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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 August 20, 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

The 9<sup>th</sup> US Circuit Court of Appeals has found collection of DNA from probationers and parolees is constitutional, thereby reversing an earlier decision by a panel of the court. Voluntary DNA sampling efforts for exclusion testing made headlines Nebraska and Kansas, and a Louisiana suit has been thrown out. Pennsylvania's Superior court has upheld John Doe warrants.

Retention of DNA analysts at Mississippi's state lab has been a problem, Texas backlogs are causing court delays, and Vermont is planning a new crime lab. The American Bar Association has called for crime labs and medical examiner offices to be accredited.

Cold hits aided investigations / prosecutions in California (rape/murder), Florida (3 rapes), Minnesota (murder), and New York (9 rapes). DNA evidence was important to cases in North Carolina (2 rapes), Missouri (1984 murder), Kansas (rape), Pennsylvania (deer theft), and Oregon (rape suspect also wanted for rapes in Georgia and the UK). A WW II airman was identified through DNA.

Post conviction DNA testing exonerated an inmate in Florida. Motions for post conviction testing have been granted in California and Florida.

In international news...DNA databases are under consideration in Israel (criminal) and Canada (missing persons). England will consider allowing roadside DNA collection, and DNA collection kits in Scotland will help identify drivers who spit on traffic cops. In Australia, DNA population statistics are an issue in an Aboriginal case, and one territory may strengthen its DNA laws. A Canadian officer has suggested that men soliciting prostitutes should give DNA samples. DNA is aiding investigations in Austria (crash victims), England (rape), France (assault), and Thailand (murder).

### NEWS ARTICLES

#### Forensic DNA

1. "Court reverses forced DNA decision." CNN.com, August 19, 2004.  
The 9<sup>th</sup> Circuit Court of Appeals has ruled that the U.S. government can require certain criminals to submit to DNA testing after their release from prison. This opinion released by the full court reverses a decision made in 2003 by a 3-judge panel of the court. "Compulsory DNA profiling of qualified federal offenders is reasonable under the totality of the circumstances," wrote the majority. "Therefore, we today realign ourselves with every other state and federal appellate court to have considered these issues -- squarely holding that the DNA Act satisfies the requirements of the Fourth Amendment." The case stems from a man who robbed a bank in 1993 with a gun. After

his release from prison in 2000, tests showed cocaine in his urine and a court required him to undergo a drug program. When his probation officer asked him to submit a DNA blood test, he challenged the constitutionality of the 2000 law requiring certain criminals to provide DNA samples. "The interests furthered by the federal DNA Act are undeniably compelling," the court ruled. "DNA profiling of qualified federal offenders helps bring closure to countless victims of crime who long have languished in the knowledge that perpetrators remain at large. The ruling was closely split, in a 6-5 decision. The federal public defender has indicated that she intends to appeal the decision to the Supreme Court.

