

A Push for Universal Database May Test Our Amendment Rights

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Abstract

Since the early 1990's Legislators, Governors and Police Officials have been looking at the Deoxyribonucleic Acid (DNA) database as a miracle for justice. For this reason alone, law enforcement agencies around the United States were encouraged to create a worldwide database. Historically, the database only contained information on convicted criminals. The future database will contain information on all citizens. This push for a larger database has prompted critics to argue whether it is an unconstitutional invasion of privacy. A DNA database with appropriate safeguards will benefit law enforcement by identifying suspects quicker. Civil libertarians against the issue may change their mind once they realize how this will eliminate racial bias.

Introduction

Since the last decade, Deoxyribonucleic Acid (DNA) analysis has developed a stronghold in the criminal justice system. DNA has become the gold standard for identification. Various citizens in our society have reached a consensus that the use of DNA in the justice system may be beneficial, but there are still some concerns with expanding the database that are unsettled. Proponents of DNA databases argue that it supports a discipline that does not rely on subjective judgments and interpretations. Expanding DNA databases will not only help to solve more crimes, but also exonerate innocent people who have been wrongly convicted, ultimately reducing the need to reverse previous miscarriages of justice.

Opponents of DNA databases, on the other hand, argue that there is a risk of DNA being used to the exclusion of material that might prove the innocence of the suspect. Also, the fact that DNA samples can be stored indefinitely raises concerns regarding the temptation to use those samples for new and unidentified purposes. The United States Congress is still reviewing the sources of controversy surrounding universal database. Some of the main controversies identified include: the protection of citizen's amendment rights, poor implementation of such statutes, implications of reusing information obtained for one purpose for new and unidentified purposes, and the concerns about function creep and misuse of personal information.

We all know DNA databases serve a good purpose. It contains the DNA profiles of people who been convicted of a criminal act. Nevertheless, the fact that DNA samples can be stored indefinitely raises concerns regarding the temptation to use those samples for new and unidentified purposes. This risk is too great for the federal government to ignore.

Literature Review

The State of Virginia became the pioneer state for collecting convicted sex offenders DNA in the late 1980's. Their efforts created a protocol for other states to follow. The majority of the states joined in once the Federal government, encouraged by Virginia's lead, created the Combined DNA Index System (CODIS). CODIS is a national database that allows Law Enforcement Officials around the country to download DNA information about criminals (Schaefer, 2004). This paper summarizes the legal foundations for CODIS, examines racial disparities, ethical issues, privacy rights violation and profiling along with the related issue of sample retention concerning universal DNA database.

At first, DNA databanks were used to retain the genetic identification of sexual offenders. Due to their high rates of recidivism, violent nature of their crimes, and vast amount of recoverable DNA left behind, the data retrieved became more useful. According to Murphy (2010), many States quickly started to increase the scope of their databanks to include "non-violent" crimes as well. She expanded her research and concluded that "States have rationalized the broadening of their databanks based on the belief that a State's interest in solving past and future crimes outweighs any expectation of privacy that any convicted criminal having concerns with their DNA being placed in the database. This rationalization does not just have the convicted criminal concerned, but the non-criminal also has issues with DNA database since the scope has been geared toward developing a universal database."

According to Bailey (2010), a Yale University law student named Michael Seringhaus promoted the concept of a central data base for all citizens. Seringhaus (2009), noted that the Federal Bureau of Investigations (FBI) DNA database CODIS, has been fully operational for just over a decade. The premise was built upon a set of 13 genetic markers from a certain class of convicted felons. Very recently this system of DNA databases has grown to include those arrested and who may or may not be convicted of a crime. The system also allows for familial DNA searching: A type of partial-stringency matching designed to return close relatives of individuals profiled in the database. Through their determination for expansion, the FBI may have already overstepped its legal authorization for the database (Murphy, 2010). The once-solid Fourth Amendment justification that authorizes compulsory DNA collection based upon offenders' diminished expectation of privacy may be in jeopardy. However, the goal of the universal database is to help police better fight crime.

http://articles.cnn.com/2012-01-09/justice/justice_washington-cold-case_1_dna-links-dna-profile-genealogy?_s=PM:JUSTICE.

