

August 14, 2020

**Email and Mail**

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Office of the Chief Medical Examiner  
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Mayor Bill DeBlasio  
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*President*

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Justine M. Luongo  
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David Loftis  
*Attorney-in-Charge  
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Re: OCME DNA Identification Index Transparency

Dear Dr. Sampson and Mayor DeBlasio:

We learned recently that more than 33,800 people's DNA is currently stored in the laboratory of the Office of the Chief Medical Examiner's (OCME) rogue DNA identification index --almost 2,000 more than what was [disclosed](#) to [City Council](#) this past February.<sup>1</sup> What's even more concerning is how tightly the lab has kept that number, as well as other critical information about DNA testing, under wraps from the public. We urge you and the hundreds of scientists the City employs to immediately shut down this unlawful and affirmatively harmful DNA databank. But until that happens, we demand that the laboratory immediately release information about who is stuck in it to the public, and what steps, if any, you are taking to get them out.

During the February Council hearing, police officials rattled off a number of disturbing statistics about the DNA index. Officials admitted that at least 25% of the people in it were never convicted of – or possibly even charged with -- a crime.<sup>2</sup> At least 5% of DNA samples taken each year are from children—equaling almost 1,700 kids total.<sup>3</sup> And, stunningly, the police admitted that at least half of the people in the OCME's index had their DNA surreptitiously collected by the police – meaning they don't even know they are in the DNA index at all.<sup>4</sup> However, neither police officials nor the OCME brought to that hearing any hard data or documentation backing up these numbers – leaving us to fear that they likely are even higher.

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<sup>1</sup> See Erin Durkin, *Cops take heat from Council over DNA, despite planned reforms*, Politico.com (Feb. 25, 2020), available at <https://www.politico.com/states/new-york/albany/story/2020/02/25/cops-take-heat-from-council-over-dna-despite-planned-reforms-1263552>. See also New York City Council, Public Safety and Criminal Justice Operations Committee Hearing Transcript (Feb. 25, 2020) (“Hearing Tr.”), p. 20, available at <https://legistar.council.nyc.gov/View.ashx?M=F&ID=8227437&GUID=D4B9AC60-EFE7-4784-A521-905254EADDC8>.

<sup>2</sup> Hearing Tr., p. 20, 52.

<sup>3</sup> Hearing Tr., p. 22.

<sup>4</sup> Hearing Tr., p. 29.

At the same time, neither the OCME nor police officials came to the hearing with data that the public critically needs to know. How many people in the DNA index are people of color? Does OCME's DNA index actually solve any crimes that couldn't also be solved with the regulated and lawfully authorized State DNA index? How many people had their DNA collected during [coercive](#)<sup>5</sup> genetic stop-and-frisk dragnets, like the one in [Howard Beach](#)?<sup>6</sup>

We were encouraged by the OCME's stated commitment to take some steps to reduce the number of individuals in the local DNA identification index. But we have seen no evidence that any steps actually were taken. Instead, we've seen less transparency, and more people being added to the DNA index every day. The OCME's responses to FOIL requests for the number of people in the index are significantly delayed. The OCME has mentioned policy changes that would keep people out of the DNA index in cases where the police did not recover any comparable evidence. But that policy shift does not appear in any of OCME's publicly available protocols. This lack of public disclosure is troubling since it is our clients and their loved ones who are directly affected by the maintenance of OCME's secret DNA identification index.

OCME's lack of transparency around its DNA identification index is part of a [troubling pattern](#),<sup>7</sup> and falls far outside the norms of the scientific community. When OCME's scientists created the FST program, OCME not only [objected](#)<sup>8</sup> to disclosing the source code, but [withheld](#)<sup>9</sup> a flaw in that system that caused [false inclusions](#)<sup>10</sup> (and likely wrongful convictions). From the little that is disclosed, we know that lab errors have resulted in more than one wrongful arrest.<sup>11</sup> And, most

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<sup>5</sup> See Graham Rayman, *NYPD detectives demanded DNA swabs from hundreds of black and Latino men while hunting killer of Howard Beach jogger*, New York Daily News (May 10, 2019), available at <https://www.nydailynews.com/new-york/nyc-crime/ny-men-caught-up-in-nypd-jogger-dna-drag-net-object-to-the-tactic-20190510-h4i4q7p4wzhtbpmjmdilvxsc5u-story.html>.

<sup>6</sup> See Jan Ransom and Ashley Southall, *'Race-Biased Dragnet': DNA From 360 Black Men Was Collected to Solve Vetrano Murder, Defense Lawyers Say*, The New York Times (Mar. 31, 2019), available at <https://www.nytimes.com/2019/03/31/nyregion/karina-vetrano-trial.html>.

