

YOU'RE UNDER ARREST (AND SO IS YOUR DNA)

THE GOVERNMENT IS COLLECTING DNA FROM PEOPLE WHO'VE BEEN ARRESTED, BUT ARE STILL LEGALLY INNOCENT. DOES THAT VIOLATE THEIR PRIVACY—AND THE FOURTH AMENDMENT?

By Solomon Moore

Brian Roberts, 29, was awaiting trial in March for possession of an illegal drug. At the Twin Towers Correctional Facility in Los Angeles, a sheriff's deputy swabbed the inside of his cheek to collect a DNA sample. The DNA was then translated into a numeric sequence in the F.B.I.'s database of nearly 7 million genetic profiles.

Every Monday from now on, the F.B.I.'s system—housed in a closet-size room at its laboratory in Quantico, Virginia—will search for matches between Roberts's DNA and other profiles from all over the country—in the event that one day, perhaps decades from now, Roberts might leave his DNA at a crime scene.

Until now, the federal government genetically tracked only convicts. But in April, the Federal Bureau of Investigation, which maintains the world's largest genetic database, began collecting DNA samples from those awaiting trial and from detained immigrants. The F.B.I. plans to expand the growth rate of its database from 80,000 new entries a year to 1.2 million by 2012—a 15-fold increase.

"We went from federal

offenders to arrestees and detained non-U.S. citizens," says Robert Fram, the special agent in charge of the F.B.I. laboratory division. "We don't know where, or if, the number of profiles will plateau."

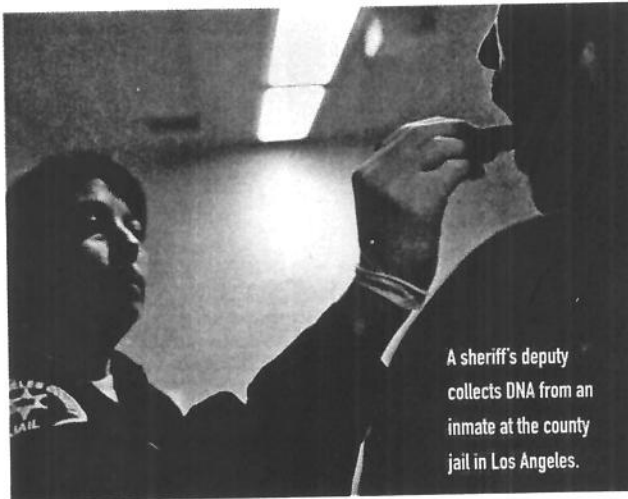
A GENETIC-SURVEILLANCE SOCIETY?

And the F.B.I. isn't alone: This year, California began taking DNA upon arrest and expects to nearly double the growth rate of its database to 390,000 profiles a year. In all, 15 states have expanded mandatory DNA collection to people who have been arrested or detained but not yet convicted. This move raises concerns about the privacy of people who are supposed to be

presumed innocent.

DNA analysis is used in only 10 percent of criminal cases, but it is far more accurate than other techniques; scientists estimate the possibility of a random match at one in a quadrillion (one thousand million million).

Law-enforcement officials say that expanding the nation's DNA database to include legally innocent people will not only help solve more violent crimes, but may also lead



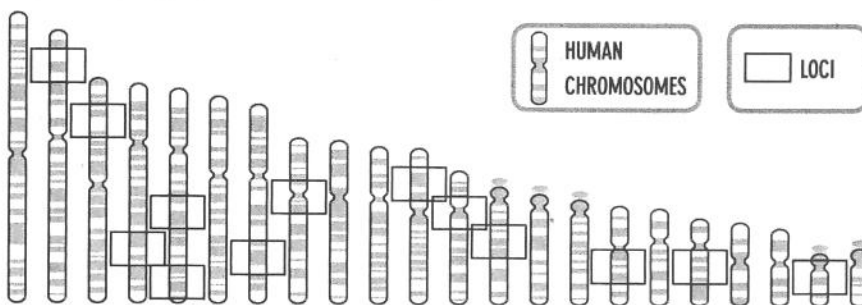
A sheriff's deputy collects DNA from an inmate at the county jail in Los Angeles.

The F.B.I.'s DNA database is being expanded to include genetic material from people who've been arrested but not yet convicted. State laws differ as to who is required to submit DNA to the national database.



15 states, along with federal agencies, now collect DNA samples from some of those awaiting trial. In Kansas and Minnesota, juveniles are required to provide DNA samples upon arrest.

