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An ever-growing number of books, innocence projects and overturned convictions speak to the unreliability of conviction. A surprising number of death-row inmates have been discovered to be innocent of the capital offense for which they were convicted. For example, an Illinois case study examines what went wrong with a justice system that sent 13 innocent men to death row, one common thread has already emerged: poorly financed, often incompetent defense lawyers who failed to uncover and present crucial evidence. The mistakes go far beyond the 13.

13 In one case, a defense lawyer failed to prepare any strategy for his client at the death penalty hearing the day after the conviction, saying he had been hoping that the jury would opt for manslaughter charges. 14 Another defense lawyer rambled so incoherently during a death penalty trial that the proceeding " would border on the comical if only it were make-believe," a State Supreme Court justice wrote. A third lawyer failed to attend some critical hearings, arrived late at others and neglected to call witnesses who had volunteered to testify about a defendant's character.

" The legal defense for death row inmates has simply been inadequate," said Elisabeth Semel, who heads an American Bar Association project that focuses on legal representation for people facing the death penalty. Other legal experts add that the situation in Illinois is mirrored in many other states. The defense lawyers in some of those cases were incompetent, and even when they were competent, they often did not have the money to conduct their own thorough investigations and compete against the police and prosecutors.

16 Although not all the cases involved questions of poor defense work Some resulted in accusations of overly aggressive police officials and prosecutorial misconduct it is striking that in three cases, college students working on class projects at Northwestern University were able to find evidence that had escaped the attention of defense lawyers.

17 While a proper defense in a death penalty case takes months of research and costs \$250, 000 or more, Ms. Semel said, defendants in these cases are often represented by lawyers who are paid a few thousand dollars, or less, and spend only two days on a case.

Separate hearings in each case determine whether a defendant should be executed, and that adds to the cost. Unable to afford good legal help, the families of defendants often settle, in desperation, for any lawyer who will take a case, regardless of reputation. The results are not surprising. A Chicago Tribune examination of death penalty cases found that 33 defendants sentenced to die were represented by a lawyer who has been disbarred or suspended. The fate of these inmates, in some cases, depends on volunteers unearthing evidence, or just plain luck. Read marketing mix Innocent

18 While a spotlight has been cast on the Illinois system, accounts have emerged from around the nation of defense lawyers who slept through trials, or came to court drunk. Courts have assigned death penalty cases to lawyers, like those specializing in tax law, who have never tried a criminal case. And for many of the decent, hardworking lawyers who take death

penalty cases, the money paid by poor families is generally so paltry that paying for a thorough investigation is impossible.

Seymour Simon, a former Illinois Supreme Court justice and longtime foe of the death penalty, said he believed the poor legal representation for defendants made the death penalty unjust.

19 A criminal justice system that convicts innocents on the serious charge of murder is certain to convict innocents on less serious charges, as well.

20 The rate of wrongful conviction is high because of serious flaws in what passes as "evidence." For example, criminologists know that eyewitnesses are wrong 50 percent of the time.

This means that half of inmates convicted by eyewitness testimony are innocent.

21 Yet this "evidence" is still used to convict hundreds of people. This situation is not unlike the one that a young David Milgaard found himself in 33 years ago. At the age of 16 David Milgaard was considered "trouble", known to his friends as a hippie and troublemaker and to his parents and teachers; impulsive and rebellious.

22 David Milgaard was the perfect suspect for the rape and murder of 22-year old Gail Miller, a nursing assistant who lived in Saskatoon.

On the night of January 31st 1969, between 6:45 and 7:30 am Miller was found raped and stabbed twelve times and left for dead, in an alley way. At this same time Milgaard was with his two friends Ron Wilson and Nichol John,

they were on a road trip. Along the way they stopped to pick up another friend, Shorty Cadrain. When they got to Saskatoon They stopped to help someone out of asnowbank, and got stuck themselves; this is when Milgaard ripped his pants, something that came into evidence against him.

When they finally arrived at Cadrain's home, David changed his pants, and they left to go to Alberta. Larry Fisher, who was later convicted of this crime (Miller's murder), was staying in the same home as Cadrain at the time.

Some time after returning from their short trip to Alberta, Cadrain heard about the \$2000 reward for information into Miller's death. Cadrain went to the police with a version of what happened that night, although he had been questioned earlier and had no information to give at that time.

