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Smith Alling Lane, P.S. provides governmental affairs services to Applied Biosystems. As part of this representation, the firm generates weekly reports on state and federal legislation and news articles. Applied Biosystems has authorized Smith Alling Lane to make these reports publicly available through this website. The information presented in these reports does not necessarily reflect the viewpoints of Applied Biosystems or Smith Alling Lane, P.S.

The March 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

Bills to expand DNA databases to include all convicted felons were introduced in Louisiana and Pennsylvania, moved forward in South Carolina, and were enacted in South Dakota. DNA has confirmed a fifth woman is the victim of a serial murderer in Louisiana, and has linked a criminal justice student in North Dakota to a string of sexual assaults.

Attorney General Ashcroft's announcement of the President's DNA Initiative prompted articles on backlogs and funding issues at crime labs in Pennsylvania, Illinois and Missouri. Other backlog and funding stories made the news in North Carolina, New York, Mississippi. New Jersey and Texas introduced legislation to require ASCLD accreditation of crime labs.

A bill to eliminate the statute of limitations for DNA rape cases was introduced in Massachusetts, and the US Supreme Court is considering a retroactive application of a California law that removed the statute of limitations for certain cases. Appellate courts in Illinois dismissed search and seizure challenges to DNA collections in two unrelated rulings.

Post conviction DNA testing bills were introduced in Oregon and Texas, and a New Mexico bill was enacted, and a Nevada bill is under consideration. Cases for potential post conviction DNA testing are under review in Baltimore, Maryland and Orange County, California.

In international news...Canadian groups are calling for a missing persons DNA database, and a Canadian province is reviewing old criminal cases that used hair comparison for possible new DNA testing.

STATE LEGISLATION

Forensic DNA

1. Hawaii HCR 214 – Requests interim studies on the issues and feasibility surrounding the collection of DNA samples from class A and B felons.
2. Louisiana HB 290 -- Requires DNA samples to be taken from all persons who have been arrested, convicted, or who have entered a plea agreement for all felony offenses.
3. Louisiana HB 374 -- Requires DNA samples to be taken from all persons who have been arrested, convicted, or who have entered a plea agreement for all felony offenses.
4. Massachusetts HB 2102 – Allows rape indictments to be filed at any time if a DNA sample was collected and stored.

5. Minnesota SB 817 – If authorized by the victim, the county may seek reimbursement from the victim’s insurer for costs related to criminal sexual contact examinations, including full cost of the rape kit examination.
6. New Jersey AB 3451 -- Requires state forensic laboratories to be accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB). Requires the Legislature to provide annual funding, in an amount certified by the Attorney General, necessary for these laboratories to maintain accreditation.
7. Oregon HB 3365 -- Removes requirements from current post conviction testing laws that petitioners must show that identity was an issue at trial.
8. Pennsylvania HB 835 – Expands offender DNA database to include all convicted felons. Retroactive to include currently incarcerated.
9. Texas HB 2319 – Requires juvenile DNA samples to be expunged from the offender DNA database if the person provides a certified copy of a court order that seals the juvenile record of the adjudication that resulted in the DNA record.
10. Texas HB 2703 – Requires crime laboratories to be accredited by the American Society of Crime Lab Directors. Forensic analysis conducted by non-accredited labs may not be admitted as evidence. Also requires a sufficient amount of testable evidence to be maintained for defense, otherwise the evidence is not admissible.
11. Texas HB 2704 – Requires the use of third party consultants for the post conviction review of DNA laboratory evidence in criminal cases.
12. Texas HB 3255 – A convicting court must order retesting of DNA evidence for any biological evidence previously tested by the Houston lab.
13. Texas SB 1180 – Requires an offender-pays fee of \$250 for DNA testing of samples to be included in the database.
14. Texas HCR 93 & SCR 30 – Urges Congress and the U.S. Department of Justice “to conduct a thorough investigation into the irregularities found in the work of the Houston Police Department Crime Laboratory and that the department conduct a review of past criminal cases in which the outcome might have depended on evidence processed by the laboratory.”

Genetic Research / Privacy

15. Florida SB 2222 – Creates the Genetic Counseling Practice Act.
16. Massachusetts HB 1280 – Regulates stem cell research and prohibits human cloning.
17. New York HB 6246 – Insurers may not deny coverage based solely on results of a genetic test which indicates a predisposition.
18. Ohio HB 122 -- Extends the prohibition on certain uses of genetic screening and testing in connection with health care policies, contracts, plans, and agreements, currently scheduled for repeal on February 9, 2004, for ten years.
19. Pennsylvania HB 854 -- Prohibits discrimination in insurance coverage on the basis of genetic information or a request for genetic services.
20. Pennsylvania HB 855 -- Prohibits certain practices of discrimination because of genetic information.
21. Texas HB 3521 – Prohibits “destructive human embryo research.”
22. Texas SB 1614 -- Imposes a civil penalty for violation of certain restrictions relating to genetic information.

