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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 September 3, 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

A private citizen's effort in Oregon is raising funds for offender testing. Maryland's high court has released its opinion upholding the state's DNA database statute. Federal funds helped Michigan clear its offender DNA backlog, and the Air Force is giving money to the Army to help with its rape investigation backlog. Evidence from thousands of cases in Houston has been found in mislabeled boxes.

Cold hits aided investigations / prosecutions in Minnesota (juvenile linked to rapes), Missouri (robber linked to rape), and New York (weapons offense linked to murder). DNA was also important to cases in California (1986 murder; 3 rapes), Florida (murder linked to California man), Iowa (murder), and Pennsylvania (rape). A seventh rape has been linked to an unidentified man in North Carolina. Testing on unidentified remains resolved missing persons cases in Arkansas, California and Florida. Ohio prosecutors are attempting to stretch the state's statute of limitations laws to prosecute a serial rapist.

Post conviction DNA exonerations made headlines in Georgia, Pennsylvania and Tennessee. Post conviction DNA testing was denied in a Pennsylvania and is moving forward in a Texas case. A Virginia editorial calls for a review of all cases where DNA could exonerate, and a group of retired justices in Montana are calling for a review of all cases handled by a former analyst.

In international news...DNA testing in Kenya continues in a baby smuggling investigation, and will be conducted in India over rape allegations against the military. A cold hit in Canada's DNA database led to a murder conviction. New Zealand's DNA database continues to grow in size and number of investigations aided. DNA identified more remains of Kuwaiti POWs; and opposing sides have politicized missing persons DNA testing in Cyprus.

NEWS ARTICLES

Forensic DNA

1. "A rapist is not entitled to post-conviction DNA testing of hair samples found on the victim." Pennsylvania Discovery and Evidence Reporter, September 4, 2004.
A Pennsylvania court has ruled that a defendant convicted of rape is not entitled to post-conviction DNA testing of hair samples found on the victim where the court determines there is no reasonable possibility that DNA testing would produce exculpatory evidence that would establish the defendant's actual innocence. The jury had been informed the hair samples did not belong to the defendant.
2. Kenya; Tests Show Babies Not Deya's." Africa News, September 1, 2004.

Police in Kenya report that twenty of the 21 so-called miracle babies do not belong to the women from whose homes they were seized, according to DNA results. Only one of the babies was proved to belong to the wife of Pastor Deya, who is at the centre of the babies saga. Detectives will now have to wait for the DNA results of samples taken from about fifteen couples that have claimed the babies to determine if they are the parents. At the same time, police have appealed to a couple whose baby was allegedly stillborn to go for tests.

3. 'I'm still dreaming'; After 17 years behind bars, innocent man gets freedom." The Atlanta Journal-Constitution, September 1, 2004.
In Georgia, Clarence Harrison has been pronounced a free man after more than 17 years behind bars for a rape he did not commit. Harrison read an article about DNA testing the year after his conviction and managed to get the prosecution's evidence tested. But the technology of the time could not produce results. Last year, Harrison contacted the Georgia Innocence Project, which arranged for new testing with modern technology. On Aug. 24, the lab reported the results: Clarence Harrison could not have been the rapist.
4. "State police eliminates backlog of DNA samples from felons." Associated Press State & Local Wire, August 31, 2004.
The Michigan State Police has eliminated a 10-year backlog of DNA samples from convicted felons with help from a grant worth nearly \$3.4 million from the National Institute of Justice. The grant allowed the state to send 80,640 samples to a private laboratory for analysis. Now the backlog is gone and DNA profiles again are being analyzed in the state. Since January, the database has helped in nearly 400 Michigan investigations and connected more than 300 convicted offenders to open cases, the state police said. In one case, a match connected a suspect to three unsolved rapes in 1993, 1995 and 1996.
5. "Police find 15 additional DNA cases that may need retesting." Associated Press State & Local Wire, August 31, 2004.
In Texas, the Houston Police Department has found 15 DNA cases from 1998, mostly sexual assaults, that it failed to submit to the Harris County District Attorney's office for review to determine whether retesting was needed. The police department referred a list of 1,322 cases for case review beginning in March 2003. Fourteen of the 15 cases were discovered this week after the District Attorney requested information in an aggravated robbery case. The defendant in that case had filed a request for additional DNA testing, but Rosenthal said his office had not received a case number for it from the police department. The department plans to get an outside expert to review the DNA section's records dating to 1991, when the department first began its earliest DNA extraction work.
6. "Bredesen exonerates man who spent 22 years in prison." Associated Press State & Local Wire, August 31, 2004.
In Tennessee, Clark Jerome McMillan, who spent more than 22 years in prison for a rape he did not commit, was exonerated by Gov. Phil Bredesen. The exoneration clears the way for McMillan to seek up to \$1 million in compensation from the state Board of Claims. McMillan was released from prison in 2002 after DNA testing on evidence revealed he could not have been the man who had raped a Memphis teenager. The testing was not available when McMillan was convicted in 1980 of aggravated rape and robbery with a deadly weapon.
7. "Manorama Death: Govt For DNA Test." The Times of India, August 31, 2004.
In India, the defense ministry has decided to have DNA test conducted on the Assam Rifles personnel accused of raping and killing a woman. The woman's death sparked off an agitation in the state with people demanding the withdrawal of AFSPA. Four personnel of the 17th Assam Rifles batallion have been accused of raping and killing the woman.
8. "Military labs slow rape investigations." United Press International, August 31, 2004.
The U.S. Air Force said it is giving \$1 million to the Army's criminal investigation lab to clear a backlog that is slowing the investigation of rapes. The Air Force found during a six-month study of sexual assaults in the service that the Army "is selective about accepting and processing" rape kits. Moreover, civilian hospital analysis of rape kits is often not accepted by the military as evidence, both of which impede the ability to investigate and prosecute sexual assaults in the Air Force. The Army lab also has a six-month backlog in examining DNA evidence, which can either delay an investigation or slow a trial, which is supposed to take place within 120-days of charges being filed against a perpetrator.
9. "Band Won't Dump Responsibility." Wisconsin State Journal, August 31, 2004.
A tour bus operator for the Dave Mathews Band reportedly emptied the bus' waste tanks into the river Chicago River. The waste, unfortunately, landed on a group of people on a tour boat. Surveillance cameras show the band's

