

The PROSECUTOR

Using DNA To Solve High-Volume Property Crimes In Denver: Saving Money, Lowering Crime Rates and Making Denver Safer

BY SIMON ASHIKHMIN, SUSAN BERDINE, GREGGORY LABERGE, MITCHELL MORRISSEY AND DAWN WEBER

Editor's Note: NDAA has supported this program since its inception with NIJ and promoted the collection of DNA from property crimes in NDAA's regional DNA trainings. Hopefully, through this article, other jurisdictions will implement the practice of collecting DNA in property crimes with similar success in reducing crime.

FROM OCTOBER 2005 THROUGH SEPTEMBER 2007, Denver participated in a five-site grant project¹ funded by the National Institute of Justice (“the burglary project”² or simply “the project”).³ The aim of the burglary project was to explore whether DNA was a cost-effective tool for investigating and prosecuting high-volume property crimes such as home and commercial burglaries and car thefts and car break-ins. The burglary project was a great success. In the two years of the project, the number of burglaries was reduced by 26 percent.

Historically, DNA had been used by law enforcement only for violent crimes. However, the overwhelming conclusion reached in Denver as a result of the burglary project was that using DNA to investigate and prosecute high-volume property crimes saved money, lowered crime rates (making Denver safer), and removed a substantial number of habitual criminals from the community.

This article will address:

- *the effectiveness* of the burglary project (how many burglars were caught through DNA; how much crime was prevented by catching these burglars; how long their prison sentences were);
- *the cost-efficiency* of using DNA to catch habitual burglars (how much money was saved by using DNA to catch habitual burglars); and
- *the best practices* developed during the burglary project (how best to investigate high-volume property cases with biological evi-



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dence; how to maximize outcomes through a triangle of collaboration between the police department, the crime lab and the district attorney's office).

The success of the burglary project is best shown by Figures 1 & 2 below, which show that the systematic use of DNA evidence in investigating and prosecuting burglaries resulted in a pronounced drop in property crimes compared to similar metropolitan areas in the United States during the target period.

THE NUTS & BOLTS OF THE BURGLARY PROJECT

How DNA matches were obtained

Biological evidence such as blood, saliva, skin cells, hair and urine were collected from crime scenes. This evidence (“scene DNA”) was analyzed by DNA experts within the Denver Police Department Crime Lab (“the lab”). The experts developed a DNA profile which was then uploaded into CODIS, the combined DNA index system, a nation-wide database maintained by the FBI.⁴ A DNA “hit” or “match” occurred when the scene DNA matched a profile in CODIS. A match could tie the scene

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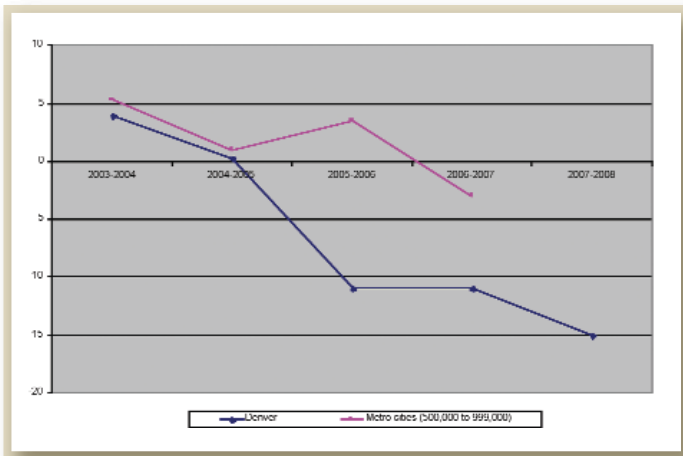


FIGURE 1: Percentage Decrease in Burglary Rate in Denver During Burglary Project and Continuing into 2008 (no data for 2007-2008 is available for Metro cities from the FBI)

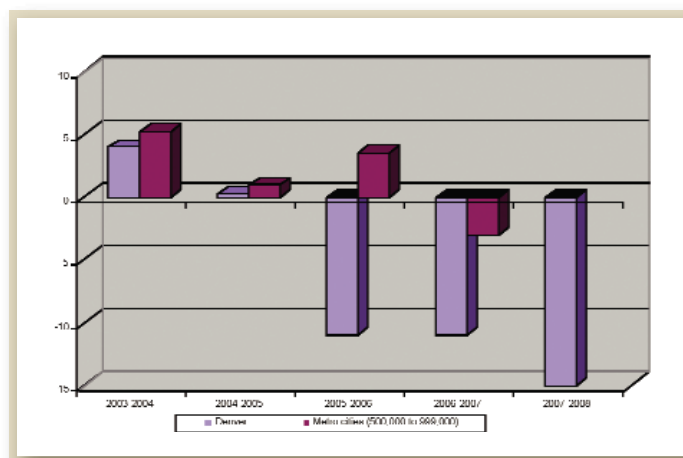


FIGURE 2: Percentage Decrease in Burglary Rate in Denver During Burglary Project and Continuing into 2008 (no data for 2007-2008 is available for Metro cities from the FBI)

DNA either to a known, named offender (an “offender hit”) or could link to a profile of an unidentified offender from another unsolved case (a “case-to-case hit”).

In the event of an offender hit, the case was immediately reopened for investigation and, often, an arrest was made on the strength of the hit. Case-to-case hits often result in “John Doe” filings. A “John Doe” filing is an actual case filing (not just a warrant) made to keep Colorado’s three-year statute of limitations from running out on property crimes, including burglary. A John Doe DNA filing simply inserts the perpetrator’s DNA profile in the place in the charging document where a known defendant’s name would ordinarily appear. Because the statute of limitations was preserved, these cases can be re-activated at any time in the future when an offender hit reveals the identity of the perpetrator. When a DNA match reveals the identity of the offender, the District Attorney’s Office simply amends the charging document to reflect the offender’s name in the place where his or her DNA profile used to be. This change is referred to as “converting” the case from a John Doe filing to a known-defendant filing.