Paternity

23. Florida SB 1939 -- Requires DNA testing of all live births and the maintenance of such records by the Department of Health. Provides that analysis of such DNA records shall be by court order only. Allows for new trials for paternity determinations based on genetic testing.
24. New York AB 6269 – Requires courts to immediately halt child support orders if genetic testing disproves paternity.
25. Ohio HB 95 – Requires genetic paternity testing if the custodial parent applies for federal support and an acknowledgement form has not been signed by both parents. Requires hospitals to inform both parents of the availability of immediate genetic paternity testing at no cost.
26. Texas HB 2318 & SB 1805 – A tribunal may order temporary child support orders if an alleged father has declined to submit to genetic testing.

NEWS ARTICLES

Forensic DNA

1. “Fifth victim linked to Louisiana serial killer.” The Associated Press State & Local Wire, March 19, 2003.
In Louisiana, DNA evidence has now linked a fifth victim to a serial killer who has not yet been identified. The killings began a year and a half ago. More than 1,000 men have been asked for DNA samples to assist police in eliminating possible suspects – most of these samples have been given voluntarily.
2. “Richardson vetoes first bill of session.” The Associated Press State & Local Wire, March 18, 2003.
New Mexico’s Governor has signed into law a bill that will give more time to convicted felons to try to prove their innocence with DNA evidence. A state law enacted in 2001 gave prisoners a year - until July 2002 - to petition district courts to reopen their cases and order DNA testing. The new law extends the deadline for three years, until July 2006.
3. “Arkansas trucker pleads guilty to 1965 murder in California.” The Associated Press State & Local Wire, March 18, 2003.
A former truck driver from Arkansas has pleaded guilty to a California murder committed in 1965 and was sentenced to prison for seven years to life. DNA from the crime scene was linked to the man’s DNA from saliva on envelopes mailed to his trucking company more than 30 years later. The man has been linked to another California murder in 1965 and a murder in Oklahoma in 1975. The man’s truck driving job took him across the United States, and authorities suspect he may be linked to crimes in other states.
4. “Military prosecutors present case against two accused in parachute sabotage.” Associated Press State & Local Wire, March 18, 2003.
US military prosecutors have begun presenting their case against two Marines accused of sabotaging parachutes blamed for injuring three trainees. There is reportedly DNA evidence found on one of the parachutes that may link one of the Marines to the crime.
5. “Court reviews window on old molestation cases.” Associated Press State & Local Wire, March 18, 2003.
The case is *Stogner v. California*, 01-1757. The US Supreme Court is considering a 1994 California law that retroactively repealed the statute of limitations in child-molestation cases. The defense maintains that the US Constitution prohibits bringing criminal cases where the statute of limitations has expired. The Bush administration has urged the court to uphold the law out of concern that throwing it out may weaken some provisions of the USA Patriot Act. The Justice Department also has asked Congress to adopt rules retroactively nullifying statutes of limitations on child abduction, child molestation and federal cases involving DNA evidence.
6. “DNA Initiative' Would Help Get Sex Offenders Off the Street, Says Pennsylvania Coalition Against Rape.” PR Newswire, March 18, 2003.
The Pennsylvania Coalition Against Rape and the National Sexual Violence Resource Center calls the President’s DNA Initiative a “much needed step forward” in the effort to combat sexual violence. In Pennsylvania, a shortage

of personnel has resulted in a backlog of 8,000 offender samples. The state police lab says the proposed funding is much needed, especially in light of anticipated state budget cutbacks and increased workloads at DNA labs. The labs hope that the proposed funding will be able to be used for the hiring of the additional personnel that labs so desperately need.

