

FACES of FAILING PUBLIC DEFENSE SYSTEMS

Portraits of Michigan's Constitutional Crisis



Dear Michigan Policymakers and Concerned Constituents:

The book in your hands documents nearly \$13 million in wasted taxpayer dollars and decades in wasted time as it tells the stories of thirteen people failed by Michigan's network of county-based public defense systems.

Their stories are not easy to read. Many of these individuals were in the wrong place at the wrong time and with the wrong people. In each case, flawed public defense systems prevented them from obtaining the legal assistance they needed to refute the charges against them and prove their innocence. These are not stories about getting people off. Instead, these stories are about the importance of getting it right.

The Sixth Amendment to the Constitution of the United States secures for every person accused of a crime the right to an effective defense, even if that person cannot afford an attorney. Just like the freedoms of speech and religion, and the right to bear arms, the right to an adequate defense is enshrined in the Bill of Rights and is a fundamental duty of our government. Yet, a recent examination of ten Michigan counties found that none of them provided public defense services that were constitutionally adequate.¹

How do the stories of the thirteen people in this book affect you?

Lawyers, academics and others estimate that hundreds, if not thousands, of Michiganders have been wrongfully incarcerated because of the counties' failing public defense systems. The incarceration of the innocent wastes scarce taxpayer dollars, permits the real perpetrators to remain free to commit other crimes and destroys public confidence in the state's criminal justice system.

As a state, as a community and as human beings, we cannot let this continue to happen. We hope that the thirteen stories in this book motivate you to act. The time is now.

Sincerely,

American Civil Liberties Union



American Civil Liberties Union of Michigan



Michigan Campaign for Justice



1 National Legal Aid and Defender Association, *A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis i* (June 2008), available at http://www.mynlada.org/michigan/michigan_report.pdf (last viewed on March 2, 2011).

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INTRODUCTION

Michigan's public defense systems are widely considered an embarrassment. Although the constitutional obligation to provide the indigent with defense counsel rests with the states, Michigan long ago delegated that responsibility to its 83 counties and then turned its back. Without state oversight, most counties never provided their public defense attorneys with the tools they needed to do their jobs. These deficiencies were never remedied. Today, the overwhelming majority of Michigan's public defense systems are seriously under-funded and poorly administered.

The stories in this book illustrate how real people, their families and their communities have been harmed by these systems. The book profiles thirteen Michiganders sent to prison not because they committed crimes, but because their public defense attorneys did not have the tools to challenge the accusations against them. So far, the miscarriage of justice in these thirteen cases has cost Michigan's taxpayers more than \$13 million in unnecessary incarceration costs, court costs, attorneys' fees and compensation for wrongful imprisonment.¹ To put that amount of money in context, with \$13 million, Michigan can educate 1,000 public school children for one year² or provide 16,500 poor children with medical services for one year.³

These stories are not unique. Advocates, defense lawyers and academics estimate that there are hundreds of similar cases in Michigan. The men and women profiled here were resourceful enough to engage the interest of an organization like Michigan’s State Appellate Defender Office (SADO) or one of Michigan’s innocence projects. Because of limited resources, however, these organizations can only handle a small number of cases each year. As a result, most of the factually innocent remain behind bars, lost to their families and communities and an unnecessary financial burden on the Michigan taxpayer. Meanwhile, actual perpetrators remain on the street.

The Constitutional Right to Legal Defense

Over forty years ago, in the landmark case *Gideon v. Wainwright*, the United States Supreme Court held that the Sixth Amendment to the United States Constitution required states to provide counsel to indigent defendants in state criminal prosecutions.⁴ In so doing, it wrote that the “noble” idea that all of the criminally accused stand equal before the law “cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”⁵

The Court has since made clear that every person is entitled to more than a lawyer to stand alongside him or her at trial; he or she is entitled to “effective assistance of competent counsel.”⁶ The Court has also made clear that “*effective assistance of competent counsel*” means representation that subjects the prosecution’s case to “the crucible of meaningful adversarial testing.”⁷

As the Court has noted, the “very premise” of our criminal justice system “is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free.”⁸ If defense counsel is so overburdened and under-resourced that she cannot put the prosecution’s case to the test, the adversarial system breaks down and the criminal justice system can no longer be relied upon to produce results that are fair and just.⁹

Although the Court does not dictate a particularized checklist of tasks that an attorney must undertake to challenge the prosecution effectively, it does tell us that the Constitution imposes certain duties upon every defense lawyer, including the duties to: remain loyal;¹⁰ avoid conflicts of interest;¹¹ advocate the client’s case;¹² consult with the client on important decisions;¹³ keep the client informed of important developments in the case;¹⁴ make reasonable factual and legal investigations into the client’s case or “make a reasonable decision that makes particular investigations unnecessary;”¹⁵ and bring to bear necessary skills and knowledge.¹⁶

Necessary Tools for Adequate Public Defense

Research from around the nation has documented the fact that public defense attorneys cannot fulfill these duties unless they function within a system that provides them with necessary supports, skills and resources. The American Bar Association (ABA) has identified ten “fundamental criteria” that a public defense system must meet if the attorneys employed by, under contract with, or assigned by that system are to represent their clients as required by the Sixth Amendment.¹⁷

Principle #1 states that the system be free of unnecessary political and judicial influence. When defense attorneys are hired, fired, supervised and compensated by politicians or judges, the adversarial nature of criminal proceedings and the attorneys’ constitutionally mandated duties of loyalty are compromised. Instead of making strategic decisions based on the best interests of their clients, attorneys may make case-related decisions to ensure that they retain their jobs and their salaries.

Principle #2 advises that the system should be funded by the state, not counties or municipalities. As previously stated, the responsibility for the public defense function falls upon the states. If a state chooses to delegate that constitutionally-mandated obligation to its county and municipal governments, it must ensure that the local governments have the financial and administrative capabilities to meet the task that they have been asked to assume.¹⁸

Principle #3 requires that the system appoint attorneys to represent clients as soon as possible. Because many critical decisions that can affect the outcome of a case are often made shortly after arrest,¹⁹ delays in appointment of counsel can compromise effective representation.

Principles #4, #5 and #6 assert that the system should provide defense attorneys with sufficient time to meet with their clients, ensure manageable workloads, and assign cases in such a manner that attorneys are not appointed to cases that they lack the ability or experience to handle.

Principle #7 recommends that the system ensure that a single attorney represents a client from arrest through disposition and sentencing.

Principle #8 requires that the system provide public defense attorneys with resources comparable to those available to prosecutors.²⁰ States expend vast resources on law enforcement, criminal labs, lawyers and experts to prosecute those charged with criminal wrongdoing. Without access to similar

forensic, investigative and expert resources, the defense is unable to test the accuracy and reliability of the prosecution's evidence.

Principles #9 and #10 require that the system provide defense counsel with continuing legal education, as well as supervision and monitoring to ensure that counsel adheres to national and local practice standards.

Inadequate Resources for Michigan's Public Defense Attorneys

According to numerous reports produced over the last 40 years, Michigan falls short on almost every criteria that the ABA identifies as crucial for the delivery of constitutionally adequate public defense. Among other things, its county-based systems do not insulate attorneys from local judges and politicians and do not provide them with necessary training, supervision, compensation, manageable workloads and access to expert witnesses and investigators.²¹

In 2008, after an extensive investigation, the National Legal Aid and Defender Association (NLADA) issued a report that concluded that Michigan's systems were some of the nation's worst. Among other things, NLADA researchers found that judges in Grand Traverse County forced public defense attorneys to provide certain legal services for free if they wished to receive paying public defense work. In Oakland County, public defense attorneys were permitted to define for themselves what constituted quality representation. In Chippewa County, public defense attorneys who wanted to meet with their clients in private were forced to hold such meetings in a unisex restroom across from the judge's chambers. In the City of Detroit, some public defense attorneys handled 2,400 to 2,800 misdemeanor cases each year, six times the recommended national standards. Outside of the largest urban centers, no county mandated any type of training.²²

Inadequate Tools, Unreliable Results

As the profiles in this book illustrate, the failure of Michigan's systems to meet the Ten Principles has a profound effect on the individuals who must rely upon the systems for representation.

For example, in violation of Principle #6, Edward George Carter, who had been wrongfully accused of rape and faced a life sentence, was assigned a public defense attorney who had recently graduated from law school and had little experience defending complex felonies. She lacked the skills and training to investigate adequately the charges

against him and to ask the right questions at trial. Mr. Carter was convicted of a crime he did not commit and spent thirty-five years in prison before his conviction was vacated.

Similarly, because few of Michigan's public defense systems provide the training, supervision or monitoring required by Principles #9 and #10, Davien Woods was assigned a public defense attorney who lacked basic knowledge of criminal procedure. Mr. Woods had two alibi witnesses who could have testified that he was home sleeping when the carjacking he was accused of took place. Michigan law requires that defense counsel provide the court and prosecutor with advance notice of any alibi witnesses. Because Mr. Woods' attorney failed to provide such notice, neither of Mr. Woods' alibi witnesses could testify at trial. Mr. Woods was convicted and spent two years in prison before securing his release.

Although Principle #8 requires public defense systems provide defense counsel with the same types of resources available to the prosecution, Frederick Mardlin's attorney was not given access to such resources. Three different experts testified in support of the prosecution's theory that Mr. Mardlin had purposefully burned down his family's home to collect insurance funds. Although Mr. Mardlin's public defense attorney asked for the funds to hire two experts to rebut the prosecution's theory of the case, he was allowed only one. Mr. Mardlin spent five years in prison for a fire caused by faulty electrical wiring and is still trying to clear his name.

Lastly, in violation of Principle #4, Kenneth Wyniemko's defense attorney was not given sufficient time to prepare an adequate defense. Wrongfully accused of rape and facing a life sentence, Mr. Wyniemko was initially assigned an attorney whose brother was one of the police officers investigating the crime. When that attorney refused to do any work on his case, Mr. Wyniemko asked that he be assigned another attorney. The court granted his request but gave his second attorney only two days to prepare for trial. Mr. Wyniemko spent nine years in prison before he was exonerated with DNA evidence.

Conclusion

The systemic nature of the deficiencies of Michigan's public defense systems means that every indigent person charged with a crime in Michigan is at risk of receiving constitutionally inadequate legal assistance. If Michigan's systems trained, supervised, adequately resourced and provided standards to its attorneys, the lives of not only these thirteen people but countless other indigent Michiganders might have turned out very differently. In order to prevent more tragedies like those chronicled here, Michigan must strengthen its public defense system, and, in so doing, restore confidence in its criminal justice system.



WAYNE COUNTY: Recorder's Court for the City of Detroit
Conviction overturned in 2010 after 35 years served.

