



F42 It's My Toy and You Can't Play With It: Defense Counsel Problems With Access to CODIS

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After attending this presentation, attendees will have an overview of the origins and scope of the Combined DNA Index System (CODIS), the requirements for obtaining access to CODIS, and the obstacles defense counsel face when attempting to use this investigative tool to establish their client's innocence.

The presentation will impact the forensic science community by identifying an existing problem with CODIS access, highlighting the lack of any substantiated counterargument for the denial of such access, and proposing the need for legal reform to make CODIS equally available to defense counsel in a criminal justice system that prides itself on being fair.

Over the past two decades, DNA technology has revolutionized the nation's criminal justice system. DNA has become the foremost technique for conclusively identifying and excluding criminal suspects in cases where biological material is left at a crime scene. As of June 2014, CODIS produced over 250,000 hits which helped in nearly 239,000 investigations.¹ Thousands of courts throughout the United States have reversed convictions of people who were wrongfully convicted.² Currently, there have been 1,406 individuals exonerated in the United States.³ Of those exonerations, 317 have been the result of DNA testing, and convictions taking place as early as 1974 have later been reversed through DNA testing.⁴ Of the 317 post-conviction DNA exonerations, DNA testing has led to the identification of the true perpetrator in a staggering 152 of the cases.⁵ There can be no denial that DNA is the leading tool for convicting the guilty and exonerating the innocent.

Sadly, only nine states — Colorado, Georgia, Illinois, Maryland, Mississippi, New York, North Carolina, Ohio, and Texas — have laws giving defendants access to CODIS.⁶ Defense counsel's success in accessing CODIS in other jurisdictions tends to be the result of luck, interested law enforcement, or the kindness of prosecutors. More often than not, law enforcement and prosecutors have outright blocked defense counsel access. The typical arguments against access is that the defense has no right to access, or that access would result in the disruption of the national database system altogether. Such claims appear to be largely unfounded and concerns could be satisfactorily dealt with by proper reform. Further, the denial of access is at odds with a defendant's right to due process and the government's obligation to disclose exculpatory evidence.⁷ Steven Benjamin, the National Association of Criminal Defense Lawyers' president, said, "Science doesn't belong to the government, but they act like it does."⁸ It should not be so.

In 2009, prosecutors charged Reggie Cole with possession of a razor blade in prison; a razor blade had been found inside his prison mattress. DNA testing was performed on the razor blade and Cole was excluded. Cole motioned for the profile to be run through CODIS. The motion prompted the DNA attorney for the California Department of Justice to personally appear in the remote county where the trial was taking place to successfully oppose the motion. Uriah Courtney's case was much different. In 2005, Courtney was convicted of kidnapping, rape, and other charges. He served more than seven years in prison before a forensic profile was run through CODIS and generated a match to the true perpetrator. Unlike Cole, the county prosecutor agreed the profile generated should be run through CODIS.

Other examples highlighting defense counsel's struggle and the need for improving the criminal justice system will be discussed.

References

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8. Ethan Bronner. Lawyers, Saying DNA Cleared Inmate, Pursue Access to Data. *The New York Times*. January 3, 2013.

DNA, CODIS, Defense Counsel

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