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Special Report

Federal Offenses and Offenders

Prosecuting Criminal Enterprises

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Federal prosecutors have available two sets of statutes to dismantle criminal enterprises that function like businesses. The continuing criminal enterprise (CCE) statute (21 U.S.C. 848) targets only drug traffickers who are responsible for long-term and elaborate conspiracies. The antiracketeering statute (18 U.S.C. 1951-1968), which includes the Racketeer Influenced and Corrupt Organizations Act (RICO), targets offenders working at the top levels of various kinds of criminal organizations.

The number of prosecutions based on these statutes is relatively small compared to those for major categories of Federal offenses such as drug trafficking. Among persons whose cases were terminated in U.S. district court in 1990, 996 were prosecuted using the racketeering statutes and 128 were prosecuted using CCE, while 17,135 were prosecuted for drug trafficking using other statutes. Conviction under most criminal enterprise statutes requires proof of both a *predicate offense* and — what is generally more difficult — a pattern or set of circumstances that connect the predicate offenses.

The importance of the criminal enterprise statutes comes from their potential to break up associations of highly placed drug traffickers or to incapacitate criminals who direct complex illegal activities. By using these statutes, a U.S. attorney can obtain convictions that carry longer sentences on average than convictions for the predicate offenses alone. Additionally, based on overlapping jurisdiction with the States, Federal prosecutors may agree to use the statutes to prosecute crimes such as murder and robbery that would otherwise be State offenses only.

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Federal criminal enterprise statutes specifically target criminal behavior conducted like a legitimate business. The Racketeer Influenced and Corrupt Organizations Act (RICO) is the most prominent of these statutes. A majority of these statutes, including RICO, require or permit especially severe punishments compared with other Federal legislation directed at the same criminal behavior.

This special report examines how these statutes have been applied. The data indicate that the statutes are resulting in convictions and substantial sentences for drug kingpins and other major offenders.

This information should assist public officials, prosecutors, and researchers in their effort to fight racketeering offenders, including resilient top-level distributors of illicit drugs.

Lawrence A. Greenfeld
Acting Director

The main findings from an analysis of matters concluded by U.S. attorneys and cases terminated in U.S. district courts, from mid-1987 to mid-1990, include the following:

- In 1990, 2% of Federal offenders were convicted of racketeering or CCE charges.
- CCE offenders constituted less than 1% of Federal drug offenders, representing a uniquely defined set of the most serious drug traffickers. Characteristics of these offenders, such as sentence length and criminal history, can be most clearly observed in comparing CCE with "other" drug cases.
- Most racketeering convictions were based either on RICO (27%) or interstate travel in aid of racketeering (28%).
- The predicate offenses on which racketeering convictions were based were primarily gambling offenses (21%), drug offenses (23%), and threats and extortion (22%).
- Defendants in both racketeering and CCE cases were less likely than other Federal defendants to plead guilty but were about as likely as others to be convicted.

• Whether disposed by plea or trial, CCE cases took considerably longer to resolve than other drug trafficking cases. Racketeering cases took somewhat longer to dispose than cases that involved the corresponding underlying offenses, and approximately 50% longer than the average for all offenses.*

*Underlying offenses include all Federal offenses which could have qualified as predicate offenses in a RICO prosecution, except for drug trafficking, which is tabulated separately for comparison with CCE cases.

• Offenders convicted of racketeering were more likely to be incarcerated than were those convicted only of underlying offenses.

• Prison sentences for both racketeering and CCE offenders were substantially longer than those imposed on offenders convicted of the underlying racketeering-related or drug trafficking offenses, respectively. Ten percent of CCE offenders were sentenced to life terms, and another 29% were sentenced to definite terms of more than 20 years.

• Fines were imposed on a quarter of CCE offenders. The average fine exceeded $100,000, more than 7 times the average fine imposed on other drug traffickers.

Racketeering statutes

Federal racketeering statutes, first enacted in 1934 and periodically amended, target a number of specific offenses, such as conspiracy to obstruct, or obstruction of, interstate commerce by robbery or extortion; travel in interstate or foreign commerce, or use of the mails, with the intent to facilitate any unlawful activity; and any offer, acceptance, or solicitation of bribes to influence an employee benefit plan. Penalties include fines and imprisonment and vary by offense.

Racketeer Influenced and Corrupt Organizations Act (RICO)

The Organized Crime Control Act of 1970 amended existing Federal racketeering statutes to include the Racketeer Influenced and Corrupt Organizations Act (RICO).

