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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 February 25, 2005 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

LAW ENFORCEMENT: Investigations and prosecutions aided by DNA evidence include:

- Arkansas – DNA exonerated a suspect who spent 9 months in jail on murder charges.
- Idaho – DNA evidence from a hair found on a gun is linked to a suspect in a murder trial.
- Maryland -- Database hit leads to arrest in a two sexual assault cases, which have been linked to two more cases in Pennsylvania
- Nevada – DNA elimination samples have been collected from 120 men in a murder investigation.
- New York – Database hit links a man to be extradited to a 1995 rape, and links a burglar to a sexual assault.
- Washington – Database hit to a known burglar leads to murder and rape charges
- Australia – DNA from a toothbrush is key evidence in a drug plantation trial

POLICY AND FUNDING ISSUES: All convicted felons DNA database bills were introduced in New York, and have advanced in Hawaii, Indiana, North Dakota, and Oklahoma. Bills for all felony arrestees were introduced in Illinois (passed policy committee), Minnesota (passed policy committee) and Texas. A bill in New Mexico to require DNA from all registered sex offenders, regardless of their conviction date, is progressing.

COURT DECISIONS: A California court will be allowing both mitochondrial DNA evidence, and for the first time, YSTR evidence. A New York an appeals court denied habeas relief in a case where DNA evidence not matching the defendant was not permitted at trial. Another New York decision ruled there is no time limit for post-conviction motions and that the defendant does not have the burden to establish the existence of such potentially exonerating DNA evidence.

OTHER FORENSIC DNA ISSUES: A California man has been completely exonerated through DNA tests. Texas is considering establishing regional DNA labs across the state to replace the locally-run labs. A Mississippi editorial urges for additional funding for the state crime lab. A computer glitch prevented a DNA match from being made in a Colorado rape case, and potentially allowed the perpetrator to attack additional victims.

INTERNATIONAL NEWS: In Australia, a DNA database hit lead to a guilty plea in a sexual assault case. DNA elimination samples were collected in murder investigations in Canada and New Zealand. A court in India ruled evidence is insufficient to prove DNA evidence tampering in a murder case involving the military. A Scottish teenager was identified in a spitting incident from a “spit kit” collected by a bus driver. DNA proved paternity of a man stolen from his parents during Mexico’s “dirty war”, and of a child central to a Malaysian rape case. Lebanon is seeking DNA assistance in the Al-Hariri murder investigation, and the Ukraine will reopen the case of a missing journalist for DNA testing. A man being deported from the US faced charges in South Korea in connection with 8 rapes linked by DNA.

STATE LEGISLATION

Forensic DNA

1. California AB 851 – Requires a persons DNA sample to be automatically expunged from the database if there is no conviction. Current law requires the person to petition the court for an expungement.
2. California AB 940 – Deletes the January 1, 2006 expiration date for a \$2 fee that is used to fund the Missing Persons DNA Database program.
3. Illinois SB 333 – Expands DNA database to include anyone arrested for a felony.
4. Minnesota HB 1244 -- Expands DNA database to include anyone arrested for a felony.
5. Missouri HB 557 – Creates a Laboratory Oversight Committee to review state crime lab operations.
6. New York AB 2469 – Extends the statute of limitations for crimes in which there is a DNA profile of the attacker which has not yet been matched to a known offender.
7. New York AB 5107 – Mandates a class for every person engaged in the storage of DNA evidence at a forensic laboratory.
8. New York SB 1018 – Expands offender DNA database to include all felony and misdemeanor convictions.
9. Texas HB 1068 -- Expands DNA database to include anyone arrested for a felony.
10. Washington HB 1943 – In cases of missing persons where criminal activity is suspected, requires a DNA sample be submitted to the missing persons DNA database.

Genetic Privacy

11. New York AB 4260 – Creates a commission on personal privacy to examine and assess the privacy of individuals in the state of New York and to make recommendations relative to the protection thereof.
12. New York AB 2768 -- Requires hospitals to provide DNA testing of newborns or take blood samples from newborns for future DNA testing.
13. Tennessee HB 777 – Provides that each person has an intellectual property interest in such person's own DNA. Prohibits others from using a person's DNA for cloning, stem cell research “or other similar scientific experiments or research” without the express written consent.

