

SELECTIONS
FROM
THE CQ
RESEARCHER

ISSUES IN LAW AND SOCIETY



DNA Databases • Adoption Controversies • Gay Rights
Prison-Building Boom • Policing the Police • Drug Policy
Antitrust Policy • Utility Deregulation • Closing In on Tobacco
High-Impact Litigation • Patients' Rights
Embryo Research • Medical Mistakes • Internet Privacy
Digital Commerce • Copyright and the Internet

Issues in Law and Society

Selections from *The CQ Researcher*



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Annotated Table of Contents

The 16 *CQ Researcher* articles reprinted in this book have been reproduced essentially as they appeared when first published. In a few cases in which important new developments have occurred since an article came out, these developments are mentioned in the following overviews, which highlight the principal issues that are examined.

CIVIL LIBERTIES

DNA Databases

DNA identification has moved from an experimental technique to an established crime-solving tool for police and prosecutors in the United States, as well as other nations. Now, law enforcement agencies are creating DNA databases of criminal offenders that can be used to link criminals or suspects to unsolved crimes. All 50 states have laws requiring DNA profiling of some offenders, and some law enforcement officials want to compile DNA profiles of arrestees as well. Defense lawyers are also using DNA analysis to challenge old convictions: more than 60 prisoners—some on death row—have been exonerated by DNA testing. But civil liberties and privacy advocates say expanding government DNA databases will lead to misuse of sensitive personal information that can be gleaned from DNA analysis.

Adoption Controversies

Recently, Oregon voters approved a ballot initiative that would allow adopted children to obtain their original birth records when they turn 21, regardless of the wishes of their birth parents. Legal challenges have prevented the Oregon law from taking immediate effect, but adoption rights activists began working to put similar measures before voters in other states. The controversy over open adoption records is one of several highly emotional issues dividing the adoption community. Controversies linger over whether gays and lesbians should be allowed to adopt and whether to allow parents to adopt children of another race.

Gay Rights

Vermont has become the first state to grant marriagelike status to gay and lesbian couples. Elsewhere in the country, however, opposition to same-sex marriage remains strong. Meanwhile, other gay-rights measures are gaining support

despite continuing opposition from conservatives. Eleven states and some 124 municipalities have anti-discrimination legislation, and many school districts have allowed high school students to form “gay-straight” alliance clubs. On the military front, the Defense Department is promising a crackdown on anti-gay harassment but defending the “don’t ask, don’t tell” policy. The issues divided the major presidential candidates: Democrat Al Gore backed gay-rights measures, while Republican George W. Bush was opposed.

CRIMINAL JUSTICE

Prison-Building Boom

The number of Americans behind bars has grown to nearly 2 million, requiring federal and state governments to build an unprecedented number of prisons. Conservatives argue that while regrettable, the prison-building boom has helped to bring down the nation’s high crime rate. But liberals and others say the United States is building prison cells when it should be combating crime by spending more money on education and drug treatment. In addition, they argue, other tough-on-crime measures, such as mandatory minimum sentences and truth-in-sentencing laws, are simply keeping minor felons in jail too long, at great expense to the taxpayers. But proponents of tough sentencing laws counter that they are needed as an antidote to lenient judges.

Policing the Police

Police departments around the country have been on the defensive because of accusations of abuse of authority. Los Angeles has been rocked by a corruption scandal involving planted evidence and shooting unarmed suspects. New York City officers have been convicted of torturing a suspect and covering up the crime but acquitted in the shooting death of an unarmed

civilian. State and local law enforcement agencies are accused of using “racial profiling” in traffic stops. Critics say stronger controls are needed. Law enforcement groups say most police obey the law and that the abuses are being exaggerated. Meanwhile, the U.S. Supreme Court considered a controversial law aimed at partly overturning the famous *Miranda* decision on police interrogation.