RICO specifically prohibits four activities:
(a) investing the proceeds of a pattern of racketeering activity (as defined below) in an enterprise that engages in interstate or foreign commerce;
(b) acquiring or maintaining an interest in such an enterprise by means of a pattern of racketeering activity;
(c) using a pattern of racketeering activity in conducting the affairs of such an enterprise; or
(d) conspiracy to do (a), (b), or (c).

The statute defines *racketeering activity* as any of 27 types of violations of the U.S. Code and 8 types of State felonies. The 27 Federal offenses include specific types of gambling, prostitution, drug offenses, obscenity, theft, fraud, extortion, counterfeiting, bribery, obstruction of justice, cigarette bootlegging, and labor law violations. State predicate crimes include murder, kidnaping, gambling, arson, robbery, bribery, extortion, and drug offenses.

The statute defines *enterprise* to include any individual, partnership, corporation, association, or other legal entity, or any group of individuals who, though not a legal entity, are associated in fact.

The RICO statute permits fines of up to $25,000, imprisonment for up to 20 years, or both, and requires the forfeiture of ill-gotten gains and any interest in the enterprise. The statute authorizes restraining orders and injunctions prior to conviction to prevent the transfer of potentially forfeitable property.

Civil RICO

The civil provisions of RICO permit U.S. attorneys and private citizens to sue for treble damages and the cost of the suit (including reasonable attorney fees) if it can be shown that the plaintiff was injured in his or her business or property and that those injuries resulted from a pattern of racketeering activity. Many objections raised against the RICO statute have focused on its use in civil cases, as varied as divorce proceedings, religious disputes, and contractual disputes between business people.

The use of the civil penalties provided by RICO is not included in this report because private parties, not U.S. attorneys, have initiated most of the civil cases. In the 12 months ending June 30, 1991, a total of 966 civil RICO cases had commenced in U.S. district courts. The United States was the plaintiff in 12 of these suits.

Continuing Criminal Enterprise statute (CCE)

Although similar in purpose, the CCE statute and RICO differ considerably. The CCE statute targets only illegal drug activity. The statute makes it a crime to commit or conspire to commit a continuing series of felony violations of the 1970 Drug Abuse Prevention and Control Act when such acts are undertaken in concert with five or more other persons. Appeals courts have ruled that a continuing "series" means at least three related violations. For conviction under this statute, the offender must have been an organizer, manager, or supervisor of the continuing operation and have obtained substantial income or resources from the drug violations.

The sentence for a first CCE conviction is a mandatory minimum 20 years' imprisonment (with a maximum of life imprisonment), a fine of not more than $2 million, and forfeiture of profits and any interest in the enterprise. Anyone engaging in a continuing criminal enterprise who intentionally kills a person or causes an intentional killing (which actually occurs) may be sentenced to death. Probation, parole, and suspension of the sentence are prohibited.

Criminal matters

In calendar year 1990, U.S. attorneys investigated 2,704 suspects in matters potentially involving violations of the racketeering statutes and another 440 in matters where a charge of CCE was considered (table 1). Although only 3% of the suspects in criminal matters terminated in that year were investigated for these offenses, these matters involved some of the most serious offenders and led to some of the most severe sentences among all the cases terminated.

Table 1. Suspects in matters concluded by U.S. attorneys, 1990

Most serious offense investigated	Number of suspects	Percent of suspects Filed for prosecution	Declined
All offenses	95,760	63%	37%
Racketeering	2,704	52	48
Underlying offenses	8,317	49	51
Continuing Criminal Enterprise	440	85	15
Other drug offenses*	31,071	80	20
All other offenses	53,228	56	44

Note: The number of suspects was 60,521, filed for prosecutions, and 35,239, declined. Excludes matters resolved by U.S. magistrates.
*Includes possession (approximately 7% of Federal drug suspects).

