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The October 11, 2002 DNA legislative and media summary is listed below.

These reports are prepared by Tim Schellberg and Lisa Hurst of Smith Alling Lane (253) 627-1091, on behalf of Applied Biosystems. Text of legislation can be obtained by following the appropriate state-link at this site: <http://www.ncsl.org/public/sitesleg.htm>. Please see the appropriate media website for the newspaper articles.

COMMENTS

A review of the nation's DNA system found that severe backlogs, underfunding, and a large discrepancy in how legislation is implemented state to state has delayed the realization of the full potential of DNA testing. Backlogs made the news in Pennsylvania and Tennessee, and a North Carolina newspaper suggested that five rapes could have been prevented if not for the backlog in that state. Forensic DNA is a campaign issue in Florida and South Carolina (governor), and Massachusetts (district attorney).

Perpetrators were identified through database hits in Virginia (10 year old rape case), New Jersey (linking a convicted rapist to 2 new rapes), South Carolina (10 year old murder case), New York (9 year old rape case), Texas (18 year old murder case), Canada (11 year old rape case), Illinois (6 year old murder case), and Indiana (rape case). DNA linked 3 murders from the 1970's in California to the same perpetrator.

Inconsistent rulings from federal Circuit Courts could force the US Supreme Court to review post conviction DNA testing rules. Two men convicted of rape 16 years ago in Georgia were cleared after post conviction DNA testing. In California, the first death row inmate to request post conviction DNA testing under a new law has been further implicated by the test results, and another man could be freed after serving a 10 year sentence for a rape. The Florida State Supreme Court has ordered a third trial for a death row inmate.

In international news...the U.S and Canada are exchanging DNA database information. Panama is using a US company for DNA identification of victims of extrajudicial governmental killings. An Australian study showed that almost of the crime is committed by recidivist offenders, but the national DNA database has not been as effective as hoped due to delays in state legislation. New Zealand used DNA to convict a murderer for a 15 year old case, and Austria used DNA to help identify a suspect in a 5 year old robbery case.

NEWS ARTICLES

Forensic DNA

1. "Falconio crime DNA tested." The Australian October 9, 2002.
In Australia, lawyers for the defendant in the case of an English backpacker who was murder dropped their appeal to deny police efforts to test items for DNA. DNA from blood on the victim's girlfriend's shirt will be compared to blood taken from the defendant. Results are expected within the week.
2. "DNA testing finds mother of discarded baby." The Associated Press State & Local Wire October 8, 2002.
In Connecticut, genetic testing has confirmed that a Bridgeport woman is the mother of a dead baby found in a garbage truck two weeks ago, with umbilical cord and placenta still attached. An autopsy determined that the baby was stillborn and died of natural causes. Despite the woman's denials of maternity, tests performed at the State Police Forensic Laboratory found a positive DNA match between the woman and the dead baby girl.
3. "15-year-old murder mystery of little girl concluded." Deutsche Presse-Agentur, October 8, 2002.
In New Zealand, a man was convicted of the 1987 murder of a six year old girl. The prosecution rested largely on DNA evidence taken from the body of the girl. Police had compiled a list of 1,000 suspects at the time and took DNA samples from 21, but were unable to pin anything on the defendant until he was arrested on another charge earlier this year.

