

# Discarded, Elimination, Employee, and Third-Party DNA Samples: Right to Privacy

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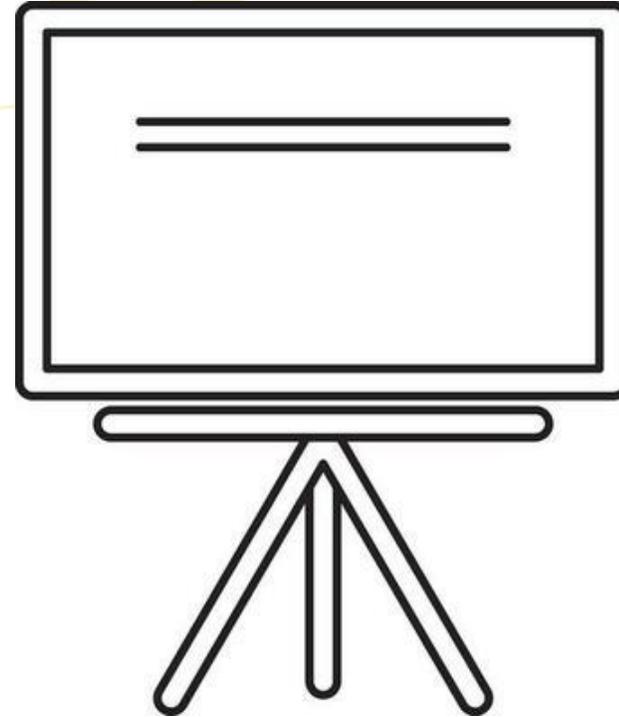
# Disclaimer

Opinions expressed herein are those of Ray Wickenheiser, not that of NYSP, ASCLD, FSSB OSAC, SWGDAM, NTVIC or any other entity.



# Outline

- Forensic use of DNA
  - Crime scene and discarded DNA
  - Reference Samples
  - Elimination samples
  - Employee databases
  - Third party samples
- Privacy concerns and recommendations



# The Crime and Crime Scene (Forensic) DNA

- Order of events
  - Suspect interacts with victim and/or scene
  - Crime is committed
  - Crime is reported/comes to the attention of law enforcement
  - First response
  - Crime scene evidence collection
    - First responders
    - Specialized crime scene units
  - Evidence is submitted to a forensic laboratory
  - Biological material is identified
  - DNA is extracted, quantified, amplified, and a profile is generated
  - The profile is interpreted and compared to known samples individually and/or using databases



# Forensic DNA

- Suspect deposits (discards) their DNA at a crime scene (forensic sample)
- Forensic DNA is the focal point of the value of forensic **association** (transfer – Locard Exchange Principle)
- Victim DNA may also be present and of great associative value
- Individuals' DNA unrelated to the crime may also be present
  - Significant other (ex. spouse of SA victim)
  - Extraneous DNA
  - Contamination from first responders, crime scene technicians, crime laboratory personnel



# Discarded DNA

- Crime scene DNA
- Samples from known sources
- No presumed right to privacy once something is discarded
- Should all discarded DNA be treated the same?
- What are individual's right to privacy?
- There is no constitutional right to privacy: it is implied in the Third Amendment right to privacy in the home, the Fourth Amendment protecting individuals from unreasonable searches and seizures by the government, and the Fourteenth Amendment guaranteeing due process for all individuals



## Reference (known) samples

- Taken with knowledge of the individual
- Known sample from suspect
- Known sample from victim (complainant)
- Known sample from individual expected to be (or not surprised to be) present (elimination sample)
- Known sample from other individuals who may contributed extraneous DNA
- Employee databases (a specialized form of elimination sample)
- Third-party samples



## Reference (known) samples

- Known samples from suspects may be demanded
- Known sample from victims, elimination samples, employee samples and third-party samples
  - Taken voluntarily
  - Informed consent
    - Defines the use
    - Obtains consent from the individual for the defined use



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# Unofficial Reference Samples

- Samples taken without an individual's knowledge
- Discarded DNA from a known individual taken for the purposes of using it as a reference
- Suspect – permits not tipping off individual they are a “person of interest”
  - Protects their rights if they are not the perpetrator
- Third-party or other individuals known to be innocent (FIGG)
  - Just because you can, doesn't mean you should
  - It may be legal, but is it ethical?
  - Does it undermine trust?



# Bioethical Concepts

- Autonomy – my right to my own body and what to do with it (originally for treatment of disease, operations, etc.)
- Proportionality – weighting the good versus the bad, risk
- Recidivism – amplifies the risk to society of not solving the instant risk. Analogy is communicable disease. This case can spread to or generate the next harmful case, so there is a cost to others in not solving it



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# Bioethical Concepts

- Public safety – an extension of autonomy, right to not have crime perpetrated upon my person or that of my family, friends, etc.
- Beneficence – is the quality or state of doing good. Maximize the value of evidence. Use objective evidence to assist the finder of fact
- Nonmaleficence – obligation of the scientist to do no harm. Do not undermine the public trust.



# Bioethical Concepts

- Staff databases – we frequently cease analysis when we obtain a foreign profile, so contamination may hurt a case. An individual can also be erroneously placed in a database where a staff database is meant to keep them from being erroneously entered in that database, but also improve on the technique.
  - Is there a duty to provide an elimination sample?
- Elimination samples – should they only be used in the instant case or used in other cases?
  - Ray's opinion is "NO"
  - Undermines trust
- Victim, staff and third-party samples – should not be used for prosecution (bioethical concept of nonmaleficence - do no harm)



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# Public Trust



- Forensic Science and Forensic DNA in particular is the “gold standard” in terms of quality and use of objective evidence to assist the finder of fact (investigators and jury)
- Adhere to Terms of Service of genealogical databases (FamilyTree and GEDMatch)
- We need public support to use individuals DNA as it is their right to autonomy and they can permit use of or withdraw their sample at any time



# Recommendations

- Develop and utilize policy on use of DNA samples
- Respect privacy of individuals known to be innocent
  - Do not use beyond the instant case
- Adhere to Terms of Service for genealogical databases
- Maintain the public trust (do no harm)

*Recommendation*

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_



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**Thank you!**

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