The number of cases included in the project & the number of CODIS hits produced by those cases

During the burglary project period between October 2005 and through September 2007, more than 12,000 burglaries were committed in the City and County of Denver. The monthly average number of burglaries reported in 2006 and 2007 was about 500, with six percent (or 30 out of 500) cases having biological evidence.⁵ Six hundred DNA profiles were obtained from scene evidence and were uploaded to CODIS, producing 245 CODIS hits. In other words, 41 percent of profiles uploaded to CODIS produced hits.

There were 167 hits to identified offenders in CODIS. The remaining hits were case-to-case hits (in which matching DNA profiles were collected from independent crime scenes, but the identity of that offender remained unknown).

Of the 245 CODIS hits, there were 234 cases filed. One hundred eighty-nine of these hits occurred in cases in which the sole means of identifying the perpetrator was through his or her DNA profile. Forty-five other cases were filed in which DNA evidence was collected at the scene, but was in addition to other identifying information that revealed the identity of the offender. For example, in one case the suspect was caught leaving a burglarized home. His identity was thus established by the arresting officer. However, in addition, police collected the burglar’s blood from the sharp edge of a pried-open jewelry box inside the home. This case therefore featured a conventional means of identifying the criminal in addition to DNA evidence tying him to the inside of the residence.

Background information about Denver and the types of offenses that were tracked in the burglary project

Denver has a population of approximately 560,000, consisting of about 240,000 households. The Denver Police Department is comprised of approximately 1,500 sworn officers. The Denver District Attorney’s Office has 81 trial deputies. Denver has a wide range of business and residential neighborhoods, including high-density urban neighborhoods, such as the Capitol Hill area, as well as old, established neighborhoods interspersed with businesses, such as the Highlands area in Northwest Denver and the Cherry Creek area. It also has high-density, mixed-use commercial and residential areas, such as the Lower Downtown (or “LoDo”) area. Other areas, such as the Hilltop area, are almost exclusively residential.

The key personnel in the burglary project

The deputy district attorney. The deputy district attorney had numerous roles in the burglary project. She made personal contact with the sergeant of the property crimes unit in each of Denver’s six police districts, providing training and generally establishing a single point of contact between the police department and the District Attorney’s Office on DNA-related matters. The deputy district attorney fielded phone calls from detectives across Denver, advising the detectives on issues ranging from evidence collection to how to “convert” a case from a John Doe case to a known-defendant case. The deputy district attorney also carried a full caseload consisting of offenses with DNA evidence. Additionally, the deputy district attorney served as a liaison with the analysts in the crime lab, again serving as a convenient point

of contact for communication between the District Attorney's Office and the lab.

Study coordinator. The study coordinator was a single point of contact for the National Institute of Justice as well as the Urban Institute. The coordinator collected data as the project progressed and produced analytical and statistical monthly reports. These reports helped the deputy district attorney to identify trouble spots and weak links in the project implementation by police district across Denver and to provide additional training to officers and detectives. The graphs contained in this article were created by the study coordinator, based on the compiled and analyzed project data.

Project DNA analyst. The project DNA analyst was the grant-funded DNA analyst who focused exclusively on screening possible biological evidence collected from project cases and developing DNA profiles from that evidence (where possible) and uploading CODIS DNA profiles and following up on database hits.

Local CODIS manager. In addition to being a full-time forensic DNA analyst, the local CODIS manager is responsible for the accuracy, security and integrity of all DNA profiles entered into CODIS. The CODIS administrator uploads new forensic profiles to the state and national CODIS databases each week, evaluates all candidate forensic and offender hits, and notifies investigators of any hits and investigative leads derived through CODIS.

Laboratory Director. The Denver Police Department Lab director oversaw all the DNA analysis done in connection with the project, including oversight of the grant-funded DNA analyst position dedicated solely to analyzing evidence in project cases. The Denver Police Department Crime Lab is in a unique position because it is an in-house lab focused solely on evidence generated in cases investigated by the Denver Police Department. It is not a state-wide lab or a lab serving multiple law enforcement agencies throughout multiple jurisdictions. The working relationship between the lab, the Denver Police Department and the Denver District Attorney's Office remained close and collegial throughout the project. Indeed, the lab director was a crucial link between the Denver Police Department and the District Attorney's Office and played an active role in the success of the burglary project.

Street officers and detectives. In Denver, patrol officers respond to 911 calls and prepare field reports such as offense reports and individual, narrative statements. They also collect evidence at the scene where appropriate (such as a bloody t-shirt left behind by a burglar who cut himself by smashing a window at the point of entry). The officers then place the evidence in property and turn over their case documentation to detectives in the property crimes unit. The detectives then make sure that all relevant statements have been obtained and all relevant evidence collected. For the burglary project, the detectives served an important function by making sure suitable biological evidence was collected and submitted to the lab for DNA testing. The detective was also responsible for doing the additional documentation when a John Doe filing was "converted" to a named-defendant filing after a CODIS hit was made.

Crime scene investigators. Crime scene investigators were trained lab personnel who would respond to scenes to collect DNA evidence (such as blood swabs from the dashboard of a car that had

been broken into). These investigators were trained to recover the types of biological evidence with the highest likelihood of producing a DNA profile, such as blood (to be discussed in greater detail below).

OUTCOMES OF THE BURGLARY PROJECT: THE EFFECTIVENESS OF THE BURGLARY PROJECT

Cases with DNA evidence were filed at significantly higher rates than cases that did not have DNA

In Denver, when a detective determines that a particular case has one or more active leads, he or she will investigate those leads. If the leads are productive, the detective will complete the case filing. The detective then goes to the district attorney's intake office in police headquarters to present the case to a deputy district attorney.⁶ The detective makes an oral presentation of the case to the intake deputy and the intake deputy then decides whether to accept the case for filing or to reject it.

Figure 3 below shows that burglary project cases containing DNA evidence were eight times more likely to be presented by a police detective and accepted for filing by the District Attorney's Office than were cases that did not have DNA evidence.

