

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 May 14, 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

Arizona is facing a growing backlog due to budget cuts. Additional funding for DNA was suggested in editorials in Georgia and New York and by a special report in California, and was requested of Congress by Illinois politicians. A Tennessee criminal court upheld the DNA database statute, and a Louisiana district court admitted a DNA sample collected from a suspect through a subpoena.

Florida has been averaging 3 cold hits per day, and a cold hit identified a suspects in California (rape). DNA evidence also aided investigations / prosecutions in Kentucky (child rape), Louisiana (dog theft case), Maine (skin cells on a door handle in a murder case), Massachusetts (murder), Nebraska (rape; murder), and Washington (sweat on an object in a police shooting case). DNA evidence freed a man charged with rape in Tennessee. A Texas county will be training more sexual assault nurses.

Post conviction DNA testing motions were considered in Missouri, granted in Florida, and denied in New Jersey and West Virginia. A New York editorial urged passage of federal legislation on post conviction DNA testing. The Innocence Project recommended a special commission for post conviction matters in Florida.

In international news...Finland expects to solve 1,300 crimes through DNA this year. Canada is considering a modest expansion of its DNA database, and a local police department has been collecting DNA from prostitutes for use in future missing / unidentified persons cases. An Australian suspect is accused of purposely tainting a DNA sample. DNA evidence identified bank robbers in Italy (from adhesive tape), burglars (from a soda can and a tea tray) and railway spitters in England, and exonerated an inmate of murder in Romania. Kuwait has identified additional remains of citizens missing since the Gulf War. Scotland is using DNA to solve a long-standing murder case, and is starting a database for testing racehorse lineage.

STATE LEGISLATION

1. New Jersey AB 2747 -- Expands the DNA database to also include persons convicted of disorderly conduct, and to allow arrestee testing for certain violent crimes, including murder, manslaughter, kidnapping and sex offenses.

NEWS ARTICLES

Forensic DNA

1. "Accused Hitman 'tainted' DNA." The Age (Melbourne), May 11, 2004.

In Australia, police launched a fresh court bid to obtain a blood sample from an accused mafia hitman amid claims that he had deliberately contaminated a DNA sample taken from his mouth. An oral sample provided recently by the suspect had been saturated with an unknown "brown substance". The suspect requested a cheek swab after he refused to give a blood sample. Rather than scraping the inside of his cheek as directed, he instead placed the swab under his tongue. When he removed the swab it was "saturated in an unknown brown substance". He was asked to take the swab again but he did not comply.

