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How Serious is Serious Crime?

*Albert J. Reiss, Jr.**

I. INTRODUCTION

Modern democracies increasingly base their crime control and criminal justice policies upon society's general knowledge about crime. In the United States, there are three major sources of public knowledge about crime: governmental statistical studies, the news media, and scientific research. Unfortunately, these information systems limit the public's knowledge about how much crime actually occurs and its understanding about the kinds of crime that it should consider serious. By focusing on particular types of serious crime and ignoring the possibility that other types of crime also might be serious, crime information sources give society a myopic view of the crime problem in the United States. Because the information that is available to the public and to public policymakers is so narrowly confined, neither the public nor the policymakers have enough information to evaluate effectively the amounts and types of serious crimes that are prevalent in today's society.

This Article examines the information systems that are available to the American public. Part II of the Article discusses crime information sources and limitations arising from their excessive dependence upon the same sources of information. Parts III and IV of the Article focus on the information and methods that American society depends upon to determine the amount and seriousness of "serious" crime. These parts of the Article criticize society's present modes of crime assessment by evaluating public perceptions of crime under several standards for determining the amount of harm that results from different criminal acts. In part V, the Article examines traditional perceptions about offenders and their patterns of offending and suggests that group and juvenile offenses are more prevalent and more serious than the public and the government consider them to be. Finally, the Article concludes in part VI that the crime reporting system has paid insufficient attention to

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juvenile offenders and to crimes of violence against property. This part concludes that the shortcomings of inaccurate and incomplete crime information pose problems for both the effectiveness of criminal justice systems and the communities that these systems attempt to safeguard.

II. CRIME INFORMATION SOURCES

The methods that American society uses to gather and process information about crime largely determine the extent and use of society's knowledge about crime. As stated above, three major organized sources of information about crime exist in the United States: specialized, institutionalized, and organized systems for gathering information on crime, criminals, and criminal justice;¹ journalistic investigation and crime news reporting;² and scientific investigation of crime phenomena.³ Each organized intelligence system shapes society's knowledge about crime phenomena in ways that blind citizens to the nature of crime, its seriousness, and its control. This part of the Article reviews the type of crime information that each system generates and then discusses the implications of society's reliance on these systems for crime control and

1. See *infra* notes 4-8 and accompanying text. The major organized systems for collecting and reporting information about local crime in the United States are local police and sheriffs' departments. These departments, in turn, report to Uniform Crime Reporting (UCR), which is a crime reporting system within the Federal Bureau of Investigation (FBI). Uniform Crime Reporting aggregates these local reports and publishes national statistics on crime in the United States. The system submits quarterly and annual reports in a Justice Department publication that is entitled FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES [hereinafter cited as UNIFORM CRIME REPORTS]. This system of organized collection and reporting is based on the institutionalized rules and procedures of the Uniform Crime Reporting system. See *infra* note 6. Both the states and the federal government also report crime information that they have acquired through the investigative activities of the law enforcement divisions of their executive departments or independent regulatory bodies. In addition, the United States Department of Justice publishes NATIONAL CRIME SURVEYS (NCS), which are annual reports that provide national statistics on major crimes against persons and households. See *infra* note 5.

2. See *infra* notes 9-16 and accompanying text. For a discussion of citizens' and governmental officials' dependence on the mass media, rather than on official crime statistics, for their information on crime, see Funkhouser, *The Issues of the Sixties: An Exploratory Study in the Dynamics of Public Opinion*, 37 PUB. OPINION Q. 62 (1973). For an interesting study of how the news media creates crime waves, see Fishman, *Crime Waves as Ideology*, 25 Soc. PROBS. 531 (1978) (studying a major "crime wave against the elderly" in New York City in 1976).

3. See *infra* notes 17-23 and accompanying text. The disciplines of criminology, law, and the social sciences are the major sources of scientific investigation into crime as a social phenomenon. The results of studies in these fields are published as articles in major scientific journals, monographs, and reports by agency sponsors of research.

criminal justice.

A. Institutionalized and Organized Intelligence

Although all levels of law enforcement and the criminal justice system in the United States collect information and make decisions about crimes, only the police have an organized system to collect, process, and report this information locally and nationally. Although local police collect information on a large number of different crimes, the institutionalized classification and reporting system of Uniform Crime Reporting (UCR), which is a function of the Federal Bureau of Investigation in the United States Department of Justice, principally determines the way in which they organize that information for reporting.⁴ Only one other major, institutionally organized mode of collecting information on crime exists: the National Crime Survey (NCS) of crime victims.⁵ The NCS collects and reports information on victimizations by crime for a sample of United States persons and households. These national systems provide a selective and imperfect picture of crime because they both underestimate and overestimate the amount of crime and the risk of victimization. As discussed below, several components of the systems contribute to this effect.

In its reporting on the amount of crime, for example, UCR considers only the major Index Crimes against persons—murder, nonnegligent manslaughter, forcible rape, robbery, and aggravated assault—and against property—burglary, larceny-theft, motor vehicle theft, and, since 1978, arson. Similarly, the NCS reports only

4. A survey by the author of the annual reports in 1978 of police departments in cities with 100,000 or more inhabitants disclosed that even though all the departments provided information on Part I offenses, *see infra* note 6, which they regularly report to the FBI for Uniform Crime Reporting, less than one report in five included detailed information on Part II offenses, *see infra* note 6, which the police are not required to report. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTING HANDBOOK, ch. III (1980) [hereinafter cited as UNIFORM CRIME REPORTING HANDBOOK].

5. *See* LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, U.S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION IN THE UNITED STATES (annual surveys of victimization by crime). The United States Bureau of the Census also has collected information for the Justice Department on victimization by crime in selected major American cities. These city surveys, however, have been discontinued. For three examples, *see* NAT'L CRIMINAL JUSTICE INFORMATION AND STATISTICS SERVICE, U.S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION SURVEYS IN CHICAGO, DETROIT, LOS ANGELES, NEW YORK AND PHILADELPHIA, A COMPARISON OF 1972 AND 1974 FINDINGS (1976); NAT'L CRIMINAL JUSTICE INFORMATION AND STATISTICS SERVICE, U.S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION IN EIGHT AMERICAN CITIES, A COMPARISON OF 1971/72 AND 1974/75 FINDINGS (1976); and NAT'L CRIMINAL JUSTICE INFORMATION AND STATISTICS SERVICE, U.S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION SURVEYS IN 13 AMERICAN CITIES (1975).

the major crimes against persons—forcible rape, robbery, assault, and larceny from the person—and against households—burglary, larceny from the household, and motor vehicle theft.⁶ In addition, although UCR provides information on Part II crimes⁷ and misdemeanors to local police departments, it reports national statistics on only the number of *arrests* for these crimes. Moreover, UCR national reports on major crimes are reported at a highly aggregated level. This aggregation cloaks information on both the number of crime incidents that deal with attempted rather than completed offenses and the amount of injury or economic loss to persons or organizations.

Besides being deficient in categorizing the types of crime to be reported, national statistics simply are compiled over too large a geographic area to be of any value for individuals to calculate their risk of victimization or the chances of injury or loss when victimized. These numbers, nevertheless, often are used for precisely this purpose. Police statistics, moreover, do not account for the substantial proportion of all crime victimizations that are not reported to the police.⁸

Both the failure of institutionalized reporting systems to include many frequently occurring kinds of crime and their failure to

6. Uniform Crime Reporting adopted a standard classification of offenses in 1932 to ensure that information compiled on crime would follow uniform procedures of classification. Part I offenses comprise criminal homicide (murder, nonnegligent manslaughter, and manslaughter by negligence), forcible rape, robbery, aggravated assault, burglary (breaking and entering), larceny-theft, motor vehicle theft, and arson. For a definition of Part I offenses and the procedures for their classification, see *UNIFORM CRIME REPORTING HANDBOOK*, *supra* note 4, chs. I & II.

Almost all offenses under state and local law that cannot be classified as Part I offenses are classified in 26 other offense classes and are called Part II offenses. *See id.*, ch. VI. Among the common crimes UCR reports as Part II crimes are simple and minor assaults; fraud; vandalism; receiving, buying, and selling stolen property; sex offenses; drug abuse violations; driving under the influence of alcohol; and offenses against the family and children. *Id.*

Part I offenses should not be confused with UCR Index Crimes. Index Crimes consist of all Part I offenses other than negligent manslaughter. For a definition of Index Crimes, *see id.*, ch. I; *see also* *UNIFORM CRIME REPORTS*, *supra* note 1. For information on the addition of arson as an Index Crime, *see* *UNIFORM CRIME REPORTS*, *supra* note 1, at 36-37 (1981) (annual report for 1980).

7. *See supra* note 6.

8. *See* *BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION IN THE UNITED STATES, 1979*, at 15-17 & tables 87-103 (1981) [hereinafter cited as *CRIMINAL VICTIMIZATION*] (1979 victimization rates of reporting to the police) (the Bureau of Justice Statistics was formerly a program within the Law Enforcement Assistance Administration). In 1979, for example, victims reported to the police only 30% of all estimated crimes against persons and only about 36% of all estimated household crimes. *Id.* at 15.

inform the public of the consequences of these crimes for citizens distort the public's knowledge and conclusions about crime. The dearth of information on violent crimes towards property and on victims and offenders known to the police has an especially problematic effect on the formulation of criminal justice and crime control policies. In particular, because institutional sources of crime statistics ignore the nature and amount of victimization of organizations and communities by multiple victimization and offending, communities are unlikely to be able to respond appropriately to these problems.

B. Journalism and Crime News Reporting

A recent survey on crime news examined eight newspapers in Chicago, Philadelphia, and San Francisco,⁹ and attempted to describe both how and why the daily news media report crime as they do. The survey indicated at the outset that crime news is easy to obtain, since reporters can gather it almost entirely from police and crime reports.¹⁰ Consequently, the police—not the television and newspaper reporters—are the major gatekeepers of crime news. Journalists' reliance upon police sources has two rather obvious, yet extremely significant, effects on the public's knowledge about crime. First, crimes that citizens do not report to the police, as well as crimes that police do not disclose to the media, generally do not become known to the public. Second, citizens receive police portrayals of fact, rather than descriptions from independent investigations by journalists.

The survey also suggested that the presentation of crime news affects the competitive position of a newspaper.¹¹ Thus, newspapers that devote more space than their competitors to violent crimes, and that more often report these crimes in front page headlines, tend to lead their rivals in both circulation and stability.¹² Some newspapers also devote substantially more space to each crime story that they carry. Typical stories on crime portray violence, and more than half of these news items report murders. Although they sometimes report crime stories about arson—usually ones that also include charges of manslaughter—newspapers generally focus on violent crimes against persons

9. Gordon & Heath, *The News Business, Crime, and Fear*, in REACTIONS TO CRIME 227 (D. Lewis ed. 1981).

10. *Id.* at 228.

11. *Id.* at 233.

12. *Id.* at 237-38, tables 11.2 & 11.3.

more commonly than other crimes.¹³

Finally, the survey offered evidence that readers of those newspapers that devote the largest proportion of their overall space to crime are more afraid of crime than are readers of other papers in their competitive market.¹⁴ The reason for the phenomenon is unclear. On the one hand, readers who initially possess higher levels of fear of crime may select papers that report large amounts of crime news because of their interest stemming from this fear. Under this interpretation, newspapers continually reinforce their readership's anxiety about crime. On the other hand, the media may engender public fear by their selection and reporting of crime news.

In sum, the news media do relatively little to generate their own information on crime in society.¹⁵ They depend primarily upon police sources to develop images of violent crimes against persons—particularly crimes in which serious bodily injury and death occur. In contrast, newspapers devote relatively little space to the portrayal of property crimes, including crimes of violence against property, except for stories about arsons that present an actual or potential danger to human life.¹⁶

C. *Scientific Investigation of Crime Phenomena*

Like the news media, scientific studies of crime and criminal justice rely to a substantial degree upon institutionally organized collections of information by law enforcement and criminal justice agencies.¹⁷ This dependence affects both the choice of problems for scientific studies and their conclusions. To avoid these consequences, scientific researchers have expended much additional ef-

13. *Id.* table 11.5.