Drug Policy

The federal government spends billions fighting drugs, yet illegal drug use remains high. Critics say the answer to the drug problem is not more law enforcement but policies that focus on reducing the harm that results from both drug use and the efforts to stop it. But drug-policy officials charge that most “harm reduction” proposals are little more than veiled attempts to legalize dangerous substances. They say a better approach is the growing system of drug courts, which require addicted drug offenders to undergo treatment. Meanwhile, states are taking innovative approaches to the drug problem. Voters in several states have approved initiatives allowing the medical use of marijuana, and have considered proposals to divert some drug offenders from prison to treatment programs.

SETTING THE BOUNDARIES OF BUSINESS

Antitrust Policy

For more than a century, federal law has sought to encourage competition by prohibiting monopoly behavior and other anti-competitive business practices. Now District Judge Thomas Penfield Jackson has ordered the breakup of Microsoft Corp., saying that the company did not appear to have accepted his ruling that it had broadly violated antitrust laws. The government had charged, and Jackson agreed, that Microsoft used its monopoly in operating systems to put competitors at a disadvantage and stifle innovation. Microsoft Chairman William H. Gates called the judge’s ruling “an unwarranted and unjustified intrusion into the software marketplace, a marketplace that has been the engine of economic growth for America.” Microsoft said it would appeal the case to the Court of Appeals, while the government plans to seek an immediate review by the Supreme Court. The high-

stakes court action comes as the Justice Department and the Federal Trade Commission are also more closely scrutinizing corporate mergers that may restrict competition. With a record wave of mergers, some people are cheering on more aggressive policies, and some want the government to do even more, but others say the government should let the marketplace alone.

Utility Deregulation

The \$220 billion U.S. electricity market—sometimes dubbed the last great government-sanctioned monopoly—has slowly been opening to competition. Many states have passed deregulation plans that allow residential and commercial consumers to choose their electricity supplier, and at least as many other states have begun studying free-market proposals. Already, several deregulated states have delivered lower electric rates, particularly to large industrial power users, as well as giving consumers the option to support the production of non-polluting “green power.” But the federal government hasn’t developed an overall strategy for deregulating the nation’s retail power market. Serious questions remain about the future of the nation’s power grid, the potential for discriminatory pricing and contingencies to avoid regional blackouts.

PUBLIC POLICY IN THE COURTROOM

Closing In on Tobacco

The tobacco industry is facing a new round of legal and regulatory challenges in the protracted war over smoking and health. The Supreme Court ruled that the Food and Drug Administration should not regulate tobacco products, while the Justice Department is suing tobacco companies for the costs of treating smoking-related illnesses under Medicare and other federal health programs. These moves came in the wake of the tobacco industry’s agreements to pay state governments \$246 billion to settle similar reimbursement suits. For its part, the country’s largest tobacco company, Philip Morris, is now acknowledging that smoking causes lung cancer and heart disease. But all the tobacco companies are resisting the latest governmental moves against the industry and defending their right to sell a “legal product” in a “responsible manner.”

High-Impact Litigation

The states' successful litigation against the tobacco industry has spawned a new legal offensive—against gun manufacturers. Thirty local governments want to force gunmakers to pay damages for gun-related injuries, change gun design and alter marketing practices. Cities and gun-control advocates say the suits follow established legal principles, but critics say the litigation amounts to extortion and an end-run around the legislative process. Meanwhile, plaintiffs' attorneys are pressing private class-action suits against other businesses, including health maintenance organizations and giant Microsoft Corp. Business interests say the disputes do not belong in the courts, but defenders say litigation often is the only way to hold industry accountable and force decisions on pressing social problems.

MEDICINE AND THE LAW

Patients' Rights

The continuing growth of managed-care health plans is provoking a powerful backlash. Many patients say managed care makes it harder simply to see a doctor, let alone get insurance coverage for needed treatment. Doctors are also chafing under restrictions that limit the way they treat patients. The managed-care industry insists, however, that it is improving the quality of health care and slowing the rise in costs. More than 30 states have passed laws strengthening patients' rights in dealing with insurers. Congress continues to consider imposing new regulations on managed-care companies. Patient and consumer groups are pushing for reforms as part of so-called Patients' Bill of Rights legislation, but insurers' and employers' groups warn that the result may be higher premiums and more uninsured workers.

