

John Doe, D1S7, D2S44, D5S110, D10S28, D17S79, Charged with Rape



*An Interview with Norman Gahn
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In September 1999, prosecutors in Milwaukee County, Wisconsin, charged a man's genetic profile with rape without stating his name—just as the statute of limitations was running out on the case.

“John Doe, unknown male with matching DNA at genetic locations D1S7, D2S44, D5S110, D10S28 and D17S79.” In September 1999, prosecutors in Milwaukee County, Wisconsin, charged a man's genetic profile with rape without stating his name. Recently, we spoke to Norman Gahn, the Assistant District Attorney for Milwaukee County, Wisconsin, regarding this case and the role that DNA typing has played in rape investigations in Wisconsin. Gahn is recognized nationally for his understanding of DNA evidence and its use in court.

Q: Could you provide some background on the use of DNA typing in investigations in Wisconsin?

Mr. Gahn: The first time that we used DNA typing in an investigation in Milwaukee County, the DNA evidence was critical to the prosecution's case. In 1987–1988, a number of elderly women were brutally murdered, and the MO (modus operandi) of the perpetrator was very similar for each case. In one attack, foreign blood (i.e., not belonging to the victim) was left at the crime scene. The Wisconsin State Crime Laboratory determined that the ABO and enzyme markers were consistent with the suspect. Recognizing that these markers alone would not constitute proof beyond a reasonable doubt to link the suspect to the crime scene, samples from the foreign blood were sent to the Memorial Blood Center in Minneapolis, Minnesota, for Gamma marker and Kappa marker testing; to Forensic Science Associates in California for DQ α testing; and to Cellmark Diagnostics in Maryland for restriction fragment length polymorphism (RFLP) testing. All laboratories reported matches between the suspect's and the foreign blood from the crime scene, giving the prosecution sufficient evidence to charge the suspect. With DNA testing being in its infancy then, lengthy admissibility hearings were held before trial. The hearings determined that the DNA evidence was admissible. Due to the numerous genetic matches in the case, the jury found the defendant guilty of the murder where the foreign blood was found and also convicted him of three other murders due to the remarkable similarities in the manner and cause of death of all of the victims. Convictions would not have been obtained without the DNA evidence.

The next two times that DNA typing was used in Wisconsin, we were able to identify suspects in serial rape cases. In 1990 a Milwaukee Police Detective retrieved from the police evidence property room four old, unsolved rape cases that he believed were committed by one person. The detective had a suspect in mind but no evidence to arrest him. These four rape cases occurred over a two-month period in 1986, and all involved home invasions of four elderly women. In each case, the perpetrator, wearing gloves and a ski mask, broke into the homes and sexually assaulted the women. None of the victims could identify her assailant. Although the evidence from the crime scenes sat in the police property room for five years, the decision was made to send semen stains from each scene to Cellmark Diagnostics for RFLP testing. Cellmark declared a five-probe match between the suspect and all four crime scenes. Based upon the DNA evidence, the jury convicted the defendant of numerous counts of sexual assault of the four women. Also during 1990, thirteen women were attacked in their cars at gunpoint; forced to the passenger seat; driven to a remote location by the assailant; had their faces covered with an item of clothing; and then brutally raped. Upon developing a suspect, all thirteen cases were sent to the U.S. Federal Bureau of Investigation Laboratory in Washington, D.C., for RFLP analysis. A six-probe RFLP match was declared between the suspect and seven of the thirteen cases. Due to an insufficient amount of DNA for RFLP testing, Roche Biomedical developed a PCR-based DQ α , PolyMarker, D1S80 and HUMTH01 profile for an

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eight case that also matched the suspect. Although none of the victims could identify her assailant, the jury found the DNA evidence to be sufficient to convict the defendant of numerous counts of sexual assault of the eight victims.

Since that time, DNA testing has been used routinely in the investigation of homicides and rapes in Wisconsin.

Q: Milwaukee County has received a great deal of press for issuing a warrant for “John Doe, unknown male” with DNA profile “D1S7, D2S44, D5S110, D10S28 and D17S79.” Could you provide some background on that case?