14. *Id.* at 246.

15. Although no national statistics exist on sources of information on crime, individual studies support this finding. Mark Fishman, for example, reports, "Media organizations know of crime almost exclusively through law enforcement agencies. The media's major source of supply for crime incidents in New York City is the New York Police Department's police wire. Crime dispatches over this wire are largely reports of street crimes: robberies, burglaries, shootings, stabbings, and other assaults." Fishman, *supra* note 2, at 542. Fishman also provides information on the distribution of incidents available to New York newspapers through the police wire. *Id.* at 539.

16. *See id.*

17. For excellent discussions of the use of official statistics in studies of crime, see R. CARR-HILL & N. STERN, *CRIME, THE POLICE AND CRIMINAL STATISTICS: AN ANALYSIS OF OFFICIAL STATISTICS FOR ENGLAND AND WALES USING ECONOMETRIC METHODS* (1979); R. HOOD & R. SPARKS, *KEY ISSUES IN CRIMINOLOGY* (1970); Biderman & Reiss, *On Exploring the "Dark Figure" of Crime*, 374 *ANNALS* 1, 1-7 (Nov. 1967).

fort on devising information systems that are independent of these institutionally organized systems. The principal types of independent information systems are the self-report surveys of victimization by crime¹⁸ and of offending.¹⁹ Unfortunately, researchers have not yet undertaken victim surveys to calculate measures of risk of victimization,²⁰ and self-report surveys of offenders are only beginning to be useful for estimating individual incidents of offending. Thus far, self-report surveys of offenders have not been very useful for estimating the prevalence of offenders in a population.²¹ In addition, a recent spate of research on white-collar crime has made little progress in estimating the occurrence or consequences of white-collar crime, although researchers know more now about its processing in criminal justice and other systems than they knew previously.²²

Research on juvenile crime also has failed to meet some important public information needs. Although research on adults has focused primarily on estimating crime and victimization and on evaluating deterrent and treatment strategies of crime control, researchers of juvenile crime have concentrated disproportionately on juvenile offenders and their activity in status offenses. They have spent very little time learning about the contribution of juvenile offenders to the crime rate, and even less time studying juveniles' Part II crimes against persons and property.²³

18. For a recent symposium review of self-report surveys of victimization, see *Symposium on Victimization and Victimology*, 72 J. CRIM. L. & CRIMINOLOGY 704 (1981) [hereinafter cited as *Symposium*].

19. For an excellent recent review and discussion of official statistics and self-report data on offending and delinquency, see M. HINDELANG, T. HIRSCHI & J. WEIS, *MEASURING DELINQUENCY* (1981).

20. The Panel for the Evaluation of Crime Surveys of the National Academy of Sciences recommended as early as 1976 that the Department of Justice's National Crime Surveys (NCS) calculate measures of risk of victimization in addition to counting total victim incidents and victimization incident rates. See PANEL FOR THE EVALUATION OF CRIME SURVEYS, NAT'L ACADEMY OF SCIENCES, *SURVEYING CRIME* 126-31 (B. Penick ed. 1976) [hereinafter cited as *SURVEYING CRIME*].

21. See M. HINDELANG, T. HIRSCHI & J. WEIS, *supra* note 19, at 214-20; Blumstein & Cohen, *Estimation of Individual Crime Rates from Arrest Records*, 70 J. CRIM. L. & CRIMINOLOGY 561 (1979); Hindelang, Hirschi & Weis, *Correlates of Delinquency: The Illusion of Discrepancy Between Self-Report and Official Measures*, 44 AM. SOC. REV. 995 (1979).

22. For a review and compilation of information on white collar crime, see A. REISS & A. BIDERMAN, *DATA SOURCES ON WHITE COLLAR LAW-BREAKING* (Nat'l Institute of Justice, U.S. Dep't of Justice, 1980).

23. See M. HINDELANG, T. HIRSCHI, & J. WEIS, *supra* note 19, at 215-17.

D. Summary

These three systems of intelligence are highly interdependent because they all rely for much of their information upon the same institutionally organized systems of collecting and reporting information on crime and criminal justice. Although the scientific community has achieved some relative independence in data collection from institutionally organized sources, these processes of collecting and reporting information on crime and criminal justice appear susceptible to many of the same problems as the organized systems, although the scientific community displays greater concern for the accuracy of information and the uses to which that information can be put.

The major objective of this Article is to assess how the public defines and judges serious crimes. The evidence for this assessment depends very much upon institutionally organized sources of information on crimes, their victims, and their offenders—particularly the police statistics in UCR and the victim and offender statistics generated from the semi-annual NCS. Although a number of scientific studies are also sources of information, the studies often rely too heavily upon these institutionally organized statistical sources of information.

III. HOW MUCH CRIME ACTUALLY OCCURS?

The question of how much crime occurs in the United States is a difficult one. The answer depends in part upon the kinds of crime that are included in the crime count, which units are counted, the accuracy of any count, and the territory and population for which counts are made. Unfortunately, no mechanism exists in the United States for systematically detecting, counting, or reporting most crimes. Public information on the amount of crime is available primarily from Uniform Crime Reporting of Index Crimes,²⁴ which comprises only the major crimes of violence against persons and property. Although many local police departments collect information on other common crimes against persons, property, and the public order, they usually do not publicly report these counts.²⁵ Moreover, crime reporting sources detect,

24. See *supra* note 6.

25. The basis for this conclusion is a review by the author of annual reports from police departments with 100,000 or more inhabitants. Reporting of Part II offenses varies widely, with some departments providing no information and others reporting different degrees of detail by categories of Part II crimes. The Seattle, Washington Police Department,

collect, and report even less information on white-collar crimes than on common crimes and their victims.²⁶ In sum, what the public views as crime is in fact only a relatively small number of all kinds of crime and only a limited representation of their frequency of occurrence, even though the kinds of crimes covered are traditionally regarded as the most "serious" crimes.

A. Crime Reporting is Person Centered

One major deficiency in how crime in the United States is counted is that UCR uses persons as the base of the rate for the reporting of all crime rates; other population bases are more appropriate for reporting some crime events.²⁷ Many burglaries and robberies, for example, victimize organizations such as households or commercial establishments rather than individuals. Reporting offenses for an exposed population of persons when organizations are the primary victims easily creates a false impression that persons are at risk. Moreover, these reporting practices disguise the risk to organizations of victimization by crime. Crude comparisons of the victimization rates of persons and organizations in situations in which both persons and organizations are at risk for the same kind of crime indicate that the victimization rate for organizations is substantially greater than the comparable rate for persons. The NCS robbery victimization rate reported for all persons twelve years of age and over was 6.5 per thousand in 1976.²⁸ The commercial establishment rate of 38.5 per thousand establishments in

for example, provides statistical information only on Part I crimes, Part I arrests, and selected Part II crimes. The Kansas City, Missouri Police Department provides counts for Part I crimes, seven Part II offenses, and selected calls for service such as sick calls, lost property, and suicides. The Washington, D.C. Police Department provides counts for all reported Part II offenses.

26. A. REISS & A. BIDERMAN, *supra* note 22, at 102-03.

27. The phrase "base for a rate" represents a technical concept. Statisticians describe the crime rate as a fraction in which the numerator represents the number of crimes and the denominator represents the population base. Thus, the "base of the [crime] rate" refers to the population from which the rate will be counted.

The problem of persons as the base for crime rates is especially apparent when the victims are organizations rather than persons, as well as when one seeks to calculate measures of risk of victimization by crime. The author has addressed these issues at length in a report to the President's Commission on Law Enforcement and Administration of Justice. See A. REISS, *STUDIES IN CRIME AND LAW ENFORCEMENT IN MAJOR METROPOLITAN AREAS 10-12* (President's Commission on Law Enforcement and Administration of Justice 1967).

28. The comparison between person and establishment rates is made for 1976 because that was the last year in which the NCS completed a Commercial Crime Victimization Survey. See NAT'L CRIMINAL JUSTICE INFORMATION AND STATISTICS SERVICE, U.S. DEP'T OF JUSTICE, *CRIMINAL VICTIMIZATION IN THE UNITED STATES, 1976*, at 23, table 2 (1978).

1976, therefore, was approximately six times greater than the rate for victimized persons.²⁹ If all the employees and owners who were victimized by robberies of a commercial establishment were added to the robbery statistics for 1976, the rate still would have increased to only 8.1 per thousand persons, which is just over one-fifth the rate for commercial establishments. A similar comparison of 1976 residential household with commercial establishment burglary rates shows a substantially higher rate for commercial establishments; according to the NCS report, there were 217.3 burglaries per thousand commercial establishments, compared with 88.9 burglaries per thousand households.³⁰

B. *Choices in Counting Crime Affect Estimates and Perceptions of the Amount of Crime*

Because the average crime has more than one victim,³¹ the count of victimizations is always greater than the count of crime events. Thus, public perceptions about crime and crime reporting estimates of the amount of crime depend in part upon whether a reporting system chooses to count the number of crime events or the number of victimizations by crime, as well as upon whether the system reports prevalence or incidence rates. UCR counts crimes or offenses as events, incidents, or occurrences,³² whereas the NCS only counts victims and victimizations by crime.³³ The Bureau of Justice Statistics, which takes a victimization approach, estimates that in 1980 about three in every ten households experienced one or more victimizations by major crimes either against one or more members of the household or against the household's common property.³⁴

IV. HOW SERIOUS ARE SERIOUS CRIMES?

Although conclusions about the amount of crime depend upon

29. *Id.*

30. *Id.*

31. See SURVEYING CRIME, *supra* note 20, at 26-27.

32. For definitions and procedures for classifying and scoring offenses in UCR, see UNIFORM CRIME REPORTING HANDBOOK, *supra* note 4, ch. II (especially note the references to "Classification of this Incident" at 33, col. 2). See also U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS BULLETIN: MEASURING CRIME 1 (Feb. 1981) [hereinafter cited as MEASURING CRIME].

33. See MEASURING CRIME, *supra* note 32, at 1; SURVEYING CRIME, *supra* note 20, at 134-42.

34. U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS BULLETIN: THE PREVALENCE OF CRIME 1 (Mar. 1981) [hereinafter cited as THE PREVALENCE OF CRIME].

the system's choice of both the rate that it uses to report a count and the population and territory that provide the basis for that rate, the amount of crime that exists depends initially upon the system's choice of which crimes to count. When UCR was established in the United States, the choice of which crimes to count rested in a consensus that the most serious crimes against persons and their property should compose the crime index.³⁵ Setting aside the difficult issue of what makes any event a crime, this part of the Article examines what makes a crime a serious matter and assesses the traditional notions about which crimes are serious.

Society has used a number of methods to assess the seriousness of criminal activity. Perhaps the most obvious method is to judge the seriousness of crimes by the punishments or sanctions that the law allows for their violation. The public, of course, generally regards crimes that can be sanctioned by capital punishment or incarceration as the most serious ones. Not surprisingly, therefore, all the major crimes in UCR allow for punishment by incarceration.

Apart from examining the severity of punishments for criminal violations under the law and punishments that the criminal justice system actually metes out to persons charged with or found guilty of criminal offenses, a number of other methods exist to aid society in evaluating the seriousness of criminal violations. These methods include focusing on the actual or potential harm to victims of crimes and the absolute and relative consequences of any harm to victims and others who are dependent upon them. Society, of course, might assign different degrees of seriousness to the same crime event depending upon which of these criteria it utilizes. In an absolute sense, the public may regard a crime in which a person loses less than fifty dollars as less harmful than one in which the economic loss is greater. Relative to one's income or wealth, however, fifty dollars may be either a substantial or a minor loss. Moreover, a victim's assessment of harm may change over time. If, for example, a victim recovers an economic loss from insurance, or stolen property is returned to its rightful owner, then the victim may redefine an initially burdensome loss as inconsequential.

One clear characteristic of major crimes against persons and property is the considerable variation in the seriousness of events classified as major crimes; this variation occurs whether the criteria that society relies upon to evaluate the crime are the sanctions

35. See UNIFORM CRIME REPORTING HANDBOOK, *supra* note 4, at 2.

meted out for committing the crime, the presence of physical or economic harm and its consequences, or the public's perceptions of seriousness. The next sections examine some of this variation in seriousness using different criteria to assess it. The sections then discuss what the public should conclude from aggregate crime statistics that purport to measure the extent of serious crime in the United States.