Paternity

14. Florida SB 1456 – A man required to pay child support may file a motion to set aside a determination of paternity at any time if the request is accompanied by a genetic paternity test.

NEWS ARTICLES

Forensic DNA

1. “Arrest in 2 Montgomery Sex Assaults.” The Washington Post, February 23, 2005.
In Maryland, a man suspected of concealing his face with duct tape and sexually assaulting a 16-year-old girl at a shopping center recently has been arrested yesterday and charged in the attack and a similar one in January. Police said they suspect that the person who committed the two assaults is further responsible for two similar assaults in September in Pennsylvania, due to a DNA connection in the cases.

2. "House approves toughening the state Megan's Law." The Associated Press State & Local Wire, February 22, 2005.
New Mexico's House of Representatives has approved a bill that would require all sex offenders living or working in New Mexico to submit a DNA sample to local authorities, regardless of when they were convicted. The bill was approved unanimously.
3. "Toothbrush DNA link to drug plantation, court told." The Cairns Post/The Cairns Sun (Australia). February 22, 2005.
DNA evidence from a toothbrush found at a \$5 million drug plantation in Australia will link a man to the clandestine operation, a court was told. Police swooped on the property finding more than 750kg of cannabis in a sophisticated and camouflaged set-up, complete with dams, irrigation and earth-moving equipment. Two men were found on the scene and the one on trial was alleged to have escaped after being sighted by police.
4. "DNA delivers slew of convictions." The Calgary Herald (Alberta), February 22, 2005.
In Canada, police solved a murder by collecting DNA evidence from the middle finger of a 12-year old homicide victim. As part of the investigation, police surveyed the victim's neighborhood and asked about 1,000 people for DNA samples. Fewer than one per cent declined – the perpetrator was among that group. As the man was developed as a possible suspect, police followed him and picked up a pop can with a straw that he had discarded. The subsequent DNA tests matched him to the crime. Canada's national DNA data bank has helped in 2,748 police investigations, including 178 murders and more than 400 sexual assaults.
5. "DNA mix-up helped Brents remain free." The Denver Post, February 22, 2005.
In Colorado, a computer error prevented authorities from matching a DNA sample from a suspected serial rapist to an October sex assault. If the error had not occurred, the suspect might have been arrested months before the recent attacks that terrorized Denver. It took police two months to test the October sample and submit it into the DNA database. On the same day, an FBI contractor responsible for the software and hardware operations of the DNA database was performing a data transfer between computer servers. The samples never were placed onto the new system, resulting in no hit on the offender's profile. In February, police finally caught the error and identified the offender. The CBI and the contractor met on Wednesday to "formulate a solution to the immediate problem," and the contractor has reportedly added "additional quality-assurance measures."
6. "Bill calls for more testing of DNA." Pioneer Press, St. Paul, February 22, 2005.
In Minnesota, a bill has been introduced that would require DNA from all people arrested on suspicion of committing violent or predatory offenses. In a second phase, which would become effective in 2010, all people arrested for any kind of felony would be subject to the DNA testing. Both the Dakota County prosecutor and Hennepin County Sheriff have spoken in favor of passing this legislation. The ACLU has called the proposed legislation an unwarranted invasion of privacy and a violation of the Fourth Amendment.
7. "Encounter Deaths: Jammu Court Absolves Police Officer Of Charges." The Hindu, February 21, 2005.
In India, the Jammu and Kashmir High Court has exonerated a senior police officer accused of tampering with the DNA samples of five civilians killed in a "fake" encounter at Pathribal in March, 2000. The civilians, who were killed in the Panchalthan-Pathribal belt of Anantnag district on the night of March 24 and March 25, 2004, had been labeled as foreign militants responsible for killing 35 Sikhs in Chhatisinghpura. The Senior Superintendent of Police (Jammu) was placed under suspension after the a commission report found him guilty of being involved in altering the DNA samples of those killed in the fake encounter. The incident led to protests that the so-called militants were, in fact, civilians. The court found that the allegations of DNA tampering could not be fully substantiated.
8. "Excluded by DNA tests, man wants apology for time in jail." Arkansas Democrat-Gazette, February 20, 2005.
In Arkansas, a man who spent nine months in jail on murder charges has been exonerated through DNA testing. "I have five kids," he said in a recent interview. "I missed every birthday, every holiday. ... The time I lost, ain't no amount of money or nothing they can give me to replace it." Evidence used to hold the man in jail included a witness statement from a known felon who subsequently disappeared, an eyewitness who was 80 percent sure of the suspect's identity, and microscopic shards of glass found on a pair of pants at the man's home that were similar to the glass found at the crime scene. The DNA evidence came from a bite mark on the victim's cheek, blood found in the victim's car and on a towel in his house – none matched the suspect.

