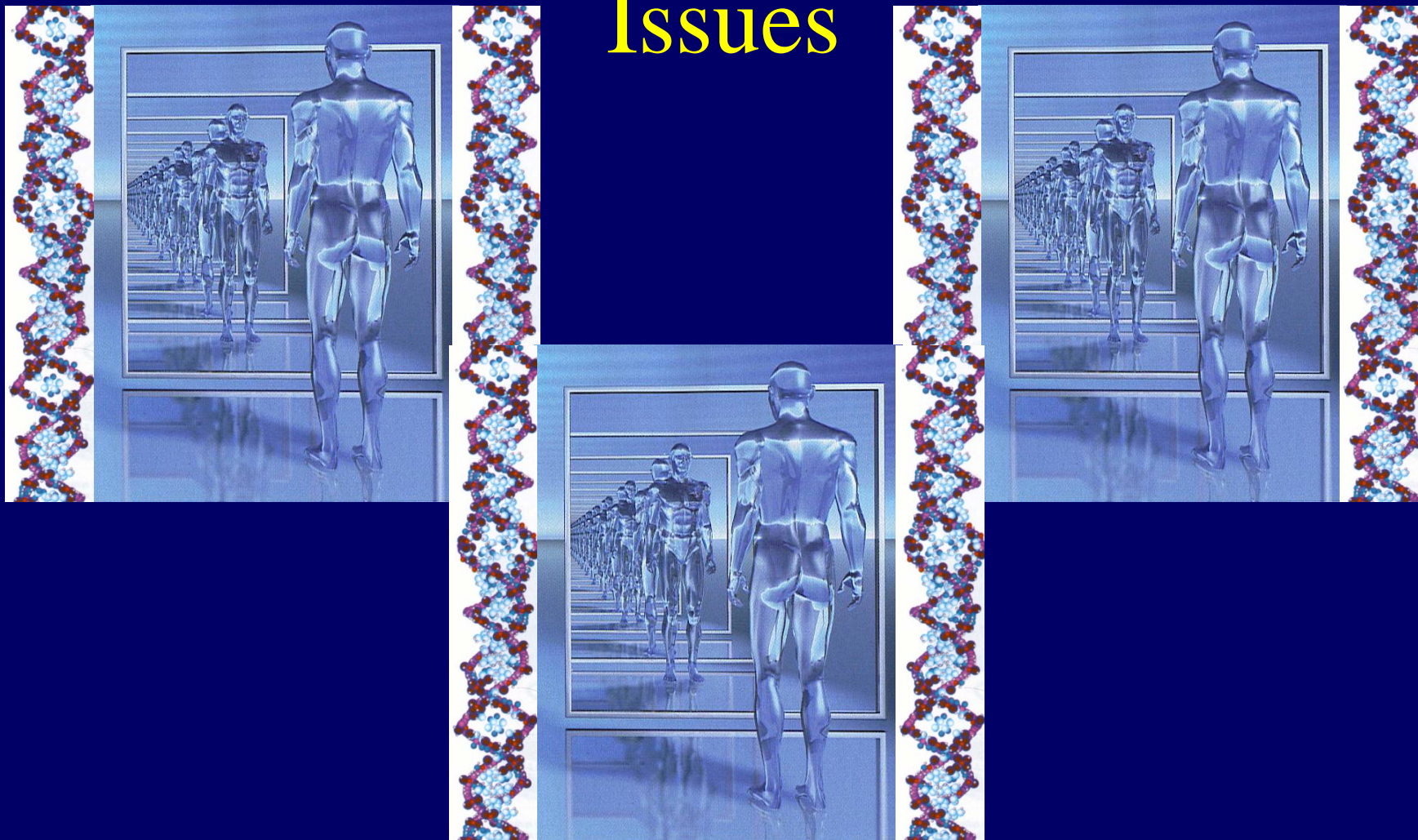


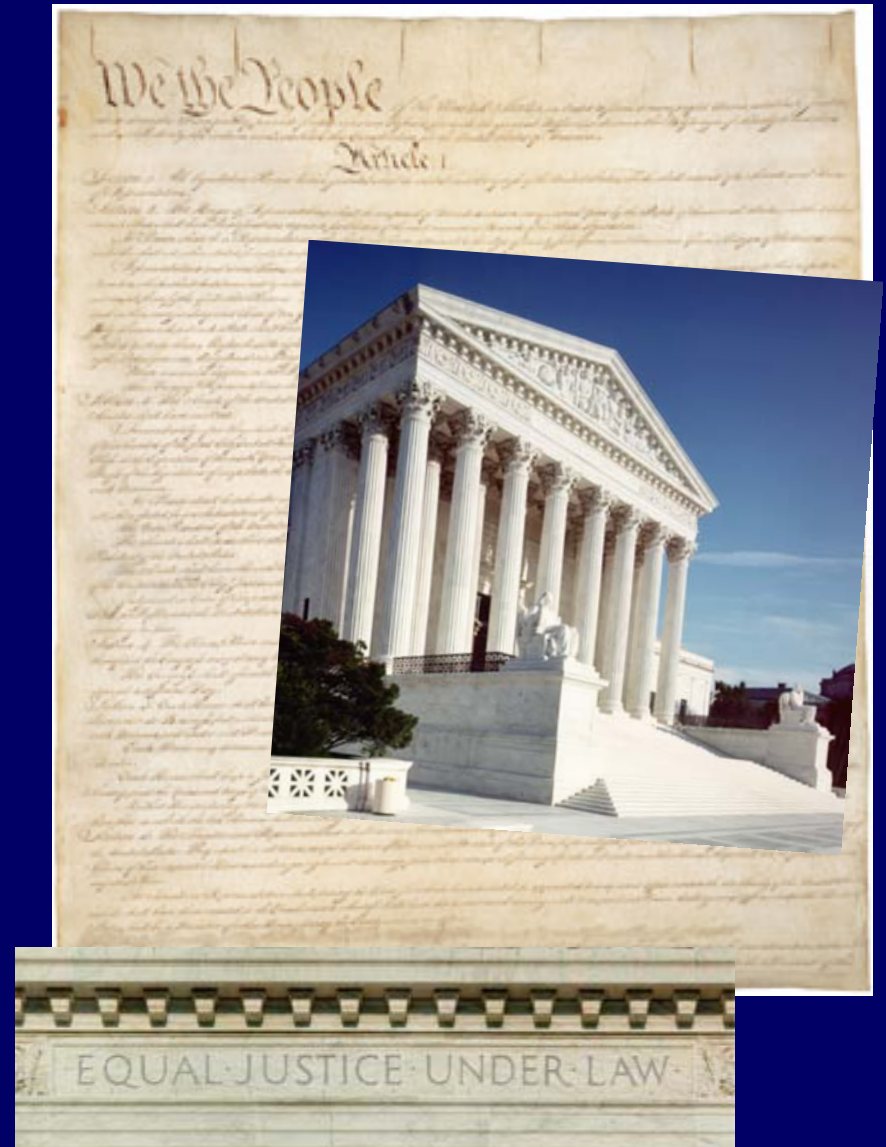
# Expanding the DNA Databases - Legal Issues



