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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 6, 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

An Oklahoma bill requires DNA for all felony arrests, and other bills in Oklahoma, Hawaii and West Virginia require DNA from all convicted felons. A New Mexico bill requires DNA from all registered sex offenders (including misdemeanors), and a similar measure passed the California House. Indiana's Senate passed a bill to include residential entry and incest on the database.

Cold hits on DNA databases solved crimes in Kansas (rape/murder; murder) and New York (sex assault), and have linked four rapes in Idaho. Local agencies in Tennessee turned in disappointing numbers of backlogged DNA cases. The Texas DNA Database for missing persons continues to collect profiles for matching. A delayed rape kit submission in an Oregon case was questioned. The federal government is using DNA to combat caviar fraud.

President Bush's 2005 budget includes \$175 million for forensic DNA programs, and permits the FBI to charge a fee for forensic services. The Kentucky Governor's budget increases crime lab funding, and South Dakota is requesting a new crime lab. Bills in New Mexico fund the DNA backlog and costs associated with expert testimony. An Alabama bill increases a fee for DNA testing. Illinois and Michigan legislators will introduce bills to address DNA backlogs.

An Oklahoma bill removes the statute of limitations for rape, and an Iowa group indicated support for similar legislation after releasing a study that 1 in 8 women in the state are raped. The first man in the US convicted through DNA evidence (1987 Florida case) is requesting tests using today's more sophisticated techniques. Post conviction DNA testing has been granted in cases in Tennessee and North Carolina. A Maryland court ruled defendants who pay for private DNA testing must also pay associated expert witness fees.

In international news...An Australian state government proposes increased spending on DNA. DNA linked suspects to a rape in Ireland and a murder in Australia. An Australian murder case has experts arguing over adventitious matches vs. evidence contamination. Israel's DNA testing on a bone fragment confirms the bone is not from a missing military pilot. Lack of funding for DNA testing in Scotland is frustrating police. Zamibian police have started a special unit to address child rape cases and may use DNA in more investigations. In England, DNA used to convict a murderer is being questioned.

STATE LEGISLATION

Forensic DNA

1. Alabama HB 161 – Increases the \$2.00 fee in assessed bond forfeiture proceedings to \$10.00. (Fees are distributed to the DNA Database Fund).

2. Hawaii HB 2754 – Expands offender DNA database to include all convicted felons.
3. New Mexico HB 364 – Appropriates \$65,400 to pay for expert witnesses associated with cases that were sent to a private lab for DNA tests.
4. New Mexico HB 402 – Appropriates \$450,000 to process backlogged DNA and trace evidence cases related to sexual assaults.
5. New Mexico HB 475 – Requires sex offenders to submit DNA samples when registering or when renewing registration.
6. Oklahoma HB 1853 – Creates the Mary Rippy Violent Crime Offenders Registration Act. Requires DNA from registered offenders and establishes a \$15 fee for DNA analysis.
7. Oklahoma SB 1362 – Expands offender DNA database to include all convicted felons and juveniles adjudicated delinquent on felony level offenses. Retroactive to include the currently incarcerated.
8. Oklahoma SB 1374 – Clarifies that the DNA database law extends to those inmates serving time in county jail. Authorizes the county sheriff to collect DNA samples. Offender fee for DNA is to be paid to the collecting agency.
9. Oklahoma SB 1399 – Requires all public labs to provide copies of examination reports regarding cases accepted for investigation by the DNA forensic testing program administered by the Oklahoma Indigent Defense System.
10. Oklahoma SB 1413 – Removes the statute of limitation for rape.
11. Oklahoma SB 1417 – Expands offender DNA database to include all convicted felons and all arrested felons. Not retroactive.
12. Oklahoma SB 1447 – Expands offender DNA database to include all violent offenders. Include persons receiving deferred judgment or suspended sentences.
13. West Virginia HB 4156 & SB 312 – Expands offender DNA database to include all convicted felons. Language is permissive and prohibits the state police from increasing expenditures in 2004 to implement the expansion unless further approval is given by the legislature. Creates a right to post conviction DNA testing.

Genetic Research / Privacy

14. Illinois HB 4200 – Creates the “Genetic Counselor Licensing Act.”
15. Kansas HB 2647 – Creates a Kansas Bioscience Authority. Provides for bioscience development and funding
16. New York SB 5992 – Establishes the New York State Genome Institute.
17. New Mexico HB 366 – Creates Programs at the University of New Mexico Health Sciences Center.

