

Smith *Governmental Affairs*
Alling *Attorneys at Law*
Lane

Sponsored By



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 October 15, 2004 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

The New York Supreme Court upheld law enforcement's collection of discarded cigarette butts for DNA sampling. Reforms to military handling of sexual assault cases with DNA are on the way. Federal DNA grants for Nebraska were announced. North Carolina editorials continue to urge the state to better fund its DNA program.

Cold hits on DNA databases aided investigations / prosecutions in California (molestation), Florida (murder tied to drug offender), Missouri (murder), New York (murder; robbery linked to Florida inmate), Oregon (burglaries; rape linked to Florida inmate), Pennsylvania (rape), and Wisconsin (rape). DNA extracted from baseball caps led to cold hits in Arizona (rape) and New York (rape linked to South Carolina felon), and Georgia linked a rape and a murder to the same unidentified man. DNA confirmed a missing Texan's identity found in Washington State.

A post conviction DNA testing appeal was denied in a Tennessee case, and a post conviction motion in Maine is seeking access to the state DNA database. DNA testing freed inmates in Louisiana and Texas. A man exonerated by post conviction DNA testing is seeking \$36 million in damages in Wisconsin. There are now 35 "Innocence Projects" nationally.

In international news... In England, DNA from a trigger identified the gun's owner, and DNA from a teacup identified a burglar. Thailand and South Korea are seeking to establish a DNA database, and an Australian territory has expanded the scope of its DNA database. Russia may use DNA to identify victims from an Egyptian bombing incident. Canada's DNA database identified a drug dealer as a rapist, and 31 of the 69 suspected victims of a Canada farmer have been linked to him by DNA. Indonesia continued DNA tests on suspected suicide bombers.

NEWS ARTICLES

Forensic DNA

1. "DNA connects recent rape to slaying in 1995." The Atlanta Journal-Constitution, October 13, 2004.
In Georgia, an unidentified man who recently raped a 13-year-old girl and let her go after threatening her is linked by DNA to the 1995 rape and killing of an Atlanta girl.
2. "Serial killings suspect guilty in second trial, could face death." The Associated Press, October 13, 2004.
In Louisiana, a jury took just 80 minutes to find the Baton Rouge serial killings suspect, Derrick Todd Lee, guilty of first-degree murder in the death of a 22-year-old woman. Prosecutors took eight days to present their case, which included gruesome crime scene photos and evidence from the murder and four other killings authorities have attributed to Lee. DNA evidence was used to connect Lee to the murder. DNA has linked him to the murder of a total of 7 women from 1998 to 2003.

