

## DNARESOURCE.COM

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

**Smith** *Governmental Affairs*  
**Alling** *Attorneys at Law*  
**Lane**

*Sponsored By*



Smith Alling Lane, P.S. provides governmental affairs services to Applied Biosystems. As part of this representation, the firm generates weekly reports on state and federal legislation and news articles. Applied Biosystems has authorized Smith Alling Lane to make these reports publicly available through this website. The information presented in these reports does not necessarily reflect the viewpoints of Applied Biosystems or Smith Alling Lane, P.S.

The March 26, 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

Idaho has expanded its DNA database to include burglary, and Georgia closed a loophole that allowed life sentences and death row inmates to elude the DNA database. A bill in Rhode Island would allow DNA evidence to be used in court that is taken without the suspect's consent.

Cold hits on DNA database aided investigations / prosecutions in Florida (rape), Illinois (Nevada offender linked to a rape) Maryland (rape), New York (rape), Texas (Michigan offender linked to a murder), Wyoming (murder). DNA was also vital evidence for cases in Illinois (6 rapes), Kentucky (three rapes), Missouri (three murders), and New York (three rapes).

Washington, DC is now required to keep DNA evidence in unsolved homicide cases 65 years. A Texas rape and kidnap victim intentionally spit frequently during her abduction to leave DNA clues behind. A North Dakota vandalism victim wants feces tested for DNA. A Vermont judge is admitting DNA evidence which the defense says was not handled properly.

A South Dakota inmate is seeking a new trial because due to his lawyer's failure to challenge DNA evidence. A man exonerated through post conviction DNA testing of a rape received a settlement from the town whose detectives allegedly coerced a confession.

In international news... Canadian police are reviewing all homicide cases with hair evidence for possible DNA testing, and in Toronto a database hit has led to the arrest of two men in a sex assault. An English town is using DNA to catch car thieves and London police study revealed that many domestic abusers escape the DNA database even though they have a high probability of committing other crimes. Pakistan is using DNA in an alleged rape case and in identification of suspected terrorists.

### STATE LEGISLATION

#### Forensic DNA

1. New York SB 6480 – Requires the state's DNA Commission to create a mandatory course for the storage of forensic DNA evidence.
2. Pennsylvania HB 2430 – Requires DNA samples from unidentified dead bodies to be sent to a crime lab for profiling and inclusion in a missing/unidentified persons database.