Embryo Research

The use of embryos and aborted fetuses in scientific research is again under scrutiny, thanks to the landmark isolation of primordial human embryonic stem cells. These "master cells" are capable of evolving into virtually every kind of tissue in the body and could be the key to cures for conditions such as Parkinson's disease and

diabetes. They also offer a never-before-seen glimpse into the earliest stages of human development. But anti-abortion groups and other critics contend the privately funded work runs counter to a 1995 congressional ban on embryo research and want to bar taxpayer money from subsidizing the research, regardless of the potential benefits. Congress and the National Institutes of Health are trying to devise new guidelines and sidestep political minefields.

Medical Mistakes

Many more patients are hurt by medical mistakes than hospitals ever acknowledge. In fact, a recent report by the Institute of Medicine confirms what medical experts have long known: medical errors kill more people every year than AIDS, breast cancer or car crashes. The IOM says that encouraging doctors to admit their mistakes could help hospitals prevent future errors. President Clinton has urged the states to require the reporting of medical errors, but medical lobbyists and consumers are at odds over how public the reports should be. Consumer advocates and large employers, including General Motors, say hospitals should be required to report their mistakes publicly. But hospitals and doctors want their identities protected to avoid malpractice suits and to encourage candor.

THE INTERNET AND THE LAW

Internet Privacy

Privacy advocates warn that many Web sites try to collect personal information from on-line users, but few of these sites guarantee how that data will be used. Privacy advocates also say the federal government should establish standards to protect privacy online. But Internet businesses and others contend that they can safeguard users' privacy without resorting to government interference. Law-enforcement agencies, meanwhile, favor government limitations on the use of sophisticated encryption technology, which makes on-line communications secure—even from the police. They fear that strong encryption software will aid criminals in hiding their activities. But privacy advocates argue that encryption technology assures companies and consumers that their online communications are not being tampered with.

Digital Commerce

Once known mainly for chat rooms, e-mail and pornography, the Internet has rapidly transformed into a powerful commercial selling tool. U.S. business transactions on the World Wide Web totaled \$43 billion in 1998 and could rise to \$1.3 trillion by 2003. Companies increasingly go online to order parts, schedule shipments and obtain business services. Consumers are clicking on Web sites that sell books, recordings and high-tech equipment. But all of the activity is posing difficult questions for regulators, who must set rules for the thriving marketplace. Among the chief issues are taxing sales in cyberspace, defining appropriate commercial speech used on Web sites and applying antitrust laws to an industry often likened to the Wild West.

Copyright and the Internet

Millions of Internet users are downloading the latest CDs onto their personal computers—and the recording industry is up in arms. But the legal battle over Napster is just one of many new copyright disputes spawned by the digital revolution. Movie studios are trying to limit the availability of a software program that allows movie fans to copy encrypted digital videodisks. The film industry is also suing a California company that provides a Web-based video playback service—what the founder calls a “virtual VCR.” The recording and movie industries claim that the Internet-based services amount to “piracy.” But computer and consumer groups say copyright law needs to adapt to new technologies that make it easier and less expensive to disseminate creative works.

Preface

A society creates a system of laws to resolve conflict fairly and impartially, to protect the basic rights of its citizens and to reflect its norms and values. Every citizen has a stake in the rigorous application of the law, yet many people disagree about how it should be practiced and adjudicated—from the regulation of commerce, to the fight against crime, to the guarantee of civil rights. At times, there are no obvious winners in legal arguments, and *Issues in Law and Society* does not take sides or champion a particular perspective. Instead, through balanced accounts, instructors can thoroughly and fairly explore opposing sides of today's problems in law and society. Students will be challenged to weigh in and form their own "legal opinions" on such topics as the legalization of same-sex marriages, drug policy, embryo research and Internet privacy.