4. "DNA Hunt For Spitting Passengers." Daily Record, October 7, 2002.
In Scotland, criminals who spit on rail staff will be traced with DNA and possibly jailed in a crime blitz on Scotland's transport network. The new Scottish area commander for the British Transport Police has promised a crackdown after 39 assaults on railway staff this year. "It costs us pounds 500 per DNA analysis. But for pounds 500 we'll get a detection."
5. "U.S. Puts Face On Illegal Immigrants." The Ottawa Sun October 7, 2002.
Canadian and U.S. police have begun a joint crackdown on cross-border organized crime. According to classified Privy Council Office documents, police from both countries are exchanging DNA samples of criminals and terrorists in their investigations. The samples can be used to match terrorists or criminals against crimes committed in either country.
6. "Jeff firm hunts missing from Latin unrest." The Times-Picayune (New Orleans) October 7, 2002.
In Panama, a Louisiana based company is being used to help identify the roughly 200 victims of extrajudicial government killings which occurred between 1969 and 1989. In an effort to identify human bones found at sites scattered throughout Panama, the Truth Commission has turned to a Louisiana's ReliaGene Technologies Inc. But the process is difficult, as many of the fragmented samples are old and soiled, and there is no bank of tissue samples from those known to have disappeared to compare with disinterred remains. In cases where a sibling of a victim may be known, mitochondrial DNA testing is being done on the bones in an attempt to provide closure to the victim's families.
7. "Report: New evidence links three murders from 1970's." The Associated Press State & Local Wire October 6, 2002.
In California, DNA has linked 3 murders from the 1970's to the same perpetrator. Police have reopened investigations into the 1970s murders based on new information that suggests the same killer committed the three killings. Police also said the murderer may be responsible for killing other women in San Jose and San Francisco. Detectives only recently received new, undisclosed evidence that tied the murders to each other. Semen recovered from two of the victims that has been stored for decades could eventually be used to identify the killer through DNA testing.
8. "Crime And Crime Again; Many offences committed by few." The Advertiser October 5, 2002.
In Australia, a major study by police has revealed almost half of the crime in South Australia is committed by a minority of offenders. It found that 3265 criminals - 14.2 per cent - were responsible for 28,210 offences - 46.3 per cent of all crime committed - in a single year. It found almost half of the total number arrested - 22,913 - were repeat offenders and 14.2 per cent were hard-core recidivists, committing five or more criminal acts. The Commissioner said the notion of reoffending was important with DNA because a DNA database was based on the notion that people would reoffend, "so we need their profile in order to be able to detect them later on."
9. "JUSTICE Long arm of teddy." The Gold Coast Bulletin October 5, 2002.
In Austria, traces of DNA on a cocaine-stuffed teddy bear helped bring charges against a man who got away with a bank robbery five years ago. Tests on the toy matched DNA evidence found at the scene of a botched bank robbery in 1997, when two thieves were forced to throw their booty out of the window of their getaway car after an alarm had gone off in the money bag.
10. "Bambi seeks to clear name; Judge approves some DNA tests." The Hamilton Spectator October 5, 2002.
In Wisconsin, a judge ruled in favor of a former Milwaukee police officer who was convicted in a case of murdering her then-husband's ex-wife. The ruling will allow Laurie "Bambie" Bembenek to have some evidence in the case analysed for DNA. Bembenek, who later won her freedom after a prison escape, wants to have the evidence tested at an independent Tennessee laboratory. A Milwaukee County circuit judge released some of the evidence for testing, including a bandanna, a T-shirt worn by the victim, the bullet that killed her and the off-duty and on-duty revolvers of Bembenek's then-husband, who was a police detective at the time. The judge ordered Bembenek to pay for the DNA testing.
11. "Allegheny County can't afford any more DNA tests." The Associated Press State & Local Wire October 8, 2002.
In Pennsylvania, the Allegheny county coronor announced that because the forensic lab recently ran out of the materials to complete DNA tests on blood and evidence from rape and homicide cases, it does not have enough money, equipment or staff members to complete any more DNA tests this year. Buying enough materials to process seven tests costs about \$4,000. Before the forensic lab ran out of money and supplies, testing was about six

months behind schedule. An increase in rape and drug cases, a tripling in the amount of evidence submitted for testing and new, more complicated DNA tests have created the backlog.