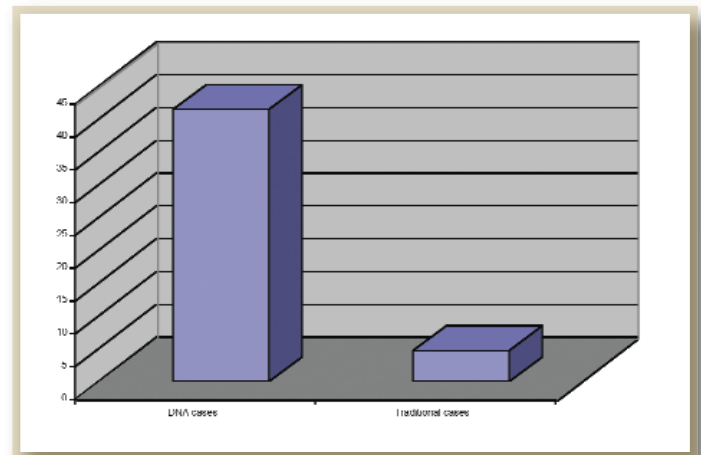


FIGURE 3: Court filing rate for DNA Vs. Non-DNA cases (by percentage)

Cases with DNA evidence resulted in pleas to the top charge far more frequently than cases in which there was no DNA evidence

Figure 4 shows that the presence of DNA resulted in very favorable dispositions for the prosecution to a far greater extent than property crimes in which the prosecution did not have the benefit of DNA.

An additional insight into Figure 4 is that many of the criminals caught by DNA evidence were career criminals with lengthy criminal histories and with multiple cases pending at the time of disposition of the DNA case. In addition to having stronger cases because of the DNA, these factors—criminal history, plus more than one case pending—gave deputy district attorneys greater leverage in getting a plea to the top charge. Figure 4 also reflects District Attorney Mitchell Morrissey's policy—put in place at the

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Using DNA

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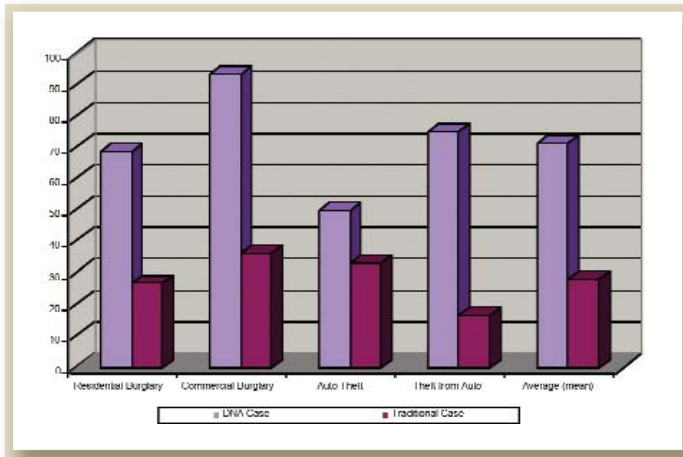


FIGURE 4: Percentage of Cases in Which Defendant Pled to Top Charge in DNA Vs. Non-DNA Cases

beginning of the project—that habitual-criminal defendants would be required to plead to the top charge or else face the filing of habitual criminal charges.

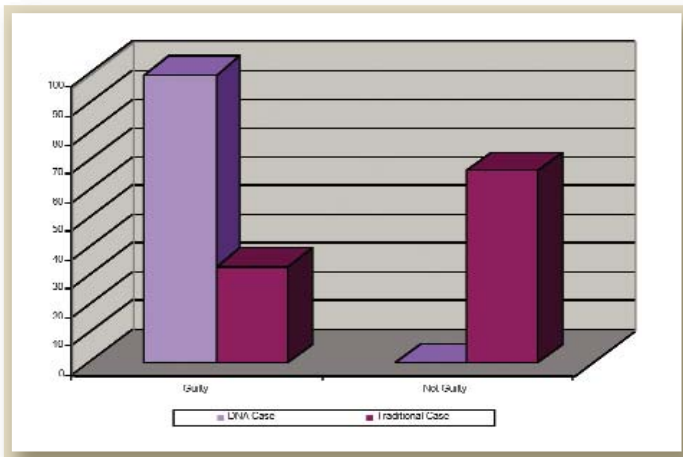


FIGURE 5: Trial Outcome in Residential & Commercial Burglaries in DNA Vs. Non-DNA Cases (by percentage)

An example both of the prolific nature of many of the serial burglars caught by DNA and of a leveraged plea to the top charges, is found with Denver defendant David Weller. Weller was a heroin-addicted serial burglar whose DNA was found in a DNA mixture along with that of his wife, Dina, on a cigarette found at a burglary scene. David testified at Dina's trial, admitting that he had committed as many as 1,000 burglaries in his criminal career. Dina was convicted at trial and was sentenced as a habitual criminal to a 36-year sentence. David pled in three separate burglary cases and was sentenced to 36 years as well. After his sentencing on that global disposition, yet another CODIS hit was made on him and he now faces a mandatory 48-year prison term if he is convicted at trial of the substantive burglary offense

and of the habitual criminal charges.

It is worth noting that the burglary rate in the neighborhood in which the Wellers committed their crimes dropped 40 percent after they were jailed. It is stunning that only two criminals could be responsible for that volume of home burglaries. However, the Wellers embody the project's findings that a relatively few number of criminals are responsible for a great volume of property crime.

Cases with DNA evidence resulted in convictions at trial three times more frequently than trials in which there was no DNA evidence

Figures 3 and 4 showed how the presence of DNA increases the likelihood that a given burglary case will be filed and also increases the likelihood that such a filing will result in a plea to the top charge. The next Figure, Figure 5, shows the next step in this progression: that the presence of DNA substantially increases the likelihood of conviction at trial.

