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The October 3, 2003 DNA Resource Report is listed below.

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SUMMARY

The 9th Circuit Court of Appeals has ruled that requiring DNA samples from convicted federal prisoners and parolees violates 4th Amendment protections. The ruling applies to federal statutes for DNA collection. Further details at this time are scarce, but we hope to provide you with updates in the future. Please contact lhurst@smithallinglane.com if you need a copy of the opinion.

Massachusetts has enacted a law to require DNA from all convicted felons. Congress has introduced legislation that authorizes the President's DNA Initiative and sets post conviction DNA testing standards (S. 1700 and HR 3214 – see <http://thomas.loc.gov> for details). Arizona's DNA lab reported 14 database hits in one month, and cold hits helped to solve crimes in North Carolina (three rapes to one perpetrator)

DNA evidence was instrumental in investigations and prosecutions in California (murder), Iowa (murder), Louisiana (murder), Pennsylvania (murder), Tennessee (rape), and Washington (murder). Crime lab funding is a priority in a campaign for Kentucky Governor, and for the Wisconsin Attorney General. Federal funding will help North Dakota's DNA program.

California passed a bill requiring victim notification in relation to rape kit testing. A Pennsylvania legislator intends to introduce a bill allowing for "John Doe" criminal complaints based on DNA profiles.

Florida's Supreme Court is reviewing the constitutionality of a deadline for post conviction DNA testing, and Nebraska has declined an inmate's request for post conviction testing.

Interpol is focusing on DNA sharing as a priority for the international law enforcement community. Canada's criminal DNA database recorded its 1000th hit, and is considering a Missing Persons DNA database. DNA testing has identified more Kuwaiti remains found in Iraq. Investigators used DNA to identify suspects in Canada (5 sex assaults linked to one man; murder case), New Zealand (rape), and Australia (burglary), and low copy number testing may supply a suspect in a murder case in Scotland. An Australian state has had success with a project to review old cases for new DNA evidence.

NEWS ARTICLES

Forensic DNA

1. "Court strikes down prisoners' DNA database." CNN.com/Law Center, October 2, 2003.
A three-judge panel of the 9th U.S. Circuit Court of Appeals has ruled (in a 2-1 decision) that requiring the blood samples amounts to an illegal invasion of privacy because they are taken without legal suspicion that the convicts

were involved in other crimes. The court said that is a violation of inmates' Fourth Amendment rights against illegal searches. The samples "constitute suspicionless searches with the objective of futhering law enforcement purposes." The 9th Circuit Court covers Arizona, California, Hawaii, Oregon, Idaho, Washington state, Montana, Nevada and Alaska.

2. E-mail Correspondence. October 2, 2003.
In Morristown, Tennessee, an 80 year old woman was raped in her home in the summer of 2003. The victim did not know the intruder and was unable to provide any leads. Without much to go on, investigators came up with a possible suspect, based largely on educated guesses and their knowledge of the community. The suspect was interviewed by police, adamantly denied any wrongdoing, and voluntarily submitted a DNA sample to prove his innocence. However, DNA testing proved a match between the victim and the suspect, and the suspect subsequently confessed when faced with the DNA evidence. Police believe, "Without the DNA there would be no case." The suspect is currently awaiting a court date.
3. "Jury convicts N.C. man in three slayings, rapes." The Associated Press State & Local Wire, October 1, 2003.
In North Carolina, a jury took less than two hours to convict a man on murder, rape and other charges for a 1990 crime spree. Police used DNA evidence to link the suspect to the crimes that included the deaths of three residents in their 70s. Authorities did not have any leads until 2001, when a federal grant allowed the crime lab to pull evidence from old, unsolved cases. The man had never been questioned about the crimes, but in 1996 had been convicted of firing a shot into an occupied home. Agents were able to match DNA evidence from that crime to the three unsolved cases.
4. "Inmate draws life sentence in second 1980s-era rape and killing." The Associated Press State & Local Wire, October 1, 2003.
In Pennsylvania, an inmate serving time for the rape and murder of an elderly woman will be sentenced to life in prison without parole for the abduction, rape, beating and strangulation of another woman more than two decades ago. Prosecutors charged the man based on new DNA testing of blood found in a stolen car used in the crime.
5. "Court delays closure on DNA." St. Petersburg Times, October 1, 2003.
Florida's state Supreme Court will review the constitutionality of the October 1, 2003 deadline for completing DNA testing in old criminal cases. In the interim, the Court has suspended the deadline so that it could hear oral arguments on November 7 regarding deadline's constitutionality. The Tallahassee office of the Innocence Project, said there are 600-700 requests for help from inmates across the state that the office has not yet had time even to review. The Florida Bar's Criminal Procedure Rules Committee voted 23-10 to file an emergency request with the Florida Supreme Court asking that the DNA deadline be extended.
6. "DNA profiling key weapon in Interpol's fight against crime." Agence France Presse, September 30, 2003.
Interpol has indicated that extending DNA profiling was a key priority. Interpol already holds DNA profiling details on some four million individuals, compiled from 41 countries. According to Interpol's director of police operational support, DNA profiling is a vital aid as the agency seeks to meet the challenge of 21st century policing.
7. "Lawmakers reach agreement on DNA testing bill." The Associated Press, September 30, 2003.
In Congress, House and Senate lawmakers have completed final details of an agreement on a five-year, \$1 billion bill that would also ensure DNA testing for death row inmates who claim innocence. The bill includes the Bush administration's program for DNA testing to clear a backlog of rape cases and also would provide grants for DNA training. Members are optimistic that the bill will pass this year.
8. "Legislature sends Romney bill updating sex offender law." The Associated Press State & Local Wire, September 30, 2003.
The Massachusetts House voted 146-4 in favor of a bill to expand the state's DNA database to include everyone convicted of a felony. Currently the database only includes those convicted of violent crimes. The bill has already been approved by the Senate.
9. "Court tosses lawsuit by man cleared by DNA test." The Associated Press State & Local Wire, September 30, 2003.
In Pennsylvania, a federal appeals court has ruled that a man who spent nearly two years in jail awaiting trial for a series of rapes of which he was later cleared waited too long to sue the city for false arrest and imprisonment. The 3rd U.S. Circuit Court of Appeals tossed out a \$1 million suit filed by the petitioner, who was freed from jail in

