POLICY ESSAY

GANG DATABASES

Gang databases
Context and questions

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Long before computers were so widespread, individual police officers and the gang-intelligence units of big city police departments maintained intelligence files on gangs and gang members. The introduction of computers enabled more systematic information gathering and storage, vastly more powerful search capacity, and practically instantaneous retrieval. Today, databases on gangs and gang members have proliferated at the local, state, and federal levels. As Barrows and Huff (2009, this issue) explain, the trend is clearly in the direction of more databases and access to information on more gang members—whether it is through a centralized gang database or diverse decentralized databases.

Gang databases are just one of many species of criminal justice investigative and intelligence databases that the information technology revolution has made possible. The police and other investigative, prosecutorial, and correctional agencies record many types of information in an electronic form, which can be easily accessed by countless authorized users and then lawfully shared or unlawfully leaked. Once information is entered into an investigative or intelligence database, it can easily migrate to other public and private databases and, therefore, can become more difficult to purge or edit effectively. Mistakes might never be corrected. The label could last a lifetime.

Gang databases come in various forms. Increasingly, police create gang databases for intelligence purposes—independent of conviction, arrest, or even a criminal investigation. In addition, jail and prison officials record such information in their databases in furtherance of institutional order and discipline. Prosecutors and judges also might want access to such information to use in making charging, plea bargaining, and sentencing decisions. In short, criminal justice agencies and agents operate many different databases wholly or partly devoted to gangs and gang members. They also routinely share gang-intelligence information with one other.

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Recording gang affiliation in an intelligence database is controversial because intelligence databases are constructed by police agencies on the basis of what might be limited, ambiguous, or even mistaken information. But even gang databases created by prosecutors and by jail and prisons officials are vulnerable to error, because a decision about whether a particular individual is a gang member (and whether a particular group of individuals constitutes a gang) often requires discretionary judgment. Moreover, even if a person is accurately identified as a "gang member," the meaning and significance of such membership varies greatly from individual to individual.

Civil Liberties Concerns

Gang databases raise civil liberties concerns because the concept of "gang" is amorphous. The label can be affixed to a tightly knit group of professional criminals or to friends who hang out together, and to all sorts of "groups" and clusters of individuals in between. Some critics perceive gang labeling as stigmatizing minority inner-city youth and, worse, limiting their educational, social, and economic opportunities as a consequence. The critics emphasize the vast numbers of youth—especially Black and Hispanic youth—who are entered into gang databases.

Despite these concerns, political and legal challenges to gang-intelligence databases have not been nearly as successful as challenges to intelligence initiatives directed at political radicals and suspected terrorists. Recall the 1960s and 1970s controversies about the Federal Bureau of Investigation and police information gathering on "radicals" and political activists. Legal challenges to some of these operations resulted in tight controls as to when and what kind of intelligence files could be opened and what use could be made of the information. Recently, the federal government's intelligence operations in the war on terror have triggered a firestorm of protests. Apparently, that kind of intelligence gathering is much more contentious than intelligence gathering directed at suspected gang members.

Intelligence gathering directed at suspected gang members has more or less been treated as a legitimate law-enforcement strategy rather than as a form of political repression. For decades, the police and other law-enforcement agencies have maintained organized crime files on the La Cosa Nostra (LCN) crime families, their members, hierarchies, activities, residences, businesses, and social clubs. To my knowledge, these files and databases have never been challenged successfully. Undoubtedly, the reason is that LCN is regarded as an unambiguous crime problem. To the extent that gangs are understood to be proto-organized crime groups, intelligence gathering on them is regarded as unproblematic.

Access to Gang Databases

Who has a good reason for accessing a gang intelligence database? The police argue, plausibly, that good information about gangs and gang members is essential for protecting neighborhoods and for properly deploying covert and undercover personnel and youth workers. Jail and prison officials argue that gang information is imperative for making appropriate classification and other decisions directly related to institutional safety and security. Prosecutors argue that knowledge

of a defendant's gang affiliation and rank better informs charging and plea bargaining decisions. Judges argue that a defendant's gang affiliation is relevant to bail and sentencing decisions. School officials argue that knowing which students belong to a gang helps them maintain security and assign counseling resources. Employers argue that screening gang members from the job applicant pool contributes to a reliable and competent workforce that will best promote the interests of the business and its customers and employees. If all these agencies, entities, and individuals have access to gang-intelligence databases, then the information is effectively public.

