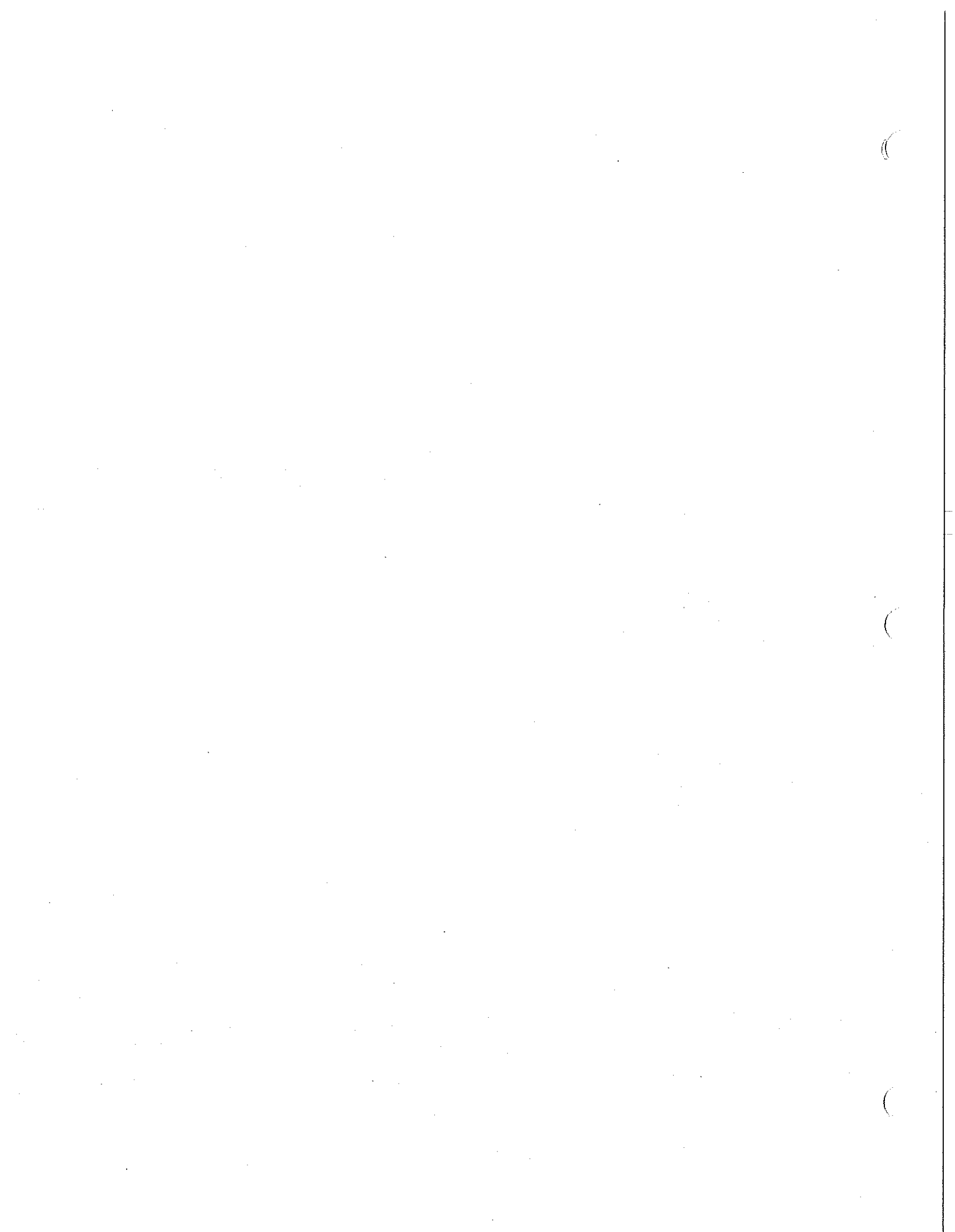


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## Many DNA matches aren't acted on

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By Richard Willing, USA TODAY

In a March 2003 speech arguing for \$1 billion in new spending on DNA-based crime fighting, then-attorney general John Ashcroft singled out the FBI's DNA database for its many successes.

