



A223 It's the Right Thing to Do — Virginia's Ground-Breaking Post-Conviction Program

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After attending this presentation, attendees will gain an appreciation for the logistics involved in identifying, analyzing, and reporting more than 750 post-conviction cases that involved 30-40 year-old cases in which original evidence was unavailable, existing samples were compromised, case information was incomplete, and DNA results were challenging.

This presentation will impact the forensic science community discussing Virginia's ground-breaking efforts to establish a program to inventory, test, and report on evidence in hundreds of post-conviction cases that were 30-40 years old.

In Virginia in the 1970s, an unorthodox habit believed to supplement testimony with demonstrative displays had a tremendous impact on the disposition of a number of these cases 30 to 40 years later. Despite the practice of local law enforcement agencies at that time to destroy evidence and case files for unsolved and adjudicated cases, a lead scientist at the agency and her trainees taped the swabs, cuttings, and threads used in conventional serological techniques into the corresponding worksheets for the case.

These worksheets became part of the respective case file and were kept at the facilities until they were sent to the Library of Virginia State Records Center. These documented transfers took place between the Department's custodian of records and a Records Center storage technician. It was at this point that the files were accessioned into the Library and kept in a documented location with limited entry, thus creating a chain of custody on the worksheets.

It wasn't until 1999, when a prosecutor conducted a routine inquiry for any remaining evidence retained at the Department in a particular case, that administrators saw these substrates taped into worksheets and considered them "evidence." Given that this was the only evidence remaining for the case in which the convicted offender requested DNA testing to prove his innocence, DNA polymerase chain reaction (PCR) testing was conducted using short tandem repeats (STRs) and not only demonstrated that the offender was not the source of the sexual assault evidence, but the DNA evidential profile was searched in the Virginia DNA Data Bank and a "hit" was obtained. Since there is no statute of limitations on rape in Virginia, these particular DNA results took on two roles: to support the innocence of the convicted individual, and to investigate and eventually prosecute the newly identified suspect.

Due to the success of subjecting this "taped-down" evidence to current DNA PCR techniques, then-Governor Mark Warner ordered testing in 31 sexual assault cases. The moderate success of obtaining DNA profiles from these previously compromised samples resulting in additional eliminations, some of which resulted in full pardons, led to the Governor's order in 2006 to test all appropriate cases between 1973 and 1988. In 1988, with the advent of blood-borne pathogens and accreditation, the "tape-down" practice ended. Of the 530,000 case files generated in the Department by all disciplines during that time span, over 2,100 were found to contain biological evidence taped into the case files. In order to be able to track these files created prior to the computer era, a database was created which could be updated as cases were identified, original case dispositions were determined, evidence was tested, and results were reported.

This was the beginning of a ground-breaking post-conviction testing program for Virginia. Six years into the project, over 750 cases in which convictions could be confirmed have been analyzed and countless hours have been spent by a core group of scientists and administrators who agree with Governor Warner that "a look back at these retained case files is the only morally acceptable course, and what truth they can bring only bolsters confidence in our system."

The scope of this unique project with the challenges accompanying it was unprecedented. Case files lacked essential details usually provided in current cases and were not available through the submitting agency; in fact, given the dates of these cases, the majority of the original law enforcement officials had since retired. Samples consisting of threads, swabs, or cuttings previously subjected to multiple saline washes as part of ABO blood and secretion testing resulted in partial DNA profiles (or no DNA profiles). The level of interpretation difficulty increased due to both the absence of associated known sample(s) and the lack of DNA results developed from those which were preserved. These challenges, in addition to a case study demonstrating the obstacles encountered by both scientists and prosecutors when preparing a post-conviction case for prosecution of a newly-identified suspect, will be discussed.

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