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Chair

The Honourable Paul DeVillers

Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

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● (0900)

[*Translation*]

The Chair (Hon. Paul DeVillers (Simcoe North, Lib.)): I call to order this meeting of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness.

We are continuing our consideration of Bill C-13, an Act to amend the Criminal Code, the DNA Identification Act and the National Defence Act. We have as a witness today,

[*English*]

as an individual, Mr. David Rose, barrister and solicitor.

[*Translation*]

We also have, from the Barreau du Québec, Ms. Nicole Dufour and Mr. Jean-Claude Dubé. Each group of witnesses will do a presentation of 10 minutes or less, and then committee members will ask questions.

[*English*]

We will start then with Mr. Rose's presentation of approximately ten minutes, please.

Mr. David Rose (Barrister and Solicitor, As Individual): Thank you.

It's my view that Bill C-13 is not intended to undertake major substantive changes to the DNA collection and analysis regime currently in place. As we know, this year, 2005, there has to be a statutory review of the DNA Identification Act, pursuant to section 13 of that legislation. At that time, I expect that a full analysis and critique of the operational and legislative strengths and deficits in the legislation will be completed. For that reason, I suggest that more controversial aspects of DNA law and DNA data banking be deferred until that time.

It will be recalled that the first wholesale addition of DNA evidence to the Criminal Code in 1995 was preceded by an extensive consultative process, so that new legislation could be expected to withstand constitutional scrutiny. To the extent that the Supreme Court of Canada has recently—at least a year and half ago—upheld the validity of the DNA warrant regime, the original consultative process can be seen to be effective. Extending pre-conviction DNA data banking, as opposed to sampling for comparison to a specific crime scene, would require a similar type of consultative process.

Nonetheless, there are aspects of Bill C-13 that strike me as extensions of the DNA analysis regime for which Parliament should apply special scrutiny. For instance, according to sections 3 and 4 of Bill C-13, persons found not criminally responsible for an offence would now become eligible for DNA data banking. In my view, this amounts to an erosion of the current standard that only those who are found guilty of an offence may be eligible for DNA data banking.

It's important, for purposes of considering expanded DNA data banking, to emphasize the effect at law of a finding of not criminally responsible as a result of a mental disorder. This is found, for instance, in section 672.35 of the Criminal Code of Canada, where it says at the outset, “Where a verdict of not criminally responsible on account of mental disorder is rendered, the accused shall not be found guilty or convicted of the offence”.

In my view, that is an important standard to consider when considering the extension in Bill C-13 of data banking to persons found not criminally responsible as a result of mental disorder. Clearly, at law, a verdict of not criminally responsible on account of mental disorder—as we call it, NCRMD—bars a finding of guilt. Parliament has made this theme consistent, in the sense that a finding of NCRMD is a complete defence to a subsequent charge over the same matter, as found in paragraph 672.35(a), and cannot be used as a prior conviction for the purposes of seeking higher penalties on later convictions. Parliament has thus sought to avoid placing persons found NCRMD in the same category as offenders who are found guilty while enjoying the presumption of being sane in subsection 16.(2) of the Criminal Code of Canada. Persons found NCRMD are subject to a sophisticated review procedure that is case-specific and designed to treat the person and afford protection of the public.

On the other hand, a review of sections 487.051, 487.052 and 487.055—the current DNA analysis regime in the Criminal Code—indicates that these provisions now apply only to offenders, that is to say, those convicted, discharged, or found guilty of a designated offence. Bill C-13 now threatens this delicate balance that is entrenched in the Criminal Code. If Bill C-13 passes as proposed, persons found NCRMD will be the only category of persons subject to data banking who have not been found guilty of an offence.

This has two problems. First, DNA data banking should not be extended beyond offenders found guilty of a designated offence. To do so would reflect a clear policy choice that DNA data banking applies even to those not exposed to a penal sanction. Second, DNA data banking, as it applies to persons found NCRMD, appears to be aimed at a vulnerable sector of society. Although such persons would normally, in my experience, have the assistance of counsel in proceedings under the Criminal Code, to the extent that Bill C-13 takes aim at persons with mental disorders, unlike other classes of charged persons, it is an unnecessary singling out of disadvantaged persons.

● (0905)

My second submission regards property offences. Bill C-13 includes as a secondary designated offence for the first time section 349 of the Criminal Code of Canada, which is being unlawfully in a dwelling. The offence of break and enter with intent to commit an indictable offence is now to be listed as a primary designated offence. My observations are twofold.

First, section 349 of the Criminal Code, which is the new secondary offence of being unlawfully in a dwelling, is separate from but quite similar to section 348, which is now a secondary designated offence and is proposed to be a primary designated offence—that's break and enter with intent. The difference between the two is that to be guilty of break and enter the offender must have commenced the break-in with the intent to commit any indictable offence, while those convicted of being unlawfully in a dwelling need only have entered the dwelling unlawfully, including by trespass or without the lawful occupant's permission, and have formed the intention to commit an indictable offence while in the dwelling.

If one accepts the logic of including break and enter into the list of designated offences, then it is not too far behind to accept that being unlawfully in a dwelling should also be a designated offence.

In my view, however, break and enter itself is an anomaly in the list of designated offences, so the House should be cautious before extending the list of designated offences to offences under part IX of the Criminal Code, which deals with offences against the rights of property, or as we call them, property offences. The culpability regarding break and enter with intent can be with respect to any indictable offence, from property offences to offences against a person and anything in between. Parliament has chosen not to make such distinctions in section 348.

Section 487.04, which lists the designated offences and for which Bill C-13 proposes changes, currently shows a logic and pattern of not designating on the list other strictly property offences with no aspect of violence. Theft, possession, offences against currency, book-making, etc., are all not designated offences. Presumably the logic of the list as it currently stands in section 487.04 is that those who are convicted of the designated offence are likely in some way to reoffend in a similar pattern involving personal, as opposed to property, harm to the complainant. In the case of break and enter, this logic would be true if the offender's intention in entering were to do personal violence in some form. On the other hand, break and enter to take property is also caught within section 487.04 as it currently stands, as will be being unlawfully in a dwelling and stealing while on the premises.

I suggest this committee should be cautious about extending section 487.04 to property offences lest the inherent gravity associated with being a designated offence be lost. The answer to this may be to suggest, in refining both section 348 and section 349, demarcating the intention to commit an indictable offence involving violence, as opposed to simply property offences.

Those are my opening remarks.

● (0910)

The Chair: Thank you, Mr. Rose.

[*Translation*]

We will now hear from Ms. Dufour or Mr. Dubé from the Barreau du Québec.

Ms. Nicole Dufour (Lawyer, Research and Legislation Service, Barreau du Québec): I'm the one who's going to start, and Mr. Dubé is going to wrap up.

The Chair: Thank you, Madam.

Ms. Nicole Dufour: Thank you for inviting us to testify here today.

The President of the Quebec Bar, Mr. Denis Mondor, sends his regrets. He had a previous commitment.

My name is Nicole Dufour and I'm a lawyer with the Research and Legislation Service of the Barreau du Québec. With me is Mr. Jean-Claude Dubé, a lawyer who has been practising criminal law for 25 years. He is also a very active member of the Criminal Law Committee of the Barreau du Québec. That committee advises the president.

Also with me, as a guest, is Ms. Renée Delaquis, a student in my section.

The Barreau du Québec has already stated its views on DNA identification at least twice. We have previously produced two briefs, in 1997 and 2002. Our comments on Bill C-13 will be made by my colleague, Mr. Dubé, and I now turn it over to him.

Mr. Jean-Claude Dubé (Lawyer, Barreau du Québec): Thank you, Ms. Dufour.

Good morning, everyone.

For its presentation on Bill C-13, the Criminal Law Committee of the Barreau du Québec essentially maintains what it said in the document submitted to you on January 17, 2005. It is rare for our committee to manage to agree to limit itself to a few comments.

Mr. Chairman, the Barreau du Québec wishes to submit its comments and thoughts on Bill C-13.

First of all, we note that offences were added to the list of designated offences under the Criminal Code. Subsections (2), (3), (4), (5) and (6) of section 1 add new offences to the list of primary designated offences while subsections (8), (9), (10) and (11) add offences to the list of secondary designated offences.

Moreover, some of the proposed changes make some so-called "secondary" offences "primary" ones.

I give you this preamble because the Barreau du Québec, in two briefs, in 1997 and 2002, already warned against increasing offences in both categories. In the past, the Barreau du Québec has also presented its concerns regarding offences being added or moved from one list to another.

In its 1997 and 2002 briefs, the Barreau du Québec said: From the outset, the Barreau du Québec maintains its support for a pre-established list of offences.

We all agree on that point. Moreover, considering this technique's potential for invasion of privacy, the Barreau du Québec has always favoured using this technique in the most serious crimes, such as those involving physical violence or attempted violent offences. Should there ever be plans to add new offences, which the Barreau does not favour, these criteria must be considered when adding any offences.

In accordance with section 183 of the Criminal Code, the Barreau du Québec has always feared that this list could expand over time.

That is what we are currently seeing with Bill C-13. Moreover, this fear has been borne out with the government's adoption of the Antiterrorism Act, which expands the list of primary offences by adding some that were considered secondary prior to the adoption of this act.

It is useful to recall that the court's discretion to authorize sampling for DNA analysis differs depending on whether the offence is deemed to be primary or secondary. While the so-called primary category does not give the judge much leeway, the secondary category is left to the court's discretion. This discretionary power is necessary in view of the intrusive nature of DNA sampling. It allows the court to evaluate, among other things, the circumstances of the offence.

As a result, the legislative choices made as to the lists of primary and secondary offences have a significant impact. We are concerned by the current trend which limits the court's discretion and necessarily leads to the establishment of a compulsory standard for sampling. Yet establishing a single category of offences has never been considered before. There are important issues regarding the protection of privacy. DNA identification could potentially provide access to information beyond what is strictly necessary to create a database for the identification of suspects. Judicial control is predicated on judicial discretion, which is a key method of avoiding potential abuses.

The Barreau du Québec considers it essential, as already indicated —we are referring more specifically to the brief we produced in October 2002—that criteria be established for placing an offence in either category and for moving it from one to the other. The list of primary offences should be limited to serious crimes, and we stand by our position. Moving an offence from one category to another should be justified, and therein lies the rub.

● (0915)

The Barreau du Québec suggests that the criteria used should include an objective standard, such as the maximum sentence for a serious crime. For example, the legislator could stipulate that any offence punishable by a prison term of more than 10 years is a so-called primary offence. I would add the following example to the text you were given.

Among the offences added to section 487.04, section 1(5) of the bill includes the section 423.1 Criminal Code offence of "intimidation of a justice system participant or journalist". This is what we find the most puzzling. What criteria enable the legislator to decide that this crime is going to move into the first category? We're not puzzled about the fact that there are two categories; we all agree with that principle. Our argument is that for the secondary category, judges need to have some discretion. But we seriously question how the legislator is able to judge that a certain type of crime, which belongs to neither category, should belong to one category or the other from now on. What criteria are the basis for saying that an offence in the secondary category should become an offence in the primary category?

We refer to an objective standard like the maximum sentence, and we gave, by way of example, a 10-year sentence. However, how does that apply in relation to section 423.1: why was it felt that that should be a primary offence? So we are mainly puzzled by the categorization. I think the legislator has to deal with our need to know how the choice was made.

In the final comments we submitted to you, we referred to section 5(1) of the bill, which amends subsection 487.055(1) of the Criminal Code by adding new cases authorizing the judge to order DNA sampling for an offender serving a sentence. We question the lack of reference to the provision of section 753.1 regarding long-term offenders. This concept was adopted in 1997 and pertains to sexual offences, some of which are included in the list in the new subsection 487.055(1). Is this an oversight on the part of the legislator? Or might the desire to "categorize" offences without specific criteria increase the risk of inconsistent results?

In our opinion, due consideration must be given to adding offences or moving them from one of the current lists to another, because we don't know what criteria the legislator went by in categorizing these offences.

