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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 9, 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

Missouri legislation would expand the DNA database to include all convicted felons, and another Missouri proposal would provide funding for the DNA database program. Texas will not require accreditation of county medical examiners' offices.

Cold hits on DNA databases identified/convicted offenders in Illinois (envelope linked sex offender to a string of threatening letters to schools), New York (burglar linked to serial rapes) and Ohio (felony domestic violence conviction linked to a robbery). DNA evidence also aided investigations in California (cigarette butt tied to murder suspect) and Florida (Deputy tied to sex assault). Tennessee has extended a deadline for local agencies to submit backlogged DNA evidence for testing.

The 9th Circuit Court of Appeals has agreed to reconsider a ruling against the federal DNA database statute. The Washington Supreme Court has refused to reconsider a ruling that allows the use of DNA evidence obtained through a ruse. A new study shows that rape kits collected by sexual assault nurse examiners result in more effective evidence collection.

Post conviction DNA testing has freed an inmate in North Carolina and the DNA was matched through the database to another offender. Post conviction DNA evidence that freed an inmate in Virginia and linked another offender to the crime will not be used to charge the offender – prosecutors are dropping charges due to witness deaths and missing paperwork. An Illinois appeals court has reversed a trial court's refusal of a motion for post conviction DNA testing.

In international news...In Australia, cigarette butts linked a suspect to a burglary. A Taiwanese legislator has agreed to DNA tests in a sexual assault case. Canadian authorities have collected DNA from the tenants of a building in an abduction investigation. France has sent a DNA team to assist in the identification of bodies from an airplane crash.

STATE LEGISLATION

Forensic DNA

1. Missouri HB 931 -- Expands the DNA database to include all convicted felons and juveniles adjudicated delinquent of felonies. Includes guilty and no contest pleas, and persons sentenced to jail or community supervision. Retroactive to include previously convicted, including those still serving probation or parole.
2. Missouri SB 924 – Establishes a laboratory oversight committee to provide independent review of state crime laboratory operations. Proscribes procedures for laboratory reports. Establishes the laboratory oversight committee

revolving fund. Half of all moneys in fund will be for DNA database and testing purposes. One fourth of the fund will be for accreditation and auditing, and the remaining quarter will be for equipment and training.

Genetic Privacy / Research

3. Indiana SB 162 -- Prohibits the state, a state educational institution, or a political subdivision of the state from using resources to knowingly participate in human cloning activities.

Paternity

4. Indiana SB 175 -- A person previously ordered to pay child support is entitled to a new hearing if a genetic test establishes that the person is not the biological parent of the child.

NEWS ARTICLES

Forensic DNA

1. "Violence: Sexual assault evidence collection by trained nurse examiners is more accurate." Women's Health Weekly, January 8, 2004.
A new study published in the December 2003 issue of the Journal of Emergency Nursing shows that evidence kits collected by specially trained sexual assault nurse examiners (SANEs) provide more effective evidence collection compared with non-SANE-trained nurses and physicians. Crime analysts with the Colorado Bureau of Investigation completed audits on sexual assault evidence kits submitted to the bureau from October 1999 to April 2002. Researchers found that evidence kits prepared by SANE nurses were more likely to have a completed chain of custody (92%) compared with non-SANE-collected kits (81%). SANEs were also more likely to have properly sealed individual specimen envelopes (91% vs. 75%), to have labeled the individual specimen envelopes (95% vs. 88%), and to have included the appropriate number of blood tubes (95% vs. 80%).
2. "Appeals court to rehear inmate blood sample ruling." The Associated Press State & Local Wire, January 6, 2004. Without commenting on the merits, the 9th U.S. Circuit Court of Appeals said it would reconsider its decision in which a three-judge panel ruled that requiring blood samples from certain federal convicts was an illegal invasion of privacy. The original decision, which had been stayed pending appeal, was viewed as a crime-fighting blow because blood samples culled from prisoners and stored in a DNA database maintained by the FBI often solve other crimes. The decision also threatened state laws demanding DNA samples, which are often forwarded to the FBI's database. The San Francisco-based court, acting on a petition by the Justice Department, did not indicate when it would rehear the case, this time with 11 judges.
3. "Sex offender arrested in sniper threats." The Associated Press State & Local Wire, January 6, 2004. In Illinois, DNA testing has helped investigators capture a Chicago man who is accused of sending letters threatening to kill schoolchildren. Investigators were able to trace the letters back to the suspect because DNA taken from saliva on three envelopes matched his. His genetic profile was on the DNA database because he was a registered sex offender.
4. "Alleged trail killer faces extradition." Contra Costa Times, January 6, 2004. An Indiana man charged with killing a woman during a lunchtime attack on the Contra Costa Canal Trail in California will soon return to California for trial. Detectives became aware of the suspect in September, after DNA on a tested cigarette butt found at the crime scene matched sexual assault evidence found on the victim. Investigators reviewed their original interviews and found a witness who tied a man at the scene to the cigarette butts. Police eventually found the man in an Indiana jail, where he had been arrested in July for driving a moped without a license and violating probation on an earlier battery conviction.
5. "Parolee Gets 35 Years In Rape Spree." Daily News (New York), January 6, 2004. In New York, a parolee accused of raping four women in Chelsea and two in the Bronx during a five-month crime spree was sentenced to 35 years in prison for the Manhattan attacks. The man was arrested last May after police

matched DNA taken during a 2001 prison stint for burglary with evidence left at the scene of the sexual assaults. He still faces charges for the Bronx assaults.

