

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

In re C.H., a Person Coming Under the Juvenile ) No. **S237762**  
Court Law. )  
\_\_\_\_\_) (First District Court  
) of Appeal No. A146120;  
) Contra Costa Superior  
PEOPLE OF THE STATE OF CALIFORNIA, ) Court No. J1100679)  
)  
Plaintiff and Respondent, )  
)  
v. )  
)  
C.H., )  
)  
Defendant and Appellant. )  
\_\_\_\_\_)

**SUPREME COURT  
FILED**

AUG 15 2017

Jorge Navarrete Clerk

\_\_\_\_\_  
Deputy

**APPLICATION FOR PERMISSION  
TO FILE AMICUS CURIAE BRIEF  
and  
BRIEF OF AMICUS CURIAE  
LOS ANGELES COUNTY DISTRICT ATTORNEY  
in support of RESPONDENT  
The People of the State of California**

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) **CURIAE BRIEF**  
C.H., ) **AND BRIEF OF**  
) **AMICUS CURIAE**  
Defendant and Appellant. )  
\_\_\_\_\_)

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES  
OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

The Los Angeles County District Attorney hereby applies for permission to file a brief as amicus curiae in the above-entitled matter, pursuant to rule 8.520 of the California Rules of Court, in support of the Respondent, represented by the Attorney General of California.

The underlying case pertains to Appellant’s request to have his DNA information expunged from the CODIS<sup>1</sup> database after Appellant successfully applied for re-designation of the charge in his sustained juvenile delinquency petition to a misdemeanor pursuant to Penal Code section 1170.18, subdivisions (f) and (g). The Court of Appeal properly ruled that Appellant is not entitled to such expungement. The amicus curiae brief bound with this application argues:

\_\_\_\_\_  
1. The FBI Combined DNA Index System.  
(<https://www.fbi.gov/services/laboratory/biometric-analysis/codis>, last viewed August 7, 2017.)

- (1) Penal Code section 299 provides the only procedure in California for expungement from the CODIS database, and neither voters nor the Legislature have chosen to extend such procedure as Appellant desires;
- (2) Appellant's DNA information is one of many acceptable biometric measurements of identity to be retained in a state database, and such inclusion causes the offender no harm;
- (3) the public benefits from a DNA database that is as broad and inclusive as possible Appellant's DNA information is one of many acceptable biometric measurements of identity to be retained in a state database, and such inclusion causes the offender no harm; and,
- (4) Proposition 47's purpose is to save money and to focus those resources on the prosecution of violent offenders and the rehabilitation of other offenders, both of which would be undermined by diverting such savings to proceedings regarding DNA expungement.

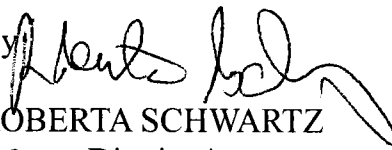
The Los Angeles County District Attorney has read the briefs previously filed by the parties and believes that a need exists for additional argument on the points specified above.

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If this Court grants this application, then the Los Angeles County District Attorney, as amicus curiae, requests that this Court permit filing of the brief which is bound with this application.

Respectfully submitted,

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By 

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**ISSUE PRESENTED**

Is an offender whose conviction is reduced to a misdemeanor pursuant to Penal Code section 1170.18<sup>2</sup>, and who is not otherwise required to submit a DNA sample, entitled to expungement of his DNA information from the CODIS database?

**STATEMENT OF THE CASE**

Amicus curiae (hereafter “amicus”) relies upon the Statement of the Case presented by the Respondent in the Opening Brief on the Merits.

**STATEMENT OF FACTS**

Amicus relies upon the Statement of Facts presented by the Respondent in the Opening Brief on the Merits.

**SUMMARY OF ARGUMENT**

Current law provides for expungement from the DNA database in certain circumstances. However, expungement is not made newly available for past offenders each time a crime is re-designated from a felony

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2. Unless otherwise designated, all statutory references are to the Penal Code.



to a misdemeanor. Proposition 47 sought to preserve resources for the investigation and prosecution of violent crimes, as well as providing funds for the prevention of crimes, victim services, and rehabilitation of certain offenders. The proposition made no express changes to the law regarding the availability of DNA expungement.

Appellant and similar offenders whose convictions are reduced pursuant to Proposition 47 do not suffer by their continued inclusion in the DNA database.

The existence of a large DNA database goes to ensure that investigations and prosecutions of crime are more accurate and efficient, and assists in the exoneration of those innocent persons who are suspected or accused of crimes or who have been wrongfully convicted.