Opponents against the universal database strongly feel a law requiring them to place their DNA in such a system will be a violation of their rights. According to information obtained, a DNA database will offer some advantages and disadvantages for a universal system. Advantages to having this type of system in place include: to help police solve crimes, the ability to identify victims of crime, linking various crimes together, and resistance to evidence tampering. There are also disadvantages with this type of system: Fourth and Fifth Amendments Rights could be violated, ethical issues could arise, and profiling and racial disparities may occur without the proper protocols being in place (Seringhaus 2009).

The CODIS forensic DNA database is expanding steadily. It now includes arrestees and various foreign detainees in addition to its original corpus of convicted

felons. New technologies and techniques, such as familial search, are stretching the power of the original 13 CODIS loci. The database should be universal, thereby negating the need for familial search and erasing in a stroke the racial bias that mars and continues to encroach upon CODIS today. Articles such as *The Evolution of DNA Databases*, *Relative Doubt*, *Forensic DNA Profiles*, and *Profiling at the Cellular Level* offered arguments for and against having a universal database. One of the primary reasons for having this type of database is to offer Law Enforcement the opportunity to solve horrific crimes. However, a major disadvantage to this type of system is that it may cast suspicion upon innocent people solely based on biological relatedness without probable cause.

http://www.ornl.gov/sci/techresources/Human_Genome/elsi/forensics.shtml).

Method

This survey was conducted to find out how the public feels concerning the use of a universal DNA database. The survey was sent to the Tallahassee Police Department, the Leon County Jail, the Gadsden County Jail, and the Wakulla County Jail.

The survey was distributed to the following selected band of people: Police Officers, Communication Officers, Civilian Employees, and Inmates. The participants were asked to answer all applicable questions on the survey and return by Monday, June 18, 2012. The survey gathered information from individuals concerning their opinion of who should be excluded from being entered into the universal database. One hundred surveys were sent to Tallahassee Police Department's Officers, thirty-three surveys were sent to Tallahassee Police Department's Communication Officers, fifty surveys were sent to Tallahassee Police Department's civilian employees, fifty surveys were sent to inmates in the Leon County Jail, fifty surveys were sent to inmates in the Gadsden County Jail, and fifty surveys were sent to Wakulla County's Correctional Officers. The data obtained may provide a little insight on our community's position concerning this matter.

Results

The survey was distributed to a specific group and they ranged from police officers to inmates. Three hundred and thirty three surveys were mailed. One hundred and eighty three responses were received which converts to a fifty-four percent response rate. Once the data was obtained, the surveys revealed ninety-six (52%) respondents were female and eighty-seven (47%) respondents were male. The civilian band personnel responded to every question pertaining to their section. Of the forty seven responses received from officers of the Tallahassee Police Department, one officer did not respond to one question pertaining to the law enforcement section. Of the twenty six responses received from communication officers, one officer did not respond to one question pertaining to this section. Of the fifty responses received from Leon County Jail inmates, two inmates did not respond to questions concerning their sections. However, the eighteen responses received from Gadsden County Jail inmates had sixteen inmates not respond to a question in their section. There were fifty surveys sent to the Wakulla County Jail, but no responses were received.

The first portion of the survey requested general information pertaining to the respondent being a US citizen or a law enforcement officer. The remaining portion of the survey was categorized as follows: law enforcement officers' questions section only, Non-sworn personnel's questions section only, and Inmates' questions section only. The two focus questions steering the results from this survey are as follows: Do you think it's unconstitutional to place everyone's DNA in a universal database? And do you think the DNA of law enforcement officers should be excluded from being placed in a universal database?

The forty-six responses received from the civilian section were all females. Eighty-three percent of the respondents stated they did not think it is unconstitutional to place all criminals' DNA in a universal database. Sixty-one percent stated that they did not believe it is unconstitutional to place everyone's DNA in a universal database. Seventy-eight percent stated that they did not believe the DNA of law enforcement officers should be excluded from a universal database.

