

★ Article refers to Demas (Geren) suits etc. on p. 3 ★

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She saved evidence that freed three

By MICHELLE WASHINGTON, The Virginian-Pilot

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NORFOLK — Mary Jane Burton's legacy sticks to the papers in the files of the Division of Forensic Science.



Mary Jane Burton.

Beginning three decades ago, Burton cut tiny pieces of cotton — no bigger than the tip of a cotton swab — from samples she tested for biological evidence. She carefully taped the cotton bits to her hand made grid lab sheets, sealing them under cellophane. None touched. The margins remained clear.

Years after Burton left the lab, years after she died, her work habit vaulted her into the spotlight. DNA testing of the evidence she preserved helped exonerate three men who were convicted of crimes they did not commit. Other evidence from their cases had long since been destroyed. Each man had spent more than 15 years in prison.

The test results represented what Burton had always worked to find — the cold, hard facts, the truth. But Burton herself remained a mystery, an incomplete puzzle, even to those who thought they knew her well. Her family and friends knew little about her work. Her colleagues knew little about her personal life.

The three men freed from prison had never heard of Burton until learning she had saved the crucial evidence. They didn't need to know anything else.

"Maybe if she hadn't done what she did, I wouldn't be here today," said Arthur Lee Whitfield, who was cleared in August. He served more than 22 years of a 63-year sentence for two rapes in Ghent in 1981.

Burton's path to Virginia's crime lab began in Ohio. She was Mary Jane Graf then, a chemistry student at the University of Cincinnati.

Burton kept her brown hair cut to just below her ears. A childhood bout with polio gave her a slight limp and forced her to buy shoes in two sizes, said Eunice Snyder, one of Burton's sorority sisters. Burton wore plain clothes, no makeup. She met her husband, John, in Cincinnati's Tall Club — friends put her height between 5 feet 9 inches and 6 feet. Mary Jane was not a pretty woman, her friends said, but her personality made her attractive. Her loyalty and sense of humor endeared her to them.

They often saw the fussy, meticulous nature that made her so good at working with fragments of evidence and drops of blood. Burton fretted over Snyder's spelling on signs for sorority fund-raisers.

"She caused me no end of trouble because I either had to do something over or conform to what she wanted," Snyder said, laughing.

Still, her friends were surprised at her decision to work for the Cincinnati coroner's office. The job matched her studies, but in the 1950s it wasn't considered ladylike work.

"I didn't think she would tolerate things like that," said Audrey Krokum, Burton's childhood friend.

Not only did Burton tolerate it, she relished the work, several colleagues said.

When her husband died of pneumonia at 32, after just a few years of marriage, Burton sold his bakery in Ohio and moved to Charlotte to work in the city-county police crime lab. She began to build a reputation as an extraordinary forensic analyst.

Peter Gilchrist, Charlotte's district attorney, worked with Burton on a rape case more than 30 years ago. The crime happened around Christmas.

A woman woke up to see a man leaning over her with a knife. Her young daughter slept in the next room. The man told the woman to do as he said, or he would kill the girl.

Dim light from a street lamp kept the woman from seeing her attacker, Gilchrist said. But police stopped a man in her neighborhood within half an hour of her call.

They stripped him. Mary Jane Burton got the clothes.

Burton found glass fragments in the man's shoes, Gilchrist said, blue on one side, silver on the other. She found more broken glass resembling a soda bottle, and she found an animal hair on the man's clothes.

On the ground outside the woman's house, police found a shattered soda bottle. At an open window behind her Christmas tree, they found shards from a glass ornament – blue outside, silver inside.

And a detective pulled hairs from the woman's cat.

In the decades since, Gilchrist has tried many rape cases, many with higher profiles. But that case came together like magic, in part because of Burton.

"I just liked her so much," Gilchrist said.

Bill Best, Burton's boss at the Charlotte lab, said she spared no effort.

"I remember one case in which there was thought to be evidence on the outside of a house," Best said. "She got the city to take a cherry picker out there, and she was looking at the side of the house with a magnifying glass and evidence kit."

Burton created a "rape kit" to help nurses and police collect evidence from sexual-assault victims. Burton adapted similar kits in use elsewhere and taught people how to use them, said her nephew, Keith Betscher.