November of 2000 after a DNA test said he could not have been the man who raped four women in 1998. In his suit, the man claims prosecutors knew that a DNA test had exonerated him for at least 11 months before the charges were dropped, and purposely delayed reporting the results to keep him behind bars. In a brief opinion, the 3rd Circuit said Pennsylvania law mandated that he sue within two years of his arrest. Instead, he sued in April 2002.

10. "Rapist convicted in crime that sent innocent man to prison." The Associated Press State & Local Wire, September 30, 2003.

In Maryland, a man who was identified by the same DNA evidence that freed an innocent man who had served 20 years for rape has pleaded guilty to the crime. After the crime was committed, another man was arrested and convicted of the crime, and sentenced to 30 years in prison. The man, now 40, was released from prison in November after the state public defender's office discovered DNA evidence that proved he could not have committed the crime. The newly convicted man was arrested on Nov. 18. He had been recently released from prison, where he had been serving time for a 1989 rape conviction.

11. "Chandler says he would give grants to hire police officers." The Associated Press State & Local Wire, September 30, 2003.

In Kentucky, the Democrat gubernatorial candidate has proposed a crime package that includes ending backlogs in the Kentucky State Police crime labs. The candidate said funding for the crime labs would be a high priority if he's elected.

12. "DNA File On Felons Is Poised To Pass." The Boston Globe, September 30, 2003.

Massachusetts was poised to pass a bill to include DNA samples from all convicted felons, and the Governor has indicated that he would sign the bill. The state's current DNA database requires samples from people convicted of one or more of 33 violent offenses. The proposed legislation would expand the DNA database to include samples from any convicted felon, enlarging the database of 20,000 samples to nearly 90,000. The parents of a slain teenager have lobbied for passage of the bill, and the ACLU lobbied against the bill.

13. "Canada needs DNA databank for missing persons to help their families: Easter." The Canadian Press, September 30, 2003.

Canada's Solicitor General has stated that Canada needs a DNA databank for missing persons to spare families the pain and frustration of searching, often for years, for loved ones who may be dead. The concept of a Missing Persons Index was presented to provincial and territorial ministers responsible for justice at their annual two-day meeting. The idea may receive further study regarding the costs involved and privacy issues. Earlier this year, a Canadian Alliance MP introduced a private member's bill to establish the special databank.

14. "National DNA Data Bank Reaches Milestone 1000 Matches, Linking Crimes to Convicted Offenders." Canada NewsWire, September 30, 2003.

Canada's DNA Data Bank has reached an important milestone in September when it recorded 1000 matches between DNA profiles of convicted offenders and those of crime scenes. Canada's database was launched in June 2000 and made 526 matches last year. "The National DNA Data Bank has revolutionized the way police investigate and solve serious crimes in our country," said the federal Solicitor General.

15. "Rape after drinks, woman says." The Press (Christchurch, New Zealand), September 30, 2003.

In a New Zealand rape allegation, the victim claims she was raped by a friend after drinking too much. The man denied having sex with the woman, and agreed to supply a blood sample for DNA matching. He said they would not find any of his DNA. But a match was made, the odds being huge that the DNA could have come from someone else.

