



The Future of Forensic Bioinformation

Seminar Three – 13th May, 2009. Nuffield Foundation, London.

Agenda

- 0930 Tea/ Coffee
- 1000 Welcome and Introduction to the seminar
- 1020 Session One – *International Cooperation*
- 1115 Tea / Coffee
- 1140 Session One (continued) – *International Cooperation*
- 1300 **Lunch** - *A buffet lunch will be provided for all participants at the seminar venue*
- 1400 Session Two – *The Significance of Marper*
- 1515 Tea/ coffee
- 1530 Session Three – *Integrity*
- 1615 Session Four – *Initial reactions to the Government consultation on the response to the ECtHR Marper Judgement*
- 1700 Close
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Contributions

Attendees will not be asked to give formal 'presentations' and there will no 'podium speakers' as such. Instead, it is hoped that each attendee will be able to consider the questions outlined below (in addition to adding any issues that they feel have been omitted but merit discussion) and come with the intention of sharing their perspective on each of the issues. The seminar will then be a discussion between experts, each contributing to the intended debate.

The format will be a series of structured and necessarily short discussions on the issues below, led by the organisers. This is intended to encourage maximum participation by all attendees in identifying the options for resolving each issue, relevant sources of data and precedents. It is also hoped to clearly identify those issues where a consensus has been reached or may be possible between the different perspectives and interests represented at the seminar and, where this is not possible, at least clarify the extent and significance of any disagreement.

Chatham House Rule

The seminar will operate under the Chatham House Rule in order to facilitate a frank and open discussion. The Chatham House Rule reads as follows:

When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.

This seminar will consider a series of interrelated issues relating to internationalisation and exchange. In particular:

- What, if any, are the implications of the judgement by the European Court of Human Rights in *S. and Marper v. The United Kingdom* for law and practice relating to the use of forensic bioinformation during international cooperation for law enforcement and victim identification purposes?
- There have been critical examinations of the reliance that investigators and courts can place on forensic science within the UK and the USA. These have resulted, respectively, in the appointment of the Forensic Science Regulator and the National Research Council's (NRC) report *Strengthening Forensic Science in the United States: A Path Forward*. Should these internal concerns encourage similar questions about the reliability of forensic bioinformation, or the validity of its use, when it has been received from other jurisdictions or via intra-state channels where there may not have been a similar degree of critical review?
- Also, congruent with an important theme from the second seminar, is there a risk of treating forensic bioinformation exchange issues in isolation from understanding how its significance may change at different stages of an investigation, the need for effective integration with other intelligence or evidence and the effect this may have on the assessment of its value to the outcome of an investigation?
- Are further measures or resources needed to improve the governance, integrity and volume of such information, and, if so, whether extra funding is possible during the current global recession?

Session One – International Cooperation

This session will review the objectives of international cooperation together with the organisational and technical arrangements that make this possible in order to identify issues relevant to the seminar series themes of assessment, integration and integrity.

The objectives of international cooperation; assessment of their potential significance and their integration with law enforcement/criminal justice and other legal/social objectives within England and Wales:

- The detection of crime
- The analysis of trends in transnational crime (volume and spatial)
- The identification of bodies and body parts, including DVI
- Other possible needs, such as the identification of trafficked children (currently an issue that appears to be driving plans for the increased use and linkage of DNA databases in China).

1.1 Learning from experience:

- 'By chance and not as a matter of routine' (the identification of Francisco Arce Montes and Michel Fourniret)
- Lessons from the CPS Report about 'Operation Thread' in respect of 'match, no match' arrangements for the initial exchange of data
- Bioinformation as a major identification tool during DVI work in connection with the 2005 Tsunami and the loss of the ferry, Princess of the Stars, in the Philippines during Typhoon Frank in 2008
- Critical contextuality: the arrest of Dr Haneef in Australia after confusion between Glasgow and Liverpool
- Quality lost in transmission: the arrest of attorney Brandon Mayfield in Oregon following a FBI fingerprint 'match' with latent prints from the scene of the 2004 Madrid train bombings.

1.2 Potential complication of different DNA maker systems:

- SGM+, CODIS and any other markers used in criminal investigations or for DVI purposes
- How matches are defined when different systems are used?
- Are there any potential new marker systems being developed and why?
- Transition arrangements for moving from existing marker systems to a new one
- Different tools for measurement and issues of calibration

1.3 Potential complications in respect of fingerprints:

- Quality of a fingerprint images: (a) latent, (b) impression and (c) burnt, decomposed or fragmented and (c) the impact of different imperfections (even when the image is

derived from the same individual) in latent prints and impressions when comparisons are attempted

- Baseline standards (e.g. 16-point, 10-point or non-numeric system) to map, record and recognise features (ridges and pores?) in fingerprint images
- Potential degradation of image during international transmission
- Lack of interoperability of some propriety AFIS systems
- Individual skill, experience and proficiency
- The use of randomised peer scrutiny to enhance validity of matches

1.4 Other potentially relevant issues:

- Compliance with domestic law in taking or using bioinformation
- Scientific or technical integrity at crime scenes through to fingerprint laboratory analysis
- Data protection standards
- Contextual information allowing judgements to be made about the significance of any matches
- Can the value of a match vary during different stages of an investigation and what is the effect this on the assessment of its value to the outcome of an investigation?

