NEW YORK CITY COUNCIL
DNA COLLECTION AND OVERSIGHT HEARING
WRITTEN TESTIMONY OF DR. HOWARD BAUM
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My name is Howard Baum. From 1990-2008, I was a scientist at the Office of the Chief Medical Examiner. In 1998, I was the assistant laboratory director at the lab. It was that year that I created what was then called "Linkage," and has now morphed into the local DNA identification index, which is the subject of the City Council's oversight hearing today.

When I created this databank, DNA testing was a brand-new crime solving tool. In those days a "match" often was iron-clad evidence of guilt. But this new testing also was time consuming. The backlog was significant.

I was tasked with finding ways to move testing faster. I identified one area of slowdown: the OCME had just one computer terminal that connected to the NY state and national CODIS DNA databank. Each DNA test had to be run through that state and national CODIS DNA databank before being completed. Lining up the cases single file was crushingly slow.

And so, I built a separate local databank. At the time I created it, there was little regulation in this area. It was the wild west, and I wanted to build a program that would harness as much evidence as possible.

The databank I built contained evidence samples, as well as DNA samples taken from potential crime suspects. The crime suspect samples typically were taken on court-order or consent. We rarely, if ever, saw surreptitiously collected DNA or DNA from juveniles. Law enforcement was pleased at our increased turnaround time. And so, no one suggested to us that we should seek regulatory guidance for what was becoming a shadow of the regulated State databank.

Instead, we trusted ourselves to regulate the databank. We would not have accepted samples from children that were taken without parental consent or a court order. We also wouldn't have taken what the NYPD now calls "database only" samples, or samples from people who are not accused of any crime. We followed these internal guidelines because they were fair. If the NYPD asked for something different, we would have refused.

The problem, of course, with regulating ourselves is the that "ourselves" couldn't stay at OCME forever. As my colleagues and I departed the lab, police involvement in its operations increased. The databank, which for so long has operated quietly and without oversight, became as I understand it, a vast repository of DNA from dragnets, surreptitious collection, and collection from children. I understand that the databank now has more than 31,4000 people– an exponential increase from when I left the in 2008. Not only was such a vast databank never our intention, but also it was expressly *against* the justice-seeking functions for which I created it.

People might wonder why an unregulated databank is such a concern. After all, they may say, "if a person hasn't done anything wrong, why should they worry about their DNA?"

I tell them that a match alone these days does not mean a person is guilty of a crime. The more sensitive testing becomes, and the more people who are compared, the more potential there is for wrongful hits, like Terrell Gills, who was prosecuted for a robbery he did not commit based on an erroneous DNA match.   Unregulated databanks also have more potential for error. An example is Darrell Harris, who was wrongfully arrested based on a "hit" to the OCME databank that was caused by lab contamination.

And DNA technology is ever evolving. Emerging technologies test people's DNA for ancestry, diseases, and even psychiatric conditions. Given the vast and growing number of samples in OCME's index, it is easy to imagine a databank that tracks people by any or all of these categories.

Just because I built the technology for OCME to have such a large databank doesn't mean it *should* have one. It shouldn't. The City Council now needs to make clear that an unregulated, local DNA index cannot continue unabated.   Otherwise, the OCME and NYPD will continue to take my idea for faster testing and transform it into a sweeping index of New Yorkers who are now vulnerable to wrongful arrests or convictions.

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