

Access By Law Enforcement

Vignette:

Jerry Fox participated in a research study that sought to determine whether genetic factors contribute to Alzheimer's disease. Jerry has an older relative with this disease, and he wanted to participate in the study to help scientists discover more about its causes. A sample of Jerry's blood was drawn and sent to the lab at University Hospital where the study was conducted.

In order to keep track of each sample in the Alzheimer's study, the scientists utilized a method developed by law enforcement agencies to uniquely fingerprint the DNA, instead of using ordinary bar code numbers. The researchers in the Alzheimer's study also kept paper records that linked each DNA profile to name of the person from whom that profile came - again, as a double-check to protect against mix-ups in the lab.

Several years after Jerry Fox provided his sample for the Alzheimer's study, a dozen university professors throughout the country are very seriously injured by letter bombs. The police have few concrete leads, but suspect the same perpetrator committed all or most of the crimes, based on the DNA profile of the biological evidence (saliva) found on the flaps of some of the envelopes. Following extensive investigation, law enforcement officials narrow the location from where the letter bombs were sent to a large metropolitan area – the same area where University Hospital is located.

Police run the DNA profile of the suspect through all available criminal databases of DNA profiles, but they do not find a match. In the meantime, the letter bombs continue and another university professor is injured. As other leads dwindle and public pressure to arrest a suspect mounts, the police put out a court-approved warrant for “any person having a match” to the DNA profile of the suspect.

Shortly thereafter, law enforcement officials learn about the existence of the samples (>50,000) at University Hospital that were collected for the Alzheimer study and about tracking system the researchers used, which makes it very easy for them to search for a match with the suspect. They request access to the DNA records from this study hoping that they will find one that matches the profile of the serial bomber. The researchers refuse to release their records, citing the promise of confidentiality they made to all participants at the time they collected their samples, but law enforcement officials obtain a subpoena. As a result, the researchers have no choice but to turn over their records to the police.

Jerry Fox is not a suspect in the case, and he is not the perpetrator of these crimes. Nevertheless, when he later learns (inadvertently) that the FBI has gotten access to his DNA identification profile, he is very upset.

Discussion Questions:

Is it fair to Jerry that the police were able to get his DNA identification profile from this research protocol without his knowledge, given that he was not a suspect with regard to these crimes (or with regard to any crimes)?

If Jerry is truly innocent and a law-abiding person, what difference should it make to him whether or not the police have his DNA profile?

If you were Jerry, would you have agreed to participate in the Alzheimer's genetic study if you had known his DNA identification profile would someday be given to the police for a crime in which he was not a suspect? Would the way that the scientists created unique identifiers for each sample influence your decision?

Should law enforcement's interest in solving these serial crimes override Jerry's right to privacy?

In the past few years, a number of convicted criminals—including some on death row—have been exonerated of crimes they spent years in prison for, through the power of DNA identification evidence. Some people think this shows how imperfect our system of criminal justice is, and strengthens the arguments against capital punishment. Other people think DNA identification technology *strengthens* the arguments for capital punishment, because when DNA evidence found at a crime scene matches the DNA of a suspect, there can no longer be *any* doubt that the suspect is really guilty. What do you think?