Stefan L.’s (not his real name) tale of what happened to him last summer is reminiscent of a disturbing literary classic. His experience with German authorities is eerily similar to that of Josef K., the main character in Franz Kafka’s The Trial. Out of nowhere, he, too, was pulled into the depths of the justice system for no apparent reason. In the course of a dragnet search, Stefan L., an innocent bystander, got scooped up in the investigators’ nets—by-catch, as it were. “This sort of thing can happen,” says Dirk Pehl of the Max Planck Institute for Foreign and International Criminal Law in Freiburg. He examined the efficiency of dragnet searches as part of his doctoral dissertation, and his findings were hardly flattering.

A dragnet search is based on a similar principle to a fishnet, as it aims to catch the big fish—namely terrorists, criminals or others who are considered to pose a “considerable danger to the government or the country, or to the well-being or lives of individuals.” When such dragnet searches began some 30 years ago, the police were fishing in a relatively small data pool.

The first criminal searches of this kind, which were intended to track down Germany’s Red Army Faction (RAF) terrorists, collected only addresses, car registration data or information such as how a suspect paid his electricity bill. In contrast, today’s investigators can obtain the authorization of the courts to access much richer sources of information. Credit card payments, information on telephone connections or self-disclosures made in entirely different contexts, such as on a tax return, can tell investigators a lot about a person.

In view of this criminological passion for gathering information, data protection specialists have predicted the rise of Big Brother. At the moment, however, the law stipulates certain limits. For instance, prior to initiating...
a dragnet search, investigators must obtain the permis-

sion of the courts, even in cases where the aim is to pre-

vent a major crime. The legal framework for this is pro-

vided by the law on fighting organized crime, which only

began regulating dragnet searches in 1992 (in sec-

tion 98a of Germany’s Code of Criminal Procedure), and

the police laws of the German states.

Although law enforcement agencies had already used the first dragnet search in 1977 to find the kidnappers of German businessman Hans Martin Schleyer, the method still triggers explosive debates. Just recently, the discussion on whether dragnet searches are a blessing or a curse erupted anew when Wolfgang Schäuble, Ger-

many’s Minister of the Interior, proposed expanding such

searches. He also suggested allowing employees of Ger-

many’s Federal Criminal Police Office to conduct drag-

net searches in cases involving imminent danger – with-

out the court’s prior permission.

Research under difficult conditions

Freiburg-based legal researcher Dirk Pehl’s work will likely reignite the debate. Over the past two and a half years, he has analyzed all investigations undertak-

en by the public prosecutor’s office that have involved

dragnet searches. “This was not an easy task,” he says of the sometimes tedious research work. “The biggest prob-

lem was gaining access to the information at all.” He

first wrote to data protection officials, none of whom had any material about the catches in their databases.

Ultimately, the Max Planck researcher managed to find the right contacts. He wrote to each public prosecu-

tor’s office individually and had the good fortune that

each and every one of them remembered the dragnet

searches they had conducted. “After all, it isn’t some-

thing they do every day,” says Dirk Pehl.

As a result of his hard work, the researcher was able to collect the files of 27 investigations in which a total of 31 dragnet searches were carried out. While this may not sound like much, it represents a complete survey of the public prosecutors’ investigations in which one or more actions according to section 98a of Ger-

many’s Code of Criminal Procedure have been ordered and

conducted since these began governing dragnet search-

es. Another reason why the number of dragnet searches 2

is relatively small is that they are not applied every-

where. In fact, dragnet searches are generally conducted

by Germany’s Office of the Federal Prosecutor or

by authorities in the federal states of Bavaria, Hesse or

North-Rhine Westphalia.

As Pehl discovered, about a third of the dragnet

searches had a stated aim of finding persons who pos-

sessed features that were relevant to the investigation. “But dragnet searches also serve to investigate the facts,

identify accomplices, determine the structure of crimi-
nal groups, investigate suspects’ whereabouts and pre-
pare large-scale DNA analyses.” In about half of the

dragnet searches, investigators included information pro-

vided to them by registration offices. They also

searched data from Germany’s Federal Motor Transport

Authority, sometimes even repeatedly in a single inves-

tigation. Most often, however, they used internal police

databases.

As a little fish caught in the authorities’ dragnet, Ste-

fan L. personally experienced many of the empirical

findings that Pehl cited in his dissertation. The 43-year-

old remembers how it all began: with a gray envelope in

his mailbox. “At first I thought it was a parking ticket,”

he says. But even that surprised him, as he could not re-

member having committed any traffic violations.

His astonishment grew when he read the letter, which

was a subpoena. He was to appear as a witness at Ger-

many’s Federal Criminal Police Office two weeks later.

“I had no idea what it was that I was supposed to have

witnessed.” A terrible feeling crept over him. He imme-

diately called the police commissioner’s office, which

unsettled him even more. He had been caught up in a

dragnet search, the friendly clerk on the other end of the

line explained. “I thought I was a part-time job as an instructor, which he mentioned in his tax return. He does not know whether the investigation led to the desired results. Once he had provided his saliva sample, he never heard from the police again.

