

## *The Kansas City Model of Cold Case Review*

BY TED R. HUNT, CHIEF TRIAL ASSISTANT, KANSAS CITY, MISSOURI

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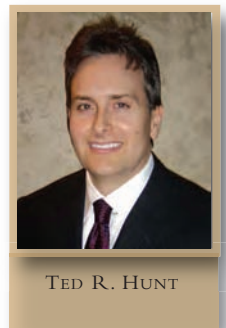
IN KANSAS CITY, MISSOURI, cold case investigation and prosecution with DNA technology has been ongoing since 2000. This endeavor was largely facilitated by the implementation of STR DNA technology by the Kansas City Police Crime Laboratory that same year. In December 2002, partially in response to this incipient technology, the Kansas City Police Department created a Cold Case Squad to investigate unsolved homicides. To date, this squad has submitted a total of 23 homicide cases to the Jackson County Prosecutor's Office that have come to judicial disposition. The prosecutor's office won convictions in 22 of these cases. The lone acquittal was a case in which the defendant was convicted of six other cold case murders at the conclusion of the same trial.

In 2002, the crime lab was awarded the NIJ Backlog Reduction Grant. Work on this grant began in March 2003. From 2003 to 2008, an informal partnership existed between the crime lab, the police department, and the prosecutor's office on cold case investigations and prosecutions. This partnership produced a great deal of success. To date, there have been a total of 81 dispositions of cold sex crimes cases in Jackson County, Missouri. Seventy-four of these cases have resulted in conviction, four have been acquittals, and three cases were dismissed after charges were filed. The most notable accomplishments during this period were the investigation, arrest, and conviction of four serial rapists who had been active

in Kansas City between 1977 and 2003. These men are known to have collectively victimized over 50 women. The overall cold case conviction rate stands at 95 percent.

On January 1, 2008, the Kansas City Police Department created a dedicated unit to investigate unsolved cold sex crimes cases. This was made possible through the Solving Cold Cases with DNA grant awarded by the National Institute of Justice. With the inception of this unit, the partnership between the participating agencies became more formalized. Among the formalizing factors were the following: the creation of a shared investigative database; weekly collaborative meetings held and attended by the KCPD Cold Case Sex Crimes Unit, representatives from the crime lab and the prosecutor's office; and DNA testing pre-approval by both the Cold Case Sex Crimes Unit and prosecutor's office.

In 2008, the Jackson County Prosecutor's Office applied for and received a \$400,000 grant award from the National Institute of Justice to form a DNA Cold Case Unit in the office. The grant is for a period of 18 months. Work began on June 1, 2009. The grant funds two assistant prosecutors who bear the title, "Cold Case Analyst," one investigator, and one paralegal.



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## LAB EVIDENCE INVENTORY

Since 2003, two contract analysts employed at the Kansas City Police Crime Lab by the NIJ Backlog Reduction grant have worked to identify unsolved cases with potential to be solved through DNA technology. These cold cases include homicides, sex crimes, and assaults. All cases that meet these criteria have been entered into the lab's Cold Case Database. This review process entailed a multi-faceted inventory and examination of evidence retained in the lab from cases dating from 1972 until 2005.

To date, this database consists of approximately 5,500 unsolved cases with potential DNA screening. The two lab analysts reviewed laboratory log books to identify all cases in which evidence was received into the lab over those years. Next, the lab analysts conducted a complete inventory of the long-term evidence storage freezer to determine which cases had evidence stored in the lab. They also began an inventory of the lab's microscopic slide archive. By late September 2008, the slide inventory was about 20 percent complete. Finally, they requested that the KCPD Property and Evidence Section perform a computer query to determine what evidence may have been retained in the property room under the case numbers of interest.

When the members of the Jackson County Prosecutor's Office DNA Cold Case Unit began work on June 1, 2009, they were first assigned to the crime lab to complete the ongoing cold case evidence inventory. This work consisted of finishing the microscopic slide archive inventory. Their task was to determine what, if any, evidence existed on the slides and what information could be gleaned from the writing on the slides themselves. After examining each slide, data from the slides was entered into a laptop computer in Excel spreadsheet format. Out of a total of 137 drawers of microscopic slides inventoried, the Prosecutor's Office DNA Cold Case Unit reviewed and entered data from slides consisting of 67 drawers.

