, Director of Public Prosecutions
- Professor Marcelo Aebi, Vice-Director, School of Criminal Sciences, University of Lausanne
- Professor Betsy Stanko OBE, Visiting Professor UCL, City University of London and Sheffield Hallam University; Emeritus Professor of Criminology, Royal Holloway University of London
- Dr. Seán Redmond, Adjunct Professor in Youth Justice, University of Limerick
- Michael O’Neill, Head of Legal, Irish Human Rights and Equality Commission

The conference workshop presenters included: Angela McCarthy, Head of Clinical Services, Dublin Rape Crisis Centre; Eoin Kelly and Natasha Browne, Department of Justice and Equality; Asst. Commissioner David Sheahan, Roads Policing and Major Event Management;

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Dr. John Danaher, Lecturer Above the Bar, School of Law, NUI Galway; Gerry McNally, Assistant Director, The Probation Service and President of the Confederation of European Probation (CEP) and Supriya Subramanian, The Probation Service Statistician; Séamus Carroll, Head of the Data Protection Unit, Civil Law Reform Division, Department of Justice and Equality; Rory Staines, Michael J. Staines & Company Solicitors; and Dr. Deirdre Healy, Sutherland School of Law, UCD

The Chatham House Rule was invoked as necessary, to facilitate free discussion.

The ACJRD Council is confident that the papers in this publication will benefit all practitioners, policy makers and all who now take the time to peruse them.

Launch of Conference

Aidan O'Driscoll, Secretary General, Department of Justice and Equality

Introduction

Good morning. I am delighted to be here to open this 21st Annual Conference of the Association for Criminal Justice Research and Development. This is one of my first public functions as the new Secretary General in the Department of Justice and Equality. And I am really happy it is - as I feel very much at home here.

My own background is in economics and policy analysis so as you can imagine the theme of this conference is one that warms my heart and hugely engages my interest. Of course I am aware that the Association plays an important role in bringing together officials, academics, legal practitioners and NGOs and provides an open forum to discuss key policy issues in Criminal Justice.

I especially want to thank Maura, Danelle and Katherine for their sterling work in organising today's event. The theme, as you know, is *'Unlocking the Power of Data for Criminal Justice Research, Policy-Making and Practice'*.

So now I would like to offer a few observations about where the criminal justice sector finds itself today; about the role of data in navigating that landscape and finding solutions to the problems we face; and about some of the steps that the Department and its partners are taking in this crucial area.

Today's criminal justice environment is vastly more complex than it was two or three generations ago. Crime itself, and the means by which it can be committed, has evolved beyond all recognition. Cybercrime in particular poses an

enormous challenge to law enforcement, as do the other modern cross-border phenomena of drug and human trafficking, money laundering, radicalisation and international terrorism. These are intricate problems and they are rapidly growing and evolving. The speed and accuracy with which we can evaluate trends and developments in these areas will be crucial to our success in addressing them.

We need the capacity to see what's coming down the tracks and plan accordingly. And, given the interdependencies between the agencies that make up the criminal justice system, we need to move away from siloed thinking in favour of a whole-of-sector approach in this area. We also need to understand what domestic and international trends can tell us about longer-term challenges for our sector, so that we can prioritise accordingly. Furthermore, we need the ability to measure how well the criminal justice sector is performing in the here and now. Is it meeting its objectives and delivering for service users, for the taxpayer and for the wider public? Where do we need to improve, and how?

We need good data, analysis and evaluation to answer all of these questions and many others. Thankfully, the technology now available for capturing, sharing and analysing such data is becoming ever more powerful, and this is something that other speakers and workshops will no doubt touch on.

While crime itself has become an increasingly complex matter, so too has offender management - albeit for more

positive reasons. Penal policy - once a blunt and simple instrument of punishment - has latterly been moving towards a more rehabilitative model, both within the prison system itself and in the variety of post-release programmes and alternatives to imprisonment that are now available. We believe that this approach is the best way to reduce crime and build safer communities, and there is certainly evidence for this proposition both internationally and at home. However, we need to produce *more* of this evidence, with greater regularity, if we are to attract the political and public support necessary to make this approach the accepted norm in the long run.

On that note, I understand that the Central Statistics Office intends in the near future to produce a fresh study of prison and probation recidivism rates. This is very welcome and we will keenly await the results. However, our own sector needs to go further by regularly and thoroughly evaluating the success of our offender management programmes, so that we can communicate the results and learn from them.

In this regard one notable recent development comes to mind: the independent evaluations of the Joint Agency Response to Crime (JARC). As many of you will know, JARC is a targeted offender management initiative operated jointly by The Probation Service, the Irish Prison Service and An Garda Síochána with strong support from the Department.

The evaluations of the three JARC pilot programmes have now been completed, along with a comparative desktop review by an internal group of experts. The evaluations indicate quite strongly that these programmes have helped to reduce both the frequency and severity of

reoffending and, furthermore, have helped some habitual offenders to move completely away from crime. The Department and agencies are now working to develop a standardised evaluation framework which will enable an ever-more robust assessment of JARC as it continues and, hopefully, expands into the future.

And there are other good examples from around the criminal justice sector. For instance, Garda Operation Thor, which tackled burglary, was driven by data analysis which identified spatial and temporal patterns in such offences, patterns of repeat offending and repeat victimisation, the methods typically used to commit these crimes, and the main types of items being stolen. This enabled accurate, evidence-informed responses including hot spot policing, targeting of prolific offenders, providing advice on ‘target hardening’ of homes, and raising public awareness more generally. Overall, Operation Thor led to a 30% reduction in burglaries, which has largely been sustained. The data analysis that underpinned this was recognised when the Garda Síochána Analysis Service won last year’s Data Science Award for the best use of analysis in the public sector.

These are the kinds of cutting-edge, data-driven initiatives that the Department wants to support, drive and deliver in the criminal justice area. As someone with an economist’s background, I have always been acutely aware of the importance of good data in driving policy and service delivery. That’s why, on taking up my new post last month, I was so pleased to see the recent strides the Department has been making in this area. For example, progress is well underway on developing a Criminal Justice Operational Hub. This is a central data hosting framework which will

allow the criminal justice agencies to exchange - in real-time - operational data such as charge sheets, warrants, evidential records, criminal legal aid payments, and court and prison outcomes. In so doing, the Hub will greatly reduce duplication, and facilitate the efficient end-to-end management of cases and people throughout the criminal justice system. In time, it will also provide a rich store of management information for decision-making purposes.

In addition, the Department this summer launched an ambitious new Data and Research Strategy which aims to develop a thriving culture of research, analysis and evaluation in the Department and the wider Justice sector. This will involve the Department building its internal capacity in these areas, but also in partnering with our agency colleagues as well as with expert stakeholders in academia and civil society - many of whom are represented here today. Our continuing involvement with this Association will also be very important in ensuring implementation of our Strategy.

The next speaker is Gurchand Singh, the Department's CIO (also newly appointed) and he will talk to you about the Strategy in more detail. However, I'm pleased to be able to steal a bit of Gurchand's thunder by announcing that one of the key outputs of the Strategy is now up and running: a rolling research programme with ring-fenced funding. Just this week, the Department issued its first call for research proposals under the Strategy. The themes to be covered under this call include:

- The growth in female imprisonment rates and development of further non-custodial alternatives;
- Consistency in sentencing;

- Public confidence in the criminal justice system; and
- Victims' experiences of and satisfaction with the system.

Before I conclude, I'd like to make a few comments about the wider context in which our Data and Research Strategy will be implemented. Many of you will be aware that the Department is about to undergo a radical and unprecedented restructuring.

Firstly, the Department will be internally divided into two distinct branches: Justice and Home Affairs, respectively. Within each of these branches we will have five functional units: Policy, Legislation, Operations, Transparency and Governance. This is to enable us to carry out each of these five core responsibilities in a more focused, dedicated and professional way than is possible under the existing arrangement where 'everyone does a bit of everything'. This is a radical transformation from the traditional, subject-based structure of the Irish Civil Service. It is seen, rightly I believe, as a potential new model for the entire service of the future.

This will undoubtedly be a very challenging process of transformation. While it will have numerous success factors, an absolutely critical one will be having good data to guide our future work. The new structure will give us the space to become more effective in developing and implementing policy and legislation, in delivering programmes and services, in engaging with stakeholders, in providing timely and high-quality information to the Oireachtas and the public, and in ensuring appropriate accountability of our agencies. But we will ultimately be judged on how well we *use* the space available to us, and having the

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best possible data and analysis to support our work will be absolutely crucial to our effectiveness in every one of these areas.

Our Data and Research Strategy is obviously key to this - but so, too, is the willingness of the Department and its agencies to engage with and learn from stakeholders in academia, civil society and the wider public. With that in mind, fora such as this Association, and events such as this one, will be of ever greater value. As such, I hope that our long association with the ACJRD will continue and deepen for many years to come.

On that note, I'd now like to thank you for your attention and to wish you all a very enjoyable and productive conference.

Developing an Evidenced Based Approach using Research and Analysis: The Department of Justice's Strategy

Gurchand Singh, Chief Information Officer, Department of Justice and Equality

Introduction

I really want to speak to the conference title – unlocking the power of data, and I want to do this by looking at three key areas:

- Firstly - data. I don't want to take on the notion of data uncritically. I want to take a bit of time thinking about some key issues in our data **and** indeed what data needs to look like for us to get the most out of it in the Criminal Justice System.
- Secondly - Departmental data analysis. I want to briefly spend a bit of time talking about how we are currently using data.
- Thirdly - I want to spend some time thinking about the immediate future. The Department is about to undergo significant change - this is really exciting because it opens up a whole range of possibilities in how we can build in the use of data - to unlock its power.

Right now, this is just thinking out loud. There is a lot of debate work between now and whenever we finish this reform process. However, I think it should at least allow you to see the potential of data.

Running through my presentation will be our Research and Analysis Strategy and I will make reference to how we are proceeding.

Data

I said that I didn't want to think about this notion of data uncritically; for me, there are three broad dimensions which are important if we are to get the most out of

the information we hold within the Criminal Justice System.

To note, I'm not saying that there are no other elements we should consider, but these three do seem to be the important ones in the context of our conference.

Integrated:

We have all heard of the growing volumes of data now being collected and held, as well as the potential this holds in delivering insights and supporting service delivery. Whilst great insights can be delivered from one particular source of data, if we are able to integrate it with other data sources then new insights can be delivered that give us a greater breadth and depth of understanding of the issue we are looking at. However, data sets are not always integrated and even the ability to link across from different data sets is made difficult because of a lack of common identifiers. What this means is that, when we are undertaking analysis, there is a danger of a partial or segmented view of the issue we are exploring.

Within the Criminal Justice System we unfortunately do have **relatively** independent databases. This is an artefact of the structure we have. We have agencies, who sit as part of the Department, who collect and manage their own data to support service provision. However, what we need for the Criminal Justice System is that integrated view, to give us that greater breadth and depth of understanding as we analyse data from across the Criminal Justice System.

This was recognised in our Research and Analysis Strategy, in particular under Strategic Action No. 2. Part of the work we are undertaking is developing a Justice and Equality Hub, integrating data from across the Criminal Justice System. This will provide a unique view of offender interactions with the Criminal Justice System from start to end, providing us with analysis that can help inform policy and practice. This action is already underway and we have an estimated completion date of 2020 for developing the infrastructure and beginning to integrate information. Whilst the initial focus will be based on the offender view, we will also look to develop other integrated views.

Trusted:

I think trust has several dimensions -

Firstly, accuracy - we need to be able to trust that the data we have is accurate and that it is reliable. If we are describing certain crime related issues, or making claims in relation to certain interventions, we need to have confidence that what we are saying is based on solid, accurate data. Unfortunately, we have seen data quality issues emerge within criminal justice data. For me, **part** of the resolution comes from improving governance and I do believe that the Department should have a central role in this. There is a role for setting data standards, of developing data consistently across the Criminal Justice System, of ensuring that it can be integrated, and ensuring that the appropriate mechanisms are there to drive improvements. If we have this, then all parts of the Criminal Justice System can benefit from good quality data. This is recognised in our Research Strategy, under Strategic Action No. 3 where we will look to develop governance. This will

be no mean feat and it is something which we are in the process of scoping out.

Secondly, knowledge - you can have the most accurate, shiniest data around - but that does not mean people will necessarily believe it. One way around this is greater transparency.

I believe that people need to have an awareness of how criminal justice sector agencies collect, classify and count incidents. Some elements are not widely understood - for example, crime counting rules, or even the classification of certain offence types. By making these open, transparent and easily understood, it gives people a better understanding of our data, more engagement, more use and perhaps more trust. There is work already underway in An Garda Síochána to explore this, however I do believe that there is merit to looking at this more widely.

This action is again captured under Strategic Action No. 3, which is around the governance of data. It's a big job, one not to be under-estimated, but one we do have to look at and scope out.

Open:

Part of the power of data comes when we share it with others to support the development of new insights for social and economic benefits. Indeed, the Government has recognised this in its Open Data Strategy. Currently, the Open Data Portal contains data on crime, prison committals, prison population and prosecutions as well as links to the surveys (such as the Public Attitudes Survey).

Our Research and Analysis Plan commits the Department to publishing appropriate data sets - and will shortly be exploring the best mechanisms for this. Indeed,

part of the job might also be to better publicise data already out there - for example, colleagues from The Probation Service in their workshop will highlight the range of data they currently have.

However, stepping back, there must be an overall balance here - and let me come back to the theme of trust: People must also know that their data is safe and is being used in an appropriate manner in order to develop or maintain trust. We can see the breakdown in confidence in terms of how people's data has been used without their explicit knowledge recently. So, when we do share data it will be at an aggregate level ensuring that we maintain data protection.

However, I do not want to have data protection become a catch-all excuse for not allowing research to be undertaken. For example, in the past we have put in mechanisms to support research that dealt with really sensitive information (e.g. Greentown Study).

However, it's not necessarily easy to arrange, and often dependent on internal resources.

Its use

So, data needs to be developed - it is very rarely in perfect condition. Nonetheless, there are still things we are doing in the Department to apply data:

- It just means that it takes longer to do as we spend time cleaning the data.
- It also restricts what we can say as, dependent on the quality of the data we are working with, we will need to put caveats around the results of the analysis.
- Developing models to assess the outcome of interventions. Part of this is building in estimations of the potential savings that can be delivered

- so we have developed work on the costs of crime.

- Evaluating interventions such as the JARC initiative.
- Looking at options for a more efficient delivery of criminal legal aid.

Indeed, some of these will be covered by our colleagues, Natasha Browne and Eoin Kelly, as part of their workshop. Data is also being used more broadly inside and outside of the Criminal Justice System:

- Looking at long term patterns - so, we are keenly awaiting to hear the results of the latest recidivism study conducted by the Central Statistics Office but using Criminal Justice System data.
- Using data to develop interventions - again, Aidan O'Driscoll mentioned Operation Thor as an example.

So, the data is already making an impact in informing our understanding of criminal justice problems and identifying solutions.

I finally want to take a look forward. As Aidan noted, the Department is about to launch one of the most significant reform programmes it has ever gone through very shortly. It leads to the question - what role will data analysis play within a reformed departmental structure and processes? There is a bit of work to be done here, but even if we contemplate, there are some real positives.

Policy

Focusing on developing policy options:

- Analysis of longitudinal data to identifying emerging issues that require policy intervention.
- Look for key drivers behind this - for example, one of the areas we are currently exploring is drawing data down for the Public Attitudes Survey (PAS) to conduct a regression analysis

of the key factors that drive confidence.

- We can also model - develop those scenarios that basically say ‘on basis of evidence we have, and some educated assumptions, what happens if we apply this ...’. And if we have that integrated database, we can see the impact of policies across the Criminal Justice System.

Governance

Within governance, the key aim would be to ensure that we meet performance expectations - again, data is key here:

- To monitor performance - including looking at whether we are achieving our outcomes and whether we are putting in place the necessary outputs to do so.
- To support evaluations - are we achieving what we said we would, what’s working, what’s not. It can help us decide whether to expand our intervention, adapt it in some way to address any shortcomings, or cease all activity if it is not proven to be effective. Interventions of course need to be designed in such a way that they collect this information.

I should also point out that I’ve been lucky enough to be involved with several really bright people who have applied statistical techniques to good administrative data in order to develop counterfactuals where it is difficult to achieve (because of the universal roll out of the programme). So I’ve seen really interesting work done (and indeed learned from that work) using techniques such as Regression Discontinuity Designs and Propensity Score Matching.

Legislation

Development of legislation: using evidence to support or inform policy options.

But evidence can also support Regulatory Impact Assessments of primary legislation and statutory instruments in order to:

- Explore the different options to address particular policy issues.
- Assess whether or not the new proposals would have the desired impact.
- Identify the costs and benefits associated with regulation.

So, it’s about thinking how we can legislate for effective and efficient interventions.

Transparency

This has several dimensions - it is important for people, whether members of the general public or the Oireachtas, to see the data that decisions have been built on. In this context, let me come back to the issue of trust in data: when people see the data you hold and how you are using it, it should contribute to building confidence.

Operational

Managing and rolling out the interventions ...

The importance of social research

I believe we should not forget the importance of social research in all of this. What we need is **evidence** drawn from a variety of sources to answer the research question at hand, whether that be insights developed from data or grounded theory.

One of the things I want to make sure we do is to drive Strategic Action No. 6 of the Strategy, to develop research in the Department. We are already undertaking a process to identify research needs

across the Department. We will use this to develop a Departmental Research Plan for 2019. Budgets permitting, we will undertake several rounds of procurement next year to support this programme. I should say that for 2018, we have already put out one call for support this week. We will work with the Justice Sector Research Advisory Group to identify successful bids.

Summary

I do believe that data is an asset, but it does need to be developed. Our strategy will look to how we can develop more integrated data, look to see how we can build trust, and support open data as much as we can. This will only contribute to our ability to derive insights - though it does not prevent us delivering some insights now as colleagues will talk about later. In terms of the Department, these are really interesting times and there are clearly opportunities to further embed data into the organisation, thus realising the potential that was set out in our Research and Analysis Strategy.

The Use of Digital Evidence in Prosecuting Crime

Claire Loftus, Director of Public Prosecutions

The topic that I have been asked to talk about today is digital evidence but I just thought, given the overall theme of the conference with its emphasis on research, that I might say something first of all about the collaborative work that the Office does in relation to collecting data and providing it to some external stakeholders.

I want to mention a few of the projects that we have undertaken or participated in recently, just to give you a flavour of the work that goes on in this area and to illustrate ways in which the Office has supported academic and other research projects.

Recently, for example, office legal staff compiled and carried out an analysis of Special Criminal Court judgments which assisted Ms. Justice Una Ní Raifeartaigh of the High Court in her role as editor of Alison Harrison BL’s recently published book, “The Special Criminal Court: Practice and Procedure”.

Another example is the work we have been doing conducting research in the area of applications made pursuant to section 3 Criminal Law (Rape) Act, 1981(as amended), before the Central Criminal Court. That is the application to cross examine the complainant on her previous sexual history. The research covers how many applications were made over the period 2013 and 2017; whether the applications were granted or refused; the trial outcomes, etc. It is intended that some of the data gathered during this research project will be shared with Senator Ivana Bacik and Noeline Blackwell (Dublin Rape Crisis Centre). They intend to incorporate this data in their

submission to the working group tasked by the Minister for Justice and Equality with reviewing the investigation and prosecution of sexual offences, chaired by Tom O'Malley. We have a representative on that group.

