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Judicial Process

Dr. Reed

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American society has taken a hard, stern stance on sexual assault in recent years. From Bill Cosby to Harvey Weinstein to Matt Lauer, influential and famous men throughout the country are being accused of sexual assault or harassment on a daily basis. As a result, movements like the Me Too movement and the Women's March have risen and gained great popularity among society. Social media is often flooded with new sexual assault allegations and posts supporting victims and raising awareness about the issue. Despite all of this, convictions regarding sex crimes in the United States are embarrassingly low, and women and men who raise their voice as victims are often labeled as liars and never see their day in court.

For these reasons and many others, the laws regarding sex crimes in the United States must change. Over the past decade, law regarding sexual assault and rape has gone through a sort of revolution for the better, including the limitation, or complete elimination of, mandatory psychiatric evaluations of victims (Nemeth). However, there is still so much that needs to be done. In the United Kingdom, the government released a report that suggested changes and modifications to their laws regarding sex crimes, but it did little to help and instead, perpetuated many rape myths that plague victims and advocates (Rumney). One of the biggest issues in sex crime law are statutes of limitations. Many states have statutes of limitations, which limit the amount of time that prosecutors have to commence prosecution on an individual for a crime they may have committed. Crimes like murder usually do not have statutes that limit the time in which they can be prosecuted, but sex crimes usually do. This limits the amount of time that a victim may have to bring forth charges against the perpetrator that committed these heinous crimes.

A solution to the problem of statute of limitations for sex crimes could perhaps be “John Doe” arrest warrants. This type of arrest warrant is for an unidentified individual, where all that is known is their DNA profile. John Doe arrest warrants identify a suspect by their genetic profile, usually in some sort of database, and allows this profile to be matched to other individuals already in the database. This allows for a statute of limitations to be tolled, or put on hold, while awaiting a match. Once a match is made, then prosecution can commence. In many states, this prosecution must begin within a year (Bieber). Generally, most states have laws that state that warrants for arrest must identify an individual by his or her name or by a description that they can certainly be identified by, and the individual must be put on notice in some form when the warrant is active. There is much debate regarding the legitimacy of these John Doe DNA arrest warrants, but they certainly meet the requirements of standard arrest warrants, and provide an important pathway for victims to finding justice.

There is much debate on whether or not there should be statutes of limitations for sex crimes, and on the legitimacy of John Doe DNA arrest warrants. In his article “Drafting a Fair DNA Exception to the Statute of Limitations in Sexual Assault Cases,” Jonathan Diehl argues for provisions in DNA exemptions that protect a defendant in a sex crime prosecution. He believes that the statute of limitations is put into place to protect defendants in prosecutions, and should not be removed. Over time, memories fade, witnesses become harder to locate, and evidence is misplaced. Because of this, Diehl asserts, a defendant’s ability to effectively defend himself is diminished greatly as time passes. Diehl states that statutes of limitations promote repose, or peace, in the defendant by decreasing uncertainty and worry about potential prosecution once the

amount of time has passed that prosecutors may bring charges. He also argues that over time, victims' justification for punishment and desire for retribution decrease as well.

Diehl secondly argues against the use of DNA arrest warrants. He notes that there is a possibility of error in matching of DNA, although admittedly very small. His bigger concern, though, is with error in collection and handling of a DNA specimen. This could lead to a wrongful conviction or the possibility of false accusations, especially if the DNA left behind was for consensual sexual actions, or if they defendant happened to be at the scene before the occurrence of a crime. Additionally, a defendant's ability to prove the mishandling of a specimen diminishes over time as memory fades and people forget how the DNA was collected and who it was handled by. Diehl does discuss the possible benefits of DNA for defendants, such as the small chance of matching error that can occur and the ability to retest a specimen if a portion has been kept and stored away securely. These benefits could help prove a wrongfully accused defendant innocent, and help catch the person who actually committed the crime. Overall, Diehl argues against the abolition of statutes of limitations, but does concede to a very limited use of a DNA exception. This, he asserts, allows for a reduction of prejudice against a defendant and their protection as well.