When this task was completed, unit members began a complete review of the laboratory notebooks prepared by the analysts who had originally worked on the cases being examined. Relevant data from these notebooks was then correlated with the information gleaned from the slide inventory and was entered into the same spreadsheet. Unit members reviewed a total of 89 analyst notebooks during this process. In the one-month period end-

ing July 2009, the unit had conducted microscopic slide inventory and data entry of 2,551 cases ranging from the years 1972 to 1992. At the conclusion of this inventory, it was determined that between the years 1979 and 1992 alone, there are exactly 1,835 cases with potential evidence amenable to DNA testing to be reviewed.

## INEFFICIENT MODELS OF COLD CASE REVIEW AND INVESTIGATION

The conventional model of cold case review employed across the nation since the advent of STR DNA technology is at best, inefficient. Typically, a police department's cold case unit, individual detectives assigned to investigate cold cases, or even laboratory personnel conduct a merit-based review of the case file with little, if any, input from the local prosecutor. Lab requests are then made to perform DNA testing on remaining case evidence. This model "puts the cart before the horse" and is both inefficient and ineffective. It can lead to investigative frustration and demoralization.

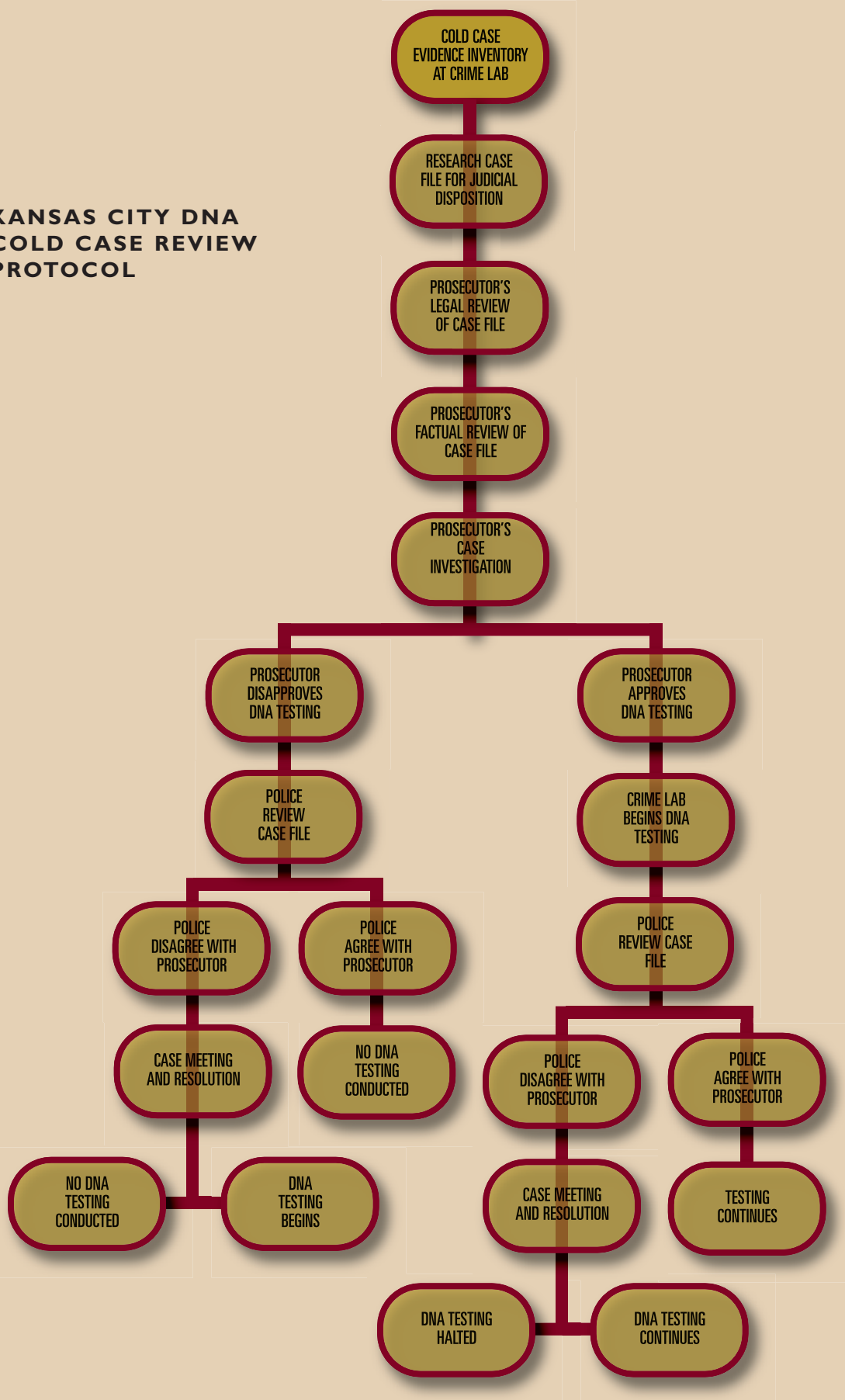
The model is inefficient because investigative time and resources may be needlessly wasted on cases that may well be rejected by the prosecutor once the case is ultimately submitted for charging consideration. In addition, the crime lab also wastes time and valuable resources performing complex testing and analysis on cases the prosecutor may ultimately reject. Lab backlogs are thereby further exacerbated.

