



### **E29 Maryland vs. King: Compulsory Extraction of DNA and the 4<sup>th</sup> Amendment**

*James K. Record, LL.M.\**, California University of Pennsylvania, Dept of Justice, Law & Society, 250 University Avenue, California, PA 15419

After attending this presentation, attendees will gain an understanding of the reasoning behind the majority and minority opinions in *Maryland vs. King* as well as the far reaching impact upon citizens and their constitutional rights under the Fourth Amendment.<sup>1</sup>

This presentation will impact the forensic science community by pointing out that during the oral argument in *Maryland vs. King*, Justice Alito announced that he regarded King as “perhaps the most important criminal procedure case this Court has heard in decades.”<sup>2</sup> The holding espoused in *Maryland vs. King* impacts the forensic community, law practitioners, and society.

One of the most significant scientific advances made in law enforcement techniques is the development of the capacity to test an individual’s genetic markers and thus to learn that person’s identity. Because an individual’s DNA is entirely unique to that person, revealing that person’s genetic profile is solid evidence of who that person really is. Thus, DNA is a powerful tool to identify an individual by links to physical evidence obtained at a crime scene, and, alternatively, completely exonerate the individual if there is no match.

The U.S. Supreme Court in *Maryland vs. King* was asked to clarify the power of the police, under the Fourth Amendment, to take a DNA sample from a person accused of a crime. At issue was a Maryland law that required a routine DNA sample of every person arrested by the police for what the law defines as a “serious crime.”

The threshold question in *King*, as in many Fourth Amendment cases, is whether a search occurred? The issue was really not in dispute. As the majority opinion points out, cases under the “reasonable expectation of privacy” rubric of *Katz vs. United States* had held that requiring an individual to expel air from deep within his lungs, to submit to a blood draw, and to have debris gently scrapped from beneath a fingernail all had been deemed searches.<sup>3</sup> Scraping the inside of the cheek falls in this same category. Yet, a sharply divided Supreme Court upheld the power of the government at all levels to take DNA samples from every single person legally arrested for a “serious” new crime.

Justice Kennedy, writing for the majority, insisted that the ruling involved little more than what happens when the police take a suspect’s fingerprints or mug shot. Justice Scalia, writing for the dissent, said the Court validated the use of scientific evidence taken without a warrant not to make identification, but to gather evidence to solve cold cases — something he said the Court has never allowed before, thereby obliterating the long-standing rule that police may not take scientific samples from an individual, if the sole purpose is to solve a prior crime.

Ultimately, the Court found that the public policy value of a procedure of routine DNA sampling of arrested persons is so great, and DNA technology so efficient, that this far outweighs the minimal intrusion on privacy that is entailed when police take a DNA sample.

The testing of a person’s DNA simply because of an arrest implicates serious privacy concerns. It involves a bodily intrusion for an individual’s genetic blueprint, and the information it reveals is increasingly used for familial searching, thus extending its reach for beyond the actual person arrested.

Of critical importance is that neither the majority nor minority opinion opined about a major Fourth Amendment issue. What happens if after an arrestee is sampled and a match is made to an unsolved crime, the arrest is deemed to be unlawful? Does the Exclusionary Rule mandate that the information collected from the DNA extraction be excluded from any prosecution for the unsolved crime as a fruit of the poisonous tree?

In conclusion, although the extraction of DNA from an innocent person under the law may be minimally invasive as the majority insists, the minority makes a compelling argument that the Maryland law is in place, not for identity purposes, but for investigating unsolved crime unrelated to the original arrest. Furthermore, the holding albeit simple-to-understand contention, has created complex Fourth Amendment issues concerning DNA, privacy verses policy, and criminal procedure issues.

#### **References:**

1. 569 U.S. \_\_\_\_ (2013), 133 S.Ct. 594 (2013)
2. See Transcript of Oral Argument in *Maryland vs. King*, No. 12-207 (Feb. 26, 2013) at 34.
3. 389 U.S. 547 (1967)



## Jurisprudence Section - 2014

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