Thank you for your attention.

● (0920)

The Chair: Thank you, Mr. Dubé.

[*English*]

Now we'll go to the questioning, with Mr. Moore. We'll follow the procedure we did last meeting. I think it was five minutes each.

Mr. Moore, for five minutes.

Mr. Rob Moore (Fundy Royal, CPC): Thank you for your testimony today. There are just a few different questions I have that I'd like to get all of your comments on.

We've been hearing from many different witnesses who have raised some of the same concerns that you've raised. I guess I would need to be persuaded a little more, particularly on the NCR. There seems to be, in some of the testimony we've heard, including yours, that somehow, for someone who has been designated as NCR, this is an additional punishment, to be listed in the DNA data bank.

Already now, on primary designated offences, we've heard from the data bank that there's only a 50% inclusion rate. For whatever reason, in only half the cases when somebody has been convicted of a primary designated offence are they being added to the data bank. We've heard different reasons why that's possible, but as you know, there is a provision where, if the impact on someone's privacy outweighs the protection of society and the administration of justice....

But I think it's interesting to look at the protection of society aspect. The impression I get is that when someone is found not criminally responsible, some of the witnesses have made it sound like, well, then, the impact on society is nullified.

We have to remember, in an NCR case, there's still a victim; there's still the potential for future victims. An event has taken place, but the person, just by reason of his or her condition, has been found not criminally responsible. But the other factors, the other reasons why someone who has been convicted of an offence is included in the data bank, do exist.

I'd like you to comment on how swabbing someone's mouth or taking a blood sample and adding that, even though the person is not criminally responsible, somehow has an impact on that person's freedoms, or how you see that impact outweighing the potential protection of society.

The Chair: Mr. Rose.

Mr. David Rose: Thank you.

I think that's a very good comment, Mr. Moore. My response is to start off with the proposition that the DNA data bank and the DNA legislation, the Criminal Code, starts from the principle that we will only data-bank those who are found guilty of an offence. That's a very important starting proposition.

We don't data-bank people who, for instance, have had charges withdrawn, charges stayed, or charges thrown out because of delay for any reason under the Criminal Code, because sections 487.051 and 487.052, and section 487.055, for that matter, say you must be found guilty of an offence first. People who are found NCR are not found guilty of an offence.

In my view, there's a very important policy distinction that you have to get over here, which is that if you're going to make people who are found not guilty by reason of an NCR verdict subject to data-banking, then you will necessarily extend and open a door to other people who are found not guilty to be data-banked as well. You will have established a principle and a precedent that those who are found not guilty are still subject to data-banking, and that will be in law; that will be in the legislation; this will not be a matter for judicial interpretation.

It's a very good principle and a very good point to say that people who are found NCR may very well have committed some form of violence, inflicted some form of harm on someone, but at law they're not found guilty. I think the important thing to consider is that those who are found NCR are subject to a very sophisticated treatment regime to ensure the protection of the public. Under section 672, they're subject to treatment; they're subject to discharge.

One of the problems with Bill C-13 as it's presently worded is that those who are found not criminally responsible would have a data bank sample taken from them, and they could be absolutely discharged with anywhere from three months to a year, or beyond. Those who are found guilty of an assault and have blood taken from them and put into the data bank and are discharged under section 730 of the Criminal Code will, at law, have that data bank sample purged after one year.

● (0925)

Mr. Rob Moore: If I may, I think there's a great distinction between someone going through the normal criminal proceedings and being found completely not guilty of an offence and someone who is found NCR. When someone is found NCR, they may have committed the offence in question, it's just that they're not going to be convicted because their mental state is such that they're found to be not criminally responsible.

What you said doesn't answer my question on how that potential impact on their privacy somehow outweighs the protection of the public. That's the question. Because even in an NCR case we can see where there can be a protection of the public in exoneration or a linking of different offences.

Mr. David Rose: I would be hard-pressed to necessarily disagree in terms of expectation of privacy. The courts have always held that your expectation of privacy, once you are found guilty of an offence, is necessarily lower. That's a legal operation, distinct from something residing in the offence itself. The law says once you are found guilty you have a lower expectation of privacy, because you're subject to penal sanction.

Also, in response to one of your comments, it's never been seen that the DNA data-banking regime is part of the sentencing process. I think you're correct in that.

The Chair: Thank you, Mr. Rose and Mr. Moore.

[*Translation*]

Mr. Marceau, you have five minutes.

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Thank you very much, Mr. Chairman. I would like to thank the witnesses for coming here to share their views with us.

Mr. Dubé, I would appreciate some clarifications about your testimony.

On page 2, you state the following:

> As a result, the legislative choices made as to the lists of primary and secondary offences have a significant impact. We are concerned by the current trend which limits the court's discretion and necessarily leads to the establishment of a compulsory standard for sampling. Yet establishing a single category of offences has never been considered.

Am I to understand from that that you would like to see a list of offences for which judges would have discretion over whether or not DNA sampling was done?

Mr. Jean-Claude Dubé: No. We are saying that the legislator could have chosen to identify certain criteria for all Criminal Code offences and given the courts the necessary judicial discretion, depending on the crime, to decide whether those criteria were applicable to the specific case before them.

Mr. Richard Marceau: So there would not be a list of offences; the decision would depend on the sentence.

Mr. Jean-Claude Dubé: Exactly. The general principle would be that DNA sampling would take place for any crime punishable by a sentence of at least 10 years. The legislator did not choose to go that route, but instead created two categories. It is a restriction of judicial discretion. When an offence is moved from the secondary list to the primary list, judicial discretion is eliminated. You might argue that section 487.051 contains an exception where privacy outweighs the public interest. I would simply say that we still do not see how an individual with that burden of proof can establish that his or her privacy should be put ahead of the public interest.

● (0930)

Mr. Richard Marceau: One distinction that already exists in the Criminal Code is the possibility of choosing, in certain cases, to use a summary conviction procedure instead of a criminal procedure.

One of my conservative colleagues is of the view that anyone convicted of a secondary designated offence should have a DNA sample taken. What would your response be if he made that suggestion to you?

Mr. Jean-Claude Dubé: That is exactly the approach that the Quebec Bar Association has always advocated. Crimes are being systematically marginalized by being included in the list of primary designated offences. This is a serious invasion of privacy. They are trying to marginalize everything. We could conclude that a DNA sample should be taken whenever a Criminal Code offence is committed. That goes against a fundamental principle that is at the very core of our Canadian legal system. It violates privacy rights. We are not the only witnesses, I believe, who have told you over the past week or so that the protection of privacy is a fundamental principle in law.

If we extended this procedure to all offences, we would be violating that principle.

Mr. Richard Marceau: There is one issue that is often raised, but it is sort of in the background. Is the taking of a DNA sample part of the punishment or simply an administrative act? This question comes up in particular regarding people who are declared not criminally responsible. Are they being stigmatized if they have to give a DNA sample in the cases cited by this legislation? What is the Quebec Bar Association's position on that?

Mr. Jean-Claude Dubé: There is not really any consensus on this issue. I can tell you, however, that the word “punishment” may not mean the same thing to everyone. But an invasion of privacy necessarily creates a burden. Can it be seen as a punishment? Depending on where you sit, it can obviously be seen as either preventive or punitive. I do not necessarily see it as a punishment, but having a DNA sample taken is certainly an invasion of privacy.

Since 1995, or at least 1997, the Quebec Bar Association has been warning legislators not to go any further than absolutely necessary. There is the question of how else the information could be used. An excerpt from Mr. Justice Iacobucci's ruling in Saab was recently brought to your attention. It makes the point that we need to protect the integrity of the judicial system and the investigation process. This is a very important point: if a decision is being made about a DNA sample being taken from someone, you need to know why it is being done. The sample is taken for purely administrative reasons, to help with an investigation. That is the idea. When samples are taken for reasons other than those for which they were designed, they constitute an invasion of privacy.

The Chair: Thank you, Mr. Dubé and Mr. Marceau.

[*English*]

Mr. Comartin, for five minutes.

[*Translation*]

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Mr. Dubé, has the Quebec Bar Association taken a position or made proposals regarding the criteria that should be in place? You said that a maximum 10-year sentence was one of the criteria that could be applied. Do you have any other suggestions?

Mr. Jean-Claude Dubé: We are not proposing an exhaustive list of criteria that the legislator should adopt. We are asking you what criteria you are using and we would like you to list those criteria so that we can comment on them. Of course, your considerations may be different in some cases from those of the Quebec Bar Association or its members when it comes to the commission of an offence. We are calling on you, as legislators, to choose the criteria you consider to be pertinent, so that we can react to them. Parliament will have all the leeway it needs to choose these criteria. It is not limited to the criteria proposed by various groups that attach greater importance to some criteria than to others. Parliament can establish the criteria, then see what the reaction is.

● (0935)

Mr. Joe Comartin: You are saying that the criteria have to be clearly established before the decisions are made.

Mr. Jean-Claude Dubé: Exactly.

I gave you the example of subsection 1(5) of the bill and section 423.1 of the Criminal Code. What is the justification for making the section 423.1 offence a primary designated offence?

[*English*]

Mr. Joe Comartin: Mr. Rose, I haven't practised criminal law for quite some time. I don't know what happens. I want to talk about NCR and people who have been so found. What happens to their fingerprints? Do they remain registered on CPIC? Is there any other recording of the incident? What happens if they are found to be not criminally responsible?

Mr. David Rose: I've never been in a situation where I've had to ask for the destruction of fingerprints. I can't say that this is the law, but my understanding is that if you were fingerprinted upon arrest for an offence in which you are ultimately found NCR, those fingerprints would probably stay on file.

Mr. Joe Comartin: But there is a provision in the law where you could apply to have them destroyed.

Mr. David Rose: I'm not so sure that's the case.

Mr. Joe Comartin: As far as CPIC is concerned, would the incident itself stay on the computer?

Mr. David Rose: Every incident is on CPIC, even if you're acquitted.

Mr. Joe Comartin: Thank you, Mr. Chair.

The Chair: Thank you, Mr. Comartin.

Mr. Macklin for five minutes.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you, Mr. Chair, and thank you, witnesses, for being with us today.

Mr. Rose, you commented on the fact that there is a lower expectation of privacy once one has been convicted. I wonder if the bar shares that view.

In looking at this whole issue, most committee members went out and examined the way the processing is done at the Ottawa office of the DNA data bank, and we saw something that appeared to be very rigorous in the way privacy was protected. First of all, has either of your groups been to that data bank and seen the process that is in place? And if it is as rigorous as was suggested to us, how do you argue that broadening the base is really, in terms of offences, going to be considered in effect an invasion of one's privacy? That's assuming we're operating with those who have been convicted of an offence.

Either group can answer.

Mr. David Rose: I can start.

I must say I don't share all the views of the Quebec Bar Association in the sense that according to my review of the cases, the judges have found there is a lower expectation of privacy, and that allows data banking. The legislation has some fairly clear safeguards with respect to privacy and the protection of privacy once the data bank sample is collected.

I've never been there. I've never seen the process, but I assume it's fairly rigorous.

In terms of extending data-banking to violent offences—I hope this is an answer to your question—I would have thought there'd be a logic and pattern in the designated offences, that they'd be offences of violence. I would think that when one is convicted or found guilty of an offence of violence, then that lower expectation of privacy allows data-banking for that offence. That's on the assumption, again, that there's a logic and pattern, namely that people who commit offences of violence may very well commit further acts of violence in the future.

I hope that answers your question.

● (0940)

[*Translation*]

The Chair: Mr. Dubé, would you like to make a comment?

Mr. Jean-Claude Dubé: I may have misunderstood the question.

Here is the context. When we talk about an invasion of privacy in the case of lesser offences and those guilty of committing these lesser offences, there are other criteria that may affect privacy rights.

When a secondary designated offence is not necessarily a major offence and is committed by a primary offender, should the privacy rights of that individual be violated because he or she has been convicted of a secondary offence? Or should it simply be done systematically? In our view, that is where the distinction has to be made.

