

DNARESOURCE.COM

A WEB SITE FOR ANYONE WHO SEEKS INFORMATION ON THE LATEST DEVELOPMENTS IN FORENSIC DNA POLICY

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 29, 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

A suit was filed in federal court regarding DNA samples collected from potential suspects in a serial murder investigation, and a Nebraska court ruled against sealing affidavits used by police to collect DNA samples from possible suspects. A Wisconsin court ruled an inmate must pay the DNA surcharge even if a DNA sample was previously collected. An investigative series in the Chicago Tribune discussed problems at public crime labs.

California has received its 1000th hit since the DNA database was started, and Washington State received its 100th hit for this year. California's DNA database identified a man responsible for 12 murders, another man responsible for 11 rapes, and linked a man to a murder with DNA from an eyelash. Cold hits aided other investigations in Florida (murder; rape), New York (2 burglaries), and Pennsylvania (10 rapes linked to 2 men).

DNA evidence was also important to cases in Florida (murder), Maryland (murder), Pennsylvania (robbery using DNA from a ski mask), and Washington (murder). New York City's pilot project for collecting DNA from burglary scenes has already identified 23 suspects tied to 34 cases. DNA exonerated a suspected rapist in California.

Wisconsin settled a lawsuit seeking damages for an inmate exonerated by DNA evidence, and a new claim was filed by an inmate in that state. A Rhode Island court will hear a request for post conviction DNA testing.

In international news...DNA from a "spit kit" has convicted a man who spat on a bus driver in England. England also solved a murder by collecting DNA from a man arrested for kicking his neighbor's door, and used DNA to identify a man who damaged church windows. China is using DNA to identify victims from a mine blast. New Zealand solved a robbery with DNA from a blood smear.

NEWS ARTICLES

Forensic DNA

1. "WSP crime laboratory achieves 100th CODIS hit for 2004." Washington State Patrol, State News Release, October 20, 2004.

The Washington State Patrol Crime Laboratory Division announced today that it has achieved its 100th Combined DNA Index System (CODIS) hit in 2004. A federal grant, obtained in September 2003, has provided funding to contract out the typing of backlogged convicted offender samples enabling the WSP Crime Laboratory to upload over 35,000 additional convicted offender samples into the Washington database. The increased size of the convicted offender database has had a direct effect on the rate of CODIS hits. The hit rate has dramatically increased due to the passage of the all felons' law in 2002 by the legislature. Prior to the passage of this law, CODIS hits were much less frequent; it took approximately 2 ½ years to get the first 100 DNA hits.

