

# THE LEGAL AID SOCIETY

Justice in Every Borough.

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

## ***Legal Aid Defeats the City's Attempt to Moot Lawsuit Challenging 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** secured a [ruling](#) today in the United States District Court for the Southern District of New York, defeating a motion to dismiss in [Leslie et. al. v. City of New York et. al.](#), class action litigation brought last March against the City of New York, the New York City Police Department (NYPD) and the New York City 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.

In response, **The Legal Aid Society** issued the following statement:

“The City’s illegal DNA collection and storage practices ensnares children, witnesses, New Yorkers never convicted of any crime, and other unsuspecting members of the public, treating them as de facto suspects in any case involving DNA. Today’s ruling rejects the City’s attempt to moot the lawsuit and instead will allow our litigation to proceed, continuing to shine a light on law enforcements’ intrusive and Orwellian methods that should frighten all New Yorkers. We look forward to further judicial review of these destructive practices to bring our clients the justice they deserve.”

#### **Litigation Background**

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, secretly treating thousands of New Yorkers as 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 the Office of Chief Medical Examiner (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 the taking of DNA from their child.

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 on City’s DNA Collection and Storage Practices**

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 [email](#) 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](#).

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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)*