THE COST: Incarceration: \$1,050,000 (35 years)

WHAT WENT WRONG: Edward George Carter's public defense attorney lacked the experience needed to handle a case as complex as Mr. Carter's. The attorney:

- Did not investigate facts of the case or interview potential alibi witnesses.
- Failed to challenge a suggestive photo lineup.
- Did not introduce forensic evidence at trial that would have exonerated Mr. Carter.

EDWARD GEORGE CARTER

Spent more than 35 years in prison before the court overturned his wrongful conviction.

In 1975, after a trial that lasted no more than a few hours, 19-year old Edward George Carter was sentenced to life in prison for an armed rape and a robbery that he did not commit. Mr. Carter's public defense attorney did not have the experience or training to mount an effective defense on his behalf.

Background

On the afternoon of October 24, 1974, a pregnant Wayne State University student was in a campus restroom when a man placed a knife to her throat, and sexually assaulted and robbed her. Although the victim was initially unable

to identify her assailant, she later identified Mr. Carter from a photo lineup that contained multiple photos of him and an in-person line-up consisting of Mr. Carter and several others who bore no resemblance to him.

The victim's eyewitness identifications ultimately proved to be the only evidence against Mr. Carter. Two University employees who had seen a suspicious young man in the hallways immediately prior to the assault did not identify Mr. Carter. The finger prints, semen and seminal fluid collected at the scene or from the victim did not implicate Mr. Carter and Mr. Carter had a solid alibi. Yet, Mr. Carter was arrested, charged with sod-

omy, armed robbery and assault with intent to commit gross indecency, and scheduled for trial in the Recorder's Court for the City of Detroit.

The court appointed an inexperienced defense attorney.

Mr. Carter's public defense attorney had recently graduated from law school. She had been practicing law for only 18 months, met with Mr. Carter once at his preliminary hearing and not again until the day before his trial.

The attorney failed to prepare for trial.

Without the necessary training, time, or resources, the public defense attorney did not investigate the charges against Mr. Carter. She permitted Mr. Carter to waive his right to a jury trial; she did not object to the suggestive nature of the photo and in-person lineups; there is no record that she requested permission to retain an eyewitness expert to discuss the unreliability of eyewitness identifications; she did not request from the Detroit Police Department the fingerprints found at the crime scene and the Department's analysis concluding that they did not belong to Mr. Carter; she did not object to the prosecutor's unsubstantiated speculation as to why the blood cells in the semen and seminal fluid collected from the victim were not of the same blood type as Mr. Carter's; and she waived Mr. Carter's right to call all but a single alibi witness, a 17-year old girl who had been notified of the trial the day before by Mr. Carter's sister. In fact, on the day of his trial, she admitted that she had just learned that Mr. Carter had an alibi defense.

The statute of limitations prevented the real perpetrator from being prosecuted for the rape with which Mr. Carter had been charged.

The trial concluded the same day that it had started. The judge found Mr. Carter guilty and later sentenced him to life in prison.

Thirty years later, finger print evidence proved that Mr. Carter was innocent.

In the mid-2000s, after all of his appeals and requests for post-conviction relief had failed, Mr. Carter wrote to one of the local innocence projects asking it to take his case. The project, in turn, requested the semen and seminal fluids collected from the victim. While looking for that evidence, which was never found, a police officer located the fingerprints recovered from the scene. Intrigued by Mr. Carter's continued claims of innocence, the officer ran them through the FBI's Integrated Automated Fingerprint Identification System. There was a match. The fingerprints belonged to a convicted sex offender

who had been arrested for and convicted of a number of very similar armed rapes during the same time period, two of them on the Wayne State campus.

In April 2010, attorneys with the University of Michigan Clinical Law Program filed a motion to have Mr. Carter's conviction vacated. The motion was granted.

Mr. Carter was exonerated in 2010.

On a warm spring day, Mr. Carter walked out of the Lakeland Correctional Facility after 35 years, pushing a handcart that held his belongings. His younger brother Larry, whom Mr. Carter had not seen in nearly 18 years, met him with his arms held wide. Although Mr. Carter was soon reunited with more siblings, nieces, nephews, and cousins, his parents were unable to share in the joy of his release. Both had died while he was behind bars.

The real perpetrator was never held accountable for the 1974 rape. The State of Michigan was unable to prosecute him because the statute of limitations had already run.



BERRIEN COUNTY: Circuit Court
Evidence supports claim of innocence.

THE COST: Incarceration: \$90,000 (3 years so far)

WHAT WENT WRONG: Mr. Hubbard's public defense attorney failed to:

- Prepare for trial.
- Locate potentially exculpatory witnesses.
- Seek funding to retain necessary expert witness.

Mr. Hubbard's court-appointed appellate attorney did not complete the investigation necessary to demonstrate Mr. Hubbard's innocence.

RODNEY HUBBARD

Imprisoned for three years; evidence points to innocence.

In 2007, 42-year old Rodney Hubbard was convicted of murder by a Berrien County jury and sentenced to life in prison without the possibility of parole. His court-appointed trial and appellate lawyers never located or interviewed the witnesses or retained the experts who could have corroborated his claims of innocence.

Background

On March 4, 1999, Raymondo Davis' body was found in an alley near Mr. Hubbard's house. He had been shot in the back. Investigators found no bullets, no blood, no

footprints, no fingerprints and no gun in or near the alley. In a yearlong canvass of the neighborhood, police officers spoke to two confidential informants, one local drug dealer and three relatives of Mr. Hubbard's girlfriend, all of whom identified another local drug dealer, "Detroit Mike," as the killer. For reasons that are unclear, the police did not pursue Detroit Mike as a suspect.

Little happened with the case until July, 2004 when police received a letter from a jail inmate who was facing a lengthy sentence as a habitual offender unless he could cut a deal with prosecutors. The inmate claimed that Mr.



ABOVE: Rodney Hubbard with sisters and niece (Photo courtesy of Rodney Hubbard's family.)

Hubbard, incarcerated in the same jail, had confessed to murdering an individual whose name the inmate could not recall. At that time, Mr. Hubbard was serving a one-year sentence for shooting a bullet into the side of a house from outside; no one had been injured.

After a subsequent conversation with the inmate, the police gave him a concealed device to record a confession from Mr. Hubbard. The inmate subsequently provided the police with a recording of an unidentified man admitting that he had killed “Edward,” not Raymondo,

“The court . . . stated that it would reconsider its decision [on whether to permit Mr. Hubbard to retain an expert] if counsel provided the court with more information. There is no indication in the lower court record that additional information was ever provided to the court.”

—MICHIGAN COURT OF APPEALS

by shooting him in the chest, not the back. The inmate claimed that the unidentified man was Mr. Hubbard. He later received a significantly reduced sentence.

Based solely on the tape recording, Mr. Hubbard was arrested and charged with Raymondo Davis' murder. His case was referred to Berrien County Circuit Court for trial.

Mr. Hubbard’s public defense attorney failed to consult or retain necessary experts.

Mr. Hubbard’s court-appointed public defense attorney did almost nothing to investigate the charges against Mr. Hubbard or to prepare for his trial. Mr. Hubbard consistently maintained that the voice on the tape was not his. Yet, his attorney did not retain a voice expert to establish that fact. As the Michigan Court of Appeals later noted:

Counsel conceded [at trial] that he made a serious error by failing to have the recording analyzed before trial. . . . When defense counsel requested an adjournment, he informed the court that he had located two experts who might be able to analyze whether the voice on the recording was defendant’s, but counsel admitted that he had not spoken to either. The court denied the request for an adjournment, but stated that it would reconsider its decision if counsel provided the court with more information. There is no indication in the lower court record that additional information was ever provided to the court.

His public defense attorney did not investigate important leads.

Mr. Hubbard’s attorney made no independent attempt to locate and interview the local drug dealer and the confidential informants who claimed to have been present when Detroit Mike shot the victim. He made no attempt to locate or interview individuals who could have dis-

credited the testimony of the jailhouse informant; police reports documented conversations with two other inmates in which the informant stated that he would do whatever it took to “free himself up” and that he was “going to testify on Rodney Hubbard, because Rodney was trying to mess up a case he was on.”

Mr. Hubbard’s court-appointed appellate attorney failed to conduct the investigation needed to overturn Mr. Hubbard’s conviction.

On appeal, the Michigan Court of Appeals affirmed Mr. Hubbard’s conviction. In so doing, it found that his trial attorney had committed serious errors but that his appellate attorney had failed to contact the experts or locate the witnesses needed to show how the trial attorney’s errors had prejudiced Mr. Hubbard’s case.

Today, Mr. Hubbard is representing himself *pro se*, filing petitions for a new trial so that he may have an opportunity to present evidence that neither of his attorneys did. In the meantime, a voice identification expert hired by the ACLU concluded that Mr. Hubbard’s voice was not on the tape that was used to convict him.



ST. CLAIR COUNTY Circuit Court
Conviction overturned in 2010. State is appealing.

THE COST: \$720,000 (24 years so far)

WHAT WENT WRONG: Mr. Kensu's public defense attorney was known to be addicted to crack cocaine and alcohol and was often intoxicated during trial. This attorney failed to:

- Adequately investigate the charges against Mr. Kensu and prepare for trial.
- Call a crucial alibi witness to testify at trial.

His court-appointed appellate attorney then failed to raise critical issues on appeal.

TEMUJIN KENSU

Remains incarcerated although a federal court overturned his conviction and ordered that he be retried.

In 1987, 23-year old Temujin Kensu (known as Frederick Freeman before his conversion to Buddhism) was convicted of first-degree murder and sentenced to life imprisonment without the possibility of parole. The public defense attorney who represented him at trial was a known crack-cocaine addict who failed to investigate the charges against Mr. Kensu or prepare for trial; his court-appointed appellate attorney did not adequately raise on appeal the deficiencies with trial counsel's performance.

Background

On the morning of November 5, 1986, the 20-year old son of the Mayor of Croswell was shot to death in the parking lot at St. Clair County Community College in Port Huron, Michigan. Within hours of the shooting, the sister of the victim's fiancée told police that she suspected Mr. Kensu. Mr. Kensu and her sister, the fiancée, had dated briefly months earlier.

At the time of the murder, Mr. Kensu lived in the town of Rock in Michigan's Upper Peninsula, with his pregnant 18-year old girlfriend. There was no physical evidence

The attorney often smelled of alcohol and appeared inebriated during his trial.

connecting him to the crime. Moreover, several credible alibi witnesses placed him in or around Rock, 450 miles from the crime scene, shortly before, during and after the shooting. Of the three eyewitnesses who claimed to have seen the shooter as he drove away from the scene, only one identified him as Mr. Kensu. He did so, however, after being hypnotized by a college professor who was friendly with one of the investigators.

