

CHAPTER 2

Background

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NATIONAL CRIME INFORMATION CENTER SYSTEM

The National Crime Information Center (NCIC) is a national system, managed and operated by the Federal Bureau of Investigation (FBI) which uses computers and telecommunication technology for transferring and sharing criminal justice information among Federal, State, and local agencies. The center is physically located in the FBI's computer facility in Washington, D.C. and includes a telecommunication network that reaches automated or manual teletype terminals in all of the 50 States, the District of Columbia, Canada, Puerto Rico, and some large cities. The service of NCIC is free to the participating States and the funds for it come from the FBI's authorization.

In addition to the Computerized Criminal History (CCH) system, which is the subject of this report, NCIC has eight files containing information about wanted persons, missing persons, stolen vehicles, and other missing property. The summary information in these files is available online in response to inquiries from law enforcement agencies throughout the country. Confirmation of the validity of the data and further details must be obtained from the agency that originated the record. Each State has a single control terminal connected to the NCIC computer in Washington through which all inquiries and record updates must be transacted. At the present time, there are well over 6,000 law enforcement terminals connected to NCIC, averaging over 250,000 transactions daily.

The CCH file was added to NCIC in 1971, following a successful demonstration of feasibility sponsored by the Law Enforcement

Assistance Administration (LEAA). Originally conceived as an index file, pointing to records held in State repositories, the system, as implemented in NCIC, stores full details of criminal records that are supplied by the States and the Federal Government.

The CCH file now makes available instantly, more than 1,287,642¹ criminal histories of people who at one time or another have been arrested on certain felony and misdemeanor charges which have been established as "criterion offenses. "

After 6 years of slow development, and despite heavy Federal funding of State systems by LEAA, only 12 States in addition to the Federal Government are contributing records to this national data bank for use by their own agencies, by other State agencies, and by Federal agencies. Two of the earliest States to develop CCH programs, New York and Pennsylvania, withdrew from the system in 1974, finding that they could not justify the cost of updating the duplicate records held by NCIC.

Despite this slow development, criminal justice practitioners are virtually unanimous in their view that interstate exchange of criminal history information is necessary for the efficient and effective administration of justice. State officials express the view that implementation of CCH has been slowed by indecisiveness and confusion on the part of the Federal Government.

¹August, 1978 NCIC *Newsletter*.

COMMITTEE REQUESTS

This preliminary analysis was conducted as an initial planning activity in response to a request for an assessment of NCIC made by the Chairman of the House Committee on the Judiciary, Representative Peter Rodino, and the Chairman of the Subcommittee on Civil and Constitutional Rights, Representative Don Edwards.

They were joined in this request by the Chairman of the Senate Committee on the Judiciary, Senator James O. Eastland, and the Chairmen of two Judiciary Subcommittees, the Subcommittee on Administrative Practice and Procedure chaired by Senator James Abourezk, and the Subcommittee on the Constitution, chaired by Senator Birch Bayh.

As part of its legislative and oversight responsibilities for the Federal Bureau of Investigation of the Department of Justice, the House Subcommittee is studying the FBI's criminal justice information systems. Assuring proper standards for these systems has been the legislative concern of the subcommittee for the last three Congresses. Attention has been focused on cost-effectiveness, efficiency, security, and privacy protection. In addition, the larger issue of the role of the Federal Government in this exchange of information by and for local law enforcement agencies has been raised before the subcommittee.

In seeking OTA's help, the House Chairman cites* the technical complexity of nationwide computerized information and telecommunications systems, and the Justice Department's work on a proposal with both short- and long-range plans for the future of NCIC, the FBI's role in law enforcement telecommunications systems, and message switching generally. He cites a number of provisions that would necessarily have to be addressed in the FBI's plans for the future of NCIC: appropriate privacy and security measures and safeguards for constitutional rights and liberties; the needs of the primary users, the States; and the right balance between State and Federal control.

The Senate Judiciary Committee has been similarly concerned for several Congresses with

the legislative and oversight issues raised by the NCIC, particularly the CCH files. Yet the chairman notes that it has not had the benefit of a thorough evaluation of exactly what information is in the system, who needs it and why.

In addition to the matters covered by the House request, the Senate Committee asks* for emphasis on several issues, including: the impact of the interrelationship of many information policies that govern the administrative practices of the Federal and State agencies that use or are affected by NCIC, particularly by the criminal history records; the effect of any NCIC changes on other Federal agency users, as well as others who use CCH/NCIC files; and the relationship of NCIC programs, operation, and controls to the constitutional separation of powers and the independence of the Judiciary.

