

DINNER/DISCUSSION SUMMARY

The holding and use of DNA profiles on police data systems

Held at The Royal Society on 6th February, 2008

We are grateful to
National Policing Improvement Agency and The Wellcome Trust for supporting this event

- Chair:** **The Earl of Selborne KBE FRS**
Chairman, The Foundation for Science and Technology
- Speakers:** **Meg Hillier MP**
Parliamentary Under Secretary, Home Office
[Represented by **Peter Neyroud QPM**
Chief Executive, National Policing Improvement Agency]
- Jonathan Bamford**
Assistant Commissioner, Information Commissioner's Office
- Tony Lake**
Chief Constable, Lincolnshire Police
- Dr Peter Gill**
Chair of the International Society of Forensic Genetics DNA Commission
Chair of ENFSI methods, interpretation and analysis sub-group,
University of Strathclyde

MR. NEYROUD identified the central issue: should solving crime through use of DNA identification take precedence over the individual's right to refuse to provide a DNA sample? The sole purpose of requiring DNA samples was to match them with existing samples on the DNA profile database. Apart from volunteers, DNA samples could be compulsorily taken only from those arrested in connection with a 'recordable offence'. They could be used only for assisting the police; investigating crimes; conduct of a prosecution; or identification of the dead. Its use was effective. In the seven years 1999 to 2006 330,000 matches had been found in connection with crimes. It protected the innocent, as well as helping find criminals, and reinforced public confidence in the ability of the police to catch offenders. But public confidence was qualified by concern over the increasing quantity of personal information held by the state. This concern must be addressed through transparent regulation and means of challenging its use; ensuring the integrity of the process and quality of the information; demonstrating its effective use; and ensuring that all participants understood their legal rights and responsibilities.

MR. BAMFORD agreed with Mr. Neyroud's identification of the central issue-combating crime without infringing personal rights. He was concerned that there were 4.5m samples on the data base, but many were taken from people who had never committed an offence, or who were volunteers. There was no statutory basis for the database, and its use would increase as more offences were defined, some of them as trivial as begging. Databases shared internationally. The current approach and framework should be reviewed, taking into account both international and national law and implementing the principles of data protection - fair process, limited purposes, accuracy and proportionality. Did the inability of volunteers to withdraw consent and holding data for indefinite periods meet those tests? A review should look at the use of the database for research; the implications of international disclosure; the

links between the police computer records and the database; lifelong retention and making procedures more privacy friendly (e.g. the Scottish retention procedure and unlocking the database/police computer link only if there are crime matches).

MR. LAKE said that the DNA database was the largest in the world (apart from the USA) with 4.5m samples, 60,000 additions per month and 35,000 intelligence matches per month. The government must, however, ensure that there was a sound strategic direction for the system, in order to meet changing circumstances and demands. He gave some vivid examples of the use of the database in allowing matches to be made over time, in connection with widely differing offences and internationally. The satisfaction which victims felt when convictions were secured should not be ignored and the use of DNA undoubtedly secured more convictions. But it was crucial that public confidence in the system was maintained and he agreed with Mr. Bamford that there were issues which needed to be explored. His list included the rights and expectations of victims and volunteers; disparity (was the presence of a disproportionate number of young black males on the database acceptable?); long term retention of samples; public misunderstanding of the content of the DNA held and Lord Justice Sedley's dictum about the desirability of a universal data base (impractical, in view of the resource cost, in his view). A public debate on all these issues was essential. Public confidence in the effectiveness of the police had been damaged by failure to secure convictions in some recent cases; it could be enhanced by greater success through use of the database - but only if the public found this acceptable.

DR. GILL outlined the process by which a profile is created for the database from the analysis of evidence in a crime situation. There needed to be an identical match between markers from two samples to ensure that there was certainty about the identity. But in many cases the profile

could only be partial, either through time sequences (starting from before the time of the crime, to the eventual matching) or contamination through adventitious transfer of material. In such cases the power of discrimination was weakened. The matching of samples was no more than a piece of information and it was crucial to distinguish between the creation of this piece of information - the scientist's job - and its evidential use in court proceedings. The Omagh trial demonstrated this. It was not for the scientist to decide whether or not to prosecute, he could produce evidence for both the defence and the prosecution - and failure to convict did not mean the science was faulty. Analyzing the meaning of evidence was a totally different proceeding from the science. The Treaty of Prüm between EU states which would facilitate the exchange of information between states would lead to new demands on the science. There was a danger that new technology to reduce the number of random matches would be needed, and we should avoid being locked into outdated technology.