bus was the only one to cross the bridge at the time of the incident. To be of further assistance in the investigation, the band members have offered their DNA samples for comparison against the waste in order to make certain it was their bus.

10. "DNA Nails More Crims." Christchurch Press, August 30, 2004.
In New Zealand, since the start of 2002 the number of DNA samples held on the police databank has increased from 21,000 to 43,000. In the last year, police took 7733 voluntary samples, 1143 "compelled" samples and 546 with the consent of those involved. When samples from a crime scene are tested it is found 52 per cent are linked to people on the databank -- up from about 38% two years ago. Under legislation introduced in April suspects for a range of crimes, including burglary, can also be compelled to provide a DNA sample to match against the police DNA databank.
11. "DNA test confirms identity of girl's body." Associated Press State & Local Wire, August 30, 2004.
In Arkansas, a DNA test requested by the family of a missing 7-year-old girl confirmed that she was the person found dead by authorities. Police said they were certain the girl they found dead near a bean field was their daughter. But the girl's family wanted further confirmation, as the clothes did not match the description of those last worn by their daughter.
12. "Prosecutors want to test blood of two others in contested case." Associated Press State & Local Wire, August 30, 2004.
In Texas, prosecutors told a state judge they want to do another test on the blood of two people who were suspects in a kidnapping and rape for which a man was sent to prison 17 years ago. The Innocence Project wants the judge to find the convicted man would have been exonerated if DNA testing had been conducted at the time. Prosecutors disagree, saying a hair sample tested recently for DNA could have come from anyone. Prosecutors say they linked the man, who said he was at work at the time of the attack, through semen collected during a rape test on the 14-year-old victim. There were two other suspects considered during the investigation. One was also convicted of the attack and sentenced to 60 years. Another may have been wrongly cleared.
13. "Bone matches missing Mexican's DNA, but skull isn't hers." The Dallas Morning News, August 30, 2004.
DNA test results in California this week proved conclusively that a bone taken from skeletal remains found in Chihuahua City belonged to the missing Mexican girl. But the skull found with the remains was not hers. The woman disappeared in May 2003, and police said her remains were discovered in July of that year. A cousin was arrested and charged with her death. But the young woman's mother was suspicious of the police account from the start.
14. "Hadzipasic Meets With Director Of 'Bode Technology Group'." ONASA News Agency, August 30, 2004.
BiH Federation's Prime Minister met recently with Bode Technology Group to discuss possibilities for usage of analysis of DNA samples as an assistance to investigation and judicial bodies in finding of perpetrators of crimes. The American company wants to establish with interested BiH institutions the centers for DNA analysis. BiH has approximately forty experts for DNA analysis, out of whom approximately twenty are included in the process of identification.
15. "Juvenile offender status at trial is balancing act." Saint Paul Pioneer Press, August 30, 2004.
In Minnesota, a juvenile faces sexual assault charges in two separate cases. The boy was arrested after his DNA was submitted to the state database. The state's Bureau of Criminal Apprehension database contains the names of 470 juveniles mandated to submit DNA samples. One of the assaults occurred while he was on probation for exposing himself.
16. "Grant would give old cases another look." St. Petersburg Times, August 30, 2004.
In Florida, the Pinellas County Sheriff's Office, which has 39 unsolved homicides and 22 missing persons cases still open on its books, is applying for a federal grant that will pay the costs associated with reactivating old unsolved cases. Sheriff's detectives are hoping to get a three-year grant that will allow them to pay for expensive DNA tests and investigators' overtime for working on the cold cases. The agency probably will ask for at least \$600,000 in federal money over that three-year period.
17. "Remains Of 10 Kuwaiti POWs Killed In Iraq Identified." BBC Monitoring International Reports, August 29, 2004.
The Kuwaiti team searching for the POWs and missing announced the names of 10 Kuwaiti POWs whose remains