<sup>7</sup> Aaron Morrison, *New York City Agency Has Underreported Lab Errors in DNA Database it Oversees*, The Appeal (Feb. 24, 2020), available at <https://theappeal.org/new-york-city-dna-database-lab-errors/>.

<sup>8</sup> Lauren Kirchner, *Federal Judge Unseals New York Crime Lab's Software for Analyzing DNA Evidence*, Pro Publica (Oct. 20, 2017), available at <https://www.propublica.org/article/federal-judge-unseals-new-york-crime-labs-software-for-analyzing-dna-evidence>.

<sup>9</sup> Lauren Kirchner, *Traces of Crime: How New York's DNA Techniques Became Tainted*, The New York Times (Sept. 4, 2017), available at <https://www.nytimes.com/2017/09/04/nyregion/dna-analysis-evidence-new-york-disputed-techniques.html>.

<sup>10</sup> See Jeanna Matthews, et al, *The Right To Confront Your Accusers: Opening the Black Box of Forensic DNA Software*, AIES '19: Proceedings of the 2019 AAAI/ACM Conference on AI, Ethics, and Society (Jan. 2019), pp. 321–327, available at <https://dl.acm.org/doi/abs/10.1145/3306618.3314279>.

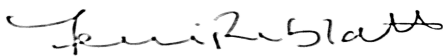
<sup>11</sup> Aaron Morrison, *New York City Agency Has Unreported Lab Errors In DNA Database It Oversees*, The Appeal (Feb. 24, 2020), available at <https://theappeal.org/new-york-city-dna-database-lab-errors/>.

disturbingly, the OCME wrongfully fired<sup>12</sup> a former senior scientist who dared to speak out<sup>13</sup> to demand transparency about some of OCME's more controversial DNA testing methods.

Nearly every other laboratory in the country discloses more about its scientific process than the OCME. For example, this State's DNA identification index regularly discloses<sup>14</sup> how many people are included, and how many investigations it aids. Even Texas discloses<sup>15</sup> far more details about its DNA index, as well as its lab processes and error-rates, than New York City's OCME.

OCME's laboratory's motto is "science serving justice," and its scientists frequently insist that their work is independent from the police. Yet the scientist who created the local DNA index says<sup>16</sup> that police involvement has caused it to swell well beyond its intended purpose. And, at the City Council hearing, the OCME disturbingly deferred to the NYPD about whose DNA the OCME does or does not include in the databank. If OCME truly wants to earn its reputation as one of the leading forensic science institutions in the country, it must stop aiding the NYPD's voracious appetite for illegally taken DNA. But the least OCME's lab can do to show its commitment to justice is to make its DNA identification index numbers, demographics, method of collection, and effectiveness public immediately. The people of this City deserve to know where their DNA – and that of their children— is right now.

Very truly yours,



Terri Rosenblatt  
Supervising Attorney, DNA Unit

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<sup>12</sup> See Sharon Otterman, *She Was Fired After Raising Questions About a DNA Test. Now She's Getting \$1 Million*, The New York Times (Apr. 23, 2019), available at <https://www.nytimes.com/2019/04/23/nyregion/dna-testing-nyc-medical-examiner.html>

<sup>13</sup> See Benjamin Weiser and Joseph Goldstein, *Ex-Official Says Medical Examiner Forced Her Out Over DNA Technique*, The New York Times (Feb. 18, 2016), available at [nytimes.com/2016/02/19/nyregion/ex-official-says-medical-examiner-forced-her-out-over-dna-technique.html?action=click&module=RelatedLinks&pgtype=Article](https://www.nytimes.com/2016/02/19/nyregion/ex-official-says-medical-examiner-forced-her-out-over-dna-technique.html?action=click&module=RelatedLinks&pgtype=Article).

<sup>14</sup> See Website, FBI CODIS-NDIS Statistics, available at <https://www.fbi.gov/services/laboratory/biometric-analysis/codis/ndis-statistics> (last visited July 5, 2020).

<sup>15</sup> See Texas Department of Public Safety, Monthly CODIS Statistics, available at <https://txdpslabs.qualtracxcloud.com/ShowDocument.aspx?ID=56262> (last visited July 5, 2020)>

<sup>16</sup> Graham Rayman, *Developer of NYC's DNA database 20 years ago troubled by what it has become*, New York Daily News (Feb. 24, 2020), available at <https://www.nydailynews.com/new-york/nyc-crime/ny-dna-pioneer-criticizes-nypd-20200224-brwloofnrfapzhn332kvyzl23y-story.html>.

Dr. Barbara Sampson

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cc: Council Member Donovan Richards  
*Chair, Committee on Public Safety*

Council Member Rory Lancman  
*Chair, Committee on the Justice System*

Dr. Timothy Kupferschmid  
*Director, Forensic Biology Laboratory*