NEWS ARTICLES

Forensic DNA

1. “Family feud led to Whippy van murder.” The Australian, February 4, 2004.
In a murder case in Australia, the court heard that DNA samples taken from the car of the accused and from a glove found at the murder scene matched DNA taken from the defendant. The Crown prosecutor told the jury it was "10 million times more likely" the mixture of DNA found at the murder scene and on the sword -- which was found discarded in the front garden of a neighboring property-- belonged to the victim and the defendant, rather than the victim and "some other male chosen at random from the Victorian caucasian population". A "festering grievance" between the two families over parking rights of their respective Mr Whippy ice-cream vans is suspected as the

cause leading to murder of a man.

2. "OJ expert hits forensic error." Herald Sun (Melbourne, Australia), February 4, 2004.
In Australia, a forensic expert from the US has disputed claims made by the Victorian crime lab that an adventitious match was made from crime scene evidence to a victim in an unrelated case. The US expert witness testified that the chance of such a match was one in 171 billion and suggested that it was more likely a case of laboratory contamination. He said that lab documents recently provided to him revealed the lab had suffered instances of contamination, inadvertent transfers, and mislabeling after this particular incident. He also criticized the lab for failing to conduct what he believed were all necessary forensic tests, and said the lab could do a better job of documenting its procedures so independent experts could check its work.
3. "TBI's longer deadline turns up only 47 additional DNA samples." The Associated Press State & Local News Wire, February 3, 2004.
In Tennessee, only 47 additional samples of DNA from unsolved crimes were sent into the state crime lab for testing despite a one-month deadline extension to participate in a federally funded program. The TBI gave police agencies more time to take advantage of a \$3.4 million federal grant after receiving only 121 out of an estimate 2,500 pieces of evidence by the original Dec. 31 cutoff. By the new Friday deadline, 168 samples of material had been received. The samples were from cases where there were no suspects and included blood, semen and saliva from crime scenes. The lab is surprised by the lack of responses after it initially surveyed law enforcement agencies to come up with its initial estimate. Some agencies have indicated that evidence was not submitted because the statute of limitations for prosecution has already expired.
4. "Study: One in eight women is victim of rape." The Associated Press State & Local News Wire, February 3, 2004.
A study conducted by the Iowa Coalition Against Sexual Assault found that one in eight Iowa women is raped during her lifetime. The study does not take into account children, victims of date rape or attempted rape, or men and boys who are sexually assaulted. The Iowa number is slightly lower than the national average, which was attributed to the state's older-than-average population, since younger women are more likely to be victims of sexual assault. The study also found that only one out of six sexual assaults is reported to law enforcement. The coalition would like to see the Legislature restore about \$2 million a year to fund services for sexual assault victims and domestic violence shelters. The money was eliminated from the state budget two years ago. The coalition also supports doubling the statute of limitations on sexual assault cases, which is now ten years, stating that advances in DNA have made prosecuting older cases easier.
5. "Appeals court reverses DNA decision in skating rink murder case." The Associated Press State & Local News Wire, February 3, 2004.
In Tennessee, a man serving life in prison for strangling his 15-year-old ex-girlfriend will have evidence tested for DNA after an appeals court in Knoxville reversed a lower court's decision. The lower court judge had said the inmate's confession eliminated any need for DNA testing on the blood samples, and that he believed the inmate's recanting of the confession was a lie. The appeals court was unanimous in overturning the original decision.
6. "A mom's agony: Is daughter dead?" Austin American-Statesman, February 3, 2004.
The Texas Missing Persons DNA Database program collects DNA samples of missing people's family for inclusion on a database that is compared with samples collected from unidentified bodies. The program, housed at the University of North Texas Health Science Center, is one of three in the United States. It was established during the 2001 legislative session to help identify an estimated 700 sets of remains housed at county medical examiner offices across the state. Nearly 150 family members of missing persons have provided samples. The database program operates on a \$400,000 annual budget, through the Texas attorney general's office. This article details the struggles of a missing woman's family and their hope of finally identifying possible remains of their daughter who has been missing since 1978.
7. "Bush budget aids defense, home security." The Baltimore Sun, February 3, 2004.
President Bush's proposed budget for fiscal year 2005 includes a provision allowing the FBI to charge state and local police forces for its forensic services (including, but not limited to, DNA analysis). For nearly a century, police departments across the country could have crime scene evidence analyzed for free at the bureau's forensic lab.
8. "Labor pledges \$29m to police." Courier Mail (Queensland, Australia), February 3, 2004.