At the request of the National Sexual Assault Treatment Unit (SATU) Guidelines Development Group, my staff undertook an analysis of sexual abuse cases, received over a specified six month period, that contained SATU reports on the examination of the victim. The impetus surrounding the SATU study originated from requests by Forensic Clinical Examiners seeking to establish the quality, consistency and efficacy of SATU reports. The findings of this study (appropriately redacted) were recently shared with the Department of Health as part of the evaluation they are conducting at present, of the adult services provided by SATU clinics.

Of course there are more ways we contribute data, notably where Ireland is the subject of numerous evaluations, both nationally and internationally. We have ongoing engagement with the Department of Justice and Equality, other Government Departments, the European Commission and other international bodies who rely on the DPP’s Office to provide them with data. We also put data in our annual report and we have published prosecution data through our annual report since 1998.

There can be shortcomings with regard to how Government bodies and agencies compile and gather data. I am sure you are going to pick up on this theme during the course of the conference today. This

is a very challenging area. What are the specific challenges? First of all, and this applies to my Office just as much as anywhere else, there is the challenge of capturing the right data. We have to reflect on that ourselves because the type of data our external stakeholders might need, or we ourselves might need, changes over time and we have to be constantly thinking whether our systems should change to capture data differently.

So there is the challenge of ensuring that we are capturing the right data but then, in collaboration with stakeholders, there is the issue of different agencies capturing data differently. Is there coherence in terms of what we are measuring as between stakeholders?

Sometimes people come and ask the Office specific questions or ask the Office to participate in a specific project and we haven't captured the necessary data required in any of our data fields to readily answer that question or deliver on the project. Our lawyers and support staff are then asked to fill in any gaps and have to go back manually through files to mine this further data. This will always be a challenge because we will never be able to foresee exactly what questions will arise or be posed into the future.

We also have to be judicious about when we cooperate with requests because such work is so resource intensive. However, where possible we are happy to facilitate the gathering of data and contribute in whatever way we can to research and thereby to the development of policy, themes of this conference today. Turning now to the practical side of prosecutions:

Overview of presentation on digital evidence

This topic is voluminous. The more I delved into it for today's presentation the more voluminous it seemed. It has this in common with the digital material that we encounter on a daily basis in every facet of our lives. Various internet age figures have made pronouncements on the scale of the data that we generate and deal with now as compared with even ten years ago. Apparently we have generated more data in the last two years than we did during the entire course of civilisation before that! Apparently we individually deal with eight to ten times as much data on a daily basis today than we did ten years ago. So it is inevitable that there has been a knock on effect for the Criminal Justice System and that this huge increase in data spills over into the cases being prosecuted and defended on a daily basis.

I do not propose to tackle the minutiae of such a voluminous subject in the twenty minutes or less available today. What I want to highlight are a number of key strands or themes that I think are important in terms of where we are now in the prosecution of crime, and where we are going, given the ever rising volumes and types of data which arise in criminal investigations.

I will, I hope, give you some sense of what content and devices constitute electronic or digital evidence; some recent developments in the case law in relation to aspects of the admissibility of that evidence; what practical issues arise for us in terms of both presenting such evidence and managing disclosure; and finally some thoughts on law reform in the area.

Digital evidence and its pervasiveness

So what is electronic evidence? Electronic evidence can be any piece of digital technology that processes or stores digital data. It includes content on PCs, laptops, servers or even game consoles. It can be stored on CDs, DVDs, USB drives or memory cards. It can be on handheld devices such as mobile phones, digital cameras or even satellite navigation systems. It can involve network devices such as routers and wireless access.

The European Commission, in its communication in April this year regarding a new draft directive and draft regulation aimed at addressing the issues around access to electronic evidence from service providers, described electronic evidence as follows:

“Electronic evidence refers to various types of data in electronic form that are relevant in investigating and prosecuting criminal offences - including 'content data' such as e-mails, text messages, photographs and videos - often stored on the servers of online service providers, as well as other categories of data, such as subscriber data or traffic information regarding an online account. These types of data are often essential in criminal investigations to identify a person or to obtain information about their activities.”¹

In evidential terms these days this means that anything from digital photographs, CCTV recordings, mobile phone traffic, emails, social media messages including the ubiquitous Facebook, child pornography in all its forms, and business

transactions. All can constitute digital evidence.

As I say it is hardly surprising therefore that the global obsession with digital media and electronic forms of communication and recording carries through to the circumstances of individual cases and thereafter can become crucial evidence. Like all evidence it has to be ruled to be admissible by the trial court and then proved beyond reasonable doubt.

According to the European Commission website more than half of all investigations today involve a cross-border request to access electronic evidence, and electronic evidence is needed in around 85% of criminal investigations. The website also states that in two-thirds of these investigations there is a need to request evidence from online service providers based in other jurisdictions. We have first-hand experience of this as our mutual legal assistance requests have doubled since 2015 and have increased by over 500 per cent since 2010. Many of these are requests to the main online service providers.

Research done by the Human Rights Centre at Berkeley Law School stated that in 2013 the number of mobile phone subscriptions worldwide was 6.8 billion, up from 6 billion in 2011 and 5.4 billion in 2010.² So, digital information is the norm in almost every investigation.

The constant changing nature of technology and the vast amounts of electronic data now available require a

¹ Frequently Asked Questions: New rules to obtain electronic evidence”, European Commission 17 April 2018, http://europa.eu/rapid/press-release_MEMO-18-3345_en.htm.

² “Digital Fingerprints: Using Electronic Evidence to Advance Prosecutions at the International Criminal Court.” Human Rights Center, UC Berkeley School of Law, February 2014, p4.

high level of expertise. This brings with it significant difficulties in the areas of criminal investigations, prosecutions and disclosure. The pervasive use of technology in every area of life means that many criminal prosecutions involve electronic evidence. This is an international trend with similar difficulties faced across the world.

Legal developments to deal with digital evidence

Heffernan and Ní Raifeartaigh in their text on Evidence state that,

*“Technological innovation has transformed the way in which we generate, store, use and communicate information with the consequence that most of the material that is disclosed in the course of criminal proceedings has been created by, or subjected to, some form of mechanical or digital process ... The ubiquity of electronic or digital evidence highlights a need for statutory intervention, court rules or judicial guidelines to bridge the gap between the law, on the one hand, and social and business practice, on the other.”*³

I will come back to what further measures might be needed in the area of law reform, both to speed up and to simplify the use of this evidence in criminal prosecutions. First, I want to highlight examples of some clarity that has been achieved, through decisions of the Court of Appeal and the Supreme Court in individual cases, on the treatment of this evidence. These decisions have made a real difference to the processing of cases within the criminal justice system.

In the Court of Appeal decision in *People (DPP) v Maurice Power* from April of this year, Edwards J, delivering judgment,

³ Heffernan & Ní Raifeartaigh, *Evidence in Criminal Trials* (Bloomsbury 2014), 11.106.

rejected the submission that the trial judge had erred in law in admitting XRY data as real evidence.⁴ The trial judge in *Power* had analogised the situation of a Garda giving evidence as to how they operated the XRY machine as being akin to a radiologist giving evidence of an MRI scan. The XRY report of mobile phone data was properly admitted, with the Court reiterating that reliability of the evidence went to weight, as opposed to admissibility.

In the judgment of McKechnie J of the Supreme Court in *People (DPP) v A. McD* 14/12/2016, the court held that CCTV footage was correctly categorised as real evidence. CCTV footage was required to be proved however and judicial notice could not be taken of the evidence. The Supreme Court held that evidence produced by electronic devices other than CCTV could be either real evidence or hearsay.⁵

In *People (DPP) v Murphy*, the accused was convicted by the Special Criminal Court of conspiracy to cause the Omagh bombing.⁶ A significant ground of appeal related to the admissibility of telephone records, which was established by reference to cell mast information. Kearns J in the Court of Criminal Appeal reaffirmed that Court’s view that electronic evidence, which was compiled without any human intervention, need not be inadmissible due to the rule against hearsay. The evidence was also deemed admissible having regard to Section 5 (1) of the Criminal Evidence Act 1992, which allows documentary evidence, which could be given orally, to be adduced if

⁴ [2018] IECA 119.

⁵ The evidence would naturally be hearsay evidence if there was some human in-put which reflected the human intervention at that time.

⁶ [2005] 2 IR 125 (CCA).

such a document was compiled within the ordinary course of business.⁷

In *People (DPP) v Marcus Kirwan*⁸, Birmingham J relied upon *People (DPP) v JC*⁹ in finding that there was no basis for excluding the extracted XRY mobile phone data. Furthermore, the Court reiterated that CCTV evidence is real evidence, and no evidence as to how the CCTV system operates is required for admissibility purposes. The Court of Appeal also held that there was no legal requirement on the part of the prosecution to call as a witness a software engineer to explain how the software for XRY extraction worked.

In *People (DPP) v CC & MF* the Court of Appeal found that the Circuit Court had erroneously excluded telephone evidence. The decision clarifies that it is not necessary to routinely give evidence that computers which produce records were operating correctly on a particular day.¹⁰

In the recent Court of Appeal decision *People (DPP) v Moran*, the appellant argued that Facebook and telephone record evidence should have been deemed inadmissible by the trial court. Hedigan J in the Court of Appeal rejected

the appellant’s arguments and stated that the properly certified Facebook records were admissible as real evidence and that,

*“the presence of his name, personal details and validation using his phone number together with his admission that he had a Facebook page provided ample evidence upon which a jury could decide whether or not the message came from the appellant.”*¹¹

The Moran case was also important in relation to holding that the new form of certificate which had been agreed between the US and Ireland was valid. This meant that Facebook records could be treated as real evidence.

The Court also ruled that the trial judge had been correct in admitting the telephone records,

*“On the authorities of DPP v. Brian Meehan [2006] IECCA 104, DPP v. C.C. [2016] IECA 263 and R. v. Shephard [1993] AC 380, it is established law that a recording produced mechanically without human intervention is admissible in evidence. It is real evidence which may be given by a witness familiar with the operation of the system who can testify that it is working properly. Thus we consider the learned trial judge was correct in his ruling on the admissibility of the Meteor telephone records.”*¹²

The Court also ruled that the Meteor records were admissible as business records, citing Birmingham J in *Smith*.¹³

Issues in the trial process

I highlight these cases not only to illustrate the legal issues clarified but to point up how contentious the

⁷ Section 5(1) of the 1992 Act states: “Subject to this Part, information contained in a document shall be admissible in any criminal proceedings as evidence of any fact therein of which direct oral evidence would be admissible if the information—
(a) was compiled in the ordinary course of a business,

(b) was supplied by a person (whether or not he so compiled it and is identifiable) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with, and

(c) in the case of information in non-legible form that has been reproduced in permanent legible form, was reproduced in the course of the normal operation of the reproduction system concerned.”

⁸ [2015] IECA 228.

⁹ [2015] IESC 31.

¹⁰ *People (DPP) v CC & MF* [2016] IECA 263,

¹¹ *DPP v Moran* [2018] IECA 176, para 39.

¹² *DPP v Moran* [2018] IECA 176, para 42.

¹³ *DPP v Smith* [2016] IECA 154.

admissibility of various forms of digital evidence can be. Enormous amounts of time are being spent in voir dices during trials where this evidence is challenged. A major precedent which arises in these voir dices on admissibility is the decision referred to above of the Supreme Court, *DPP v JC*¹⁴. This landmark, and, in my view, very welcome decision means more trials are proceeding to conclusion as there is greater scope to persuade the trial judge of the admissibility of evidence. In many instances, evidence which would have been automatically ruled inadmissible in the past, by virtue of the rule in *DPP -v- Kenny Supreme Court 1990*, 2 IR 110 may now be ruled in by the trial judge.

Disclosure

I have earlier given examples of the multiple forms of media and digital evidence that can be gathered during the course of a Garda Investigation. Of course the other major problem, as the volume of data continues to expand exponentially, is how to manage the disclosure of relevant but unused material to the defence. In a recent prosecution arising out of the banking crisis about 850,000 documentary exhibits were involved. These included email databases and records of banking transactions. Particular strategies had to be adopted in consultation with the defence as to how those documents could be trawled to make sure that any document that was relevant was captured and disclosed.

The only practical way to do it was by way of searches of the relevant databases using key words and search terms that were applicable in the particular case. The defence were informed of the search terms being used and if they wished to

add their own search terms this was facilitated. There are software programmes specifically designed to search vast databases. In a case involving hundreds of thousands of documents (if not millions) it would be far too labour intensive to go through each one, and could delay a trial for years. The searches are robust and of course even reviewing the documents thrown up by a search can be very time consuming and labour intensive.

In very large fraud cases not only is the bulk of unused material held electronically by owners of the material but for reasons of practicality it is increasingly being transferred electronically to the defence and other stakeholders. Indeed just this month my office has launched a pilot electronic disclosure system for cases in the Central Criminal Court. This means that the defence (who have been highly receptive to the initiative) can access all disclosure material electronically on an encrypted database. The system will also record when disclosure in a particular case is accessed, thus avoiding any disputes about whether disclosure has been completed or not. These new ways of working are essential because of the volume of paper that would be generated if we were to attempt to do it by traditional methods.

Advances in technology have also added to the volume in cases, whether as evidence or more voluminously, as disclosure. This is because digital material which was deleted is now recoverable. This arises in relation to all records generated on computers and of course text messages on mobile phones, not to mention content on social media platforms. Where material is recovered it has to be gone through.

¹⁴ [2015] IESC 31

However along with something of immense evidential value, vast amounts of other information are recovered which have to be gone through and assessed for relevance. In the area of text messages alone, on foot of the latest technology, it can take days or even weeks to go through the material for the purpose of identifying relevant messages for disclosure.

In a way electronic evidence has more performance than documentary evidence on paper or an old fashioned photograph. If a match was put to them they were gone for good. As many of you will know, even though users can purport to delete material from their PCs or phones or elsewhere, the operating system usually allows for that material to be recovered. It may appear to the user to be deleted but that is not really the case.

Indeed the fact that there will be an audit trail as to what deletions or even modifications were made to a document or a digital image should alleviate the scepticism of some about digital evidence. The Law Reform Commission in 2017 said that: *“Where authentication procedures are put in place it is arguable that electronic documents are just as or more reliable than traditional paper documents.”* (para. 4.112) In the area of digital photograph images, and this would of course include CCTV, it goes on to say that: *“electronic imaging does not create new legal problems. It provides new technology to distort images but it also provides new means to potentially detect fraudulent manipulation.”*(para. 4.125)

In summary, because of the vast amount of information and material being generated on a range of digital platforms the prosecution faces significant challenges to fulfil our obligations on

disclosure which are ongoing, and extremely important to ensure that the accused gets a fair trial.

Presentation of Evidence in the Trial Court

Just as the evidence gathered in investigations goes digital, so will we hopefully go digital in our communications and our presentation. There is no doubt that in the future there will be an increasing number of cases where evidence is presented electronically, particularly in high volume cases. The first criminal case where evidence was presented electronically to a jury took place in 2014. This was a large fraud case and there have been a number of cases since then, some of which were many times larger, where electronic presentation on large screens in the court has been extremely beneficial. I think both prosecution and defence agree that it speeds up the court proceedings as everyone is working off the same document at the same time on multiple screens. It does require some choreography but the benefits are enormous.

Indeed even in relation to the book of evidence, which is a statutory document under the 1967 Criminal Procedure Act as amended, we have, in recent large cases, kept to the minimum statutory requirements the documents required to be served in paper form. Hence for example, in a case with thousands of exhibits the defence was furnished with a list of exhibits as required under the 1967 Act and the actual copies of all those exhibits were provided on a USB key. This was done for both the defence and the court and worked well.

The prosecution has also successfully used graphics in fraud trials showing for

example complex financial transactions and explaining financial concepts. I strongly believe that as the technology evolves the courts have to be receptive to all and any tools that can help a jury understand issues that can be quite removed from their own experience.

Law reform

It is very clear that we still have a way to go before our procedures catch up with the developments in the area of digital evidence. While some of the case law which I have mentioned earlier has made a significant difference, for example in identifying certain types of digital evidence as real evidence, there are significant issues related to both the enormous volume of digital evidence arising in most cases and the complexity that can result.

There have been reforms which have assisted in this area such as the **Electronic Commerce Act 2000**, where Section 22 renders electronic communications or electronic forms of documents admissible if it is the best evidence available.

The **Criminal Justice Act 2011** at Section 18 significantly reforms the rule against hearsay in respect of documentary evidence including electronic evidence. However, as the Law Reform Commission has found: *“while it has proved useful and effective in the context of serious fraud cases it is an extremely expensive process.”*

The Law Reform Commission has looked at this area twice in the last 10 years. In 2009 they published their “Report on documentary and electronic evidence” which contained extensive recommendations. This was followed in 2017 with their “Report on the consolidation and reform of aspects of the

law of evidence” and some of the 2009 recommendations appear to have been reiterated here.

While the 2017 report dealt with both civil and criminal cases I just want to highlight a couple of recommendations which I think would be useful in the criminal arena. I understand the report is under consideration by the relevant Minister.

Firstly, however, I want to talk about a general reform of the law that could also have a significant impact on trials involving lots of electronic evidence. I have mentioned how *voir dire*s are taking more and more time during cases when juries are being sent away for days or even weeks. Apart from the disruption to the lives of citizens who do a great public service acting as jurors, I don't think anybody believes it is the most efficient way to deal with legal argument on admissibility.

As you will know there has for some time been a bill under consideration to deal with various aspects of criminal procedure, including more comprehensive pre-trial hearings. This would allow the court and the legal team to thrash out sometimes complex legal issues in advance of the trial, and more importantly in advance of the victim being present and the jury being empanelled. This would make an immeasurable difference to the flow of trials and certainly the jury's understanding of the real issues in the case.

It is hoped that the Criminal Procedure Bill 2015 (and the final form of the provision on pre-trial hearings remains to be seen) will have sufficient robustness to make a meaningful difference to the processing of all indictable cases through the courts.

While the savings in time and money can be most obvious in very lengthy and complex cases there is a need for effective disposal of issues including disclosure prior to trial in less complex but perhaps even more serious cases. Pre-trial hearings would also improve the experience of victims who frequently are brought to the brink of giving evidence and then find that their trial is delayed for a number of days or even months because of various legal issues.

Coming back to the 2017 Law Reform Commission recommendations from their report, I don't propose to go through every recommendation here but I would commend a number to you.

I fully support the Commission's recommendation (albeit it relates to documentary evidence generally) which appears at paragraph **4.103** as follows; *“The Commission recommends that the draft evidence bill should provide that in the case of voluminous documents a written summary of such documents may be used to prove such documents in place of the documents themselves. “*

This recommendation draws on the experience of other jurisdictions, notably Australia and New Zealand, where legislative provisions have been made concerning the proof of voluminous or complex documents. The Commission sees these models from other jurisdictions as providing a simple and effective means of facilitating discovery in complex cases involving voluminous documents.

I would just highlight however, that already within the realm of theft and fraud offences, there is provision under the 2001 Act *“for the provision of certain information to juries including documents that might be of assistance to the jury in*

its deliberations including where appropriate an affidavit by an accountant summarising in a form which is likely to be comprehended by the jury any transactions by the accused or other persons which are relevant to the offence.” This is by no means as wide in application as the Law Reform Commission provision as envisaged but such provisions require to be used more often.