The Chairman also cited the benefits which might be gained from such a study; not only to improve the efficiency of NCIC, but to help Congress in its consideration of other proposals for applying such technology on a nationwide basis:

We believe Congress will benefit from OTA's assessment of NCIC. This system represents the first and most important nationwide use of computer and telecommunications technology to link Federal, State, and local governments, and to apply the technology to serious law enforcement and criminal justice problems of concern to our entire society. Many of the issues involved in NCIC are those common to any such Federal-State information systems.

An assessment of this large Federal-State personal information system would also partially respond to concerns expressed in 1976 and 1977 in letters to the Director of OTA from two different Chairmen of the Subcommittee on Government Information and Individual Rights of the House Government Operations Committee. They have cited the subcommittee's assignment involving the field of computer technology and other means of electronic communications, which flows from its legislative jurisdiction,

● See appendix A.

*See appendix A.

particularly from the mandates of the Privacy Act of 1974 and the Freedom of Information Act.

The current Chairman, Representative Richardson Preyer, reconfirmed the subcommittee's

earlier request for assistance on this issue, but commented "Of equal, if not greater importance is the subcommittee's concern over the impact of technological advances in the development of government information programs in general."

HISTORY AND PERSPECTIVES

The CCH information system is rooted in all the complex historical relationships among governments and institutions which have characterized our Federal system from its beginning, particularly in the area of law enforcement.

To the extent it is a system, CCH was developed and superimposed over patterns, relationships, processes, and ways of making decisions in many hundreds of different political arenas in every State. It was introduced into a framework already set by constitutional, statutory, judicial, and administrative doctrines. Although it was meant to be an eventual substitute for the pre-existing slower arrangements for sharing information at the Federal level, it has suffered the drawbacks of operating both as a parallel system, as a supplement to the old arrangement, or in competition with it as the older system was developed and expanded with new technologies.

For these reasons, the development of the CCH data-sharing program appears to have been caught up in the same kinds of political struggles and issues, often with new labels, which have dominated the old relationships. The decision areas for CCH development have, for some purposes, merely provided more points of access for those contending forces. In addition, CCH has brought into the old discussions newer forces with varied professional, economic, and organizational interests in the application of information sciences and computer and telecommunications technology.

The origin of the application of automated data-processing (ADP) technology to the exchange of criminal history records is grounded in the political agendas of the decade of the sixties, where political contenders debated the issues of law and order and proposed different kinds of remedies for dealing with crime in a

highly mobile society. It was conceived in a time of considerable social unrest, of protest activity, demonstrations, dissent, and violence, frequently involving travel across State lines for the purpose. Law enforcement officials and courts were often confronted with multiple arrests which placed strains on information and investigative resources and on the capacity of their criminal justice systems to administer due process of law. Organized crime elements, active in interstate commerce raised other public and government concerns. The extent of the day-to-day problems of crime in the community were beginning to show up as information technology enabled better crime reporting.

These public concerns coincided with trends in developing and applying computer and telecommunications technology to deal more efficiently and economically with problems of government and society. Tandem with this was the enthusiasm over the systems approach to public administration.

These movements and trends flowered in the report of the 1967 Commission on Law Enforcement and the Administration of Justice appointed by President Johnson. A landmark in the intellectual history of criminal justice issues, the Commission report recommended applying a systems approach to those interrelated problems through computer technology. It called for "a national law enforcement directory that records an individual's arrest for serious crimes, the disposition of each case, and all subsequent formal contacts with criminal justice agencies related to those arrests."

Following passage of the Safe Streets Act of 1968, the Department of Justice's LEAA, through Project SEARCH (System for Electronic Analysis and Retrieval of Criminal Histories), an interdisciplinary group, sponsored an experi-

ment to develop a plan for collecting and sharing the records of people involved in the administration of criminal justice.

The early Project SEARCH reports on the need for privacy, confidentiality, and security in the new systems addressed the social and political concerns being expressed in Congress and elsewhere in the Nation about the ways of achieving a just and fair society, accountability in government, how to prevent unwarranted surveillance and other invasions of privacy, and how to combat crime effectively. Principles were laid down concerning data content, rules of access and data use, dissemination, rights of challenge and redress, and administration.