## NEWS ARTICLES

### Forensic DNA

1. "Police DNA Test Of Suspect Refused." The Age (Melbourne), March 24, 2004.  
In Australia, a magistrate has refused a police application to take a DNA sample from a prime suspect in a murder case for comparison to genetic material on the gun dropped near the murder scene. The judge ruled that evidence linking the underworld figure to the murder scene was not strong enough to warrant the compulsory forensic test.
2. "Pakistan Militants Raid Army Convoy." China Daily, March 24, 2005.  
Pakistan's military is conducting DNA tests to identify six suspected foreign terrorists killed in recent fighting along the border with Afghanistan, but will not say whether they included any important figures.
3. "Squad formed to look into unsolved Pima County homicides." The Associated Press State & Local Wire, March 24, 2004.  
In Arizona, the Pima County Sheriff's is forming a cold case squad in an attempt to resolve some of the 130 unsolved homicides during the past 45 years in the area. DNA is expected to play a vital role in the reviews, and in fact DNA evidence is known to be available in many of the old cases, "but because of technology that was not available at the time, it wasn't tested," said the section head. A similar unit will not be added to Tucson Police Department any time soon because it does not have enough officers. However, Tucson investigators have reviewed 115 old homicides for the past two years looking for forensic evidence, such as DNA, that can be analyzed using new technology. Officials with the Phoenix Police Department formed a cold case squad about five years ago, and has solved several cases, some dating back about 20 years.
4. "State Patrol fires crime lab scientist." The Associated Press State & Local Wire, March 24, 2004.  
The Washington State Patrol has fired embattled state crime laboratory scientist Arnold Melnikoff, concluding his testimony in a 1990 Montana case did not meet professional standards. Melnikoff's termination was not based on a recent audit of 100 drug cases he worked over the past four years in the Spokane crime lab, but on testimony he gave 14 years ago in Montana while he was an employee of Washington state. Melnikoff headed Montana's state crime lab from 1970 to 1989, when he went to work for the WSP. As a result of the Innocence Project's challenges of Melnikoff's hair testimony in a rape case, an inmate was exonerated through DNA evidence in 2003 (but remains in prison for another rape in 1989). Another man was also exonerated after serving 15 years in Montana for the rape of an 8-year-old girl.
5. "Jury convicts man of rape and burglary of 92-year-old woman." The Associated Press State & Local Wire, March 24, 2004.  
In Florida, a jury has convicted a man of breaking into the home of a 92-year-old woman and raping her in June 2002. He faces a possible sentence of life in prison. The 92-year-old woman collected her attacker's DNA and put the washcloth in a plastic bag. Florida Department of Law Enforcement lab experts tested it and matched it with a sample of DNA from the suspect. The rapist had been dubbed "the Naked Burglar" because he often took off his clothes as he broke into homes. He also faces trial on charges of five more rapes and attempted rape counts, including two involving allegations of a prior burglary and rape involving the same elderly woman in October 2000.
6. "Legislature 2004: In Brief." The Atlanta Journal-Constitution, March 23, 2004.  
Georgia's House of Representatives approved a bill that closes a loophole in current law by requiring DNA samples to be taken from death row inmates. DNA samples are already taken from every Georgia inmate upon their release for inclusion in the state database, which has been used to solve more than 280 crimes in the state. The bill, sponsored on behalf of Lt. Gov. Mark Taylor, corrected previous language which only allowed DNA samples to be taken upon inmates' release from prison – thereby missing condemned inmates who are not ever considered for release.
7. "Man arrested in 2 sex assaults." Chicago Tribune, March 23, 2004.  
In Illinois, DNA evidence combined with a pattern followed by the rapist who attacked several Chicago-area women while they slept in their unlocked apartments led to sexual assault charges against a self-employed painter, police. The man was charged with two counts of aggravated criminal sexual assault after police, armed with a search warrant, swabbed a DNA sample from him when he appeared in court on an unrelated trespassing charge.

He is suspected in at least seven other rapes between July 1999 and the Feb. 2004 attack. The man's DNA matched evidence from at least 6 rapes.

8. "Mayor signs measure requiring open homicide evidence to be kept 65 years." The Associated Press March 23, 2004.  
District of Columbia law enforcement agencies will be required to keep evidence in open homicide cases for 65 years under a new law inspired by a more than 30-year-old killing. The new law also requires storing evidence from other open cases, including assault with intent to kill, aggravated assault, assault on a police officer with a dangerous weapon, burglary, and any crime of violence while armed. The legislation is named for a victim who was sexually assaulted and murdered in her Southwest Washington apartment in 1973. Because of inconsistencies in the evidence storage process, information in the case could not be found for use when DNA technology made a reinvestigation possible. The Councilwoman who sponsored the legislation also called on Congress to provide funds so that D.C. can have its own crime lab and DNA testing facility. Since the Sept. 11 attacks, the FBI has limited the testing it will accept from the city to current cases with an identified suspect.
9. "Idaho Legislative Log." The Associated Press State & Local Wire, March 23, 2004.  
Idaho's Governor has signed into law HB 520, which add burglary convictions to the criminals required to submit DNA for the forensic database.
10. "Man Awarded \$1.6 Million After Being Cleared Of Rapes." Orlando Sentinel, March 23, 2004.  
In Florida, a landscaper who served 15 years in prison before DNA testing cleared him of two rapes will get a \$1.6 million settlement from the town whose detectives had elicited a false confession. The man filed his lawsuit in September 2002, seven months after he left prison, alleging in part that two detectives tricked and coerced him into confessing. Sentenced to 10 to 20 years in prison in 1987, he was freed in February 2002 after being exonerated by DNA tests.
11. "Man to die for '94 murder." San Antonio Express-News, March 23, 2004.  
In Texas, a jury took 40 minutes to decide that a man should be executed for raping and strangling a 38-year-old Frito-Lay saleswoman a decade ago. The case remained unsolved for eight years until the man was leaving a Michigan prison on an unrelated assault charge. He had to give authorities a DNA sample to leave jail, and that sample matched DNA found in the victim's body and car. After being questioned by Michigan and San Antonio police, he admitted to the crime, and his statement was read during the trial last week.
12. "Death-row inmate alleges rights violations." The Associated Press State & Local Wire, March 22, 2004.  
In South Dakota, the appeal lawyer for one of four men on death row said Monday his client's trial lawyers did not adequately defend him and that a key piece of evidence was destroyed. He has asked that the State Supreme Court overturn the conviction. In particular, the lawyer argues that the man did not have adequate legal representation at his second trial when it came to the DNA evidence against him. He also questioned the DNA testing method and said the man's trial lawyers ruined his chances of acquittal by not taking part in an important hearing to determine if the DNA evidence was admissible.
13. "DNA Car Thief Crackdown." Daily Post (Liverpool), March 22, 2004.  
In England, Merseyside police department will be investing 1.8 million pounds in the use of DNA testing as part of an effort to clamp down on car thieves and joyriders. Part of the cash will allow all abandoned cars used by joyriders to be examined for any traces of DNA. "DNA testing can be vital in car crime... In many cases, joyriders are serial offenders who are on the DNA database already," said the head of head of the force's scientific support department.
14. "Judge denies motion to exclude DNA results in rape trial." The Associated Press State & Local Wire, March 21, 2004.  
In Vermont, a judge has denied a motion to exclude DNA evidence in a rape trial. The man's attorney argued that the DNA results were unreliable because they were not tested or processed properly. But in a 60-page ruling the judge wrote that she found the DNA testing produced accurate and reliable results. "Any evidence of contamination goes to the weight to be given to the evidence by the fact-finder and not to its admissibility," she wrote. "The court concludes that the results of the DNA testing performed in this case are admissible."
15. "Was Tragic Lara Really My Sister?; Sad Twist For Mum Cleared Of Baby-In-Concrete Murder." Sunday Mercury, March 21, 2004.

