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Belated Justice: Ohio’s Untested Sexual Assault Kits

David Miller
National Epidemic

Detroit's 10,000-plus untested rape kit problem in national spotlight

By LUCAS L. JOHNSON II
Associated Press
NASHVILLE, Tenn. (AP) - With possibly hundreds of thousands of rape kits untested across the country, a number of states are proposing legislation to address backlogs that in at least one case dates back nearly three decades.

In Memphis, Tenn., alone, there are more than 12,000 untested rape kits going back to the 1980s, according to the New York-based Rape Kit Action Project, which has been tracking the backlogs nationwide. In the entire state of Texas, there are about 16,000 untested kits collecting dust in police evidence rooms.

<table>
<thead>
<tr>
<th>Location Name</th>
<th>State</th>
<th>Backlog Size</th>
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<td>San Francisco</td>
<td>California</td>
<td>753</td>
<td>Testing in Progress</td>
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</tbody>
</table>
National Epidemic

How did we get to this point?

– Technology limited what could be tested
– Unknown suspect cases prior to CODIS
  • Technology has evolved → rapid results
  • Touch samples
– Case never enters investigative phase
– Vulnerable victims with special circumstances
– Hopelessly backlogged DNA laboratories
National Epidemic

• National campaign launched by RAINN—2001

• Justice Department estimates 221,000 kits untested—2004
  – Debbie Smith Act
  – Safer Act
Who is Anthony Sowell?

• Raised in East Cleveland
  – One of seven children
  – Surrounded by physical & sexual abuse

• Joined US Marine Corps in 1978
  – 7 year career
  – Received numerous recognitions during service
  – Honorably discharged, 1985
First Rape Conviction

• 1989 Attack
  – 3 month pregnant woman bound, gagged & raped
  – Charged with kidnapping, rape, and attempted rape
    • Plead guilty to attempted rape
    • Served 15 years in prison
    • Released in 2005
Unearthing a Serial Killer in 2009

• September 22
  – Sowell’s friend reports being hit, choked & raped

• October 29
  – Police arrive with search warrant
  – Sowell not home
  – Two bodies in living room

• October 31
  – Sowell arrested
Trial and Sentencing in 2011

- Indicted December 01, 2009 → 85 counts
- Trial June - July 2011
  - Pleaded not guilty by reason of insanity
- Convicted July 22
  - Found guilty: 82/85 charges
    - Jurors: survivor testimony crucial in determining verdict
- Sentenced August 30
  - Death penalty
Just Another Kit

- Cleveland Heights sexual assault → April 2009
- Victim reports
  - Kidnapped at bus stop in blue Dodge Neon
  - Drugged, beaten and raped for two days in duplex
  - Suspect went by ‘Tony’ & bragged he had been a Marine
- Kit never sent to laboratory
Opportunity Lost

- May 2011
  - After victim inquiry, Cleveland Heights submits 2009 rape kit to lab
  - CODIS hit to Sowell
- AG’s office kit taskforce ramps up
  - AG asks police to send all kits to lab
  - Renewed sense of urgency
Victim Timeline

- May 2007: Crystal Dozier
- June 2008: Leshanda Long
- August 2008: Tonia Carmichael
- October 2008: Amelda Hunter
- December 2008: Janice Webb
- April 2009: Diane Turner

Preventable deaths

- May 2007: Tishana Culver
- June 2008: Michelle Mason
- October 2008: Nancy Cobbs
- December 2008: Telacia Fortson
- April 2009: Kim Yvette Smith

Photo from Cleveland Plain Dealer
Project Scar

- Three rapes and a rape/homicide linked by DNA profile. Offenses span 1996 – 2010
- Victims’ reported suspect to have a scar on his face
- BCI met with Cleveland PD Detectives
  - Submit all unworked rape kits from assault within 1 mile radius of the linked rapes
  - 17 of the submitted kits had hits but not to the Project Scar profile
Project Scar

