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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 February 13, 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

Bills to include certain felony arrests were introduced in Illinois and Maryland. A Missouri bill to include all felons on the DNA database is progressing, and an Idaho bill to include burglars has strong support from law enforcement. A New Mexico city is requiring DNA from all registered sex offenders.

Cold hits on DNA databases aided murder investigations/prosecutions in Alaska and Texas. Maryland prosecutors will appeal a circuit court ruling against the state's DNA database. DNA evidence was also key to criminal cases in Connecticut (serial murders), Montana (murder), New Mexico (murder), and North Carolina (rape). DNA evidence led to murder charges being dropped in a federal case, and Illinois legislators may close a loophole to allow prosecution of rape cases after the victim's death if DNA is available.

An Illinois bill requires annual reports on DNA backlogs, an Arizona city will use federal funds to address a backlog, and a Michigan bill urges Congress to increase federal spending on DNA. Mississippi would like a new cold case squad, but backlogs at the crime lab may be an obstacle. Oregon has moved to save its forensic programs from budget cuts, and an Ohio lab may need major renovations.

Bills regarding post conviction DNA testing were introduced in New Jersey and Tennessee. Other post conviction DNA testing cases made headlines in California, Florida, Nebraska, and Pennsylvania. A Minnesota bill reinstates the death penalty for certain cases where DNA evidence proves guilt.

In international news...DNA evidence was used in criminal cases in Canada (child rape), Ireland (murder) Malaysia (murder). Cold hits linked suspects to unsolved murders in Australia and New Zealand. London police are reviewing 330 rape cases for DNA profiles and have had an 80% success rate thus far, and Scotland is requesting funds for more DNA equipment. An Australian state is focusing on solving burglaries through DNA, and another state is reviewing collection of DNA profiles from personal items of inmates not required to give samples.

STATE LEGISLATION

Forensic DNA

1. Georgia SB 482 – Removes requirement for DNA samples “upon release” for certain inmates. Remaining language would allow for immediate collection of samples.
2. Illinois HB 4424 – The state's current statewide sexual assault evidence collection program is modified to include comparison of DNA evidence against the state DNA database.

3. Illinois HB 4825 – Expands offender DNA database to include felony arrests.
4. Illinois HB 6884 – Clarifies DNA database statute to include persons found not guilty by reason of insanity.
5. Illinois SB 3014 – Requires an annual report from the state police regarding the size of backlog and waiting time, including offender samples. Report is to be publicly available.
6. Maryland SB 426 – Expands offender DNA database to include persons charged with violent crimes.
7. Michigan HRes 193 – A resolution to memorialize the Congress of the United States to increase the level of federal funds available to the states for DNA testing.
8. Minnesota SB 1860 – Requires the creation of a capital cases DNA database. Allows capital punishment if cases meet certain criteria, including DNA evidence indicating guilt.
9. New Jersey AB 2195 – Allows post conviction DNA testing on evidence which resulted in a murder conviction, but which was not subject to testing. Identity must have been an issue at trial and the inmate has the burden of proof establishing that the evidence has been subject to a sufficient chain of custody.
10. New Jersey SB 824 – Fiscal Year 2004 supplemental appropriation of \$ 300,000 to the Office of the Attorney General in the Department of Law and Public Safety to fund the Post-Conviction DNA Testing Program.
11. Tennessee HB 3454 & SB 3008 -- Removes process for state payment of expenses associated with DNA testing of post-conviction petitioners from the criminal injuries compensation fund.

Genetic Research / Privacy

12. Alabama HB 282 – Prohibits human cloning.
13. Arizona HB 2685 – Prohibits human cloning.
14. Illinois SB 2889 – Creates the Genetic Counselor Licensing Act.
15. Maryland HB 481 – Prohibits human cloning.

Paternity

16. Illinois HB 4742 – Uniform Parentage Act. Contains various provisions regarding paternity testing and acknowledgment forms.
17. New Jersey SB 910 -- Enacts the "New Jersey Parentage Act of 2003." Establishes genetic testing guidelines.

