Justice delayed is justice denied

No defendant should face death because exculpatory evidence was withheld

By William S. Sessions

On Constitution Day, it is fitting that we examine whether the law — and those we have entrusted to safeguard and enforce our constitutional rights — deliver justice. We must devise solutions when our criminal justice system breaks down, failing to protect victims of crime, the accused and society. Our Constitution demands no less.

Forensic science is one area in which reform is urgently needed. In April 1997, Texas executed Benjamin Boyle, sentenced to death for raping and strangling to death a young woman in 1985. His conviction depended on hair and fiber analysis performed by FBI examiner Michael Malone. The prosecutor affirmed that "but for Malone's testimony, Boyle would not have been convicted of the capital offense that rendered him eligible for the death penalty." Unfortunately, as a joint FBI and Justice Department task force discovered not long before Boyle's execution, Malone's testimony was wrong. Yet no one told Boyle, his lawyers or the courts, and he was executed anyway.

In 1996, while Boyle was still alive, the task force began reviewing thousands of cases possibly tainted by unreliable FBI laboratory analysis and testimony. Had Boyle known of the review, he might have obtained a stay of execution to allow the courts to reconsider his case. In fact, in 1999, an independent scientist working on the review found that the forensic testimony in Boyle's case was "scientifically unsupportable."

A July 2014 report by the Justice Department's inspector general makes clear that the delays and notification failures were not limited to Boyle's case. The FBI task force reviewed at least three other cases from 1985 to 1996 based on the very type of questionable forensic analysis in Boyle's case and conducted by the very same examiner. In each case, the inmates were exonerated. In fact, 13 FBI examiners from three different forensic divisions at the lab used improper techniques and gave unreliable testimony in thousands of criminal cases. The report indicates that capital cases, in particular, were not prioritized, even though the prisoners faced execution. The FBI took nearly five years to identify 64 cases of defendants on death row. State prosecutors dragged their feet in responding to task force requests, so it took another two years to complete an independent analysis of the evidence in these capital cases. During this time, three death row inmates, including Boyle, were executed. In each case, the task force failed to notify state authorities, or the defendants themselves, of the possible need to stay an imminent execution because of tainted lab analysis and testimony.

I have no idea whether Boyle was innocent, but clearly, he was executed despite great doubts about his conviction. Such uncertainty is unacceptable, especially in a justice system that still allows the death penalty.

The FBI's DNA testing program, which began in November 1987 when I became director, has had an enormous impact on criminal investigations. The FBI quickly recognized and began to use this technology's unparalleled capacity to both accurately identify suspects and free the innocent. To date, DNA testing has resulted in the exoneration of more than 300 people for crimes they did not commit, including 19 sentenced to death. Just this month, we witnessed yet another innocent man, Henry Lee McCollum, walk off of North Carolina's death row 30 years after he had been sentenced to death.