Mystery writer Patricia Cornwell's description of "the lab" in her Richmond-based novel, "Postmortem," was inspired by Burton, said Jan Betscher, Keith's wife. Cornwell spent years working in the state's chief medical examiner's office, and worked briefly with Burton.

Burton's passion for her work may have been driven by loneliness. Burton was an only child.

Her father died young, and she had a cold, distant relationship with her mother.

"They were two dominant-type ladies," Snyder said. "Her mom wanted to do her thing, Mary Jane wanted to do hers. They were both set in their ways."

Burton never remarried, and people who worked with her never heard her speak of a boyfriend.

She kept her personal life out of her work – some co-workers didn't know that Burton had ever been married.

Her nephew said Burton had become pregnant with twins during her marriage but miscarried. She later lived with and cared for her husband's mother, Maud. She lavished her love on her nephews and niece. Betscher cherishes

memories of going to the bakery with her at 3 a.m. to make donuts and pastries.

"Us three kids had a very personal relationship with her, a very warm relationship," Betscher said.

When Burton moved to Virginia in the early 1970s to run the serology section in the Richmond lab, the promotion surprised no one.

About five people worked in the serology lab, where analysts tested blood, semen and other biological evidence. Burton trained Deanne Dabbs, who succeeded Burton when she retired in 1988. Dabbs now heads the fore

nsic biology section for the state lab. "She did a fine job getting me trained," Dabbs said.

They had little equipment, Dabbs said, because at the time not much existed. Burton always kept a jar of Mary Janes, the chewy candies that bore her name. She often asked for help opening vials because arthritis crippled her hands.

Not everyone enjoyed working with Burton. One trainee had such trouble with Burton that she eventually filed a lawsuit against her and the directors of the lab. She was Regina Demas then; she became Regina Geren when she married.

"I ended up losing my job," Geren said.

The lawsuits she filed in 1977 and 1978 have long since been dismissed because her lawyer failed to meet deadlines for filing evidence and documents. The court papers outlined some of Geren's complaints.

Geren said Burton failed to use proper lab techniques when she tested evidence, according to the court documents. Geren said Burton changed her notes and test results.

"She would call stuff that was iffy because she wanted so much to get a result," Geren said.

Paul Ferrara, now the director of the Division of Forensic Science, investigated Geren's complaints when he came to the lab as chief forensic scientist in 1977. He never found proof supporting Geren's allegations. Burton had changed some results, he said, but she had reasonable explanations as to why.

Co-workers in the Virginia lab believed the dispute between Geren and Burton amounted to little more than a personality conflict. Wally Forst worked with Burton in North Carolina and again in Virginia. She was conscientious, he said, testifying just as effectively as a defense witness as she did for the prosecution. Analysts testified to their findings, he said, and let the results speak for themselves.

"It makes me wonder how can a young person in training start questioning someone who has been seasoned?" Forst said. "I can't believe Mary Jane would do anything like that."

Geren's accusations remain unresolved.

"I think it's still a mystery," Ferrara said.

Burton's friends and family had many theories about why she saved the samples that became so crucial to Arthur Lee Whitfield, Julius Earl Ruffin and Marvin Anderson, the three men cleared by the DNA evidence preserved in her files. Maybe she forgot to give them back to the police. Perhaps she kept them in case defense lawyers asked for further testing. Could she have known that some day better science would bring analysts to a breakthrough in testing?

Nice theories, Ferrara said, but none true.

Ferrara pulled Burton's notes from Marvin Anderson's file when a request came from his lawyer to search for evidence. It was a matter of routine, Ferrara said. He expected to find a log that told him the evidence had gone back to the police department it came from.

Instead, he found Burton's lab sheet.

"I was excited," he said Anderson had already been paroled when he was exonerated, after serving 15 years of a 210-year sentence. He had been forced to register as a sex offender.

Ferrara has color photocopies of Burton's lab sheets. The test rows are labeled in Burton's neat writing. The chemicals Burton used colored the cotton samples from off-white to brown.

Burton also sometimes taped down swatches of clothing or other material she had tested.

Burton's habit would be against the rules now, because analysts are required to return all evidence to the law-enforcement agency that submits it. Back then, nothing prohibited saving the samples.