This reader is a compilation of 16 recent articles from *The CQ Researcher*, a weekly policy brief that brings into focus the often complicated and controversial issues on the public agenda. *The CQ Researcher* makes complex issues less intimidating. Difficult concepts are not oversimplified but are explained in plain English. Offering in-depth, objective and forward-looking reporting on a specific topic, each selection chronicles and analyzes past legislative and judicial actions in addition to current and possible future maneuvering. *Issues in Law and Society* is designed to encourage discussion, to help readers think critically and actively about these vital issues and to facilitate future research. Adding color and depth, real-world examples give a flavor of the substantive detail in a variety of areas while showing how legal issues at all levels of government—federal, state and local—affect students' lives and futures.

The readings, organized into six subject areas—Civil Liberties, Criminal Justice, Setting the Boundaries of Business, Public Policy in the Courtroom, Medicine and the Law and the Internet and the Law—were chosen purposely to expose students to a wide range of legal issues. We hope it will appeal to several audiences. It is an attractive text for law and society, judicial process, introduction to law and sociology of law courses.

The CQ Researcher

The CQ Researcher was founded in 1923 under a different moniker: *Editorial Research Reports*. ERR was

sold primarily to newspapers, which used it as a research tool. The magazine was given its current name and a design overhaul in 1991. Today, *The CQ Researcher* is still sold to many newspapers, some of which reprint all or part of each issue. But the audience for the magazine has shifted significantly over the years, and today many more libraries subscribe. Students, not journalists, are now the primary audience for *The CQ Researcher*.

People who write for the *Researcher* often compare the experience to that of drafting a college term paper. Indeed, there are many similarities. Each article is as long as many term papers—running about 11,000 words—and is written by one person, without any significant outside help.

Like students, staff writers begin the creative process by choosing a topic. Working with the publication's editors, the writer comes up with a subject that has public policy implications and for which there is at least some controversy. After a topic is set, the writer embarks on a week or two of intense research. Articles are clipped, books ordered and information gathered from a variety of sources, including interest groups, universities and the government. Once a writer feels well informed about the subject, he or she begins a series of interviews with experts—academics, officials, lobbyists and people actually working in the field. Each piece usually requires a minimum of 10 to 15 interviews. Some especially complicated subjects call for more. After much reading and interviewing, the writer begins to put the article together.

Chapter Format

Each issue of the *Researcher*, and therefore each selection in this book, is structured in the same way, beginning with an introductory overview of the topic. This first section briefly touches on the areas that will be explored in greater detail in the rest of the chapter.

Following the introduction is a section that chronicles the important debates currently going on in the field. The section is structured around a number of questions known as "Issue Questions," such as "Should the government try to regulate Internet content?" or "Should mandatory-minimum sentences for drug offenses be abolished?" This section is the

core of each selection: the questions raised are often highly controversial and usually the object of much argument among those who work and think in the field. Hence, the answers provided by the writer are never conclusive. Instead, each answer details the range of opinion within the field.

Following these questions and answers is the "Background" section, which provides a history of the issue being examined. This look back includes important legislative and executive actions and court decisions from the past. Readers will be able to see how current policy has evolved.

An examination of existing policy (under the heading "Current Situation") follows the background section. Each "Current Situation" provides an overview of important developments that were occurring when the article was published.

Each selection concludes with an "Outlook" section, which gives a sense of what might happen in the near future. This part looks at whether there are any new regulations afoot, anticipates court rulings and considers possible legislative initiatives.

All selections contain other regular features to augment the main text. Each selection has two or three sidebars that examine issues related to the topic. An "At Issue" page provides opposing answers to a relevant question, from two outside experts. Also included are a chronology that cites important dates and events, and an annotated bibliography that details some of the sources used by the author of each article.

Acknowledgments

We wish to thank the many people who were so helpful in making this collection a reality. First is Tom Colin, editor of *The CQ Researcher*, who gave us his enthusiastic support and cooperation as we developed this collection. He and his talented staff of editors have amassed a first-class library of *Researcher* articles, and we are privileged to have access to that rich cache. We also thankfully acknowledge the advice and feedback from the scholars who commented on our plans for the volume. In particular, we thank Vanessa Baird at the University of Colorado, Scott Barclay at the State University of New York at Albany, Evan Gerstmann at Loyola Marymount University, Susan Lawrence at Rutgers University and Alison Dundes Renteln at the University of Southern California.

