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*Wrongfully convicted ex-prisoners at Chicago conference: each declared, one by one, 'If the state had its way, I would be dead today'*

**WORLD SPECIAL REPORT**

# LUCKY TO BE ALIVE

**Freed former death row inmates warn that the danger of a mistaken execution is growing**

**A**ll through the 10 long years he spent in a cell on Illinois's death row, Rolando Cruz never doubted that one day he would prove his innocence. "I was too busy being mad," says Cruz, a solidly built man of 35 with crew-cut hair and a penetrating stare. "If I had ever doubted, they would have won." In 1985, based largely on what proved to be perjured testimony by police and jailhouse informants, Cruz was sentenced to death for the brutal rape and murder of 10-year-old Jeanine Nicarico. Someone had kicked in the door of her house in Naperville, Ill., while she was home alone with flu; her body was found in a field two days later. Months afterward, a man named Brian Dugan was arrested for a similar rape-murder—and confessed to killing Nicarico as well. Cruz was granted a retrial, but zealous prosecutors convinced the jury that he had helped Dugan, and so still deserved execution. It took years of public pressure, new DNA evidence and a police officer's admission of lying on the stand before Cruz was cleared and set free in 1995.

Cruz's story is shocking, frightening—and far from unique. In the last 25 years, no less than 75 men and women have had their death sentences overturned and been set free—usually after many years behind bars. Some came within hours of execution. Now, with new

laws limiting appeals and recent funding cuts to legal-aid centres, death penalty opponents warn that the danger of mistakenly executing such wrongfully convicted people is growing.

The issue was highlighted at a dramatic conference in Chicago last week. The 1,200 participants included a who's who of top anti-death-penalty litigators and activists, but the stars of the show were 29 of the wrongfully convicted ex-prisoners. At the conference's emotional climax, they strode onstage one by one, each declaring to a packed auditorium: "If the state had its way, I would be dead today."

More than 480 people have been executed since the United States reintroduced capital punishment in 1976, roughly the same time period in which the 75 condemned inmates were cleared. "That means one exoneration per six executions," says Barry Scheck, a professor at New York City's Benjamin N. Cardozo law school and a onetime member of O. J. Simpson's defence team. "If you had to go to a hospital for a life-or-death operation, and found out that hospital misdiagnosed one out of every six cases, you'd run," says Scheck. "It's an intolerable level of error, regardless of your views on the death penalty."

Canada, of course, has had no death penalty since 1976, although some Reform party MPs and the Canadian Police Association advocate bringing it back. The Supreme Court is also considering whether to allow the extradition of Canadians to face capital charges in other countries. But Canada has had its share of wrongful convictions. At least eight Canadians have had their life sentences overturned in recent years, including Guy Paul Morin, David Milgaard, Donald Marshall and, on Nov. 5, Newfoundland's Gregory Parsons. Those cases show the danger of capital punishment, says Joyce Milgaard, who attended the conference with several other members of the Toronto-based

Association in Defence of the Wrongly Convicted. Milgaard's son David spent 23 years in prison for the 1969 rape and murder of a Saskatoon nursing aide before a DNA test exonerated him. "Where would David be if we had a death penalty?" asked Milgaard. "He'd be dead."

What leads to wrongful convictions? Incompetence, honest mistakes, politics and malice—often combined in a single lethal judicial cocktail. In a study of 400 wrongful murder and rape convictions, philosopher Hugo Bedau of Tufts University and sociologist Michael Radelet of the University of Florida found perjured testimony to be among the most common causes. Jailhouse snitches seeking favors for themselves often claim to have heard a defendant confess in prison; such tainted testimony helped convict Cruz. Sometimes, the testimony comes from the actual killer. Randall Dale Adams spent 11 years in a Texas prison—four on death row—for killing a police officer, thanks largely to the testimony of a man who later admitted to committing the murder himself. False confessions and mistaken eyewitness identifications are also common factors.

Racism, too, often plays a role. When Clarence Brandley, a black janitor, was arrested in connection with the murder of a white girl in Texas in 1980, a police officer allegedly told Brandley and his white co-worker that one of them would hang for the crime. "Since you're the nigger," he told Brandley, "you're elected." Brandley was exonerated after 10 years in prison.

