



ACLU of Massachusetts Files Suit to Stop "Shadow" DNA Databases

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BOSTON -- Cape Cod men who voluntarily agreed to provide DNA samples in the investigation of the murder of Christa Worthington have brought suit seeking to prevent the State Police Crime Lab from keeping their DNA in a secret "shadow" DNA data bank.

The class action suit was filed today by the American Civil Liberties Union of Massachusetts (ACLUM) in Suffolk Superior Court on behalf of Keith Amato, a Provincetown resident who gave the State Police a DNA sample but has been unable to obtain its return.

Amato was one of approximately one hundred Cape residents who voluntarily provided what is called a "rule out" DNA sample, in order to exclude them as suspects in the investigation. Each of the men was promised that his sample would be destroyed if it did not match the DNA found at the crime scene. To date, however, both the District Attorney and the Crime Lab have refused either to return or to destroy the samples, despite repeated requests that they do so.

"We are not saying that the government may not collect rule-out samples, but only that there is no valid reason to retain those samples once it is clear that the sample is not linked to the crime in question," said John Reinstein, Legal Director of the ACLU of Massachusetts. "We are asking for the return of samples taken in this case, but also asking that the Executive Office of Public Safety fulfill its obligation to adopt regulations that ensure the privacy of these individuals and of those who cooperate with police investigations in the future will be safeguarded."

Most of the samples were obtained in what was described as a "sweep" of a large number of men who were wholly unconnected with the case. Given the breadth of the sweep, its only apparent purpose was to see who refused to cooperate. The sweep was widely criticized at the time as an intrusive investigatory technique that did nothing to further the investigation.

After the investigation ended in the arrest of Christopher McCowen, Amato asked District Attorney Michael O'Keefe for the return of his DNA. The ACLU of Massachusetts lawsuit alleges that O'Keefe promised that the sample would be destroyed, but refused to confirm that this had been done. Later, in response to an inquiry made on Amato's behalf by the ACLU of Massachusetts, the director of the Crime Lab disclosed that it still had Amato's DNA sample and that it would not destroy it without a specific request from District Attorney O'Keefe.

"The Crime Lab retains these rule-out samples indefinitely, effectively creating a shadow DNA database," said Proskauer Rose attorney Mark Batten, who is representing Amato on behalf of the ACLU.

"Massachusetts has no procedure for the disposition of these samples, so there are no guarantees that they could not be used for other purposes. Because of the sensitivity of DNA information, we believe that strict rules protecting privacy and guarding against abuse are necessary."

"People who cooperate with police investigations need to know that their DNA will not wind up in a shadow government database, where there are no guarantees of how the DNA may be used -- not only against them, but against members of their family," said Batten.

Massachusetts is one of the few states in the country that allows so-called "partial match" testing of DNA to determine whether a close relative of a subject is a potential suspect in a crime.

"While Massachusetts law provides for keeping a data bank of the DNA of convicted felons and including that data in the national DNA identification system, it does not authorize the Crime Lab to maintain records of the DNA of innocent persons who have cooperated with the police in voluntarily giving them a DNA sample," said Reinstein. "This disregard for the privacy of innocent people is also bad public policy, because it creates a real disincentive for people to cooperate in future investigations."

For a copy of the complaint, see:

http://www.aclum.org/legal/amato_v_okeefe/complaint.pdf

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