2. "Suspect in girl's rape held in Richmond." *Contra Costa Times*, May 11, 2004.
In California a suspect in the January kidnapping and rape of a 13-year-old school girl has been arrested. He was linked to the crime the DNA database. He has a criminal record dating to the 1980s, which includes a sexual assault conviction. He was most recently arrested last October on suspicion of soliciting a prostitute.
3. "Man suspected in theft of dogs worth \$2,500." *The Associated Press State & Local Wire*, May 11, 2004.
In Louisiana, authorities have used genetic testing on a deceased dog - a \$500 toy poodle - to link a suspect to the theft of five pedigreed puppies worth a combined \$2,500. A man was booked with felony possession of the stolen poodle after authorities ordered an autopsy of the dog as well as DNA testing to determine if it was likely one of the puppies taken from a store. The dog mysteriously died while detectives began investigating whether the man had something to do with the five dogs' disappearances.
4. "Court considers whether guilty plea invalidates DNA request." *The Associated Press State & Local Wire*, May 11, 2004.
An illiterate Mississippi man who pleaded guilty in 1992 to raping a southeast Missouri motel clerk is seeking a DNA test that could prove his innocence. However, an attorney for the state argued the man's guilty plea bars him from invoking a 3-year-old law allowing prisoners to seek DNA testing if they allege under oath that there is available, untested evidence and that "identity was an issue in the trial." Judges on Missouri's State Supreme Court seemed skeptical of the state's argument that the statute only applies in cases where a conviction follows a trial rather than a guilty plea.
5. "Pensioner's tea tray fight foils a thief." *The Daily Telegraph (London)*, May 11, 2004.
In England, an elderly woman battered a masked burglar so hard with her tea tray that she drew blood which led to his identification by DNA. The 75 year-old woman hit the burglar six times and forced him to escape out of a window after raiding her apartment in the middle of the night. The burglar, who has a 40-year history of burglary offenses, was identified following DNA tests on the blood found in the woman's home.
6. "Increase in sex attacks by illegal cab touts." *The Evening Standard (London)*, May 11, 2004.
In England, new figures show that unlicensed minicab drivers commit on average two sex assaults every week. Scotland Yard says unlicensed cab drivers committed 120 sex assaults last year, including 36 rapes. The true picture could be worse as most attacks are believed to go unreported. As part of an overall effort to crackdown on these cases, illegal drivers face arrest, losing their cars and having to undergo DNA tests to see if they are linked to sex crimes.
7. "Justice at the Crime Scene." *The New York Times*, May 11, 2004.
Editorial urges Senator Hatch to act on the DNA bill in Congress that would authorize funding for DNA programs as well as offer opportunities for post conviction DNA testing and address issues of competent counsel for death penalty cases. Excerpt reads: "Unfortunately, this product of five years of work by some of the most experienced criminal prosecutors in Congress has become caught in conservative cross-fire in the Senate. Critics contend that it would give convicted murderers unfair opportunities to appeal. Actually, the measure, by Representative James Sensenbrenner Jr., a Wisconsin Republican, presents a clever balance of criminal justice causes...The measure is endorsed by the Senate judiciary chairman, Orrin Hatch, a Utah Republican. He must now apply his peacemaking skills to what would be a standout advancement of justice by this Congress."
8. "Accused's DNA a match, court told." *The Toronto Star*, May 11, 2004.
In Canada, gunshot residue and blood matching the DNA of a man accused in a shooting were found on an orange vest similar to one worn by a gunman. Blood matching the suspect's DNA was also found on the seat belt, seat and dashboard of the front passenger side of a Honda Civic, seen driving away from the nightclub where the shooting occurred.
9. "DNA Samples Taxing Arizona." *The Arizona Republic*, May 10, 2004.

In Arizona, about 60,000 DNA samples from felons have not been tested, and officials worry that the growing backlog is just the "tip of the iceberg." In the past two years, the DPS has received less than half of the money it was supposed to get for tests. It could take at least two years and possibly as many as 10 for crime-lab technicians to be able to process the backlog and keep up with the amounts of samples that have been pouring in since the state required all felons to submit a DNA sample in January. Initially, lawmakers appropriated \$2 million a year to fund DNA testing, raised through a 3 percent surcharge on fines and penalties collected by the courts. Because of state budget cuts, DPS has received only \$1.6 million in the past two fiscal years for DNA tests. Full funding is expected to be restored on July 1, and the state is seeking a federal grant to allow it to outsource about 20,000 samples to private labs.

