ARRESTEE DNA SAVES LIVES

By Rep. Ernest Hewett (CT), 39th Assembly District

There have been 280 conviction DNA exonerations in the United States of America. The common themes that run through these cases are global problems including poverty, racial and criminal justice issues, eyewitness misidentification, overzealous police officers and prosecutors, as well as inept defense counsel. About 70% of individuals exonerated by DNA testing are members of minority groups. In almost 40% of these cases, the actual perpetrator has been indentified by DNA testing.

Let me provide you with some chilling examples of the advantages of arrestee DNA. On August 31, 2003, the Sepich Family received a phone call at 2:15 in the afternoon. Their whole lives were shattered with just six words: "Have you talked to Katie today?" She went to a party the night before, had a fight with her boyfriend, and stormed out to walk five blocks home. No one ever saw her again. A few hours later their worst fears were realized. Katie's partially clothed body was found at an old dumpsite. She had been brutally raped, strangled, and set on fire. The detective in charge explained to Katie's mother that she fought for her life and that skin and blood of her attacker was found under her fingernails. The perpetrator's DNA was uploaded into a National Database called CODIS. Mrs. Sepich told the detective that this person will most likely commit another crime, and then they will be able to take his DNA. The detective told her that it is illegal to take DNA when someone is arrested. She was told that they would have to wait until he is convicted of a felony. She could not believe it. We take fingerprints and mug shots when an individual is arrested; but we do not take DNA, the most accurate, powerful scientific tool available.

On January 26, 1987, Chester DeWayne Turner was arrested in California for assault with a deadly weapon. There was not enough evidence to convict him, and his DNA was not taken. Turner was arrested a total of 21 times before being convicted of a crime that allowed his DNA to be taken. In 2003, after a rape conviction, his DNA was taken and it matched the crime scene evidence found on 12 rape and murder victims. The first murder was committed in March of 1987, less than two months after the first felony arrest. He raped and murdered **Diane Johnson, Annette Ernest, Anita Fishman, Regina Washington, Debra Williams, Mary Edwards, Andrea Triplett, Deserae Jones, Natalie Price, Mildred Beasley, Paula Vance, and Brenda Brics**. These are not merely names. They were daughters, some were mothers **– two of these women were expectant mothers –** and all were loved. These were young women whose lives could have been spared.

One can argue that if Mr. Turner's DNA been taken when he was arrested in January of 1987, he would have been arrested and convicted in the murder committed in March of 1987. Whereby, 13 lives could have been spared, taking into account two of the victims were expectant mothers. David Jones, who had been convicted of three of these murders, served 11 years in prison. One DNA sample taken upon felony arrest could have saved 13 lives and could have prevented an innocent man from spending 11 years in prison.

In 2006, Katie Sepich's family went to the New Mexico Legislature to see "Katie's Law" – which mandates that DNA be taken upon felony arrest – get passed into law. "Katie's Law" went into effect at midnight of January 1, 2007. At 1:14 a.m. On January 1, 2007, the first arrestee was swabbed for DNA under Katie's Law. His DNA matched a double homicide. He has since been convicted of both of these murders. They have now had 177 matches in New Mexico, a state with a population of 2 million people.

Less than 3 months after Katie Sepich was murdered, Gabriel Avila was arrested for aggravated burglary. Since DNA was not required for his arrest at the time, it was three years and three months after Katie's murder that he was finally convicted of a felony, and incarcerated. His DNA profile matched the DNA found in the skin and blood underneath Katie's fingernails. In addition, the detectives found other incriminating evidence, including the diamond ring she was wearing that was retrieved from his truck. Faced with the presented evidence, Avila confessed, pled guilty, and is now serving 69 years without the possibility of parole.

Critics of the DNA collection upon arrest say that it is a violation of civil liberties and an invasion of privacy. This is not true. The Human DNA molecule has over 3 billion markers. Only 13 of these are placed into CODIS. These 13 markers were specifically chosen by scientists and DNA experts; they contain absolutely no genetic information, except gender. There is no medical predictive information. It was precisely designed to protect privacy and should only be used for identification.

Additionally, DNA records in the CODIS database have no potential to reveal any genetic or medical information. Furthermore, there are no names or social security numbers in that database. The only time this profile becomes more than a digital record is when the entire series of numbers match a crime scene's DNA, and this occurs in a very secure environment. The originating state is first notified that a match has been made, and the sample is then retested for accuracy. Subsequently, this information is submitted to another secured and protected offline database that matches the specimen ID number in the profile to an actual name. This information can only be released to law enforcement personnel for use as an investigative lead. If the evidence proceeds to court, a warrant is issued to take another DNA sample. It is retested once again and this evidence is then presented in court. It should be noted that it is a Federal offense

to tamper with CODIS, and since the inception of the DNA database there has never been a misuse of the system.

Opponents also argue that DNA upon arrest violates the presumption of innocence. This argument is not valid. Similar to fingerprints and mug shots, DNA matching is for identification purposes, albeit a more accurate tool used for identification.

Opponents also argue that this procedure is too expensive. However, what are the costs of not using DNA upon arrest? According to the Dona Ana County, New Mexico District Attorney's Office, over $200,000 in investigatory costs were incurred on Katie's case between November 2003 when Avila was arrested for burglary and December 2006, when the match taken after his conviction was made. Those costs that could have been saved with one simple check swab.

The response to this question is: How much is a life worth?

There is also another question: What dollar amount can be assigned to eleven years in prison for an innocent man? James Tillman was jailed in Connecticut accused of rape, and was exonerated through DNA and the State of Connecticut paid out $5,000,000 for his wrongful incarceration. Coincidentally, a year after he was exonerated, a man went to jail in Virginia on a felony arrest. Virginia is one of the states that takes DNA on arrest and his DNA matched the rape in Connecticut for which James Tillman wrongfully spent 18 years in prison.

President Barack Obama is quoted in an interview with John Walsh of America's Most Wanted. "We have 18 states who are taking DNA upon arrest," Walsh said. "It's no different than fingerprinting or a booking photo...Since those states have been doing it, it has cleared 200 innocent people from jail. It's the right thing to do," Obama replied. "This is where the national registry becomes so important, because what you have is individual states — they may have a database, but if they're not sharing it with the state next door, you've got a guy from Illinois driving over into Indiana, and they're not talking to each other."

It is imperative for members of the National Black Caucus of State Legislators to urge their state houses to pass this legislation in the months and years to come; otherwise, there will be a list of additional names that could have been saved and were not. I am not willing to bear this great burden, which is why I introduced this legislation in the State of Connecticut, and why I implore fellow legislators to do the same in their states. If you do pass this law, we will never know the names of those who will not become victims, and that will be a blessing. L

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