Table 2. Suspects in matters declined by U.S. attorneys, 1990

Most serious offense investigated	Number of suspects declined	Main reason for declination: No crime	Referred for prosecution elsewhere	Case-related reasons[a]	Other reasons[b]
All offenses	35,239	16%	25%	30%	29%
Racketeering	1,302	16	19	45	20
Underlying offenses	4,268	18	20	37	24
Continuing Criminal Enterprise	67	1	31	31	36
Other drug offenses[c]	6,346	12	43	26	20
All other offenses	23,256	17	21	29	33

Note: The number of suspects for the declination categories was 5,641, no crime; 8,682, referred; 10,695, case-related reasons; and 10,221, other.
[a] Includes reasons such as weak evidence and expiration of the statues of limitations.
[b] Includes lack of resources to prosecute, minimal Federal interest, and failure to meet formal policy guidelines.
[c] Includes possession (approximately 7% of Federal drug suspects).

Table 3. Defendants and offenders in cases terminated, 1990

Most serious offense charged	Defendants*	Convicted offenders
All offenses	58,696	47,486
Racketeering	996	807
Underlying offenses	2,252	1,940
Continuing Criminal Enterprise	128	115
Other drug trafficking	17,135	14,538
All other offenses	38,185	30,086

*Excludes 8 defendants for whom outcome could not be determined.

The U.S. attorneys declined to prosecute about half of the suspects in racketeering matters. This declination rate was roughly comparable to that for suspects investigated for the underlying offenses mentioned in the racketeering statute. In CCE matters 85% of suspects became defendants in Federal prosecutions (although not necessarily on CCE charges), a prosecution rate comparable to that for other drug suspects.

Declination did not necessarily mean that no action was taken against a suspect. About a fifth of the racketeering suspects and nearly a third of CCE suspects whose matters were declined by U.S. attorneys were referred to other authorities for prosecution (table 2).

Among those racketeering matters that prosecutors declined to prosecute, 45% were declined because of problems with the legal case, such as weak evidence, jurisdictional problems, or the expiration of the statute of limitations. Among declined CCE matters, 31% were declined for these case-related reasons.

Another 16% of suspects in declined racketeering matters were declined because the actions did not constitute a crime, either for a reason such as lack of intent or from the conduct not appearing to violate a Federal law. The remaining 20% of the racketeering declinations and 36% of the CCE declinations occurred because of a lack of resources to prosecute, minimum Federal interest, a policy directive in prosecutorial guidelines, a request from another agency, or personal circumstances such as the defendant's poor health.

The nature of criminal enterprise offenses

In 1990, 3,248 defendants in cases terminated in U.S. district courts were charged with either racketeering or one or more of the offenses underlying the racketeering statute (table 3). Thirty-one percent of these defendants — 996 — were specifically charged with a racketeering violation. By contrast, fewer than 1% of the over 17,000 drug trafficking defendants in 1990 were charged under the CCE statute.

Over a 3-year period ending June 30, 1990, racketeering convictions were based principally on charges of interstate travel in aid of racketeering (28%) or RICO (27%) (table 4). The predicate offenses on which racketeering convictions were based were primarily gambling offenses (21%), drug offenses (23%), and threats and extortion (22%) (table 5).

Among those racketeering offenses for which a monetary loss could be determined, the average value was $1.9 million (not shown in table). Racketeering charges were significantly more likely to be brought in the Eastern U.S. than in the West. Over a quarter (27%) of defendants in racketeering cases terminated in 1990 were prosecuted in five judicial districts (Northern Illinois, Southern Florida, Southern and Eastern New York, and South Carolina).

Disposition of cases

Defendants in CCE and racketeering cases were much less likely to plead guilty than were defendants charged with other drug trafficking or underlying offenses. In 1990 among racketeering defendants, 64% pleaded guilty; among CCE defendants, 57% (table 6). Seventy-seven percent of defendants in cases involving the underlying offenses related to racketeering and 69% of non-CCE drug trafficking defendants pleaded guilty.

Table 4. Racketeering offenders convicted July 1, 1987 - June 30, 1990, by specific racketeering offense

Conviction offense	Racketeering offenders Number*	Percent
Racketeering offenses	2,326	100%
Interfere with commerce by threats or violence	350	15
Travel in aid of racketeering	654	28
Interfere with employee benefit plans	10	–
Illegal gambling	428	18
Money laundering	179	.8
Transactions in property derived from unlawful activity	13	1
RICO	637	27
Multiple offenses	55	2

–Less than 0.5%.
*Excludes 14% of racketeering offenders, 460 offenders, for whom a specific statute violation could not be determined.

