DNA Evidence Stands  
Affirmative Brief by Nathaniel Arroyave



DNA Evidence is a staple of criminal courts and law enforcement, and as such, must be addressed on the Affirmative. The Negative will likely cite DNA evidence in cases where it was obtained in a manner that violated someone’s privacy. This brief serves to justify this intrusion.

This being such a broad topic, this brief will seek to address the most common arguments regarding DNA evidence and privacy invasion. It is worth noting that not all DNA evidence collecting is an invasion of privacy, particularly at crime scenes. But demanding that someone provide a sample of their DNA to law enforcement during a case? Definitely an intrusion upon one’s privacy. If these responses are deployed properly, the most the Negative can respond with is something along the lines of painting some dark, Orwellian image on the Affirmative. Combat this with these responses and show that this intrusion in particular isn’t just commonplace, it’s just good sense.

The tags used in this brief include:

1. DNA Evidence
2. Common Uses
3. Standard procedure drastically reduces mistakes
4. Banning DNA evidence means less solved crimes
5. Less solved crimes leads to a greater increase in crime
6. No DNA evidence means less solved cold cases
7. No DNA Evidence means less innocents exonerated
8. DNA databases serve as deterrent to criminals
9. No DNA evidence means law enforcement is hamstrung
10. Third-Party Doctrine Still Upheld
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12. No DNA evidence means law enforcement is hamstrung
13. Collection Process
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DNA Evidence Stands

DNA Evidence

*“What Is DNA Evidence?” Findlaw,* [*https://criminal.findlaw.com/criminal-procedure/what-is-dna-evidence.html*](https://criminal.findlaw.com/criminal-procedure/what-is-dna-evidence.html)One of the most reliable forms of evidence in many criminal cases is in our genes, encoded in DNA (deoxyribonucleic acid). DNA evidence can be collected from blood, hair, skin cells, and other bodily substances. It can even be used to solve old crimes that occurred prior to the development of DNA-testing technology. Similar to fingerprints, each individual has a unique DNA profile (except for identical twins, who share the same genetic code). But unlike fingerprints, only a minuscule amount of genetic material is needed to identify a suspect.

**Common Uses**

*ADVANCING JUSTICE THROUGH DNA TECHNOLOGY: USING DNA TO SOLVE CRIMES.” The United States Department of Justice, USDOJ Archives, 7 Mar. 2017,* [*www.justice.gov/archives/ag/advancing-justice-through-dna-technology-using-dna-solve-crimes*](http://www.justice.gov/archives/ag/advancing-justice-through-dna-technology-using-dna-solve-crimes)*.*

DNA is generally used to solve crimes in one of two ways. In cases where a suspect is identified, a sample of that person’s DNA can be compared to evidence from the crime scene. The results of this comparison may help establish whether the suspect committed the crime. In cases where a suspect has not yet been identified, biological evidence from the crime scene can be analyzed and compared to offender profiles in DNA databases to help identify the perpetrator. Crime scene evidence can also be linked to other crime scenes through the use of DNA databases.

**Standard Procedure drastically reduces mistakes**

*Harris, William. “How DNA Evidence Works.” HowStuffWorks Science, HowStuffWorks, 28 June 2018,* [*www.science.howstuffworks.com/life/genetic/dna-evidence1.htm*](http://www.science.howstuffworks.com/life/genetic/dna-evidence1.htm)*.*

Today, the gold standard is DNA evidence because DNA can be collected from virtually anywhere. Even a criminal wearing gloves may unwittingly leave behind trace amounts of biological material. It could be a hair, saliva, blood, semen, skin, sweat, mucus or earwax. All it takes is a few cells to obtain enough DNA information to identify a suspect with near certainty.

For this reason, law enforcement officials take unusual care at crime scenes. Police officers and detectives often work closely with laboratory personnel or evidence collection technicians to make sure evidence isn't contaminated. This involves wearing gloves and using disposable instruments, which can be discarded after collecting each sample. While collecting evidence, officers are careful to avoid touching areas where DNA evidence could exist. They also avoid talking, sneezing and coughing over evidence or touching their face, nose or mouth.

