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**\*\*\*FOR IMMEDIATE RELEASE\*\*\***

***Legal Aid Files Class Action Civil Lawsuit Against the City's Illegal and Orwellian DNA Collection and Storage Practices***

***NYC Operating a Rogue DNA Database, Indefinitely Warehousing New Yorker's DNA, Including Those Only Accused of a Crime***

(NEW YORK, NY) - The Legal Aid Society [filed](#) a class action [lawsuit](#) in United States District Court Southern District of New York [against](#) the City of New York as well as the New York City Police Department (NYPD) and the Office of Chief Medical Examiner (OCME) [challenging](#) the illegal, secret seizure and storage of DNA material from New Yorkers - including children - whom the police suspected of committing a crime without obtaining a warrant or court order.

This controversial practice has enabled the creation of a rogue DNA database maintained by the City that - unlike federal and state DNA databases - lacks any legislative authorization, empowering the City to treat thousands of New Yorkers as permanent, perpetual criminal suspects.

The lawsuit - brought on behalf of two Legal Aid clients who, through interactions with NYPD detectives, had their DNA secretly collected without their knowledge or consent and placed in an illegal, unregulated database run by OCME called the "Suspect Index" - charges that the NYPD's established practice of unlawfully collecting, analyzing, and indexing the DNA of New Yorkers constitutes an unreasonable search in violation of the Fourth Amendment.

**Video of a surreptitious collection using a bottle of water:** <https://vimeo.com/455960394>.

**Video of a surreptitious collection using a cigarette:** <https://vimeo.com/393278124>.

Once filed in the database, DNA profiles are then put in a perpetual "genetic lineup" and compared to DNA evidence taken from practically any past or future investigation - all without obtaining a warrant or court order, and in blatant contradiction of New York State law, which prohibits the indexing of a person's DNA unless they have been convicted of a crime.

By illegally seizing DNA from thousands of New Yorkers, the NYPD's mass DNA collection efforts support the use of its new and invasive investigatory technique that can be used to investigate not only individual suspects, but their family members as well.

Due to the history of institutional racism in arrest rates in New York City, Black and Latinx people are the vast majority of arrestees subject to the City's DNA indexing practice, and their families can be ensnared in future investigations. The City's secret DNA collection practice also targets children as young as 11, who can never be included in a DNA database authorized under state law, and even includes [DNA from children](#) that was secretly taken after parents refused to consent to giving the DNA.

"Thousands of New Yorkers, most of whom are Black and brown, and many of whom have never been convicted of any crime, are illegally in the City's rogue DNA database, which treats people as suspects in every crime involving DNA," said **Phil Desgranges, Supervising Attorney in the Special Litigation Unit of the Criminal Defense Practice at The Legal Aid Society**. "This database operates virtually unchecked, and despite promises from the City to reduce its size, the database has continued to grow at the expense of communities of color. We simply cannot trust the NYPD to police itself, and we look forward to judicial review of these destructive practices to bring our clients the justice they deserve."

"Simply put, no child should have their DNA illegally and secretly collected and stored in a rogue database making them perpetual suspects indefinitely, especially when that child has not been convicted of a crime," said **Lisa Freeman, Director of the Special Litigation Unit with the Juvenile Rights Practice at The Legal Aid Society**. "New York's laws afford children special protections to prohibit a lifetime of collateral consequences from encounters with the criminal legal system and the mere existence of this database, which compares one's DNA profile against all crime scene evidence, disregards these essential safeguards. Legal Aid looks forward to arguing this case in court to protect the rights of our young clients."

"The City's decision to ignore state and federal law while secretly collecting and permanently storing the DNA profiles of thousands of people should send a chill down the spine of every New Yorker," said **Dave Pollock, Staff Attorney in the DNA Unit of The Legal Aid Society's Criminal Defense Practice**. "The NYPD's troubling ruse - offering our clients a drink or a cigarette after hours in a precinct without food or water, and using it to surreptitiously collect their DNA - is wrong and illegal. This lawsuit will relieve the Plaintiffs in this case, and thousands of others, from the fear and intimidation that results from the City's genetic surveillance."

This lawsuit asks for the court to declare that the City's practice of secretly taking, analyzing and maintaining peoples' DNA in its Suspect Index is an unreasonable search in violation of the Fourth Amendment, and to declare that the City's maintenance of a Suspect Index violates state law; to enjoin the NYPD and OCME from subjecting unsuspecting New Yorkers to these unconstitutional and unlawful violations; and to order the expungement of all profiles and related DNA records that were secretly collected and stored in the aforementioned Suspect Index.