I am just giving you examples. I am thinking out loud.

When a repeat offender commits a secondary designated offence, it is easier for the Crown prosecutor to get the fingerprints of that person than those of an 18-year-old on a first offence with an unblemished past and a promising future. In the second case, the person's privacy outweighs the public interest.

[*English*]

The Chair: Mr. Macklin, 30 seconds.

Hon. Paul Harold Macklin: Well, it seems to me that one of your premises for limiting the way one would put various offences on the list is based on whether or not there's a relationship to the invasion of privacy. In other words, you're saying that at a certain gravity it's okay but for other offences it's not okay. Surely the application of the right to privacy is equal and the loss of privacy would be equal in all cases, wouldn't it? How do you make that distinction according to the gravity of the offence and whether or not one should have this invasion of privacy, as you would put it?

[*Translation*]

Mr. Jean-Claude Dubé: There are two basic elements. First, genetic samples. When a genetic sample is taken, it is for a particular purpose. It's in order to conduct an investigation. It is a working tool within a police investigation.

Just because a person has committed a crime once, it does not mean that this person will necessarily commit others. If the government forever stigmatizes an individual facing trial for an act which was committed completely out of character, and if that person's privacy rights are not protected, I believe it opens the door open wide. I don't think we are insisting enough on a person's right to privacy.

In striking a balance between the rights of the individual and the rights of society, the government must take into account what is perhaps the key element here, namely the right to privacy. Just because a person acted erratically at a certain point, and committed a secondary crime, it does not necessarily mean that this person loses his or her right to privacy in the name of the public interest.

The Chair: Thank you, Mr. Dubé.

[*English*]

Now Mr. Thompson, for five minutes.

Mr. Myron Thompson (Wild Rose, CPC): Thank you.

I'm not a lawyer, and a lot of times I don't quite understand what's being said. I don't mind admitting that. But I do know one thing: that in Canadian society, they look upon Parliament and its members as being a body of people whose primary objective is to protect society and keep them safe from harm. That's what I try to do, and I think things through when we're making decisions, concentrating on what I think is a higher priority than offenders' rights—that is, society's right to protection and safety.

One particular category that has troubled me for some time, and continues to trouble me—and I will spend my dying days in Ottawa fighting it—is child pornography. A number of bar associations and other witnesses who have come here have stated that child pornography is a category that should not be, in their view, in the primary offences. Yet when the police associations....

I've been to many, many prisons; I've talked to case workers, psychologists, and inmates—offenders of young children—and there's a very strong indication, although there's never been an official study done that we can find, that child pornography is very much a precursor to the offence against children, the most vulnerable of our society. When statements are made that the offence should have at least a ten-year sentence before it can be considered to be part of the DNA bank, I take offence, because when have you heard of anybody possessing child pornography ever getting a ten-year sentence? Most of the time it's house arrest, community service—maybe a few months, at the most. Yet it's been fairly strongly indicated, in our day and age, that this particular material is very much a precursor to an offense against our children.

Would you care to comment on your views in regard to how, I think, most people in society feel about protecting our children, about how they feel it's necessary to exonerate people, in some cases—I understand DNA is one of the best methods of doing that—and about how important it is to get a message out to all possible child-pornography offenders that this will not be an acceptance in our society, and, therefore, you will be part of the databank.

A comment on either one, or both.

● (0945)

The Chair: Mr. Dubé, or Mr. Rosen.

Mr. David Rose: I'll ask Mr. Dubé to start.

[*Translation*]

Mr. Jean-Claude Dubé: Mr. Thompson, you would have made a good lawyer.

Of course, no one is against virtue. It's clear that as lawmakers and members of Parliament, you have to make choices to protect the public. But in applying those choices, you have to ask yourself whether the public would indeed be better protected if a genetic sample is taken from an individual found guilty of possessing child porn and if that sample winds up in the genetic database. That's the question you must ask yourselves to decide whether that type of crime should be included in the primary or secondary category.

Correct me if I'm wrong, but the point of the genetic database and its development was to take DNA samples from individuals who have committed violent crimes, in other words, who have physically touched another person, who have caused physical, corporal or psychological harm. I'm not saying that the person sitting behind the computer is not responsible and has not committed a serious offence, but that person has not physically hurt anyone. So the point of creating a genetic database was to enter the DNA of persons who had physically hurt someone else.

As for the rest, I would say that we cannot forget that new types of offences have been included in the Criminal Code which were not considered offences previously. There is a social price to pay for an individual who has committed those types of crimes. It's true that everything is based on the Criminal Code and the offences contained therein, but entering a person's DNA into a genetic database will not necessarily protect the public.

● (0950)

[*English*]

The Chair: Merci, Monsieur Dubé.

Mr. Rose, do you have a brief response?

Mr. David Rose: Mr. Thompson, it seems to me that in your very right and proper goal of protecting society and attacking those who possess and traffic in child pornography, Bill C-13 and the current list of designated offences would be very much in keeping with your mission.

I am not suggesting that you should take child pornography, possession of child pornography, or Internet luring of children off the designated list. I think that would be a very difficult thing for individual members of Parliament to take back to their constituents. I tend to agree with you that there is widespread support for that proposition.

Having said that, the logic of including child pornography as a designated offence is that it involves in some way the implication of violence. All I ask of this committee is to keep with that logic and that list.

Mr. Myron Thompson: If I ever need a lawyer, I might call you.

The Chair: Thank you, Mr. Rose, and thank you, Mr. Thompson.

Madame Bourgeois, sept minutes.

[*Translation*]

Ms. Diane Bourgeois (Terrebonne—Blainville, BQ): Thank you, Mr. Chairman.

Good morning, Mr. Dubé and Ms. Dufour. Good morning, Mr. Rose.

My first question is for the representatives of the Barreau du Québec. You made no mention of people suffering from illnesses or from mental conditions. Did you study the matter? Can you tell us more about this issue?

Mr. Jean-Claude Dubé: Yes, we did study this issue, but as far as we are concerned, the general opinion reflects what Mr. Rose said, namely that when a person is not found criminally responsible, there is no need to take a DNA sample. That's because DNA samples are basically taken from individuals who have been found guilty. We agree with that principle. And that is why we did not elaborate on that issue in our presentation, just as we did not in our previous briefs. We feel that DNA samples should be taken from an individual who is found guilty, which automatically excludes persons found not criminally responsible for reasons of insanity.

Ms. Diane Bourgeois: In your document, you state: “The list of primary offences should be limited to serious crimes.” This means that a DNA sample would automatically be taken from a person suffering from a mental illness who committed a crime included on the list of primary offences.

Mr. Jean-Claude Dubé: Rather, it would be the opposite, if the person was not found criminally responsible for the offence. This may seem very legalistic, but that's how the criminal justice system works. If you are not held criminally responsible, I don't see why you should be forced to give a DNA sample.

Ms. Diane Bourgeois: I just wanted to make sure.

Mr. Rose, the Canadian Association of Chiefs of Police says that when a person with a mental illness commits a crime once, that person will probably commit the crime again, which is why it is important to get a DNA sample.

How would you respond to that?

[*English*]

Mr. David Rose: My response is that those people are not found guilty, the same way that people who are arrested and ultimately acquitted are not found guilty. We don't data-bank those people.

My observation is that generally speaking the police want expanded data-banking on every front. I have seen many police associations—and I don't know whether it's this police association or one of the others—that advocate DNA data-banking for those who are simply arrested and not convicted. Many police associations would go that far.

What I say is, why stop there? Why not data-bank for federal employees? What I also say to the police association is if there's widespread support in the police community for data-banking those who are not found guilty, simply for purposes of protecting the public and expanding data-banking, why are there no private groups who of their own accord simply data-bank their members' blood—such as police associations? Let's not forget that the police are the people who are primary people at the crime scene. Why are there no police groups who are providing their data bank so that people who are charged with offences can exclude investigating officers from crime scenes? Those people are also not found guilty.

There would be a logic in having police officers across the country put into a data bank. It just depends on how far you want to go. I say there is a line: you must be found guilty.

● (0955)

The Chair: Merci, Madame Bourgeois.

Ms. Neville, Mr. Comartin, and we will finish with Mr. Warawa before going to our next witnesses.

Ms. Neville.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Thank you, and thank you for your presentations here today.

I apologize, Mr. Rose, for coming in late, but I'm going to ask you for clarification on your presentation.

I'm having a little difficulty following your argument as it relates to break and enter and unlawfully entering a dwelling. I'd like you to expand a bit for me on the distinction there. Are you saying that people who commit property offences are not likely to commit violent offences?

I don't know whether you've had an opportunity to visit the DNA data bank. One of the things we learned when we were there is that in their search for DNA they identified that about 14% of the DNA they had stored under one category actually applied to more violent offences. I'd like your comments on that, please.

Mr. David Rose: The reason I make comments about unlawfully in a dwelling and break and enter is it's one of those offences that can capture violent offences and property offences.

If we look now at section 487.04, which is the current list of designated offences and for which Bill C-13 wants to propose additions, there are no property offences in there. No one has suggested, to my understanding, inclusion of theft, possession, counterfeit offences, fraud, offences like that.

To the extent that break and enter or being unlawfully in a dwelling can be a purely property offence, to an extent you're violating the logic that Parliament has deemed in section 487.04. So that's why I make the comment about break and enter.

The problem this committee has is it's stuck, effectively, with a very generally worded offence, “break and enter” and “unlawfully in a dwelling”. There's very little you can do about that. I don't understand this committee's mandate to amend that portion of the Criminal Code.

In terms of the second portion of your comment, I am aware that certain police officers, certain police groups, have taken the position that those who commit break and enter are somehow more likely to commit an offence involving violence. I have heard that. I have yet to see empirical studies confirming that.

What I have seen so far amounts to what are effectively anecdotal observations that those who commit break and enter come to commit violent offences. It may well be that there is a connection between break and enter, committing property offences, and further offences of violence, but in my view it's not enough simply to say we observe one category coming into the other, therefore this is a precursor, therefore there is a connection.

Ms. Anita Neville: Thank you.

The Chair: Thank you, Ms. Neville.

Mr. Comartin.

Mr. Joe Comartin: I have a comment on Mr. Thompson's comments, because I think he's perhaps not appreciating the argument we've heard from some of the other delegations. I want to say that some of us did understand what they were saying. It's the same point that Mr. Rose has been making this morning.

The sections that are being suggested to be added to either the secondary or primary list involving child pornography charges fall into a similar category as what Mr. Rose is talking about with regard to breaking and enter. It's a question of whether there is violence involved. Is there some logic as to why we would be, for instance, taking the very lowest charge, accessing child pornography over the Internet, and adding that offence in, as opposed to the more serious ones of luring, which I think most people would accept we should be adding in because of its likely potential for violence to be involved?

So it's really back to the point Mr. Dubé from the Barreau made. What the Barreau is calling for is that we have to have some logic for doing this. Mr. Thompson's categorization of the other delegations, of their coming forth and saying there's just no way the child pornography charges should be on these lists, is not an accurate portrayal of the delegations we've heard from.

● (1000)

The Chair: Thank you, Mr. Comartin.

To wrap up, Mr. Warawa.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chairman. I get the last word, is that what you're saying?

The Chair: That's what I'm saying.

A voice: It better be good.

Hon. Paul Harold Macklin: A single word. Choose it wisely.

Mr. Mark Warawa: I want to thank the witnesses for being here today. I appreciate the comments made by my colleague and Mr. Thompson, and would like to carry on making some comments from the perspective of our society at large.

I appreciate that your comments are coming from the perspective of an individual's rights to privacy. I think the delicate balance is to ensure both, if at all possible: the fundamental rights to privacy, and also the fundamental rights of our society to safety and security. How can we assure both? Both are fundamental principles.

I'm coming at it from the perspective that I would have no difficulty providing a DNA sample and leaving it in the bank. I'm not advocating we do that, but I personally would have no difficulty doing that. I don't see it being an intrusion into my personal rights because we've had a tour of the DNA bank and I was very impressed with the privacy it provides. The DNA markers, the genetic markers on that card, are identified through a bar code. So their privacy is protected.

