IN CONJUNCTION WITH THE ASSOCIATE COUNSEL PLAN OF THE CITY OF NEW YORK
APELATE DIVISION, FIRST AND SECOND JUDICIAL DEPARTMENTS
SPONSORED BY:

Mimi Mars, Esq.
Chief Medical Examiner and Emerging Legal DNA Issues
The "Ins and Outs" of New York City Office of

January 31, 2011
Winter 2011
CONTINUING LEGAL EDUCATION
Recommendations:

climates of the many disciplines of forensic science and provided the following

The NAS Report (as it is colloquially called) offered a wide-ranging assessment and

practice, and matters of the law.

issues raised in forensic science and practice, questions of oversight of the science and

scientific working groups, and a panel of researchers. The NAS report brings together

crime laboratories, subjective interpretations, exaggerated testimony, the coroner system,

The committee needs to address such wide-ranging topics in inconsistent practices in

THE NATIONAL ACADEMY OF SCIENCES REPORT

keeping pace with and addressing these scientific changes.

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At the conclusion of this lecture, participants will be aware of advances in forensic DNA

legal issues.

In February 2009, the Committee on Identifying the Needs of the Forensic Sciences

NO forensic method other than nuclear DNA analysis has been rigorously shown to have

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legal issues.

in can be said that advances in forensic science are extraordinary developments in

New York City Office of Chief Medical Examiner

William H. Nance, Special Counsel, Forensic Biology

Current and Emerging DNA Technical Issues
1. To promote the development of Forensic Science into a mature field of
fornsic science, and manditory certification of

2. The Forensic Science community should establish standard terminology to be

3. Congress should appropriation funding to support researches needed for advancing

4. All public forensic laboratories should be removed from the administrative

5. Congress should appropriation funding to support researches needed for advancing

6. The Forensic Science community needs to develop tools for advancing

7. Mandate laboratory accreditation and individual certification of forensic science

8. The Forensic Science community must establish quality control procedures

9. A national code of ethics for all forensic science disciplines should be established

10. Improve and develop undergraduate studies in multidisciplinary fields (physical and

11. Improve medical and death investigations by:

1. Appropriate funds to establish medical examination systems, with the goal of

2. Eliminating existing forensic systems.
The executive summary of the NAS report is available to download for free at

https://www.nap.edu/catalog/12598

The NASE report explores the need to standardize requirements of accreditation and certification in forensic science disciplines, including forensic science programs and joint federal/local laboratories. The report also discusses the significance of the NASE report in its attempt to address and reduce significant deficiencies in the forensic sciences.

8. Provide funding (to CDC and FBI) to prepare forensic scientists and crime scene investigators for potential roles in responding to mass and regional events affecting homeland security.

7. Fund and launch a broad-based effort to achieve nationalwide interoperability in the forensic sciences and crime scene investigations.

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5. Provide funding (to CDC and FBI) to prepare forensic scientists and crime scene investigators for potential roles in responding to mass and regional events affecting homeland security.

4. Promote a broad range of forensic science programs.

3. Strengthen the forensic science community through a broad range of forensic science programs.

2. Strengthen the forensic science community through a broad range of forensic science programs.

1. Require that all medical examiner offices be accredited or supervised by a board.

a. Require that all medical examiner offices be accredited or supervised by a board.


c. Establishing a Scientific Working Group for Forensic Pathology and Medical Examiner professions.

d. Mandate all medical examiner offices be accredited.

e. Require the federal funding to accrediting medical examiner offices.

Whe impact does proposed DNA legislation have on a public forensic laboratory?
Applyable discovery statute is not.

Whether documents or data requested by a defendant fall within the scope of

By a forensic laboratory, a prosecutor and defense attorney may want to assess

In assessing a demand for materials in the possession or control of a laboratory

of the software utilized in the forensic laboratory's database, the analyst's role, the

description of the analysis, the performance of forensic research, etc., the analyst's

curiosity, the analysis' procedure, the results, the standards, or job

or data protocols or manual applicable to the Federal or State forensic

may require that a forensic laboratory produce any of the following additional documents

Beyond the report and certificate, the Federal or State forensic laboratories do not fall within the administrative aspects of

PROCOVERY OBLIGATIONS AND REQUIREMENTS

risk being directed to perform database searches which may otherwise be impractical.

In the absence of such language, CODIS-participating laboratory

concluded, 'in a manner consistent with federal and state laws and regulations governing

requests to databases, the preclusion of such conduct occurred as a result of

another topic of legislative discussion, the proposal that a defendant be entitled to ask

Another topic of legislative discussion is the proposal that a defendant be entitled to ask

Forensic testing is conducted.