In Virginia, for example, he said authorities "have been able to solve 90 homicides and 196 non-homicide sexual assaults" by matching the DNA left at crime scenes to the DNA of prior offenders.

What Ashcroft didn't explain was that a DNA match — a crime "solved" by the FBI's database — does not mean that an arrest was made, that a criminal was prosecuted or even that detectives considered a case closed. Just how many DNA matches lead to an arrest isn't known; no government agency keeps track.

But a USA TODAY investigation found almost three dozen cases during the past five years — including a rape in Virginia — in which investigators failed to pursue potential suspects whose DNA matched evidence found at crime scenes.

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DNA matches that could have closed cases weren't pursued because of basic police foul-ups, such as overlooking a telephone message reporting the match. Backlogs of unsolved "cold cases" that threaten to overwhelm some big-city police departments caused matches to be ignored, the newspaper found. In some jurisdictions — Richmond, Va., Cincinnati, and DeKalb County, Ga. — police offered no explanations for why matches were not pursued.

The suspects in two such cases, one a rape and the other the attempted sexual assault of a child, were later charged with committing subsequent sex crimes that might have been prevented had the first DNA match been pursued.

In one of those cases, William Orlando Smith followed a 13-year-old girl home from a convenience store, dragged her into a wooded area beside a middle school and raped her — months after Virginia authorities matched Smith's DNA to a previously unsolved rape, and Richmond police failed to take action. Had the first match been pursued in 2002, Smith might have been in jail in October 2003 and unable to commit the second rape.

Smith was caught and convicted for raping the 13-year-old — by a DNA database match that police in Chesterfield

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County, Va., immediately pursued.

The FBI calls the DNA database CODIS, for Combined DNA Index System. It has cost the government hundreds of millions of dollars to build and has proved adept at making matches in "cold cases" in which police had no leads and little hope of finding a suspect. Its dozens of successes include clearing innocent suspects, bringing rapists to justice 30 years after their offenses, and linking burglars to murders, rapes and other violent crimes in which they never were suspects.

USA TODAY reviewed hundreds of pages of court documents and local media reports and interviewed police, prosecutors, defense attorneys and lab officials to look for cases in which matches were made but police departments were slow to react.

Among the cases the newspaper found:

- In Oakland, in June 2004, the DNA of convicted child molester Kalonji Lee matched DNA from an attempted sexual assault of a 10-year-old Oakland girl the previous January. Police did not contact Lee until after he had molested another Oakland 10-year-old in December 2004, deputy chief Howard Jordan confirms. Lee was caught for the second assault after the victim's parents spotted his picture on California's "Megan's Law" website and alerted detectives.

- In September 2004, the DNA of career felon Gary Box matched DNA left at a December 2001 rape and abduction that Cincinnati police had been unable to solve. At the time of the match, Box was serving a prison sentence for assault. But police did not contact him until May 2005, after he had been released from prison and had returned to Cincinnati. Court files show that police acted after being alerted by Box's victim, who encountered him by chance while walking in a local park.

- In Georgia in March 2003, the DNA of convicted burglar and sex offender Floyd "Tony" Arnold matched DNA left at separate rapes in Fulton and DeKalb Counties. The rapes had taken place in 1993 and 1995. But neither Fulton nor DeKalb authorities contacted Arnold, according to both police departments, even though at the time of the matches he was in Georgia's prison system serving a five-year sentence for cruelty to children. The unpursued matches came to light last December, when Arnold was matched through a third DNA hit to a 1981 Cobb County rape for which another man had been wrongly convicted. That man, Robert Clark, Jr., had served almost 24 years in prison.

- In 2002, the Oregon state police crime lab used DNA to match 26 men to unsolved Portland burglaries. The names were reported to Portland police, department spokesman Detective Paul Dolbey acknowledges. None was followed until one of the 26 suspects was matched again to an additional burglary, and lab technicians pointed out the earlier matches.

#### Tip of the iceberg

The unpursued matches had this in common: All were recorded as "hits" by the CODIS system and added to the list of CODIS-aided investigations that the FBI makes public. Through September, the FBI counted 39,291 such matches since 1990.

No one is certain how many of those matches resulted in arrests or convictions, however.

