

THE NATION

BIG BROTHER — WITH AN FBI BADGE

Computerized surveillance proposal doesn't only scare civil libertarians

The year is 1995. With the push of a button in his squad car, a policeman who has stopped a motorist for a broken taillight discovers that the driver is a suspect in a white-collar crime investigation, belongs to two leftist clubs and once received welfare assistance under an alias.

The officer conducting this routine check also might have been able to call up the driver's American Express and Visa records, but that idea was ditched early on by an FBI advisory panel that is laying the groundwork for a major expansion of the national crime data bank.

It is the above scenario that has become the stuff of nightmares for civil libertarians, businessmen and even some law-enforcement officials.

They fear the FBI is moving a step closer to a computerized federal surveillance system reminiscent of George Orwell's Big Brother. An FBI advisory group currently is giving serious consideration to creating computer files that would permit law-enforcement officers across the country to track suspected criminals and retrieve confidential tax and Social Security information.

Some proposals strike at the heart of democracy and the individual autonomy and privacy that go with the right to be left alone. They violate a basic concept of American law: the presumption of innocence. They remind people of the witch hunts of the 1950s conducted by Sen. Joseph McCarthy, and they conjure up the specter of political surveillance carried out by overzealous FBI agents in the 1960s and 1970s among politicians, artists, academics and members of leftist groups like the Weather Underground.

Widespread concern

The new system, yet to be approved, represents a clear departure from the public record approach taken by the National Crime Information Center for the last 20 years. The existing crime data bank holds records of arrest warrants, convictions and stolen vehicles. Local law-enforcement officers at 64,000 agencies across the country, some using mini-computers in their cars, can tap into NCIC in a matter of seconds to check, for example, whether a speeder's car is stolen. Officers query these records a half million times each day.

But the FBI advisory panel could recommend that the bureau electronically trail citizens who have never been charged with a crime but who are suspects in drug, organized crime or white-collar crime cases. Records of juvenile offenses, normally kept confidential, could become a part of the criminal histories routinely available to law-enforcement agencies.

"This is a fundamental expansion and redefinition of the whole system," said Jerry Berman, director of the American Civil Liberties Union's Project on Privacy and Technology. "It has essentially been a public record system for criminal justice, and now it is being turned into a national tracking and surveillance system."

The ACLU is not alone in sending up red flags. The American Bankers Association, the US Chamber of Commerce, the National Rifle Association and Rep. Don Edwards (D-Calif.) have each raised their concerns about some of the 120 proposals that the advisory panel will review when it meets in Florida in December.

"There's too much possibility of Big Brother in Washington," Edwards said.

John Byrne, counsel to the American Bankers Association, calls the idea of tracking white-collar crime suspects troubling. "We want to fight insider abuse," he says, "but creating a data base has the potential for real problems."

"We don't want raw investigative information in that file," said Richard Gardner, general counsel to the National Rifle Association, which rarely aligns itself with Edwards and the ACLU. "These files should be limited to criminal-history information accessible to law-enforcement organizations for law-enforcement purposes."

Particularly troubling are eight preliminary proposals to link the FBI's law-enforcement computer to data bases at the Internal Revenue Service, the Immigration and Naturalization Service, the Securities and Exchange Commission and the Social Security Administration, among others. If implemented, these proposals would violate the Privacy Act of 1974, which prohibits federal agencies from disclosing records containing personal information for purposes other than those for which they were collected, according to some legal scholars.

"I don't think the law-enforcement need for that information outweighs the need of the public to be free from that level of scrutiny," said Hubert Wil-

The FBI and members of its advisory panel dismiss their critics' assertions. "These aren't proposals, they're concepts," said the chairman of the FBI advisory panel, Gray Buckley, inspector of the Colorado Crime Information Center. "We won't propose anything unless it has broad-based support and it's legal and right. We'll end up with some recommendations, but they will be mostly innocuous."

Some proposed changes

Among other proposals being examined by the FBI:

- A tracking system that would notify officers in Florida, for example, if a suspect was stopped for a traffic violation in Idaho.

- A file of "vehicles of investigative interest"; no standards are articulated, however, for entering the vehicle.

- On-line access to records previously purged from the system.

- A "known group membership" file detailing the purported affiliations of suspects.

- Juvenile offenses, misdemeanors and military records would be cataloged for use in background checks.

- Fingerprints found at crime scenes would be checked against files containing fingerprints taken for purposes other than law enforcement. Many question whether this would violate current law.

"Taking each proposal in isolation, you might say OK. But put them all together, and you have a picture of a society that looks very different from democracy," said a privacy expert.

Former FBI Director William Webster said in congressional testimony that the NCIC should continue to rely on public information, not unverified rumor. "I personally do not believe that the mere capability is a justification in itself for putting names and facts into a massive computer file," he said.

No one doubts the need for updating the NCIC system, but the ACLU wants the FBI to make radical changes only after congressional authorization.

"There are no standards, no consistent theme, no overall structure, no consistent policy," said Janlori Goldman, an ACLU attorney. "For such a dramatic overhaul, you should demand a more thoughtful dialogue."

New York University professor Kenneth Laudon recently studied the NCIC's accuracy. He found that the best NCIC file was only 50 percent accurate; its worst was wrong 75 percent of the time. "If you spread this inaccurate information around the country, you will increase the probability of false arrest and unemploy a vast number of people who later won't be able to get jobs even as street sweepers," Laudon said.

Recently, the FBI released the files it had maintained on nearly 100 American writers, including Ernest Hemingway, Edna St. Vincent Millay and Dashiell Hammett. The extent of surveillance conducted on the writers was remarkable. But even more remarkable was the number of inaccuracies the files contained.

The FBI commissioned the Mitre Corp. two years ago to conduct a \$4.3 million study for developing a second-generation crime data bank. As a starting point, the bureau asked law-enforcement officials around the country for "wish lists" and directed Mitre to match them with the technology. Mitre's answer was the current set of proposals.

Last June, the advisory panel struck about 120 proposals from the Mitre study. Among these were one to link the NCIC to credit-card reporting agencies.

FBI officials don't yet know what the final dollar figure will be, but outside experts estimate it will easily cost in excess of \$1 billion to bring a high-tech crime data bank into the 21st century.

Ironically, the Drug Enforcement Administration has quietly assembled a massive array of computerized files chock-full of raw investigative information and unverified leads that are available to any DEA agent worldwide who types in his password. Names, addresses, aliases, known associates, affiliations, descriptions, sightings and agent's notes are filed and cross-referenced into the computer directly from routine reports. Rarely are the files purged.

Despite the rush to put in place a state of the art system, the FBI has never examined the effect of disseminating records on combatting crime.

"They just say whatever the cops want we'll do."