phone post

FORUM

FALSE JUSTICE

one hundred thousand innocent men in prison— and, for most, no escape

by CHIP ROWE

This we know to be true: In the early hours of July 6, 1986, firefighters responded to a fire at a home in Paris, Illinois. It had been set in two locations. In a bedroom firefighters discovered the bodies of Dyke and Karen Rhoads. Dyke, lying near the door, had been stabbed 28 times. Karen, near the foot of the bed, had been stabbed 26 times. The wounds in each victim were up to six inches deep.

For two months the case stymied investigators. Karen's employer offered a $25,000 reward. What happened next calls to mind James Carville's remark about the consequences of dragging a $100 bill through a trailer park.

A local alcoholic, Darrell Herrington, told police he knew who had killed the Rhoadses. First he blamed "Jim" and "Ed." Then he claimed that, although he had been drinking from noon to midnight on the day of the murders, he recalled driving to the Rhoadses' home with two layabouts named Randy Steidl and Herb Whitlock. While he waited in the car, he said, the other two went inside. Herrington said he heard noises, used a credit card to open a locked door and saw the bodies.

The police gave Herrington a lie detector test. He failed.

A few months later, another barfly came forward. Deborah Rienbolt, an alcoholic who also abused drugs, told police that on the night of the murders, Whitlock had borrowed a five-inch hunting knife from her and said something about the Rhoadses and a drug deal gone bad. She said she later drove by the Rhoadses' home and spotted Whitlock outside. In a second interview with police, she said she had driven by, heard screams, gone inside and saw Steidl and Whitlock and the bodies. In a third interview, she said she had gone inside, saw the couple being attacked and (inexplicably) held down Karen Rhoads as she was killed. She said that when Whitlock returned her knife, she soaked it in hot water and scrubbed the blood out of the crevices.

Prosecutors put Whitlock and Steidl on trial for murder. Because no physical evidence linked either man to the

implausible and contradictory testimony (neither reported seeing the other at the scene). Somehow it was enough to convince two juries. Steidl received a death sentence, while Whitlock got life.

After the trials, Herrington recanted his testimony, then reaffirmed it. Rienbolt recanted her story, reaffirmed it and then recanted again. She said police had fed her details, such as a broken lamp at the crime scene, that made her account appear credible. Three

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years ago journalism students tracked down a former neighbor, now a surgeon, who had lived across the street from the Rhoadses. On the night of the killings he had been sitting outside, about 100 feet away from the Rhoadses' house, with a friend who is now a U.S. marshal. Neither recalled seeing or hearing anything unusual at the time both witnesses insisted the murders had occurred. Neither man had been interviewed by police.

Steidl and Whitlock have spent the past 15 years in prison. There is more than reasonable doubt to their guilt. Troubled by the evidence, an appeals court reduced Steidl's sentence to life. Yet it also ruled that the strong evidence of perjury was not enough to justify a new trial.

In layman's terms, Steidl and Whit-

the attention of *Chicago Tribune* columnist Eric Zorn (see ericzorn.com/columns/paris) and the CBS news magazine *48 Hours*. But journalists don't decide, juries do. And when a jury makes its decision based on what turns out to be bad information, the system is reluctant to correct the error.

"You hear the lofty pronouncement that better 10 guilty men go free than one innocent man suffer," says Rob Warden of the Center on Wrongful Convictions at the Northwestern University School of Law. "But as a nation, we've never believed that. It's the other way around."

If the number of prisoners who have been released in capital cases is any indication, a significant percentage of the 2 million residents of state and federal prisons are living a nightmare. In Illinois, defense lawyers, journalists and students have helped free 14 of 288 death row prisoners. That's an error rate (so far) of 4.9 percent in cases that receive intense scrutiny. Applied to the general inmate population, that would translate to roughly 100,000 people, or enough to fill 80 prisons.

No official agency reviews questionable convictions, so an assortment of activists tackle the job. The Center on Wrongful Convictions each year hears from 4000 new prisoners who claim to be innocent. Because its staff of three lawyers and a dozen students can juggle only about 25 cases, the center uses a questionnaire to screen applicants: What was the physical evidence introduced at your trial? What statements did you make—or were you alleged to have made—during your interrogation? Were the principal witnesses against you eyewitnesses, victims, investigating officers, purported accomplices, jailhouse informants or forensic experts? What, if any, was your defense? Do you have an alibi?

