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

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The January 30, 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 5th Circuit Court of Appeals upheld the federal statute requiring DNA from convicted felons. The ACLU is joining a challenge to New Jersey's recently expanded DNA database.

Bills for all-felons DNA databases were introduced in Hawaii and Rhode Island, and limited expansion bills were introduced in Idaho, Kansas, and Washington. Washington also introduced a bill to require DNA from all arrestees. DNA database legislation is moving forward already in South Carolina, Indiana and Nebraska. DNA evidence aided investigations/prosecutions in Alaska (man linked to 5 rapes), California (man linked to 2 rapes), Illinois (man linked to 3 rapes), Michigan (man linked to 5 rapes), Montana (murder), and Wisconsin (burglary). DNA evidence exonerated a man who had been jailed on murder charges in Tennessee. Using DNA to determine race characteristics is questioned in an ongoing Colorado investigation.

Michigan backlogs resulted in a rape that could have been prevented. Bills authorizing funding for DNA programs were introduced in Hawaii and Utah, and the Oregon crime lab could be decimated again by budget cuts. An analyst fired from the Houston DNA lab has been reinstated, and a local lab director in Indiana is on administrative leave while his lab is investigated. The San Diego County crime lab has achieved full accreditation.

A Hawaii bill would fund sexual assault nurse examiners throughout the islands, and a California hospital has suspended its forensic nurse exams. A Colorado county has issued a "John Doe" warrant in a rape case.

Washington introduced a bill regarding post conviction DNA testing time limitations. Bills allowing compensation for erroneous convictions were introduced in Mississippi and Tennessee. A Massachusetts inmate has been exonerated through new DNA testing.

In international news...In England, Parliament is concerned the DNA backlog of 14 days is resulting in public safety hazards. England used DNA from a drink carton to identify a burglar, dog hairs to identify a murderer, and exonerated a man originally convicted on earprint evidence. 9 more victims have been linked a serial killer in Canada. An Australian state has identified 30 burglars through DNA. DNA may play a role in a rape/adultery case in Sudan. The FBI is assisting with a new crime lab in Hungary. A proposed "European arrest warrant" would facilitate the transfer of DNA samples between nations. In Scotland, a minor drug offense linked a man to an unsolved rape.

STATE LEGISLATION

Forensic DNA

1. Hawaii HB 1804 – Expands offender DNA database to include all convicted felons.

2. Hawaii HB 2018 -- Funds a pilot project (at \$240,000) for the establishment of a sexual assault nurse examiner program for forensic examinations of victims of sexual assault and abuse in the State of Hawaii.
3. Hawaii HB 2076 – Provides \$1.25 million to the Honolulu crime lab due to backlogs of DNA analysis.
4. Idaho HB 520 – Expands offender DNA database to include felony burglary and felony domestic violence.
5. Kansas HB 2542 – Expands offender DNA database to include probationary sentences.
6. Mississippi HB 2200 – Provides civil compensation for erroneous convictions. Criteria for compensation includes exonerations through DNA evidence.
7. Oklahoma HB 2185 – Requires the state offender DNA database to be compatible with the national offender DNA database.
8. Oklahoma SB 1190 – Allows that any DNA sample taken in good faith for the DNA database may be maintained on the database for investigative purposes.
9. Oklahoma SB 1199 – Permits chemical castration as punishment for certain sex crimes if DNA positively proves guilt.
10. Rhode Island HB 7290 -- Expands offender DNA database to include all convicted felons.
11. Tennessee SB 2375 & SB 2689 – Provides compensation for a man exonerated through post conviction DNA testing.
12. Utah HB 93 – Allows agencies to recover the cost of obtaining a specimen from an offender by collecting the funds from the inmate's trust fund account.
13. Washington HB 2847 – Expands offender DNA database to include all arrests for all felony and gross misdemeanor charges.
14. Washington HB 2872 – Removes time limitations on current post conviction DNA testing statutes.
15. Washington HB 2969 – Expands offender DNA database to include prostitution and soliciting a prostitute.

Genetic Research / Privacy

16. Florida HB 559 – Prohibits human cloning
17. West Virginia HB 4106 – Creates the “Genetic Information Privacy Act.” Provides for the confidentiality of genetic test results and limits the use of genetic information by health insurers.