2. "State news of national interest." The Associated Press, August 18, 2004.  
In Maryland, a \$1.9 million federal grant is paying for 12 new employees of the Baltimore city police crime lab. The employees are helping Baltimore catch up on a backlog of more than 3,000 unsolved rape and homicide cases. The new hires will select cases they believe could be helped by DNA testing at a private lab.
3. "Judge: DNA claims filed too late." The Advocate (Baton Rouge, LA), August 24, 2004.  
In Louisiana, a judge has thrown out the claim that East Baton Rouge Parish Sheriff's Office illegally coerced man into providing a DNA sample during the hunt for a serial killer due to the fact that the complaint was filed more than a year after the indictment.
4. "Defence slams DNA 'guesses'." The Australian, August 17, 2004.  
Western Australia's state pathology center has been accused of making "reckless guesses" that could have swayed countless criminal prosecutions against innocent people. The prosecution case relies on DNA testing to corroborate two rape charges and prove one of the assaults led to the suspect's fathering a child with the girl. The defense has challenged the use of DNA testing to determine the paternity of Aboriginal people, raising the possibility the case will set a landmark precedent. The defense has argued there is insufficient research and data to accurately test the paternity of Aboriginal people. It has also questioned a 3 per cent allowance that takes into account the effect of in-breeding in Aboriginal populations.
5. "N.C. dentist closes office after panel revokes his license." The Associated Press State & Local Wire, August 17, 2004.  
In North Carolina, a dentist accused of putting semen into the mouths of six female patients, including a 14-year-old, closed his office after a panel of the N.C. Board of Dental Examiners revoked his license. Accusations against the dentist became public in November, after several employees said they had become suspicious of his behavior. They collected five syringes from his office and asked a veterinarian to test the contents, which turned out to be semen. The employees contacted police, who searched his office and found more syringes, containing similar material. DNA tests showed it was the man's semen. The dentist said he was collecting his semen in the syringes because he was tracking the side effects of Propecia, and denies putting it in patients' mouths.
6. "Deer breeder charged in big buck burgling." The Associated Press State & Local Wire, August 17, 2004.  
In Pennsylvania, a deer breeder faces possible jail time for allegedly stealing the giant buck - worth perhaps up to \$500,000 - from another breeder nearly five years ago. The deer vanished from the owner's ranch in October 1999. He was about 2 years old, weighed 260 pounds and had 28 points, or antler tips. In July 2003, members of the Pennsylvania Deer Farmers Association located the creature believed to be the missing deer on another man's farm. DNA testing on the recovered deer matched a DNA sample taken from the missing deer prior to its disappearance. The suspect has been charged with theft, receiving stolen property and conspiracy to commit theft - all third-degree felonies.
7. "Independence man charged in 20-year-old murder-rape case." The Associated Press State & Local Wire, August 17, 2004.  
In Missouri, a man was charged in a two-decade-old murder-rape case that prosecutors said they linked him to through DNA evidence. The 1984 case is the oldest unsolved rape in Jackson County. Police testing at the time of the crime produced a semen sample, but authorities had been unable to match it to a suspect until Aug. 4.
8. "New York man convicted in 9 rapes over a decade." The Associated Press State & Local Wire, August 17, 2004.  
In New York City, a serial rapist who was wanted for 16 sexual assaults across the city was convicted of nine rapes. The man was arrested in May 2002 after he approached his last victim, a 13-year-old girl, and asked her if she was pregnant. Bronx detectives got a DNA swab from his mouth during questioning, but before it could be analyzed he escaped from the police station and was at large for six months before being picked up in Brooklyn. The DNA tests linked him to the victims.