The most discouraging question: How much time do you have left? Because an appeal can take years, the center and 20 or so other innocence projects around the country don't ass[ist] inmates scheduled for release any ti[me] soon. They also do not take cases [in] which the only evidence is he said–

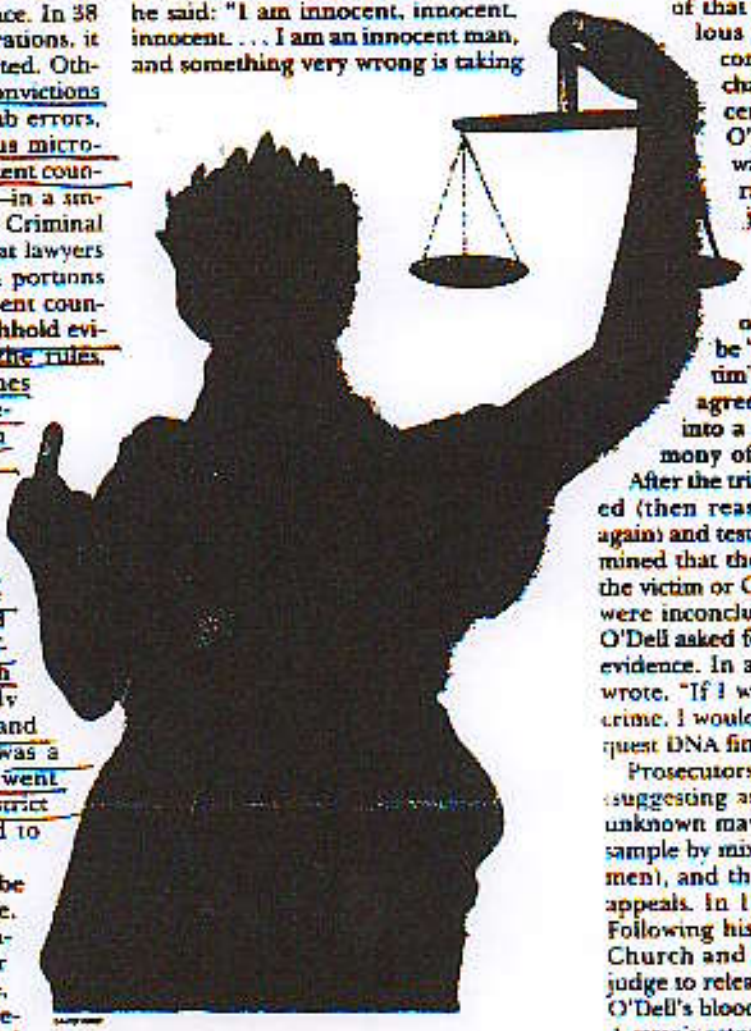
date rape. "Many times a guy has a defense that's plausible," Warden says. "But the jury heard both sides and decided against him. Legally, there's not much else to be done."

In more complex cases, which is most of them, how does an innocent man end up behind bars? Most often it's because of mistaken or perjured eyewitness testimony. According to one study, eyewitnesses played a role in three quarters of the first 67 convictions reversed by DNA evidence. In 38 percent of death row exonerations, it was the only evidence presented. Other common factors in false convictions include police misconduct, lab errors, coerced confessions, dubious microscopic hair matches, incompetent counsel (which is hard to prove—in a single year, the Texas Court of Criminal Appeals ruled three times that lawyers accused of sleeping through portions of trials had provided sufficient counsel) and prosecutors who withhold evidence or otherwise break the rules. Prosecutors play these games because they are under tremendous pressure to win and because they have little to fear if they're caught. The *Chicago Tribune* analyzed 381 murder cases in which defendants had convictions overturned because of official misconduct and found that not a single prosecutor had been charged with a crime or disbarred. Only five faced public discipline, and the harshest punishment was a 90-day suspension. Many went on to become judges or district attorneys. One was elected to Congress.

Because neither wants to be accused of being soft on crime, Congress and the courts emphasize bureaucracy over justice. In one notorious case, the U.S. Supreme Court refused to hear a condemned man's compelling claim of innocence because years earlier his lawyers had missed a filing deadline. In 1993, the court ruled in *Herrera vs. Collins* that a prisoner cannot simply argue in federal court that new evidence points to his innocence. He first must prove that his trial contained procedural errors (the technicalities that may free the guilty but also protect the innocent). In this case, Leonel Herrera had been convicted of shooting two police officers. Ten years later, he submitted affidavits from witnesses who said that his now-dead brother had been the killer (one witness was his brother's son, who says he saw the murders). Without considering the statements, the court told Herrera to sit down and shut up. "Federal habeas courts do not sit to correct errors of fact but to ensure the individuals are not imprisoned in violation of the Constitution," it said.

In other words, being falsely imprisoned is not a violation of your rights.