NEWS ARTICLES

Forensic DNA

1. "Execution reprieve will lead to more delays." The Associated Press State & Local Wire, February 11, 2004. The U.S. Supreme Court has declined to overrule an appellate court's stay of execution for a California inmate, who pleaded that DNA tests on the evidence would prove his innocence. The man wants DNA evidence linking him to the slayings tested for preservatives or other signs that would indicate it could have been planted at the crime scene. He also wants DNA tests on hair found clutched in one of the victims' hands, which was never tested. Gov. Arnold Schwarzenegger, who earlier denied clemency in the case, said he was confident that "our judicial process will ultimately bring finality to this case."
2. "DNA profile matches that of accused." New Straits Times, February 11, 2004.

In Malaysia, a court was told that DNA evidence found on the body of a murder victim was a match to the suspect charged with her death. The forensic scientist said that he found that the evidence (semen and sperm matched all 16 genetic loci. "The probability of a randomly selected unrelated individual having a matching DNA profile is one in 5.8 quintillion," he said. The article reports that the analyst "had to repeat slowly and clearly his explanation on the technical details involved in DNA profiling in the case due to the complicated process and scientific terminology involved so that High Court judge could write it all down."

3. "Man pleads no contest to raping, killing teenage niece." Anchorage Daily News, February 10, 2004.
In Alaska, a man has pleaded no contest to raping and killing his 15-year-old niece and was sentenced to 60 years in prison. The man was also identified as a rapist after his arrest in the murder case when his DNA was run through CODIS. The rape occurred nearly a full year prior to the murder. In accordance with the negotiated plea, he received an extra 10 years for that first-degree sexual assault, making his total sentence 70 years.
4. "Henry Lee testifies that defendant is serial killer." The Associated Press State & Local Wire, February 10, 2004.
In Connecticut, forensic scientist Henry Lee, known for his work on celebrity criminal cases, has concluded that a homeless drifter killed three women in Hartford after luring them to secluded areas for sex before crushing their skulls. Lee said the most important evidence was DNA testing that showed that the man's semen was on all the bodies. Defense lawyers have repeatedly elicited testimony that the defendant was only one of several men who left DNA on the bodies. On cross-examination, they have also quizzed local police and state scientists about why certain pieces of evidence were never tested for DNA. Lee's celebrity was an issue during jury selection, when lawyers questioned jurors about whether they would give more weight to Lee's testimony because he was well known. The jurors all said they would not be overly swayed by his celebrity.
5. "Man seeks DNA tests to prove slaying was justified." The Associated Press State & Local Wire, February 10, 2004.
In Pennsylvania, a former state prison guard convicted of killing his estranged wife's boyfriend is seeking genetic tests in his bid to prove the slaying was justified and to back up his claims his daughter was being molested. The inmate has asked a judge to have DNA tests performed on bed sheets, underwear and other places in the bedroom where the victim was killed in May 2000. The inmate claims the shooting was justified because the victim was molesting his then-2-year-old daughter.
6. "DNA links man to unsolved 1989 murder." The Associated Press State & Local Wire, February 10, 2004.
In New Mexico, DNA evidence has linked a convicted rapist to the unsolved slaying of a woman who was bludgeoned to death in 1989. The man was convicted of two counts of rape in 2000, and is serving two life sentences. Analysis was performed in December on evidence seized in the murder case.
7. "Yard hunts 40 rapists after new DNA checks." The Evening Standard, February 10, 2004.
In London, England, forensic experts have identified the DNA profiles of 40 men in reviews of 330 unsolved rapes. In some cases, police have names of suspects they are now actively hunting after their profiles matched samples on the DNA database. A police team is examining cases between 1987 and 1995 in the biggest review of its kind ever undertaken by a single force. A small team of detectives from Operation Sapphire, the unit that deals with sex offenses, has investigated 50 out of the 330 cases up for review. So far, the DNA hit rate on the cases is 80 per cent.
8. "DNA snares strangler." Herald Sun (Melbourne, Australia), February 10, 2004.
In Australia (Tasmania), a man linked to the murder of a woman more than 13 years ago by DNA evidence has admitted the crime. The man was charged with the crime early last year, after a mandatory DNA test in prison linked him to blood splattered on the victim's pillowcase. The man had been serving a sentence for attempted rape.
9. "Magistrate Slams Cops." Illawarra Mercury (Australia), February 10, 2004.
In Australia, a Wollongong magistrate has demanded action from "someone with a bit of clout" to ensure DNA evidence against an accused murderer is available to his defense. The man has been in custody for 10 months without a complete brief of evidence. The judge demanded a report be tendered, outlining what steps had been taken to get the DNA results, when and by whom. "I'm not satisfied there has been enough follow-up," he said.

