



**REPORT OF THE  
COMMITTEE TO REVIEW THE CONRAD JEFFREY  
MATTER**

**VOLUME III**

**FINDINGS AND RECOMMENDATIONS**

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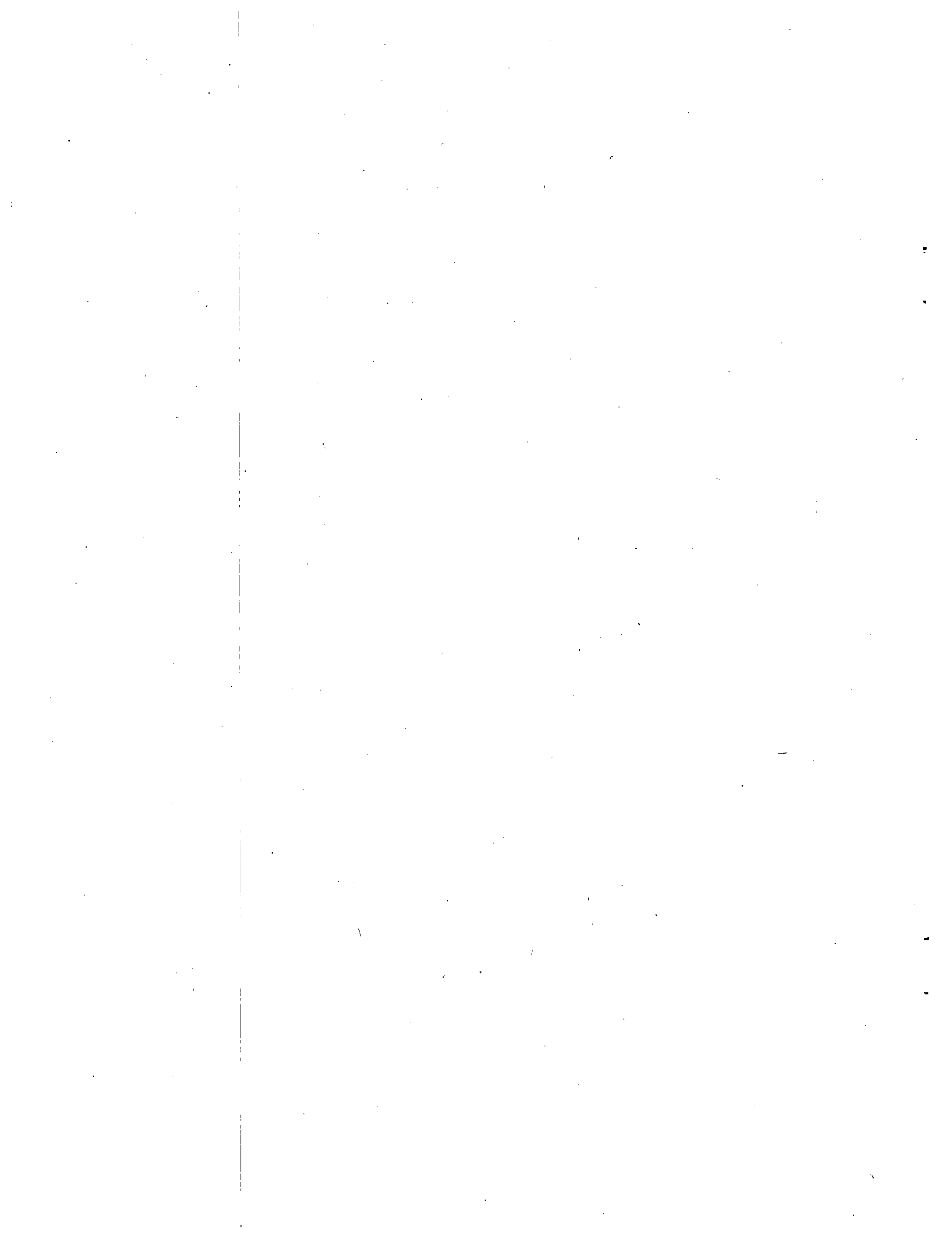


TABLE OF CONTENTS

I. INTERACTION OF CRIMINAL JUSTICE AND MENTAL HEALTH SYSTEMS ..... 1

II. FINDINGS ..... 2

A. Excessive Reliance by Judges and Prosecutors on the Conclusions of Psychiatric Experts ..... 3

    1. Prosecutors' Responsibilities ..... 5

    2. Recommendations To Reduce Over-Reliance On Expert Opinion ..... 5

        a. Critical Examination Of Expert Opinion ..... 5

        b. Underlying Basis of Expert Opinion ..... 6

            (1) Subjective Data ..... 6

            (2) Verifiable Information ..... 8

        c. Heightened Scrutiny Must be Utilized When Opposing Psychiatric Experts Concur ..... 9

        d. Responsibility of Judges ..... 10

        e. Suggested Training for Prosecutors and Judges ... 10

        f. Designation of Specially Trained Prosecutors to Handle Incompetency and Insanity Cases ..... 13

B. Failure to Assure that the Correct Legal Standards for Incompetence Were Applied ..... 13

    1. Legal Standards for Incompetence in 1974 ..... 14

    2. Failure to Apply Legal Standards to Treatment ..... 14

    3. State v. Krol ..... 15

4.	<u>Recommendations to Improve Communication and Application of Correct Legal Standards to Treatment</u>	16
5.	<u>Failure to Apply Legal Standards in Court Proceedings</u>	18
a.	<u>Testimony Must Address Legal Criteria</u>	19
b.	<u>Written Guidelines for Mental Health Community</u>	21
c.	<u>Correct Doctor Must Testify</u>	22
d.	<u>Legislative Changes Would Improve the Interaction Between Legal and Mental Health Communities</u>	23
e.	<u>Determination Of Guilt Or Innocence Of Incompetent Defendants</u>	23
f.	<u>Incompetent Defendants Becoming Civil Committees</u>	25
C.	<u>Experts' Filtering of Relevant Information to the Court</u>	26
1.	<u>Recommendations to Prevent Exclusion of Relevant Evidence</u>	27
D.	<u>Conclusion</u>	28
III.	<b>SENTENCING, PLEA NEGOTIATIONS AND PAROLE</b>	29
A.	<u>Sentencing and Plea Negotiation</u>	30
1.	<u>Repetitive Violent Offenders</u>	30
2.	<u>Special Scrutiny for Repetitive Violent Offenders</u>	32
3.	<u>Pre-Sentence Investigations</u>	33
a.	<u>Statewide PSI Guidelines Must be Adopted</u>	34
b.	<u>Verification of Information on PSI's is Critical</u>	35
c.	<u>PSI Should not be Accepted by Court Unless it is Complete</u>	37

4.	<u>Plea Negotiations</u> .....	37
B.	<u>Parole</u> .....	39
1.	<u>Pre-Parole Process</u> .....	40
2.	<u>Work and Good Time Credits</u> .....	41
3.	<u>Release into the Community</u> .....	42
4.	<u>Maxing-Out</u> .....	43
C.	<u>Conclusion</u> .....	44
IV.	<u>RECORDS AND IDENTIFICATIONS</u> .....	44
A.	<u>FINDINGS</u> .....	45
B.	<u>Recommendations</u> .....	47
1.	<u>Fingerprint Identifications</u> .....	47
a.	<u>Automated Fingerprint Identification System</u> .....	48
b.	<u>Flawed Process</u> .....	49
2.	<u>Live Scan Will Eliminate Delayed Fingerprint Identifications</u> .....	51
3.	<u>Statutory Requirements for Fingerprinting</u> .....	53
C.	<u>Rap Sheets Should Not Be Considered Definitive Documents</u> ...	55
1.	<u>The Rap Sheet Process</u> .....	55
2.	<u>Improvements Already Implemented</u> .....	56
3.	<u>Necessity of Supplementing Information on Rap Sheets</u> ..	57
D.	<u>Full Automation of State's Criminal Justice System will Provide a Powerful Tool to Law Enforcement</u> .....	58
1.	<u>Technology Already Implemented</u> .....	58

2.	<u>Psychiatric Histories In Certain Cases Should be Included On Rap Sheets</u> . . . . .	61
3.	<u>More Automation is Recommended</u> . . . . .	62
E.	<u>Conclusion</u> . . . . .	63

## I. INTERACTION OF CRIMINAL JUSTICE AND MENTAL HEALTH SYSTEMS

After Jeffrey's arrest for the 1974 homicide of Alberta Dorsey, he was found incompetent to stand trial and was sent to the Trenton Psychiatric Hospital ("TPH") for further evaluation and treatment to restore his competence to stand trial for the murder.<sup>1</sup> What followed his commitment was a eight-year journey through a mental health system that was supposed to be working in concert with the criminal justice system. The interaction between these two systems, however, was dysfunctional as manifested by frequent failures of communication. As the Committee learned during its investigation, the boundaries between the criminal justice and mental health systems are often blurred, and the goals of these two systems as they relate to defendants, like Jeffrey, may be completely dissimilar. The Jeffrey case demonstrates that where the criminal justice and mental health communities must work together, changes in the communication between these systems must be made so that their goals, as they relate to specific defendants, are compatible, that they serve the ends of justice and protect the community.

The Committee's investigation revealed systemic deficiencies in the interaction of the criminal justice and mental health professionals who handled Jeffrey's case. The problems arose in part from the extremely divergent objectives that each system had for Jeffrey. The criminal justice system holds individuals accountable for anti-social behavior, imposing penalties when society's laws are broken. In contrast, the mental health system is designed to cure or treat the causes of anti-social behavior,

not to punish the individual who exhibits such characteristics. The labels used by these systems further exemplify the different objectives of the criminal justice and psychiatric communities; defendants in jail are called "inmates," while those in psychiatric hospitals are called "patients."

In Jeffrey's case, the criminal justice system's goal of prosecuting him for the Dorsey homicide was overshadowed by TPH's goal of curing him of mental illness. These two systems never focused in a unified way on the specific legal purpose of Jeffrey's institutionalization -- restoration of his competence to stand trial.<sup>2</sup> Even when there was substantial evidence during Jeffrey's hospitalization that he may have been competent to stand trial, there was no triggering mechanism that led TPH's mental health professionals to recognize that the legal standards for competence had been met; nor was there any communication with the criminal justice system concerning his change in mental condition. Similarly, the court and prosecutor's office appeared to have no procedure for on-going communication with TPH about Jeffrey's mental state during the intervals between his scheduled hearings.