When interpreting Figure 5, it is important to bear in mind that:

- Each of the burglary project cases that was tried resulted in a guilty verdict; there was not a single acquittal; and
- Because of the office-wide policy put in place by District Attorney Mitchell Morrissey (demanding a plea to the top charge in cases in which habitual criminal filings were foregone), each of the project cases that was tried also included successful prosecution under the habitual criminal statute. The result was the imposition of mandatory lengthy prison sentences for habitual criminals: three times the maximum in the presumptive range for offenders with two prior felonies and four times the maximum in the presumptive range for offenders with three or more prior felonies.

Cases With DNA Evidence Resulted in Prison Sentences 10 Times Longer for Home Burglars and Six Times Longer for Commercial Burglars than Those Obtained Without DNA Evidence

Figure 6 reveals that the presence of DNA in a case was strongly tied to a lengthier prison term. The average length of a prison term for a defendant convicted without DNA evidence was 1.6 years. In contrast, defendants convicted at least in part because of DNA received an average sentence of 16.1 years, ten times that for traditional home burglary convictions. For commercial burglaries, the average prison term with no DNA was only 10 months. With DNA, it increased to almost five years. For auto thefts, DNA-based cases resulted in an average prison sentence of nine years, compared to only 1.4 years in traditional cases.

The same considerations that are relevant in interpreting Figure 4—lengthy criminal histories and multiple active cases pending at once—are also important in Figure 6. DNA evidence helped to catch serial offenders whose extensive criminal history warranted a long prison term (either standing alone or as a result of the filing of habitual criminal charges). For example, serial burglar Robert Whitley, mentioned below, was charged in a project case with a class three felony burglary of a dwelling and was also charged with five counts of habitual criminal. If convicted on all counts, he will be sentenced to a mandatory sentence of 48 years. Similarly, defendants Rodney Stearns and Jonathan Nelson, also mentioned below, were also serial burglars. Stearns faced charges on two additional non-DNA burglaries and Nelson faced charges for nine home burglaries and theft. Whitley, Stearns and Nelson were typical of the repeat offenders captured and prosecuted dur-

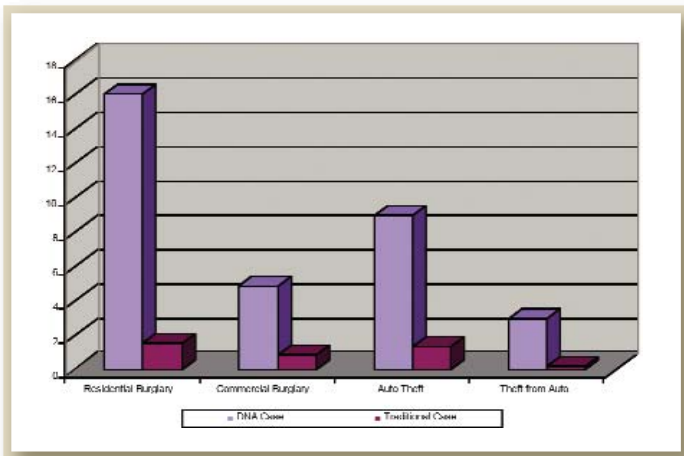


FIGURE 6: Length of Prison Term by Type of Offense in DNA Vs. Non-DNA Cases (in Years)

ing the burglary project.

OUTCOMES OF THE BURGLARY PROJECT: THE COST-EFFECTIVENESS OF THE BURGLARY PROJECT

Over the two years of the project, an estimated \$36.8 million in property loss was avoided and \$5 million in police costs were saved

The estimated total savings of the burglary project was \$41.8 million. This figure represents property loss that did not occur because more than 95 habitual burglars (who can be responsible for more than 200 crimes a year⁷) were captured using DNA. The figure also included the savings that occurred when police officers did not have to respond to and investigate crimes (that were estimated to have been committed had the habitual burglars not been in custody). Another way to express this is to say that 190 hours of investigation time was saved for each police officer in two years. Stated otherwise, there was a return on investment of more than \$90 for every dollar spent during the two years of the project.

To arrive at these figures, we analyzed the amount of time spent by each responding officer, each of the crime scene personnel, and the detective in responding to and working on each burglary and auto crimes. The data showed that, on average, two police officers were dispatched to each of the above crimes; that it took an average of 22 minutes for the officers to arrive; and that, once on scene, the officers spent 95 minutes there. At the pay rate of \$35 per hour, the cost of scene officer response was calculated at \$131. The average tally for the crime scene personnel consisted of 1.5 detectives spending 90 minutes at each scene to identify, document and collect both fingerprint and biological evidence. At a pay rate of \$40 per hour, the crime scene personnel costs were \$90. The assigned detective was found to spend, on average, six hours per case (visiting the scene; obtaining surveillance camera footage; contacting suspects; tracing stolen property; filling out lab requests; arresting and interviewing suspects; and preparing a case filing). At the rate of \$40 per hour, that totaled \$240. The sum of these expenses (\$131 + \$90 + \$240) equaled \$461 for police response per burglary and auto crime.⁸

The actual figure for police expenses saved is calculated as the total number of burglaries and auto crimes prevented during 2006 and 2007,⁹ multiplied by the cost of police investigation for

each case. That figure is 10,888 (cases prevented) x \$461 (cost of investigating each case) = \$5 million.

Stated otherwise, each \$1 invested in DNA forensics and related fields (such as police and lab training) resulted in more than \$90 of prevented police expenses and property loss. This quantitative measure of cost efficiency is obtained by dividing the total amount of property loss and police costs saved (\$41.8 million) by the forensic investment cost of \$462,000 (comprised of grant-funded lab, police department and district attorney training costs), yielding a cost efficiency of 90.5.

Best Practices Developed During the Burglary Project

As the burglary project progressed, certain best practices emerged. These practices related to key institutional relationships that needed to be built and maintained between the Denver Police Department, the Denver Crime Laboratory and the Denver District Attorney's Office; to certain types of field training that street officers and detectives needed to properly collect biological evidence and to document scenes with biological evidence; to follow-up investigative steps to be taken after a CODIS hit; to interview techniques of suspects following a CODIS hit; to proper documentation of John Doe filings; and to trial issues specific to CODIS-hit cases.