"Someone's got to yell about it, with a bit of clout."

10. "Jury hears accused's DNA matched sample on body." The Irish Times, February 10, 2004.
In Ireland, DNA profiling carried out on the body of a young German woman revealed a match with that of the man accused of her murder. The forensic scientist estimated there was a "less than one in a thousand million" chance that someone else could share the same DNA profile as the suspect. However, she did add there was a one in 30,000 chance that one of his brothers could share the same DNA profile.
11. "Nail scrapings led to murder charge." The Southland Times (New Zealand), February 10, 2004.
In a New Zealand murder case, a DNA sample taken from a man on an unrelated matter in January led to his being identified as a suspect in the murder. The man's DNA matched DNA taken from the murder victim's fingernail clippings. A forensic analyst testified that the DNA sample was 4 billion times more likely to be that of the suspect's than any other unrelated male. Further tests revealed the DNA could not have come from his father or brother.
12. "Grand Jury Indicts Brown." Winston-Salem Times, February 10, 2004.
In North Carolina, on the first day of court after the release of an inmate exonerated through new DNA tests, a grand jury formally charged another man in connection with a string of crimes involving the 1984 death. The recently exonerated man spent 18 years in prison for the murder. Investigators began looking at the suspect because he had been a suspect in another downtown rape six months after the victim was killed. A sample collected from his brother was found to be a close match to the crime scene evidence. The suspect was in jail on a misdemeanor probation violation charge when he was charged with the death.
13. "New federal prosecutor takes over investigation of Ciudad Juarez killings." Associated Press Worldstream, February 9, 2004.
The new federal prosecutor appointed to investigate over a decade of killings of women in Ciudad Juarez, Mexico said she will review the more than 200 unsolved cases to determine whether her office should take over some of them. The prosecutor is the former head of the federal Justice Department in northern Coahuila state. She also said establishing a DNA data bank and a victims' registry will be a top priority. Mexican authorities estimate that 258 women have been killed over the past decade in Juarez. Nearly 100 of these killings fell into a pattern where the victims were sexually assaulted, strangled and dumped in the nearby desert.
14. "Montgomery County judge strikes down DNA collection law." The Daily Record (Baltimore, MD), February 9, 2004.
In Maryland, a Circuit Court judge for Montgomery County has ruled that a law that gives the state the power to collect DNA samples from anyone convicted of a felony violates the Fourth Amendment's ban on unreasonable searches and seizures. Prosecutors intend to appeal Circuit Court Judge S. Michael Pincus' decision in the case of Charles Raines, who is facing trial on a sexual offense purely on the basis of DNA evidence. Pincus' ruling is the first time a challenge against the DNA Collection Act has been successful at circuit court level. The state believes there was no legal basis for the judge's decision and plans to appeal. In further support of his argument, the judge cited a 9th U.S. Circuit Court of Appeals decision (U.S. v. Kincade), in which a three-judge panel ruled that the defendant's Fourth Amendment rights had been violated when his DNA was taken. The Maryland Solicitor General noted that the 9th Circuit is due to reconsider that decision en banc.
15. "Barely broken-in BCI headquarters building plagued by problems." Plain Dealer (Cleveland, OH), February 9, 2004.
Four years after the Ohio Bureau of Criminal Identification and Investigation opened its state-of-the-art crime lab and headquarters, the building needs major renovations. Water from the fall's heavy rains penetrated the roof of the \$17.8 million facility, peeling sheets of wallpaper above the front entrance and leaving pools of water on a ledge above the door. In the computer crimes evidence room, water-soaked ceiling tiles caved in, forcing employees to find other storage for computers, discs and other evidence. Elsewhere on the third floor, virtually every office has sagging and mildewed ceiling tiles - including the DNA lab. Some have alleged that the problems are being made into a political battle between the current administration and the former administration.
16. "BLIC Safety Commissioner Wants Cold-Case Unit To Solve Old Crimes." The Commercial Appeal (Memphis, TN), February 8, 2004.
Mississippi's Public Safety Commissioner has said he wants to start a cold-case unit within the Department of Public Safety. "Rural sheriffs have difficulty with murder cases," he said, but his agency could provide certain

expertise. "I don't think it requires more manpower. I think it requires more coordination, more cooperative effort." However, backlogs at the crime lab could be a problem. The lab currently has a backlog of 5,153 cases. Four years ago, the backlog was more than 10,000 cases.

