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The December 6, 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.

## COMMENTS

The North Carolina Attorney General wants to expand the state offender DNA database and double the number of DNA analysts at the state lab. A Missouri prosecutor is calling for higher pay for DNA analysts at the state lab, and a local lab Florida has recently added four new DNA analysts and will be outsourcing some DNA cases while the analysts finish training. A South Carolina county is considering establishing its own DNA testing facility. A change in federal law makes military personnel DNA samples available to local law enforcement for investigations under very limited conditions.

DNA database hits identified a Colorado felon as the perpetrator in the 1979 murder of a child in California, and an Indiana man as the perpetrator in a 1988 murder in that state. DNA also helped Louisiana investigators eliminate the Washington, D.C. area snipers as potential suspects in a serial murderer case.

In Virginia, an inmate seeking post conviction DNA testing could be the first test of the state's new constitutional amendment, and law makers are considering further relaxing the 21-day rule. A stay of execution was granted in Florida so that DNA testing could be conducted on evidence from the 1977 murder. In Oklahoma, two men who served 11 years before a DNA exoneration have settled their lawsuits against the city and the state. A North Carolina actual innocence commission will examine how and why innocent people are convicted. Attorneys in Michigan are asking for DNA testing for a man convicted of a rape he says he didn't commit.

In international news...In Australia, a state will continue "gene sweep" operations after encouraging results from the first two of such operations, and the government plans to establish a forensic DNA database on dolphins. DNA evidence identified a burglars in Hong Kong, Australia, and England. Irish authorities used DNA to convict a man of a murder that happened 20 years ago.

## NEWS ARTICLES

### Forensic DNA

1. "Dolphin research suffers." The Advertiser, December 4, 2002.  
In Australia, the government has issued a \$10,000 reward to anyone who has information which leads to the successful conviction of a person found intentionally harming, injuring or killing dolphins. As part of the initiative, police will establish a forensic DNA database on dolphins and water police will increase surveillance. The South Australia Museum, which has one of the leading centers for DNA research, will be involved in the dolphin forensic project.
2. "Authorities ID body six years after woman's death." The Associated Press State & Local Wire, December 3, 2002.

In Colorado, investigators have identified a woman whose body was found six years ago using DNA testing. They will now try to find who is responsible for her death.