Best practice: the single most important feature that enabled the burglary project to be successful was the collaboration between the Denver Police Department Crime Laboratory, the Denver Police Department detectives and the Denver District Attorney's Office

From the beginning, there existed a triangle of collaboration between the police department, the lab and the District Attorney's Office. There was frequent and open communication between these three players and there existed a shared notion that integration of DNA technology into routine police work could take habitual burglars off the street and make the introduction of DNA evidence at trial as routine for deputy district attorneys as the admission of fingerprint evidence.

The Denver Police Department Crime Laboratory displayed a consistent commitment to the project. For instance, the department designated one of its burglary detectives, Detective Philip Stanford, as the DPD liaison for project issues and police training. Detective Stanford created an instructional video concerning DNA evidence collection that was played at roll call in police districts across the city. Additionally, Detective Stanford trained other detectives and street officers extensively and made other substantial contributions to the advancement of the project goals. These efforts included working closely with the deputy district attorney assigned to the project, including collaborating on the direction certain investigations would take to ensure the best plea disposition or trial outcome.

The lab consistently supported project goals by, for instance, training crime scene personnel, detectives and scene officers on the importance of proper recovery and handling of biological evidence. The crime laboratory attended not only to evidence collection procedures but also to whether CODIS hits were being translated into filed court cases. The crime laboratory director made personal contact with the various police districts to ensure that the evidence analyzed by his staff was acted upon by detectives. Additionally, the lab cooperated with the District Attorney's

Office and unfailingly had a “can do” attitude about preparing DNA evidence for court (often on very short deadlines).

Finally, the District Attorney’s office benefited from the police department’s capable collection of the DNA evidence and the lab’s expert analysis of that evidence to successfully prosecute scores of criminals. The deputy district attorneys resolved project cases with negotiated plea dispositions, often to the highest charge and often with added leverage because multiple CODIS hits on serial burglars resulted in multiple cases pending against the same defendant at the same time. Additionally, deputy district attorneys successfully used habitual burglar statutes and habitual criminal statutes to obtain very lengthy sentences that effectively removed 95 habitual burglars from the community.

In summary, it was the creation of positive, collaborative professional and personal relationships between each of the three points in the “triangle” that enabled Denver to improve its investigation and prosecution of high-volume property crimes with DNA evidence.

Best practice: the collection of blood and saliva at crime scenes yields the greatest number of uploadable CODIS profiles

Of the 12,000 burglaries committed in Denver during the project, 510 cases with biological evidence were submitted to the lab for testing. Figure 7 shows the types of biological evidence collected.

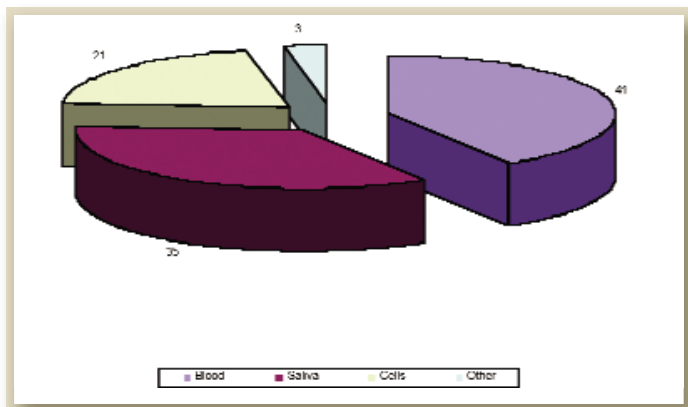


FIGURE 7: Types of Biological Evidence Collected (by Percentage)

Of the 510 cases with samples, blood produced CODIS-quality DNA profiles 94 percent of the time. Samples containing saliva produced useable profiles 80 percent of the time. Samples that contained only cells yielded profiles 60 percent of the time. Samples from the remaining “other” category (consisting of feces, hair, urine and semen, such as that found on discarded condoms) produced useable DNA profiles 58 percent of the time. These numbers are depicted graphically in Figure 8:

CODIS hits were obtained for more than 40 percent of blood and saliva DNA profiles, for 26 percent of cell-based DNA profiles, and for 35 of “other” DNA profiles (defined above as DNA from hair, feces, urine and semen).

Best practice: collection of “touch DNA” is less effective than the collection of blood and saliva, where available

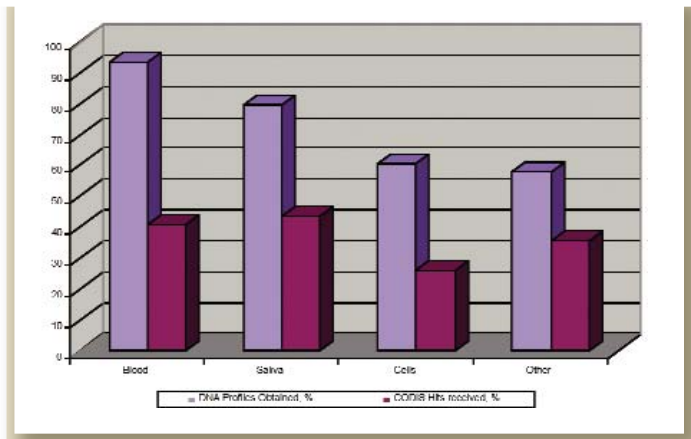


FIGURE 8: Proportion & Types of Samples Yielding CODIS Hits

“Touch DNA” refers to cellular DNA left behind by a criminal who merely handles a particular item (without bleeding or sweating onto the item). For instance, in a commercial break-in case where a law firm’s desktop computers were stolen and the burglar moved items on the victims’ desks to gain access to the computers, the data did not support the collection of the moved items for DNA analysis. This is not to say that “touch DNA” items should never be collected. Rather, it merely suggests an order of priority for collection where not all items can be collected.

