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WHAT IF THERE'S NO DNA?

When biological evidence is lacking, the wrongfully convicted may be stuck



By Julius (Jay) Wachtel. It's the rare prosecutor who will admit a grievous error. Rarer still are those who seek them out. [Dallas D.A. Craig Watkins](#) is such a man. Elected in 2007 after a string of exonerations shocked Texas, Watkins formed a "conviction integrity unit" to undo the damage. Using post-conviction DNA testing, which Texas authorized in 2001, Watkins quickly came up with more innocents rotting away in prison. A few months ago the total was twenty.

[Now it's twenty-two.](#)

Unlike most Dallas County exonerations, which are based on DNA, physical evidence was absent. Claude Simmons and Christopher Scott had been convicted of a 1997 murder based solely on the eyewitness testimony of the victim's wife, who was present when the killing occurred. The distraught woman had no reason to lie. Why did she err? One of the men (both suspects were petty drug dealers) was sitting handcuffed in a police interview room when she walked by, leading her to think that he was involved. That threw off police, and it went downhill from there.

Five years ago a former suspect in the case, who was serving thirty years for aggravated robbery, made a detailed confession and implicated a partner. University of Texas students worked with the D.A. and police to re-investigate the case. It turned out that the girlfriend of the convict's partner originally told defense lawyers that he admitted to the crime. But the trial judge wouldn't allow her statement in, nor those of two other witnesses with information to the same effect. It took six minutes for jurors to wrongfully convict, and twelve years for the truth to prevail.

“I could never admit to something I didn’t do.”

On October 28, 2009 [Dewey Bozella](#) was finally free. A sturdy-looking man of fifty, he had been in prison since 1983 for murdering an elderly woman in Poughkeepsie, New York. Posing with his spouse, a middle-school teacher he married in 1996 while incarcerated, Mr. Bozella smiled for the cameras, thanked everyone and walked away. He was looking forward to dinner; his wife was making his favorite, lasagna.

Sad to say, had he played ball with the system he would have been released long ago.

Mr. Bozella was convicted on the testimony of two criminals seeking deals on their own unrelated cases. His first conviction was set aside in 1990 because members of his race -- Mr. Bozella is black -- were improperly excluded from the jury panel. Before the second trial prosecutors offered a plea bargain and early release. That, however, would have required that Mr. Bozella confess. Like another innocent yet hard-headed man, [Darryl Hunt](#), Mr. Bozella took his chances and, like Hunt, was convicted again. Over the next few years he had several opportunities for parole, but these too would have required that he admit strangling a 92-year old woman with an electrical cord for the sake of her bingo money. So he just said “no.”

Mr. Bozella eventually asked for help from the [Innocence Project](#), a pioneering organization at Yeshiva University that exonerates the innocent using DNA. Unfortunately, as in a majority of violent crime, his case lacked DNA, so they handed off Mr. Bozella off to a private law firm that agreed to take on the case pro bono. Miraculously, the complete police file was preserved by a retired lieutenant who thought the case would come up again. It contained [reports](#) that Mr. Bozella’s original defense lawyers never saw. A neighbor said that the intruder entered via a broken window -- not, as the jailbirds testified, through the front door. A man spoke of a burglar who was planning to break into the victim’s home. Most remarkably, a [fingerprint found at the crime scene](#) was matched to a prisoner doing time for the “nearly identical” killing of another elderly female who lived nearby.

Finding evidence of Mr. Bozella’s innocence “overwhelming,” a judge ordered a new trial. Although they insisted that they still believed in their case prosecutors declined to refile. Mr. Bozella was let go.

What's to be done? It's difficult enough to exonerate with DNA. But when biological material is lacking -- estimates are that suspect DNA is available in no more than a quarter of violent crime -- freeing the innocent can prove daunting.

“CSI” isn't always useful. In the real world there is often nothing beyond an eyewitness or a confession. Consider, for example, drive-by shootings, where there may be no physical evidence other than bullets in a victim's body. Balancing the need for witness ID against its pitfalls, some jurisdictions, including Dallas County, now require that photographic lineups be administered sequentially, one photo at a time, by an officer not involved in the case. Dallas PD goes so far as to prohibit [showups](#) (one-on-one field identifications soon after a crime occurs) unless a dangerous suspect might otherwise have to be released. [Texas State Senator Rodney Ellis](#) proposed tougher rules, banning showups altogether and requiring that all confessions be recorded in their entirety. Others have suggested that statements by self-interested parties such as jailhouse informants be inadmissible unless corroborated.

Whether to protect the finality of the process or, as seems more likely, to avoid political embarrassment [prosecutors often keep hammering away](#), opposing the most worthy appeals and requests for hearings with fanatical resolve. Whatever remedies are chosen, perhaps the most fundamental is the one most easily overlooked. As they relentlessly went after Mr. Simmons, Mr. Scott and Mr. Bozella there was something very basic that the authorities forgot. Doing justice means more than just securing a conviction. *A lot more.*