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JUSTICE

The Wrongly Condemned

How many capital cases end in false convictions?

By John McCormick

Dennis Williams and Verneal Jimerson understand that it sometimes takes a while to correct a mistake. But year after year they sat squirming on death row for the 1978 abduction and gruesome murder of a young Chicago-area couple. In 1996, both men were freed (along with two alleged accomplices) after DNA tests proved that none of the so-called Ford Heights Four could have raped the woman. Three other men admitted the crime and are now serving time. On the day of his release, Williams stood on the courthouse steps, drinking in the warm, fresh air. "Finally, officially, free!" he exulted. "To put it bluntly, it's been pure hell."

Fiascoes like the one in Ford Heights aren't just flukes. Next week a conference at Northwestern University's law school in Chicago will focus on 75 cases of "the wrongly convicted," men and women freed from death row on the likelihood--and in many cases the absolute certainty--that they are not guilty. More than 30 of the group will appear together onstage-- proof in the flesh that we convict the wrong people a small but disturbing share of the time. In the 22 years since the U.S. Supreme Court reinstated the death penalty and laid down new rules to make courts apply it more fairly, 486 prisoners have been executed. The number of death-row inmates has swelled to 3,517. Nobody knows how many may be innocent, but research--and forensic science--strongly suggest that some are. The Northwestern conference will also explore the many reasons for mistaken verdicts, and practical reforms that could help prevent this ultimate injustice.

How do people get wrongfully convicted? Racial discrimination--among cops, prosecutors and jurors--can certainly be a factor. Clarence Brandley, an African-American janitor, was accused of killing a white girl in Texas in 1980. A police officer allegedly told Brandley and a white janitor that one of them would hang for the crime, then turned to Brandley and added, "Since you're the nigger, you're elected." It was later shown that prosecutors suppressed evidence; Brandley was freed after 10 years in prison. But myopia and expediency may be to blame as often as malevolence. Many cases that go bad involve a sympathetic victim--a child, for example--and a dirtball suspect with a rap sheet.

But the greatest source of bad convictions is lousy lawyering for the defense. Judges often assign capital cases to inexperienced or marginally talented attorneys. Alabama pays lawyers just \$20 an hour--up to a cap of \$1,000--to prepare for a capital trial, and \$40 an hour to argue it. One Texas lawyer delivered a 26-word statement at sentencing: "You are an extremely intelligent jury. You've got that man's life in your hands. You can take it or not. That's all I have to say." His client was executed in 1992.



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Ferretting out bad convictions isn't as easy as it looks on TV dramas, where forensic science--such as DNA testing--usually saves the day. In real life, few murderers leave their semen or blood at crime scenes. Of the 75 reversals, only about 10 involved DNA evidence. "Our error rate is probably a constant, regardless of whether the killer left his semen," says Lawrence Marshall, the law professor who organized the conference. "DNA improves our detection rate. It opens our eyes to how many other convictions may be wrong."

Reforms, drafted by academics and lawyers, could reduce mistakes. For openers, state and federal legislators could rethink their recent steps to speed up death-penalty appeals. Today the process typically postpones execution for almost a decade. But in the 75 wrongful cases, the average time from conviction to exoneration was seven years. Had the system moved faster, many on the list would be dead. Other measures would make it easier to present exculpatory new evidence after a trial. Although laws vary in the 38 death-penalty states, even strong DNA evidence can be hard to introduce post-conviction, says Richard Dieter, head of the Death Penalty Information Center, an anti-capital-punishment advocacy group.

Under another plan, judges would instruct jurors not to impose the death penalty if they aren't certain beyond any doubt--not just any reasonable doubt--of the defendant's guilt. Still another would curb the ability of jailhouse snitches to finger defendants in return for softer treatment.

Skeptics will argue that the justice system is already capable of correcting its mistakes. How else were those 75 lives spared? But consider cases like that of Kirk Bloodsworth, who was cleared in 1993 of the rape and murder of a 9-year-old Maryland girl. The reason: two laboratories ruled out his DNA as that of the rapist's using a test that didn't exist when he was charged with the crime in 1984. "In a good half of these 75 cases, the exoneration is so complete that it erases any doubt whatsoever," says Marshall. "But the system didn't work. The system merely allowed enough time to pass for someone else to prove their innocence."

Will the national conference build momentum for reforms? That may depend on whether it comes off as an exercise in drafting good policy or one big bleeding-heart session. Capital-punishment proponents are keeping quiet until after the gathering; some say privately that if the proposals aren't just excuses for limiting executions, they'll listen.

proposals aren't just excuses for limiting executions, they insist. Among the public, support for the death penalty is strong, and many abolitionists quietly admit that it's here to stay. Their new and narrower goal sounds like a paradox: to make the death penalty safer. Even staunch death-penalty advocates know that sending the wrong person to death row usually leaves a killer on the street. These mistakes also cheat murder victims' families of any closure. Randall Dale Adams was freed after 13 years' imprisonment for the 1976 murder of Houston policeman Robert Wood. Adams believes that, with the real killer never charged, the officer might as well be "still lying by the side of the road." Making the death penalty safer won't please hard-liners who want to abolish it, or those who favor more executions. But reform might save a few innocent lives--and better avenge a few others.

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