On the other side of the debate, Meredith Bieber in her article, "Meeting the Statute or Beating It: Using 'John Doe' Indictments Based on DNA to Meet the Statute of Limitations," makes a strong argument for John Doe DNA arrest warrants and their use as an exception to statutes of limitations. She argues that DNA arrest warrants meet the typical criteria for standard arrest warrants and also withstand judicial scrutiny because they meet the legal requirements for description, are consistent with rationales behind statutes of limitations, are subject to certain

limitations, and have checks placed upon them that allow for safety of defendants. A DNA profile is a sufficient description for an arrest warrant because no person, except for identical twins, have the exact same DNA profile. This allows for a defendant to be identified with reasonable certainty because no two are alike, and it is a proficient way of identifying individuals. DNA warrants do not have to be able to put the defendant on notice, Bieber argues, because they should already be on notice since they know they committed a crime.

Bieber tackles the idea of statutes of limitations protecting evidence, memories, and witness from being lost in a case by pointing out that DNA does not lose its probative value over time. Whenever DNA is available, when it's been collected and stored properly, it can be tested much later without fear of degradation. Bieber states that although witnesses may become unavailable overtime, DNA evidence trumps witness testimony in usefulness and strength. She argues that the only need for repose and certainty of not be prosecuted comes with perpetrators that are known to the victim, and those that are unknown are not fearful enough, or do not care enough, to be looking over their shoulders for a potential prosecution. Also, Bieber points out that the only uncertainty and fear that comes from delay of prosecution comes from the defendant hiding their identity. Certainly, they could put an end to their apparent restlessness and unrest by coming forward for the crime they have committed. Lastly, she states that retribution does not diminish with sex crimes because they are so personal and damaging that victims will continue to desire justice.

Appellate courts across the United States have weighed in on John Doe DNA arrest warrants and have pretty consistently confirmed their validity both statutorily and constitutionally. The Supreme Court has ruled over time that DNA collection is not an invasion

of privacy, and that a person's criminal conviction, and subsequent status of a criminal, does not afford them the standard of privacy that an average citizen has (Sucherman). This opened the door for DNA collection of convicted criminals, and the ability to compile this data into a database that can be used to compare unknown DNA samples to those of known criminals. In 1994, Congress passed the DNA Identification Act of 1994, which allowed for the facilitation and collection of DNA information and the ability of criminal justice jurisdictions to share this information through the Combined DNA Indexing System. The Court has also ruled on the issue of the requirements for arrest warrants, and has upheld the need for the warrant to name the individual or describe him or her sufficiently enough to identify them (Sucherman).

At the state level, there has been much debate about John Doe DNA arrest warrants in both state appellate courts and state legislatures. In 1998, the state senate of Illinois adopted a bill that provided for an exemption to their statute of limitations for sex crimes when there was DNA evidence that attached a potential suspect to it (Diehl). In California, a bill was recently passed to allow prosecutors more time to find a suspect if they had unknown DNA evidence, but once they find a match, they must commence prosecution within a year (Bieber). More at the appellate court level, several state courts have ruled on cases that have set great precedents for John Doe DNA arrest warrants. Michael Sucherman writes about a particular case, *People v. Robinson*, that was decided by the California Supreme Court in his article, "People v. Robinson: Developments and Problems in the Use of 'John Doe' DNA Arrest Warrants." In this case, the court upheld Robinson's conviction, allowing for both the use of John Doe DNA arrest warrants, and prosecutions and convictions that can arise from them many years after the statute of limitations has run out.