When Ferrara found the samples with Burton's notes, he asked her colleagues why they were there. Dabbs told him Burton saved the samples, and taught her to do the same, simply to document the work she had done and to show juries while testifying.

"If she was asked in court, 'What did you test?' she could pull it out in court," Ferrara said. For that, Whitfield, Ruffin and Anderson thank her.

Burton's show-and-tell prop rescued them from losing even more of their lives in prison.

Burton died in Florida in 1999, at age 70, about a week after spending the Christmas holidays with the Betschers. After her death, her nephew found an envelope with his name on it in her files. Her finances were pristinely kept, Betscher said; even in death she sought order. She was cremated and buried in a small box next to her husband.

Ferrara said the lab has no plans to honor Burton. Her actions were serendipitous, Ferrara said, not heroic. At Gov. Mark R. Warner's request, lab workers have begun combing through a sample of Burton's files, looking for other cases in which she saved evidence. The effort should take a few more weeks, Ferrara said. If any of the samples lead to another exoneration, the governor's office could order that all her files be examined.

Jan and Keith Betscher said Burton's part in the exonerations thrilled them.

"I think it's wonderful," Jan Betscher said. "She's speaking from the grave."

Staff writer Jakon Hays contributed to this story.

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Feb 18, 2003

Scientist's legacy: freedom for two

BY FRANK GREEN
TIMES-DISPATCH STAFF WRITER

When forensic scientist Mary Jane Burton died in 1999, she left a legacy far more meaningful than the pages of a best-selling novel based on one of her cases.

And a controversy that is only now surfacing.

For years, in what was either a stroke of prescience or a mistake, she put tested biological material in case files instead of returning it with other evidence to the appropriate authorities.

In so doing, she has enabled recent DNA testing in cases where all the other evidence has long since been destroyed, thereby clearing two innocent men of rapes.

"This woman has been a complete mystery," said Gordon Zedd, lawyer for a client just released from prison thanks to Burton. "I know she died, but I don't know anything else about her.

"It's almost like she had a premonition that the science was going to get better," he said.

But Peter Neufeld of the Innocence Project said Dr. Paul B. Ferrara, director of the state's Division of Forensic Science, told him Burton was "let go because she was not doing good work" and her filing of the testing material in case files was but one example.

A colleague who worked closely with Burton for years declined to comment for this report. Ferrara would only say she left her job of her own accord.

Said Marvin Anderson, cleared of a 1982 rape because of Burton: "My opinion now is that they need to look at a lot of her caseload, because there could be a lot more innocent people who are incarcerated."

Ferrara, however, said there are no plans to run blanket tests of the material Burton may have kept in her files. Instead, he will only perform those tests ordered by courts or the governor.

For one thing, testing it all would be impractical and not necessarily productive. Ferrara said that there have only been 15 requests by inmates for DNA testing since a law granting that right went into effect in 2001.

Neufeld said the Innocence Project is representing at least one other man whose case might be helped by evidence Burton retained.

Ferrara remembers Burton as a quiet and private employee. He said it has been the practice to return all evidence to the agency that submitted it once it has been tested.

"However, this particular examiner [Burton] had a habit of taking the pieces of evidence - in these

cases I think they were little swatches of evidence - that she used for blood typing and tape them to her test sheets."

Ferrara had no idea she had been doing it. He said she may have done it in hundreds of cases.

Ferrara found out about it in 2001 when Anderson - a parolee at the time - requested DNA testing to clear his name.

With the assistance of Hanover County Commonwealth's Attorney Kirby Porter, lawyers for the Innocence Project determined the court clerk's office and the police department no longer held any evidence in the case.

The state forensics laboratory was also asked to look. Ferrara said he went to search the case file in his office so he could say when the evidence had been sent back to authorities.

But what he found shocked him. Taped to a sheet of paper in the file was the tip of a swab that Burton had used in her blood-typing tests.

"Holy mackerel," said Ferrara.

He wondered if it was suitable for DNA testing. State officials, however, initially refused to grant permission for the test. But then a new law took effect in 2001 giving Anderson the right to the test.

Not only was the material suitable for testing, in addition to clearing Anderson, it implicated another man who has since been convicted of the rape.