Physical items of evidence to the custody of the investigating police department after

protective measures, or evidence to the custody of a laboratory, and those are many laboratories retain

a public forensic laboratory would certainly be impacted by a requirement to

protected forensic laboratories, to create a statutory minimum period of

In the last few years, on both a national and individual state level, there has been an

instructions to laboratories designed to create a statutory minimum period of

A forensic laboratory...
DNA testing may be excluded in calculating the 'speedy trial clock' if the prosecution time period in which DNA testing is performed is chargeable or excludible. Time period in which DNA testing is performed is chargeable or excludible. Under the Criminal Procedure, a prosecutor's speedy trial right is triggered whether the defendant is held in the prosecutor's custody or released. If a forensic laboratory is under the administrative control of the prosecutor, the prosecutor's office is notified. DNA testing in a criminal case is chargeable. The office of the prosecutor is notified. One important factor to keep in mind is whether the forensic laboratory which performed the testing is the same as that which performed the initial testing.

Depending on the individual jurisdiction, the criminal procedure law, and the statute of limitations, the prosecution may be required to perform DNA testing in a criminal case. The time period it takes to perform forensic DNA testing may be chargeable or excludable.

The Speedy Trial

Directed, the laboratory will ask that the order be amended or clarified. Directed, the laboratory will ask that the order be amended or clarified. A district court order is not clear to the public forensic laboratory to whom it is directed. A district court order is not clear to the public forensic laboratory to whom it is directed. If the order is not clear to the public forensic laboratory, it is necessary to resolve the conflict.

A protective order which is properly worded (e.g., "the laboratory is directed not to enter the defendant's medical record") as well as a timely fashion. A protective order which is properly worded (e.g., "the laboratory is directed not to enter the defendant's medical record") as well as a timely fashion. It is imperative that the local forensic laboratory be notified of the court's direction.

Locally maintained DNA database. Laboratory practice (e.g., testing from multiple defendants known DNA profile into a database, testing from multiple samples to specific case evidence) is permitted. It is necessary to resolve the conflict. On occasion, commonly at the request of a defendant, a court may direct a public

Protective Orders

Exculpatory material, if any, is provided in accordance with the defendant's constitutional rights (and possibly disclosure treatment). If the defendant's constitutional rights are involved, the disclosure must be made. If the defendant's constitutional rights are involved, the disclosure must be made. If the defendant's constitutional rights are involved, the disclosure must be made.
is repeated 31 times. In low template DNA amplification, the amplification process is repeated 28 times. In high copy DNA amplification, additional cycles of amplification result in significantly more DNA amplification, but with the same sensitivity as the traditional DNA amplification. With both DNA amplification, in order to increase the sensitivity of the process, the DNA template is increased.

DNA targets are copied is termed "amplification." During this process, the DNA is cycled through a sequence of temperature changes, with each cycle amplifying the sample. This process is often referred to as "amplification." During amplification, the extracted DNA is added to a mixture which contains a polymerase enzyme and DNA primers (short synthetic pieces of DNA that hybridize to the target DNA). As the mixture is heated and cooled, these primers hybridize to the target DNA, and the polymerase enzyme elongates these primers to produce a DNA profile. This process is then repeated, resulting in a process of exponential amplification, a process known as "molecular exorcism." Amplification is often described as a "molecular amplification" process, which amplifies DNA sequences.

Amplification is next. When low template DNA amplification may be utilized, 1000 of less in the amplification, then low template DNA amplification may be utilized. If quantification yields less than 20 pfu/ml (or more than 1000 pfu/ml in the amplification) concentration, the extracted DNA was not amplified.

During quantification, the amount of DNA in the sample is determined. The extracted DNA is then quantified. Quantification is next. In simple terms, the quantitative steps in the DNA detection process: extraction, quantification, amplification, and electrophoresis.

In the number of times the extracted DNA is amplified, the number of copies of DNA template DNA amplification differs only in the amount of DNA amplified and not in the number of DNA copies. High level of DNA sensitivity, with slight modifications to increase the sensitivity of the reaction process. High level of DNA sensitivity uses the same procedures as traditional "high copy" DNA amplification.

LOW TEMPLATE DNA

Supervising reading of a specific case.

In the case of forensic analysis, who are performing or assisted case detection of presumptive (and the forensic analysts) and the forensic analysts who are performing of cases involves the relationship between the results who are inconsistent or ambiguous of communications. It is the practice of many public forensic laboratories to keep case records of communications. The question then is how does the prosecutor demonstrate this due diligence? It is the question this encoded difference in tracking the results and obtaining results. The
Known sample.