A. *Criminal Justice Processing of Serious Crimes*

A precise determination of how seriously crimes are treated in their processing by the criminal justice system is not possible, since no information systems exist that can unambiguously calculate the number of crimes, their victims, and their offenders. Researchers, however, have discovered that police never clear by an arrest a majority of the crime incidents originally characterized officially as major crimes against persons or property—with the exceptions of homicide and aggravated assault.³⁶ Moreover, in adjudicating arrests, courts typically dispose of a substantial proportion of cases by guilty pleas.³⁷ In doing so, courts may downgrade the seriousness of a crime by either reducing charges or submitting sentencing recommendations to the judge.³⁸

36. The clearance rate (crimes cleared by arrest) appears to vary from one crime to the next. UNIFORM CRIME REPORTS, *supra* note 1, at 181 (1981) (annual report for 1980). In 1980, for example, among the major crimes against persons, 72% of all murders and 59% of all aggravated assaults were cleared by an arrest; nearly one-half (49%) of all forcible rapes, but only 24% of all robberies, resulted in an arrest. *Id.* For property crimes during the same year, UCR reported that only 14% of all burglaries, 14% of all motor vehicle thefts, and 18% of all larceny-thefts were cleared by an arrest. *Id.*

37. The United States does not compile national prosecution statistics. A majority of filed cases, however, typically are disposed of by guilty pleas. When comparing the disposition of filings in twelve United States jurisdictions, Brosi found that in only two jurisdictions were less than a majority of cases disposed of by pleas of guilty. One of these two, however, quite frequently used trial by transcript rather than guilty pleas. Moreover, when one examines the number of convictions, in no jurisdiction were fewer than two-thirds of them obtained on guilty pleas. See K. BROSI, A CROSS-CITY COMPARISON OF FELONY CASE PROCESSING 35 (Institute for Law and Social Research, Apr. 1979).

38. The United States does not compile accurate information on charge reductions and sentence recommendations. Some evidence, however, indicates that there is considerable variation in whether any given jurisdiction follows one or the other or both practices. See *id.* at 38-40. Moreover, in some jurisdictions such as New York City, considerable reduction in the seriousness of charges clearly occurs. See W. RHODES, PLEA BARGAINING: WHO GAINS? WHO LOSES? 38-39 (Institute for Law and Social Research, Dec. 1978). In other areas such as Washington, D.C., however, even though there is evidence for charge reduction, if the characteristics of the offender and of the offense are the same, the sentences given for most major crimes generally are the same for cases going to trial as for those that are plea bargained. See *id.* at 42-43.

A study of the processing of criminal offenders in New York City³⁹ shows perhaps the most substantial reduction in the seriousness of felony matters in any jurisdiction in the United States. Judging from the facts in that study concerning the severity of sanctions given to felony offenders, one could conclude that the criminal justice apparatus in the New York City system is so constrained that the system adjudicates many crimes which New York law considers serious as if they were relatively minor matters. A substantial proportion of the offenders in New York City who were charged with a major felony against persons or property at the time of arrest had their cases disposed of without a conviction. Only fifteen percent of the defendants were convicted of a felony, and only four percent went to disposition without a reduction or dismissal of the original charge.⁴⁰ Forty-three percent of the felony arrests were dismissed.⁴¹ Of the defendants charged with felonies, fifty-five percent pleaded guilty, but three-quarters of these guilty pleas were to a misdemeanor or a minor violation.⁴²

The study shows a considerable range in reduction of a felony charge by type of offense. The greatest reductions were for burglary cases; only two percent of the defendants were convicted of the burglary felony originally charged, fifteen percent were convicted of a plea to a lesser felony, and eighty-three percent pleaded guilty to a misdemeanor.⁴³ The highest rate of conviction was for homicide cases, in which fifty-eight percent were convicted on the original felony charge for murder, attempted murder, or nonnegligent manslaughter.⁴⁴ The study, however, estimates that fifteen percent of all homicide felony charges were disposed of by a plea of guilty to a misdemeanor.⁴⁵ Except for rape cases, in which thirty-six percent of the defendants were convicted on the original felony charge, the conviction rate on the original charge was no more than fourteen percent for any other offense.⁴⁶ Indeed, the judicial system disposed of at least eight of every ten felony property charges and felonious assault charges with pleas of guilty to a

39. THE VERA INSTITUTE OF JUSTICE, FELONY ARRESTS: THEIR PROSECUTION AND DISPOSITION IN NEW YORK CITY'S COURTS (Monograph 1977).

40. *Id.* at 6.

41. *Id.*

42. *Id.* at 6-7.

43. *Id.* at 10, fig. 5.

44. *Id.*

45. *Id.*

46. *Id.*

misdemeanor.⁴⁷

Despite some variation between New York City and the various criminal court jurisdictions of the states, there is ample reason to conclude that the New York City findings are not too dissimilar from those of other jurisdictions.⁴⁸ Because the criminal justice system largely ignores victims in processing criminal matters, the system is not responsive to the consequences for victims of assessing the seriousness of crime through adjudication. Moreover, for most victims, tort law is an ineffective and inconsequential remedy for the harms that they sustain from crime. Indeed, even state or locally operated victim compensation programs exclude losses from most kinds of crime from their compensation plans.

Unfortunately, no information exists to assess how police and prosecutors use their discretionary powers to decide either that some crime events are not sufficiently serious to be adjudicated under the law or the extent to which they should reduce charges when they adjudicate matters that they regard as less serious. A body of evidence from studies of local jurisdictions shows that police treat a substantial proportion of all crime events brought to their attention as noncriminal matters and do not make arrests even when probable cause to arrest is present.⁴⁹ Similar evidence supports the same conclusion about prosecutorial and judicial discretion.⁵⁰ Just how much weight one should give to police or prosecutorial judgments about the seriousness of offenses is unclear. Perhaps the behavior of officials of the criminal justice system makes a great deal of sense, considering the nature of matters that on initial contact are defined as serious crime. The matters that police report as serious crimes under law often turn out to be

47. *Id.*

48. Precise comparisons among jurisdictions are difficult to make, partly because the charges made at conviction often are not related to the original felony charge. Among the jurisdictions that Brosi studied, conviction rates varied from a low of 39% in Detroit to 81% in Indianapolis for defendants originally charged with a felony. K. Brosi, *supra* note 37, at 52. Given the distribution of sentences, however, there is reason to conclude that for each jurisdiction, a substantial proportion of these defendants were convicted on a misdemeanor rather than on a felony charge. *See id.*

49. A. REISS, *THE POLICE AND THE PUBLIC* 72-83 (1971).

50. *See* W. RHODES, *supra* note 38, at 33. Rhodes, for example, found that one in four arrests in Washington, D.C. were rejected at the initial screening. He also found that the prosecutor nolleed almost one case in every three that were filed. Only 16% of all arrests in Washington resulted in misdemeanor convictions, and about 13% resulted in felony convictions. Dismissals, acquittals or absconding accounted for the remainder of the convictions. Clearly, then, most cases of arrest in Washington, D.C. are never prosecuted. *See also* K. Brosi, *supra* note 37, at 35.

far less serious by objective criteria than is implied by the legal and administrative designations of these events as "serious."

B. How Harmful Are Serious Crimes?

1. Physical or Economic Harm

Using as a standard of seriousness the actual amount of harm done to victims, a question arises concerning the degree of seriousness of crimes that victims report to the police or to the NCS interviewers. One way to measure the seriousness of a crime is to compare both the actual harm that the crime has caused and the consequences of that harm with the harm caused by events that are not regarded as crime. Comparisons can be made, for example, between fatalities caused by homicide and nonnegligent manslaughter with other kinds of fatalities that result from negligence. One illustration of this comparison is that motor vehicle fatalities in 1978 numbered more than twice the fatalities resulting from homicide.⁵¹ Estimates of the number of fatalities attributable to drunken driving seem at least equal to those for homicide.⁵² UCR studies additionally indicate that a victim's chance of being murdered by a stranger is roughly equivalent to that of being killed by someone whom the victim knows.⁵³ Comparisons like these raise

51. In the United States, an estimated 52,411 deaths resulted from motor vehicle accidents in 1978, compared with a reported 20,432 homicide victims. Compare BUREAU OF THE CENSUS, DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1980, table 121 with *id.* table 310.

52. Unfortunately, no one has conducted an actual count of the automobile fatalities that are attributable to drivers who are operating a motor vehicle under the influence of alcohol. Estimates from some studies place the number of alcohol-related deaths at one-half of all auto fatalities. See DEP'T OF TRANSP., 90TH CONG., 2D SESS., ALCOHOL AND HIGHWAY SAFETY REP. (Comm. Print. 1968); Jones, *Alcohol and Highway Crashes: A Projection for the 1980's*, UNIVERSITY OF MICHIGAN HIGHWAY SAFETY REVIEW 7 (1979). Based on this estimate, approximately 26,205 fatalities resulting from drunken driving occurred in 1978, an estimate that is higher than the one for homicides during the same year. Since the drivers are an unknown proportion of the alcohol related deaths, the number of fatalities that represent the victims of intoxicated drivers is unknown. The proportion of nondrinking drivers who are victims, however, may well be equivalent to that of victims of homicide.

53. In about one-third of all homicides, UCR does not obtain information on the relationship between the victim and the offender. For 1980, UCR reported the following distribution for the relationship of victims and offenders in homicide: Unknown relationship, 35.8%; stranger, 13.3%; family member or relative, 16.1%; and friend, neighbor, or acquaintance, 34.8%. UNIFORM CRIME REPORTS, *supra* note 1, at 12 (1981) (annual report for 1980). Even assuming that strangers were involved in all cases in which the relationship was unknown or unreported, a person has the same chance of being murdered by someone he knows as he does of being murdered by a complete stranger. Thus, the risk of being killed by a drunken driver who is a stranger is much greater than the risk of being killed by someone whom the victim knows.

questions about the amount of weight that should be given to intentional behavior in determining the seriousness of an event, as well as about whether matters that include some intentional harm should be treated differently from those that do not. State statutes typically treat the offense of driving under the influence of alcohol when a fatality results as a misdemeanor;⁵⁴ a living driver ordinarily will be charged only with that misdemeanor and rarely will be imprisoned.⁵⁵ Just how reasonable it is to hold a driver responsible for his actions while he is drunk—and under what circumstances—enter into both defining matters as serious crimes and determining whether or not a particular event should be treated as a serious matter.

Another way to examine the seriousness of a crime is to focus on the consequences of the actual harm that results from the crime. Many specific events that are considered crimes have no objectively harmful consequences. Some crimes do not result in harm because either the victim or others have thwarted the intent of the offender without harm to themselves. Other crimes have no harmful consequences because the offender himself aborts the attempt. Whatever the reason, a great many crime events cause no objective harm to their intended victims.

The inclusion of attempted crimes with completed crimes in UCR reports of the crime rate in the United States can create a false impression that the crimes that are used to calculate those rates are equally serious in harm. The inclusion of attempted crimes, however, reduces the average seriousness of the crimes in any major crime classification for two reasons. First, the average harm inflicted in an attempted crime is less than the harm inflicted in a completed crime, particularly in economic losses, but also in physical harm.⁵⁶ Second, when it is adjudicating criminal matters, the criminal justice system treats an attempt to commit a crime as less serious than a completed crime.⁵⁷ The higher the ratio

54. See R. Holden, *Legal Reactions to Drunken Driving* (1980) (unpublished doctoral dissertation available in Vanderbilt University Library).

55. *Id.*

56. This statement can be verified for some of the crimes for which information is reported in the NCS. According to the 1979 NCS, economic loss among household victimizations, for example, occurs in only 28.5% of attempted larcenies, compared with 100% of completed larcenies; in only 58.9% of attempted auto thefts, compared with 100% of completed auto thefts; and in only 66.4% of attempted burglaries, compared with 95.1% of forcible entry burglaries. See *CRIMINAL VICTIMIZATION*, *supra* note 8, at 67, table 74.

