

## EVENT OR TREND?

## DNA Evidence Lost in Flood is Challenged

As reported by the Gazette in Cedar Rapids, Iowa



The Gazette in Cedar Rapids, Iowa reports on March 25, 2009 that DNA from a key piece of evidence in a sexual abuse case may become the first casualty of water that swamped a police property room during the record flood last June.

A defendant's attorney in the sexual abuse trial argued in Linn County District Court that DNA test results should be suppressed from being admitted as evidence in trial because the source of the DNA has been lost. The missing evidence is a penile swab and a pair of the Suspect's underwear with a mixture of his and the victim's DNA. The DNA was tested by the Iowa Division of Criminal Investigation and that agency issued a report. But with the underwear and swab missing, the defense could not have his own experts run the tests and compare their results to those of the state -- a right accorded the defense in criminal trials.

About 7 feet of floodwater and sewage backup rushed through the Police Department basement at 505 First St. SW during June -- swamping bags of evidence and cardboard boxes on shelves up to 2 feet from the ceiling.

Three Cedar Rapids police officers testified that all the evidence they could salvage had been sent to a restoration company in Chicago. They said the property room was a mess and they tried to sift through the soaked items and prioritize what cases to save according to pending cases, forcible felonies and age of the crime, among other criteria.

It was unknown if the underwear and swab sample had been thrown out or if it had been sent to the Chicago company where it was later misplaced.

**The defense questioned the officers about why the police department wasn't prepared for the flood, telling them how important it is to preserve evidence, especially DNA.** The officers' "decision-making" to throw away evidence was "negligent conduct," according to the defense counsel.

*Some interesting issues arise from this case that have applicability to any evidence room which has been subject to natural disasters, including, but not limited to: floods, hurricanes, tornados, earthquakes, and even fires. Flooding disasters in Louisiana, both North and South Dakota, Ohio, Tennessee, and California suggest that all 50 states have the potential to incur flood damage.*

*The legal issues that arise are centered upon whether to admit any part of flood damaged evidence, or prevent all of it from being introduced. Arguments may be advocated for both positions, and the courts will need to decide how to treat this evidence.*

*Some issues for discussion. Has the original item in the given case been located? If so, has its evidentiary value been compromised? Has the item been cross-contaminated by water, rust, sewage, or other substance? Had the item previously been sent to the lab for DNA testing? Is there a lab report with the results? Does the lab still retain a sample for additional testing? Is witness testimony sufficient to establish relevance without DNA or fingerprints? Does the potential probative value of a second defense test negate the probative value of the prosecution's testing? Can the item be presented to the jury and its evidentiary value weighted appropriately by the jury?*