Paternity

18. Hawaii SB 2659 – Requires paternity testing for children born out of wedlock prior to issuance of a child support order. Requires paternity acknowledgement forms to have a separate, signed genetic testing waiver.
19. New Jersey AB 1850 – Requires paternity testing in child support cases that are challenged.
20. Utah SB 45 – Allows that presumptions of paternity may be challenged through genetic testing.

NEWS ARTICLES

Forensic DNA

1. "Police find DNA from nine more women at pig farm of accused serial killer." Agence France Presse, January 28, 2004.

In Canada, police revealed that they have found genetic material from nine more women on the pig farm of a man who could be Canada's worst serial killer. Robert William Pickton, a pig farmer and handyman in Canada's western-most province, was charged in 2002 with first-degree murder in the deaths of 15 women. Almost all of the women whose remains were found had been associated with drug addiction and prostitution in Canada's most violent, impoverished neighborhood. They vanished over a period of 25 years.

2. "Ruling reinstates fired DNA analyst to crime lab job." The Associated Press State & Local Wire, January 28, 2004.

In Texas, a DNA analyst fired from the Houston Police Department crime lab has gotten her job back after arguing that any errors she made were the product of systemic problems at the crime lab, not individual negligence. The analyst and her lawyer greeted the ruling as a sign that the lab's benchworkers would not be blamed for problems that should be attributed to HPD supervisors who allowed analysts to go without adequate training and supervision.

3. "House Committee passes bill requiring DNA from all felons." The Associated Press State & Local Wire, January 27, 2004.

South Carolina's House Judiciary Committee has approved a bill that would expand the state's DNA database to include anyone convicted of a felony. The measure is supported by the South Carolina Law Enforcement Department. Federal funds are expected to help pay for the program.

4. "Governor to push for return of death penalty to Minnesota." The Associated Press State & Local Wire, January 27, 2004.

Minnesota's Governor has outlined a proposal that would amend the state constitution to allow the death penalty, which was abandoned in 1911 after a botched hanging. Although a majority House and the Senate members personally oppose the death penalty, and legislative leaders have said hearings are a waste of time, polls in the past have found a majority of Minnesotans support it. Among conditions for a death penalty is a requirement that DNA evidence must link the defendant to the crime.

5. "Parliamentary watchdog warns of delays in forensics analysis." Associated Press Worldstream, January 27, 2004.

In England, a parliamentary committee warned that criminal prosecutions could be jeopardized because of delays in the analysis of forensic evidence by a government agency. The House of Commons Public Accounts Committee said the Forensic Science Service has failed to meet its target time -- of 14 days -- for analyzing samples for the past four years. The committee said a delay in forensic analysis could lead to suspects being released on bond or prevent police from

pursuing other lines of inquiry as they wait for evidence to eliminate a suspect.

6. "Bill would expand DNA database." The Associated Press State & Local Wire, January 26, 2004.
In Nebraska, a bill requiring DNA samples from anyone convicted of burglary or robbery has been given initial approval. The bill was approved in its first round of debate in a unanimous vote (32—0)
7. "Senate approves open container bill, expands DNA testing." The Associated Press State & Local Wire, January 26, 2004.
In Indiana, the Indiana Senate has approved a bill that expands the offender DNA database to include incest and breaking and entering. The bill also provides that matches made to samples on the database by mistake are not invalidated.
8. "FBI trains East Europeans in latest forensic techniques." Associated Press Worldstream, January 26, 2004.
The FBI on has opened a forensics laboratory in Hungary that will teach experts from Eastern Europe and Central Asia the latest techniques for fighting organized crime and terrorism. The laboratory includes facilities for specialist fingerprint development, DNA testing, and chemical analysis.
9. "'Latino' DNA finding rooted in imprecision." The Denver Post, January 26, 2004.
In Colorado, Boulder police have used genetic testing (performed by a private laboratory) which indicates that DNA extracted from semen found on a victim's body reveals that the man it came from was either Native American or Latino. However, police may not have been told that the genetic profile could be from a South Asian. The commander of the detectives bureau said the tests allow police to exclude Caucasians, certain Asians and African-Americans. However, the test is viewed by some geneticists as suspicious because the company has yet to publish a full explanation of how it comes to its determinations.
10. "Find More Money For State DNA Labs." The Detroit News, January 26, 2004.
Editorial: "Michigan's DNA labs are overwhelmed. While money in the state budget is tight, more funds should be found for processing DNA evidence. The safety of state residents is at stake." Recommends releasing certain prisoners earlier which would allow the savings to be put towards the crime lab system.
11. "Suit Challenges Expanded DNA Law." New Jersey Law Journal, January 16, 2004.
The American Civil Liberties Union of New Jersey filed suit to overturn New Jersey's mandatory DNA testing of criminals. The Mercer County suit asserts that collection of biological samples violates the rights of privacy and "bodily integrity" and flouts constitutional due process and ex post facto provisions. The named plaintiffs in the ACLU are a man serving time for two drug offenses, and a 15-year-old boy who is on probation for a juvenile delinquency offense based on an altercation with a police officer. The suit claims that compulsory collection violates the individual's right to privacy, citing a Supreme Court upheld urine testing of police officers but made such tests subject to state and federal constitutional scrutiny.
12. "DNA technology used by police to solve crimes." AAP Newsfeed, January 25, 2004.
In Western Australia, DNA testing has allowed police to charge more than 30 people with a string of unsolved burglaries.
13. "Marion County crime lab director removed amid criminal investigation." The Associated Press State & Local Wire, January 25, 2004.