57. Evidence on the treatment of attempted crimes is difficult to procure. Crimes in which personal relationships are present often lead to an arrest. Even when an arrest en-

of attempted to completed crime events, therefore, the less the average seriousness of that crime will be in terms of harm to victims and consequences for offenders.

Citizens commonly report—and organized information systems count—completed events for property crimes more often than completed events for crimes against persons.⁵⁸ In the 1979 NCS, the proportion of crime events that were completed varied considerably among the major crimes.⁵⁹ Of all the crimes of violence against persons, more than two-fifths were completed offenses.⁶⁰ Only thirty-five percent of all forcible rapes, about one-fifth of simple assaults, and one-third of aggravated assaults were completed events.⁶¹ Among property crimes, however, the reverse was true; more than four-fifths of the reported crimes were completed events.⁶² Of course, the figures varied for the different property crimes, ranging from only six percent of all larceny-thefts being reported as attempts to about one-fifth of all burglaries and one-third of all motor vehicle thefts.⁶³ People admittedly have a harder time detecting attempted property crimes than attempted person crimes because people are less likely to be present when property crimes take place. Differences in crime rates nevertheless may signal differences in public perceptions of the seriousness of certain crimes; the public, therefore, may consider attempted property crimes as less serious than crimes against the person.

According to the NCS, the major types of crime vary in the extent to which attempted and actual crimes inflict physical harm or economic loss upon victims.⁶⁴ Attempted crimes cause harm when they fail because of the offender's intentions, but they cause more harm when the offender realizes these intentions. Almost

sues, however, many cases do not survive prosecution screening, either because of a lack of evidence or because they are considered *de minimis non curat lex*. Moreover, many arrest cases subsequently are nolle. Unfortunately, no precise statistics exist that indicate whether the crime in these decisions is an actual or an attempted event. When clear evidence does exist, however, as in attempted murder cases, the offense typically is treated as an aggravated assault, which has lesser penalties on the average than do murder and non-negligent manslaughter.

58. See CRIMINAL VICTIMIZATION, *supra* note 8, at 22, table 1 (statistics on attempted and completed offenses in major crimes against persons and households); *infra* notes 59-63 and accompanying text.

59. CRIMINAL VICTIMIZATION, *supra* note 8, at 22, table 1.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at 63, table 68; *id.* at 67-72, tables 74-79.

nine out of every ten completed burglaries result in some economic loss, but only two out of every three attempted burglaries have this consequence.⁶⁵ Completed forcible entries and attempted burglaries cause damage losses in about equal proportion, but completed forcible entry crimes result in theft losses as well as damage losses.⁶⁶ Victims ordinarily do not receive compensation for their losses. Moreover, insurance companies are unlikely to cover all economic losses from burglary. In addition, in approximately three-fourths of the cases victims never receive reimbursement for their losses from any source.⁶⁷ Actual economic loss, however, is on the average greater for completed burglaries than for attempted ones.⁶⁸ Roughly the same relationships pertain to household larcenies,⁶⁹ but the ratios of attempted to completed crimes in economic terms are more complex for motor vehicle theft.⁷⁰ In the motor vehicle category, economic loss is more likely to result in cases in which actual theft (one hundred percent), rather than attempted theft (fifty-nine percent), occurs.⁷¹ Moreover, the average amount of loss is smaller for attempted motor vehicle thefts than completed ones.⁷² The amount of economic damage compared with theft losses, however, is greater for attempted thefts.⁷³

Another criterion that can be used to measure the amount of a crime's physical harm and its consequences for victims is the degree of physical injury that the victim suffers. Once again, the NCS provides most of the information on actual harm and its consequences. The first category to consider in this context is the physical injury to victims in crimes against persons. Among the most feared consequences of victimization by crime—and a measure of its seriousness—is physical or bodily injury. The NCS assumes that all forcible rapes cause bodily injury,⁷⁴ even though the victims often do not seek any form of medical treatment. In contrast, only a minority of all victimizations by robbery or assault result in

65. *Id.* at 67, table 74.

66. *Id.*

67. *Id.* at 71, table 78; *id.* at 72, table 79.

68. *Id.* at 68-69, table 76.

69. *Id.* at 67, table 74; *id.* at 68-69, table 76; *id.* at 72, table 79.

70. *See infra* notes 71-73 and accompanying text.

71. CRIMINAL VICTIMIZATION, *supra* note 8, at 67, table 74.

72. *Id.* at 68, table 76.

73. *Id.* at 67, table 74.

74. Therefore, among the crimes against the person, rape is not included in the tables on physical injury. *See, e.g., id.* at 63, table 68.

physical injury—approximately three in ten victimizations.⁷⁵ The likelihood of a victim sustaining bodily injury in an assault is greater when the offender is a relative, friend, or acquaintance than when the offender is a stranger or someone known to the victim only by sight.⁷⁶ Surprisingly, the probabilities of bodily injury vary only negligibly by the social characteristics of victims.⁷⁷

The severity of the bodily injury that a victim reports is an important variable when physical injury is the indicator of a crime's seriousness. Whether the victim sought medical treatment, and, if so, whether the injury required hospitalization, naturally are significant criteria to be considered in making this evaluation. Relying upon these criteria, the public might regard a much smaller proportion of all victimizations against the person as serious matters. Of the thirty-four percent of all robbery victimizations in which the victim sustained some physical injury, fewer than one-third of the victims required either emergency room or hospital care, which equalled approximately ten percent of the total number of robbery victims.⁷⁸ A substantial majority—seventy-three percent—of these victims needing emergency room or hospital care required only emergency room care, and a sizeable minority—fourteen percent—required hospitalization for four or more days.⁷⁹ A similar profile emerges for the twenty-nine percent of victimizations from an assault on the person that resulted in physical injury.⁸⁰ Fewer than one-fourth of all assault victims needed emergency room or hospital care;⁸¹ seventy-nine percent of these victims required emergency room care only, and fourteen percent of them required a hospital stay of four or more days.⁸²

Physical injury requiring medical attention also may have economic consequences for victims. According to the NCS, in about two out of every three victimizations, insurance or eligibility for public medical service covered the costs.⁸³ The expenses for about three in ten robberies and assaults were less than fifty dollars, and an additional forty percent cost from fifty to two hundred fifty dol-

75. *Id.*

76. *Id.*

77. *Id.* This table compares physical injuries among victims by race, sex, age, annual income of family, and relationship between victim and offender.

78. *Id.* at 63, table 68; *id.* at 65, table 72.

79. *Id.* at 66, table 73.

80. *Id.* at 63, table 68.

81. *Id.* at 63, table 68; *id.* at 65, table 72.

82. *Id.* at 66, table 73.

83. *Id.* at 65, table 71.

lars.⁸⁴ The statistics on medical treatment, its cost, and the extent to which expenses are covered by insurance or public sources are crude estimates because of the problems of acquiring accurate information on the survey and the absence of follow-up measures to obtain information on continuing costs and recovery from insurance. The NCS statistics, therefore, underestimate both the total medical costs and the extent of their recovery. These flaws in the data notwithstanding, the cost of medical care for crime victims generally reflects its short-term nature and suggests relatively minor injuries.

The harm done by damage to or from loss of property also is a measure of the seriousness of crimes. Victims may suffer property loss or damage both in crimes against persons and in crimes against only their property. A proportion of all victimizations by crime involve economic loss, but the risk of loss varies considerably by type of crime. Not surprisingly, according to the NCS the proportion is lowest for crimes against persons, with one-third of all rapes and fourteen percent of all assaults resulting in some economic loss,⁸⁵ and highest for those involving theft or damage to property, with seven in ten robberies and roughly nine in ten burglaries, household larcenies, and motor vehicle thefts causing economic loss to their victims.⁸⁶ These losses result primarily from theft, although damage losses also figure substantially in attempted and completed forcible entry burglaries and attempted automobile theft.⁸⁷ Monetary losses generally were small; over one-half of the losses in all personal crimes and about four-fifths of the losses in all household crimes in 1979 resulted in theft or damage losses of less than fifty-dollars.⁸⁸ According to the NCS, motor vehicle theft on the average caused the largest damage losses,⁸⁹ but it also was the crime in which the recovery of all or part of the loss was greatest—fewer than one-fourth of motor vehicle victimizations resulted in no recovery of the loss.⁹⁰ Recovery of the loss generally was low for all theft crimes other than motor vehicle theft.⁹¹ This fact is partly the result of the relatively small losses for many

84. *Id.* at 64, table 70.

85. *Id.* at 67, table 74.

86. *Id.*

87. *Id.*

88. *Id.* at 69, table 76.

89. *Id.*

90. *Id.* at 71, table 78.

91. *Id.*

of these crimes, and partly the result of the relatively low rate of recovery for stolen property.⁹²

The NCS records one other measure that can serve as an indicator of the seriousness of a crime event: whether the crime leads to some loss of time from work.⁹³ Loss of work time occurs not only because victims are hospitalized or need to recover from a physical injury, but also because they spend time aiding the police in identifying offenders of stolen property or filing insurance forms and other claims. Employers may compensate a victim's loss of work time, or the victim may recover it by some other means, so this indicator should not be taken as an automatic measure of economic loss. Indeed, according to the NCS, only six percent of personal victimizations result in some loss of time from work by the victim or another household member.⁹⁴ Furthermore, the amount of time lost from work due to hospitalization for injury varies among major crimes against the person.⁹⁵ Forcible rape, robbery with injury, and aggravated assault have higher rates of lost time than robbery without injury and simple assault.⁹⁶ Approximately one-fourth of the rapes and robberies with injury lead to loss of time from work.⁹⁷ Only a relatively small proportion—three percent—of personal and household larcenies,⁹⁸ about one in ten forcible entry burglaries, and under two in ten motor vehicle thefts result in some loss in work time.⁹⁹ On the other hand, when victims lose work time, in almost one-half of all reported cases they lose more than a day's work.¹⁰⁰

In sum, this relatively extensive examination of the costs and consequences of crime to victims reveals that physical or economic harm occurs in a minority of victimizations for most kinds of crime. Most victims generally suffer either small economic loss or only short-term bodily harm. A substantial amount of what is characterized as serious crime, then, is not very harmful to victims. Unfortunately, scholarship on this issue has not yet revealed how these losses cumulate over time, though a substantial minority of repeat victimizations do occur within a span of several years.

92. *Id.* (especially "none recovered").

93. *See id.* at 73-75, tables 81-86.

94. *Id.* at 73, table 81.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* at 74, table 81.

100. *Id.* at 74, table 84.

Moreover, researchers have not yet developed a measure of the cost of economic harm to victims relative to their income or wealth. Victims' losses, however, are small both absolutely and relatively, and one might reasonably conclude that victims often fail to report crimes not only because they believe little can or will be done about them as crimes, but also because they themselves do not regard the crimes as all that serious. Ironically, what the public has come to fear as serious crime—reported crimes classified in legal categories—may be far less consequential to its victims than to its offenders after they are apprehended.

2. Psychic Harm

Criminologists know very little about either the psychic harm resulting from victimization by crime or the emotional consequences for victims and others caused by their fear of crime. Of course, evidence does exist which shows that the fear of crime is growing in the general population.¹⁰¹ Rather surprisingly, a person's fear of victimization apparently is unrelated either to his victim status during the recent past or—for repeat victims—to the number of victimizations experienced within the past year.¹⁰² Nonetheless, media accounts frequently appear about persons who report that they are very afraid of being victimized by crime as a result of their past experience as victims.¹⁰³ These accounts suggest that at least a minority of persons—most likely those who are victims of crimes in which the offender uses deadly force—experience long-term psychic harm. Most of the large number of persons who express fears about crime in public opinion polls, however, apparently have not experienced a personal victimization recently, especially not by a crime of violence against persons. According to the Bureau of Justice Statistics, for example, no more than six percent of all households reported that one or more of its members were the victim of a violent crime in 1980.¹⁰⁴

C. *Uniform Crime Reporting Treatment of Serious Crime*

UCR also underestimates both the seriousness of some crime

101. Reiss, *Public Safety: Marshalling Crime Statistics*, 453 ANNALS 222, 231 (1981).

102. See M. HINDELANG, M. GOTTFREDSON & J. GAROFALO, *VICTIMS OF PERSONAL CRIME: AN EMPIRICAL FOUNDATION FOR A THEORY OF PERSONAL VICTIMIZATION* 190 (1978).