The access in the absence of any expert opinion that the results generally match a
sense. Moreover, confederate DNA
least results, standing alone, shed no light on the guilt or
from a match that confederate forensic testing is not meaningful
of "non-relevant" to the analysis of a crime.

Many courts have held that DNA reports are "non-relevant" (under the Crawford

crime.

4) Whether the report accesses the defendant by directly linking him or her to the

3) Whether the report has been placed in favor of law enforcement.

2) Whether the document reflects objective facts at the time of their recording.

1) Whether the analysis that produced the record is independent of law enforcement.

Factors that may be relevant in determining whether a DNA report is "categorial"

focus shifted to whether or not the proposed evidence is "categorial". After Crawford, the
was whether there were "circumstantial guarantees of reliability." Before Crawford, the
issue in the evaluation of the ability to cross-examine testimony.
The Crawford decision triggered a significant shift in the analysis of

The United States Supreme Court's decision in Crawford v. Washington altered the

IS A DNA REPORT "TESTIMONIAL" IN A CRAWFORD ANALYSIS?

novel scientific procedure within the scope of the FRE rule. DNA

results as performed by the New York City Office of Chief Medical Examiner is not a

results and are therefore admissible as such. The Court also ruled that low

accepted as reliable in the forensic scientific community, consistently yields reliable

In February 2010, at the conclusion of a FRE hearing, where a total of seven forensic
A defendant's ability to suppress any analysis of evidence introduced at his hearing on the question of constitutionality in part because the constitutional clause imposes a burden on the victim pursuant to state law of the constitutional process. Clause is not applicable for the question of what hence the constitutional clause imposes a burden on the victim.

Regular course of equipment maintenance may well quash a nonetheless record in the

the defendant's offer (be introduced live Addamson) documents prepared in the

the chain or custody are so critical to requiring evidence that when testimony is introduced must

the chain of custody, this does not mean that everyone who has hands on the evidence

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For constitutional clause purposes, the United States Supreme Court has held, and it

routine objective of obtaining the results of forensic tests.

Laboratory techniques are not engaged in a lawful and reasonable function meaning a

the results of the forensic tests must appear in person as part of the prosecution's case.

Sixth Amendment right of confrontation was violated.

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and admitted, the police are not evidence of the conclusions of the forensic tests.

As the forensic analyst testify in person as to the results. The court considered the results

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the results of the forensic analyst's testimony as to the results. The court considered the results

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when the prosecution submitted results of forensic analysis though an affidavit and not by

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in Massachusetts v. Massachusetts, 129 S. Ct. 2275 (2009), the United States Supreme

MENDOZ-DIAZ
Familial searching is a means to attempt to identify and locate the biological children of the defendant or other known relatives. Whether or not familial searching is used in the case, the general principle is that the greater the number of individuals who have been eliminated as the source of a certain DNA profile, the more likely the remaining individuals are the source. However, when a partial match occurs between a forensic DNA profile and an offender DNA profile, a partial match occurs because there are overlapping partial matches. The number of these partial matches is determined by a statistical test, which provides a probability that the partial match was due to chance. When a partial match occurs, the hypothesis becomes whether it was due to chance or whether it was due to an allelic relationship between the offender and the victim. A partial match is excluded if the number of partial matches is less than a certain threshold, usually determined by statistical analysis. When a partial match occurs, the hypothesis becomes whether it was due to chance or whether it was due to an allelic relationship between the offender and the victim. A partial match is excluded if the number of partial matches is less than a certain threshold, usually determined by statistical analysis.
DATABANK ACCESS

Your honor, the principal witness my client is a computer database.

New York State is poised to join Colorado and California as states which have

formed an approved partial match policy. Should be handled.

recommendations about how these CODIS searches which result in partial matches (SWGDAM) to explore this phenomenon of partial matches and to make

In 2006, the FBI requested the Scientific Working Group on DNA Analysis Methods

database.

Opponents of Partial Matching and Familial Searching argue this creates invisible genetic

offenders as an investigative tool to investigate their closest familial relatives.

Familial Searching is a database rolling technique whereby a crime scene profile is

The general population versus a random match probability within the offender database.

These requests for database searches are aimed at challenging the statistical calculations

or the number of parts of offenders who match at 10 loci a search of an offender database for the number of parts of offenders who match at 9 loci share a higher number of shared loci, a question is whether a Court may order a State to run

release of full genetic DNA profiles of offenders who (due to genetics or fortuitousness)

Where it may be highly doubtful that a Court would have the authority to order the

An amazing DNA legal issue is the request by a defendant to access a State’s offender

"Your honor, the principal witness my client is a computer database."
entering his profile into local DNA database (denied).

