



MEMO

June 21, 2012

To: Janet Lambert
Life Technologies, Inc
1050 K Street, NW Suite 310
Washington, DC 20001

Dear Ms. Lambert,

For many years our respective organizations have worked to ensure that biotechnology develops in the public interest. Perhaps no biotechnology issue is more fraught with privacy and civil rights implications than the use of forensic DNA by law enforcement. Issues ranging from the taking and storing of DNA prior to conviction, to the collection and retention of DNA profiles from large numbers of individuals to the uses of forensic DNA to conduct “familial searching” have raised very real concerns about the proper balance between the legitimate needs of law enforcement and human rights. Since lobbying on the issue of forensic genetics so directly affects criminal justice practices in the US, we believe it is fundamentally a different arena than traditional lobbying—one that requires any company operating in such an atmosphere, with individual rights and democratic principles at stake, to be doing so at the highest levels of honesty, fairness and transparency. As compared to many commercial areas, the public has no reason to believe that lobbying is even occurring on issues of forensic DNA use; in fact many of the individuals that are on the front lines of forensic DNA policy are unaware of such activities, let alone their scale. As the largest supplier of forensic DNA equipment and services in the world, we have very serious concerns about how Life Technologies, through its lobbying firm Gordon Thomas Honeywell Governmental Affairs (GTH), is lobbying globally for the expansion of forensic DNA databases.

Public Policy Priorities:

With the support of Life Technologies, GTH has established themselves as the leading “experts” on forensic DNA and according to their website are “advising over 50 foreign governments and states on forensic DNA legislation, policy and law”, including operating the website <http://www.dnaresource.com>

which Life separately funds. No one at GTH has any scientific background¹ but more pointedly their website, materials and lobbying are exclusively focused on expansion of DNA databases. While there are a multitude of improvements in existing DNA analysis and policy that could benefit law enforcement (and by extension the public) in the US and other countries², we believe GTH has played a strong role in distorting political priorities by exclusively focusing on database expansion and minimizing the human rights implications.

Indeed to the degree they do refer to human rights issues, it's with the intent of quickly dismissing them out of hand. For example, GTH claims DNA databases purge racial bias from the criminal justice system³ despite the often cited fact that African Americans are included at a highly disproportionate rate in such databases⁴.

GTH regularly cites the Innocence Project's successes with freeing wrongly convicted prisoners in support of DNA database expansion without revealing that the Innocence Project largely opposes such expansions.⁵ Indeed the Innocence Project regularly cites the complex reality of forensic DNA use by law enforcement and argues against an exclusive focus on expansion at the expense of more effective uses of DNA databases. Innocence Project co-founder Barry Scheck has stated:

“if supporters of DNA expansion were serious about preventing wrongful convictions, they should promote measures like requiring videotaping of interrogations or changing the way lineups are done. Less than 10 percent of serious felony cases have any biological evidence in them, which can identify the real perpetrator with a DNA test...And most of the serious offenders are already in the DNA database. This isn't the No. 1 priority.”⁶

Questionable Practices:

We are equally concerned that in their zeal to lobby for expanded DNA databases, GTH distorts evidence and hides their conflicts of interest.

Perhaps the most egregious example of these practices was uncovered in a Pro Publica investigation⁷ that revealed that multiple staff members of GTH used their contacts within the US Department of Justice and with other subcontractors of the DOJ and NIJ to receive several no-bid contracts to do key studies that have helped shape the US government's DNA policies—policies that have benefitted Life Technologies. The investigation quotes Senator Shelby, the ranking Republican on the Senate's Justice Appropriations Subcommittee: “At the very least, there are questionable conflicts of interest, serious voids of transparency and unethical behavior unbecoming to the Department of Justice.” GTH itself once bragged on its web site that their research was “used as the underpinnings” of the *Justice for All Act*.

GTH has also spent significantly on financially supporting candidates and holding ceremonies where they hand out awards to politicians who have worked to expand DNA databases.