103. THE PREVALENCE OF CRIME, *supra* note 34, at 1. The NCS prevalence estimates were adjusted for the report of homicides in UCR, leading to an NCS estimate that a major crime of violence against persons touched fewer than 6% of all households in 1980.

104. See *id.*

events and the number of crimes of a given kind that occur during a stated time period. This underestimation occurs in part because UCR counts only the most serious charge arising out of a particular crime incident.¹⁰⁵ UCR ranks crimes by their relative seriousness: murder and nonnegligent manslaughter are considered the most serious, followed in decreasing order of seriousness by forcible rape, robbery, aggravated assault, burglary, larceny-theft, and motor vehicle theft.¹⁰⁶ As stated, the system classifies any crime incident that includes two or more offenses or charges solely according to the most serious offense that police could charge.¹⁰⁷ The only crime that the system does not combine with other offenses in a crime incident is arson.¹⁰⁸ Although UCR always reports arson when it occurs, it does not necessarily count every other crime that occurs in conjunction with an arson. If a homicide or nonnegligent manslaughter accompanies an arson, the system normally reports that offense as well as the arson, but if this crime event also includes, for example, a theft, UCR would be unlikely to report the theft in addition to the arson and the homicide or nonnegligent manslaughter.

The amount of crime that UCR fails to report because of its ranking of crimes according to the seriousness of the charge is difficult to estimate. If one makes special tabulations of the 1976 National Crime Survey, the NCS provides some basis for estimating the conjunction of two or more offenses for some kinds of crime.¹⁰⁹ Thefts in conjunction with major crimes against persons, for example, apparently do not contribute to the theft rate reported either by UCR or the NCS. This omission is quite significant, since twenty-two percent of completed forcible rapes and ten percent of attempted rapes also include the offense of theft.¹¹⁰ Moreover, theft accompanies twenty-six percent of the serious assaults and twenty percent of the minor assaults.¹¹¹ The addition of the offenses of theft in forcible rapes and assaults to the reported larcenies from the person by purse-snatching and pocket-picking would

105. See UNIFORM CRIME REPORTING HANDBOOK, *supra* note 4, at 33 (especially "Hierarchy Rule").

106. *Id.* at 33.

107. *Id.*

108. *Id.* at 34.

109. The author has made these tabulations especially for the crimes reported below. See *supra* notes 100-12 and accompanying text.

110. These tabulations are based on data type made from the semi-annual data tapes for the National Crime Survey 1972-1976.

111. *Id.*

have more than doubled the rate of larcenies from the person that the NCS actually reported. In addition, robbery has a theft completion rate of only fifty-seven percent.¹¹² If the public views theft from the person with contact as more serious than theft without contact, then the current system of counting crimes probably underestimates the more serious forms of theft. By solely counting the offense in a crime incident that society considers most serious—the offense against the person—the crime statistics system effectively ignores a very large number of contact thefts.

In sum, the practice of counting crime by counting only the most serious of the offenses occurring in an event causes the system to underestimate the number of offenses that occur. Multiple offenses in crime events often appear as multiple charges in prosecution and adjudication. Statistical systems unfortunately disguise the probability that many victims experience more than one type of offense in a crime event, and that offenders are prosecuted for single or multiple offenses—not for a total crime incident. Moreover, limiting the counting of crimes not only to the single most serious offense in a crime incident, but also to a small hierarchy of possible crimes, has additional consequences for society's perceptions about the seriousness of crime. A great many offenses that are classified as Part II crimes¹¹³ also may include a Part I offense, but they are not counted as Part I offenses because their primary classification is Part II. Frauds, for example, are not also counted as thefts for reporting purposes, nor are thefts from the person that occur in conjunction with sex offenses—which are classified as Part II crimes—treated as thefts.

D. Public Processing of Serious Crimes

Official statistical concepts of the seriousness of a matter and the organized statistical reporting system for classifying and counting events determines to a substantial degree not only how crimes are counted, but also what the public perceives to be serious crime. By any standard, the public never learns about most of the crimes that victimize people or society because they do not fall within the present system of collective intelligence reporting. As this section indicates, these crimes frequently remain unreported because victims and witnesses consider the incidents inconsequential and, therefore, fail to report them to the police.

112. *Id.*

113. *See supra* note 6.

Witnesses to and victims of crime control the flow of information about crime to the police and to other agencies of criminal justice. Citizens, who provide most of the information on most crimes, in effect mobilize the police. Unless a citizen or some witness determines that an event should be brought to the attention of the police, law enforcement officials are unlikely to find out about the incident at all.¹¹⁴ Table I below shows that citizen mobilization of the police varies considerably among the major crimes against persons and their property.¹¹⁵

TABLE 1: Percent of Victimitations Reported to the Police
by Type of Crime, 1979

Type of Crime Victimization	Percent Reported	Type of Crime Victimization	Percent Reported
PERSONAL CRIMES:	29.8	HOUSEHOLD CRIMES:	36.4
RAPE	50.5	PERSONAL LARCENY WITHOUT CONTACT	23.6
ROBBERY	55.5	BURGLARY	47.6
with injury	62.2	Forcible Entry	71.9
without injury	52.0	Entry without Force	38.3
ASSAULT	42.4	Attempted Forcible Entry	30.9
Aggravated	51.3	HOUSEHOLD LARCENY	25.1
with injury	57.1	Completed	25.2
attempted with weapon	48.3	less than \$50	13.4
Simple	37.4	\$50 or more	44.3
with injury	50.2	Attempted	24.5
attempted without weapon	32.9	MOTOR VEHICLE THEFT	68.2
PERSONAL LARCENY WITH CONTACT	35.6	Completed	85.7
purse snatching	48.9	Attempted	34.1
pocket picking	29.1		

The table clearly indicates that citizen behavior in mobilizing law enforcement and in reporting crimes to the police does not conform to the established hierarchy of the seriousness of crimes. The public regards homicide, which is not included in Table 1, as the most serious crime, and they report it to the police most

114. The police patrol divisions of the larger police departments in this country are organized to react to citizen complaints and requests for service rather than to seek out or discover criminal matters on their own. Thus, the discretionary decisions of citizens as individuals, members of households, or of other organizations are the machinery that bring most matters other than traffic and vice to the attention of police patrol. See A. REISS, *supra* note 49, at 65-88.

115. CRIMINAL VICTIMIZATION, *supra* note 8, at 76, table 87.

often.¹¹⁶ Motor vehicle theft, however, is ranked the least serious among the major crimes, even though Table 1 ranks it highest among the crimes that are listed for citizen reports to the police. Thus, citizens report only one-half of all forcible rapes and robberies, compared with more than two-thirds of all motor vehicle thefts. The public, therefore, apparently uses other criteria than established seriousness of crimes when they decide whether to report matters to the police. Although insurance coverage may motivate citizens to report motor vehicle thefts, Table 1 shows that the public also judges the relative seriousness of crimes both in terms of the value of property loss and the nature and extent of personal injury. The more refined NCS tabulations for 1979 also provide support for this proposition;¹¹⁷ whereas victims reported only eight percent of all larcenies with a loss of under \$10, they reported sixty-three percent of those larcenies in which the loss was valued at \$250 or more.¹¹⁸ Similarly, the public reported only twenty-two percent of all burglaries under \$10 compared with eighty-three percent of all burglaries valued at \$250 or more.¹¹⁹ Clearly, the number of victims reporting losses rises considerably as the value of the losses increases. Furthermore, victims are more likely to recover losses of \$250 or more from insurance for burglaries and motor vehicle thefts than they are for household larcenies.¹²⁰ Potential insurance recoveries and the amount of economic loss, therefore, are incentives to citizens—apart from considering the conventional ordering of serious crimes—to report burglaries and motor vehicle thefts to the police.

The reasons that victims give for not reporting victimization by crime to the police help to explain which crimes the public considers serious. The two most common reasons that victims offer for not reporting a personal or household victimization are that nothing could have been done about it, or that the offense was not important enough to warrant bringing it to the attention of the po-

116. According to Hindelang, a high level of agreement is evident between homicides as reported by the Uniform Crime Reports and the Vital Statistics of the United States. Hindelang, *The Uniform Crime Reports Revisited*, 2 J. CRIM. JUST. 1, 3-6 (1974). Sherman observes that this applies only to the measurement of citizens *qua* citizens killing other citizens. The measurement of law enforcement officials killing other citizens is subject to much greater error. See Sherman & Langworthy, *Measuring Homicide By Police Officers*, 70 J. CRIM. L. & CRIMINOLOGY 546, 559-60 (1979).

117. See CRIMINAL VICTIMIZATION, *supra* note 8, at 81-82, tables 96-97.

118. *Id.* at 81, table 96.

119. *Id.*

120. *Id.* at 72, table 79; *id.* at 81, table 96.

lice. Victims give these two responses in over forty percent of the victimizations that go unreported to the police.¹²¹ Indeed, over two-thirds of the reasons that crime victims give for not reporting personal or household crimes to the police indicate that they consider the offense relatively inconsequential.¹²² Moreover, few victims give any reasons for not reporting victimizations to the police which suggest that they regard the unreported matter as a serious offense.¹²³ Only one percent of victims fail to report a personal crime event out of a fear of reprisal,¹²⁴ which is a rate that is below even that of the two percent who do not report an incident because mobilizing the police is too inconvenient or time consuming.¹²⁵ Citizens, therefore, apparently do not report to the police a great many victimizations of crimes that the law regards as serious because by public—if not by judicial—standards they consider the crimes to be *de minimis non curat lex*.

V. HOW SERIOUS IS OFFENDING?

This part of the Article examines offenders and their patterns of offending by considering two interrelated questions. First, how large are the subpopulations of offenders that often are singled out for special treatment in the criminal justice system—for example, violent offenders, occasional offenders, and career offenders? Second, can the criminal justice system distinguish these subpopulations of offenders from the total population of offenders and thereby treat them differently? To answer these questions, one must ascertain and then utilize methods of identifying and selecting subpopulations from a larger population of offenders and accurately forecast the future behavior of offenders whom police iden-

121. *Id.* at 82, table 97.

122. *Id.*

123. *Id.* This proposition can be inferred from the major reasons given for not reporting crime in the *Criminal Victimization* report. *Id.* The main reasons given for the failure to report were as follows: (1) For 16% of all victimizations by personal crimes and for 19% for all household crimes, nothing could be done about it because of a lack of proof; (2) For 26% of personal and 29% of household victimizations, the victims did not consider it sufficiently important; (3) For 6% of personal and 9% of household victimizations, the victims believed that the police would not want to be bothered; (4) For 2% of both personal and household victimizations, the victims felt that to report would be too inconvenient or time consuming; and (5) For 7% of personal and 6% of household victimizations, the crime concerned a private or personal matter. These reasons account for approximately 59% of all reasons for not reporting personal victimizations to the police and 65% of the reasons given for not reporting household victimizations.

124. *Id.* The rate for household crimes is even lower—a mere one-half of one percent.

125. *Id.*

tify or apprehend.

A. Criminal Career Offenders

1. Characteristics of Criminal Career Offenders

The criminal justice system places a good deal of emphasis on dealing with the chronic, habitual, or career offender. The interest in career offenders is twofold. First, society has an interest in locating persons who have high individual rates of offending because, relative to other offenders, these individuals contribute disproportionately to the crime rate. Second, society also has an interest in identifying special subpopulations of career offenders—for example, robbers, rapists, and other violent offenders. Although rates of offending and recidivism vary considerably among offenders of any age after their initial contact with the criminal justice system,¹²⁶ determining the relative sizes of career offender populations and their relative contributions to the crime rate in a community nevertheless deserves special attention.¹²⁷

One major finding is a substantial prevalence rate of offending for males.¹²⁸ Recent estimates by Blumstein and Graddy¹²⁹ of the prevalence of male offending in cities of 250,000 or more inhabitants indicate that one in every four males living in large cities will be arrested for an index offense in his lifetime.¹³⁰ Most males are first arrested before the age of eighteen, with the probability of a first arrest dropping substantially after age sixteen.¹³¹ Nonwhite males in large cities are much more likely than white males to be arrested at least once; about one-half of the nonwhite males who grow up and continue to live in large cities—compared with fourteen percent of the white males—probably will be arrested at some point in their lifetimes.¹³²

Wolfgang, Figlio, and Sellin found that a population of offend-

126. The first American study to analyze recidivism for a cohort of males appeared in 1972. See M. WOLFGANG, R. FIGLIO & T. SELLIN, *DELINQUENCY IN A BIRTH COHORT* chs. 5-8 (1972). These writers also present a review of cohort studies in other countries. *Id.* at 5-13.