Nonetheless, the police arrested Mr. Kensu, charged him with first-degree murder and referred his case to the St. Clair County Circuit Court for trial.

The court appointed an attorney who was addicted to alcohol and cocaine to represent Mr. Kensu.

The court appointed as his trial counsel an individual widely known in local law enforcement circles as a crack-cocaine addict and alcoholic. In the prior year, the attorney had been arrested for using cocaine in a park in Ohio. According to Mr. Kensu, he often smelled of alcohol and appeared inebriated during his trial. The at-

torney's assistant later testified at a hearing involving another client that the attorney had used crack-cocaine and had drunk excessively during the period he represented Mr. Kensu.

Mr. Kensu's public defense attorney failed to investigate the case and challenge the prosecution's assertions.

The attorney did not discover, as investigators working on Mr. Kensu's behalf after his conviction would, that the victim sold drugs and had been involved in a dispute with his suppliers. One of these suppliers had traveled in the same social circles as the victim and had been in the Port Huron area about the time of the murder. The attorney also did not discover that detectives had promised to transfer from prison to a halfway house the jailhouse informant who testified at trial that Mr. Kensu had confessed to the crime. Six years after Mr. Kensu's conviction, that informant admitted on television that his trial testimony had been a lie.

The attorney also failed to raise an important conflict of interest: at the time of Mr. Kensu's trial, the prosecutor was running for state office and the victim's father was one of his chief financial backers. Today, the prosecutor is a sitting federal judge.

The public defense attorney failed to adequately present Mr. Kensu's alibi.

Prior to the trial, the lead investigator on the case had harassed and threatened Mr. Kensu's pregnant girlfriend,



ABOVE: Temujin and A'miko Kensu in prison. (Photo courtesy of A'miko Kensu.)

telling her that that if she testified on Mr. Kensu's behalf, she could be charged as an accomplice, could be forced to give birth in a prison, and would lose custody of her infant child. She fled to Florida and Mr. Kensu's attorney did not attempt to compel her return to Michigan, although she could have testified that Mr. Kensu was home asleep at the time of the murder.

When credible witnesses placed Mr. Kensu 450 miles away from the murder just hours before and after it occurred, the prosecutor called his personal pilot to the stand. The pilot theorized, with no evidence whatsoever

to support this theory, that Mr. Kensu, who was living off of food stamps, had hired a pilot to fly him to and from the murder scene. Mr. Kensu's attorney made no attempt to refute this testimony.

Mr. Kensu remains in prison although a federal court has overturned his conviction.

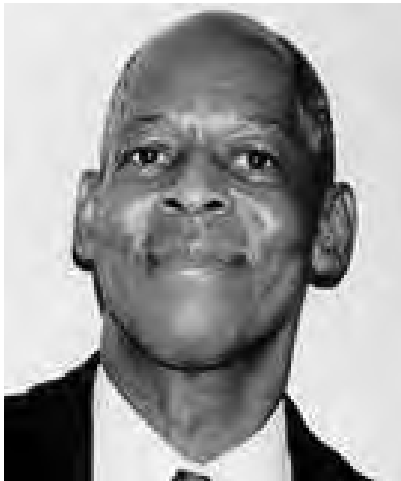
In October 2010, after finding that Mr. Kensu's court-appointed trial and appellate attorneys had both provided ineffective assistance of counsel, the United States District Court for the Eastern District of Michigan overturned his conviction and ordered that he be re-tried. The State of Michigan is appealing the federal district court's decision and thus Mr. Kensu remains in prison. Efforts to obtain a pardon from the Governor have been unsuccessful.

Among those actively campaigning for Mr. Kensu's release are a former Michigan Supreme Court Chief Justice, a former federal prosecutor, a veteran investigative journalist, two retired Special FBI agents, several veteran Michigan police detectives and officers, the non-profit Proving Innocence, the Michigan Innocence Clinic at the University of Michigan Law School and members of the Innocence Project at the Thomas M. Cooley Law School.

In the meantime, Mr. Kensu, his wife, and his family struggle to deal with his continued incarceration.

I know that he is looking down on us hoping that we'll do the right thing to prevent future injustices, so that what happened to him won't happen to others.

— RUTH LLOYD HARLIN, sister of Eddie Joe Lloyd



WAYNE COUNTY

Conviction vacated in 2002. Charges dismissed.

THE COST: Settlement of wrongful conviction lawsuit: \$4 million
Incarceration: \$510,000 (17 years)

WHAT WENT WRONG: Mr. Lloyd's public defense attorney did not challenge the validity of Mr. Lloyd's confession, which he gave while in a psychiatric facility after several coercive police interviews, and did not seek an analysis of the biological evidence collected at the crime scene.

EDDIE JOE LLOYD

Spent 17 years in prison before conviction was vacated based on DNA evidence.

In 1985, Eddie Joe Lloyd was wrongfully convicted of murder based on a confession he had given while in a psychiatric hospital for a thought and mood disorder that rendered him delusional. His court-appointed attorney never challenged the manner in which the confession was obtained, and although the police had collected biological evidence at the crime scene, that same attorney never sought to have it analyzed.

Background

Mr. Lloyd was one of six children from a close-knit family. His mother died when he was young, but his father, a self-employed housing contractor, worked hard to keep the family together. Although Mr. Lloyd's siblings remember him as a smart, funny and loving man, he spiraled into a devastating depression and began to use drugs to ameliorate his grief after his twin sister was murdered by her husband.

Over time, the drug use caused him to become delusional and he became convinced that he had supernatural abili-

ties to solve crimes. He often wrote letters to the Detroit Police Department offering to assist in cases that he had learned about through the newspapers or television.

In October 1984, Mr. Lloyd was involuntarily committed to the Detroit Psychiatric Institute. While hospitalized, Mr. Lloyd wrote a letter to the police suggesting that he had pertinent information about the highly publicized rape and murder of a 16-year-old girl that had occurred eight months earlier.

Police visited Mr. Lloyd at the hospital on at least four separate occasions. They convinced him that if he confessed to the crime and allowed himself to be arrested he would help them “smoke out” the real perpetrator. They told him details about the crime scene that he could not have known, and had him sign a written confession and give a tape-recorded statement. Based on that confession, Mr. Lloyd was charged with first-degree murder.

The court appointed two different public defense attorneys to represent Mr. Lloyd, and neither prepared adequately for trial.

Wayne County Circuit Court appointed an attorney to represent Mr. Lloyd who did little to prepare for his trial. The attorney did not seek funding for experts to analyze the blood, hair, semen or fingernail scrapings collected by police investigators at the crime scene. He did not seek funding for a psychiatric expert to evaluate Mr. Lloyd’s condition at the time of his alleged confession and to determine the veracity and reliability of that

confession. On the day on which Mr. Lloyd’s trial was to commence, the attorney called in sick.

The court appointed a second attorney to replace the first and postponed the trial for one week. At trial, the second attorney called no defense witnesses; he presented no expert testimony; he did not cross-examine the police officer primarily responsible for obtaining Mr. Lloyd’s confession; he did not cross-examine the medical examiner; and he gave a five minute closing argument.

The jury deliberated for less than one hour before convicting Mr. Lloyd. At sentencing, the trial judge apologized to the courtroom that he could not hang Mr. Lloyd. When asked whether he had anything to say, Mr. Lloyd answered, “I did not kill [the victim]. I never killed anybody in my life and I wouldn’t.”

The court appointed an attorney who had a record of misconduct to represent Mr. Lloyd on appeal.

For purposes of appeal, Mr. Lloyd was appointed another attorney. This one had been reprimanded for misconduct by Michigan’s Attorney Disciplinary Board numerous times and had had his law license temporarily suspended. The attorney never met with Mr. Lloyd and refused to return Mr. Lloyd’s phone calls. When Mr. Lloyd filed a complaint with the Attorney Grievance Commission, the attorney responded by stating that Mr. Lloyd’s “claim of my wrongdoing is frivolous, just as is his existence. Both should be terminated.”



ABOVE (left to right, top to bottom): Eddie Joe Lloyd and his niece, sister in law, brother, and great nephews. (Photo courtesy of Ruth Lloyd Harlin.)

Eventually, DNA testing conclusively proved Mr. Lloyd's innocence.

In 1995, law students working for the Innocence Project at the Benjamin N. Cardozo Law School in New York City began to search for the forensic evidence the police had taken from the crime scene. When it was finally located and subjected to DNA testing, it revealed that Mr. Lloyd could not have been the perpetrator.

In 2002, Mr. Lloyd's attorneys and the Wayne County Prosecutor's Office jointly moved to vacate his conviction. The judge who had presided over Mr. Lloyd's trial granted the motion but placed the blame for the wrong-

ful conviction on Mr. Lloyd, stating, "I never heard this man say, 'I didn't do it,' or 'they forced me to do it.'" At the end of the hearing, Mr. Lloyd simply said "Thank you."

Mr. Lloyd served seventeen years in prison for a crime he did not commit; he died two years after his release.

On August 26, 2002, after having been imprisoned for 17 years, three months and five days, Eddie Joe Lloyd walked out of a Michigan prison as a free man. Two years after his exoneration, Mr. Lloyd died of a heart ailment he had developed while in prison. He was 55.

Shortly after his death, the State of Michigan, Wayne County, and the City of Detroit agreed to pay Mr. Lloyd's estate \$4 million for failing to provide Mr. Lloyd with effective assistance of counsel and for his wrongful conviction and imprisonment.

The real perpetrator of the crime for which Mr. Lloyd was imprisoned has never been found.



WAYNE COUNTY: Third Judicial Circuit Court
Conviction overturned in 1997. Charges dismissed.

THE COST: \$480,000 (16 years)

WHAT WENT WRONG: Mr. Love's public defense attorney failed to:

- Conduct a reasonable investigation.
- File necessary pre-trial motions.
- Challenge the sole eyewitness's mistaken identification of Mr. Love.
- Call an alibi witness to testify on Mr. Love's behalf.

DWIGHT CARVEL LOVE

Spent 16 years in prison before conviction was overturned.

In 1982, 22-year old Dwight Carvel Love was sentenced to life imprisonment without the possibility of parole for a murder that he did not commit. His public defense attorney failed to adequately investigate the charges against him and as a result, did not learn that the police had identified another man who was bragging publicly about having committed the murder. Although the prosecution's case rested almost exclusively on a single eyewitness, the attorney did not adequately challenge that man's mistaken identification of Mr. Love as the perpetrator and failed to call as a witness at trial a neighbor who could have supported Mr. Love's claim that he was in his apartment at the time of the incident.

Background

Early on the morning of September 10, 1981, Mr. Love, a trained locksmith who worked for his family's business, was asleep next to his girlfriend when he was awakened by a series of "pop-pop" sounds outside of his apartment building. From his window, he saw a body lying across the street in front of a local bar.