were identified in Iraq. Official spokesman for the team said in remarks that laboratory tests conducted at the Criminal Evidence Public Directorate have shown that the DNA samples matched those of the corpses located at mass graves in Iraq.

18. "State Cannot Ignore 3 Wrong Convictions." The Virginian-Pilot, August 29, 2004.
Editorial suggests that the state of Virginia ought to review all cases where DNA evidence exists for cases tried prior to the availability of modern DNA testing. Virginia has recently exonerated a third inmate through DNA testing. "One life demolished by a wrongful conviction can be an aberration. Two might be a coincidence. But three is a trend. Truth is on file at the Virginia Division of Forensic Science. Conscience demands that someone open the drawers."
19. "Cypriot Turks cry foul over DNA tests in probe into missing people." Agence France Presse, August 28, 2004.
Turkish Cypriots have warned that DNA tests carried out unilaterally by rival Greek Cypriots to identify missing people from both sides of the long-divided island will be considered unreliable. Three decades on, the fate of about 2,000 people listed as missing since Turkey's invasion of Cyprus in 1974. A joint committee has been formed between the two sides to investigate the fate of the missing, who include about 1,500 Greek Cypriots and 500 Turkish Cypriots. Turkish Cypriots have recently accused the internationally-recognized Greek Cypriot government of monopolizing the only medical institute in the island capable of carrying out DNA tests.
20. "Affidavits' release depends on appeal by city." Omaha World Herald, August 28, 2004.
In Nebraska, a judge has decided to unseal the affidavits Omaha police used to obtain court orders to collect DNA from black men in a serial rape investigation. The judge said he would omit all identifying information of the victim or witnesses in the copies made public, but he will wait until the city decides whether it is going to appeal before releasing the documents.
21. "Man Pleads Guilty To 1989 Palm Beach Murder." Palm Beach Post, August 28, 2004.
A man convicted of killing two boys in California pleaded guilty to the slaying of a woman 15 years ago in Palm Beach, Florida and agreed to talk to detectives about the town's only remaining unsolved murder. New DNA tests linked the 1993 death of the two boys to the man, who was serving a 70-year sentence for the rape of a San Diego woman. While putting together the double-murder case of the boys, San Diego detectives learned that the suspect lived in Palm Beach County from 1988 to 1991. Local agencies reexamined unsolved cases from that time, and DNA taken from the Palm Beach victim's crime scene was found to match the California suspect.
22. "Court, with reservations, rules DNA databank is constitutional." The Baltimore Sun, August 27, 2004.
Maryland's DNA databank survived a constitutional challenge in the state's highest court. The opinions show a deeply divided court. It upheld the decade-old law establishing the state's DNA databank by a 4-3 margin, and two judges who voted with the majority wrote separate concurring opinions expressing concerns about the nature of the intrusion.
23. "Sex Attack Man Held." Birmingham Evening Mail, August 27, 2004.
In England, the Forensic Science Service has used "new super sensitive DNA techniques to unlock evidence in historic crime scene 'stains' that had been stored in deep freeze since 1989 and were unusable until now." The effort, codenamed Advance, has identified 33 suspects in unsolved crimes so far.
24. "Man charged in 10-year-old homicide case." Associated Press State & Local Wire, August 27, 2004.
In Iowa, a man convicted last month of beating his girlfriend to death with a brick and leaving her body in an alley has been charged in a 10-year-old homicide. Detectives revisiting the case in the late 1990s matched to the suspect's DNA some saliva that was left on a cigarette butt found in the victim's apartment. Police arrested the man on August 25, 1994 for the robbery of another elderly woman elsewhere in the same city. The state medical examiner placed the time of the victim's death as late Aug. 25 or early Aug. 26 – clearly leaving the man an alibi. However, a review of the coroner's findings of the time of death has led to an adjustment of 24 to 36 hours.
25. "Charges dropped against man freed from prison by DNA test." Associated Press State & Local Wire, August 27, 2004.
In Pennsylvania, a man who served 16 years in prison for the 1987 rape and murder of an elderly neighbor, then was released on bail after DNA evidence contradicted the verdict, has had all charges against him dropped. The District Attorney said his investigation had resolved questions about the chain of custody of the DNA samples, which were found in Germany with a former Penn State University professor. In addition, he said, further tests had