HOW A DNA MATCH IS MADE: Forensic scientists analyze 13 specific locations, or loci, on human chromosomes, which contain repeating sequences known as Short Tandem Repeats.



SOURCES: WRIGHT STATE UNIVERSITY; BIOFORENSIC CONSULTING; DNA.GOV; NATIONAL CONFERENCE OF STATE LEGISLATURES

to more exonerations: So far, more than 200 wrongfully convicted people have been freed based on DNA evidence.

But criminal-justice experts worry that the nation is becoming a genetic-surveillance society and say that in some cases, compulsory DNA collection may violate the Fourth Amendment, which states that “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .”

“DNA databases were built initially to deal with violent sexual crimes and homicides,” says Harry Levine, a sociology professor at City University of New York. “Over time, more and more crimes of decreasing severity have been added to the database. Cops and prosecutors like it because it gives everybody more information and creates a new suspect pool.”

Courts have generally upheld laws authorizing compulsory DNA collection from convicts on the grounds that criminal acts diminish privacy rights. Minors are required to provide DNA samples in 35 states upon conviction; in Kansas and Minnesota, juveniles must provide DNA samples upon arrest.

Last November, three juvenile suspects in Arizona filed the only current constitutional challenge against taking DNA at the time of arrest. The judge temporarily stopped DNA collection from them and the case is pending.

Sixteen states now take DNA from some who have been found guilty of misdemeanors. But civil rights advocates say the government’s power is being applied too broadly. “What we object to—and what the Constitution prohibits—is the indis-

criminate taking of DNA for things like writing an insufficient-funds check, shoplifting, drug convictions,” says Michael Risher, a lawyer for the American Civil Liberties Union.

Law-enforcement officials maintain that DNA collection upon arrest is no different from fingerprinting a suspect. States purge profiles after people are cleared, but defense lawyers say this is a laborious process that can involve a court order.

RACIAL QUESTIONS

Critics are also concerned about the demographics of DNA databases. Hank Greely, a Stanford University Law School professor, estimates that blacks—about 12 percent of the U.S. population—make up 40 percent of the DNA profiles in the federal database, reflecting their prison population. He expects Hispanics, who are about 13 percent of the population and committed 40 percent of last year’s federal offenses—nearly half of them immigration-related—also to figure heavily in databases.

Law-enforcement officials contend that DNA is blind to race: Federal profiles include little more information than the DNA sequence and the referring police agency.

Rock Harmon, a former prosecutor for Alameda County, California, says that even if an innocent person’s DNA is in a genetic database, it means nothing unless there’s a crime-scene sample that matches it. “If you haven’t done anything wrong,” he says, “you have nothing to fear.” ●

Solomon Moore is a Los Angeles correspondent for The New York Times.



the U.S., and about a third of American households have reported having a gun at home (see facing page). State and local gun-control measures range from requiring safety locks to outright bans on certain types of ammunition or on gun ownership for felons or the mentally ill.

Advocates of gun-control laws say that much has changed since 1791, when people kept muskets to be ready for militia service and to hunt for their food. And modern weapons are far deadlier than those of the 18th century: They fire more powerful ammunition and can deliver dozens of shots at a time. In 2006, almost 31,000 Americans died from gun violence, more than in any other country.

Gun-rights groups—the most powerful of which is the National Rifle Association—argue that any restrictions on gun ownership infringe on the rights of law-abiding citizens.

“The only universe of people affected by gun-control laws are law-abiding Americans, since most criminals obtain their firearms on the black market,” says Andrew Arulanandam of the N.R.A.

LOOSENING STATE GUN RESTRICTIONS

Amid fears in the gun-rights community that the Obama administration is about to tighten gun restrictions, a number of states have recently loosened their gun laws. (In fact, the President has been largely silent on gun control, and has signed bills allowing guns on Amtrak trains and in national parks. “We have had some successes, but we know that the first chance Obama gets, he will pounce on us,” says Wayne LaPierre, head of the N.R.A.)

Montana and Tennessee passed laws exempting themselves from federal regulation of firearms and ammunition made, sold, and used within their borders. (Federal regulators say federal law supersedes such state measures; the Montana law is already being challenged in court.)

Virginia lawmakers have approved a bill that allows people to carry concealed weapons in bars and restaurants that serve alcohol. This change comes less than three years after the shooting at Virginia Tech that claimed 33 lives and prompted a renewed push for tighter gun control. Meanwhile, lawmakers in Arizona and Wyoming are considering whether to allow residents to carry concealed weapons without a permit.