A friend of the murdered man told police that he and the victim had been accosted by two African-American men when they left the bar, that the victim had been shot three times as he tried to run back into the bar, and that one

of the assailants had run in the direction of Mr. Love's building after the shooting. He described the shooter as short with bumpy, acne-marked skin.

Mr. Love was charged after a flawed photographic lineup.

Police later showed the friend a photographic lineup populated with images of men who did not meet this description. Officers told him to “zero in on the shooter.” Although Mr. Love did not have bumpy, acne-marked skin, his photo was the first in the lineup; a police file revealed that he had been included because he lived in the area. The friend identified Mr. Love as the shooter in both this lineup and a later in-person lineup. Based solely on these identifications, Mr. Love was charged with first degree murder.

The court appointed an attorney who failed to adequately investigate the crime.

The public defense attorney appointed by the Third Judicial Circuit Court of Wayne County did little to mount a defense on Mr. Love's behalf. There is no evidence that he sought funding to hire an investigator. Had he retained one, he might have discovered that several people in and around the neighborhood suspected that someone else had committed the murder.

Mr. Love continues to be plagued by illnesses he contracted while incarcerated.

At trial, the attorney failed to challenge the eyewitness identification, to call a crucial alibi witness or to provide a second alibi witness with an opportunity to explain prior inconsistent statements.

Although the prosecution's case rested almost exclusively on the victim's friend's identification of Mr. Love, the attorney did not question the friend about the discrepancies between his initial description of the shooter and Mr. Love.

The prosecution argued that Mr. Love had returned to his apartment immediately after the shooting; yet, Mr. Love's attorney failed to call as a witness Mr. Love's downstairs neighbor, who had testified at an earlier hearing that he had not heard anyone enter the building after he heard the gunshots. He had further testified that the steps to Mr. Love's apartment were “loud and creaky” and that he could always hear Mr. Love's movements on the stairs and in his apartment.

Mr. Love's girlfriend testified that he had been with her at the time of the shooting, but the prosecution cast doubt on her credibility by highlighting inconsistencies in her prior statements. Mr. Love's attorney failed to provide her with an opportunity to explain these inconsistencies. At the time she made the statements, she had been charged with murder along with Mr. Love and was under tremendous stress.

Mr. Love was convicted and sentenced to life imprisonment.

Twelve years later, new information about the real murderer came to light and Mr. Love's conviction was vacated.

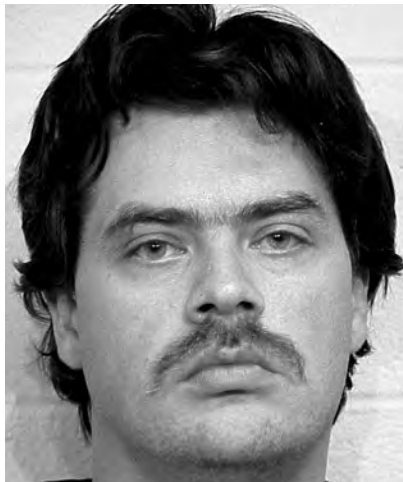
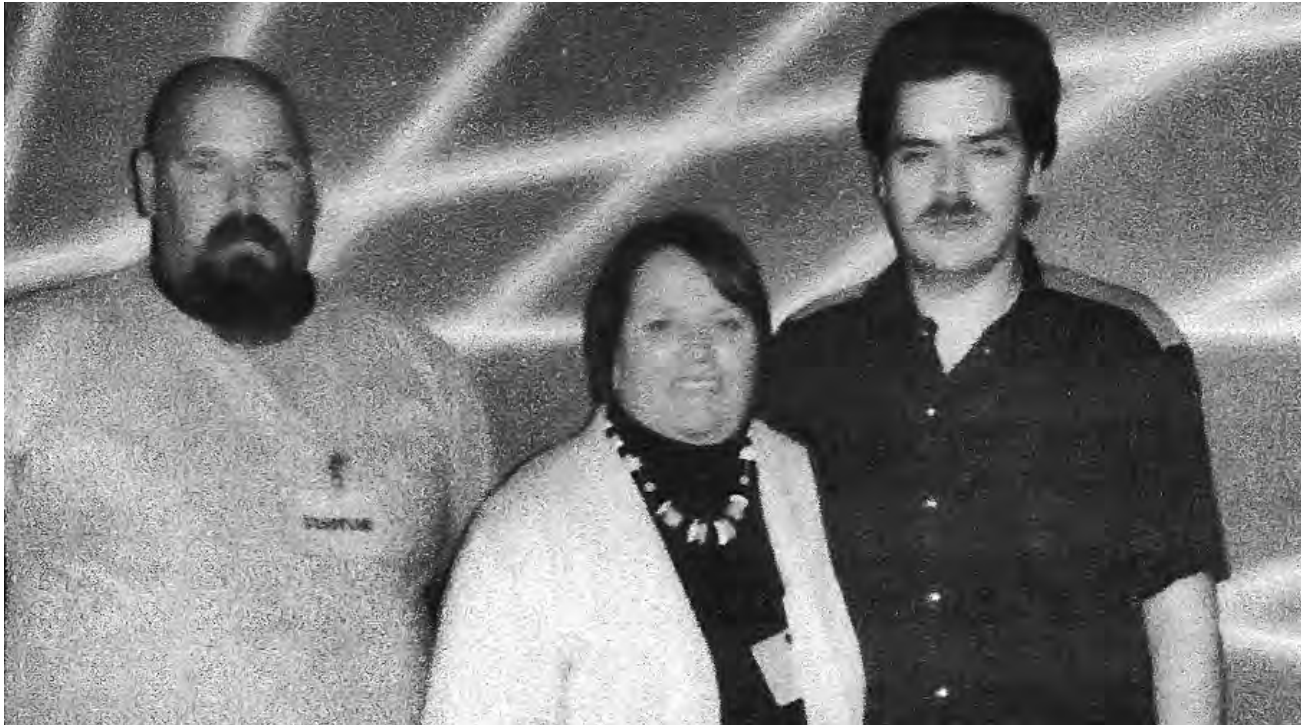
Mr. Love made repeated attempts to overturn his conviction, but none were successful. Finally, with the help of an attorney hired by his family, he discovered that the prosecution, which has a constitutional obligation to turn over all potentially exculpatory evidence prior to trial, had withheld from Mr. Love police reports identifying other potential suspects, including a man who had bragged about the murder. Around the same time, Mr. Love's brother located an individual who acknowledged that he had been with the shooter at the time of the murder and that Mr. Love was not the shooter.

Based on this new evidence, Mr. Love filed a motion with the trial court seeking a new trial and to have his conviction set aside. The court granted the motion and subsequently ordered the State of Michigan to release Mr. Love pending any appeal. The court stated:

When you consider that with potentially exculpatory evidence that was contained in a miscellaneous police file that did not surface until . . . 1996, that what I deem to be ineffective assistance of counsel for failure to call a very important witness, a witness who may have been able to say whether or not the Defendant was seen or heard going out of or coming into his apartment across from the robbery murder scene, as well as the evidence that someone else confessed to the crimes, any one or more of those particular issues leads to . . . the conclusion that there was a miscarriage of justice . . . The Defendant has spent fifteen years in prison on a conviction that probably should never have been had.

Even after release, Mr. Love's incarceration continues to cause him problems.

Although the State of Michigan attempted to re-try Mr. Love, the trial court dismissed the charges against him in 2001. Mr. Love can no longer work because of a pulmonary condition he contracted while in the Wayne County Jail. He lives on disability benefits of just over \$500 a month and suffers from post-traumatic stress syndrome because of his wrongful incarceration.



ST. CLAIR COUNTY Circuit Court

Evidence of innocence. Case is before Michigan Court of Appeals.

THE COST: Incarceration: \$90,000 (3 years)

WHAT WENT WRONG: The court denied Mr. Mardlin's attorney the funds to retain a necessary defense expert.

FREDERICK MARDLIN

Was denied opportunity to retain necessary expert witnesses and spent three years in prison.

Frederick Mardlin, a 32-year old married father of three children, was wrongfully convicted of arson and burning an insured property and unnecessarily imprisoned for three years. The trial court declined to provide his public defense attorney with the funds to retain an electrical expert who would have testified that the fire was accidental, caused by faulty electrical wiring.

Background

On November 13, 2006, a fire burned down Mr. Mardlin's home, destroying most of his family's possessions, including sentimental heirlooms. The damage to the

house was so extensive that it was eventually bulldozed. There was no physical evidence suggesting that Mr. Mardlin had started the fire, but police claimed that he had burned down the house to collect the insurance proceeds.

Initially, the prosecution told Mr. Mardlin that if he pled guilty, he would be sentenced to no more than two months in the county jail. Mr. Mardlin, however, rejected the deal, maintaining his innocence. Although he was behind on his bills, he had recently negotiated a payment plan with his utility company. Moreover, he swears that he would have never destroyed his family's

keepsakes. “They said I intentionally destroyed pictures of my children,” said Mr. Mardlin. “I took my children to the state fair every year to get pencil drawings done of them. I loved those pictures. I could have never destroyed them.”

Nonetheless, he was arrested and charged with arson. The case was referred to the St. Clair County Circuit Court for trial.

The court denied Mr. Mardlin’s public defense attorney the funds to retain a necessary expert.

Although no accelerant was found in the remains of Mr. Mardlin’s house, the prosecution argued at trial that the damage to the house was “consistent” with its use. Two arson experts testified in support of this assertion. A third stated the fire had no electrical cause although he had not examined the faulty wiring in an outlet in the room where the fire started.

The public defense attorney appointed by the court to represent Mr. Mardlin had little jury trial experience. He requested funds from the court to retain a fire “origin and cause” investigator and an “electrical” expert, but the court only provided him with funds for the fire investigator. Although that investigator concluded that the fire was electrical and had been caused by faulty outlet wiring, he lacked the electrical expertise to testify about that wiring.

The prosecutor knew that the court had denied Mr. Mardlin’s requests for an electrical expert, but repeatedly emphasized in his closing arguments that the defense had failed to call such an expert to testify in support of its theory of the case.

Mr. Mardlin was convicted and sentenced to concurrent terms of between three and 20 years for the arson and between one and 10 years for burning an insured building. An electrical expert would have cost the court approximately \$2,000.

An electrical expert later demonstrated conclusively that the fire was accidental.

The defense’s fire investigator, believing Mr. Mardlin to be innocent, had personally retrieved the faulty outlet from the house before it was bulldozed so that it could be preserved for later analysis. Mr. Mardlin’s court-appointed appellate attorney secured the assistance of an electrical engineering expert who agreed to work on the case free of charge. His tests showed conclusively that the cause of fire was electrical and therefore accidental.