In Australia, the re-election campaign of Queensland's ruling government has revealed a proposal to spend \$29 million to improve the crime-fighting equipment and techniques available to the police. The package includes an additional \$11 million over three years for thousands of backlogged DNA offender and crime scene samples. The state crime lab has been a target of multiple attacks by the public and judges in recent years because of the time it takes to come up with a result. Much of the delay has been blamed on lack of funds. The government said while the extra money would solve the backlog, there needed to be a better understanding that this type of complex science was always going to take time. Another \$2.6 million would go towards linking police with the National DNA Database.

9. "Helmeted Rapist Who Attacked Prostitute Jailed For 10 Years." Irish Independent, February 3, 2004.
In Northern Ireland, a Dublin man who kidnapped and raped a prostitute has been jailed for 10 years. The suspect had denied all knowledge of the incident when he was arrested four days after the crime. He only admitted involvement when confronted with DNA evidence gathered from semen he had wiped on a curtain. The man had approached his victim on a motorcycle and kept his helmet on throughout her ordeal, which had made identification difficult without DNA.
10. "Saving Sturgeons: Value Of Eggs Makes Fading Fish A Target Of Criminal World." San Jose Mercury News, February 3, 2004.
The US Fish and Wildlife Agency uses DNA testing to assist in the prosecution of caviar fraud. 70 percent of the biggest U.S. caviar dealers are being held on smuggling and forgery charges. The technology is not always perfect when it comes to hybrid sturgeons, but overall has been highly successful. Moreover, caviar producers can easily comply with the law by listing both species on their permits when the eggs are from a hybrid. The lab tries to turn around results within nine days, but some caviar sellers complain that the holdup is a hardship.
11. "Israel Says DNA Tests Show Bone Sent By Iran Not That Of Its Navigator." BBC Monitoring International Reports, February 3, 2004.
Israel has determined through DNA tests that a bone fragment thought to be from a missing Israel Air Force navigator does not belong to him. The bone was delivered by Iran to Hezbollah, who subsequently handed it over to the Germans. The bone was delivered through the office of a German mediator from Hezbollah.
12. "Nation's 1st DNA Convict Calls For New Test." Orlando Sentinel, February 2, 2004.
In Florida, the first person in the country to be convicted of a violent crime based on DNA (in 1987). He was subsequently convicted again, three months later, in a separate sexual assault case also based on DNA. He is now appealing the second guilty verdict, with the help of the Innocence Project, in an attempt to get a new trial. He hopes to have the DNA evidence retested using today's more sophisticated testing methods. A geneticist who has reviewed portions of the DNA evidence wrote in 1994, "given the standards available today, I would call these results inconclusive." The victim also identified the man as her attacker, but the jury was primarily swayed by the DNA evidence. A hearing will be held in March to determine whether the evidence can be tested with the new methods.
13. "DNA database helps clear two "cold" homicide cases." The Associated Press State & Local News Wire, February 1, 2004.
In Kansas, DNA evidence has linked two prison inmates to unrelated Wichita killings. One of the inmates, who is serving time for a kidnapping and rape, is accused in a November 1995 rape and murder of an elderly woman. The other is in jail for robbery and is accused in a May 2002 stabbing death. After the initial hits were made, the DNA of both suspects was retested, and detectives began re-interviewing witnesses as they put their cases together.
14. "Grant will allow crime lab to buy new equipment." The Associated Press State & Local News Wire, February 1, 2004.
A \$500,000 federal grant will allow the Missouri Southern State University crime lab that serves more than 50 law enforcement agencies in Missouri and southeast Kansas to buy new equipment and perhaps catch up on a backlog of cases. The lab averages 2,500 cases a year from criminal justice agencies in its region. A small staff and old equipment have caused the lab to fall about 800 cases behind. Among other items, the grant also will be used to upgrade the lab's DNA program.
15. "Torturer New Link To Naomi Murder." Sunday Mercury, February 1, 2004.
In England, new evidence may tie a man recently convicted of murder to a 1995 murder for which another man was convicted. DNA was used in the man's conviction, but supporters of the inmate's now say that a possible police

“bungle” contaminated the evidence. At the time of the man’s arrest, DNA was taken from his parents. When their results came back from the lab, they say they were asked if they were his real parents. At the trial, a blood DNA test suggested there was only a one in 44 million chance that someone else could have committed the murder.