The Law Reform Commission also touches on the issue of audio recordings and recommends as follows:

“The Commission recommends that the draft Evidence Bill should provide that an electronic or digital recording shall be admissible in evidence where it has been established that it is an authentic recording; and that any dispute as to the quality of the recording, including the identity of any person speaking on the recording, shall go to the weight of the recording rather than its admissibility.” **(paragraph 4.114)**

This is an important recommendation and of course there have been several examples of audio recordings being used in evidence in a range of cases. However an effort to simplify the proving of such recordings would be helpful. This recommendation builds on case law as outlined in the Law Reform Commission report at paragraph 4.115 whereby in the case of **People (DPP) v Prunty (1986) ILRM 716** the Court of Criminal Appeal held that defects in audio quality and disputes as to the identity of the speakers did not render the evidence inadmissible and were matters for the trier of fact.

Finally I just want to touch on the Commission's last recommendation at **paragraph 4.135**:

“the Commission recommends that in light of the Commission’s view that the law should be technologically neutral, no special evidential regime should be introduced to govern the admissibility of computer generated documents.” I think there is a lot to be said for this approach.

We have seen how the courts in some of the case law I have referenced have taken steps to clarify the law on various forms of digital evidence and it is to be hoped that this will continue. However legislative intervention in this area would certainly assist in the speed of progress.

Conclusion

Our challenge as prosecutors is to try to tell the story of the case in as accessible a way as possible. On the one hand this is aided by the very compelling visual and other digital evidence that can exist of the commission of a crime. However it is also very challenging given the volume, complexity, and diversity of digital

evidence available to investigators. Our mission has to be to demystify the digital evidence that we wish to present and it is to be hoped over time that it will be treated like all other evidence.

We are undoubtedly in a period of transition currently both technologically and legally. The legal arena is not the only area where everyone is struggling to catch up or at least stay abreast of the latest developments. As prosecutors we need to continue to build confidence in the technology underpinning our digital evidence so as to unlock its full potential.

Improving the Validity of International Comparisons of Crime and Criminal Justice Statistics

Professor Marcelo Aebi, Vice-Director, School of Criminal Sciences, University of Lausanne

Professor Aebi delivered the above named presentation. ACJRD is grateful for his contribution to the conference.

Getting Traction: Driving Better Criminal Justice Policy and Practice through Analytics

Professor Betsy Stanko OBE, Visiting Professor UCL, City University of London and Sheffield Hallam University; Emeritus Professor of Criminology, Royal Holloway University of London

This paper shares insight from four decades working with academics, analysts, criminal justice agents (senior police and prosecutors), policy makers, government officials and ministers in the UK and beyond, to find grounded, creative ways of including information and analytics in their understanding of criminal justice problems and policy. From the centre of UK Government to the halls of local police forces and its oversight bodies, debates about the direction of criminal justice policy are contested, re-imagined and have the potential to support better outcomes. Some of these debates are sparked by identifying shortcomings in the criminal justice system. For instance, there is widespread dismay expressed that the fall in charges compared to the spike in reported rape allegations in England and Wales has come at a time of increased reporting of rape. Explaining this outcome - few criminal allegations lead to conviction - remains difficult. For officials and the public alike, why do rape allegations so often fail as solid criminal cases leading to convictions if the best decisions are being made by criminal justice decision makers? Criminal justice official spokespeople are likely to be wary of undermining the credibility of justice, as credible surveys tell us, people expect fair justice (Jackson, Hough and Bradford 2011). Furthermore, do we have a shared agreement between the public and criminal justice policy on what kind of policy should promote increased community safety or security when it comes to sexual offending? How can oversight bodies or government inform the public about the best delivery of

criminal justice within the guidelines of proper accountability? What kinds of criminal justice outcomes lead to 'better'? Could we know more about the impact of criminal convictions leading to a reduction in rape allegations (that we take as a proxy for reducing sexual violence) or in an increase in people's feeling of safety? As I will argue, more transparency from analytics can inform the officials and the public alike, focusing on improving justice and enabling a proper debate that decisions of officials are in the public's interest and in the interest of public safety. This is why it is so important to explore ways of making the outcomes of criminal justice decisions part of public discourse in a democracy.

This paper explores the use of better information through two case studies. One case study tracks the exploration of police crime recorded information on rape allegations in one police service. The case study looks at how - over a decade plus - this work has influenced the decisions of the police service and others, including the Crown Prosecution Service. These analytics have been included in the ongoing debates among the third sector, criminal justice policy officials and oversight bodies for over a decade. The second case study examines public attitudes toward policing, and the conversations, performance frameworks and understanding sparked over the past decade and a half in London. The ongoing survey of public attitudes toward policing remains at the heart of asking questions about the outcomes of policing and the public's trust and confidence in the policing of London.

Some principles of working towards better analytics in criminal justice

A few principles to introduce these two examples and my insight on how using systematic analysis over time can begin to change the approach to a conversation about justice. The following sets out my underlying assumptions in promoting the benefits of good analytics underpinning conversations:

- Rapidly changing contexts require continuously refreshed understanding of the problems of crime and the possibilities of disruptive interventions;
- Drawing on best evidence enables better problem identification, flexibility and better targeting of policy;
- Considered and reflective implementation captures useable and useful data;
- We can be purposeful to avoid doing more harm than good;
- Transparency needs to accept that learning comes from failure as much as it does success;
- Shared information will improve service and performance of multiple agencies;
- Reflective practice opens up shared practice and advice, and invites stakeholders to ask ‘what does the evidence say?’, ‘can we do this better?’; and ‘where can we best focus our efforts to do so?’.

Many practitioners in the criminal justice arena are sceptical of the information on which they rely for their assessment of practice. My decades of working inside have shown that administrative data can always be improved, but these data should not be overlooked. These are goldmines of information. This information - collected routinely by police officers taking victim statements, call handlers speaking to the public, court

recorders, prison officers and officials, and a host of other officials - does not contain all of the data to diagnosis and to document the state of justice. Yet is a solid start for a better conversation and debate - and it provides feedback to practitioners and policy officials. While it must be balanced with upholding the privacy of individuals, the best data are pegged to the journeys of individuals through the maze of systems. Justice, after all, is the arbitration of people’s problems. Some people have different and more problems than others, and it is through creative analytics that our learning about the differential impacts of inequalities has on people’s chances for and with justice. We - as a society - can demand better outcomes for those within the justice system and for all of us who pay for it. Collaborations with academic, third sector and other expert providers enable justice officials to interrogate problems, informed by the best insight and research available worldwide. The bottom line is that the more criminal justice agencies use their information and become curious about its potential for public security, the better. The more we share these data with the public, the more we can involve them in problem solving interventions, harm disrupters and safety solutions.

Two examples of evidence-informed conversations

Case Study One: a look at the policing of rape allegations in London

In 2005, I was asked to reviewⁱ systematically the likelihood that rape allegations reported in London would result in a ‘sanctioned detection’ (Stanko, Paddick and Osborne 2005). There have been many efforts to lower attrition of rape allegations, including law reform to address deficiencies uncovered in the

earlier reviews. The 2003 Sexual Offences Act (SOA) introduced a new definition of rape and clarified the definition of 'consent to sex'. Better victim care was another step to improve the way victims were treated. Practical measures included the creation of Sexual Assault Referral Centres (SARCs, also called 'Havens' in London) where medical and psychological care for victims of rape and sexual assault is the primary focus, the introduction of Specially Trained Officers (STOs, also called SOITs - Sexual Offences Investigative Trained officers) to attend to rape and sexual assault cases, the availability of female police officers to take the statement, the installation of 'rape suites' in police stations to give rape victims more privacy when making the report, Early Evidence Kits (EEKs) to collect valuable forensic evidence, video-recording of victim statements to spare vulnerable victims giving live evidence in court, and new police guidelines on how to handle rape cases. In summary, there clearly have been changes that have sought to improve the conviction of rapists who come to the attention of criminal law. The question to ask: do these different improvements lead to an improvement in policing practice and justice outcomes? How did the data held by a police service contribute to the conversation about decision making in the criminal justice systemⁱⁱ?

The data capture that began in 2005 was repeated seven times over eight years (last year completed was 2012; the exercise is now being repeated looking at data from 2016). The data provided unique empirical evidence from a large representative sample of rape complaints made to the UK's largest police force, the Metropolitan Police London (MPS). The dataset contains unprecedented detail on the incident, victim, suspect and police

investigation, allowing us to provide an up-to-date picture of the factors that influence attrition (see Williams and Stanko 2016). Although the work began as a requested review of police performance, I was keen to widen the conversation about rape and police practice, and to do so the analytics needed to draw on data from the police crime report that had to be individually read and coded. This was labour intensive, and to reproduce this process over eight years took flexible juggling of resources. Over the decade, the analysis arose from insight on over 3500 rape allegations. Throughout, there was never a time that this issue was out of the public light.

The analytics informed performance reviews, internal reviews of structure and workforce planning, and ultimately the commissioning of an external review for the improvement of the policing of rape in London (see for example, Stern 2010 and Angiolini 2016). It is important to acknowledge that the decision to prioritise this topic inside the police service was controversial at times. The Commissioner who called for the analytic diagnostics left the police service three years after the first report. Heⁱⁱⁱ was a keen advocate for better treatment of rape victims, and a supporter for improving the analytic capacity of the police service, better understanding the information held by the police and examining what it tells us about the victims. For example, the data shows over the full period of the study that victims are largely vulnerable to rape in the circumstances of the offence (in three of four reported rapes victims and offenders are known to one another; seven in ten rapes happen in the home of victim or offender) and in their individual vulnerability to the offender (victims are

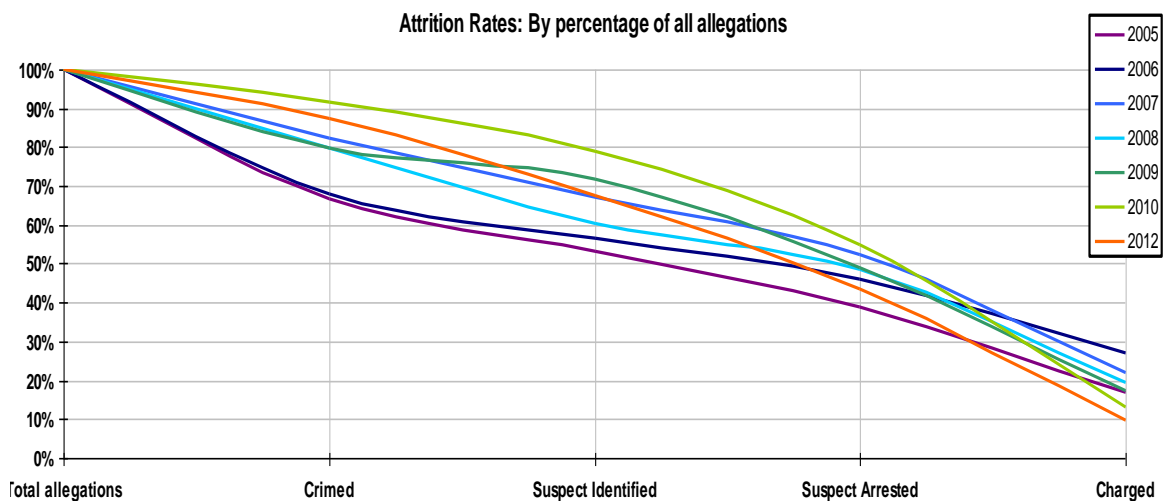
young in one in three reported rapes; ex or current partners in one in four reported rapes; have learning difficulties or mental health issues; and rape occurs in circumstances involving the misuse of alcohol and drugs). Essentially, the overwhelming majority of reported rapes in London do not fit the classic stereotype of a rape - an attack by a stranger. To anticipate the main findings, the results lend partial support to the influence of classic rape myths and stereotypes on attrition. These myths influence both the victims’ decisions as well as those of criminal justice officials. Hohl and Stanko (2015) note that a further central factor in attrition is what police and prosecutors perceive as evidence against the victim’s allegation: the police record noting a previous false allegation by the victim, inconsistencies in the victim’s recollection of the rape, and evidence or police opinion casting doubt on the allegation. In the sample, none of the allegations with any of these features were prosecuted. Furthermore, Hohl and Stanko found that a white suspect with no prior police record is likely to avoid a full police investigation, whilst the police and

Crown Prosecution Service (CPS) appear more inclined to believe and pursue an allegation that involves a non-white suspect or a suspect with a prior police record.

The following two data figures feature prominently over time in the discussions inside the police service and the CPS. Figure 1 shows the key police decision points over the seven years that data was collected. While there are some indications that the overall impact of decision making shifted, the overall outcome of police investigations led to few charges against those identified through investigation of rape allegations over time.

This information was fed into the April 2015 *Joint CPS and Police Action Plan on Rape*^{iv}, and the 2015 *Report of the Independent Review into the Investigation and Prosecution of Rape in London*^v. The policing and prosecution of rape allegations remains an area of criminal justice business that has proven very resistant to improvement in criminal justice outcomes (that is, there are very

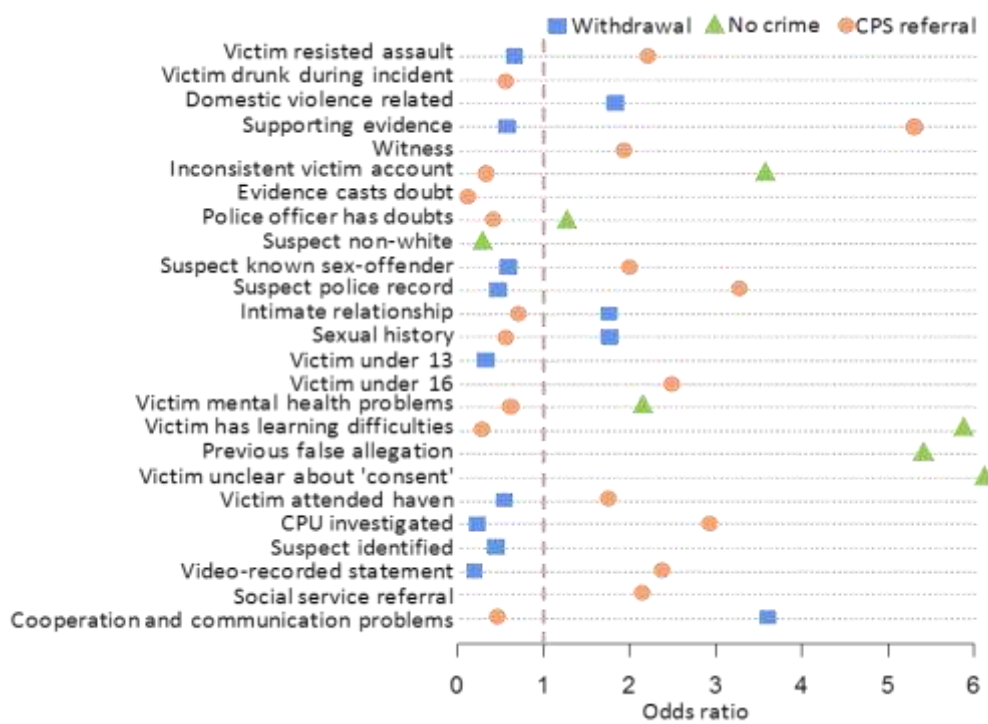
Figure 1 Outcomes of key policing decision stages in allegations of rape for the months of April and May, 2005 - 2012



few convictions arising from an individual allegation). However, the case study has also contributed to the wider debates about the vulnerability and targeting of victims, and the disadvantage of vulnerability in the context of criminal allegations in the UK. Figure 2 (below) demonstrated that victims of rape experience an uphill struggle for criminal justice outcomes. Despite this, rape allegations are rising significantly across England and Wales, and are at their highest volume since the introduction of the National Crime Recording Standard in 2002,^{vi} but the high level of victim vulnerability remains. The advantage of grounded analytics using police data on recorded allegations is that the conversation does not neglect the experience of those victims who do report to the criminal justice system. In the era of #MeToo it is critical to consider the experience of those who do report rape allegations to the police service.

The purpose of Case Study One is to illustrate how data analytics, using administrative data from the police service, can inform the policy debates and investigation strategies of the police and Crown Prosecution Service. Whether these conversations and actions lead to a better service to victims remains to be seen, as there are many issues facing these cash strapped public services. However, there is I argue, public benefit in bringing this information into the public domain, as it informs the wider debate about the kinds of sexual assaults that are coming to the attention of state justice services. These analytics can and should inform public debate. The way the state and society together manage and challenge sexual violence, I believe, is a testament to the values and principles of a modern democratic state. There is still a lot of work to be done to improve justice outcomes for victims of sexual assault.

Figure 2 Odds ratio showing influence of victim characteristics and the likelihood of the allegation being withdrawn, crimed or referred to the Crown Prosecution Service



Case Study Two: Public trust and confidence in policing

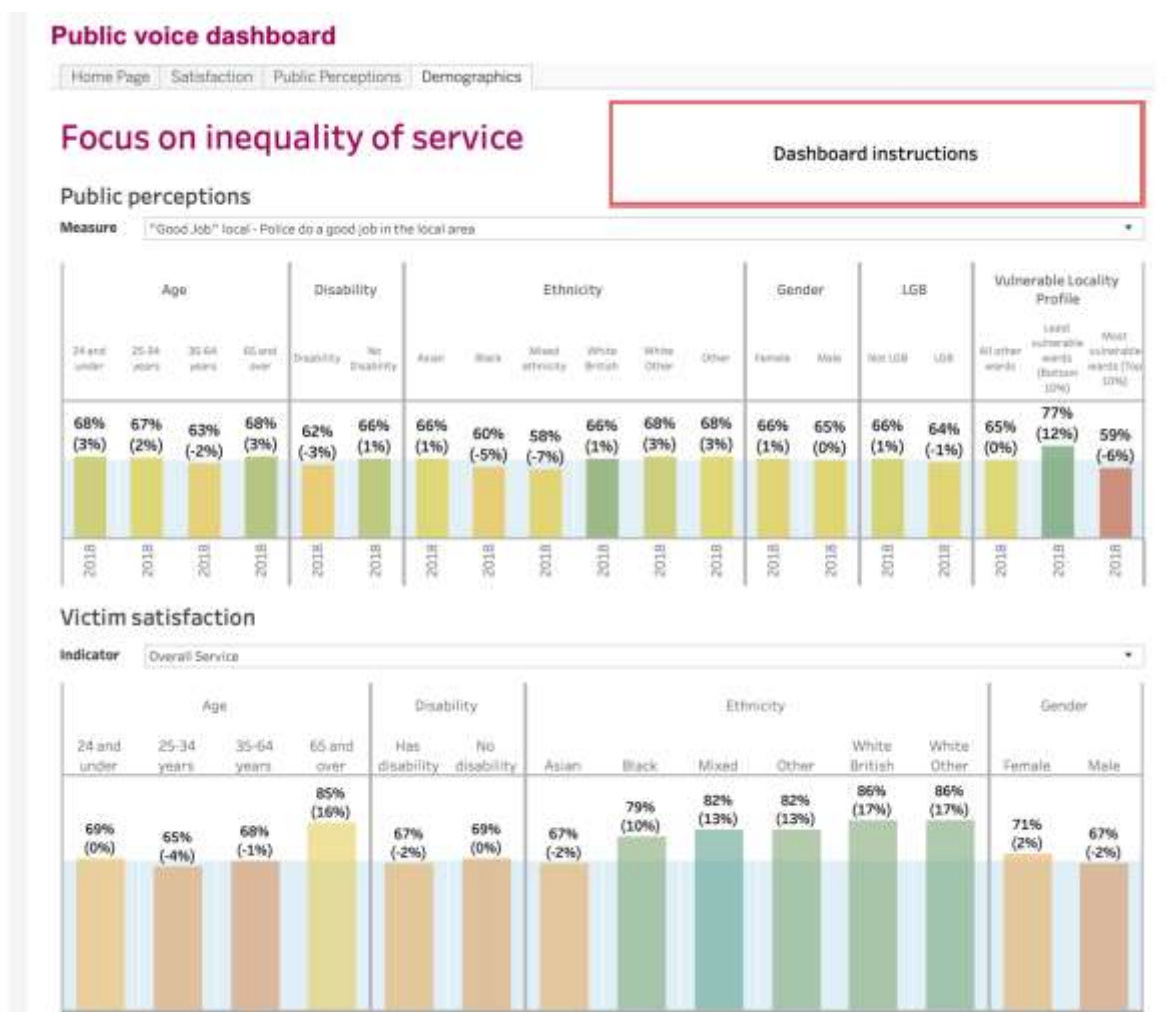
The importance of the legitimacy of justice in a democracy and for a democracy should not be understated. The state has the (legitimate) power to uphold and to enforce the law. The state’s agents - police, prosecutors, judges and other public officials - are expected by the public to do so fairly. In return, people are more willing to cooperate and engage with law to settle disputes, to claim that they have been harmed by others and to seek a remedy that is equivalent to the harm.