Banning DNA evidence means less solved crimes

*Regalado, Antonio. “‘Hundreds’ of Crimes Will Soon Be Solved Using DNA Databases, Genealogist Predicts.” MIT Technology Review, MIT Technology Review, 18 Sept. 2018,* [*www.technologyreview.com/s/612001/hundreds-of-crimes-will-soon-be-solved-using-dna-databases-genealogist-predicts/*](http://www.technologyreview.com/s/612001/hundreds-of-crimes-will-soon-be-solved-using-dna-databases-genealogist-predicts/)*.*

Suspects in hundreds of unsolved murders and rapes will be identified using public DNA databases in the near future, a prominent genealogist predicted during MIT Technology Review’s EmTech conference today. CeCe Moore, head of a genealogy unit at Parabon Nanolabs, predicted that “dozens” of cases will be solved in coming months in the US.

*(Later in same article)* So far, genetic genealogy has succeeded in narrowing police investigations, often to a single person. Moore said police forces often have lists of hundreds or thousands of potential suspects before they begin employing DNA.

**Less solved crimes lead to a greater increase in crime**

DNA Technology in Forensic Science. National Acad. Press, 1993. <https://www.ncbi.nlm.nih.gov/books/NBK234535/>

Despite the scientific debate concerning some aspects of DNA typing technology, by late 1990 at least 11 states had implicitly acknowledged its potential value in forensic science by statutorily creating DNA databanks on convicted felons.37 In general, the laws require that a person convicted of a felony involving a sexual assault submit to phlebotomy before parole; the blood sample is to be subjected to DNA typing and stored under the control of authorities. The California law calls for the testing of felons convicted of murder and other nonsexual felonies involving violence to a person. The Iowa law does not make clear who will be tested. The Virginia law provides for testing of all convicted felons.   
Those laws were enacted because of the high rate of repeat felonious behavior by convicted persons. For example, available data on Virginia offenders shows that 36.3% of persons convicted of rape and 32.8% of persons convicted of aggravated assault (including sexual assault) are convicted of another crime within 5 years.38 The laws are premised on the fact that criminals sometimes leave biological evidence at the crime scene and that the comparison of the results of DNA typing of such samples with profiles stored in the forensic laboratory might lead law-enforcement officials quickly to a prime suspect.

**No DNA evidence means less solved cold cases**

*Snow, Kate, and John Schuppe. “'This Is Just the Beginning': How a Small Forensics Company Is Cracking Cold Cases.” NBCNews.com, NBCUniversal News Group, 18 July 2018,* [*www.nbcnews.com/news/us-news/just-beginning-using-dna-genealogy-crack-years-old-cold-cases-n892126*](http://www.nbcnews.com/news/us-news/just-beginning-using-dna-genealogy-crack-years-old-cold-cases-n892126)*.*

For three decades, authorities in Fort Wayne, Indiana, had the DNA of the man who murdered 8-year-old April Tinsley in April 1988, but could not find him. Police pleaded for leads, and chased them. They brought in FBI profilers, enlisted state and federal agents and went on “America’s Most Wanted.” The detectives initially assigned to the case retired and were replaced by younger ones, who also retired without an arrest. The pain and frustration grew over the years, as the killer left taunting notes — and more DNA evidence. Willing to try just about anything, police in 2015 sent the genetic material to a small DNA technology company in Virginia that produced a computer-generated sketch of what the killer might look like today. Still nothing. Then, this spring, that company, Parabon NanoLabs, called back, offering to perform a new type of DNA testing that went far beyond the traditional biometric match police labs use. Fort Wayne agreed, and six weeks later the company’s lead researcher reported that she’d narrowed the list of potential suspects to two brothers. On Sunday, detectives arrested one of the brothers, who confessed. This seemingly rapid resolution to a long-stalled murder case is becoming something of a trend: It is the fifth cold case solved by Parabon and their researcher, CeCe Moore, since early May, meshing high-tech DNA analysis, traditional genealogical work and the soaring popularity of online ancestry databases. A sixth, involving an accused serial killer in California, was solved in a similar manner.

**No DNA Evidence means less innocents exonerated**

“DNA Exonerations in the United States.” Innocence Project, [www.innocenceproject.org/dna-exonerations-in-the-united-states/](http://www.innocenceproject.org/dna-exonerations-in-the-united-states/).

