

Genetic Genealogy In Cold Cases

Familial DNA websites reveal more than long lost cousins

By: Dana Grimes, CASD President

For decades, no one knew the Golden Gate Killer's identity. Police believe that he committed 12 murders and more than 50 rapes from 1976 through 1986. Into the 1990s, law enforcement did not connect his Northern and Southern CA crimes as having been perpetrated by the same suspect. But, as the late and great Hon. Woody Clarke knew, even as cases grow cold, DNA science marches on. In 2001, with new technology, a criminalist in Contra Costa connected the two sets of cold cases by 1970s DNA evidence. It was DNA again that led to the revelation in April of this year, that the police identified the Golden Gate Killer as Joseph James DeAngelo. What is unusual about this case is not how long ago the sample was collected. What is unusual is the way the officers investigating the case found a match for the crime scene sample.



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The FBI's Combined DNA Index System (CODIS) Currently contains about 13 million DNA profiles in its offender database. Comparing the 1977 crime scene sample produced no hit, as DeAngelo (who had never been arrested) was not in that database. To generate leads, the detectives uploaded the 1970s crime scene DNA sample to GEDmatch, a genealogy website, by creating a fake profile, under the pretext of an average consumer who wanted to identify family members. A general inheritance principle of DNA means that close relatives share a higher percentage of alleles between each other than with other, random, members of society. GEDmatch provides family trees based on this, and the detectives' pretext profile was matched with DNA profiles of relatives of DeAngelo. These leads resulted in their focusing on DeAngelo.

Offender searches on CODIS

CODIS is the U.S. DNA database created and maintained by the FBI. The CODIS software contains different databases including missing persons, convicted offenders, and forensic samples collected from crime scenes. The original purpose of the CODIS database was to build upon the sex offender registry through the DNA collection of convicted sex offenders. Over time, that has expanded. Currently, all 50 states collect DNA from those convicted of felonies.

The number of DNA profiles in the CODIS offender database is now over 13 million, and it is growing. When a person is arrested on a "serious" offense, a mouth swab of their DNA is taken, and it is entered into the CODIS offender database. The courts have held that this is not a violation of the Fourth Amendment, in very close decisions. *Maryland v. King* (2013) 569 U.S. 435 was a 5-4 decision of the U.S. Supreme Court. It held that Alonzo King had been properly convicted for a rape committed in 2003 using a DNA sample taken after an assault case he was arrested on in 2009 led to his DNA's inclusion in the CODIS offender database:

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By comparison to this substantial government interest and the unique effectiveness of DNA identification, the intrusion of a cheek swab to obtain a DNA sample is a minimal one. True, a significant government interest does not alone suffice to justify a search. The government interest must outweigh the degree to which the search invades an individual's legitimate expectations of privacy. In considering those expectations in this case, however, the necessary predicate of a valid arrest for a serious offense is fundamental. "Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place."

"The legitimacy of certain privacy expectations vis-à-vis the State may depend upon the individual's legal relationship with the State." [Internal citations omitted.]

Maryland v. King, supra, at *461-62.

Speaking for the minority, the late Justice Scalia said, after an interesting analysis of Madison's draft of what would become the Fourth Amendment, that the decision of the majority would have "vast and scary consequences" in diminished protection for the privacy of Americans. He wrote,

The Fourth Amendment forbids searching a person for evidence of a crime when there is no basis for believing the person is guilty of the crime or is in possession of incriminating evidence. That prohibition is categorical and without exception; it lies at

the very heart of the Fourth Amendment. Whenever this Court has allowed a suspicionless search, it has insisted upon a justifying motive apart from the investigation of crime.

It is obvious that no such noninvestigative motive exists in this case. The Court's assertion that DNA is being taken, not to solve crimes, but to identify those in the State's custody, taxes the credulity of the credulous. And the Court's comparison of Maryland's DNA searches to other techniques, such as fingerprinting, can seem apt only to those who know no more than today's opinion has chosen to tell them about how those DNA searches actually work.

Maryland v. King, supra, at *467.