Speakers in the following discussion endorsed the presenters' view that the central issue was using the database effectively to combat crime, while maintaining public confidence that the system did not unnecessarily infringe privacy. Crucial to this debate was clarity of purpose of the database. Was it used for intelligence purposes or surveillance purposes? Many of the solutions to the specific issues, which all agreed needed to be reviewed, could depend on this distinction. For example, the public might accept that there were a disproportionate number of young male blacks on the database, if its purpose was surveillance, because statistically, they would be more likely to commit crimes. But if the purpose was intelligence, that meant that there was no statistical basis, but simply a suspicion that young male blacks needed to be put on a database. Similarly on retention; if the purpose was surveillance, the sample could be deleted when it had become clear that the donor had no connection with the crime, but if the purpose was intelligence, there was no logical limit for retention, as it was always possible for a link to be discovered to some past crime (e.g. the example quoted by Mr. Lane, where a rapist was found through a DNA link to his sister, accused of drink driving some years later). In essence, the debate was about the management of risk, and the public's willingness to accept that the choice is either using every available mechanism to detect offenders, or limiting the mechanisms, with the consequence that some offenders will go free, and their victims un-solaced. The real worry, perhaps, was the link between the database and the police computer system. There was always the danger that if an individual was on the database and was questioned by the police, his name would come up on the computer and the policeman would automatically assume there was something suspicious (no smoke without fire). Thus the suggestion of unlocking the link only when there was strong reason for it, should be pursued.

Certainly there was much misunderstanding both about the nature of the DNA on the database, and about the legal limits surrounding its use. The widespread fear that the samples could be used to construct profiles about the health or other attributes of donors was quite wrong. The sample simply said who you were (or alleged you were) and enabled it to be matched to another sample. What were the Human Rights issues about this? The law prohibited the use of the data for NHS purpose, although it could be (but was not) used in paternity issues. The public, however, did not trust the state either to maintain the strict limits on the use of database material when it found

it convenient to merge databases, or to look after data in its possession (recent Revenue and DVDL cases). It was unfortunate that public concern about the use of Identity Cards had become entangled with the DNA database issues. The two were quite different; there were major ethical and proportionality issues on ID cards. It was also unfortunate that the database debate had taken place in isolation from concern and ignorance about the information held by private organizations - e.g. Tesco - about individuals and information circulated on the internet. It could be argued that this type of information was acceptable because it was given voluntarily - one did not have to take a Tesco card. But this was only a partial answer. Did people know what details Tesco had? How did they know how Tesco would react if the police put pressure on them to reveal these details? There were much larger issues about the nature of the society we wished to live in and the sources of information about individuals, than those raised by the DNA database. A snap poll amongst those present - would they object to being identified, even if the use of the information was strictly limited - revealed a significant divergence of view. Even if the cost of a universal data base were not prohibitive, it was very doubtful if the public would find it acceptable.

The distinction Dr. Gill drew between information and evidence was important, but raised the question about the source of the techniques for providing the information. The "multiplex" technique used for matching was a commercial system protected by patent. There was no competitor and it was worrying that development of the techniques could be hampered by its possession by a single manufacturer in this country. But there were other techniques and the courts were beginning to demand a common philosophy and universally used technique. There was no way that this could be done in practice.

Sir Geoffrey Chipperfield KCB

Details of past events are on the Foundation web site at www.foundation.org.uk. Other links are:

Association of Chief Police Officers:

www.acpo.police.uk

Centre for Forensic Science,

University of Strathclyde:

www.strath.ac.uk/forensic

Home Office:

www.homeoffice.gov.uk

Information Commissioner's Office:

www.ico.gov.uk

International Society of Forensic Genetics DNA

Commission:

www.ingentaconnect.com

Lincolnshire Police:

www.lincs.police.uk

Lincolnshire Police Authority:

www.lincolnshire-pa.gov.uk

National Policing Improvement Agency:

www.npia.police.uk

The Wellcome Trust:

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