17. "Long arm of law extended." The Sunday Times (Perth, Australia), February 8, 2004.
In Australia, police are to launch a six-month blitz on burglars. The offensive, called Operation Clearance, aims to rid Perth of its reputation as the burglary capital of Australia. It will involve 60 police officers and cost \$200,000, funded from within the existing police budget. The new operation, across all of the metropolitan area, will focus on the use of DNA and new fingerprint technology to catch burglars, particularly repeat offenders. Police have collected about 30,000 DNA samples, resulting in the reopening and solving of up to 1000 cases.
18. "Police throw manpower into sex-offender blitz." Albuquerque Tribune, February 7, 2004.
In Albuquerque, New Mexico, the police department has assigned four detectives to a new unit that identifies and locates unregistered offenders. That's half the number of detectives assigned to work in the city's homicide unit. The department's move comes after a state district judge last week upheld parts of the city law passed last year. The ordinance requires adults convicted of a sex offense against a child since 1970 to register with police. The city will keep photographs of those registered and may also record dental imprints and DNA. Under the ordinance, extracting DNA is not required for all offenders who register. It is on a case-by-case basis, but so far, DNA has been collected from all offenders who have registered. It will cost the city about \$250,000 a year to pay the four detectives and a sergeant who work in the unit, according to the department's fiscal manager.
19. "DNA evidence links suspect to old murder." The Associated Press State & Local Wire, February 7, 2004.
In Texas, police said a growing statewide DNA database has helped them arrest a man in the strangulation of a 22-year-old pregnant mother four years ago. A DNA sample was taken from the man when he was booked into state jail last year on a burglary conviction. When his DNA was entered into DNA database, it matched samples obtained from the suspect's home.
20. "Machine To Speed Up DNA Tests Set For City." Evening News (Edinburgh), February 7, 2004.
In Scotland, senior officers are set to ask a police board for approval to spend GBP 107,000 on technology which will allow them to double the rate at which they can test DNA samples. Police argue that urgent cases such as murders would be dealt with much more quickly and added that the new equipment will also help reduce investigation costs. It would also allow police to eliminate others from their inquiries much faster.
21. "Man gets 64 years for 2nd assault." The News & Observer (Raleigh, North Carolina), February 7, 2004.
In North Carolina, a man has pled guilty to three counts of first-degree sexual offense and one count each of first-degree rape, first-degree kidnapping and attempted armed robbery. He became a suspect in the 1989 case after police recognized similarities with a 2002 case for which the suspect had been convicted. The 1989 evidence had remained in an evidence file until police retrieved it for testing. At the time of the match, he was serving a 9-year sentence on the 2002 attempted rape conviction. He has been sentenced to 64 years for the 1989 assault.
22. "No More DNA Tests For Killer, Judge Decides." Orland Sentinel, February 7, 2004.
In Florida, a judge has ruled that there will be no more DNA testing in connection with a former police officer who was convicted in a 1987 murder. In 2003, the Florida Supreme Court ordered the trial court to "determine whether [evidence] exists that can be tested for DNA . . ." Most items were tested by the Florida crime lab, but none of those tests produced a result that could exonerate the inmate. However, a semen sample on a slide was not tested because the technician testified the material "would be destroyed and no DNA profile would be obtained." The judge ordered testing of the slide, but the defense attorney withdrew the request for the DNA tests, for fear the sample would be destroyed. The judge honored that request but stated in his order that the court is not granting the defense the "right or privilege to pursue DNA testing . . . at a later date. That is a matter more appropriately addressed by the Florida Supreme Court."
23. "U.S. Moves To Drop Rice Charges For Now." Richmond Times Dispatch, February 7, 2004.
New forensic evidence led federal prosecutors to seek to drop charges against a defendant in the 1996 slaying of two women camping in the Shenandoah National Park. The suspect had been charged with capital murder and could have faced the death penalty. DNA evidence has been the key in pointing to the involvement of a killer other than the suspect, according to court documents. DNA analysis of physical evidence taken from the crime scene - including gags and ligatures used to tie the women - was initially botched by the FBI lab. In one instance, the FBI lab identified a hair found on a pair of glove liners as belonging to one of the victims. It does not, a later analysis