3. "New lab gear helps state crime investigations." The Associated Press State & Local Wire, October 12, 2004.
In Nebraska, two recent federal grants totaling about \$300,000 - one to help reduce the lab's backlog and another to purchase new equipment - will help the lab more quickly solve its cases. One purchase is expected to be a monitor so technicians can see a more than what is seen through a microscope. They also need freezers and a dehumidifier to make sure DNA will not grow mold. The grant money also means the lab can buy a new instrument that will determine the amount of DNA in 96 samples at a time instead of the current 48.
4. "Steven Avery files suit in Milwaukee seeking up to \$36 million." The Associated Press State & Local Wire, October 12, 2004.
In Wisconsin, a man wrongfully convicted for a rape he did not commit, who was later exonerated through DNA testing, is seeking up to \$36 million in damages. He is suing Manitowoc County and its former sheriff and district attorney, claiming they ignored obvious evidence of the real attacker. The lawsuit seeks between \$1 million and \$18 million in compensatory damages and between \$1 million and \$18 million for punitive damages.
5. "Patty' Rapist Gets 50-Year Term." Capital Times (Madison, WI), October 12, 2004
In Wisconsin, a man convicted of raping a legally blind woman was sentenced to 50 years in prison for the crime. Police initially accused the woman of lying when she said she was raped at knifepoint in her duplex in 1997, and she recanted her story under pressure. She was charged with obstructing police, although the charge was later dropped. But in 2001, a state investigator found DNA from a semen stain in the woman's bed matched the man, who once dated the victim's daughter. The DNA match was made possible through the DNA database. The man has a long record of previous violence, which included other sexual assaults. He is currently serving an 18-year term for a robbery he committed just days the rape.
6. "Police's lab tests point to solo bomber." Jakarta Post, October 12, 2004.
In Indonesia, police said that blood samples from the families of another two suspected bombers did not match the DNA of body fragments found at the Kuningan bomb site. The National Police director of the counterterror division said police had conducted DNA tests on all of the suspected bombers' families and concluded that Heri Golun, alias Heri Kurniawan, was the sole suicide bomber. "We have examined all of the suspected bombers' families. We found only one family's blood sample matched DNA from the blast site," said Pranowo. Police initially suspected that two suicide bombers were involved in the terrorist attack outside the Australian Embassy in Kuningan, South Jakarta, which claimed nine innocent lives and injured over 180 others.
7. "Police officer held in sex assault." The Miami Herald, October 12, 2004.
In Florida, an 18-year veteran of the Miami-Dade patrol has been arrested on sexual battery charges. Investigators say they were able to match his DNA with a semen sample found on a shirt in the victim's truck. The woman had told police that the man used the shirt to wipe himself after raping her. The officer has faced 10 disciplinary actions since August 2001 and was suspended twice without pay, but also shows 21 commendations since January 2001.
8. "Southern Violence: Suspects to face DNA test." Nation, October 12, 2004.
Thailand's Justice Ministry's Forensic Science Institute will seek government approval to collect DNA profiles of all suspects involved in violence in the deep South. The ministry will ask the Prime Minister to set up a national DNA database which would enable authorities to present clear evidence against alleged militants. A member of the National Human Rights Commission warns that the ministry should be aware it was violating human rights if DNA collecting was conducted without consent.
9. "Hospital Restores Rape Program." The Post-Standard (Syracuse, NY), October 12, 2004.
In New York, since University Hospital began collaborating with the Rape Crisis Center in February, more than 45 rape victims have been examined by specially trained nurses there. That came after months of no special services because of funding cuts. The center's Sexual Assault Nurse Examiner (SANE) program began in 1997 through a \$50,000 grant from the state Division of Criminal Justice Services. The grant provided money to train nurses, who saw hundreds of patients, helping them through traumatic emergency room triage, completing rape kits to collect evidence and testifying in trials to prosecute suspects. But the money gradually dried up, and by 2002, the state had cut its support to \$28,000 a year. The center signed a contract in January with University Hospital and now provides the services for both adult and pediatric victims of sexual assault. The program also got some financial assistance from a \$25,000 state legislative grant and a pledge of \$10,000 a year for three years from the Allyn Foundation.