In England, a woman cleared over the murder of a baby girl whose body was found in a concrete block has revealed that the victim could have been her secret sister. The woman and her husband were arrested in January after a DNA swab linked the mother of three to the corpse. Detectives had initially suspected that the child, who died from a blow to the head at four to six months old, was the woman's illegitimate daughter, born as the result of an affair. Although the couple was eventually cleared, the results of a second DNA test suggests the baby was the woman's sister.

16. "Home abusers 'likely to commit other crimes.'" The Guardian (London), March 20, 2004.  
In England, Metropolitan police research reports that domestic abusers are much more likely to commit other crimes but police are failing to make crucial connections. A study of 400 offences and perpetrators, mostly men, discovered that at least 70% of those who had physically assaulted partners had a criminal history. Around one in 12 had sexual convictions, or there was intelligence that they had been involved in other rapes or sexual assaults. Of those who had sexually abused a partner, one in four were committing offences outside the home and one in eight were considered highly dangerous. Yet only 29% of those who had raped or sexually assaulted a partner were on the national DNA database. A senior behavioral consultant with the Met's racial and violent crime taskforce, said officers often did not swab domestic abusers for DNA because consent rather than identification was at issue, and they were not considering the offender as a suspect for other crimes.
17. "Database links theft suspect to rape of city woman in '97." The Baltimore Sun, March 19, 2004.  
In Maryland, the DNA database has linked a man to an unsolved rape from six years ago. The man was recently accused recently by police of being a member of a group that committed more than 100 thefts from drug dealers and others in a month-long crime spree, and has a 1995 conviction for robbery. This year, the state database has linked 18 rapes to known felons. Three times it has linked two rapes to each other, but police do not have suspects in those cases. Officials expect to generate more "hits" as felons are added to the state database, and as the city continues to reduce a backlog of about 4,000 rape and homicide cases.
18. "Man serving life sentence pleads guilty to 3 more killings, gets another 20 years." The Associated Press State & Local Wire, March 19, 2004.  
In Missouri, a convicted killer who already was serving a life sentence without the possibility of parole was sentenced to another 20 years for the stabbing deaths of three women in 1998 and 1999. After his murder conviction in 2001, police later matched his DNA to semen found on another murder victim's body. He pleaded guilty to second-degree murder and armed criminal action in this death. The other two murder cases against him were filed just before his pleas, and only because he agreed to plead to them. The prosecutor said the DNA evidence in those two cases was not good enough to positively identify the man.
19. "Rape Victim's Truth Sex Con Is Busted 7 Years After No One Believed Her." Daily News (New York.), March 19, 2004.  
For seven years, nobody believed a New York victim when she said she was raped by a man who followed her home from school on her 16th birthday, broke into her Queens house and held her by the throat as he brutalized her. Authorities, and her own parents, believed she made up the story to explain her pregnancy (she was two weeks pregnant at the time by her boyfriend). She was coerced into writing a statement saying she fabricated the story, and was prosecuted for filing a false report and sentenced to pick up garbage for three days. The rapist, already serving 15 years for raping two other teens, was identified as a suspect after his DNA matched evidence taken from the victim in 1997. He has pleaded guilty to raping her, and will be sentenced to an additional 22 years.
20. "DNA retests fail to resolve doubts." The Houston Chronicle, March 19, 2004.  
In Texas, new DNA tests on evidence from Houston's crime lab were inconclusive in 14 cases, and prosecutors said they may not conduct further tests, raising concerns that questions about the quality of work used to convict defendants may never be answered. These cases are the most problematic batch of retest results released in the months-long effort to review the analyses of the Houston Police Department's DNA division, which was shut down in December 2002 amid concerns about the accuracy of its work. The Harris County district attorney's office said it will not pursue additional testing in every case with inconclusive results, even if additional evidence is available. Defense lawyers said it is "outrageous" to place the burden on defendants whose evidence is being retested.
21. "Casper Jury Convicts Man In '88 Sex Assault, Slaying." Rocky Mountain News (Denver, CO), March 19, 2004.  
In Wyoming, a man has been convicted of kidnapping a woman and holding her as a sex slave before beating and stabbing her to death 16 years ago. A routine check of Wyoming's DNA database led to the man's arrest, who