## II. FINDINGS

The deficiencies identified by the Committee in the interaction between the criminal justice and mental health systems may be broadly defined as follows:

●EXCESSIVE RELIANCE BY JUDGES AND PROSECUTORS ON THE UNTESTED OPINIONS OF PSYCHIATRIC EXPERTS.

●FAILURE TO ASSURE THAT THE CORRECT LEGAL STANDARDS FOR COMPETENCE WERE APPLIED.

●FILTERING OF RELEVANT EVIDENCE PRESENTED TO THE COURT AND PROSECUTOR.

Each of the Committee's findings are discussed in more detail below. Following a discussion of each of these findings are the Committee's recommendations. The Committee is hopeful that these suggested changes will help prevent defendants from escaping criminal responsibility within the mental health system, protect the public from dangerous criminals, and improve the interaction of legal and mental health professionals who should have compatible goals with respect to the criminal defendants in their systems.

A. Excessive Reliance by Judges and Prosecutors on the Conclusions of Psychiatric Experts

The Committee's investigation found that from the outset, prosecutors and courts placed too much reliance on the opinions presented by the psychiatric experts evaluating Jeffrey's competence. Because several different judges and prosecutors handled Jeffrey's case over a lengthy period of time, those involved heavily depended on the evaluations and testimony of both the independent psychiatrists as well as the doctors at the state psychiatric facility. For much of his institutionalization only one

doctor was providing information concerning Jeffrey's condition to the defense, prosecution and court thereby eliminating any fresh perspectives on his condition. Although there was relevant information in Jeffrey's records that conflicted with the information that was presented to the court in the experts' written evaluations and oral testimony, these contradictions were not presented to the court for its consideration.<sup>3</sup>

The Committee has found a number of factors that contributed to the excessive dependence on psychiatric expert opinion. First, both the defense and prosecution experts at the initial competence hearing agreed in their conclusions that Jeffrey was both mentally ill and unfit to stand trial. Such concurrence of expert opinion tends to lower the level of scrutiny employed by prosecutors and courts in evaluating the information presented by psychiatrists. Although prosecution and defense experts might agree that a defendant is unfit to proceed, material contradictions could exist between both doctors' evaluations, as they did in the Jeffrey case, that should be further investigated and evaluated by the fact-finder. As detailed in the Committee's factual analysis of this investigation (Volume II), the lack of scrutiny of the concurring psychiatric opinions and the underlying bases of these opinions resulted in the exclusion of relevant information.

Last, the Committee found that prosecutors and judges receive little, if any, training in dealing with complex issues of law and psychiatry. The lack of such

training further exacerbates their need to heavily rely on the expert opinion of mental health professionals in such cases.

1. Prosecutors' Responsibilities

The Committee acknowledges that the following recommendations will place the burden of responsibility on prosecutors for assuring that all expert opinions and relevant facts concerning a defendant's competence are properly investigated and evaluated. The Committee believes, however, that there is no other participant in the criminal justice system who can be more appropriately charged with this duty. Although the Committee is cognizant of the excessive case-loads and budget constraints faced by the counties' prosecutors, it believes that in cases where issues of incompetence and insanity are raised, the following changes will increase the likelihood that there will be no over-reliance on expert opinion and that such testimony will be subject to appropriate scrutiny, analysis and application.

2. Recommendations To Reduce Over-Reliance On Expert Opinion

a. Critical Examination Of Expert Opinion

When a defendant raises a defense of incompetence to stand trial, or of insanity, it is critical that the prosecutor carefully analyze the factual foundation and underlying opinions upon which psychiatric experts are basing their conclusions. This

analysis must include a careful review of the documentary information provided to and reviewed by the state's expert. The prosecutor must ensure that all relevant police reports, confessions, mental health records and similar material has been reviewed and considered by its expert. Because the manner and method of examination can vary substantially with each doctor, it is also vital that the prosecutor clearly review the basis of the expert opinion being provided.

b. Underlying Basis of Expert Opinion

Specifically, the prosecutor should determine which aspects of the experts' conclusions are based on verifiable factual data, and which are based on more subjective indicia such as observations of the defendant or the underlying opinions of others that lead to the experts' ultimate conclusions. It is imperative that the prosecutor and judge evaluating this information to break down the elements of the expert opinion to determine how much weight an expert is giving to information in each category. To the extent that a psychiatric expert is relying on information that cannot be verified, it should be critically examined by the prosecutor.

(1) Subjective Data

Subjective data is the most difficult type of information for the prosecutor and fact-finder to appropriately evaluate because it derives primarily from a doctor's

observations of a defendant and his determination about what is happening in a defendant's mind. Because this data is often heavily based on what the defendant says about himself to the expert, it must be viewed quite carefully.

Observations that an expert makes about a defendant during his evaluation and the results of any diagnostic tests performed must also be carefully scrutinized. Some diagnostic testing, such as the use of sodium pentothal, provide objective test results whereas other evaluative tools are based on the subjective interpretation of the expert. Prosecutors must carefully analyze the type of data that they are receiving and also determine whether the conditions under which the observations took place were adequate and whether the observation conducted was sufficient. Moreover, an evaluation must also be made as to whether there are additional tests or studies that should be conducted, or whether an expert is discounting the results of tests already performed. If any tests or other observations conflict with the experts' diagnosis, the basis for his decision must be carefully examined. In addition, if the fact finder is presented with the expert opinion of a defendant's treatment team from a psychiatric institution, it is important to ascertain if the evaluation is based on the treatment team's unanimous decision, or whether there are divergent views among the group members of the team. If there are divergent views they should be examined and pursued if appropriate.

(2) Verifiable Information

As compared with subjective information, factual and historical information represent evidence collected from the defendant or other sources that can be verified by the expert and/or prosecutor. This includes such data as police reports concerning the current offense, criminal history information as well as personal and medical background information provided by either the defendant or from other sources. It is critical that the prosecutor know whether or not the expert verified this information and to what extent that data was relied upon in the expert's opinion. If the expert relied on information received from the defendant that was not sufficiently verified, the prosecutor or an investigator should seek confirmation of this data before relying on its veracity. If the expert did verify the information supplied by the defendant, the prosecutor must learn specifically how such verification was made. The Committee suggests the following methods of verifying medical history or other data supplied by a defendant if properly available to the prosecutor under New Jersey law:

- Contact defendant's family, neighbors, parole or probation officer (if applicable). Ascertain defendant's past and current ability to socialize, conduct his affairs and hold employment, with special attention paid to any difference in past and current abilities and conduct.
- Contact hospitals, institutions, physicians or other treating personnel mentioned by defendant and obtain all records and evaluations conducted on defendant.

- Verification of any medication(s) mentioned by defendant.

- Search of defendant's educational and criminal justice records (using the rap sheet as only a starting point) for evidence of prior mental illness, institutionalization or hospitalization, or for evidence of the absence of any such history.

- Contact the corrections officer who currently has custody of the defendant to inquire as to the defendant's behavior.

c. Heightened Scrutiny Must be Utilized When Opposing Psychiatric Experts Concur

Although it seems counter-intuitive for the prosecutor to maintain an elevated level of scrutiny in analyzing the concurring psychiatric opinions of opposing experts, the Jeffrey case demonstrates that such an analysis is necessary to ensure that the adversary process does not come to a halt with this concordance of opinion. The agreement of opposing experts from the prosecution and defense serves to place the court and treating psychiatric facility on notice that there is no question about the defendant's condition. This accord tends to diminish the level of inquiry that takes place in court and may subsequently unduly influence those charged with the responsibility of treating such a defendant at the psychiatric institution. Nevertheless, such agreement between or among experts should never be regarded as *per se* dispositive.

Although one of the Committee's psychiatric consultants who addressed this issue with the Committee acknowledged that a number of prosecutors do obtain second opinions when their expert agrees with the defense, this point cannot be over-emphasized.<sup>4</sup>

d. Responsibility of Judges

Judges overseeing competence and insanity cases must understand that it is they who must hold both the state and the defense to the proper standards for investigating and reviewing such matters. It is the obligation of the trial judge to carefully review the records of the hospital commitment, including all of the notes made by the treatment team, nurses and other hospital personnel. The judge, when necessary, should not hesitate to arrange for an independent examination of a defendant.

e. Suggested Training for Prosecutors and Judges

The Committee notes that since the series of court hearings related to the issue of Jeffrey's competence took place, the level of training experienced by assistant prosecutors throughout the State of New Jersey has increased substantially. The Committee acknowledges the annual Basic Prosecutors' Training Course conducted by the Division of Criminal Justice. However, additional advanced training for

prosecutors would also prove beneficial. Such advanced training should include instruction that addresses issues of incompetence and insanity. The Committee has also been advised that each county Prosecutor regularly conducts in-service training for their respective legal staffs related to significant legal and procedural aspects of the criminal justice system. Nevertheless, the Committee recommends, as noted below in a proposed course outline, that Judges and Prosecutors' staffs undergo enhanced training with regard to incompetence and insanity, which in many instances are case dispositive issues. Similar training should also be conducted for mental health community members who are called upon to participate in legal proceedings.

### **SUGGESTED TRAINING OUTLINE**

#### **A. Standards for Determining Competency**

- The rationale behind the legal standards: How the standards should be applied. Various ways of evaluating competency, e.g., affective vs. cognitive approaches. The mental illness requirement. The concept of "function specific." How to evaluate the defendant's capacity to understand the proceedings, the charge, or to communicate with his lawyer, and to assist in his defense.
- How psychiatrists and other clinicians view incompetency. Psychiatric misconceptions about the law
- How to cross-examine psychiatrists and other clinicians who testify about competency.
- Can feigning of a defendant who purports to be incompetent be detected? The inadequate literature on feigning.

- Systemic inadequacies in the preliminary evaluation of incompetency.

**B. The Hospitalization of Incompetent Defendants**

- The use of anti-psychotic medications to restore defendants to competency.