It is also likely that investigators who don't communicate with prosecutors during the investigation will lack a crucial trial issue-focused perspective on the case. Issues pursued by the police during the investigation are often different than those litigated by the prosecution and defense in court. For example, a rape case solved with DNA and investigated as a "whodunit" will likely be litigated as a case of consensual sexual contact. This lack of a trial issue focus may result in the "wrong" issues being pursued by investigators or the "right" issues being pursued with the wrong focus. If this occurs, the "bell has been rung," and the potential strength of certain prosecution issues may well be permanently compromised by the time the case comes to trial.

Finally, the victim may be needlessly re-traumatized if the police notify her of the DNA match before the prosecutor approves charges. If charges are declined, the disheartened victim may rightly wonder why she was con-

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**KANSAS CITY DNA  
COLD CASE REVIEW  
PROTOCOL**



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tacted in the first place and why the authorities could not have better coordinated their work on the case. Thus, this model is ineffective in that it runs a great risk of failing to produce the desired result—the filing of charges—at the end of a long, complicated investigative and scientific process. This outcome inevitably results in lowered morale for all concerned—investigators, lab analysts, prosecutors, and most importantly, the affected victims.

Even worse than the above model, in some jurisdictions, a laboratory working on cold cases will blindly conduct tests on archived evidence in the hope that a DNA profile will be obtained and uploaded to CODIS. Such an approach may be referred to as “blind-labbing.” This approach completely bypasses any form of merit-based review of the investigative file before the evidence is tested. Such an approach inevitably results in wasted lab hours, supplies, equipment, and other monetary resources. Far from reducing backlogs, such an inefficient approach contributes to them. If “blind-labbing” is performed in conjunction with the investigative model described above, the same inefficiencies with their correlative ineffective outcomes are all but guaranteed.

There are myriad reasons why a prosecutor cannot and should not file charges in cases in which a CODIS database match has been made. These reasons may be legal, factual, or both. Legal reasons include: the expiration of the statute of limitations; the legal inadmissibility of crucial victim or witness statements; the inability to establish a legally required chain of custody for the evidence; or the death or absence of the victim or a necessary witness. Factual reasons include: the victim having provided inconsistent statements during the original investigation; contradictory accounts of the facts between the victim and other witnesses in the case; or a plausible consent defense given the victim’s conduct before, during, or after the assault. The objective of prosecution pre-approval as a trigger for supplemental police investigation and DNA testing in cold cases is to reduce or eliminate wasted time, effort, and resources on cases that will never see an indictment. At the same time, full resources can be committed to legally and factually viable cases that will ultimately be litigated in a courtroom.