had never previously been considered a suspect in the case. After the database match, authorities found the woman's missing car buried on the suspect's property.

22. "2 Charged In Sex Assault." The Toronto Sun, March 19, 2004.  
In Canada, two men are charged with a four-year-old sex attack after tests allegedly matched DNA from the scene with that of a suspect in a Toronto sex probe. The Peel Regional Police spokesman said detectives probing the case restarted the investigation in February after the National DNA Databank Crime Scene Index reportedly found the match.
23. "DNA links prisoner to rape in Gurnee." Chicago Daily Herald, March 18, 2004.  
In Illinois, a state prison inmate has been charged with the July 2001 rape of a woman in a Lake County parking. The man is the first person linked to a Lake County crime through the DNA database. The man is currently serving a 12-year sentence for arson and burglary in Jackson County but also has a history of Lake County convictions. He has convictions for a 1991 aggravated criminal sexual assault, a 1990 abduction and rape, and a 1987 attempted arson.
24. "Man who police say taunted them with letter convicted of rape." The Associated Press State & Local Wire, March 18, 2004.  
In Kentucky, a man who mailed police a letter that contained his DNA and thumbprint was convicted of three counts of rape, and the jury recommended that he be sentenced to 420 years in prison. Two years ago, police received a letter from the suspect, complete with a thumbprint in ink; pictures showing him at the Canadian border; and a sample of the man's DNA, taken from the envelope flap he had licked in sealing the letter. The letter, signed with his true name, told investigators they would never catch him. He was arrested after the DNA sample from the envelope was matched with DNA obtained during the investigation of one of three rapes that occurred in Louisville in 1994 and 1995. The man had been a suspect in the cases prior to the letter, but police did not have enough evidence to make an arrest.
25. "Nevada inmate linked to 1988 Chicago killing." The Associated Press State & Local Wire, March 18, 2004.  
A career criminal serving three life prison terms in Nevada has been linked to the killing of a Chicago florist more than 15 years ago. Authorities said the man confessed to the 1988 stabbing death during an interview with investigators after DNA testing linked him to the crime scene. The man has a history of armed robbery convictions in Washoe County, Nevada. He was required to submit a DNA sample when he was sentenced as a habitual criminal in 1998.
26. "Lynch calls for increased police power to obtain blood samples." The Associated Press State & Local Wire, March 18, 2004.  
In Rhode Island, the Attorney General has called for "fast track passage" of a bill allowing police to forcibly obtain DNA samples from suspects. The bill would allow police to obtain samples of a suspect's blood, saliva, other bodily fluids or hair without consent, for use in DNA testing. A case now pending in Superior Court involving allegations of sexual assault is in danger of being dismissed because the state cannot introduce DNA evidence taken without the defendant's consent. The state intended to introduce DNA evidence at the trial this week, but the judge granted a pretrial motion to suppress the DNA-test results. The judge ruled the evidence inadmissible unless a search warrant for the defendant's blood was executed with the defendant's consent.
27. "Alleged rape victim spit to leave her DNA." The Houston Chronicle, March 18, 2004.  
In Texas, a woman who said she was forcibly taken to a man's house and raped may have left DNA evidence behind. The woman said that she started spitting everywhere a man took her after binding and blindfolding her and taking her to a house to rape her. "I started leaving my DNA all over the place," she said. Investigators took samples from a Jeep Cherokee and the home of a man charged with sexually assaulting two other women to see if the samples match the victim's DNA. The samples are being sent to a lab for DNA testing. The tests may be able to establish that the victim's saliva was in the vehicle and the house. She said she feared the man was going to kill her and that she wanted to leave clues for investigators.
28. "DNA Nails Thug In Three Rapes." The New York Post, March 18, 2004.  
In New York, a Manhattan jury used DNA evidence to convict a Bronx man of sexually assaulting three women who were lured to abandoned offices and raped at knifepoint. Although the attacks happened over five years, between 1997 and 2002, prosecutors were able to link them through DNA.