- The purpose of hospitalization and medication as restoring incompetent defendants to stand trial. Hospital staff misunderstandings concerning the purpose of hospitalization. Confusion of State v. Krol and Jackson v. Indiana.<sup>5</sup>

**C. Constitutional Limitations on the Trial of Medicated Defendants**

- Riggins v. Nevada. The side effects of medications and the demeanor of defendants.

- The burden of proof. Medina v. California.<sup>6</sup>

**D. The Discharge From the Hospital and Dismissal of an Indictment of a Defendant Who Cannot be Restored to Competency to Stand Trial.**

- What Jackson v. Indiana stands for.

- The over-reading of Jackson v. Indiana. The New Jersey Statute and New Jersey Supreme Court decision in State v. Krol.

- Models for implementing Jackson v. Indiana. How to protect defendants' rights and societal rights simultaneously.

f. Designation of Specially Trained Prosecutors to Handle Incompetency and Insanity Cases

In addition to specialized training for all prosecutors in handling competence and insanity cases, the Committee also recommends that one or two experienced prosecutors in each county be specially designated to handle all such cases. It is also critical that those prosecutors with special expertise in issues of incompetence and insanity follow such cases to their conclusion. Such continuity in the handling of these cases is vital to ensure that there is an accurate understanding of both the complete history of the case and of the defendant.<sup>7</sup>

B. Failure to Assure that the Correct Legal Standards for Incompetence Were Applied

The Committee's investigation found that throughout Jeffrey's years at TPH and his many competence hearings, there was little, if any, focus on the legal standards for competence to stand trial by members of either the criminal justice or mental health systems. In addition to this lack of focus, there was documented confusion by the Trenton Psychiatric Hospital concerning Jeffrey's legal status and the hospital's mission of restoring his competence to stand trial.<sup>8</sup> In fact, the concentration throughout Jeffrey's institutionalization was placed on treating mental illness without sufficient monitoring as to whether or not his mental state prevented him "from comprehending his position and from consulting intelligently with counsel in the preparation of his defense."<sup>9</sup>

## 1. Legal Standards for Incompetence in 1974

In 1974, the standard for incompetence to stand trial was one that had been enunciated by the New Jersey Supreme Court in State v. Auld, 2 N.J. 426 (1949): "one unable to comprehend his position, to consult intelligently with counsel and plan his defense cannot be put to trial."<sup>10</sup> The standard for incompetence was distinguished from the insanity defense by the New Jersey Supreme Court in Aponte v. State, 30 N.J. 441 (1959):

As a test of ability to stand trial on a criminal charge, insanity means a mental illness or condition which prevents the accused from comprehending his position and from consulting intelligently with counsel in the preparation of his defense.<sup>11</sup>

The failure to apply the correct legal standards for competence to stand trial manifested itself in several ways.

## 2. Failure to Apply Legal Standards to Treatment

The training of psychiatrists and the orientation of psychiatric hospitals emphasizes the general restoration of mental health, not the improvement of specific capacities identified by law. This difference was apparent throughout Jeffrey's institutionalization where there is evidence that those involved in Jeffrey's treatment were unclear as to the exact nature of his legal status.<sup>12</sup> The record reveals that at

times throughout Jeffrey's treatment and court proceedings he was erroneously referred to as a "Krol" patient. Jeffrey's hospital records and the subsequent review of those records by the Committee's experts found that TPH's treatment of Jeffrey had little connection to the underlying murder charges or the court's directive that Jeffrey be institutionalized in order to restore his competence.<sup>13</sup> Rather, TPH attempted to cure Jeffrey and abate the danger that he posed to others so that he could eventually be released into the community.<sup>14</sup>

### 3. State v. Krol

Krol patients are those who have been adjudicated not guilty by reason of insanity ("NGRI") which was not Jeffrey's situation. In Jeffrey's case, there had been no adjudication of his guilt or innocence for the Dorsey killing, only a finding that he was not competent to stand trial.

In State v. Krol, the Court held that those committed to mental institutions under the criminal statutes because they had been adjudicated NGRI must have their status periodically reviewed to determine whether there is both a continuation of the mental illness and a risk that the committee poses a danger to himself or others if released. Although the Krol Court explicitly stated in a footnote that its decision did not affect the disposition of persons found incompetent to stand trial, Jeffrey's situation was not recognized by the institution to be such an exception. The

Committee's psychiatric experts who reviewed Jeffrey's treatment records noted that the confusion concerning Jeffrey's legal status appeared to affect his subsequent treatment. His treatment was described by one of the Committee's experts as being "unfocused and generic" and not concentrated on the legal purpose of his institutionalization -- restoration of his competence to stand trial for the Dorsey homicide.<sup>16</sup>

The hospital did not continually monitor Jeffrey's ability to comprehend trial events, nor did the hospital ever bring to the attention of the prosecutor or court documented periods of remission when Jeffrey may have been competent to stand trial. Likewise, there was seemingly no interaction or response by the criminal justice system to Jeffrey's treatment or periods of remission. In fact, the record does not indicate any communications, other than those in connection to or referencing scheduled court proceedings, between TPH and the prosecutor's office concerning Jeffrey's ability to stand trial.<sup>16</sup>

4. Recommendations to Improve Communication and Application of Correct Legal Standards to Treatment

In order to bridge the communication gap between the legal and mental health communities, institutions in which incompetent defendants are confined should be reminded by the prosecutor of their ongoing obligation to evaluate a defendant's

progress so as to report to the court and prosecutor whenever there is evidence that the defendant may be experiencing a return to competence.

It is the prosecutor who must ensure that those treating such a defendant understand the legal status of that patient. In particular, the prosecutor must make sure that doctors and staff in a specific case are alert to the distinction between a patient who is hospitalized because he lacks competence and one who has already been tried and found NGRI. The hospital staff assessing these two types of defendants should be looking for different factors in each case, and must be attentive to the fact that where their observations of a defendant have any relevance to the legal status of the defendant and the purpose of the patients' institutionalization, they have an obligation to communicate that data to the criminal justice system.

In cases of incompetence, the Committee also recommends that treating institutions be required by court order to continuously monitor a defendant's level of competence, and to place upon the record at each meeting of the patient's treatment team or review committee all observations and opinions as to whether there has been any change in defendant's competence. As part of this on-going responsibility, each treating institution should create an evaluative mechanism separate and distinct from the treatment protocol to facilitate and make a record of any observations relevant to a defendant's competence. This analysis should also include any changes that medication may have had on a defendant's fitness to proceed. If there are any

dissenting opinions among members of the treatment team, these views should be noted and the reasons for the dismissal of any such contrary opinions should be clearly documented. The court's order should place the duty on the institution's superintendent to bring to the attention of the court and/or prosecutor any observations made by any level of hospital staff that would be relevant to a defendant's competence. One possible remedy would be to have a copy of all notes from every meeting concerning a defendant's competency automatically forwarded to the prosecutor for review.

5. Failure to Apply Legal Standards in Court Proceedings

The mental health system's failure to focus Jeffrey's treatment on the restoration of his competence was compounded by the fact that the criminal justice system, until the end of Jeffrey's institutionalization, was also not concentrating on the legal standards for competence. Rather, attention was primarily paid to whether or not Jeffrey continued to exhibit signs of mental illness and where to best treat him as opposed to the restoration of his cognitive capacity to stand trial.

One of Jeffrey's first competence hearings, however, did present the court with an opportunity to squarely address the issue of Jeffrey's competence. In fact, the prosecutor's cross-examination of the defense expert indicated quite clearly that Jeffrey understood the nature of the charges against him as well as the roles of those

involved in a trial proceeding.<sup>17</sup> The judge, who continually referenced the proceeding as a Krol matter, would not consider the evidence of Jeffrey's competence that was elicited by the prosecutor as relevant to the proceeding. Instead, the judge confined the hearing to whether Jeffrey met the standards for continued institutionalization.<sup>18</sup>

Although Jeffrey's final incompetence hearings, prior to the dismissal of the indictment, did squarely address the legal standards for competence, the cumulative effect of the systemic failures that occurred during the previous eight-years were insurmountable. The historical baggage that this case carried with it into those final hearings, including many years of skewed legal focus and an over-reliance on expert opinion concerning Jeffrey's mental fitness, hindered the court in objectively evaluating all relevant information concerning Jeffrey's mental state that was available at that time. The Committee is hopeful that the following recommendations will increase the likelihood that the correct legal criteria in such cases are applied from the outset.

a. Testimony Must Address Legal Criteria

The Committee recommends that in matters where psychiatric testimony is critical to legal determinations, that the court and prosecutor determine whether the testifying experts have understood and applied the correct legal standards in reaching their conclusions. It is vital that those who testify as psychiatric experts possess

sufficient education and clinical training, have specialized knowledge regarding the legal criteria to which they will testify and have performed an adequate examination of the defendant.

As the Committee learned during its investigation, many individuals in both the legal and mental health communities erroneously believe that any signs of mental illness automatically render a defendant incompetent. In fact, an individual may be both mentally ill and competent to be tried. The American Bar Association addressed this issue in its Criminal Justice Mental Health Standards:

Accurate communication between judges and lawyers, on the one hand, and mental health and mental retardation professionals, on the other, has been a problem in the interaction of the legal discipline and the behavioral sciences...The most frequent block to effective communication has been a confusion of competence with mental illness or psychosis, dangerousness, mental nonresponsibility [insanity] at the time of the alleged offense...In fact, issues of mental illness and present mental competence clearly are not of necessity interdependent; defendants can be incompetent to undergo criminal proceedings and yet not be mentally ill...or they can be competent to stand trial despite severe mental illness.<sup>19</sup>

The Committee believes that prudent attention by all involved in the process to the correct legal standards in incompetence hearings will better serve to provide the court with the tools necessary to make legal determinations based on the psychiatric testimony provided.

b. Written Guidelines for Mental Health Community

The Committee recommends that the exhaustive report detailing recommendations for the effective interaction of the legal and mental health communities compiled by the American Bar Association ("ABA") be reviewed by both the judiciary and legislature. The ABA's careful research and analysis by recognized experts extends well beyond the issues raised in the Jeffrey investigation and provides valuable suggestions for the improvement of New Jersey's criminal justice system.

