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A WEB SITE FOR ANYONE WHO SEEKS INFORMATION ON THE LATEST DEVELOPMENTS IN FORENSIC DNA POLICY

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The December 27, 2002 DNA Resource Report 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.

SUMMARY

A bill to expand the Mississippi database to include all convicted felons has been introduced. A lack of adequate local and state funding has been identified as the cause of backlogs at crime labs in Pennsylvania, Nevada and Michigan.

Cold hits on DNA databases helped to solve crimes in Virginia (1994 murder), Ohio (1992 murder), Alabama (1993 rape), and Washington (1999 rape). DNA testing has linked a fourth murder in Louisiana to the same serial killer who remains at large. DNA was also instrumental in identifying murder suspects in Florida (2001), California (1978, 1990, 1995), and Texas (1987).

Maryland's highest court ruled that a man's resistance to requests for a DNA sample should not have been admissible against him as evidence of his guilt in a murder investigation. A Florida court dismissed challenges to statistical probabilities about population in relation to DNA matching, and Oklahoma's recent removal of the statute of limitations in certain sexual assault cases has been upheld.

A Mississippi bill would allow for post-conviction DNA testing motions for all capital death penalty cases, and a Montana senator is proposing to provide for the education of inmates exonerated by DNA testing. Convicts in Virginia and Illinois were granted the right to have DNA analysis completed on evidence from their 1981 and 1988 crimes, respectively. In Wisconsin, DNA conducted from evidence in the 20-year old conviction of Laurie Bembenek found none of her DNA on any of 15 items tested.

In international news...in England, a man was convicted of the murder of his 15-year old niece (whose body has never been found) after DNA found on stockings in his attic matched was matched to the victim, and a robber was identified from a cigarette butt. In Japan, a man was arrested for a 1988 double homicide after new DNA testing identified him as a suspect (just 10 months before the statute of limitations was due to expire).

STATE LEGISLATION

Forensic DNA

1. Mississippi HB 64 – Expands the state DNA database to include all convicted felons.
2. Mississippi HB 169 -- Provides for post-conviction motions for DNA for all capital death penalty cases.

Genetic Privacy

3. Indiana SB 28 – Allows the state to recover costs of genetic testing in a paternity action if the man is found to be the biological father.
4. Mississippi HB 6 – Prohibits the following: genetic discrimination in health insurance; the use of genetic information by employers; mandatory genetic testing; the collection of genetic information; the disclosure of genetic information without consent.
5. Mississippi HB 145 -- Genetic information is defined as personal property and no person can be required to consent to genetic testing without informed consent.

