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DNA Evidence in Rape Cases and The Debbie Smith Act

Forensic Practice and Criminal Justice Implications

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The Debbie Smith or “Justice for All” Act was passed on November 1, 2004. The act addresses the problem of collecting and analyzing DNA evidence from backlogged rape kits sitting in crime laboratories around the country. Presently, no empirical data exist by which to assess the soundness of the legislation. However, the act clearly affects discrete operations within the forensic and criminal justice systems. This article explores the relative merits of the Debbie Smith law, highlighting changes in Sexual Assault Nurse Examiner (SANE) programs, law enforcement, court administration, correctional treatment, and juvenile justice practices. Concerns linked to the likely impact of the “Justice for All” Act raise significant questions about its overall programmatic utility and treatment efficacy.

*Keywords:* rape; The Debbie Smith Act; DNA evidence and analysis; public policy

The use of DNA technology in criminal profiling emerged in the mid-1980s (e.g., Arrigo, 2006; Holmes & Holmes, 2002; Turvey, 2002). Since then, it has all but replaced fingerprint evidence, especially in sexual assault crimes (Butler, 2001; Palermo & Kocsis, 2005; Rudin & Inman, 2001). However, given the absence of funding, and the lack of available and properly trained DNA technicians, a backlog of samples from rape kits exists that dates back to the early 1990s (Turvey, 2002). Indeed, the first serious attempt to address the accumulation of kits did not occur until November 1, 2004. On this date, President George W. Bush signed into law the congressionally approved Debbie Smith or “Justice for All” Act. This legislation makes extra funding available so that all DNA samples sitting in various local and state crime laboratories can be tested. Moreover, the funds enable forensic experts to enter into Combined

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DNA Index System (CODIS) all DNA evidence obtained from the build-up of rape kits. CODIS is a national database maintained by the Federal Bureau of Investigation (FBI). The additional government-sponsored financial support extends through the 2008 fiscal year. The purpose of the act is to facilitate the accurate identification of criminal offenders and to promote the effective administration of justice for victims of rape.

This article explores the implications of the Debbie Smith Act, especially in relation to forensic and crime and justice practices. As a newly enacted congressional initiative, little is known about its scope and purpose, or its anticipated impact in the field of crime scene investigation in sexual assault cases. To address these matters, this article is divided into four substantive sections. First, the story of Debbie Smith is summarized. The details of this case are useful in that they set the stage for the significant legislative reform that followed in its wake. Second, relevant, albeit limited, background information on the crime of rape is provided. This includes definitional and statistical concerns related to this offense that help situate the sexual assault in Mrs. Smith’s case. Third, the relevant sections of the “Justice for All” Act are enumerated, the nature of DNA analysis is reviewed, and the operation of CODIS is delineated. This commentary provides the essential backdrop from which to properly evaluate the Debbie Smith Act. Fourth, the act’s impact for forensic practice and the criminal justice system is systematically explored. Implicated here are changes affecting sexual assault nurse examiner (SANE) programs, law enforcement work, court administration, correctional treatment, and juvenile justice. Fundamental to this provisional analysis is an assessment of the merits of the act (and those institutions responsible for its creation and implementation), given the changes it fostered in the administration of justice for offenders and victims.

The Case of Debbie Smith: A Brief Overview

Debbie Smith resided in the historic town of Williamsburg, Virginia. On the afternoon of March 3, 1989, she was in her kitchen doing odds and ends while her husband, Robert, was upstairs taking a nap. On the day of Debbie’s attack, a man entered her home wearing a ski mask (Hewitt, Podesta, & Longley, 2002). The man told her he had a gun in his possession. On one hand, she wanted to scream for her husband to help her; on the other hand, she was afraid that if she did, the intruder would shoot Robert as he made his way down the stairs. Consequently, Debbie remained silent and followed the orders of her attacker.

The stranger forced Debbie out of the kitchen and out of the house into the woods behind the Smith house. Before exiting the residence, he robbed them taking several items from their home. While secluded in the woods, Debbie’s assailant blindfolded her. And, for the next hour, he raped her repeatedly. After her attacker was finished, he told her that he knew where she lived and that he could return at anytime. Debbie’s attacker made clear that if she told anyone what had happened, he would come back and kill her. After her assailant departed, Debbie ran back to her house and woke her
husband. Robert insisted on taking Debbie to the hospital for a rape kit. Because Robert Smith was a lieutenant with the local police department, he knew the evidence from the crime would be invaluable in solving Debbie’s case (Hewitt et al., 2002).

A serology analysis performed on the evidence excluded a suspect on whom the police had focused. Regrettably, no other suspects remained. Consequently, Debbie’s DNA evidence was placed in a storage refrigerator like many other rape kits involving unsolved cases and anonymous attackers.

In 1994, a string of sexual assaults occurred in the Williamsburg area, and a new suspect was identified. Criminal investigators reentered Debbie Smith’s evidence into the tracking system thinking that perhaps the person who had assaulted her 5 years ago was responsible for the recent onset of rape incidents. Once again, no match was found; however, this time, Debbie’s DNA evidence was logged into a national database (CODIS) and a profile of her attacker was created (Hewitt et al., 2002). During this period, Debbie suffered from insomnia and depression. She even contemplated suicide. Knowing that her assailant had not yet been identified, Debbie felt unsafe even in her own home. Indeed, as she reported in an interview, “I [was] stripped of everything that seemed normal” (Hewitt et al., 2002, p. 2).