16. "Saliva on shirt linked to accused." The Record (Kitchener-Waterloo, Ontario), September 30, 2003.

In Canada, saliva on a woman's shirt found in the apartment of a suspect matched the man's DNA to the exclusion of everybody else in the world, an expert has testified. A smaller DNA profile from the saliva matched a murder victim's DNA to the exclusion of 430 million people. Several other pieces of evidence found in the suspect's apartment also contained the victim's DNA, including several blood stains.

17. "No buts in DNA test." Sunbury Macedon Leader (Australia), September 30, 2003.

In Australia, a cigarette butt found at the scene of a burglary where two handheld radios, a scanner and four mobile phone batteries were stolen has been matched to a sample taken from a suspect.

18. "British Transport Police significantly reduces forensic result times with LGC contract." PR Newswire European, September 29, 2003.
The British Transport Police has awarded a contract to a private lab to deliver a range of forensic analysis services, including criminal justice DNA and scene-of-crime DNA samples. The UK-wide contract is for an initial three years, with an option to extend for a further two. LGC's standard result turnaround times will provide immediate improvements to the BTP's forensic analysis services.
19. "Remains of five more Kuwaiti POWs in Iraq identified." Agence France Presse, September 28, 2003.
DNA testing has identified remains found in mass graves in Iraq of five additional missing Kuwaitis. The announcement took to 34 the number of POWs -- including a Lebanese woman -- whose remains have been identified through DNA testing after they were found in mass graves in Iraq following the US-led ouster of Saddam Hussein's regime in April.
20. "DNA nails more for old crimes." The Sunday Times (Perth, Australia), September 28, 2003.
In Western Australia, DNA samples from prisoners have identified prime suspects for hundreds of unsolved crimes, including rapes and armed robberies. In just over a year, DNA provided a breakthrough in 650 investigations that had been at a standstill. In a recent project called "Backcapture," DNA confirmed the identity of offenders in 65 more cases where police had a suspect but insufficient evidence to press charges. DNA matches have identified offenders for more than 500 previously unsolved burglaries and more than 60 cases of car theft.
21. "New computer system will open backlog of unsolved cases." The Associated Press State & Local Wire, September 27, 2003.
In North Dakota, a federal grant will be used to pay for new equipment and overtime pay needed to complete DNA analysis. Previously, the two-person staff routinely has turned away DNA samples from "no-suspect" cases. The crime lab's director, said the lab has DNA from 50 cases without suspects. She said law enforcement agencies around the state could have more than 200 such cases each year.
22. "Remains identified as girl listed as possible Green River victim." The Associated Press State & Local Wire, September 27, 2003.
In Washington State, investigators have identified bones recently found in a ravine near as those of a girl who disappeared in 1983 and was listed as a victim of the Green River Killer. DNA testing matched samples obtained from the family in 1998 with a sample from the bones. The speculation is that the serial murder defendant has been leading detectives to sites where the bodies were buried in hopes of winning a plea deal that would spare him from execution, but local law enforcement has refused to comment. The bodies of dozens of women were found in the area in the 1980s, and detectives believe at least 49 may have been victims of the Green River Killer.
23. "Police: DNA led to killing suspect." Contra Costa Times, September 27, 2003.
In California, DNA testing has linked crime scene evidence to a suspect. DNA evidence from a sex assault victim who was murdered was found to also match DNA found on a cigarette collected from the crime scene. Witnesses had described a man in the area who was said to be smoking cigarettes, and investigators eventually narrowed in on a man who fit the description. A DNA sample collected from the man matched the evidence.
24. "Rape suspect charged in woman's killing." The Gazette (Montreal, Quebec), September 27, 2003.
In Canada, a man suspected of preying on Montreal-area women last year was arraigned on charges of first-degree murder and aggravated sexual assault in connection with a rape-killing nearly 18 months ago. The man has already been charged with sexual assault in four other violent attacks that took place last year, and police have a DNA match in all five cases.
25. "Boys Don't Cry convict's request rejected by court." The Miami Herald, September 27, 2003.
In Nebraska, a Death Row inmate -- in the murder that inspired the 1999 movie Boys Don't Cry -- lost an appeal seeking DNA tests that he hoped would prove his innocence. The Nebraska Supreme Court rejected his request for DNA testing, saying the results could not produce evidence that he was either wrongly convicted or wrongly sentenced.
26. "Sheriff: DNA links inmate to assault." The Advocate (Baton Rouge, LA), September 26, 2003.
In Louisiana, DNA testing of a backlog of 400 cold cases has linked a man, who pleaded guilty last week to first-degree murder, to a sexual assault of a woman in 1987. Analysis of the remaining 400 cold cases will be completed within 30 to 45 days.