There’s also been a push recently among gun-rights activists to exercise their right to carry guns openly in states that allow it (see photo, facing page). Starbucks, in particular, has been a target

for gun owners in Virginia and California, who have walked in and ordered their lattes with handguns strapped to their waists. Businesses can, in fact, ban guns from their premises, even in “open carry” states; California Pizza Kitchen, for example, has banned guns in its restaurants, while Starbucks has not.

WHY GUN CONTROL WILL LIKELY SURVIVE

Even if the Supreme Court does use the *McDonald* case to extend Second Amendment rights to the states by overturning Chicago’s handgun ban, it will not necessarily mean that all gun-control laws are unconstitutional.

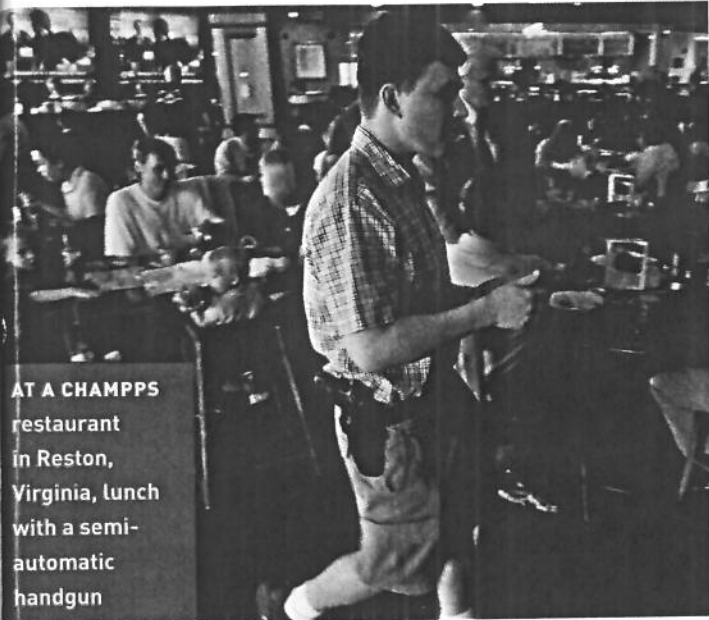
“Even when we’ve applied provisions of the Bill of Rights to the states, we have allowed the states substantial latitude to impose reasonable regulations,” noted Justice Anthony M. Kennedy during oral arguments. “Why can’t we do the same thing with firearms?”

Justice Antonin Scalia made a similar point in the *Heller* ruling two years ago, suggesting that all sorts of restrictions might pass Second Amendment muster, including, “the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”

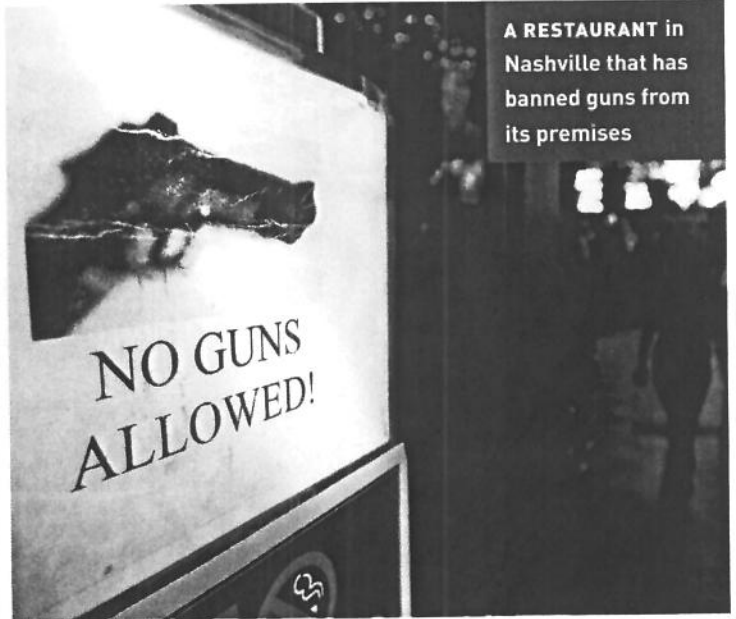
Comments like these have been cause for optimism among gun-control advocates. As Jonathan Lowy of the Brady Campaign to Prevent Gun Violence puts it, “The Court went to great lengths to state that the *Heller* decision is not an impediment to common-sense gun laws.”

The specifics of what kind of restrictions are constitutional and which are not will likely take years—and many more court cases—to hammer out.