1.5 Different arrangements for the initial identification of potential matches:

- By transferring national data to an international database located in another jurisdiction – The Interpol AFIS and DNA Gateway
- By allowing officials another jurisdiction to directly search (but not manipulate) information held on a national fingerprint and DNA database – The Prüm Treaty
- By retaining full national control over access to information on a national base, but dealing with requests for assistance in a standardised and systematic manner – The ENSFI DNA Search Request Network¹ using Interpol's I 24/7 communications network
- Any other potential arrangements?

1.6 Different fora (including capacity/ legal competence) for international cooperation:

- Europol and Eurojust
- National liaison officers at Europol
- Interpol national bureaux
- ACRO and similar organizations
- The Prüm structure

¹ Presumably this is the 'Search Request Network' mentioned as a deliverable at page 12 of the consultation draft of The National Policing Improvement Strategy (version 1.1) dated 5.3.2009, issued by the NPIA and available from Edward.boyd@npia.pnn.police.uk

- Individual police force to individual police force
- Any other arrangements
- Judicial and police information: can differences in ownership or the control of information be a barrier to cooperation?
- Does DVI cooperation involve any different organisational and operational arrangements?

1.7 Affordability

- The cost of reliable forensic bioinformation
- The cost of using forensic bioinformation with integrity
- The high quality exchange of forensic bioinformation as a global public good (i.e. ‘...good policing can help to provide the circumstances that make human rights possible.’²)

Session Two – The Significance of Marper

Session Two will consider the extent to which consensus is possible about the significance of *Marper* for international cooperation and, within the domestic sphere, whether there is any risk of international cooperation resulting in a reversal of any key legal and normative concepts established through this judgement or elsewhere, namely:

- consent
- proportionality
- transparency
- accountability
- margin of appreciation
- data security and sanctions for breaches

This session will address concerns such as those voiced, albeit prior to the recent G20 Meeting in London, in Sheptycki (2007) that, ‘as it stands, transnational policing, like virtually every other aspect of the global system, is ungovernable. A characteristic feature of the transnational condition is that governance and authority are fragmented, resulting in a sense of randomness and weak political accountability’³. In other words: whether principles that have been or may be established either by law or convention in this country might be undermined in the course of international cooperation and thus whether any changes in domestic law, new supranational protocols or similar instruments may be needed?

² Ibid, p.55.

³ Sheptycki, J. (2007) ‘The Constabulary Ethic and the Transnational Condition’ in Goldsmith, A. and Sheptycki, J. (eds.) *Crafting Transnational Policing: Police Capacity-Building and Global Policing Reform* (Oxford and Portland OR: Hart) p.33.

Session Three – Integrity

The third session will consider the extent to which consensus is possible about the importance for ensuring the effectiveness of law enforcement as well as justice for individuals of the reliability of the forensic bioinformation exchanged and the validity of any inferences drawn from it.

Particular attention will be paid to:

- standardised terminology and reporting
- accreditation of laboratories and systems
- certification of individuals
- proficiency testing
- independence of sources of forensic bioinformation, professional ethics and external oversight

In particular, whether steps taken either by law or administrative action in this country to improve the integrity and validity in use of bioinformation might be undermined when information is exchanged whether new supranational protocols or similar instruments to prevent this may be needed? Is this what lies behind the Swedish EU presidency Initiative?⁴

Session Four - Initial reactions to the Government's consultation on its response to the ECrtHR Marper Judgement

While the seminar will remain focused on the theme of internationalisation and exchange the time devoted to Sessions 1-3 may be reduced slightly to allow time for initial reactions to the Government's consultation proposals announced on 7 May.

Useful Reading:

National Research Council (2009) *Strengthening Forensic Science in the United States: A Path Forward*, for details of how to purchase a pdf or hardcopy visit <http://www.nap.edu/catalog/12589.htm>

Nuffield Council on Bioethics (2007), *The Forensic Use of Bioinformation: Ethical Issues*, http://www.nuffieldbioethics.org/fileLibrary/pdf/The_forensic_use_of_bioinformation_-_ethical_issues.pdf

Home Office Consultation on Marper – to be sent via email when released.

⁴ See: Forensic Science Regulator Newsletter No.13, 11 March 2009, accessible at <http://police.homeoffice.gov.uk/operational-policing/forensic-science-regulator/reports-publications/>

Confirmed Attendees

Vanessa Neumann	FSS
Simon Clarkson	SOCA rep.
Maureen Smyth	Director, DNA Laboratory, Dublin
Peter Gill	Strathclyde University
Stacey Dibbs	ACPO/ NDNAD
Eric Downham	NPIA
Jim Munro	Home Office
June Guinness	Forensic Science Regulation Unit
Barbara Prainsack	Kings College London
Chris Maguire	FSS International & R & D Division
John Dickinson	
Tony Lake	Formerly Chief Constable of Lincolnshire/ACPO Forensic Portfolio Lead
Simon Cowen	LGC Forensics
David Smith	Dep. Information Commissioner
Jo Fish	SOCA
Kees Van der Beek	Netherlands Forensic Institute
Martin Bill	FSS Snr Scientific Manager
Pierre Van Rentergham	Europol
Lyn Fereday	Formerly FSS and Home Office
Ruth McNally	CESAGEN
Gary Linton	ACRO
Geoff Whittaker	NPIA Biometrics Group
Carole McCartney	Chair (Project Team)
Robin Williams	Chair (Project Team)
Tim Wilson	Chair (Project Team)

Travel Expenses

We hope that you will be able to reclaim expenses from your employing organisations. If this is not the case, we are able in some instances to secure a contribution to travel costs (up to a maximum of £100 per seminar attended). Please contact Carole McCartney for further details.

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