Behind the Guidelines

NAPBS Criminal Research Provider Guidelines

Number 25: Standardizing Search Parameters

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One of the biggest challenges in developing the *NAPBS Criminal Research Provider Guidelines* was how to standardize search parameters.

In other words, what search parameters should any given researcher apply when requested to perform a common criminal search?

This question represented an area of *held down* confusion between CRAs and Research Providers—so much so it seemed to have fostered a habitual MO of *don't ask, don't tell*.

It was our conclusion we could hardly consider our Guidelines complete without confronting this obvious area of potential confusion and imposing some order on it.

We began by surveying CRAs and Providers on the aforementioned question.

The responses ranged between a few exceptional extremes that held, on the one hand, researchers should exercise no judgment whatsoever; and on the other hand they should actually wear the CRA's hat in determining reportability. Otherwise, the vast majority of responses fell more moderately in between.

It was into this area of potential confusion we sought to establish our initial beachhead: namely, what constitutes the predominate search scope?

It stood to reason this would necessarily be a function of the industry's predominately requested *search product*—which was, obviously, the 7 year criminal search.

This we termed the *Common Search*—and made it our foundation for building, to the degree practicable, a standard search parameter.

Our next step was to examine the existing nomenclature on the subject.

One prevalent term stood out in particular: *readily available*.

A number of the CRA contracts surveyed employed this term—typically in directing Research Providers to search the *readily available* index or return all *readily available* records.

At first blush this term seemed reasonable enough. But on closer inspection it was found to be open to interpretation at best, downright potentially dangerous at worst—for both CRAs and their Providers.

In Alameda County, California for instance the felony/misdemeanor computer index extends back 10 years. As a rule all Alameda researchers check this index exclusively in performing a 7 year search.

However there is also a felony only fiche index in the Oakland Superior Court. And this index, by contrast, extends back to the early 1900's.

We confronted the fact is was not beyond the realm of possibility that a job applicant under background check could have been recently released from prison on an Alameda conviction filed well over 10 years ago which would not be detectable on the felony/misdemeanor computer index.

We envisioned the victim's counsel pulling out the CRA's contract requiring the researcher to search the *readily available* records, and then questioning the defendants in the negligent hiring suit whether the felony-only index is "readily available".

So our next step was to coin a more defensible term.

Once again we used Alameda as our exemplar.

As previously mentioned the researchers in this county predominately use the felony/misdemeanor computer index in performing a 7 year search.

Just as this was the established standard for Alameda, other research communities had their own established standard for what portion or portions of their index they predominately used to perform a 7 year search.

Herein then was the first component of a workable standard: a researcher, when required to perform a Common Search, must minimally check the *predominately used index* for their jurisdiction.

Hence our definition:

> **Predominantly Used Index (PUI):** That portion or portions of a county's index at the *Central Court* which is commonly considered adequate to use exclusively in performing a *Common Search*. For example, in a county with three separate criminal index sections—such as: a section of the felony/misdemeanor index on computer which extends 10 years back; another section of the felony/misdemeanor index on microfiche which extends from 10 to 20 years back; and a felony-only index that extends 60 years back—only that 10 year section of the felony/misdemeanor index on computer would constitute the *Predominantly Used Index*, if indeed it is the section of public index predominately and exclusively used by the local research community to perform a Common Search in that county. Another example would be a county with a computer index that extends only 5 years back; then another microfiche index which extends from 5 to 10 years back; and a card index that extends 10 to 25 years back. The 5 year computer index plus the 5-10 year microfiche index would constitute the *Predominantly Used Index*, if indeed those are the sections of public index predominately and exclusively used by the local research community to perform a Common Search in that county.

As you can see another key term has emerged here—*Central Court*, which definition further frames our standard search parameter:

> **Central Court:** In counties with multiple courts that include smaller, local, lower level, outlying or remote municipal or justice-of-the-peace courts, the Central Court is considered that court in which felonies and most misdemeanors are adjudicated. The Central Court index may not include all cases that can be found in these smaller local

> courts, as such courts may not report all convictions to the Central Court—or "County Seat" Court as it is sometimes referred to.

With the above two key definitions in place, we were prepared to introduce the first component of a search parameters standard—or guideline, as we opted to call them:

> In performing a **Common Search** the research provider is minimally required to check the **Predominantly Used Index** in the **Central Court** for the jurisdiction being searched.

The next obvious question was: how much further could we practically go in standardizing search parameters?

