

DNA RESOURCE REPORT FEBRUARY 21, 2003

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The February 21, 2003 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.

SUMMARY

Maryland, Minnesota, North Carolina, Rhode Island and South Carolina introduced bills to expand their DNA databases. A convicted robber is challenging federal DNA database statutes on constitutional grounds. A Maryland court has upheld the jailhouse search of a man's clothes following an arrest which yielded DNA that matched him to an unrelated crime.

Budget cuts in Michigan and Texas could affect state crime labs, and meanwhile a city in Texas and an Ohio jurisdiction may be building a new labs. Backlogs at local crime labs in Louisiana were considered at a recent legislative hearing.

A bill to extend the statute of limitations when DNA evidence is available was introduced in Kansas. Rape evidence may have been compromised in a case where police questioned a victim for two hours at a precinct rather than taking her to a hospital for an examination.

Post conviction DNA testing in Virginia has exonerated a man after 21 years in prison, and the same testing has linked another man to the crime through the database. Georgia and Texas introduced proposals to allow inmates greater access to post conviction DNA testing, and a New Mexico bill has passed the Senate. An Illinois prosecutor will review 100 cases for post conviction DNA testing, and other post conviction testing requests made the news in Florida and Ohio.

In international news...DNA is key evidence in trials in South Africa, Namibia and Brazil. Canada's high court ruled that a DNA sample is not required until all appeals are exhausted. In London, police partially credit DNA with lowest burglary rates in 25 years. Also in the UK, DNA testing on dandruff identified a robber, and testing has been ordered on a dog in an ownership dispute. The International Commission on Missing Persons was in Chicago to gather relative samples for DNA comparisons.

STATE LEGISLATION

Forensic DNA

1. Arkansas SB 276 – Appropriations bill for the state crime laboratory.
2. Georgia SB 119 – Provides for a motion for new trial where a person is sentenced for a capital crime and DNA testing may be exculpatory; provides for post-conviction requests for DNA testing in cases where a person is sentenced to death.

3. Kansas HB 2270 – Extends the statute of limitations for certain crimes where DNA evidence is available to one year after the perpetrators identity is established.
4. Maryland HB 934 – Expands offender DNA database to include all convicted felons. Retroactive to include currently incarcerated and probationers. Makes other changes to the DNA database statute.
5. Minnesota HB 382 – Makes permanent the current all-felons DNA database statute.
6. Missouri HB 8 – Appropriates funding for state regional crime laboratories.
7. North Carolina HB 7 – Expands offender DNA database to include all convicted felons. Retroactive.
8. Rhode Island HB 6104 -- Expands offender DNA database to include all convicted felons. Retroactive to July 2001.
9. South Carolina HB 3517 -- Expands offender DNA database to include all convicted felons. Retroactive.
10. South Carolina HB 3594 -- Expands offender DNA database to include all convicted felons. Retroactive.
11. Texas HB 866 & SB 444 – Creates a commission to study capital punishment in Texas. Requires that the commission consider the ability of new technologies such as DNA testing to increase that certainty.
12. Texas HB 1011 – Makes various changes to current provisions for requesting post conviction DNA tests.

Genetic Privacy / Research

13. California SB 199 – Provides that genetic information is the personal property of the individual to whom the information pertains.
14. California SB 200 -- Prohibits the denial of long-term care insurance based on a person's genetic information.
15. Missouri HB 437 – Genetic information may not be treated as a preexisting condition in the absence of a diagnosis of the condition related to such information.
16. New York AB 4018 – Requires licensure of genetic counselors, and establishes a genetics advisory council.
17. Rhode Island HB 5773 -- Prohibits employers and employment agencies from denying employment, and prohibits licensing agencies from denying occupational licenses based on a refusal to submit to genetic testing by the employee or applicant.
18. Tennessee SB 1515 & HB 1075 – Prohibits human cloning.

