

Analysis of Publicly Available Court Data (APACD) Webinar

KEVIN SCOTT: The new Chief of Prosecution and Judicial Statistics at BJS. That's pretty much all you need to know about me. One thing—and Suzanne will get to this as we kind of work through logistics, but we're—we want to kind of leave the option open for you all to not identify yourselves. So, you know, a normal conference call might start with going around, introductions. We're going to skip that and so, kind of, proceed with logistics and then substance.

SUZANNE STRONG: Right. And we also are recording this teleconference, we plan to record it and then make a transcript available so that anybody who was unable to attend today's teleconference can hear the questions that were asked, or at least get the answers that would come from any emailed questions as well. So we'll go ahead and get started. Again, the solicitation is the Analysis of Publicly Available Court Data. And with this solicitation, BJS is seeking to reestablish our State Court data collection. At this time, we do not have a national picture of how many cases are filed, dismissed, or convicted, whether they're convicted of the highest charge or if they're convicted of lesser charges, or if they're diverted into non-criminal-justice outcomes. So the primary goal for this data collection is criminal data. But the solicitation does allow applicants to examine civil data sources as well. BJS is statutorily limited on what civil data it can collect. So the collection of civil data is limited to the cases where civil and criminal justice intersect. Historically, this has included tort data, contracts cases, motor vehicle cases, medical malpractice cases, and other such similar cases where there was a violation of a law along with a civil outcome. The civil case could be filed in addition to or instead of the criminal case. So today's call is, again, to allow people who may be interested in applying for this collection to ask questions about this particular solicitation. Again, on this call, we are going to ask that you do not identify yourself or your organization, because we want to keep anonymity as clearly as we can. I will remind you that this call is being recorded and will be available. We're still working on how we're going to make that available, but please feel free to email me—and I'll give you my email address in a minute—in order to get the copy of that transcript. I will note at this time that there were two errors included on the solicitation. The solicitation incorrectly—we worked back and forth on whether we were going to have one teleconference or two teleconferences. We decided on one teleconference, but the solicitation references two. This will be the only teleconference, so there will not be a follow-up one. And then directly underneath that statement—and this is on page seven—it states that the project's going to be funded in two phases. We decided against that, and we are going to award the full amount of two million for all four phases of the project with the understanding that if there—if any of the goals or any of the phases of the project are not met, BJS retains the option to close the grant early. Today I would like to let you know that you can submit questions, obviously, via telephone, so on the phone right now. Or you can email to—email them to me, I have my email open so I will get them right away. My email address is not on the solicitation, but the spelling of my name is, so that should be helpful. My email address is Suzanne, which is S-U-Z-A-N-N-E, dot M as in Mary dot Strong, S-T-R-O-N-G, at USDOJ dot gov (suzanne.m.strong@usdoj.gov). As we stated in the solicitation, we were making ourselves available to have questions submitted in advance via email and telephone. At

this time, BJS receives phone calls [feedback noise]. Is there some feedback going on on people's lines?

MAN: Yes.

WOMAN: Yes.

MAN: Yeah.

KEVIN SCOTT: I guess if we could ask you, if you're not asking a question, if you could mute just in case, thank you.

SUZANNE STRONG: I'll restate my email just in case, but it's Suzanne, S-U-Z-A-N-N-E, dot M dot Strong, S-T-R-O-N-G, at USDOJ dot gov (suzanne.m.strong@usdoj.gov).

Again, we've received two calls with questions prior to today's teleconference, so I am going to share with you the questions that we received and the answers that I provided. Let me see if I can move this out of the way a little bit. The first question was, "Can data collected during the APACD, either from the courts themselves or from the compilation of information about state court access laws, be used for the contractor's own research?" The answer is that any data collections that are funded by BJS belong to BJS, and they cannot be used by the contractor until BJS releases the data to the public. The contractor cannot use any data collected that is not included in the public-use file, which is stripped of all personally identifiable information. However, at this time, BJS does not know the quality and extent of the data that we could collect in this effort. In some of our other collections, such as the National Crime Victimization Survey and our corrections data set, BJS states "restricted access data available under certain agreements." We may also make a more complete data file available under restricted access with the data collected in this effort. But we first have to see what kind of data we can collect. And then also, to the part about state court access laws—as noted in the solicitation, the information gathered as part of the state court data laws may be published as a BJS-funded report. However, in some circumstances, BJS has allowed contractors to use such data in other projects, but that is always on a case-by-case basis. The data cannot be used without express permission from BJS. The second question was, "There are potentially three reports: the state court data access report, the final BJS co-authored report, and the final report summarizing the project. Would all three of these be published?" So again, the state court records report may be published if that information is helpful to the public. If the data are collected and the BJS co-authored report is published, the final report may or may not be published. That is, if BJS and the contractor are able to publish the findings from the data collected, the final project report could remain an internal document outlining the challenges and successes of the project and recommendations for future collections of the data. If the project is not successful, that final project report should be published so that the public knows the level of effort that is required to obtain and report these data, and why the project failed. And the third question that we received is, "Is BJS moving towards shorter reports?" And that is a yes. BJS is moving away from a history of one project, one report model. Depending on the quality and representativeness of this data collection, multiple reports could be published by BJS and also by the contractor. However, the first report must be the co-authored BJS contractor report on the data. Once that report is published and the data are archived, the contractor can use the archived data to prepare as many reports as it likes. BJS is also able to prepare multiple reports from the data. BJS and the contractor could work together or separately on these reports, as it all