10. "Our Opinion: What can you do with \$170,000?" The Atlanta Journal-Constitution, May 10, 2004.
Editorial explains that the Georgia General Assembly met in a special session which was called to pass one bill that could easily have been adopted during the regular session that ended last month. The cost of the special session was \$34,000 a day. The editorial opines that the cost of the session (\$170,000) could have been spent in other ways, such as: "About 70 percent of the staff time in the forensic biology section of the crime lab is devoted to analyzing DNA in rape cases. Yet there are too few scientists performing the tests, which is one reason for the backlog. It can take as much as six months before a case can be analyzed. Some of those cases could be solved immediately if DNA were matched with sex offenders already logged into the state's database of known criminals. Each test to match DNA costs about \$500. The \$170,000 could have provided DNA tests in more than 300 rape cases."
11. "DNA Evidence Points To More Than One Killer." Daily Star, May 10, 2004.
In Scotland, new DNA of evidence at the scene of the 1977 World's End murders has already been used to confirm the involvement of one suspect, and now also indicates that a second man may have been involved. However, the unknown DNA profile does not match anyone on the national DNA database.
12. "Two thugs who spat at railway station staff have been identified using new DNA testing kits." Manchester Evening News, May 10, 2004.
In England, two men who spat at railway station staff have been identified using new DNA testing kits. More than 1,600 station workers now have access to swabbing kits, which they can use to store saliva if a customer spits at them before sending it off for analysis. One man's DNA was already on the police database, while the other man later committed an offence and police took a DNA profile, which matched the saliva.
13. "Finnish police solve more crimes with DNA samples." Nordic Business Report, May 10, 2004.
Finnish police estimate that 1,300 crimes will be solved with the help of DNA tests this year, while about 450 were solved with the help of the DNA database in 2003. It has been estimated that there will be 15,000 samples in the database by the end of the year. Under a new law, the Finnish police are allowed to take DNA samples from those suspected of crimes that are punished with a minimum of six months in jail.
14. "Police clip prostitutes' hair, in case force needs to identify remains." The Record (Kitchener-Waterloo, Ontario), May 10, 2004.
In Halifax, Canada, police who deal with sex workers have been collecting locks of hair and filing them away. In the event unidentified remains are discovered, it is hoped the DNA samples will help police identify them more quickly. Whenever an officer encounters a person involved in street prostitution, the person is asked to contribute a sample. The prostitute and the officer sign a waiver saying the sample will only be used for the purpose of identifying remains and cannot be used against a person who is arrested for a crime. The process is entirely voluntary.
15. "Kuwait identifies remains of more Gulf War missing in Iraq." Associated Press Worldstream, May 9, 2004.
Kuwaiti authorities have identified the remains of 11 more Kuwaitis missing since the 1991 Gulf War from mass graves in Iraq. Their identities were confirmed by DNA tests on remains found in Iraq since the fall of Saddam Hussein's regime last year, according to a statement by a team that has been searching Iraq for more than 600 missing Kuwaiti citizens and residents. The announcement raised the number of former missing who have been identified to 122.
16. "Still behind bars, despite DNA evidence." The Miami Herald, May 9, 2004.
In Florida, an inmate remains behind bars for a 1982 rape, despite new evidence from DNA tests which suggests he did not commit the rape. He was convicted based largely on microscopic hair analysis which linked two pubic hairs found in the victim's bed to him. However, DNA analysis on those hairs does not match him. Recently, an

assistant attorney general told appellate judges that the man's guilt or innocence was irrelevant. The issue, she said, was the timing -- not the outcome -- of the DNA test. Because the inmate had gotten his DNA processed before the state's DNA rules were passed, the prosecutor argued that the findings were not admissible. Ironically, had the inmate's DNA been tested a few months later -- after the Legislature set the guidelines for such cases -- he would likely be free today. An appeals court has ordered a new trial for the inmate.