Finally, the goals set forth in Proposition 47 would be undermined if a newly created procedure was made available to a large class of persons whose convictions have been re-designated, due to the resulting court costs and administrative costs.

## **ARGUMENT**

### **I**

#### **SECTION 299 PROVIDES THE ONLY PROCEDURE FOR EXPUNGEMENT FROM THE DNA DATABASE, AND NEITHER VOTERS NOR THE LEGISLATURE HAVE CHOSEN TO EXTEND SUCH PROCEDURE AS APPELLANT DESIRES**

Appellant wants the expungement procedures provided in section 299, subdivisions (a) and (b), to apply to Appellant's situation: upon a redesignation of a sustained juvenile charge from a felony to a misdemeanor pursuant to section 1170.18, subdivisions (f) and (g). However, voters have not chosen to extend expungement in that manner, whether via

Proposition 47 or otherwise. The Legislature likewise has chosen not to extend the availability of expungement in the manner that Appellant seeks. Appellant therefore asks this Court to effectively legislate such an extension. It would be improper for this Court to do so.

Section 299 is the only provision of California law that provides for the expungement of information from the DNA database. Subdivision (a) provides as follows:

A person whose DNA profile has been included in the databank pursuant to this chapter shall have his or her DNA specimen and sample destroyed and searchable database profile expunged from the databank program pursuant to the procedures set forth in subdivision (b) if the person has no past or present offense or pending charge which qualifies that person for inclusion within the state's DNA and Forensic Identification Database and Databank Program and there otherwise is no legal basis for retaining the specimen or sample or searchable profile.

That subdivision directly refers to subdivision (b), of the same statute, which further limits the class of individuals who may seek expungement. Subdivision (b) enumerates four specific scenarios, and clearly states that only a person who fits into one of those scenarios may make a written request to have his or her profile expunged from the database and to have any remaining specimen and sample destroyed. Just prior to listing the four scenarios, the subdivision states "*if any of the following apply*" (emphasis added.) While subdivision (a) refers to persons who have "no past or present offense or pending charge which qualifies that person for inclusion" within the state's DNA database, such reference only provides that such persons may seek expungement if they meet the further restrictions in subdivision (b).

The four scenarios specified in subdivision (b) are as follows:

- (1) Following arrest, no accusatory pleading has been filed within the applicable period allowed by law, charging the

- person with a qualifying offense as set forth in subdivision (a) of Section 296 or if the charges which served as the basis for including the DNA profile in the state's DNA and Forensic Identification Database and Databank Program have been dismissed prior to adjudication by a trier of fact;
- (2) The underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed;
  - (3) The person has been found factually innocent of the underlying offense pursuant to Section 851.8, or Section 781.5 of the Welfare and Institutions Code; or
  - (4) The defendant has been found not guilty or the defendant has been acquitted of the underlying offense.

Clearly, Appellant fits into none of these scenarios. An accusatory pleading was filed against Appellant, Appellant admitted the felony charge of grand theft (§ 487, subd. (c)), disposition was imposed, such disposition has not been reversed, the case was never dismissed, and Appellant was never declared factually innocent of such charge.

The Court of Appeal properly found that Appellant must satisfy both subdivision (a) and subdivision (b) in order to request expungement. (*In re C.H.* (2016) 2 Cal.App.5th 1139, 1147-1148.)

Two published cases may provide support for extending the availability of expungement to Appellant's circumstance. Both were wrongly decided, and one was quickly superseded by the Legislature. In *In re Nancy C.* (2005) 133 Cal.App.4th 508, a minor had admitted a charge in a juvenile delinquency petition for the offense of unlawfully taking a vehicle (Veh. Code § 10851, subd. (a).) Such offense is a wobbler and may be charged as either a felony or a misdemeanor. It was charged in the charging document as a felony. After taking the minor's admission, the court transferred the case to another county for disposition. At the disposition hearing in the second county, the court made an insufficient record as to whether the disposition was imposed as a felony or misdemeanor. The Court of Appeal reversed the

judgment, and ordered that juvenile court to declare the offense either a felony or a misdemeanor. (*Id.*, p. 510.) The minor had also appealed the juvenile court's order requiring the minor to provide a DNA sample. The Court of Appeal wrote, without any analysis, that if the juvenile court on remand declared the offense to be a misdemeanor, and if the minor had already provided a DNA sample, then "the minor may seek relief pursuant to the expungement procedure provided by section 299." (*Id.*, p. 512.)