Table 5. Racketeering offenders convicted July 1, 1987 to June 30, 1990, by predicate offense

Predicate offense[a]	Percent of convictions
Violent offenses	
Murder	2.9%
Assault	.2
Robbery	.5
Threats and extortion	22.1
Fraudulent property offenses	
Embezzlement	1.5%
Fraud	10.2
Counterfeiting	.2
Other property offenses	
Burglary	.1%
Larceny	1.8
Motor vehicle theft	.3
Arson	2.0
Transportation of stolen property	.3
Drug offenses[b]	23.5%
Regulatory public-order offenses	1.2%
Other public-order offenses	
Weapons	.2%
Tax law violations	3.7
Bribery	2.8
Perjury	.1
National defense	.2
Gambling	20.7
Prostitution	1.9
Mail or transport of obscene material	.3
Conspiracy, aiding and abetting	3.4
Number of convicted racketeering offenders	2,786

Note: Percents are based on 2,614 offenders with a known predicate offense. See *Methodology*.
[a] The most serious offense of conviction, other than the racketeering charge itself.
[b] Includes drug possession, approximately 6% of Federal drug convictions.

Table 6. Disposition of cases terminated in 1990

Most serious offense charged	Cases terminated in U.S. district courts: Number of defendants[a]	Percent of defendants: All	Convicted: Total	Plea[b]	Trial	Dismissed[c]	Acquitted
All offenses	58,696	100%	81%	71%	10%	16%	3%
Racketeering	996	100	81	64	17	15	4
Underlying offenses	2,252	100	86	77	9	11	3
Continuing Criminal Enterprise	128	100	90	57	33	9	1
Other drug trafficking	17,135	100	84	69	15	13	3
All other offenses	38,185	100	79	72	7	18	3

[a] Excludes 8 defendants for whom outcome could not be determined.
[b] Includes nolo contendere.
[c] Includes nolle prosequi, deferred prosecution, and Narcotics Addicts Rehabilitation.

Despite the greater likelihood of CCE cases going to trial, these defendants were more likely to be convicted than other drug trafficking defendants (90% versus 84%).

Conviction rates for racketeering defendants were slightly lower than for those charged with underlying offenses (81% versus 86%).

Table 7. Average time from filing to disposition, cases terminated in 1990

Most serious offense charged	Mean time in months from filing to disposition: Guilty plea[a]	Trial[b]	Dismissal[c]
All offenses	6.3 mo	8.0 mo	10.5 mo
Racketeering	9.5	12.7	15.7
Underlying offenses	7.8	11.5	16.3
Continuing Criminal Enterprise	13.3	18.3	15.2
Other drug trafficking	8.7	9.4	14.1
All other offenses	5.0	6.1	8.8

[a]Includes nolo contendere.
[b]Includes mistrials.
[c]Includes nolle prosequi, deferred prosecution, Narcotics Addicts Rehabilitation Act (NARA) Titles I and II, and all dismissals.

Table 8. Sentences imposed on convicted offenders, cases terminated in 1990

Sentence	All offenses	Most serious conviction offense: Racketeering	Underlying offenses	Drug trafficking: CCE	Drug trafficking: Other	All other
All sentences	100%	100%	100%	100%	100%	100%
Incarceration[a]	61	73	61	98	91	45
Probation[a]	40	38	54	11	18	50
Any fine[b]	31	37	23	27	16	38
Average fine	$9,161	$25,055	$21,942	$100,239	$13,499	$7,137
Number of valid observations[c]	47,036	855	1,861	82	14,851	29,387

[a]Includes sentences combining incarceration and probation.
[b]Includes all fines, regardless of whether other sentences were also imposed.
[c]Excludes 458 offenders whose sentence could not be determined.

Table 9. Length of prison sentences imposed on convicted offenders, cases terminated in 1990

Sentences to prison	All offenses	Most serious conviction offense: Racketeering	Underlying offenses	Drug trafficking: CCE[a]	Drug trafficking: Other	All other
All prison sentences	100%	100%	100%	100%	100%	100%
1 year or less	38	33	55	4	16	60
2 to 5 years	36	45	35	6	43	29
6 to 10 years	14	12	5	23	23	6
11 to 20 years	8	8	3	29	13	4
Over 20 years	3	2	1	29	4	1
Life	--	--	0	10	--	--
Number of valid observations[b]	28,659	625	1,136	80	13,559	13,259

--Less than 0.5%.
[a]The source agency classifies some offenders as CCE who were not specifically convicted under 21 U.S.C. 848.
[b]Excludes an unknown number of offenders whose sentence could not be determined.