depends on the data that are collected. And again, those are a summary of the questions that BJS received prior to this teleconference. And we'd now like to open the line to your questions. I will remind you that the questions and answers are being recorded and again request that you do not identify yourself or your organization.

MAN: Hi, I have a quick question.

SUZANNE STRONG: Sure.

MAN: So I know for some of the other data, like, say, for the NCVS, it's collecting data from surveys that are being administered to private individuals, and so the embargo there makes sense. I was wondering if the embargo still applies if the data is already available to the public, that's being collected?

KEVIN SCOTT: It depends on—and this is part of, kind of, the initial scoping of this that's envisioned under this project. If the data are truly available without restriction to access, then I don't think BJS plans to construct an additional embargo or construct an additional barrier to access those data, even if BJS compiles those data from multiple jurisdictions. In all probability, as we—assuming that, again, assuming this goes forward, different jurisdictions will impose different restrictions on the use of their data, and so BJS will have to—and the contractor will have to—kind of work through all of that to try to see what BJS can publish and archive in terms of data, and what kind of access level we're permitted to grant on those data. But—and we acknowledge that this is a little bit different from surveys of private individuals. And in one respect, these are all, kind of, parts of public records, but how those data are made available electronically by different jurisdictions varies significantly.

MAN: So, just to follow up on that, just so I'm clear. So, any data that are publicly available and freely available—so, meaning without access or data use restrictions—for any of those data, there would not be this embargo, and any research organization could use those to conduct their own research as they acquire them during the course of this project. Is that correct?

SUZANNE STRONG: I'll let Kevin answer again.

KEVIN SCOTT: I think that—I don't want to give an unqualified yes as an answer to that question. This is—to be honest this is new territory for BJS, because you can imagine a world where one subset of the data are completely and totally freely accessible and, you know, there are no restrictions on what BJS and its data collection agents do once they've collected and analyzed those data. But then you can imagine a dataset that's not particularly—I mean, you know, that would not be the dataset that BJS used to produce its publications. So we're, you know, it may be three states allow complete and total and free access. And so BJS would do some analysis on those data, but then a BJS report is—you know, our objective is to produce national estimates. So, we may not—we wouldn't just use those three states, for obvious reasons. So, to the question, you know, if it were three states, for example, would that data be accessed—archived? I can imagine a situation where we have, kind of, different datasets with different levels of access, if that's something that's within the capability of our archive.

SUZANNE STRONG: As to the use of data prior to the first BJS co-authored publication, again, there can't be any reports that come out prior to that initial report, the BJS contractor authored report, because that's always been a BJS standard, that BJS collected the data, BJS should be the first to report on it. And it should adhere to BJS standards of publication.

MAN: I see. Okay. Thanks. No, I think that answers the question. So even though the data may be freely available, by which I mean without—available to the public without restrictions, we would—we would still need to wait for that archiving process on your end before we were to use it for any research purposes.

KEVIN SCOTT: Strictly speaking, you would only have to await the publication. So, the archiving sometimes occurs after that first publication. But once that first publication is published and available to the public, that's when the data can be used.

SUZANNE STRONG: Correct.

KEVIN SCOTT: Sorry if I misunderstood the original question.

MAN: Thanks.

WOMAN: Hi. We have a question.

SUZANNE STRONG: Please.

WOMAN: About—hi. So the funding is to—you're expecting it to be released and—the award to be released in September, correct?

SUZANNE STRONG: So, that's tricky. So, we are expecting it to be awarded in October. The solicitation should close in enough time that we're able to get everything cleared to be awarded in October. I know this past fiscal year, we did have some hiccups in the awarding process and the funds weren't released until January. But we believe we can hit the October schedule.