Paternity

19. Massachusetts HB 782 – Establishes procedures for genetic paternity testing and paternity acknowledgement forms.
20. Minnesota HB 453 – Adopts Uniform Parentage Act. Contains various provisions relating to genetic paternity tests.
21. Tennessee SB 522 – Allows men to challenge child support orders on the basis of genetic paternity tests but only if the man did not consent in writing to be named on the birth certificate and if he did not enter into an agreed order acknowledging paternity.
22. Texas HB 993 – Permits motions to vacate court orders for child support based on genetic paternity tests.

NEWS ARTICLES

Forensic DNA

1. "SKorea subway blaze death toll 124, 144 injured." AFX Asia, February 19, 2003.
Of the 124 dead from the South Korean subway fire, only 25 have been identified so far, and the remaining 97, burnt beyond recognition, will likely need to be identified by DNA testing.
2. "Judge has a cunning plan for DNA test on abandoned Baldrick." The Daily Telegraph (London), February 19, 2003.
In England, a county court judge has ordered a DNA test on a pedigree dog to show whether a woman's claim to it is genuine. The woman says a friend was looking after the dog while she was in the hospital for an operation. After the surgery, she was told that the dog had died. The dog shelter questions the lady's claim to the dog and her ability to care for it. The dog's sample will be matched to other dogs from the same litter that the woman says she still looks after, including his parents.
3. "Forensic scientist saved evidence that later freed 2 innocent men." The Associated Press State & Local Wire, February 18, 2003.
In Virginia, a forensic scientist -- in what was either a stroke of prescience or a mistake -- she put tested biological material in case files instead of returning it with other evidence to the appropriate authorities. In so doing, she has enabled recent DNA testing in cases where all the other evidence has long since been destroyed, thereby clearing two innocent men of rapes. The woman had apparently been in the habit of taking the pieces of evidence that she used for blood typing and tape them to her test sheets. The evidence was recently discovered when the lab was reviewing his case file after a request for post conviction DNA testing.
4. "Prosecutors to review nearly 100 murder convictions." The Associated Press State & Local Wire, February 18, 2003.
In Cook County, Illinois, a team of prosecutors will review nearly 100 murder cases for untested DNA evidence. The DNA Review Unit is focusing on untested biological evidence in cases where the defendants maintain their innocence.
5. "Ontario police extract DNA from evidence in 33-year-old case." The Canadian Press (CP), February 18, 2003.
Canada's Centre of Forensic Sciences has successfully extracted a male DNA profile from evidence in a 33-year-old murder being re-examined by Ontario Provincial Police. The development could be the key to unlocking the mystery of the death of a man whose body was found in the summer of 1969, bound and gagged and floating face down in a river.
6. "Lawmaker wants DNA database expanded." The Associated Press State & Local Wire, February 17, 2003.
A South Carolina legislator wants the DNA database expanded to include anyone convicted of a felony. "It has broad support from law enforcement and victim's groups," he said. "An all-convicted-felon program in our state would solve additional crimes and provide support to law enforcement."
7. "Balkan refugees seek missing relatives." Chicago Tribune, February 17, 2003.
The International Commission on Missing Persons collected DNA samples from Chicago residents who are still missing family from the conflict in Bosnia. Forty families had expressed interest in providing blood samples, but more arrived after learning of the program -- and a family of six drove two hours to participate in the program. The ICMP reports that about 1,600 bodies from the region have been identified using DNA. The commission estimates that up to 40,000 people are missing in the former Yugoslavia.
8. "Once unsolvable cases unraveled by DNA." Miami Herald, February 17, 2003.
This article illustrates how DNA profiles and other forensic evidence can assist investigators trying to solve the murders, but that the process can often get bogged down in overworked crime labs. It can sometimes take months to process information that could help solve a case -- and perhaps catch an assailant before the person commits another crime. Focuses on cases in South Florida.
9. "Cuyahoga furthers plan for crime lab." The Plain Dealer, February 17, 2003.

In Cuyahoga County, Ohio, a committee led by the county prosecutor has been working for more than a year to build a county crime lab. The plan should be released in a month or so. In addition to the investigative aspect, the committee is promoting a new lab as an economic development project - lots of big-money science jobs and a possible partnership with a local university. However, funding for the lab will be a big obstacle.