On July 24, 1995, a DNA technician found a match in the database for Debbie’s case while analyzing various records. Her attacker was Normal Jimmerson. At the time of his identification, Mr. Jimmerson was incarcerated, and it was not likely that he would be released for his crimes. He was serving a sentence for abducting and robbing two women in the same year Debbie’s assault occurred. The district attorney elected to prosecute the Smith case. The offenses Jimmerson committed against Debbie represented his third strike. Following his conviction for the rape of Debbie Smith, Mr. Jimmerson was given a 161-year sentence (Hewitt & Rust, 2003).

The story of Debbie Smith is compelling on a number of fronts. However, for these purposes, the case draws attention to rape kit samples sitting in crime labs all over the country that have not, and perhaps never will, be analyzed. These victims will not know the identity of their attackers as Debbie Smith did. Their DNA evidence will sit on a crime laboratory shelf unanalyzed, allowing their attackers to remain anonymous.

The success of Mrs. Smith’s case spawned significant legislative reform that eventually became law. The sample obtained from her rape kit was entered into a national database where a match was found and her attacker identified. The likely commission of additional rapes against women by this assailant was abated. In a speech delivered after her attacker had been identified, Debbie Smith noted that she never guessed “it would be numbers, matching numbers, that would breathe air into [her] lungs and allow [her] to truly live again” (Hewitt et al., 2002, p. 1). Clearly, the need for this type of legislation appears great, especially given the incidents of rape that occur annually.

For example, according to the Uniform Crime Report (UCR) of 2003, there were 93,433 forcible rapes reported in the United States (FBI, 2003). Other data sources, such as the Department of Justice, indicate that the average number is closer to 248,000 per year (Rennison, 2003). No matter which figure is utilized as the “official” statistic, the crime of rape is all too common in the United States. Moreover, several
cases remain unsolved, due partially to a lack of DNA evidence and partially to the fact that many rapes are not reported. According to the Bureau of Justice Statistics (BJS, 2002), 63% of completed rapes were not reported to the police from 1992 to 2000. With so many unreported cases, solving these crimes becomes impossible (BJS, 2004; T. W. Campbell, 2004). The following section offers more specific details on the crime of rape as these comments relate to victims such as Debbie Smith.

**Understanding Rape: Definitional and Statistical Concerns**

Much of the recent literature on the new “Justice for All” Act surrounds the nature of DNA analysis, the function and improvement of CODIS, and how the funds provided by the act are allocated (e.g., TalkLeft, 2004; The Third Branch, 2005). Because many of the stipulations specified in the act improve the area of DNA analysis and laboratory standardization practices (and the training of well-qualified technicians), a review of the subsequent literature will focus on this area. However, before examining the reform measures initiated by the Debbie Smith Act, it is also important to comprehend the parameters of the Debbie Smith Act itself. To understand the act, basic definitions and statistics regarding the crime of rape must first be discussed.

**Rape Definitions and Statistics**

The definition of *rape* is important. In effect, under appropriate circumstances, proper implementation of the act will make it possible to identify individuals responsible for this type of criminal wrongdoing. Thus, what is at stake is the mobilization of scientific and investigatory resources designed to apprehend felons and rectify victim harm (Flowers, 2000; Palermo & Farkas, 2001).

Rape statutes vary according to state jurisdiction; however, most embrace a number of similar definitional characteristics (American Prosecutors Research Institute [APRI], 2003; Cocca, 2004). For example, according to Sections 14-27.2 and 14-27.3 of the North Carolina General Statutes (N.C.G.S.),

First-degree rape encompasses the following elements.

A person is guilty of first-degree rape if the person engages in vaginal intercourse:

1. with a victim who is a child younger than age 13 years and the defendant is at least age 12 years and is at least 4 years older than the victims, or
2. with another person by force and against the will of the other person, and
   a. employs or displays a dangerous or deadly weapon or an article that the other person reasonably believes to be a dangerous or deadly weapon, or
   b. inflicted serious personal injury on the victim or another person, or
   c. the person commits the offense aided and abetted by one or more other persons.

States such as Florida, Pennsylvania, Washington, Nebraska, and Georgia employ comparable language in their rape statutes (APRI, 2003).
The two principal national data sources that collect rape statistics for general analysis are the UCR and the National Crime Victimization Survey (NCVS). Each defines rape in a slightly different way. For instance, according to the UCR, forcible rape is defined as the “carnal knowledge of a female forcibly and against her will” (Riedel & Welsh, 2002, p. 209). However, the NCVS has a more detailed definition. The NCVS specifies that rape involves “forced sexual intercourse” in which the victim and perpetrator may be either male or female (BJS, 1999; see also, Flowers, 2000; Graney & Arrigo, 2002; Maltz, 1998).