Understanding how legitimate people feel they are policed is linked to how people feel about how they are governed. Public confidence in policing too serves as a barometer for people’s willingness to cooperate with police and by proxy, for people’s trust that the state will keep them safe, or if something happens, will facilitate justice (Jackson, Bradford, Stanko and Hohl 2013). Without being too simplistic (there are libraries focusing on jurisprudence, governance, procedural justice and the public value of the relationship between the governed and the governing), this second case study looks at the way analytics and social science research influenced the lens through which the police and its oversight

body, the Mayor’s Office for Policing and Crime (MOPAC) in London assessed how Londoners’ feel about policing and public safety (Stanko and Bradford 2009).

The Public Attitude Survey (PAS) was originally a survey commissioned by the Metropolitan Police (from 1984), and transferred under the jurisdiction of MOPAC in 2014. Surveying approximately 12,000 Londoners each year, the 20-minute face to face survey asks people a range of questions about police activities, public opinions exploring in particular the effectiveness of the police in fighting crime, providing a visible police service, policing events and responding to emergencies and supporting victims. These data are able to explore the impact of events (such as riots, terrorist incidents, and the Olympics), as well as serve as a mirror on the way people feel they are treated by the police, exploring key drivers of public perception of confidence in policing. MOPAC also conducts a telephone survey of victims of crime which enables them to assess the drivers of public satisfaction of key demographic groups. Comparison across groups enables MOPAC and the police to assess how well the public feels equally treated by policing across London. MOPAC is transparent about how the public feel about police^{vii}.

Figure 3 MOPAC Public Voice Dashboard October 2018



For my purposes here, I am suggesting that these data have become a key component in the oversight of the police in London. To a large extent, the PAS (as well as the Victim Satisfaction Survey) has taken a pivotal role in creating a performance framework for policing that uses the public's views to measure how well the Metropolitan Police are doing in London. Conversations, debates and strategies are devised, driven by the analyses of people's perceptions of policing in London. These data ground the democratic mandate which police enjoy in the public's experiences of that policing. At the time of writing (October 2018) the public voice dashboard is shown in Figure 3 (above).

The above chart demonstrates the focus of MOPAC on equality of police service delivery, a crucial conversation that can be informed by the analytics and diagnostics found in the PAS. There are a number of strategies police can use to improve public confidence, and can explore through the PAS whether these strategies have an impact about how people feel about policing. As well as tracking people's perceptions over time, the PAS can examine the impact of key events and incidents on people's feelings about policing. In Figure 4 below, three events were studied.



Figure 4 *Natural Experiments: Testing the effect of major events on public opinion*

Over the past decade and a half, the PAS has become an integral part of the conversation about the impact of policing on the public between MOPAC and the Metropolitan Police Service. This is significant because it has created a measurement on and about policing which is not generated within the administrative confines of the police service. The journey to get to this place was not always easy. Over a decade ago, police officers were wary of using public surveys to measure how people felt about the impact of their work. Although it has taken years to get to this point, it is safe to say that the conversation about policing in London inevitably includes reference to ‘how people feel about the police’, drawn from the PAS analytics.

Getting traction: the journey to embed analytics into criminal justice policy and practice

Over the past two decades, I have sought to promote the use of data analytics, social science research methodologies and the harnessing of criminal justice administrative data in policy making and

criminal justice decision making. The journey is now facilitated because of the technology and analytic tools that enable better analytics and testing of theory and practice. I used two case studies to illustrate the use of the data and its visual representations, key to impactful debates. I firmly believe that transparency of criminal justice outcomes as well as the openness of the criminal justice agencies to academic research will drive better conversations. The strong use of data and evidence, I further believe, drives concrete, meaningful outcome debates that are more likely to benefit more people. Leveraging academic and policy expertise through the information that is administratively held and produced by criminal justice agencies further requires openness and a willingness to try improvements, even if these efforts end in failure. In the end, the willingness to improve the experience of the public with law, justice and democracy that will ultimately result in more accountability, a search for knowledge that helps rather than harms.

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ⁱ This section of the paper draws on Hohl and Stanko (2015).

ⁱⁱ Whilst these practical improvements, legal changes, regular inspections, inquiries and research reports are generally welcomed, academic commentators express doubt as to their effectiveness in reducing attrition (Brown, 2011; Jordan, 2011; Cook, 2011; Kelly et al., 2006). Official data published jointly in 2013 by the Ministry of Justice, Home Office and National Office for Statistics shows that the attrition problem remains. The proportion of complaints that result in any legal validation - in the form of sanction detections, prosecutions and conviction - has declined noticeably. Whilst 24% of complaints resulted in a conviction in 1985, only 12% did so in 1995, and conviction rates have remained at around a low 7% since 2000 (Home Office and Ministry of Justice data, 2013). Based on official statistics it appears that the series of legal changes, HMIC inspections, guideline revisions and government-commissioned reviews have not been accompanied by a reduction of the attrition problem. Attrition is still high, and getting worse, at every stage of the criminal justice process.

ⁱⁱⁱ See Ian Blair (1985) *Investigating Rape: A New Approach for Police*. London: Croom Helm. (ISBN 978-0-7099-2098-4)

^{iv} See **Joint CPS and Police Action Plan on Rape** April 2015 (<https://www.cps.gov.uk>).

^v See Elish Angiolini (2015) **Report of the Independent Review into the Investigation and Prosecution of Rape in London** (<https://www.cps.gov.uk>).

^{vi} See Office for National Statistics, Crime Statistics September 2018 (<https://www.ons.gov.uk>)

^{vii} See www.mopac.london.gov.uk data and statistics, confidence and satisfaction, the Public Voice Dashboard.

Balancing Precision with Momentum - Scientific Evidence and Youth Justice Reform in Ireland

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I've been around the youth crime/ youth justice policy area with practice, programme, policy and now academia roles for over twenty five years. When I reflect on reform and particularly the contribution of science toward reform in the youth crime policy area, I arrive at a simple phrase to guide me in terms of design – ‘balance precision with momentum’. Not everyone will agree with this phrase. Indeed, as you will see some commentary is dead against it considering it to be either too rigid and reductionist, lacking reflexivity and imagination or conversely too woolly, lacking shape form and rigour. Today I'm going to talk a little about the rise of *precision* as a scientific gold standard, and how cracks started to appear in what seemed for a long time to be its bulletproof logic. I will then go on to discuss *momentum*; the rise of new, possibly splintered discourses on youth crime, which perceive evidence as enlightenment as opposed to certainty; and what these tensions mean in terms of judgments that actual decision makers have to take.

First a health warning; scientists and academics don't come out of this paper looking too good. We (I include myself here and for the rest of the paper) are characterised as retentive, myopic, conflators of ideology with science, conflators of science with ideology, snake-oil sellers, opportunistic, sometimes delusional, often impractical and forgetful. This collection of less than complimentary descriptors obviously stands in contradiction to the normal mantle of authoritative counsel, but I believe there is substance to the charges.

Nevertheless, as I will conclude, a narrative does not have to stay the same but demands that we switch to ‘receive’ mode as often as we do ‘transmit’.

Let *me* also come clean. I am a registered social worker, I practised in youth justice from 1988-1996. I have been a senior manager in prison resettlement for three years, Assistant Director with Barnardos, Ireland's largest children's charity for ten years and a civil servant, (including Head of Young Offender Programmes) for the last ten years. Over the last two years I have been assigned to the University of Limerick to set up what I think is a really interesting partnership with the Department of Children and Youth Affairs with the mission to ramp up the evidence base to support rational policy making in the area of youth crime in Ireland. So I'm a bit of an imposter when I refer to myself as a scientist, although like many involved as practitioners or managers in youth justice, I have always been an avid consumer of youth crime science and have retained a childish, possibly mischievous, curiosity for getting under the bonnet to see how things work.

The project I lead with four fantastically talented and seasoned researchers is called the REPPP project (or Research Evidence into Policy Programmes and Practice) operating in the area of youth crime. It is a dreadful name and a dreadful acronym that I'd like to change as soon as we draw breath. However its approach I think is interesting and one I'd encourage colleagues even to think about. Firstly, the REPPP in its totality is a research partnership with core funds from the DCYA supporting its operations (me);

and individual funders supporting various research projects that fall within the REPPP work programme. This may sound a little extravagant in a context where research is now simply another commodity in an open market tendered by state purchasers and delivered by (academic) providers. However, the REPPP model I think is a good model of risk reduction in a market where certainly I have experienced, research output can be esoteric, impractical, impenetrable, late, drawn out, delayed and/or poor quality. We always think about driving out overhead costs but rarely think about the costs of not getting what you expected because of inadequate (overhead) governance. The REPPP approach agrees a programme of research, which is *policy initiated*: each project co-designed with departmental officials. We've stopped using the mystical mantra to convey that 'we' are the experts; 'I'm sorry that's not a very good research question' and replaced it with 'policy questions are good research questions'. Of course policy questions may be more fuzzy than precise fine-tuned research questions, but outside of the certainty of laboratory conditions and randomised control trials, so is real life. My experience has also been that policy actors who are the audience for and users of much of the output that REPPP generates, can also cope with evidence informed advice tinged with grey; it is what they have to deal with day-in, day-out. So the types of projects REPPP is involved in are partly science-related, partly governance-related. Our research output retains the capacity for healthy criticism but it also attempts to offer workable solutions to the problems we are asked to assist with. This is where my

'tacit' knowledge for once, I think at least, adds a bit of value¹.

Scientific Truths and Youth Crime

In the space available it is not possible to share a comprehensive account of the science underpinning our approach to youth crime. To do this we would have to re-visit ancient games of chance, geometry and the mathematics of probability that have informed the science of actuarial risk assessment and bell curve logics supporting utilitarian policy development. We would have to take account of the passion for empiricism that for example cracked the code for the spread of cholera in Victorian London: a network of contaminated water standpipes from dirty waterworks. We would have to take account of a host of theories of child development, deviance, persistence and desistance from an equally wide range of disciplines.

However, what I'd like to talk about are what I believe to have been foundational *scientific truths* that have acted as key reference points for the development of youth justice policy; and here I talk mainly about Ireland and our nearest neighbours. I mean 'truths' in the same way as Kuhn refers to paradigms (Kuhn 2012) – a given state at any one point in time where the generation of theory and evidence appears to fit a particular 'truth' or normative belief. This perception of science is significantly and qualitatively different from the received linear process of knowledge generation toward, but never achieving perfection, that we were taught in school. Kuhn's account sees

¹ There is not space in this paper to describe specific projects that REPPP is leading in relation to monitoring, evaluation and programme design. More information on REPPP is available by writing to Dr. Seán Redmond (Principal Investigator REPPP) sean.redmond@ul.ie

scientific epistemic communities built around hard-won battles for the establishment of truths, followed and supported in sequence by science-industries and mainstream text books supporting established truths by bounding allowable knowledge and containing theoretical dissent. However, sometimes the evidence doesn't fit its allotted box. More and more things don't figure out in the way that they should. New competing truths emerge which are at first easily slammed by the orthodoxy because of the weight of accumulated 'evidence' base and established 'ways of doing'. However, over time some dissent gets traction, then wins over minorities and majorities of informed commentary and slowly a new truth is formed. This truth similar to its vanquished predecessor then sets new bounds for what is allowable and discussable.

Nothing Works

My first truth when I started work as a young social worker in 1988 was that *nothing worked*. This mantra based on what we know now to have been an incomplete reading of works such as Martinson (1974), who to my reading said that there was *no evidence* to show any difference between community alternatives and prison as opposed to 'Nothing Works'. What Martinson actually said about there being no evidence communicates, as we shall see, as much about poorly specified interventions, a poorly specified sense of what success means and very limited measurement tools as it does about the intrinsic value of the interventions themselves.

The Nothing Works *truth* had a huge impact on the world of youth justice – or at least in my experience of working in the West Midlands, then southern Home

Counties in England. As Horst Rittel stated in his seminal work 'Dilemmas in a General Theory of Planning' (1973), the actions of scientists *leave traces* in public systems. In this conception of scientific truth, intervention with young people was considered malignant and contaminative. What intervention there was by 'progressive' youth justice practitioners (sic) was *systems* intervention, identifying the system-gates by which young people end up deeper in the youth justice system and applying some proactive stewardship. At the point of prosecution, at the point of conviction and at the point of detention, be-suited youth justice bureaucrats could be seen influencing decision makers to down-tariff young people at each strategic pass-point to detention; applying far more attention to affecting changes in these system decisions than working directly with young people.

The value of minimum intervention for the vast majority of children who committed offences is unquestionable. Custody rates for children in the boroughs that I worked in plummeted in the late 1980's and early 1990's. Certain locations in England and Wales became virtually custody free zones for children, exposing and one would hope embarrassing those areas across England and Wales that were high users. Low custody areas included the likes of the Surrey, which now seems to have been appropriated as evidence of a new emerging truth, 'Children First', (Case and Haines 2015, 2018) even though the county had very low custody rates for many years.

The problem I had (and have) with minimum intervention is that it fell afoul of the same blunt-instrument criticism levelled at 'what works' programmes which I will talk about in a moment. In short by applying what was an ideological

prescription across the board for young people – this non-contact approach caught young people involved in very serious chronic crime and crying out for help as well as those for whom doing *nothing* was surely the best remedy. Whether appropriate or not the reality is that Youth Justice systems may be the first red flag to raise concerns about a young person. The whole idea about red-flags or early warning is anathema to some commentary but in Ireland we know for instance that young people detected for burglary are twice as likely to commit more than five offences. We can also infer, like we can with drugs for sale and supply, that it is unlikely that they commit these offences without the involvement of adults. Youth justice at its best I think has always been pragmatic, necessarily nimble to compensate for the institutional brownfield inflexibility of child welfare and education systems – and to avoid the endless ‘justice or welfare’ arguments about who is best served (usually) ‘not’ to serve a particular child or young person. Is it beyond the wit of Youth Justice systems to act pragmatically where it’s required and without the attendant risks of contamination, rather than stand on ceremony about *who should do what*. The youth justice dramas played out by young people happen at this individual case level not at system level.

Some things work really well

I’m not entirely sure about the provenance but at some point between the early to mid 1990’s a new truth began to emerge. Perhaps as Kuhn identifies in his account of scientific revolutions this new truth emerged out of sufficient critical mass of scientists beginning to question the ‘nothing works’ paradigm, using the same data generated to support the orthodoxy, to dissent. There may also have been an element of serendipity.

However, I’d also like to think that there was a body of practitioners who felt uncomfortable with a doctrinaire stance on minimum intervention, to the extent that in very chronic crime situations it almost passed for system child neglect. In any event we were about to hit a golden age; *evidence über alles*, a promising new world where rational science could start to challenge the glass half empty view that nothing worked. This period gave rise to the phrase ‘evidence-based programmes’ and has also been referred to as the ‘risk and protection paradigm’.

A number of studies particularly in the United States were starting to show short and long term benefits of certain programme approaches with almost ‘Galacticos’ status. High Scope and latterly Nurse Family Partnership were considered nailed on demonstrations of how attention to detail and programme fidelity in the early years could yield significant returns in later years by turning children considered to be latent risks into adults participating fully in the economy. The number of programmes increased in a limited sense. However, it was now possible to shop online on sites such as Colorado Blueprints. Here you could match your domestic youth justice problem to an off-the-peg solution with guaranteed effect based on averaged out performance.

Some important caveats apply here; first all of the said programmes had to be subject to the most stringent tests of impact, experimental design and in particular, the now famed randomised control trial (more on this in a while). Secondly and equally importantly, programmes had to be delivered with high degrees of fidelity to guarantee the results. This included a curriculum strictly governing and bounding professional

discretion and determining with whom the programmes would and would not work, via tight inclusion and exclusion criteria, often tested with reference to very detailed operating manuals.

I mentioned randomised control trials and we cannot pass this point without reference to the *hierarchy of evidence*. Much like Moses’ Ten Commandments which determine what’s in and what’s out in terms of good and bad things to do, the hierarchy of evidence arbitrated (at its height) what constituted good knowledge and what didn’t. Bottom of this hierarchy were non-experimental designs i.e. those which failed to provide for a counterfactual position. These low worth studies include quite correctly those consultancy reports loosely called evaluations, which select a few rosy service user quotes and claim impact, but also more structured before and after studies.

Top of the tree was the randomised control trial, borrowed from medical research and a few social experiments in the mid 1900’s. These studies randomly assigned individuals to either treatment or control groups. Only the randomised control trial can really claim that an intervention was responsible for a particular outcome, i.e. proof of impact, because it provided its own counterfactual; (or what would have happened if the intervention had not taken place). However, it did mean that the number of programmes, as observed by Harvard professor Malcolm Sparrow (2008), was woefully low. Nonetheless at their height the ‘randomistas’ (Sparrow 2012) were extremely confident about the exclusive stock of evidence based programmes. In 2006, Steve Aos, who I think it’s fair to say was a bit of a poster boy for the evidence based practice

paradigm, undertook with Karen Drake a comprehensive review of programmes applying the hierarchy of evidence rubric. ‘*We find that if Washington successfully implements a moderate to aggressive portfolio of evidence based options, a significant level of future prison construction can be avoided, taxpayers can save about \$2 billion, and crime rates can be reduced....*’ (Drake and Aos 2009).

The confidence levels were huge but there were implicit weaknesses about *design by manual* that were only disclosed in later years.

There have been a number of critiques of the risk and protection paradigm. In England and Wales Kevin Haines, Stephen Case, Barry Goldson and Tim Batemen are part of a long-term coalition of the willing against the overly bureaucratic, top-down hegemonies of risk science and England’s national Youth Justice Board. McAra and McVie’s highly influential Edinburgh longitudinal study highlights (2007, 2010) the dangers of unnecessary and ineffective state invasion into the lives of children; and closer to home Katharina Swirak (2015) links risk science to new public management and neo-liberal ideology. Perhaps the most incisive of the critiques was Paul O Mahony (RIP) in his article ‘The Risk Factor Prevention paradigm and the causes of Youth Crime: A Deceptively Useful Analysis’ (2010) where he subjects the risk paradigm assumptions to withering surgical examination and caricature, at the same time highlighting the problems associated with policy makers’ convenience shopping for intervention programmes.

The evidence based practice paradigm for all its value (similar to the ‘minimum intervention’ paradigm I would argue that easy cases probably prospered), was

extremely didactic and controlling; transforming free-thinking professionals to programme operatives.