12. "DNA evidence project comes to Washington State U." University Wire October 3, 2002.
Researchers at Washington State University are collaborating with the law firm of Smith Alling Lane to look into just how many backlogged cases there are in the United States. The research team also is looking to find out how an expanded DNA database might help solve some of the backlogged cases. Virginia, the state with the oldest DNA database in the country, found they would have missed 85 percent of cold hits if they had limited their database to only felons. The demand for DNA evidence processing in labs is increasing and building up the backlog. The survey is being mailed to all crime labs and a broad selection of police departments this month. Once the surveys come back and are entered into the database, researchers will estimate the cost savings of having a DNA database and the portions of cases that are cleared using existing databases.
13. "Rapists roam as lab labors." Morning Star (Wilmington, NC) September 28, 2002.
In North Carolina, five women may have been raped because the state has not funded enough technicians for its top crime lab. It took the State Bureau of Investigation lab until last week to analyze the DNA samples from a rape that occurred in early March. The suspect tied to that DNA - a convicted rapist - was quickly arrested. But during that six-month delay, five other women were attacked, and police have connected the suspect with at least four of them. At the moment, the lab has a backlog of more than 250 rape cases. Just five people are available to analyze them - as well as the DNA samples that arrive from the scenes of murders and other serious offenses. The state Attorney General has called the situation a threat to public safety and "clearly unacceptable."
14. "EDITORIAL Backlogs on rape kits insult justice, victims." The Tennessean September 24, 2002.
In Tennessee, evidence is not being tested because of backlogs. Hundreds of thousands of rape kits sit idly because law enforcement doesn't have funds for testing. Statewide, the backlog is about 2,500 cases, and nationally it's 500,000. Yet those collections of evidence are not being used because of funding constraints. The Tennessee Bureau of Investigation has applied for a grant of \$3.45 million, which would be used to reduce the DNA testing backlog. Although it expects to receive the money, the task remains daunting. Officials will have to consider who's next in line and keep urban backlogs from overwhelming those from smaller communities.
15. "DNA testing fails to live up to potential." USA Today, October 7, 2002.
Although DNA has become a fixture in the U.S. justice system, DNA's promise to solve old crimes and prevent new ones remains largely unfulfilled. A USA Today review of the nation's DNA system found that:
*Evidence from tens of thousands of unsolved rapes and homicides during the past several years has not been tested for DNA. State and local crime labs say they are swamped by current cases, but they have been slow to apply for new federal grants aimed at reducing the backlog.
* The effectiveness of the DNA crime-solving system varies from state to state.
* Federal efforts to help states and cities pay for DNA testing have encouraged states to pursue rapists but not murderers.
* States have made uneven progress in setting up their databases. Some have been aggressive and have built large databases by drawing DNA not only from sex offenders but also from other violent criminals, drug users and even burglars and forgers.
*At least a dozen states that have authorized large databases haven't collected DNA from some convicts because the process can be expensive or fraught with legal problems.
*When it comes to solving old rape cases, many police agencies don't even try. A survey done for the Justice Department in 1999 estimated that evidence kits from 180,000 unsolved rapes, some nearly 10 years old, had never been tested for DNA. Many public crime lab directors say they are busy doing DNA tests on active cases and have no money to analyze the old evidence.
*Congress allocated about \$ 45 million to help states perform DNA tests on unanalyzed evidence in 2002 and 2003. But as of September, only 24 state crime labs had applied to test fewer than 20,000 rapes.
16. "DNA Register Fails While States Delay." Australian Financial Review October 7, 2002 Monday
In Australia, a national database that had been expected to help police prosecute more criminals by allowing cross-jurisdictional matching of DNA profiles remains largely unused almost 18 months since the technology went live. Despite projections that the database would hold between 25,000 and 40,000 DNA profiles in the first year, just 8,000 have been uploaded and cross-reference matching is yet to take place. Officials blamed the states and territories. Appropriate legislation has been passed by NSW, Victoria, Western Australia, Tasmania and the ACT.

Legislation was recently introduced in South Australia and is being prepared in Queensland. The Northern Territory has not yet introduced the necessary legislation.