2. "Attorney General Lockyer Announces More Than 1,000 Hits Obtained Through CAL-DNA Data Bank." Office of the Attorney General, Press Release, October 27, 2004.
Attorney General Bill Lockyer today announced the California Department of Justice's DNA Data Bank has obtained more than 1,000 hits linking DNA profiles from convicted felons to old and cold criminal cases. Under state law, individuals convicted of 36 serious and violent felonies are required to submit biological samples that yield DNA profiles that are stored in the CAL-DNA Data Bank. Those felonies include murder, manslaughter, rape, sexual assault, first-degree burglary, first-degree robbery, carjacking and arson. Currently, the CAL-DNA Data Bank contains 274,000 convicted felon profiles and 9,300 forensic profiles. The 1,000th hit came from a case in Santa Barbara County. Because the investigation is ongoing, Lockyer could not provide more details.
3. "DNA kit traps teenager who spat at bus driver." The Daily Telegraph (London), October 27, 2004.
A teenager who spat at a bus driver has become the first person in Britain to be convicted of assault after his DNA was traced using a "spit kit". The boy was prosecuted after spitting in the driver's face and racially abusing him. The driver used a swab kit, which has been given to staff on trains and buses throughout Britain, to take a sample of his attacker's saliva. There have been three other convictions after similar attacks on trains. At least one driver is spat on every week in Glasgow, according to police figures.
4. "D.C. Man Arrested In Slaying Of Courier." The Washington Post, October 27, 2004.
In Washington, DC, a man has been arrested in the slaying of an armored car courier who was ambushed and shot outside a Maryland bank in August. Investigators searched a Jeep Cherokee that the suspects left at the bank after it was rammed by the armored car. Police found evidence that was subjected to DNA tests and the results linked the man to the crime.
5. "Destroy DNA records, suit asks." The Advocate (Baton Rouge, LA), October 26, 2004.
In Louisiana, nearly two dozen men swabbed during the hunt for a serial killer filed a lawsuit in federal court, demanding the genetic records collected for "future crime detection" be destroyed. The complaint also asks a judge to declare unconstitutional a Louisiana law requiring that those arrested for felonies be added to the DNA database. Nineteen of the men are claiming they were intimidated and coerced into providing DNA samples to clear them as potential suspects in the investigation. Two others arrested and booked in an unrelated crime in October 2003 claim they were barred from being released on bond unless they gave a DNA sample.
6. "Inmate charged with girl's murder 15 years ago after DNA evidence re-examined." The Associated Press, October 26, 2004.
In Florida, police charged a man with murdering a 12-year-old girl in 1989 after DNA evidence and ballistics tests were re-examined. The man was long considered a suspect, and already is serving a life sentence for raping two women.
7. "Tillicum pair charged with killing homeless man in Maple Valley." The Associated Press State & Local Wire, October 26, 2004.
In Washington State, a man and his girlfriend have been charged with killing a homeless man who was regarded with some affection as to town tramp in Maple Valley. Witnesses reported seeing a couple at a pay telephone that day and that the man had blood on him. Records of calls from the phone led authorities to the pair, and eventually investigators were able to obtain a DNA from a coffee cup the man discarded. According to prosecutors, it matched DNA found on liquor bottles near the victim's body. The pair has admitted beating Thompson, an alcoholic, during a fight and then leaving the scene.
8. "Exonerated Man Settles With Lawyer." The Capital Times (Madison, WI), October 26, 2004.
In Wisconsin, a man who spent close to five years in prison for a rape in Madison that DNA evidence later showed he did not commit, has reached an out-of-court settlement with the attorney who represented him in the 1991 trial. In October 2000, a jury awarded the man \$2.6 million after finding the attorney negligent for not pursuing DNA tests on hairs found at the crime scene. That award was tossed out in March 2002 by an appellate court which said the man must prove his innocence to be eligible for civil damages.
9. "Inmate Linked To 12 Murders." Modesto Bee, October 26, 2004.
In California, the DNA database has linked a man currently in prison for rape to 12 murders that occurred between 1987 and 1998. Another man had been previously convicted of two of the murders, but was exonerated and released from prison in March. The new suspect has served sentences in various state prisons, and has prior

convictions of parole violations, drug possession and grand theft auto.