In Indiana, the Indianapolis Mayor has placed the longtime director of Marion County's crime lab on administrative leave without pay while investigators look into allegations of wrongdoing in the lab. The mayor took the step three days after the Marion County Prosecutor asked that a special prosecutor be appointed to look into sworn statements by a crime lab scientist that the director covered up abuses in DNA testing. Prosecutors first became alarmed about the alleged problems in 2002, after a lab technician resigned. As prosecutors checked out the allegations of DNA testing problems, the director reassured them that the testing issue merely related to a single case involving the restarting of a testing machine before the results had been read. In July, the Mayor ordered the lab to retest DNA evidence in 64 criminal cases after learning that the technician who resigned may have skipped steps.

14. "Prints snafu in Cowans case almost criminal." The Boston Herald, January 25, 2004.
In Massachusetts, a man has been released from prison after post conviction DNA testing contradicted fingerprint evidence used in the original trial. The man had been convicted of shooting a police officer in 1998. A review of the fingerprint "match" now shows that there was no match at all. The police department has reassigned two fingerprint analysts and ordered a review of procedures in the fingerprint unit

15. "Man Convicted Of Rape Past Statute Of Limitations." Buffalo News (New York), January 25, 2005.
In New York, a man already imprisoned for one 1994 Buffalo rape became the first Western New York sex crime suspect convicted of an assault committed past the state's five-year statute of limitations on nonhomicides. The man was linked through DNA evidence two years ago to that attack, and is serving a 10- to 20-year prison term after being convicted in December 1995 of raping a 27-year-old hitchhiker in 1994. The state's high court has given prosecutors limited discretion for using the prison DNA database to seek convictions beyond the state's five-year statute of limitations on most crimes.

16. "DNA key in murder trial." Great Falls Tribune (Great Falls, MT), January 25, 2004.
DNA evidence will be central in a murder trial in Montana. Semen found on the victim does not match the suspect, however his blood was found on a pillow found beside the victim, and the victim's blood has been found on clothing belonging to the suspect. The defense explains that the suspect admits he was at the victim's home earlier in the evening, which is why his DNA was found at the scene.

17. "Sudan; Chief Justice Suspends Flogging of Girl." Africa News, January 24, 2005.
Amnesty International has welcomed the suspension of a flogging sentence against a 16-year-old girl convicted last year of adultery, but urged the Sudanese authorities to treat the case in accordance to their obligations under international human rights law. The man who she alleged to have raped her has, however, denied having had any connection with her. The girl's lawyer said that he intended to lodge a separate suit against the man who allegedly raped her. "I will ask for more evidence against the man and even, where possible, a DNA test to prove the paternity of the child," he said.

18. "Warrant in rape case identifies suspect by DNA only." The Associated Press State & Local Wire, January 24, 2004.
El Paso County, Colorado has issued an arrest warrant has been issued that identifies a rape suspect only by his DNA. The warrant was issued in the 2001 rape of a woman who could not describe her attacker because he wore a

mask, broke into her house at night and blindfolded her. The warrant also creates a legal record showing detectives have established probable cause to arrest that person. If new detectives are on the case at the time a suspect is identified by name, they would not have to repeat the research already done. At least two other such warrants have been issued elsewhere in Colorado.