confirmed that the samples also contained the victim's DNA, eliminating any doubt that they came from the same crime scene.

26. "DNA evidence in woman's murder matched to inmate." Associated Press State & Local Wire, August 27, 2004. In New York, hair and other evidence gathered from the body of a woman found fatally stabbed outside a factory was matched through the DNA database to a man sent to prison on a gun charge.
27. "7TH Charlottesville-Area Attack Linked To Serial Rapist, Police Say." Daily Press (Newport News, VA), August 27, 2004. In North Carolina, DNA evidence has linked a 7th victim to the same serial rapist responsible for attacks on six other women over the last seven years. The new victim's home matches that from six other assaults over seven years. Police still do not have a suspect.
28. "New Evidence Furor Hits HPD." The Houston Chronicle, August 27, 2004. In Texas, the Houston Police Department has discovered evidence from thousands of cases that was improperly tagged and lost in its property room, suggesting that problems with handling evidence may go back 25 years. The evidence was contained in 280 mislabeled boxes that were found in the department's property room last August. The boxes were labeled with the numbers of individual cases. Now, HPD officials said, it appears that evidence from as many as 8,000 cases, from 1979 to 1991, was packed into the 280 cartons. The discovery, the latest in a long list of problems at HPD's crime lab, may move officials closer to an independent investigation of the entire operation.
29. "DNA test sparks lawsuit." Inland Valley Daily Bulletin (Ontario, CA), August 27, 2004. In California, the parents of an underage girl who had sex with a 19 year-old man is suing Orange County prosecutors in federal court for taking a DNA swab of their daughter's cheek. The 16-year-old girl told police she had consensual sex with the man at small house party. "They got an illegal search warrant and forced the girl to give a sample against her will," said the attorney representing the accused man. "It's outrageous what they did." The Orange County District Attorney believes that the girl is afraid to take part in the prosecution because of the way the accused's attorneys treated another alleged victim he is accused of raping during his first rape trial.
30. "DNA Helps Solve Family's 3-Decade-Old Mystery." Palm Beach Post, August 27, 2004. In Florida, DNA testing has confirmed human remains found the same year of a 15 year-old's disappearance were hers. The girl disappeared in 1976 and her family always thought she had run away and would one day return.
31. "Man accused of raping 4 women to stand trial." The San Diego Union-Tribune, August 27, 2004. In California, a man has been ordered to stand trial on nine charges including rape, sodomy and kidnapping involving four women. He denies guilt, but DNA links him to three of the rapes (in 2001, 2002, and 2004). The chances that the biological samples recovered from both victims are not from the suspect are 1 in 49 quadrillion.
32. "Government Lacks Chemical For DNA Tests On "Miracle Babies"." BBC Monitoring International Reports, August 26, 2004. In Kenya, it was revealed that the government did not have the chemical needed to carry out DNA tests on "miracles babies" who are in the middle of a recently revealed child smuggling ring. It also emerged that it would cost the parents or the government between 15,000 and 20,000 shillings for a private doctor to conduct each DNA test. Sources at the government chemist said staff were demoralized because the investigators bypassed them by first taking the samples to the Kenya Medical Research Institute, which could not conduct the tests. A week later the request for the DNA tests were sent to the government chemist by the investigators. These delays are likely to force the police to release the four people who have been in custody in connection with the "miracle babies" scandal.
33. "Philly deputy charged with rape." Centre Daily Times, August 26, 2004. In Pennsylvania, a Philadelphia sheriff's deputy is accused of drugging and raping a woman who was in town attending a sheriff's academy. The woman gave birth to the baby and, in June, officers obtained a search warrant for a sample of the officer's DNA. A paternity test showed that he is the father of the woman's baby. The woman called police when she discovered she was 8 months pregnant, but believed she had never had sex. In a taped conversation, the officer claimed he never had sex with the woman.
34. "Lab errors cited in petition on 200 Montana cases." Chicago Tribune, August 26, 2004.