Mr. Mardlin has been released on parole, but his motion for a new trial remains unresolved.

Based on this new expert evidence, Mr. Mardlin filed a motion with the trial court for a new trial. That motion was denied. He appealed to the Michigan Court of Ap-

The Chief Justice [of the Michigan Supreme Court] noted “serious concerns about the fairness of [Mr. Mardlin’s] trial.”

As his case bounced back and forth among the courts, Mr. Mardlin was released on parole, three days after his son graduated from high school. Not only did his imprisonment cause him to miss the graduation, but while he was incarcerated, his son had required surgery, his younger brother and grandfather had died, his aunt had quadruple bypass surgery, and his wife had been forced to work multiple jobs to support the family. As Mr. Mardlin’s mother puts it, “He’s missed so many things, so many family moments.”

peals, which overturned his conviction on other grounds. The prosecution appealed to the Supreme Court, which reinstated the conviction, but sent the case back to the Court of Appeals to address whether Mr. Mardlin had been improperly denied a necessary expert witness. In a dissenting opinion, the Chief Justice of the Supreme Court noted that the existence of the new expert testimony “raises serious concerns about the fairness of defendant’s trial.”

During the course of these appeals, St. Clair County, which is responsible for paying for Mr. Mardlin’s appellate representation, announced that it would not pay his appellate attorney for the time he had spent on the case when it was before the Michigan Court of Appeals unless the attorney agreed to represent Mr. Mardlin before the Michigan Supreme Court for free. The attorney agreed to do so.

At trial, his public defense lawyer made no opening argument, called no witnesses and rested when the prosecution did.



MUSKEGON COUNTY: Muskegon County Trial Court, Criminal Division
Evidence points to innocence

THE COST: Incarceration: \$210,000 (7 years so far)

WHAT WENT WRONG: Mr. Sones' public defense attorney did not retain a necessary expert because of lack of court funds. He also did not prepare for trial, failing to:

- Investigate the facts of the case or attempt to locate and interview potential alibi witnesses.
- Challenge a suggestive photo lineup.
- Make an opening statement or call a single witness at trial.

ALPHONSO SONES, SR.

Remains in prison after seven years even though evidence points to his innocence.

In 2003, 56-year old Alphonso Sones, Sr. was sentenced to a prison term of between 22 and 36 years for allegedly robbing a gas station. The only evidence against him was the fact that two gas station employees had picked him out of an improperly conducted in-person line-up. Although his court-appointed attorney twice stated on the record that his client could not obtain a fair trial without an expert on the unreliability of eyewitness identifications, he did not seek the funds to retain such an expert.

Background

On the evening of August 26, 2002, a man brandishing a butcher knife robbed a gas station. According to two gas station employees, the man was in his mid-40s and dark-skinned, had facial hair and had been wearing blue sweatpants and a white t-shirt. He made off with two packages of cigarettes, a cash drawer and more than \$400.

The robbery, which took no more than two minutes, was recorded on the gas station's surveillance camera. The

Mr. Sones' public defense attorney explained that he had not retained an expert earlier because "it would be extremely expensive."

recording was grainy and most of the footage was of the back of the perpetrator's head. Yet, two police officers who viewed it immediately after the robbery later testified that they thought that the perpetrator resembled a man known as Jimmie Foreman. They further testified that they had made no effort to locate or speak to Mr. Foreman.

Several days later, different police officers stopped 56-year-old Mr. Sones as he walked from his daughter's house to his girlfriend's house. He was wearing blue pants and a white t-shirt. The officers searched him, his car and his girlfriend's house, but did not find the \$400, the cash drawer, or the butcher knife. Nevertheless, they took Mr. Sones to the police station where they placed him in a lineup.

Mr. Sones was arrested based on the results of a flawed lineup.

The two gas station employees viewed the lineup and identified Mr. Sones as the perpetrator. They later stated, however, that the four other men in the lineup looked sufficiently different from their description of the robber that they could not have been the perpetrator. One man was too large; a second man was too young; a third man had hair that was too long; and a fourth had skin that was too light.

On the basis of the employees' identification, Mr. Sones was arrested and charged, and his case was referred to the Criminal Division of the Muskegon County Trial Court for trial.

The court appointed an attorney who failed to prepare Mr. Sones' case for trial.

Mr. Sones' public defense attorney met with Mr. Sones once prior to his trial, refused to listen to his claims of innocence and pressured him to plead guilty. According to Mr. Sones, he never investigated Mr. Sones' assertion that he had been with his ex-wife at the time of the robbery or Jimmie Forman's possible involvement in the crime. Instead, in December 2002, on the eve of trial, the attorney requested a postponement, admitting, "Quite frankly, I don't think I'm prepared for trial at this point." He stated that he wanted to retain an expert on the reliability of eyewitness identification. The court adjourned the trial.

The attorney did not ask the court for the funding to secure necessary expert testimony.

By the time the trial began, the attorney had not retained the eyewitness identification expert. Instead, after the jury had been selected, he asked the court to instruct it on the reliability of eyewitness testimony; the court refused. He then asked that he be allowed to present facts to the jury on the unreliability of eyewitness testimony; the court denied his request. He then asked for a second adjournment so that he could again retain an expert. When the prosecution objected, the attorney explained that he had not retained an expert earlier because “it would be extremely expensive . . . And we all work with limited budgets here and we have to decide whether or not those funds can—should be expended in a particular case.” The court again denied his request and the trial went forward. Mr. Sones’ attorney made no opening argument, called no witnesses, and rested his case when the prosecution rested its case.

Mr. Sones remains incarcerated.

Mr. Sones was found guilty of armed robbery and sentenced to 22 to 36 years. His various efforts to overturn his convictions have failed. His earliest release date is 2024. He will be 70 years old.



I was naïve. I didn't know anything about the courts. I'd never been in trouble before. I'd never even been to the police station.

—DAVID TUCKER

WAYNE COUNTY: Recorder's Court for the City of Detroit
Conviction overturned in 1998. Charges dismissed.

THE COST: Incarceration: \$120,000 (4 years)

WHAT WENT WRONG: Mr. Tucker's public defense attorney completely failed to investigate the charges against him or prepare for trial.

DAVID TUCKER

Released on parole after four years; federal court later vacated his conviction

In 1992, 21-year old David Tucker was convicted of assault with intent to do great bodily harm after a 45-minute bench trial for which his public defense attorney did no investigation and no preparation. He was sentenced to between six and ten years in prison.

Background

On June 30, 1990, David Tucker was working at a McDonald's on Detroit's northwest side. Shortly before 9 p.m., one of the restaurant managers was attacked, beaten and left unconscious on the floor of the restaurant's bathroom. At around the same time, Mr. Tucker

left his workstation to use the restroom, having received permission to do so. Upon finding the manager beaten and bleeding, Mr. Tucker immediately returned to the restaurant, alerted other restaurant employees and called 911.

The manager spent several days in a coma and initially lost his ability to speak. Over the next 18 months, he identified a number of different co-workers as his attackers. At first, he told police that he had been beaten by two McDonald's employees, neither of whom was Mr. Tucker. Sometime later, he accused Mr. Tucker before again insisting that the perpetrator was one of the

two men he had originally named. Despite these discrepancies, police arrested Mr. Tucker and charged him with assault with intent to murder. His case was referred to the Recorder's Court for the City of Detroit for trial.

Mr. Tucker's public defense attorney completely failed to prepare for trial.

Shortly before trial, Mr. Tucker's attorney received a letter from the victim's attorney stating that the victim's head injuries prevented him from reliably identifying his attacker but reserving his right to testify against Mr. Tucker at his trial. On the basis of that letter, Mr. Tucker's lawyer wrongly concluded that the victim would not appear at the trial and that the prosecution would be unable to prove its case.

As a result, the lawyer did not request the victim's medical records or consult with a medical expert about the impact of head trauma on memory. He did not outline the victim's contradictory and conflicting accounts of the attack. He did not identify witnesses to testify on Mr. Tucker's behalf, although another employee had seen Mr. Tucker return from the bathroom one minute after leaving his workstation. He did not seek testimony from the initial police investigators who were told by the victim that two other McDonalds' employees had assaulted him.

The victim did, however, testify against Mr. Tucker, and asserted that David Tucker had assaulted him. Mr. Tucker's attorney offered no response and did not seek a continuance to prepare. Forty-five minutes after the trial

“Counsel, unprepared and assuming that the prosecution would present no evidence against his client, nevertheless declined to request a continuance to prepare.”

—UNITED STATES COURT OF APPEALS,
SIXTH CIRCUIT

began, the judge convicted David Tucker and sentenced him to between six and ten years in prison.

Years after Mr. Tucker had been paroled, the federal courts declared that his attorney had provided constitutionally inadequate legal representation.

Although Mr. Tucker was released on parole after four years, he continued to fight to clear his name. Both the Michigan Court of Appeals and the Michigan Supreme Court questioned his lawyer's lack of preparation but

did not find that the lawyer's omissions had affected the trial's outcome.

The United States District Court for the Eastern District of Michigan, however, disagreed. It granted Mr. Tucker's petition for a writ of habeas corpus, and ordered that he be retried or released. The United States Court of Appeals for the Sixth Circuit affirmed, stating:

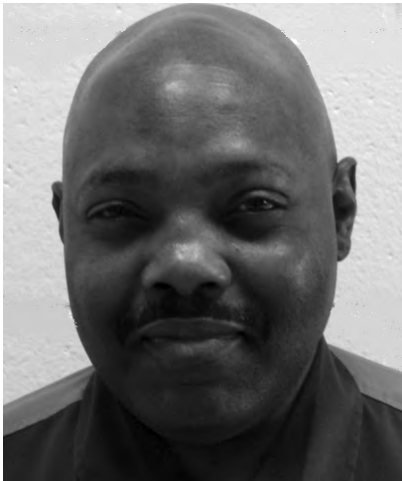
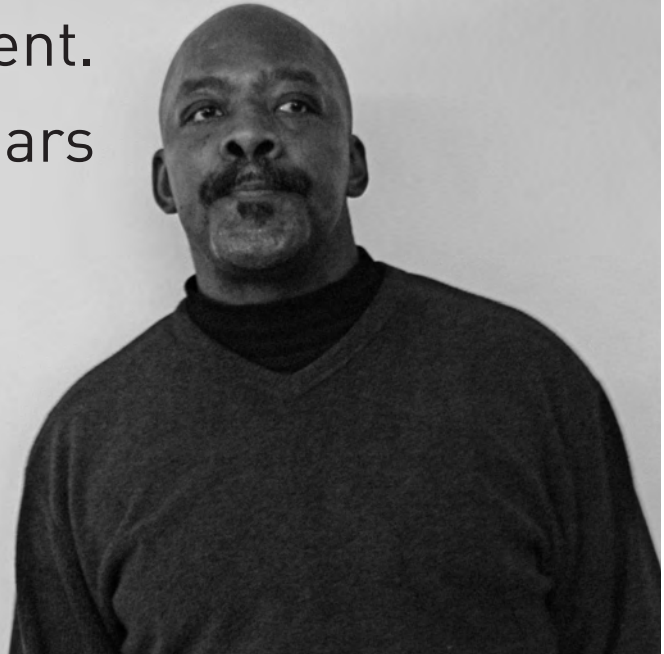
Counsel, unprepared and assuming that the prosecution would present no evidence against his client, nevertheless declined to request a continuance to prepare. His failure to do so, when he knew that he was unprepared for trial and had not obtained critical evidence of which he was aware, could not be considered representation within the "wide range of reasonable professional assistance." [citation omitted]

Indeed, [Mr.] Tucker's "burden of overcoming the presumption that the challenged action might be considered sound trial strategy" is not a difficult one in this case. No conceivable sound trial strategy would include a decision to proceed unprepared when counsel has learned that his assumption that the prosecution would not present evidence was unfounded.