Many law enforcement agencies face tight constraints on the DNA evidence that may be collected at a scene. For instance, a police department may not have crime scene personnel who can respond to a scene and collect certain samples. Or, a lab may place a limit on the number of samples they will accept per case, thus causing the scene officer or detective to collect certain samples and leave others behind. These limitations are real and influence evidence collection every day. In view of these limitations, the Denver data suggests that the collection of blood and saliva should be emphasized over the collection of cells-bearing items and items possibly containing feces, urine and semen.¹⁰

Best practice: foreclose possible defenses by collecting evidence that definitively puts the defendant in the home, business or car

Blood evidence not only had the highest percentage of useable DNA profiles but it also offered the greatest success in prosecution overall. This is because, unlike saliva on a portable item (such as a soda can) found at a burglary scene or in a stolen car, the blood (to use prosecutor parlance) “puts the defendant there.” Consequently, during the project, Denver deputy district attorneys often declined to file cases in which the DNA sample was found on a portable item that could have been introduced into the scene. Such portable items could include a mucous-bearing Kleenex that may or may not have been left by the culprit and may or may not have contained the culprit’s DNA (to the exclusion of all others). Another example is of a beer can found in the kitchen of a home burglary that was not there before the break-in. The presence of the suspect’s saliva on the rim of the can is often not a sufficient guarantee, standing alone, to support a filing because the can was imported from outside the scene and could bear the DNA of a non-participant in the burglary.

In contrast, cases were filed in which food or beverages from

inside the home were consumed by the criminal, with a DNA-laden portion left behind. An example of this is the case against Denver defendant Robert Whitley, who licked a lollipop during a home burglary and left it behind before fleeing. The lollipop was from inside the home; it was not imported from outside the scene. Another example is defendant Jose Rodriguez who ate the victim's chips and salsa and drank beers during the burglary and left partially-consumed chips behind, along with a saliva sample on a beer bottle. The evidentiary value of such DNA-bearing items is great because the item was inside the crime scene and thus, "puts the defendant" at the scene. Similar results were obtained in the cases of defendants Rodney Stearns and Jonathan Nelson. Stearns defecated in two homes and left behind the home-owner's hand towels that he had wiped himself with. Nelson urinated on the victim's clothes, in the victim's home.

One consideration in determining the probative value of DNA evidence was whether the location in which the biological evidence was found was private or public in nature. For example, a victim's home is, depending on the lifestyle of the victim, often a place in which access is tightly controlled and the presence of a stranger's DNA is inherently suspect. Thus, the presence of DNA in a victim's home generally carried greater evidentiary weight than, say, DNA in a stolen car which could have been passed between numerous users after it was stolen (in exchange for drugs, for instance) and which could have cigarettes and beverage containers that did not necessarily come from the car thief herself. The relative evidentiary weight of the DNA in a given case was, therefore, contingent on a variety of factors unique to that case. The same could be said of quasi-public scenes such as construction sites where many workers are present each day, where the workers might change from day to day and where access to the site was loosely monitored. Moreover, in such cases, it is often hard to locate a single witness who can testify with certainty that the biological evidence was not there before the burglary but was there after. Figure 9 reflects how these considerations translate into filed burglary cases, both residential and commercial.

Occasionally, DNA evidence of a suspect's presence outside a burglarized home can be paired with other evidence to support a filing. For example, when defendant Anthony Wright's blood was found outside a burglarized home, the case was refused for filing because there was no proof that Wright entered the home. However, when detectives tied Wright to pawn slips of items stolen in the burglary, the case was filed and Wright was sentenced to 12 years in prison.

Best practice: police documentation of a crime scene must explicitly state the condition of the scene to show that the biological sample could only have been deposited by the offender

Responding officers were trained to note the exact condition of the scene prior to the burglary or car break-in or theft. Officers were also trained to inquire of the victims whether the DNA could have been left by anyone but the perpetrator and to include the victim's response in the crime scene documentation. For instance, in a case in which a cigarette butt was left in the kitchen of a burglarized home, the officer was trained to pin down the exact location of the butt on the floor (to shut down defense arguments that the butt had been there, perhaps in a less visible location, from a previous consensual visit); to confirm that there

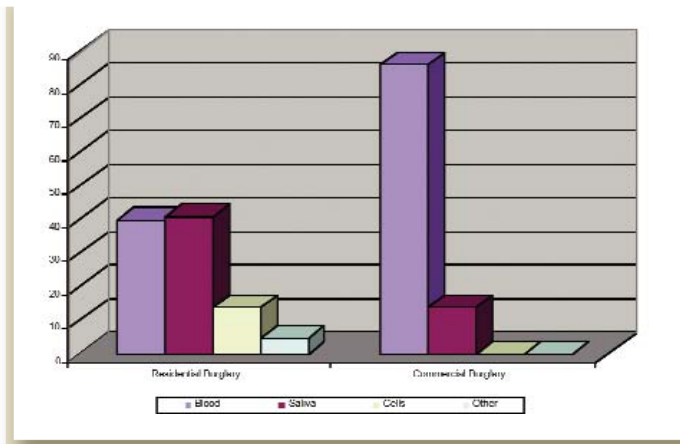


FIGURE 9: DNA-Based Court Cases by Type of Burglary and Type of Biological Evidence (by percentage)

were no smokers who lived in or had been allowed in the house; and to document the precise condition of the scene the last time the victim was there (i.e., there was no butt present then, but one appeared after the burglary).

This bit of added scene documentation paid great dividends by closing doors on the defense. It also helped to refresh victims' and officers' recall of details when preparing for trial, often months or even years after the date of offense.