• 2012 Rape (Offender database sample finally collected)
• Cases hit to offender sample from Larry McGowan
• Several short prison sentences over 20 year period
• Prison from 2001-2010
• Sentenced to 11 years for the 2012 Rape
• Two hits as part of SAK Initiative (1998 and 2000)
• 100th indictment as part of the Cuyahoga County Prosecutor’s Office DNA Cold Case Task Force
• Trial pending

Photo from Cleveland Plain Dealer
Larry McGowan

Rapes/Homicide

- May 1996 Rape
- February 1997 Rape/Murder
- June 1998 Rape
- September 1998 Rape
- August 2000 Rape
- December 2010 Rape
- November 2012 Rape

In/Out Prison

1 yr 1994
1 yr 1996
1 yr 1997
1.5 yrs 1999
10 yrs 2000
2 yrs 2011
11 yrs 2013

How many more?

Larry McGowan in CODIS
Ohio’s Untested Kit Initiative

• Implementation
• Submission policy
• Triage
• Analytical approach
• CODIS uploads
• Results
• Challenges
Implementation

• Two goals
  – Prosecute rape cases
  – Grow the forensic database

• One caveat: Testing of old kits cannot impact current cases
  – Additional staff
  – Streamlined pathway through DNA analysis
  – Modified analytical approach for old kits
Kit Submission

• Any law enforcement agency in Ohio may submit old kits to BCI

• All kits submitted to BCI lab will be tested regardless of investigation status
Analytical Approach

• Minimal traditional screening

• Extraction
  – Manual organic differential
  – Differex differential (limited)

• Tecan Evo® 150 and 75
  – Manual extract tube-to-plate
  – Quantifiler® Duo set-up
  – Normalization
  – Identifiler® set-up
  – CE set-up

• Reference standards DNA IQ® automated extraction
DNA Overview

• Genome contains over 3 billion base pairs.
• Only a small percentage of DNA is different between individuals.
• Forensic analysis targets areas of DNA that are highly variable between individuals.
Polymerase Chain Reaction (PCR)

- Technique used in modern forensic analysis.
- Chemical Xeroxing process creating an exponentially growing number of copies of DNA.
- Allows forensic scientists to work with very limited amounts of DNA.
Short Tandem Repeats

• Repeating patterns of DNA.
  – GATA GATA GATA GATA GATA
  – GCGT GCGT GCGT GCGT GCGT GCGT

• Examine number of repeats by measuring length of DNA.
Electropherogram
Statistics

• Studies performed to determine how rare each allele is.
• Each allele is not rare in and of itself.
• Combination of alleles is extremely rare.
• D8
  – Allele 10 ~10% in Caucasian population
  – Allele 13 ~34% in Caucasian population
End Result

# Statistics Report

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<th>Locus</th>
<th>Allele</th>
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<th>BLK</th>
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</tbody>
</table>

**Inverse Probability for Population Groups**

- **CAU**: 1 in 277,800,000,000,000,000
- **BLK**: 1 in 8,564,000,000,000,000
- **SWH**: 1 in 3,269,000,000,000,000

**Code Legend**

- L: Locus data for the current population group is not available.
- M: Minimum allele frequency was used in the calculation.
- P: Alternate Formula Applied (2p)

December 13, 2014
Printed by David Miller
Staffing and Reports

To: Toledo Police Department
   Sergeant Keefe Snyder
   525 North Erie Street
   Toledo, OH 43604

BCI Laboratory Number: 14-21234

Date: April 22, 2014

Agency Case Number: 01234

Offense: SAK Testing Initiative

Subject(s): John Doe

Victim(s): Jane Doe

Submitted on March 07, 2014 by Sergeant Keefe Snyder:
1. Rape kit from Jane Doe

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tr>
<td>1</td>
<td>Rape kit – Jane Doe</td>
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<tr>
<td>1.1</td>
<td>Vaginal samples</td>
<td>Negative for acid phosphatase* activity</td>
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<tr>
<td></td>
<td></td>
<td>No male DNA profile obtained</td>
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<tr>
<td>1.2</td>
<td>Anal samples</td>
<td>Not found in kit</td>
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<tr>
<td>1.3</td>
<td>Oral samples</td>
<td>Not found in kit</td>
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<tr>
<td>1.3.1</td>
<td>Underwear</td>
<td>Male DNA profile obtained</td>
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<tr>
<td>1.4</td>
<td>1.4.1 Swab of comb</td>
<td>Foreign DNA detected – incomplete profile</td>
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<tr>
<td></td>
<td>1.4.2 Roots used as DNA standard</td>
<td>Female DNA detected – incomplete profile</td>
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</tbody>
</table>