² Goulka J, Matthies C, Disley E, Steinberg P (2010) Toward a Comparison of DNA Profiling and Databases in the United States and England. RAND Center on Quality Policing. Technical Report. http://www.rand.org/pubs/technical_reports/TR918.html

¹ <http://www.gth.gov.com/staff.html>

³ <http://www.dnaresource.com/documents/reasonsforexpansion.pdf> ⁴ <http://www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.1001100>

⁵ <http://www.innocenceproject.org/docs/Policy062006Statement.pdf>

⁶ http://www.nytimes.com/2012/02/01/nyregion/bill-to-expand-dna-database-fuels-fight-in-albany.html?_r=2&scp=1&sq=%22Innocence%20Project%22&st=cse

See also:

<http://www.councilforresponsiblegenetics.org/GeneWatch/GeneWatchPage.aspx?pageId=378&archive=yes> ⁷

<http://www.propublica.org/article/the-dna-debacle-how-the-federal-government-botched-the-backlogcrisis-505>

Media:

GTH has waged an aggressive public relations campaign, its staff regularly appears in the media offering interviews and commentary promoting DNA database expansion –but often they fail to indicate they are lobbyists and not independent experts.²

Or when they do reveal they are lobbyists, they do so in ways that obfuscate their direct financial interest in seeing expansion of databases.⁹

Supporting Organizations:

GTH, and in some cases Life Technologies directly, actively supports victim’s rights groups both in the US and in other countries that then serve as “independent voices” in support of DNA database expansion.

See, for example:

DNA 4 Africa ¹⁰ which is run by a founding Vice President of GTH (Chris Asplen) who doesn’t reveal these ties in his biography on the site. DNA 4 Africa’s main partner is the PR Firm Harris D. McKinney, the same PR firm for both Life Technologies and Applied Biosystems.

DNA Project ³(South Africa) funded directly by the Applied Biosystems division of Life Technologies.⁴

DNA Saves⁵, a victim’s rights group that regularly accompanies GTH lobbyists and which is also supported by Life’s PR firm Harris D. McKinney.

The National Center for Victims of Crime, which is funded directly by Life Technologies and which heavily promotes resources created by GTH⁶.

² <http://mdmorn.wordpress.com/2012/04/25/425121-changing-how-maryland-collects-dna/>
<http://www.forensicmag.com/article/fighting-back-against-worst-nature-and-human-nature?page=0,2> ⁹
http://www.msnbc.msn.com/id/34420777/ns/us_news-crime_and_courts/t/gaps-dna-banks-lead-tragedy/

¹⁰ <http://www.dna4africa.org/>

³ <http://dnaproject.co.za/>

⁴ <http://dnaproject.co.za/sponsors>

⁵ <http://dnasaves.org/>

⁶ http://www.ncvc.org/ncvc/main.aspx?dbID=DB_DNAResourceCenter240

Facts:

Gordon Thomas Honeywell has misrepresented facts or obscured facts in support of DNA database expansion. They have cited data from sources that are not independent. For example, they regularly cite a study on the cost effectiveness of database expansion without revealing that one of its authors is the head of a commercial forensic DNA lab⁷.

An example-the UK experience:

GTH regularly refers to the United Kingdom in their materials and presentations. To begin with GTH rarely ever mentions the European Court of Human Rights decision in *Marper* that found that the very same policies GTH promotes were found violative of basic human rights principles forcing the UK to redo their policies. Moreover GTH regularly cites UK DNA database “hit rates” but never explains that DNA matches are not solved crimes (an omission they regularly employ), and that DNA detections did not increase as the UK DNA database expanded. Although the UK does not record crimes solved using DNA, it does records DNA detections. DNA detections are crimes considered “cleared up” by the police which involved a DNA match: this is a much better measure of the role of DNA in solving crimes (although it also includes DNA detections with known suspects, that do not require the database). Despite GTH’s claims otherwise, DNA detections did not increase when the UK expanded its DNA database to retain innocent people’s DNA or to collect DNA routinely on arrest

GTH’s presentation⁸ in Brasilia and other countries contains an even more serious misrepresentation of the UK DNA database. It claims:

DNA databases solve crime! Example

5,000 stranger rapes occur in the United Kingdom with no evidence except for DNA at crime scene 60% UK hit rate means that 3,000 of these cases can be solved with one simple DNA test.

5,000 Stranger rapes occur in non-database country with no evidence except for DNA at crime scene No offender database means that none of the cases can be solved.

This claim is completely untrue. This is because:

- (1) It is not true that there are 5,000 stranger rapes in the UK per year;
- (2) It is not true that all stranger rapes provide DNA evidence;
- (3) The DNA database ‘hit rate’ cited will include many hits with victims or passers-by, not with the perpetrator, as well as false matches with partial DNA profiles. In addition, the hit rate is dominated by volume crimes, such as burglaries, and provides no information regarding the likelihood of a match with a semen profile from a rape.