17. "Investigators recount Colby murder probe." Bangor Daily News (Maine), May 8, 2004.
In Maine, investigators used DNA from a door handle on a car to link a man to a murder. The man had touched the handle of the car door when he abducted the victim from a parking lot. The skin cells that he left behind matched a sample taken from the suspect. The match set a probability standard of one in 50,000, which is an extremely low match in the world of DNA. When asked about the match the suspect confessed to the killing. Subsequent DNA testing on other materials linked the man to the crime with odds of one in 39 trillion.
18. "DNA leads to indictment in 1987 rape, murder case." The Boston Herald, May 8, 2004.
In Massachusetts, a former employee of a cleaning company was indicted in connection with a 1987 rape and murder of a 64-year-old woman found dead in her bed. The suspect, who is already incarcerated on a separate offense, was charged with aggravated rape and murder. The man became a suspect in the murder due to his access to the victim's house, but a DNA match helped to verify his identity.
19. "Liberals widening DNA data bank." Calgary Herald (Alberta, Canada), May 8, 2004.
In Canada, the federal government is proposing to expand the DNA data bank to include people who have committed crimes but have been found not guilty because of mental disorders, and require retroactive samples from a larger range of offenders instead of only dangerous offenders, repeat sex offenders and multiple murderers. The Conservatives dismissed the bill as a pre-election stunt, saying that it is only minor tweaking instead of a much-needed overhaul.
20. "Congressman criticizes governor's tardiness at D.C. meeting." The Associated Press State & Local Wire, May 8 2004.
In a joint visit to Washington, DC, the Illinois Governor and Chicago Mayor requested money to help erase the state's DNA testing backlog.
21. "Lawyer: Murder reviews needed." Florida Times-Union (Jacksonville), May 8, 2004.
At a recent conference, Barry Scheck of the Innocence Project recommended that Florida needs a special commission to review murder convictions where there are legitimate concerns about the person's innocence. Scheck said the state has the fourth-largest prison population in the nation, yet only two out of 145 cases where DNA testing has exonerated someone convicted of murder have been in Florida.
22. Judge OKs DNA swab use in Lee's trial." The Advocate (Baton Rouge, LA), May 7, 2004.
In the Baton Rouge serial killer case, the District Judge has admitted into evidence a DNA swab taken from the suspect through a subpoena. The defense attorney had asked the judge to throw out the DNA evidence because it was obtained with a subpoena and not a search warrant in violation of the suspect's constitutional rights. However, the judge ruled that other pieces of evidence, when taken together, rose to the necessary level of probable cause to suspect the man.
23. "Negative DNA results clear rape defendant." Chattanooga Times Free Press, May 7, 2004.
In Tennessee, a County Criminal Court Judge dismissed rape charges against a man after DNA results indicated he was not the person who raped a woman in February. The man had been picked out by the victim from a photo lineup. The county's district attorney's office was criticized in December when a Kentucky man was freed three months after negative DNA test results were returned to prosecutors.
24. "Former sheriff defends handling of missing-girl case." The Associated Press State & Local Wire, May 7, 2004.
In Arkansas, the remains of a 16-year-old girl sat in a sheriff department's evidence room for years before investigators took the proper steps to identify them. The girl went missing in January 1995, and in 1997 the sheriff's department took possession human skeletal remains discovered by a hunter. In March 2003 a sealed cardboard box containing human bones was discovered while evidence was being transferred to a new storage room. The bones were sent to the state crime lab, and then to the FBI lab. Because of a possible decade-long backlog at the FBI, the Sheriff managed to persuade county court officials to spend \$2,500 for testing by a private

lab Nevada. The remains were eventually matched to the missing girl.