*Nancy C.* was wrongly decided because after the minor admitted a felony charge, even if the juvenile court at disposition declared the offense to be a misdemeanor, the minor still would not fit into any of the scenarios enumerated in section 299, subdivision (b). The Court of Appeal made no attempt to fit the case into any of those scenarios, and stated in a conclusory manner that the minor could seek such relief even though the statute provides otherwise. If, as the Court of Appeal suggested, the minor sought such relief, then section 299 would have required the juvenile court to deny the request.

The second case that appeared to provide a judicially created addition to the enumerated scenarios in section 299, subdivision (b), was *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209. There, the minor successfully petitioned pursuant to section 1170.18 to reduce the offense that was the subject of a sustained juvenile petition against him from a felony to a misdemeanor. (*Id.*, p. 1216.) On the related question of DNA expungement, the court recognized that this circumstance was "outside the matters contemplated by the Penal Code DNA expungement statute." (*Id.*, p. 1229.) The court then emphasized that neither the voters nor the Legislature had amended section 299, subdivision (f) to state that such expungement should not be allowed. (*Id.*, pp. 1229-1230.) The Court of Appeal categorically declared that every reduction pursuant to section 1170.18

rendered a defendant or minor eligible for expungement of their DNA information. (*Id.*, p. 1217.)

*Alejandro N.* improperly overlooked the enumerated circumstances in section 299, subdivision (b). That was made clear when the Legislature quickly amended section 299 after the opinion in *Alejandro N.* was issued<sup>3</sup>. The Court of Appeal had created its addition to the list in subdivision (b) by relying upon the contents of subdivision (f). By amending subdivision (f) to reference section 1170.18 alongside sections 17, 1203.4 and 1203.4a, the Legislature reaffirmed that the availability of expungement should not be extended to a person such as Appellant who pursues a re-designation of a felony offense to a misdemeanor. By adding all persons who sought relief pursuant to section 1170.18 to the class of persons who could seek expungement pursuant to section 299, the court in *Alejandro N.* went against clear statutory provisions and the underlying intent of the Legislature.

Although the court in *Alejandro N.* came to the wrong result, it properly relied upon the intent of the voters and the Legislature as the determinative factors in interpreting section 299. Section 299 was enacted in 1998 by the Legislature as part of AB 1332, and took effect January 1, 1999. (Stats. 1998, ch. 696, § 2.) Section 299 was significantly amended by Proposition 69 in November, 2004. Proposition 69 added most of the content of the current subdivision (b). (Ballot Pamphlet, General Election (November 2, 2004), pp. 141-142 (hereafter “Prop. 69 Ballot Pamp.”) Since that time, the enumerated circumstances in subdivision (b) have remained unchanged. The Legislature has shown no intent whatsoever to extend the availability of expungement to the large number of offenders whose convictions have been

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3. The opinion in *Alejandro N.* was issued July 23, 2015. On October 4, 2015, AB 1492 was enacted, to be effective January 1, 2016. That law added the reference to section 1170.18 in section 299, subdivision (f). (Stats. 2015, ch. 487 § 4.)

reduced from felonies to misdemeanors and who otherwise fit into none of the circumstances enumerated in subdivision (b). Most importantly, the voters have shown no such intent either, even when creating a very large new class of such persons when passing Proposition 47. When enacting a proposition, voters are presumed to be aware of existing law. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1048.) By not including an amendment to section 299, subdivision (b) in Proposition 47, the voters clearly stated that they did not desire to make expungement available to Appellant and the large class of similar offenders.

Because neither the voters nor the Legislature have extended the availability of expungement to offenders who benefit from Proposition 47 relief, Appellant is asking this Court to judicially amend the pertinent statutes. This would be wholly inappropriate.

## II

### **APPELLANT'S DNA INFORMATION IS ONE OF MANY ACCEPTABLE BIOMETRIC MEASUREMENTS OF IDENTITY TO BE RETAINED IN A STATE DATABASE, AND SUCH INCLUSION CAUSES THE OFFENDER NO HARM**

Appellant's DNA information as retained in CODIS is merely another biometric identifier, like a booking photo, fingerprint, height or weight measurement, eye or hair color description, or a photograph of tattoos, that is collected as part of an arrestee's booking process or after conviction.