Rittel points out, as discussed earlier, that clunky solutions to complex problems leave traces. This concern is supported by the institutional economics literature with concepts such as 'asset specificity'. Asset specificity occurs when core system and programme designs are agreed and implemented. The consequence of asset specificity is that once there has been a large infrastructural investment it is very difficult then to up-root and make any radical changes in direction if it turns out you got it wrong. You end up tinkering around with your Frankenstein; making the best of what you've got. We see this in capital developments, communication routes and large IT investments, once claimed as ground-breaking then considered liabilities. However we also see it in softer architectures such as work practices and professional culture. By way of a tenuous example, tacit knowledge was beaten out of a 500-year-old pottery craft in the city that I was born in, Stoke-on-Trent, by globalisation, greedy factory owners and craft commodification during the Thatcher years. Similarly it could be argued that creativity was beaten out of those youth justice professionals subject to excessive commodification via manual and new public management. I had an interesting experience attending a conference with colleagues in Westminster on the future of youth justice in England and Wales a couple of years ago. Known for rolling out programmes, procedures and compliance technologies over the last 15 or 20 years, like railway lines, the Youth Justice Board there had decided (centrally) to move to a model of subsidiarity. This is where asset specific 'culture' is so powerful. Subsidiarity, free from the yoke of new

public management, is what many practitioners had been screaming for in journal articles, for years. Now that the Youth Justice Board promised greater local discretion, a good section of the conference took gulps. Like my potter brothers' and sisters' loss, *the craft was gone*, they had forgotten how to make judgments and they were anxious about what to do next with the newfound freedom.

We did not do this in Ireland in my view. Let us call it a near miss.

Both the 'nothing works' and 'some things work really well' paradigms, as I have clumsily labelled them, had their strengths and weaknesses. One of the main weaknesses I identify is their inability to deal with the most complex situations. In Ireland we have robust evidence based on PULSE detections which show a clear *aging out of crime* curve. This curve, which plots increasing incidents of youth crime up to and including 21 years (or thereabouts) then shows a clear and sustained reduction beyond this age. The curve based on aggregations of crime detection data masks other trends like early and late onset of crime by young people and young adults. However, the background noise is in the most part very positive, supporting doing nothing; maximum diversion and careful deployment of interventions that appear to work. In its own way the curve supports both paradigms, though the threshold for where interventions should occur, what they should look like and which system should undertake them (e.g. welfare or justice) will continue to be contested. Both paradigms are strongest with what Rittel (1973) calls 'tame problems' – the stuff that we know about and the problems that scientists continue to refine and make more efficient. They

fare less well with what he coined ‘Wicked Problems’. These are problems which have no stopping rule, which elicit multiple viewpoints about what the problem is, what makes it tick, what sustains it and what are the best remedies in figuring out resolutions. In youth justice terms this is what Loeber has called the ‘right hand of the tail’ (Loeber 2000), with resonances across jurisdictions. He refers here to the small number of children responsible for disproportionate amounts of crime, many of whom are stuck in very adverse personal circumstances. Big science, large policy levers, big programme ideas tend in my view to fail miserably in this area of youth crime complexity.

The recognition that broad assumptions about the performance of evidence based programmes was slowly starting to dawn by the mid to late noughties. Whether this related to the variable social and political topographies where programmes were delivered across jurisdictions and within jurisdictions (Goldson 2006, 2010) or differences in the policy infrastructure and organisational cultures where programmes were embedded, creaks were starting to show in the bulletproof veneer of evidence-based programmes. Some influencers stuck to their guns and continued, in fact continue, to bang the drum for the randomised control trial as the only true method of discovery and the evidence based programme as the only assured tool.

Others saw this refutation and reformulation as part of the orthodox scientific process of knowledge building. I for one do not buy this; the secessionist models of discovery (Pawson and Tilley 1997) promoted by evidence based programme supporters were more geared toward testing their own tools (Sparrow

2008) than evidence building for the public good. Leading supporters of the paradigm had mini-epiphanies, including Steve Aos who with Karen Drake in 2006 spoke about assured investment in ‘aggressive portfolios of evidence based options’; and who in 2015 identified a second phase of ‘wrestling with the challenges of implementation in real world settings...’(Walker S.C. et al 2015).

Kuhn identifies this part of the scientific revolution cycle as the part where diminishing support for a paradigm hits a tipping point, or more accurately a ‘withering point’ and is considered thereafter a busted flush. The rear-guard action to shore-up the paradigm by its supporters with high levels of personal and professional investment has failed. The paradigm is old news. Equally as consequential those who support it are old news, others stood back from this old thinking like a bad smell. ‘Evidence based’ cedes to ‘evidence informed’ and a bit like the comedian Michael Redmond who challenges the St Patrick legend of driving the snakes out of Ireland because there don’t seem to be an awful lot of snake *fossils* around, very few traces of academics linked to evidence based practice and new public management can be found either.

The scientific reformation in youth justice

I referred to this section of my paper as a *reformation* and a brief justification is required. When Catholicism crumbled in the 1500s and free thinking via Protestantism began to surface and spread, linking individuals to God without the divine intervention of the church, space opened up for new ideas; lots of them ranging from Lutheranism, ascetic Calvinism to anarchic Anabaptism. This is another in my endless repertoire of probably ill-chosen analogies but the

points I am trying to make with regard to youth justice are twofold. Firstly the proponents of new ideas see the world mainly through new lenses bounded by a new idea which someone (usually one or a small number of civil servants) has to try and make sense of these new imaginings with regard to preferencing finite investment on behalf of the tax-payer. Secondly, a practical consideration for officials is to what degree a new idea may lead to an inflexible 'specific asset' that in ten years may require wholesale reform. The following is a conservative list of the ideas currently in circulation vying for the position of policy preference and with varying requirements for the creation of specific assets to implement them. We have the '**evidence lenses**' - evidence driven, evidence based, evidence informed; the **programme lenses** - High Scope, Triple P, Strengthening families, Functional Family Therapy, Multi-Systemic Therapy, Big Brother Big Sister (and many more); the **approach lenses** - procedural justice, desistance, cognitive behaviour, restorative justice, ACES, trauma informed and more recently, children first, offender second. As soon as scientific support rallies for one or other approaches other evidence is provided to discredit it. Restorative justice for example has been hammered for its record on recidivism, although it's in good company here and one would have thought that an approach which victims of crime are happier with is a good enough start, if only as a practice reflecting our values about how things should be done; (more on this later). Also what seemed unassailable truths about how adverse child experience links with youth crime have been challenged as being founded on what some commentators have referred to 'bullshit science' (Gilles, Edwards and Horsley 2018) and a 'dangerous way to proceed'.

Scientific positions can, as we have seen, reframe and adapt reasonably easily with little more at stake for their proponents than personal reputation, influence and position within or without the group. Academic commentators have become expert architects of youth justice systems vigorously supporting one approach or other, often without I would argue the engineering and realpolitik insights that link good drawings to sound constructions. As I have argued, support for a particularly attractive idea can subside over time, replaced by some other emerging truth pursued with equal vigour. This vicarious pleasure of idea generation in youth justice with none of the attendant implementation responsibilities reminds me of an observation made by the political satirist PJ O'Rourke about how customers perceive the relative benefits of the rental car...

*'Nothing handles better than a **rented car** (my emphasis). You can go faster, turn corners sharper, and put the transmission into reverse while going forward at a higher rate of speed in a rented car than in any other kind. You can also park without looking, and can use the trunk as an ice chest. Another thing about a rented car is that it's an all-terrain vehicle. Mud, snow, water, woods – you can take a rented car anywhere. True, you can't always get it back – but that's not your problem, is it?'* And we are surprised and disappointed when officials appear to 'hedge'.

As I enter the closing stages of the paper, I argue that caution and incrementalism often practised by officials and seen pejoratively as *muddling through* can also offer a collaborative and deliberative path toward creeping enlightenment. This is, I argue, in keeping with the challenges that youth justice presents to science, particularly in its more complex iterations

and is more reflective of context-rich real-life. This of course is an idealised notion, I am sure some officials still rubber stamp and simply cope with the weight of day-to-day administration of government. However I know from personal experience in Ireland that this is certainly not always the case. At least as much of the progress to date in our youth justice system can be attributed to prosaic stewardship toward a better system by those on the inside as to nudges from the expert and scientific community.

My case for incrementalism demands a re-think on approach. Rittel’s account of the death of the expert in the early 1970’s and what now appears to be the death of scientific surety and proof promised by the evidence hierarchy from the mid to late 2000’s, demands us to think differently about the relationship between the scientific / academic community, policy makers and practitioners in youth justice. In this conception of sourcing evidence and making better youth justice judgments, the craft knowledge held by practitioners and policy makers and the experiential

knowledge of young people is elevated to the same level as research knowledge. This is not to say it is a *free for all*. Far from it, our policy norms and values bind what is desirable and permissible, the rules of the game, which I believe are often conflated with ‘evidence’ about what works. In trying to arrive at the governance sweet-spot between top-down and bottom-up approaches, we should have a clear view on what constitutes good scientific practice, including new deliberative models which hold a key to understanding more complex problems that play out neighbourhood by neighbourhood, less well served by large policy swipes however well informed by evidence.

Data in the Criminal Justice System: Human Rights Perspectives

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In a world of rapidly advancing digital communications and surveillance technologies, a number of human rights challenges have emerged. These were not, and could never have been, envisioned when the international human rights system was constructed in the aftermath of World War II.

Chief amongst these challenges to universally recognised human rights has been the collection, storage, and sharing / re-purposing of personal information, whether obtained by surveillance or interception, or freely provided by individuals.²

As digital communications and the ways in which personal data is retained have expanded, existing human rights frameworks have been invoked in an attempt to ensure that fundamental privacy and data protection rights are protected and that sufficient oversight and safeguard mechanisms for processing such data are in place.

At the same time, this rapid technological expansion has highlighted the need to strengthen standards of data protection and privacy rights. Examples include:

- at the domestic level, the Data Protection Act 2018, which implements the EU's General Data

Protection Regulation ('GDPR') and Law Enforcement Directive,

- the Charter of Fundamental Rights of the EU has enshrined the right to data protection as an autonomous fundamental right (Article 8), and
- in 2015, the UN Human Rights Council appointed its first Special Rapporteur on the Right to Privacy, an independent expert mandated to monitor, report and advise on the promotion and protection of the right to privacy in the digital age around the world.

These developments are of direct relevance to the criminal justice system.

Human rights law is clear – there must be an appropriate balance, on the one hand, between the undoubted advantages of data to the administration of justice in the effective prosecution of crime and, on the other hand, the privacy and data protection rights of the individual.

Before delving further into this required balance, we must first ask what do we mean by data?

What is data?

The EU's GDPR defines personal data as "**any information relating to an identified or identifiable natural person**".³

¹ With thanks to my colleague Ciarán Finlay for his invaluable assistance in the preparation of this paper. All views are personal and not attributable to IHREC.

² New Zealand Human Rights Commission (2018) *Privacy, Data and Technology: Human Rights Challenges in the Digital Age* (NZHRC, Auckland) p.8.

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Article 4.

Therefore, when we talk about data in the GDPR context, the scope is very broad. The definition includes a natural person’s:

- name;
- addresses – physical and email;
- phone number and records of phone usage;
- social media accounts and posts;
- image;
- credit card details;
- medical records; and
- information concerning affiliations etc. e.g. political association or trade union membership.

Personal data can also include ‘metadata’, described simply as ‘data about data’. While this term may sound relatively innocuous, metadata may incorporate important information relating to, for example:

- the location origins of a communication;
- the device used;
- the time the information/communication was sent;
- the details of the recipient; and
- the length of a communication or size of the message.

When mined and analysed, metadata can give deliver a comprehensive – and invasive – picture of a person’s life: their interests; movements; beliefs etc.

Law Enforcement Directive

The GDPR came into effect across the EU on 25 May 2018. While the GDPR’s scope is broad, its provisions are inapplicable where the processing of personal data is carried out for the prevention, investigation, detection or prosecution of a criminal offence or the execution of criminal penalties. Instead, the far-less publicised Law Enforcement Directive, which has been transposed into Irish law

by way of the Data Protection Act 2018, applies.

The Law Enforcement Directive strives to balance data protection objectives with security policy objectives. One of the main differences between GDPR and the Law Enforcement Directive lies in the fact that the rights of information and of access to personal data are curtailed under the latter. It is recognised that if the full range of rights provided for under GDPR were exercised to the fullest possible extent within the ambit of criminal law, it would effectively make criminal investigations impossible. Different considerations are at play when balancing an individual’s right to data protection against the concerns of the police and other law enforcement-related agencies.

In these circumstances, it is all the more important that sufficiently robust systems, including oversight mechanisms, exist in the area of criminal law. Part of what I want to explore here is the degree to which this is currently the case.

State gathering of data

In the conduct of criminal investigations, law enforcement personnel gather personal data through a variety of methods, including surveillance.

Surveillance powers include the use of surveillance and tracking devices; the interception of postal packets and telephone conversations (colloquially known as “phone tapping”); and the use of information that has been generated by service providers arising from the use of phones and various electronic devices.

The European Court of Human Rights has consistently held, for instance in *Klass v*

Germany⁴, that the retention and disclosure of such data for intelligence gathering in the conduct of criminal investigations has widespread implications for privacy rights.

Positive duty to investigate crime

At the same time however, the European Court of Human Rights has established, in cases such as *Osman v UK*⁵, that there is a positive obligation on public authorities to investigate crimes. Such an obligation constitutes an element of the right to an effective remedy under Article 13 of the European Convention on Human Rights (“ECHR”) and a procedural element of the right to life, the right to freedom from torture and ill-treatment, and the right to respect for private life amongst other core civil rights. Personal data, intercepts and metadata are all potential sources of evidence for any such criminal investigations.

The appropriate balancing of competing rights

Accordingly, privacy and data protection rights must be considered alongside the legitimate public interest in public safety and an effective criminal justice system, able to prevent and detect serious offences, and to prosecute them where necessary.

In these circumstances appropriate safeguards are necessary to help achieve a balance between these competing rights, and to mitigate the risk of an excessive or inappropriate intrusion on each of the various competing rights. This must be the case in relation to all kinds of surveillance.

These sentiments are echoed by the UN Special Rapporteur on the Right to Privacy who has stated:

*While often “traditional” methods, such as the interception of phone calls and communications in general, are subject to judicial authorisation before the measure can be employed, other techniques such as the collection and analysis of metadata referring to protocols of internet browsing history or data originating from the use of smartphones (location, phone calls, usage of applications, etc.) are subject to much weaker safeguards. This is not justified since the latter categories of data are at least as revealing of a person’s individual activity as the actual content of a conversation. Hence, appropriate safeguards must also be in place for these measures.*⁶

On a 2017 visit to Ireland, the UN Special Rapporteur, Joe Cannataci, noted that while requests to plant audio-visual bugs require a judicial warrant and requests to ‘tap’ phones require the authorisation of the Minister for Justice and Equality, access to communication data, or metadata (such as telephone data) is sought directly by Gardaí and other agencies without a warrant.⁷

Balancing competing rights – the standard

The European Court of Human Rights has emphasised that measures which curtail privacy rights under Article 8 of ECHR must be assessed against the following core safeguards:

- they must be in accordance with law;

⁶ UN Special Rapporteur on the right to privacy (2017) *Report of the Special Rapporteur on the right to privacy, Joseph A. Cannataci* (OHCHR, Geneva), p.10.

⁷ Cormac O’Keefe, ‘Oversight of Garda access to data ‘a must’, says UN inspector’, *Irish Examiner*, 6 April 2017.

⁴ (1979-80) 2 EHRR 214.

⁵ [1998] ECRR 101.

- they must have a legitimate aim; and
- they must be considered necessary in a democratic society.

This assessment must be carried out in the context of the entire circumstances of the case, including: the nature, scope and duration of the measures; the authorities’ competency to permit, carry out and supervise such measures; and the class of remedy provided by law.

What does this mean in practice?

Access to Communications Data

IHREC made a submission to former Chief Justice John Murray’s review of the legislative framework on retention of and access to communications data by statutory agencies (the “Murray Review”).

It highlighted the incidence of communications data being accessed:

- in a 5-year period 62,000 requests were made;
- that is 34 a day;
- or almost 2 per hour for every hour of every day;
- less than 2% of requests were turned down by service providers; and
- record keeping systems, remedies available and oversight is scant.

It recommended that:

- clear, explicit, comprehensive and transparent statutory powers; together with
- adequately resourced judicial oversight are two means of improving our domestic framework.⁸

Mr Justice Murray delivered his review to the Minister for Justice and Equality in

⁸ Irish Human Rights and Equality Commission (2016) *Memorandum: Review of the Law on Access to Communication Data* (IHREC, Dublin) p.16.

Spring 2017 and it was published in October 2017, together with proposals for a new Communications (Retention of Data) Bill 2017, to replace the Communications (Retention of Data) Act 2011 taking in to account recent decisions of the Court of Justice of the European Union in the *Digital Rights Ireland*⁹ and *Tele2*¹⁰ cases, and conclusions of the Murray Review.

Aspects of the proposed Bill are welcome including, in particular, a new scheme of prior judicial authorisation for every case involving a request to access metadata by the Garda Síochána and all State agencies for investigative purposes.

However, it is important to note that not all of Mr. Justice Murray’s recommendations are reflected in the Bill. Notable omissions include:

- no reference to a specific regime to cover access to journalists’ communications data (including access only when the journalist is the object of a serious offence investigation, on foot of a decision of the High Court; and a prohibition on accessing journalist source data save where there is an overriding public interest); and
- no decision to establish a more clearly defined oversight function vested in an independent supervisory body that is sufficiently resourced, including with specialist resources.

In January 2018 the Joint Oireachtas Committee on Justice and Equality made a

⁹ Joined Cases: C-293/12 and C-594/12 *Digital Rights Ireland and Seitlinger and Others*.

¹⁰ Joined Cases C-203/15 *Tele2 Sverige AB v Post-och telestyrelsen* and C-698/15 *Secretary of State for the Home Department v Tom Watson and Others*.

series of recommendations on the draft heads of bill including:

- a Ministerial order for data retention should only be made when strictly necessary (rather than the proposed proportionality test) to reflect Court of Justice of the European Union case law;
- the proposed retention period of twelve months should be reduced to three months; and
- the proposed definition of ‘traffic and location data’ should be narrowed to exclude, for example, web browsing information.

Amendments to the regime for the interception of communications

Change is also on the horizon for the law relating to the interception of communications.

In late 2016, the Department of Justice and Equality published a policy document on proposed amendments to the State’s legislative framework on the lawful interception of communications, the primary stated aim of which is to ensure that electronic communications services are covered by our lawful interception legislation.¹¹

The proposals seek to expand the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993, to allow for access to the content of all existing electronic platforms, as well as any future platforms which may be developed.

However, there are a number of human rights concerns in relation to the proposal as set out in this document including:

- The 1993 Act (s.4) permits intercepts during investigations of serious or suspected serious offences – the definition of ‘serious offence’ including any offence that may result in a prison sentence of five years or more. This is very broad and goes beyond issues of terrorism or organised crime, as referenced in the 2016 policy document;
- The 1993 Act (s.5) also covers intercepts in the interest of State security – however this is not defined. The only available definition (s.3A of the Garda Síochána Act 2005) is broad, for a different purpose and leaves the final adjudication on whether a matter is State security or general policing to the Minister for Justice and Equality;
- The proposed new legislation would allow for access to all existing, and new, communication platforms – in circumstances where technology is fast moving and likely to become more invasive of privacy over time;
- Clarity is also needed on what is accessible during the lifetime of an authorisation (the so-called ‘email chain’ dilemma);
- The policy document indicated a continuation of the current system whereby the Minister for Justice and Equality issues intercepts authorisations, rather than a system of judicial pre-authorisation;
- Similarly, there was no indication in the policy document that the current oversight scheme will be overhauled;
- Further examination is needed of the relationship between the gathering of content information using intercepts and its use (and/or disclosure) in criminal trials:

¹¹ Department of Justice and Equality (2016) *Policy Document on proposed amendments to the legislative basis for the lawful interception of communications* (Department of Justice and Equality, Dublin).

