

March 22, 2011

Dr. Amy Gutmann, Chair
The Presidential Commission for the Study of Bioethical Issues
1425 New York Avenue, NW
Suite C-100
Washington, DC 20005

Dr. Gutmann,

The Council for Responsible Genetics is a public policy organization that represents the public interest and fosters public debate about the social, ethical and environmental implications of genetic technologies.

I am writing to you today to strongly encourage the Commission to explore the rapid growth in forensic DNA collection practices in the United States.

DNA testing was initially introduced into the criminal justice system of the United States as a method of developing supplemental evidence to be used in convicting violent felony offenders or freeing the innocent on a case by case basis. In the last fifteen years this has changed dramatically, with DNA collection by law enforcement now routinely being used for a multiplicity of purposes that pose significant privacy and civil rights concerns to every citizen.

The federal government and all fifty states have created permanent collections of DNA taken from ever-widening categories of persons and subjecting these collections to routine searches. Many of the same disparities in the U.S. criminal justice system are reflected in these databases: for example while African-Americans are only 12% of the U.S. population, their profiles constitute 40% of the Federal database (CODIS).

At the same time, a stunning array of techniques have emerged allowing lab technicians to glean information from DNA that goes well beyond the mere identification of a person. Law enforcement's use of these tools to search, profile and store the DNA of those who have not been convicted of a crime, without a court order or individualized suspicion, has already exceeded reasonable constitutional protections. In particular, a number of new genetic techniques and practices are providing law enforcement unprecedented access into the private lives of innocent persons by way of their own genetic data.

These include:

1) A growing trend towards the permanent retention of DNA from innocent people in forensic DNA databanks.

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- 2) Trolling for suspects using DNA dragnets.
- 3) Searching for partial matches between crime scene evidence and DNA banks to obtain a list of possible relatives for DNA analysis (“familial searching”).
- 4) Constructing probabilistic phenotypic profiles of a perpetrator from DNA collected at a crime scene.
- 5) Surreptitiously collecting and searching DNA left behind on items such as cigarette butts and coffee cups.
- 6) The creation of local “offline” forensic DNA databases.

The lack of ethical guidelines for forensic DNA practices in the United States has implications far beyond just the American citizenry. Today, 56 countries worldwide are operating forensic DNA databases and at least 26 countries plan to set up new DNA databases.¹ The vast majority of these countries are looking to the United States as a model. Yet, as the U.S. expands its DNA collection practices, Europe is starting to move in the opposite direction. In 2008, the European Court of Human Rights issued a decision² holding the UK's DNA data collection practices were a violation of the right to privacy. European countries are beginning to implement the decision through national legislation; most recently the United Kingdom introduced its Protection of Freedoms Bill.³

In contrast to current debates in Europe, expansions of the uses of DNA by law enforcement in the United States are generally occurring in a policy vacuum and then being justified retroactively by a limited number of solved crimes aided by DNA data. Aside from the fact that these cases appear to be the exception rather than the rule, what is not revealed by these stories is the larger picture of the steady erosion of privacy that accompanies the shifting purpose of DNA's use by law enforcement from one of identification to surveillance. Continued use of these techniques and practices outside of the arena of judicial oversight and without the application of ethical guidelines demands a rigorous debate about the government's intrusion into the lives of innocent people.

I urge the Commission to explore the massive growth of forensic DNA databases and collection practices in the United States and their far reaching implications. The Council for Responsible Genetics is glad to offer any assistance it can in this process.

Sincerely,



Jeremy Gruber
President
Council for Responsible Genetics

¹ Please see CRG's *Guide to Forensic DNA Databases* at <http://www.councilforresponsiblegenetics.org/dnadata>

² *S. and Marper v. The United Kingdom* (December 4, 2008) (Application nos. 30562/04 and 30566/04)

³ http://www.publications.parliament.uk/pa/bills/cbill/2010-2011/0146/cbill_2010-20110146_en_1.htm