



A58 Indicting John Doe by His DNA – A DNA Analyst's Perspective

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After attending this presentation, attendees will learn about Grand Jury presentations against DNA profiles in unsolved cases. These indictments have the potential to be amended to include the individuals' names if the cases are solved in the future.

This presentation will impact the forensic science community by demonstrating how John Doe indictments in New York City have created the potential for prosecution of heinous crimes which otherwise would move beyond the reach of the law.

For the last decade, the District Attorney's Offices (DAOs) in New York City have been making use of the John Doe Indictment as an instrument to stop the clock before the statute of limitations has run out. This method has been used extensively during the "DNA era" for sexual assault cases that occurred before DNA testing was available. These cases were tested years after the incidents occurred, but before their statutes of limitation had expired; on occasion, indictments were filed only days before the deadline. In 2006, the laws of the State of New York changed to allow sexual assaults to be prosecuted at any time after the incident when there is DNA evidence available. Previously to that, there was a five year statute of limitations for the prosecution of sexual assaults when the offender was known, with an additional five year extension when the offender was unknown. Other felonies (except homicides) have a five year statute within the State of New York.

Beginning in 2000, a joint project was undertaken by the New York City Police Department (NYPD), the five District Attorneys' Offices, and the Office of the Chief Medical Examiner (OCME) Department of Forensic Biology, to perform DNA testing on sexual assault kits collected during the years before it became standard for every NYC kit to be tested. This included approximately 17,000 kits, which were analyzed by three commercial labs and entered into CODIS by the Department of Forensic Biology. The "NYC Rape Kit Backlog Project" has been described previously at various forums.

Because these backlog cases dated back as far as 1989, many hundreds were already past the statute of limitations before testing even commenced. The most that could be done for them was to link up patterns and report any confirmed offender matches for the record. The majority, however, were cases where the statute of limitations had not yet expired. The inaugural John Doe indictment was filed in 2000 against the "East Side Rapist," a notorious Manhattan serial offender active from 1995-1997, who remains unidentified. As the Rape Kit Backlog Project progressed, the DAOs identified certain cases they desired to attempt to prosecute and the John Doe Indictment Project (as described in a 2003

press release by Mayor Bloomberg) went into high gear. Generally the cases were chosen because they were especially violent, had children as victims, were part of a rape pattern, or had other extenuating circumstances. Other characteristics of candidate cases were that the offender remained unknown, and therefore the case unsolved, despite due investigative diligence including CODIS; the victim being available and willing to testify; and that there was a single-source male DNA profile in the case (in order to cite statistics showing the profile was expected to be unique in many world populations' worth of people).

For a DNA analyst, a John Doe indictment in NYC is very similar to Grand Jury testimony where the perpetrator has been identified. There is a voir dire, background questions about what DNA is and how the testing works, and specific information about the case at hand. However, instead of proceeding to state that "the DNA in this case is the same as that of...", the statement is "the DNA in this case came from an individual with the following DNA profile" at which point the numeric profile must be read by the analyst into the record. If the Grand Jury votes a True Bill (meaning, votes to indict) "John Doe with known profile," the charges are filed and the statute of limitations clock is effectively stopped. Then it is simply a matter of waiting for a database match to occur, and thereafter amending the indictment to the name of now-identified perpetrator.

Dozens of John Doe indictments have been obtained in New York City in the last several years; however, only a small number have been later matched to a known individual via CODIS and converted to active indictments. Many of those which were converted have resulted in guilty pleas or verdicts.

Issues to be weighed when considering the use of John Doe indictments will be offered, as well as illustrative examples as time allows.

John Doe Indictment, Statute of Limitations, DNA Testimony