

“The United States should establish a National DNA Criminal Database”

Thesis Statement:

The United States should not establish a National DNA Criminal Database because it would need to encompass all past, future, and current criminals, subject the individuals in question to an invasion of privacy on the most fundamental level, and violate constitutional rights outlined in cases such as *Coffin v. United States* (1895). In addition, the possibility of error in the retrieving and analysing of DNA, as well as the abuse of the information within the database is supports the opposition of a National DNA Criminal Database.

Quick Overview:

Definitions of Key Terms:

Criminal: According to West’s Encyclopedia of American Law Edition 2, a criminal is defined as, “Pertaining to, or involving, crimes or the administration of penal justice. An individual who has been found guilty of the commission of conduct that causes social harm and that is punishable by law; a person who has committed a crime.”

Database: As defined by Merriam Webster Dictionary is “a usually large collection of data organized especially for rapid search and retrieval”.

Presumption of Innocence: According to West’s Encyclopedia of American Law Edition 2, the presumption of Innocence is, “A principle that requires the government to prove the guilt of a criminal defendant and relieves the defendant of any burden to prove his or her innocence.” Thus, in short the accused is innocent until proven guilty.

Privacy: According to West’s Encyclopedia of American Law Edition 2, is the, “... the right of people to make personal decisions regarding intimate matters; under the Common Law, the right of people to lead their lives in a manner that is reasonably secluded from public scrutiny, whether such scrutiny comes from a neighbor's prying eyes, an investigator's eavesdropping ears, or a news photographer's intrusive camera; and in statutory law, the right of people to be free from unwarranted drug testing and Electronic Surveillance.”

Discussion:

1. There are two problems with the specificity of the term Criminal:
 - a. Is the DNA of “criminals” the only data added to the database?
 - i. Only convicted individuals information is on record
 1. Limits the system to only catching repeat offenders
 - a. “A database containing the DNA of convicted criminals helps law enforcement find and identify repeat criminal offenders.” - West’s Encyclopedia on American Law, Edition 2.
 - ii. Is the non-convicted individuals data recorded or omitted
 1. *Coffin v. United States* (1895)
 - a. Presumption of Innocence
 - b. “It is said that the presumption of innocence is a conclusion drawn by the law by virtue of which, on a trial, the accused must be acquitted unless proved guilty.” - Bradley
 - c. “However, issues of human dignity and bodily integrity could arise when a state purports to force innocent members of society to donate biological information of any sort.” - “Ethical-legal problems...”
 - b. What about the DNA data necessary to convict ‘new’ criminals?
 - i. Would need the DNA of everyone on file
 1. This would be an invasion of privacy
 - a. The definition of privacy is “... the right of people to make personal decisions regarding intimate matters; under the Common Law, the right of people to lead their lives in a manner that is reasonably secluded from public scrutiny, whether such scrutiny comes from a neighbor’s prying eyes, an investigator’s eavesdropping ears, or a news photographer’s intrusive camera; and in statutory law, the right of people to be free from unwarranted drug testing and Electronic Surveillance.” - West’s Encyclopedia of American Law Edition 2
 - b. “Information about an individual’s genome implies the most private expression of many endogenous factors which intervene in the confirmation of his/her future, as well as present, state of health” - “Ethical-legal problems...”

2. There are possible ethical problems and error that are produced from the DNA database.
 - a. Possibility of abuse of DNA data within the database
 - i. “A further extension of the scope of forensic databases is achieved by searching for close matches that might indicate that someone on the database is genetically related to the crime suspect. Such familial searching may lead to a large number of people becoming suspects.”
 - ii. “The key questions raised by familial searches, from a civil liberties perspective, are how often they lead to testing of innocent people-i.e., people who do not have the matching profile-and how often they might falsely incriminate innocent people”
 - iii. “As genetic databases become increasingly common in other countries (over 60 countries are now operating one) the sharing of data between international police forces is likely to increase. This may increase the vulnerability of databases to abuse and hacking.”
 - b. There is potential for errors in retrieval and analysis
 - i. “In DNA profile analysis, uncertainty arises due to a number of factors such as sampling error, single bands and correlations within and between loci. One of the most important of these factors is kinship: criminal and innocent suspect may share one or more bands through identity by descent from a common ancestor. Ignoring this uncertainty is consistently unfair to innocent suspects.” - Balding and Nichols
 - ii. “Although generally quite reliable (particularly in comparison with other forms of evidence often used in criminal trials), DNA tests are not now and have never been infallible. Errors in DNA testing occur regularly. DNA evidence has caused false incriminations and false convictions, and will continue to do so” - Thompson
 - iii. “a combination of technical problems in the laboratory and careless or mistaken interpretation of the test results produced misleading DNA evidence that helped send innocent men to prison for many years. 13 False DNA matches have come to light in a number of other cases as well.” - Levitt