10. "Bill Offers Defense for Defendants Changing Plea." Texas Lawyer, February 17, 2003.
In Texas, a legislative proposal would allow defendants who plead guilty but later assert their innocence to have a defense if prosecuted for perjury. The bill would allow those who have pleaded guilty to claim innocence later - under certain circumstances -without fear of prosecution. The bill's sponsor says the measure is needed because some prosecutors have threatened to prosecute inmates on perjury charges because the inmates pleaded guilty but subsequently sought DNA tests based on claims that they're innocent.
11. "South Africa; Attorney Charged With Rape Says He Was Attracted to Girl." Africa News, February 16, 2003.
In the trial of a South African attorney charged with raping a 14 year-old girl, a medical expert has testified that the attorney was the donor of at least one DNA sample taken from the girl. The attorney has admitted to a relationship with the girl, but has not admitted to sex.
12. "ACLU Asks Officials To Ease Up on Rapist Siebers." Albuquerque Journal, February 16, 2003.
The Mayor of Albuquerque is proposing a local ordinance for convicted sex offenders which could include a requirement to submit a DNA sample when registering as a sex offender.
13. "Judge will allow a third DNA test for death row inmate Amos King." The Associated Press State & Local Wire, February 16, 2003.
In Florida, a circuit court judge has decided to allow attorneys for a death row inmate to arrange a third round of DNA testing in another attempt to prove the condemned man did not commit a 1977 murder. Earlier this month, Governor Jeb Bush said the further testing failed to provide any additional evidence which would exonerate the man and scheduled the execution for Feb. 26.
14. "Treatment delay could endanger rape case." Philadelphia Inquirer, February 16, 2003.
In Pennsylvania, police investigating a rape elected to take the victim to the department's Special Victims Unit for two hours of questioning rather than immediately taking her in for medical treatment and collection of forensic evidence. Police believed the attack to be the third in a series of rapes in the evidence and determined that it was important to get the interview completed as soon as possible. That delay shocked a judge, and one supervising prosecutor is concerned that it may have affected the successful collection of critical DNA evidence. In order to preserve evidence, rape victims are urged not to eat, drink, wash or use the bathroom until rape kit evidence is collected at a hospital -- and this case could hinge on DNA evidence, because the rapist was masked and covered each victim's eyes. None of the women could identify the attacker. Police eventually linked a suspect to the crime through the DNA database.
15. "Hospital conference to help aid rape victims." Chicago Daily Herald, February 15, 2003.
In DuPage County, Illinois, a conference was recently held its second Sexual Assault Response Team/Sexual Assault Nurse Examiner Conference to discuss ways to provide a unified response to sexual assault cases. Funding for the conference has been provided by a grant from the Illinois Criminal Justice Information Authority, and participants included medical, legal and law enforcement professionals.
16. "Suburbs' piece of the pie \$400 billion project list includes help to Metra, crime lab, hospital." Chicago Daily Herald, February 15, 2003.
The fiscal year 2003 federal funding bill includes \$250,000 to expand the DuPage County crime lab.
17. "Namibia; DNA Links Suspect to Heist Car." Africa News, February 14, 2003.
In Namibia, DNA matching that of an armed robbery suspect has been found in the vehicle allegedly used in a multi-million dollar highway heist. The DNA evidence means that the suspect is the second of the nine remaining suspects on trial to be linked to a stolen vehicle suspected to have been used in the robbery in 2000. The DNA, taken from blood found on the steering wheel, was performed by scientists with the South African crime lab.
18. "Federal spending includes money for Florida citrus, shrimpers." The Associated Press State & Local Wire, February 14, 2003.

The fiscal year 2003 federal funding bill includes \$1.25 million for the Florida Gulf Coast University DNA testing center.