9. "State might overhaul crime labs." The Houston Chronicle, February 20, 2005.
In Texas, many state legislators are calling for a statewide overhaul for the way in which crime labs are regulated. One legislator commented, "I really question whether (DNA testing) can be done in a police department after what I saw at HPD." One solution is to create an oversight board to certify and audit crime labs. The board, modeled after one in New York and another being created in Virginia, would include scientists, prosecutors and defense attorneys. Another proposal would eliminate locally operated DNA labs in favor of regional labs, through the DPS or a new entity at the county level. A third possibility would involve taking all forensic sciences out of law enforcement agencies and establishing regional crime labs like those in Bexar and Dallas counties, which operate as independent departments.
10. "Public's help sought in slaying of Reno preschool worker." Reno Gazette-Journal, February 20, 2005.
In Nevada, the investigation into the murder of a preschool worker has included collection of DNA elimination samples from 60 neighborhood men and another 60 men with whom she was acquainted. So far there have been no matches. The victim's boyfriend was an immediate suspect. The lead detective noted, "Thank God for DNA because we'd still be looking hard at him."
11. "Legislators seek to expand collection of convicts' DNA." Spokesman Review (Spokane, WA), February 20, 2005.
In Washington State, the state legislature is considering a bill to collect DNA from anyone convicted of a gross misdemeanor. The state DNA database currently contains profiles from more than 80,000 convicts.
12. "Forensic analysts link teen's DNA with weapon." The Associated Press State & Local Wire, February 19, 2005.
In Idaho, forensic evidence has linked DNA from a teenager suspected of killing her parents with the rifle prosecutors say is the murder weapon. Hair taken from the rifle used to shoot the couple contained DNA that matched the daughter's profile. A bathrobe found in a trashcan also contained blood from the daughter as well as the mother. Other DNA evidence includes the mother's DNA found on a glove in the same trashcan, and the mother's DNA found on the victim's socks.
13. "Teenager Who Spat On Bus Driver Faces Arrest." Evening News (Edinburgh), February 19, 2005.
In Scotland, a teenager who spat in the face of a bus driver during a row over a ticket is facing charges after being identified through his DNA. It is believed to be the first time anyone in Scotland has faced charges based on evidence using new "spit kits", which were handed out to bus drivers in the Capital last year. More than 1800 employees at the city's two main bus firms were given the kits to secure evidence after attacks. Around one driver a week reports being spat on to the police, although the actual figure is believed to be twice as much because many incidents go unreported.
14. "Ruling goes beyond 'not guilty'." Sacramento Bee, February 19, 2005.
In California, a man has been completely exonerated of rape thanks to DNA tests and the victim's recantation. Four months ago he was released from prison after a judge threw out the 1994 conviction. The prosecution decided against a retrial after new DNA results proved the existence of an unidentified rapist - neither the exonerated man's nor the victim's boyfriend, with whom she had admitted having consensual sex. The victim recently contacted the media to say she never had been sure of her identification of the exonerated man as her assailant but had been pressured by police to name him. She expressed a hope of prosecuting someone else for the crime but said little else in court. The Lodi Police Department issued a statement later in the day saying it was requesting submission of the DNA sample to the state's database.
15. "Man pleads guilty to sexual assault charges." AAP Newsfeed, February 18, 2005.
In Australia, a man has pleaded guilty to two charges relating to a sexual assault in 1996 after DNA-samples linked him to the alleged attack in Sydney's west. In 2001, the man was DNA tested as a convicted felon. Last year, the forensic evidence was placed through a DNA database and a positive match to him was made in relation to the sexual assault.
16. "15 ruled out in Aaron case." The Dominion Post (Wellington, New Zealand), February 18, 2005.
In New Zealand, half of the 30 women DNA tested after a baby was flushed down a toilet have been ruled out as being the mother. The women, who were of child-bearing age and of Maori or Pacific Island descent, have been eliminated from the baby-dumping inquiry. Police are awaiting the final 15 DNA tests to see if they reveal the mother.
17. "2 Kinds of DNA to Be Cited in Trial." Los Angeles Times, February 18, 2005.