NEWS ARTICLES

Forensic DNA

1. “BR killer strikes in Lafayette.” The Advocate (Baton Rouge, LA.), December 24, 2002.
In Louisiana, DNA evidence shows that a 23-year-old woman found beaten to death in November was killed by the same man who killed at least three women in Baton Rouge. The DNA results were finalized by the local crime lab. More than 600 men in the Baton Rouge area have been swabbed for samples to see if their DNA matches the killer's DNA
2. “Arrest in mother's slaying is an answer to son's prayer.” The Miami Herald, December 24, 2002.
In Florida, DNA testing has led to the arrest of a suspect in the murder of a widowed mother of three in 2001. Evidence at the scene linked the victim's former boyfriend to the killing. DNA samples from hair found on bloodied towels in the women's restroom at the suspect's place of employment matched the victim. Witnesses also identified the suspect as the man they saw leaving the scene that morning. A little more than a month before her death, the woman had obtained a restraining order against the suspect, complaining that he was stalking her, cut her car's brake lines, broke into her house and threatened to kill her.
3. “Caught by a cigarette.” Evening Chronicle (Newcastle, UK), December 21, 2002.
In England, a robber who ransacked a holiday home was caught after he dropped a cigarette stub at the scene. The man broke into the cottage and stole £3,800 of property. Police matched his DNA to the stub and he was jailed for 18 months after admitting burglary.
4. “Brit gets life for killing teen niece.” The Mercury, Hobart, December 21, 2002.
In England, a man was convicted of the murder of his 15-year-old niece, who disappeared last year on her way to school and has never been found. Detectives believed that although they had not found a body, they had compelling evidence that the defendant had abducted and murdered the child. Police found a bag in his attic containing stockings stained with blood that contained a mixture of his and the girl's DNA. The child's parents had been concerned about the amount of attention the man showed their daughter in the last nine months of her life, but they said they were unaware of his criminal record which included a suspended sentence for holding a 14-year-old girl at his home without authority and photographing her in karate clothes and swimwear.
5. “Conviction In Assault Of Young Girl Is Upheld.” Orlando Sentinel Tribune., December 21, 2002.
In Florida, a court ruled that a DNA expert who testified against a man found guilty of sexually assaulting a 10-year-old girl two years ago was qualified, even though the statistics that she testified to were challenged by the defense. During a hearing, the analyst explained that she used a statewide database with 350 DNA samples from black people, since the victim was black, to come up with certain statistical probabilities about the population. From there, she used 13 generally accepted genetic markers and found each of them matched the victim's DNA. The defense pointed to U.S. Census Bureau statistics that say about 2.3 million blacks live in Florida. He questioned whether a sampling of only 350 people is enough to be considered accurate. The analyst admitted the 4 quadrillion is a "theoretical number."
6. “DNA tests show Bembenek wasn't at murder scene.” Calgary Herald, December 19, 2002.

In Wisconsin, DNA tests conducted on evidence in the 20-year-old conviction of Laurie Bembenek found that none of her DNA on any of 15 items tested. The results showed two male DNA samples on the victim's bedsheets and comforter, neither of which could be identified, and male and female DNA on a bullet taken from her body. Bembenek was sentenced to life in prison for the 1981 murder of the ex-wife of the man she was married to. She escaped in 1990 and hid out in Canada before being tracked down by the RCMP. She reached a deal with prosecutors in 1992 in which she pleaded no contest to second-degree murder and was released from custody.

7. "Maryland State Court of Appeals reverses murder conviction." The Daily Record (Baltimore, MD), December 19, 2002.

In Maryland, the state's highest court unanimously ruled that the fact that a man accused of murder resisted giving a blood sample to police should not have been admissible as evidence of guilt at his trial. The man had been convicted in 1999 of felony murder, robbery, and second-degree murder, and is now entitled to a new trial. At trial, he had failed to persuade the circuit court that his refusal to give a blood sample to police in June 1998 should be inadmissible. The blood, which was forcibly taken, did not link him with the crime. The new ruling noted that for evidence indicating "consciousness of guilt" to be admissible, "there must be an evidentiary basis . . . to connect a defendant's consciousness of guilt to the particular crime charged." Since there was no evidence that the man knew the blood sample was wanted for the murder investigation, there is nothing to suggest that his conduct had anything to do with feelings of guilt for that particular crime.

8. "Two filed lawsuit claiming pubic hair topped pizza." The Associated Press State & Local Wire, December 18, 2002.

In New York, two people suing a Domino's Pizza claim they found pubic hair on their pizza, and want DNA testing to prove it. The two believe the hair belongs to a Dominos employee who had previous conflicts with one of the patrons. The Domino's franchise agreed to allow the test. Their attorney will seek a court order if the employee does not provide a sample for testing.

9. "County OKs buying new DNA analyzer." Fort Worth Star Telegram, December 18, 2002.,

In Tarrant County, Texas, the County Council has approved a purchase of new DNA-testing equipment for the Medical Examiner's Office. The commissioners approved the purchase of a new \$80,000 genetic analyzer for the medical examiner's office that is expected to enhance DNA analysis and shorten turnaround time for the high-tech results.

10. "Officials blame staff, money shortage for DNA lab backlog." The Associated Press State & Local Wire, December 24, 2002.