Biometrics involves the scanning or recording of some unique personal characteristic, such as a fingerprint, a retinal print or voice pattern and the comparison of the digitized image or recording against a verified database for positive identification. Digital imaging, the technology involved in

finger imaging, is already a basic component of a myriad of applications ranging from document management to medical radiology to videoconferencing, and its contribution to the field of biometrics makes the current technology of finger imaging possible. In finger imaging, the technology converts a fingerprint into a highly detailed and exact electronic image that a computer can interpret and compare to other images.

(Note, *Finger Imaging: A 21st Century Solution to Welfare Fraud at our Fingertips* (1995) 22 Fordham Urb. L.J., 1333-1334.)

Other biometric identifiers, especially photographs and prints, have been incorporated for years into a collection or databases. These databases have been used for authenticating the identity of the person in custody and for intelligence in crime solving. When an unknown sample is recovered from a crime scene (fingerprint, hair, blood, video capture, etc.), that sample can be compared to known exemplars by searching available databases.

Booking photos were incorporated into “mug books” long before computers were available to digitize the photographs. In 1900, a defendant challenged the taking of his photograph upon arrest and inclusion of that photo in the “Sheriff’s Rogues Gallery.” (*State ex rel. Bruns v. Clausmeier* (Ind. 1900) 57 N.E. 541.) The Indiana Supreme Court refused to reject the use of a relatively new invention and held that the sheriff was acting within his lawful authority:

It would seem, therefore, if, in the discretion of the sheriff, he should deem it necessary to the safe-keeping of a prisoner and to prevent his escape, or to enable him the more readily to retake the prisoner if he should escape, to take his photograph, and a measurement of his height, and ascertain his weight, name, residence, place of birth, occupation and the color of his eyes, hair, and beard, as was done in this case, he could lawfully do so.

(*Id.* at p. 542.) Even booking photos from an illegal arrest were allowed to remain in the “database” or mug book and could result in

a subsequent prosecution if that photograph was selected by another witness in an unrelated crime. (*People v. McInnis* (1972) 6 Cal.3d 821, 825-826.)

For years, fingerprints have been gathered to identify an arrested suspect. Courts have held that fingerprints taken at booking after a felony arrest that are later challenged as illegally seized can still be used to connect defendants to other offenses. (*People v. Clark* (1973) 30 Cal.App.3d 549, 558-559.) In California, after the initiation of the California Identification System (“Cal ID”) in 1985, latent prints of an unknown suspect lifted from crime scenes could be compared to a collection of fingerprints.<sup>4</sup> CAL ID provides law enforcement with the ability to use a known exemplar from an arrestee or convicted offender and compare it to unsolved crimes. The technological leap that allowed searching a database with an arrestee’s fingerprints in order to determine what, if any, other offenses he or she committed, did not render it necessary to create a new procedure to allow a person to request expungement of their fingerprints from state databases.

Fingerprints, photographs, and other biometric identifiers may be retained in a database and therefore made accessible for intelligence as to other crimes. “However, the use of database searches as a means of identifying potential suspects is not new or novel.” (*People v. Johnson* (2006) 139 Cal.App.4th 1135, 1149.) The United States Supreme Court in *Maryland v. King* addressed this point succinctly.

They [law enforcement] already seek identity information through routine and accepted means: comparing booking photographs to sketch artists' depictions, showing mugshots to potential witnesses, and comparing fingerprints against electronic databases of known criminals and unsolved crimes. The only difference between DNA analysis and fingerprint databases is the unparalleled accuracy DNA provides. DNA is another metric of identification used to connect the arrestee with his or her public

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4. See Cal. Pen. Code sec. 11112.1 et seq.



persona, as reflected in records of his or her actions that are available to the police.

(*Maryland v. King* (2013) \_\_\_ U.S. \_\_\_ [133 S.Ct. 1958, 1963-1964, 186 L.Ed.2d 1, 14].)

DNA is still the most reliable, immutable identifier that exists. As a biometric identifier, DNA is the best available method to establish the identity of the contributor of biological evidence that is found during a criminal investigation.

Furthermore, there is simply no stigma attached to being included in the DNA database, and neither Appellant nor other offenders like Appellant who have had their convictions reduced to misdemeanors suffer in any way from inclusion in the database.

Every member of the United States military, from sailors to the Chairman of the Joint Chiefs of Staff, and every new recruit is required to submit a DNA sample for the military database, also known as a Repository. This is done for two purposes, the identification of remains and criminal investigations.