19. "Gubernatorial candidate Leach pushing DNA testing." The Associated Press State & Local Wire, February 14, 2003.
In Louisiana, a former congressman who is now a candidate in the governor's race is promoting a plan Friday that would require DNA testing for death penalty cases. He said he would push for the proposal if elected to office.
20. "Kearney man convicted of rapes." The Associated Press State & Local Wire, February 14, 2003.
In Nebraska, a man has been convicted of raping at least three women. He was linked to the crimes through DNA evidence, but denied the charges. In exchange for his no contest pleas, four counts of felony burglary and three counts of use of a weapon to commit a felony were dismissed.
21. "Science to aid painful search." Chicago Tribune, February 14, 2003.
The International Commission on Missing Persons estimates that between 25,000 and 40,000 are missing in Bosnia-Herzegovina, Croatia, Kosovo and Macedonia because of the years of ethnic battles. The commission has taken about 28,000 blood samples from survivors in the former Yugoslavia. Since 2001, the samples have helped identify nearly 1,500 bodies. Officials want to expand the DNA program to Guatemala, Rwanda and other nations.
22. "No privacy expectation in clothes confiscated at jail." The Daily Record (Baltimore, MD), February 14, 2003.
In Maryland, the Court of Appeals upheld the jailhouse search of a murder suspect's clothing following his arrest on an unrelated charge drug charge. Subsequent DNA analysis identified stains on the man's clothing as the blood of a murder victim. During the investigation, police officers moved the clothing from the general booking area to a property room for safekeeping. After consulting with the state's attorney's office, investigators returned the clothing to its original location and obtained a search warrant so the clothing could be analyzed. "The Fourth Amendment's exclusionary rule's purpose in deterring police and government misconduct is not violated by an officer who chooses to secure potential evidence already being legally held by authorities, ... seeks advice from counsel and then further searches the evidence pursuant to a warrant," the court said.
23. "Blood from Reno house matches woman's DNA." The Deseret News (Salt Lake City), February 14, 2003.
Blood found on the carpet in the house of a Reno, Nevada man accused of abandoning a 3-year-old boy in Salt Lake City is consistent with the DNA profile of the boy's mother who has been missing since January. Investigators found blood in several places around the house, including "two substantial-sized" bloodstains on the carpet from the master bedroom. The carpet and padding had been ripped out, rolled up and left in the hallway when police found it.
24. "Mich. troopers dwindle to 1,000." The Detroit News, February 14, 2003.
Due to state budget cuts, the number of Michigan State Police troopers is about to dip below 1,000 -- a three-decade low that means slower response times to crime scenes and traffic accidents and lower visibility on the highways. Plans may include moving some administrators onto road patrols, or shifting troopers to the road from arson investigation, local school programs, lab work and DNA analysis.
25. "No DNA Test For Doc." The Edmonton Sun, February 14, 2003.
The Supreme Court of Canada will not hear an appeal from the Alberta Crown which wanted to get immediate DNA evidence from a doctor convicted of killing a fellow physician. The court's decision means a doctor convicted of killing one of his colleagues will not have to give any DNA evidence to the Crown until appeals connected with his case have run their course. The victim's body was never found despite a massive search, but his blood was found in the suspect's office and in the trunk of his car.
26. "Man guilty in sex attacks on 3." Rochester Democrat and Chronicle, February 14, 2003.
In New York, a prison inmate accused of sexually assaulting two girls and a 67-year-old widow was found guilty on 16 of 18 charges. Investigators charged the man last April after a routine comparison of inmate DNA from a state database was made against DNA samples from unsolved cases. He had given a sample of his DNA after he was imprisoned in December 2000.
27. "'Suspect' will test DNA to dispel guilt." Akron Beacon Journal, February 13, 2003.
In Ohio, a convicted killer may get another chance to prove his innocence if DNA evidence points to another man he says killed his mother-in-law. In a development that caught his defense team off-guard, the so-called

"alternative suspect" – as developed by the defense -- has voluntarily agreed to submit to DNA testing. A judge has suggested that DNA testing of the other man should be done -- if a legal means of obtaining the samples could be found. Without probable cause, however, the only way authorities could conduct the testing would be on a voluntary basis. A detective who recently visited the alternative suspect's home said he voluntarily gave the samples because "he's tired of the crap and wants to be left alone."