29. "District (Sialkot): Alleged Rapist Asks For His DNA." Pakistan Press International Information Services Limited, March 18, 2004.  
In Pakistan, a man has requested a DNA test to prove his innocence in a rape he is alleged to have committed. If allowed, it would be the first ever DNA test in the district for any rape case
30. "Hair Study Unique." Winnipeg Sun (Manitoba, Canada), March 18, 2004.  
In what may be the only review of its kind, police in Manitoba, Canada are combing over old homicide cases in which hair evidence was used. The review was partly prompted by the case of a man who was serving a life sentence for the 1990 shooting death of friend. DNA testing showed three hairs found in the man's van did not belong to the victim --contrary to testimony from an RCMP hair analyst. "Our view is there were a few cases where testing proved to be wrong, we decided we should double-check and ensure there were no other cases like that."
31. "BHS locker vandalism brings complaints." Bismark Tribune (North Dakota), March 17, 2004.  
In North Dakota, police and school officials are looking into complaints they have received from a Bismarck family who is unhappy with the way they investigated a vandalism at Bismarck High School, in which a 17-year-old student's gym locker was filled with human feces. The child's parents question why DNA from the feces could not be used to solve the case. However, the city attorney explained they did not have enough evidence to get a DNA sample from suspects and try to match it to the feces. "We can't go pull every kid in and pull DNA," he said.

#### Genetic Privacy / Research

32. "2 lawsuits filed against ASU over misuse of blood and handprint samples." The Associated Press State & Local Wire, March 18, 2004.  
Arizona State University plans to "vigorously defend" itself against two federal lawsuits seeking \$75 million for the misuse of blood and handprint samples from the Havasupai Tribe. Last year, the university hired an investigator to determine whether the samples, containing genetic information from more than 200 members of the tribe, were used for research to which they did not consent. The suits allege that the samples taken beginning in 1990 for diabetic research were also used to study inbreeding, schizophrenia and population migration.
33. "Genetic insurance tests OK: Swiss Assembly." United Press International, March 18, 2004.  
The Swiss national assembly passed a measure allowing insurers to require genetic tests when issuing large life or injury insurance policies. The measure calls for a general ban on required genetic testing, but makes exceptions for life insurance policies worth more than 400,000 Swiss francs (\$313,000) or optional injury insurance worth more than 40,000 francs (\$31,000). In issuing the measure, the national assembly asserted genetic information should remain private, but not in cases where privacy makes business impossible.

#### Paternity

34. "Tests secure cash for Norwegian son of Royal Marines war victim." The Daily Telegraph (London), March 24, 2004.  
DNA testing has confirmed that an eight-month-old boy born to a Norwegian nurse is the son of a British Royal Marines officer who was killed at the start of the Iraq war. The outcome means that the child will be entitled to an allowance from the Ministry of Defense. The Ministry of Defense called for the DNA tests before it agreed to pay the allowance, as the father was not married to the mother who resides in Norway.