With limited time, I want to question you, Mr. Rose, in regard to the NCR. Your premise was that the NCR are not found guilty, therefore shouldn't be on the list, and yet they were involved with a criminal offence. A criminal offence occurred, yet they are found personally not guilty. Yet they are managed through a review board, usually.

Have you ever been involved with an NCR file and gone through a review board process?

Mr. David Rose: Yes, I've been through the review process. I've appeared before the Ontario review board, for instance, which in Ontario handles people who are found NCR or not fit to stand trial. It's an administrative proceeding that has doctors, prosecutors, defence lawyers as part of it, with a view to protecting the public and treating the person, with a view to either treatment or ultimately discharge.

Mr. Mark Warawa: That's hopefully the ultimate goal, that there's healing there and an absolute discharge is given. But those individuals, in spite of being found not guilty by reason of being NCRMD, are still managed and dealt with appropriately for the protection of themselves and for society.

I see that the taking of a sample and its being held in the data bank could eliminate them as a suspect. It could protect society, as providing information. It could link involvement to other crime scenes.

But in spite of being found not guilty, an NCR still is managed through a review board.

Mr. David Rose: That's a fair point. It's absolutely correct.

And as I say, it's just a question of whether at law you are prepared to data-bank people who are not found guilty. It's just a legal question. And if you're prepared to do it, how far are you prepared to go?

● (1005)

The Chair: Thank you, Mr. Warawa.

And thank you, Mr. Rose, for taking the time as an individual to come to the committee to offer your views.

[*Translation*]

I would like to thank the Barreau du Québec for having come before the committee today. It was a pleasure, as always.

We will suspend our deliberations for a minute to give time for our witnesses to withdraw and for the next witness to take a seat.

Thank you.

[*English*]

We will suspend for one minute.

● (1005)

(Pause)

● (1009)

The Chair: Can we reconvene, please, for our next witness?

We have, appearing from the Forensic Laboratory Service of Wetherby Laboratory in the United Kingdom, Mr. Chris Maguire. Welcome, Mr. Maguire.

Our normal procedure is ten minutes for presentations, but given the nature of your presentation, we'll give you an over-the-pond exemption and allow you 20 to 25 minutes, which I understand is what you require.

Dr. Chris Maguire (Forensic Science Services, Wetherby Laboratory, United Kingdom): Thanks very much, Mr. Chairman. I'd like first of all to thank the committee for inviting me to present some evidence today. It's a great honour for me to be here.

What I've provided so far to your clerk is copies of the relevant legislation from the U.K. and copies of a couple of documents relating to the Forensic Science Service and the national DNA database in the U.K.

It's true to say that on April 5 this year the U.K. national DNA database will be ten years old. It's the first-established national database in the world, and it's again fair to say it is a routine tool for police use; this is just part of police processing now. It's underpinned by a raft of legislation going back to 1984, but depending on the point of view, and I've heard both views expressed, we either have the most liberal or the most draconian legislation in the world. Depending on which end of the polls you are, those are the views taken.

The history and development of our DNA database mirrored the advances in DNA profiling. When I was asked to come to this committee I did some research on the first parliamentary discussions in relation to DNA databases, and the earliest I could find took place in about 1991-92.

At that time profiling was becoming a tool forensic scientists used in the investigation of serious offences. Parliamentary questions were being asked about whether a national database was a reality. At the same time the Forensic Science Service, and at that time the separate Metropolitan Police Laboratory, started looking at the feasibility of DNA databases and comparing data from an individual against the database. In 1992-93 the U.K. introduced the DNA profiling technique that is in current use throughout the world, the so-called short tandem repeat or STR profiling. This made it easy to database samples, because basically the genetic information is now just a string of numbers.

The legislative support for the creation of the database and the use of DNA data stemmed from a 1993 royal commission, the Royal Commission on Criminal Justice. Their report recommended the setting up of a database, and key enabling legislation came the following year.

Up until 1994 police powers for fingerprinting and other samples were controlled by the Police and Criminal Evidence Act of 1984. That gave the police powers to take bodily samples, and a distinction was drawn between intimate and non-intimate samples. Intimate samples included blood, semen, body fluids, urine, saliva, pubic hair, or a swab from any orifice—and that was important. The non-intimate samples included samples of hair other than pubic hair and samples from nail scrapings or swabs from the external skin.

Samples could only be taken from a person in police detention if the person consented and with the authorization of a police office of a rank of at least Superintendent, with reasonable grounds to suspect an individual was involved in a serious arrestable offence and in the belief that the sample would either confirm or disprove involvement in that offence. The consent was required in writing, and if the person refused, inferences could be drawn at court about that refusal.

In order to take the DNA profiling legislation forward, those powers were amended. This is the Criminal Justice and Public Order Act 1994. Section 54 talked about intimate samples. It allowed samples to be taken or re-taken if the earlier sample had proved to be insufficient. It replaced the words “serious arrestable offence” with “recordable offence”. This meant any offence that was then recorded by the Home Office, and that was everything from murder to urinating in the street, so it was from a very wide range of offences that samples could be taken.

● (1010)

Non-intimate samples were allowed, under this legislation, to be taken without consent if a person had been charged with or informed he was reported for a recordable offence, had not had a non-intimate sample taken before or previous samples had failed, or if the person had been convicted of a recordable offence—and there's a phrase that's used throughout the subsequent legislation, “charged, reported for, or convicted of a recordable offence”. That's quite an important phrase in subsequent events.

This legislation also allowed all the information derived from the examination of fingerprints or samples to be checked against other samples or information containing records held by or on behalf of the police. That gave us the power to create a searchable database.

This legislation also talked about destruction of samples and sample records, saying that the samples and records need not be destroyed if the person was convicted, but the person was entitled to have the information removed if they had been acquitted or the case had been discontinued.

I have in my notes some information I think would be useful at this point. There were two cases at this time where this particular legislation was used in court and created a certain outcry in the public.

The first case was Regina versus a juvenile known as Person B. The case was one of rape of an elderly woman. A profile was obtained from semen in the case and loaded to the database. That was in April 1997. In January 1998 a juvenile was arrested for a burglary offence, and because at that time we had backlogs to deal with, the sample did not go into the database until September 1998. That profile matched the DNA profile from the rape, but the juvenile's profile relating to the burglary offence should have been removed earlier, because he had been acquitted of that offence.

In a second case, a man was murdered in January 1998 and a profile from the murder scene added to the database. This matched with a sample from a man named Weir that had been taken August 1997 as a result of his being charged with a drug offence. However, the CPS, the Crown Prosecution Service, had decided to discontinue that case, and that sample should also have been removed. The database custodian was not informed, and match reports were issued, and police subsequently acted.

In both cases, without those DNA links there would have been no other evidence—or insufficient evidence—to take those prosecutions forward. In one case the judge refused to admit the DNA evidence, and the prosecution was abandoned. In the other, the man was ultimately convicted of murder, but the murder conviction was quashed on appeal. These went to the House of Lords, who subsequently ruled it should have been left to the discretion of the trial judge as to whether or not to admit the evidence in those circumstances, but the convictions were not reinstated.

Again the legislation was further strengthened—or whatever your point of view is—through the Criminal Justice and Police Act 2001. There was a change for practical purposes so that the authorization went to police inspector level rather than superintendent, because the police had reorganized and the ususal man or woman in charge on a shift was an inspector. It allowed for a resampling if insufficient samples had been provided. It allowed speculative searches by allowing volunteers to volunteer to have their samples taken. If a man, for instance, had been placed on a convicted offenders register and every time there was a sex offence in the area the police would knock on his door asking for samples, that person could volunteer to have his sample on the database so that he would not be bothered, because this would immediately show his non-involvement in that particular crime.

Again I think what gets missed is the value of DNA profiling for showing that people are not involved in potential offences, for focusing police inquiries in the right direction, and closing down non-productive lines of inquiry.

● (1015)

Again, this particular legislation, 2001, commented on the restriction on use and the destruction of samples, and the phrase that has come out of this legislation was a sample could be retained for the prevention or detection of crime, the investigation of an offence, or the conduct of a prosecution. So under this legislation, samples or the data from them are not required to be destroyed in the event of a non-prosecution or an acquittal. This is the position in the U.K.

That was challenged also in two cases. In Regina versus the Chief Constable of South Yorkshire Police the Crown was acting on behalf of a man known as S and a man named Marper. In these cases their appeals were brought on the grounds that DNA samples and profiles had been retained in circumstances where under the earlier legislation in the one instance the person had been found not guilty of attempted robbery and the other charges had been dropped. Both appellants argued that the chief constable's decision breached articles 8 and 14 of the European Convention on Human Rights. The court of appeal found that although there was some breach of article 8, it was proportionate and justified. The court also found there was no breach of article 14. The case went to the House of Lords and the appeal was denied in the House of Lords.

Had the House of Lords upheld those appeals, records would have had to have been removed from the database. At that time the DNA database custodian records that 128,500 profiles would have to have been removed from our database. Of those, nearly 6,000 have been matched subsequently with crime scene samples in over 6,300 offences. These include—I think this is important—53 murders, 33 attempted murders, 94 rapes, 38 sexual offences, 63 aggravated burglaries, and 56 cases of supplying controlled drugs. So perhaps, and I'm thinking of some of the conversation I heard earlier, that might provide some numbers in these events.

Also, before that there was an amendment act, the Criminal Evidence (Amendment) Act in 1997, which allowed non-intimate samples to be taken from individuals convicted before 1995 and still imprisoned, because they'd been missed. So we now have profiles from the prison population and those detained under the Mental Health Act as not criminally responsible. Those persons also have samples taken and those are registered with our database.

The final legislation that's been enacted was the Criminal Justice Act, 2003. This amended the taking of non-intimate samples without consent, and says a non-intimate sample may be taken without consent of the subject provided the person is in police detention in consequence of his arrest for a recordable offence.

So effectively our national DNA database is now one of an arrestee status, and as I said, this is a complete police process. So if someone is arrested for a recordable offence and taken into a police station as part of the normal police booking-in process, they have fingerprints taken, have their photograph taken, and a DNA sample taken.

This is just a process in the U.K. Once a sample has been taken it goes to one of three or four laboratories that are accredited to process profile samples for the national DNA database, and there is interaction between the national DNA database and our police national computer.

The police create a record when they're processing an individual on the police national computer and a unique transaction number is generated, which is called an arrest summons number. The police national computer and national database are linked, so this action, the creation of that arrest summons number, also creates what's called a stub record or a skeleton record on the national database. So the database is now expecting to see a sample from that individual.

● (1020)

Unlike the Canadian system, the record cards that accompany the DNA samples to the suppliers contain a bar code and the arrest summons number. They also contain the subject's name, date of birth, sex, ethnic appearance code, the force and the division from which the samples were taken, the sample type, and the supply laboratory. So all those demographics go with the sample.

The supplier gets the sample kit from the police and processes one of the two swabs. We use buccal scrapes and hair samples as methods of choice. In my own personal opinion, I think we should have gone for a small blood sample like you use in Canada, because the storage would have been easier. We now have nearly three million swabs in storage frozen, which is a challenge.

The testing laboratory processes those samples and submits the profiles to the DNA database. Each day all the new criminal justice samples, equivalent to your convicted offender samples, are checked against scene-of-crime profiles, and the matched reports issued to the police for scene-to-suspect matches, and also scene-to-scene matches, because we're constantly loading scene-of-crime samples as well. If a match is generated, the match report goes to the police, and we have a secure web-based system that sends that electronically.

I've provided you with some statistics about the current state of the database. We hold currently just short of 3 million records, 2.9 million records, which relate to 2.6 million individuals. There's a certain duplication in there because a number of individuals go through the police station several times and get sampled several times. There is a flag, or a marker, on the police national computer that the police are supposed to check to say this man has been sampled previously and therefore they're not obliged to take sample. But that doesn't always work. So we have a little duplication in there.

