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Dumb on crime means broken lives

By [The Editorial Board](#) | Saturday, May 17, 2008, 06:16 PM

Something is terribly wrong with the Texas justice system, which has sent scores of innocent people to prison for crimes committed by others. It is especially tragic that Texas has the capability and technology to prevent (or discover) errors that lead to wrongful convictions but lacks the leadership and will to use it.

What other conclusion can be drawn in the face of the dozens of DNA exonerations - now totaling 33 - of wrongfully convicted people who languished in Texas prisons for years, some nearly three decades. And those exonerations don't include people cleared by other means, such as the Tulia residents who were convicted on the false testimony of a law enforcement officer.

Perhaps after last week's public hearing at the state Capitol, the issue of protecting innocent citizens from being wrongfully imprisoned finally will gain traction. It must. It is unacceptable that innocent people are convicted while the real culprits get away with rape, murder and other violent crimes. That approach is not tough on crime - it's dumb on crime.

At the Capitol, nine men who were wrongfully convicted of crimes explained the events that sent them to prison and the trauma they suffered as a result.

"I'm here to tell you I lost everything. I am still hurting. I am still broken," said James Curtis Giles, who spent 10 years in prison for a rape he did not commit.

In the way of details, here are the reasons the system broke down for Giles and 32 others exonerated by DNA. Some cases involve a combination of the errors:

- Witnesses misidentified suspects in 27 cases.
- False forensic testimony contributed to six convictions. In some cases, it was deliberately false on the part of forensic experts.
- Testimony from informants, accomplices or those with incentives to lie was found in five cases.
- False confessions or guilty pleas led to three convictions.
- Prosecutors suppressed exculpatory evidence or engaged in other misconduct in four cases.

Technical and scientific advances in crime investigation have narrowed the margin for error, making the problems impossible to ignore. Innocent people are being harmed. Furthermore, in many cases, the real criminals are not punished. They are free to roam and commit more crimes. As Sen. Rodney Ellis, D-Houston, said, "We've reached the tipping point."

Just a few weeks ago, James Lee Woodard of Dallas was exonerated by DNA evidence after spending 27 years in prison on a rape-murder charge. His case exposed the damage done when prosecutors put conviction rates over justice. In his case, the then-Dallas district attorney suppressed evidence that would have bolstered Woodard's innocence claim.

The case also illustrated the best and worst of Texas justice: Dallas leads all Texas counties in the number of wrongful convictions reversed by DNA - 17. In Travis County, four people have been cleared by DNA. Unlike most other counties, however, Dallas preserves biological evidence in all criminal cases, so it has the greatest capability to correct its mistakes.

Texas lawmakers should require that all counties preserve biological evidence and review questionable cases for error.

There certainly are heroes on this battlefield, including Ellis and Dallas County District Attorney Craig Watkins, whose efforts in reviewing cold cases for errors have set an example nationally. It's encouraging that other leaders are working to fix flaws in the Texas system, including Houston Police Chief Harold Hurtt, Travis County District Attorney-elect Rosemary Lehmberg and Court of Criminal Appeals Judges Barbara Hervey - who worked as an assistant district attorney in Bexar County - and Cheryl Johnson, who say crime labs need greater oversight or independence from police to avoid conflicts of interest.

Anyone interested in justice - regardless of political philosophy or party affiliation - has a stake in finding a solution. We can start by establishing a Texas Innocence Commission that Ellis has been pushing hard for since 2003. Lawmakers should adopt and fund it.

Such a commission could establish best practices for criminal cases that would go a long way in ensuring that the guilty are punished and the innocent are not. Texas no longer can claim to be tough on crime if it doesn't get smart on crime.

Some of the wrongfully convicted Texans cleared by DNA

Chris Ochoa and Richard Danziger were sent to prison on a false confession. Ochoa confessed to the 1988 murder of Nancy DePriest, 20, whose body was discovered at an Austin Pizza Hut store where she worked. He confessed after police aggressively interrogated him for 20 hours and threatened to go for the death penalty. Ochoa, who worked at the same Pizza Hut, fingered co-worker Danziger as the rapist and testified against him. They spent 12 years in prison. The real culprit was identified by DNA.

James Curtis Giles had a similar name to one of the perpetrators (James Earl Giles) in the 1982 robbery and rape of a Dallas couple. His photograph was added to a police photo lineup, and the rape victim wrongly identified him as one of her three attackers. He was paroled as a registered sex offender after 10 years in prison. Prosecutors hid an affidavit by one of the criminals that identified the guilty parties and cleared Giles.

James Waller spent 10 years in prison after he was convicted of raping a child on the testimony of a witness who erred. A 12-year-old boy, the victim of a sexual assault, identified Waller as his attacker by the sound of Waller's

voice and look of his eyes. At the time, Waller and his family were the only African Americans living in the apartment complex where the victim lived and the 1982 crime took place. The attacker was black.

Carlos Lavernia spent 15 years in prison after being identified by a witness who erred. Lavernia was convicted for the 1983 rape of a woman jogging through the Barton Creek greenbelt after she finally picked him out of a photo lineup more than a year after the attack. She had failed to identify anyone in two previous photo lineups. Austin police detective J.W. Thompson helped obtain DNA testing for Lavernia after interviewing him in prison in 1999.

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