In part that's because no law or regulation requires crime labs, the FBI or local law enforcement to follow through and determine what becomes of DNA matches after the CODIS system reports them to police.

Crime lab officials believe hundreds more matches have not been pursued by authorities. They say those matches might become evident only after a perpetrator is caught for a second crime.

"How many (CODIS matches) don't get pursued and we never find out about it? That's the part of the iceberg that's under water," says Roger Kahn, forensic biologist for the Harris County, Texas, medical examiner's office, and a former president of the American Society of Crime Laboratory Directors. "I've got to believe it's a pretty big iceberg."

Early on, the developers of CODIS realized that requiring labs to monitor what police do with the matches would be burdensome. The International Association of Chiefs of Police estimates that there are about 18,000 different local, state and federal law enforcement agencies in the U.S.

"That would have meant tracking information through hundreds of different local authorities and judicial systems, some of which might take years to resolve a case (based on a DNA match)," says John Hicks, director of the FBI's laboratory division when CODIS was developed in the early 1990s. "It didn't seem feasible."

Instead, the bureau decided to measure success by "investigations aided." These include cases in which DNA from a crime scene matches a potential suspect, as well as cases in which DNA matches one unsolved crime to another. Lab technicians, not detectives, determine whether a match has "aided" an investigation.

The FBI says it is unfair to hold CODIS accountable for what happens to the "investigative leads" after they are furnished to investigators.

Labs that make CODIS matches send written reports and sometimes follow up with telephone calls and e-mails.

CODIS "was not designed ... to answer" whether matches actually solve crimes through arrests and prosecutions, says Thomas Callaghan, the leader of the FBI's CODIS unit. "What we can do is provide information to investigators that can lead to an arrest or a prosecution."

Today, 16 years after CODIS began as a pilot project in the FBI laboratory, the lack of data on how many matches are pursued makes assessing the system impossible.

CODIS "is a black box," says Frederick Bieber, a geneticist at Brigham and Women's Hospital in Boston who wrote about unpursued DNA matches in *The Journal of Law, Medicine and Ethics* this year. "You can talk about DNA matches all you want, but the reality is no one really knows what's out there."

#### **Father: 'Worth all the millions'**

That uncertainty, however, hasn't stopped public officials from boasting of its successes or securing millions of taxpayer dollars to grow the system.

The original mission statement for CODIS, still carried on the FBI's website, describes it as "an effective tool for solving violent crime." CODIS' "underlying concept," then-FBI lab director Dwight Adams told a U.S. Senate hearing in May 2002, was to "solve crimes for which there are no suspects."

CODIS prospered. Both the Clinton administration in the 1990s and the Bush administration in this decade backed federal grants that expanded lab capacity, DNA research and testing designed to expand the number of offenders, and unsolved cases whose DNA profiles are included in CODIS.

Since fiscal year 2000, the Justice Department has made about \$286 million in grants that have directly or indirectly benefited the system. Bieber, the Boston geneticist who has studied unpursued matches, estimates that state and federal governments have spent at least \$1 billion building the system.

And CODIS has grown. In October 1998, when the FBI ended its pilot project and made CODIS a permanent program, the system held DNA profiles of about 1 million convicted offenders, according to bureau records. The database now includes more than 3.6 million samples, most added in the past five years. The number of "investigations aided" is growing with the database. In March 2001, CODIS had made about 2,200 such matches. The number doubled in the next year, quadrupled by April 2004, and has more than doubled again since then, to 39,291 such matches.

When pursued, such matches are "overwhelming, flabbergasting," says David Scoville, a Canandaigua, N.Y., man whose 28-year-old daughter Patty was raped and murdered on a Stowe, Vt., bike path in October 1991. More than 13 years later, a DNA profile from the crime scene matched Howard Godfrey, a 58-year-old Vermont man who had been forced to give a DNA sample after being convicted of assault. Godfrey is awaiting trial for the Scoville murder.

"Finding the man the authorities believe was Patty's killer was a huge relief," Scoville says. "Whether that makes it worth all the millions of dollars (spent building CODIS), I don't know. But it was to us."

### **'We dropped the ball'**

Why do investigators fail to pursue a DNA match? In some cases, ineptitude is to blame.

