

Bid for increased police power in Australia

Wee Waa: a test case for mass DNA sampling

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A small town in rural Australia last week became the venue for the country's first DNA testing of an entire male population. Police took mouth swabs from and interrogated about 600 men in Wee Waa, a cotton centre in north-west New South Wales, some 500 kilometres from Sydney.

The nature and scale of the operation were unprecedented. Amid a barrage of media attention, at least 30 detectives and other police personnel descended on the town of just 1,900 people. Every home was doorknocked, some with TV cameras rolling. Men aged between 18 and 45 who did not “volunteer” to be tested were visited by police. Those who ultimately consented were also fingerprinted and photographed.

In addition, police asked residents a series of questions, including their whereabouts, and those of their neighbours, on the night that a 93-year-old woman was brutally raped in the town 15 months ago. A questionnaire given to the men tested also asked what punishment they believed should be meted out to the rapist and whether the offender should be given a chance to redeem himself.

The police, as well as the federal and state governments, are cynically exploiting the shocking crime as a public relations exercise for the planned introduction of compulsory DNA fingerprinting and the establishment of a \$50 million national DNA database. One police chief described the Wee Waa exercise as a “learning experience” for operating the new database.

Given the extensive police resources devoted to the operation, police commanders were under considerable pressure to produce a result. This week they reported that a local farm labourer had presented himself at the Wee Waa police station and had been subsequently charged with aggravated sexual assault. Police refused to say whether the man had participated in the DNA testing.

Led by Premier Bob Carr, the state Labor government is about to unveil legislation for mass DNA testing, as well as mandatory DNA swabbing of prisoners. Since mid-1999 each of the other seven states and territories have either begun, or completed, drafting similar laws. Led by Justice Minister Amanda Vanstone, the federal government is pushing and funding the new national database and crime-tracking system, known as CrimTrac.

The Wee Waa operation has been accompanied by sweeping claims by the police and Carr that compulsory DNA testing would clear up about 80 percent of unsolved crimes. Police chiefs have gone further and declared that they already know three killers and a rapist and will quickly identify them if allowed to enforce testing. “We know who killed them” was the banner headline in the Sydney *Sun-Herald* of April 9.

The same newspaper reported that Wee Waa is only the first target. “Police will use tough new DNA testing powers to swoop on towns

and suburbs across NSW and Sydney as well as targeting suspect groups in a bid to solve several brutal murders and rapes.”

Such operations will introduce police-state conditions, in which entire communities and ethnic, political or cultural groups can be targeted. Moreover, in effect the onus of proof will be reversed in criminal cases. Any piece of hair or saliva trace found on a crime scene can automatically make someone a suspect. In practice, they will have to prove their innocence, instead of the police having to prove guilt. The same will apply to anyone who refuses to take a DNA test or whose test shows a positive response.

Under the Carr government's proposed legislation, still to be fully unveiled, police can ask anyone to give a DNA sample. Those who refuse can be compelled by a court order. Police will simply have to convince a judge that they have a “reasonable suspicion” that the person was involved in a crime.

In addition, everyone arrested or charged with an indictable crime must give a sample. The same will apply to prisoners already in jail for terms exceeding five years—giving the police an immediate database of 5,400 samples to compare with 15,000 samples already collected from crime scenes.

Some residents of Wee Waa refused to participate in the police witchhunt, defying intense media and political pressure. Several complained of harassment and victimisation. At least one, local solicitor David Sweeney, was abused in front of TV cameras and threatened with loss of business.

Another, Jeremy Holcombe, wrote an impassioned plea, published in the *Australian*, for the rejection of a culture in which people would be “asked to prove their decency, with the implied assumption of guilt”. He wrote: “The thought of that culture becoming the norm in Australia makes me sick to the stomach.”

Holcombe posed the following question: “If we don't see a result from the DNA testing, what shall we do then? Test everyone within 100km? Everyone in NSW? In Australia? There are proponents of that scenario, in any case.”

Civil libertarians, lawyers' groups and some judges have raised serious questions about the underlying political and legal agenda. “This town is the first in a series of moves which the federal and state governments will be using to suggest that Australians need to have a national database to have a safe society,” Criminology Professor Paul Wilson told ABC radio. He noted that the political mileage to be gained by the police depended on the Wee Waa test succeeding in producing a suspect.

NSW Law Society president John North stated: “The issue here is that the police are turning around the legal system which we have always relied on—namely that you are innocent until proven guilty.”

At an earlier university seminar, High Court Justice Michael Kirby

said DNA testing raised four issues: “First, the issue of self-incrimination. Second, the enhanced power of the State to intervene in the life of the individual. Third, the problem of the risk of tampering with samples, which must be carefully secured if the system is to have integrity. And finally, the risk of error.”