One in 8 women (12.1 million) will experience rape or attempted rape in her lifetime (Kilpatrick, Edmunds, & Seymour, 1992). According to the BJS (2004), approximately 30% of all rapes that occur nationwide annually are reported to the police. Rape is most likely to be committed by a person with whom the victim is acquainted in some way (65% of rapes) as opposed to a stranger (BJS, 2004; Palermo & Farkas, 2001). In 1997, the BJS reported that 77% of rapes were committed by someone the victim knew (Greensite, 2003). It is mostly in this type of sexual assault that DNA evidence is crucial (Butler, 2001; Holmes & Holmes, 2002). In acquaintance rape cases, the offense typically entails a dispute over the concept of consent as opposed to whether or not the victim and offender had sexual intercourse (Graney & Arrigo, 2002; Palermo & Kocsis, 2005).

The Debbie Smith story highlights the trauma of stranger rape. Her sexual assault had a significant policy impact partly because of the element of pervasive fear involved with stranger rape. This type of sexual assault brings with it an added element of global victimization (Francisco, 2000; Ledray, 1994; Shanahan, 1999). The offense can happen to anyone regardless of how many friends the victim has or who these friends are (friends are an element of acquaintance rape). Stranger rape can also happen anywhere (Graney & Arrigo, 2002), even in one’s own home or in the woods behind one’s house (Debbie’s case). The idea that one can be walking down the street or even be on one’s own property and be victimized by an unknown assailant in the most intimate manner possible is unsettling at the very least (Francisco, 2000). A disturbing factor noted by Greenfeld (1997), and illustrated by the Debbie Smith situation, is that more than 50% of reported rapes and sexual assault incidents take place within a 1-mile radius of the victim’s home (see also Graney & Arrigo, 2002; Palermo & Kocsis, 2005).

The Debbie Smith case was part of a statistical minority with respect to stranger versus acquaintance rape (she was attacked by a man whom she did not know). Moreover, it was also a statistical anomaly with respect to weapon use. Statistically speaking, weapons are not used in the majority of rape incidents (APRI, 2003). Indeed, according to Greenfeld (1997), 84% of victims report that their attacker did not use a weapon. As subsequently discussed, the element of stranger rape compounded by the presence of a weapon made Mrs. Smith’s case worthy of media attention and public outrage (e.g., TalkLeft, 2004). Indeed, this societal scrutiny (and clamor for reform) forced politicians to take notice of the Debbie Smith story. Her situation prompted the proposed legislation that followed in its wake, especially when the statutory initiative came up for a vote.
The Debbie Smith Act, DNA Analysis, and the Operation of CODIS

The “Justice for All” Act (H.R. 1046), was passed as legislation on November 1, 2004. The act directs the attorney general to engage in a number of tasks to assess the extent to which DNA samples have not been analyzed (Bill Summary, 2004). Specifically, the attorney general must conduct a survey of all federal, state, and local (and tribal) law enforcement jurisdictions to determine the amount of backlogged DNA samples from rape kits and conduct a review of all protocols on the collection and processing of DNA (from crime scenes and in laboratories) in these locales (Mohamadi, 2004). The current estimate of these untested rape samples is between 160,000 and 500,000 nationwide (Mohamadi, 2004). Finally, the attorney general must fund sexual assault examiner programs and training and proper certification projects. These grants cover all costs related to improving laboratories with new equipment or staff training (US$75 million through 2007). This includes training law enforcement personnel and prosecutors in how to handle and present DNA evidence, in the collection process and in the courtroom.

The next section of the act represents an amendment to the already-existing DNA Analysis Backlog Elimination Act of 2000 (ABE). The Debbie Smith Act expiates the ABE law, ensuring that analysis of DNA samples from rape kits is conducted as swiftly as possible. This also includes samples from nonsuspect cases ($15 million through 2008). Recall that in the Debbie Smith episode, there was no suspect for a majority of the time during which her case remained unsolved. Prior to the “Justice for All” Act, DNA analysis was typically conducted in incidents for which police had already developed a suspect where the DNA could be matched up with the rape kit sample (Ryan, 2003). This is precisely what transpired in Mrs. Smith’s case. In addition, the amendment reauthorizes grants, especially to local governments, and directs the attorney general to give priority to any unit that has a significant backlog of untested and unanalyzed DNA evidence from rape cases. Finally, as an amendment to the 2000 act, the Debbie Smith legislation affects privacy issues with respect to suspects. In particular, it extends the scope of the DNA samples that would otherwise be subject to any type of privacy protection (Bill Summary, 2004).

The remaining section of the “Justice for All” Act amends the federal criminal code, along with the Rules of Criminal Procedure, to “authorize ‘John Doe’ DNA indictments for sexual abuse” (Bill Summary, 2004, n.p.). This means that it is now acceptable to identify an offender as an “unknown” with a profile in the Index if no suspect has been developed. The benefit of this addition is that the DNA sample stands as a representation of the suspect. This means that if a match is ever found, that person automatically will become the suspect paired with the DNA sample. This person will have an indictment standing against him making the prosecutorial proceeding and the administration of justice much faster. Last, the funds are allocated to the FBI, enabling them to make some improvements with CODIS (as an amendment to the 1994 Identification Act). The 1994 act formalized the control of the FBI over CODIS, allowing them to establish a national database for offender DNA samples (Gregoire, 2001).
DNA: Definitions and Analysis

As Debbie Smith noted after her attacker was singled out, she never thought it would be matching numbers that would hold a key to identifying her assailant. What she was referring to is the process by which DNA is coded. DNA profiles are made up of matching numbers that determine whether a suspect is either included or excluded from the search for the perpetrator (Turvey, 2002). Before analyzing DNA, it is helpful to understand the basics of this concept. Most scientific literature indicates that DNA, or deoxyribonucleic (cellular) acid, is the fundamental building block of the body (Butler, 2001; N. A. Campbell & Reiss, 2002; Rudin & Inman, 2001). All cells contain a person’s DNA, and this DNA is the same in all cells. This means that a DNA sample taken from one’s hair has the same content as a sample taken from that person’s saliva, blood, and/or semen for males (Butler, 2001).