7. "Legislator seeks to expand DNA law." The Advocate (Baton Rouge, LA), March 17, 2003.
A Louisiana legislator who has introduced a bill to require all convicted and arrested felons to submit DNA samples to the database said that the hunt for Louisiana serial killer influenced his proposal of the legislation, but that was not the entire reason. "Criminals who commit more serious crimes are likely to commit lesser crimes at some time before or after, and, thus, getting a DNA match might help to clear up mysteries surrounding some crimes," he said. An ongoing pilot program under way in one Louisiana parish is collecting DNA samples from anyone arrested for a qualifying offense at the same time they are fingerprinted.
8. "Federal judge overturns conviction for 1984 double murder." The Associated Press, March 17, 2003.
A US District Court in California has overturned the conviction of a man serving a life sentence for two 1984 murders, ruling that new evidence called his guilt into question. The court ruled that a jury would not find convicted man guilty, based on evidence that included the arrest nearly four years ago of another man now linked to the deaths through DNA testing.
9. "Backlog of cases leads SBI to push for collection of testing fees." The Associated Press State & Local Wire, March 17, 2003.
In North Carolina, defendants are being told to come up with certain court costs and fees that have long gone uncollected. In some cases, those costs include new fees, such as a \$300 bill for various laboratory tests (including DNA tests) conducted by the State Bureau of Investigation. Public defenders feel the fee is too high for many defendants to pay, but acknowledge the state lab needs more revenue to avoid substantial test delays. For example, the time lag for obtaining DNA results is six months to a year. In one case, a homeless man spent several months in jail on a \$150,000 bond while DNA tests were completed. The man was eventually released from jail after the DNA tests eliminated any possibility that he burglarized, kidnapped and raped a woman.
10. "Nevada considering DNA testing procedures for death row inmates." The Associated Press State & Local Wire, March 17, 2003.
The Nevada Judiciary Committee is considering a plan that ensures Nevada's death row inmates can petition for DNA testing of any existing evidence not previously tested. The court would only order such tests if there's a "reasonable probability" that the petitioner wouldn't have been prosecuted or convicted if the DNA evidence had been tested earlier and didn't connect the person with the crime. The proposal came out of the Legislature's interim committee to study the death penalty, which came up with 17 recommendations, including a ban on the execution of the mentally retarded and abolition of three-judge sentencing panels, in line with recent U.S. Supreme Court rulings.
11. "More DNA collections may mean more arrests." The Associated Press State & Local Wire, March 17, 2003.
The South Dakota Legislature has enacted a bill to require DNA from all convicted felons. Officials expect the law will help solve more crimes and clear innocent people. The current collection of about 300 DNA samples a year under current law, and the new law will require 2,000-2,500 samples a year. Officials say the additional samples will be sent to an outside lab, so the new law will not interfere with DNA testing in active criminal cases.
12. "Cops revisit murders for shreds of DNA evidence." Chicago Sun-Times, March 17, 2003.
Chicago detectives have been poring over cold case homicide files for records of any evidence--baseball caps, hair and even cigarette butts--that they can send to the State Police for DNA testing to solve aging murder cases. The program's impact on the State Police laboratory--which processes DNA cases for local police agencies--is still unclear. It often takes at least a month for a police agency to receive DNA results back from the lab. Under a separate program announced last month, the Cook County state's attorney's office plans to check whether any DNA evidence went untested in the cases of 100 murder convicts who claim innocence. Testing evidence in those cases would not create an undue burden for the lab.
13. "DNA Education: New poll shows dramatic rise in Americans' "DNA I.Q." Health & Medicine Week, March 17, 2003.
A new Harris poll shows that 60 % of U.S. adults got the right answer when asked "what is DNA?" When given the multiple choice question, "what does DNA stand for?," adults did even better with two-thirds choosing the

correct answer. The findings show a dramatic rise in genetics awareness since 1996, when a National Science Foundation survey showed only 21% of adults could define DNA.