DNA tests produce purely circumstantial evidence, but may heavily influence juries, particularly when sensationalised by the media. At present, police must normally have an eye-witness, direct physical evidence or a confession to ensure a conviction. A DNA sample will become proof instead.

Already, some scientists have raised the prospect of police using a spot of blood at a crime scene to identify an offender's hair colour, ethnic background, skin colour, height and even nose size and age. A Queensland University of Technology forensic scientist, Angela van Daal predicted that genetic discoveries from the Human Genome Project would “revolutionise” criminal investigations within two to five years.

Despite advances in DNA research, however, there are scientific disputes over the accuracy of DNA material establishing guilt. Some scientists have pointed to the lack of defined standards for both laboratory work and statistical calculations. Every person has at least three billion DNA bases, but Australian police only test for nine locations.

If multiple sections of the immensely complex DNA structure are rigorously tested, it still cannot produce a 100 percent probability of guilt. Even a one in a million chance that a match is wrong, leaves the possibility that up to 20 other people in Australia could produce a matching sample.

At the same time, reliance on DNA evidence makes it infinitely easier for anyone—whether they be accomplices, personal enemies, political opponents or the police themselves—to plant or tamper with evidence. All it takes is one cigarette butt or one swipe of saliva from a used glass to be dropped at a crime location.

For the police, the DNA database, cross-referenced to unsolved crimes, could provide an elaborate mechanism for frame-ups. The recent Wood Royal Commission into police corruption in NSW found scores of cases in which police had planted evidence, laid false charges, concocted confessions or pressured suspects into pleading guilty. DNA testing will multiply the opportunities for such practices.

These methods are endemic in police forces across the country. Australian Civil Liberties Council president Terry O’Gorman has asked: “What about police tainting? Royal commissions and ongoing controversies over police fabrication of evidence have dotted the criminal justice landscape in every state and territory as well as the Australian Federal Police and the National Crime Authority for the past two decades.”

In defending the Wee Waa trial, NSW Police Commissioner Peter Ryan claimed that DNA testing was nothing more than the logical extension of fingerprinting, in use since the early 1900s. But DNA samples are not only much easier to obtain—or concoct—than fingerprints, they can be used for far wider purposes.

Potentially, police and other authorities can map the genetic characteristics of entire sections of the population, going far beyond the individuals whose samples are on file. In the near future, the data contained in a DNA sample may be able to be used to identify family relationships, ethnic origins and the likelihood of over 4,000 types of genetic conditions and diseases. Not only governments but also businesses may have interests in utilising such information.

In the United States the American Civil Liberties Union has raised

questions about the Violent Offender DNA Identification Act that is being prepared to bolster a newly-created national DNA database. Many American states already have mandatory DNA testing for prisoners. In Louisiana police take samples from all people merely charged with an offence, even if they are subsequently proven innocent, and the New York Police Commissioner has demanded the same power.

“While the FBI states that this information will be used for limited forensic purposes, the history in our country is that information compiled for one purpose will be used for another,” the ACLU pointed out. “For example, Social Security numbers were initially intended only for use as an aid tracking social security payments but are now a universal identifier. Another example, census records created for general statistical purposes were used to round up innocent Japanese Americans and place them in internment camps during World War II.”

The Wee Waa operation is a blatant bid to sweep aside such concerns and stampede public opinion. Detective Superintendent Robin Napper, a senior UK police officer who has been in Australia for 12 months to advise on the DNA project, recently revealed the official strategy.

Napper, who helped set up a British national database in 1995, told the *Australian Magazine* that opposition to the British facility was flattened by spectacular reports of DNA samples being used to identify violent offenders.

“We had the civil libertarian challenges but, frankly, these high-profile successes just steamrolled them,” he boasted. “The community was saying, ‘Hang on, we’re talking about murders here, bodies on mortuary slabs, and this is reality’.”

As part of the PR blitz, Napper has rolled out figures claiming that since the British database began five years ago, the police “clean-up” rate has soared in serious crimes. The Carr government has, in turn, relied upon these figures to justify its drive for forced testing.

But, in the first place, such police figures are highly questionable, in the light of all the avenues for misuse of DNA data. As Napper blurted out, the police have a definite agenda to push by producing “successes”.

More fundamentally, these police statistics are being presented as the overriding measure of social wellbeing. This entire focus—part of an ongoing “law and order” campaign by Australian governments—serves to depict crime as simply the result of depraved or “evil” individuals, diverting attention away from the deteriorating social conditions.

The same governments that can find millions of dollars to spend on police, prisons and DNA databases are slashing essential social services such as health, education, public housing, legal aid and welfare benefits in order to satisfy the financial markets. Having created immense social problems, these governments and their police chiefs then seize upon all violent crimes as pretexts to boost police power, at the expense of fundamental democratic rights and civil liberties.



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