The Department of Defense (DOD) began to use DNA samples to identify the remains of service members during the first Gulf War in 1991. "Because of problems with obtaining reliable DNA samples during the Gulf War, the DOD began a program to collect and store reference specimens of DNA from members of the active duty and reserve forces." What was then called the "DOD DNA Registry," program within the Armed Forces Institute of pathology, was established pursuant to a December 16, 1991 memorandum of the Deputy Secretary of Defense. Under this program, DNA specimens are collected from active duty and reserve military personnel upon their enlistment, reenlistment, or preparation for operational deployment. As of December 2002, the Repository, now known as the "Armed Forces Repository of Specimen Samples for the Identification of Remains," contained the DNA of approximately 3.2 million service members. According to a recent DOD directive, the "provision of specimen samples by military members shall be mandatory." The direction

to a soldier, sailor, airman, or marine to contribute a DNA sample is a lawful order which, if disobeyed, subjects the service member to prosecution under the Uniform Code of Military Justice (UCMJ). If convicted at court-martial for the offense of violating a lawful general order, the service member carries the lifelong stigma of a federal felony conviction, and faces a maximum punishment of a dishonorable discharge, confinement for two years, total forfeiture of all pay and allowances, and reduction to the lowest enlisted grade. (10 § 1565a. DNA samples maintained for identification of human remains: use for law enforcement purposes (a) Compliance with a court order).<sup>5</sup>

(Ham, *An Army of Suspects: The History and Constitutionality of the U.S. Military's DNA Repository and Its Access for Law Enforcement Purposes*, (July/August 2003) *The Army Lawyer*, pp. 1-19.) Submitting to the same sampling and analysis procedures to which millions of service men and women are required to participate cannot be considered stigmatizing.

It is well known that in the aftermath of disasters such as Hurricane Katrina, the 9-11 attacks and the tsunami in Japan, DNA is widely used to identify the victims by comparing recovered remains to relatives' toothbrushes and personal effects. (Knoppers et al, *Ethical Issues in Secondary Uses of Human Biological Materials from Mass Disasters* (2006) 34 *J.L. Med. & Ethics* 352-365.) Such access, affordability and routine use of DNA tests have removed any imagined stigma.

In 1932, Mortimer Kelly was arrested for selling gin and was fingerprinted. He complained that he suffered indignity at being fingerprinted. Judge Learned Hand wrote:

Finger printing seems to be no more than an extension of methods of identification long used in dealing with persons under arrest for real or supposed violations of the criminal laws. It is known to be a very certain means devised by modern science to reach the desired end, and has become especially important in a time when

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5. In 2003, the National Defense Authorization Act expanded the Repository uses to include criminal prosecutions.

increased population and vast aggregations of people in urban centers have rendered the notoriety of the individual in the community no longer a ready means of identification.

(*United States v. Kelly* (2d Cir. 1932) 55 F.2d 67, 69.) Judge Hand went on to note that fingerprinting was becoming widespread in 1932:

Finger printing is used in numerous branches of business and of civil service, and is not in itself a badge of crime. As a physical invasion it amounts to almost nothing, and as a humiliation it can never amount to as much as that caused by the publicity attending a sensational indictment to which innocent men may have to submit.

(*Id.* at p. 70.) The same can be said for the use of DNA today.

Finally, courts have recognized that inclusion in the DNA database is merely an administrative identifying procedure and is not punitive in any way. (*Good v. Superior Court* (2008) 158 Cal.App.4th 1494, 1508.)

The only potential negative consequence for Appellant in the future as a result of inclusion in the DNA database would be if Appellant was identified as being connected to a crime. This is hardly a violation of any privacy right. Furthermore, as will be seen, such identification would further the public's interest in properly and efficiently investigating and preventing future criminal activity.

### III

#### **THE PUBLIC BENEFITS FROM A DNA DATABASE THAT IS AS BROAD AND INCLUSIVE AS POSSIBLE**

The public has a strong interest in the accurate and prompt investigation of crimes, and the prevention of future crimes. A broad DNA database assists law enforcement in narrowing their investigations, ruling out suspects at an early stage, and exonerating those who have been wrongfully

convicted.

In enacting Proposition 69, the people of the State of California made the following findings and declarations:

(b) There is critical and urgent need to provide law enforcement officers and agencies with the latest scientific technology available for accurately and expeditiously identifying, apprehending, arresting, and convicting criminal offenders and exonerating persons wrongly suspected or accused of crime.

...