3. "DNA nabs crims." MX, December 2, 2002.  
In Australia, a police operation which captured 28 criminals in three weeks will now be repeated every four months. The "Gene Sweep" operations focus on arresting known offenders based on fingerprints and DNA from crime scenes. The first operation arrested 112 people for 393 offences. The second operation, which ran for a shorter time period, arrested 29 for 88 offences. Police have noticed a significant decrease in the number of break-ins after each of the operations.
4. "'Cinderella' robber jailed by DNA evidence on shoes he left behind." Deutsche Presse-Agentur, November 30, 2002.  
In Hong Kong, a thief dubbed the "Cinderella" robber has been jailed after DNA evidence from shoes he left behind at the crime scene proved his guilt. The suspect lost his shoes when he ran away from a cake shop that he had tried to rob. He was arrested later, and DNA on the footwear matched the suspect.
5. "VA. High Court Might Change 21-Day Rule." Daily Press, November 29, 2002. Friday  
In Virginia, the Supreme Court has proposed changes to the rule that currently bars most new evidence from being considered by state courts hearing appeals of criminal convictions. The proposed rule would require defendants to explain what the new evidence is, when it was discovered and why it was not known or introduced at the original trial. The motion would also have to show that the evidence really is new and does not just support previous defense arguments or discredit prosecution witnesses. In 2001, the legislature did approve an exception to the 21-day rule, allowing the introduction of new DNA evidence on appeal. The Supreme Court is inviting public comment on the rule change through its Web site at <http://www.courts.state.va.us/commentsought.html>.
6. "DNA clears 'snipers'." The Daily Telegraph(Sydney), November 29, 2002.  
In Louisiana, DNA evidence has cleared the DC area sniper suspects of any connection to the serial killings of three women in Baton Rouge. Samples taken from John Muhammad and John Lee Malvo did not match DNA left behind in the three murders. The three serial killer victims, all women, have been linked by DNA evidence.
7. "Burglar Caught By DNA Link." Express & Echo (Exeter), November 11, 2002.  
In England, a burglar was caught when his DNA was found on an orange drink bottle left at the scene of one of his burglaries. The suspect originally denied the burglary, but when the DNA results revealed a match, he owned up.
8. "AG wants to expand DNA testing in North Carolina." The Associated Press State & Local Wire, December 3, 2002.  
The North Carolina State Attorney General wants to expand DNA testing by adding 10 analysts to reduce a growing backlog of cases. A legislative oversight subcommittee recommended approval of the AG's plan to hire the new employees. If the request is approved, it would more than double the lab's genetic unit beginning in January. There are roughly 20,000 rape kits sitting in police departments' evidence rooms statewide waiting to be tested. The state crime lab is so backlogged that it only accepts rape kits and evidence if investigators have a suspect. The expansion would enable the lab to double the 600 cases it now tests. About 2,800 backlogged offender samples that are also backlogged will be sent to a private lab for analysis. Last year, outsourcing solved a series of 11-year-old rapes and murders in the state. The AG is also pushing to expand North Carolina's DNA database. State law only requires DNA samples from those convicted of certain violent felonies, while 23 states require DNA from all convicted felons.
9. "Greene County prosecutor says low pay hinders crime lab." The Associated Press State & Local Wire, November 30, 2002.  
In Missouri, the Greene County prosecutor has said that one of the contributing causes of the state crime lab's backlog is that it doesn't pay its analysts enough. He plans to press state lawmakers for pay raises for crime lab workers because their starting pay of about \$26,000 trails eight other states surrounding Missouri. Crime lab officials acknowledge that low pay contributes to high turnover at labs. The state backlog of DNA cases is over 4,000, which has accumulated due to employee turnover and understaffing. Local police have come to expect a year's wait for DNA results in rape cases. The crime lab reports that it replaced 22 of its 41 criminalists during the past three years, primarily because of pay. "Most got trained and moved on to better paying jobs in other states."
10. "Catching Up With Crooks' DNA." The Palm Beach Post, November 17, 2002.  
In Florida, the Palm Beach County sheriff's lab soon will employ a private lab to help it cut its more than 400-case backlog. Funding for the outsourced casework comes from a federal grant. The lab has recently hired to additional analysts, and expects two previously hired analysts to finish their training in May. At least 81 percent of public DNA laboratories have casework backlogs, according to a National Institute of Justice report from March.