10. "Police Try Extending Use of DNA Tests to More Crimes." The New York Times, October 26, 2004.
In New York, police investigators have been working with a trial expansion of DNA testing to crimes other than rape and homicide. Since it was started in January, the program, called Biotracks, has identified 23 suspects tied to 34 cases, most of which the police say would not otherwise have been solved. Most of the cases have been burglaries. In 2002, the most recent year for which statistics are available, the Police Department made arrests in just 15 percent of the city's burglaries. Of the 250 Biotracks cases, there were 366 samples taken from things like cigarette butts and hats left at the scene. One hundred and ten yielded profiles that met the requirements for the national DNA database maintained by the F.B.I. Of those, 34 matched known offenders. The National Institute of Justice has made grants for DNA testing in property crimes to New York and to Miami-Dade and Palm Beach Counties in Florida.
11. "DNA evidence clears man held in rape case." The Oakland Tribune, October 26, 2004.
In California, DNA testing has cleared a man in the rape of a woman walking to her car, and police hope the evidence will eventually lead them to the actual attacker. Police arrested a transient in the area who has a criminal record, but he denied attacking the woman, and was released after DNA testing confirmed he was not the assailant.
12. "Orchid Selected by U.K. Thames Valley Police to Provide Forensic DNA Testing." PR Newswire European, October 26, 2004.
Orchid BioSciences announced that its European Cellmark business has been selected by the Thames Valley Police as its exclusive provider of forensic DNA testing services. The three-year contract, extendable for an additional two years, was awarded through Orchid's strategic partner Forensic Alliance. Orchid Cellmark has supplied part of Thames Valley Police's forensic DNA testing needs since 1998, and this contract now appoints Orchid Cellmark as the sole supplier of these services. Thames Valley Police is one of the U.K.'s largest police forces and the largest non-metropolitan police force in the country.
13. "Prop. 69 would widen DNA database." The San Francisco Chronicle, October 26, 2004.
Article regarding the California DNA initiative that would require DNA from all convicted felons, and eventually from all felony arrests. Notes that the Governor's support of the initiative is "significant not only for its political heft, but because it also marks a rare instance in which the fiscally conservative governor is backing a government expansion projected to cost the state at least \$20 million."
14. "Death Toll in China Mine Explosion at 86." Associated Press Online, October 25, 2004.
Rescuers digging through tons of debris found more bodies in a coalmine in central China, raising the death toll in a gas explosion to 86, with no sign of survivors among 62 missing miners. Rescue officials were using DNA tests to identify some miners, suggesting that their bodies were damaged beyond recognition in the explosion.
15. "Judge dismisses appeal from city in unsealing DNA affidavits." The Associated Press State & Local Wire, October 25, 2004.
In Nebraska, a Douglas County Judge has dismissed an Omaha city appeal and upheld an earlier decision to unseal two affidavits police used to collect the DNA samples of several black men in a serial rape investigation. The investigation involves at least four unsolved rapes of 17- to 21-year-old black women in the last two years that police believe were committed by the same person. Police served a search warrant on Omaha Public Power District this summer. Its list had 32 men who matched a rough description of the suspect. The city has about three weeks to decide if it will make another appeal before the documents will be unsealed.
16. "Saved by an Eyelash?" Los Angeles Times, October 25, 2004.
In California, an eyelash extracted from a slain prostitute's sock, sat frozen for 15 years until investigators recently submitted it for DNA testing. The DNA database found a match to a parolee who has served time for assault and rape. The case is Garden Grove's first cold-case homicide involving DNA. The man admits to being in the victim's presence, but denies he killed her.
17. "New police database links crimes." Philadelphia Daily News, October 25, 2004.
In Pennsylvania, Philadelphia police have linked 10 rapes to the same two men through the DNA database. At this time, police still do not know the identity of either man. Before the DNA analysis tied the cases together, many of them appeared dissimilar.

