

What death penalty mistakes don't we see?

Marty Trillhaase/Lewiston Tribune

For more than 30 years, Jaimi Charboneau sat in an Idaho prison - some of it on death row.

Now he's out after a judge concluded the evidence used to convict him was corrupted.

In 1989 - four years after a Jerome County jury convicted Charboneau of murdering his ex-wife Marilyn Arbaugh - the victim's daughter Tira Arbaugh, who is now deceased, wrote a letter accusing prosecutors of telling her to lie and conceal evidence.

She admitted not telling the truth at Charboneau's trial.

It took another 21 years before Tira Arbaugh's letter emerged. Charboneau's lawyer Brian Tanner argues it was concealed by state prison officials. And while Arbaugh's family calls the letter a fraud, it was sufficiently authentic for Fifth District Judge Robert J. Elgee to throw out Charboneau's conviction and release him on a \$20,000 bond.

"The state's hands ... at least as far as the Idaho Department of Correction is concerned are very dirty. If ... Tira Arbaugh's letter is true, the dirt in this case goes way beyond the state's fingers and elbows and goes all the way to their eyeballs," Elgee said.

This is far short of an exoneration. Prosecutors intend to seek a new trial, but appeals could put that off for years.

But it wouldn't be the first time flawed or even altered evidence was used to wrongly convict someone of murder and send him to Idaho's death row.

Twenty years after his 1981 conviction for the murder of Kimberly Ann Palmer in Post Falls, Donald M. Paradis walked free.

The federal courts had discovered medical evidence used against him had been altered.

But it took the NAACP Legal Defense fund, attorneys Edwin Matthews of New York and William Mauk of Boise, national media attention and the political courage of then-Gov. Phil Batt to stop the state's machinery of death just long enough to allow this new evidence to emerge.

In the end, Paradis collected a \$900,000 settlement for prosecutorial misconduct.

In 1982, Charles Irwin Fain's fate was sealed by the testimony of jailhouse snitches, faulty interpretation of hair sample evidence and the loss of a rape kit that could have refuted it. In spite of passing a lie detector test, a Canyon County jury convicted Fain of raping and murdering 9-year-old Daralyn Johnson, and he received a death sentence.

Almost 20 years later, defense attorneys Spencer C. McIntyre of Seattle and Frederick Hoopes of Idaho Falls used DNA evidence on the same hair samples to prove Fain was nowhere near the scene of the crime.

Fain was released on Aug. 23, 2001.

One time you could dismiss as a fluke.

Twice is hard to ignore.

Three times is a pattern.

No region of the state is immune.

In Idaho, innocent people get convicted and sentenced to die. It happens because capital punishment relies on human nature.

It would be naive to think the only mistakes made are the ones we've learned about. Paradis, Fain and Charboneau benefited from a strong second defense that was able to use new evidence to overcome a presumption of guilt.

What if we learn of other mistakes too late?

What if we never find out?

Wednesday, Nebraska became the first conservative state to end capital punishment.

Idaho has every reason to become the second. - M.T.