16. “Bill would require more felons to submit DNA.” South Bend Tribune, January 31, 2004.
The Indiana Senate has passed a bill to require DNA samples from persons convicted of residential entry, incest, and attempts/conspiracy to commit these crimes. According to Senate testimony, Indiana State Police matched 123 DNA samples from the current database to unsolved crimes last year.
17. “DNA ties together several rapes.” The Associated Press State & Local News Wire, January 31, 2004.
In Idaho, authorities believe a series of rapes across Kootenai County were committed by the same man, who is thought to scout victims before breaking into their homes. DNA evidence shows at least four of seven rapes or attempted rapes dating back to April were committed by the same assailant. Idaho collects DNA samples from violent felons. A local police chief explains that, “One of the things we teach as a profiler is to look for burglars,” Cronin said. “It’s a precursor to being a sex offender.” But Idaho is among the states that do not obtain DNA from people convicted of burglary.
18. “Bill would end backlog of DNA tests.” Chicago Daily Herald, January 31, 2004.
An Illinois State Senator is working with the Women’s DNA initiative and the Chicago Police Department to introduce new legislation called the “DNA Backlog Accountability Act” early in February. Coupled with an additional \$2.6 million earmarked by the governor for DNA testing, the goal of the legislation is to end the backlog of DNA tests.
19. “State Senate passes DNA bill.” Pasadena Star-News, January 31, 2004.
In California, the state Senate has passed a bill that would require anyone convicted of a misdemeanor sex offense to provide authorities with a DNA sample. The legislation would greatly expand California’s DNA database, adding crimes such as sexual battery and indecent exposure to the growing list of offenses requiring submissions of blood and saliva samples. The bill passed the Senate unanimously, but civil liberties groups criticized the bill, saying it violates the Fourth Amendment protection against unwarranted searches. There are roughly 99,000 registered sex offenders in California. About two-thirds have already submitted to DNA testing because either their crime was a felony or they were under age 18 when they were convicted. Legislative analysts predict that as many as 30,000 sex offenders who have already been convicted will have to submit samples in the first year and another 3,000 samples will be collected each year after. The State Attorney General has said he would support DNA testing in all felony convictions but has taken no position on this bill.
20. “NDSU lands money for proposed DNA lab.” The Associated Press State & Local News Wire, January 30, 2004.
North Dakota State University officials hope a proposed DNA lab in Fargo will lend crime-solving help to North Dakota authorities. The school is using \$1 million from Congress to develop the lab. Officials say they plan a doctoral program in forensic science to accompany it. The lab would focus on analysis of mitochondrial DNA. NDSU hopes to get \$2.5 million to \$3 million more in federal funding next year for the lab. Officials plan to renovate an existing research space to house the proposed lab.
21. “Judge orders new DNA tests in 1992 N.C. murder case.” The Associated Press State & Local News Wire, January 30, 2004.
In North Carolina, a judge has ordered new DNA tests in a case that alleges prosecutors withheld evidence that might have raised doubts about the guilt of a man sent to death row for killing two women.
22. “Crime lab, emergency center discussed.” The Associated Press State & Local News Wire, January 30, 2004.
A \$21 million request to build a new South Dakota crime lab that also would include a police training academy, communications headquarters, and a state emergency operations center was unveiled to the House Appropriations Committee. Legislators took no immediate action on the bill, but the State Attorney General said there is a dire need for a new state crime lab and police training facility. He said part of the existing building is in danger of collapsing.
23. “Md. Court of Special Appeals rules defendant who pays for counsel must also pay his own experts.” The Daily Record (Baltimore, MD), January 30, 2004.
The Maryland Court of Special Appeals has ruled that a murder defendant who hired private counsel was not entitled to public funding to pay an expert witness to testify. The man paid an expert \$1,000 to review the state’s

DNA analysis which indicated that his DNA profile -- as well as the DNA profile of a codefendant -- was present on items and samples collected at the crime scene. However, the expert wanted more money to give live testimony in court. That testimony may have helped his case, but would have cost \$5,000 to \$10,000 -- money neither the suspect nor his family had. The appeals court held that the trial court did not err in denying a privately represented defendant's request that his indigency entitled him to public funds for a DNA expert's trial testimony when he already had paid that expert to provide a preliminary opinion.