LEAA began funding the development of State information technology that would enable States to computerize their files and participate in the system. By congressional mandate, they also began developing legislation to provide standards for information systems that they funded. In 1973, Congress amended the Safe Streets Act of 1968 to require that all criminal history information collected, stored, or disseminated through LEAA support shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included. These activities are to take place under procedures reasonably designed to ensure that all such information is kept current; the Administration shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information contained in an automated system is inaccurate or incomplete is entitled to review and correct it.

During the 92d, 93d, and 94th Congresses the House Judiciary Subcommittee on Civil and Constitutional Rights and the Senate Judiciary Subcommittee on Constitutional Rights held hearings on the various legislative proposals to set privacy, confidentiality, and security standards for arrest records and for any Federal or federally supported criminal justice information systems.

Testimony included that of Federal and State law enforcement officials and administrators involved in many different criminal justice programs; groups concerned with protection of pri-

vacy and civil liberties: spokesmen for press, radio, and television interests concerned with unfettered access to information; constitutional law experts concerned with accountability in government; computer professionals; State officials concerned with demands and controls that would be placed on standards and uses of computer technology, and particularly on State computer operations; representatives from business, industry, and other organizations who used arrest records; and many others concerned with the effects on rights to due process of law under current practices as well as the range of possibilities for affecting such rights in future programs.

During these congressional studies, according to one expert observer, five major issues dominated the agenda:²

1. What general rules if any should be set by Federal law to restrict the exchange of criminal justice information between criminal justice agencies?
2. What general rules should govern the release of criminal justice information outside the criminal justice community?
3. The extent, if any, of sealing or purging of records?
4. What rules should govern the collection and exchange of criminal justice intelligence and investigative files? and
5. Who should administer any Federal legislation—the Attorney General or a Board composed of private citizens and representatives of the States and Federal Government?

The problem of how to set controls on intelligence and investigative information with other criminal justice arrest records was a particularly difficult legislative task. Some congressional sponsors of legislation and many witnesses felt that it would be impossible and unwise to set specific standards for collection and dissemination of criminal history records without any statutory controls on dissemination of more sensitive and potentially damaging intelligence information which Federal and State agencies maintained about people.

The extensive congressional hearings on this draft legislation produced a high degree of co-

²Mark Gitenstein, address before the International Search Symposium, 1975.

operation between Congress and the executive branch, and among Federal and State law enforcement and criminal justice officials, press and media, civil liberties representatives, and other interested parties. However, no consensus could be reached which was strong enough to support final passage of legislation specifically to control law enforcement and criminal justice records. This was connected to and reinforced by the fact that the Justice Department undertook to draft regulations to reflect the consensus already developed and to set privacy and security standards for routine exchange of criminal history information by the FBI as well as for the federally funded criminal history record systems at the State and local level.

The further development of a national consensus on what the public demands from official information systems was fueled by a Department of Health, Education, and Welfare (HEW) Report on records on computers in early 1974 which summarized many of the current concerns about fairness and accuracy in government information programs and use of personal records. The report called for an application of "fair information practices" in the management of all personal records systems, including procedures for access, challenge, and rebuttal, for keeping data accurate and current and controlling improper dissemination. However, the scope of its recommendations generally excluded law enforcement and criminal justice records.

The report's findings encouraged the introduction of bills in many State legislatures and in Congress.

In Congress, such bills were introduced and the Senate and House Government Operations Committees held hearings on what was to become the Privacy Act of 1974. This statute, for the first time, established broad management principles and standards for the protection of privacy, confidentiality, and security in the Federal Government's computerization, collection, management, use, and disclosure of personal information about individuals.

In considering the scope of the act, the committees took note of the pending criminal justice bills and the forthcoming Justice Department regulations, and refrained from completely including law enforcement and criminal justice

records. However, with respect to criminal history records under the control of Federal agencies, Congress did require application of the act's general rules for public notices of record systems, for individual rights of access and challenge, and for standards governing confidentiality, security, and data quality.

A preliminary review of the hearings, documents, reports, and commentaries shows that many of the issues and questions raised in this report are not new. They have been raised and discussed ever since the CCH plan was conceived. Some of them have been discussed since the founding of our country. They have been the subject of numerous congressional hearings, of countless studies and conferences by private organizations, of judicial decisions, and of scholarly commentaries by experts. They have concerned Presidents, legislators, and judges; special interest groups in the public and private sector; public interest groups; and professional organizations of all kinds. They continue to concern directly every citizen who has been caught up in the machinery of criminal justice and whose record profile, however accurate or inaccurate, relevant or irrelevant, stale or timely, may be part of this Federal-State data system.

They concern every person whose chances for employment, professional license, and many other rights, benefits, and privileges may depend on someone searching a computerized file for information.