Some readers of this collection may be learning about *The CQ Researcher* for the first time. We expect that many readers will want regular access to this excellent weekly research tool. Anyone interested in subscription information or a no-obligation free trial of the *Researcher* can contact Congressional Quarterly at www.cq.com; at (800) 432-2250, ext. 279; or at (202) 887-6279.

We hope that you are as pleased with *Issues in Law and Society* as we are. We welcome your feedback and suggestions for future editions. Please direct comments to Charisse Kiino, in care of CQ Press, 1414 22nd Street, N.W., Washington, D.C. 20037, or by email at ckiino@cq.com.

—The Editors of CQ Press

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1 DNA Databases

KENNETH JOST

New York City police arrested Isaac Jones in April outside a pawnshop in the Bronx. He was waiting in a car while his girlfriend redeemed a diamond pendant that had been taken from a rape victim.¹

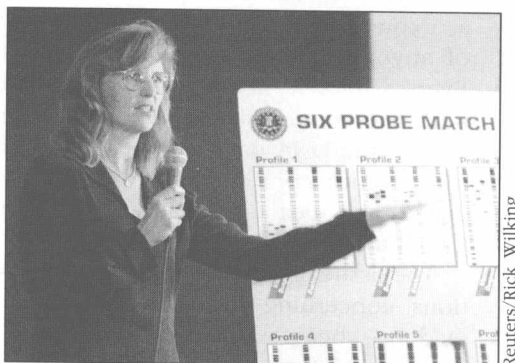
At first, Jones denied any knowledge of the attack, according to police. When detectives threatened to charge his girlfriend, however, Jones reportedly admitted that he was the man police had been hunting in a string of rapes dating back to 1993.

Jones, who had previous convictions for sodomy and unlawful imprisonment of a woman, could not recall details of the other attacks, police said, so they charged him in only four assaults. But an analysis of the DNA contained in a sample of Jones' blood showed a likely match with DNA samples obtained in many other rapes.* "We have 17 positive hits of DNA evidence leading back to Isaac Jones as the rapist," First Deputy Police Commissioner Patrick Kelleher told reporters.

Acquaintances from Jones' Bronx apartment house and the New York office building where he worked as a floor polisher described Jones as polite and friendly and voiced surprise at his arrest. "The DNA evidence speaks for itself as to what kind of individual he really is," Kelleher responded. "We got a very, very dangerous individual off the streets of New York."

* DNA — deoxyribonucleic acid — is the basic genetic substance of all living cells. Embedded in the giant DNA molecules — identical throughout the body — is the hereditary information that determines everything from eye color to predisposition to some diseases. In addition, a DNA molecule contains stretches of chemical building blocks with repetitive patterns that vary from individual to individual.

From *The CQ Researcher*,
May 28, 1999.



Reuters/Rick Wilking

Introduced in U.S. and British courtrooms in 1987, DNA profiling, or so-called genetic fingerprinting, has evolved from a controversial forensic novelty to a powerful and widely accepted tool for identification in criminal investigations and prosecutions.² DNA identification has also been used in some 60 cases in the United States to exonerate defendants wrongfully convicted years ago — freeing inmates from death rows or long prison sentences. (See story, p. 5)

"It's the most significant advancement in investigative tools at least in this century," says Christopher Asplen, a federal prosecutor who is currently serving as executive director of the Justice Department's National Commission on the Future of DNA Evidence. "It's one of the most accurate technologies we have. It has an incredible ability not just to convict the guilty but also to exonerate the innocent."

Walter Rowe, a leading academic forensic scientist, says that DNA typing, in fact, is going beyond the identification technique introduced at the turn of the century: fingerprinting. "Now we're probably more likely to recover usable DNA from a scene than a fingerprint," says Rowe, a professor at George Washington University in Washington, D.C. "We're now starting to do DNA work from animals and plants. It may be the greatest advance in forensic science in history."