19. "Serial rape suspect in Grand Rapids pleads guilty." The Associated Press State & Local Wire, January 23, 2004. In Michigan, a man suspected of breaking into homes and raping five women over five years faces up to five life terms in prison with the possibility of parole after pleading guilty in the case. He was linked to all five rapes through DNA evidence. The string of rapes started in 1998.
20. "EU justice ministers not keen on plans to bolster arrest warrant powers to fight terrorism." Associated Press Worldstream, January 23, 2004. European Union justice and interior ministers were hesitant on plans to bolster the powers of their European arrest warrant, which is aimed at fighting terrorism and other serious crimes. On the table during the second and final day of talks was a proposal to set up a "European evidence warrant," which would help magistrates share cross-border evidence on everything from bank accounts to telephone records. The proposal would simplify legal procedures between EU countries on transferring evidence from one country. The type of evidence that could be transferred under the proposal includes taped interviews, statements by witnesses or suspects, DNA samples, information gathered through covert police tapping, and documents like phone records that have already been used.
21. "Prosecutor: Man Raped Two Women in Separate Incidents." City News Service, January 23, 2004. In California, a transient is on trial for raping two women – one in May 2002 and another in April 2003. DNA evidence collected from both incidents links the man to the crimes. One victim recalled the rapist licked her back, and saliva samples collected from her spine matched the rapist's DNA. In the other rape case, a Band-Aid found next to the victim's bed contained DNA which matched the same rapist. The defense is arguing that the first case was consensual sex, and the second case was not perpetrated by the defendant.
22. "Expert evidence farce clears 'earprint killer'." The Daily Telegraph (London), January 23, 2004. In England, a man convicted of murder in 1998 based on an earprint was acquitted at a retrial after the expert evidence that jailed him was shown to be flawed. Recent analysis of DNA extracted from the earprint in question failed to match the man. The case was the first conviction based largely on earprint evidence, and the handful of subsequent convictions obtained using earprint identification techniques may now have to be re-examined.
23. "Man charged after DNA links him to break-in." Milwaukee Journal Sentinel (Wisconsin), January 23, 2004. In Wisconsin, a man was charged with burglary after DNA from a towel found at a burglarized business was matched to the suspect. The man first became a suspect after he became a suspect in another burglary and a flashlight found in his car matched the description of a flashlight stolen from the burglarized business. A DNA sample was collected from the man and eventually matched to the crime.
24. "Hospital limits rape tests." Press Enterprise (Riverside, CA), January 23, 2004. In California, Riverside County Regional Medical Center has stopped performing exams for adult sexual-assault victims, raising concern among agencies that serve victims. Transporting already-traumatized victims to more distant hospitals puts them under unnecessary stress, and the extra time on the road delays the collection of evidence that could put sexual offenders behind bars, victim advocates and law enforcement leaders said. The hospital insists that the halt in exams is temporary, saying that a "change in leadership and coordination" was needed. Although funding was not directly blamed, the hospital has indicated that it is considering charging police agencies for performing the exams.
25. "Rape trial opens; attorneys on both sides blast suspect." Anchorage Daily News (Alaska), January 22, 2004. In Alaska, a rape trial has begun for a man linked through DNA to five rapes. The defense acknowledges the presence of the suspect's DNA, but explains that, "DNA doesn't mean guilty. DNA simply means you were there."

The defense will argue that all of the accusers agreed to have sex for money and falsely reported being raped when he refused to pay them. However, the prosecution will show that the DNA evidence came from semen found in cases of forced sex and from blood from both the victims and the suspect.