17. "White vows to form two new DA groups." *Telegram & Gazette* October 07, 2002.
In Massachusetts, a candidate for district attorney has vowed to create both a homicide response team and a cold case squad if he is elected next month. The cold case squad that he would establish "will both re-examine old evidence and seek new evidence concerning the more than 30 unsolved homicides committed in Worcester County during the last 25 years. "If new material comes up, we look at it," he said, citing the example of a 1974 unsolved murder in which evidence was submitted to the state crime laboratory in Sudbury for DNA testing that was not available at the time of the crime.
18. "Senate, gubernatorial candidates mostly in support of death penalty." *The Herald (Rock Hill, S.C.)* October 6, 2002.
In South Carolina, gubernatorial candidates are focusing on death penalty issues in light of the numerous cases in which wrongful conviction have been proved through DNA testing. Both candidates have faced questions about whether a death penalty moratorium is needed in South Carolina. In 2002, three convicted murderers have been executed in South Carolina; more than 70 others sit on death row. Sanford believes a moratorium is being used by anti-death penalty activists to block capital punishment altogether. Like Hodges, he believes DNA testing should be used as often as possible to ensure that no one who is innocent is executed. No South Carolina death row inmates have been exonerated by DNA testing, Blume said. "It's just a matter of time."
19. "DNA evidence leads to more charges against convicted rapist." *The Associated Press State & Local Wire* October 7, 2002.
In New Jersey, a man awaiting sentencing for the 1998 rape of a 15-year-old city girl has been charged with two other sexual assaults based on a DNA match. Both occurred in 1998 at the Newark Public Library. The library assaults where the first New Jersey cases linked using the FBI's computer system that analyzes the nation's DNA data bank. The library assaults are the third major case solved by the sex crimes unit in the past month using DNA.
20. "Fair elections and sad, sad losses." *Charleston Daily Mail*, October 05, 2002.
In South Carolina, an indictment was returned against a 33-year old man in the 10 year old slaying of a teenager. The suspect was convicted of kidnapping and rape in 2000, and his DNA was provided to CODIS, which made the match with the evidence from the teenager's murder.
21. "Thanks To DNA, Man Busted In 1993 Rape." *Daily News (New York)* October 4, 2002.
In New York, DNA technology has led to the arrest of a 60-year-old Bronx man in a 1993 rape in Long Beach. The suspect, a career criminal once shot in the abdomen after assaulting a cop, left plenty of DNA samples behind when he raped the woman. Long Beach Police took all of the DNA samples they had from the rape case and put them through the state system.
22. "Violent Rapist Charged Again." *The Toronto Sun* October 4, 2002.
In Canada, an illegal immigrant serving time for raping a grandmother and two other women in 1991 has allegedly been linked by DNA to the beating and rape of another woman. Police charged the man after allegedly matching DNA evidence, bringing to four the number of cold sex-assault cases in Toronto that have led to charges since the DNA databank opened in June 2000. The Police Chief said he hopes lawmakers look at the success of DNA evidence and change legislation to make it easier to collect DNA from criminals. Criminals charged before June 30, 2000, only have to provide samples if they were convicted for multiple sex offences, multiple murders or have been declared dangerous offenders.
23. "DNA match cracks 1986 homicide case." *The Houston Chronicle* October 03, 2002.
In Texas, a DNA databank match identified the perpetrator in a 16 year old homicide. The match was the first time the sheriff's homicide division has solved a case with such technology. DNA was not a widely used science when the 22 year old victim was slain in 1986. But in May 2000, the sheriff's Cold Case Squad took over the investigation and sent scrapings taken from under her fingernails during her autopsy to a lab for DNA tests. The results matched the DNA of a man serving a life for aggravated robbery and sexual assault. He had never been considered a suspect - his name had never even come up during investigation.
24. "DNA Confirms Killer's Guilt." *Inland Valley Daily Bulletin*, October 3, 2002.

In California, recently completed DNA testing confirms that a death row inmate is the man who hacked to death a family inside a Chino Hills home nearly 20 years ago. The inmate has vehemently denied the killings, and was the first death row inmate in California to request DNA testing under a state law that took effect last year. The man's attorneys said that they will argue that some of the evidence was tampered with in a San Bernardino County crime lab prior to testing.

25. "Wisconsin man charged in 1996 killing." Chicago Tribune, October 2, 2002.

In Illinois, a 40-year-old Wisconsin man charged with murdering a Chicago woman more than six years ago has been indicted by a Cook County grand jury. Prosecutors said a link to the suspect was made earlier this year when he was sentenced to prison on a burglary conviction, and his DNA profile was found to match material gathered from the murder case in Chicago's list of open investigations. The suspect's teeth also line up with a bite mark found on the victim's body, prosecutors have said.

26. "DNA leads to arrest in '01 rape." The Indianapolis Star September 20, 2002.

In Indiana, a DNA test match led to the arrest of a man who police believe is responsible for several rapes and break-ins. He was convicted of rape in 1986, cocaine possession in 1997 and resisting law enforcement in 2001. He was released from the last of those sentences in February, which would have been before the first of the three attacks reported this year. Until the recent DNA match was made, police did not have a suspect. During one of his prison sentences, the suspect was required to give a blood sample that was placed in the CODIS system. When that sample was tested against evidence from the October 2001 case, it matched and police made the arrest.

27. "Snagged By Dna, Man Admits To More Rapes." The Virginian-Pilot(Norfolk, Va.) October 8, 2002.