9. "DNA 'traps minicab driver' in rape case." The Evening Standard (London), August 17, 2004.  
In England, a minicab driver accused rape was trapped by his DNA four years later after he was arrested for illegally touting for business. In September 2000, the man locked his victim in the back of his minicab after driving her to west London then raped her. DNA evidence was recovered, but police had no suspect. Earlier this year the man was arrested for illegal taxi touting in London. He gave a mouth swab for DNA and a match was quickly made.
10. "Evidence In 1973 Murder Re-Examined." Sun-Sentinel (Fort Lauderdale, FL), August 17, 2004.  
In Florida, a Palm Beach Circuit has issued an order granting the defense request for DNA testing in the case of a man who was convicted of raping and murdering a girl 31 years ago. The man's lawyers say DNA testing will clear him in the case. However, prosecutors counter that even if DNA testing excludes the man as the person who contributed genetic material found on the dead girl, it would not clear him of participating in the crime. At the time of the original trial, swabs taken from the victim's body showed signs of her blood type and that of the inmates.
11. "Suspect Admits Jewish Graves Desecration." Associated Press Online, August 16, 2004.  
In France, an unemployed man was arrested in connection with the desecration of a Jewish cemetery earlier this month and an attack on a Muslim. Authorities said it appeared the suspect worked alone and wanted to be caught by police. A black sweatshirt found at the cemetery had contained traces of DNA that matched the suspect.
12. "Virginia And CVS Launch DNA Kits." Daily Press (Newport News, VA), August 16, 2004.  
Virginia Attorney General recently announced that DNA identification kits will be available free to parents at local CVS/Pharmacy stores. The availability of the kits was timed to match when parents shop for back-to-school supplies. CVS/Pharmacy officials said Virginia is the only state where such kits are available because Virginia officials are the only ones who asked for such a program. The kits include a fingerprinting pad, a step-by-step instruction kit on collecting DNA, an envelope to store the material, and a piece of paper for a photo and basic information.
13. "American Bar Assn. Delegates take action on several initiatives." The Minnesota Lawyer, August 16, 2004.  
American Bar Association delegates approved a number of measures from the Criminal Justice Section designed to reduce the possibility of convicting the innocent. Among them were recommendations that crime labs and medical examiner offices be accredited, and that their procedures are standardized to ensure the reliable and timely analysis of forensic evidence.
14. "Delays Need Attention; Backlog at Crime Lab Could Mean Release of Defendants." Texas Lawyer, August 16, 2004.  
In Texas, concerns that the delays in getting crime lab test results are causing prisoners to stack up in the county jail, the Nueces County Commissioners Court voted on Aug. 11 to look into possible legal remedies. The commissioners court have asked a consultant to examine what the state's responsibilities are in terms of the lab and the timeliness of the lab's responses to requests for testing. One judge says he recently learned that it would take from nine months to a year to get the DNA testing done in another capital murder case involving multiple defendants. If the defense wants to get the evidence re-examined, it will probably take another year or so to get the results. A DPS spokesman says the state does not have enough people to keep up with all the work sent to its labs. Of the 13 labs DPS has in the state, eight do DNA testing. Each of the labs has a DNA backlog.
15. "Thai Police Set Up New Squad To Find Backpacker's Killer." Western Mail, August 16, 2004.  
In Thailand, police have set up a fresh murder squad to investigate the guest house rape and murder of 23-year-old Welsh backpacker four years ago. Authorities have a DNA profile of the suspected killer, but have not yet identified a suspect. So far 11 men have been arrested as suspects but cleared after tests showed they did not have matching DNA. Authorities will be interviewing more "potential witnesses" and more DNA tests are likely.
16. "State officials to merge forensic, health labs." The Associated Press State & Local Wire, August 15, 2004.  
In Vermont, state officials plan to close the aging Waterbury forensic laboratory and move the operation to a new facility in Burlington in a few years. The \$30 million project will also include laboratories for the Vermont Department of Health. State officials hope to have the 60,000 square-foot facility running by 2008, one year before the crime lab is scheduled for an accreditation review. The plan has the support of the Vermont Police and Sheriff's associations. "Our crime lab is undersized, equipment is getting a little bit old and there are testing issues," said the commissioner of buildings and general services. "All of which are fine now, but will not be fine in 10 years." The

Vermont crime lab now has a \$1.7 million budget. It assists in about 2,000 criminal investigations per year.