These statistics were generated just before I came here. They relate to the week ending January 30. In that week the custodian reported 902 matches between individuals and samples taken from scenes of crime. Those matches went to five murders, 17 serious sexual assaults, and 880 volume crimes—that's property crime, drugs crime, and so on.

In addition, the forensic science suppliers can ask the database to speculatively search other stains that they generate in case work. In that case 74 requests were made in that week, and 46 further matches identified. So in this year, this is April 2004 to January 30, 2005, so far there have been over 34,000 matches of that type. And since this database started there have been over 638,000 matches generated.

We do have a police elimination database. That was mentioned by the last speaker. It was difficult to establish, but it came about as part of some government funding. Most police forces now require new policemen to give their samples. The very point that was made earlier was covered. How do we know that a crime scene hasn't been inadvertently left by a police officer who attended that crime? We now have 77,500 records from police officers in the U.K. That also includes forensic scientists who might be attending scenes of crime. The way that database is used is quite specific. A senior officer must request that profiles from certain officers who attended that scene are checked against the crime stain from that particular scene.

We've had over 770 individuals searched for 208 scenes. There have been 43 cases where individuals, police officers, matched samples left at the scene of crime. In that instance there were 41 different scenes. That is assumed to be an inadvertent contamination by the scene-of-crimes officer or the police officer attending.

● (1025)

The government supports this national DNA database with a significant amount of funding. In 2000, the Home Office allocated a sum of money to support the continued collection of DNA samples. They did it by match funding. The police had paid for a certain number of samples to be processed and loaded to the DNA database in 2000, and in 2001 the government said it would match the funding to an equivalent amount of sampling, and we did see an enormous jump in the number of samples taken.

The government also provided funding for the police to increase its staff of senior crime specialists, the people who collect the samples, and that had a big effect. A year later we saw a big jump in the number of crime stains collected—that year's gap was to allow the training and familiarization of those new police officers and civilian staff.

The government continues to support the DNA database. It spent 182 million pounds over three years on this, and it's spending 50 million pounds this year in supporting these efforts. I understand that the government will continue to support the police in this way. The intention is to grow the national DNA database to match the size of the active criminal population.

Perhaps I could turn to the elements of this, which I think are as important; it's not just that you have a database, but that in fact it's used, and it's used very efficiently. Government committees such as this one will want to know what the value is of spending all of this public money on a DNA profiling database, what we actually get out of it.

If you look at standard volume crime supply chain—what happens from the time a crime is committed to the time someone goes to court for it—it might look something like what I've described here. The crime is reported to the police and a senior crimes officer attends. Sometime over the next five to ten days the police processes go through and the police send the sample to the laboratory. Sometime later, the laboratory processes that sample and uploads it to the database, and a match is generated.

The police get the match report, and sometime after that the match report is actioned and somebody may be arrested. A court process follows, and there may or may not subsequently be a judicial outcome. In the U.K., this has in the past taken anywhere from three to nine months; it's quite an extended process.

What we try to do in the U.K., in the Forensic Science Service, is to re-engineer the whole of that supply chain in conjunction with the police. The police are very focused on the elements they control, and we are very focused on the elements we control. What happens then is certain police forces in the U.K.—the West Yorkshire Police in particular, which is a big metropolitan force of 5,000 police officers and 3,000 support staff, and it happens to work near the laboratory in Wetherby, where I'm based—partner with us in a joint program.

This particular joint program with the West Yorkshire Police was targeted at domestic burglary. In the city areas of the West Yorkshire Police, the burglary of some estates is the highest in the U.K. There are about 120 households out of 1,000 burgled each year. You have a one-in-ten chance of getting your house burgled if you live in certain areas in Leeds. Property actually sort of rotates around these estates—a television gets stolen here, and then it gets stolen again, and ultimately you'll get it back when you burgle the house next door.

This was called Operation Converter, and it is currently a force-wide initiative. The operation targets repeat offenders. In this instance, the police have agreed that they will go to each and every scene of a burglary within 24 hours to collect samples and that they will submit those samples to the Forensic Science Service within 24 hours. So we've cut a huge chunk off the front end.

We process those samples through the DNA profiling process and the custodian process and get them back to the police within seven days. Actually, we're averaging about three to do that. The police then commit to act on that intelligence and action the report within three days. They make a decision to arrest somebody or to do some further research, and so on. So there's very quick action at the end.

● (1030)

Now the supply chain looks like up to three days at the front, three days in the middle, and a couple of days at the end. The results are phenomenal, I think. If we look at some data—it's on your sheets—we see that from between October 2003 and March 2004 we had over a thousand samples submitted to laboratory. The time from the crime report to submission averaged 2.8 days. The DNA analysis averaged two days and the database matches less than half a day.

From 1,089 samples, we obtained 597 different profiles, and these produced 353 match reports—353 cases matched individuals—an average match rate of over 59%. In one of the divisions in the city that match rate was 72.7%. So three out of every four stains submitted to the lab, collected from scenes of crimes, produced a match against an individual.

Also, in this process we've put in place a system whereby the judicial end of the process records what happens, and everybody knows what happens in the disposal. This also generates a whole raft of management information, and the police know everything about this whole process now.

Now, there is a piece of research done by the Home Office on the economic cost of crime. It can be collected from the Home Office website. Using this data, it suggests that an average house burglary costs 2,300 pounds to the householder for replacement of doors, increased security, increases in insurance, and replacement of lost goods. So the way the police have actually measured the value of this is to look at specific offending profiles of individuals, repeat offenders, to see what their offending profiles are, how many times they commit offences, and to look at the effect on society of getting those people off the streets early.

I've given an example on slide 14. It talks about a particular individual. A burglary took place on November 27, 2003. The sample went to the laboratory, and on December 7 a match report was issued to the police. That was just ten days after the event. On December 12 the suspect was arrested and remanded in custody. On February 4 the individual offered a guilty plea to the offence and asked for a further 19 burglaries to be taken into account, and he was subjected to a sentence of five years' imprisonment.

That particular offender was 25 years old. He was known to have offended in 25 domestic burglaries, 20 commercial burglaries, and other vehicle or truck crime. The initiative took 70 days from the crime to arrest supply chain. On the basis of his offending at around five burglaries a week—because they knew he was doing more than they actually had convictions for—that saved about 50 incidents from having taken place. That's the way the police looked at it. In the Home Office data, the saving for the Leeds community for the early arrest of this one offender was over 115,000 pounds.

Similar projects in another force, in the West Midlands in Birmingham, recorded it in terms of reduced burglary rate, and they recorded a 6% reduction in burglary because of this approach.

I said at the beginning that the DNA profiling process in the U.K. is controlled by strict legislation, but it's actually a police process. The Forensic Science Service developed some specific.... Sorry, I'm getting ahead of myself here.

We've also been involved with some cold case reviews of sex offences with one force where they've looked at undetected sex offences going back to 1974, reanalyzing material in those cases, and subjecting them to modern DNA profiling techniques. This is called Operation Phoenix. The annual forensic costs, dare I say, were 240,000 pounds; the police costs were 200,000 pounds.

● (1035)

Up to April of last year, there were 91 cases completed, 34 different names generated from database hits in serious sexual offences, three persons convicted, seven persons charged, eight serial offenders identified, and other cases in development. They have potentially 5,000 undetected cases going back that long.

The DNA database board allows the use of the data contained within the DNA database for police intelligence. This is purely an intelligence tool. The names it generates are considered intelligence. The police have to go and do something about those names and get evidence to take it further into court.

DNA profiles contain genetic characteristics that are inherited—half from your mother, half from your father—and you pass on half of your profile to your children. Identical twins have the same profile, and brothers and sisters share a considerable proportion of their DNA profiles in general.

The Forensic Science Service devises specific search routines that allow us to search the national database for genetically close relatives. Again, this is an advanced search algorithm. This is allowed through the provisions of the DNA database board. This particular technique has had significant effects in detecting criminality.

The searches are used in the following way. If a profile is generated from a crime scene and loaded into the database and it doesn't match anything, if the case is sufficiently serious, the police may ask for this particular search routine to be invoked. We can then search the database for potential parents or children, a half profile match, or for profiles that are very close. In the U.K. system, there are 20 characteristics we generate data for, and maybe we look for 15, 16, 17 characteristics in common. Effectively, we're looking for parents, children, or potential siblings of this crime stain. The searches can generate a large number of potential matches, and they need to be refined in consultations between the scientists and the police. We use demographic data based on information the police have—age, sex, ethnic appearance, geographic location, and so on.

We have now had four cases with these searches going through the courts. One involved linked sexual assaults of girls in Hampshire. The offender was sentenced to six years. He was identified through a sample provided by a sibling in a case of criminal damage.

In another case, the rape and murder of an 87-year-old woman, the offender was sentenced to life imprisonment. The offender was identified through a match with a sample provided by a sibling in a case of burglary.

In Operation Glitter, a lorry driver was killed when a brick was thrown from a motorway bridge and it went through the windscreen of his lorry and hit him in the chest, and he died of a heart attack. We got a profile from the brick just by somebody handling it. We matched that with a sample provided by a sibling in a case of a vehicle crime. The offender was sentenced to six years for manslaughter.

The fourth of the cases involved the rape and murder of three teenagers in 1973, which remained unsolved for 30 years. There was a re-examination of the profile, and the offender, who was by then deceased, was identified through a sample provided by his son in a case of some minor crime.

We also have specific tools we can use where we have mixed DNA profiles. It's a technical issue, but they can be very difficult to search. We can get intelligence from so-called uninterpretable mixtures, and we provide intelligence to the police with names they can check.

To conclude, I'll go back to my first point. The view of the U.K. national database depends on your particular point of view, whether it's the most draconian legislation in the world or the most liberal legislation in the world.

● (1040)

In my view, the DNA database will only be used to provide more intelligence through different techniques. I think it will start to be linked with other databases—and I've produced a picture there. There's a DNA database, a tool mark database, a glass evidence database, firearms databases, and fingerprints databases. I think ultimately the way forensic science and policing will go in the U.K. is that all of the information contained in those databases will be used in the investigation of crime.

Thank you.

● (1045)

The Chair: Thank you, Mr. Maguire. That's very beneficial.

We'll start now with the questioning on behalf of the Conservatives, with Mr. Warawa, for five minutes.

Mr. Mark Warawa: Thank you, Mr. Chairman.

Thank you, Mr. Maguire, for being here today.

You said you do not use blood samples; you use buccal and hair samples.

Dr. Chris Maguire: Yes, that's correct.

Mr. Mark Warawa: You said that created a bit of a storage problem, with three million samples.

Is the plan to go in the direction of blood sampling? My understanding is that in blood samples there's a lesser chance of error. So is the plan for the U.K. to go to blood?

Dr. Chris Maguire: Not to my knowledge.

The legislation supports taking of non-intimate samples. The buccal scrape is defined as non-intimate. A blood sample would be considered an intimate sample and therefore would have to be taken by a medically qualified individual or a registered nurse. So no, I don't think there is any move.

The legislation now covers the ability for these samples to be taken, and, in the event of that sample failing, for the police to go back to the individual and take a further sample. The issue of storage is literally that. We have all these swabs. We have them frozen. We have a warehouse full of freezers and three million swabs in the Forensic Science Service, which we will have to keep in perpetuity or until somebody decides through legislation that we no longer need to keep them.

Mr. Mark Warawa: Who decides which type of sample is going to be taken? In Canada, I'm sure you've seen the kits. We have three kits. Who decides what type of sample is going to be taken, and which is the better type of sample to be taken, buccal or hair?

Dr. Chris Maguire: Routinely, the police take buccal scrapes where possible. I don't know when they would take hair, but they occasionally do take hair. It's in a much lower case.

Personally, I think the best results would come from blood, but we get good results from buccal scrapes. We also get good results from fresh hair roots. They have to be pulled samples, rather than just cut samples. But they're much messier to operate through the laboratory.