Sucherman also analyzes several other state supreme court rulings from across the nation. In Wisconsin, the court ruled in *State v. Dabney* that a DNA profile certainly describes an individual, and thus that profile meets the particularity requirements for identification of a suspect that an arrest warrant must meet. In a similarly named case, an Ohio court ruled in *State v. Danley* that the delay in time between committing a crime and the actual prosecution of the crime that can come from DNA arrest warrants did not disrupt a defendant's life, and the trouble locating the defendant was the cause of the delay anyway. *People v. Martinez* was decided in New York, and the court there concluded that the growing number of prosecutions based on DNA evidence was enough to confirm its use and effectiveness, and that arrest warrants did not have to have the name of an individual on them to be valid. Lastly, a Kansas court ruled in *State v. Belt* that John Doe DNA arrest warrants usually are statutorily and constitutionally valid, but not in this particular case because the defendant was only matched with two loci of a DNA profile. With a more significant match, though, the court ruled that the arrest warrant would be completely valid. Overall, Sucherman asserts that courts across the country, including the Supreme Court, have accepted the use of John Doe DNA arrest warrants, and are not concerned with the speedy trial issues that may arise with their use.

Many states across the nation utilize statutes of limitations for sex crimes. Although the elimination of these statutes may never occur, there can be exceptions made so that victims can still obtain the justice they so desperately need and deserve. One of these exceptions is the use of DNA evidence to commence later prosecutions against defendants, even after the statute of limitations has run. The use of John Doe DNA arrest warrants allows for time to be tolled on statutes of limitations so that, hopefully, a DNA match can be made and a victim can achieve

justice. Fortunately, appellate courts across the nation, including the Supreme Court, have agreed with the use of DNA arrest warrants and have not struck down their implementation so far. However, there is still great debate regarding this issue.

Viewpoints like Diehl's, which was discussed earlier, focus more on protecting the defendant than victim. All persons should have the rights afforded to them by the Constitution protected, but not to the extent that victims of sex crimes do not get the justice they desire. Diehl argues that the desire for retribution diminishes over time, but this is far from the truth. Sex crimes are so debilitating and harmful that victims can truly not heal until they receive justice. Diehl expresses that the justification for punishment also diminishes over time, but this is also invalid because crimes must be punished, or there would be no deterrence from committing them. He also argues that defendants deserve repose and certainty from imbedding prosecution, but this is not a luxury that should be afforded to individuals who commit such heinous crimes. If these individuals wanted peace and assurance from prosecution and conviction, then they should not have committed a sex crime in the first place. Lastly, Diehl points out that the issue of whether or not a sex crime was committed comes down to consent, and defendants who are known to the victim are more likely to engage in consensual sex. This is the exact opposite of the truth because most rapes and sexual assaults are committed by people who are close, and thus known, to the victim. Overall, Diehl's argument is invalid and full of inaccuracies.

Viewpoints like Diehl's are not the only issue in the way of the utilization of DNA arrest warrants. Thousands of rape kits, which usually contain DNA evidence of the perpetrator, sit in storage facilities untested for years. By the time police departments and forensic labs get around to testing them, if they ever do, most of the time the statute of limitations has run out and the

DNA evidence is worthless. Victims of sex crimes deserve so much better than this, and rape kits must be promptly tested in order to bring prosecutions before time runs out. Many rape kits that sit untested are thought to be able to identify serial rapists, but the evidence is usually not collected and inputted into a database in time. Testing these kits as soon as possible and matching them into databases is essential to fighting the major problem and pervasiveness of sex crimes throughout the nation.

John Doe DNA arrest warrants are a very useful tool in combating the problem of sex crimes. Many times, DNA is the only way a perpetrator can be prosecuted and convicted for the heinous crime they have committed. Statutes of limitations will probably always exist in order to protect the individual rights of the defendant, but these DNA arrest warrants could protect the victim's rights. Allowing for more time and the potential for a specimen match in a database affords victims a chance they may not have had before in achieving justice. John Doe DNA arrest warrants should be permitted throughout the country and used in order to catch those that commit heinous sex crimes. Without them, many of these crimes may go unsolved and victims may never receive the justice, and healing, they deserve and desire.

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