"I think she gets, as we used to say as kids, the 'Kilroy Was Here,' award," Neufeld said. "Her so-called mistakes had a rather unusual result. I mean, talk about serendipity."

Julius E. Ruffin, too, was exonerated thanks to Burton.

Zedd went to court to win DNA testing for Ruffin, and the request was approved late last year. The Norfolk commonwealth's attorney's office searched for suitable material for DNA testing. The three places to search are the local court, the police department or the forensics laboratory.

All the other evidence had long since been destroyed but some was found in Burton's case file.

The victim in the case positively identified Ruffin as her attacker. Blood typing, presumably done by Burton, had placed Ruffin and the rapist within 8 percent of the population.

His first two trials were mistrials, but the third time, he was convicted and sentenced to life in prison. He served more than 20 years before he was freed last week.

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Said Burton's nephew, Keith Betscher, of West Chester, Ohio: "It's great to know she did something that corrected a terrible wrong."

Family and friends said Burton was born Mary Jane Graf on the west side of Cincinnati. She was an only child. She obtained her undergraduate degree in chemistry from the University of Cincinnati in 1950. On Oct. 1, 1960, she married John W. Burton, a baker in Lebanon, Ohio.

John Burton died at 32 of pneumonia not long after they wed. She never remarried, said Betscher. She and her mother-in-law, Maud Burton, made a go of the bakery for a couple of years before she sold it.

Betscher said Burton then went to work for the coroner's office in Cincinnati, and in the 1970s she moved to Charlotte, N.C., and worked for authorities there. She was then hired by Virginia and moved to Richmond.

Betscher said his aunt cared deeply for her family and was devoted to her mother, who lived with her until she died. On the other hand, he said, his aunt was reserved and "wasn't a touchy-feely kind of person."

Betscher's wife, Jan, described Burton as a "a very logical, pragmatic-type person."

Betscher said Burton developed a "rape kit" for police to recover evidence in rape cases. Her mother-in-law used to help assemble the kits that were given to police departments.

Burton often talked about her job and attending trials. "She loved it. Absolutely loved it," Betscher said. She got a great deal of satisfaction helping solve cases and bringing about justice. "She had a very strong sense of right and wrong."

In a 1974 Times-Dispatch article about women who worked at the state laboratory, Burton was quoted as saying: "What we are doing is very necessary and a great help to the police." She made it clear, however, that she was objective and not a "judge and jury."

Betscher said his aunt told him the state offered her an attractive buyout package she could not refuse. Betscher and her colleagues were not sure when Burton left state government, but it appears to have been after 1990.

She lived in Richmond for several years after she retired and then moved to a retirement community in Cincinnati. She had several time-share vacation homes on the East Coast and died at 70 in Indian Rocks, Fla.

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The man who hired Burton in Virginia, Warren G. Johnson, the now-retired director of what was then called the bureau of forensic science, said, "We stole her from Charlotte."

Burton's job was to run the serology operation, said Johnson. Forensic serologists determine the blood type and other identifying characteristics of biological evidence that would either exclude or include a particular suspect as the potential perpetrator of a crime.

"She was a sweetheart to work with," he said. She never complained and was always willing to help. "It was more than a job to her. It was an avocation. . . . She lived her job. She wasn't married, so the only thing she had in life was that job."

"She kept up with all the scientific changes," said Johnson.

One of her last big cases was that of serial killer Timothy Spencer, the "South Side Strangler" whose chilling crimes were the basis of Patricia Cornwell's best-selling book, "Postmortem." Spencer, executed in 1994, was the first person sentenced to die as a result of DNA evidence. Cornwell worked in the state lab at the same time as Burton.

"According to what Mary Jane told me, when Patricia Cornwell refers to 'the lab,' she's talking about Mary Jane," Jan Betscher said.

Dr. Marcella Fierro, the state's chief medical examiner, a colleague of Burton and the inspiration for Cornwell's character Kay Scarpetta, said Burton "used to work like a dog. She'd be working weekends."

"I remember talking to her one Saturday and saying, 'Mary Jane, you're your own worst enemy because you generate good results. It's the first time police have ever had such first-class serology service, so now they bring you more and more.