14. "Progress on DNA backlog." Sarasota Herald-Tribune, March 17, 2003.
Article reports that, "year after year, in state after state, they've [politicians] failed to deal with a glaring shortcoming in law enforcement -- a huge backlog of DNA evidence that crime labs haven't had the time or money to examine." Lauds the Bush administration's proposal to spend \$1 billion over five years on DNA, but notes that more attention should also be paid to post conviction DNA testing cases.
15. "Sexual Assault Cases: Attorney: 'Always room for error' in DNA evidence." Grand Forks Herald, March 16, 2003
A man majoring in criminal justice at the University of North Dakota, who also served as the vice president of the Criminal Justice Association, has been charged with four sex assaults on campus. The man's DNA has linked him to at least one of the assaults. The man is now a suspect in several other sexual assaults that have occurred in the community over the last 18 months.
16. "The Nation;You Think DNA Evidence Is Foolproof? Try Again." The New York Times, March 16, 2003.
Discusses the "human factor" in DNA tests that can have falsely positive results – especially in light of the recent problems faced by the Houston lab. One local lab suggests that the only one way to assure the integrity of DNA testing by laboratories. "Resources must be made available to criminal defense attorneys," he said. "If you want the best crime lab, you need to have the best criminal defense attorneys to challenge us."
17. "Backlog Federal Help Could Unlock The Benefit Of DNA." Pittsburgh Post-Gazette (Pennsylvania), March 16, 2003.
Article notes the need for added DNA funding in Pennsylvania and praises the Bush administration's DNA Initiative. "In an ideal world, the county and state would find the money to hire the staff that examines such evidence, just as they hire the police officers they need. But in this unique transition to a new form of criminal analysis, a boost from Washington is not out of line."
18. "Brown asks hold on some death penalty cases." The Houston Chronicle, March 16, 2003.
Houston's Mayor is asking the Texas Governor to place a moratorium on some Harris County death penalty cases in which DNA evidence was processed by the Police Department's troubled crime lab. He also asked the US Attorney General for Justice Department help in reviewing cases from the crime lab that were prosecuted by the county's district attorney's office. One potential problem is that the lab may not have preserved enough evidence to be retested.
19. "Society wants DNA database for lost kids." Calgary Herald (Canada), March 14, 2003.
The Missing Children Society of Canada is calling on the government to create a new DNA data bank for missing persons, a tool that could identify human remains and provide peace of mind to relatives by putting cases to rest. Last year, there were 66,532 children reported missing in Canada, according to RCMP figures.
20. "Manitoba to review high-profile convictions that used hair evidence." The Canadian Press (CP), March 14, 2003.
Manitoba, Canada has announced it will review all serious criminal cases involving hair comparison evidence to ensure that juries were not misled by what is now considered unreliable science. Manitoba's deputy minister of justice said the review was launched after hair comparison evidence was excluded from two recent high-profile murder cases when it was contradicted by DNA tests. Erroneous hair comparison evidence had played a key role in wrongful convictions.
21. "Senate Judiciary OKs bill to require felons to submit DNA." The Herald (Rock Hill, SC), March 14, 2003.
The South Carolina Judiciary Committee has approved a bill to expand the state DNA database to include all convicted felons. The South Carolina Coalition Against Domestic Violence and Sexual Assault and the state Law Enforcement Division support the proposal. DNA helps both prosecutors and law enforcement around the state, but criminal defense attorneys argue that the chances for human error in collecting, processing and storing DNA will increase along with the number of samples involved.
22. "County to tackle backlog of no-suspect cases." Rochester Democrat and Chronicle, March 14, 2003.
The Monroe County (New York) Public Safety Laboratory plans to launch a major initiative to address the growing number of cases in which it has possible DNA evidence from a crime scene but no suspect. The laboratory was awarded a grant of \$1,278,725 from the state for a No Suspect DNA Backlog Reduction Program. The laboratory

has projected that it would have a backlog of 1,200 cases by the end of the year of possible DNA evidence of a crime - but no suspects. This grant will help put about half of these into a national DNA data bank.