In Pennsylvania, the Allegheny County Coroner's forensic laboratory has not tested DNA evidence for about 300 criminal cases because a staff and money shortage has created a backlog. The laboratory receives about six new cases a month, but can only test half of them. The lab also does not test DNA evidence for cases in which police don't have a suspect. When the lab receives physical evidence, such as rape kits or bloody clothing, workers determine whether a DNA sample can be extracted. If a sample can be extracted, the lab informs police and the county district attorney's office that workers will test the DNA when officials identify a suspect in the case. But the Pittsburgh Police Chief noted that it's difficult for police to identify a suspect without being able to compare DNA evidence to a national database of convicted offenders. The County Coroner asked the county to boost his office's 2003 budget by \$745,000 so workers can eliminate the backlog. The county council agreed to give the coroner's office \$600,000. But the county Chief Executive reduced the increase to only \$400,000.

11. "Nevada crime labs struggling to tackle DNA sample backlog." Reno Gazette-Journal, December 23, 2002.

Northern Nevada's crime laboratory reports that new laws have created a backlog, slowing investigations and possibly the resolution of old cases. Worsening the problem is the state's failure to provide money for DNA analysis and the county's inability to collect testing fees from convicted felons - which has cost local government about \$767,250. Since the state DNA database law was expanded in 2001, officials have collected more samples in the last year than in the past six years. The county crime lab has collected about 4,500 DNA, samples from convicted offenders since the early 1990s. About 3,600 of those samples were taken within the last year at a rate of about 300 each month. Moreover, there are an estimated 10,000 or so back samples that need to be collected from felons who slipped through the cracks over the years. In addition, several new laws are in the works including expanding collection to include all felons, extending statutes of limitations, and allowing post-conviction DNA testing for death row inmates.