10. "DNA tests to identify Taba blast victims may be made in Russia." TASS, October 12, 2004.
The Russian Foreign Ministry is considering carrying DNA tests to identify possible Russian victims of the recent hotel blast in Egypt. Earlier, the chief of the embassy's consular department reported that unidentified bodies are damaged beyond recognition, and the only possibility to identify them is to make a DNA test on relatives.
11. "Man wrongly convicted of rape freed after DNA tests." The Associated Press State & Local Wire, October 11, 2004.
In Louisiana, a man who spent 19 years in the state penitentiary for rape was freed after DNA evidence showed he could not have been the rapist. A District Court Judge overturned the conviction after two separate DNA tests excluded him as the man who raped a woman in 1984. He will be held under house arrest until prosecutors decide whether there is any reason to retry his case. The DNA tests were conducted after the man wrote the Innocence Project in February 2003. He is the 25th inmate cleared in Louisiana since 1990.
12. "Congress set to OK reform package for military sexual assaults." Belleville News-Democrat, October 10, 2004.
Congress was expected to approve the most sweeping reform package ever for addressing sexual assault within the military, ordering the Pentagon to standardize policies, improve victim services and speed up processing of forensic evidence. The legislation was part of the 2005 Defense Authorization Bill. Among other provisions, the measure requires a system to process DNA evidence "within 60 days of receipt by the laboratory." A backlog has resulted in delays of longer than eight months in some rape cases.
13. "Prop. 69 Not As Expensive As Editorial Claims." Modesto Bee, October 10, 2004.
Letter from California Attorney General regarding a voters initiative that would require DNA from all convicted felons, and eventually from all arrested felons. Letter responds to a recent editorial stating that the provision could add nearly 400,000 new samples a year. "According to this skewed logic, in 20 years, nearly one-quarter of California's population would have been arrested and sampled. In reality, as the database grows, the number of samples taken will be reduced because more arrestees' samples already will be in the database. By 2009, we expect the database will be largely complete, based on many studies on recidivism that indicate most arrestees have prior felony convictions."
14. "A hand on DNA." The News & Observer (Raleigh, North Carolina), October 12, 2004.
North Carolina editorial urging the state to fund its forensic DNA program. "It's not an inexpensive matter -- about \$700,000 to \$1 million a year -- for North Carolina to maintain a DNA database of blood collected from convicted felons. The General Assembly, in fact, passed legislation in 2003 that required blood samples to be taken from felons. But it failed to appropriate the money for testing thousands of samples that could solve a substantial number of violent crimes... Legislators must take the lead in the conviction of the guilty and the freeing of the innocent -- both of which are entirely honorable goals for North Carolinians."
15. "DNA sets inmate free after 17 years." The Houston Chronicle, October 9, 2004.
In Texas, George Rodriguez has been set free after 17 years in prison for a kidnapping and rape that DNA evidence now indicates he did not commit. A man who confessed to having taken part in the attack, however, told police then that Isidro Yanez, who has a history of violence and recently was released after serving a prison sentence for another crime, was his accomplice. Time sheets also indicated that Rodriguez had been at his job when the girl was snatched off the street and sexually assaulted. Nevertheless, based on the victim's repeated identification of Rodriguez as one of her attackers, police focused on him. No charges were filed, however, until the now-discredited Houston Police Department crime laboratory identified a pubic hair found in the victim's panties as coming from Rodriguez. DNA tests on the hair earlier this year by a private lab ruled out Rodriguez and pointed to Yanez as the likely source.
16. "New Testing of DNA Evidence Leads to Arrest in 1994 Death." The New York Times, October 9, 2004.
In New York, police arrested a man in a 1994 homicide case after matching his DNA with that from of a rag left at the scene covered in blood that did not come from the victim. The case was solved as part of a cold case project, part of a National Institute of Justice program to test evidence in cases in which there is no suspect. The killer, who was also the victim's nephew, was on the DNA database for a 1993 stabbing. He ultimately served nine years in prison in that case, and was released in April. So far, the cold case squad's review of previously untested evidence has yielded 45 DNA profiles
17. "Man pleads not guilty to molestation charges." The San Diego Union-Tribune, October 9, 2004.
In California, a 28-year-old music composer pleaded not guilty in San Diego Superior Court to charges that he

molested four boys between 1994 and 2000. He was arrested after DNA linked him to a boy prosecutors said was molested in 1996. The man was convicted of assault in 2000 and 2003 but never went to prison. He was on probation at the time of his arrest.

