

## **Big bio-brother is here, watching, taking and keeping your DNA**

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### **Abstract**

The UK National DNA database (NDNAD), the largest forensic database in the world was established way back in 1995. Since then it has grown immensely in terms of the profiling it undertakes.

Legislation like the Police and Criminal Evidence Act 1984, Criminal Justice and Public Order Act 1994, Criminal Evidence Act 1997, Criminal Justice Act and Police Act 2001, Criminal Justice Act 2003 and the Serious Organised Crime and Police Act 2005 are said to apply to the operation of the NDNAD system, as also does data protection law.

*R v Chief Constable of South Yorkshire (ex parte S and Marper)*,<sup>1</sup> a case wherein the House of Lords ruled that the *taking* of fingerprints and samples from persons suspected of having committed relevant offences is a reasonable and proportionate response to the scourge of serious crime. The case is now pending before the European Court of Human Rights.

The primary goal of the NDNAD is laudable –although there remain certain issues at different levels that need to be effectively addressed and dealt with. The Nuffield Council on Bioethics is currently preparing a consultation paper on the “Forensic use of bio information: Ethical issues” – its report is to come out in autumn 2007.

The paper will consider one of the very important issues raised by the Consultation. This pertains to the big question of “whether the retention of bioinformation from those not convicted of an offence is proportionate to the needs of law enforcement.” The paper will illustrate with legal scenarios what the worst case possibilities and effects could be.

The paper while highlighting how the requests for the removal of DNA samples from police databases are hit by the ‘exceptional rule’-the ACPO has released guidance<sup>2</sup> that removal of DNA samples may be done in cases of unlawful arrests or cases where no offence had prompted the arrest-, will show the folly of how a cumbersome legal burden has been imposed on the ‘innocent.’ The paper will propose that this burden be shifted back onto the ‘collector of the DNA or such other samples’ in order to provide a safeguard for the rights of victims or witnesses who come within the purview of the criminal justice system by chance.

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<sup>1</sup> Home Office, DNA Expansion Programme 2000-2005: Reporting Achievement (2005) Forensic Science and Pathology Unit, p 16.

<sup>2</sup> See <http://www.acpo.police.uk/policies.asp>