127. For a trenchant analysis and critique of attempts to identify career criminals and chronic offenders in a cohort, see Blumstein & Moitra, *The Identification of "Career Criminals" from "Chronic Offenders" in a Cohort*, 2 L. & POL'Y Q. 321 (1980).

128. Belkin, Blumstein & Glass, *Recidivism as a Feedback Process: An Analytical Model and Empirical Validation*, 1 J. CRIM. JUST. 7 (1973).

129. A. BLUMSTEIN & E. GRADY, *PREVALENCE AND RECIDIVISM IN INDEX ARRESTS: A FEEDBACK MODEL APPROACH* 28 (1981).

130. *Id.* See also M. WOLFGANG, R. FIGLIO & T. SELLIN, *supra* note 126, ch. 5.

131. M. WOLFGANG, R. FIGLIO & T. SELLIN, *supra* note 126, at 134, fig. 8.1.

132. A. BLUMSTEIN & E. GRADY, *supra* note 129, at 29.

ers is subject to substantial attrition after the offenders' first contact with the criminal justice system; roughly one-half of official first offenders have no subsequent criminal justice contact.¹³³ Moreover, both self-report and official data on offending support the conclusion that at least one-half of first offenders desist from further delinquency or crime within a relatively short period of time after their first arrest.¹³⁴ Some findings, however, indicate that persons who are arrested for a second index offense are highly likely to be arrested for yet another index offense. Blumstein and Graddy, for example, determined that the probability of rearrest for an index offense after a second arrest is .88.¹³⁵ This rearrest rate is not significantly different from the .875 rate that Belkin and his collaborators found for all persons arrested for all offenses in the United States.¹³⁶ Thus, Blumstein and Graddy conclude that the criminal justice system should not direct its efforts towards persons arrested for a serious offense with the expectation of reducing the total recidivism rate, since these efforts are not likely to produce beneficial results.¹³⁷

Wolfgang discovered that a minority of all repeat offenders have such high rates of offending that their offending contributes disproportionately to the crime rate.¹³⁸ Wolfgang and his collaborators found, for example, that eighteen percent of the boys in a Philadelphia birth cohort who had lived in the city from age ten to age eighteen accounted for fifty-two percent of that cohort's offenses which were known to the police.¹³⁹ Although these findings might lead many to conclude that identifying high rate offenders and reducing their offending rates to zero would substantially reduce the crime rate,¹⁴⁰ Blumstein and Moitra demonstrate convincingly that, at present, chronic offenders cannot be identified prospectively from official crime records.¹⁴¹ They observe that the

133. M. WOLFGANG, R. FIGLIO & T. SELLIN, *supra* note 126, at 65.

134. Wolfgang, for example, has found this conclusion to be true for his second birth cohort study. See Wolfgang, *From Boy to Man—From Delinquency to Crime*, in *THE SERIOUS JUVENILE OFFENDER: PROCEEDINGS OF A NATIONAL SYMPOSIUM* 161, 170-71 (J. Hudson & P. Mack eds. 1978) (publication sponsored by the Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, U.S. Dep't of Justice).

135. A. BLUMSTEIN & E. GRADDY, *supra* note 129, at 25.

136. Belkin, Blumstein & Glass, *supra* note 128.

137. A. BLUMSTEIN & E. GRADDY, *supra* note 129, at 129.

138. Wolfgang, *supra* note 134, at 171.

139. M. WOLFGANG, R. FIGLIO & T. SELLIN, *supra* note 126, at 89, table 6.1.

140. For an eloquent statement of this conclusion, see J. WILSON, *THINKING ABOUT CRIME* 198-202 (1975).

141. Blumstein & Moitra, *supra* note 127, at 323 & 332 n.4.

number of prior arrests has little effect on rearrest;¹⁴² the probability of rearrest, particularly for those offenders who have experienced three or more arrests, is more or less constant regardless of the number of prior arrests.¹⁴³

Although career offenders tend to repeat the same type of crime in later offenses—except for theft—this persistence is uneven.¹⁴⁴ Moreover, evidence exists which shows that a person's history of criminal activity prior to any offense does not foreshadow the type of offense that the same person will commit subsequently.¹⁴⁵ Some offenders, of course, eventually do specialize in a major type of offending, although they occasionally commit other crimes. Specialization, however, seems to occur more often with adult than with juvenile career offenders. The recent Rand study of self-reported offending by incarcerated adults, for example, shows that among those offenders who report committing one or more robberies, three percent had individual robbery rates of thirty or more in the year prior to their incarceration.¹⁴⁶ Similar specialization rates seem to occur with a subset of offenders in cases of aggravated assault—particularly assaults on persons who are known to the offender—and burglary.¹⁴⁷ The Rand study, however, found much less specialization in the crimes of homicide and forcible rape. Indeed, among incarcerated persons who admitted committing one of the two offenses, the median annual rate of committing these particular crimes was below the median annual rate for all offenses for aggravated assaults, attempted murder, shootings and stabbings, and attempted rape.¹⁴⁸

Thus, the trend among researchers is to attempt to identify subpopulations of offenders prospectively by using prediction scores based on a number of characteristics relating to the offender and his or her history. At present, however, this process selects far too many false positives, and, therefore, has limited practical value.

Another common characteristic of offenders is that they tend

142. *Id.* at 327-28.

143. *Id.*

144. See M. WOLFGANG, R. FIGLIO & T. SELLIN, *supra* note 126, at 206.

145. *Id.*

146. M. PETERSON, H. BRAIKER & S. POLICH, *DOING CRIME: A SURVEY OF CALIFORNIA PRISON INMATES 22* (1980). High-rate robbers on the average have 13 times as many robberies as do low-rate ones. *Id.* at 25.

147. *Id.* High-rate burglars average 25 times as many burglaries as do low-rate ones. *Id.* at 25.

148. *Id.* at 25, table 10a.

to be relatively young, and this fact holds true whether they actually are arrested,¹⁴⁹ or whether they simply succeed in victimizing someone.¹⁵⁰ Moreover, group offenders, who are discussed below, on the average are younger than lone offenders.¹⁵¹ The NCS estimates for eight cities in the United States posited that only one-third of all lone offenders were from twelve to twenty years of age, compared with about one-half of all offenders in multiple offender victimizations.¹⁵² In addition, although older multiple offenders apparently were unlikely to victimize young persons, multiple offenders in general were quite likely to victimize persons who were older.¹⁵³

A final general characteristic of offenders is that they tend both to live relatively near their victims and to concentrate in a relatively small number of residential areas. A substantial number of studies show that offenders tend to commit their crimes within short distances of their places of residence.¹⁵⁴ Furthermore, juveniles may concentrate their criminal activities in even smaller territories than adults,¹⁵⁵ and adult offenders on the whole do not seem to move very long distances to commit crimes. Most subsequent studies have confirmed the findings of the 1964 FBI survey of offenders residing in Washington, D.C.¹⁵⁶ That survey found that only seventeen percent of the persons arrested in the entire metropolitan area—excluding those who were arrested for drunk and disorderly offenses—did not live in the general neighborhood where they were arrested.¹⁵⁷ Ten percent of the persons arrested for murder, forcible rape, and aggravated assault were nonresident offenders; nine percent of the persons arrested for robbery, as well as nineteen percent of those arrested for burglary, larceny, and

149. UNIFORM CRIME REPORTS, *supra* note 1, at 200-01, table 32 (1981) (annual report for 1980).

150. See CRIMINAL VICTIMIZATION, *supra* note 8, at 47-48, tables 40 & 42.

151. M. HINDELANG, CRIMINAL VICTIMIZATION IN EIGHT AMERICAN CITIES: A DESCRIPTIVE ANALYSIS OF COMMON THEFT AND ASSAULT 172 (1976).

152. *Id.* at 172-78.

153. *Id.* at 174.

154. See, e.g., M. AMIR, PATTERNS IN FORCIBLE RAPE (1971); A. Reiss, *supra* note 27; A. Normandeau, Trends and Patterns in Crimes of Robbery (1968) (unpublished doctoral dissertation available in University of Pennsylvania Library); M. Smith, An Economic Analysis of the Intracity Dispersion of Criminal Activity (1972) (unpublished doctoral dissertation available in North Carolina State University Library).

155. G. SUTTLES, THE SOCIAL ORDER OF THE SLUM: ETHNICITY AND TERRITORY IN THE INNER CITY (1968).

156. See UNIFORM CRIME REPORTS, *supra* note 1, at 23-25 (1966) (annual report for 1965).

157. *Id.* at 23.

auto theft, were nonresidents of the communities where the crimes were committed.¹⁵⁸

Offenders not only live in relatively close proximity to their victims, but as a population they also concentrate disproportionately in inner city residential and commercial areas.¹⁵⁹ The concentration of offenders in urban space means that the residents of these areas are disproportionately victimized relative to all others—even residents of those areas that have the same social characteristics. Residents of high crime areas share certain characteristics of socioeconomic status, race, and age composition; they are likely to be black, low in socioeconomic status, and relatively young in age.¹⁶⁰ These common characteristics, when coupled with the relatively low mobility of offenders in seeking their victims, suggest not only that victims and offenders are alike, but also that residence is fundamentally linked with any explanation of predation and victimization. They also suggest that community structure, including community patterns of deviance, may mitigate the effect of criminal sanctions.¹⁶¹

2. Group Offending

A substantial proportion of all offenders commit their crimes as members of offending groups.¹⁶² As a corollary of this proposition, a substantial proportion of all victimizations are committed by more than one offender.¹⁶³ An evaluation of the composition and amount of serious criminal activity must account for the seriousness in volume and character of offenses that these groups commit.

Victims reporting crime events to the NCS have noted that a

158. *Id.* at 24.

159. Researchers have observed this phenomenon over a period of more than 150 years in both European and American cities. Clifford Shaw and Henry McKay studied the question most intensively in the United States for the first time in the 1920's. See C. SHAW & H. MCKAY, *DELINQUENT AREAS* (1929); C. SHAW & H. MCKAY, *JUVENILE DELINQUENCY AND URBAN AREAS* (1942); *infra* note 201 and accompanying text. For an excellent recent summary of these studies, see Baldwin, *Ecological and Area Studies in Great Britain and the United States*, in 1 *CRIME AND JUSTICE: AN ANNUAL REVIEW* 29-66 (N. Morris & M. Tonry eds. 1979).

160. *Id.* at 47-48.

161. See Tittle, *Deterrents or Labeling?*, 53 *SOC. FORCES* 399, 407 (1975).

162. Reiss, *Understanding Changes in Crime Rates*, in *INDICATORS OF CRIME AND CRIMINAL JUSTICE QUANTITATIVE STUDIES* 12, 16-17, table 2 (S. Feinberg & A. Reiss eds. June 1980). See also Zimring, *Kids, Groups and Crime: Some Implications of a Well-Known Secret*, 72 *J. CRIM. L. & CRIMINOLOGY* 867 (1981).