18. "1993 Hit-Run Victim Is Finally Identified." The Seattle Post-Intelligencer, October 9, 2004.
Eleven years after he became a "John Doe" killed by a hit-and-run driver on a Central Washington road, an attorney and former judge of Amarillo, Texas, has been identified. DNA testing confirmed the identity of the remains. The case was solved by an investigator who was inspired by a series of newspaper articles that critiqued law enforcement handling of missing-person cases. Rather relying on the FBI's NCIC, the investigator also tried the Internet search engine "Google" and came up with a list of missing persons fitting the victim's description, one of whom turned out to be a match.
19. "DNA Leads To Rapist's Conviction." The Toronto Sun, October 9, 2004.
In Canada, a drug dealer would never have been considered a suspect, was convicted in the back-to-back knife-point rapes of women in downtown Toronto. Police said the role of the national DNA database was "absolutely vital" in bringing charges. "He certainly wasn't on our radar screen," said the head of the sex crimes unit, said.
20. "Motion seeks DNA samples from Maine databank." The Associated Press State & Local Wire, October 8, 2004.
In Maine, a motion filed on behalf of a convicted murderer seeks access to material in Maine's DNA databank. The man's lawyers say they believe seven people whose DNA are in the databank cannot yet be ruled out as having DNA that could match material found under the fingernails of the 12-year-old victim. The man, who is serving a life sentence, maintains his innocence. He is seeking a new trial based on test results showing the presence of DNA from an unknown male under the victim's fingernails.
21. The Associated Press State & Local Wire, October 8, 2004.
In West Virginia, Marshall University's Forensic Science Center has been awarded a \$520,000 grant from the Justice Department to train criminologists. The center will provide six weeklong DNA laboratory training workshops to 60 individuals. The National Institute of Justice will select the trainees from among people who work in crime laboratories and require training in forensic methods and techniques. The center will also provide a help desk for advice and consultations after the training is complete.
22. "Proliferation of innocence projects pushing DNA evidence to exonerate prisoners changes tone, topics of debate." Broward Daily Business Review, October 8, 2004.
Florida paper reports that the number of "innocence projects" has mushroomed to 35 nationally - nearly half formed in the last four years - triggering a movement that has steadily altered criminal procedures in dozens of states. Since the 1998 formation of the first Innocence Project at the Benjamin N. Cardozo School of Law in New York, the projects have played a key role in: exonerating 151 prisoners through DNA testing, passing post-conviction DNA statutes in more than a dozen states, implementing videotaped interrogations by more than 200 police departments, and reforming eyewitness identification procedures in two dozen cities.
23. "Crime lab analyst faces overtime theft charge." Chicago Tribune, October 8, 2004
A DNA analyst at the Illinois State Police crime lab in Chicago has been indicted on felony theft charges for allegedly claiming overtime she did not earn. The analyst is accused of claiming \$2,400 in overtime pay in May and June for work she did not do. Prosecutors would review the analyst's pending cases as they come to trial but "don't have any questions about her credibility." The state believes the indictment should not affect previous cases in which the analyst testified, and prosecutors will fight any defense's efforts based on Rehnstrom's indictment to overturn convictions.
24. "DNA Data Use Causes Privacy Concerns." Korea Times, October 8, 2004.
In South Korea, police announced in April a plan to establish a DNA database for missing children in an effort to find their families in April. With the help of the database, several missing children have been reunited with their families. However, both proponents and opponents of a proposed criminal DNA database share the view that on legal grounds South Korea lags behind the standards necessary for protecting human rights and preventing the misuse or abuse of genetic information. According to current laws, the government and public institutions are not controlled by regulations on DNA screenings and research because of failures to cooperate among relevant government agencies.
25. "Police: DNA Evidence Ties Prison Inmate To Rape." Morning Call (Allentown, PA), October 8, 2004.

In Pennsylvania, DNA evidence has tied an inmate in a state prison to a 1999 Allentown rape.