Most of the early controversies about the science of DNA identification have faded away. But some civil liberties and privacy advocates are assailing moves by law enforcement agencies to construct a nationwide computer database of DNA profiles of criminal offenders. Law enforcement officials say police and prosecutors can use the databases to link suspects and offenders to crimes that otherwise would either go unsolved or require substantial amounts of time and money to solve.

Critics, however, fear the databases will be abused. "There is a frightening potential for a brave new world where genetic information is routinely collected and its use results in abuse and discrimination," says Barry Steinhardt, associate director of the American Civil Liberties Union (ACLU). Employers and insurers, for example, could uncover a worker's predisposition to disease and use the information to exclude him from employment or insurance coverage.

The same biological sample used for DNA identification "can also be used for a full biological dissection of that person," says geneticist Paul Billings, who edited a collection of critical essays about DNA identification several years ago.³

Law enforcement officials note, however, that the DNA used for identification purposes actually does not contain genes and thus provides no genetic information about a person: "junk DNA," they call it. But critics emphasize that law enforcement agencies retain the original samples collected from criminal offenders — usually blood or saliva — making it possible to use the samples for other purposes. "Whoever holds those samples has full access to all the genetic information about that person," Billings says.

Steinhardt also warns against what

he calls the "creeping expansion" of databases. The earliest databases were limited to sex offenders, but over time they have been expanded in some states to include people convicted of other crimes. "We've gone very quickly from data banks for persons convicted of sex offenses to data banks for most felonies to proposals to test all arrestees and even to test all newborns," says Steinhardt (*See story, p. 16*)

So far, the criticisms of DNA databanking are having little effect. All 50 states have passed laws providing for DNA databases on convicted sexual offenders. Four of those states collect samples from anyone convicted of a felony (*see p. 12*).

The FBI, which established its own database in 1990, is now working to create a national database comparable to its national criminal fingerprint file. Twelve states have connected to the FBI's system — known as CODIS for Combined DNA Identification System — since it was officially announced in October; FBI officials hope to have all 50 states connected within a year or so.

But the states face significant funding and logistical problems — including a backlog of nearly a half-million DNA samples that have been collected but not analyzed. And some states have yet to set up their databases — including Louisiana, the only state with a law on the books for collecting DNA samples from people who simply have been arrested for felonies, as well as those who have been convicted.

Despite those difficulties, lawmakers and law enforcement officials in many states are actively debating expansion of DNA databases. New York City Police Commissioner Howard Safir stirred the controversy in December by proposing that DNA samples be collected from all arrestees in the city, saying it would help reduce crime. He coupled the

proposal with some safeguards, such as expunging the DNA identification of anyone who was not convicted. Even so, civil liberties advocates fiercely denounced the idea, while even some DNA database advocates said practical considerations weighed against the idea for the time being. (*See "At Issue," p. 15*)

The issue is one of many questions concerning the use of DNA evidence being considered by the national DNA commission, which is expected to complete its work by August. As the commission, appointed by Attorney General Janet Reno, sifts through a variety of issues, here are some of the major questions being debated:

Should the use of DNA databases be expanded?

Carolyn and Tony Sievers, of Virginia Beach, Va., have no doubts about the value of DNA databases. Virginia's database helped solve the murder of their 22-year-old daughter, Hope Hall, more than two years after she was raped and killed in her suburban Richmond, Va., apartment. Her killer, Shermaine Johnson, was identified after he had begun serving a long prison sentence for rape and abduction in southeastern Virginia. Johnson was identified when the DNA sample he had provided after his conviction — as required under Virginia law — was matched in August 1996 in a computerized "cold hit" to DNA collected at the scene of the 1994 crime. Johnson was convicted in July 1998 of Hall's murder and sentenced to death.

The Sievers have created the "Hope Denise Hall Action Memorial" Web site to advocate more funding for national and international DNA databases to identify and prosecute criminal offenders. "Instead of convicting a criminal of one crime," the Sievers write, "we can identify him for all the crimes he committed, and then he goes to prison for the rest of his life or

is properly executed if warranted."⁴

Such cases explain why law enforcement officials view DNA databases as an important tool in fully realizing the benefits of DNA evidence. "It's not just crimes that occur today," says Steve Niezgoda, program manager for the FBI's DNA database. "It's crimes that occurred in the past: women raped five or six years ago."