Criminal enterprise cases generally took longer to dispose than other cases. On average, cases of CCE defendants who went to trial took nearly twice as long from filing to disposition as cases of defendants in other drug trafficking trials (table 7). Even guilty pleas in CCE cases took 5 months longer to dispose than pleas in other drug prosecutions.

Disposition times for racketeering defendants, however, were similar to or slightly longer than those for defendants charged with underlying offenses. For defendants who did not plead guilty, both groups of cases took approximately twice as long to resolve as dispositions for offenders convicted of crimes unrelated to enterprise offenses (shown in tables as "all other offenses"). Guilty pleas in racketeering cases also took nearly twice as long as pleas for "all other offenses" and 22% longer than for offenses underlying the racketeering statute.

Sentences

Incarceration sentences were imposed on most drug traffickers regardless of whether the CCE statute was invoked: 98% of CCE and 91% of other drug traffickers were sentenced to prison in 1990 (table 8). Racketeering convictions were more likely to result in prison sentences than were convictions for underlying offense types (73% versus 61%).

In addition to sentences to prison or probation, fines were imposed on over a third of convicted racketeering and CCE offenders. The average fine imposed on CCE offenders exceeded $100,000, more than 7 times the average fine imposed on other drug traffickers.

Where prison sentences were imposed, they tended to be much longer for criminal enterprise offenders than for those convicted of comparison offenses. Of all CCE prison sentences 10% were for life imprisonment, and another 29% were for definite terms exceeding 20 years (table 9). By comparison, 4% of "other" drug trafficking offenders were sentenced to terms of more than 20 years.

Twenty-two percent of racketeering prison sentences were for 6 years or more, compared to 10% of prison sentences for underlying offenses. Among racketeers sentenced to prison, 10% received terms of 11 years or more; among those sentenced to prison for underlying offenses, 4% had terms of 11 years or more.

Characteristics of convicted offenders

Offenders convicted of CCE are nearly all male (97%), mostly white (76%), less likely to be of Hispanic origin than other drug offenders (19% versus 26%) and substantially older than other drug offenders (a median age of 39 versus 31 years) (table 10).

Racketeering offenders resembled those convicted of underlying offenses, but were slightly more likely to be male, white, and older than their counterparts.

The criminal records of enterprise offenders were similar to those of their counterparts, although CCE offenders were more than twice as likely as other drug offenders to have served at least one term of felony imprisonment, and were somewhat more likely to be on probation, parole, or pretrial release at the time of arrest for the CCE violation (table 11).

Table 10. Characteristics of offenders convicted between July 1, 1987, and June 30, 1990

Characteristics	All offenses	Most serious conviction offense: Racketeering	Underlying offenses	Drug offenses: CCE	Drug offenses: Other[a]	All other
Male	83%	89%	87%	97%	86%	80%
White	72%	82%	77%	76%	74%	69%
Hispanic	17%	6%	5%	19%	26%	13%
Age						
16-18	1%	--	--	--	1%	1%
19-20	4	1	2	--	5	5
21-30	36	18	24	18	41	36
31-40	32	27	32	40	34	30
Over 40	26	53	42	42	20	28
Number of valid observations[b]	131,201	2,695	7,914	340	44,597	75,655

--Less than 0.5%.
[a]Includes possession (approximately 6% of Federal drug offenders).
[b]Based on the sex category that had the largest number of valid observations.
Totals excluded 91 offenders for whom data on sex were missing; 2,349 offenders missing a race designation; 3,046 missing a Hispanic designation; and 3,642 missing an age categorization.

Table 11. Criminal record of offenders convicted between July 1, 1987, and June 30, 1990

Offender's criminal record	All offenses	Most serious conviction offense: Racketeering	Underlying offenses	Drug offenses: CCE	Drug offenses: Other[a]	All other
No known record[b]	58%	56%	56%	40%	53%	61%
Juvenile only	3	2	3	4	4	3
Adult convictions						
Never incarcerated	21%	24%	22%	24%	25%	18%
Incarcerated under 1 year	5	4	6	5	6	5
Incarcerated over 1 year	13	13	14	28	12	14
Offender under criminal justice supervision at time of arrest	27%	13%	18%	27%	20%	33%
Number of valid observations	131,962	2,710	7,975	340	44,613	76,324

[a]Includes possession (approximately 6% of Federal drug offenders).
[b]Missing data cannot be distinguished from "No known record."