## **Background**

For years now, NYPD detectives have targeted unsuspecting New Yorkers that they suspect of committing a crime - [including young children](#) - by bringing them into interrogation rooms that have been prepared in advance to capture saliva, skin cells, or other genetic material.

In these interrogation rooms, detectives offer people cigarettes and drinks to secretly collect their DNA. In one example, detectives handed a 12-year-old boy a McDonald's soda and, after the boy drank from it and was escorted out the room, they secretly removed the straw for DNA testing and placed the boy's DNA in an index of people suspected of criminal activity ("the Suspect Index").

Under New York Civil Rights Law 79-L, New York State prohibits genetic testing, including "DNA profile analysis," of any person's biological material known to contain DNA without the person's written informed consent, unless permitted by court order or under state law provisions authorizing such testing for people

convicted of crimes. The Legislature included these limited exceptions to the civil rights law “to balance the rights of the individual with the legitimate interests of our criminal justice system,” according to the law’s sponsor in the State Senate, but the City has far exceeded those limits.

The NYPD has deployed a new investigative technology, called Investigative Genetic Genealogy, that uses DNA to map out a person’s family tree in search for genetic relatives of the DNA found at crime scenes. In essence, this new technology creates an incentive for the NYPD to secretly collect and store as much “suspect DNA” as possible, because that person’s DNA may turn out to be genetically related to DNA collected at a crime scene and investigated using IGG. The City’s use of this investigative method is shrouded in complete secrecy and free from any safeguards.

Beyond the sheer unconstitutionality of collecting the DNA of unsuspecting citizens, the practice also increases the risk that an innocent person will be erroneously arrested and prosecuted due to laboratory errors or the contamination of evidence. Recently, a Queens man was wrongly arrested and prosecuted because of a lab error by OCME that resulted in DNA [contamination](#).

Compounding that risk, rank-and-file NYPD officers who come into frequent contact with crime scene evidence have refused to place their DNA in an “elimination database” to confirm when contamination takes place.

The National Institute of Standards and Technology, a federal agency, recommends that [all law enforcement personnel](#) place their DNA in an elimination database to ensure accurate DNA comparisons. But unions representing NYPD officers have steadfastly refused to comply with this recommendation, citing their privacy concerns over storing officer DNA in a database.

The City’s DNA collections and storage practices have even garnered criticism from former and current OCME employees. Dr. Howard Baum, a former OCME official who built the DNA database, submitted [testimony](#) before a 2020 City Council hearing on the topic voicing ethical and civil liberties concerns.

In an [interview](#) with the *New York Daily News*, Dr. Baum explained that, “the city should follow all the rules and regulations of the state database. There are no rules and regulations for the city database, and unregulated data banks have more potential for error. The technology is now quick enough. You don’t need a local DNA index.”

Moreover, a group of OCME employees previously objected to the City’s collection and storage practices, communicating this in an [e-mail](#) to the New York City Council which states that “[A]nyone can currently have their DNA sample collected and submitted by the NYPD without their knowledge. It is worth asking ourselves how much of this practice aligns with the values of New York City.”

The City has a problematic track record managing databases. In 2019, it was revealed that the NYPD, for years, [maintained a database](#) of tens of thousands of juvenile fingerprints, including those who were not convicted of a crime, in violation of the law. Only after years of advocacy from Legal Aid, did the NYPD finally terminate this database and expunge related records.

Despite repeated promises made by the NYPD to reform its DNA collection and retention policies - including the promise to review and audit the database - the City’s Suspect Index has [continued to grow in size](#).

From OCME’s first report on June 2, 2021 following the completion of an internal NYPD audit to March 1, 2022, the date of OCME’s most recent report, the Suspect Index has grown from 28,660 to 31,826 profiles, an increase of 3,166 individuals or almost a dozen New Yorkers per day. These samples have been searched without suspicion by comparing them against approximately 29,492 DNA samples from crime scenes and will continue to be searched against any future evidence.

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*The Legal Aid Society exists for one simple yet powerful reason: to ensure that New Yorkers are not denied their right to equal justice because of poverty. For 145 years, we have protected, defended, and advocated for those who have struggled in silence for far too long. Every day, in every borough, The Legal Aid Society changes the lives of our clients and helps improve our communities. [www.legalaidnyc.org](http://www.legalaidnyc.org)*