23. "Crime science plans revealed." Daily Oklahoman (Oklahoma City, OK), March 13, 2003.
In Oklahoma, a \$20 million forensic science center to be built in Edmond will be the first of its kind and will create about 60 jobs. The lab will be jointly operated by the Oklahoma Bureau of Investigation, the city of Edmond and the University of Central Oklahoma.
24. "Criminal law & procedure -- DNA testing." Chicago Daily Law Bulletin, March 13, 2003.
An Illinois Appellate Court has ruled that a trial court correctly denied juvenile's challenge on search-and-seizure grounds to statute requiring sex offender to submit blood sample for DNA profiling analysis and for registration of his DNA profile. The appeals court said that DNA samples submitted pursuant state law are confidential and the physical intrusion is relatively slight and poses no threat to the health or safety of the individual tested. In addition, the court said, a convicted sex offender has only a minimal privacy interest in his or her identity and that such an identification becomes a matter of legitimate state interest to solve other past and future crimes. The court also noted that the respondent failed to cite a single case supporting his claims that statutes mandating blood samples from sex offenders violate the Fourth Amendment.
25. "Maryland Police Reviewing 480 DNA Cases." Associated Press Online, March 12, 2003.
Baltimore County, Maryland police are reviewing 480 cases worked on by a department chemist who testified at a 1983 rape trial against a defendant who was later exonerated by DNA evidence. The chemist presented false testimony at the trial that the suspect's blood type matched the evidence.
26. "Arrest in death of 18 year old girl." The Associated Press State & Local Wire, March 12, 2003.
In Vermont, DNA test of semen taken from a murder victim exonerated the boyfriend, but the results told investigators it came from someone closely related to the boyfriend. Subsequent testing has linked the boyfriend's father to the crime. The man was convicted in 1991 of sexual assault on a minor.
27. "State lab gradually cutting backlog of cases." The Clarion-Ledger, March 12, 2003.
Four years ago, the Mississippi Crime Lab had a backlog of more than 7,000 cases, and today the backlog is about 3,000 cases. However, the lab cannot catch up to the demand for testing because of \$1 million in budget cuts since 2001, a staffing shortage and aging equipment. Currently, the Crime Lab is performing DNA testing on an emergency basis only because it has just two trained analysts to perform the tests.
28. "DNA-Test Dough Sought." The New York Post, March 12, 2003.
New York City Medical Examiner's office reports that the City's backlog of 17,800 rape-evidence kits has been reduced. 13,255 DNA kits have been reviewed and 924 matches have been made. 419 of the rape DNA samples matched evidence from other rapes, although the suspects are still unknown, 332 matched convicted felons who'd committed unrelated crimes, and 173 matched the suspects who were convicted.
29. "Ashcroft Proposes Spending \$1 Billion For DNA Testing." St. Louis Post-Dispatch, March 12, 2003.
In Illinois, the state lab has a backlog of 330 cases, and Missouri has a 10 month delay on DNA evidence analysis. Missouri currently has no backlog for offender DNA samples, but if it were required to begin collecting DNA from all convicted felons, it could rise to as many as 100,000 in the first year. Backlogs in both states were reviewed by the newspaper in conjunction with the announcement of the President's DNA Initiative.
30. "Criminal law & procedure - hair, blood samples." Chicago Daily Law Bulletin, March 12, 2003.
An Illinois Appellate Court has ruled that the trial court properly granted search warrant for seizure of samples of defendant's blood and pubic hair in connection with criminal sexual assault because under totality of circumstances, person of reasonable caution would believe that defendant's blood and hair samples likely would provide some evidence of crimes committed. The defendant had been seen by one of the victim's neighbors less than a block from the victim's home on the night before the assault. The neighbor stated that the defendant was looking at the victim's house and the window by which the attacker later entered the house. In addition, the complaint stated that the victim's car had been recovered two blocks from a house where the defendant was known to have stayed before his last arrest and that during one his arrests, the defendant had been discovered wearing gloves and a black hood, the same kind of outfit worn by the assailant in this case.
31. "On The Law;Project Seeks to Right Wrongful Convictions." Los Angeles Times, March 7, 2003.

As part of the 2-year-old effort, 20 inmates, including rapists and murderers, serving lengthy prison sentences will have their cases reviewed to determine if they were wrongfully convicted in Orange County (California) Superior Court. The cases will be reexamined in May by a panel comprising two defense attorneys, a prosecutor and a law professor that will study the inmates' claims of innocence. The lawyers will then decide which ones merit further investigation and possibly DNA testing.

32. "Limitations Period Was Told in Rape Trial Based on Semen Donor's DNA Profile Criminal Practice." New York Law Journal, March 7, 2003.

In New York in 1995, a sexual assault kit was prepared for a woman who was beaten, raped and robbed. The police department's latent print unit continued to search for a match to a fingerprint recovered from the crime scene. In 1994, a state DNA database was created to preserve DNA profiles of certain convicted felons. A DNA profile of a semen donor was uploaded to the state database for analysis. Defendant, serving a 12-year prison sentence, was indicted after being identified as the semen donor. He sought dismissal due to expiration of limitations period. The court denied dismissal. Citing *People v. Seda*, it ruled that Criminal Procedure Law §30.10[4][a][ii] may toll the limitations period if a defendant's whereabouts are unknown and unascertainable by the exercise of due diligence. The court further ruled that the prosecution had demonstrated diligent and extended efforts by law enforcement agencies to identify the perpetrator of the 1995 crimes.

33. "Beastly Evidence: Animal DNA Can Put Bite Into Criminal Cases." ABA Journal, March 2003.
Review of the increasing use of animal DNA in solving criminal cases. It has helped to convict suspects as well as to exonerate the accused.

Paternity

34. "Federal funding for paternity program nears end." The Associated Press State & Local Wire, March 17, 2003.
In Maine, a federally funded program called the Non-Custodial Parent Outreach Investigation Project that tracks down men who owe child support is due to shut down this year and the likelihood of the state picking up the \$131,000 tab appears to be slim. In one quarter of one social worker's cases, DNA tests showed the named man was not the child's father. Before a mother can apply for state assistance, she must name her child's father. The Department of Human Services contacts the named man, who has the option of acknowledging paternity or requesting a DNA test. Men who disregard the letters are determined to be the father.