We have automated lines for DNA profiling now, which are geared up to take those samples. So samples are processed against their bar code and just go straight through.

Mr. Mark Warawa: In the storage and in the taking and processing of the samples, is there a similar standard throughout the world, so that the information could be shared if necessary?

Dr. Chris Maguire: Yes.

In most of the western world, in most of the developed world, DNA databases are being developed and used. Those laboratories adhere to international standards, whether it's ISO 9000 or 17025, or whichever international standard it is. The laboratories are obliged to be accredited by an appropriate accrediting authority. In the U.K. we have the United Kingdom Accreditation Service, and the British Standards Institution. In America there's an association of crime lab directors, and so on. Laboratories are obliged to be accredited to take those samples in most jurisdictions—or at least all the jurisdictions I know about. So there are set standards, and there are set standards for laboratories, for the personnel, for the training, for the production of the samples, and for the management of the data thereafter.

Mr. Mark Warawa: I have one last quick question. You had pounds in your report, and in some cases you had dollars attached to that. Is that U.S. dollars?

Dr. Chris Maguire: That's U.S. dollars.

Mr. Mark Warawa: Thank you.

The Chair: Thank you, Mr. Warawa.

[*Translation*]

Mr. Marceau, you have five minutes.

Mr. Richard Marceau: Thank you very much, Mr. Chairman.

Thank you, Dr. Maguire, for your testimony. Your database seems to cover England and Wales. Am I to understand that Scotland has its own database?

● (1050)

[*English*]

Dr. Chris Maguire: Yes, that's correct. In terms of legislation, Scotland is a completely separate country. Scotland has its own legal system and its own prosecution and defence counsels and separate legislation.

The database in Scotland is held by a Scottish database board, which is based in Dundee. The Scottish police can have samples searched against its own database, and Dundee also provides all of its records to the England and Wales database, the Home Office database. Similarly, the police service for Northern Island maintains a database on behalf of Northern Ireland, and it will search local individuals against that database. But again, it provides those profiles to the England and Wales database. So the databases are linked, but Scotland has its own separate database.

[*Translation*]

Mr. Richard Marceau: Is data exchanged between the English and Scottish databases on a regular basis?

[*English*]

Dr. Chris Maguire: Yes.

[*Translation*]

Mr. Richard Marceau: Does the Scottish database operate the same way as the English one?

[*English*]

Dr. Chris Maguire: I believe so, yes. The senior police officer who chairs that Scottish database board also sits on the Home Office database board.

[*Translation*]

Mr. Richard Marceau: The figures you showed us would be even more impressive if they included the data contained in Northern Ireland's and Scotland's databases.

[*English*]

Dr. Chris Maguire: Those numbers already contain samples supplied by Scotland.

[*Translation*]

Mr. Richard Marceau: When we visited the database, we were told clearly that the files were separated: genetic profiles were kept in once place, and personal information, such as people's names and so on were encoded and kept in another building.

Am I to understand that the data is not kept separate in your database and that information related to a person's genetic profile, name, date of birth and ethnic appearance are all contained in the same file?

[*English*]

Dr. Chris Maguire: Yes. The DNA database sample is submitted by the supplier to the database with all the ethnic appearance, and that's a judgment made by the police officer. In some instances it may not be a true genetic origin, but it's an ethnic appearance, along with name, date of birth, and so on. That data goes with that sample to the database. That data is maintained by the database.The sample is actually processed against a combination of the bar code and the arrest summons number. We have different bar codes for different types of samples. The bar code controls what can be done with that data. When the matched report goes back to the police, it goes back with the bar code for the individual and the bar code with the crime stain, together with all the demographic data for the individual and the information about the crime, such as where it took place, which police force was involved, and so on. We don't have the same separation as you do between your database processing and your demographic data holding.

[*Translation*]

Mr. Richard Marceau: I assume that the data is extremely well protected from misuse.

To your knowledge, has any of this data ever been misused, or have there ever been leaks from within your organization?

● (1055)

[*English*]

Dr. Chris Maguire: No, not to my knowledge. The database board consists of a custodian, police representatives for the Association of Chief Police Officers and some of the supplying police forces as well as Scotland, and Home Office representatives. It has lay members from the Human Genetics Commission. They're responsible for the security of all of that data. A supplier, a police officer, or whoever can't just ring in and say, "Tell me about this particular sample". The only time the information goes out is when it goes out on official match reports. That data is very carefully controlled and protected. If it were misused, an individual could be subject to a criminal offence. I'm sure they would be.

The Chair: Thank you, Mr. Maguire.

Merci, Monsieur Marceau.

Mr. Comartin for five minutes.

Mr. Joe Comartin: Thank you for coming, Dr. Maguire. It's been very useful and very interesting.

Let me start with this. I was going to leave it until further on. Say I was to seek witnesses from the U.K. who saw this program as draconian. Do you have any suggestions? Who's your biggest critic? I guess that's what I'm asking.

Dr. Chris Maguire: There are a couple of barristers I could give you the names of.

Some hon. members: Oh, oh!

Dr. Chris Maguire: It's interesting, because as this legislation went on, I expected there to be an outcry from groups such as Liberty and so on about the nature of this legislation. We have had some instances of individual barristers crying foul on occasion, but it hasn't made great waves in the U.K, which in some instances is quite surprising.

There's another matter. Two weeks ago it came out that there were cases in the U.K. where individuals who'd been arrested and imprisoned on the basis of alleged terrorist offences had been kept in prison for some time without trial. Liberty was actually demanding that the police be allowed to utilize phone taps and use that phone tap evidence in court so they could show these men were actually innocent. Those things could go to the trial and men could show they were innocent.

So no, we haven't had—maybe surprisingly—the outcry we might have expected for some of these things.

The Chair: Mr. Maguire, just for the record, you referred to "Liberty". Is that a civil libertarian organization?

Dr. Chris Maguire: It's a civil libertarian organization.

The Chair: Thank you.

Mr. Joe Comartin: You made a statement just briefly that there is a goal of trying to get samples for that proportion of the population that is criminally active. First of all, the population of Britain, the last time I looked, was just in excess of 60 million.

Dr. Chris Maguire: That's right.

Mr. Joe Comartin: What percentage of that, how many samples, would you have to have?

Dr. Chris Maguire: For the DNA database the original goal was approximately 2.3 million, but actually what they're trying to do is to match the number of fingerprint records we hold, something of that sort of order, which is around four and a half million. We have actually seen a falling off in the rate samples are collected, but that's what the goal is, I believe.

Mr. Joe Comartin: That's the test you use, the number of fingerprints you have now.

Dr. Chris Maguire: In the past, fingerprint samples were always taken as people went through the police process. Again, it's a matter of this becoming a police process. Samples are taken as people go through police custody.

Mr. Joe Comartin: You used Yorkshire as an example. Would the system, your infrastructure for collecting the samples, be able to do that across the whole of England? I'm asking about capacity.

● (1100)

Dr. Chris Maguire: As to capacity, we're processing about 380,000 offender samples, suspect samples, a year. The Forensic Science Service has a capacity of around half a million profiles a year, and the other suppliers would add another hundred thousand to that. The turnaround time for our processing for convicted offender samples at that volume is approximately three days.

Mr. Joe Comartin: Would you be capable of doing that particular experiment you did in Yorkshire, though, right across both England and Scotland?

Dr. Chris Maguire: The issue would not be the processing of the database; the issue would actually be providing the people to help in the management of that process.

It is going to become, in my view, the standard across the service, because the police are subject to review as well. When one police force is doing particularly well, Her Majesty's Inspectorate of Constabulary wants to know what they're doing well and what other people aren't doing quite so well.

These things are becoming more used, and yes, at the moment we are supporting them as they come on.

Mr. Joe Comartin: At the crime scene, other than by lucking out and finding a blood sample, how else do you obtain DNA samples?

Dr. Chris Maguire: We collect samples from a lot of cigarette ends. In vehicle crime in particular we're getting things like drink cans left in vehicles, a lot of cigarette ends, lollipop sticks, and straws. Juveniles take the car and they're drinking from a carton with a straw, and you can get profiles from those. Those are routinely going through the laboratory at the moment.

Mr. Joe Comartin: Let's go back to the Yorkshire experience. Those samples were taken from private residences or commercial properties?

Dr. Chris Maguire: Yes.

Mr. Joe Comartin: In what percentage were the front-line officers able to find samples in that experiment?

Dr. Chris Maguire: I can't tell you off the top of my head. I will look that data up and let you have it.

Mr. Joe Comartin: If you could pass it back to us.

Dr. Chris Maguire: Yes, of course.

Mr. Joe Comartin: Thank you, Mr. Chair.

The Chair: Thank you, Mr. Comartin.

Ms. Neville, for five minutes.

Ms. Anita Neville: Thank you, Mr. Chair.

Thank you very much, Mr. Maguire. It's a pleasure to have you here. I have a number of disconnected questions.

I noted that on your report card you identify ethnic appearance.

Dr. Chris Maguire: Yes.

Ms. Anita Neville: I would appreciate if you would comment on why you do that and whether it has created any commentary in England.

My main question focuses on the familial search algorithms. You talk about identifying family members from the DNA of other members. We've heard from our Privacy Commissioner about the great concern on that. Has your data bank been used for any other purposes, as it relates to familial connections? Have you extended it in any other way? Has there been any opportunity for research to be done? What controls are in place on this? A predictable question, I'm sure.

The other question I want to ask you is this. We understand from when we were at our database that you're funded based on the number of samples you process. Does that have any impact on the number of samples collected for processing?

Dr. Chris Maguire: Let's start with the funding question. The Forensic Science Service is funded by the work it does for the police. We charge the police. So if the police submit a sample to us, they get charged for it—£38.50, or something of that sort, for processing a sample. The U.K. forensic market is the most competitive forensic market in the world. There are three major players—the Forensic Science Service, a company called Orchid Cellmark, and a company called LGC. We all make a charge, so police forces can choose to spend their money with whichever one of the suppliers they choose to spend their money.

We process the samples that are sent to us, and the continuance of our business depends on us processing samples or doing other forensic casework, meeting the requirements of those cases of the police, and the police continuing to support us. So yes, it's a commercial operation in that respect.

The government continues to support the police in providing moneys for staff, equipment, vans, and so on to allow the expansion of the number of scene-of-crime officers. They fund a proportion, up to 50% of the samples being submitted and processed. An element of the funding—about 3 million pounds—also went into police training, a very large two-year training program to make sure our police officers have at least a basic understanding of what they're doing and what DNA means.

Have I answered the question there?

● (1105)

Ms. Anita Neville: Yes, thank you.

Dr. Chris Maguire: What was your first point again?

Ms. Anita Neville: The use of ethnic on the codes.

Dr. Chris Maguire: The ethnic codes have been a police process for as long as I've been associated with policemen. In my experience, 25 years, police have always recorded ethnic appearance. I don't know why, and I doubt that it makes any difference.

We hold frequency databases—this has nothing to do with the DNA database and matching data—to be able to say that the likelihood of obtaining this particular profile is this, the match probability is that, and we have a number of databases generated from samples from ethnic groups. A particular profile will occur with a given frequency in white Caucasian, or Afro-Caribbean, or an Asian database. That's the same with DNA profiling all over the world: a particular genetic combination is more frequent in one genetic group than another genetic group. I don't know why the police continue to record that, but we do use ethnic inference, we do use the ethnicity of samples to generate those frequency databases. That's entirely separate from the national database.

So to go on to your next question, although the genetic information on the best part of three million samples is phenomenal, no research is allowed on any of that. That information can't be used for anything else. It just sits there. It's a block of data that can be searched in police inquiries. It can't be used for paternity testing. That was one of the big questions that came out in setting up the police database: one of the big concerns of the police officers was will their genetic data be allowed to go to a child protection agency. Of course, that was not the case. That data goes nowhere else. The policemen wanted to know if we could show that they were fathers of children for this other.... No. That data is completely protected. It can't be used for anything other than the purpose for which it was collected, which is the investigation of crime, the detection of crime, prosecution of offences, going back to that phrase.