What About Due Process?

Being recorded in a database as a gang member can have fateful consequences for an individual's interactions with the criminal justice system, schools, employers, and even landlords. Yet, the police, jails, and prisons can label an individual as a gang member without affording him or her any opportunity to contest the label and without notifying the individual that the labeling has occurred. Although lack of notification seems blatantly unfair to the individual, it is hard to see how due process could come to the rescue. It would often defeat the idea of intelligence gathering to notify the target that he or she has been identified as a criminal threat. Imagine notifying suspected members and associates of LCN that they have a right to contest the organized crime-control unit's determination that they might be connected to organized crime!

Even if the intelligence target were to be notified, then what kind of due process would be appropriate? Would the suspected gang member have the right to a hearing before a police commander or some "neutral" fact finder? If so, would the police intelligence gatherers have to reveal to the target what they knew and how they knew it? Would they have to expose their informants, undercover agents, and electronic surveillance? Would the sources of intelligence information be subject to cross-examination? Would the suspected gang member be entitled to representation by retained counsel? Would the state have to provide an attorney to an indigent gang member? Would there be a right to an appeal within the police department or to a court? These questions strongly suggest that establishing a due process right to contest inclusion in a gang database is unlikely. Thus, maintaining the accuracy of gang databases will necessarily depend on the values, judgment, and competence of those officials who control the database.

Centralized or Decentralized Gang Databases?

Is the legislature the appropriate decision maker for authorizing or prohibiting the creation of a gang database? Should one size fit all counties in a state? Gang problems (and gang-control resources) vary considerably from community to community. Generally speaking, law enforcement in the United States is highly decentralized. Each county has its own prosecutor, and each city or town has its own police department. Although legislative attempts to control prosecutorial and police discretion do occur (e.g., mandatory arrest and prosecution in domestic violence cases)—for the most part—policing and prosecutorial policy is set at the local level. Furthermore, it is difficult to enforce state-level policy against local-level criminal justice system officials.

Even if policymaking on gang databases is centralized at the state level, the state is not likely to have a single comprehensive gang database or to tightly control the labeling of gang members. Gang enforcement is a local government function. All gang and gang-member information will originate at the local level and will almost certainly be recorded in local gang-intelligence files and databases. Then, that information will be input directly into the state-level gang database or be transmitted to state-level personnel who will also decide if and how to store the information. Meanwhile, it will probably be possible for local police departments to obtain gang-intelligence information directly from other local police departments.

Neither a state- nor a federal-level gang database can be exclusive. Even if gang databases are combined or merged at a central (e.g., federal or state) level, then it is likely that local police departments would keep their own databases and files (that is certainly true of rap sheets). The age of mainframes has passed; we live in the age of laptops and desktops. A local gang-intelligence officer could maintain his or her own database.

Regulating the Gang Database

Some jurisdictions have sought to regulate gang databases through legislation or administrative rule making. Such laws and rules contain criteria for labeling an individual as a gang member, and include protocols for auditing the database and for purging dated and inaccurate information. Here, willingness, capability, and competence are the relevant issues. Police departments (and other government agencies) always are strapped for resources. Realistically, scrutiny of the gang database is not going to be a high police-department priority. I think it is likely that auditing will be conducted shoddily or not at all. In any event, whether to leave a name in the database will often require subjective judgment. Moreover will information removed from the database be stored in yet another database?

If a name is removed from the gang database, what assurance is there that it will not be reentered in a local police-department database, in a gang-intelligence unit file, or into the computer of an individual police officer? The longer a name remains in a database, the greater the chance that it will be accessed by someone who could enter it into another database, perhaps a private database. The information technology revolution has made it difficult to destroy information effectively. And in the case of gang-intelligence databases, it is unlikely that any "complainant" will hold the feet of the database operator to the fire. Thus, it should not be surprising to find a large discrepancy between how the gang database should operate and how it does operate.

References

Barrows, Julie and C. Ronald Huff. 2009. Gangs and public policy: Constructing and deconstructing gang databases. *Criminology & Public Policy*. This issue.

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