Preventative dragnet searches, which began after the

terrorist attacks of September 11, 2001, have demon-

strated the extent to which the success of a search de-

pends on the precision of the profile. In the case of these

searches, completely innocent people got caught in the

croissants. They were looking for sleepers, po-

tential terrorists on standby, whose most distinguishing

feature might cost innocent people their freedom.

“Something like that is destined to fail,” says Dirk Pehl.

Looking for perpetrators in the lab: Whoever

is caught in the dragnet is summoned to a DNA test.

flooding of information overwhelms police systems

Even with normal dragnet searches, the police’s luck

seems to be limited. The figures the legal researcher pub-

lished as a result of his detailed study of police files

speak for themselves. According to Pehl’s findings, only

13 percent of dragnet searches to date have led to the

identification of a perpetrator. “For another 13 percent

findings were inconclusive, and 16 percent were consid-

ered unsuccessful,” Pehl explains. In the remaining cas-

es, the police had limited success. The method provided

a new approach to conducting investigations, “but it did not contribute to solving a case,” says Pehl.

In some cases, it is not an inaccurate profile that is to be blamed for the failure. Often, police systems are ill

equipped to process the information – which, to com-

pound the problem, is often outdated, incomplete, or

incompatible with the investigators’ system. In addition, the

outdated software, especially that used at registration offices, makes investigations more difficult or delivers useless information.

Dragnet searches are also problematic from a data

protection point of view. Even collecting personal data is a violation of the basic right to informational self-de-

termination when, as is generally the case with such

searches, it is done without the prior knowledge of the

person concerned. This publicity right entitles all indi-

viduals to decide where, when and how their personal

information is used.
Information may be disclosed. Another problem lies in
the fact that, by linking data, a personality profile can
be constructed, and the concerned individual has no
control over its accuracy or how the information is used.
This violates a 1983 ruling of Germany’s Federal Consti-
tutional Court. Furthermore, the mere thought of being
subject to data collection can influence or confine a
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Not a tool for quick fixes

According to Pehl, the authorities’ information policies
are a particular cause for concern. “In almost two-
thirds of cases, people who were the subjects of further
investigation weren’t informed, even though this is le-
gally required.” Pehl blames this state of affairs on
the fact that public prosecutors’ offices and the police of-
ten disagree on who is responsible for providing sus-
ppects with information, and even on how much infor-
mation they should be given. While the police often
argue that the public prosecutor’s office should decide
on how and when the affected parties should be in-
formed, public prosecutors say that informing a sus-
pect is the job of the police.

The situation was similar for Stefan L. To this day, he
remains in the dark about the results of the dragnet
search and his saliva sample. And he wonders what
will happen with his information. Although it has to
be deleted, he does not know whether this has already
been done. In legal terms, the situation is cut and dry.
The law clearly lays out the scope of the duties and au-
thority of the Bavarian state police: “If the purpose of
the action has been fulfilled, or it becomes clear that it
cannot be fulfilled, the data collected over the course
of the search must be deleted from the data carrier. All
related documents must also be destroyed, provided
that they are not necessary to investigating a crime.”

Despite this stipulation, there is no obligation to pro-
vide information on whether this has been done. As a
result, the concern remains that another gray envelope
could turn up in the mail the next time a search is
conducted in a similar matter.

With his dragnet search work at the Max Planck Insti-
tute in Freiburg, Dirk Pehl has made an important con-
tribution to basic research. For as heated as the recur-
rent legal and political debates on whether or not
dragnet searches make sense have always been, there
was never much in the way of hard facts on the issue.
“Previous studies on the topic always focused on wheth-
er or not dragnet searches violate the constitution. There
weren’t even any statistics on how many times these
searches had been conducted,” says Pehl.

Dirk Pehl was the fi rst researcher ever to examine the
effectiveness of this police instrument. He exposed a
lack of court control, outdated software, technical diffi-
culties and a low success rate. Despite this, he believes
that dragnet searches do have their place: under specifi-
circumstances and with excellent preparation to solve
special cases. “But it shouldn’t be a tool to be used spon-
taneously for whatever case comes up,” the legal re-
searcher asserts.

Birgit Fenzel

It seems that the skeptics aren’t entirely unjustifi-
cd in their suspicion of the clandestine data collection prac-
ticed in dragnet searches. Over the course of his research
and discussions with investigators, Dirk Pehl uncovered
some delicate issues that could raise hackles – and not
just for outright opponents and those with general con-
cerns. In practice, a number of standards are simply ig-
nored, and legal processes are sped up by cutting cor-
ters. For instance, Pehl fi nds it questionable that, in
many cases, the justification for a dragnet search is not
suffi ciently discussed beforehand. This is particularly
true in investigations ordered by courts or public prose-
cutors’ offices, and less so in the case of those ordered
by the police. The short timeframe within which dragnet
searches are proposed, requested and authorized also
suggests that the basis for these searches is often “the
result of rather informal arguments and justifi cations.”

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