The guideline above is merely a formal articulation of a pre-existing standard. It only addresses the *extent* to which any index should be searched in order to affect a Common Search.

Any endeavor to standardize search parameters beyond that would necessarily involve an effort to qualify *what records* should be returned in the course of performing a Common Search.

Revisiting our survey results raised additional questions along this line. Take the viewpoint that researchers must exercise no discretion or judgment, but robotically return everything found on an index regardless of age, level of charge or disposition.

Personally I had only look at one of my own jurisdictions, San Francisco, to answer this question for myself at least. The SF felony/misdemeanor index is a sprawling paper affair that extended back to 1976, with all records available at the time. In that the court records section could only accommodate a few public at a time, necessitating that researchers take limited turns writing up their records, it was unfeasible to spend our budgeted court resources—“court tokens” as we call them—returning up to 30 year old cases that were not only generally considered unusable, but legally unreportable as well.

We concluded it was impractical for researchers to have no discretion whatsoever over the records they returned on a common search. In the face of court access barriers and limited court resources in particular, operating as a “dummy terminal” could instantly result in a non-viable degradation of their service—squandering budgeted court tokens and engendering unnecessary delays in the blind pursuit of ultimately unusable or unreportable records.

The further we waded into the prospect of trying to further standardize this area, the more complicated it became. It brings to mind the proverbial fellow who waded into the swamp to drain it only to find himself up to his posterior in alligators. One could readily see how a habit of tacit mutual avoidance could have occurred around this subject.

We also discovered strong opinions about how much research a $5 search fee can practically buy.

In this regard, we were prompted to review the different *categories of research* in order to define and differentiate *screening* and *verification* from *investigation*, which we formally expressed in both the preamble to the Guidelines and the glossary.

While it was true no single standard existed vis-à-vis search parameters, it was equally true *many* individual standards existed vis-à-vis search parameters—namely, those which individual researchers had heuristically (by trial and error) forged in response to collective instruction, correction and penalization received from their clients.

The fact was also acknowledged that legal search parameters varied from state to state—and on that count in particular it was simply unworkable to attempt a single, uniform, nationwide standard for search parameters.

In lieu of the prospect of being perpetually balked, baffled and rebuffed by these complexities, we concluded the optimum solution was to simply introduce a standard that called for Criminal Research Providers to disclose their existing individual standards—which is to say, disclose their *default search product* (another term we introduced and defined in the Guidelines glossary).

For the Common Search in particular this required that the research provider disclose what we termed their *Common Search Guideline*:

> **Common Search Guideline:** A formal, written guideline specifically outlining how a *common search* is to be performed. Such a guideline could be originated by the research provider or the customer. A provider's Common Search Guideline is equivalent to a description of their *default search product* for a *common search*, which, when disclosed, provides their *customer* with an expectation of how that provider will perform their common search requests.

The researcher, then, should possess a written Common Search Guideline and minimally be prepared to disclose it upon demand.

Furthermore, should their individual default search parameters prove insufficient for any given client, it would then fall to that client to negotiate their own Common Search Guideline with their researcher.

With this third key definition in place, we were now prepared to introduce the second and final component of what was to become the central search parameters standard or guideline:

25) a) The research provider should specifically have a formal, written description of their **Common Search Guideline**, and shall disclose it, if not generally to their customers, then minimally upon demand.

b) In performing a **Common Search** the research provider is minimally required to check the **Predominantly Used Index** in the **Central Court** for the jurisdiction being searched.

The term *readily available* was not entirely discarded, by the way. Instead we chose to revise, re-task and qualify this term by way of the following definitions:

> **Available Record:** Any record which has not been lost, sealed, expunged, destroyed or otherwise rendered unavailable for public viewing.
>
> **Non-Readily Available Record:** 1) A record that is not readily available compared to other more readily available records in the same court or public records agency; 2) A record that is not readily available due to court access barriers. It should be noted that

> records which are readily available individually, or in smaller quantities, can nonetheless be more difficult to access collectively, or in larger quantities, by virtue of court imposed record access barriers—such as file-pull limitations (e.g., the court only allows 5-10 file-pulls per provider per day), viewing time limitations (e.g., the court only allows 1 hour of file-viewing per provider per day), et cetera.

Two additional flanking guidelines, with corresponding definitions, were subsequently developed in order to tighten up the overall standardization of search parameters; but we'll reserve any discussion of these for a future article in the Provider Committee's new *Behind the Guidelines* series.

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