⁷ http://dnasaves.org/files/IN_DNA_Cost_Savings_Study.pdf

⁸ [http://www.dnaresource.com/documents/BRAZILBrasiliaJuly2010\(2\).pdf](http://www.dnaresource.com/documents/BRAZILBrasiliaJuly2010(2).pdf)

¹⁷ Home Office (2009). Crime in England and Wales 2008/09.

<http://webarchive.nationalarchives.gov.uk/20110220105210/http://rds.homeoffice.gov.uk/rds/crimeew0809.html>

There were 13,133 rapes recorded in England and Wales in 2008/09¹⁷. An estimated 5% to 25% (657 to 3,283) may be stranger rapes⁹.

There were 3,411 rape detections in 2008/09: **only 184 involved a DNA match**¹⁹.

This total includes matches where the suspect had already been identified through means other than their DNA and the sample was only taken to confirm intercourse i.e. it includes both stranger and known suspect rapes. If 5% to 25% of these rapes were stranger rapes it would mean that 9 to 46 stranger rape detections were made through DNA matches on the database (including both matches between newly added crime scene profiles and stored individuals' profiles, and between newly added individuals' profiles and stored crime scene DNA profiles).

Detections are not solved crimes: they are crimes considered "cleared up" by the police, usually because someone has been prosecuted. There were 2,018 convictions for rape in 2008/09 (59% of detections)¹⁰. If 9 to 46 stranger rapes were detected using DNA, this could mean **5 to 27 successful prosecutions**. This may be an overestimate because proving the absence of consent is usually the most difficult part of a rape prosecution and is the most common reason for a rape case to fail, however DNA makes no contribution to resolving disputes about consent. On the other hand, a successful prosecution sometimes leads to a confession of additional crimes, which could increase the total. Many of these successful prosecutions are likely to be captured by retaining crime scene DNA profiles and the profiles of individuals with past convictions for rape or similar serious offences. This means the added value of widening the net to capture and store large numbers of individuals' DNA profiles is relatively limited. Yet these false figures are cited in support of expanded DNA databases.

Political Access and the Public Square:

GTH regularly uses their influence to gain access to politicians at the expense of an open public debate. Just recently New York State became the first in the US to expand their DNA database to "all crimes". The expansion was heavily promoted by NY Governor Cuomo who worked closely with representatives of GTH in such promotion, so closely that staff of GTH stood publicly with the Governor when he announced that his proposal had become law²¹. No public interest organization was given any audience with the Governor at any point during this process. This is not an unusual experience.

We live in a system where companies lobby governments all the time for policies that will improve their bottom line, but rarely does that bottom line so directly affect civil rights and democratic principles. These are but a few examples of the ethically questionable practices employed by GTH in their pursuit of an expanded market for Life Technologies and other providers of forensic DNA equipment, testing and services. We strongly urge you to re-evaluate your relationship with Gordon Thomas Honeywell Governmental Services and your own policies and practices in pursuit of marketing your forensic DNA equipment and services. The core issue we believe is what kind of company does Life want to be in this space-not all companies engage in this kind of lobbying. The forensic products and services Life provides

⁹ Criminal Justice Joint Inspection (2012) Forging the links: Rape investigation and prosecution A joint review by HMIC and HMCPSI. February 2012. ISBN: 978-1-84987-688-9. <http://www.hmic.gov.uk/media/forging-the-links-rape-investigation-and-prosecution-20120228.pdf> ¹⁹ National DNA Database Annual Report 2007-09. <http://www.npia.police.uk/en/docs/NDNAD07-09LR.pdf>

¹⁰ Crown Prosecution Service (2009) Violence against women crime report 2008-2009. http://www.cps.gov.uk/publications/docs/CPS_VAW_report_2009.pdf

are an important and meaningful asset to law enforcement and public safety, and can be used to accomplish a lot of good. The types of practices outlined in this memo are simply unnecessary-Life Technologies products can and should be marketed fairly, honestly and with complete transparency.

Sincerely,



Jeremy Gruber, President
for Responsible Genetics
5 Upland Rd., Suite 3
Cambridge, MA 02140
(617) 868-0870
jeeg@concentric.net
www.councilforresponsiblegenetics.org



Helen Wallace, Executive Director Council
GeneWatch UK
60 Lightwood Rd.
Buxton SK 17 7BB UK Tel:
Tel: 01298-24300
helen.wallace@genewatch.org
www.genewatch.org

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<http://www.nytimes.com/2012/03/14/nyregion/dna-database-pensions-and-redistricting-are-part-of-talks-on-major-albany-deal.html>