18. "Cops seize aborted fetus in rape case." Alameda Times-Star, October 24, 2004.
In California, San Mateo County sheriff's investigators used a search warrant to seize an aborted fetus in hopes of finding out who impregnated a 13-year-old girl. Authorities took the fetus and the girl's medical records from the medical center where she had an abortion Oct. 13. DNA will be extracted from the fetus and used to verify the identity of the father, who is believed to be an adult. Detectives are investigating the case as statutory rape and have a suspect but had not yet arrested him. The case came to light two weeks ago after the girl tested positive for chlamydia, and medical center employees reported the case to authorities.
19. "Four years on, girl's killer is trapped by his bad temper." Daily Mail (London), October 22, 2004.
In England, a man who was arrested for criminal damage after kicking a neighbor's door, has been linked through the DNA database to a 2000 murder. He escaped suspicion in the murder by moving from the area, where police were carrying out voluntary DNA tests on 3,700 men.
20. "DNA Test Leads To Arrest In Two Dewitt Store Burglaries." The Post-Standard (Syracuse, NY), October 22, 2004.
In New York, DNA testing has linked a man to two store burglaries. In both cases the man broke front windows of the businesses to gain access, and in doing so cut himself and left behind blood drops. The man has two prior felony convictions.
21. "News in brief from eastern Pennsylvania." The Associated Press State & Local Wire, October 21, 2004.
In Pennsylvania, DNA found in two ski masks left behind a movie theater after a robbery have led to charges against two men nearly five years later. The DNA in the masks matched samples from two Allentown men now in prison for their roles in three shootings. Investigators had information that the two men were involved in the robbery, but definitive evidence did not come until DNA samples were taken from the suspects.
22. "Convicted burglar charged in series of rapes along SoCal freeway." The Associated Press State & Local Wire, October 21, 2004.
In California, a convicted burglar was charged with raping and brutalizing nearly a dozen women along the 710 Freeway over a two-year period. The man faces 66 felony counts of forcible rape, kidnapping, assault, robbery and other violations, the district attorney's office said. If convicted, he could be sentenced to life in prison. He is currently serving a 10-year state prison term after pleading guilty earlier this year in three separate burglaries. Investigators linked the man to the series of rapes through a DNA sample collected from a mouth swab he provided after his arrest.
23. "Scandal Touches Even Elite Labs." Chicago Tribune, October 21, 2004.
In recent years, evidence of problems ranging from negligence to "outright deception" has been uncovered at crime labs in at least 17 states. Among the failures were faulty blood analysis, fingerprinting errors, flawed hair comparisons and the contamination of evidence used in DNA testing. Lab directors contend that the American Society of Crime Laboratory Directors' accreditation board are sticklers for quality and accuracy. But some question the effectiveness of the board's review teams. "Everyone boasts that their labs are certified by them," said a former Cook County prosecutor. "I believe they are more of a fraternal organization than an authoritative scientific body."
24. "DNA gives identity of hooded drug robber." The Daily News (New Plymouth, New Zealand), October 21, 2004.
In New Zealand, a man has been convicted of aggravated robbery, thanks to DNA evidence. The man had been a suspect, but only admitted the crime after police confronted him with DNA evidence from a blood smear found at the house.
25. "Editorial; Fight Crime With DNA." The Daily News of Los Angeles, October 21, 2004.
Editorial regarding the California DNA initiative that would require DNA from all convicted felons, and eventually from all felony arrests. Concludes, "There is, to be sure, something creepy about the state's keeping a database on its residents' genetic information. But then, DNA samples are really nothing more than what fingerprints were to earlier generations. And old-fashioned fears are no excuse for old-fashioned policing."
26. "Inmate charged in '96 slaying." The Miami Herald, October 21, 2004.
In Florida, an investigation into a suspect in a series of murders has led to the arrest of a prison inmate in the 1996 rape and slaying of a 68-year-old widow after police said DNA tied him to the killing. The case broke after the February 2003 arrest of a man suspected of killing six women in Jacksonville and another in Georgia. The state

crime lab began expediting evidence in cases police suspected were connected to the man. The cold case unit included several other murders hoping for matches. In this case, the evidence did not match the serial suspect, but was found to match another man who has been arrested two dozen times since 1973. He was sentenced to 10 years in prison on a drug charge nine months after the victim's slaying and was scheduled for release next year. The arrest is the fourth made by the Jacksonville police cold case unit since it began investigating unsolved murders last year.

