

From the on-line magazine "Facing South"  
By [Desiree Evans](#) on September 1, 2009 10:23 AM

## Texas Justice: Where wrongful convictions are the norm

There's growing [evidence](#) that Texas executed an innocent man in 2004.

A nationally-known fire expert told a Texas state commission on forensics last week that the arson investigations that put two Texas men on death row were poorly conducted and the forensic evidence couldn't be supported by science, [reported](#) the Dallas Morning News.

One of the cases now in question is that of Cameron Todd Willingham, who was executed in February 2004 for setting his house on fire and killing his 2-year-old daughter and 1-year-old twins. According to the study, Texas fire investigators had no basis to rule that the house fire was arson, a finding that led to Willingham's murder conviction and execution. Willingham always maintained his innocence, and [according](#) to the New York Times, "refused to accept a guilty plea that would have spared his life, and insisted until his last painful breath that he was innocent."

The Chicago Tribune [reported](#) that the re-examination of the Willingham case comes as many forensic disciplines face scrutiny for playing a role in wrongful convictions that have been exposed by DNA and other scientific advances. It's also a crucial case for Texas:

The finding comes in the first state-sanctioned review of an execution in Texas, home to the country's busiest death chamber. If the commission reaches the same conclusion, it could lead to the first-ever declaration by an official state body that an inmate was wrongly executed.

### A Broken System

Wrongful convictions are familiar territory for Texas, a state that has been in the hot seat for the past decade due to the alarming frequency of exonerations. Texas is the state with the highest number of prisoners found to be innocent following DNA testing, according to the [Innocence Project](#), a national organization working to exonerate wrongfully convicted people.

Of the [241](#) inmates that were found and had their convictions overturned as a result of DNA testing since 1989, 38 have been in Texas. Combined these [38](#) men have spent more than [500 years](#) in prison for crimes that they did not commit.

Just last month, DNA tests proved the innocence of Ernest Sonnier, a Texas man who was convicted for a 1985 rape, and served 23 years of a life prison sentence before he was released.

Sonnier was convicted of the crime and sentenced to life in prison largely based on the victim's testimony, even though the forensic evidence gathered from her body and clothes showed that someone with a blood type different from the defendant's had raped her, according the Innocence Project.

Eyewitness misidentification has played a role in more than 84 percent of all wrongful

convictions exposed by DNA in Texas (and at least 40 percent of these eyewitness identifications involved a cross racial identification), according to the Innocence Project. In Texas, witness misidentification has been a large issue for Dallas County, playing a role in the majority of the county's slew of exonerations. Since 2001, 21 people in Dallas County have had convictions overturned after DNA proved their innocence, [reported](#) the Associated Press. That's a rate larger than any other county in Texas, and larger in fact than many other states in the U.S.

Unvalidated or improper forensic science and forensic scientist misconduct has also played a large role in wrongful convictions --accounting for approximately 50 percent of wrongful convictions later overturned by DNA testing, according to the Innocence Project. It was a combination of witness misidentification and faulty testimony from a Houston Police Department Crime Lab analyst that led to Sonnier's conviction. In fact, Sonnier was the sixth man to be freed by new DNA testing and revelations of faulty work, sloppy procedurals and false testimony by the HPD crime lab.

As the Innocent Project said in a recent [press statement](#):

Sonnier's is the latest in a string of cases where DNA testing has proven inmates' innocence after wrongful convictions involving faulty forensics at the HPD Crime Lab. Last year, Innocence Project client Ronnie Taylor was exonerated through DNA testing after serving more than 13 years in prison for a rape he didn't commit. In Taylor's case, a forensic analyst claimed to have conducted testing for the presence of semen on evidence from the crime scene and found none. Years later, DNA testing on the exact same spot proved Taylor's innocence - and proved that the testing had either never been done or had been conducted improperly, according to the Innocence Project.

"For years, Houston has been ground zero in the national epidemic of faulty forensic science," said Innocence Project Co-Director Barry Scheck. "There are still thousands of cases from the Houston Crime Lab that need to be reviewed, and that needs to happen quickly. In many ways, Houston is a symptom of the root problem, which is a lack of national standards and oversight for forensic science."

Human rights advocates have been pushing the Texas legislature to implement a number of safeguards, some that would protect against faulty forensics and prosecutorial misconduct, and reform interrogation and eyewitness identification procedures. Earlier this year, a bill mandating best practices for both photo and in-person lineups to minimize false identifications died in the Texas legislature. But in May the Texas legislature did succeed in passing the Tim Cole Compensation Act. The bill was named for Timothy Cole, who died in jail before DNA testing revealed that he had been convicted for a rape which he in fact did not commit. The Tim Cole Act goes into affect on Sept. 1 and increases lump sum payments to the exonerated from the current \$50,000 to \$80,000 for each year of imprisonment.

## The Death Penalty

A Facing South has [reported](#), executions have become a Southern phenomenon in many ways. In fact, the South has performed 80 percent of all executions since 1977, according to the [Death Penalty Information Center](#). In 2008, [95 percent](#) of all executions were in the South.

[More troubling is the fact that almost 50 percent](#) of all executions in 2008 were performed in Texas. Human rights advocates find it troubling that Texas not only leads the nation in executions by a wide margin, but it also leads the nation in wrongful convictions. In 2008 alone,

7 people were executed from Dallas County, a county soaring with wrongful convictions.

Since 1973, over 130 people have been released from death row with evidence of their innocence, according to the DPIC. Nationally, 17 of the 241 people exonerated so far through DNA have served time on death row.

The Southern death penalty was a hot topic of news this summer. In Georgia, the high-profile case of Troy Davis got the nation talking about the possibility of a wrongful conviction. As Facing South [reported](#), Davis, who has always maintained his innocence, received a rare ruling from the U.S. Supreme Court in August that would allow him a new hearing. That same week in Texas, [Sharon Keller](#), the presiding judge of the Texas Criminal Court of Appeals, went on trial. She was prosecuted for misconduct after callously refusing to keep her office open beyond 5:00 p.m. to allow lawyers for a death row inmate, Michael Richard, to file a last minute appeal for a stay of execution. Now the nation waits to hear if the charges will be dropped against her, or if she will be reprimanded or removed from office.

As the New York Times editorial page [noted](#) on these two recent high-profile cases:

Judge Keller's profound lack of appreciation for the seriousness of taking a life -- and the obligations it places on the state -- is similar to the disturbing dissent that Justices Antonin Scalia and Clarence Thomas delivered this week in the Troy Davis case. They suggested there was no constitutional problem with executing a man who could prove he was innocent.

Willingham and Sonnier are just two of the latest cases that highlight the ongoing problem of wrongful convictions in Texas and across the nation. Tangentially, the cases of Keller and Davis have also shone a light on the deep problems intrinsic in the country's system of capital punishment.

Before his execution, Willingham [told](#) the Associated Press: "The most distressing thing is the state of Texas will kill an innocent man and doesn't care they're making a mistake."

And the question on many people's minds this week: How many more Willingham's exist on Texas' death row?