17. "State fought to keep innocent man in prison." The Miami Herald, August 15, 2004.  
In Florida, a man has been exonerated of raping a woman after spending 22 years in prison for the crime. DNA tests on crucial crime scene evidence excluded the man as a suspect. In 1996, the inmate asked that his DNA be matched against that of the pubic hair found at the rape scene, but the prosecutor opposed the request. The DNA test was finally done in late 2000. The results showed that the hair from the rape victim's bed belonged to someone else. Prosecutors continued to block attempts to free the man, and eventually requested additional testing on a degraded semen sample. Tests on this sample also did not match the inmate, and he has finally been freed.
18. "More bite for DNA probes." Sunday Territorian, August 15, 2004.  
In Australia, the Northern Territory's DNA laws will be further strengthened under new legislation to be introduced into Parliament. The Police Minister said the amendments contained in the Police Administration Amendment Bill 2004 would enhance Police powers to target crime. Included in the amendments would be "clarity and certainty in the legislative basis for protecting voluntary DNA samples to be used in the investigation of serious crimes such as murder, terrorism and pedophilia".
19. "Blunkett's Use Of DNA Is Racist Says The Scientist Who Discovered Criminal Link." Sunday Mercury, August 15, 2004.  
In England, Sir Alec Jeffries has argued that new police powers to collect DNA samples from all arrestees will result in a racist database. He argues that statistics show people from ethnic communities are more likely to be arrested. Therefore, a higher proportion of DNA details from innocent black and Asian people will be retained on the database - which the scientist believes could be racist. He is particularly concerned that arrestee samples will be kept regardless of conviction or exoneration. To combat the prejudicial potential of a limited DNA database, Sir Alec has proposed that DNA samples from all British citizens should be officially recorded.
20. "Search for BTK touches others." The Wichita Eagle, August 15, 2004.  
In Kansas, a growing number of Wichita residents claim they have been asked by police to provide DNA samples for comparison against evidence recovered from the BTK serial murders. Wichita police will not comment on the investigation. In the 1980s, Wichita police launched an unsuccessful attempt to identify BTK by collecting more than 200 blood samples from a list of suspects compiled by police.
21. "Blood on Cooper's Shirt Will Be Tested." Los Angeles Times, August 14, 2004.  
A US District Court judge has ruled that a T-shirt splattered with the blood of death row inmate Kevin Cooper and two murder victims must be tested for a preservative that, if found, could possibly indicate tampering by law enforcement officials. The deputy attorney general handling the case, has called the testing "junk science" and urged the judge not to create a "cottage industry" of testing. Cooper, convicted of the 1983 murders of three members of a Chino Hills family and their 10-year-old house guest, was issued a stay of execution Feb. 9 by the U.S. 9th Circuit Court of Appeals, 16 hours before he was scheduled to die. DNA testing ordered on hairs found at the crime scene recently were found to match those of the victims.
22. "Years-long investigation led to S. Dade rape arrest." The Miami Herald, August 14, 2004.  
In Florida, Miami police have arrested a suspected serial rapist. DNA evidence links the man to three rapes, and he is a suspect in a fourth. He was identified as a suspect after a DNA sample was taken from him for a felony conviction unrelated to the sex charges. According to public records, the suspect had been charged with carrying a concealed firearm and with marijuana possession just 9 days before the first attack in 1996.
23. "Spittle Bit Safer." The Mirror, August 14, 2004.  
In Scotland, traffic wardens have been issued special DNA collection kits to catch drivers who spit on them. Some wardens have recently been spit on by drivers, and while others have gone back to their scooters to find the seats covered in spittle. Each kit contains a sterile swab and test tube to collect DNA. And the samples taken can then be checked against a police database.
24. "Extra powers for the police." Bristol Evening Post, August 14, 2004.  
In England, the Home Office has published new proposals to give police officers new powers to fingerprint suspects at the roadside, and to take DNA samples and footwear impressions.