## THE KANSAS CITY MODEL

The Kansas City model of cold case review is committed to the principles of both efficiency and effectiveness. This model attempts to firmly place the “cart behind the horse.” There exists an active and ongoing interagency partnership on cold case review and investigation between the Kansas City Police Department, the Kansas City Police Crime Lab, and the Jackson County Prosecutor’s Office. The police department and the prosecutor’s office conduct a “dual” review of each case that has been determined to have biological evidence amenable to DNA testing.

As of July 6, 2009, the prosecutor’s office DNA Cold Case Unit is reviewing police case files with offense dates beginning January 1, 1979, (the earliest potential date inside the applicable statute of limitations) going forward in time. The Kansas City Police Department’s Sex Crimes Cold Case Unit is simultaneously reviewing cases from the 2000s going back in time. The goal is to eventually meet in the middle—likely at an as yet unknown date in the early 1990s.

KCPD and the prosecutor’s office separately review cases and determine whether each one should be approved or disapproved for DNA testing. Cases approved for testing by the prosecutor’s office are tested by the lab. Cases disapproved for testing, for either legal or factual reasons, will not be tested. Cases approved by the police for testing but disapproved by the prosecutor’s office, will not be tested. If a case is disapproved for testing by the police department but subsequently approved by the prosecutor’s office, testing will be conducted. Under this model, the prosecutor’s office has the final word on whether DNA testing will be conducted.

This approach makes sense, as the prosecutor and only the prosecutor has the final word as to whether charges will be filed. The “pre-approval” authorization for testing is the equivalent of a conditional commitment that charges will be filed in the event that a database match is obtained. With this case review model, scarce investigative and laboratory resources are not wasted or misdirected on cases that have not received—and may never receive—the prosecutor’s approval. As a result, collective investigative and laboratory resources are more focused and efficiently directed. Time, money, and effort are not wasted, and morale is raised. Investigators and lab analysts know that they are working on cases that will ultimately result in the arrest and prosecution of the suspect who is

the focus of the investigation.

## **COLD CASE REVIEW PROTOCOL**

The only case files reviewed by the police and prosecutor's DNA Cold Case Units are those known to possess biological evidence amenable to DNA testing based on the completed laboratory evidence audit. All such cases are logged into an Excel database maintained by the Prosecutor's Office Cold Case paralegal. The first level of case file review is performed by both the paralegal and investigator. Investigative files that correspond to associated lab files in which it is known that evidence exists are ordered from the police department records unit. Cases are then researched for judicial disposition by the paralegal and investigator. Those cases not previously adjudicated by conviction or acquittal are forwarded to the Prosecutor's Office Cold Case Analysts for legal and factual review.

Legal review entails determining whether the statute of limitations has expired; whether chain of custody for evidence can be established; whether sufficient competent and admissible evidence is available for trial; and whether the victim or other crucial witnesses are alive and locatable in the event of a trial, among other factors. Factual review consists of a qualitative assessment of the merits of the case, taking into account factors such as whether the victim's statements are credible and consistent with each other; whether those statements correspond with or are contradictory to statements of other witnesses; and whether the victim's actions before, during, and after the offense are reasonable and understandable, or rather, are questionable or incomprehensible.

If it is determined that charges cannot or should not be filed after a complete legal and factual review of the case, the Cold Case Analyst's reasons are noted in the Prosecutor's Office Cold Case Database. A "Cold Case Review Sheet" is then completed by the reviewing analyst. This sheet documents the reason or reasons that the case cannot or should not be filed. With this form attached to the file, the case is returned to the police department. The laboratory is also notified by e-mail that DNA testing is not approved for that case. The police department will also review the file and will note their concurrence or disagreement with the prosecutor's decision on the Cold Case Review Sheet. Those cases in which there is disagreement will be further discussed to attempt to resolve the disagreement.

If, after a complete legal and factual review, it is determined that DNA testing should be approved, this information is noted in the Prosecutor's Office Cold Case Database and the lab is notified by e-mail that the case is approved for testing. A copy of the investigative file is made and retained at the prosecutor's office. A Cold Case Review Sheet is completed, noting that testing has been approved, and is attached to the original investigative file that is then returned to the KCPD Cold Case Sex Crimes Unit. The reviewing prosecutor also completes a "Case Summary Sheet" that contains a short factual abstract of the case along with a list of potential witnesses and their biographical information as documented in the case file. This sheet is then e-mailed to the Cold Case Investigator, who attempts to locate (but not yet contact) the victim and case witnesses.