11. "New crime lab speeds up investigation in Richland County." The Associated Press State & Local Wire, November 29, 2002.  
The Richland County, South Carolina Sheriff plans to speed up investigations by processing evidence in the department instead of sending it to the state's crime lab for analysis. The county has \$300,000 in grants to equip the department's own labs and hire chemists and evidence examiners. According to authorities, SLED is overwhelmed by doing all tests for everybody in the state. It hurts their cases, it slows prosecution and it costs more for people to be incarcerated. Within the next year, the sheriff said he will try to get grants for equipment to test blood and other body fluids, trace evidence and DNA.
12. "Bill Would Compensate Those Wrongly Convicted." The Boston Globe, November 30, 2002.  
In Massachusetts, legislation is being drafted that would offer compensation to those wrongfully convicted of crimes. The bill would allow those whose convictions are reversed to sue the state for up to \$500,000, but the suit must be filed within three years of the reversal. The bill also would allow for the freed prisoner to win a 50 percent match to attend the University of Massachusetts or other state and community colleges, and for his or her criminal record to be expunged. California, Maryland, New York, and Texas have already enacted laws providing for compensation for those who were wrongly convicted.
13. "DNA tests lead prosecutors to inmate in 23-year-old murder." Contra Costa Times, December 4, 2002.  
In California, a DNA database hit to a convicted felon in Colorado has identified the perpetrator in a 1979 murder case of an 8-year old girl. Acting on the recent DNA tests as well as fresh police interviews, prosecutors charged a convicted child molester with capital murder. The suspect is serving an eight-year sentence for a 1998 child sexual assault conviction in Colorado. The man had never been a suspect in the California case. The man's criminal record included convictions in the early 1970's for "alteration and fraudulent negotiation" in a Secret Service case, and possession of a deadly weapon. He then had a string of misdemeanor arrests, and was convicted of child sexual assault in 1994, and then again in 1998.
14. "Suspect charged in '88 Elkhart slaying; Father grateful for 'some answers' in Marie Kline death." South Bend Tribune, November 20, 2002.  
In Indiana, authorities have charged a man with a 15-year old murder after DNA evidence taken from the victim's body matched the suspect's DNA profile in a state database. The 35-year-old man is currently serving a 40-year prison term for an unrelated attempted murder conviction (for stabbing a woman 20 times). The man had been interviewed during the investigation of the case, but was not considered a suspect.
15. "Inaction on DNA reason for hold-up, court told." Townsville Bulletin, December 3, 2002.  
In Australia, a DNA sample taken from a bloodstained piece of cardboard has helped solve a five-year-old crime. He had thrown a rock through the glass door and made off with more than \$4000 worth of fishing gear, intending to sell it to support his drug habit. Police investigators took away a bloodstained piece of cardboard from the store. Counsel for the defendant said within a week police received a phone tip-off naming him but nothing was done. It was not until he was serving a term in 2000 for another offence that a DNA sample was taken from him. Even then, the court heard the police did not use the DNA match-up to charge him with the 1997 offence until he had been released from prison.
16. "Murder solved after 20 years;" Irish News, November 28, 2002.  
In Ireland, a laboratory assistant has been convicted of a 20-year-old murder after a speck of blood linked him to the crime. The police had remained baffled by the brutal killing and sexual assault of the 82-year-old woman until developments in DNA testing led to the sample being checked again. A blood spot found at the scene and a pubic hair found on the victim's vest resulted in the defendant's arrest. This was the first time DNA evidence was used to secure a conviction so long after the event in Ireland.
17. "Ninety minutes from execution, Florida inmate wins stay." The Associated Press, December 3, 2002.  
In Florida, a convicted killer received a last-minute stay of execution from the Governor so that DNA tests can be conducted on evidence from the 1977 murder. As the defendant was being served his final meal, New York attorney Barry Scheck of the Innocence Project met with the governor's death penalty attorney to discuss the case. Bush said Scheck "informed my legal office of the existence of previously untested evidence and further DNA testing that could possibly exonerate the defendant. It is wholly appropriate that we delay the execution until we can determine that all potentially useful DNA testing has been completed." In his filing with the Florida Supreme Court, Scheck asked for mitochondrial DNA and Y-chromosome testing on three pubic hairs and scrapings from under the victim's fingernails. The test were not available 25 years ago when the defendant was convicted. The DNA tests are expected to take less than 30 days.

18. "Former inmates settle lawsuit over wrongful convictions." The Associated Press State & Local Wire, November 29, 2002.  
In Oklahoma, two men who served 11 years in prison for a killing they did not commit have settled their lawsuits against the city of Ada and the state of Oklahoma. The sum is said to be less than the \$100 million initially sought, but still a "comfortable" number. One of the witnesses against the two men has been tied to the crime scene by DNA evidence. He is charged with first-degree murder and is awaiting trial. The two wrongly convicted men, one sentenced to life in prison and the other sentenced to death, were originally convicted by microscopic hair comparisons that have since been discredited.
19. "N.C. sets up 'actual innocence' panel to review procedures, hoping to reduce wrongful convictions." The Associated Press, November 27, 2002.  
In North Carolina, a group of legal authorities has created a commission that will review how innocent people are convicted and how to free them when it happens. The N.C. Actual Innocence Commission was convened for the first time last week by the chief justice of the state Supreme Court. The State Attorney General, a prosecutor, a public defender, several law professors, judges and law enforcement officials are on the panel. Concentrating on procedures, not individual cases, the group will consider ways to improve crime investigations and trials. It also will consider proposing a review for claims of innocence beyond the normal appeal process.
20. "Innocence Project seeks DNA testing in rape case." The Associated Press State & Local Wire, November 27, 2002.  
In Michigan, attorneys for the Innocence Project are asking for DNA testing in the case against a man convicted of rape. Among the evidence lawyers want tested are a cigarette butt, bed sheets and a pair of semen-stained underwear that were not analyzed at the time of the investigation. Following the victim's admission to an extramarital affair, a detective had the underwear removed from evidence testing. The Michigan State Police Crime Lab conducted two sets of tests - not DNA testing - on samples of the defendant's hair, blood, semen and saliva, comparing the samples to evidence from the scene. The results physiologically eliminated him as a suspect. A hearing on the request is scheduled.
21. "Inmate Seeks His Freedom Using State's New DNA Laws." The Virginian-Pilot (Norfolk, Va.), November 27, 2002.  
In Virginia, an inmate is seeking DNA testing to prove his innocence in a case that could test the state's new constitutional amendment on DNA. The man asked the Circuit Court to identify biological evidence from his case that still might be in storage. If it is there, he claims that DNA testing unavailable at the time of his 1981 trial will prove his innocence. With the passage of a constitutional amendment this fall, the Virginia Supreme Court has been given the authority to decide on actual innocence through those tests. Lawyers have asked for a range of physical evidence, including swabs from the rape victim, bed sheets and clothing, blood and hair samples and the defendant's blood-specked boots.