27. "Richard Dodd sentenced to life in prison for 1981 slaying." The Associated Press State & Local Wire, September 26, 2003.

In Iowa, a man convicted of raping and killing a woman in 1981 has been sentenced to a second life prison sentence. The man was already serving a life sentence for kidnapping and raping a 10-year-old girl in 1984. For years, detectives were convinced the man was responsible for the 1981 death, but prosecutors declined to file charges because they felt their case at the time, including DNA evidence, was not strong enough. DNA tests done earlier this year, using more precise technology, were able to match the man's DNA to samples taken from the victim's body.

28. "Sex Crimes Bills." City News Service, September 26, 2003.

In California, a bill requiring law enforcement agencies to notify sexual attack victims before biological evidence is destroyed has been signed into law. The bill also requires law enforcement agencies to notify victims if they have decided against analyzing or using the biological evidence. The legislation does not order the law enforcement agencies to keep the kits. But it "gives women the tools" to fight and put pressure on law enforcement to keep what could be valuable evidence against a suspect. A Los Angeles City Councilman said the LAPD has agreed to adopt a "no destruction of DNA" policy. He said the next step is getting the agency to agree to test all samples within two years, because then the evidence can be used for an unlimited time to prosecute crimes.

29. "Improving On DNA." The Arizona Republic, September 25, 2003.

The Mesa, Arizona DNA lab aided investigations in 14 cases in July -- about triple its average monthly rate. However, the lab still has a backlog of 230 cases. Of the 14 hits on the DNA database which came in July, there were four local hits attached to nine cases, one hit that linked a local case to a state police case, and four more in which unknown DNA was matched to a felon. Mesa averages a 30 percent hit rate. Approximately two-thirds of all Mesa DNA cases are burglaries.

30. "There Is No Escape From The Appliance Of Science." Evening News (Edinburgh), September 25, 2003.

Police in Edinburgh, Scotland hope to solve a 1977 double homicide case through DNA testing. New analysis of old evidence has revealed the DNA profile of an unknown male. "Low copy number" testing was used to retrieve a partial profile of the unknown male. As part of the investigation, police will be looking at 200 DNA samples from potential male suspects which were collected previously. Using the database, police are also looking for matches to the partial profile which could lead either to the killer or a relative of the killer.

31. "Bill would allow DNA charges." Centre Daily Times, September 24, 2003.

In Pennsylvania, a state representative said he's begun the process to introduce legislation allowing police to file criminal complaints based on a DNA profile instead of a name. The legislation was inspired by two 1997 rape cases in which prosecutors identified the suspect by a DNA profile as a means of allowing prosecution after the five-year statute of limitations on the crimes had expired. A break in the case came this summer when a former resident was arrested in Florida for attempting to rape a 33-year-old woman, and linked to the Pennsylvania cases through DNA.

32. "Dallas to stick with county's crime lab." The Dallas Morning News, September 24, 2003.

The Dallas Police Department has decided to continue using the county crime lab for drug, DNA and toxicology testing after county officials questioned whether the financially strapped city could find a better private sector deal. The City Manager said that the city would renew its nearly 30-year relationship with the Southwestern Institute of Forensic Sciences and reject bids submitted earlier this year by four private laboratories. The DA's office whether testimony from witnesses employed by a private, for-profit lab paid by the city would be as credible as that from taxpayer-supported county lab technicians, and raised concerns about the fees that private firms typically charge for expert testimony, which was excluded from the bid package, as well as potential problems with Dallas submitting cases from a private lab to the national DNA database.

33. "Attorney general says she needs more staff." The Post-Crescent (Appleton, WI), September 19, 2003.

The Wisconsin Attorney General is asking the Legislature to make the funding of state crime labs that process DNA evidence a priority. The Milwaukee and Madison labs had a testing backlog of 536 DNA cases. However, the next state budget cycle is two years away and it the Governor's office said it would be difficult to predict what resources will be available for the labs.

Genetic Privacy

34. "NHS Crisis As DNA Test 'Kills' Private Health." The People, September 28, 2003.

In England, insurance firms agreed at a conference last week to delay any decisions over DNA testing for five years. Due to advances in genetic testing, these patients could be monitored for an increased risk of heart disease.

But they might struggle to get medical cover. The Health Secretary warned, "Genetics will kill off health insurance because you will either be a good risk or a bad risk. As our understanding of genetics increases, the case for private health insurance as an alternative to the NHS weakens.

Paternity

35. "Bill Would Urge Early Paternity Testing." The Boston Globe, September 27, 2003.

Massachusetts legislators are considering a bill that would urge men to prove or disprove through genetic testing that they are the father of a child born out of wedlock before signing on to support the child. The proposal has the backing of the Massachusetts Bar Association, Boston Bar Association, and several fathers' groups.