- In Ireland the fruits of intercepts are usually not tendered as evidence but, rather, relied upon as intelligence. This is not necessarily the case in all EU member states. Bearing in mind that much of the evidence collected in Ireland under the proposed legislation may be on foot of mutual assistance requests, interesting comparisons may arise with regard to the right of an Irish accused to access, or challenge, evidence sourced using this statute versus his European counterparts; and
- Similarly, if an authorisation is granted as part of an investigation into person A, the findings of which contain exculpatory evidence re Person B, it is unclear if / how such evidence would be disclosed in any trial of Person B.

The 2016 policy document signalled the intention to request the Law Reform Commission to carry out a review of the law on investigatory powers relating to communications. Such a review is necessary.

Inter-Partes Disclosure

There is no codified legislative structure governing prosecution disclosure in criminal investigations in Ireland.

While there is a general duty resting on the prosecution to disclose any information at its disposal that is relevant to the proceedings and that could assist the defence, including unused evidence, there is no specific procedure or general, overarching statutory framework for such prosecution disclosure.

In its 2014 Report on Crime Investigation, the Garda Inspectorate noted that in

Ireland, unlike other comparable jurisdictions, the Garda Síochána “are generally untrained in disclosure issues, particularly in presenting evidence that is disclosable or non-disclosable and in preparing disclosure schedules for court.” As a result, the Inspectorate recommended the need for disclosure training for the Garda Síochána.

The Law Reform Commission’s 2014 report on “*Disclosure and Discovery in Criminal Cases*” (the “2014 Report”) notes that a scheduling procedure, analogous to civil discovery, exists in criminal procedure in England and Wales. The Criminal Procedure and Investigations Act 1996 recognises a distinction between ‘sensitive’ and ‘non-sensitive’ unused material which is documented by investigators in schedules; one schedule contains a list of ‘non-sensitive’ unused material and another sets out the ‘sensitive’ unused material.¹²

The Law Reform Commission recommended that a statutory framework should be enacted setting out the scope of the prosecution duty of disclosure and its application in trials on indictment and summary prosecution and such a framework should include a scheduling system.¹³

Third-Party Disclosure in Criminal Cases

Another issue concerning personal data in the criminal justice context with significant human rights implications, and where there have been some positive developments, is in the area of third-party (or non-party) disclosure in criminal proceedings, particularly the disclosure of

¹² Law Reform Commission (2014) *Disclosure and Discovery in Criminal Cases* (LRC, Dublin) p.16.

¹³ *Ibid* pp.32-33.

counselling records in sexual offence cases.

Again, a balancing exercise is required between on the one hand, the rights of the accused seeking access to counselling records in furtherance of the right to a fair trial, and on the other, a victim who may assert that the records are protected by their right to privacy.

In the 2014 Report, the Law Reform Commission explored the extent to which, and the circumstances in which, material in the possession of third parties can or should be disclosed, especially in circumstances where claims of privilege or confidentiality are made.

The Criminal Law (Sexual Offences) Act 2017 subsequently provided some long-awaited legislative clarity in this area on the appropriate considerations when balancing these competing rights. S.39 of the 2017 Act, commenced in May 2018, provides for the disclosure of third-party records in criminal proceedings involving sexual offences. In determining whether the content of the counselling record should be disclosed to an accused person, the court is required to take a number of factors into account including:

- the probative value of the record;
- the potential prejudice to the right to privacy of any person to whom the record relates;
- the public interest in encouraging complainants of sexual offences to seek counselling; and
- the likelihood that disclosing, or requiring the disclosure of, the record will cause harm to the complainant including the nature and extent of that harm.

This is a very welcome development and it will be interesting to see how the courts

weigh up these considerations when disclosure is sought.

That said, it must be stressed that the scope of the legislation is quite narrow in that it only relates to third party disclosure in cases involving sexual offences. Hopefully this can act as a template for wider legislative reform in this area.

DNA Database

A further area where the use of data has profound human rights implications is in the collection, analysis and use of DNA in criminal investigations.

The Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 provides for a national DNA Database System, which was established in November 2015. While acknowledging the important contribution forensic sampling and the availability of a DNA Database makes to crime investigation, again there must be a proportionate balance between the rights of the person who is the source of a DNA profile and the wider societal interest of the prevention of disorder and crime and the investigation of offences.

While the 2014 Act goes some way towards meeting Ireland's international human rights obligations, issues remain. The 2014 Act sets out the circumstances in which a mass screening of a class of persons defined by certain characteristics may be conducted. Such a mass screening must be authorised by a member of the Garda not below the rank of Chief Superintendent where s/he has reasonable grounds for believing that the mass screening of the target class is likely to further the investigation of the offence and it is a reasonable and proportionate measure to be taken in the investigation

of that offence. The target class may be determined by sex, age, kinship, geographic area, time, or any other matter which the authorising member considers appropriate.

Vigilance is necessary to ensure that the identification of a class of persons is never directed, either explicitly or possibly inadvertently, at a racial or ethnic minority in the State.

Data gaps which inhibit the development of policies in the criminal justice sphere

Data also plays a crucial role in shaping criminal justice policy. For policy to be effective and responsive, it must be evidence-based. This is especially true in the context of domestic and sexual abuse.

Like many other countries around the world, the #MeToo Movement has thrown a spotlight on sexual assault and harassment against women here in Ireland. However, a dearth of reliable statistics and up-to-date research has made it difficult to determine both the prevalence of these issues and the most effective ways of addressing them.

The only national survey to assess sexual abuse and violence in Ireland, known as the SAVI report, was published as far back as 2002. It details specific information about the prevalence of sexual violence in relation to age and gender for over 3,000 adults, and identifies the barriers to accessing law enforcement, medical and therapeutic services for those abused and their families.

Statistics concerning the number of court cases in relation to rape and sexual offences are not disaggregated by age or gender of the victim. Similarly, court sentences in relation to prosecution of domestic violence are not disaggregated

by reference to Traveller women, Roma women, migrant women, asylum-seeking and refugee women, or women with disabilities.

The Central Statistics Office has found that from 2003 to 2016, sex crime reporting was overestimated by the Garda by 6% overall with the error being up to 26% in one year.¹⁴ There have been additional reports on the incorrect categorisation of domestic violence and sexual assault cases.

In 2017 the UN Committee Against Torture identified a number of areas where data was lacking or insufficient, including with regard to the extent of gender and sexual-based violence.¹⁵ These concerns were shared by the UN Human Rights Committee and the UN Committee on the Elimination of all forms of Discrimination against Women, with the latter recommending that data on all forms of gender-based violence against women, including domestic violence, be systematically collected and analysed and that they be disaggregated by, *inter alia*, age, ethnicity and relationship with the perpetrator.¹⁶

The Government has committed to commissioning a second SAVI report, and this is to be welcomed. However, it will remain difficult to understand the nature and extent of the problem, and to plan

¹⁴ Sarah Burns, ‘*Domestic and sexual violence data collection at ‘crisis point’ says Women’s Council*’, Irish Times, 16 April 2018.

¹⁵ United Nations Committee against Torture (2017) *Concluding observations on the second periodic report of Ireland* (OHCHR, Geneva) paras.31-32.

¹⁶ United Nations Committee on the Elimination of all forms of Discrimination against Women (2017) *Concluding observations on the combined sixth and seventh periodic reports of Ireland* (OHCHR, Geneva) paras.26-27.

and evaluate services and preventive interventions until comprehensive data is systematically collected.

One cause for hope in this regard is the public sector human rights and equality duty. Many of you will be aware that there is now a positive duty on public sector bodies to have regard to the need to eliminate discrimination, promote equality, and protect human rights in their daily work. This is an innovative development in Irish equality and human rights legislation and presents a valuable opportunity for public bodies to embed human rights and equality considerations into their functions, policies and practices. As part of this duty, public bodies involved in efforts to combat sexual and gender-based violence should improve their data collection systems to ensure that policies aimed at preventing, punishing, and eradicating such violence are effective and responsive to the needs of victims.

Another domain where data is lacking, and where the public sector duty holds the potential for positive change, is the area of hate crime. For instance, there have been only five convictions under the Incitement to Hatred Act 1989 Act since its introduction.¹⁷ Additionally, recent research conducted by the Hate and Hostility Research Group at the University of Limerick on behalf of the Irish Council for Civil Liberties found that the “hate” aspect of crimes is filtered out of the narrative as investigations or complaints make their way through the criminal justice system.¹⁸

¹⁷ Conor Gallagher, “*Courts Service reveals five convictions for hate crime since 1989*”, Irish Times, 19 June 2017.

¹⁸ Haynes, A, Schweppe, J (2018) ‘Recognising, Addressing and Confronting Hate Crime: Submission to the Commission on the Future of Policing’, Hate and Hostility Research Group, University of Limerick

In terms of combating hate crime, the importance of effective systems for recording accurate and reliable data cannot be underestimated. The recording of such data by the Garda Síochána, together with additional prosecution and sentencing data from across Ireland’s criminal justice system, is a prerequisite for enabling Irish policy makers to understand the particular exigencies of hate crime in our society. Informed by such data, Irish policy makers could develop effective evidence-based policies and practices to challenge both its symptoms and root causes.

This issue of data on hate crimes was also a matter of focus for the Commission on the Future of Policing in its recently published report. It noted that the poor quality of data currently available to the Garda Síochána hampers the organisation in almost every aspect of its operations.¹⁹ In the case of crime, it affects the ability of the police to detect and investigate crime, and, crucially, to take preventative measures to reduce crime, which must be the primary objective.

Good quality data collection and analysis should be key requirements for any organisation, especially one charged with the vital task of securing community safety.

Conclusion

To conclude, fundamental rights such as privacy and data protection rights may be restricted where a legitimate public interest objective is pursued, such as the investigation of a serious crime – however, the more serious the intrusion, the higher the justifying threshold. A

¹⁹ Commission on the Future of Policing (2018) *The Future of Policing in Ireland* (Commission on the Future of Policing, Dublin) p.22.

proportionate balance must be struck between these competing interests.

At present, digital communications and surveillance technology are outpacing the law, with further developments, such as “body cameras” for Gardaí potentially on the horizon. The current legal framework is light touch, and not human rights compliant in that it lacks the necessary quality of law, well-resourced independent expert oversight at appropriate points in the process, and access to effective remedies where rights are infringed. Enhancing safeguards would serve to bolster public confidence in investigations and the wider criminal justice system, ultimately benefitting all stakeholders.

Useful Documents

Third Party Disclosure / Inter-Partes Discovery

Sexual Offences Act 2017

<http://www.irishstatutebook.ie/eli/2017/act/2/enacted/en/html>

Law Reform Commission – Discovery and Disclosure in Criminal Trials

<http://www.lawreform.ie/fileupload/Reports/r112D&D.pdf>

DNA Database

Criminal Justice (Forensic Evidence and DNA Database System) Act 2014

<http://www.irishstatutebook.ie/eli/2014/act/11/enacted/en/html>

IHREC Observations on the Criminal Justice (Forensic Evidence and DNA Database System) Bill 2013

https://www.ihrec.ie/download/pdf/final_obs_on_the_dna_crim_justice_bill_2013_doc_ff.pdf

Law Enforcement Directive

Law Enforcement Directive

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L.2016.119.01.0089.01.ENG>

Eurojus article – Balance between Security and Fundamental Rights Protection: An Analysis of the Directive 2016/680 for Data Protection in the Police and Justice Sectors and the Directive 2016/681 on the use of Passenger Name Record (PNR)

<http://rivista.eurojus.it/balance-between-security-and-fundamental-rights-protection-an-analysis-of-the-directive-2016680-for-data-protection-in-the-police-and-justice-sectors-and-the-directive-2016681-on-the-use-of-passen/?print=pdf>

Murray Review

IHREC Memorandum: Review of the Law on Access to Communication Data

<https://www.ihrec.ie/documents/memorandum-review-law-access-communication-data/>

Review of the Law on the Retention of and Access to Communication Data

http://www.justice.ie/en/JELR/Review_of_the_Law_on_Retention_of_and_Access_to_Communications_Data.pdf/Files/Review_of_the_Law_on_Retention_of_and_Access_to_Communications_Data.pdf

Hate Crimes

Amanda Haynes and Jennifer Schweppe, Lifecycle of a Hate Crime: Country Report for Ireland (ICCL 2017)

<https://www.iccl.ie/wp-content/uploads/2018/05/Hate-Crime-Report-LR-WEB.pdf>



Pictured (L-R): **Aidan O'Driscoll**, Department of Justice and Equality, **Gurchand Singh**, Department of Justice and Equality, **Claire Loftus**, Director of Public Prosecutions, **Professor Marcelo Aebi**, University of Lausanne and **Maura Butler**, ACJRD.



Pictured (L-R): **Professor Seán Redmond**, University of Limerick, **Professor Betsy Stanko OBE**, Visiting Professor UCL, City University of London and Sheffield Hallam University; Emeritus Professor of Criminology, Royal Holloway University of London, and **Michael O'Neill**, Irish Human Rights and Equality Commission.

CONFERENCE WORKSHOPS

1. The Power and Influence of SAVI 1, and the Potential Impact of SAVI 2

Presenter: Angela McCarthy, Head of Clinical Services, Dublin Rape Crisis Centre

Chairperson: Dr. Susan Leahy

Rapporteur: Megan McGovern

Introduction

Since 1979, the Dublin Rape Crisis Centre has worked towards preventing the harm and healing the trauma of sexual violence. The Sexual Abuse and Violence in Ireland (SAVI) Report, launched in 2002, was the first of its kind. Up until then, the only national figures available were based on the numbers seeking counselling, or reporting to the Gardaí. The SAVI report was commissioned by the Dublin Rape Crisis Centre. Funding came from Atlantic Philanthropies with additional funding coming from State Agencies. The research work for the report was led by Professor Hannah McGee and was undertaken by the Health Services Research Centre at the Department of Psychology at the Royal College of Surgeons. This has been the first major nationwide survey of its nature.

The main aim of the SAVI study was to estimate the prevalence of various forms of sexual violence among Irish women and men across the lifespan from childhood through adulthood. A survey assessing the prevalence of sexual violence took place and was carried out by anonymous telephone interviews. 3,120 randomly selected adult participants were interviewed from the general population in Ireland.

Results of the Survey

Women

- Almost one in three women (32 per cent) reported experiencing some form of sexual abuse as a child.
- One in four women reported experiencing some form of sexual abuse as an adult.

Men

- Almost one in four men (23 per cent) reported experiencing sexual abuse as a child.
- One in seven men (13 per cent) reported sexual abuse as an adult.

Lifetime Sexual Violence

- More than four in ten women (42 per cent) reported some form of sexual abuse or assault in their lifetime. The most serious form of abuse, penetrative abuse, was experienced by 10 per cent of these women.
- Over one quarter of men (28 per cent) reported some form of sexual abuse or assault in their lifetime.

The Impact of SAVI 1

SAVI 1 provided the first and only complete overview of the prevalence of sexual violence among the general public in Ireland. The survey provided the first accurate profile of the nature and extent of sexual violence in Ireland, in both childhood and adulthood. A survey of attitudes/beliefs regarding sexual violence highlighted that awareness raising and information was needed. SAVI 1 challenged Irish people to take responsibility for the high levels of sexual violence and the lack of child protection. The report received international recognition from the beginning with the

effective endorsement of Professor Finklehor, a renowned American researcher and educator on sexual abuse, at the launch of SAVI which took place in Dublin Castle in 2002.

Writing in the independent.ie (29th October, 2017) in support of a SAVI 2, Professor McGee stated that the first achievement of the original research was that SAVI 1 was believed and taken seriously, as a result of its scale and methodology. Even though the large volume of abuse reported was shocking, the statistics recorded could not be denied as a result of the reputation of the researchers and the thoroughness of the research approach.

Following SAVI 1, several positive initiatives took place:

- The review of the Sexual Assault Treatment Unit Services (SATU) and the creation of additional SATU units around the country.
- The establishment of training for the first Forensic Nurse Specialists.
- Improvements in the speed and spread of service delivery nationwide.
- The establishment of COSC, the National Office for the Prevention of Domestic, Sexual and Gender based violence.
- Film, television and annual poster campaigns followed annually nationwide, funded by COSC, attempting to raise public awareness in relation to these issues and support services.

The Need for SAVI 2

Various recommendations were made following SAVI 1, one of the key recommendations being that a follow up study should be conducted by the year 2006 in order to track changes. This follow up study never occurred and

sixteen years have now passed. It is now crucial that a similar survey is obtained of current prevalence and attitudes towards sexual violence.

Ireland, as a country, has changed significantly in the past 16 years. With the impact of new technology such as the internet, mobile phones and a more multi-cultural society, there is a need to uncover changes. There is the question of whether policies and legislation that were designed since 2002 to protect children and adults are in fact making a difference. Since SAVI 1, new issues have emerged including cybercrime, 'sexting' and the use of the internet for the promotion and supply of human trafficking.

The Potential for SAVI 2

Recently published statistics from the Central Statistics Office (CSO) show an increase of 10% in sexual offences that were reported this year, 2018, versus 2017. Without nationwide research it is unsure whether this represents a rise in sexual assaults or a rise in reporting of incidents. Today with the presence of a reliable set of data, and in comparing the new data with SAVI 1, there is the possibility of finding out whether there have been significant increases or decreases in the twenty year interval. There is also the possibility of including groups who were not included in SAVI 1. SAVI 2 would help clarify the statistics received on a yearly basis from the CSO and from the Dublin Rape Crisis Centre, thus giving the Dublin Rape Crisis Centre reliable figures that would indicate whether sexual crime is actually increasing or decreasing and whether there are differences in age cohorts, or between figures for recent and retrospective abuse.

The recent announcement by Minister for Justice, Mr. Charlie Flanagan TD, on

3rd October, 2018, that he will be bringing proposals for a new SAVI to government in the near future seems to warrant “Great Expectations” that we will have a SAVI 2 by 2020.

Discussion

Following the Minister for Justice’s announcement that he will be bringing proposals for a new SAVI to government, participants were curious to know whether a new SAVI was likely to be funded by the government. It was mentioned that the bulk of the funding in the past had come from Atlantic Philanthropies and, therefore, it is unclear what the funding arrangements will be.

There was a discussion on the technological changes that have occurred since SAVI 1. Participants expressed their concern about children and their use of the Internet in the modern day. There was a discussion on how there is a need to protect children, not only in the real world but also in the online world. Participants expressed their worries of how online abuse can occur at a faster pace than physical abuse.

Delegates spoke about how there is currently far less information available on the effects that online abuse has on children as opposed to the effects that physical abuse has on children. Participants suggested that more resources were needed due to the length of time it would take to investigate the different forms of crimes that have emerged in recent years, cybercrime being an increasingly important one.