found. In another instance, the lab said a re-analysis of a stain found on ligatures used to bind one of the victims came from a male other than the suspect - contradicting the lab's earlier finding that it could not determine the sex of the person who left the stain.

24. "Blood Draw, Miranda Rule At Issue In Convict's Appeal." Tampa Tribune, February 7, 2004.
In Florida, a former pizza delivery man convicted in a 1996 fatal stabbing and rape has asked the state Supreme Court to overturn his conviction and death sentence. He argues that he was not informed of his right to remain silent until his arrest and that the drawing of his blood to obtain DNA was not voluntary. However, he did not attempt to dispute that DNA found in the victim's home matched his own, as he had previously admitted to having consensual sex with the victim.
25. "City to get DNA sequence detection system via federal grant." The Associated Press State & Local Wire, February 6, 2004.
In Scottsdale, Arizona a federal grant of \$224,000 will allow police to review hundreds of cold criminal cases with DNA analysis. The lab reports the backlog of cold or "no suspect" cases is in the thousands but only about 800 are good candidates for DNA testing. \$50,000 of the grant will be used to purchase a new analyzer. The remaining funds will be spent on supplies, additional training for crime scene technicians and criminologists, as well as overtime for the investigators. The goal with the grant is to track down burglary, robbery and aggravated assault suspects using biological material from crime scenes.
26. "Legislators target loophole that lets killers avoid rape charges." Chicago Daily Herald, February 6, 2004.
In Illinois, a proposal endorsed by a House committee all but eliminates the legal deadlines in cases where a criminal rapes and murders a victim. Although there is no legal deadline for prosecuting murder, prosecutors have only three years to pursue rape charges. They get a 10-year extension if the victim comes forward within two years of the crime. This can create a problem for cases where the victim was killed during the commission of a rape, and therefore cannot report the rape. Under the proposal, if prosecutors establish a genetic link through DNA evidence within 10 years of the crime, they can file charges at any time. Regardless of whether the victim is still alive. A Cook County assistant state's attorney said the county is dealing with five such cases and that the accused should be held accountable for all of the "heinous" crimes they are charged with, not just the murders.
27. "Oregon Governor Seeks to Ease Sharp Budget Cuts Forced by Tax-Hike Rejection." The Register Guard, February 6, 2004.
Oregon's Governor responded to the failure of the Measure 30 tax increase by offering to preserve some of the public safety and health care programs that were to be cut. Among programs to be spared are the forensics labs. He has ordered a halt the elimination of 60 crime lab positions by asking the Legislative Emergency Board to free up \$ 3.9 million from the emergency fund. However, most of the other cuts triggered by the measure's defeat -- cutting education by \$ 300 million, trimming social services programs, and kicking about 50,000 people off the Oregon Health Plan -- will go ahead as scheduled.
28. "Convicted killer first to ask for new trial under DNA law." The Associated Press State & Local Wire, February 5, 2004.
In Nebraska, a man convicted of killing a woman over a drug debt 14 years ago could be the first person to receive a new trial under a 2001 law requiring the state to pay for DNA testing. The inmate has asked the state Supreme Court for a new trial because DNA tests done at the state's expense found no traces of blood on the evidence used to convict him. Experts had testified during his trial that they found the victim's and his own blood on his jacket, sweater and pants. A district judge has already rejected the request for a new trial, saying that, considering the evidence presented at the 1988 trial, the test results would not have changed its outcome even though the tests might have been favorable to the inmate.
29. "Senate endorses bill requiring DNA samples of felons." The Associated Press State & Local Wire, February 5, 2004.
In Missouri, the Senate has given initial approval to a bill to expand the state's DNA database to include all convicted felons. To pay the testing tab, they propose a fee on people convicted of everything from traffic offenses to murder. The bill would require the state to pay prisoners exonerated by DNA evidence. The bill, which needs another Senate vote to move to the House, has failed in past years because of the potential expense to the state. The bill would impose a \$30 surcharge on anyone who is found guilty or pleads guilty or no-contest to a felony. The surcharge would be \$15 in misdemeanor cases and 50 cents in traffic-related cases.