12. "Demand for DNA evidence creates backlog for state police." The Associated Press State & Local Wire, December 18, 2002.
In Michigan, demand for DNA testing to solve crimes has outpaced the ability of the Michigan State Police to pay to process and analyze samples, resulting in a large backlog. By this time next year, the state police forensic unit is expected to have a 10-year backlog. The backlog means delays for police detectives and investigators waiting on DNA test results. Most of the state police's DNA backlog is due to a year-old state law that requires local police to collect DNA from anyone convicted of a felony or certain misdemeanors, such as window peeping. It is estimated that the state would need to double its 26-member forensic science team to get rid of the backlog. State funding for additional staff is not likely with the state's \$1.5 billion deficit for the next fiscal year. The lab has applied for additional money, but given the increase in other needs, like homeland security, they are not expecting to get any additional funds. However, the Senate Judiciary Chairman said that the state must find a way to pay for more DNA analysts – "This is one of the fundamental obligations of government: to protect the public."
13. "State senator seeks bill to educate convicts freed by DNA." The Associated Press State & Local Wire, December 19, 2002.
A Montana lawmaker is proposing the state provide a free college education to Jimmy Ray Bromgard and others whose convictions are overturned based on DNA evidence. But the Senator acknowledged that a scholarship fund could be a hard sell because of the state's current budget problems. "I'm going to give it a darn good try," Bohlinger said. "I just think there are good, strong, moral reasons why legislators should support this and I'm going to have to appeal to their consciences." Bromgard, spent 15 years in prison before being freed in October when DNA testing exonerated him of raping an 8-year-old girl in Billings.
14. "Suspect accused in eight-year-old slaying." The Associated Press State & Local Wire, December 24, 2002.
In Virginia, a suspect linked to a 1994 slaying by DNA collected from a hair at the crime scene was indicted on a charge of first-degree murder. Police said the man became a suspect in the murder two years ago when a hair from the crime scene produced a "cold hit" in Virginia's DNA databank.
15. "Tennessee inmate pleads guilty to 1992 Ohio slaying." The Associated Press State & Local Wire, December 23, 2002.
In Ohio, a man avoided the death penalty by pleading guilty and giving a detailed confession to fatally stabbing a woman in 1992 after having sex with her in a cemetery. The victim's body was found in the cemetery in 1992 with at least 29 stab wounds. The defendant was indicted in September 2002 after samples of his DNA were entered into a national database and matched DNA from the scene. He is currently serving time in a Tennessee prison for a conviction of aggravated kidnapping and attempted aggravated sexual battery in a 1998 attack.
16. "DNA tests in prison lead to charges in rape case." The Associated Press State & Local Wire, December 21, 2002.
In Alabama, a man has been charged in the rape of a woman almost 10 years ago after he was linked to the case by a DNA sample given while he was in prison on an unrelated charges. The man, who was recently paroled from prison, was arrested on charges of attempted murder, first-degree rape and first degree sodomy. He is charged in the 1993 rape of an 85-year-old woman at her home. DNA evidence gained during the routine testing of inmates in the Alabama prison system linked the man to evidence gathered at the scene of the crime.
17. "Man linked to rapes here faces Colorado trial." The San Diego Union-Tribune,, December 21, 2002.
In California, the man San Diego police believe is the "Bankers Hill Rapist" and who authorities say is linked to sexual assaults in five states, has been ordered to stand trial on sexual assault and burglary charges in Colorado Springs, Colorado. The man is suspected of breaking into a Colorado Springs home last July and raping a 55-year-old woman. He was arrested Sept. 24 in Colorado Springs and has been linked by a national DNA databank to the rapes and assaults of 14 girls and women in Colorado Springs; San Diego; Tucson; Sparks, Nev.; and Norman, Okla., between Sept. 1999 and May 2002.
18. "Rape Charges Are Filed In DNA Case." The Seattle Post-Intelligencer, December 18, 2002.
In Washington, prosecutors filed kidnapping and rape charges in Pierce County's first-ever "cold hit" DNA case. The suspect was charged in the 1999 kidnapping and rape of a 14-year-old girl abducted from her school-bus stop. On Feb. 11, 2000, the suspect was convicted of the unlawful possession of a firearm and obstruction in another case and sentenced to two years and eight months in prison, but at the time, DNA samples were taken only from people convicted of violent crimes or sexual offenses. Then, on Aug. 9, 2001, the man escaped from a work-release facility and broke into the home of his estranged wife, where he stabbed another man and struck his wife. He was

convicted of two counts of felony assault and a blood sample was finally taken for DNA typing. In July, the sample was matched to DNA retrieved after the 1999 rape.

19. "Ex-teacher arrested in '78 killing." Sacramento Bee, December 24, 2002.
In California, a former Sacramento high school music teacher and registered sex offender is suspected of killing a young woman in 1978. He became a suspect after his 1998 conviction for committing a lewd act with a 15-year-old high school student. Based on recently examined DNA evidence, sheriff's deputies arrested the suspect last week at his home in connection with the death of the 20-year old, who was found raped and strangled in her apartment. Prosecutors declined to explain the three-year time span between obtaining the samples and arresting the suspect.
20. "DNA Retest Triggers Arrest." San Jose Mercury News, December 23, 2002.
In California, DNA evidence has led to the arrest of a man in a 12 year old murder case. Authorities would not discuss what led detectives to look more closely at the suspect, saying only that DNA evidence collected at the crime scene was retested with updated forensic technology. A coroner's report from 1990 stated that swab samples from the victim's genitalia and mouth along with samples from injuries on her chest and neck were given to police. The suspect, who just turned 29, has been charged as a juvenile. He was 16 at the time of the crime, but is scheduled for a hearing in January to decide whether his case will be transferred to adult court. A private lab helped with the DNA testing.
21. "DNA tests break 1987 slaying case." The Associated Press State & Local Wire, December 19, 2002.
In Texas, advances in DNA technology gave authorities the breakthrough they needed to arrest a Houston man for the stabbing death of his sister-in-law 15 years ago. The victim's body was discovered in her home with her two young children. Investigators describe the crime as a "lust murder," saying the suspect made romantic advances to the victim, but she rejected him. The suspect is still married to the victim's sister.
22. "Double murder fugitive found after 14 years." Mainichi Daily News,, December 18, 2002.
In Japan, a fugitive wanted for a 1988 double murder in Hokkaido was arrested just 10 months before a statute of limitations was due to expire. Hokkaido police were unable to name the culprit of the double murder until October this year, when they obtained an arrest warrant from a Hokkaido court after studying DNA samples of blood detected at the scene of the murder.
23. "DNA clues put man on trial in '95 slaying." The San Diego Union-Tribune,, December 17, 2002.
In California, a judge has ordered a 32-year-old man to stand trial in the stabbing death of a woman more than seven years ago. The case was unsolved until investigators performed new DNA tests, using evidence from the original crime scene that links the suspect to the killing. DNA tests on a glove belonging to the victim yielded genetic samples that matched the suspect's DNA and tests conducted on a steak knife used as the murder weapon produced a DNA sample with a mixture of the victim and suspect's genetic material.
24. "Statutes of limitations get look." Tulsa World, December 22, 2002.