As suggested by the ABA Criminal Justice Mental Health Standards, the Committee advocates that the criminal justice system promulgate written guidelines to inform and advise mental health professionals about all relevant aspects of New Jersey law relating to competence and insanity.<sup>20</sup> Such targeted writings would be further enhanced by specialized training for mental health professionals who are called upon to provide written evaluations and testimony in competence and insanity cases. By helping professionals in the mental health community better understand the legal principles that govern these cases, testimony and evaluations will be improved because the expert will better understand how his clinical observations will be applied to the law.

c. Correct Doctor Must Testify

It is vital where testimony and reports of institutional psychiatrists are presented to the fact-finder in competence and insanity matters that they be provided by the doctor with primary responsibility for that defendant. This case demonstrates that the doctors who are sent from state psychiatric facilities to testify in court are not always those who are currently responsible for a defendant's treatment.

Psychiatric institutions may be influenced in their decisions regarding which psychiatrist to send to court to testify for a number of reasons, including the fear of damaging the relationship between a physician and patient as a result of a psychiatrist's in-court testimony. Prosecutors and judges in such cases must ensure that the appropriate witness with the most accurate first-hand information available provides expert opinion about the defendant's psychiatric condition. The Jeffrey case illustrates that if a physician other than the treating psychiatrist provides testimony about a defendant the danger exists that his report to the court will be comprised of filtered information that was gleaned from records and reports without an accurate knowledge of the patient's condition.

d. Legislative Changes Would Improve the Interaction Between Legal and Mental Health Communities

The Committee also recommends that the legislature explore the possibility of enacting several statutory changes that would reduce or eliminate problems that can occur in cases of competence and insanity. First, the legislature should consider amending N.J.S.A. 2C:4-6(c) and (e) to eliminate, or at least severely limit, the circumstances under which an indictment may be dismissed with prejudice as a result of the continuing incompetence of a defendant to stand trial. Such a remedy is not required by either the constitutions of New Jersey or the United States.<sup>21</sup> Thus, in cases where a once incompetent defendant regains competence, the state will not be precluded from prosecuting the matter at a later date.

e. Determination Of Guilt Or Innocence Of Incompetent Defendants

The legislature should also consider the feasibility of enacting a statute that would permit the determination of pretrial motions as well as the guilt or innocence of an incompetent defendant for the crime(s) charged. The American Bar Association and the states of Illinois and New Mexico currently offer models for such a statute. Such a system would help to guarantee that society would be protected from permanently incompetent defendants who have committed serious offenses. If factual guilt is established, then special commitment proceedings could be instituted to ensure

that the individual remains hospitalized in a secure facility. Moreover, the sooner a hearing addressing guilt or innocence takes place after the commission of a crime, the greater the likelihood that physical evidence and vital witness testimony will not be lost over time.

The ABA cites one writer who describes the perceived problems such legislation is designed to correct, as follows:

[I]f [the state] tries and punishes the defendant despite his lack of competency to stand trial, he has been denied due process; if it commits him until he is competent to stand trial, which, if he is permanently incompetent, he will never be, he has in effect been punished without a trial; and if it finds him incompetent to stand trial yet is not allowed to commit him, he may as a practical matter have been given carte blanche to commit other crimes.<sup>22</sup>

In a case such as Jeffrey's, where such a lengthy period of time passed from the time of his arrest for the Dorsey homicide in 1974 until his release from TPH in 1983, such a system as described above could have made a difference. If Jeffrey's factual guilt had been established under such a system based on the strong physical evidence as well as his confession, those who subsequently encountered Jeffrey would have had the benefit of better understanding of his violent criminal history as well as the threat that he posed to society.

f. Incompetent Defendants Becoming Civil Committees

As evidenced in the Jeffrey case, where a defendant is found permanently incompetent and the criminal indictment pending against him is dismissed for that reason, current statutory provisions provide few safeguards to ensure that such individuals are not released into the community. The absence of an indictment precludes the involvement of the criminal justice system in decisions affecting the release of such patients. The statutes, as currently written, provide that an individual may be involuntarily committed when he is both mentally ill and a danger to himself or others. This investigation demonstrates that when a defendant's dangerousness is clear, but signs of mental illness are absent, psychiatric institutions believe that the only way they may keep such an individual in their facility is if the patient agrees to a voluntary commitment. If such a patient then wishes to leave the hospital, the institution has no legal basis to keep the individual within the facility.

The Committee recommends that New Jersey statutes be amended to provide the following protection in cases where an incompetent defendant may become a civil committee:

- 1) Only a judge may release a civil committee who faces a pending indictment, and then, only after a hearing.
- 2) The prosecutor must be notified and must participate in the hearing unless sufficient cause for non-participation is found by the court.

- 3) The prosecutor should represent the state in any subsequent civil proceedings to change a defendant's commitment status.

C. Experts' Filtering of Relevant Information to the Court

As detailed in the Committee's factual analysis, relevant information from Jeffrey's hospital records was continually "filtered" by the psychiatrists from the institution who provided written evaluations and in-court testimony concerning Jeffrey. This process of screening out probative information precluded the court and prosecutor from learning of valuable information which indicated that there were divergent views among treatment team members concerning Jeffrey's condition. Moreover, some of the information in Jeffrey's medical records, which was not presented to the court or prosecutor, was in direct conflict with testimony that was being provided to the court concerning Jeffrey's competence.

It would be impossible for experts not to assimilate or screen-out some information gathered during an evaluation of a defendant. However, the Committee believes that prosecutors and judges must maintain an awareness that expert opinions may contain only that information that supports the expert's conclusions. Moreover, if both the prosecution and defense are relying on only the testimony of one institutional psychiatrist, as was the case in Jeffrey, the court is limited to only the

information provided and interpreted by that one witness unless the court carefully reviews the complete records of the institution pertaining to the patient.

1. **Recommendations to Prevent Exclusion of Relevant Evidence**

The Committee recommends that prior to any evaluations being conducted, the court should specify the precise nature of the evaluation to be conducted and the legal criteria to be utilized by the expert.<sup>23</sup> In hearings dependant on psychiatric testimony, the judge should insist on thorough and detailed reports, which should contain, at a minimum, the following:

- The name of the primary treating physician.
- A comprehensive psychiatric history.
- Dates and lengths of interviews with the testifying psychiatrist.
- The entire record of the institution must be produced and must include nurses notes, incident reports, medication records and reports from the floor staff as to the patient's day to day functioning.
- A diagnosis of the precipitating cause of the criminal behavior, not just a broadly descriptive diagnosis.
- Specific treatments required for a defendant to attain or maintain competence and an explanation of appropriate treatment alternatives.

- Likelihood of recurrence of the incompetence if the defendant is put on trial for the crime charged, including the likelihood that the defendant will continue to take required medication if released from custody.

- Evidence, if any, of malingering on the part of the defendant. If suspected, detailed information as to how this issue was resolved and whether the final diagnosis represents a unanimous consensus among hospital personnel. If the decision was not unanimous, the court must examine the relevance of dissenting views of treatment staff.

- Verification of sources relied on for any prior psychiatric history.

D. Conclusion

Although bridging the communication barrier between the criminal justice and mental health systems will be difficult, this goal must be accomplished. By enhancing each system's understanding of the problems that currently exist, positive steps may be taken to create common goals with respect to criminal defendants subject to both the criminal justice and mental health systems. In order to protect the public from dangerous criminals, the Committee urges that the criminal justice and mental health systems, as well as the legislature, carefully examine the above recommendations.

### **III. SENTENCING, PLEA NEGOTIATIONS AND PAROLE**

The dismissal of the 1974 homicide indictment and Jeffrey's release from the Trenton Psychiatric Hospital did little to diminish his involvement with the criminal justice system. Jeffrey was arrested numerous times after his release from TPH for a variety of crimes, including two convictions prior to his recent 1993 homicide arrest where his victims were children. One major problem that the Committee found was the fragmented manner in which the criminal justice system dealt with Jeffrey. Each crime that he committed after his release from the psychiatric hospital was looked at as though it were an isolated event. Little effort was made to understand Jeffrey in a more comprehensive manner -- evaluating his complete criminal history and its progression over the years.

As detailed in the Committee's factual analysis, much of the information that comprised Jeffrey's pre-sentence investigations ("PSI's) and written reports was flawed or inaccurate. There was a heavy reliance on Jeffrey's own assertions about his past, but little evidence that any of his statements were actually verified. In fact, much of the information in his PSI's conflicted with other PSI's that were prepared for other crimes. This flawed information was relied upon by sentencing judges, parole officers, prosecutors, psychologists, classification officers and parole board members who believed that the information was accurate and complete.

The Committee believes that it is critical for all state officials in the criminal justice system to have as clear a picture as possible of a defendant before making any sentencing, plea bargaining and parole decisions. The following recommendations outline the Committee's suggestions for improving the flow and availability of all relevant criminal history information to those charged with making the best decisions possible regarding sentencing, plea bargaining and parole for repetitive violent offenders in New Jersey.

A. Sentencing and Plea Negotiation

As previously noted, the Committee is not challenging the sentencing and plea bargaining decisions that were made in Jeffrey's cases. However, the Committee's examination of Jeffrey's history accentuated the fact that these decisions were made, unbeknownst to the decision-makers, with incomplete or inaccurate criminal history information. An accurate and complete understanding of a criminal's background, particularly for chronically violent offenders, is vital to effective sentencing and plea bargaining decisions.

1. Repetitive Violent Offenders

The Committee suggests that the use of more detailed information to evaluate criminals would be enhanced if the Attorney General and County Prosecutors establish

new standards that would categorize certain offenders as highly dangerous based on their overall criminal and/or psychiatric history. Special standards for evaluating and categorizing such chronically violent offenders will aid in ensuring that such individuals are dealt with to the fullest extent of the law, thereby further protecting the public. Just as organized crime defendants' files receive an "OC" sticker differentiating them from other criminals, a "violent offenders" marker -- both computerized on a defendant's Criminal Case History ("rap sheet") and on such a defendant's file -- should be utilized so that all state agencies are alerted to the chronic dangerousness posed by such a defendant. Similar to the previous career criminals program in New Jersey which was phased out when federal funding was cut, the Committee believes that such a program would again prove valuable by giving prosecutors and judges the opportunity to give heightened scrutiny to offenders with a history of violent offenses who pose a high degree of danger to the community and a strong likelihood that they will commit future crimes.