30. "Child Rapist Gets Six Years In Jail." Edmonton Sun (Alberta, Canada), February 5, 2004.
In Canada, an "animalistic drunk" who admitted raping a "defenseless" 5 1/2-year-old girl, although he claims he can't remember, was handed a six-year prison term. A blood sample linked his DNA to semen found inside the victim, and the suspect said he "had no idea how" that could be. A forensic lab report said the probability of the DNA matching another person was one in 120 billion.
31. "Lewistown." Great Falls Tribune (Great Falls, MT), February 5, 2004.
In Montana, after 12 days of testimony, it took jurors less than five hours of deliberation to find a Lewistown man guilty of deliberate homicide in the stabbing and strangulation death of a 70-year-old woman. DNA evidence continued to be a mainstay for both the prosecution and the defense in their closing arguments. DNA found on the victim's body did not match the suspect, but prosecutors argued that the DNA sample may have been contaminated, or the victim may have had another sexual partner. Other DNA evidence did link the suspect to the victim's apartment, including DNA on a pillow found beside the victim and DNA found on the suspect's bloody clothes.
32. "Killer DNA seizure probed." Herald Sun (Melbourne, Australia), February 5, 2004.
In Victoria, Australia, the unauthorized removal of DNA from the prison cell of a notorious child killer has prompted an inquiry into police and prison powers. A prison officer was asked by his superior to remove a hair comb, razors, a dirty sock and a washing cloth which were analyzed for a DNA profile. Police were hopeful that the DNA would match evidence from an unsolved child murder (it did not). The draft report concludes that, "The covert obtaining of the DNA was, at best, not authorized by law." However, the Ombudsman has also admitted that there are no specific laws relating to police collecting DNA secretly from suspects -- a loophole that had been raised by a parliamentary inquiry due to release its report soon.
33. "Idaho police push DNA library to include convicted burglars." The Associated Press State & Local Wire, February 4, 2004.
Idaho State Police are supporting a bill in the state Legislature that would add convicted burglars to the state DNA database. Experts say that perpetrators of home-invasion rapes often escalate from burglary. They also know that repetitive criminals do not just specialize in one type of criminal activity. Idaho is the only Northwest state that does not collect DNA samples from convicted burglars. Neighboring states, except Nevada, go one step further by taking samples from all convicted felons. To offset the costs, the bill requires a person convicted on DNA evidence pay up to \$500 per sample, regardless of whether the sample was taken from the victim or the perpetrator.

Genetic Research / Privacy

34. "Call for look at DNA guidelines." The Mercury (Australia), February 9, 2004.
The Australian Medical Association has been asked to investigate the guidelines surrounding a drug company's move to obtain DNA donated by Tasmanians. A newspaper recently revealed that the respected population researcher center collecting the DNA had a "first right of refusal" deal with Melbourne-based drug developer Cerylid. An alderman has called for tougher disclosure requirements, saying most Tasmanians who donated DNA for the center's work did so unaware of the deal. He called on the AMA to outline stricter disclosure requirements or, he said, drug companies would continue to raid the genetic information held within island communities like Tasmania.

Paternity

35. "DNA test ordered by court." PNG Post-Courier, February 9, 2004.
In Papua New Guinea, genetic testing is being used in the mining town of Tabubil to find out who the fathers of two young children are. The two men have denied the allegations which led the magistrate to ask for a DNA test to be carried out. Similar cases had been brought up in court in the past but they were thrown out due to lack of evidence, leaving the women dissatisfied with the outcome from the courts. The judge said in many cases women were illiterate and unemployed and could not get good lawyers to represent them. If the testing does not prove paternity, then the women must reimburse the men the cost of the test.