Annotated Bibliography

Balding, David J., and Richard A. Nichols. "DNA profile match probability calculation: how to allow for population stratification, relatedness, database selection and single bands." *DNA profile match probability calculation: how to allow for population stratification, relatedness, database selection and single bands*. Science Direct, 1994. Web. 17 Feb. 2017.

This information will allow for the argument to be made that in certain hard cases the issue arises with an individual falsely being accused of a crime. If the process isn't thorough enough an innocent individual, with no association to the crime other than genetic makeup, could be wrongfully incriminated through such a database. However, it is noted that this error rate would be small, but nonetheless is still pertinent because it affects innocent individuals.

"criminal." West's Encyclopedia of American Law, edition 2. 2008. The Gale Group 16 Feb. 2017 <http://legal-dictionary.thefreedictionary.com/criminal>

This website was used as it emphasizes that the system is limited to convicted criminals, and goes even further to extend into the limitations on catching repeat offenders. This will allow for a great deal of basis on which to refute the implementation of a DNA database, as well as establish what the database is and whom has access to it.

"Database." Merriam-Webster.com. Merriam-Webster, n.d. Web. 16 Feb. 2017.

Guillen, Margarita, Maria Victoria Lareu, Carmela Pestoni, Antonio Salas, and Angel Carracedo. "Ethical-legal problems of DNA databases in criminal investigation." *Journal of Medical Ethics*, n.d. Web. 16 Feb. 2017.

This article poses a great deal of relative information concerning the potential legal risks associated with such a database, as well as qualify the stance on privacy on a biological level. Although the stance is mostly against the database a fair amount of information is provided in favor of it; thus qualifying the stance even more.

Levitt, Mairi. "Forensic Databases: Benefits and Ethical and Social Costs." *British Medical Bulletin*. 29 Sep. 2007. Web. 16 Feb. 2017.
<https://academic.oup.com/bmb/article/83/1/235/387584/Forensic-databases-benefits-and-ethical-and-social#5710075>

This article was chosen as it gives both pros and cons of the DNA database. There is information on the use of familial searching that supports statements made against the database. However, there are also many claims for the database that can be used as a rebuttal.

"presumption of innocence." West's Encyclopedia of American Law, edition 2. 2008. The Gale Group 16 Feb. 2017 <http://legal-dictionary.thefreedictionary.com/presumption+of+innocence>

"privacy." West's Encyclopedia of American Law, edition 2. 2008. The Gale Group 16 Feb. 2017 <http://legal-dictionary.thefreedictionary.com/privacy>

This article poses a great deal of relative information concerning the potential legal risks associated with such a database, as well as qualify the stance on privacy on a biological level. Although the stance is mostly against the database a fair amount of information is provided in favor of it; thus qualifying the stance even more.

Thayer, James Bradley. "The Presumption of Innocence in Criminal Cases." *The Yale Law Journal*, vol. 6, no. 4, 1897, pp. 185–212., www.jstor.org/stable/780722.

This source elaborates on the Constitutional right to a Presumption of Innocence by exploring the case of *Coffin v. United States*. By establishing what exactly this right is, a stance against a database that requires criminals to submit information can be argued as you are innocent until proven guilty. This also allows for the argument that if only criminal information is on file, and if those individuals have been sentenced, then this vastly limits the scope of such a database.

Thomson, William. "The potential for Error in Forensic DNA Testing." *Council for Responsible Genetics*. Web. 16 Feb. 2017 <http://livinggenomics.org/editoruploads/file/Crime%20and%20DNA%20readings/Potential%20for%20Error%20in%20Forensic%20DNA%20Testing.pdf>

This article was chosen as it gives strong evidence on how DNA retrieval and analysis for law is not infallible. It will be a great source of information to utilize in helping support claim that errors occur within the database that can lead to wrong incrimination of people.