There are two methods of DNA analysis. The first of these is the multilocus probe (MLP). It “used chemical scissors—restricted enzymes—to dissolve DNA into fragments” (Lynch, 2003, p. 94). The second method emerged in the late 1980s and is called the single-locus probe (SLP). The difference between the two techniques is that the latter isolates only a select number of DNA regions that are marked via radioactive particles. A detailed explanation of these two methods of DNA analysis is beyond the scope of this article; however, the SLP technique replaced the MLP method when it was discovered (Lynch, 2003).

In addition, a person’s DNA cannot change or be altered throughout his or her life span, or even after death (Rudin & Inman, 2001). Thus, the DNA that one possesses at age 15 remains the same when the individual turns 35, 65, or at any other age. Based on the application of various mathematical and statistical formulae, no two people share the same DNA, with the exception of monozygotic (identical) twins (N. A. Campbell & Reiss, 2002). This situation occurs because identical twins come from the same egg, as opposed to fraternal (dizygotic) twins, who come from two different eggs and, thus, have different DNA. When a sexual assault or rape occurs, typically some physical evidence is left by the offender that can be collected and analyzed (presuming the victim does not wash away the evidence; Palermo & Farkus, 2001; Turvey, 2002). Biological evidence such as semen, saliva, hair, skin cells, and even blood can be found, collected, and tested to create a DNA profile of the attacker (Holmes & Holmes, 2002; Turvey, 2002).

The concept of DNA profiling used in criminal investigations was first introduced by a research group in England (Arrigo, 2006; O’Hara & O’Hara, 2003). This group was led by Alec Jeffreys who dubbed this type of analysis “DNA fingerprinting” (Jeffreys, Wilson, & Thein, 1985). Since then, most researchers have agreed that DNA is a near foolproof way to identify an individual (O’Hara & O’Hara, 2003; Turvey, 2002). DNA was used for the first time outside of civil court in 1987. The case involved a serial rapist in Florida who was convicted and sentenced to multiple life sentences in prison (Gregoire, 2001).

In the developmental history of using DNA analysis, its stamp of approval by the legal community as an infallible source of evidence was challenged in 1989 (Butler,
2001; Lynch, 2003). It is ironic to note, this was the same year that Debbie Smith was raped. In this particular instance, scientific experts testified and successfully challenged the admissibility of the DNA evidence. The general argument in these so-called DNA wars was between those who believed in the infallibility of DNA analysis via the SLP technique as opposed to those who supported the MLP method. The DNA wars lasted until 1992, when the U.S. Research Council settled the matter with two separate analyses of forensic DNA profiling (Lynch, 2003, p. 93; see also, Turvey, 2002). The 1992 investigation highlighted some of the flaws in the DNA collection process, along with the scientific analysis, given the two techniques. This was the main point of contention between those who were in favor of DNA as the new fingerprint and those who were skeptical. In light of the Research Council investigation, several additional issues surfaced and were addressed.

Among these concerns were DNA technician training and proper qualification, DNA crime laboratory guidelines, and environmental factors related to evidence collection (National Research Council [NRC], 1996). Addressing these flaws would make the available DNA evidence that much more infallible in a court of law. Specifically, it was noted that many technicians not only worked on multiple cases at the same time but also were improperly trained in medical procedures pertaining to evidence collection and analysis (NRC, 1996). In addition, at the time, there was considerable variety in crime laboratory guidelines with respect to processing DNA evidence (Rudin & Inman, 2001; Turvey, 2002) and, more problematic, different labs reached contradictory results. Moreover, the crime scenes from which most DNA evidence was traced, especially in rape cases (the crime scene is the victim in some instances), represented an uncontrollable environment (Holmes & Holmes, 2002; Turvey, 2002). Thus, the police, detectives, or nurses who collected this evidence often had little to no training in maintaining the biological integrity of the DNA sample (Butler, 2001; NRC, 1996).

Failure to rectify these three pivotal matters (i.e., technician training, laboratory guidelines, and environmental integrity) certainly could compromise the quality of the DNA evidence seized and analyzed, on which so many cases hinged. The NRC investigation led to some standardization in training practices for technicians, and some improvements in the collection of DNA evidence (Turvey, 2002). However, as is illustrated by the changes mandated by the Debbie Smith Act, both areas still warrant vast improvements.

In part, given the problems mentioned above, the admissibility of DNA analysis faced some harsh criticism when first used in court, especially with respect to its validity (Butler, 2001; Rudin & Inman, 2001; Turvey, 2002). Indeed, much like any evidence presented by either the prosecution or the defense, it was subject to expert evidentiary review and legal scrutiny. Lynch (2003) pointed out that the controversy over DNA was no longer a scientific dispute. Even as lawyers argued back and forth about the reliability and validity of DNA evidence, the focus was on excluding this type of evidence from courtroom consideration. For example, concerns were raised about
jury trials and whether laypeople would be able to comprehend the nature of DNA evidence as explained by expert witnesses (Lynch, 2003).