The charges against him were subsequently dismissed.

My brother is innocent.
It has taken 23 years
for people to listen.

— ROBERT VINSON, younger brother of Karl Vinson



WAYNE COUNTY: Third Judicial Circuit Court

Evidence points to innocence. Motion to overturn conviction pending.

THE COST: Incarceration: \$720,000 (24 years)

WHAT WENT WRONG: Mr. Vinson's court-appointed attorney did not conduct the reasonable investigation that would have enabled her to challenge forensic evidence against him. She also failed to seek funding to retain experts who could have exonerated Mr. Vinson.

KARL VINSON

Remains in prison after 24 years although forensic evidence points to his innocence.

Karl Vinson has spent the last 24 years of his life behind bars because of a rape conviction. New evidence, however, strongly suggests that he is innocent. A recent analysis of Mr. Vinson's blood revealed that the semen found at the crime scene could not have been his. Such evidence was not introduced at Mr. Vinson's trial because his court-appointed public defense attorney never asked for permission from the court to retain necessary experts.

Background

On the morning of January 3, 1986, a man broke into a Detroit home and raped a nine-year-old girl. The girl was unable to identify her attacker until her mother asked if he might be Karl Vinson, the ex-husband of the girl's former babysitter. At that time, 33-year-old Mr. Vinson was training as a boxer and renting a house from his mother. He had recently lost his job at the Chrysler plant.

“I did a lot of crying and praying over the years”

—MILDRED POINTZES, KARL VINSON’S MOTHER

Mr. Vinson had an alibi.

Both he and his family insisted that he could not have committed the crime. He had been asleep at his mother’s house on the morning of January 3rd. Moreover, none of the biological evidence collected by the police at the victim’s home implicated him. The blood cells in the semen on the victim’s bed sheets were type O. Mr. Vinson’s blood type was AB. Nonetheless, the police arrested and charged him.

The court appointed a public defense attorney who failed to raise problems with the forensic evidence.

At trial, the prosecutor argued that the lack of physical evidence did not establish Mr. Vinson’s innocence. Instead, he claimed that Mr. Vinson had a particular physiology that prevented his fingertips from leaving fingerprints and his blood type from being detected in his semen. The type O blood cells in the semen, he claimed, were not from Mr. Vinson, but the victim.

Although these assertions were false, Mr. Vinson’s public defense attorney did not attempt to refute them. There is no record of her having asked for funding from the court to retain an expert to determine whether Mr. Vinson’s blood type could be detected in his semen, to examine the stained bed sheets, or to review the results of the hospital’s rape kit. The only witnesses she called on Mr. Vinson’s behalf were his mother and stepfather, both of whom the prosecutor accused of lying.

Mr. Vinson was convicted and sentenced to between 10 and 50 years in prison.

After more than two decades in prison, Mr. Vinson located experts whose analysis of the forensic evidence supports his innocence.

Mr. Vinson’s multiple appeals and motions for post-conviction relief were denied. He was unable to use DNA evidence to prove his innocence because the police had destroyed the bed sheet with the semen stains. Although his case came before the Michigan Parole Board a number of times, he was never paroled. He refused to admit his guilt.

Finally, an associate chemistry professor who works with the National Death Row Assistance Network visited Mr. Vinson in prison and tested his blood. Those tests revealed that he did not have the type of physiology that the prosecutor had claimed; his blood type could be detected in his semen and bodily fluids. If the semen on the bed sheet in the victim’s room had been Mr. Vinson’s,

it should have contained type AB blood cells—which it did not.

Her conclusions were subsequently confirmed by an independent laboratory in Pennsylvania and supported by the same Detroit Police crime lab analyst who worked on Mr. Vinson’s case for the prosecution in 1986.

Mr. Vinson and his family await a decision on a motion to vacate his conviction.

In February 2010, the Innocence Clinic at the University of Michigan Law School filed a motion asking that Mr. Vinson’s conviction be vacated. At a subsequent evidentiary hearing, experts testified that Mr. Vinson could not have committed the crime. The motion is still pending.

“I did a lot of crying and praying over the years,” said Mildred Pointzes, Karl Vinson’s mother, who together with Mr. Vinson’s siblings and children never doubted Mr. Vinson’s innocence. Now 54 years old, Mr. Vinson has big plans for putting his life back together if and when he is released from prison. He wants to write a book and to create an advocacy organization to make sure that no one has to experience the pain and suffering that he and his family have experienced. He is looking to help people get a fair chance in court. He says that he plans to “live a life that you can feel good about.”



BERRIEN COUNTY: Circuit Court

Conviction overturned in 2008. Pled guilty to lesser offense.

THE COST: Incarceration: \$60,000 (2 years)

WHAT WENT WRONG: The court appointed an attorney to represent Mr. Walker who was so disengaged that Mr. Walker preferred to represent himself. The attorney failed to:

- Investigate the facts of Mr. Walker's case.
- Prepare for trial.

CHARLES WALKER

Spent more than a year in prison before conviction overturned.

In 2006, 42-year old Charles Walker was wrongfully convicted of robbery. When his public defense attorney failed to mount any defense on his behalf, the illiterate Mr. Walker was forced to represent himself. He was sentenced to between seven and twenty years in prison.

Background

On January 27, 2006, Charles Walker caught an acquaintance, Raymond Henry, attempting to break into the house of Mr. Walker's cousin and called the police.

After the police arrested Mr. Henry, they questioned him about a November, 2005 incident in which two men had robbed the night clerk at a local Executive Inn. Mr. Henry admitted involvement and claimed that Mr. Walker had been his accomplice.

A few days later, the police questioned Mr. Walker about the robbery. Mr. Walker acknowledged that he knew Mr. Henry and that he had once given him a ride, but insisted that he had nothing to do with the Executive Inn robbery. He maintained that on the night of the incident,

he had been on a bus to visit one of his sisters in Texas for Thanksgiving. “I told [the detective] I can’t admit to something I knew nothing about,” Mr. Walker stated.

Besides Mr. Henry’s statements, there was no evidence linking Mr. Walker to the robbery. Footprints and tire tracks found at the crime scene did not belong to Mr. Walker. The quality of the security camera footage of the robbery was so poor that it was impossible to identify either man. The night clerk could identify Mr. Henry but not the second man. Nevertheless, the police arrested Mr. Walker and charged him with robbery.

Mr. Walker’s public defense attorney did not prepare for trial.

The Berrien County Circuit Court appointed a public defense attorney for Mr. Walker who had little interest in Mr. Walker’s claims of innocence. On two different occasions, the attorney advised Mr. Walker to plead guilty, but both times Mr. Walker refused. “[A]nything that I have done I am willing to fess up to it,” he says, but “I can’t plea to nothing that I didn’t play a part in.”

Mr. Walker asked his attorney, both orally and in letters written for him by others, to obtain copies of relevant police records and to contact several witnesses, at least one of whom could have provided Mr. Walker with an alibi. The attorney refused and yelled at Mr. Walker for sending him the letters.

The court forced the illiterate Mr. Walker to represent himself when he complained about his public defense attorney’s conduct.

When Mr. Walker informed the court about his defense lawyer’s lack of interest, the judge told Mr. Walker that the only way he could get a new lawyer was by hiring one. Otherwise, he could represent himself with his court-appointed attorney serving as “stand-by counsel.” Because he had no money, Mr. Walker chose to represent himself. He later said, “I felt that I was being screwed. I wanted another lawyer.”

From the beginning of his trial, Mr. Walker was at a severe disadvantage. He never received a ruling from the court on any of the pre-trial motions that had been prepared on his behalf by others. He never received any information or evidence from the prosecutor and none of his witnesses appeared in court. During jury selection, the judge repeatedly struck down Mr. Walker’s questions and corrected his grammar.

Although illiterate,
Mr. Walker was forced to
represent himself or to go
to trial with an unprepared
attorney.

Midway through the trial, the unprepared attorney took over, but failed to provide any meaningful defense.

Mr. Walker’s cross-examination of the prosecution’s witnesses went so poorly that during his cross-examination of the second witness, the judge adjourned the trial. Then, outside the presence of the jury, he suggested to Mr. Walker that he step aside and permit the public defense attorney to complete the trial. Mr. Walker reluctantly consented and the judge gave the attorney “eight minutes to catch up.” The public defense attorney briefly cross-examined the prosecution’s remaining witnesses, but did not call a single witness on Mr. Walker’s behalf.