In the California case of the murder of 5-year-old Samantha Runnion, an Orange County court will allow both YSTR DNA evidence as well as mitochondrial DNA evidence. This case marks the first time YSTR evidence, taken from the Y chromosome and found only in males, will be used in a California court. One defense issue is the size of the databases used to show the likelihood that a DNA sample came from a particular person. The database the prosecutor is using does not include California, a fact that also concerned the judge. "I certainly have reservations that the database that was used in this case excluded California," the judge said. "Unfortunately, my concerns aren't relevant, given what seems to be accepted in the scientific community."

18. "DNA Helps Convict 1995 Rapist." The New York Post, February 18, 2005.
In New York, a man about to be deported has been convicted in a 1995 rape thanks to a hit on the DNA database, and could face up to ten years in prison. The DNA match was made in 2002, after the man was released from prison for an unrelated attempted murder. He was detained in an INS facility fighting extradition to his native Guyana at the time he was arrested for the rape.
19. "DNA confirms identity of stolen child of Mexico's 'dirty war'." Associated Press Worldstream, February 17, 2005.
A DNA test has confirmed that a Washington, D.C., man is the child of Mexican revolutionaries who apparently vanished in police custody in 1975. It is the first case of a forced disappearance of a child in Mexico that has been resolved. The man had been unaware of his past before he was located late last year by his sister. He had been adopted and renamed at the age of 4 by a family that later moved to the United States.
20. "Convicted burglar held in rape and killing in Port Angeles." The Associated Press State & Local Wire, February 17, 2005.
In Washington, a burglary and assault convict has been arrested on the basis of DNA evidence for investigation of first-degree murder in the rape and strangling of a 15-year-old girl. The man is a native of California and has lived in Washington, Oregon and Massachusetts. He was sent to the state prison in February 2002 for third-degree possession of stolen property, third-degree assault, residential burglary, second-degree theft and second-degree malicious mischief and for delivery of a controlled substance.
21. "Lebanese Court Authorizes Request For Help Of Swiss Experts In Al-Hariri Probe." BBC Monitoring International Reports, February 17, 2005.
Lebanon will be requesting forensic experts from Switzerland to assist in the identification of suspects in the Al-Hariri blast. Experts will include specialists in explosives and DNA.
22. "DNA Leads To Jailed Burglar." Daily News (New York), February 17, 2005.
In New York, a man has pleaded guilty to breaking into a 23-year-old woman's home, sexually attacking her and robbing her and her teenage niece. The man was already in prison on an unrelated burglary when investigators matched his DNA to some left at the scene of the crime.
23. "DNA samples; Expanding state database makes sense." Daily Oklahoman, February 17, 2005.
Editorial in Oklahoma newspaper in favor of expanding the state DNA database to include all convicted felons. Excerpt reads: "The state collects about 4,500 DNA samples each year under the current law. That number is likely to grow to more than 20,000 per year if all felons are made to submit samples, which officials believe could be a big help in solving crimes. As it stands, just under 20 percent of Oklahoma's major crimes are solved...Unlike the men in Truro, who haven't so much as been arrested, those in Oklahoma who have been convicted of felony offenses could have plenty to hide. Expanding the state's current criminal DNA database to help expose those skeletons is a worthwhile idea."
24. "DNA evidence focus of habeas petition in U.S. District Court case." The Daily Record of Rochester (Rochester, NY), February 17, 2005.
In New York, despite the trial court's error in precluding the petitioner from presenting DNA evidence which he contended would have proven he did not rape a woman, the U.S. District Court for the Western District of New York denied his request for habeas relief based on its determination that the trial court's error was "harmless." In ruling against the petitioner in Robert T. Rasmussen v. Gary H. Filion, Superintendent, et al., U.S. Magistrate Judge Marian Payson concluded that despite the trial court's error there was ample evidence the petitioner committed rape.
25. "Detainee hangs himself at jail; South Korean native faced rape charges." Herald News (Passaic County, NJ), February 17, 2005.

