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BOOK REVIEW

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Review of: *Genetic Policing: The Use of DNA in Criminal Investigations*

REFERENCE: Williams R, Johnson P. Genetic policing: the use of DNA in criminal investigations. Cullompton, Devon, UK: Willan Publishing, 2008, 198 pp.

The United Kingdom has more aggressively tackled forensic DNA databasing than any other jurisdiction. Today, the UK's National DNA Database (NDNAD), which went live on April 10th 1995, is the largest "national" database in the world in terms of samples (3.8 M individuals and 0.4 M evidentiary samples) and samples/per capita (5%). Williams and Johnson, British sociologists and long-time observers and commentators of the NDNAD, after a 3-year study funded by the Wellcome Trust, have written an authoritative and reflective "socio-historical overview" on the subject.

Forensic DNA typing is generally considered to have been birthed in the UK in 1985 when Alec Jeffreys published two articles in Nature and performed DNA testing in two rape/homicides resulting in a 1986 exoneration and a January 1988 conviction. This establishment of forensic DNA technology in the UK, in the late 1980s and early 1990s, coincided with: (i) a "crisis" in policing characterized by rising crime and falling clearance rates; (ii) a "crisis" in the confidence in forensic science due to highly publicized miscarriages of justice largely based on faulty forensic science; and (iii) a New Public Management (NPM) approach to modernize the public sector which emphasized measurable economy, efficiency, and effectiveness. This backdrop created an impetus for governmental action which in turn resulted in an unplanned "function creep" advancing the NDNAD beyond that of other countries and indeed a paradigm shift in policing—with little public deliberation or transparency. Success rates, which the authors find questionable, trumped any discussions of due process or civil liberty.

The NDNAD grew out of the 1984 Police and Criminal Evidence Act (PACE) through a series of amendments. Prior to any databasing, the original PACE legal framework authorized DNA testing on samples from scenes of crimes (SOC samples) and samples from individuals (CJ samples). "Intimate" CJ samples required consent, but "non-intimate" (hair, nails, and swabs from other than body orifices) CJ samples could be collected without consent where the police officer had reasonable grounds to believe the sample would yield significant information relevant to a serious crime. This framework was subsequently changed incrementally, resulting in a greatly expanded databasing effort. Non-intimate samples were redefined to include oral swabs. The offenses justifying collections were extended from serious crimes to all recordable offenses. The NDNAD was populated with samples from those convicted since 1995, those charged since 2001, and those arrested since 2003. A national funding strategy accelerated the expansion of the database, resulting in a database said to contain virtually the entire "active criminal population" of about 3 million individuals. Yet, the authors describe still further potential expansion under consideration.

The NDNAD has been part of a transformation of police investigations from reactive investigations to proactive "intelligence-led" policing efforts. The National Intelligence Model was officially adopted by the Association of Chief Police Officers (ACPO) in 2000. This crime management strategy focuses on identifying and intervening in the "risky conduct" of individuals to reduce crime. This shift is from a "disciplinary society" emphasizing moral conduct of the individual to a "control society" emphasizing the actions within populations, and requires extensive surveillance.

Speculative searches ("fishing expeditions") of the database constitute police investigations ("intelligence") of the "active criminal population" or "career criminals" ("the usual suspects"). Inclusion in the database of those merely arrested means that investigations are now based upon police suspicion, not judicially vetted guilt—a paradigm shift from an emphasis on "due process" to "operational efficiency." Gerlach is quoted: "the rituals of justice are now increasingly being performed behind laboratory doors instead of on the public stage of the court rooms."

A database of innocent individuals who have never been formally charged with an offense for use in future investigations is a significant shift in English law and runs counter to the notion of "innocent until proven guilty." The Human Genetics Commission calls this a "cynical belief that those suspected of a crime are probably guilty, even if acquitted, and likely to be involved in further offending." The Lord Bishop of Worcester described this as "an illegitimate distinction between the guilty who have been convicted of offences, the not guilty, and the probably dodgy." Recent government revelations indicate that the database in late 2006 contains over a million profiles from individuals without convictions, or about one third of the total, although they were said to be only a tenth of that number earlier in the year.

This shift is based upon an uncritical confidence in forensic identification techniques. However, the authors recognize that DNA evidence offers exculpatory as well as inculpatory power and moreover, that there is little evidence to suggest that DNA testing is leading to miscarriages of justice or that DNA intelligence is inducing false admissions of guilt from suspects. Nonetheless, the authors conclude that "although the police may derive a further 'convenience' from the establishment of a wide retention regime, it is questionable whether social, financial, or administrative benefits are sufficiently great to justify the extension of powers…"

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The authors note that much change is afoot, although it is too early to know the impact. A NDNAD Strategy Board, an independent Ethics Group, and a Forensic Science Regulator are to be established and the contract granted to the Forensic Science Service to operate the NDNAD will be rebid. The authors hope these changes bring about greater public discourse and transparency.

All forensic DNA analysts, indeed all forensic scientists, would benefit from reading this book, whether they share the perspective of the authors or not.