25. "Lakehead's Paleo-DNA Laboratory First University Lab Accredited for Forensic Testing." Canada NewsWire, August 13, 2004.  
In Canada, Lakehead University's Paleo-DNA Laboratory is the first university laboratory in Canada to become accredited by the Standards Council of Canada (SCC) for Forensic DNA testing. Currently, all six RCMP laboratories and a handful of private labs are accredited for forensic biology/DNA by the SCC and conform to ISO standards ISO/IEC 17025.
26. "DNA Testers Hire On Elsewhere." The Commercial Appeal (Memphis, TN), August 13, 2004.  
Mississippi's crime lab is searching for ways to attract and retain scientists. Many of the lab's workers spend a few years at the lab and then move on to more lucrative jobs in the private sector or in other states. An analyst with about four years' experience makes about \$35,000 at the state Crime Lab, but can earn up to \$10,000 more anywhere else. The Mississippi Crime Lab stopped DNA testing in 2002 because it did not have anyone to do the work, but the lab resumed testing in 2003. Currently, the lab has four DNA analysts. The agency is authorized to hire up to 11. The Department of Public Safety is crafting a package that asks lawmakers to provide money to fill some of the lab's 27 vacancies in the fiscal year that starts next July 1. The Attorney General is aware of the need for DNA analysts. He said his agency is working with the University of Southern Mississippi to develop a forensic science/DNA testing degree and fund a DNA lab.
27. "County hopes analysis of DNA eases backlog." The Kansas City Star, August 13, 2004.  
In Kansas, Johnson County commissioners approved a contract to analyze a backlog of cold DNA cases. The contract was awarded to Orchid Cellmark to process DNA cases with no known suspects. Grant money from the National Institute of Justice is paying for the contract. Within a month, samples will be sent away for analysis and returned to Johnson County to be entered into the National Combined DNA Index System, known as CODIS.
28. "Public safety auditor to study DNA collection in other cities." Omaha World Herald, August 13, 2004.  
In Nebraska, Omaha's public safety auditor said that she will conduct a broad review of police collection of DNA -- examining how other cities' departments have gathered, handled and destroyed the genetic material. The policy review would stop short of the full-fledged investigation that another she had considered and the Omaha police union had opposed. She has received about 20 complaints -- including those from five or six black men who have been tested -- since Omaha police began collecting DNA in their investigation of four rapes in the past two years. The auditor noted that she had received a lower number of complaints from individuals who had been tested than she expected.
29. "Sealed affidavits in DNA case faulted." Omaha World Herald, August 13, 2004.  
In Nebraska, a state senator and a defense attorney have challenged the sealing of Omaha police statements used to obtain a judge's order to collect DNA in a serial rape investigation. State law does provide for a delay in filing a search warrant until after it has been executed -- typically so the target of a warrant cannot evade authorities. Once the warrant has been executed, state law calls for it and the police affidavit used to obtain it to be filed with the District Court clerk for public review. The sealings have been challenged as several black men have sought the reason why Omaha police asked for their DNA in the investigation of the rapes of four black women in the past two years.
30. "Police: DNA solves woman's 1994 killing." Saint Paul Pioneer Press, August 13, 2004.  
In Minnesota, DNA evidence has linked a man to a 1994 murder. The man is currently in prison for molesting two of his grandchildren. He was scheduled for release next year. The man became a suspect in the murder only after a cold hit on the DNA database.
31. "Angier man arrested in 2 sex assaults." The News & Observer (Raleigh, North Carolina), August 12, 2004.  
In North Carolina, DNA evidence left at a July crime scene linked a man with two separate sexual assault cases in Raleigh and led to his arrest. Authorities arrested the man after a woman walked into her apartment and discovered a man snoozing on a bed. The woman quickly left her apartment and called police, who arrived before the man could flee.
32. "Jury convicts parole absconder in rape case." The Wichita Eagle, August 12, 2004.  
In a Kansas rape case, a man has been found guilty based solely on DNA evidence. Because the victim was unable to identify her attacker, lawyers on both sides of the case focused their closing arguments on the testimony of a DNA analyst who said semen found in the victim's pickup truck had almost certainly come from the suspect. The

prosecutor said the DNA test showed that the chances the semen came from someone other than the suspect were less than one in 3.9 septillion. The man had been convicted previously of attempted murder.