In New Jersey, a detainee being held on federal immigration charges at the Passaic County Jail committed suicide, hanging himself with a bedsheet. The man was facing deportation to his native South Korea where he was wanted in connection with eight rapes he had been linked to by DNA evidence.

26. "Rape accused, 76, denies he fathered child." *New Straits Times (Malaysia)*, February 17, 2005.
In Malaysia, a 76-year-old man charged with raping a 12-year-old girl denied in court that he had fathered a child as a result of the incident. He also said there was also no evidence to show that the victim was forced into sexual intercourse against her will. Earlier the prosecution submitted that a DNA test showed that the man was the biological father of the baby.
27. "Ukrainian Prosecutors Launch Arms Sales Investigation." *World Markets Analysis*, February 17, 2005.
In the Ukraine, the prosecutor's office has ordered that further DNA analysis be carried out on the body of Heorhiy Gongadze, the journalist who was murdered in 2000 and in whose death former president Leonid Kuchma became implicated after tape recordings made by a bodyguard showed him calling for Gongadze to be 'driven out, thrown out, given to the Chechens.' The prosecutor-general said earlier that a further DNA analysis would provide 100% certainty that the headless body found in a wood was Gongadze's. Gongadze was reportedly investigating arms deals.
28. "Police chiefs back regional DNA labs." *The Houston Chronicle*, February 16, 2005.
The police chiefs of the six largest cities in Texas all support the concept of regional DNA laboratories across the state, a move that could take forensic DNA work out of the hands of local law enforcement agencies. The memo was signed by the Houston Police, along with the chiefs of Dallas, San Antonio, Fort Worth, Austin and El Paso. It was distributed during a legislative hearing.
29. "Panel Sees No Time Bar to DNA Motions." *New York Law Journal*, February 16, 2005.
In New York, the Court of Appeals has ruled that there is no time bar to bringing a post-conviction DNA motion and -- critically -- that it is not the defendant's burden to establish that such evidence exists. The Court unanimously overturned the Appellate Division, Fourth Department, and gave hope to convicts who claim they were wrongly convicted. It specifically rejected the contention that the current law providing for post-conviction DNA testing imposes a due diligence requirement on the defendant.
30. "House panel moves to require DNA samples from felons." *The Daily Oklahoman*, February 15, 2005.
In Oklahoma, a House committee approved an expansion of a DNA database program that would require all felony offenders to submit samples. The nearly \$530,000 program was approved by the House Appropriations and Budget Subcommittee on Public Safety and Judiciary. The vote was 10-0. One of the legislators advocating for the bill received a letter from Hope Exists After Rape Trauma (HEART), an advocacy group pushing for adoption of similar laws across the country.
31. "Legislature can't ignore Crime Lab." *Hattiesburg American*, February 15, 2005.
Mississippi editorial calling for additional funding for state crime lab. Excerpt reads: "Different year. Same old story at Mississippi's cash-strapped Crime Lab. According to a report...the Crime Lab continues to fail to process DNA evidence in a timely manner. This creates havoc for law enforcement agencies throughout the state that rely on the lab to help them prosecute criminal cases. But don't place the blame on the leadership and/or staff at the Crime Lab. That would be short-sighted and inaccurate. The blame for this situation rests squarely with the state Legislature, which has failed repeatedly to provide the Crime Lab with the resources it needs to do a quality job."

Genetic Privacy

32. "Genetic Discrimination: Senate Approves Bill Prohibiting Practice." *American Health Line*, February 18, 2005.
The US Senate has voted unanimously in favor of a bill (S. 306) that would establish protections against genetic discrimination. Under the legislation, sponsored by Sen. Olympia Snowe (R-Maine), employers could not use genetic information in employment decisions, and insurance companies could not deny coverage or establish premium rates based on such information. However, the bill's fate in the House is uncertain, where powerful industry lobbying groups could keep the measure "in limbo." The U.S. Chamber of Commerce, the National Association of Manufacturers and the National Restaurant Association oppose the bill because they say that it would "add to a confusing patchwork of laws" and possibly "trigger an explosion of lawsuits because it allows for jury trials and punitive and compensatory damages."