The specific standards for categorizing such defendants must be carefully structured. The creation of too broad a category of criminal defendants will overburden prosecutors who are already dealing with excessive caseloads and reduced staffs. The Attorney General and Prosecutors will have to carefully evaluate the criteria that will be utilized to categorize certain criminals as repetitively violent offenders. Certainly, the breadth of this category may be influenced by an evaluation of the resources necessary to give these cases the heightened scrutiny that they

demand. Although the Committee will leave the task of establishing the criteria to the Attorney General and Prosecutors, the Committee urges that predatory sexual offenders be included in this category. Special standards for evaluating and categorizing such repetitively violent offenders will aid in ensuring that cases involving these defendants will receive special attention, are dealt with to the fullest extent of the law and afford the public the greatest protection possible from individuals who have demonstrated a strong likelihood of committing future violent criminal activity.

## 2. Special Scrutiny for Repetitive Violent Offenders

Once an individual has been classified as a repetitive violent offender, the Committee suggests the case be handled by a specially designated, highly experienced prosecutor where practicable. Such a system of differentiated case management -- handling cases involving repetitive violent offenders differently -- will require that these cases carry with them special requirements that may not be necessary for the majority of cases prosecuted.

For instance, where a case involves a defendant who meets the repetitive violent offender standards, a specially designated prosecutor should handle the case from beginning to end. Such a system of vertical prosecution will ensure consistency in the handling of these special cases. The Jeffrey case demonstrates that such continuity would help protect against the possibility that vital information and an

intimate understanding of the case and defendant would be lost over time as a case is passed from one prosecutor to another. Cases involving repetitive violent offenders demand a seasoned prosecutor with experience in handling difficult investigations and cases. In addition, more in-depth background checks and a more intensive investigation of a case than is normally required should also be conducted in order to obtain the most comprehensive understanding possible of such a defendant's criminal history. The Committee also suggests plea negotiation and sentencing restrictions for repetitively violent offenders, including special efforts to prohibit sex offenders from avoiding Avenel evaluations and treatment as a result of plea negotiations. These added controls will aid in assuring maximum control of repetitively violent defendants for as long as possible.

### 3. Pre-Sentence Investigations

Pre-sentence investigations and the reports that are subsequently generated are heavily relied upon by sentencing judges, parole and probation officers, psychologists, prosecutors and others. The Committee's review of the PSI's in Jeffrey's case demonstrated that there is a high degree of variability in the format of the information provided as well as the quality and accuracy of the information in the reports. This investigation found that the informational deficiencies in Jeffrey's PSI's were passed on to other decision-makers, or relied upon as the basis for vital decisions by various state officials. Much of the information considered about Jeffrey was supplied by the

defendant and does not appear to have been verified. Because these reports are referred to so frequently, the Committee recommends that the following steps be considered to improve the quality of PSI's in New Jersey.

a. Statewide PSI Guidelines Must be Adopted

While examining Jeffrey's records, the Committee found that over the years the formats of presentence reports have changed frequently and there are no set standard requirements for the reports unless developed by individual counties. Standardized requirements for PSI's would aid in improving the flow of valuable information to those who must have a complete and accurate understanding of criminal defendants. The Committee recommends that uniform requirements for the production of presentence investigation reports be developed. These standards should require that the criminal history reports for any prior violent crime include a complete description of all offenses as well as comprehensive information regarding performance during prior periods of probations or paroles. Any indication of prior mental health problems should require that an in-depth psychological review is necessary. The results of any such psychological exams should also be detailed in the PSI's. One possible starting place for the creation of uniform PSI's would be the Uniform Defendant Intake Report which could be revised and utilized in the formation of standardized PSI reports.<sup>24</sup>

Although PSI's are heavily utilized, the Committee learned that it is often difficult for individuals in one county to obtain previously prepared PSI's from neighboring counties as quickly as necessary. Important information and a means of comparing information supplied by a defendant is lost when a prior report cannot be obtained in a timely manner. Obtaining prior PSI's permits the complete review of the circumstances surrounding a prior offense, instead of relying on a general description of the offense as it appears on a rap sheet. The current procedures for obtaining PSI's from other counties vary significantly. The Committee acknowledges the heavy criminal caseloads throughout the state, but recommends that each Criminal Case Management Office be required to identify a contact person who can obtain and provide PSI's to other Case Management Offices quickly. These requests should be considered a priority and the requesting office should not be required to send such requests by mail.

b. Verification of Information on PSI's is Critical

Throughout Jeffrey's entire criminal history the Committee found that Jeffrey's unverified statements to authorities about his past formed the basis for most of the information contained in his pre-sentence reports. One primary example of the inaccuracies of the information obtained from the defendant is visible in the information provided by Jeffrey to the court and bureau of parole concerning his mental health history. Three presentence reports were completed after the

defendant's nine year hospitalization for the 1974 homicide, yet no one was aware of Jeffrey's Trenton Psychiatric Hospital stay despite the questionable gap in his arrest record, employment record and residential history. After his release from TPH, Jeffrey continually told authorities that he had no history of prior hospitalizations or mental illness.<sup>25</sup> As a result, Jeffrey's PSI's had no reference to his lengthy court ordered institutionalization -- a vital piece of information for sentencing judges, prosecutors, public defenders, parole officers and the parole board.<sup>26</sup>

For each presentence report, the Committee thinks it imperative that case supervisors make at least one collateral contact with someone who can verify information provided by the defendant. At a minimum, the defendant's residence and employment must be verified. Any non-verified information received from the defendant should be noted as such in the PSI so that those depending on the information contained in the report will know how much weight to give each piece of data.

In addition, the Committee recommends that rap sheets include time spent in state psychiatric facilities pursuant to court orders in criminal matters and civil commitments of those with criminal records who have been committed involuntarily due to their dangerousness to themselves or others. We cannot afford to lose vital information about the psychological make-up and behavior of the defendant that may be found in psychiatric reports.

c. PSI Should not be Accepted by Court Unless it is Complete

The 1985 PSI that was considered by the court prior to Jeffrey's sentencing for his assault of a 12-year old boy failed to include any information concerning Jeffrey's detailed criminal history. The probation officer who prepared the report noted in the PSI that the rap sheet had been requested from the state police, but had not yet arrived. Despite the absence of this information, the court accepted the PSI and imposed Jeffrey's sentence.<sup>27</sup> The Committee recommends that the judiciary adopt a policy that no PSI be accepted by the court unless it includes the defendant's detailed criminal history. If this information has not yet been obtained at the time of sentencing, then the sentencing hearing should be postponed until such time that the information is included in the PSI and the report is deemed complete and acceptable by the court.

4. Plea Negotiations

The Committee believes that it is imperative for each prosecutor's office to establish procedures to closely scrutinize all crimes of violence and those committed by chronically violent offenders. All plea offers in such cases should be approved by a specially designated senior staff trial attorney or a central reviewing authority in each prosecutor's office.

Moreover, the Committee believes that if, as recommended previously, repetitive violent offenders in the state are categorized as such, that the plea bargaining process will be strengthened by the elevated level of information available regarding such defendants. For instance, a prosecutor may be less inclined to bargain away an examination at Avenel if he or she enters the plea bargaining process with the knowledge that they are dealing with a repetitive violent offender -- even if the present charge, evaluated as an isolated event, does not constitute a serious violent offense. Another possible solution would be to implement a system of top-charge plea bargaining wherein repetitively violent offenders would not be able to bargain away the most serious crime with which they are charged unless the Prosecutor or senior attorney reviewing authority deems it appropriate. As the Committee has stressed throughout its recommendations, it is vital to view each offense committed by a defendant in light of his complete criminal and psychiatric history.

The Committee understands that prosecutorial discretion is essential to the plea bargaining process and that plea negotiations are a vital component of the criminal justice system. However, it is also critical for those who are evaluating a criminal defendant for a subsequent offense to have complete information concerning earlier charges and previous plea bargains. The Committee believes that in order to eliminate any distortion of the seriousness of a defendant's record, it would be beneficial for both original charges and subsequent plea bargains to be noted on rap sheets and PSI's. Because the final charges in plea bargains may be less severe than the original

charges, an analysis of a defendant's criminal record must include both the original charges and the results of any subsequent plea negotiations. Moreover, when the original charges are sexual offenses or crimes against children, this information must be known to prosecutors, judges and parole personnel regardless of the results of any plea negotiation.

**B. Parole**

Jeffrey was paroled several times after his release from TPH. Most notable was Jeffrey's last parole in March 1993, just two months prior to his arrest for the murder of seven-year old D.G. In fact, during this parole Jeffrey reported regularly to his parole officer and even met with his parole officer on the day of D.G.'s homicide. The parole officer supervising Jeffrey did not know that the defendant had twice been arrested in the weeks prior to their May 1993 meeting.

The Committee's investigation found that there are too few parole officers to adequately supervise the number of inmates on parole. Moreover, the tools currently available to parole officers to monitor their parolees and ensure that they are complying with the conditions of their parole are lacking. Specifically, as addressed in the Committee's recommendations regarding records and identification, it is vital that a fully integrated computerized system be implemented so that immediately upon arrest, police officers may know the true identity of the individual arrested and will

also know whether that person is on parole or probation. Moreover, it is vital that supervising parole officers gain immediate access to information indicating that their parolees have been arrested.

1. Pre-Parole Process

The Committee recommends that the legislature consider returning to the former parole system under which there was no presumption of parole until it was established that an inmate no longer posed a threat to the community. The parole board members interviewed during the course of this investigation put forth compelling arguments that current parole legislation leaves them little discretion to deny parole in certain cases.