163. Reiss, *supra* note 162.

very large number of offenders participated in these crimes.¹⁶⁴ Although some problems arise in estimating the number of different offenses that occur in all crime events—because of the overlap of offenders in repeat victimizations—the NCS information nevertheless provides the best available estimates of the extent to which offenders victimize in groups.¹⁶⁵ In major crimes against the person, only three in ten of the offenders who participated in crime incidents were alone when committing an offense, a quarter of the offenders were in groups of two and three, and almost half were involved in crime incidents that included four or more offenders.¹⁶⁶ Numbers of crime participants, however, varied considerably according to the type of crime. Among the major crimes against the person, offenders in the forcible rape category were most likely to commit an offense alone—about eight in every ten cases—and offenders in the category of robbery were most likely to commit a crime in a group—about six in ten cases.¹⁶⁷ Overall, single offenders committed just over one-half of the victimizations against persons reported in the NCS.¹⁶⁸

Because victims ordinarily do not know who the offenders are in crimes of stealth,¹⁶⁹ little information is available on the size of offending groups for the major crimes against property. The information which is available, however, suggests that the pattern for theft and attempted theft of automobiles is similar to that for crimes against persons.¹⁷⁰ The NCS excludes all cases in which juveniles or others may have been involved in the unauthorized use of a motor vehicle; if these incidents were included in the count, however, the group offending rate for motor vehicle theft undoubtedly would be the largest among all the major types of crime.¹⁷¹

This group nature of offending creates substantial implications for criminal justice policies. Crimes that frequently are committed by groups might be considered more serious because citizens' fear of victimization by groups may constitute one element in the public's determination of which crimes it considers serious. Robbery,

164. *Id.*

165. *Id.* at 12-13.

166. *Id.* at 16-17, table 2.

167. *Id.*

168. *Id.* at 14-15, table 1 and calculations based on information in table 1.

169. See *id.* at 16-17, table 2, for low rates of reporting for crimes against households (burglary, larceny from the household, and motor vehicle theft).

170. *Id.*

171. See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, NATIONAL CRIME SURVEY INTERVIEWER'S MANUAL (1979).

for example, which the public considers to be a serious crime, engenders public fear because many robberies are committed by two or more offenders who confront the victim with force or threats of force.¹⁷² Moreover, if the criminal justice system incarcerates selected individuals from an offending group, but does not incarcerate the entire group, then the system may not have averted the crimes that the incarcerated individuals would have committed had they not been incarcerated. Because the imprisoned individual is part of a group, the group itself possesses the capacity to continue to commit these offenses regardless of whether some individuals are no longer present. In addition, a group has special abilities to recruit new offenders into its ranks;¹⁷³ the loss of some of its members, therefore, would not necessarily abate the group's rate of offending. Because of this problem, society may have to develop new methods of dealing with group offenders if it wishes to act effectively to prevent further increases in crime.

B. *Problems in the Statistical Reporting of Serious Crime Matters*

The foregoing sections show that information which agencies collect and process about crime provides a selective and partial description of crime matters. Society's major sources of crime data¹⁷⁴ neglect to collect and report information that could shift the focus of law enforcement and alter the policies and practices underlying the criminal justice system. Although the current system of information gathering neglects a number of major topics because of its methods of selectively collecting, compiling, and reporting information about crimes, three of these topics are particularly important because they raise significant issues about crime control and the adjudication of offenders.

First, a substantial proportion of all offenders who are taken into custody for major crimes against persons or their property are people under eighteen years of age who participate in those offenses as members of offending groups.¹⁷⁵ Second, statistics gatherers give precedence to crimes against persons—especially those of violence against persons—over crimes against organizations.¹⁷⁶

172. Reiss, *supra* note 162, at 14-15, table 1.

173. *Id.* at 16.

174. See *supra* notes 1-23 and accompanying text.

175. See Zimring, *supra* note 162, figs. 3 & 4.

176. Reiss, *Towards a Revitalization of Theory and Research on Victimization by Crime, Foreword to Symposium, supra* note 18, at 704, 708-09.

Consequently, data sources that policymakers and the public rely upon largely ignore the consequences of victimization both for organizations and for organized life in communities. Last, institutions that gather crime information give most of their attention to crimes in which violence against persons may occur. Crime statistics gatherers view crimes of violence against property as less serious than crimes against persons, and, consequently, they neglect to compile and report complete data on these crimes. As discussed below, crimes of violence against property may have particular implications for the criminal justice system and crime control.

VI. CRIMES OF VIOLENCE AGAINST PROPERTY

The UCR Index of property crimes focuses on the taking of property by stealth or theft. The major index crimes against property include burglary, larceny, and motor vehicle theft. Theoretically, when theft occurs, the state of property remains unaltered; the only change in form is a transfer of ownership. When an offender commits a crime of theft, the event might constitute more than the mere taking of the property; it also might include violence against persons and destruction of property. Crime statisticians, however, often ignore violence against property when reporting crime statistics and give precedence to crimes against persons over crimes against property in classifying crime events.¹⁷⁷

Although UCR considers theft to be a property crime—not a violent crime against persons—this categorization is both misleading and an inaccurate representation of public notions about the nature of crime. Many persons would describe a victimization by theft, particularly burglary, as a violent experience, since the theft violates their sense of personal safety, property rights, and privacy. Burglary victims experience the unwelcome invasion of their homes and the theft of their belongings as continuing threats of violence.¹⁷⁸ Indeed, the popular notion of violence being inherent

177. When a single occurrence encompasses more than one offense, UCR classifies the incident according to its "hierarchy rule." This rule requires UCR to count only the most serious offense and ignore all others in the incident. Since all index crimes against persons rank above all property crimes, an incident that constitutes a crime against both persons and property will be classified only as a crime against the person. Arson is an exception to this hierarchy rule. See UNIFORM CRIME REPORTING HANDBOOK, *supra* note 4, at 33-34. Similarly, the NCS does not report destruction or damage of property when incidents are classified as violent crimes against persons. See CRIMINAL VICTIMIZATION, *supra* note 8, at 22, table 1.

178. .Garofalo, *The Fear of Crime: Causes and Consequences*, 72 J. CRIM. L. & CRIMINOLOGY 839, 840-41 (1981). In distinguishing physical harm from property loss, Garofalo

in property crimes is reflected in the development of the trespass action. At common law, trespass was a cause of action "for redress in the shape of money damages for any unlawful injury done to the plaintiff, in respect either to his person, property, or rights, by the immediate force and violence of the defendant."¹⁷⁹ The "immediate force and violence" element of the offense could be actual, as in the case of an assault and battery, or implied, as in the case of a wrongful entry on a person's land or private space.¹⁸⁰ Most crimes of theft contain some form of trespass in either an actual or an implied sense. The crime of burglary, for example, contains a form of violence against property in the implied sense of entry upon a person's private place; it also often includes physical violence to property, as in the crime of forcible entry to commit a burglary.

Nevertheless, the criminal justice system does not consider trespassing to be either a violent or a serious crime. This example is but one of the many instances in which the crime reporting organizations' failure to define property crimes to include elements of violence distorts society's general notions about the nature and seriousness of these crimes. This part of the Article, therefore, discusses crimes that result in the destruction of property and the effect that these crimes have on the relationship between communities and their crime rates.

A. *Destruction of Property*

Ordinary crimes of theft often result in damage or destruction of the victim's property. Thus, even when police recover the property, it has been destroyed in some important sense. Thieves, for example, may damage or destroy an automobile, or they may alter the state of a precious object by melting down the gold or silver. Perhaps more important, when thieves steal an article such as a gift or heirloom to which the owner attaches sentimental value, the object is in no sense "replaceable." Society's definition and measurement of property crime, however, focuses primarily on the monetary value of the loss, which conforms to the legal definition of larceny as the taking of something of value, and ignores the noneconomic costs and consequences of damage or destruction of

notes that burglary should elicit more fear than the simple larceny of some property item that is left in one's yard. *Id.* He states that "[a] piece of property can also be valued highly because it is an integral symbol of self. Theft of such property is similar to a physical attack." *Id.* at 840 n.3.

179. BLACK'S LAW DICTIONARY 1674 (rev. 5th ed. 1968).

180. *Id.*

property.

In individual and community terms, the consequences of thefts of property are different from the results of damage or destruction of property. Although individuals—barring sentiment—can replace both stolen and damaged or destroyed property, the destruction of property has an additional consequence for collectivities. Theoretically, the theft of property only transfers ownership of that property, leaving untouched the aggregate value of the property to society. Indeed, one effect of crime is the redistribution of wealth. When property is destroyed, however, society suffers an *aggregate* loss of value, which cannot be replaced. Moreover, repair of damage or replacement of destroyed property results in additional losses from diverting resources to restoration or replacement that might have been devoted to other ends. When offenders destroy public property, the victim is the public good and its treasury; governments must divert tax income for repair and replacement, and, therefore, the destruction of public property creates a collective victimization either by precluding the use of taxes for other goods or by causing taxes to be increased without providing an additional public gain.

Collectively used property is the typical object of crimes of property destruction.¹⁸¹ Major victims of property damage and destruction include single and multiple family residences, organizations such as businesses, warehouses, and storage facilities, and public facilities—particularly schools, parks, streets, and public transportation.¹⁸² In addition, households and other multiple own-

181. This statement is difficult to prove by precise calculation. Damage to property can occur in crimes of theft from the person or crimes against one's personal property, but these crimes appear to be far less frequent than the crimes in which the property of members of a household is at risk—burglary, larceny from the household, and motor vehicle theft—and they do not result in substantial damage to the property of organizations besides households—both privately and publicly held. All forms of property theft crimes are directed against households more often than they are against persons. Indeed, when one adds together all the crimes against property in which organizations are the victims and considers that vandalism is directed almost entirely against households and other organizations, a collective entity rather than an individual clearly surfaces as the model victim in crimes resulting in the destruction of property. See CRIMINAL VICTIMIZATION, *supra* note 8, at 22, table 1.

182. The crime of arson may be illustrative. UCR defines arson as “any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.” UNIFORM CRIME REPORTING HANDBOOK, *supra* note 4, at 30. For 1980, UCR reported that 31% of the arsons were directed at residential structures, 17% at industrial, manufacturing, commercial, or other organizational structures, 6% at the community or the public, 24% at some means of transportation—primarily motor vehicles—and 22% at some other form of property such as crops, timber, fences, and road signs. UNIFORM CRIME REPORTS, *supra* note 1, at

ers and users incur property damage resulting from burglary or motor vehicle thefts more often than do single individuals.¹⁸³ Finally, politically motivated crimes such as terrorism or threats to minorities often result in destruction either of property or of both persons and their property.

Perhaps the two most violent crimes against property are arson and vandalism,¹⁸⁴ both of which the public frequently associates with the destruction of public or collectively used property. The amount and cost of vandalism in the United States in a given year are extremely difficult to estimate, and the growing statistical base on arson is beset with problems of accuracy in measurement and completeness in reporting.¹⁸⁵ Nevertheless, current information on these offenses suggests that both crimes occur in great numbers and are likely to be committed by juveniles.

1. Arson

The information that local police departments report to UCR now includes the arsons committed in areas that are occupied by eighty-four percent of the United States population.¹⁸⁶ Police departments reported about 115,000 offenses of arson in 1980, an amount that is greater than the number of reported murders and rapes—the two most serious crimes of violence towards persons—during the same period.¹⁸⁷ If arson is regarded as the most serious property crime, then according to UCR figures, it occurs more frequently than the two most serious violent crimes against persons.

As in motor vehicle theft and burglary, young people commit a substantial number of the total arsons—assuming that arrests are a reasonably reliable indicator of the offender population.¹⁸⁸

36 (1981) (annual report for 1980).

183. Unfortunately, the NCS figures on damage to property are not reported according to the size of the household. Nevertheless, the conclusion in text is warranted because the proportion of single family households is well below that of multiple person households and single family households seem no more likely to report forcible or attempted forcible entry burglaries, than, for example, multiple person households. See *id.* at 41, table 29.

184. This proposition is based on the ranking of a large number of crimes according to their seriousness that includes most of the crimes which result in damage to property. Arson and vandalism consistently rank above crimes of simple theft. See Rossi, Waite, Bose & Berk, *The Seriousness of Crimes: Normative Structure and Individual Differences*, 39 AM. SOC. REV. 224 (1974).

185. See *infra* notes 186 & 190 and accompanying text.

186. UNIFORM CRIME REPORTS, *supra* note 1, at 36 (1981) (annual report for 1980).

187. *Id.* at 36, unnumbered table; *id.* at 41, table 1.

188. *Id.* at 200-01, table 32.