Best practice: after a CODIS hit, have the detective re-contact the victim with a photo lineup containing the CODIS-hit suspect to confirm that the victim did not know the suspect, nor did the victim ever consent to allowing the suspect into the victim's home or car

Re-contacting a victim following a CODIS hit to show a photo lineup ensures that the victim did not know the suspect and had never consented to the suspect's presence in the victim's car or home. Including this step in the investigation avoids the filing of improper charges against an individual who had, for instance, been in the home with the consent of its owner prior to the burglary and had innocently left behind some type of biological evidence (saliva on a soda can or hair on a comb, for instance).

When administering the photo lineup, detectives are instructed not to ask the victim whether the victim sees the burglar in the lineup but rather, whether he or she knows anyone in the lineup. If the victim does not see anyone he recognizes, the case can proceed with ID being supplied by the DNA. If the victim does recognize the burglar, that identification can be admitted at trial and perhaps the victim can supply the detective with additional information that buttresses ID even further. For instance, the victim may say that the defendant is the clerk at the dry cleaners where the victim takes her clothes each week or that the defendant is her house-sitter or the clerk at the local grocery store. The detective could then follow that lead and, through employment records or otherwise, nail down that the defendant was in the area at the time of the offense and thus, had the opportunity to do the offense. Such investigation could also pin down that the defendant had first-hand knowledge of the victim's comings and goings and could time the burglary accordingly.

Where time and circumstances permit, the "filler" photos used in the photo lineup could consist not only of individuals whose physical appearance is like that of the CODIS-hit suspect, but of

individuals of such appearance who were in custody on the date of offense. That way, if the victim mistakenly identifies someone other than the CODIS-hit suspect, the deputy district attorney could minimize that misidentification at trial by eliciting testimony from the detective that the victim was simply mistaken and, indeed, that the person identified by the victim could not have committed the crime because he was in custody on the date of offense.

Best practice: when interviewing the suspect after a CODIS hit, show the suspect photos of the neighborhood and the scene and make the defendant commit to whether he is familiar with them

The first principle of interviewing a suspect identified via a CODIS hit is to not reveal until the end of the Mirandized interview how he or she was identified. Rather, it is helpful to show photos of the neighborhood immediately surrounding the burglarized home. This forces the defendant to commit to the general statement of either being familiar with that neighborhood or not. Then, the detective can get more specific by showing photos of the exterior of the scene, again, pinning the defendant to whether he will claim familiarity with that place or deny it. Finally, the detective can narrow the focus even more by showing interior photos of the burglarized home and get the defendant locked into that as well. Even when a suspect makes no overtly incriminating admissions, it is still extremely helpful to the case—and damning to the defendant at trial—for him to deny ever having been to the scene when the DNA proves otherwise.

Another interviewing technique often used if the suspect is becoming more guarded is to disclose, in very vague terms, that some of the suspect's DNA was found at the scene and to "invite" him, in his own words, to explain how it could have gotten there. Again, even if no incriminating statements result, the defendant is tying himself to an account of events that he has to stand by at trial or get impeached with if he offers a different account.

Best practice for John Doe filings: have the detective obtain long-term contact information for the victim and document the case assuming that it could be many, many years before the case is re-activated via a CODIS hit

The benefit of a John Doe filing is, of course, that the statute of limitations has been preserved. The practical effect, however, is that a John Doe case can be re-activated five, 10, or even 50 years later. Thus, the challenge with such a filing is to document the case well enough that the case could be tried all those years later. To that end, detectives were trained to document a John Doe case differently, and better, than the standard non-John Doe filing.

First, detectives were asked to get long-term victim contact information so that victims could be reached if they had left Denver by the time the CODIS hit was made. Some victims provided their parents', grandparents' or best friends' addresses. On more than one occasion during the project when a John Doe filing was converted to a known-defendant filing, detectives were able to contact out-of-state victims within one business day because they had obtained long-term contact information on the front end.

Second, in Denver, it is commonplace for officers to simply summarize burglary victims' statements and not to require the victims to write out their own statements. However, such sum-

marized officer statements often lack detail and offer little memory refreshment to victims who are called to testify many years after the offense. Accordingly, detectives were asked to obtain original statements from the victims so that a fuller account of events would be recorded and available for review should a CODIS hit re-activate the case many years down the road.

Third, detectives were trained to get receipts, insurance claim documents and other supporting documentation from victims for damage done or items stolen so that the dollar value of the damage or lost item could be proven at trial, possibly years after an offense.¹¹ Since the passage of time is only going to make the gathering of those documents harder, detectives were instructed to get them at the time of the filing of the John Doe case.

Best practice for trial: be prepared to enter into a stipulation or possibly purge any reference to the CODIS hit from your case

There is a risk at trial that some trial court judges might deem it too prejudicial to tell the jury that the defendant was contacted by the police because of a hit in a database. The basis for such a ruling is that such information could imply that the defendant has a prior criminal history and thus, was discovered via a criminal database. This "best practice" tip is offered with the caveat that different judges could differ widely in their handling of this issue. Nonetheless, the tip is offered so that trial deputies will at least be alert to the possibility that the court may curtail prosecution witnesses in this regard. Such a ruling can certainly leave an awkward gap in the People's case (but not as awkward as a ninth-inning mistrial).

A common practice in Denver is for the People to offer the following stipulation to address this issue:

INSTRUCTION NO. _____

The prosecution and the defense stipulate to the following: A DNA profile was developed from the blood found on the doorknob in the victim's home on November 28, 2007. As detectives continued investigating this matter, they received information concerning Mr. Burglar as a possible suspect. You are not to speculate or draw any conclusions as to what that information was. Based upon that information, the defendant, Mr. Burglar, was contacted.

This stipulation has been accepted by the court and the defense in each of the burglary project cases tried by the burglary project's deputy district attorney. It was her experience that the defense was uniformly receptive to the stipulation and that it was routinely accepted by the court.

CONCLUSION

DNA evidence is extremely helpful to law enforcement in catching high-volume serial property offenders. It helps to substantially lower property crime rates. Using DNA evidence is efficient: it catches serial burglars and takes them out of the community, usually for very long periods of time. It is also cost-effective: it saves \$90.5 for every \$1 spent. Using DNA evidence to catch serial property offenders saves many millions for cash-strapped law enforcement agencies and saves home and car owners from sustaining costly losses.