33. "DNA tests to confirm Austrian bus crash victims were British." Agence France Presse, August 11, 2004.  
In Austria, five tourists presumed to be British were killed in a coach crash after their tour bus was forced off the road by a vehicle overtaking on a sharp bend. DNA tests were made on the dead, two men and three women, who could not immediately be identified as not all the passengers carried identity papers.
34. "WW II casualty is laid to rest." Chicago Tribune, August 11, 2004.  
Army Air Forces Sgt. Arthur Andrew Merzlock was laid to rest near his home 60 years after being killed in action in the South Pacific and thanks to a half-century of efforts by the military to retrieve and identify his remains. In 1998, one of the man's relatives was tracked down by the U.S. Army's casualty office and asked to provide samples of his blood so DNA tests could determine if any of the remains were those of his uncle. The relative received word this year that DNA tests confirmed the identity of remains found in 1949 and 1983. With that, arrangements were made last month to send the remains for a proper military burial.
35. "Convicted Rapist Pleads Innocent to 93-Year-Old Woman's Slaying." City News Service, August 11, 2004.  
In California, a convicted rapist pleaded innocent to a capital murder charge in connection with the rape and strangulation of a 93-year-old woman at an apartment complex for senior citizens 13 years ago. The man was linked to the crime through a cold hit on the DNA database. The man was a registered sex offender.
36. "Sexual assault suspect in Portland has record elsewhere, police say." The Associated Press State & Local Wire, August 11, 2004.  
A man suspected of raping women in Georgia and the United Kingdom has been accused of sexually assaulting two women in Portland, Oregon. The man is a suspect in five sexual assaults in the United Kingdom in the late 1980s and early 1990s. He was linked to the assaults through DNA. Those assaults were similar to the Portland attacks. In four of those cases, the attacker entered the victims' apartments through windows. In the fifth case, the attacker assaulted the woman in a garage. He is also a suspect in one sexual assault and an attempted assault that happened in Georgia in 2000.
37. "Police present DNA database." The Jerusalem Post, August 10, 2004.  
In Israel, the Knesset Law Committee toured a new forensics lab at the National Police Headquarters in Jerusalem as part of its preparation for deliberations on legislation to establish a criminal DNA database. The bill, proposed by the Internal Security Minister, would allow the police to take DNA samples from sex offenders, burglars, and murderers in order to help identify the perpetrators if they commit similar crimes in the future. The law today only allows investigators to take a DNA sample from a suspect when an investigation warrants such a step.
38. "Criminal Practice Anonymous Warrant Tolls Limitation." Pennsylvania Law Weekly, August 9, 2004.  
The Pennsylvania Superior court has ruled that the five-year statute of limitations for prosecuting criminal offenses may be tolled by the filing of a "John Doe" criminal complaint and warrant. Prosecutors must first demonstrate that they "set forth all information it knew or should have known in the initial 'John Doe' complaint or warrant," and then show that "specific, identifying information obtained later as the result of diligent investigation [was] added to the complaint or warrant within a reasonable amount of time." If the ruling stands, it is expected to have a profound effect on Pennsylvania cases in which law enforcement employ DNA testing to identify unknown assailants.
39. "Head of Edmonton vice squad says RCMP should get DNA samples from johns." Canadian Press Newswire, July 31, 2004.  
Mounties in Canada chasing a suspected serial killer stalking Edmonton-area prostitutes should start seeking DNA samples from known johns, says the head of the Edmonton city police vice squad. The task force has been soliciting DNA samples from Edmonton prostitutes since about June, to help identify any future victims. The prostitutes are volunteering the DNA samples, which cannot be collected without the donor's consent unless police have a judge's warrant. Johns also would have to agree to donate a DNA sample.
40. "DNA bank for missing persons would cost millions, RCMP study says." Canadian Press Newswire, July 14, 2004.  
The RCMP says creating a special DNA databank to help solve missing-persons cases, an idea touted by the federal government, could cost as much as \$30 million and entail significant ongoing expenditures. A study by the

national police force's forensic laboratory service found introduction of the high-tech tool would mean hiring additional personnel and finding new money. The Calgary-based Missing Children Society of Canada has urged the federal government to move ahead with the initiative. The recommended approach would involve contracting out preparation of DNA samples to forensic experts at the Bureau of Legal Dentistry laboratory at the University of British Columbia. Analysis of the samples would then be conducted by the RCMP.

### Paternity

41. "DNA Test Fails to Confirm Baby Miracle Claim." Africa News, August 17, 2004.  
In Kenya, a DNA test carried out by the British High Commission failed to confirm a mother-child biological link in a miracle babies saga. Two women, both of them British nationals had recently walked into the Embassy and applied for passports for newly-born infants – each claiming a miracle birth, but DNA testing found no relationship. The Embassy has since handed over the matter to Kenyan authorities, who could be investigating an alleged human trafficking syndicate with international links.
42. "Over 30 Hilltribes To Get Thai Nationality." Thai Press Reports, August 16, 2004.  
In Thailand, a Mae Ai district officer reiterated today that all the 32 persons of three hilltribe families will receive Thai nationality within the next one or two weeks following DNA tests which found that they had Thai ancestors. The Provincial Administration Department announced last week that 78 out of 1,243 people in Mae Ai district of Chiang Mai province had received Thai citizenship. These 1,243 people had their Thai citizenship revoked in February 2002.
43. "DNA bank project in Cincinnati could reunite adoptees, birth parents." The Associated Press State & Local Wire, August 13, 2004.  
A former private investigator is hoping to establish a DNA bank in Cincinnati, Ohio where samples from adoptees and birth parents who are searching for one another can be added to a central database to be compared with other samples for possible matches. The theory is that the DNA could be the only way to reunite adoptees with birth parents in the many cases where names were changed, birth certificates were altered or babies were bought on the black market. Sometimes no paper trail existed, and adoption records remain closed in all but a handful of states.