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DNA Review Yields No New Exonerations

By Bill Brubaker
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Sunday, April 13, 2008; C06

RICHMOND -- More than two years into a massive, unprecedented review of biological evidence that could free wrongly convicted people, Virginia's crime lab has spent \$1.4 million to search 534,000 old case files, identifying 2,167 that contain forensic evidence with named suspects and submitting 316 samples for DNA testing, state officials said.

The decades-old samples include strands of hair, blood-stained cotton swabs and quarter-inch cuttings from semen-stained clothing from an era when DNA testing was not widely used in criminal cases, lab director Peter M. Marone said. Not all of the 2,167 samples will be tested, because the state has decided to focus only on cases involving violent offenses that triggered lengthy prison sentences. So far, 10 of the 316 samples sent to a private lab for testing contain DNA that does not match the felon's, Marone said.

But although the review is far from over, none of the samples has proven the innocence of any felons, he said. And in a recent interview, he distanced himself from a 2005 prediction by his predecessor that dozens of people would be exonerated within two years.

"This isn't easy," Marone said. "This isn't a TV show like 'CSI.' "

The review of the 534,000 files has been more complex than many experts had imagined, with multiple state agencies playing a role, defense attorneys questioning how it is being handled and Marone's Department of Forensic Science scrambling to secure additional funding.

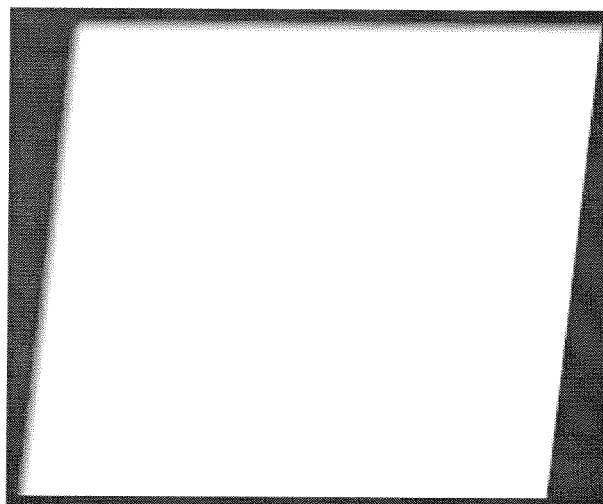
"Have you ever seen a TV show where they say, 'We can't find anything'? Have you? That's the problem," Marone said. "In every one of those instances, they find evidence, and it's all done in 47 minutes. You know, it doesn't happen that way, especially in these older cases. The evidence isn't necessarily there."

The review flows out of a discovery made in 2001 by Marone's predecessor, Paul B. Ferrara. A new law had given felons the right to request DNA testing of old evidence. That fall, Peter Neufeld, co-founder of the New York-based Innocence Project, which works on behalf of people it believes were wrongly convicted, asked Ferrara if any biological evidence had been preserved in the case of a Hanover County man convicted of rape. Marvin Anderson wanted to clear his name after spending 15 years in prison for a crime he insisted he did not commit.

Digging into Anderson's file, Ferrara found some yellowed cotton swabs, which he tested. Anderson, he determined, was not the rapist.

And the longtime lab director found something else: hundreds -- and later thousands -- of other manila

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folders that contained physical evidence. Most forensic analysts at the time simply threw away evidence after a defendant's appeals had run out. But Mary Jane Burton made a practice of stapling the samples to her worksheets.

"She was very big on demonstrative things," said Marone, who worked alongside Burton. "She wanted to be able to hold [samples] up to the jury and say, 'And these are the samples I collected from the pants. See here? And the checkered tablecloth? Here. It's red and white.' "

In September 2004, after further DNA testing of Burton's samples exonerated two other men, then-Gov. Mark R. Warner ordered additional testing.

A year later, Marone reported that two more men who had served long prison sentences were innocent, bringing the total number of exonerations from Burton's cases to five. So he broadened the review to include all cases handled by the state lab from 1973 through 1988, when Burton was on the job. There were 534,000.

But more than two years after the review began, no more exonerations have been announced. Marone said the lab work should be finished in a year. But with prosecutors and defense attorneys in the mix, and the state lab required to contact all felons and victims in cases that are being reexamined, Marone isn't making any predictions.

Neither is Warner, who in a recent e-mail cautioned patience. "A look back at these case files was the only morally acceptable course to take, and the truth that is revealed can only strengthen the public's confidence in our justice system," he wrote. "The number of cases being reviewed has grown exponentially larger than anyone predicted, and we should expect accuracy over speed."

In the 10 cases for which felons' DNA was not found on the samples attached to their files, lab officials conferred with prosecutors in the appropriate counties, Marone said. And in some instances, he said, prosecutors had a logical explanation for why the DNA didn't match.

"In one case," Marone said, "the prosecutor looked at the file and said, 'Oh, well, yeah. He was convicted of rape, but he wasn't a participator. He held her down while the other two guys did it.' "

Marone declined to discuss the 10 cases in any detail.

The review has frustrated some in the defense community because 29 months after it began, the Department of Forensic Science does not have a specific way to notify felons that evidence has been found in their files. The only people routinely being notified are prosecutors and other law enforcement officers.

Shawn Armbrust, executive director of the Innocence Project's District-based chapter, said the review should have had a notification policy from the start. "The process would have moved faster if someone at the outset had sat down with all of the potentially interested parties and developed a protocol and then worked from there," she said. "That would have been a much better system. But I understand this is a huge project."

Armbrust said she was pleased, though, that a budget amendment, passed by the General Assembly last month, directs the state Forensic Science Board to notify felons when physical evidence is found in their files. If Gov. Timothy M. Kaine (D) signs the amendment, the Department of Corrections will be responsible for locating the felons, most of whom have completed their sentences.

"Relying only on prosecutors to make the decisions about what is exonerating evidence is a huge mistake," Armbrust said. "These cases aren't all totally clear-cut. And so a defendant whose evidence doesn't match samples should at least have the ability to find an advocate to look at this stuff."

Marone said the review hasn't been helped by critics who question the integrity of prosecutors. "You know, these guys are officers of the court. They are ethical individuals," he said.

The 534,000 files had been stored in a state facility in downtown Richmond, and lab workers and student volunteers were directed to cull through them to find only cases involving violent crimes and containing biological samples.

Senior lab examiners are narrowing the field further, looking for cases in which the defendants were convicted. Samples from their files are being sent to a private Fairfax County lab, Bode Technology Group, for testing.

Marone said he is looking for new state, as well as federal, funding because his agency had spent the \$1.4 million it received from a special governor's fund to conduct the review. On Thursday, he testified before a House Judiciary Committee on funding for post-conviction DNA testing programs.

"I thought it was going to be involved. I knew it was going to be expensive," Marone said earlier of the review. "But what's an individual's life worth? What's an individual's reputation worth? We've spent \$1.4 million. If we spend another \$3 million or \$4 million and we end up exonerating two or three people more -- or just one guy more -- that's what we should do."

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