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Hon. Gordon Liu, Chief Justice of the California Supreme Court, expressed similar concerns when that court ruled on the same issue under a California Constitutional analysis in 2018. In a 4-3 decision in *People v. Buza*, (2018) 4 Cal.5th 658, the California Supreme Court upheld the conviction of a suspect who had refused to allow a DNA cheek swab to be taken at the time of his arrest on felony charges (it is a misdemeanor for a felony arrested to decline to allow the DNA cheek swab). The dissent noted, "to create and store a DNA profile gives the government long-term access to the subject's genetic code—some of the most personal information imaginable." (*Buza* at *713, internal citations omitted.) And Chief Justice Liu wrote the collection and retention of DNA evidence for arrestees who have not been charged, convicted, or found by a magistrate to be lawfully detained is "not a scheme carefully calibrated to identify felony offenders" but rather a "biological dragnet". *Id.* at *696.

Familial searching on CODIS

When a crime scene DNA sample is submitted to CODIS or other offender DNA data base it may return a hit, (like it did for Mr. King in *Maryland v. King* after his later assault arrest landed him in CODIS), or it may not. In this latter instance, what an investigator would like to do is expand the search to include people in the offender database whose genetic markers show sufficient similarity to the crime scene DNA to indicate a family relationship.

This type of familial searching of CODIS has led to several convictions after the exhaustion of all other leads. A familial DNA CODIS search is what led police in Scottsdale Arizona to identify the person who murdered Allison Feldman. They had a suspect DNA sample, and when they ran it through CODIS the one familial hit was Mark Mitchem, a man who had been sentenced to 40 years in prison for child molestation.

The detectives then focused on his brother, Ian Mitchem. Ian was not in the offender database because he had no felony arrests, but he did have a misdemeanor DUI conviction in October of 2015. The detectives obtained the blood sample from that case, which was a match to the DNA left on a beer bottle at the scene of Ms. Feldman's murder.

In investigations of suspects identified by family members, detectives have used other means to obtain the suspect's DNA. LAPD identified Lonnie David Franklin as a suspect in a series of murders in LA, when the crime scene DNA produced a CODIS family DNA hit with his son, Christopher Franklin, who was in the offender DNA database because of a felony weapons charge. The detectives followed Lonnie and obtained his DNA by collecting discarded pizza crust and utensils he left after eating at a restaurant. (Detective work remains when the

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police get a list of candidates from a family DNA search, but the names of potential relatives of the suspect are extremely valuable leads that law enforcement would not otherwise have.) In 2016, Lonnie Franklin was convicted of killing nine women and a teenage girl.

Family DNA searches through the CODIS offender database identify relatives of the person who left his DNA at a crime scene at higher rates than one might expect. (One study found that at least 42% of jail inmates had close relatives who were also incarcerated.)

Familial searching practices are controversial, as the individual who ends up being charged with a crime was only implicated because someone else's DNA was in the CODIS database. As of April 2018, only twelve states, (and California is among them), have approved the use of familial searching in CODIS. Only 12 states (California is one of them) allow its use, and it even in

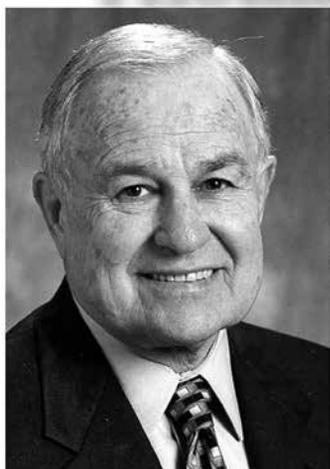
those states it is not used frequently, because of the burdensome procedures required. One objection to familial DNA searches is that it is discriminatory because black and Hispanic men are overrepresented in offender databases. The Fourth Amendment objections are less persuasive, because of the standing issue – even if the relative's fourth amendment rights were violated by the collection of the DNA sample, the suspect would not have standing to challenge that process.

Nobody is proposing (yet?) that familial DNA searches be done to solve auto theft cases. Here, they are reserved for serious crimes including rape and murder, that are cold cases. In the UK, familial DNA testing has been done in homicide and sexual assault cases since 2002. It is allowed in cases where the police have DNA samples believed to be from the perpetrator, and other investigative efforts have failed. From 2003 through 2011,

investigators in the UK identified 41 perpetrators from 188 cases, a 22% success ratio in serious cold cases that in all likelihood would otherwise have remained unsolved.

Fourth Amendment advocates worry that Scalia was prescient, and we will one day find out what the "vast and scary consequences" will be to the erosion of our privacy and governmental access to the genetic blueprint of millions of Americans. (Does Cambridge Analytica already have access to it?) On the other hand, familial DNA is a powerful tool for solving serious crimes that would otherwise remain cold cases. **TBN**

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