TPD Civilian Surveys		
Response rate	42/50	84%
1. Are you an American Citizen?	no.	%
· Yes	42	100.00%
· No	0	0.00%
Total Responses	42	
2. Are you Male or Female?		
· Male	0	0.00%
· Female	42	100.00%
Total Responses	42	
3. Are you a Law Enforcement Officer?		
· Yes	2	4.76%
· No	40	95.24%
Total Responses	42	
4. Are you a civilian member of a law enforcement agency or a correctional facility?		
· Yes	40	95.24%
· No	2	4.76%
Total Responses	42	
5. Have you ever been arrested for any type of crime?		
· Yes	0	0.00%
· No	42	100.00%
Total Responses	42	

TPD Civilian Surveys (continued)		
Non-Sworn s' Questions section only:		
	no.	%
13. Do you think it's unconstitutional to have all criminals' DNA placed in a universal database?		
· Yes	7	16.67%
· No	35	83.33%
Total Responses	42	
14. Do you think it's unconstitutional to place everyone's DNA in a universal database?		
· Yes	16	38.10%
· No	26	61.90%
Total Responses	42	
15. Do you think the DNA of Law Enforcement Officers should be excluded from being placed in a universal database?		
· Yes	9	21.43%
· No	33	78.57%
Total Responses	42	

The twenty-six responses received from the communications officers were comprised of nineteen (73%) females and seven (26%) males. Ninety two percent of this group responded no when asked if it is unconstitutional to have all criminals' DNA placed in a universal database. Fifty-three percent responded no when asked if it is unconstitutional to place everyone's DNA in a universal database. This question revealed Non-sworn are more favor to have criminal DNA placed in a universal database. Sixty-nine percent responded no when asked if law enforcement officers' DNA should be excluded from being placed in a universal database.

TPD's Communication Officers		
Response rate	26/33	78.8%
1. Are you an American Citizen?	no.	%
· Yes	26	100.00%
· No	0	0.00%
Total Responses	26	
2. Are you Male or Female?		
· Male	7	26.92%
· Female	19	73.08%
Total Responses	26	
3. Are you a Law Enforcement Officer?		
· Yes	0	0.00%
· No	26	100.00%
Total Responses	26	
4. Are you a civilian member of a law enforcement agency or a correctional facility?		
· Yes	26	96.30%
· No	1	3.70%
Total Responses	27	
5. Have you ever been arrested for any type of crime?		
· Yes	0	0.00%
· No	26	100.00%
Total Responses	26	

TPD's Communication Officers (continued)		
Non-Sworn Personnel Questions section only:		
	no.	%
10. Do you think it's unconstitutional to have all criminals' DNA placed in a universal database?		
· Yes	1	3.85%
· No	24	92.31%
· No Response	1	3.85%
Total Responses	26	
11. Do you think it's unconstitutional to place everyone's DNA in a universal database?		
· Yes	12	46.15%
· No	14	53.85%
· No Response	0	0.00%
Total Responses	26	
12. Do you think the DNA of Law Enforcement Officers should be excluded from being placed in a universal database?		
· Yes	8	30.77%
· No	18	69.23%
· No Response	0	0.00%
Total Responses	26	

The forty-seven responses received from Tallahassee Police Officers were comprised of thirty seven (78%) males and ten (21%) females. Ninety one percent of this group responded no when asked if it is unconstitutional to have all criminals' DNA placed in a universal database. However, there were two respondents who failed to answer this question. Fifty seven percent of the group responded yes when asked the question if it is unconstitutional to place everyone's DNA in a universal database. There were two respondents who failed to answer the question. Fifty-seven percent responded no when asked if law enforcement officers' DNA should be excluded from being placed in a universal database. There were also two respondents who failed to answer the question.

TPD Officers Survey		
Response rate	47/100	47%
1. Are you an American Citizen?	no.	%
• Yes	47	100.00%
• No	0	0.00%
Total Responses	47	
2. Are you Male or Female?		
• Male	37	78.72%
• Female	10	21.28%
Total Responses	47	
3. Are you a Law Enforcement Officer?		
• Yes	46	97.87%
• No	1	2.13%
Total Responses	47	
4. Are you a civilian member of a law enforcement agency or a correctional facility?		
• Yes	3	6.38%
• No	44	93.62%
Total Responses	47	
5. Have you ever been arrested for any type of crime?		
• Yes	2	4.26%
• No	44	93.62%
• No Response	1	2.13%
Total Responses	47	