" 'The better job you do, the more work you generate for yourself,'" she said she told Burton.

Fierro believes Burton would have deliberately kept the material and that it was no error.

"It's not uncommon to realize that there might be [new] technologies or additional tests that you might want to perform in the future so you would archive those things," she said.

By error or design, Anderson is glad for what Burton did.

"The way she did her job - I consider it a blessing, not only for me but for other people," he said.

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Alarming indifference from crime lab boss

The Virginian-Pilot

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This is the first of two editorials on an independent report released Friday that found fault with the way the state crime lab analyzes DNA results.

Unfortunately, Dr. Paul Ferrara still doesn't get it.

For months, the director of the Virginia Division of Forensic Science (DFS) insisted that the lab had done nothing wrong in its analysis of evidence in the case of Earl Washington Jr. Now he's implying that the mistakes were minor.

Ferrara was wrong when he told The Virginian-Pilot last June, "They can say what they want; we are standing by those results."

He was wrong when he told the Chicago Tribune last October, "I'm not going to admit error when there is none."

And he's wrong now when he describes a damning audit by the accrediting arm of his profession as a critique of "one sub-sample five years ago based upon current technologies and standards."

The seven-month analysis by ASCLD/LAB, which has prompted Gov. Mark Warner to order a review of 150 additional DNA cases, points to an assortment of errors by the lab stretching from 1993 to 2004. And it casts a shadow over numerous other prosecutions, convictions and imprisonments that relied on the lab's DNA work.

The bulk of those problems in the audit stem from the work of analyst Jeffery Ban who, it is sobering to note, is the Virginia lab's lead DNA scientist and sits on a national panel on DNA testing standards.

The audit raised serious questions about Ban's failure to outright eliminate Washington during the first DNA testing in the case in 1993. At the time, then-Gov. Douglas Wilder cited the iota of doubt as the reason for reducing Washington's death sentence to life, rather than releasing him.

Washington served 17 years in prison, including 9½ on death row, before he was pardoned, though not proclaimed innocent, by former Gov. Jim Gilmore in 2000, based on a new round of DNA testing.

In the more recent tests, the audit found that Ban correctly eliminated Washington from DNA on a blanket on the bed where 19-year-old Culpeper housewife Rebecca Williams was slain. That DNA was matched by the state's data bank to Kenneth Tinsley, who is serving life in prison for another rape.

However, when it came to DNA recovered from Williams' body, Ban got wrong results on one test. In a second, Ban discounted as unusable a slide from which a California scientist got what the audit calls "clear and definitive results."

According to that analysis by Dr. Edward Blake, sperm found in Rebecca Williams' vagina also belongs to Kenneth Tinsley.

It is time for someone in authority in Virginia to apologize to Earl Washington Jr. for years of false imprisonment and for the cloud of suspicion that continues to haunt him, even since his release.

Is there another case in the annals of DNA testing in Virginia in which genetic material on both a victim's body and the bed where she was slain has been linked to an individual, Tinsley, and that person has neither been indicted nor identified as the lead suspect in the case?

No.

The mistakes at the Virginia lab do not stop with Ban, however. Perhaps even more perplexing, as questions swirled last year about the lab's performance, it attempted additional testing and performed an internal review. For the most part, the lab found no errors in Ban's work.

Clearly, the Virginia state lab cannot be trusted to police itself. Four entities deserve credit for exposing flaws within a crime lab previously considered to be on the cutting edge of DNA testing nationally. The New York-based Innocence Project pushed relentlessly for a comprehensive, independent audit.

Dr. Robert Shaler, the point man on the Sept. 11 victim identifications and the director of forensic biology for New York city, risked the rebuke of colleagues by putting professionalism above cronyism to criticize the work of fellow scientists.

Gov. Mark Warner ordered the audit and, despite pressure to do otherwise, released the entire report. And ASCLD/LAB silenced doubters by issuing an exacting critique.

Unfortunately, the list of those performing admirably does not extend to Dr. Ferrara. His defensive posture is disappointing and unsettling from a lab that, while doing many things right, has enormous power to obstruct criminal prosecutions if it errs.

So long as Ferrara wrongly diminishes the serious errors in his lab, Virginia policy-makers take a huge risk in standing by him.