In Fulton County, Ga., officers failed to retrieve a telephone message from the CODIS lab reporting the match that might have led to the arrest of sex offender Arnold, says Lyn Vaughn, spokeswoman for prosecutor Paul Howard, who investigated the foul-up. Ted Staples, DNA section chief at the Georgia Bureau of Investigation crime lab, says a written report also was sent but that no action was taken.

In Oakland, an overworked cold case investigator received the information that child molester Lee had been matched to an attempted sex assault but failed to give it priority, says Jordan, the deputy chief.

"He had over 100 cases (to work on), but that's not an excuse," Jordan says. "We dropped the ball."

In other instances, police were not prepared to handle the wealth of leads that CODIS sometimes supplies.

In Portland, Ore., police had no system for accounting for or tracking unsolved property crimes cases that were suddenly revived by DNA matches. Reports describing DNA matches in two dozen burglary cases simply "sat on a sergeant's desk," Dolbey says.

There also is evidence, however, that CODIS is making some matches that investigators can't use:

In Richmond this year, a police department review of its first 500 CODIS cases found more than a dozen instances in which crime scene evidence was matched to a person who was clearly not a suspect, such as the owner of a home that was robbed.

Last year, an internal study by the Virginia state crime lab found that 424 of the state's first 3,000 DNA matches were not prosecuted because victims could not be found or were reluctant to testify or the evidence submitted for testing did not solve the crime. An example: a cigarette butt from a stolen car that matched the car's owner.

Other DNA matches were not pursued because the time limit for filing prosecutions had expired.

In Oakland, in at least 20% of the rape cases in which CODIS has identified a potential suspect, the victim had previously told police that she would not press charges, says Rockne Harmon, an assistant prosecutor who specializes in DNA cases.

The evidence was analyzed anyway, Harmon says, because crime labs received state and federal funding that paid for the analysis. Police and prosecutors were not consulted, Harmon says.

"All the money (to build CODIS) has gone to the lab side," Harmon says. "Nobody ever asked the cops what they wanted or how (CODIS matches) would affect what they do."

Unpursued matches, he says, are a "shame" but not a "surprise."

### **Who should be accountable?**

What can be done to improve accountability? Callaghan, the FBI's CODIS leader, says that tracking the results of DNA matches would present a "significant task" that the FBI is not geared to undertake. He says that accounting for CODIS matches should be the responsibility of local police and prosecutors who are given match information.

Some are taking action. In Portland, Fulton County, Ga., and Oakland, all jurisdictions in which authorities overlooked DNA matches, police have begun tracking CODIS leads that were reported to detectives.

In Georgia last December, state crime lab officials sent reminders to every police chief and prosecutor whose jurisdiction had received a match report since Georgia's first CODIS hit, in 1995. Previously, CODIS matches had been reported only to detectives.

But absent a law or other requirement, it is uncertain that many other departments will follow their example.

In 2005, Virginia CODIS officials found more than a dozen instances in which local detectives and prosecutors had lost track of DNA matches that had been reported to their departments.

This year, the California District Attorneys Association asked its members to account for all of the state's 1,509 DNA matches by searching police records and court files. Through August, fewer than half had been located.

In other nations with DNA databases, accountability isn't optional.

In the United Kingdom, which has had a national database since 1995, police are required to tell the Home Office whether matches actually prove useful to resolving cases.

From 1999 through 2005, about 43% of the U.K.'s matches were relevant to criminal investigations.

Beginning in November 2006, police in Canada will be required to report DNA match outcomes. The Canadian database runs on CODIS software donated by the FBI.

Some state CODIS officials think the laboratories themselves should take the lead in following up DNA matches.

Without better data on whether the matches really solve crimes, CODIS funding is vulnerable to cost cutting, says Michael Bourke, CODIS administrator in Connecticut's state police crime lab.

"At some point, the federal government is going to want some measure other than raw hits of what the real societal impact is," Bourke says.

Because of prodding by Bourke and other officials, the Connecticut chief state's attorney's office is attempting to account for 335 CODIS matches the state has made, dating back to 1995.

A report is expected before the end of the year.

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