#### Genetic Privacy / Research

22. "Minnesota: Judge Approves State Patient Data Bank." American Health Line, December 3, 2002.  
In Minnesota, an administrative law judge ruled that the Minnesota Department of Health can begin to collect medical information on most state residents as part of a "massive" patient data bank. The health department plans to collect patient data from hospitals, HMOs and other health insurers to "better track" the quality of care provided in the state's health care system and to develop plans to improve the system. The health department plans to encrypt the data, which will include patient names, birth dates, street addresses, diagnoses, prescriptions, race and gender, before researchers can view the information. The Judge said, however, that the health department was "impermissibly vague" about which information that officials plan to encrypt. Opponents of the database complain that there is nothing to bar the state from also collecting genetic information about patients.
23. "Mouthwash popular means to get DNA samples." Scripps Howard News Service, November 29, 2002.  
At the University of Florida, research is underway on using mouthwash as a method of DNA collection. Cheek swabs get a relatively small amount of DNA, enough for a few experiments. With the mouthwash, scientists can extract enough DNA for up to 5,000 experiments. There has been relatively little formal study of the quantity, stability or quality of DNA samples collected with the rinse method, so the University of Florida researchers set up two tests: one with a small group of volunteers, another with 201 people participating in a study on the effects of a heart medicine. Results showed that scientists could still obtain sufficient amounts of usable DNA from the samples after they had been stored for three months. However, researchers note that this method would not be convenient for samples that need to be mailed to another location for analysis.

## Paternity

24. "Men wage battle on 'paternity fraud.'" USA Today, December 3, 2002.  
In Michigan, a man who found out that the child he's been paying support for isn't really his is lobbying the state Legislature for relief and joining other men in a national movement against what they call "paternity fraud." In almost a dozen states, men have won the right to use conclusive genetic tests to end their financial obligations to children they didn't father. But women's groups and many public officials responsible for enforcing child support are battling the movement, which they say imperils children. In 30 states, married men face a 500-year-old legal presumption that any child born during a marriage is the husband's. "Think of it. I can get out of jail for murder based on DNA evidence, but I can't get out of child support payments," says a man caught in the middle of just such a situation. Alabama, Arkansas, Georgia, Iowa, Ohio and Virginia now permit ex-husbands and out-of-wedlock fathers to end child support through DNA. Maryland has made the same change via court decisions. Colorado, Illinois and Louisiana grant relief only to ex-husbands, allowing them to offer genetic proof. Texas allows ex-husbands four years from a birth to disprove paternity and gives unwed fathers unlimited time. A sweeping bill that would authorize married and unmarried fathers to offer DNA evidence is working its way through the New Jersey State Assembly.

## **CONGRESSIONAL RECORD**

### **1. HOUSE OF REPRESENTATIVES**

Tuesday, November 12, 2002., 107th Congress, 2nd Session

TITLE: CONFERENCE REPORT ON H.R. 4546, BOB STUMP NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

2003 Defense Authorization bill allows law enforcement to obtain Department of Defense DNA samples (kept for identifications of human remains) if no other sample is "reasonably available." Law enforcement must obtain a court order before the DNA sample can be released, and the sample must be needed for the purpose of investigating a felony or a sexual assault.

### **2. US SENATE**

Monday, November 18, 2002., 107th Congress, 2nd Session

TITLE: INNOCENCE PROTECTION ACT

SPEAKER: Mr. LEAHY; Mr. DeWINE; Mr. HATCH; Mr. NELSON of Florida; Mr. HOLLINGS; Mr. COCHRAN; Mr. DORGAN; Mr. BYRD; Mr. ROCKEFELLER; Mr. FRIST; Mr. SPECTER.

Discussion in Congress on the Innocence Protection Act focused on preserving DNA for testing and allowing defendants improved access to the evidence for testing in efforts to prove their innocence.