A more accurate way to analyze DNA than either the MLP or SLP technique was discovered during the early part of the 1990s (Jasanoff, 1995). Without going into the full nuances of the science behind this new method, it allowed for the utilization and analysis of a smaller DNA sample with greater precision (Butler, 2001; Turvey, 2002). The procedure uses something called the polymerase chain reaction (PCR). The PCR increases the amount of DNA that can be forensically assessed and decreases the physical amount of genetic material that is needed for the test (Lynch, 2003). Debbie Smith’s rape kit was evaluated with this new method of DNA analysis, and it was entered into the CODIS database from which a match was obtained. This new technique bypasses many of the ambiguities that were the source of consternation during the so-called DNA wars when the effectiveness of DNA analysis was in dispute (Butler, 2001).

CODIS

CODIS began as an experimental project in 1990 (Gregoire, 2001; Rudin & Inman, 2001). CODIS consists of two separate indexes: the Convicted Offender Index and the Forensic Index. The former includes DNA profiles taken from offenders convicted of any type of violent crime, including felony sex offenses (Holmes & Holmes, 2002; Turvey, 2002). The Forensic Index contains various DNA profiles collected from crime scenes, such as blood or hair samples. All the profiles in each index include various identifiers that provide information about the specimen, the laboratory that analyzed it, and the initials of the individual who entered and analyzed the specimen (Lynch, 2003). Most important, the indexes contain the unique characteristics of the DNA.

The FBI system uses 13 specific markers (genes) that are derived from different sites (loci) on a chromosome. These 13 Short Tandem Repeat (STR) loci identify the unique makeup of each sample of DNA (Butler, 2001; Lynch, 2003). According to Gregoire (2001), most laboratories affiliated with CODIS use the same 13 loci. It is important to reiterate that most, not all, labs use the same 13 STR loci; however, requiring all laboratories to employ the same specific markers is a standardization problem that the “Justice for All” Act aims to rectify.

When analysis is done on a DNA sample, the product shows color-coded graphs that designate each locus (Butler, 2001; Rudin & Inman, 2001). These graphs are easy to interpret for properly trained personnel (N. A. Campbell & Reiss, 2002; Turvey, 2002). Currently, 137 crime laboratories across the country (in 47 states and D.C.) have databases that are linked to CODIS, making it possible for the law enforcement officers in these areas to check their DNA samples against a national listing of offender samples (Gregoire, 2001; Turvey, 2002).
The Debbie Smith Act: Forensic Practice and Criminal Justice Implications

The Debbie Smith Act ushered in a host of (unexamined) changes affecting forensic practice and the criminal justice system. Generally speaking, the first section of the act requires that administrative action be taken by the attorney general to evaluate the extent of the DNA sample backlog problem. This affects the organizational and management dimensions of those crime and justice agencies and/or departments involved. The next section of the act affects crime technicians in laboratories on the state and local level and calls on them to begin testing the unanalyzed rape kits. However, more specifically, the act reforms the SANE program along with other medical assistance programs for victims of rape. In addition, funds are allocated for more training of law enforcement officers and detectives, especially in the handling of fragile DNA evidence during investigations. Finally, the “Justice for All” Act amends the Analysis Backlog Elimination Act of 2000, indicating the need for legislative reform particularly in the area of proper implementation. These implications are discussed in relation to where and how the act changes forensic nursing, law enforcement, court administration, correctional treatment, and juvenile justice practices in rape cases.

SANE Programs

SANE programs focus on providing compassionate and expert medical treatment to victims of rape, including encouraging women to obtain kits for DNA analysis. In 1997, there were only 86 such programs; today, more than 200 exist (Littel, 2001). A SANE professional is a registered nurse who is properly trained with respect to clinical preparation and patient care, specifically as it relates to victims of sexual assault and rape. They are also uniquely qualified in gathering forensic evidence from the body, such as semen, blood, and hair samples. By granting funds for increasing and improving SANE programs, the Debbie Smith Act represents legislation that protects the integrity of DNA by having only experienced and competent technicians, in this case forensic nurses, perform the rape kit.

According to Littel (2001), SANE programs enhance “evidence collection [yielding] more effective investigations and better prosecutions” (p. 2). Indeed, with the crime of rape, the SANE professional conducts the evidence examination (extraction of DNA) regarding the suspect(s) in a particular case. In addition, forensic nurses may be called on to testify in court as to the process and integrity of the DNA sample in question (e.g., storage procedures, chain of custody issues; Littel, 2001). By specifically allocating funds to DNA technology, the Debbie Smith Act affects the processing of DNA in rape cases. It improves current operational methods and ensures the involvement of expert technicians.

Law Enforcement Impact

As Hancock and Sharp (2004) pointed out, implementation of any criminal justice policy begins at the street level. This is the level at which police personnel encounter
criminal offenders. More specifically, law enforcement policy represents a statement of guidelines and/or principles that should be followed “in activities that fall within either specific organizational objectives or the overall police mission” (Alpert & Smith, 2004, p. 178).