Ms. Anita Neville: Thank you.

The Chair: Thank you, Mr. Maguire and Ms. Neville.

Now, Mr. Thompson for five minutes.

Mr. Myron Thompson: I'm supposed to be after him.

The Chair: I'm sorry, Mr. Moore first and then Mr. Thompson.

Mr. Rob Moore: Thank you.

When we visited our DNA data bank it was explained to us that the strands they look at are something like a book in a library. You have all this information, but for the purpose of matching, you're only looking at one book.

I'm wondering if you do make connections how many books, so to speak, you use. For example, if you had a match at one crime scene, you have the DNA sample there, and another investigation you think might be linked, and you know what this person looks like—you know they're male, you know they have blue eyes, you know they have brown hair—are you able to use your data bank at all in that way, or are you contemplating it beyond matching two DNA profiles?

Dr. Chris Maguire: No is the simple answer to that one.

If you get a profile from a crime scene stain, to use your analogy of a book, we use one book and our book is smaller than your book. We use a system that has ten informative tests and you're using, I think, thirteen, so we have a slightly smaller book than your book at the moment. If in a very serious crime case we have a DNA profile and we go to the database and there's no match, still we could use the information contained within that profile and infer certain things, use the information in certain ways.

One of the things you can infer is ethnicity. That's a simple statistical thing. You can say this particular profile is significantly more common in white Caucasians than Afro-Caribbeans or the Asian database, and therefore it's statistically more likely the individual is white. There's an inference you can draw. It's not hard and fast.

We have other tests you can do on that sample. One of these is called the “red hair gene”. It just gives an indication of whether this particular gene is present or not. I don't know that it's used very often. I don't know how much weight is drawn. I really don't know much about that technique. That data is generated in the case-working laboratory and has nothing to do with the data that's submitted to the DNA database. We wouldn't troll through all of that data on the database and say that we know 30% of them have red hair and this gene is present. None of that information is used in that way. It's a simple process of matching the database against the crime stain.

● (1110)

Mr. Rob Moore: We're having this debate over not criminally responsible. You're using DNA taken from people—your equivalent of our not criminally responsible. Has there been a situation where someone was found not criminally responsible for one crime, their DNA was linked to another crime, and because of a change in their status or condition they were found to be criminally responsible in that second case?

Dr. Chris Maguire: I don't know. I can go back to the custodian and ask, on your behalf, whether they can provide me with any information in that respect. If they can, I'll make it available.

Mr. Rob Moore: We're also having this debate over what primary offences and secondary offences.... Generally, primary would be seen as more serious, and secondary as less serious. What about linking secondary, or less serious offences, to primary offences? Have samples been taken, for example, in a break and enter that have enabled you to solve a murder or a more serious offence?

Dr. Chris Maguire: It happens every day of the week—the examples I gave you. We take samples from a very wide range of cases. We take samples from everything from burglary cases through to murder cases. Every day of the week we get cases where samples taken from individuals for very minor offences are linked to very serious offences.

We had a case, in my own personal experience, of a man who was arrested for urinating in the street—which is why I used the example earlier—where a sample taken from him matched the rape of a 13-year-old girl. In one instance, a man was arrested for the theft of a bottle of whiskey from a liquor shop, and his sample matched an outstanding murder case. We've had people arrested for drug offences, and their profiles were subsequently matched to murder cases and sex offence cases. It happens every day of the week.

The Chair: Thank you, Mr. Moore.

Madame Bourgeois.

[*Translation*]

Ms. Diane Bourgeois: Thank you, Mr. Chairman.

Good morning, Mr. Maguire.

Perhaps you already mentioned this, but there is not enough information with regard to how the genetic database is to be used. I have the impression that you do not treat any differently persons held in psychiatric institutions—since you passed a law on that matter—and people who were ultimately not prosecuted or who were acquitted. I get the impression that your genetic database contains the DNA of anyone who has been arrested.

Is that right?

[*English*]

Dr. Chris Maguire: The DNA database process, as of April 2004, applies to everybody who is arrested and detained in a police station. So it wouldn't apply to somebody who was arrested for speeding and dealt with at the side of the road, but it would apply to somebody who was arrested for any relatively minor offence and taken through the doors of the police station.

● (1115)

[*Translation*]

Ms. Diane Bourgeois: Wasn't there an outcry? Didn't any association representing the rights of persons with mental illnesses or defending people who have been acquitted from crimes accuse you of infringing upon the privacy rights of those people? Weren't there any protests?

[*English*]

Dr. Chris Maguire: In my experience, there has been no great outcry of that nature. We have specific cases that went through the whole legal process to the House of Lords...and it's in the event of individual cases when you get to process, but I haven't heard a great standing up from people saying no.

There's more public outcry against the potential use of an identity card than against any DNA profiling.

[*Translation*]

Ms. Diane Bourgeois: Thank you very much.

The Chair: Thank you, Ms. Bourgeois.

[*English*]

Mr. Macklin is next, for five minutes.

Hon. Paul Harold Macklin: I'll try to be brief.

We are sitting here today discussing what offences ought to be included, and what the criteria should be for including offences. In your country, you seem to have taken a quantum leap in going from a serious arrestable offence—where it seems as if you had some of the criteria we're discussing today and have been discussing over the past few weeks—to a recordable offence.

In terms of the net effect, can you give us a general understanding? Did you just collect a lot more data? How effective was the data? For example, while you were dealing with serious arrestable offences, did you find you were getting a fairly significant percentage of data that was useful? Now, with recordable offences, although you may have more people in your data bank, is it really as effective on a percentage basis, or has it "diluted" the sample so you're now getting a very small percentage of offences that actually yield the connection, the hit, or the linkage?

Dr. Chris Maguire: For serious arrestable offences, when the database first started the police limited the samples that were taken to suspicious death, serious sexual offences, and domestic burglary. Domestic burglary has always been there, and I guess that's because it's the offence that affects most people most often.

I think it was really a limit on capacity. We had capacity issues when we first started. I think when Mr. Howard announced this as Home Secretary on April 10, 1995, it was probably about six months premature. We had a few capacity issues over the first couple of years thereafter, because we were inundated with samples taken by the police.

The effectiveness of the database depends on the efficiency of the police in finding the evidence at the scene, collecting the evidence at the scene, and matching that with samples taken from suspects. In the first few years, our match rate was around 35%, and then it crept up to 40%. So in dealing with serious arrestable offences, about four in ten samples submitted hit against our database.

Now we've moved to this wider category where we're using all offences. The police are funded, and they collect samples from a whole range of offences. We have a situation where a number of crime stains on the database runs to about 10% of the value of the number of people. That's the way it seems to have been for quite a while now. We're now getting match rates routinely over 50%, and in the instances of specific inquiries of police operations, they're 60% to 72%.

In my experience, the wider you cast the net, the more efficient your match rates become.

● (1120)

Hon. Paul Harold Macklin: So in fact you're getting more links as a percentage basis of the total number of samples you have in your bank. Am I reading that correctly?

Dr. Chris Maguire: I think we're getting more links. A higher percentage of samples submitted are matching against people. I guess as the database gets bigger you're going to get that anyway, but we seem to be getting a higher proportion of matches now than we did five or six years ago.

Hon. Paul Harold Macklin: To what do you attribute that?

Dr. Chris Maguire: I think it's a combination of things. The police are actually better equipped to get out to scenes of crimes and collect the evidence, and the police are more aware of what potential DNA evidence is. The police are more aware of how to manage that evidence, so they don't contaminate it or destroy it. So there's better control of the samples.

I think it also has to do with the rapidity with which the police get the samples to us, because there is less chance for degradation to occur, and it has to do with the rapidity with which we get the samples through the system.

Hon. Paul Harold Macklin: In your observation of what's going on within the justice system in the United Kingdom, do you see this as having any deterrent effect?

Dr. Chris Maguire: I suppose if you go back to the crime statistics—probably four times a year you get supplements—and look at the rate of burglary and vehicle crime in the U.K., it is falling at an enormous rate. It's gone down something like 25% over the last four or five years. You can get those crime figures and have a look at them. Whether that's entirely due to DNA profiling or the DNA database, I can't say.

The one experience I can tell you about is the one I mentioned earlier where the West Midlands Police have attributed a 6% fall in the domestic burglary rate in their area specifically to the use of DNA profiling and a very proactive use of the DNA database.

Hon. Paul Harold Macklin: Very good. Thank you.

The Chair: Thank you, Mr. Macklin.

Mr. Comartin, I would have had you thrown out at the plate because I missed your signal the last time. You're up.

Mr. Joe Comartin: To follow up on Mr. Macklin's point, I think he's missing the significance of the statistics. Obviously, if you took a sample from everybody in the U.K., unless you had some crimes being committed by people from outside the U.K., you would get close to 100% for successful matches.

Dr. Chris Maguire: Potentially, yes.

Mr. Joe Comartin: As the size of the database grows and the bank grows, those percentages for matches should continue to go up.

Dr. Chris Maguire: Yes, you might expect that.

There are advocates of whole population profiling.

Mr. Joe Comartin: I was just going to ask you about that.

Dr. Chris Maguire: Sir Alec Jeffreys is one. I was just at a meeting with him. He's the guy who invented DNA profiling back in the mid-eighties. He actually stood up at public meetings and said that we should get away from statistics and statistical analysis and profile the whole population. That's a point of view.

Mr. Joe Comartin: Would you have the capacity to do that in your existing system?

Dr. Chris Maguire: For 60 million, it would take a few years. There's a way of doing it. You could start taking cord blood from babies at birth and do that.

Then again, we have visitors going through. Now I go to the U.S. and I have to stick my finger on a pad. They record my fingerprints and I get my photograph taken. You might then start thinking that you need a sampling process at every airport. It would have to work very fast to have the profile on record before the person left the country.

I think that's technically feasible, but unlikely to happen. I don't think it will happen, but it's technically feasible.

Mr. Joe Comartin: Thank you.

The Chair: Thank you, Mr. Comartin.

Mr. Thompson.

Mr. Myron Thompson: Thank you so much for your presentation. I really am interested in what you had to say and what's happening in your land.

I understand that all samples are taken at the time of arrest and the tests begin immediately on the samples that were taken at the time of arrest. Of course, maybe I've lived around Ottawa too long, but I find it amazing that you have people's support for this initiative.

● (1125)

Dr. Chris Maguire: People's support?

Mr. Myron Thompson: Yes. I heard this question. Is there no outcry for the rights of the people who are being arrested? Apparently it isn't that serious. Is that correct?

Dr. Chris Maguire: Well, yes, in my personal experience, we see the occasional case, but it's usually through the courts. There's an objection to a particular way in which the sample has been handled.

If I go back to the case that I mentioned where the man was arrested for urinating in the street, this was prior to the event of a sample being retained. It was processed and the guy was convicted of the rape of a 13-year-old girl. The defence was one of an abuse of process. The sample was one of the ones that should never have been on the database at the time of his arrest, at the time of the subsequent rape offence, because there was a discontinuance of the offence of urinating in the street.

The way it happened, I think, was that the database wasn't informed by the police that the sample should be removed. It was a failure of communication. The judge took the view that in that case there was no malice involved and it was a simple oversight. It was tough luck for the guy convicted that the event should stand. The judge raised the issue that the girl who was subjected to the rape also had rights.

This is my experience. We don't have an outcry.

Mr. Myron Thompson: Is it safe for me to assume that in your country the rights and the safety of the citizens of your country are far more important than the rights of the perpetrators and the criminals?

Dr. Chris Maguire: I don't know if that's enshrined in legislation anywhere, but there seems to be a view—

Mr. Myron Thompson: That's the mood.

Dr. Chris Maguire: That seems to be the mood of it, in my experience.

I should say there is this issue. If we were to get identity cards or something with an identity card on it, there would be far more of an outcry. We have driving licences with pictures, which are identify cards, but in name. There's no issue with that. If you had something with “identity card” on it, there would be a complete outcry, led by some of the newspapers. But in terms of DNA profiling, there's no outcry.