Accusing the Montana Attorney General of abandoning justice, three retired state Supreme Court justices and other concerned citizens filed a petition demanding an independent investigation of more than 200 cases handled by a crime lab analyst whose testimony helped wrongfully convict three men. The petition filed with the state Supreme Court seeks appointment of a "special master" to convene a panel of experts and state funding to investigate and, if necessary, retest evidence in cases handled by the former state crime lab director who gave testimony on hair analysis that experts said was scientifically baseless. Three men, all convicted of rape in part because of faulty testimony from the director, were exonerated by later DNA analyses.

35. "Statute Of Limitations; Rape Cases Before '99 Still Apply, Court Told." Columbus Dispatch, August 26, 2004. In Ohio, prosecutors trying to imprison a serial rape defendant for life, as well as save face with several victims, asked a judge this week to preserve more than 40 counts that a defense attorney wants dismissed from an indictment. The man was linked through DNA to 14 rape cases committed between 1987 and 1993. The prosecutor argued that the statute of limitations for prosecuting had not run out because in 1999 the state legislature changed the law and extended the statute of limitations from six years to 20 years.
36. "DNA hit leads to conviction in rape case." The Kansas City Star, August 26, 2004. In Johnson County, Missouri, a jury has convicted a man of rape based on DNA evidence. He was first linked to the crime through a cold hit on the DNA database. He was on the database due to a previous robbery conviction. He was also linked through DNA to another unsolved rape for which he has been convicted.
37. "DNA Links Inmate To '86 Murder." Modesto Bee, August 26, 2004. In California, DNA has linked a prison inmate to the rape and murder of a woman who was killed behind a church 18 years ago. The man had long been a suspect, but investigators did not have enough evidence for an arrest until the evidence was resubmitted in 2000 and a DNA profile was developed. The man was previously convicted of three other rapes, one of which was also a murder.
38. "Killer jailed nine years after DNA cracks case." The Calgary Herald, August 25, 2004. In Canada, a man has been sentenced to nine years for raping and killing a woman during a drunken rage in a decade-old case RCMP finally solved with DNA. The man had been ordered to submit a sample to the DNA database following an assault on another woman.
39. "Here's One Way To Catch Rapists: Cater A Dinner." The Oregonian, August 25, 2004. In Oregon, a resident hosted a dinner to raise funds for Oregon's backlog of DNA samples. Each guest donated at least \$30, the estimated cost of processing offender samples. The dinner raised \$365, and the news article included the lab's address for other donations [Oregon's crime lab reports \$860 was collected in two days]. "Hopefully, this could make a difference for somebody," Miller says about her dinner donation. "As a woman, it sits in the back of your mind; it could be me or someone I care about."
40. "Lawyers have found a way to get around statute of limitation laws in rape cases." National Public Radio (Morning Edition), August 24, 2004. Discussion of prosecutor's practice of filing John Doe warrants in rape cases where a DNA profile is available to no suspect has been identified. Discussion participants include rape victim Debbie Smith, Suffolk County (Massachusetts) prosecutor, a victim's advocate, a defense attorney, and Barry Steinhardt of the ACLU.

Paternity

41. "Orchid to Provide Identity DNA Testing Services for Kinsearch Registry." PR Newswire, August 26, 2004. Orchid BioSciences announced that it has signed an agreement with the Kinsearch Registry to provide genetic testing services to create DNA identity profiles for registry participants. The Kinsearch Registry was established by the Center for Information and Research on Adoption, Inc. to help adoptees identify and locate biological siblings and other birth family members.
42. "Plea of no contest in child-switch case." Akron Beacon Journal, August 25, 2004. In Ohio, a woman accused of renting her toddler to a friend in an attempt to fool a court-ordered DNA test has agreed to plead no contest for her role in the scam. She was accused of accepting money from another woman in exchange for letting the woman take her daughter to a court-ordered DNA test as part of a contentious divorce case. She was hoping to pass off the girl as her own because she did not want her ex-husband to get visitation rights to

see the couple's 2-year-old daughter.

43. "News briefs from California's Central Coast." Associated Press State & Local Wire, August 25, 2004.
In California, a mental facility supervisor was charged with raping an autistic patient who became allegedly became pregnant with his child. The 27-year-old woman was allegedly raped on or about Dec. 11, 2003. The staff noticed in May that the severely autistic client's stomach was enlarged, and a doctor's examination revealed she was pregnant. She could not articulate who had sexually assaulted her, but a DNA sample was taken from her unborn child and compared with ones from male employees who could have been in contact with her around that time. It was found to match the supervisor.