26. "DNA links inmate to more assaults." Chicago Tribune, January 22, 2004.
In Illinois, a man already in prison for possession of a controlled substance was charged with sexually assaulting three women in 2001. His criminal history also includes a 1988 sexual assault conviction and convictions for weapons offenses.
27. "DNA delays let suspects roam free." The Detroit News, January 22, 2004.
In Michigan, a backlog of DNA cases awaiting examination by the state police has frustrated local police and, in at least one case, let a suspect in a rape roam free while police waited eight months for the evidence to arrest him. The man now is charged, based on DNA evidence, with raping a woman twice while police waited for the lab results. His was one of the now 74,000 DNA samples awaiting processing by the state to solve crimes, which excludes the 5,000 new convicted felons and 1,000 DNA evidence requests that come in each month. One local community is considering establishing its own DNA lab.
28. "Prolific Burglar Jailed For Four Years." Express & Echo (Exeter), January 22, 2004.
In England, a prolific burglar who admitted raiding 17 homes in three counties and stealing £20,000 of property has been jailed for four years. The court that he heard 18-year-old was caught after police found his DNA on a carton of apple juice at the scene of a burglary.
29. "Charges dropped in rape case with misfiled DNA test." The Associated Press State & Local Wire, January 21, 2004.
In Tennessee, a judge dismissed rape, burglary and assault charges against a man who was kept behind bars for three months after prosecutors misfiled the DNA test report that cleared him. The man was indicted in July on a charge that he raped a former girlfriend the day before he was to attend a court hearing on restitution payments from previous vandalism charges. The Assistant District Attorney has said the DNA test had been "misfiled" and he was not aware the results were in the suspect's favor until he was shown a copy in court in December. He said that as soon as he learned the results were misfiled he advised the court.
30. "Sheriff's crime lab accredited." The San Diego Union-Tribune, January 21, 2004.
The San Diego Sheriff's Crime Laboratory has become the 285th lab in the United States to receive national accreditation. Accreditation by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board "gives immediate credibility to the lab. While the lab has produced quality work during the several decades of its existence, it is still important that an outside organization has provided its seal of approval. During cross-examinations, defense attorneys on occasion made an issue of the lab's lack of accreditation. The accreditation process began about six years ago and included numerous inspections, remodeling of the lab and stringent record keeping.
31. "Hair of the dog sends killers to jail for life." The Times (London), January 21, 2004.
In England, dog hairs found on a murder victim's body were matched to a bullmastiff kept by one of the killers. The DNA analysis was completed in America at Sacramento University, and was vital to the case against the four men who have been convicted of the murder. The dog actually belonged to another family, who had lost her in the summer of 2002, a few months before the murder, when she jumped over a fence. A microchip helped to reunite the dog with her rightful owners.
32. "Rapist Snared By DNA." Evening News (Edinburgh), January 20, 2004.
In Scotland, a chef who raped a prostitute in Edinburgh has been caught years later by his DNA. The man would have got away with the attack if he had not been accused of a minor drugs offense last year. A routine swab collected by police at the time of the drugs offense led to the DNA match to the unsolved rape. Although he originally argued that it was a case of consensual sex, the man pleaded guilty to rape when allegations that he held a knife to the woman's neck and forced her to commit other sex acts were dropped from the charge.
33. "Oregon Without A Clue." The Oregonian, January 20, 2004.
In Oregon, a looming potential defeat of a ballot measure for increasing state taxes will mean significant cuts to crime lab services. The Legislature's emergency budget-balancing plan – to be implemented if the tax increase is not approved – includes eliminating \$3.9 million from the Forensic Services Division of the Oregon State Police.

The cuts would force the state police to shrink its forensics staff from 107 to 47 employees. An earlier round of budget cuts last year trimmed the staff down from 135 employees. Editorial concludes, "Now, for want of \$3.9 million, Oregon seems poised to empty its forensic labs. In the end, that's a spending cut only a rapist could appreciate."

34. "Groce v. United States Dep't of Justice." January 19, 2004.
The 5th Circuit Court of Appeals has ruled that the forced collection of DNA samples implicates the Fourth Amendment, but that as applied to inmates, who have diminished privacy rights, the search is reasonable. The case arose from petitions filed by two federal inmates who were incarcerated for armed bank robbery and conspiracy to commit armed bank robbery. The pair filed a complaint to challenge the DNA Analysis Backlog Elimination Act of 2000 (which requires DNA samples from certain federal convictions) as a violation of the Fourth Amendment prohibition against unreasonable searches and seizures. The district court dismissed for failure to state a claim.

Genetic Privacy

35. "Legislation would license genetic counselors." Copley News Service, January 27, 2004.
In Illinois, a State Representative wants to require all Illinois genetic counselors, who assess patients' risks of developing certain diseases by analyzing their DNA, to be licensed by a state board. Counselors commonly evaluate the likelihood that patients will develop cancer or have children with birth defects. However, there are no national standards defining who may call themselves counselors, according to the National Society of Genetic Counselors

Paternity

36. "Lawmaker pushes bill to put DNA testing at heart of paternity battles." The Associated Press State & Local Wire, January 26, 2004.
In Colorado, a man is campaigning to change Colorado law, which assumes the husband is the father unless he takes action to prove otherwise soon after the baby is born. A measure in the state legislature would remove Colorado's six-month time limit to challenge paternity. The man campaigning on the issue was forced to pay over \$1000 per month in child support, despite DNA evidence proving the twin boys are not his.