“There will be a lot of litigation,” predicts Adam Winkler, a law professor at the University of California, Los Angeles. “But the vast majority of gun-control laws are going to survive.” ●



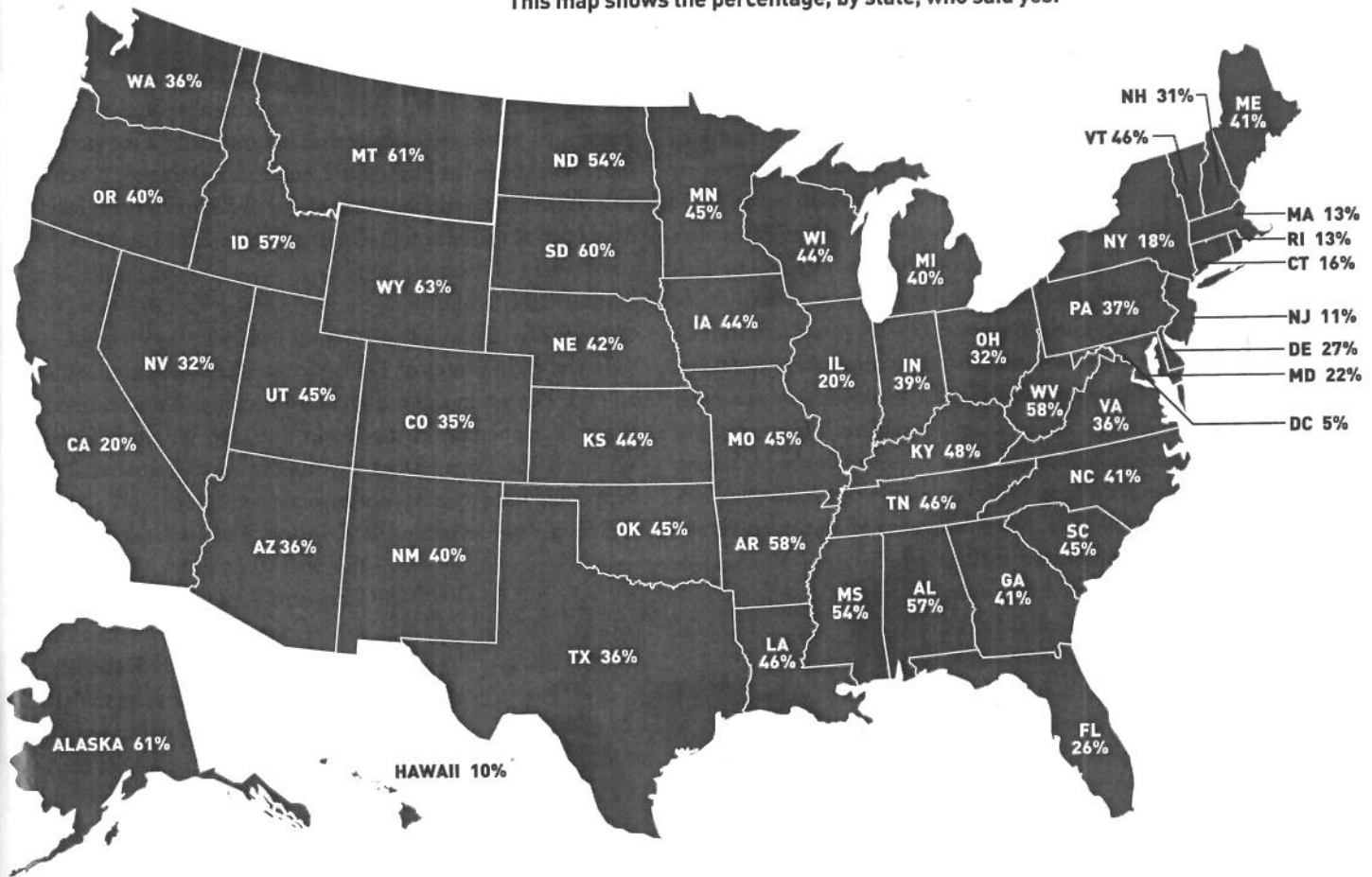
AT A CHAMPPS restaurant in Reston, Virginia, lunch with a semi-automatic handgun



A RESTAURANT in Nashville that has banned guns from its premises

GUN OWNERSHIP BY STATE

A 2002 survey asked more than 220,000 Americans if they kept firearms in or around their homes. This map shows the percentage, by state, who said yes.



SOURCE: BEHAVIORAL RISK FACTOR SURVEILLANCE SYSTEM, NUMBERS HAVE BEEN ROUNDED.
NOTE: ALASKA AND HAWAII ARE NOT DRAWN TO SCALE OR PLACED IN THEIR PROPER GEOGRAPHIC POSITIONS.