Niezgoda says there have been more than 600 cold hits through the FBI's DNA database since it was established in 1990. The database also produces benefits that are less susceptible to quantifying, he says. "A database hit saves a lot of police resources," Niezgoda says. "And it might lead to longer sentences, or less cost with the trial, because the evidence is of higher quality."

Critics of DNA databases are hard-pressed to dispute the benefits to law enforcement. "Of course, there would be benefits for the criminal justice system," says Philip Bereano, a professor of technology and public policy at the University of Washington in Seattle. "There would be benefits if we let police knock down doors at random in search of criminal activity. I'm sure they would find some, but the Fourth Amendment wouldn't permit it."

"Law enforcement is always looking for new tools to investigate crime," says the ACLU's Steinhardt. "We still have problems with the notion of mass testing of individuals based not on reasonable cause that they are a suspect in the crime but just on their status" as a convicted offender or arrestee.

So far, however, civil liberties challenges to creating DNA databases of convicted offenders have failed in state and federal courts. Three federal appeals courts have upheld state laws allowing the collection of DNA samples from inmates and parolees, and the only state court ruling to bar the practice — by a lower court judge

DNA Testing Frees Many Convicted Offenders

At least 62 convicted offenders have been freed from prison in the United States after DNA testing of evidence established their innocence or cast sufficient doubt on their guilt to warrant their release. A Justice Department report published in 1996 analyzed the 28 cases known at that time. All but one of the defendants were convicted by juries; the one guilty plea involved a defendant with a mental disability. All of the cases involved some form of sexual assault. The inmates served an average of seven years before their release. Three of the freed inmates had been sentenced to death, and six others received life terms. Here are synopses of those cases:

Case Name/ Location	Primary Charges/ Date of Conviction/ Sentence	Selected Evidence at Trial	Result of DNA Testing; Time Served
Bloodsworth, Kirk Baltimore, Md.	Murder, rape (1985); death, reduced to life	Five witness IDs; self-incriminating statements	Excluded by test of panties; 9 yrs.
Cotton, Ronald Burlington, N.C.	Rape, 2 counts (1985, '87); life + 54 yrs.	Victim ID; similarity of shoes, flashlight	Excluded by test of panties, vaginal swabs; 10-1/2 yrs.
Cruz, Rolando Chicago, Ill.	Murder, kidnapping, rape (1985); death	Witness statements; "dream visions" of murder	Excluded by test of semen-stained underwear; 11 yrs.
Daye, Frederick Rene San Diego, Calif.	Rape, 2 counts; kidnapping (1984); life	Victim, witness ID; blood analysis	Excluded by test of semen-stained jeans; 10 yrs.
Hernandez, Alejandro Chicago, Ill.	Murder, kidnapping, rape (1985); death	Witness statements; self-incriminating statements	Excluded by test of semen-stained underwear; 11 yrs.
Honaker, Edward Nelson County, Va.	Rape, sexual assault, sodomy (1985); 3 life terms + 34 yrs.	Victim, witness IDs; hair analysis	Excluded by test of vaginal swab; 10 yrs.
Jones, Joe C. Topeka, Kan.	Rape, kidnapping (1986); life + 10-25 yrs.	Victim, witness IDs; proximity to crime scene	Excluded by test of vaginal swab; 6-1/2 yrs.
Nelson, Bruce Allegheny Co., Pa.	Murder, rape (1982); life	Codefendant testimony; inculpatory statements	Excluded by test of crime- scene evidence; 9 yrs.
Woodall, Glen Huntington, W. Va.	Sexual assault, kidnapping (1987); 2 life terms + 203-335 yrs.	Blood, hair analysis; victim ID	Excluded by tests of vaginal swabs, clothing; 4 yrs. + 1yr. electronic confinement

Source: U.S. Department of Justice, Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial (1996).

in Boston — was overturned by Massachusetts' highest court in April.