Brief history of criminal enterprise statutes

Continuing Criminal Enterprise Statute (21 U.S.C. 848)

1984: Enacted

1987: Effective

1986: Fines for first offenders increased from maximum of $100,000 to $2 million for individuals

1988: Mandatory minimum prison terms for first violations increased from 10 to 20 years

Federal Racketeering Statutes (18 U.S.C. 1951ff.)

1934: Interference with commerce by threats or violence (Section 1951)

1961: Interstate and foreign travel in aid of racketeering enterprises (Sec. 1952)

1961: Interstate transportation of gambling paraphernalia (Sec. 1953)

1962: Offenses related to employee benefit plans (Sec. 1954)

1970: Illegal gambling businesses (Sec. 1955)

1970: RICO (Secs. 1961-68; amended to clarify or broaden scope of prohibited activities, or adjust penalties in 1978, 1984, 1986, 1988, 1989, 1990)

1984: Use of interstate commerce facilities (including mails) in commission of murder-for-hire (Sec. 1958)

1984: Violent crimes in aid of racketeering activities (Sec. 1959)

1986: Money laundering (Sec. 1956)

1986: Monetary transactions in property derived from specific unlawful activity (Sec. 1957)

Methodology

Abt Associates Inc. calculated the tables in this report for the BJS Federal Justice Statistics Program (FJSP), based on data provided to the FJSP by Federal agencies.

The Executive Office for U.S. Attorneys (EOUSA) and the Administrative Office of the U.S. Courts (AOUSC) provided the source files used in this report. The AOUSC files include court processing of cases filed by U.S. attorneys and also other prosecutors such as the Criminal Division of the U.S. Department of Justice. Racketeering and Continuing Criminal Enterprise offenses were identified on the basis of the most serious offense mentioned. As a result, some racketeering offenders were excluded from this analysis because they were also charged with or convicted of a more serious offense (such as murder). Both individual and corporate cases are included in the tables, and both felonies and misdemeanors, unless otherwise indicated.

Offenses for comparison to racketeering were selected by analysis of the statute. 18 U.S.C. 1961(1) defines the term "racketeering activity" by listing 8 State offense categories and 27 U.S. Code violations. Persons whose most serious offense was one of the listed U.S. Code violations (but who were not classified as racketeers or drug offenders) were included in the tables under the heading "underlying offenses." These tables use the term "underlying offenses" when racketeering was not charged, and "predicate offenses" when racketeering was charged.

In tables 1 and 2, the U.S. Code title and section citation of the offense is available for classification. In all other tables, offenders were classified on the basis of either title and section or a substantive description of the offense provided by the AOUSC. If either of these indicated racketeering or CCE, the record was classified accordingly. The source agency classifies some offenders as CCE who were not specifically convicted under 212 U.S.C. 848. Where both CCE and RICO applied, the CCE charge was used.

Each section of tables 10 and 11 excludes offenders for whom that specific characteristic was unknown or not applicable (corporations). Demographic data were missing for approximately 2%-3% of offenders.

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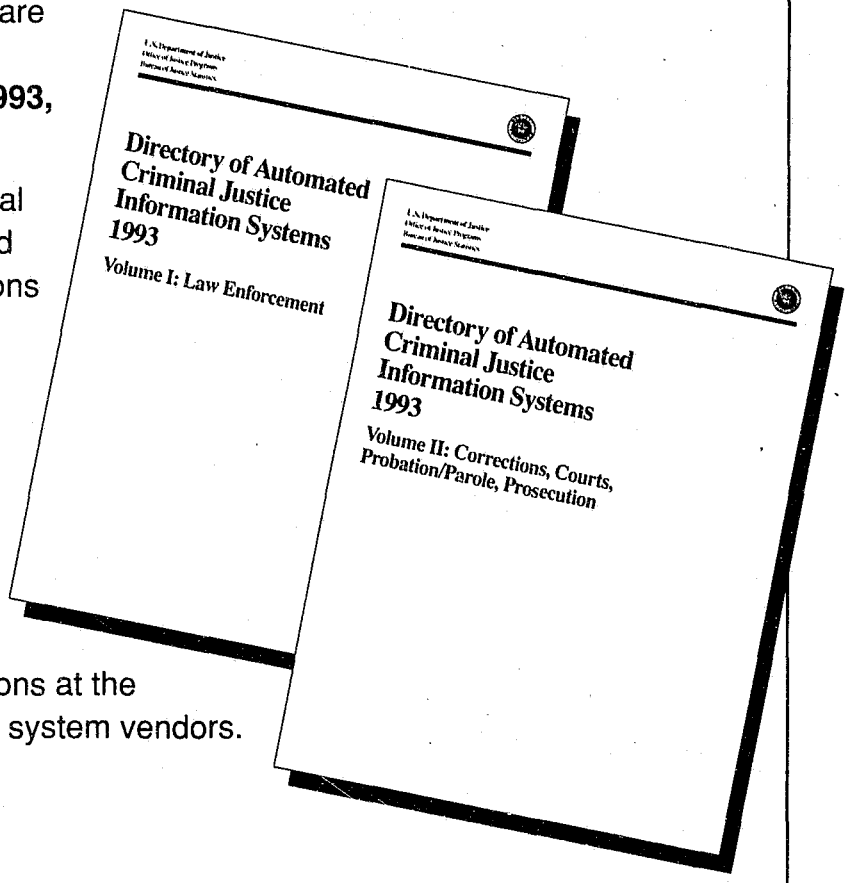

