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Va. cases shed light on false convictions

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-- No one ever claimed the criminal-justice system was perfect. But until 20 years ago, it was difficult to prove otherwise.

Since then, 225 innocent people -- 10 in Virginia -- have been exonerated of crimes by DNA testing. However, DNA is not a factor in most cases, and the rate of wrongful convictions remains unclear.

That could change, in part, because of a large, groundbreaking and sometimes hotly contested review of old cases under way in Virginia.

The U.S. Justice Department recently awarded \$300,000 to the Urban Institute to use the results of the Virginia effort and a smaller one in Arizona to try to determine the rate of error in convictions for such crimes as murder, rape and robbery. The Urban Institute plans to report its results in the summer of 2010.

The ultimate goal is to minimize the future risk of convicting innocent people.

"It's certainly time for this study to happen," said John Roman, a senior researcher for the Urban Institute, a 40-year-old organization that studies social and economic issues to promote sound public policy and effective government.

"We [may] be able to answer the question: [In] what percentage of cases from 1973 through 1988 were people wrongfully convicted?" he said.

The hope then is to answer another question: "What is it about cases that made them more likely to have somebody wrongfully convicted?"

However, Brandon L. Garrett, an expert on DNA exoneration who teaches at the University of Virginia law school, is cautious.

"Careful researchers always have to be very cautious about generalizing beyond the sample that they are studying," he said.

The criminal-justice system keeps spotty case data, loses or destroys data, and selects and treats cases differently. "And those are general challenges -- wrongful-conviction cases are harder to study, much less generalize about," he said.

Nevertheless, Garrett said, "I think it is right to say that this is an exciting project, that the most important thing is to get testing done in these [Virginia] cases as quickly as possible, and that the more we can learn about these cases and how they were selected, the better."

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The Virginia effort started three years ago after it was discovered that swabs and cuttings holding biological evidence -- blood, semen and saliva -- had been taped inside some of the 1973 through 1988 case files of several state forensic serologists.

Three men who claimed innocence were cleared of rapes they did not commit after DNA testing of evidence discovered in the old files.

Then-Gov. Mark R. Warner ordered a sample testing of 31 of the old cases, of which 29 had led to convictions. The sample testing cleared two more Virginians of rapes they did not commit. Neither of the two innocent men had sought the DNA testing.

Warner then ordered a full study that has required searching 534,000 old files.

More than 740 qualifying cases -- featuring biological evidence and a person who was convicted -- were discovered, requiring some 5,600 DNA tests and analyses. Half of those cases involved sexual assaults and 40 percent of them slayings.

As of November, 34 cases had been completed. In eight of those cases, the DNA profile of the convicted person was not found, though that does not necessarily mean any new exonerations.

When the convicted person's DNA is not found, the Department of Forensic Science searches a database of DNA profiles of offenders and arrested people to see if there is a match. Also, if there is an exclusion, prosecutors are notified to see if the results indicate innocence.

No new exonerations have been announced. But in August, police charged an Emporia man with a Jan. 2, 1975, rape and murder of an 88-year-old woman. Another man had been convicted, though his conviction was thrown out later on a technicality.

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The effort has been complicated by disputes involving law enforcement, defense lawyers, academics, and the executive and legislative branches of government over how the state should locate and notify convicted people that potential DNA evidence had been discovered in their old files.

The review also has proved much larger and more expensive than first thought. In September, the Virginia Department of Forensic Science was awarded \$4.5 million by the U.S. Department of Justice's Office of Justice Programs to complete it.

The state of Arizona, working with the Arizona Justice Project, was awarded \$1.3 million by the Office of Justice Programs to review and evaluate cases identified as potential wrongful convictions.

The Innocence Project has found the most common causes of the 225 wrongful convictions to date include: eyewitness misidentification; unreliable, limited or fraudulent forensic science; and even false confessions.

However, the cases handled by the Innocence Project primarily are those where the innocent person sought the testing. To a large extent, that is not the case in Virginia.

"We are looking at a sample in Virginia that allows us to generalize to a much larger population in terms of estimating the rate of wrongful conviction," said Roman of the Urban Institute.

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