24. "Bills seek to speed DNA tests." The Detroit News, January 29, 2004.
In Michigan, a state lawmaker has unveiled plans to seek additional federal and state funding to help speed up testing of DNA samples in unsolved criminal cases. That effort follows a recent report detailing how a backlog of 74,000 DNA cases awaiting examination in State Police crime labs let a suspect in rape roam free while police waited for evidence needed to arrest him. During the eight-month wait, investigators said, the man raped another woman twice. Among the proposals in the planned bill: a state resolution asking Congress for more money; additional money from the state's general fund; a state income tax check-off box to send refund revenue to the forensic lab fund; investigate using matching funds to allow university labs to process tests and lower the cost of testing.
25. "Defense Challenges DNA Evidence In Rape Case." The Oregonian, January 29, 2004.
In an Oregon rape case, defense lawyers questioned the validity of the DNA evidence, noting that the rape kit from the Feb. 27, 1997, assault sat in the Portland Police Bureau's property evidence room for nearly five years. It was not until after a February 2002 murder, also linked to the defendant through DNA, that police finally submitted the rape kit for evidence.
26. "Zambian police launch special unit to cope with child rape scourge." Agence France Presse, January 29, 2004.
Zambian police have launched a special unit to cope with increasing child rape in Lusaka, where nearly 650 cases were reported last year. The Police Inspector General said that according to the latest statistics, 152 cases out of 647 reported in Lusaka involved children under the age of five. "The police lack modern equipment to thoroughly investigate cases of child rape and sexual abuse. We need sophisticated equipment such as DNA testing kits to enable us to produce tangible evidence in court," he said. The government also intended to introduce tough penalties against those found guilty of sexual offences involving children. Some Zambians believe having sex with children or virgins can cure AIDS. One in every five Zambians is believed to be infected with HIV.
27. "Fletcher Tightens The State's Belt." Lexington Herald Leader, January 28, 2004.
The Kentucky Governor's proposed two-year budget includes many cuts, but also calls for money to improve Kentucky's crime lab in Frankfort.
28. "NYPD Daily Blotter." The New York Post, January 28, 2004.
In New York, a DNA database hit linked a man to an unsolved sexual assault of a woman in her apartment in 2000. The match was made in October 2002 and the suspect was eventually traced to Tampa, Florida where he was arrested.
29. "Police say lack of DNA cash is saving criminals." Sunday Times (London), January 25, 2004.
In Scotland, police say that thousands of criminals are evading justice because police forces cannot afford to pay for basic DNA tests at crime scenes. Officers are frustrated that thefts, assaults and crimes against property are never solved despite the presence of DNA which would identify many of the perpetrators. A police liaison officer for the Scottish DNA database, added: "There are a raft of crimes which remain unsolved because forces can't afford to allocate as much money as they would wish to crime scene profiling. Part of the problem is expense because Scottish forces have to finance the tests from their own budgets. It suggests that forces are less inclined to devote funds to crime scene profiling."

Genetic Research / Privacy

30. "Japanese Institutions Clarifying Who Owns Research Materials." Asia Pulse, February 3, 2004.
In Japan, a growing number of universities and research centers are setting rules governing the ownership rights to research materials in light of a U.S. industrial espionage case involving a Japanese researcher. A former researcher at the Institute of Physical and Chemical Research is accused of taking DNA-related materials on Alzheimer's disease from the Cleveland Clinic Foundation in July 1999, when he worked there. He was indicted in May 2001,

and the U.S. has been seeking his extradition since March 2002.

31. "Let insurers see results of genetic tests, urge doctors." Daily Mail (London), January 30, 2004.
In England, some doctors have argued that insurance firms should be allowed to see genetic tests designed to identify hereditary illnesses as there is 'no reason' for them to misuse the results. They argue the information is no more likely to be used against those at risk than questions asked about personal and family medical history. Insurers, however, have already caused an outcry by using test results to discriminate against people vulnerable to diseases, such as breast cancer. Some firms had pushed up premiums for high-risk customers or even blacklisted those likely to fall ill. As a result, a five-year moratorium on the use of such data was imposed, which runs out in 2006.