25. "Killer denied DNA sample from victim." Courier News (Bridgewater, NJ), May 7, 2004.
In New Jersey, a convicted murderer will not be granted access to post conviction DNA testing. A Superior Court Judge said jurors knew that semen found in the victim's mouth did not come from the suspect but convicted him anyway. Retesting the sample for DNA would not guarantee him a new trial. The judge also said it is unlikely there's any sample left to test, and it is unclear where the sample has been for the past 13 years. The defense plans to appeal the ruling.
26. "Floridian is indicted." The Courier-Journal (Louisville, KY), May 7, 2004.
In Kentucky, DNA testing has linked a man to a 1996 rape of a 13 year-old. At the time of the crime, the DNA evidence collected was too small for testing, but newer testing methods have linked the man to the crime. The man became a suspect when girl's mother called in November to say that the man was being investigated in Florida in a sex-abuse case in which he was eventually was charged with raping his 14-year-old stepdaughter.
27. "RCMP gets more funds for DNA tests." The Lawyers Weekly, May 7, 2004.
Nova Scotia's Justice Department has given the RCMP more than \$117,000 to enhance use of the national DNA crime scene index in criminal investigations. The funding is the result of a new federal-provincial agreement that has eliminated payment for DNA testing on a case-by-case basis. Under terms of the new agreement, endorsed by the Union of Nova Scotia Municipalities, communities will pay a flat fee to the RCMP for DNA testing.
28. "Fugitive likely had handled 'fake gun,' inquest jury told." The Seattle Times, May 7, 2004.
In Washington, analysts have testified that a suspect's fingerprints could not be found on a black object resembling a gun, which was made of wood, tissue paper, glue and tape. But DNA testing showed that perspiration found on the object indicated that he had held it at some point. The man was shot to death by police who thought the man was pointing a gun at them. The man had used a similar device a day earlier to escape from a courthouse where he was being sentenced to life in prison as a three-strikes felon. He held bailiffs at bay and stole a vehicle after waving an object that most people said was a gun.
29. "More aid coming for rape victims." Austin American-Statesman, May 6, 2004.
A Texas county has signed an agreement with the attorney general's office to train several more nurses in sexual assault exams. So far, seven nurses have signed up to take the training this summer. The county also announced that it had formed a Sexual Assault Response Team, a group made up of nurses, police officers, prosecutors and other advocates. The team is trying to raise \$20,000 to pay stipends to nurses who have signed up for the training.
30. "Supreme Court rejects Richey petition, sets DNA testing standards." The Associated Press State & Local Wire, May 6, 2004.
In a ruling that governs future requests for DNA testing in criminal appeals, the West Virginia Supreme Court rejected the latest attempt by a former state legislator to challenge his 1979 conviction for sexually abusing a teenage Capitol page. The court's 4-1 ruling set a six-step standard that petitioners must meet. The ruling said that to secure DNA testing, a petitioner must be incarcerated and the evidence in question must be available and in suitable condition. The petitioner must also show that test results would be "determinative in proving the petitioner not guilty." The ruling also said that if testing is granted, the petitioner must pay for it unless ruled indigent.
31. "Omaha man is charged in assault." Omaha World Herald (Nebraska), May 6, 2004.
In Nebraska, a man who sexually assaulted a woman at a retreat center was arrested after DNA testing linked him to the crime.
32. "Patrol says DNA links man to woman's slaying." Omaha World Herald (Nebraska), May 6, 2004.
In Nebraska, a woman who was killed last June also had been sexually assaulted, and DNA evidence led to the arrest of a former neighbor. The victim's underwear was submitted to the University of Nebraska Medical Center in Omaha for DNA analysis, and in April DNA tests linked the suspect to the crime.
33. "FDLE Crime Lab Solving Cases With DNA." Tampa Tribune, May 6, 2004.
DNA technicians test about 160,000 pieces of evidence at five state crime labs and four city or county facilities. Priority is given to the most heinous crimes. Since 1990, Florida's labs have made 1,985 matches in the database, solving 2,400 cases. The difference in figures is because some suspects were involved in multiple crimes. In the

past 10 months, nearly 900 felons have been matched to a crime through DNA analysis.