28. "Crook Trapped By Dandruff." Daily Star, February 13, 2003.
In the UK, a robber was nabbed after leaving his dandruff at the scene of the crime. He burst in to a store armed with a 2ft machete and demanded cash. The shopkeeper snatched his baseball cap from his head as he fled, and handed it to police. DNA from the dandruff then linked the hat to the suspect.
29. "\$1.6 million for crime lab OK'd by board." Fort Worth Star-Telegram, February 13, 2003.
In Fort Worth, Texas, the Crime Control and Prevention District board voted unanimously to use \$1.6 million in crime district money to fund a new Police Department crime lab. The board also agreed to allocate an additional \$120,000 so that the police lab can gain immediate DNA certification. The crime district money, which comes from a half-cent city sales tax, is used to help pay for police priorities, neighborhood crime prevention and school security initiatives. The board's decision now goes to the City Council for approval.
30. "Federal Spending Bill Includes Millions For Fort Wayne-Area Projects." State News Service, February 13, 2003.
The fiscal year 2003 federal funding bill includes \$1.5 million for the Indiana State Police labs that analyze DNA evidence.
31. "Burglaries reach 25-year low in London." The Times (London), February 13, 2003.
London has the lowest burglary rate of England's six biggest cities, according to figures published by Scotland Yard yesterday. Statistics for the nine months to January show that burglaries are running at 15 per 1,000 homes, which is the lowest rate among the six big urban forces in England and Wales. Scotland Yard said that the burglary figures are now the lowest for 25 years and projections for the end of the year suggest that the final total could be 115,000. Detectives are using more forensic science evidence, such as DNA taken from homes that have been burgled, enabling them to arrest an extra 2,350 burglars. In England and Wales, only 12 per cent of burglaries are solved.
32. "Va. Inmate Imprisoned 21 Years Released a Day After DNA Tests." The Washington Post, February 13, 2003.
In Virginia, an inmate has been released from prison after serving 21 years for a rape that he apparently did not commit. DNA testing has not only exonerated this man of committing the crime, but it also was subsequently matched to another offender on the DNA database. At the time of the conviction, crime labs, courts and police routinely destroyed DNA evidence after convictions and appeals were exhausted. But a state forensic scientist had a habit of clipping a bit of each sample before it was returned to local authorities for destruction – her file was recently discovered and the blood sample from this case was adequate for DNA testing. All other DNA evidence had been destroyed.
33. "Senate OKs DNA procedures for prisoners." The Associated Press State & Local Wire, February 12, 2003.
In New Mexico, the state Senate agreed unanimously to revive the procedures for convicted felons to use DNA evidence to try to prove their innocence. Inmates would file petitions with state district courts, which could order DNA tests done and supervise the proceedings. Depending on the outcome of the testing, courts could set aside convictions, dismiss charges, grant new trials or order other relief.
34. "Brazil-Kidnapping DNA Evidence Goes Against Brazilian Charged With Kidnapping." EFE News Service, February 12, 2003.
In Brazil, prosecutors using DNA evidence have moved closer to bringing new charges against a businesswoman suspected of kidnapping two newborn babies from hospital maternity wards and raising them as her own. The woman is already charged with abducting a boy she raised as her own for 16 years. Now genetic testing confirmed that the boy's supposed sister was also kidnapped from a public hospital. A DNA test confirmed she was taken from her parents the day she was born. Saliva used in the DNA tests was obtained from the cigarette butts the girl left behind after she testified in the investigation of her brother's identity.
35. "Perry calls for widespread budget cuts." Fort Worth Star-Telegram, February 12, 2003.
In Texas, the Governor has generally listed "higher education special projects" to be targeted for reduction due to budget crunches. Specific cuts were not yet listed, but one possibility is DNA Laboratory, used for paternity testing

and locating missing people, at the University of North Texas Health Science Center in Fort Worth.