Comparing defendant's known DNA profile to specific case evidence and to return from
court, December 9, 2009.

People v. Zelaya, 1, Mullin, Kings County Supreme Court, decided January 14, 2008.

Motion for Protective Order

Ordered.

Information that requested buccal swap would yield material evidence: motion to compel
have demonstrated probable cause to believe defendant committed a crime and clear
People v. Jones, 1, Dewey, Kings County Supreme Court, decided July 27, 2010 (People
Motion to Compel Defendant to Provide Exemplar for DNA Comparison

Scope of CPL 240.20

Not discoverable under CPL 240.20

People v. Sandy, 1, Cothran, Queens County Supreme Court, decided September 14, 2010

Complex Discovery Request

Not discoverable under CPL 240.20

People v. Hevelin, 1, Zimbler, New York County Supreme Court, decided July 6, 2010

Motion for In Camera Review

DNA recovered from a sweatshirt found near the cash box (is legally sufficient to
People v. Good, 1, Dewey, Kings County Supreme Court, decided September 16,

Reasonable doubt: conviction reversed: indictment dismissed)

Innocent inferences and is insufficient to sustain conviction of burglary beyond a

People v. Peterson, 7, AD3d 139 (2d Dep't June 22, 2010) (defendant's DNA on cigarette

DNA-based Prosecutions

CASE LAW REFERENCES
people v. martinez
2 ad3d 68 (1st dept 2008) (court upholds john doe dna
indictment).

john doe indictment

"i'm not in california."  
limited states v. fega, 2006 us dist lexis 5244 (4th cir takes
up reports from klein.

people v. freckelton
11 ny3d 38 (2008) (non-researching m/e's findings admissible).

"a well-recognized scientific test.

records are a comprehensive recollection of procedures employed and should the results of
people v. meekins
10 ny3d 16 (2008) (dna results are not testimonial; dna
results are a comprehensive recollection of procedures employed and should the results of
people v. palmer
65 ad3d 1389 (2nd dept 2009) (v's decedent, 14 n.y.3d 89, 2010).

people v. campbell
62 ad3d 35 (1st dept 2009) (court rejects defendant's
contradiction; claims refuting dna results dismissed).

people v. brown
13 n.y.3d 332 (2010) (records of a contract laboratory admissible
through the testimony of supervising employee).

sixth amendment: right of confrontation

18, 2010 (defendants' motion to dismiss on speedy trial grounds is granted).

people v. elison and hedgeway
2010 n.y. misc. lexis 3882, 2010 ny slip op

17, 2010 (defendants' motion to dismiss on speedy trial grounds is granted).

people v. simonds and rogers
1 world trade center, new york county supreme court, decided july 26, 2007.

people v. rojinson
47 ad3d 47 (2nd dept 2008) (v's decedent, 10 ny3d 69, 2008)

speedy trial
The President's DNA Initiative: includes information on forensic DNA and its uses. case

understanding of the National DNA database system,

DNA testing using the latest methods and technologies, and provide a basic
important role of DNA plays in forensic science. Introduce the steps involved in forensic
Recommendeved DNA Reserces:

Recommended DNA Resources:

labeled and authenticated biological evidence which could rule him out as the rapist.

though the test rendered the same results for scotological analysis and the defendant

Cullen v. Kuhlmann, 655 F.2d 20 (2d Cir. 1981) (a police laboratory test for the presence

procureures, and therefore integral to the decision function.

Waiver v. Monroe County, 87 F.R.D. 13 (2d Cir. 2009) (court holds that prosecutors

post conviction ruling)

Laboratory for administrative or investigatory role in submihibition DNA evidence for

detained because of his guilty plea.

exploratory research for obtaining post conviction DNA testing: this report unavailable to

People v. Byrdsong 33 AD 177 (2 Dep't Apr. 2006), 299 AD 2d 557 (2 Dep't Nov. 2002) (denied)

Post Conviction DNA Testing

Statistical analysis of DNA results

Conclusion: that DNA evidence should not have been admitted without substantial

June 8, 2010 (defendant's motion for a FRYE hearing denied).

People v. Abrams & Cherry, 7 Cal.3d, New York County Supreme Court, decided

People v. Tibble, 1 Dep't, Bronx County Supreme Court, decided June 3, 2010

People v. Negron, Supreme Court of the State of New York, Queens County, 2010 NY

Low Temple DNA
Studies of note

Project: Includes presentations, reports, summaries of important legislation, cases and
American Society of Law, Medicine and Ethics DNA Fingerprinting and Civil Liberties

DNA articles, and good links
Denver District Attorney's Office Resource Packet: Includes rulings, statistics, forensic

Studies, statistics and case law