Herrera was executed four months after the ruling. In his final statement he said: "I am innocent, innocent, innocent. . . . I am an innocent man, and something very wrong is taking place tonight."



Legislators have cut off other escape routes. The Antiterrorism and Effective Death Penalty Act, championed by Senator Orrin Hatch and passed in 1996, gives an inmate 12 months after his or her conviction to file a writ of habeas corpus, which is a request for a federal court to review the case for constitutional violations. Most states also impose restrictive deadlines—some require prisoners to present new evidence within 30 days after their trial (the average time between conviction and exoneration is 12 years). A number of states have "closed discovery" statutes that prevent defense attorneys or journalists from reviewing the evidence after a conviction.

If judges refuse to consider new evidence, who's left to correct the errors? Prosecutors aren't lining up for the job, despite an oft-cited admonition by the Supreme Court that they operate with "the twofold aim that guilt shall not escape nor innocence suffer." The state of Virginia has made a mockery of that ideal. In its most callous moment, it denied a condemned prisoner the chance to prove his innocence with DNA. Joseph O'Dell, a career criminal, was convicted in 1986 of a rape and murder. The jury based its verdict on tire tracks said to be "similar" to those of his truck, bloodstains on his clothes found to be "consistent" with the victim's (he said, and witnesses agreed, that he had gotten into a bar fight) and the testimony of a jailhouse informant. After the trial, the informant recanted (then reasserted, then recanted again) and tests on O'Dell's shirt determined that the blood didn't belong to the victim or O'Dell (tests on the jacket were inconclusive). As early as 1988, O'Dell asked for DNA testing of semen evidence. In a note to a judge, O'Dell wrote, "If I were not innocent of this crime, I would have to be insane to request DNA fingerprinting."

Prosecutors challenged the request (suggesting at one point that persons unknown may have contaminated the sample by mixing in someone else's semen), and the courts denied O'Dell's appeals. In 1997 the state killed him. Following his execution, the Catholic Church and O'Dell's widow asked a judge to release the semen sample and O'Dell's bloody jacket for DNA testing. A state's attorney objected, telling the judge that if tests showed O'Dell had not committed the crime, "people will shout from the rooftops that the Commonwealth executed an innocent man." The judge declined to release the semen or the jacket (the state argued that because O'Dell had stolen it, it didn't belong to his family). Prosecutors then asked for permission to burn the evidence. Permission granted. Case closed.

Our system of justice is the best in the world. We're justifiably proud. But what happens when that pride turns to arrogance?

VOICE OF THE PEOPLE

Make lawyers liable for malpractice, too

I found the observations by James Martin (" 'Asbestos' rings like a dinner bell to hungry lawyers," Commentary, Jan. 13) very telling about one of the problems with the legal system, in which people who have suffered no physical or financial harm are in some cases entitled to multithousand-dollar settlements just because they found a hungry lawyer willing to sue someone. I agree that placing limits on awards poses some potential problems, and I'd like to offer a two-part alternative solution:

First, hold trial lawyers to the same standards of malpractice that they hold the medical and other professions. Whenever a lawyer or judge is found to have made a mistake in law, as they are during the appeals process, they should be subject to claims of malpractice for the financial or physical harm that resulted from such malpractice.

One example of such malpractice was a recent case in which the Ohio Supreme Court ruled that two men were "denied their constitutional right to effective counsel." Why aren't the lawyers who were at fault subject to a malpractice lawsuit? Could it be that other lawyers aren't willing to go after their own, or have the lawyers' friends in the Ohio legislature protected them from being held accountable?

Second, reform would require that if you are found innocent of the charge in a civil trial you'd receive compensation to make you whole again. People shouldn't have to go bankrupt defending themselves from unprovable claims. Some trial lawyers file claims knowing it will be cheaper for the accused to settle for a nominal sum than for an innocent person to defend himself in court.

Roger Marble
Ravenna

Notes: Re: VOICE OF THE PEOPLE

The rule of thumb is that lawyers don't go after their own kind. This is one more thing wrong with our justice system. That's why lawyers are able to provide poor representation to their clients - they are protected.

Goldberg (my trial attorney) was in violation of *Strickland V. Washington* and my 4th and 6th Amendment rights to effective assistanee of counsel when he failed to call witnesses favorable to my defense. He later refused to surrender my case file, which prejudiced me from litigating new merits on my appeals. 28 months and several complains to the County Bar Association later, he surrendered my file; but in the meantime he had violated the EC1-30 and DR2110 codes of professional standards. The Bar Association acknowledged his obligation to surrender the case files, but refused to file charges on him for the violation.

–Grady Krzywkowski