Roughly forty-five percent of all arrests for burglary, motor vehicle theft, and arson are of persons who are under the age of eighteen.¹⁸⁹ Among these three types of crime, however, a disproportional number of arson arrests are of young juveniles. In 1980, for example, one-fourth of all arson arrests were of persons who were under the age of fifteen.¹⁹⁰ Of course, this disproportion may be attributable in part to the juveniles' selection of arson targets such as community and public facilities, property in open space, and outbuildings.¹⁹¹ This consideration, however, does not explain the entire situation since one-third of all the arrests for the arson of residential structures were of persons who were under the age of eighteen.

2. Vandalism

Crime statistics reveal little about the nature and extent of vandalism offenses because standards for collecting and reporting information on this crime are not uniform. Arrest statistics, unfortunately, remain the major indicator of the extent of vandalism in the United States. The NCS, regrettably, includes neither vandalism nor arson in its surveys, although the system is currently considering their inclusion. Police departments ordinarily collect information on some vandalism complaints and count them as Part II crimes, but they do not officially record many instances of vandalism, particularly ones in which juveniles are involved. In 1980, the most recent year that UCR reported arrest information on vandalism, an estimated 250,500 arrests were made.¹⁹² This number compares with an estimated 20,040 arrests for homicide, 31,380 for forcible rape, 146,270 for robbery, and 277,470 for aggravated assault—the major crimes of violence against persons.¹⁹³ Indeed, police made more arrests for vandalism in 1980 than the 130,300 arrests that they made for motor vehicle thefts.¹⁹⁴

Considerable evidence suggests that the arrest rates for both motor vehicle theft and vandalism are well below the actual number of persons who are apprehended for these crimes. Law enforcement officers treat many of the crimes as unofficial juvenile offenses, and, therefore, they adjudicate the cases by informal

189. *Id.* at 200, table 32.

190. *Id.*

191. *Id.*

192. *Id.* at 191, table 24.

193. *Id.*

194. *Id.*

means.¹⁹⁵ Moreover, both motor vehicle theft and vandalism crimes apparently are more difficult for police to solve than crimes against persons and other property crimes. Thus, the vandalism rate probably is much higher than even these crude statistics suggest—perhaps as high as the rate for burglary.

Juveniles are substantially involved in the crime of vandalism. This fact is evident from the age distribution of persons arrested for vandalism: twenty-three percent of all persons arrested for vandalism in 1980 were under the age of fifteen at the time of their arrest, and one-half of all arrests for vandalism were of juveniles under the age of eighteen.¹⁹⁶ Vandalism is clearly a crime of the young.¹⁹⁷

Vandalism appears to be endemic in the central cities of the major metropolitan areas—particularly within inner city areas. Statistics on vandalism arrests, however, do not conform altogether to these observations; arrest rates for vandalism tend to be higher in smaller cities than larger ones,¹⁹⁸ although both small and large cities have substantially higher rates than rural and suburban counties.¹⁹⁹ Because vandalism, like all Part II arrests, is particularly subject to administrative and officer discretion, these statistics may be simply a reflection of a policy in large cities to give vandalism a relatively low priority. Smaller city police departments, on the other hand, may have enough time and resources to make more vandalism arrests than their metropolitan counterparts.

B. Communities and Crime

At least one study of the core areas in the inner cities has found that a substantial amount of the property in high crime rate areas suffers from victimization by the crimes of arson and vandal-

195. This conclusion is based on the findings from a large number of studies that rely on self-reports of delinquency. For a recent study and summary of other studies supporting this conclusion, see M. HINDELANG, T. HIRSCH, & J. WEIS, *supra* note 19, chs. 7-9.

196. See UNIFORM CRIME REPORTS, *supra* note 1, at 200, table 32 (1981) (annual report for 1980).

197. This conclusion is evident from comparisons of the age distribution of arrests for Part I and Part II crimes. See *id.* The conclusion is particularly true for the arrest of persons under the age of 10. Vandalism is one of the few offenses in which significant numbers of youths under age 10 are arrested, and the arrest rate for vandalism by persons in this age group is more than four times the rate of disorderly conduct, which is the offense having the next highest number of arrests of persons under age 10. *Id.*

198. See *id.* at 193, table 25.

199. See *id.*

ism.²⁰⁰ In some areas such as the South Bronx in New York City, one or the other of these crimes has destroyed a considerable amount of property. Researchers repeatedly have investigated the endemic nature of crime in areas beset by high crime rates since the early work of Shaw and McKay.²⁰¹ The most provocative findings from any of these investigations come from a longitudinal study of community areas in Los Angeles, which began as an attempt to explain the transition from low to high crime rate areas.²⁰² In the major findings that are discussed below, the study provides tentative support for the proposition that property crimes, including vandalism and arson, contribute to the transition of neighborhoods and communities from low to high crime rates for crimes against both persons and property.²⁰³

The study found that the movement from a low to a high crime rate community usually occurred over a relatively short period of time, with the major shifts occurring within one or two decades.²⁰⁴ Communities which became high crime areas witnessed an early and substantial rise in juvenile crimes, particularly crimes against property.²⁰⁵ As crime rates advanced, rates of crimes against persons lagged behind those of property crimes until the overall crime rate peaked; peaking occurred at that point when the community's person and property crime rates accounted for roughly equivalent proportions of the aggregate city crime rate.²⁰⁶

Another major finding of this study was that changes in a neighborhood's structure appeared to be the major determinant of changes in its crime rate. The physical deterioration of property, its conversion to multiple family units, and increase in density and occupancy were particularly important structural changes that af-

200. *Id.* This comparison can be inferred from examining the victimization rates according to the residential location of victims. Vandalism rates are quite high relative to victimization by other types of crime, and they are especially high for inner city residents. Over time, the victimization experience of the inner city population cumulates to a point at which a high proportion of all residents and property in the area have experienced some damage resulting from vandalism. For an example, see Koenig, *Correlates of Self-Reported Victimization and Perceptions of Neighborhood Safety*, in *EXPLAINING CRIME* 94 (G. Netter ed. 2d ed. 1978).

201. See C. SHAW & H. MCKAY, *supra* note 159.

202. S. KOBRIN & L. SCHEURMAN, *AN INTERIM REPORT: INTERACTION BETWEEN NEIGHBORHOOD CHANGE AND CRIMINAL ACTIVITY* (University of Southern California Social Science Research Institute, Sept. 1981).

203. See *infra* notes 204-12 and accompanying text.

204. S. KOBRIN & L. SCHEURMAN, *supra* note 202, at 234, 238.

205. *Id.* at 236.

206. *Id.*

fects the rate of crime.²⁰⁷ Over time, areas in transition to high crime showed a substantial absolute loss both in residential property²⁰⁸ and in units for residential occupancy because of abandonment, destruction by arson and vandalism, and deterioration without repair.²⁰⁹

The study also discovered that offenders as well as offenses were concentrated in high crime rate areas.²¹⁰ Given the relationship of the offenders' residence to the location of their offending, this phenomenon suggests that local offenders are primarily responsible for the community's high crime rates. In addition, the study emphasized that a proportionate increase of both youth and unrelated persons living in the area preceded and accompanied a sharp increase in crime as the neighborhood deteriorated.²¹¹ Indeed, according to the study, juvenile offenders and offenses were concentrated to a greater degree in high crime rate areas than they were in other neighborhoods.²¹²

Although the Los Angeles study did not separate violent crimes against property from other property offenses, case studies of other communities make it apparent that deterioration and abandonment of property accompanies vandalism by juveniles and vandalism and arson by adults.²¹³ The Los Angeles findings and other evidence strongly suggest that communities may experience a cycle of movement to high crime caused in large part by changes in the population composition and in the physical structure of neighborhoods. Vandalism and arson appear to be both cause and consequence of population shifts and changes in a neighborhood's structure, particularly in its rapid deterioration as a residential and business community. These studies also suggest that crimes against persons lag behind property crimes because some time elapses before the physical deterioration of a community causes its stable residential population to move out and make way for the influx of the transient and offender-prone populations. Because they create conditions that contribute to flight from the area, therefore, youthful offenders and their property crimes—both violent and nonvio-

207. *Id.* at 237-39, 242.

208. *Id.* at 238.

209. *Id.* at 237-38.

210. *Id.* at 236.

211. *Id.* at 239.

212. *Id.*

213. Moll, *Arson, Vandalism, and Violence: Law Enforcement Problems Affecting Fire Departments* (March 1974) (prepared for the Law Enforcement Assistance Administration, U.S. Dep't of Justice).

lent—may be very significant in causing transitions to high crime rate neighborhoods.

Because the traditional agenda of intelligence gathering and research has blinded both policymakers and the public to studying community as well as individual crime careers, the conclusions that are drawn from the results of these information systems must be examined critically. The evidence is insufficient at present, yet the conclusion is unmistakable that for many years society has treated juvenile offenses of violence against property and offenses in which the victims are organizations as inconsequential. In addition, society still knows relatively little about crime control in communities. If the criminal justice system is to respond effectively to changes in the crime rates in communities, the criminal justice system also must take into account the seriousness of crimes against property.

VII. CONCLUSION

Neither the American public nor the policymakers of the criminal justice system have access to accurate and complete information about the dimensions of crime in the United States, especially for its many local communities. Relying upon inadequate knowledge, policymakers are not able to develop or implement policies to combat crime effectively and prevent the decay of neighborhoods and communities. In order to better understand and address crime problems in the United States, policymakers should explore the possibility suggested in this Article that crimes other than those which statisticians traditionally have denoted as serious actually may be important objects for law enforcement attention.

By drawing inferences from institutionalized statistical sources and scientific crime study data, this Article has reassessed the seriousness of crimes that major statistical systems report as being serious. The Article demonstrates that crimes against persons and property, which usually are denoted "serious," actually result in less financial and physical harm than the public commonly believes.²¹⁴ The Article also argues that criminal activities such as crimes of violence against property and juvenile crime, which the public may consider inconsequential, play an important role in the deterioration of communities.²¹⁵

The reassessment of findings that this Article presents has several important implications for crime control policies. First, ju-

214. See *supra* notes 51-125 and accompanying text.

215. See *supra* notes 126-213 and accompanying text.

venile crimes and juvenile group offenders deserve more intensive study by scientists and greater attention from the criminal justice system. Society cannot continue to tolerate "benign neglect" of this juvenile population and its offenses, should further research prove that these young offenders and their crimes substantially contribute to the destruction of communities.

Second, statisticians can no longer ignore the seriousness of crimes of violence against property. If much of the violent crime against property is directed at victimizing public resources—residences, parks, schools, and businesses—this category of crimes may have important consequences for the quality of life in communities. Moreover, if as the Los Angeles study indicated, an increase in violent crimes against property often precedes an increase in crimes against persons and thefts of property,²¹⁶ then criminal justice policies need to focus more attention on breaking the cycle of decay that destroys neighborhoods.

The crime control and criminal justice systems must alter their policies and practices to confront the realities of community crime careers. Each community's failure to maintain its buildings, and to enforce its occupancy and fire protection codes, also contributes to physical decay. Moreover, each community's failure to enforce the laws that address violence against property—especially by regarding violent crimes against property as insignificant offenses committed by minors—has contributed to the deterioration of the quality of life in its neighborhoods. Each community should begin its program by enforcing its present laws and codes—regulations that were enacted to maintain the quality of housing, schools, parks, and transportation within the community.²¹⁷

Finally, policymakers and their statistics gatherers must begin to view criminal activity as a community phenomenon as well as an individual occurrence if they are to understand both how crime becomes endemic in communities and how to reverse the process of community decay. Society has paid too little attention to the ways that crimes affect collective life and its quality; it has focused more on individuals and the harm to persons than on organizations and the cumulative harm to communities. Scientists must develop longitudinal studies of crime in neighborhoods so both policymakers and the public will possess an accurate understanding of the com-

216. See *supra* notes 202-12 and accompanying text.

217. For evidence on the discretionary and weak enforcement of housing codes, see M. Mileski, *Policing Slum Landlords: An Observation Study of Administrative Control* (1971) (unpublished doctoral dissertation available at Yale University Library).

munity nature of crime events and a basis for developing policies that will effectively control crime and abate the deterioration of communities.