TPD Officers Survey (continued)		
Law Enforcement Officers' Questions section only:		
	no.	%
13. Do you think it's unconstitutional to have all criminals' DNA placed in a universal database?		
· Yes	2	4.26%
· No	43	91.49%
· No Response	2	4.26%
Total Responses	47	
14. Do you think it's unconstitutional to place everyone's DNA in a universal database?		
· Yes	27	57.45%
· No	18	38.30%
· No Response	2	4.26%
Total Responses	47	
15. Do you think the DNA of Law Enforcement Officers should be excluded from being placed in a universal database?		
· Yes	18	38.30%
· No	27	57.45%
· No Response	2	4.26%
Total Responses	47	

Of the fifty responses received from Leon County Jail's inmates, 1 was not an American citizen, but there were 25 females and 25 males. Sixty-four percent responded yes when asked if it is unconstitutional to have their DNA placed in a universal database is unconstitutional. This question makes it appears that over half of the inmates believe taking their DNA without their consent is unconstitutional. However, sixty-two percent responded yes when asked the question if it is unconstitutional to place everyone's DNA in a universal database. Again over half of the inmates indicated placing their DNA without their consent was unconstitutional. Do you think the DNA of Law Enforcement Officers should be excluded from being placed in a universal database? Seventy eight percent of the respondents were not in favor of law enforcement being excluded from being placing in a universal DNA database. Six inmates answered no to the question asking if they have ever been arrested.

Leon County Correctional Inmates		
Response rate	50/50	100%
1. Are you an American Citizen?	no.	%
· Yes	49	98.00%
· No	1	2.00%
Total Responses	50	
2. Are you Male or Female?		
· Male	25	50.00%
· Female	25	50.00%
Total Responses	50	
3. Are you a Law Enforcement Officer?		
· Yes	2	4.00%
· No	48	96.00%
Total Responses	50	
4. Are you a civilian member of a law enforcement agency or a correctional facility?		
· Yes	5	10.00%
· No	45	90.00%
Total Responses	50	
5. Have you ever been arrested for any type of crime?		
· Yes	44	88.00%
· No	6	12.00%
Total Responses	50	

Leon County Correctional Inmates (continued)		
Inmates' Questions section only:	no.	%
6. Are you an inmate in either Leon or Gadsden County? (Please select one)		
· Yes, In Leon County	47	94.00%
· Yes, In Gadsden County	1	2.00%
· No Response	2	4.00%
Total Responses	50	
7. If you are arrested, do you think having your DNA placed in a universal database is unconstitutional?		
· Yes	32	64.00%
· No	18	36.00%
· No Response	0	0.00%
Total Responses	50	
8. Do you think it's unconstitutional to place everyone's DNA in a universal database?		
· Yes	31	62.00%
· No	19	38.00%
Total Responses	50	
9. Do think the DNA of Law Enforcement Officers should be excluded from being placed in a universal database?		
· Yes	10	20.00%
· No	39	78.00%
· No Response	1	2.00%
Total Responses	50	
Non-Sworn Personnel Questions section only:		
10. Do you think it's unconstitutional to have all criminals' DNA placed in a universal database?		
· Yes	16	32.00%
· No	16	32.00%
· No Response	18	36.00%
Total Responses	50	
11. Do you think it's unconstitutional to place everyone's DNA in a universal database?		
· Yes	16	32.00%
· No	16	32.00%
· No Response	18	36.00%
Total Responses	50	
12. Do you think the DNA of Law Enforcement Officers should be excluded from being placed in a universal database?		
· Yes	5	10.00%
· No	28	56.00%
· No Response	17	34.00%
Total Responses	50	

All of the eighteen responses received from the Gadsden County Jail inmates were males (100%). They provided the following response to these questions: All of them answered yes when asked have you ever been arrested for any type of crime. Fifty five percent responded if they were arrested it would not be unconstitutional to place their DNA in a universal database. However, the remaining forty four percent indicated it would be unconstitutional. This appeared close to a split decision with this group on this question. Eighty eight percent of the inmates in Gadsden County Jail were not in favor of law enforcement being excluded from being placing in a universal DNA database. The inmates in Gadsden County appeared to agree with Leon County inmates on not excluding law enforcement from the universal database.

However, sixty one percent responded no when asked if it is unconstitutional to place everyone's DNA in a universal database. Over half of Gadsden County inmates do not think it's unconstitutional to place their DNA in a universal database. This is a contradiction to Leon County Jail inmates.

