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Death Penalty Foes Focus Effort on the Innocent

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CHICAGO — Prominent opponents of capital punishment meeting here have launched a nationwide effort to recruit law schools to train students to work on cases that might lead to freedom for wrongly convicted people--particularly inmates facing capital punishment.

The campaign seeks to take advantage of new DNA technologies that can identify innocent people who have been wrongly convicted. It is one of several initiatives that are part of an effort by death penalty foes to revive a movement that briefly succeeded in ending executions in the United States a generation ago but which has been on the losing side of the public debate ever since.

Theirs is clearly an uphill fight. Since 1976, when the Supreme Court reinstated capital punishment, 486 inmates have been executed in the country. There are now 3,500 people on death rows in 38 states--including more than 500 in California--the most at any time in the nation.

Polls consistently show that three-quarters of Americans support the death penalty, Congress and the Supreme Court have been pushing to speed the pace of capital cases, and executions have become almost routine--California has one scheduled for midnight tonight, and Illinois has one scheduled for Wednesday.

But during the same period, 73 men and two women, including three from California, have been freed from death rows after evidence was unearthed showing that they had been wrongly convicted.

Death penalty opponents see that as an "unacceptably high error rate" that raises deeply troubling questions about how capital punishment is administered, says Northwestern University Law Professor Lawrence Marshall, who helped organize the new initiatives.

Marshall and his colleagues hope that by drawing attention to such cases--and by pushing a national effort to find more--they can begin to reverse the public's support for executions. To bolster that effort, they brought 29 of the former death-row inmates--most of them minority--from across the nation--here as the emotional centerpiece of a National Conference on Wrongful Convictions and the Death Penalty. The sessions drew 800 people to Northwestern University Law School over the past three days.

In a dramatic presentation, the 27 men and two women came on stage individually, gave their names, described the crimes they had been wrongly convicted of, the length of their incarceration and in a mantra-like refrain said that if the authorities had their way "I'd be dead today."

"We hope that when folks look at the faces of these men and women who would have been dead, they will recognize that efforts to expedite executions in this country have to slow down," said Marshall, who has represented three men exonerated of murder charges in Illinois during the past decade.

Prosecutors and other supporters of the death penalty reject that argument and say that the total length of death penalty appeals can be compressed further--to a range of four to five years.

The fact that some innocent people have been found on death row does not mean that the system is failing, contends Paul G. Cassell, a former federal prosecutor and now a law professor at the University of Utah.

"They were exonerated through the system we have today," he said.

But many at the conference sharply disagree. Kirk Bloodsworth, for example, was convicted twice of the rape and murder of a 9-year-old girl. He became a suspect after police were told that he resembled composite sketches made by a police artist of the suspect. Bloodsworth's first conviction was reversed on appeal because the prosecution had not turned over evidence to the defense that could have helped him, but he was convicted again.

As he sat on death row, a new lawyer, going through case files, discovered that there was a small semen stain on the victim's clothes. A DNA test of the stain conclusively established that Bloodsworth was not the rapist. He was granted a new trial and prosecutors then dismissed all charges in 1993.

"I was convicted twice despite all the protections of the system," Bloodsworth said. "We should give great pause before we hand out the ultimate sentence. If it could happen to me, it could happen to you."

Professor Barry Scheck of New York's Cardozo Law School, a specialist in the use of DNA evidence who has been active in trying to develop a network of law schools to train people to work on such cases, said law students have been very helpful in turning up new evidence that led to freedom for people convicted of murders or other crimes.

"It is a mainstream issue that if you can prove innocence, you shouldn't have to stay in jail and you certainly shouldn't be executed," said Scheck, who was also part of the O.J. Simpson defense team.

Perjured testimony has been a key factor leading to many of the wrongful convictions, said University of Florida sociologist Michael L. Radelet, co-author of "In Spite of Innocence," a 1992 book about the wrongly convicted. In some instances, the individuals ultimately were cleared because of DNA tests. In others, another person confessed to the crime.

In recent months, there have been a few hopeful signs for capital punishment foes. The American Bar Assn. passed a resolution last year calling for a moratorium on the death penalty on the grounds that it is subject to "a haphazard maze of unfair practices," unfairly discriminates against minorities and does not ensure that people facing the death penalty have adequate legal representation.

A legislative committee in Illinois approved a resolution calling for a death penalty moratorium in the state, and it is expected to go before the Illinois House of Representatives soon.

Perhaps even more noteworthy, in March, the Kentucky Legislature passed the first law in the nation to give defendants in capital cases the right to challenge alleged racial bias in the process by which prosecutors decide when to seek the death penalty.

The law allows a defendant to present statistical evidence that death sentences were sought more frequently for individuals of one race than individuals of another race. It passed after a six-year campaign that stressed the fact that all 39 people sentenced to death in Kentucky in the past 22 years were convicted of killing a white person even though a thousand African Americans have been murdered in the state in the same period.

Looking beyond those steps, the leaders of the anti-death penalty movement are seeking--in addition to creation of an "innocence network" of law schools--restoration of federal funds for lawyers to represent poor inmates on death row; enactment of statutes that make it easier for the wrongfully convicted to obtain compensation for their losses; adoption of laws that would remove time bars on introducing forensic evidence, such as DNA, that was unknown at the time of conviction, and creation of a data bank on police and prosecutorial misconduct.

But above all, they are hoping that the public will accept their argument that the system cannot be trusted to handle cases like that of Walter McMillian, Dennis Williams and Sonia Jacobs.

McMillian, a black logger, was convicted of murdering an 18-year old white female store clerk after a trial that lasted a day and a half in the small Alabama town that was the setting of Harper Lee's book "To Kill a Mockingbird."

Despite having had no prior criminal record, McMillian was placed on death row even before his trial began. He faced execution for six years. After Bryan Stevenson, director of the Equal Justice Initiative in Alabama took on his appeal, state authorities reopened the case and concluded that there had been perjured testimony by all three prosecution witnesses and that exculpatory evidence had been withheld. A state appeals court reversed the conviction and McMillian was freed.

Jacobs spent 16 years behind bars in Florida for murdering two police officers before her conviction was vacated by a federal appeals court. The court found that her cellmate had given perjured testimony when she said Jacobs confessed to the shootings.

Jacobs wept as she told the Chicago gathering that her co-defendant and common-law-husband Jesse J. Tafero "was not as lucky as I was."

Convicted on virtually identical evidence, Tafero exhausted his legal appeals and was executed two years before the appeals overturned Jacobs conviction.

Williams was incarcerated for 18 years in Illinois for two killings he did not commit. He now works at a social service agency in Chicago counseling youths who have had minor brushes with the law.

"I've been waiting for this day a long time," Williams told the gathering. "Those who say we need to execute are putting themselves beyond fallibility."