34. "Alarming rate of child sexual abuse." Alameda Times-Star, May 5, 2004.
In California, a San Mateo County Civil Grand Jury's report called for the County to seek additional funding so that all DNA evidence obtained in sexual assault cases can be used to create profiles and entered into the FBI's DNA database. At present, very few DNA samples collected from forensic examinations or victims are processed, according to the report. The director of the Sheriff's crime lab said such analysis proves most useful in "whodunnits" -- crimes committed by unknown serial rapists. In the majority of County cases, though, family members or acquaintances of the victims are suspected. The report found that a child is sexually abused each day in San Mateo County -- and most of them are under 12.
35. "Bank Robbers Nabbed Thanks To Spittle." ANSA English Media Service, May 5, 2004.
In Italy, seven bank robbers accused of stealing 1.3 million Euros from several banks have been arrested after investigators matched them to traces of saliva they inadvertently left on pieces of adhesive tape used during their heists. The robbers always prepared their strikes by visiting the targeted bank few days before and sawing through the iron bars over the window of its lavatory. They then used tape to hold the bars in place in such a way that, when they returned a few days later, they could quickly enter the bank through lavatory window and carry out the heist. However, it appears they tore off the pieces of adhesive tape from the roll with their teeth, leaving behind tell-tale traces of spittle. By matching DNA from the tape with information on flights north made by likely suspects in Naples, police were able to identify the robbers.
36. "Man convicted for killing is released after DNA tests prove he was not guilty." Associated Press Worldstream, May 5, 2004.
In Romania, a court released a man who spent 11 years in prison for killing and raping a young woman after recent DNA tests proved he was not guilty. The man was sentenced to 25 years in prison in 1993 for raping and killing a young woman in his home village. He spent the past 11 years in prison requesting authorities to reopen his case.
37. "Legislation would shield crime lab: public defender." Chicago Daily Law Bulletin, May 5, 2004.
In Illinois, the Cook County public defender's office is raising 11th-hour concerns over the direction of legislation to review the procedures of the state crime labs. Lawyers in the public defender's office say the measure, Senate Bill 2201, will stymie efforts to ensure that defense attorneys can review work done by the Illinois state police facilities. The public defender's office tried unsuccessfully to add an amendment in a House committee mandating that the state police turn over allegations of improprieties at the labs. The failed amendment also would have required forensics labs to ensure "complete disclosure" to both prosecutors and defense attorneys of documentation of its testing processes, plus give the lawyers access to interview personnel involved with their cases. But law enforcement groups counter that the proposed amendment could run afoul of Supreme Court rules that govern discovery.
38. "Cola Tin Lands Burglar In Can." South Wales Echo, May 4, 2004.
In the United Kingdom, a house burglar was caught after he left his DNA on an empty Coke can after he dumped it in a bin at the property while the owners were away. When the owners returned, they found the can in a trash bin that is always emptied before going away on a holiday. The owners mentioned the can to police, who collected it as evidence and found a DNA sample which matched a man with 36 previous convictions for 104 offenses.
39. "DNA tests target racehorse fraud." Sunday Times (London), May 2, 2004.
In the Scotland, scientists are launching an international DNA database of champion racehorses to stamp out the potential for corruption in stud farming. Racehorse owners will be able to establish conclusively whether their animals are from champion stock or the offspring of lesser stallions or mares. The DNA tests, providing foolproof identification for a few hundred pounds, could also be used to stamp out betting scams such as horse-switching or "ringing", where younger, fitter horses masquerade as another animal from the same stable. The Scottish genetic experts have already received enquiries from breeders whose horses will compete at this summer's Olympic Games in Athens and from wealthy stable owners in Britain and the Middle East.
40. "DNA Dragnet." ABA Journal, May 2004.
Discussion of a Louisiana "DNA dragnet" case which could determine when and how police can obtain DNA samples from large numbers of people, without court orders, based occasionally on anonymous tips, and what must be done with the samples once the crime has been solved. Discusses the history of DNA dragnets and use of DNA databases.

41. "DNA gets OK in 'UT rapist' case." Knoxville News-Sentinel, April 30, 2004.
A man alleged to be the infamous "UT rapist" who stalked and attacked University of Tennessee students in 1997 has lost his bid to have crucial DNA evidence tossed out, but his attorney says the fight is not over yet. The suspect is set to stand trial May 24 in one of five rape cases filed against him after a routine check of the state's DNA database linked him to the series of attacks. A County Criminal Court released a written ruling that shot down the defense argument that the routine taking of DNA samples from felons violates the U.S. Constitution. The suspect had submitted a blood sample when he was imprisoned in 1999 in a burglary and sexual battery case.

Genetic Privacy / Research

42. "Scientists Debate DNA Profiles For New-Borns." Press Association, May 11, 2004.
In England, government proposals to take DNA samples from every new-born baby were debated by pioneering genetic scientists. The Health Secretary first set out plans to screen babies at birth in a White Paper presented to Parliament in June last year. Details of their genetic profiles would then be stored in a database. The Government proposal to screen babies at birth was part of a £50 million plan for the NHS to exploit advances in genetic science. The Health Secretary also said he intended to introduce new laws to make it an offence to test a person's DNA. His lawyers argue the taking of inmates' blood for DNA testing violates the Fourth Amendment of the Constitution, which protects citizens from unreasonable search and seizures.
43. "Why DNA testing is worth the risk." Financial Times (London), May 10, 2004.
Article discusses how widely should DNA testing should be employed and how does one determine its limits?
"Accountability is the key. The stronger the legal assurances that DNA data collected by police will be used only for solving crimes - and remain inaccessible to unauthorized individuals including the media - the more widely authorities may cast the net." Discusses issues of health testing and paternity testing.
44. "DNA bank opens in Taiwan." United Press International, May 10, 2004.
Taiwan has opened its first DNA bank, encouraging citizens to preserve their DNA cells in the bank. The DNA stored could be used for a genetic treatment or generational identification.