(d) Expanding the statewide DNA Database and Data Bank Program is:

(1) The most reasonable and certain means to accomplish effective crime solving in California, to aid in the identification of missing and unidentified persons, and to exonerate persons wrongly suspected or accused of crime;

(2) The most reasonable and certain means to solve crime as effectively as other states which have found that the majority of violent criminals have nonviolent criminal prior convictions, and that the majority of cold hits and criminal investigation links are missed if a DNA database or data bank is limited only to violent crimes[.]

(Prop. 69 Ballot Pamp., §§ II, p. 135.) Retaining offenders such as Appellant in the DNA database can assist in the solving of future violent crimes, and also to assist in the exoneration of persons wrongly suspected, accused or convicted of a crime.

Currently, California law requires the collection of DNA samples for misdemeanor convictions requiring registration as a sex offender or arson offender (§ 296, subd. (a)(3).) 41 other states require the collection of DNA samples for at least some misdemeanor convictions. New York and Wisconsin have the broadest policies, requiring samples from all persons convicted of felonies and misdemeanors. (National Conference of State

Legislatures, Convicted Offenders Required to Submit DNA Samples, <http://www.ncsl.org/Documents/cj/ConvictedOffendersDNALaws.pdf>, last viewed August 7, 2017.) The experience in New York provides a strong argument in favor of requiring DNA samples for nonviolent offenders. According to slides presented to a National Center for Victims of Crime symposium on July 30, 2013, investigators in New York gained significant benefits after the state's DNA law was changed in 2006 to require DNA samples from offenders convicted of petit larceny. Between 2006 and July 30, 2013, individuals convicted of petit larceny were linked to 1,078 other crimes, including 57 homicides, 137 robberies, 238 sexual assaults, and 457 burglaries. (DNA Stops Crime: The Case for Misdemeanor DNA Collection, <http://victimsofcrime.org/docs/DNA%20Trainings/new-york-states-dna-databank-slides.pdf?sfvrsn=2>, last viewed August 7, 2017.) Furthermore, as of 2012, when New York considered a further expansion of their DNA database, a legislative memo provided:

The Databank also plays a significant role in helping to determine who did not commit a crime. There have been 27 individuals exonerated in New York through DNA evidence, as well as countless suspects who have been excluded and cleared most often at the earliest stages of an investigation.

(*People v. Husband* (2012) 954 N.Y.S.2d 856, 859.)

The United States Court of Appeal for the 2nd Circuit Court has summarized the benefits of a large DNA database as follows:

One, the DNA index has the potential to help society catch the perpetrator of crimes that otherwise would remain unsolved forever. Two, maintaining the DNA database offers unparalleled speed and, more importantly, accuracy in solving crimes. Three, and of particular importance, the database not only allows for the rapid identification of the actual perpetrator, but also prevents misidentification and, thereby, permits innocent individuals to be excluded, rapidly and without being forced to suffer the indignity of being suspected of crimes that

they did not commit. Critically, one of the fundamental characteristics of the database is that it can be used to exonerate individuals that could or do stand accused of crimes for which they are innocent.

*(United States v. Amerson (2d Cir. 2007) 483 F.3d 73, 83.)*

The argument in favor of expanding the database in order to catch future violent offenders is clear. Mark Helprin, writing very recently in the Wall Street Journal, argued in favor of expanding DNA collection to include all misdemeanor offenders. (Helprin, *How to Save Lives with DNA Testing*, Wall Street Journal, August 2, 2017.) He describes two notorious offenders in Charlottesville, Virginia, whose crime sprees would have been significantly curtailed had their DNA been collected upon earlier misdemeanor convictions. Jesse Matthew, Jr., abducted and murdered Hannah Graham, an 18-year-old student at the University of Virginia. Previously, he had committed another murder and a separate rape. While he left behind DNA evidence in the rape, neither crime had been connected to him at the time of the Graham abduction. In the meantime, however, he had been convicted of misdemeanor trespass. Had he provided a DNA sample at that time, he very likely would have been incarcerated for his earlier crime and not able to abduct and murder Graham. (*Ibid.*) Also, a serial rapist in Charlottesville in the late 1990s had been convicted of a misdemeanor after committing one rape but before going on to commit six more. Had DNA been collected at the time of the misdemeanor conviction, he would likely have been connected to the biological evidence from the first rape and the later victims could have been spared. (*Ibid.*)

While it is critically important to be able to use the database to catch future offenders, it is just as compelling to rationally expand the DNA database in order to unlock prison doors for the innocent.

DNA databases have proven remarkably effective in exonerating the innocent. According to the Innocence Project, there have been