The Debbie Smith Act clearly affects crime scene technicians, those gathering DNA evidence, and the medical personnel who perform rape kit collection and analysis in hospitals. In this respect, then, the act emphasizes DNA integrity, training issues, and funding allocations. However, because the act calls for extensive and proper training of all personnel involved with DNA technology (whether directly or indirectly), it will have an impact on law enforcement practices.

In an altogether obvious way, the “Justice for All” Act affects the operation of policing. To illustrate, law enforcement personnel are the first to respond to a crime scene when a woman has been raped, especially if this sexual assault is reported by the victim. The officer has the initial contact with the person harmed and the crime scene; thus, the integrity of the sight depends, in large part, on what the police officer does to secure the scene and how quickly technicians arrive at the sight (Holmes & Holmes, 2002; Turvey, 2002). Typically, officers are not responsible for collecting, analyzing, or entering evidence into a DNA database; however, they do handle evidence during the investigation process. Thus, the care they display during this phase can have significant implications for the work subsequently undertaken by forensic technicians and health care professionals.

In addition, from a victims’ rights policy perspective, the police constitute the first criminal justice system contact a victim of rape encounters, following the commission of a crime. Even though rape is vastly underreported (approximately one third of these offenses are accounted for; Gregory & Lees, 1999; Riedel & Welsh, 2002), officers must be able to respond accordingly. Sensitive interaction with the proper amount of caution and respect for rape victims is essential. The “Justice for All” Act demands this type of thoughtful and compassionate training. Indeed, the crux of the act depends entirely on a victim’s having a rape kit with DNA evidence. However, if the victim does not submit to a rape kit, then the chances of apprehending her attacker are significantly diminished. Clearly, then, the manner in which an officer interacts with the person harmed will increase the likelihood that the victim will submit to a rape kit. The evidence obtained from this very important police-citizen interaction represents what is affected by the act.

**Court System Impact**

An aspect of the criminal justice system that is directly affected by the new call for analysis of backlogged DNA is the court system. Although the Debbie Smith Act requires the analysis of rape kits that have not been tested, the evidence obtained from such examinations will free some and condemn others. Increasingly, convicted felons are now requesting DNA tests in the hope that they will be exonerated for their would-
be wrongful convictions and released from prison (Lee & Tirnady, 2003; Scheck, Newfeld, & Dwyer, 2000).

However, not all commentators regard this practice as a benefit of the Debbie Smith Act. For example, Willing (2004) stated emphatically that “DNA tests for the guilty are tying up crime labs and re-traumatizing the victims of rapes and other violent crimes” (p. 18a). These requests for DNA tests reexpose victims to the physical injury and psychological scarring they struggled to forget or accept. More problematic is that these requests create a backlog in the laboratories that perform the DNA evaluations. Consequently, critics of the Debbie Smith Act fear that the court system will be faced with a significant (and overwhelming) increase in writs calling for such testing or appeals when such affidavits are not approved in the first instance (Willing, 2004). Fundamental to this criticism is the belief that postconviction DNA testing in rape and sexual assault cases ultimately leads prisoners to abuse the system and to retaliate against victims whose testimony, more than likely, placed the offender in prison (Lee & Tirnady, 2003).

The concern for retraumatization occurs when much of the postconviction testing requires that victims give current DNA samples, in addition to answering sometimes very embarrassing and private inquiries about their current and past sex lives (The Innocence Project, 2004; Scheck et al., 2000). Presently, there is no evidence indicating that something of this sort would occur in the wake of the Debbie Smith Act. However, depending on the age of some rape kits being tested, procedures requiring victims to submit to and provide a current DNA sample might be mandated. Clearly, if this were to happen, it would represent a major impediment to the effective administration of the present legislation. Having said this, the “Justice for All” Act is designed to promote resolution for those victims who believe their attacker is still at large and to foster absolution for those who have been wrongly accused (or convicted) of another’s crime.

Priority prosecution is another area where the Debbie Smith Act is likely to affect the court system. This is especially probable with the presence of serious and/or high-rate offenders. Priority prosecution occurs when the state’s (or government’s) attorneys determine what types of offenders should receive special attention with respect to such matters as vertical prosecution, speedy trials, and the like. To accomplish this, the prosecutor’s office avails to the case all the expert attention it can afford or spare (Chaiken & Chaiken, 2004). Following the Debbie Smith Act, sex offenders would clearly be identified for priority prosecution. Indeed, given the activities of law enforcement personnel and SANE professionals, the rape kits performed, the DNA evidence analyzed, and the matches found function as physical, incontrovertible evidence. As such, government attorneys will be more, rather than less, inclined to secure priority prosecution in sex offender cases where the crime of rape is featured and the application of the “Justice for All” Act is administered.

Offender identification and crime prediction are key issues in all criminal justice prosecutions, especially in sexual assault cases (T. W. Campbell, 2004; Palermo & Kocsis, 2005). If DNA testing could accurately and positively link the felon to his crimes, then it is highly probable that sex offenders who are persistent, high rate, and
dangerous will increasingly be identified in laboratories and swiftly dealt with in the court system through priority prosecution. The Debbie Smith Act facilitates the identification of these offenders through the matching process, adding scientific and near-infallible evidence that connects the assailant to his rape (Chaiken & Chaiken, 2004).