26. "DNA laws get nod." Northern Territory News (Australia), October 8, 2004.
In Australia, legislation to strengthen the Northern Territory's DNA laws passed through parliament. The Police Minister said the Police Administration Bill 2004 allowed police to use the DNA database for the identification of people killed in natural disasters, criminal acts such as the Bali bombings, and in efforts to identify missing persons.
27. "DNA Database Helps Crack Murder Case." Palm Beach Post, October 8, 2004.
In Florida, investigators said they cracked a cold murder case more than a year and a half after the man was stabbed to death and burned in his apartment. Originally there were no matches on the DNA database for the crime, and police had no suspects. However, the man had been arrested a week before the victim's death on carjacking charges. Those charges finally resulted in a three years sentence of drug-offender probation, and a DNA sample was taken for the database. Once in police custody again, the man confessed to the crime.
28. "Police get boost to solve "cold" cases." St. Louis Post-Dispatch, October 8, 2004.
In Missouri, the US Justice Department recently awarded a \$150,000 grant to the St. Louis Police Department and the St. Louis circuit attorney's office to expand efforts to use DNA technology to solve cold cases. The 12-month grant will pay overtime for laboratory workers and other personnel, special prosecutors if needed and for contracting with outside specialists and suppliers. "We're already involved in trying to make 'cold cases' through the national CODIS system, but this grant will really allow us to do a lot more with the resources we have," said the commander of the crimes against persons division. He added that the cold-case program would be used to solve not only murders and rapes but lesser crimes such as robberies and burglaries, so long as the statute of limitations has not expired.
29. "Police link eight more missing women to accused serial killer." Agence France Presse, October 8, 2004.
In Canada, police have linked eight more missing women to an area pig farmer accused of being Canada's worst serial killer. Authorities say Robert Pickton is likely to go on trial next year on charges of first degree murder in the deaths of 15 of 69 prostitutes and drug addicts who have mysteriously vanished from this west coast city over the past quarter century. Prosecutors have said they will also lay charges against Pickton in the deaths of seven other of the woman, and police said they have identified the DNA of nine other women on Pickton's pig farm, for a total of 31.
30. "Appeals court narrowly rejects death row appeal, though one dissenting judge fears 'the wrong man may be executed'." The Associated Press
A sharply divided federal appeals court has rejected an appeal from a Tennessee death row inmate even though one judge worried the wrong man may be executed. The 6th U.S. Circuit Court of Appeals in Cincinnati ruled 8-7 Wednesday to uphold a Tennessee Supreme Court decision dismissing Paul Gregory House's request for a new trial. House's attorneys had argued that new DNA evidence would vindicate their client, but the majority of judges ruled it was insufficient. House, was sentenced to death for murder, in part based on semen found on the victim's body that was first attributed to House, a convicted sex offender. But later DNA tests, which were not widely available at the time of House's trial, revealed the semen came from her husband. Prosecutors had claimed that rape was the motive for the kidnapping and murder.
31. "DNA match results in arrest of man in 2002 sexual assault case." The Associated Press State & Local Wire, October 7, 2004.
In Arizona, a man has been arrested in an attempted sexual assault from 2002 after police said they matched a sample of his DNA. Police recovered the baseball cap and it was later submitted to an Arizona Department of Public Safety laboratory. A DNA profile was created, but the data did not match anybody in the system until May 2003. Detectives obtained a court order to obtain another DNA sample from the suspect and the victim was also able to identify him as her attacker in a photograph.
32. "Man sentenced to life after DNA evidence leads to murder charge." The Associated Press State & Local Wire, October 7, 2004.
In Missouri, a man who was charged with an August 2002 murder after a search of a DNA database was sentenced to life in prison plus 200 years. The man had been released from a Missouri prison in June 2002 after serving a 20-year sentence for rape and robbery. Because of his previous convictions, a sample of the man's DNA was placed in

an FBI database.

