

ACLU of Virginia

Six North Sixth Street, Suite 400 Richmond, Virginia 23219 (804) 644-8022

April 15, 2004

Timothy J. Longo, Jr.
Chief of Police
Charlottesville Police Department
606 East Market Street
Charlottesville, VA 22901

RE: Charlottesville DNA Dragnet

Dear Chief Longo:

It is my understanding that you have agreed to suspend temporarily your practice of seeking DNA samples from African-American men merely because they have been reported to the police as acting "suspiciously." I also understand that, in response to community concerns, you intend to revise and reestablish this practice to narrow its scope and clarify the criteria for choosing persons whose DNA will be sought in the future.

The ACLU of Virginia commends you for your willingness to modify your practices. However, we recommend that you abandon the use of the DNA dragnet altogether.

The simple fact is that through the entire history of their use in the United States, indiscriminate DNA dragnets have never caught the individual sought. Instead, innocent persons have been fired from their jobs, wrongly linked to serious crimes, and singled out for police investigation for improper reasons such as race. In Louisiana recently, police took DNA samples from more than 1,200 white males searching for a serial killer. The killer, they later discovered, was African-American.

DNA dragnets are also a waste of police resources. Thousands of valuable man hours are squandered tracking down individuals for their DNA. Additional time is wasted with follow-up investigations of those who exercise their right not to provide DNA samples. These are all valuable resources that could be applied to proven police techniques for solving crimes.

For all of the reasons stated above, the ACLU opposes DNA dragnets in principle and in practice. Listed below are some of the problems that typically occur when DNA dragnets are used.

1. No probable cause for seeking DNA

DNA samples should only be requested when there is evidence linking the person to the crime that is sufficient to establish probable cause. No sample should be requested based solely on a person's race, sex or age, or on phone calls to the police describing the person as "suspicious."

2. Time and place of request may infringe on privacy

Police should protect the privacy of individuals from whom DNA samples are requested. For example, officers should not go to a person's place of work or other public place to request samples.

3. Constitutional right to refuse is not stated

Before making a request for a saliva sample, police should inform the person that he has a constitutional right not to be tested, and that there will be no consequences if he refuses.

4. Those who refuse to provide samples are subjected to follow-up investigations

Police should not draw negative inferences from a person's refusal to provide a DNA sample. In the absence of other, independent reasons, such a person should not be further investigated or questioned because of his refusal to provide a sample.

5. DNA samples of innocent persons may be misused

Voluntarily provided DNA samples should only be compared to the DNA found at the crime scene. Such DNA samples should not be added to the statewide DNA databank. Nor should DNA samples be run through the "cold case" database or compared to the evidence of any other crime, unless there is an independent reason to believe that the individual may be involved in such crime.

6. DNA samples of innocent persons may remain on record

After use, the DNA sample should be destroyed or returned to the individual, and no record of the DNA sample should be retained by the police.

The ACLU of Virginia does not intend to impede your efforts to find the person who committed these heinous offenses. We believe that vigorous but properly implemented investigations can both protect the rights of citizens and solve difficult crimes.

I thank you for your attention to this important matter.

Sincerely,

Kent Willis
Executive Director