Perhaps the most significant implication the “Justice for All” Act is likely to have on the court system is the accumulation of cases that will be prosecuted based on compelling DNA evidence. If government attorneys are in possession of DNA evidence that positively links an offender to a specific sex crime, then the plea-bargaining process will be undeniably altered. Precisely because the Debbie Smith Act ensures that the analysis of DNA samples from rape kits be conducted as swiftly as possible in suspect and nonsuspect cases, a significant increase in the number of positive matches is anticipated (TalkLeft, 2004; The Third Branch, 2005). Thus, prosecutors will no longer need the confession of rapists to guarantee conviction; rather, the DNA analysis will accomplish this end. This means that government lawyers will be less inclined to negotiate with defense attorneys and more jury trials will take place, especially for defendants who refuse to plead guilty. In these instances, the science of DNA will determine the verdict (Lee & Tirnady, 2003).

Corrections

Ross and Richards (2002) reported that by 1998 state prisons were operating at 22% above capacity, and federal prisons were operating at 27% above capacity. Reiman (2004) pointed out that most of the offenders incarcerated today commit non-violent crimes; thus, it makes good correctional sense to parole these felons before violent offenders to alleviate overcrowding. The Debbie Smith Act is linked to these concerns on a number of fronts.

As Rhine (2004) noted, politicization of crime policy has contributed to sentencing reform. In addition, people do not trust that placing an offender in prison will have any real or long-term effect on whether that individual reoffends. For sex offenders, especially pedophiles, the recidivism rate is very high (Palermo & Farkas, 2001; Salter, 2003). However, some experts argue that rehabilitation remains possible, even in cases of sex-related crimes (see, e.g., Rich, 2003; Shipley & Arrigo, 2004).

Based on an extensive review of the literature, Rhine (2004) concluded that only “certain programs may reduce the likelihood that certain offenders will commit new crimes when compared to similar groups of non-participants” (p. 281). In short, some offenders are more receptive to treatment (e.g., drug offenders), whereas others, such as rapists, are not so amenable (Palermo & Kocsis, 2005; Salter, 2003). Given the treatment propensity of rapists, parole boards are generally reluctant to grant release to convicted sex offenders (Arrigo, 2006; T. W. Campbell, 2004). Moreover, in the wake of the Debbie Smith Act, the positive and accurate identification of an increasing number of rapists for their sex crimes is likely to stiffen, rather than weaken, the decision-making resolve of parole boards.
In addition, it is worth noting that the “Justice for All” Act represents a fact- and evidence-based policy. This means that it does not seek to advocate for one ideology over another. Instead, it is a law that endeavors to remedy the current accumulation of rape kit evidence by using science and an already-existing DNA database (CODIS). The Debbie Smith Act does not speculate on the causes of crime, it does not promote retributive objectives or rehabilitative ends. Instead, it requires that the justice and forensic systems clean house. Given the current excess of rape kit samples, it is not likely that the DNA evidence will be appreciably reduced in the near future. However, if a growing number of sex offenders (i.e., rapists) were placed on parole or were subject to early release, the likely number of backlogged rape kit samples would swell to new heights, especially given the limits of successful treatment outcomes for these individuals and the politicization surrounding sentencing reform. Arguably, then, the “Justice for All” Act indirectly serves the agenda of correctional conservatism, advancing punishment, rather than treatment, for rapists.

Finally, The Debbie Smith Act affects the correctional arena in that the DNA evidence obtained accurately helps to separate those who should be imprisoned (i.e., guilty) from those who should not be so confined (i.e., not guilty). Thus, in a very real sense, the act affects the issue of prison overcrowding, based on the problem of false convictions. To be clear, however, the act does not possess any predictive properties because the DNA analysis stemming from rape kit samples can only be performed following the commission of a crime. This is the point at which the evidence is available for collection.

**Juvenile Justice**

The “Justice for All” Act ensures the systematic collection, timely processing, and ongoing analysis of DNA evidence in rape cases. A certain percentage of these crimes is committed by juvenile offenders (Arrigo, 2006; Barbaree & Marshall, 2005; Rich, 2003). Although the average rapist is in his mid-thirties, 26% of rapists are younger than age 21 years (APRI, 2003; Riedel & Welsh, 2002; Salter, 2003). At a time when the crime rate was increasing (1988 to 1992), the rate for juvenile violent crime increased by a total of 52%, 17% with respect to arrests for rape (Barbaree & Marshall, 2005; Wilson & Howell, 1993). Because juvenile offenders are being sent to correctional facilities at an alarming rate, prison overcrowding is a problem for them, much as it is for their adult counterparts.

Overcrowding in juvenile correctional facilities is caused by the same policy initiative governing adult prisons. The current “get tough” on crime trend does not discriminate based on age (Reiman, 2004; Walker, 2006). Juveniles can be tried as adults and placed in adult institutions following the assignment of criminal wrongdoing for certain types of violent crimes (Cothern, 2000; Riedel & Welsh, 2002). Admittedly, however, capital punishment is not a sentencing option when juveniles or adults are convicted of rape (see *Roper v. Simmons*, 2005, and *Coker v. Georgia*, 1977, respectively). However, with the passage of the Debbie Smith Act, DNA evidence will be collected...
and analyzed leading to the likely identification, (adult) prosecution, and criminal conviction of a growing number of juvenile sex offenders. Given current correctional trends, the net effect will be an increase in the severity of punishment for convicted adolescents, exacerbating, rather than alleviating, the deplorable conditions of prison overcrowding around the country.