Ultimately, these questions and issues also concern every American who is a potential subject for some government decision on that person's arrest, detention, bail, prosecution, trial, sentencing, imprisonment, parole, rehabilitation, and employment. Finally, since they relate to matters of proper, fair, constitutional gathering, use, and disclosing of personal information about citizens, the issues raised by the application of technology for the CCH data system directly relate to the well-being of our Constitution and to the health of our society.

In addition to these individual concerns, these issues potentially involve every community that wants to use the best available means for fighting crime through effective law enforcement and swift, fair justice for offenders. They concern those who see popular control over local gov-

ernment as the most desirable instrument for democratic self-government. To others, Federal

controls and sanctions for this kind of system are the best guarantees for freedom.

THE PRESENT SITUATION

The present situation involves plans for expansion of NCIC for message-switching capability including the CCH records.

In July 1973, the FBI asked Attorney General Richardson's permission to implement message-switching capability that "would allow NCIC users to take advantage of the NCIC telecommunications network to transmit and receive messages to and from other NCIC users." The Deputy Attorney General on October 1, 1974 wrote the FBI Director "that it was deemed appropriate for the FBI to engage in limited message-switching but that any action to implement the decision must be preceded by the establishment and approval of an implementation plan." The NCIC Limited Message-Switching Implementation Plan was distributed in April 1975. Attorney General Levi did not act on it. FBI Director Kelley requested permission to terminate FBI participation in the CCH system. Action on this request was also deferred and the FBI was directed to proceed with decentralizing CCH records back to the participating States.

Members of Congress and concerned subcommittee chairmen have been informed that this effort would be based on adoption of a comprehensive "Blueprint" for a decentralized CCH program, and the Justice Department has agreed that this will be developed with the NCIC Advisory policy Board, interested Members of Congress, State CCH program officials, and State identification officials. Justice Department officials have also indicated that the FBI will not be authorized to perform message-switching until the approval by the Attorney General and Congress of whatever "Blueprint" is finally developed by CCH decentralization.

The Deputy Attorney General states: "the Department has no preconceived notion as to what ultimate solution will be adopted." "The goals which we shall be striving toward include identifying and implementing the type of system(s) which satisfy both the spirit of our constitutional democracy and the needs of our criminal justice community." The Department views these as "fully compatible goals."

At the same time, the States are preparing their own positions as to the future of CCH, both individually and through their membership in SEARCH-Group, Inc.

Reasons for the FBI's lack of enthusiasm for continued participation in the CCH system were described as follows in an April 16, 1976 FBI memorandum: lack of State participation, underestimation of costs and effort which would be required to establish, collect, and maintain data for the more elaborate CCH record format; nonexistent or slowly developing State technologies; a lack of required discipline and cooperation within State criminal justice systems; and the controversy surrounding establishment of the CCH file which has been disruptive to the growth and progress of the CCH program. In addition, there have been misunderstandings regarding the reason the FBI is attempting to gain approval for limited message-switching; for instance, it is feared by some that the FBI is attempting to supplant the National Law Enforcement Telecommunications Systems, Inc. (NLETS), and that they would be in a position to monitor all law enforcement communications. The Identification Division has a criminal history record file representing 21.4 million records contributed by all 50 States and the FBI, while CCH has records contributed by 8 States and the FBI. Most States continue to rely primarily on the Division services and this diminishes motivation for taking part in the CCH program. Finally, there is uncertainty about the permanence of legislation and regulations to govern NCIC-CCH, particularly those on privacy and security.

In the course of this planning process, the Department of Justice and FBI officials have interviewed and evaluated the views of a number of State officials and CCH user groups. Excerpts from their report appear in appendix B.

If some of the issues and questions are old, what is new is this critical moment of decision for the future development of the system which is now faced by Congress, the Justice Depart-

ment, and the State and local agencies who use such information. Decisionmakers now are presented with new opportunities for application and rearrangement of the information-processing and telecommunications technology in the light of changes in our society, in our economy, in concepts of federalism, and in the public expectations of effective law enforcement work combined with effective government recordkeeping and fair use of information wherever it affects the citizen.

Changes in jurisdictions of the Judiciary Committees and in the congressional budget process mean that for the first time in the debate over the issues, responsibility for substantive policy and Legislative oversight is joined with responsibility on the FBI budget. What is new, furthermore, is increased awareness of the need for careful fact-finding on matters which may determine the successful structuring of the CCH system according to the changing and varied needs of government and society.