Tomorrow: Restoring confidence in the lab.

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A reform agenda for state crime lab

The Virginian-Pilot
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This is the second of two editorials on an independent report released Friday that found fault with the way the Virginia crime lab analyzes DNA results.

Here in a nutshell is why Virginia's crime lab needs serious reform, including independent oversight.

Presented with a seven-month audit identifying serious mistakes in a high-profile murder case, lab Director Paul Ferrara responded, "The Division of Forensic Science is gratified that the audit report does not suggest any evidence of a systemic deficiency."

The audit, which found DNA errors in 1993, 2000 and 2004 in the case of Earl Washington Jr., gave the lab no such pass. But a spokesman for former Attorney General Jerry Kilgore — who should know better — repeated the claim: "...we are gratified that the audit does not find a systemic deficiency within the forensic lab, therefore this appears to be an isolated incident."

That's akin to having a biopsy come back identifying cancer and proclaiming that the isolated results mean the rest of the body is cancer-free.

In fact, the audit took a much more skeptical view than Ferrara or Kilgore imply about the overall quality of the lab's DNA work.

ASCLD/LAB recommended an inspection of other work by the lead scientist in the Washington case as well as other cases handled by the lab's DNA analysts. In all, DNA testing in about 160 cases, possibly including some resulting in death row convictions, will be re-examined.

The purpose of those reviews is to decide what Ferrara and Kilgore falsely claim has already been concluded. The audit urges additional testing to determine "whether the deficiencies revealed in this report are endemic."



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Chesapeake

Such unbridled hubris on the part of Virginia officials, far too common historically, underscores the need for far-reaching reforms, including independent oversight, improved training and better procedures. Interviews with experts affirm that many of these

suggestions need to be adopted nationwide.

Independent oversight. For good reason, the audit recommends experts who are not associated with the Virginia crime lab be involved in the broader review. In-house scrutiny can just perpetuate mistakes, as proved when an internal audit last year failed to turn up most of the errors uncovered by ASCLD/LAB.

Two permanent changes are needed. First, a scientific panel established by the legislature last winter to help oversee the lab isn't independent enough. The current law is too heavily weighted toward crime-lab scientists. At one point, draft legislation had a better mix of academic and forensic scientists. That was changed at the last minute at Ferrara's insistence. Any scientific panel will only be as good as the makeup of the board.

Second, as required by a new federal law, Virginia needs to designate an independent external auditor to evaluate serious allegations of misconduct or gross negligence at the lab.

In the Washington case, it took six months of behind-the-scenes pressure from the New York-based Innocence Project, as well as a concerted newspaper editorial campaign, before Gov. Mark

Wamer ordered an independent audit. That's not good enough.

Better training. It's disconcerting that the lab's technical leader on DNA committed the errors in the Washington case. It's equally sobering that colleagues assigned to review the scientist's work didn't catch his errors and then made some of their own.

Experts fear that DNA technology has advanced faster than scientific training in many forensic labs. The Virginia example underscores the need for a national summit on this growing gap.

Virginia policy-makers also should re-evaluate the relationship between the state lab and the Virginia Institute of Forensic Science and Medicine, a nonprofit corporation that trains many of the technicians hired by the state.

The institute, which is partly funded through the state budget, helps address a shortage of DNA analysts. But, according to the Web site, well over half of the faculty members with scientific or technical backgrounds come from the state lab or the medical examiner's office. The danger is that blind spots at the lab get reinforced by that training system.

Blind testing. Unlike other scientific inquiries, crime-lab investigations too often occur with the scientist having full knowledge of the law enforcement theories in a case. That is a recipe for slanted results. The science ought to stand on its own. That can best be accomplished if those performing the work don't know the desired outcome.

Changes at the lab are not all that is needed. Too many judges and lawyers are intimidated by the science of DNA and fail to ask enough questions. They need much better training in understanding DNA analysis and interpretation.

Those who dismiss the Washington audit as an "isolated incident" do a disservice not only to the truth, but to the integrity of the criminal justice system in Virginia. Fortunately, a review of scientific evidence in so many cases means the facts will eventually speak for themselves.

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Virginia officials don't need to wait to get started on obvious reforms.

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