36. "DNA request unconstitutional, ex-trooper says." The News Journal (Wilmington, DE), February 12, 2003.
In Delaware, a former state police lieutenant who was convicted of bank robbery is refusing to give a sample of his blood to federal authorities who claim they are entitled to obtain his DNA for a national database. Attorneys for the man maintain the DNA sample request violates a number of his constitutional rights, including the right to be free from an unreasonable search and seizure, and are asking a judge to find the federal DNA Backlog Elimination Act of 2000 unconstitutional. In this case, authorities are applying the collection rule retroactive – the man was convicted of robbery in 1994. The judge said she may rule within the next two weeks.
37. "DNA testing costs put squeeze on crime labs." Daily Advertiser (Lafayette, LA), February 11, 2003.
The Acadiana, Louisiana crime laboratory said that testing DNA samples in the New Orleans serial killer investigation is forcing the lab to run up a deficit. Testing costs between \$200 and \$450 a sample, and with 286 samples submitted to the lab plus all the other work that's submitted, the \$1.5 million budget is depleted. Of those 286 samples, 269 suspects have been eliminated, and 17 samples are "in the works" Although it's expensive, eliminating suspects through DNA testing "is more cost-effective than traditional police work," the lab director told a legislative panel looking at fees tacked on to court actions.

Genetic Privacy

38. "Science, medical journals walk censorship line in cutting details that might help terrorists." Associated Press Worldstream, February 15, 2003.
Editors of the world's leading scientific journals announced they would delete details from published studies that might help terrorists make biological weapons. The editors, joined by several prominent scientists, said they would not censor scientific data or adopt a top-secret classification system similar to that used by the military and government intelligence agencies. But they said scientists working in the post-Sept. 11 world must face the dismaying paradox that many of their impressive breakthroughs can be used for sinister purposes.
39. "Women with breast cancer asked to give DNA sample." The Daily Oklahoman, February 14, 2003.
An Oklahoma City-based biotech company is in search of 200 genetic samples from women in the Oklahoma City area who have been diagnosed with breast cancer, in its effort to complete the final research phase of a new genetic breast cancer predictive test.
40. "Delay genetic databases." Montreal Gazette, February 14, 2003.
An advisory panel, created by the Quebec government, has proposed a five-year moratorium on new genetic databases to ensure that such information on individuals is not abused. The chairman of the commission for ethics in science and technology, said yesterday no one knows how many such databases exist in Quebec, how secure the data are, or what they are being used for.
41. "Stem-cell measure advances in House." Lexington Herald-Leader, February 13, 2003.
In Kentucky, after a debate over science and faith, a House panel approved a bill to prohibit human cloning while protecting embryonic stem-cell research. The panel postponed a vote on a broader bill -- supported by religious and anti-abortion groups -- to outlaw human cloning, as well as medical procedures that involve transferring a nucleus between cells to create stem cells. Supporters of the stalled bill said stem-cell research starts with the destruction of human life.
42. "30 volunteers ready for DNA project." The Nation (Thailand), February 13, 2003.
Thirty Thais have volunteered to serve as members of a "sample group" in a national project to isolate and map variations in common DNA sequences that is to begin next month.

Paternity

43. "A paternal injustice," St. Petersburg Times, February 17, 2003.
EDITORIAL: In a recent decision from the Florida Supreme Court, a man who proved a child wasn't his within a year of his divorce - the amount of time the Florida Supreme Court gives fathers to challenge paternity – the court found that because the mother's assertion that the child was his did not constitute fraud, the man didn't qualify for

that window. The ruling means that any divorce lawyer worth his salt will be advising male clients to get DNA testing for their children before a divorce is final. Children experiencing the divorce of their parents go through enough turmoil and heartache. Now, because the legal system is looking to sock men with support obligations even for someone else's children, the children of divorce will also have to face their father questioning their relationship. The high court has misstepped here, and children will suffer because of it.

44. "Kenya; Court Orders Fresh DNA Tests On Boy, 8." Africa News, February 14, 2003.
Kenya's high court ordered fresh DNA tests on an eight-year-old boy at the center of parentage row. Two separate women are claiming to be the boy's mother. The judge said one party was disputing the initial DNA tests performed and ordered for a fresh one to be done. "In a case like this, the court cannot rely on probability and cannot shove the child from one mother to another. It is therefore paramount for another test to be performed," said the judge.