Specifically, the restriction of N.J.S.A. 30:4-123.56(c) upon the State Parole Board of the reconsideration of factors previously relied upon in the denial of a parole should be removed.<sup>28</sup> This statute, through its mandate that only "new" information may be considered upon a parole reconsideration is unduly restrictive. It forces the Parole Board to disregard the inmate's complete history in making its parole decision after the inmate's first opportunity for parole was denied. Significant factors such as prior criminal history, prior institutional disciplinary history, prior psychiatric adjustment and lack of previous participation in educational or other self-help programs must be ignored as the statute is currently written.

In addition, the information included in the pre-parole investigations reviewed by the parole board should be enhanced so that inmates who are repetitive violent offenders are identified as such. Likewise, more careful and thorough psychological examinations of inmates should be included in the material reviewed by the parole board before parole decisions are made. However, the Committee's investigation indicates that current staffing is inadequate to permit the type of in-depth examinations necessary to provide the parole board with the type of detailed analysis necessary. In fact, many of Jeffrey's pre-parole psychological examinations were conducted by institutional psychologists who volunteered to conduct the examinations on an over-time basis and did so in under thirty minutes.<sup>29</sup> Additionally, reports of all prior psychiatric examinations should be made available to and evaluated by any institutional psychiatrist or psychologist conducting a current evaluation of an inmate for parole release.

## 2. Work and Good Time Credits

Because work and good time credits influence parole decisions and the lengths of actual time served, the Committee believes that the system of awarding credits for work and good time needs to be reviewed. Thought should be given to revamping the system so that inmates have to affirmatively "win" credits as opposed to the current system which provides inmates with credits, whether or not they work, as long as

they do not commit a serious infraction whereby they lose credits already awarded.

### 3. Release into the Community

In cases, such as Jeffrey's, where an inmate is being paroled after having been convicted of committing an offense against a child, the Bureau of Parole Administrative Manual requires that the institutional parole officer supervising the case notify the Division of Youth and Family Services ("DYFS") of the parole plan of such an individual. In Jeffrey's case, his pre-parole investigation prior to his March 1993 parole did not disclose that he had been twice convicted for crimes against children and his pre-parole plan was not submitted to DYFS for acceptance.<sup>30</sup>

The Committee believes that it is critical that pre-parole investigations accurately and completely describe the criminal history of inmates, particularly those who have been convicted for crimes against minors. In addition, it is important that DYFS have the opportunity to review pre-parole plans for such inmates to ensure that such inmates are appropriately housed and employed after their release in areas that will not maximize the likelihood that future children will be victimized.

The Committee also believes that the enhancement of parolee support programs would aid in ensuring that placement cases (situations in which an inmate exists in the institution without a committed residence or job, and is often burdened with

numerous special parole conditions reflective of his societal deficiencies, such as Narcotics Anonymous, Alcoholics Anonymous, etc...) are properly supervised. Jeffrey was a placement case on two of his paroles. Although programs do exist to help parolees and other individuals who have served their maximum sentences and are released into the community, they are currently underfunded and understaffed.

#### 4. Maxing-Out

The Committee's investigation found that there exists a pervasive philosophy within the criminal justice system that it is better for inmates to be paroled before the expiration of their prison terms so that parole officers may maintain some level of supervision over inmates after they are released into the community. Although this philosophy is widely held, there is also a level of discomfort in paroling chronically violent offenders before the expiration of their prison terms. One possible solution would be to alter the current sentencing law to include the imposition of a period of "probation" after incarceration as is done in the federal system. Such a program would permit inmates to serve their full sentences while also providing transition assistance from institutional to civilian life.

### C. Conclusion

The Jeffrey case demonstrates that sentencing, plea bargaining and parole decisions in New Jersey would be strengthened by increasing the accuracy and detail of criminal history information currently available. The Committee recognizes that in this era of increased crime and tightened budgets that providing this level of information in all cases is preferable, but may not be possible. It is therefore strongly recommended by the Committee that special criteria be established to categorize repetitive violent offenders so that heightened scrutiny of such individuals will be undertaken. In order to safeguard the community, these criminals must be evaluated with a complete understanding of their entire criminal and psychiatric histories so that the threat that such repetitive violent offenders pose may be appropriately evaluated before sentencing, plea bargaining and parole decisions are made.<sup>31</sup>

### IV. RECORDS AND IDENTIFICATIONS

One of the failings that repeatedly emerged throughout the Committee's investigation was the prevalence with which relevant information concerning Jeffrey's criminal history, although in existence, failed to become known to those individuals who needed it most -- police, prosecutors, judges and parole officers. The Committee learned that throughout Jeffrey's criminal history each agency that encountered him maintained its own data concerning the defendant, yet this information was not easily

accessible to those who were encountering Jeffrey for subsequent arrests. As a result, the defendant was evaluated by individuals who did not have the benefit of Jeffrey's complete criminal history. Due to the breakdown in the timely and accurate communication of relevant information, many decisions were made concerning Jeffrey without a complete understanding of his criminal history or the threat that he posed to the community.

One such breakdown in the communication of crucial data occurred when Jeffrey was arrested in Newark's Penn Station under an alias in April 1993 for an indictable offense. Although he was fingerprinted at the time of arrest, it was not until after his well publicized May 1993 arrest for the murder of D.G. that his true identity for the April arrest was ascertained. Moreover, although on parole at that time and reporting regularly, his parole officer was unaware of Jeffrey's two arrests during this period of parole supervision. In its investigation of this aspect of Jeffrey's criminal history, the Committee notes its findings and the recommendations that it believes will significantly improve current records and identifications systems in New Jersey.

A. FINDINGS

- Fingerprint identification systems in New Jersey are less effective than they could be due to the excessive length of time that it takes for

contributing law enforcement agencies to send fingerprint cards to the New Jersey State Police ("NJSP") for identification.

- New Jersey statutes mandating when an individual must be fingerprinted should be expanded. Statutory requirements inhibit the compilation of complete criminal histories because only arrests for which an individual is fingerprinted are included on rap sheets.

- Because rap sheets only include arrests which are fingerprint supported, they should only be considered a starting point for constructing criminal histories, rather than a definitive document.

- The lack of full automation among all of the state's criminal justice agencies inhibits the sharing of valuable information that may effect custody, plea bargaining, sentencing, and parole decisions.

The Committee proposes the following improvements which it believes will significantly reduce, or in some cases eliminate, the systemic deficiencies it found in New Jersey's records and identification systems. As will be stated in more detail, several problems that the Committee identified in its investigation have already been corrected by the NJSP and the Administrative Office of the Courts.

## **B. Recommendations**

### **1. Fingerprint Identifications**

To eliminate the problems that currently exist in this area, the following changes are suggested by the Committee. The most significant change proposed in this area is the implementation of a Fully Integrated Fingerprint Identification System ("FIFIS"). The addition of FIFIS will drastically improve fingerprint identifications in the state and will eliminate the most serious deficiencies in the current system. In order to upgrade the current system to obtain FIFIS, a Live Scan Booking System should be added to the current fingerprint identification program. Live Scan is a computerized system that electronically sends an individual's fingerprints to the NJSP for identification at the time of arrest. This system will provide positive fingerprint identifications within minutes during the booking process. Currently, fingerprint identifications are made within an average of eleven days from the time of arrest, but in many cases such identifications are not completed until months after an arrest.<sup>32</sup>

In order to understand why Live Scan would make such a significant difference, it is important to understand the current system of fingerprint identifications in New Jersey. By statute, the NJSP has the responsibility and authority to maintain a central repository for all criminal records and fingerprints in New Jersey.<sup>33</sup> Although the system became somewhat automated in the 1970's with the advent of computerized

rap sheets detailing criminals' prior arrest records, fingerprint identifications remained an arduous task.<sup>34</sup> Prior to 1990, the only method available in New Jersey for fingerprint identification was the Henry System. This is an internationally utilized manual system that is used in conjunction with other descriptive information including name, date of birth, social security number, mug shot, and identifying scars, marks, and tatoos. This system is completely dependant on a fingerprint technician classifying and matching a fingerprint against all prints already within the system.<sup>35</sup> Unless a technician using the Henry System was given a list of potential subjects who might match the fingerprint they were seeking to identify, making positive identifications was extremely difficult and time consuming. Moreover, if a criminal used an alias when the fingerprint was taken, or a latent print was taken from a crime scene with unknown suspects, making positive identifications was further complicated.<sup>36</sup>

a. Automated Fingerprint Identification System

The NJSP significantly improved its fingerprint identification system in 1990 when it began utilizing an Automated Fingerprint Identification System ("AFIS"). AFIS utilizes laser technology in the comparison of fingerprints. When a fingerprint is placed into the AFIS system for identification, the computer compares that print with all fingerprints in its system. The identification process takes only minutes.<sup>37</sup> If the fingerprint, either a latent print or one taken from a fingerprint card, matches someone

who is already within the system, AFIS makes a positive identification or produces a list of potential matches/suspects, and indicates the individual's State Bureau of Identification number ("SBI").<sup>38</sup> Since 1990 when AFIS went on-line in New Jersey, a number of unsolved homicides have been resolved due to the computer's ability to identify latent fingerprints with all fingerprints in the NJSP's central repository. In most cases, the NJSP is able to make fingerprint identifications the same day that it receives the fingerprint for comparison. However, delay in receiving the cards for identification at the NJSP represents a critical systemic deficiency in the current records and identification system.<sup>39</sup>

b. Flawed Process

When an individual is arrested, the law enforcement agency that makes the arrest takes the person through a booking process. At this time, the officer obtains as much descriptive information about the arrestee as possible including name, current address, social security number, date of birth and any identifying marks, scars or tatoos. This information is obtained either verbally or through a visual identification of the arrestee's possessions. If the arrest is for a crime that statutorily requires fingerprinting, prints will also be taken at that time. All of the descriptive data is then placed on two documents -- the fingerprint card containing the prints and the arrest report. The arrestee is also photographed at that time.<sup>40</sup> It is at this point in the process that the current system's deficiencies become glaringly obvious.