This is what made Milgaard a suspect in the case. From then on the police concentrated their efforts on finding evidence implicating Milgaard. Within the statement Cadrain gave to the police he said Milgaard had blood on his clothes, he threw away a woman's cosmetic case from the car on the way to Alberta and Cadrain also stated that he threatened to kill Wilson and John because they knew too much. In the beginning Milgaard, Wilson and John were giving the same story, even when being questioned separately.

At first Wilson told police that Milgaard had not been away from the group, Nichol John supported this during her own interview, initially, as did Milgaard. After extensive and intensive interrogation by the police though, both Wilson and John began to change their stories going along with the leading questions from the police. Nichol John, after being placed in a room with Cadrain to discuss, corroborated his story, and gave more details. She also

stated she had seen Milgaard stab Gail Miller. Once having all this information and an eyewitness, Milgaard was charged with the murder.

23 It is quite evident in this case that the concentration placed on Milgaard as the killer was high. Not only did the police investigators, not search for other suspects, but in a sense they manufactured guilt, so David Milgaard could be convicted of a crime which he did not commit. The investigators in this case, determined this young man's fate, before he even reached trial. They turned his friends against him, so that their case could be stronger. At the trial which was held in 1970, the most damaging testimony came from his friends, Cadrain, Wilson and John.

When it came time for John to testify, instead of repeating her account of seeing Milgaard stab Miller, she told the court she couldn't remember that morning. John was treated as a hostile witness, allowing the Crown to cross-examine her about the statements she previously made to the police. Major damage was also done to Milgaard's defense when two young men testified against him. Craig Melnyk, 17 and George Lapchuk, 18, both testified that Milgaard had confessed to killing Miller while watching a newscast regarding her murder, they also testified he demonstrated the murder.

The judge warned the jury to treat many of the Crown's witness' testimony with skepticism.

24 Exactly one year after Miller had been murdered; the jury came back with a guilty verdict. Milgaard was sentenced to life. His many attempted appeals eventually were refused by the Supreme Court of Canada. In 1998 it was found that Larry Fisher's ex-wife had spoken to police in 1980, with the <https://assignbuster.com/age-of-technology/>

strong suspicion that her husband, at the time, had killed Gail Miller. Police did nothing with this information.

25 With Milgaard's mother and lawyers pressing and investigating other possibilities evidence of the other attacks of Larry Fisher was sent to Ottawa and the media to point out the innocence of David Milgaard and the guilt of Fisher. With the intervention of Prime Minister Mulroney, Justice Minister Kim Campbell reopened the case and the court decided there was reasonable doubt due to new DNA evidence. David Milgaard was then released on April 17th 1992.

26 Misconduct by police and prosecutors is one of the main causes of wrongful conviction.

Both police and prosecutors suppress exculpatory evidence that points to the suspect's innocence. There was a time when, prosecutors presented the case for and against the suspect and left it to the jury. But today suspects do not have the benefit of the doubt. Police and prosecutors coerce witnesses and knowingly use false testimony. When this isn't enough, they fabricate evidence.

27 Junkscience(a conservative response to inaccurate scientific findings), also plays a major role in the conviction of innocents. Microscopic hair-comparison evidence has sent many an innocent person to jail.

The weakness of hair analysis is well established. For example, it is a known fact that hairs from the same head do not often match, A test of 240 crime labs found error rates in hair analysis of 50 percent, 54 percent, 68 percent

and 56 percent. Yet prosecutors desperate for convictions continue to use junk science of hair comparison to send innocent people to jail.

28 Even when the fabric of false guilt is bare, and the same vivid threads bind a wealthy Toronto businessman and a Halifax fisherman: Sometimes eyewitnesses make mistakes.

Snitches tell lies. Confessions are coerced or fabricated. Lab tests are rigged. Defense lawyers sleep. Prosecutors lie. Forensic fraud is another source of wrongful conviction. Believe it or not, crime labs have traditionally been dependant on police budgets and obliged to prosecutors. Consequently, crime labs have tended to be politically sensitive to the needs of police and prosecutors for evidence. Often, the labs withhold warnings and present ambiguous results as compelling evidence. In some instances, the labs actually create the needed evidence.