Mitch Morrissey - Denver District Attorney

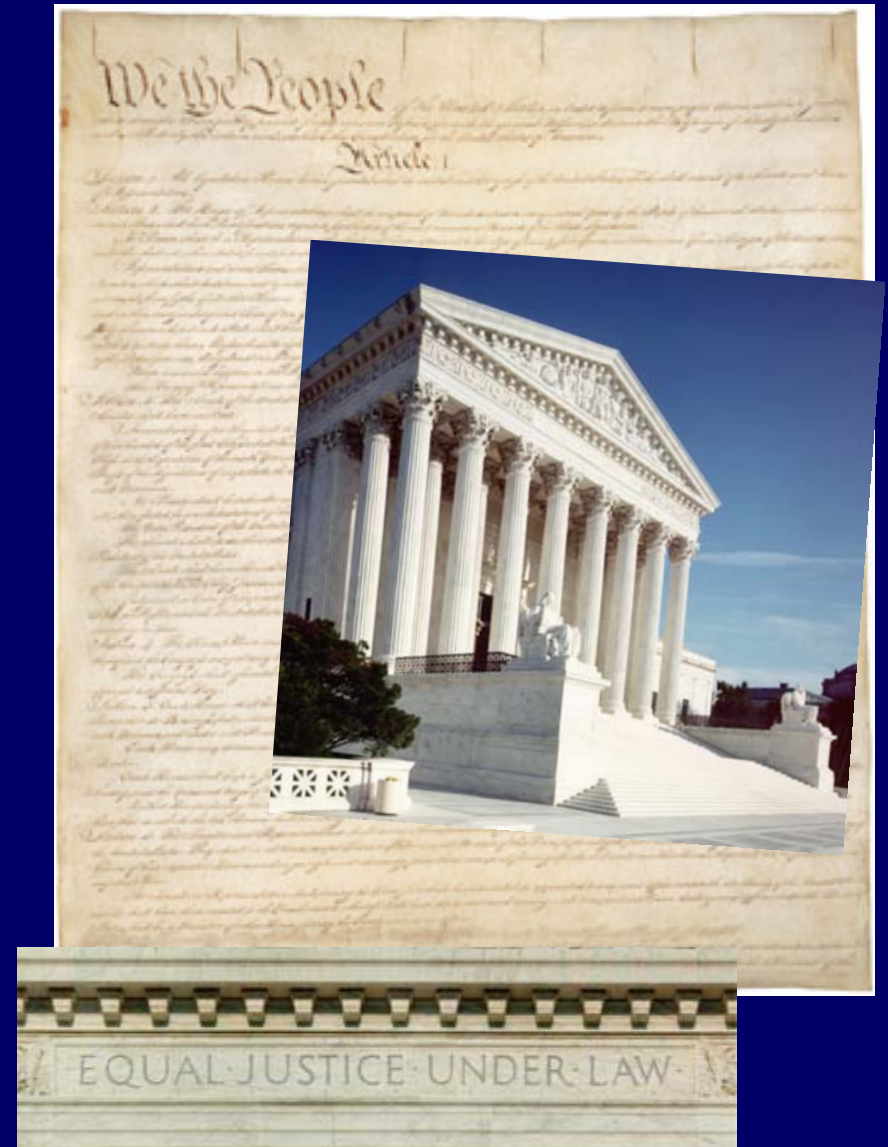
# Constitutional Considerations

- The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .”
- The touchstone of the Fourth Amendment is ‘reasonableness’.



# Constitutional Considerations

- The collection, analysis and storage of blood or saliva for any purpose is a search and seizure within the meaning of the Fourth Amendment.
- Any DNA database statute that involves the collection of DNA from individuals must meet constitutional standards.
- DNA databases are maintained by every state.



# DNA Database Law

- The DNA Analysis Backlog Elimination Act of 2000 required those convicted of a “qualifying Federal offense” to provide DNA.
- Qualifying federal offenses were limited to violent crimes, such as murder, voluntary manslaughter, and sexual abuse.



# DNA Database Law

- In 2004, Congress passed the Justice For All Act of 2004, which allows the collection of DNA from anyone convicted of a Federal felony.
- DNA information must be expunged from the system if the conviction is reversed or dismissed.
- These statutes have been challenged in almost every federal district in the US.



# Proper Disclosures of DNA Profiles

- To criminal-justice agencies for law enforcement identification purposes
- In judicial proceedings if otherwise admissible
- To a criminal defendant for criminal-defense purposes
- For a population-statistic database for identification research and protocol-development purposes, or for quality-control purposes, if personally-identifiable information is removed.



# Improper Disclosure of DNA Profiles

- Those who violate disclosure provisions could have their access to CODIS cancelled, and face a criminal penalty of up to \$250,000 and one-year imprisonment for each instance of disclosure.



# Courts Uphold DNA Database Laws

- Arrestees have diminished privacy rights
- A blood test or cheek swab imposes only a minimal intrusion
- The government has a legitimate interest in solving past and future crimes by using DNA evidence in substantially the same manner as fingerprint evidence.



# Court Rulings on DNA Database Laws

- What is reasonable under the Fourth Amendment for a person under arrest or under supervision as a felon, may be unreasonable for the general population.



# Familial DNA Database Searches and Partial Match Investigations

- Investigators use the DNA database to search for near matches to solve crimes committed by relatives of the people in the database.
- The fundamental principle is that DNA profiles of people who are related are likely to contain similarities.