A less measurable, yet significant benefit of the burglary project is that it allows junior deputy district attorneys to litigate DNA-related motions and to admit DNA evidence at trial. In the past, deputies could only learn about DNA in high-stakes sex assault and homicides cases. With the burglary project, junior deputies can get experience with DNA in relatively lower-stakes cases such as car break-in and car theft cases.

Finally, another real, but hard-to-measure, gain of the burglary project was the improvement in citizens' peace of mind. As all prosecutors know, property crimes generally—and home burglaries in particular—have a deep and long-lasting impact on citizens' feelings of safety and well-being. The reduction in crime occasioned by the burglary project must, therefore, be viewed in the fuller context of its impact on the quality-of-life of citizens in the community.

¹ The other participating sites were Los Angeles, Phoenix, Topeka, and Orange County.

² The term "burglary project" is something of a misnomer in that burglaries were not the only high-volume property crimes tracked in the project. Rather, residential and commercial burglaries, along with car thefts and car break-ins, were studied in the project. However, this phrase serves as a convenient short-hand. Where "burglaries" and "burglary rates" are mentioned in this article, the authors only intend to refer to that specific type of crime.

³ The National Institute of Justice contracted with the Urban Institute to produce a report on the burglary project as implemented in each of the five project sites. The detailed study produced by the Urban Institute may be viewed at <http://www.ncjrs.gov/pdffiles1/nij/grants/222318.pdf>. Additional detailed information regarding the project may also be found on the Denver District Attorney's Office Web site at http://www.denverda.org/DNA/Denver_DNA_Burglary_Project.htm.

⁴ The profile was also uploaded into the Colorado state database, or "SDIS" (statewide DNA index system) and the local database, or "LDIS."

⁵ This percentage (six percent) is consistent with the four-nine percent range of property crimes studied in Britain in which biological evidence was recovered. Williams, R., *The Management of Crime Scene Examination in Relation to the Investigation of Burglary and Vehicle Crime*, London, Home Office (2004).

⁶ The detective often does not present cases with no active leads to intake deputy district attorneys.

⁷ Chaiken, J.M. and Chaiken, M.R., *Varieties of Criminal Behavior*, Washington, DC: US Department of Justice, National Institute of Justice, 1982 (NCJ 87680):44.

⁸ These costs track those incurred by British law enforcement's property crimes investigations, each of which costs \$470 (adjusted to U.S. dollars from U.K. pounds sterling). Brand, S. and Price, R. *The Economic and Social Costs of Crime*, London; Home Office (2005).

⁹ To arrive at a conservative figure for the cost of prevented property crimes, we used numbers showing the reduction in burglaries, motor vehicle thefts and theft cases in Denver during 2006 and 2007 (available at <http://www.denvergov.org/HomePage/tabid/393800/Default.aspx>) and the corresponding costs from the FBI's 2006 Uniform Crime Report (available at <http://www.fbi.gov/ucr/>).

¹⁰ The relationship between semen recovered from a sexual assault examination kit and the development of a useable DNA profile is, by definition, outside the scope of the burglary grant. The authors do not imply that the statistic of 35 percent is applicable to those facts. Rather, the semen submitted for testing in the burglary grant was of the sort recovered from abandoned condoms left, for instance, in empty warehouses following a burglary or in some other type of uncontrolled environment subject to weather and degradation.

¹¹ In Colorado, the value of items stolen (such as a car or a car stereo) or the value of damage done to property is an element of an offense that must be proven at trial. For example, damage to the entryway of a burglary victim's home can support a class four felony criminal mischief charge if the damage exceeds \$1,000. In contrast, only a class two misdemeanor charge is warranted if the amount of the damage is less than \$500. Section 18-4-501(1).

ABA Update *(Continued from page 19)*

provides that states should be allowed to adopt and implement legislation governing the production, distribution and use of marijuana; federal law should not impede or preempt the exercise of state authority in this area.

The representatives who spoke at the meeting pointed out that their purpose is not to legalize marijuana or any drug. However, included in their brochure is a statement that reads, "The drug policy project has been promoting a public health approach to the chronic societal problem of substance abuse, stressing the need to shift resources into research, education, prevention and treatment as an alternative to the continued use of criminal sanctions, which has proven to be relatively expensive, ineffective and an inhuman approach to reduce the harms of psychoactive drug use."

It should also be noted that included in their materials is a resolution that was adopted by the Washington State Bar Association Board of Governors, which supports a state's right to govern the medical use of marijuana and the establishment of a special commission to study regulatory options for psychoactive substances in the state of Washington.

The representatives stated that the point they are trying to make is that federal law should be changed so that it does not preempt state laws. They also indicated a desire to present this initiative to NDAA.

POST-CONVICTION RELIEF

A task force is also being appointed to work on post-conviction relief issues. I expect to hear more on that in the future.

PROSECUTION FUNCTION COMMITTEE

The Prosecution Function Committee, a subcommittee of the Criminal Justice Section Council, is considering putting together a project on the subject of witness intimidation. A proposal has been submitted by a Brooklyn law school professor, which is to be considered by the Prosecution Function Committee and the Criminal Justice Section Council. I indicated to the Prosecution Function Committee that this is an area that NDAA and some of its board members have a special interest and concern. I will keep NDAA members advised of further developments.

ABA MODEL RULE 3.8

ABA Model Rule 3.8 was passed and subsequently adopted by the House of Delegates. Subsequently, however, the Department of Justice decided they were not pleased with Rule 3.8, especially paragraphs (g) and (h) as passed, and proposed that Rule 3.8 be modified. Representatives of DOJ met with the chair and several members of the Criminal Justice Section Council after the council meeting to discuss DOJ's proposed modifications. While NDAA objected to ABA Model Rule 3.8 in its entirety, DOJ proposed modification does not completely address NDAA's objections to the rule.