*Acid phosphatase is a component of semen and other body fluids
CODIS Uploads

• All eligible profiles
  – Elimination standards requested in report
• Jane Doe kits have special eligibility challenges
  – Local and state only
Agency Response to Initiative

• As of December 15, 2014, 148 out of ~800 agencies submitted old kits
• Total number of kits submitted per agency ranges from 1 to 4,372
• Some larger agencies prioritizing submissions
  – Age of kit
  – Stranger vs. acquaintance
  – Suspects who are not currently incarcerated
Progress

• 9046 → Kits submitted

• 5743 → Kits fully tested and results given to law enforcement
  – 230 indictments and 30 convictions in Cuyahoga County

• 3303 → Kits still in testing process
CODIS Results

- As of December 16, 2014, 2169 specimens have hit
  - 1742 solved by hits to offender and suspect standard hits
  - 427 solved or linked by forensic hits
  - Numerous investigative information hits
Serial Offenders:

These are only the victims who had a kit collected

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<th>Serial cases</th>
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<th>3</th>
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<td>12</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>410</td>
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<td><strong>Offender Unknown</strong></td>
<td>66</td>
<td>7</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>80</td>
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<td><strong>Unique Sets</strong></td>
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<td>71</td>
<td>25</td>
<td>14</td>
<td>5</td>
<td>2</td>
<td>1</td>
<td>490</td>
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“John Doe” Indictments

• To aid law enforcement, unknown DNA profiles nearing the statute of limitations are being provided to prosecutor’s for “John Doe” indictments

• Cuyahoga County “John Doe #1” DNA profile indicted
  – 1993 minor victim accuses mom’s boyfriend of rape
  – Rape kit never tested
“John Doe” Indictments

• In 2012 kit was tested as part of our untested Kit initiative
  — Profile hits to a 1996 violent stranger rape
  — That case was also previously untested until being worked in 2012 as part of this testing initiative
  — Suspect subsequently identified as George Young
Forensic Hit Examples

• Anthony Moore
  – Indicted for 1993 rape, kidnapping, felonious assault & attempted murder
  – Arrested 3 days before statute of limitations expired
  – Criminal history of petty crimes and kidnapping

• Gary Matthews
  – Indicted for 1993 rape & kidnapping
  – Indictment 1 day before statute of limitations expired
  – Criminal history of drug and property crimes
Elias Acevado Sr.

- Sentenced to 3 years in prison in 2003 for sexual battery - failed to register as sex offender
- Raped his 5 ½ months pregnant sister-in-law in 1993
- Repeatedly raped his three daughters
- 30 y.o. Pamela Pemberton disappeared in 1994
- 18 y.o. and 5 months pregnant Christina Adkins disappeared in 1995
  - Acevado lead investigators to a manhole where Adkins body was for 18 years
BCI Testing

• Rape kit from Acevado’s daughter was worked as part of the SAK Initiative

• Results of the testing were key in the interviews with Acevado that lead to his confessions
Elias Acevedo Sr. says he's not a monster; will work with FBI behavioral analysts who research violent criminals*

Elias Acevedo Sr. to serve life in prison for two murders and rapes of four family members*

*Rachel Dissell – The Plain Dealer
Forensic Hit Examples

• Our next major serial offender?
  – 2008 offender hit to 2001 rape of 46 y/o woman, no synopsis or suspect
  – Convicted of rape and drug offenses, scheduled to be released in 2015
  – Same male has now hit to 1995 assault of 43 y/o woman by three unknown males
  – He was 15 in 1995 and offender sample wasn’t entered into CODIS until 2008
Challenges