The fingerprint cards and mug shots are then forwarded by the contributing agency by regular U.S. mail to the NJSP's central repository for identification. Although the contributing agency has an obligation to send the cards to the NJSP for identification as quickly as possible, in reality, this does not always result in a prompt dispatch.<sup>41</sup> According to the NJSP, each contributing agencies' financial and personnel resources, in addition to the volume of arrests made by the agency, influence the time-frame within which the fingerprint cards are sent to the NJSP.<sup>42</sup> Although the NJSP provides self-addressed stamped envelopes for the arresting agencies to mail their fingerprint cards in for identification, some cards are not mailed for months. The delays are caused by a number of factors; not enough personnel to type data onto the fingerprint cards, a high volume of arrests overwhelming underfunded and understaffed agencies, as well as a lack of effort on the part of the agency to submit the cards as quickly as possible.<sup>43</sup> In addition, when the cards are received by the NJSP, the quality of the prints are often so poor that even AFIS cannot make an identification. In such cases, the NJSP will mail the fingerprint card back to the contributing agency and ask that the individual be fingerprinted again. In most cases, the individual is no longer in police custody and finding this individual to fingerprint again is of low priority to the arresting agency.<sup>44</sup>

Although normal procedure is to mail the fingerprint cards by regular mail, when a contributing agency takes the initiative to make an identification quickly, there are several ways that this may be done. The contributing agency can either hand

deliver the fingerprint card to NJSP headquarters for immediate processing, or they can take the prints to one of several satellite AFIS systems that may be within closer proximity to the arresting agency. In addition, the prints may be sent via facsimile to a high density printer at NJSP headquarters, however, the fingerprint quality must be extremely good for this method to work.<sup>45</sup> Most fingerprints, however, are sent by regular mail for identification.

## 2. Live Scan Will Eliminate Delayed Fingerprint Identifications

In order to eliminate delayed fingerprint identifications it is necessary to fully automate the current system. To accomplish the goal of creating a Fully Integrated Fingerprint Identification System ("FIFIS"), Live Scan must be added to the AFIS system. Live Scan is a fully automated booking system that is computer driven through fingerprint processing.<sup>46</sup> When an individual is arrested and is booked through Live Scan, the fingerprint image is taken directly by computer -- like a copy machine duplicating an image. Live Scan instantaneously lets the arresting officer know whether or not the fingerprint quality is acceptable or whether the individual should be printed again. The fingerprints, along with a mug shot and any information obtained upon arrest are transmitted at that time to the central repository by digital transmission where they are run through AFIS. Although there might be a brief delay if there are a particularly large number of transmissions being sent to the NJSP at one time, Live Scan will permit positive fingerprint identifications to be made in most cases

within minutes. The positive identification and rap sheet are then immediately transmitted back to the arresting agency who will most probably still have the individual in question in custody. The computer also produces multiple hard copies of the fingerprints so that high quality prints may be placed in appropriate files.<sup>47</sup>

The NJSP is currently in the process of seeking federal grant money to place Live Scan in 16 major urban areas and three NJSP facilities throughout New Jersey where there is a high concentration of recidivism. If the NJSP is successful in obtaining this grant, they will also set up several regional booking stations so that areas not initially targeted for the program could also have access to Live Scan.<sup>48</sup>

Live Scan would eliminate many of the problems that currently exist with fingerprint identifications in New Jersey. The benefits to all levels of law enforcement are clear:

- Immediate Positive Fingerprint Identifications At The Time of Arrest While The Individual Is Still In Police Custody
  
- Recidivist Criminals Will Be Unable To Conceal Their Records By Using Aliases
  
- Immediate Access By Police And Prosecutors To Criminal History Information Including Parole Status And Threat Posed To The Community If The Arrestee Is Released From Custody
  
- Access To Information Which Will Aid In Obtaining Search Warrants At The Time Of Arrest

**●Eliminates Costly And Time Consuming Paperwork Which Will Permit Contributing Agencies To Allocate More Resources To Crime Fighting**

It is impossible to look back on Jeffrey's criminal history and state for certain that a Live Scan system would have caused the disposition of the arrests for which he used aliases to have concluded differently. However, it is clear that Jeffrey's last known arrest in April 1993, one month prior to the homicide of D.G., was under an alias. It is also clear that although Jeffrey was fingerprinted at that time, his true identity was not discovered until after his arrest for the D.G. homicide in May 1993. A Live Scan booking system would have, at a minimum, let the arresting officers for his April 1993 arrest know that Jeffrey had lied about his identity, was on parole at the time of his arrest and would have provided them with his lengthy criminal history within minutes of that arrest.

**3. Statutory Requirements for Fingerprinting**

New Jersey Statutes mandate the specific offenses for which an individual is to be fingerprinted. The statute currently states that fingerprints must be taken in the following situations:

- 1) When an individual is arrested for an indictable offense;
- 2) When an individual is believed to be wanted for an indictable offense;

- 3) When an individual is a habitual criminal;
- 4) After a complaint has been filed charging someone with an indictable offense;
- 5) When an individual is arrested for shoplifting;
- 6) When an individual is arrested for a non-indictable offense, but whose identity is in question;
- 7) When an individual is arrested for a narcotics or dangerous drug offense, whether or not an indictable offense.<sup>49</sup>

Because rap sheets only include arrests which are fingerprint supported and only the above noted offenses require fingerprinting, it is possible for recidivist criminals to be arrested for a number of offenses which will never make it on to their rap sheets. Information concerning arrests for serious crimes such as contempt and non-indictable assaults in domestic abuse cases, are relevant to police, prosecutors and judges who must have a complete understanding of an individual's criminal history before releasing a criminal from police custody, imposing meaningful sentences and entering into plea negotiations.

The Committee urges that the legislature consider expanding the scope of offenses requiring fingerprinting. Broadening the current statutory requirements will enable law enforcement to create more complete criminal histories by including more data on rap sheets.<sup>50</sup>

Because rap sheets only contain arrests that are fingerprint supported, the possibility exists that a number of offenses committed by a criminal will never be noted on their rap sheet or otherwise considered by authorities who are evaluating an individual's past record. The Committee therefore recommends that rap sheets only be considered a starting point for constructing criminal histories.

C. Rap Sheets Should Not Be Considered Definitive Documents

Throughout Jeffrey's criminal history, the Committee learned that little, if any investigation was conducted to supplement the information on Jeffrey's rap sheet or verify any of the information that he provided to authorities about himself. Moreover, the format of the rap sheets contained little information concerning the dispositions of the arrests listed. For example, although the 1974 homicide indictment was noted on Jeffrey's rap sheet as being dismissed, there was no information concerning the reason for the dismissal.

1. The Rap Sheet Process

Rap sheets are created by the NJSP's computerized criminal history system. After a fingerprint card has been run through the AFIS system, the cards are then processed by the NJSP's Data Reduction Unit. It is at this point that a rap sheet is either created or updated.<sup>51</sup> The Data Reduction Unit reduces the information on the

fingerprint card into a computerized format. This information is placed into the computer under the arrestee's SBI number with information concerning the new arrest, any new aliases, dates of birth, or other information obtained at the time of arrest. The report that is generated after the addition of the new arrest information becomes the individual's rap sheet.<sup>52</sup> The NJSP does not do any investigation to verify any of the information on the rap sheet. The only verification that the NJSP conducts of the information is a fingerprint identification -- a positive match that the fingerprints sent to the NJSP matches another set of fingerprints already in the central repository.<sup>53</sup>

Currently, when the Data Reduction Unit enters the information from a fingerprint card into its computer to create or update a rap sheet, an electronic message is automatically generated over the Criminal Justice Information System back to the arresting agency. This message is actually the first page of the individual's rap sheet which is electronically sent to the contributing agency's printer. Once this information is sent to the contributing agency, the police or prosecutor has the burden to further investigate any conflicting data that may exist on a rap sheet.<sup>54</sup>

## 2. Improvements Already Implemented

The Committee notes that several recommendations concerning rap sheets that it would have made based on its investigation were implemented by the NJSP in

1993. Prior to 1993, rap sheets were difficult to read and understand because the information was coded and used difficult abbreviations. The codes and abbreviations have since been eliminated in favor of easier to understand definitions of crimes as defined by the New Jersey Statutes. Also included on rap sheets at this time are the applicable statute numbers and a phone number where additional information or explanation can be obtained. Moreover, critical information concerning an individual's custody status including parole, probation and which office has supervisory responsibility for the individual were added to rap sheets in 1993. These represent substantial improvements over the old rap sheet format which provided cryptic and often insufficient information.

### 3. Necessity of Supplementing Information on Rap Sheets

Because only fingerprint supported arrests are included on rap sheets, the Committee recommends that the following additional searches be done by probation officers creating pre-sentence investigation reports and by prosecutors evaluating an individual's criminal history.

First, a defendant's name and all known aliases should be searched on the Promis/Gavel system. Promis/Gavel is a computer system operated by the Administrative Office of the Courts and serves as the prosecutor's management

information system. Promis/Gavel may provide information that the defendant is or was involved in other cases at the county level for which he was not fingerprinted. In addition, a similar search should be run on CCIS. This search will provide data regarding arrests for which the defendant may have spent time in jail, but for which he was not fingerprinted. Also, if an individual is on parole or probation, the supervising officer should be contacted regarding their knowledge of and contacts with the defendant. Last, a manual criminal records search should be conducted in counties where defendant may have committed crimes that are not contained on his rap sheet or included on Promis/Gavel.

D. Full Automation of State's Criminal Justice System will Provide a Powerful Tool to Law Enforcement

1. Technology Already Implemented

As previously stated, throughout Jeffrey's lengthy criminal history, the Committee found that although relevant information about his past crimes existed, this data was often not easily accessible to those individuals evaluating Jeffrey for subsequent crimes. A number of these problems have been solved over time through the advent of technology. For example, now rap sheets include valuable information about an individual's parole status. In addition, in 1993 an electronic link was established between the NJSP, Department of Corrections and the Administrative Office of the Courts.<sup>65</sup>

The interface between the NJSP's central repository, the Administrative Office of the Court's Promis/Gavel System, and the Department of Correction's Offender Based Correctional Information System ("OBCIS") is a valuable tool. Since March 1993, all information on OBCIS is linked to the central repository and is now automatically included on a person's rap sheet.<sup>56</sup> In addition to custody, parole, and probation information being included in criminal case histories, now, whenever an inmate is released on parole, an "arrest flag" is built into the computer system by attaching an electronic message to an individual's SBI number. Whenever an individual with such a "flag" is arrested and has a fingerprint card processed by the NJSP, an electronic notification is automatically sent to the individual's originating agency (ie. supervising parole office). The originating agency receives an electronic message sent to their computer printer notifying them that one of their parolees has been arrested. Although this automatic notification is a tremendous improvement over the former system, without Live Scan, this flagging system is far less effective than it could be. This system functions only with fingerprint supported arrests and is activated only when fingerprint cards are processed through AFIS by the NJSP. Therefore, persons arrested, but not fingerprinted, fall through the cracks. In addition, the delay caused by the current system of sending the fingerprint cards to the NJSP by regular mail for identification further reduces the speed and effectiveness of this process.