Fast facts:1989: The first DNA exoneration took place 362 DNA exonerees to date37: States where exonerations have been won14: Average number of years served 5,014: Total number of years served26.5: Average age at the time of wrongful conviction43: Average age at exoneration20 of 362 people served time on death row40 of 362 pled guilty to crimes they did not commit70%: Involved eyewitness misidentification41% of these cases were a cross-racial misidentification32% of these cases involved multiple misidentifications of the same person27% of these cases involved misidentification through the use of a composite sketch45%: Involved misapplication of forensic science28%: Involved false confessions

**DNA databases serve as deterrent to criminals**

*Humphreys, Keith. “Rather than Expanding Prisons, Expand DNA Databases.” The Daily Gazette, 20 Dec. 2017,* [*www.dailygazette.com/article/2017/12/20/rather-than-expanding-prisons-expand-dna-databases*](http://www.dailygazette.com/article/2017/12/20/rather-than-expanding-prisons-expand-dna-databases)*.*

When the government of Denmark increased the proportion of arrestees from whom police gathered DNA samples from 4 percent to 40 percent in just five months, a research team took advantage of the natural experiment to evaluate whether DNA databases reduce crime. In a study of more than 38,000 males who were arrested for crimes roughly equivalent in severity to felonies in the United States, the research team found that being added to the DNA database reduced reoffending by a stunning 43 percent. The harsher criminal sentences that are favored by self-styled “tough on crime” politicians have shown no evidence of producing a comparable level of crime reduction. Because DNA evidence is found at many crime scenes (e.g., most rapes and other violent assaults), DNA databases raise the odds that the offender will be identified and convicted.

No DNA evidence means law enforcement is hamstrung

*“DNA Evidence in Criminal Cases.” Www.nolo.com, Nolo, 22 Dec. 2014,* [*www.nolo.com/legal-encyclopedia/dna-evidence-its-genes-30060.html*](http://www.nolo.com/legal-encyclopedia/dna-evidence-its-genes-30060.html)*.*

DNA technology is rapidly becoming the method of choice when it comes to linking individuals with crime scenes and criminal assaults. DNA evidence is increasingly used in criminal trials, and has also become a powerful tool in proving the innocence of wrongly-convicted prisoners.

Collection Process ‘Reasonable’ Intrusion on Privacy

*Totenberg, Nina. “Supreme Court Rules DNA Can Be Taken After Arrest.” NPR, NPR, 3 June 2013,* [*www.npr.org/2013/06/03/188397999/supreme-court-rules-arrest-dna-collection-reasonable*](http://www.npr.org/2013/06/03/188397999/supreme-court-rules-arrest-dna-collection-reasonable)*.*

The U.S. Supreme Court ruled Monday that police can routinely take DNA samples from people who are arrested but not yet convicted of a crime, and see if the DNA matches any samples from unsolved crimes in a national database. The 5-to-4 decision split the court's conservative and liberal blocs, with conservative Justice Antonin Scalia authoring a fiery dissent. Twenty-eight states and the federal government have enacted laws that provide for automatic DNA testing of arrestees. The court's ruling came in the case of Alonzo King, arrested in Maryland for menacing a crowd with a gun in 2009. Police took a DNA swab from his cheek and sent the DNA to a national database, where it showed a match to a rape six years earlier. King was subsequently tried for and convicted of the rape, but the conviction was thrown out on grounds that there was no warrant and no individualized suspicion that justified taking the DNA sample. On Monday, the U.S. Supreme Court restored the conviction, comparing such DNA sampling to photographing and fingerprinting suspects when they are booked. Writing for the five-justice majority, Justice Anthony Kennedy acknowledged that taking a DNA sample is a search, but the Fourth Amendment bars unreasonable searches, he observed, and a "gentle" swabbing of the cheek is not unreasonable. Nor, he said, is it unreasonable to use DNA to ascertain whether the arrestee has a criminal history that would make him a flight risk or a risk to the public if released on bail. Kennedy noted that Maryland's law provides for automatic DNA testing of arrestees only when they are accused of "serious" crimes, and that the law bars any collection or use of DNA to detect private genetic information. In such circumstances, the court said, DNA collection is a legitimate booking procedure.