2. Research and Evaluation in the Department of Justice and Equality

Presenter: Eoin Kelly and Natasha Browne, Department of Justice and Equality

Chairperson: Sophia Carey

Rapporteur: Jerry Wharton

The Irish Government Economic and Evaluation Service (IGEES) is an integrated cross-government service designed to enhance the role of economics and value-for-money analysis in public policymaking. This service was established in the Department of Public Expenditure and Reform in 2012 with the goal of growing a cross-government network of economists. Those recruited through IGEES enter the civil service through a specialist economist stream dedicated to forming an evidence-based policymaking process across the civil service for a more efficient and effective system. This is an idea reached using specific economic tools (cost-benefit analysis, statistical analysis and modelling, scenario testing, and desk-based reviews) which illustrate the current and potential efficiencies across a range of policies within each department. The economists involved also play an active role in consultancy for other units that are looking to increase their use of evidence-based methods. The IGEES unit in the Department of Justice and Equality, established in 2015 by Hugh Hennessy, is currently comprised of three members who all sit within a special research, data and evaluation team that includes a statistician from the Central Statistics Office.

Case Studies

‘Criminal Legal Aid: Overview of the current system and potential lessons from an international comparison’

This study shows the evaluative approach taken by IGEES, and is a mini value-for-

money analysis. Produced for the 2018 Spending Review, this study serves as an assessment of the existing Criminal Legal Aid (CLA) programme. It looks at how the research compares internationally and discusses possible amendments that could improve the system. It is important to mention that the paper only looks at the demand side, such as the number of CLA certificates requested, and does not consider supply side effects, such as the number of solicitors available for criminal legal aid cases. Criminal legal aid costs increased from €29 million in 2002 to over €60 million in 2008, and in 2017 it nearly reached the peak again and looks to be growing over the next year or two as well. The District Court deals with 80% of all offences, compared to 13% for the Circuit Court and less again for the higher courts. With this realization, the team wondered which court accounts for the highest share of criminal legal aid expenditure. It was found that, although the District Court accounts for the majority of business, it makes up less than half of all criminal legal aid expenditure. The discrepancy between the volume of business and the level of expenditure is because the District Court deals with the least complicated cases, which can be resolved much more quickly and often without the need for a barrister. Knowing this information, the study then went on to discover the breakdown of criminal legal aid expenditure by court, as well as the change in expenditure across two phases – roughly the financial crisis of 2008 to 2012, and the recovery of 2012 to 2017. The trends found a 15% increase in CLA certificates only translated into a 9% rise in expenditure because there is no direct link between certificates issued and expenditure. Combining the trends of the certificates issued with the expenditure data then found a slight discrepancy; however, this can be explained by the fact

that a single certificate can relate to multiple payments, which may not all be made within the same year. This type of time lag can also be found between the detection of a crime and when it ends up in court. The team found a positive correlation between certificates and expenditure, as well as for a range of demand drivers including Garda numbers, complexity of cases and number of prosecutions on indictment; however helpful this may reveal to be for future research, this evidence is not conclusive alone. The findings that came out of the report include:

- CLA expenditure can increase in response to new laws as they get tried and tested through the courts
- alternatives to prosecution, such as adult caution schemes, can reduce expenditure by diverting more minor offenders away from court
- thresholds for eligibility may have the perverse outcome of raising self-representation at court, which would likely cause judges to strike out cases altogether.

While this would result in a more efficient system, it would certainly not be effective. All of these considerations have the potential to influence policymakers and may have been overlooked without the evaluation.

'Critical Review of Evaluations on Three JARC Pilot Projects'

This was a desktop evaluation looking at the assessment of three separate offender management programmes - ACER3, STRIVE, and Change Works, under the umbrella 'Joint-Agency Response to Crime' (JARC) projects. The evaluation drew out the similarities and differences between the three projects as demonstrated by the assessments in order to identify the effectiveness of the

programme and how it achieved its aims. One of the main challenges in making a comparison between the three projects was the variation in the ways the data was gathered for each of the projects and the discrepancy in the definition of ‘prolific offender’ between the projects.

Using a crime severity index metric, the study took into account the change in harmful crimes in addition to the level of total crime. A potential positive outcome of the study may be that the Targets were committing offences of relatively lower harm. This will be particularly important in any future evaluation looking to capture the social and welfare effects associated with JARC.

‘Economic Cost of Crime in Ireland’

This study was first constructed by the team’s colleague David Crowe during his time in the Department of Justice and Equality. Essentially, the model attempts to capture the cost of each type of criminal offence not only in relation to the criminal justice system, but also to health services, victim services and businesses. At the core of the model are three main costs

- costs in anticipation of crime, such as deterrents like security alarms and CCTV
- cost as a consequence of crime, such as the value of a stolen item or the emotional stress caused
- costs in response to crime, such as Gardaí resources, court proceedings and probation or prison costs.

It includes social and welfare costs where possible and some of these have been extrapolated from UK reports. The model provides unit costs for each crime and these can be multiplied by the instances of each crime to reach a high-level estimate of the total cost. It is worth

mentioning that the data did not account for the 15% of crimes not reported to the Garda, mainly sexual offences.

Current Projects

‘A cost-benefit analysis of a health-led approach to personal drug use’ is a paper in its early stages and is being produced in response to debate around the possibility of changing enforcement in relation to simple possession offences. The paper has two main objectives: to provide a high-level estimate of the current cost of simple possession offences to the criminal justice and health systems, and to assess how the scenario would change if enforcement were altered to encourage early drug users into treatment services delivered by the health system. It will also draw out some key considerations, such as the demographic profile of current drug treatment users and the rate of detection for simple possession offences.

Discussion

When relating statistics to sociological issues such as health care and criminal aid costs/spending, it is a generally welcomed idea to be conscious of the language used as it will be applied to those who are not as accustomed to terms such as ‘inconclusive’ or ‘discrepancy,’ and oftentimes this creates an invalidity with the data in the eyes of the general public; future studies should be aware of this. There is hope that this research can continue to cross over into the health and justice sector soon, and that perhaps our education system can promote more of an awareness for healthcare education. Also, a study including organized crime is one worth considering but the disentanglement of the drugs, theft, etc. in our streets is a good starting point. In conclusion, this study received a multitude of quantitative data, and some qualitative data and ideally, the IGEEES unit

in the Department of Justice and Equality is looking to find the proper balance between the two in the future.

3. Utilising Road Collision Data to Save Lives

Presenter: Assistant Commissioner David Sheahan, Roads Policing and Major Event Management, An Garda Síochána

Chairperson: Pauline Shields

Rapporteur: Ciara McQuillan

Introduction

Section 7(g) of the Garda Síochána Act 2005 provides the legislative basis for the Garda Síochána role in regulating and controlling road traffic and improving road safety. In 2007 there were 338 road fatalities in Ireland. Government Road Safety Strategy 2007-2012 sought to reduce these deaths, and this presented a considerable stretched target for An Garda Síochána. The challenge for An Garda Síochána was to reduce the number of speed related fatal traffic collisions by

- Increasing compliance with speed limits
- Reducing speeds at locations with a history of speed related collisions
- Acting as a deterrent to driving at excessive speed

In 2010, to assist An Garda Síochána with its role in regulating and controlling road traffic and improving road safety, the organisation contracted GoSafe. GoSafe is a network of safety cameras operated on behalf of An Garda Síochána by civilians. The cameras are placed in areas which are identified by An Garda Síochána as having a history of fatal and serious road traffic collisions.

The single objective of this strand of the strategy was to reduce the number of victims of fatal road traffic collisions.

Asst. Commissioner David Sheahan holds the portfolio of roads policing and set out the role of data in the introduction of safety cameras as part of An Garda Síochána road safety plan. He also posed the question as to whether the GoSafe cameras are value for money.

The Role of Data Analysis

An Garda Síochána adopted a two-stage process in developing this strand of its road safety strategy. The organisation held vast sets of data and needed to identify where collisions occurred on the road network. During the first phase, collision data relating to the previous five years was gathered and analysed. A weighting was applied in respect of collision type, with collisions being categorised as fatal, serious injury and minor injury incidents. While initially excessive speed was giving a weighting, it was later excluded, as it was found that speed was a contributory factor in a high proportion of the incidents. This data then provided the basis for the identifying and mapping of collision clusters. Essentially the data identified clear sections of the road network on which fatal and serious collisions occurred. These sections of the road network became collision prevention zones and these zones in turn became an enforcement priority.

The second phase built upon the data collected from phase one and each collision prevention zone became an enforcement zone. Safety was key at all stages; each enforcement zone must also be capable of hosting a GoSafe van without causing hazard for the public or the operator. During phase two of

development a decision was made that the operation of safety cameras would be outsourced, and that the camera project would be public facing, open and transparent.

The data is currently reviewed on a bi-monthly basis and the weighting system has been refined further. This adaptability allows for a greater share of the monitoring and enforcement hours to be allocated to collision zones where recent fatalities have occurred, as well as zones where excessive speeding is an issue.

Transparency and Enforcement Zones

The transparency of the GoSafe camera network was of high importance to An Garda Síochána. A map of all enforcement zones is available on www.garda.ie. It details all the enforcement zones including their GPS locations and categorises each zone by colour

- Blue zones – New locations
- Red zones – Existing Locations
- Green Zones – Removed locations

There are now 1,031 sections of road identified as speed enforcement zones effective from the 27th May 2016. The information is available for viewing by county and by map. By clicking on a colour coded road on the map the public are provided with the GPS coordinates of the road and the precise GPS coordinates of the section of road which constitutes the enforcement zone. The statistics regarding collisions and the nature of collisions which have occurred in these enforcement zones are also available for the public to view. Several pictures of the GoSafe camera vans are available to view.

Cost Benefit and Research

GoSafe provide a minimum of 7,400 enforcement hours and have 52 distinctly

marked highly visible vehicles. Operational priority is placed on days and times which have a history of speed and collision history. The GoSafe contractor is paid based on service hours only and enforcement rates form no role in payment. The contract costs the State €14 million euro per annum with €6 million in revenue being generated from speeding fines. If this level of service was provided internally by An Garda Síochána it would cost an estimated €100,000 per van in equipment and €5.2 million in maintenance costs. In terms of personnel, 7,400 monitoring hours would require 114 Garda personnel working a forty-hour week each.

The compliance rate within the speed enforcement zones was 99.7% in 2017, and 24.4 million vehicles were monitored in that year.

Conclusion

Asst. Commissioner David Sheahan concluded his presentation by forwarding the research conducted on the impact of safety cameras. Rafferty, D (2011) has indicated that 24 lives a year have been saved because of the presence of safety cameras across the roads network.

The financial cost of a fatal traffic collision is €2.678 million. If this figure is applied to Rafferty's research, safety cameras save €64.27 million per year. 2017 saw the lowest rate of road fatalities on record even though 157 lives were lost. The RSA Attitudes and Behaviour Survey 2014 found that, in relation to the behavioural impact of safety cameras, 31% of drivers generally drove more slowly, 32% drove more slowly within Speed Enforcement Zones and that 85% of drivers supported the use of safety cameras.

Group Discussion

The workshop participants considered the Government Road Safety Strategy 2013-2020 which sets the target of reducing road collision fatalities to 124 or fewer by 2020. This target poses another stretched target for An Garda Síochána and there exists very little research on Irish driver behaviour. There was a general view that resources ought to be sought to fund such research. The group considered that research relating to the following points would be helpful in meeting the 2020 target:

- To seek further insight into what are the psychological aspects which change the driver behaviour, and how to make positive changes permanent.
- To examine driver motivation and behaviour in different regions, particularly in regions where there have been high instances of fatal collisions.
- To consider if a similar strategy could be applied to drink driving and to careless driving.
- To look at the physical triggers that change driver behaviour. The example of signage at roadworks on the N7 which prompts drivers to slow down as 'Daddy works here' was viewed as very impactful.

4. Automated Law Enforcement: Challenges and Opportunities

Presenter: Dr. John Danaher, National University of Ireland Galway

Chairperson: Dr. Yvonne Daly

Rapporteur: Rory Penny

Introduction

The automation that will potentially become a part of law enforcement can be divided into two distinct categories - the

automation of police and the automation of the system of policing. With the use of automated law enforcement it may be easier to predict and prevent crime, as well as detect and enforce penalties. The use of data and analytics is a crucial aspect in the drive towards a more automated future. It can be said that data is the fuel that feeds the fire of automation.

Automation of Police

An important question to consider in relation to the automation of police is whether it will displace those working in the policing system? It is essential to distinguish between the role of workers and the tasks they carry out. The job is the socially/politically defined role of being a 'police officer'. The activities that make up the socially defined role are tasks such as data entry, form filling, patrolling and evidence gathering. The focus should be on the automation of tasks which make up the job. Relatively straightforward tasks may be easy to automate. Other, more complex tasks may be more difficult to automate.

The Tool, the Partner and the Usurper

There are three distinct examples of how automation may become more prominent in law enforcement. These are in the form of the tool, the partner, and the usurper.

The Tool is just an implement for a human worker, such as a bomb disposal robot like the one used during the 2016 Dallas shooting. The use of tools is already common and is less disruptive than other forms of automation. The issues relating to the use of tools concern the possibility of lethal force due to ease of use.

The Partner is autonomous but shares tasks with the human worker. An

example of this would be predictive policing, such as heat maps. These partners would utilise data to highlight areas in need of assistance. More efficient actions would be facilitated by these autonomous systems.

The Usurper is autonomous and would result in humans no longer being required. An example of this is the Knightscope Security Robot which can be used to identify potential criminal activity in carparks and shopping centres.

Outcomes for Workers

There are three outcomes anticipated for those currently working in law enforcement. The first is the change in skills required for a police officer. There will be a need for complementary skills to the new technology, with more emphasis on cognitive skills rather than physical skills. There will also undoubtedly be a polarisation seen in the workforce, with an advantage to highly analytical workers. Workers may also become de-skilled due to less thinking required and the ease in which a task may be deferred to automation. A final outcome of all this may be technological unemployment.

Automation of Policing

This aspect concerns the effect on the system as a whole. This form of automation is used for detection of crime and enforcement of the law. It is already in use with speed cameras and red light cameras. This type of automation may encourage a shift towards prediction and prevention.

Roger Brownsword gives the example of a golf cart and flower bed. This shows technology being used to prevent an infraction. GPS is used to immobilise the carts when they are too near to the golf club's flower beds. The result of this is

that the technology has made it impossible to infringe on the established norm.

'Smart cities' applies this concept on a larger scale. Elizabeth Joh compares the policing that would be prevalent in 'smart cities' to how rules and norms are enforced in Disneyland. Disney anticipates and prevents possibilities for disorder through constant instructions to visitors, physical barriers that both guide and limit visitors' movements, and through "omnipresent" employees (Shearing & Stenning 1985: 301). None of this feels coercive to visitors. Yet embedded policing is part of the experience. This 'Disneyfication' of cities can be seen as a positive, but also very dystopian. This type of public/private partnership can already be seen in China's developing social credit system. This system of mass surveillance and measurement of citizens' reputation may have troubling long-term consequences.

Another effect on policing would be through the introduction of privatised security systems. If technology lowers the cost, everyone may be able to afford private security. This would be an individualised/'uberised' model.

Ethico-legal Concerns

These include:

- The freedom to fail: In a society people have the opportunity to fail to comply with norms and learn from their mistakes.
- Responsibility gaps: If something goes wrong with these new automated systems, who is then responsible?
- Biased data: If the data gathered is biased will it lead to biased outcomes?
- The value of inefficiency: There is a possibility that this may be a virtue in some cases. The example of red light

cameras detecting too many violations shows this. The system was too efficient and was too punitive.

- Transparency/Accountability: The question of who polices the automated police is a complex one.

Discussion

The first point of discussion was the application of automated law enforcement in Ireland. It was proposed that there may be a cultural resistance to these changes, as there is an attachment to community policing. It was then put forward that often change starts with small scale examples, which build up over time, rather than a radical overhaul of the system. The potential cultural issues have been observed in other countries which are more technologically advanced than Ireland. In Japan there has been a positive reaction to new technologies such as robots being used in elderly care.

The discussion then turned towards more ethical issues and Article 1 (Human Dignity) of the Charter of Fundamental Rights of the European Union. It was suggested that the protection of human dignity must be at the forefront of any new technology. The lack of accountability and empathy that may arise from an autonomous police force may infringe on this fundamental right of dignity.

Further ethical issues were raised in terms of GDPR and data protection. As one participant noted, the GDPR regulations state 'The processing of personal data should be designed to serve mankind'. Should a machine be in control and making crucial decisions? The danger of a police state emerging through new methods being overly enforced was also presented.

The next phase of the discussion concerned the decision making processes and potential biases of these new automated systems. The great fear would be of biases being amplified. However, it was also noted that automated systems may remove diversity of opinion which would result in the removal of structural discrimination. It was also noted how systems can become so ingrained in society without people realising. The overwhelming nature of these new systems was then highlighted. An example was given of how people often forego their rights and choose the more convenient option - many individuals will accept website terms, and surrender privacy rights, rather than going through the laborious process of actually reading all the minute details presented.

Approaching the end of the discussion, the topic of the change in the role of a police officer was raised. It was suggested that there may be a positive benefit witnessed where the automation of menial tasks would free up time for human interaction. The effect of this would be the change in demand in skills and different training required. The questions of who will want to be a police officer, and what may happen if a two-tier system of skilled and non-skilled workers emerge, were posed.

It is evident that technological change is increasing rapidly. This will undoubtedly result in many changes to the current system of law enforcement in the coming years. The challenges posed and the opportunities that will arise from these changes are vast. How they are approached will have a huge bearing on the future of law enforcement in Ireland.

5. The Value of Data in Offender Management

Presenter: Gerry McNally, Assistant Director, The Probation Service and President of the Confederation of European Probation (CEP), and Supriya Subramanian, Statistician, The Probation Service

Chairperson: Deirdre Byrne

Rapporteur: Princess Khumalo

Introduction

The presentation set out the value and importance of data in decision-making, to encourage the generation of comprehensive quantitative research and to raise awareness of the value of data in managing offenders. The speakers made the case for how Probation Service data can assist, in collaboration with other departmental services, such as the Irish Prison Service, the Criminal Justice Hub, the Central Statistics Office and the European Union, in policy and practice development as well as planning. Sharing and comparing data and research between jurisdictions and across borders, also has potential for learning, innovation and better outcomes.

Data Structure and Flow in The Probation Service

The Probation Service uses a software application known as the ‘Case Tracking System’ (CTS) to track the offenders at different stages through their probation journey. The information is captured in various forms, commencing with ‘Form A’ which contains information on court referrals. ‘Form B’ contains court decisions, and the information on case closures is recorded in ‘Form C’. A statistical software tool called ‘SAS’ is used to analyse the data and prepare quarterly and annual reports, assist research studies and in answering various queries.

Workload Tracking System

The Workload Tracking System is an up-to-date reporting system that is available on the CTS. The analysis of the workload provides user accessible status of active cases. It displays the number of persons on caseloads and the most recent risk assessment information, up-to-date to the previous day’s close of business. This facility drills down into National, Regional, Team and to the Probation Officer Level. Users can view the number of offenders on referrals, assessment, supervision, Community Service Orders, numbers on each type of risk assessment, offenders on low-intensity monitoring and those on current breach, by team, to help manage their caseloads.

The Role of Data for Management

Data adds an important layer to the management of the offenders which is facilitated by the various reports.

Annual Reports

- Annual Probation Report outlines the statistical summary for the year
- SPACE II Report for the Council of Europe (CoE) Annual Penal Statistics

Quarterly Reports

- Joint Report with the Probation Board for Northern Ireland
- Quarterly management summary report
- Reoffending risk analysis report
- Community Service Utilisation

Monthly Reports

- Website point in time report
- Management summary and trends report
- Sex offender report

The monthly web reports and the annual reports are available on www.probation.ie.