Mr. Myron Thompson: And there seems to be strong court participation in what's happening?

Dr. Chris Maguire: There is strong court participation. We have been asked to provide and have provided courses to all levels of the judiciary, so that when DNA profiling goes into court, there is an understanding of what it is about.

We have barristers who are highly trained and very good at dealing with DNA profiling in every aspect. They know all of the plus sides. They know all of the pertinent questions to ask about statistics. It's very well tested through the courts and it's used routinely on a daily basis.

Mr. Myron Thompson: One of the questions asked by one of my colleagues was in regard to deterrence. You alluded to the idea that there's a strong indication that this could be the case. I understand that you're now coming to the tenth anniversary in April. If you ever have any kind of a report on decade-to-decade results, I'd be interested in hearing about that report.

Dr. Chris Maguire: I'm sure there will be. I'm sure there are things planned. We had the Prime Minister sampled. When we had the two millionth profile loaded into the database, he came along and congratulated everybody, so I'm sure there will be something done for the tenth anniversary.

Mr. Myron Thompson: I congratulate you and your colleagues on your efforts in accomplishing what you have, and I wish you continued success.

Dr. Chris Maguire: Thank you.

The Chair: Thank you, Mr. Thompson.

Monsieur Marceau.

[*Translation*]

Mr. Richard Marceau: Thank you, Mr. Chairman.

I will refrain from making jokes about the Prime Minister and DNA samples.

[*English*]

Dr. Chris Maguire: I have the photograph.

[*Translation*]

Mr. Richard Marceau: I am very surprised to learn that, for the British, it was harder to accept carrying around an identity card than providing a DNA sample. That's fairly surprising, and I hope one day to understand the English.

That being said, I am not judging the respective merits of your database—which you are very proud of and probably with good reason—and the Canadian one.

So, in England, all the information—genetic profile, name, ethnic appearance—is contained in the same place. In Canada, not only is there less information, but the information is divided up: information on the genetic profile is located in one building, and the rest of the information in another. Would you say that the identity of persons is better protected in Canada than in your country?

● (1130)

[*English*]

Dr. Chris Maguire: Without making value judgments, in the case of the database, it would appear to be that where the database processes information against a bar code.... In both jurisdictions, the databases work to bar codes. When the match report goes, then as custodians we send the matched reports directly to the police, and those matched reports are generated with all of that information present.

My understanding is that in Canada, if a match is generated in the data bank, it then has to be sent to a separate department in order to have the demographic data attached before that department then sends it on to the laboratory or to the police force and so on. We just have this direct link into the police, and it's becoming an electronic link.

[*Translation*]

Mr. Richard Marceau: You presented us with many facts, and I would like to thank you for them, but we are also here to find out what your opinion is. You must surely have visited Canada's database, and you are an expert in DNA sampling. If you had any suggestions to make to help us improve the way our database operates and to improve its success rate, what would they be?

[*English*]

Dr. Chris Maguire: You should fund the police to take the samples and increase the range of samples they could take and the range of offences for which they could take samples. Those would be two suggestions.

I think that DNA databases, when properly managed, are fantastically effective tools, not only for linking people or suspects to potential scenes of crime, but also for actually eliminating people from those inquiries and really focusing the police's effort where it's really needed. Why have a police officer chase down the road of trace, interview, and eliminate? In the U.K. that has been done in the past. You go to see a raft of suspects and you send two police officers for trace, interview, and eliminate, and it costs a fortune. Nobody measures that. Nobody measures how much time, effort, and money the police place on going out and wasting, I'd say, their time getting people out of the system because they are not involved.

If you had the database working to a much wider remit, let me leave it at that.... There'll be arguments here whether it should be wider or looser, but if the database is working to a lot wider remit, it becomes a tool for the police to eliminate people from inquiries and to focus their efforts in the right direction. It's a tremendous saver of money in that respect. It has to be.

[*Translation*]

Mr. Richard Marceau: Thank you.

The Chair: Thank you, Mr. Marceau.

[*English*]

For the final questions, subject to the chair, Mr. Maloney.

Mr. John Maloney (Welland, Lib.): Thank you, Mr. Chair.

My original concern was deterrence, but that's been canvassed, so perhaps I'll go to another.

Crime is global; organized crime is worldwide. How do you interact, or do you interact, with other jurisdictions? With the situation in Canada, do you receive requests, or vice versa—do you request DNA profiles from Canada?

Dr. Chris Maguire: The DNA profiling process is in use throughout the world. There are different DNA systems, but all of the ones that are in use in the more developed nations have elements in common. So you could transfer DNA profiles or DNA data from one country to another.

There is an established Interpol method by which data can be transferred. So if the police in the U.K. had an interest in an individual or wanted to check a profile from one crime against an individual in another country, they could actually submit a particular form through Interpol. Jurisdictions who represent themselves with Interpol, or are connected with Interpol, could be asked through that route to check their own databases against that particular sample.

It's happened in one case, which comes to mind immediately, of a schoolgirl raped and murdered when she was on a school holiday in France. The late girl's name was Caroline Dickinson. Subsequently, a potential perpetrator was traced to the U.S.A., and the profiles submitted by the U.K. through Interpol to the U.S.A. authorities were subsequently matched by the FBI to that individual. That instigated the request for that person to be sent back to the U.K. for trial.

We have had scientists give evidence recently in the U.S.A., where we had DNA profiles connected to a string of undetected sex assaults and where a particular individual has committed similar assaults and is currently on trial—because the U.S. authorities want to hear evidence of similar facts.

So DNA data and requests for it are used in that way, going through channels, usually through Interpol. Interpol is now trying to set up a European-wide database to act as a conduit. There is concern, rightly, about the data being downloaded wholesale to an Interpol database and being out of the jurisdiction of particular nation-states. I don't think that will happen; the U.K. won't do that.

● (1135)

Mr. John Maloney: This may be an unfair question, and perhaps you will not be able to answer it. The information you provide in your DNA samples far exceeds what Canada's situation is. Do you have any comment if there were to be a request from Canada for a profile from Britain and it came back with all of the other extra little things that you provide? Has that ever happened? And do they allow your samples into our courts?

Dr. Chris Maguire: I don't know. I'm not aware of Canada making such a request to the U.K. I can check the database board to see whether such a request has actually ever been made.

If Canada had an undetected crime scene or there was a suspect in a case who was in the U.K., then I think that if the appropriate request was made, either through police channels or through Interpol, there would be no reason why the U.K. authorities wouldn't cooperate with that request. I don't see that as being an issue.

Mr. John Maloney: I apologize if someone has already asked this question, but we're also dealing with a missing persons registry, where relatives would volunteer samples that could be checked against people who just show up, to see if they check out.

Dr. Chris Maguire: The U.K. does not have a missing persons database, much to my disgust. Having a national missing persons register is something that I think would be extremely valuable in certain circumstances. So that's a personal view. I think we should have one, but we don't.

In the event of a body or a significant body part turning up in the U.K., if the police are investigating that crime as a suspicious death —effectively a potential criminal event—they can write to the DNA database custodian to inform the custodian of the situation and then load a profile generated from that body to the database as a crime stain. So that's one event.

If we have a pure coroner's case in which there is a natural cause but we don't know who the individual is, or in the event of the current issue in Southeast Asia, where we have bodies turning up from Thailand in the U.K. with putative identifications that are then shown not to be the case—we have a body that has been sent back as British but we don't know who it is—under our current database legislation, we are not allowed to check the database with those profiles. They don't fall under the remit of the database legislation at the moment, and we just can't do it.

My personal view is that perhaps we ought to be able to do it. We use the data for so many other things, but we're not allowed to do that. But I think we should have a separate database board and so on that is equally controlled through legislation. We should have a database for missing persons. If that's being recorded, though, perhaps that could be recorded as a personal opinion, please.

● (1140)

The Chair: Thank you, Mr. Maloney.

If I could have the indulgence of the committee as the chair, I'd like to ask a couple of questions as well.

You mentioned the cost of 182 million pounds. Is that the cost of the expansion, or is that the total cost of your database?

Dr. Chris Maguire: No, that was the cost of the expansion over three years.

The Chair: Do you have figures on the actual total costs?

Dr. Chris Maguire: I don't. In terms of processing the samples, it would be however many we're putting through a year, times about £40.

The Chair: That was the £38.50.

Dr. Chris Maguire: Yes, £38.50, and there's a custodian charge of a couple of pounds on top of that. The processing laboratories get £38.50, and then the custodian gets a couple of pounds a time, so we're looking probably at around about a million pounds a year. I can check that for you and let you have that.

The Chair: Okay, so your cost per sample is about £38?

Dr. Chris Maguire: It's £38 plus a small sum of a couple of pounds for the custodian charges, for managing the custodian side of it.

The Chair: As a second question, on the question of human rights and liberty, which I think you referred to, have there been any challenges from the European Commission on Human Rights?

Dr. Chris Maguire: The two cases that I mentioned, R. v. B. and the Marper case, both went to the appeal court and then the House of Lords, based on the European Convention on Human Rights. They were turned down. Now, I don't know whether those particular cases have gone further, to the European Court; I don't know, but I'm not aware of any other cases going that far.

The Chair: Thank you.

On the question of the crime statistics, you mentioned burglary, but has there been any reduction in homicide or sexual assaults?

Dr. Chris Maguire: I'd have to check, but I think serious crime is either stable or rising. Certainly gun crime is rising from a fairly low base, but burglary and vehicle crimes have fallen quite sharply.

The Chair: You mentioned that there is no missing persons database, but there are samples from other volunteers, including police officers and military personnel.

Dr. Chris Maguire: People are allowed to volunteer to have samples placed in the main national DNA database. One of the acts allows that to happen. These would be, as I said, cases where people were involved in previous crime, such as those on sex offender registers, and were constantly being bothered every time an offence happened with the police knocking on their door. This is a case of "I want my sample in there to show I'm not involved". The legislation states that once they volunteer, they can't withdraw their consent. That's one type of volunteer.

The Chair: But it can only be used for criminal investigations. It can't be used for any other purpose.

Dr. Chris Maguire: Yes. It can't be used for anything else.

There's a second system for the use of DNA profiling in the event of a crime happening in a particular area where the police believe they could look at a subgroup of the population because they think it's a local man, such as a child abduction and murder. This is the very first case where DNA profiling was used for exactly that reason. It involved the murder of two young girls in a very small area. The police were convinced that the man who was the perpetrator was local, so they instigated a mass screening of the population with the consent of the individuals. They asked men between the ages of 17 and 30 to provide samples.

We have mass screening cases going on routinely. Under those circumstances, we have a separate DNA kit. People volunteer their samples. They are checked against the one crime stain only. If they don't match, they never get near the national database. It's run completely separately for that one inquiry. Those samples are then destroyed. They're used for just that one purpose.

So we have that mass screening for the volunteers separately. But we use different kits with different bar codes. The bar code, as I said, generates what can be done with that data. So whether it starts with 5, 4, or whatever, that bar code can't ever get loaded into the database because the database won't recognize that bar code.

The Chair: What about police officers and the military?

Dr. Chris Maguire: This was mentioned by the previous witnesses. The police elimination database is there to check whether a crime stain could have been left by a police officer who attended that scene. Originally, it was asked to be volunteers. Some forces volunteered wholesale, some police officers were more reticent. The situation now is that it's a condition of police service in most police forces, maybe all police forces. New police officers are obliged to give DNA samples. Our forensic scientists who go to scenes of crime are also in that database. I suspect that police doctors and some pathologists are in there as well. My profile is also in that database.

● (1145)

The Chair: Do you have any statistics on error rates?

Dr. Chris Maguire: Error rates in terms of...?

The Chair: Errors in taking the sample.

Dr. Chris Maguire: Yes, I do. If you would indulge me, I'll get those for you and send them on.

The Chair: Thank you very much for your attendance. We appreciate the efforts you've made.

We'll now discuss our future business.

[*Proceedings continue in camera*]

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