During the review process, and before a testing approval/disapproval decision is made, Cold Case Analysts also e-mail investigative requests to the investigator with any follow-up inquiries that might aid the analysts' decision whether to approve or disapprove testing. The investigator will also attempt to determine what case-related property and evidence has been retained at the police department. After the investigator performs these tasks, she updates the electronic copy of the Case Summary Sheet with the latest location and contact information for case witnesses, along with the status of case-related evidence retained by police. The Case Review Sheet is then printed off, attached to the case, and returned with the investigative file to the KCPD Sex Crimes Cold Case Unit.

The Sex Crimes Cold Case Unit then reviews the file and notes their concurrence or disagreement with the prosecutor-analyst's decision. As is the case with files disapproved by the prosecutor, if there is disagreement over the merits of the case approved for testing, it is tabled for further discussion. In the meantime, however, DNA testing proceeds.

Cases that are initially reviewed by the KCPD Sex Crimes Cold Case Unit (those from the 2000s backwards) are forwarded by the police to the prosecutor's office. The prosecutor's office conducts a second review of the case—independent of police review—to determine whether the prosecutor-analyst concurs with the decision by police. If the police have indicated that they believe testing should proceed but the prosecutor decides that the case cannot be prosecuted for either legal or factual reasons, the case is disapproved for testing.

Conversely, if the police believe the case should not be tested but after review the prosecutor disagrees, the case will be approved for testing. This last scenario, however, is very rare.

## CONCLUSION

Undirected investigative initiative or “blind-labbing” as part of a cold case review program is simply neither an efficient nor effective way to expend scarce police and laboratory resources. Time, money, manpower, and other assets are sure to be wasted and lost. Victims may be needlessly re-traumatized by cases re-investigated but never charged by the prosecutor. Morale is sure to suffer for all concerned. Thankfully, there is a better way. Valuable systemic resources can be preserved and efficiently directed by a case review model that involves the prosecutor in the earliest stages of cold case review. The logic of this model derives from the simple fact that if in the prosecutor’s opinion, the case cannot be filed for legal reasons or should not be filed for factual reasons, the case will not be filed. This truism holds despite potentially enormous amounts of effort expended by investigators and lab personnel prior to case file submission to the prosecutor.

The good news is that in cold cases, contrary to the typical case, time is often on the side of investigators. The review and investigation of cold cases presents unique partnership opportunities between police, lab personnel, and prosecutors. Under this cooperative model, prosecutors provisionally decide which cases they will ultimately file before DNA testing ever takes place, while simultaneously directing and shaping the issues they will litigate at trial. At the same time, investigators and lab personnel can most efficiently and effectively focus their limited resources, while gaining greater insight into the issues that will ultimately be tried in the courtroom. Accordingly, cold cases can be investigated in a more trial-focused and strategically thoughtful manner.

Even without formal and dedicated cold case units, any jurisdiction can utilize the case review principles discussed in this article. Prosecution pre-approval of DNA testing and investigation of cold cases can be accomplished whether the number of cases to be reviewed is enormous or relatively inconsequential. What is required is a commitment to inter-agency collaboration at the earliest stages of the case review process and the realization that cold cases are fundamentally different from typ-

ical investigations. Most of all, a successful cold case review program ultimately depends upon working smart, rather than simply working hard.

## Save These Dates

October 15-17, 2009

### **NDAAs Fall**

#### **Board Meeting**

Denver, Colorado

Grant Hyatt Denver

Room rate: \$149

Reservations: 303.295.1234

Cut-off: September 23, 2009

July 11-14, 2010

### **NDAAs Annual**

#### **Summer Conference**

Napa, California

Silverado Resort

Room rate: \$169

Reservations: 800.532.0500

Cut-off: June 18, 2010

February 8-10, 2010

### **Capital Conference**

Washington, D.C.

The Liaison Hotel

Room rate: \$209

Reservations: 866.233.4642

Cut-off: January 10, 2010



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