The advent of Promis/Gavel has also been significant. Due to this system, rap sheets now contain more detail concerning the disposition of cases at the county level. Moreover, one of the Committee members has already worked closely with the NJSP to improve rap sheet formats after learning through this investigation that the CCH's were deficient in providing adequate information concerning dispositions. As a result, "reason codes" are now included on rap sheets. For instance, if an indictment is dismissed due to a finding that an individual has been found incompetent to stand trial, that "reason code" is now noted on the rap sheet. This new system adds the disposition data within one day of the actual court hearing. Previously, this reporting process was done manually by a written reporting system from the courts to the NJSP and took months, if not years, to update the criminal case histories.<sup>57</sup>

At the municipal court level, a system similar to Promis/Gavel has been implemented. This system, called the Automated Complaint System ("ACS") has linked 250 courts to the NJSP. ACS sends data concerning the disposition of municipal court cases directly to the NJSP within a day of disposition. The Administrative Office of the Courts is currently working with the NJSP to link the 350 non-computerized municipal courts to this system and is also working on a similar link with the family courts.<sup>58</sup>

2. Psychiatric Histories In Certain Cases Should be Included On Rap Sheets

The Jeffrey case demonstrates that information concerning his court ordered eight-year institutionalization would have been relevant to those individuals who subsequently came into contact with Jeffrey as a result of his prosecutions for crimes committed after 1983. However, Jeffrey's rap sheet contained no such information concerning this period of time although he was still under the authority of the criminal justice system during the eight years that he was a patient at TPH.

Since this investigation began in 1993; changes have been made to improve the information contained on criminal case histories, however, there are gaps in this current system which should be tightened so that important psychiatric information is available to those who must evaluate the criminal history of a defendant.

One such gap occurs when an individual is arrested and is sent to a psychiatric institution by reason of a court order and the case is concluded by a plea agreement. In such cases it is possible that a subsequent plea agreement will result in a defendant's record reflecting the end result of the plea negotiation, but not the court ordered institutionalization. Another such void in information is visible when individuals with criminal histories are involuntarily civilly committed based on a judge's finding that they are dangerous to themselves or others. Even though such court ordered institutionalizations are not the result of a criminal arrest, there should be

some way to memorialize this information so that it will be reflected in criminal case history information. If such an individual is subsequently arrested, the court ordered hospitalization may be relevant to the disposition of the arrest. One possible solution may be to require fingerprint identifications for involuntary committees so that court ordered institutionalizations may be included on a defendant's rap sheet. It is important that prosecutors, judges and police have access to information alerting them to the fact that a criminal defendant has a psychiatric history. The Committee recommends that further efforts be made to find a way to incorporate this data into the current criminal case history system or a newly created database which could be searched for such information.

### 3. More Automation is Recommended

During its investigation, the Committee learned that there exists a deficiency in the computerized information currently within the NJSP's central repository. When the NJSP computerized its criminal case history and master name index systems in the 1970's, the decision was made at that time not to include those criminals who were born prior to 1954 or who were arrested prior to 1972 due to the huge number of individuals who had to be entered into the computer. As a result, between 300,000 to 400,000 individuals that fall within this category were not included in the NJSP's computerized central repository. The NJSP has launched an aggressive campaign to obtain state funding to enter these individuals into the computerized

central repository so that it would include all individuals with fingerprint supported arrests in the state.<sup>59</sup> As of the writing of this report, the NJSP reports that it has just completed this process and all such individuals are now entered into the computerized system.

In order to complete the process of computerizing New Jersey's Criminal Justice System, an Automation Policy Committee was created in 1990 by the Attorney General's office. This Committee contains representative from the Department of Corrections, the Judiciary, the NJSP, the Division of Criminal Justice, and the Office of Telecommunications and Information Systems.<sup>60</sup> The purpose of the Automation Policy Committee is to coordinate automation among all of the state's criminal justice agencies, to increase efficiency, and to ensure complete and accurate records. The Committee to Review the Conrad Jeffrey Matter supports the Automation Policy Committee's goal of creating a fully automated information system that enhances the links between criminal justice agencies already created and completes those that are not yet fully automated.

#### E. Conclusion

Records and Identification systems have improved greatly since Jeffrey's 1974 homicide arrest. However, even though significant strides have been made, more improvements are necessary. Although the Committee would like to see all of its

recommendations in this area implemented, the addition of Live Scan to the current fingerprint identification system should be given serious consideration and support. This tool will aid the criminal justice system at all levels and will give law enforcement a significant advantage in immediately accessing relevant criminal history information and the threat posed to the community by an individual at the time of arrest.

## ENDNOTES

1. DN 2186-2187.
2. DN 2186-2187.
3. DN 1780; DN 1825j; DN 1857; DN 1980; DN 2065-66; DN 2376; DN 2472-2475.
4. Certified Interview Statement of Robert Sadoff, at p.34.
5. Jackson v. Indiana, 406 U.S. 715 (1972).
6. Medina v. California, 505 U.S. 437 (1992).
7. As is addressed later in this volume of the report, the Committee recommends a system of vertical prosecution and differentiated case management for cases involving complex psychiatric issues and cases involving repetitive violent offenders.
8. DN 91; DN 103-104; DN 1104.
9. Aponte v. State, 30 N.J. 441, 450 (1959).
10. Id.
11. Id. at 450.
12. DN 1825b; DN 1825e; DN 1825aa; DN 1825ae; DN 2136-2137; DN 2142.
13. Certified Interview Statement of Michail Rotov, at pp 5-6; 9; 24.
14. DN 361-362; DN 1091; DN 1680-1682; DN 1717; DN 1885; DN 2082-2083; DN 2088.
15. Certified Interview Statement of Michail Rotov, at pp. 5, 9.
16. There were large gaps of time between Jeffrey's scheduled competence hearings and any communication between the court, prosecutor, and psychiatric hospital. DN 2107; DN 2109; DN 2112; DN 2136-2137; DN 2141; DN 2143.

17. DN 3231-3233.
18. DN 3233.
19. ABA Criminal Justice Mental Health Standards 7-4.5 citing B. Ennis & R. Emery, The Rights of Mental Patients 101 (1978); Pizzi, Competency to Stand Trial in Federal Courts: Conceptual and Constitutional Problems, 45 U.Chi.L.Rev. 21 (1977).
20. ABA Criminal Justice Mental Health Standards 7-3.14.
21. Jackson v. Indiana, 406 U.S. 715, 92 S.Ct. 1845 (1972) requires only that if a defendant is committed solely because of his incapacity to stand trial, if no substantial probability exists that a defendant will be restored to competence within the foreseeable future, or if the treatment provided does not succeed in advancing the person to that goal, the State must institute civil commitment proceedings, it wishes to retain the defendant, or it must release the defendant. In neither event should the statute require dismissal of the indictment.
22. ABA Criminal Justice Mental Health Standards 7-4.13.
23. ABA Criminal Justice Mental Health Standards 7-4.4.
24. Uniform Defendant Intake Report attached as Exhibit 4.
25. DN 199-204; DN 245-253; DN 289-294.
26. DN 199-204; DN 245-253; DN 289-294.
27. DN 3309-3310.
28. N.J.S.A. 30:4-123.56(c).
29. Certified Interview Statement of Chatzinoff, Aug. 13, 1994, pp.56-58, 63, 65.
30. DN 722.
31. This Committee acknowledges that a Committee has been appointed by the Governor to examine the parole system in New Jersey. The Jeffrey Committee believes that it would be beneficial for those individuals examining the parole system to review this Committee's findings and recommendations.
32. Certified Interview Statement of Major William W. Coblentz, Mar. 15, 1995, p.5 [hereinafter cited as "Coblentz (3/15/95)"].

33. N.J.S.A. 53:1-12.
34. Coblentz (3/15/95), p.5.
35. Coblentz (3/15/95), p.5.
36. Coblentz (3/15/95), p.5.
37. Coblentz (3/15/95), p.4.
38. Coblentz (3/30/95), p.9-10.
39. Coblentz (3/15/95), p.9.
40. Coblentz (3/15/95), pp. 6-7; Certified Interview Statement of Captain Dan Hughes & Lieutenant Frank McNulty (3/31/95), p.2, [hereinafter "Hughes/McNulty (3/31/95)"].
41. Coblentz (3/15/95), p.9; Hughes/McNulty (3/31/95), pp.9-10.
42. Coblentz (3/15/95), p.7.
43. Coblentz (3/15/95), p.7.
44. Coblentz (3/15/95), pp.7-8.
45. Coblentz (3/15/95), pp.7-8.
46. Coblentz (3/15/95), p.13.
47. Coblentz (3/15/95), pp.13-14.
48. Coblentz (3/15/95), p.14.
49. N.J.S.A. 53:1-15 and 53:1-18.1
50. Hughes/McNulty (3/31/95), p.8.
51. Hughes/McNulty (3/31/95), p.3.
52. Hughes/McNulty (3/31/95), pp.3-4.
53. Hughes/McNulty (3/31/95), pp.3-4.
54. Hughes/McNulty (3/31/95), p.4.
55. Hughes/McNulty (3/31/95), p.7.

56. Hughes/McNulty (3/31/95), p.7.
57. Hughes/McNulty (3/31/95), pp. 5-7.
58. Hughes/McNulty (3/31/95), p.10.
59. Coblenz (3/15/95), pp.8-9.
60. Coblenz (3/15/95), p.11.