Not only will some juveniles be tried in adult court and sentenced to adult facilities with the aid of DNA-inspired evidence procured through the “Justice for All” Act, they also will not be eligible for some rehabilitative programs such as graduated sanctions. Some analysts suggest that this penological method combines appropriate treatment and intervention along with proper punishment and “secure corrections” for juvenile offenders (Wilson & Howell, 1993, p. 327). However, when a juvenile is convicted of a crime as an adult, this intervention stage is bypassed. In other words, exposure to graduated sanction is not administered in these instances.

An additional issue to consider with respect to the Debbie Smith Act is the practice of sealing juvenile criminal records. If DNA is taken from an adolescent rapist would this DNA be sealed in a separate database for juveniles, or would it, comparable to all other DNA samples, be placed into CODIS? This issue is not specifically addressed by the law as currently written; however, the last section of the act does address offender privacy matters with respect to DNA collection. Regrettably, the legislation does not define in detail what these privacy extensions are, and the concern for juvenile sex offenders, as provisionally enumerated above, will likely become an important issue for policy makers and practitioners in the future. Clearly, juvenile offenders are being treated as adults by the criminal justice system and the “Justice for All” Act, as presently constructed, will only increase this trend. Thus, the legislation makes adolescent rapists more, rather than less, prone to adult sentencing.

Conclusions

The tragic story of Debbie Smith benefited from considerable media scrutiny and public review, in part, because it highlighted a void in the processing of rape offenders and the treatment of victims of sexual assault. In recent years, society has been introduced to several such stories, and all of them have spawned powerful legislative reform affecting forensic practice and the criminal justice system. Indeed, Stephanie’s Law (Kansas), the Amber Alert (Texas), and Megan’s Law (New Jersey) all illustrate how the harm that befalls one person or family can garner enough public support and political attention that it eventually becomes law (Merlo & Benekos, 2004; Walker, 2006). To be sure, many victims of rape are not as fortunate as was Debbie Smith. By mere chance, the DNA of Mrs. Smith’s assailant was entered into CODIS 6 years after the initial offense occurred, and a match identifying her assailant was later found. She finally experienced some closure from her horrifying and traumatizing rape experience. However, as of November 1, 2004, all other victims of rape can receive the same DNA analysis benefits that were availed to Debbie Smith.
Naturally, when legislation becomes law it takes time for it to be properly executed. The major delay in DNA testing before the passage of the act was the lack of funding and the absence of appropriate training. Because the act allocates considerable financial resources to reduce the backlog of rape kit samples and to train laboratory technicians, implementation will likely be efficient and effective. However, as Walker (2006) noted, difficulties in executing a policy arise, particularly at the local level, if various constituency groups oppose the law in question on principled grounds. Concerns for the substance and details of the “Justice for All” Act were not spotlighted, especially given the media scrutiny of the tragic case of Mrs. Debbie Smith and the public’s outcry for legislative reform in its wake. As such, delays in its execution, even at the grassroots level, are not anticipated.

Having said this, the Debbie Smith Act does present a series of implications affecting forensic practice and the justice system. This article endeavored to enumerate several of them. On one hand, the act makes DNA testing, particularly in rape cases, a routine occurrence. Moreover, every crime scene investigator, SANE professional, law enforcement officer, detective, prosecutor, and juror would like to have this evidence at its disposal when tracking and profiling offenders, or evaluating the crime of rape, given the scientific quality of DNA evidence. It dispenses with conjecture, especially with respect to factual and legal guilt, and it has the potential to exonerate those falsely accused. In sum, the act represents powerful legislation that, in many ways, is long overdue.

On the other hand, there are several limits to the act, affecting personnel in the forensic and justice arena. Police officers will need to be better trained in their interactions with victims of rape, particularly given the sensitive nature of the harm and the sophistication of the science. The court system will have to respond to a growing number of writs from inmates to have DNA testing performed. This practice could overwhelm the legal system while retraumatizing victims. Prosecutors will have to reassess their priority prosecution efforts and focus on sexual offenders, undoing or significantly challenging the plea-bargaining process. Inmate reentry and early release initiatives will have to be reevaluated, as DNA evidence used to convict felons in rape cases will disincline parole boards to grant such requests. The concern for treating juvenile sexual offenders will need to be reexamined, especially as more, rather than less, adolescents, will be prosecuted, convicted, and sentenced in the adult system. These issues represent the unanticipated fallout of the “Justice for All” Act.

Laws that are fueled by media scrutiny and public outrage can benefit society. Regrettably, this is not always the case, particularly when appalling tragedy trumps thoughtful judgment. The Debbie Smith Act certainly endeavors to address a clear and compelling need regarding DNA evidence in rape cases. To this extent, the legislation is a worthwhile reform, benefiting forensic and justice practice. However, in the final analysis, the act appears to raise more troubling problems than it solves. These problems, as identified above, warrant more systematic attention by policy makers and justice professionals, especially if the legislation is to withstand costly and timely litigation from prison rights advocates or those championing the treatment needs of sexual offenders.
References