The jury found Mr. Walker, 42 years old, guilty. The judge sentenced him to between seven and 20 years in prison. Throughout, Mr. Walker continued to maintain that he was innocent: “[I am] not saying, that I never did

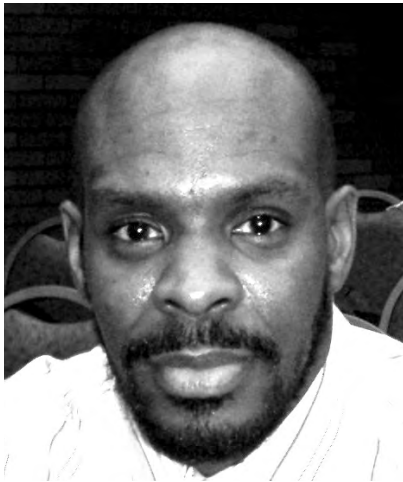
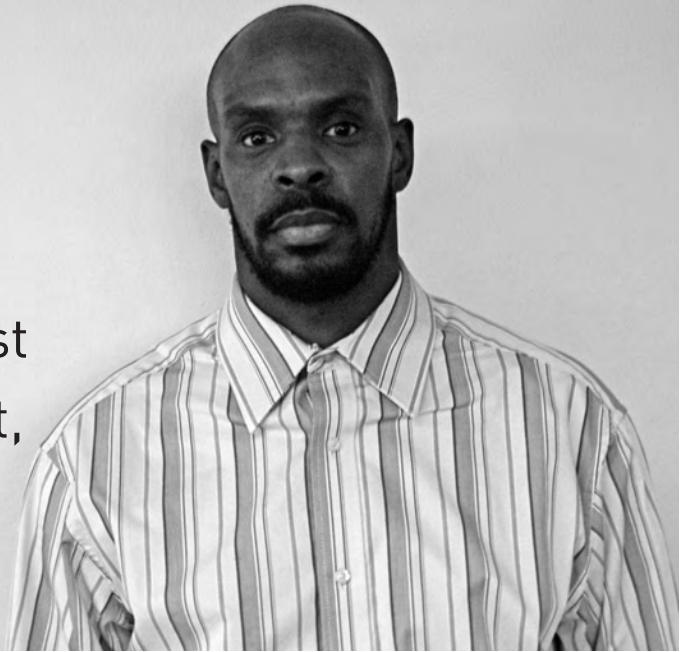
anything wrong,” he stated, but “this is the only thing that I ever took to trial I did not play any role in this. . . .”

Mr. Walker’s conviction was subsequently overturned by the Michigan Court of Appeals.

In 2007, the Michigan Court of Appeals overturned Mr. Walker’s conviction after it found that the trial court had impermissibly permitted certain statements into evidence. In so ruling, the Court noted the lack of evidence against Mr. Walker and the unreliability of Mr. Henry’s testimony regarding Mr. Walker’s participation in the robbery. On remand, Mr. Walker, believing the system to be fundamentally unfair, pled to lesser charges in exchange for a sentence of time served.

[My lawyer] wanted me to say I did it and I'll get probation and I said, 'No, no, I'll have to live with that the rest of my life. I won't say it, because I didn't do it,'

—HAROLD WELLS



WAYNE COUNTY: Recorder's Court for the City of Detroit
Conviction overturned in 1994. Charges dismissed.

THE COST: Incarceration: \$45,000 (18 months)
Settlement of wrongful imprisonment lawsuit: \$20,000

WHAT WENT WRONG: The court appointed an attorney to represent Mr. Wells who failed to:

- Investigate the facts of Mr. Wells' case.
- Prepare for trial.
- Call as witnesses at trial the two individuals who could have exonerated Mr. Wells.

HAROLD WELLS

Served 18 months in prison before conviction overturned and charges dismissed.

In 1991, Harold Alfonzo Wells was wrongfully convicted of receiving and concealing a stolen car. At his trial, his public defense attorney failed to call as witnesses the two individuals who could have exonerated him.

Background

Early on the morning of October 14, 1990, a Detroit police officer ran the license plate of a vehicle that had failed to stop at a stop sign and learned that the car had been stolen. When he motioned to the driver to pull over, the driver stopped the car in the middle of the street,

and together with his two passengers, jumped out and attempted to flee. The officer caught the two passengers, but the driver escaped. He issued a radio alert about the missing driver and drove the passengers to the police station.

About fifteen minutes later, a second police officer saw 24-year-old Harold Wells walking down the street, wearing clothing similar to that of the driver. The officer ordered Mr. Wells into his police car and transported him to the police station.

When Mr. Wells arrived at the station, he ran into the two passengers. Both told police officers that Mr. Wells was not the driver and that they had never seen him before. The officers noted these statements in their reports, but arrested Mr. Wells and charged him with possessing and concealing a stolen vehicle.

Mr. Wells’ public defense attorney failed to investigate the charges against Mr. Wells and to develop his defense.

The public defense attorney assigned to represent Mr. Wells and the judge before whom Mr. Wells was arraigned advised him to plead guilty. Mr. Wells refused and, at his arraignment, began to cry. He later said, “[My attorney] wanted me to say I did it and I’ll get probation and I said, ‘No, no, I’ll have to live with that the rest of my life. I won’t say it, because I didn’t do it,’ I was up there crying because I had never been through anything like this before. I was very, very scared.”

On his attorney’s advice, Mr. Wells waived his right to a jury trial and was tried before a judge. The trial lasted 20 minutes. The prosecution presented two witnesses: the police officer who had apprehended the passengers and the officer who had driven Mr. Wells to the police station, both of whom testified that Mr. Wells had been the driver. Mr. Wells’ attorney did not cross-examine either of them.

“I was up there crying because I had never been through anything like this before. I was very, very scared.”

—HAROLD WELLS

Mr. Wells’ attorney called a single witness: Mr. Wells. He did not call the two passengers even though they would have testified that Mr. Wells was not the driver. Although Mr. Wells attempted to tell the judge about these individuals, the judge refused to let him speak.

Mr. Wells’ pre-sentencing report recommended that he be sentenced to between zero to nine months in jail. His trial judge, however, sentenced him to between 18 months and five years, stating that “the court has no, and I’ll repeat, no doubt whatsoever who was driving the car.”

Mr. Wells' court-appointed appellate attorney conducted the necessary investigation and Mr. Wells' conviction was overturned.

Unlike Mr. Wells' trial counsel, his court-appointed appellate attorney located one of the passengers from the car and obtained a sworn affidavit from her. In it, she stated that Mr. Wells had not been the driver, that she had informed the police that they had picked up the wrong man, and that she had never been contacted or asked to testify by Mr. Wells' trial attorney. On the basis of this affidavit, Mr. Wells was granted a new trial. The prosecution, not wanting to try the case a second time, dropped the charges against Mr. Wells.

Harold Wells later sued the City of Detroit. The suit was settled for \$20,000.



WAYNE COUNTY: Third Judicial Circuit Court

Conviction vacated in 2004. Pled *nolo contendere* to lesser charges.

THE COST: Incarceration: \$60,000 (2 years)

WHAT WENT WRONG: Mr. Woods court-appointed attorney lacked adequate knowledge of criminal procedure. As a result, he:

- Failed to challenge a photo lineup.
- Did not request funding to hire necessary expert.
- Failed to file necessary pre-trial motions and as a result could not present alibi witnesses at trial.

DAVIEN WOODS

Original conviction vacated after two years in prison; pled guilty to lesser charges and received a sentence of time served.

In 2002, 18-year old Davien Woods was convicted of carjacking, armed robbery and felony possession of a firearm, primarily because his public defense attorney failed to notify the court within the requisite time period that he intended to present an alibi defense. As a result, Mr. Woods' alibi witnesses were unable to testify at trial and Mr. Woods spent two years in prison before the Michigan Court of Appeals overturned his conviction.

Background

At 5 a.m. on September 24, 2001, two men accosted a customer at a Detroit gas station and stole his car at

gunpoint. Three days later, a police officer patrolling a school crosswalk flagged down a speeding car in which Mr. Woods was a passenger. The car was the one that had been stolen from the gas station. Mr. Woods and the others in the car were arrested, charged with possession of stolen property, and jailed.

Mr. Woods was charged after an improper photographic lineup.

The following day, the car's owner picked Mr. Woods out of a photo lineup and identified him as one of the

two carjackers. Michigan state law prohibits the use of photo lineups when the accused is in jail and physically able to participate in an in-person lineup. Detroit police, however, never placed Mr. Woods in an in-person lineup.

Based solely on the car owner's identification, Mr. Woods was charged with armed robbery, carjacking, and felony possession of a firearm. His case was referred to Wayne County's Third Judicial Circuit Court for prosecution.

The public defense attorney appointed to represent Mr. Woods did not prepare for trial.

According to Mr. Woods, he and the attorney met for fewer than ten minutes before trial. During that brief conversation he told the attorney that both his brother and his grandmother could testify that he had been sleeping on a pullout bed in his grandmother's living room when the incident occurred. The attorney did not contact either witness and did little to prepare Mr. Woods' case.

Mr. Woods' attorney did not challenge the photo lineup.

The public defense attorney did nothing to challenge the improper use of the photo lineup in lieu of the in-person lineup or the car owner's identification of Mr. Woods. Although research demonstrates that eyewitness identifications are often inaccurate, the attorney did not consult with or retain an expert on the unreliability of such identifications and later acknowledged that he had never



ABOVE: Davien Woods and Davien Jr. (Photo by Stephanie Chang)

utilized an identification expert in the 20 years that he had practiced law.

The public defense attorney failed to present Mr. Woods' alibi witnesses.

Although the attorney attempted to call Mr. Woods' brother as an alibi witness, he was prevented from doing so because he had not given the prosecutor and the trial court timely notice of Mr. Woods' alibi defense. Michigan state law requires that defense counsel provide the court and the prosecutor with notice of an alibi defense at least ten days prior to trial. The attorney later admitted that he was unaware of the time period within which he had to provide notice.

After listening to new evidence presented by Mr. Woods' appellate attorney, the trial judge ruled that Mr. Woods' trial attorney had "unequivocally" provided ineffective assistance of counsel.

The public defense attorney made no effort to locate the real perpetrator.

The driver of the stolen car pled guilty to his part in the carjacking immediately prior to Mr. Woods' trial. He testified on Mr. Woods' behalf that he and a friend known as "K-9" had planned and committed the crime. Mr. Woods' attorney made no effort to ascertain K-9's true identity or to confirm his participation in the offense.

Mr. Woods was convicted and sentenced to between 70 months and 15 years in prison.

Mr. Woods's conviction was vacated after the court found that his trial attorney had provided ineffective assistance of counsel.

In preparation for an appeal, Mr. Woods' court-appointed appellate attorney arranged for both Mr. Woods and the convicted car driver to take polygraph tests regarding Mr. Woods' non-involvement in the carjacking. They both passed. The attorney also located "K-9" who admitted that he had in fact participated in the carjacking. Based on this new evidence, the Michigan Court of Appeals remanded Mr. Woods' case to the trial court for a hearing on the adequacy of Mr. Wood's legal representation at trial.

The trial court vacated Mr. Woods' conviction and ordered that he be provided with a new trial. The judge said Mr. Woods' attorney had "unequivocally" provided ineffective assistance of counsel, having failed, among other things, "to move for suppression of identification;" "to adequately investigate and prepare the case;" and "to communicate on a regular basis with his client."

Fearful that he would remain in prison if he continued to assert his innocence and without any guarantee that his second trial attorney would be any better than his first, Mr. Woods pled no contest to lesser charges and was sentenced to time served.

Mr. Woods currently lives with his girlfriend, mother, and grandmother, is the father of four children and is working with his uncle in the construction and landscaping business. His criminal record has impeded his ability to find other types of work.



