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Challenging Liberty: The Danger of DNA Databases

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Earlier this month, the Supreme Court passed down a ruling stating that it is legal to take DNA swabs from arrestees without a warrant on the grounds that "a DNA cheek swab [was similar] to other common jailhouse procedures like fingerprinting;"[1] and yesterday, it was reported that the New Jersey state senate passed a bill that "would require the collection of DNA samples from people convicted of some low-level crimes, including shoplifting and drug possession."[2] While many are praising the passing of such legislation, it ignores the inherent dangers of allowing the government to collect DNA.

> While DNA databases may seem new, this is only because they are recently coming back into the news. They have been around for quite some time as, since 1988, "every US state has established a database of criminal offenders' DNA profiles" with the goal of "quickly and accurately [matching] known offenders with crime scene evidence."[3] Politicians are arguing that taking DNA samples of criminals will actually lower crime, as the DNA works as a deterrent by increasing the likelihood that a criminal will be convicted if they are caught. However, this may not be the case, as a working paper from the University of Virginia found last year that, " **The probability of reoffending and being convicted for any offense is 3.7 percentage points (23.4%) higher for those with a profile in the DNA database than those without** ," (emphasis added) and, that DNA profiling mainly affects younger criminals with multiple convictions, as they are "85.6% more likely to be convicted of a crime within three years of release than their unprofiled counterparts."[4]

Thus, on a practical level, we should be skeptical as to whether or not DNA databases will actually lower crime in the long-term.

A separate but equally important issue in regards to these DNA databases is the assault on our privacy. Barry Steinhardt, then-Associate Director of the ACLU, stated back in 2000 that:

> "While DNA databases may be useful to identify criminals, I am skeptical that we will ward off the temptation to expand their use," said Barry Steinhardt, Associate Director of the ACLU. "In the last ten years alone, we have gone from collecting DNA only from convicted sex offenders to now including people who have been arrested but never convicted of a crime."**[5]**

Indeed, Steinhardt is quite correct in that law enforcement has a history of expanding the use of their tools. One example is tasers, which, when first introduced, were seen as a way to apprehend criminals without resorting to lethal force, have now gone so far astray from that original purpose that they have been used on children.[6] Thus, it would not be a stretch to assume that, over time, this DNA database could be used improperly, such as in

the case of Earl Whittley Davis, where his DNA was uploaded and he subsequently became a subject of a 2004 cold case murder:

> Earl Whittley Davis was a shooting victim whose DNA profile was subsequently uploaded into CODIS even though he had done nothing wrong. This victim then became the subject of a cold case hit for a murder that occurred in 2004. **Although the Maryland District Court found that crime control was a generalized interest that did not outweigh Davis' privacy when placement of his DNA profile in CODIS was not in response to a warrant or to an applicable statute, the Court held that the DNA evidence was nonetheless admissible.**
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> The Court reasoned that placement of Davis' profile in CODIS was not reckless, flagrant or systematic, that exclusion would result in only marginal deterrence, if any, and that any deterrent effect would be greatly outweighed by the cost of suppressing "powerfully inculpatory and reliable DNA evidence." **This case should lead people to fear that utilizing such practices to expand the DNA database would open a backdoor to population-wide data banking.** By denying certiorari, the U.S. Supreme Court is implicitly affirming the rulings of the Second and Eleventh Circuits. This will make it more challenging for those opposing DNA database statutes on Fourth Amendment grounds.**[7]** (emphasis added)
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> In the dissenting opinion of the Supreme Court case, Maryland v. King, many of the Justices echoed this worry of law enforcement using the DNA databases to attempt to solve old crimes, with Justice Scalia stating, "Solving unsolved crimes is a noble objective, but it occupies a lower place in the American pantheon of noble objectives than the protection of our people from suspicionless law-enforcement searches. The Fourth Amendment must prevail." [8]

DNA databasing is dangerous as it provides a future diary of sorts, which "has the potential to reveal to third parties a person's predisposition to illnesses or behaviors without the person's knowledge; and it is permanent information, deeply personal, with predictive powers" and thus "[calls] into question the very meaning and possibility of human liberty"[9] as it can lead into the slippery slope of pre-crime, especially with regard to a person's behaviors.

In addition to this, DNA databasing could negatively impact minorities and the poor, and even allow people's family members to be arrested, as *Wired* reported back in 2011:

> Civil rights advocates have warned that demographically unbalanced forensic DNA data banks could "create a feedback loop." **Because samples are stored and compared against DNA collected at future crime scenes, police will be more likely to pursue crimes committed by members of overrepresented groups, while underrepresented groups can more easily evade detection.**
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> **The potential for problems expands when states permit so-called familial DNA searches, in which police who can't find a database match to crime scene DNA can search the database for partial matches, ostensibly from the suspect's family and relatives, who can then be targeted.** It's even possible to imagine situations in which some races or groups become universally covered, while others remain only partially surveyed. **[10]** (emphasis added)

Yet, what is most worrying is the expansion of DNA databasing from major criminal offenders such as murderers and rapists to now including "some low-level crimes, including shoplifting and drug possession."[11] This expansion of DNA databasing to include even victimless crimes is quite worrisome as it shows that we are moving to a state of law where virtually any crime will allow the police to draw and database one's DNA.

With the passing of this ruling and the steadily increasing implementation of DNA databasing on the state level, an ember in the light of freedom is quietly extinguished.

References

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