WOMAN: Okay. So is there any flexibility for an award recipient to delay the start date because of hiring constraints, or to be able to get the qualified people on-boarded to—for the project?

KEVIN SCOTT: I think that would be—it's difficult to answer that question in the abstract, because—simply because of the way we envision this. Different skill sets are going to be needed at different times. So I think that BJS would prefer that those skill sets that are going to be needed right out of the gate, which are, kind of, the ability to look at public laws and figure out what data are available where, those skill sets—BJS would prefer that those skill sets be available upon award. There may be some flexibility, kind of, you know, as we move down towards, kind of, proof of concept and actual data collection, and not having those people sitting, you know, in cubicles or offices on October 1.

WOMAN: Thank you.

WOMAN: I have a question.

SUZANNE STRONG: Yeah.

WOMAN: This just gets back to what we were talking—what you were talking about earlier, about the embargo being lifted after BJS has its first publication. Is there some timeline on when that publication—on when you expect to be able to publish? Is that right at the end of the three-year term? Might it take additional time? That's part one of my question.

SUZANNE STRONG: That's always a very good question. So, BJS does have publication standards, which we will provide to the awardee, the recipient of funds. The current timeline has the report at the end of the three-year period. So it's assumed that there's time within the award for data analysis, generation of tables, and compilation of that report in the three-year period. Now, we all know that projects rarely stick to the idealized timeline, and there could be some—some delay in the report. But at the current time, it's envisioned that that report will be at the end of the three-year timeline.

WOMAN: Okay. And just to clarify, so I'm absolutely certain about this. Regardless of whether the data is public or are public—and I guess by public, I think we mean fee-based and free—regardless of the status of the data being public, nothing can come out until that publication. Is that correct?

KEVIN SCOTT: That's correct.

WOMAN: Okay. Got it. Crystal clear.

WOMAN: I have a question.

KEVIN SCOTT: Go ahead.

WOMAN: So, to the example that you said that this is focused on criminal rather than civil, is that just because the civil data that you are authorized to seek is limited, or is there actually more of a focus on criminal than the solicitation would suggest? And the solicitation suggests that, you know, decisions need to be made about what data in both systems can be collected.

SUZANNE STRONG: So, I'm going to unpack that just a little bit. So, yes, BJS does have guidelines and statutory restrictions on what civil data that we can collect. In our statute, it's pretty clear that it's civil data as it relates to criminal justice outcomes. So, if there is a motor vehicle accident and somebody's been found at fault—the motor vehicle accident, the person will be charged in that with a traffic case, but then could also be sued in a motor vehicle court for damages or injuries. So, technically, in that criminal event, there were two separate outcomes in the criminal justice system and the civil justice system. So we couldn't just go and collect the number of divorces that occurred in a particular year. So, we are restricted in our civil cases. Ideally, if a system can generate information about their criminal cases, they could also generate similar information about their civil cases if their—if their civil justice management—case management system and their criminal case management system are running the same system. So if you can generate data about criminal cases, you could generate data about civil cases. However, since we're limited to the types of civil cases that we're able to collect data from, we have to be able to ask the providers of data, or to determine whether the civil data can be compartmentalized into those—into those buckets. So, can we only pull the tort cases? Can we only pull the motor vehicle cases? Can we identify those in any way in the data and then be able to pull out the cases that meet our guidelines on that? That's why the civil data is a little bit trickier, I guess is the best way to put it. So, BJS can collect information about criminal cases with relatively few restrictions, but we have a little bit more of a rigid standard as to what we can collect in regards to civil.

WOMAN: So for the—for the purpose of this grant though, is it—is it mandatory? Is it one of the grant objectives, mandatory objectives, that we collect that sort of related civil data? Or is it just...

SUZANNE STRONG: No.

WOMAN: ...a kind of secondary objective if we feel like it?