33. "Miserable' thief was trapped by DNA on cup of tea." Derby Evening Telegraph, October 7, 2004.
In England, a door-to-door salesman stole £300 from an elderly woman after she offered him a cup of tea. The man knew where the 81-year-old arthritis sufferer kept her handbag at her home because out of sympathy she had bought an ironing board cover from him a day earlier. He returned the next day when she invited him in for a cup of tea. When the woman returned from the toilet, the man had disappeared along with her handbag, containing £300 in cash. He was caught when swabs were taken for DNA on the cup he used. He was arrested and admitted theft.
34. "Grandson Is Indicted in Murder of His Queens Grandmother." The New York Sun, October 7, 2004.
In New York, DNA testing has linked a victim's grandson to her 1989 murder. Police recently received a tip on the crime from an informant in Queens who had been arrested for jumping a subway turnstile without paying fare. When brought in for questioning, he was uncooperative and defensive, but agreed to a DNA test which was matched to matter taken from the victim's fingernails. The grandson has a rap sheet for burglaries and drug possession.
35. "Suspect claims he was robbed." The Times Union (Albany, NY), October 7, 2004.
In New York, a suspect has been identified in connection with a 2001 fast-food heist. Police recovered a bandage from the robbery scene that they believed belonged to one of the suspects and ran DNA tests, but found no match. Meanwhile, the suspect had fled to the Daytona Beach area of Florida, where he was convicted and sentenced to 15 years in state prison for a robbery and escape attempt – only one month after the fast food hold-up. Correction officers drew blood from the man and entered his DNA into a national database. That test proved a match with the bandage left at the New York robbery.
36. "DNA found on gun's trigger." Evening Chronicle (Newcastle, UK), October 6, 2004.
In England, DNA tests on a sawed off shotgun that police recently found hidden under floorboards, were matched to a suspect who admitted possessing the shotgun on the accepted basis he had nothing to do with hiding or loading the gun.
37. "Elmira man convicted." The Ithaca Journal, October 6, 2004.
In New York, a man has been convicted of attempted rape and assault in connection with a 2002 night attack on a woman. According to the DA's office, the victim did not know the suspect, but a baseball cap the man was wearing during the crime fell off and was recovered by the police. In 2003, the state crime laboratory extracted DNA from the sweatband of the cap and matched it to a sample of the suspect's DNA that was on the national database due to a previous conviction for burglary in South Carolina. "This was a cold case," said Dentes, explaining that the DNA match was made a year after the crime, and that the perpetrator's identity was discovered based on a previous out-of-state conviction. "We have benefited from DNA many times before, but this is the first time that I can recall it being useful in Tompkins County to crack a cold case like this."
38. "Burglar Gets 8 3/4 Years For Raleigh Hills Thefts." The Oregonian, October 6, 2004.
In Oregon, a man has been convicted of a string of break-ins since his prison release in 2003. At Bally's Total Fitness, the man threw a rock through a plate-glass window and sent glass flying into the swimming pool. He cut himself taking a cash register at the front desk, carried it outside and threw it into the bushes. Police matched DNA from the blood on the cash register to his DNA on file. The man has 14 previous convictions for burglary, going back as far as 1983. He also has been convicted on 13 other charges, including theft, gun and drug possession, and criminal mischief.
39. "Outside View: California's DNA debate." United Press International, October 6, 2004.
Column from Bob Barr, former US Congressman, US Attorney, and consultant to the ACLU, in opposition to the California Voters Initiative to require DNA from all convicted felons, and eventually from all felony arrestees.
40. "Portland Man Is Found Guilty Of Rape, Kidnap." The Oregonian, October 5, 2004.
In Oregon, DNA evidence sealed the conviction of a man in the kidnapping and rape of a woman last November. The victim, who was attacked at knifepoint, told the jury during a three-day trial last week that she could not identify her assailant with 100 percent certainty. But DNA from the rapist's semen matched that of convicted felon who had provided a DNA sample following burglary and grand-theft convictions in Florida.
41. "Decision of Interest." New York Law Journal, October 1, 2004.

The New York Supreme Court recently considered an appeal from a defendant who was charged with several crimes, including rape, that stemmed from three separate incidents that had been linked to defendant by DNA evidence. DNA evidence was obtained from cigarette butts that defendant smoked and threw away, while being held at a police interview room. On the basis of the evidence, a hearing was expanded to include a Mapp issue for suppression of the cigarette butts and DNA test results on ground that the butts were unlawfully seized, and DNA evidence derived was fruit of the poisonous tree. The court found that a defendant had no reasonable expectation of privacy in the cigarette butts, and was thus not deprived of his rights against unreasonable searches and seizures. The court also found that defendant could have no reasonable expectation of privacy in the interview room, and it was not reasonable to expect garbage discarded there would remain undisturbed.