The successes in matching convicted offenders to unsolved crimes, combined with the favorable court rulings, lead some DNA advocates to call for expanding the databases. "We need to have the databases as comprehensive as possible to get the maximum benefit," says George Washington's Rowe.

Civil libertarians naturally oppose any further expansion of the databases. But many law enforcement officials and other DNA database advocates also oppose the idea of collecting samples from arrestees — at least for the time being — for pragmatic reasons.

"On the face of it, it sounds good, but it does present some problems," says Rowe. "Right now, you just don't have the capability to do anything with it. And if [a suspect] is acquitted, there's some case law that would say he would have the right to have the sample destroyed and the record expunged."

"If we get to the point where our DNA labs can start turning these [samples] around in a month, and we start collecting all the samples owed and analyzing all the samples from crime scenes, once that happens, come back and talk to us about typing all arrestees," says Barry Scheck, a defense lawyer, member of the national commission and director of the Innocence Project at Yeshiva University's Cardozo Law School in New York. Scheck, who came to national prominence as the DNA evidence expert on the defense team in O.J. Simpson's 1995 murder trial, is a DNA database advocate.

Still, some law enforcement officials who oppose including arrestees for now also say there would be benefits in the future. "If we took samples from suspects at arrest and searched a database of samples from crime scenes, the advantages to public safety are going to be tremendous," says

Paul B. Ferrara, director of Virginia's Forensic Science Division.

Critics, however, say that collecting samples from arrestees is just one more step down a slippery slope that could lead someday to universal genetic registration — a system that they say is fraught with privacy implications.

"This is a technology that powerful groups will want to use eventually to monitor all of us, not just the bad people, but the rest of us," Bereano says. "That's what this technology is about."

Do DNA databases pose a danger for individual rights?

"Danny," a 7-year-old California boy, was diagnosed several years ago with a gene that predisposes him to a heart disorder. The family's doctor prescribed medication to lower the risk of a heart attack. But when Danny's father changed health insurers, the company refused to insure the boy, saying the genetic trait amounted to a "pre-existing condition" that disqualified him from coverage.

The Council for Responsible Genetics, a bioethics advocacy group in Cambridge, Mass., cites Danny's case as one of 200 instances of what it labels genetic discrimination.⁵ Critics of DNA databases say the risk of genetic discrimination will necessarily increase with the increasing number of DNA profiles being collected in both private and government computers that can readily be interconnected.

"We have a forensic, data-banking system based in the states, some more developed than others, but completely designed so that they will share information and cross state lines for doing searches of the sort we're talking about," says geneticist Billings, who reported Danny's case and others several years ago. "What's the reason for thinking that you won't be able to cross agencies?"

"The government is increasingly collecting biological samples that

contain DNA, and there are no real controls over how that information can be used and for what purposes," says Steinhardt of the ACLU. "We believe that inexorably databases created for one purpose wind up being used for other purposes."

Advocates of using DNA evidence in court have acknowledged potential risks to privacy since the early days of the technology. "When data banks are established in such a way that state and federal law-enforcement authorities can gain access to DNA profiles, not only of persons convicted of violent crimes but of others as well, there is a serious potential for abuse of confidential information," the National Academy of Sciences concluded in its first report on DNA profiling, in 1992.⁶

Law enforcement officials today, however, insist that the state and FBI DNA databases pose no real risk to privacy rights. They insist that the DNA profiles are strictly safeguarded and, in any event, are nothing more than "junk DNA" that contains no sensitive information about a person's health or background.

"These aren't genes," Ferrara says. "They don't tell us anything about medical conditions."

Steinhardt and other critics acknowledge that the DNA profiles themselves are useful only for identification not for other genetic information. But they note that law enforcement agencies retain the blood samples used to obtain the DNA used in profiling and that those samples could be used — or misused — at a later time to find out more personal information. "If the states and FBI were serious about limiting the use of these samples to law enforcement purposes, they would be destroying these samples rather than retaining them indefinitely," Steinhardt says.

"There are real and valid reasons for keeping those samples," counters the FBI's Niezgoda. First, he notes that