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Michael Paul Williams: Virginia must let everyone know about wrongful convictions

By: [MICHAEL PAUL WILLIAMS](#) | Richmond Times-Dispatch
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This situation calls for an intervention.

The Virginia Department of Forensic Science has been far too secretive about information that excludes at least 76 felons as the source of biological evidence in their cases. As of last month, 29 of the felons had not been notified that the new DNA reports existed.

Bennett S. Barbour learned only about two weeks ago that authorities — for 18 months — had a report excluding his DNA and identifying the DNA of a known offender in a 1978 rape. Officials said they could not find Barbour, even though he lives 5 miles from where he was arrested in rural Charles City County.

The post-conviction DNA project, paid for with state and federal funding, launched in 2005. It could be a groundbreaking effort to diagnose maladies in our criminal justice system. Instead, it's in danger of becoming a lost opportunity or a potential scandal.

The current notification process is inadequate. It has been shown that simply notifying law enforcement of DNA test results is insufficient. And the Department of Forensic Science is unwilling to share DNA test results with the public. This task must be placed in less-conflicted hands.

"The basic mistake in this situation is assuming that the goal of criminal justice is actually justice," said Kent Willis, executive director of the American Civil Liberties Union of Virginia.

"There is an inherent contradiction in expecting a state system designed, funded and rewarded for convicting criminals to aggressively pursue a course dedicated to proving the innocence of wrongly convicted persons."

One of Barbour's lawyers, Matthew Engle of the Innocence Project Clinic at the University of Virginia School of Law, decried the lack of sunlight in the process.

"We need to know what is the complete list of (DNA) exclusion, what's been done to notify people in those cases ... and at this point nobody knows the answers to those questions but the Department of Forensic Science, and they're not telling," he said.

Steven D. Benjamin, a defense attorney and a member of the Virginia Board of Forensic Science, suggested the formation of a new state entity — "a separate independent body charged with the task of investigating any case where there is an indication that we may have gotten it wrong."

Benjamin, president-elect of the National Association of Criminal Defense Lawyers, also said the association would be willing to take on such an effort "in a heartbeat."

We should be offended that a taxpayer-supported department is sitting on public information and gravely concerned about the integrity of the criminal justice system. Each time an innocent person is convicted, a guilty person remains on the street to victimize others.

"It's like having a series of plane crashes and doing nothing to figure out why the plane fell out of the sky," Benjamin said. "It is irresponsible to not learn everything we possibly can from these tragic cases, so we can improve the system and make it work better."

Where wrongful convictions are concerned, the state cannot afford to sit on its mistakes.

mwilliams@timesdispatch.com (804) 649-6815