



E32 The Constitutionality of the Cold Case CODIS Hit

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After attending this presentation, attendees will be exposed to the scientific possibilities that modern DNA presents and the law.

This presentation will impact the forensic science community by continuing to seek, identify, and discuss the interesting intersection of the public need to solve crime, the scientific possibilities that modern DNA presents, and the law.

There is little doubt that as a crime-solving tool, the Combined DNA Index System (CODIS) is very helpful for law enforcement. However, there is great tension that increased technology affords us in the inventorying, logging, and indexing of genetic material versus privacy concerns. The Fourth Amendment of the United States Constitution presumes a warrantless and suspicionless search is invalid. This tenant of constitutional law has been sacrosanct since before the founding. Yet every day, the federal and state governments conduct thousands of searches of its CODIS without any level of individualized suspicion and absent a warrant or any judicial intervention. As of January 2013, the national CODIS database contained more than 11,977,900 profiles of not just offenders, but many others. Once in CODIS, these profiles remain even past death. When police search CODIS, they compare a profile generated from a crime scene sample against each of the millions of profiles that constitute the national offender index. If there is no "matching" entry, the unknown that is developed from the crime scene continues to be searched on a regular basis and subjected to the ever-expanding CODIS profile system. Under this modern computer-aided police dragnet, the information database "cold hit" identify potential suspects. The results from these searches are then used to form probable cause to develop search warrants to obtain exemplars from the putative "match." The search warrants are executed and the exemplar from the now-identified person is compared to the crime scene and the evidence developed then and there. With these "matches," a prosecution comes about. There is power in the statistical information that is reported out in these cases with the result often being a guilty verdict with little corroborating evidence independent of the "cold hit." But for the resorting of CODIS to aid in the prosecution, many of these "cold hit" cases would never have been "solved." Despite the ultimate holding, the briefs and the arguments during the United States Supreme Court's argument of *Maryland vs. King* has now cast into serious doubt the propriety of this practice of warrantless and suspicionless searches from the police-only database.¹

Reference:

4. *Maryland vs. King*, 569 U.S. ____ (2013), 133 S.Ct. 594 (2013)
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DNA, CODIS, Cold Case