SUZANNE STRONG: It's not secondary—that's one way to put it. So, it is a secondary objective to determine whether we can collect the civil data limited to BJS's statutory guidelines. So, you know, rather than saying, "contractor, give us all of the civil data that meet these guidelines," and then the contractor goes out and determines that you can't pull those specific cases without pulling all of the data from the civil system—that violates BJS's authority to collect those data. So we're saying, if you have—if you've

determined that collecting the criminal data are going to be more challenging than initially thought, then perhaps we leave civil data collection to another time, and that is a decision that we are leaving to the contractors. If the contractor is able to look at the state access log for criminal and civil records and say, “we have a pretty good idea of what we can access in the criminal justice records, we have a pretty good idea of what we can access in the civil justice records, now let's see whether or not we can pull these specific case types out of the civil justice system”—and that might be the only question that's able to be answered. Because it might—I envision that some systems, you'll be able to identify those cases relatively easily, and they'll be able to provide an extract and say, “here's the civil cases that meet those guidelines,” while others aren't going to have case-level identifiers that say this is a motor vehicle tort, or this is a divorce, or this is a contract case—that are easily—that easily pull those cases in aggregate out of the system, if that makes sense. Most case management system software is, like, they're designed to be either case-level or person-level, not to pull aggregate caseloads out of it.

WOMAN: Got it. Okay. Thank you.

SUZANNE STRONG: Does that make more sense?

WOMAN: Yes, thank you.

SUZANNE STRONG: Okay.

MAN: I'd like to actually, sort of, tag onto that last thought about pulling the aggregate data. Is—are you more interested, or are you—to what extent are you interested in preparing, sort of, a snapshot or census-type dataset, versus assembling a set of protocols and procedures that can be used by others to do precisely the same thing? In other words, point some computer at a—at a data system with appropriate permissions and then be able to pull the same kind of case data in the future.

KEVIN SCOTT: I think that—I wouldn't—we wouldn't necessarily regard those as, kind of, our two choices. I think that we would want to establish the protocols, and I think that we in, you know—BJS is, I think, recommitting itself or trying to recommit itself to collecting court data, and I don't think that's a one-off kind of activity. So both (A) we would want to pull the data, and (B) we would want to be able to think about, kind of, making that a, kind of, a recurring data collection. Whether or not we're able to, you know, continue to issue solicitations and make awards along those lines, I don't know.

MAN: Okay. Thank you.

MAN: We have a question. Do you envision appeals part of this data series?

SUZANNE STRONG: Appeals. Okay. So that was something that I really struggled with, or actually that we really struggled with when writing this particular solicitation, because appeals cases can be so different. You know, do we—are we intending to exclude it by design? No. Are we intending to include it by design? No. So without knowing what these systems are capable of doing, I'm not really sure what kind of information that we'll get. So, I'm imagining a court of general jurisdiction. They're going to receive appeal cases from limited jurisdiction in non-single-tier courts, in courts with more than one tier. So they're going to receive appellate cases, and then they're also going to presumably have cases that were adjudicated in their court system that are appealed to a higher court. So, I'm more interested in the cases that the court of general jurisdiction hears and rules on. Whether or not we're going to be able to identify the appellate cases

it receives from a limited jurisdiction court is unknown at this time. Does that answer your question?

MAN: Yes. Thanks.

SUZANNE STRONG: Uh-hmm.

MAN: Hi. We just have one more question.

SUZANNE STRONG: Uh-hmm.

MAN: So there are four phases, and it's pretty clear that BJS will want to, kind of, assess at each phase and say, do we want to continue pursuing this, or is this going to be a hopeless exercise, or just way too expensive to complete? Do you have any criteria in mind for how things are going to proceed?

KEVIN SCOTT: That is—the question is at, you know, what—what's the decision that we'll use at the end of each phase?

MAN: Correct.

KEVIN SCOTT: I think that the overarching concern for BJS is the ability to provide national estimates, and of particular interest is national estimates about felony activity in the state court. And so we would be, at each stage, asking ourselves that question, and so, you know, if after a given phase it's clear that the answer is no, then we would—we would probably walk away from the project. If the answer is, we need more information, then I think we're inclined to continue to proceed along those lines.

MAN: Okay. Thanks. That's really helpful.

KEVIN SCOTT: And for those of you who are, kind of, unfamiliar with BJS perhaps, national estimates do not require a census. That is, we don't have to have every criminal case from every court in the—court of general jurisdiction in the country. If a sampling strategy is necessary to cover some percentage of the population and that sampling strategy is one that appears to be viable, BJS does that in other data collections, and so it should be clear that we're, you know, we're not saying at each stage, do we have data coming from every court that we can, you know, line up with one another and put into one big data set? That's not, kind of, the criterion.

SUZANNE STRONG: It's 1:30, and I just wanted to report that I did not receive any emails at this time.

MAN: I have a question. I came on late. I'm from [organization name]. Sorry for—if I got...

SUZANNE STRONG: That's okay. Just so you know, this call is being recorded, and we are asking that individuals do not identify themselves or their organizations. So that's okay. Just keep it in mind for the future.