Perhaps the main reason for bad convictions is bad defence lawyering. Many states provide only minimal payment for court-appointed attorneys, which means that poor defendants are often stuck with inexperienced, untalented, unmotivated defenders. Roberto Miranda spent 14 years in a Nevada prison awaiting execution after a trial in which he was represented by a lawyer who had only passed the bar a year earlier and had no experience with murder cases. Miranda's conviction was ultimately overturned.

Things are even bleaker at the post-conviction appeals stage. Many parts of the United States have a chronic shortage of appeal lawyers, especially since Congress two years ago stopped funding death penalty resource centres, which aided or provided lawyers in 20 states. According to Stephen Bright, director of the Southern Center for Human Rights, Alabama has 35 death row inmates who have no lawyer at all.

Overzealous prosecutors sometimes share the blame. "Death penalty cases have enormous pressure to convict," says Anthony Amsterdam, the veteran New York University law professor who convinced the U.S. Supreme Court to ban executions in 1972, only to see them return under new rules four years later. "They've become the prosecutor's Olympics, and all the prosecutors want to be Michael Jordan. They'll condone police perjury or bring on witnesses they don't believe, because the ethic is to win, and win death." And once someone has been convicted, it becomes difficult politically for prosecutors and judges—who in many states are elected—to admit to such a grave error.

Participants at the conference, organized by Chicago's Northwestern University, called for a range of reforms, including increased funding to legal-aid centres, limits on testimony by jailhouse informants, universal access to post-conviction DNA testing and judicial changes to make it easier to present new evidence after a trial. Their cause is picking up some support; the American Bar Association last

year called for a moratorium on executions, and the Illinois state legislature is considering imposing one. All the polls, however, continue to show that a solid majority of Americans support the death penalty.

To capital punishment partisans, the fact that so many wrongfully convicted people have been exonerated only proves that the system works. "Our system assumes mistakes will be made, and the extensive appeals process allows for corrections," says Bob Pambianco, chief policy counsel with the Washington Legal Foundation, a conservative advocacy group. "The anti-death-penalty activists can't point to one case of an innocent person being executed."

There are no incontrovertible cases of wrongful executions, but there are many possible ones. Radelet and Bedau have compiled a list of 23 people who have been executed since 1900 despite evidence pointing to their innocence. "So many mistakes of so many sorts have come to light that anyone at all realistic must understand that our justice system is unavoidably executing people who did not commit the crimes they were convicted of," says Amsterdam.

Many of those who have been exonerated owe their freedom largely to pure luck, often in the form of interested journalists, film-makers or others who bring new attention to the case. Others have been cleared thanks to technology that did not exist at the time of their conviction, notably DNA testing. Since the late 1980s, DNA checks have exonerated 56 wrongfully convicted people in the United States, including 10 on death row, and five more in Canada. But according to Scheck, a DNA expert, the relevant evidence is lost or destroyed in 70 per cent of the cases lawyers examine. "If we had that evidence, there would have been two or three times as many as those 56 exonerations," says Scheck.

Even after they have been saved from death, many of the wrongfully convicted find that their lives can never be the same again. For many, the lost years and the stigma they carry make it impossible to return to their communities or get jobs. Sonia Jacobs spent 16 years in Florida prisons, five of them on death row, after she and her common-law husband, Jesse Tafero, were convicted of murdering two police officers. During that time, both her parents died, her children grew up and her husband was executed. Thanks to new evidence turned up by a film-maker who had been her childhood best friend, Jacobs's conviction was overturned in 1992. "I went into prison a mother of two small children, a daughter and a wife," says Jacobs. "I came out a grandmother, an orphan and a widow. No one can help me deal with that."

While some wrongfully convicted inmates have been granted cash payments for their lost years, many states ban such compensation. In Canada, wrongfully convicted men like Milgaard and Morin have been paid hundreds of thousands of dollars. Morin's case sparked a federal inquiry into the justice system's shortcomings, at which Rolando Cruz testified. "The Canadian government had enough dignity and pride to admit they made mistakes, unlike this country," says Cruz.

Cruz has not been paid a penny, but he is getting another kind of satisfaction. In January, seven police officers and prosecutors will be tried for conspiracy to conceal and fabricate evidence in his case. However belatedly, real justice may finally be done in Cruz's case—but it almost cost him his life.

VINCE BEISER in Chicago



Jacobs (right) hugs ex-inmate Sabrina Butler: lost years

MICHAEL S. GREEN/AP