An Oklahoma law enacted in June 2002 removed the statute of limitations for sex crimes under certain conditions, such as introduction of new DNA evidence. That new law recently withstood the first of what will likely be multiple tests in court. A Tulsa judge ruled that a 2000 U.S. Supreme Court decision on a Texas case set a precedent that allows prosecutors to put a man on trial for first-degree rape and forcible sodomy. He is charged with the 1987 sexual assault based on DNA evidence that months earlier had exonerated another man who had spent 14 years imprisoned for the crime. When the charges were filed in September, the suspect was already in prison after his suspended sentence from a previous sex crime was revoked. Before the law was changed, prosecutors would have been precluded from pursuing charges against him because of the statute of limitations.
25. "Judge Grants Man Convicted Of Rape Right To DNA Test." The Virginian-Pilot(Norfolk, Va.), December 21, 2002.
In Virginia, a man who has served more than 20 years of 5 life sentences for a rape he has always maintained he did not commit, was granted the right to have semen samples from the rape tested to determine if the DNA matches his. If it does not, he almost certainly will go free. The man had a felony record for stealing and was identified by the victim as the attacker. Results are expected in a few months.
26. "Defense hails order of DNA testing in 1988 murder." Chicago Daily Herald, December 20, 2002.

In Illinois, several strands of hair found in the gloved hand of a murder victim will be tested for DNA, according to a state Supreme Court ruling that defense attorneys say is the first step toward exonerating a man on death row for the 1988 killing. The man was convicted by a jury in 1996 of being the trigger man in an alleged murder-for-hire plot. Prosecutors had challenged the ordering of the testing by a judge, but the Supreme Court said prosecutors had no basis for that challenge. The defendant's lawyer said his client is innocent and will be proven so, thanks to mitochondrial DNA from the hair stands that he says belong to another man currently in state prison.

Paternity

27. "Men seek 'paternity fraud' law." Philadelphia Inquirer, December 23, 2002.

In New Jersey, as in most other states, children born during a marriage are the legal responsibility of the husband - even if he isn't the biological father. Now some of these "duped dads," as they call themselves, are waging state-by-state battles to institute "paternity fraud" laws. Fueled by anger and raw emotion, they are forming grassroots groups and pressing for the right to use DNA evidence in court to be free of making support payments for children they didn't father. New Jersey Citizens Against Paternity Fraud recently paid \$50,000 for nine billboards along highways (and other ads) that show a pregnant woman and read "Is It Yours? If Not, You Still Have to Pay!" Proposed legislation would allow men to use DNA tests to disprove paternity and end financial support. The bill recently came out of committee and faces a vote from the Assembly.