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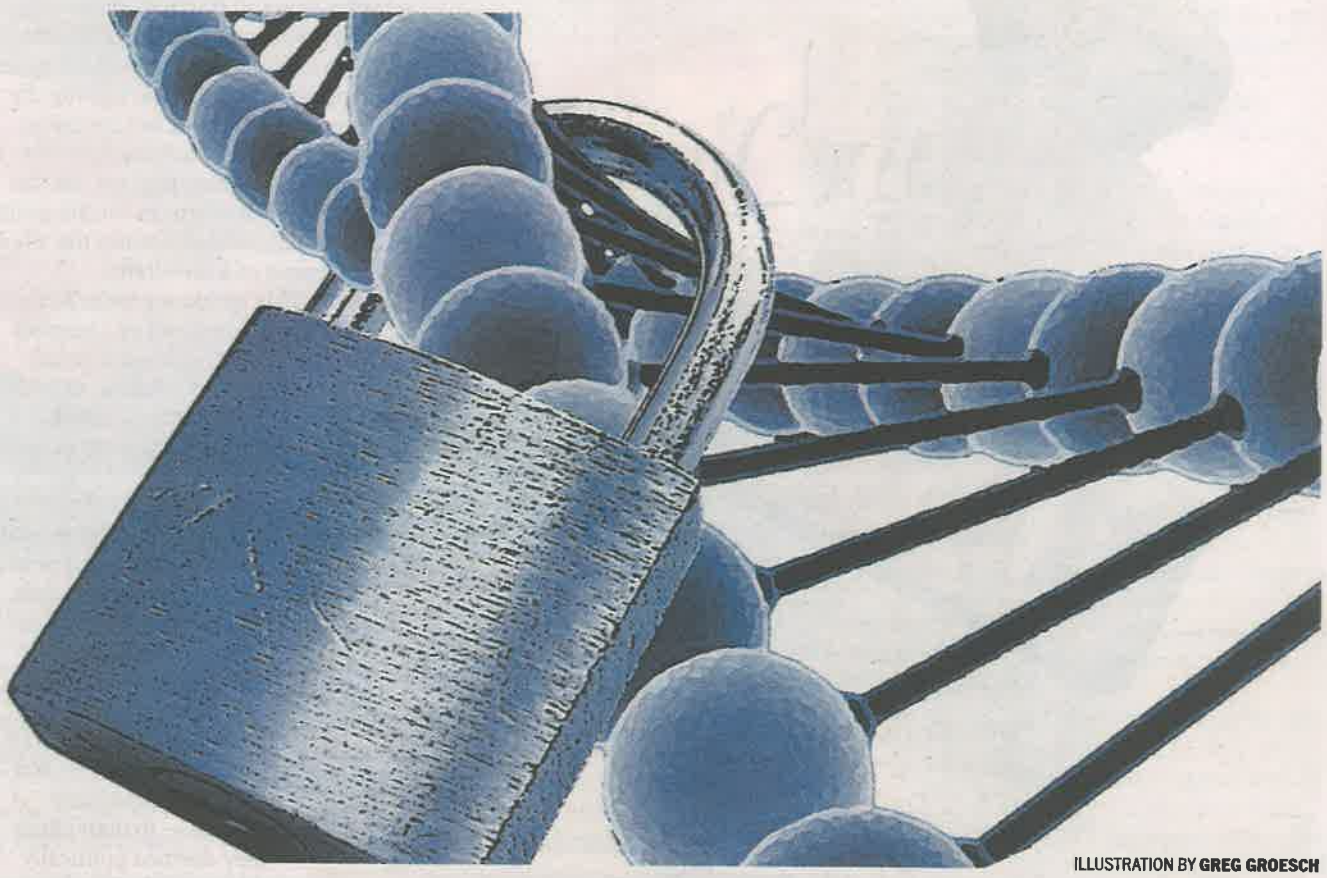
DNA evidence, in the prosecutor's hands since the trial but never given to the defense, was finally uncovered and identified the real murderer.

Fortunately, a moratorium on executions in the state saved Mr. McCollum's life.

Unfortunately, in most criminal cases, there is no biological evidence, or DNA, to test, so the wrongfully convicted face substantial hurdles to clearing their names. Thus, it is even more vital that our elected leaders expedite forensic science improvements, developing other forensic tools that are as powerful and accurate as DNA. The latest Justice Department report follows other criticism of forensic science's integrity, including reports of mistakes and malfeasance in state and local crime laboratories nationwide. But many other segments of the justice system also bear responsibility. Courts must determine if other kinds of forensic evidence are trustworthy and thus admissible. Defense counsel must rigorously review and challenge any prosecution misuse, mischaracterization or withholding of forensic evidence. After conviction, if new forensic evidence or tests become available, prosecutors and courts should not rely on procedural technicalities to prevent defendants from obtaining review. Finally, prosecutors must recognize their affirmative and vital duty to disclose evidence that may be favorable to the defendant, even if that evidence is discovered years — or even decades — after conviction.

It bears reminding on Constitution Day that when evidence of wrongdoing and mistakes emerge — whether it be systemic or in an individual case — our constitutional democracy requires that we disclose and correct it. We must not be fearful of "too much justice" when individual lives and liberty hang in the balance.



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