6. "Orchid Cellmark Awarded Exclusive Contract to Conduct Forensic DNA Testing For Los Angeles Police Department." PR Newswire, January 6, 2004
Orchid Cellmark has been awarded an exclusive contract by the Los Angeles Police Department to conduct forensic DNA analysis for new cases as well as testing for backlogged cases. Orchid was awarded this \$2.7 million three-year contract following a competitive bid process. Further details of the agreement were not disclosed.
7. "Justice takes its time for an innocent man." The International Herald Tribune, January 6, 2004.
In North Carolina, an inmate was released from prison on Christmas Eve after DNA tests on evidence from the murder of which he was convicted was found to match another known offender. He spent 19 years incarcerated and had been convicted of the murder twice. Post conviction DNA testing had excluded the inmate several years ago, but this evidence was not enough to result in an exoneration or release from prison. Finally, in response to motions by the inmate's lawyers, a judge ordered the state to compare the DNA evidence with genetic profiles of state prisoners compiled in a DNA database. The DNA was matched to a known offender, who has since confessed to the crime and claims he acted alone.
8. "Evidence Problems Cancel Man's Rape Charges." The Virginian-Pilot (Norfolk, Va.), January 6, 2004.
In Virginia, evidence problems forced prosecutors to withdraw rape charges against a man linked to the crime through DNA. Another man, Julius Earl Ruffin, was originally convicted of the crime and served 21 years in prison before DNA exonerated him. In asking to withdraw the charges, the Deputy Commonwealth's Attorney said two key witnesses have died, and paperwork has disappeared since the case originally went to trial. The forensic scientist who tested the evidence before the first trial died, as did the investigator who collected the evidence from the crime scene. After Ruffin's appeals were exhausted, prosecutors and the police department destroyed their files on the case. Additionally, procedures for handling evidence have changed drastically since the advent of DNA testing. Procedures for handling evidence are much stricter now.
9. "New rule on hold for medical examiners." Austin American-Statesman, January 5, 2004.
The Texas Department of Public Safety, responding to protests from medical examiners in Travis and other counties, has decided against requiring accreditation of medical examiner offices. But in withdrawing its proposal to require accreditation, the department stood by its assertion that accreditation offers significant benefits. The Travis County medical examiner's office, the El Paso County office and others had argued that the proposed requirement would cost taxpayers millions of dollars, worsen a shortage of forensic pathologists and allow some criminals to escape punishment because fewer autopsies would be conducted. Some medical examiners, however, had supported the proposal as an important measure for raising the quality of forensic analysis by imposing standards for personnel, training, equipment and procedures. They argued that critics were exaggerating the cost and other impacts.
10. "France to send DNA experts to identify 60 body parts from plane crash." Agence France Presse, January 5, 2004.
France is sending DNA experts here to help identify 60 body parts that have so far been recovered from an Egyptian plane that crashed here with 148 people aboard. The charter plane was flying to Paris with 148 people aboard, mainly French tourists.
11. "Cecilia case sparks privacy worries." The Toronto Star, January 4, 2003.
In Canada, tenants in the building where a 9-year-old's family owned a private tutoring school have been asked to voluntarily provide DNA samples - the third time Toronto police have asked the public to submit to forensic testing in the past year. Police are investigating a child abduction case. Lawyers and civil libertarians say safeguards are needed to ensure that these samples are properly used and later disposed of.
12. "Lawmaker Liao Apologizes, Accepts DNA Testing Of Sperm." China Post, January 3, 2004.
In Taiwan, Legislator Liao Pen-yen abruptly changed his stance on a request for a DNA test of his sperm collected by an alleged victim in what has been described as a sexual assault case. Liao also made a public apology for setting a bad example for society. A woman has charged that Liao sexually assaulted her at a drinking party in September. She claimed that she had preserved tissue paper containing Liao's sperm. The accuser has challenged Liao to take a voluntary DNA test to prove that she did not make a false accusation.
13. "DNA snares busy crim." Herald Sun (Melbourne, Australia), January 3, 2004.

In Victoria, Australia, a discarded smoke butts enabled police to use DNA technology to put a suspect at the scene of a major factory burglary. The man has reportedly has made a career over the years from drug manufacturing, gunrunning and major industrial burglaries.