Discussion

During my research, some literature mentioned the federal governments along with all fifty states have enacted separate statutes creating DNA databases. All fifty states have statutes requiring DNA samples to be collected from convicted felons, but they differ based on state-qualifying offenses. For example, while 47 states require DNA samples from all convicted felons, the statutes of 40 states apply retroactively to those already incarcerated prior to the statutes' effective dates and 32 states require DNA samples from adults and juveniles alike. Additionally, 37 states have statutes requiring DNA samples from those convicted of sex-crime misdemeanors, 5 of which also require DNA samples from those convicted of numerous other misdemeanors as well. This list goes on and on with how different states handle their statutes concerning DNA databases. This is why the argument for poor implementation of a state DNA database statute can lead to significant problems. This issue could possibly be resolved if the federal government implemented mandatory statutes for all fifty states to follow.

In spite of this, privacy regulations along with function creep are the main controversy facing DNA databases. The term function creep refers to the "operationally driven use of the existing resource for new purposes not envisaged when the resource was established," which is "made possible by technological innovation and lack of inhibiting measures" like public opposition or legislation. Since DNA has moved from an experimental technique to an established crime-solving tool for police and prosecutors in the United States, law enforcement agencies around the country are creating DNA databases of criminal offenders that can be used to link criminals or suspects to unsolved crimes.

In this study, the survey questions concerning constitutional rights data indicated the following: in the civilian section, which was all females, 83% responded they did not think it was unconstitutional to place everyone DNA's into a universal database. The majority of the communication officers of the Tallahassee Police Department, which is made up of (73%) females and (26%) males, believe it is unconstitutional to place everyone's DNA in a universal database. While it was the majority, it appeared the group was somewhat split on this question.

The majority of the police officers from the Tallahassee Police Department, which is made up of (78%) males and (21%) females, responded that they do not think it is unconstitutional to place everyone's DNA in a universal database. The majority of the Leon County Jail inmates (50% females and 50% males) responded that they believe it is unconstitutional to place everyone's DNA in a universal database.

On the other hand, the majority of the Gadsden County Jail inmates, all of which are males, responded that they did not believe it was unconstitutional. As we can see people's opinions on this issue varies, even within our community. So it is hard to see DNA database fading away in the near future. Therefore, leaders must remain diligent to ensure that all DNA profiles and DNA samples are used for the limited purpose for which they were collected, and advocates should push for the eventual destruction of all DNA samples once DNA profiles have been generated so that no one will be tempted to use them for purposes that go beyond forensic identification.

Recommendations

In reviewing the survey responses along with the literature viewed, there are several recommendations that could be made to make the DNA databases less threatening:

- The Federal government must establish some mandatory statutes governing all fifty states' DNA database protocols.
- The Federal government must provide training on mandatory statutes to eliminate the possibility of poor implementation of the statutes across the states.
- Establish comprehensive privacy regulations that would monitor non-government groups that have access to sharing DNA profiles in a DNA database like insurance companies, employers or academia.
- Use advanced technology to safeguard DNA samples until they are expunged from the database or destroyed.
- The Federal government must establish stricter laws to ensure that all DNA profiles and DNA samples are used for the limited purpose for which they were collected.
- Protections against function creep when DNA samples are stored for science and technology purposes in the future.

I further recommend citizens who are working in the justice system be diligent at protecting this great law enforcement tool, because the benefits may be of great value in the future.

Lieutenant Roderick Young has been in law enforcement for over 22 years. He started his law enforcement career with the Montgomery Police Department in Alabama in 1988. In July 1990, he was hired with the Tallahassee Police Department where he gained experience working various assignments. He was promoted to Patrol Sergeant in May 2004, and was assigned to the Patrol Division, Field Training Unit and Special Operations Division. In June 2011, Rod was promoted to Lieutenant where he was assigned to the Patrol Division as a Shift Watch Commander. He is currently assigned to the Criminal Investigation Division as the assistant Division Commander.

Resources

- Bailey, R. 2010. Fight Crime with a Universal DNA Database? <http://reason.com/blog/2010/03/17/fight-crime-with-a-universal-d>
- CNN Justice - State DNA laws help fight crime, but critics cite privacy concerns http://articles.cnn.com/2000-10-24/justice/states.dna.cr_1_dna-database-future-of-dna-evidence-dna-samples?s=PM:LAW
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