In Virginia, a man convicted last month in a 10-year-old rape case after authorities matched his DNA to evidence in the state's computerized data bank pleaded guilty on Monday to two other rapes that occurred in 1995. DNA testing initially linked the three rapes to one person. The suspect was later identified after his DNA sample matched evidence in the data bank from the three rapes. His DNA was entered into the data bank because he had been convicted of other felonies. The rapes apparently took years to solve because entering DNA information into the state computerized data bank is a painstaking process that caused a backlog for state officials. The suspect was in prison on other charges when authorities took another blood sample to confirm the DNA match. He was released from prison, and later was arrested on the three rape charges.

28. "DNA tests clear pair in 1986 rape case." The Atlanta Journal and Constitution October 8, 2002.

In Georgia, two men convicted of rape 16 years ago in Savannah were cleared Monday after DNA tests refuted the evidence used to convict them. The cases of Samuel Scott and Douglas Echols (who serviced 15 years, 8 months, and 6 years respectively) now bring to 114 the number of people --- including three from Georgia --- whose convictions have been overturned nationwide because of DNA tests. Echols was paroled in 1991; Scott was released in September 2001. A lawyer representing Scott said she also filed court motions Monday on behalf of another Chatham County man convicted of murder and rape in 1991. The motions ask that his DNA and the evidence used against him be tested to see whether he should join the list of those wrongly convicted.

29. "DNA test clears Richmond man of rape conviction." The Associated Press State & Local Wire October 4, 2002.

In California, a man could be freed after serving a 10-year prison sentence for a rape that DNA testing showed he didn't commit. A Judge ordered Albert Kent Johnson, 41, paroled after he made use of DNA tests under a 2001 California law that allows some inmates to ask for them if they were not done at the time of trial. Authorities believe Johnson is the first inmate to be exonerated under the year-old law. While the DNA test cleared Johnson of a 1991 rape case, he's still trying to prove his innocence in a 1992 San Pablo rape case. But police cannot find the rape kit evidence they need to compare DNA.

30. "Court grants death row inmate new trial – again." The Associated Press State & Local Wire October 3, 2002.

In Florida, the state Supreme Court ruled that a death row inmate twice convicted of beating, stabbing, strangling and raping a woman deserves a third trial because DNA evidence used in his case didn't meet scientific standards. It's the second time the defendant has won a new trial because of DNA. In April 1997, the high court overturned his conviction and sentence, ruling that the trial judge didn't meet standards for admitting DNA evidence. The unanimous decision also said the state failed to show why the DNA analysis should be allowed and that its expert wasn't qualified. He was retried in February 1999, convicted and condemned again. In the 5-2 decision, the court agreed with the defendant that the DNA evidence should not have been admitted because the way it was tested didn't meet scientific standards.

31. "Federal judges save inmate's chance for DNA test." Miami Daily Business Review October 2, 2002.
In Florida, a panel of the 11th U.S. Circuit Court of Appeals has revived an inmate's efforts to obtain evidence that could exonerate him through DNA testing. The inmate asked the court last year to order the state to produce the victim's clothes, bed sheets and the rape kit used to examine her so that he could have them tested for DNA. But before a court decides that issue, one of the justices stated that more thought should go into the question: "Just what rights, if any, does a convicted petitioner, who has exhausted his direct appeals and post-conviction avenues of relief, enjoy relative to discovery and testing of DNA evidence?" The 11th Circuit's decision in *Bradley v. Pryor* muddies the waters nationwide because it conflicts with a ruling in a similar case by the 4th Circuit, which covers Maryland, North Carolina, South Carolina, Virginia and West Virginia. Such a split among circuits can prompt review by the U.S. Supreme Court.

Paternity

32. "A revolutionary approach to paternity cases." Calgary Herald October 7, 2002.
In Costa Rica, a new law allows a mother to name the father of the child in a simple administrative process that begins in the hospital's birthing room. The man is asked to submit to a DNA test; if he does not agree, he is automatically assumed to be the father, with the duty to pay child support. The test is legally binding, though the man can appeal the results in court. The entire process is free. This procedure contrasts dramatically with the nation's former paternity system, which was similar to the one in effect in most of the United States. Since its inception last year, more than 8,000 Costa Rican women have taken advantage of the new law. A preliminary study shows the number of newborns with no father declared in the country's civil registry has dropped from 30 per cent to about 10 per cent. If a man denies he is the father, he automatically sacrifices paternal rights, such as visitation with the child. But in absence of DNA exoneration, he still has a duty to pay child support, and if he wants his full paternal rights restored, he must petition the court.