14. "Criminal law & procedure - forensic testing." Chicago Daily Bulletin, January 2, 2004.
The Illinois Appellate Court, 2d District, has reversed a ruling by a County Circuit Judge saying that the trial court erred in denying defendant's motion for forensic testing of evidence taken from two victims of sexual assault in prison in which defendant was being held. The defendant alleged that during his trial, there was evidence presented that a prison nurse took swabs from both of the victims but that no attempt was made to match the fluids taken from the victims to a specific person. The state did not argue that the fluids came from the defendant, and the defendant did not scientifically establish that he was not the source. The trial judge denied the motion as untimely under the Post-Conviction Hearing Act. The appeals court reversed. *People v. Joseph Price*, No. 2-01-1291. Justice John J. Bowman wrote the court's opinion with Justices Jack O'Malley and Thomas E. Callum concurring. Released Dec. 18, 2003.
15. "Deadline extended for state DNA tests." Chattanooga Times Free Press (Tennessee), January 1, 2004.
In Tennessee, law enforcement agencies across the state have been given more time to submit DNA evidence from old crimes for laboratory analysis. The state has a \$3.4 million federal grant for testing DNA samples from such cases, but most law enforcement agencies have not responded to the TBI's request. The deadline for doing so was originally set for December 31, but the TBI has extended it for a month. The TBI has received 121 samples -- 111 from Memphis police and 10 from Knoxville police. A TBI spokeswoman said response to the new notice has been positive and other agencies have promised to send in the requested material.
16. "Deputy charged with assault." Sarasota Herald-Tribune, January 1, 2004.
In Florida, a Sarasota County Deputy has been fired after DNA linked him to a sexual assault. The victim accused the Deputy of the assault but he denied sexual contact with her and refused to give a DNA sample. The Sheriff's Office executed a search warrant and collected DNA samples from the Deputy, which was matched to semen found on the victim's dress. The lab said there was one chance in 6 billion that the semen was not his.
17. "State high court rejects review of DNA ruse." The Seattle Times, January 1, 2004.
The Washington State Supreme Court has refused to review a King County judge's decision to allow DNA evidence against a man charged in a 21-year-old slaying of a 13-year-old girl. Detectives had a DNA sample from the girl's body but did not have a sample from the man, who was long the prime suspect. So, posing as members of a local law firm, detectives wrote to the suspect and invited him to join a class-action lawsuit. The suspect licked the return envelope when he replied, and DNA from the envelope matched the DNA evidence from the crime. The man's attorney had argued that the police ruse invaded the suspect's privacy and violated his right to be free from unreasonable searches and seizure. He also argued that it was illegal for detectives to pose as lawyers and illegal for crime lab investigators to open mail that the suspect intended for someone else. Prosecutors countered that it is not unusual for police to use deception to get evidence from suspects. And they argued that DNA samples and other evidence collected in public places are admissible. The King County Superior Court judge agreed, and the State Supreme Court has refused to reconsider the ruling.
18. "Suspect arrested in four-year-old bank robbery case." Zanesville Times-Recorder, January 1, 2004.
In Ohio, a man has been arrested on charges of aggravated robbery and felony theft after the DNA database linked him to the 1999 bank robbery. He was convicted in 2000 on a felony charge for receiving stolen property and in 2002 on a felony charge of domestic violence.
19. "Analyst fired for role in faulty DNA tests." The Associated Press State & Local Wire, December 31, 2003.
A DNA analyst whose defective work in the embattled Houston Police Department's crime lab helped convict a teenager of rape has been fired. Her suspension came nine months after the teenager was released from prison when a retest of the DNA in his case by a private lab discredited the analyst's work and excluded him as a suspect in a 1998 rape. He had been serving a 25-year sentence. He remains free on bond and is seeking a pardon.

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20. "A look into your future health?" The Washington Times, January 5, 2003.

Article by a US Representative Zack Wamp (R-TN). “Genetic nondiscrimination legislation would extend basic protections to all Americans from the collection, disclosure or use of their genetic information. The legislation would bar health insurers from denying coverage or adjusting premiums based on genetic information. It would also prohibit employers from using genetic information as a basis to hire, fire or promote employees... We must not allow the fear of discrimination on the basis of genetic information to impede this groundbreaking medical progress. It is essential that Congress complete action early in 2004 to fully realize the potential of genomics for improving human health and our quality of life.”

Paternity

21. “30 in Mae Ai to regain citizenship.” The Nation (Thailand), January 1, 2004.
In Thailand, thirty people in Chiang Mai's Mae Ai district who were stripped of their citizenship are to be re-naturalized after DNA tests proved they are Thai. DNA tests by Khunying Dr Pornthip Rojanasunand, deputy director of the Institute of Forensic Science, established the identities of 30 people stripped of their citizenship, despite confirmation by neighbors that they were Thai.