MAN: Oh, well. The secret's out. I had a—probably a—probably an ignorant question. So on—where it lists the deliverables, is it fair to interpret deliverables one—everything up to one—up to the pilot test, which is deliverable eight, are—those are basically reports, we're not really collecting or trying to access these data at this point? We're just trying to get what's really available?

SUZANNE STRONG: That's true. So the first test is going to be deliverable eight, which is the pilot test.

MAN: Okay. And just another specific question. In deliverable eight, it's—the reference is made of “up to 10 sources.” And by sources you mean, say, publicly available data that's free, data that you have to pay for, et cetera, et cetera, that's what you mean by a source?

SUZANNE STRONG: So I am—I envision that there's going to be a great variety of data sources for this particular project. So there are state-wide systems that do have one repository for all court data. And so in one state, perhaps, to get all of the state's court data, you would contact that repository and identify the need for the data. Because, again, first—the first preference is to see if there's a state-wide, publicly available data extract that's already existent—already in existence, or can be compiled, or is compiled on a regular basis. So that's the first category. The second category would be the freely available data that are probably maintained in a state court report or a website. The third would be a restricted access, where there's either payment to obtain those data or those data are available under a paid subscription service on a website, some sort of—or it's available for the entire state, except for three counties. So, there's some restriction to that state-wide availability. And then a whole source of other things, where maybe each county puts its own data online, or one county can provide an extract but the county next to it cannot. So, we picked 10 sources hoping to have a representation from each of the types of data sources that are discovered in those previous reports. Does that make sense?

MAN: It does, although it gets a little confusing when thinking about that and sources across different states, right? That there are types of sources, but then there are literally specific sources, which could certainly run higher than 10 from the way you describe it.

SUZANNE STRONG: Right, and what we're trying to do is do, sort of, a mini test of the full data collection project.

MAN: Okay.

WOMAN: Hi. I have a quick question that might be a question that gets answered, I guess, during the actual project, so maybe, I guess, let me know if that is the case, but is there—are there any concerns regarding the data that's not available regarding, like, perhaps, dismissed cases, cases that have been expunged, or that involve domestic violence, certain types—I mean I know it mentions case type, but I guess dismissals is really the focus. I know some places don't make that publicly available.

SUZANNE STRONG: So I had already assumed, and I guess I wasn't explicit in the solicitation, that expunged cases would be unavailable because they've been essentially deleted from the case record. Dismissals, I think, is going to vary by jurisdiction—whether or not the disposition code that's maintained or provided includes an indicator of whether or not the case was dismissed. I had—I had thought that some jurisdictions would say, you know, they have a filed case, and then in the disposition code they'd indicate the case was dismissed. I think—if you're referring to cases that get dismissed prior to being filed in court, I don't think we have any way of tracking those, because those would live in the prosecution offices. But I do agree. Some jurisdictions may not be able to provide dismissed data or dismissals. I know that they likely won't be able to provide expungement for the dismissals. You're right, though, some states do limit the access to those cases. So there may be variation.

WOMAN: Right, and I apologize, I shouldn't have said expunged. I think I just was focusing on dismissals or cases that reference—that—where records might have changed and been removed.

SUZANNE STRONG: Right. So—right. So for example, I can think of, like, a probation before judgment case that was filed, you know, a couple years ago, and they completed the probation before judgment, and they call it back and then enter the case “nolle

crossed,” and then allow the person to file for an expungement. I would assume that that original case would no longer be able to be accessed in the data.

WOMAN: Correct.

SUZANNE STRONG: I am going to take everybody's silence as an indicator that you don't have any questions, but please let me know if you do. If you can go around and just let me know, if you're still thinking or—I just don't want to keep everybody on the phone longer than necessary.

MAN: If you could repeat your email address again just in case another question comes up, that would be great.

SUZANNE STRONG: You read my next statement perfectly. So in the solicitation, there is the Ask BJS web address, which you can always use because those always come to me. And my direct email address is Suzanne, S-U-Z-A-N-N-E, dot M as in Mary dot Strong, S-T-R-O-N-G, at USDOJ dot gov (suzanne.m.strong@usdoj.gov). And if you could put in the subject line “APACD,” that would be very helpful. Okay. If there's nothing else, I'd like to thank you all for calling in today. And—

KEVIN SCOTT: Just a reminder, obviously, that the solicitation closes on June 12.

MAN: Thank you.

WOMAN: Thank you.

WOMAN: Thank you.

MAN: Thank you very much.

MAN: Okay. Thanks.

WOMAN: Thanks. Bye-bye.