MACOMB COUNTY: Circuit Court

Conviction overturned in 2003. Charges dismissed.

THE COST: Incarceration: \$270,000 (9 years)

Settlement of wrongful incarceration lawsuit: \$3.7 million

WHAT WENT WRONG: The court initially appointed Mr. Wniemko a public defense attorney who had a conflict of interest. When he was replaced at Mr. Wniemko's request, the second attorney was given only two days to prepare for trial. Neither attorney sought forensic analysis which could have exonerated Mr. Wniemko.

KENNETH WYNIEMKO

Exonerated on the basis of DNA evidence after nine years in prison.

When Kenneth Wyniemko was charged with rape in 1994, the court appointed him a public defense attorney who was related to one of the investigating police officers and who refused to listen to Mr. Wyniemko's protestations of innocence. On the eve of trial, in response to a request from Mr. Wyniemko, the court replaced that attorney but gave the second public defense attorney just two days to prepare. Neither attorney requested an expert witness who could have subjected the biological evidence collected at the crime scene to DNA testing.

Background

In July 1994, a Clinton Township woman was raped in her home. She initially described the rapist as between 20 and 25 years old, between 6 feet and 6 feet, 2 inches tall and between 200 and 225 pounds. Although he had a nylon stocking over his head and had blindfolded the victim, she stated that she had glimpsed his face and assisted the police in creating a composite sketch.

Mr. Wyniemko, 43 years old, 5 feet, 11 inches tall and 198 pounds, bore some resemblance to that drawing. However, there was no physical evidence tying him to

Although Mr. Wyniemko repeatedly asserted his innocence, his first public defense attorney told him that the case against him was “rock solid” and refused to take any of his phone calls.

the crime. The police found semen stains on the victim’s bed sheets and underwear, but analyzed only the bed sheets and then subjected them to nothing more than a blood type analysis. That analysis revealed that the semen contained Type A blood cells. Mr. Wyniemko had Type O blood.

Nonetheless, Mr. Wyniemko was arrested and charged with the rape. “One morning, I’m at home lying in bed,” he later said. “The next, I’m talking to two detectives about a rape I didn’t do.”

The court initially appointed an attorney who had a substantial conflict of interest.

The first defense attorney assigned to Mr. Wyniemko was the brother of one of the Clinton Township police officers investigating the case. During the five months that Mr. Wyniemko was jailed while awaiting trial, the attorney visited him twice. Although Mr. Wyniemko repeatedly asserted his innocence, the attorney told him that the case against him was “rock solid” and refused to take any of his phone calls.

The second attorney could not present a meaningful defense.

Convinced that this attorney would be unable or unwilling to mount an effective defense, Mr. Wyniemko asked the court, two days before the start of his trial, to assign him a new attorney. The court granted his request but refused to postpone his trial. Mr. Wyniemko’s new attorney had just a weekend to prepare.

No substantial defense of Mr. Wyniemko was mounted at trial.

Because there was no physical evidence, the prosecution’s case was built around the testimony of a “jailhouse snitch” and an ex-girlfriend whose relationship with Mr. Wyniemko had ended contentiously. The snitch testified that Mr. Wyniemko had confessed to him while awaiting trial. The ex-girlfriend described Mr. Wyniemko’s sexual preferences as similar to those of the rapist.

Neither of Mr. Wyniemko’s attorneys asked to have the stains on the victim’s underwear analyzed or to have the stains on the bed sheet subjected to DNA analysis. Without sufficient time to prepare, the second attorney did not cross-examine the victim on the discrepancies between her description of the rapist’s age, height and weight and Mr. Wyniemko’s age, height and weight; was unable to establish that the snitch had only agreed to testify after the lead detective and prosecuting attorney told him that “he would never see the light of day” if he did not; and did not call as witnesses any other former girlfriends, at least two of whom could have contradicted the girlfriend who testified.

Mr. Wyniemko was convicted and sentenced to between 40 and 60 years, beyond the maximum mandated by Michigan’s sentencing guidelines. The court justified the sentence by stating that Mr. Wyniemko had not shown appropriate remorse.

DNA evidence exonerated Mr. Wyniemko after nine years in prison.

Mr. Wyniemko’s initial efforts to overturn his conviction failed. He later told a newspaper reporter, “There were moments when I actually thought I had died and gone to hell. Prison was hell. I knew that I was innocent and I never gave up hope.”

In 2001, the Cooley Law School Innocence Project agreed to take Mr. Wyniemko’s case. It located the biological evidence collected at the crime scene and had it subjected to DNA testing, which established that Mr.

Wyniemko could not have been the rapist. The DNA of an unidentified male was found on a cigarette butt, in scrapings under the victim’s fingernails and on semen-stained nylons used as a gag on the victim.

On June 17, 2003, a Macomb County Circuit Judge declared Mr. Wyniemko “an innocent man” and released him from prison. Mr. Wyniemko now refers to that day as his second birthday. Together with friends and family, he traveled from the courthouse to his father’s grave. His father had died in 2000, after spending almost his entire life savings trying to help his son. Mr. Wyniemko believes that his father’s death was caused by the stress of his incarceration.

In 2005, Clinton Township agreed to pay Mr. Wyniemko close to \$4 million to settle a wrongful imprisonment case. In 2008, prosecutors announced that a known sex-offender, Craig Gonser, had been identified as the rapist but that he could not be tried for the crime because of the statute of limitations.

ENDNOTES TO INTRODUCTION

- 1 The cost of incarceration for each individual profiled in this booklet was calculated by multiplying \$30,000, the annual average cost of incarcerating a single individual, by the number of years he or she was incarcerated. See Michigan Department of Corrections, 2009 Annual Report, at 5, available at http://michigan.gov/documents/corrections/2009_AnnualReport_341903_7.pdf (last viewed on Mar. 14, 2011).
- 2 Michael Van Beek, *New State Data Shows Michigan Public Schools Spent Record Amount Per-Student*, Michigan Capitol Confidential, July 28, 2010, available at <http://www.michigancapitolconfidential.com/13248> (last viewed on Feb. 2, 2011).
- 3 In Michigan, Medicaid services cost only about \$790 per child per year. Eva Yulita Nugraheni, *Failure of Federal Medicaid Fund Extension: Michigan Impact*, Michigan Policy Network (June 21, 2010) available at http://www.michiganpolicy.com/index.php?option=com_content&view=article&id=821:failure-of-federal-medicaid-fund-extension-michigan-impact&catid=43:health-care-policy-briefs&Itemid=159 (last viewed on February 2, 2011).
- 4 *Gideon v. Wainright*, 372 U.S. 335 (1963).
- 5 *Id.* at 344.
- 6 *McMann v. Richardson*, 397 U.S. 759, 771 (1970) (emphasis added).
- 7 *United States v. Cronin*, 466 U.S. 648, 656 (1984). See also *Jones v. Barnes*, 463 U.S. 745, 758 (1983) (Brennan, J., dissenting); *Ferri v. Ackerman*, 444 U.S. 193, 204 (1979).
- 8 *Herring v. New York*, 422 U.S. 853, 862 (1975). See *Nix v. Williams*, 467 U.S. 431, 453 (1984) (a criminal conviction is to be the product of an adversarial process, rather than the *ex parte* investigation and determination of the prosecution); *Wheat v. United States*, 486 U.S. 153, 158 (1988) (the right to counsel “was designed to assure fairness in the adversary criminal process”).
- 9 *Strickland v. Washington*, 466 U.S. 668, 687 (1984).
- 10 *Id.*, at 688.
- 11 *Id.*
- 12 *Id.*
- 13 *Id.*
- 14 *Id.* at 691. See *United States v. Tucker*, 716 F.2d 376, 581 (9th Cir. 1983); *Gaines v. Hopper*, 575 F.2d 1147, 1149-50 (5th Cir. 1978).
- 15 *Strickland v. Washington*, 466 U.S. at 688-89. See *United States v. Gray*, 878 F.2d 702, 711 (3d Cir. 1989); *Adams v. Balkcom*, 688 F.2d 734, 739 (11th Cir. 1982); *United States v. Kaufman*, 109 F.3d 186, 190 (3d Cir. 1997); *Davis v. Alabama*, 596 F.2d 1214, 1217 (5th Cir. 1979); *McQueen v. Swenson*, 489 F.2d 207, 217-18 (8th Cir. 1974).
- 16 *Strickland v. Washington*, 466 U.S. at 688-89.

- 17 American Bar Association, *Ten Principles of a Public Defense Delivery System* (Feb. 2002), available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf> (last viewed on Mar. 17, 2011).
- 18 *Cf. Robertson v. Jackson*, 972 F.2d 529 (4th Cir. 1992) (holding that although administration of a food stamp program was turned over to local authorities, “ultimate responsibility . . . remains at the state level.”); *Omunson v. State*, 17 P.3d 236 (Idaho 2000) (holding that where a duty has been delegated to a local agency, the state maintains “ultimate responsibility” and must step in if the local agency cannot provide the necessary services).
- 19 The Sentencing Project, *Reducing Racial Disparity in the Criminal Justice System* (2008), available at http://www.sentencingproject.org/doc/publications/rd_reducingracialdisparity.pdf (last viewed Mar. 17, 2011).
- 20 *See, e.g. Johnson v. Oklahoma*, 484 U.S. 878 (1987) (parity in access to experts); *Wardius v. Oregon*, 412 U.S. 470 (1973) (parity in discovery); *Washington v. Texas*, 388 U.S. 14 (1967) (parity in offering testimony of and compelling attendance of witnesses); *Gregory v. United States*, 369 F.2d 185, 188 (D.C. Cir. 1966) (parity in access to witnesses).
- 21 *See, e.g., Report of the Defense Services Committee*, Michigan State Bar Journal (Mar. 1978); *Proposed Minimum Standards for Court-Appointed Criminal Trial Counsel*, Michigan Bar Journal (Sept. 1986); Thomas E. Daniels, *Gideon’s Hollow Promise – How Appointed Counsel Are Prevented from Fulfilling Their Role in the Criminal Justice System*, Michigan State Bar Journal (Feb. 1992); Barbara R. Levine, *Funding Indigent Criminal Defense in Michigan*, Michigan State Bar Journal (Feb. 1992); State Bar of Michigan Defender Systems and Services Committee, *Indigent Defense Contracts in Michigan*, Michigan State Bar Journal (Feb. 1992); Frank D. Eaman, *A Model System for Indigent Defense Services*, Michigan State Bar Journal (Feb. 1992); National Legal Aid and Defender Association, *A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis* (June 2008), available at http://www.mynlada.org/michigan/michigan_report.pdf (last viewed on March 17, 2011).
- 22 National Legal Aid and Defender Association, *A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis*, *supra*.

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