Mr. Gahn: In three separate attacks in 1993, women walking alone on the street in Milwaukee were attacked at knifepoint by an individual and brutally raped. Based on the perpetrator’s MO, authorities were convinced that the same individual was the perpetrator in all three cases. The crime evidence (swabs) from all of the cases was taken to the Wisconsin State Crime Laboratory, and the results of the DNA typing were consistent with just one man committing all three rapes. By the time the testing was done, however, time was running out on the statute of limitations. (In Wisconsin, the statute of limitations is 6 years for rape.)

Q: How did you decide to issue a warrant for John Doe in this case and what motivated you to take this unusual step?

Mr. Gahn: At a meeting of the National Institute for Justice in May of 1999 in New Mexico, a group from Wisconsin was presenting on “cold hits” and databasing in Wisconsin. Due to a Milwaukee Police detective’s discussions with a detective from Kansas, a suggestion was made to issue warrants in cases based on a genetic profile.

Upon returning to Wisconsin, I examined Wisconsin’s statute on warrants. The statute mandates that the warrant name the person

to be arrested *or*, if the person’s name is not known, designate the person to be arrested by any description by which the person can be identified with reasonable certainty. Since I believe that a five-probe RFLP match provides proof beyond a reasonable doubt about the identity of the perpetrator, it certainly provides the “reasonable certainty” requirement for the warrant. People can change their names, dates of birth and even their appearance, but they cannot change their genetic codes.

Actually, we were surprised at the publicity over this case. Our intent in issuing this type of warrant is to preserve the case for the victim. I feel fairly confident that we will find the perpetrator, possibly through our state databasing efforts or through searches of the national database. My hope is that when he is identified, this “John Doe” genetic code warrant will have preserved the case beyond the six-year statute of limitations.

Q: How will this warrant affect the legal process?

Mr Gahn: The legal challenge will be over whether this kind of identification on a warrant is allowed and whether the statute of limitations was, in fact, preserved. However, I believe that the Wisconsin statute on warrants is robust enough to use this form of identification.

Q: What are your expectations for the role of DNA typing in the future?

Mr Gahn: Wisconsin’s database is currently comprised of convicted sex offenders only. Beginning in January 2000, all convicted felons will be entered into the databank. Although we have had tremendous success with “cold hits” thus far, I suspect that the inclusion of all convicted felons in the databank will produce even greater successes. I believe that even today the true potential of DNA typing and databanking is unrealized. As the convicted offender databanks continue to grow, and more old, unsolved cases get loaded into the case index of each state, the resulting matches will cause the public to see the value, and hopefully encourage state legislators to take notice and properly fund the crime laboratories.

Q: What is your goal for DNA typing in the future?

Mr Gahn: I would like to see our state crime laboratories have the ability to analyze

every old, unsolved sexual assault and homicide case in the state and to enter foreign profiles into the case index. At the same time, it would be ideal if the crime laboratory had the resources to begin analysis of new cases within 24 hours of a crime and get those foreign profiles immediately entered into the case index. This is really a resource issue. It is a sad commentary when we have the technology that can identify an assailant, but we do not have the resources to do it.

The trend is moving toward having people give DNA samples when they are arrested on suspicion of committing a crime. This will not only help identify perpetrators, but it will quickly clear the innocent, much faster than ever before.

REFERENCE

1. Doege, D. (1999) *Milwaukee Journal Sentinel*, 11/10/1999.



The Milwaukee County Courthouse, Milwaukee, Wisconsin.

Editor’s note: In November 1999, as the statute of limitations on a 1993 case was nearing expiration, Milwaukee County prosecutors issued their second DNA-based arrest warrant for a child rapist whose identity is known only by DNA evidence. Gahn said, “we’ll continue to file these [warrants] this way until the [Wisconsin] legislature changes the statute of limitations on sexual assaults involving DNA evidence (1).” In November, the Wisconsin Assembly passed a bill to repeal the six-year statute of limitations on first- and second-degree sexual assault cases where fingerprints or DNA evidence are found.