

**Testimony of
Queens County District Attorney
Richard A. Brown**

* * * *

Familial DNA Searches

* * * *

New York State Commission on Forensic Science

**New York, New York
February 10, 2017**

At the outset, I want to thank you, Mr. Chairman – and your colleagues – for having agreed to consider authorizing the use of familial DNA searching in New York. This technique, currently used in eleven states – and in the United Kingdom and the Netherlands – has already proven to produce leads that can break cold-case murders, rapes and other serious crimes. By reliably generating leads that can enable law enforcement to identify the guilty, the technique also helps to ensure that the innocent will not be wrongly charged, nor subjected to the potential of prosecution, conviction or sentence.

Why, I have been asked in the past days, am I still pressing for familial searching to be authorized if an arrest has already been made in the murder of Karina Vetrano? After all, it was the vicious killing of this young woman that drew my attention to this cutting edge investigatory tool in the first place and moved me to press this Commission to authorize its use. My answer is simple: I am grateful that through the NYPD’s extraordinary police work Karina’s devastated family may find some small degree of comfort in the arrest made last weekend. And the public can rest easier knowing a suspect is in custody and being prosecuted. But there are countless other horrible cold cases that remain unsolved. Those victims and families continue to suffer and to live in fear. The public remains at risk of those perpetrators striking again. That isn’t right. Law enforcement must be provided with the newest tools and latest advances to solve these cases, too.

In my judgment, familial DNA searching represents sound public policy. Prudent, appropriate, limited safeguards can be put in place to

ensure that familial searching is used thoughtfully – not indiscriminately – and that information generated by these searches is handled with sensitivity. With such protections, familial DNA searching would bring to New York a potentially life-saving crime-fighting tool which is already being fairly employed in other jurisdictions.

Familial searching has already produced powerful examples of its utility in other states where its use is permitted. A case in point is that of the California “Roaming Rapist,” who attacked ten victims over the course of fourteen years. He was identified through an investigation stemming from a familial DNA search that turned up his brother, a convicted violent felon, whose DNA was in the state database. By investigating this familial DNA lead, the police were able to identify and apprehend the “Roaming Rapist” before he could strike again. Similarly, the so-called “Grim Sleeper” serial killer of Los Angeles was identified through a familial DNA lead involving his son’s DNA. And just a few months ago, familial searching in Ohio resulted in the arrest of a man charged with multiple crimes including child abduction and child sexual assault.

These cases compellingly demonstrate that familial DNA searches are important tools, necessary to solve cold cases. And perhaps more importantly, familial matches will help guard against wrongful convictions. That is because the technique is designed to narrow a search by producing leads in a cold case while simultaneously excluding those who are not likely to be the perpetrator. Thus, law

enforcement's attention can be focused on identifying the potentially guilty while safeguarding the innocent.

From a practical standpoint, familial DNA searching is no more invasive of citizen's privacy than standard criminal investigative techniques that have long been employed without controversy. For example, consider a bank robbery case where a partial license plate number of the getaway vehicle is provided to the police. The police run that partial plate through databases to generate a list of cars with plates that are similar enough to be potential matches. Do they then rush out and accuse or arrest every car owner with a partial match? Of course not. Is it fair to call these leads "false positives?" Of course not. Each of those candidate matches is investigated as a lead—nothing more. The same would be done were familial searching to be authorized.

As for any critics from whom you may hear, let me say simply this – many of those who argued against crime-stopping DNA advances in the past will no doubt argue against use of familial searching. The portrayal of unrealistic, ill-informed scenarios depicting the compromise of privacy rights of our citizens if this tool is employed in New York is not new. Indeed, all of those scenarios were posited when this Commission was considering the use of partial match reporting in 2011, as well as each time the New York databank was expanded to include more, and eventually all crimes. Yet, despite the various dire concerns advanced by opponents, none have in fact been borne out by the reality of our shared experience during the last seventeen years in which the DNA databanks have existed.

To the contrary, DNA databank advances like these have led to

thousands of convictions and resulted in the exoneration of dozens of innocent New Yorkers. And it is critical to remember that these DNA advances also prevent future crimes. They help take murderers and rapists off the streets before they can brutalize yet another victim. For instance, the 2008 expansion of the DNA databanks to include DNA from all felons resulted almost immediately in the arrest and successful prosecution of a Queens serial rapist, Richard Thomas, whose brutal victimization of a child in 2004 could have been prevented had the full potential of the databank been authorized years earlier. Familial searching is simply the latest advance in forensic DNA to come before the Commission and, like prior advances, it will surely produce similar benefits without harm to the public or jeopardizing anyone's Constitutional rights.

I am cognizant that there is concern in some quarters about the manner in which familial DNA leads will be investigated and whether these leads will be handled with the sensitivity the public expects. I believe that with some simple, reasonable safeguards, our law enforcement agencies will be able to maximize the usefulness of the fresh leads that this tool will provide to solve serious crimes while still respecting the privacy of individuals.

The approaches of other states already using familial searching are instructive. Some have opted for cumbersome procedures and created new layers of bureaucracy unduly complicating the familial searching process. Others have used more streamlined protocols that have apparently effectively insured careful and efficient use of this tool. Therefore, if familial searching were approved in New York, I would suggest that the simpler, more streamlined model be adopted. Indeed,

the current procedure for the handling of partial match reporting in New York is an excellent blueprint for how familial search leads could be conducted. After all, although partial matches are inadvertent discoveries and familial searches are intentional efforts to discover near-matches, the leads generated from either method stand in essentially the same posture from a policy perspective, and from a practical perspective would be utilized identically to advance open investigations of serious, but unsolved crimes.

I am persuaded that an appropriate safeguard for the employment of the familial search technique would be to require that the local district attorney and investigating law enforcement agency make a joint application to the laboratory. This would ensure coordination and consideration of both the necessity and the potential benefit of embarking upon such a search. Significantly, this joint application process is already used for partial matches, and I am convinced that employing an identical procedure for familial searches will provide appropriate protections and safeguards against possible abuses.

If additional precautions are thought to be needed, there could be required training conducted by the labs for those receiving the familial search leads to insure that they understand what the results do and do not mean. Significantly, the handling of partial matches in New York over the last half decade has shown that these types of simple measures will be sufficient to guarantee the thoughtful and appropriate use of familial search leads.

It is my hope that the Commission on Forensic Science will act

expeditiously to authorize the use of familial DNA searches to solve cold cases here in New York. Depriving New Yorkers of the benefits derived from this scientific tool is not only poor public policy, but simply stated, defies all reason. The solving of the murder of Karina Vetrano was the result of persistence, not luck. If you wish to call it luck then you must concede that the NYPD made its own luck by turning over a million stones until they turned over the right one. Yes it was in essence a stroke of lightening that led to the arrest last weekend, but we can't always rely on a lightening strike to solve crime. And we shouldn't rely on it when sound science is available. We need to use all tools at our disposal. Without prompt action on familial searching, killers, rapists and those who commit other serious crimes will remain at large, the public will remain in danger and the suffering of victims' families will be amplified by the inability to solve these crimes.

Justice demands that law enforcement be provided every lawful means at its disposal to identify the perpetrators of crime and thereby permit their prompt apprehension and just prosecution. We owe the public nothing less. If the Commission fails to act, how would we explain to other parents like the Vetranos that we had the means to prevent their loss but lacked the will?