Role of Data in Evaluation

Several Risk assessment instruments are used in evaluating the risk level of an offender

- Level of Service Inventory-Revised (LSI-R) – Adult offenders
- Youth Level Service (Juvenile Offenders)
- RM2000 – Sex Offenders
- SARA – Domestic Violence
- Stable and Acute 2007 – Sex Offenders
- PS/ROSH – Risk of Serious Harm
- PS/ROSH/SO – Risk of Serious Harm/Sex Offenders

The LSI-R instrument is used to explore and identify criminogenic issues in an offender's life such as criminal history, family and friends, living conditions, education and employment, financial status, social life, and relationship with drugs and alcohol through a questionnaire. The answers are used to determine their level of risk and needs, that if addressed can reduce the risk of their re-offending.

Data for Research Purposes

The Department of Justice and Equality and The Probation Service Data & Research Strategies are available online:

- The Department of Justice and Equality Data & Research Strategy 2018-2020 <https://bit.ly/2DUb92J>
- The Probation Service Research Strategy and Action Plan 2018-2019 www.probation.ie
- Research enquiries to The Probation Service can be sent to research@probation.ie

Recidivism Research – CSO link

The Probation Service partners with the Central Statistics Office (CSO) for the Annual Probation Service Recidivism Study. The CSO carries out matching

procedures on data provided by The Probation Service with the integrated recorded crime dataset, successful matches are obtained in over 95% of cases. Four studies have been conducted so far, 2007 to 2010 cohorts. The reports are published by the CSO. For up-to-date crime data on reoffenders, see www.cso.ie.

Further Development

Overall, the speakers argued that there is an urgent need to prioritise empirical research, including that which uses both quantitative and qualitative methodologies. They highlighted the benefits in further developing the analysis, understanding and use of the findings from research, local and international, to inform criminal justice planning and decision-making. Based on research and data analysis, there are opportunities for innovation, better outcomes for persons in the criminal justice system and the wider community, and for 'smarter justice'.

Discussion:

A lively discussion followed the presentation with considerable interest and enthusiasm in the potential for researchers to propose questions and interrogate the considerable data in The Probation Service and criminal justice system generally. The openness to research and data analysis was particularly welcomed. There was strong interest expressed in The Probation Service and Department of Justice research strategies and the opportunities for criminologists and researchers to develop proposals and conduct studies.

6. The Impact of Updated EU Data Protection Law on Criminal Justice Research

Presenter: Séamus Carroll, Head of the Data Protection Unit, Civil Law Reform Division, Department of Justice and Equality

Chairperson: Catherine Pierse

Rapporteur: Kate O’Hara

Introduction

The General Data Protection Regulation (GDPR) and the Police and Criminal Justice Authorities Data Protection Directive (Law Enforcement Directive) replaced the existing EU directive on data protection in May 2018. The GDPR and the LED greatly increase the rights of individuals, and places additional obligations around the processing of personal data. They also increase the range of possible sanctions for infringements of data protection rules. The Data Protection Act 2018 transposes the Directive into national law. However, the 1988 Data Protection Act was not fully repealed as it still applies to activities falling outside the scope of EU law and continues to apply to Prüm-related measures. The 2018 Act established the Data Protection Commission and gives them effective oversight and enforcement powers.

Exclusions from scope of GDPR

In the four scenarios below, the Regulation does not apply to the processing of personal data:

- in the course of an activity which falls outside the scope of EU law;
- by the Member States when carrying out activities which fall within the scope of Chapter 2 of Title V of the Treaty on European Union (TEU);
- by a natural person in the course of a purely personal or household activity;

- by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.

The fourth scenario necessitates a carve out from GDPR, which is covered by the Law Enforcement Directive.

The Law Enforcement Directive (LED)

The LED was transposed into Irish domestic legislation as part of the new Data Protection Act, 2018. Part 5 of the Data Protection Act 2018 relates to the processing of personal data for law enforcement purposes and defines what a “competent authority” and “controller” mean. For example, the Central Statistics Office is not a competent authority under Part 5. This section of the Act also outlines the scope of application of Part 5, as well as the processing of personal data for research purposes. Under Part 5, a controller that is a competent authority may, subject to appropriate safeguards, process personal data, whether collected by it or another competent authority, for a research purpose that falls within the scope of Part 5. However, when data sharing/processing between competent and non-competent bodies occurs, then GDPR shall apply. This includes for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes.

Processing data for research purposes

Under GDPR, processing of personal data for a research purpose is also permitted, subject to provisions in the GDPR and Part 3 of the Data Protection Act 2018. The following need to be considered:

Legal basis set out in Article 6.1. of GDPR

Article 6.1 sets out that Processing shall be lawful to the extent that one of the following applies: (a) consent of data subject, (b) contract, (c) necessary for compliance with a legal obligation, (d) vital interests of data subject, (e) necessary for task carried out in the public interest or in exercise of official authority, (f) legitimate interests of controller. Of note here is that consent may be of limited value in the case of public authorities and public bodies as it may not be freely given. Also noteworthy is that public authorities may not use limited interest grounds in the performance of their tasks.

Suitable and specific safeguards under section 42(1) Data Protection Act 2018

These measures should safeguard the fundamental rights and freedoms of data subjects, their personal data may be processed for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. It is up to each controller to identify the suitable and specific measures to be taken. The Department of Health has already made certain standards mandatory for health related research.

Data minimisation under section 42(2) Data Protection Act 2018

This refers to the collection of personal data that is adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed; it is essential here that data that 'might be useful' is not included without specific purpose.

Non-identification of data subjects under section 42(3) Data Protection Act 2018

Pseudonymisation and aggregation should be used where possible. The CSO completes this regularly.

In the case of processing special categories of personal data, "where such processing is necessary and proportionate" (section 54 Data Protection Act 2018)

This relates to processing special categories of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

There are some restrictions on exercise of data subject rights under GDPR to facilitate research. These are covered in Articles 89 and 17 of GDPR. For example, the right to erasure shall not apply to processing referred to in Article 89.1 insofar as that right is likely to render impossible or seriously impair the achievement of the objectives of that processing. An example would be data subjects cannot ask for their census data to be erased. In conclusion, the importance and value of research is recognised in both the GDPR and the Directive.

Discussion

Participants were interested in the role of oversight and governance in relation to data protection. It was clarified that every public body is required to have a Data Protection Officer. The Data Protection Commission is independent and holds very strong supervision and oversight powers in this area. It is the final decision maker when assessing whether appropriate safeguards are in place and appropriate decisions have been taken in relation to data sharing and processing. This relates to both complaints made by

the public, as well as audits into practice carried out by the Commission themselves.

Questions relating to the commissioning of research were posed. The group was informed how specific sections of both the LED and GDPR set out that contracts should detail clearly how data processors should comply with data protection safeguards. This was discussed in relation to potential compensation claims that can be brought by individuals, or by non-governmental organisations on behalf of individuals, for both material and non-material damage e.g. loss of reputation. The adequacy of these contracts was highlighted, specifically in relation to maintaining safeguards throughout a data chain if a data sub-processor is involved.

Individual concerns were discussed in the context of people knowing by whom their personal data is being processed. In relation to the criminal justice agencies' requirement to transfer data to facilitate the justice process, these agencies are in fact joint controllers. There is an obligation for transparency between agencies so that individuals can exercise their rights and know what public body is processing their data. Agencies have the option to nominate a single contact point to facilitate such enquires. The question of unnecessary copying was raised and how criminal justice agencies are often required to keep multiple copies due to certain unknowns in the process, such as appeals etc.

To conclude, the key differences between 1988 Data Protection legislation and GDPR and the LED were highlighted:

- Stronger oversight and enforcement by the Data Protection Commission - particularly the administrative fines that can be imposed on public and

private bodies for data infringements under the GDPR, and the expanded right to compensation under both the GDPR and LED

- A much greater emphasis on transparency
- Strengthening of the purpose limitation and data minimisation principles
- Specific and more detailed obligations on data processors and data controllers are provided in order to ensure compliance with applicable data protection rules and safeguards.

7. Brave New World: Challenging Technical Evidence in the 21st Century

Presenter: Rory Staines, Solicitor, Michael J Staines & Co.

Chairperson: Brendan Sheehy

Rapporteur: Felicity Leech

Criminal law trials generally work in an old-fashioned manner, particularly in relation to evidence. As technology and social media play a huge role in our daily lives, it is inevitable that technical evidence becomes involved in a large number of criminal cases. The majority of law that is currently used regarding technical evidence, however, is out of date. The Criminal Evidence Act 1992, for example, was written at a time where social media platforms such as Facebook did not exist. This creates challenges in criminal trials as courts are struggling to apply outdated legislation to modern cases.

In addition, criminal courts are not set up accordingly to manage technical evidence. It is not possible to have a court in each county in Ireland equipped to deal with

technical evidence. Thus, many cases need to be transferred to Dublin. However, not all courts in Dublin are equipped to present technical evidence either. The Criminal Courts of Justice building, for example, is a new, modern building containing 22 court rooms, yet not all court rooms are equipped to show CCTV footage. Similarly, only one court room in the District Court can provide this. This, of course, results in delays due to waiting lists for access to these rooms. While a certain amount of modernisation has been done, this is insufficient and there is a need for change.

Admissibility

Understanding technical evidence can be an issue for lawyers. However, determining its admissibility is the most important issue. What type of evidence it may be categorised as is also important. There are three types of evidence -

- Original evidence
- Real evidence
- Hearsay

It can be difficult to determine what category of evidence a piece of technical evidence falls under. Taking emails by way of example, while the Electronic Commerce Act 2000 states that electronic communication should be deemed admissible in court, establishing what kind of evidence it is can be an issue. This raises questions as to whether our law is fit for purpose. Is new legislation needed to determine types of evidence and their admissibility?

Criminal Evidence Act 1992

The Criminal Evidence Act 1992 currently governs real evidence in criminal proceedings. This act applies to documents that are not compiled for the purpose of investigation. The information in these documents must have been

compiled in the ordinary course of business, e.g. bank records. Issues have arisen in recent cases surrounding the admissibility of evidence under this act. In *O'Mahoney and Daly v DPP* for example, the conviction was quashed as the admission of vital documents as evidence was not dealt with in accordance with the Act. Similarly, in *DPP v Fitzpatrick*, the admissibility of evidence was decided in the absence of the jury, when it should perhaps have been decided in a pre-trial hearing. These cases highlight the need for law reform.

Determining the admissibility of technical evidence can be particularly challenging using outdated legislation.

Social media platforms such as Facebook

It is important to note that once information is provided on the internet it cannot be retracted. It therefore raises the question as to whether or not content on social media platform is real evidence. Social media can be used to monitor activity or track movements but it can be difficult to prove its admissibility in trial proceedings. Massive cross jurisdictional issues can arise such as whom do you call to prove your Facebook evidence? How do you prove the person in question actually owns the account? How do you prove the person created the post in question? Was this person's account hacked? Not only is providing the answers to these questions difficult, it is also time consuming. Further challenges for the prosecution can arise as the defence can submit that these forms of evidence are hearsay, rather than real evidence.

Mobile phones

Mobile phone evidence is the most frequently litigated form of technical evidence. Mobile phones can be useful as

they can track an individual’s movements. However, the accuracy of the phone towers may be questioned in this instance. The case of *DPP v CC* is an example of a case where mobile phone evidence proved to be vital. The court initially excluded mobile phone evidence which ultimately led to a direct acquittal. When the prosecution took a prejudicial appeal, which resulted in a retrial, the mobile phone evidence proved to be crucial and led to a conviction and a sentencing. This case, however, raised many questions regarding the reliability of call data and cell site data. There were also issues in relation to the time period for which each mobile company could retain data before deleting it.

Privacy

Using evidence obtained from a mobile phone can raise issues of privacy. At present, there is no legislation to provide for Gardaí using information from a mobile phone that has been seized upon arrest. This issue arose in *Dwyer v Ireland* where material taken from Mr. Dwyer’s phone was used against him. Mr. Dwyer has taken a case against the Communications (Retention of Data) Act, 2011, the result of which could have consequences for Garda investigations and future prosecutions.

The issue of privacy may also arise in cases involving CCTV footage. While footage from public CCTV cameras may be admissible, the defence may challenge the use of footage obtained by a private camera (see *Thompson v DPP*).

As well as a need for legislative reform, there is a need to train Gardaí and solicitors to deal with technological issues effectively.

Discussion

The role of the professional witness was discussed. Both parties may have professional witnesses to give expertise on technical evidence. This leaves potential room for viewpoints and opinions. A present challenge in this area is that most experts would come from the UK.

It was noted that there may be cross jurisdictional issues with phone towers in cases around the border to Northern Ireland as phones may operate between towers in both the north and south.

Accessing information on mobile phones was also debated. It was noted that where Gardaí seek to access a mobile phone which was seized upon arrest, the arrested person is under no obligation to provide the passcode for the phone. Nonetheless, it is impractical for Gardaí to go through all the material on a phone as it would take too long.

Delegates were concerned about information contained on the ‘cloud’. Information on a private home computer could be accessed through the cloud on a mobile phone. While there is no legislation to say that this would be inadmissible, it raises privacy issues. There could also be issues if the cloud is hosted outside of Ireland. While this would be beneficial in white collar crime, there is no one to give authorisation to access such information. It was established there are considerable issues for investigators in accessing data held on the cloud including the risk of deletion of the data being sought.

8. Data Access: Contexts, Challenges and Ways Forward

Presenter: Dr. Deirdre Healy, University College Dublin

Chairperson: Ben Ryan

Rapporteur: Tina Cronin

Unlocking the potential of data contributes to better criminal justice practice as well as to better criminal justice research. While there are benefits to developing greater cooperation and collaboration between researchers and the state, there are also a number of challenges. Ireland is at the start of this journey, presenting a great opportunity to start thinking about how we can do collaboration properly and avoid some of the pitfalls from other jurisdictions. The current state of Irish criminological knowledge is still in its infancy. While the Irish situation is now attracting a lot of international interest, there is little policy impact. This is compounded by the lack of a dedicated governmental research unit and limited research funding. Of particular concern is the quality of data collected. It is also currently very hard to track people's progress through the criminal justice system due to the lack of an integrated data tracking system.

A major issue highlighted by researchers in jurisdictions where there is a close relationship between researchers and the state, such as England and Wales, is the challenge posed to independence and integrity. A fundamental issue is the culture clash between the researcher and the state when goals are not compatible. Researchers have expressed fears that research agendas may be compromised in order to fit in with state funding requirements or that they may become servants to state power. Scholars in the UK have expressed concerns that

researchers will get 'locked out' of research access and opportunities for future funding if they are overly critical of the state. This is exacerbated by the control that is exercised over what is researched, who gets to research and what format it is published in. These challenges to independence and integrity don't just come from the state - they also come from the researchers themselves as they bring their own goals, motivations and subjectivity to a project. It is therefore important for researchers to reflect on what they are bringing to the research project.

The following three challenges highlight the tensions that can arise when researchers try to collaborate with state agencies.

1. Research ethics and the concept of limited confidentiality

When doing research, the participant is promised confidentiality, except in cases where the person discloses threats of harm to themselves or to other people. While this is ethically a good practice it also poses challenges for other ethical principles such as 'to do no harm'. Additionally, a methodological issue can arise if data is being shared. Participants may not fully disclose information and this can undermine the quality, accuracy and validity of the research produced. This then raises the issue of the researcher's potential safety too. A recent study involving interviews with criminologists who conduct ethnographical research found that many experienced harm; some even went to prison for protecting participant confidentiality. This can also create legal issues as was the case of the *Belfast Project* where the PSNI sought access to the data and won the right to do so.

2. Dissent and criminologists as a critical voice

There is a fear of researchers becoming servants of the state or losing their critical voice where there is close cooperation. Authors who were trying to build a partnership with English police found they were often co-opted into serving the needs of the users as part of performance management. Those who attempt to challenge the status-quo and structures of power may thus find it difficult to achieve this in practice. According to Jock Young, criminologists should be the voice of the powerless and investigator of the powerful. This is not easily achieved as, in reality, when results are deemed to be unpalatable they may be concealed. While conducting research with the *Pathfinder Programme*, researchers found that government staff over-managed the process. In some cases, researchers reported that findings were not published, not necessarily because findings were negative but because they fell down the list of priorities. Another example is Roz Burnett’s study on prisoner recidivism in England and Wales. Burnett discovered her research was misrepresented by the then Home Secretary, Michael Howard, who used the research to support his prison works agenda.

3. Administrative Criminology

The type of research being produced in these state collaborations is known as Administrative Criminology. This research is carried out by government researchers or by government sponsored researchers. It lacks the contextual picture and tends to be atheoretical in approach with a strong focus on quantitative analysis and with little emphasis on interaction. Critical voices argue that if criminologists keep buying into this agenda they may end up perpetuating the myth of crime and legitimising state power. Researchers

need to be more reflective in how they think about the issue of crime, as using narrow definitions can almost strip human experience of its meaning.

While these are challenging issues, it is important to highlight that there is a new set of innovative methodologies designed to encourage collaboration and participatory involvement of all people affected by the research. This approach situates the participants as the co-researchers. An example of such research was a study by Wendy Fitzgibbon and Deirdre Healy which used *PhotoVoice* to convey what it was like to be on supervision. The participants (co-researchers) collected the data and decided what that data meant. This also gave them a voice in policy formation as was the case when the images were shown as an exhibition to policy makers, practitioners and academics.

Discussion

The discussion focused on the challenges of doing research with state agencies, exploring various viewpoints. It was thought that sometimes there is a view among researchers that they have a right to do any research while not being cognisant of the cost and effect on the organisation. It is important for researchers to be aware of the benefit to the organisation and remember to do no harm. There is a need for a better mutual understanding of what the requirements of the researcher and practitioners are.

It was acknowledged that the UK has a very strong engagement network between researchers and the civil service, while the Irish context was deemed to have a poor relationship. However, this was challenged as it was felt that, unlike the UK situation, there are also more positive aspects in the Irish context as

researchers get to present their research to heads of government departments and agencies like the Irish Prison Service and The Probation Service.

It was acknowledged that policymakers and researchers in the English and Welsh Home Office may have had a very different perspective on working with academic researchers on the *Pathfinder Programme* evaluations. The challenges for practitioners and policymakers in working with academic researchers were also discussed and it was noted that political receptiveness can influence the impact of research studies on policy and practice. Whether research findings are taken on board by the politicians is a key question. The debate needs to shift as, no matter what researchers may say, ministers find it difficult to publicly come out and state that they favour not having longer sentences.

The possibility that suppression can come from other academics rather than the state was also explored, with risk aversion to research engagement being a factor. It was felt that it can be more a case of research not going ahead if it is potentially too risky rather than a suppression of results. Another view was that the differences in discourse were another factor affecting collaboration. If researchers want to be understood by policy makers there is a need to understand policy discourse, while policy makers need to understand research discourse.

A final point drew on whether it was possible to have a politically free, influence free, independent arbitrator or access without influence, or if this was fantasy. Discussion concluded that there will never be independent value free research. Ultimately everyone has

different ideas coming in to research so it is about finding ways to help everyone have their needs met. Overall, the view was that there is a genuine willingness for state agencies to engage in research but that there is not always the capacity to do so.

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Eva Aizpurua	Trinity College Dublin
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Natasha Browne	Department of Justice and Equality
Maura Butler	ACJRD Chairperson
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Claire Casey	Childhood Development Initiative
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Anne Conroy	Le Chéile Mentoring
John Corr	PACE
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Ciara McQuillan	ACJRD Volunteer
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“Unlocking the Power of Data for Criminal Justice Research, Policy-Making and Practice”

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