• Old cases
  – AP activity loss for screening
  – Some sample degradation
  – Missing evidence
  – Information scarce
  – DNA from kit assembly and prior handling

• Agency follow up
  – Manpower
  – Victim location, notification, participation

• Statue of limitations
Challenges

• First case taken to trial based on DNA from untested rape kits
  – Semen identified on genital swabbing
  – The frequency of the DNA profile from the sperm fraction of the genital swabbing is 1 in 85,620,000,000,000,000,000 unrelated individuals
Challenges:
DNA is not always the answer

• First acquittal
  – Lack of evidence outside of kit
  – No photos from scene
  – Possibility of consensual sex
  – Victim unable to pick suspect out of lineup
  – Drug use/mental illness
Challenges:
Deceased Victims

• Since March, charges filed against 7 men based on DNA from 6 kits
  – 6 victims died sometime after rapes were reported
    • At least two cases have been stalled
    – Judges ruled information contained in the deceased victim's medical records could not be used at trial
  • *State v. Stahl* said that a medical examination after a rape was not technically part of the legal process.

“Rape victims deserve their day in court – even after they’ve died, if need be. The evidence that matters here is the DNA in the rape kit,” McGinty said.
Challenges:
 Victims Reluctant to Testify

• Quisi Bryan sentenced to death for 2000 shooting of Cleveland Police Office Wayne Leon plus 48 years for previous sexual assaults

• Rape kit profile hit to Quisi Bryan

• Victim in recent case was reluctant to testify
What is achieved by pursuing a case against a man already sentenced to death plus some 40-something years?" Judge Matia asked.
Challenges: Deceased Suspects

- Male profile linked to 5 rape cases from 1993-1997
- Suspect deceased
- First degree relative provided a reference sample
- Victim counselling services offered to unsuspecting family members of suspect
Urgency

- December 18, 2012
  - CODIS hit to Charles Steele
- March 6, 2013
  - Grand jury indictment
  - 20 years plus 1 day
  - OH statute → 20 years
  - Steele was linked to additional cases
- New BCI goal: CODIS uploads minimum 1 year prior to statute

Serial rapist Charles Steele sentenced to a minimum of 65 years in prison
Paradigm Shift?

• Before: Police investigate rape
  – Submit kit if case to go forward

• Future: Rape kit tested shortly after collection
  – Laboratory results assist police in decisions regarding investigative direction
Alleged rape of a developmentally delayed 25 year old female…
Paradigm Shift?

As the victim told each version of what had occurred, each time the version got a little more intense and more serious of a violation. The final version told by the victim was that she was forced to walk to an apartment located at where she was forced to have oral, vaginal and anal sex.

After several more versions of what truly occurred on the date in question, final stated that she had lied about the incident and that her statements were false. She was reminded of the severity of the allegations she was making and was advised it was in her best interest to refrain from this type of incident re-occurring in the future. Please show this case closed, Unfounded.
Had the kit been sent to a lab and tested, semen would have been found.

Had the DNA profile from the semen been searched against the CODIS database, it would have hit to a violent offender.
Paradigm Shift?

Technology has changed the perspective

**Before:**
Kit testing is slow and resource-intensive
Evaluate complaint, submit kit if case will be prosecuted

**Now:**
Kit testing is fast and becoming less and less costly.
For police agencies, it is free.
Get kit tested, use that information to assist the investigation.
Pending Legislation

SB 316

**Untested kits:** agencies have one year from effective date to submit kit to lab IF investigation determines that a crime may have been committed.

**New cases:** agencies have 30 days to submit kit to lab IF investigation determines that a crime may have been committed.

**Lab:** test them asap—when is that?
Pending Legislation

An analysis of SB 316:

Good: calls attention to issue and puts agencies on notice

Bad: kit submission contingent on investigation (backwards)

Bad: no expectations set for crime labs

Wish list: all kits get tested
Acknowledgements

Ohio Attorney General Mike DeWine
Tom Stickrath, BCI Superintendent
Managers and staff of the BCI laboratories
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