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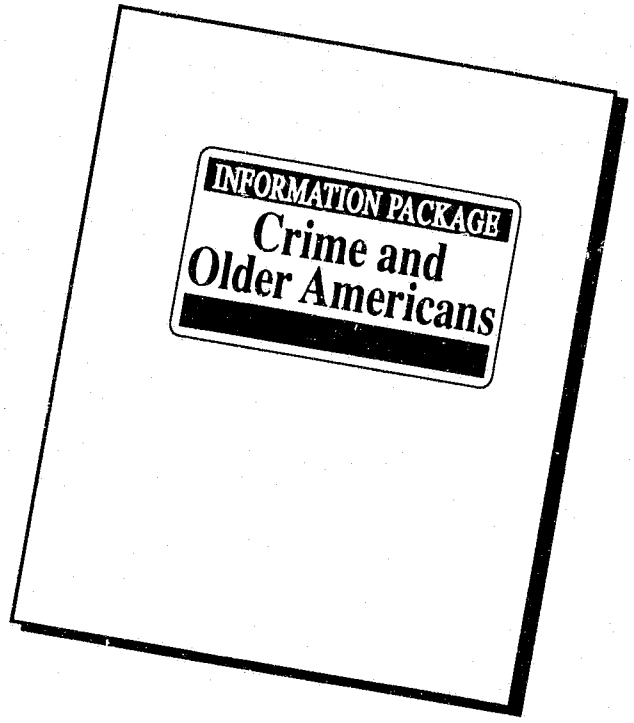

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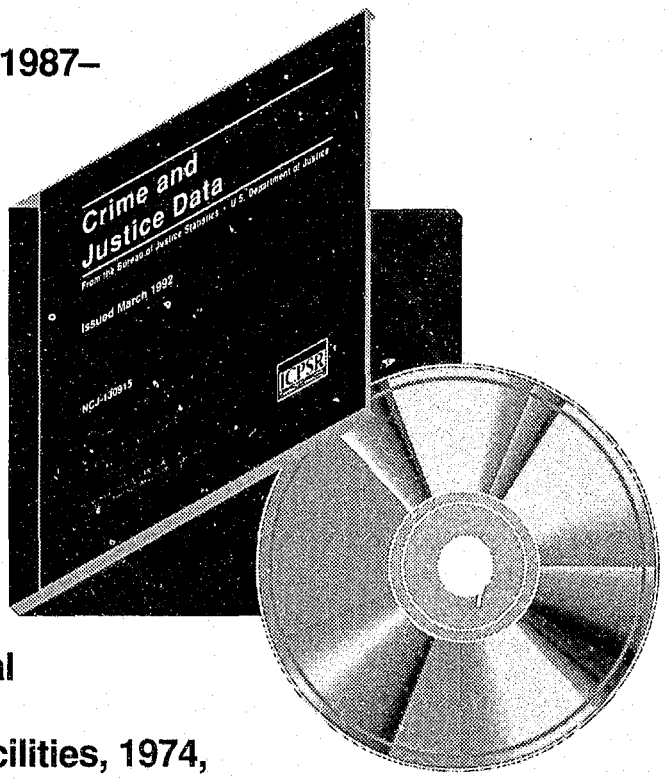

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