27. "Avery to file \$1 million claim against state." Milwaukee Journal Sentinel, October 21, 2004.
In Wisconsin, Steven Avery, who recently filed a federal civil rights lawsuit against Manitowoc County demanding \$36 million for his wrongful conviction and imprisonment, will soon file a claim against the state seeking more than \$1 million. Under state law, the state Claims Board cannot authorize a payment of more than \$25,000 for a claim, but it can recommend that the Legislature award a higher amount. Avery was exonerated in 2003 through post conviction DNA testing.
28. "Man charged in 2002 rape of girl." Tallahassee Democrat, October 21, 2004.
In Florida, Tallahassee police have charged a man in a nearly three-year-old case involving the rape of a 14-year-old girl in a motel. The victim's mother told police that the girl had identified the man who was likely her attacker, but the man had disappeared before he could be apprehended. Earlier this year, an investigator was handed the rape as a "cold case," and he tracked the suspect to Denver. Denver police got a DNA sample from him and sent it to Florida, where FDLE analysts this month matched it to the crime-scene DNA within a certainty of 1 in 520 billion. The world population is about 6.4 billion.
29. "Judge considers murderer's request to have DNA evidence considered." The Associated Press State & Local Wire, October 20, 2004.
In Rhode Island, a Superior Court judge is scheduled to consider a request from a murderer convicted 22 years ago to have DNA tests conducted on himself and evidence from the crime scene. The man is getting help from the New England Innocence Project. Lawyers from the group will ask to allow testing of his fingernail clippings, the pipe used as the murder weapon, and blood and hair found at the scene. The group's motion argues that the DNA testing should be granted due to the absence of an eyewitness to implicate the prisoner.
30. "Grants expected to boost Hub cops' DNA analysis rate." The Boston Herald, October 20, 2004.
In Massachusetts, the Boston Police Department is getting more than \$58,000 in federal grants to speed up DNA analysis in criminal investigations. The department has a backlog of 25 cases awaiting DNA testing and analysis. "We anticipate that increasing at a rate of 10 cases a month" because one of the two full-time DNA technicians left the department recently. A \$33,784 grant from the National Institute of Justice will pay a contractor to help relieve the backlog in analyzing DNA evidence taken from crime scenes or suspects. A second grant of \$24,520 from the same federal agency will be used to buy a machine that can screen evidence to determine if sufficient DNA is present to warrant full-scale analysis.
31. "When Labs Falter, Defendants Pay." Chicago Tribune, October 20, 2004.
Investigative Report Series: Forensics Under The Microscope. "Labs are supposed to be where science and the pursuit of justice merge, but too often they are a place where mistakes, omissions and a lack of rigor lead investigators down false trails that end in wrongful convictions. A Tribune investigation has found that across the country, forensic science is being undermined by unproven theories and experts who testify in a misleading fashion."
32. "Felon ordered to pay DNA surcharge." Wisconsin Law Journal, October 20, 2004.
The Wisconsin Court of Appeals has held that a felon can be ordered to pay the DNA surcharge, even if he has already provided a DNA sample for a previous felony. The man brought a postconviction motion, requesting that the trial court delete the requirement for submission of a DNA sample and vacate the ordered surcharge, as he had already submitted a sample. He provided a letter from the State Crime Laboratory indicating it needed only one sample per subject. However, the judge refused to rescind the order requiring him to pay the surcharge unless he could prove that he had paid the surcharge in the earlier case. The inmate appealed, but the court of appeals affirmed in a decision by Judge Patricia S. Curley.
33. "Man appears in court for damaging two church windows three years ago." Skegness News, October 19, 2004.
In England, a man has appeared in court for damaging two windows at church more than three years ago. Steven He apparently broke the glass to get into the church to find somewhere dry and warm to spend the night. He was

eventually caught through a DNA match to blood found at the scene.

Paternity

34. "Kenya; Judge Raps Government Chemist Over DNA Row." Africa News, October 26, 2004.
In Kenya, a High Court judge castigated a Government Chemist for sloppiness in using DNA tests to determine the genetic parentage of a child. The Children's Court Judge said DNA helped in determining whether the disputed parent played biological or social parentage. However, she lamented that due to sloppiness at the Government Chemist, cases of parenthood were determined through the evidence adduced before the court and not scientifically, which is foolproof.
35. "Child DNA identification popular with Chinese parents in S. China." Xinhua General News Service, October 27, 2004.
In China, DNA identification has become increasingly popular, especially in southern China's port city of Shenzhen. the number of Shenzhen people who seek DNA identification has increased 50 percent per year since 2001.
36. "News of the weird." The Halifax Daily News (Nova Scotia), October 24, 2004.
The Los Angeles County child-support agency, on the losing side of a California Court of Appeal paternity decision, asked the state Supreme Court to officially not tell anyone about the decision, so as to discourage additional paternity challenges. The appeal court in June overturned a paternity order based on a DNA test, and the agency petitioned the high court to "de-publish" that decision, fearing that other "fathers" might get negative DNA tests and thus stop paying support.