A champion of exonerations

Kathleen T. Zellner & Associates has freed 15 wrongfully convicted defendants since 1994

By John Flynn Rooney
Law Bulletin staff writer

In the first death penalty appeal Kathleen T. Zellner handled, her client confessed to being a serial killer.

While representing convicted murderer Larry Eyler in the early 1990s in a post-conviction effort to get his death penalty sentence reversed, he admitted to her that he had been involved in the slayings of 21 other young men and boys a decade earlier.

Bound by attorney-client privilege, Zellner kept the confession secret until Eyler died of AIDS complications in 1994. She then supplied his confessions to prosecutors, who were able to close those 21 cases.

She called representing Eyler a “nightmare” because of the gruesome nature of the crimes.

Later, Zellner was contacted by the Illinois Capital Resource Center and asked if she would work on another death penalty appeal.

“I told them I did not want to do it unless the person was innocent,” Zellner said. “I did not want to represent another Larry Eyler.”

The center’s director responded that she wanted to assign a case to Zellner for someone she believed was innocent of the murder he was convicted of and given the death penalty for.

“So, I took the Joseph Burrows case and because I was so good at getting confessions, I persuaded the real killer — Gayle Potter — to confess at a hearing in Kankakee County, and Burrows was freed from prison,” Zellner said.

Since then, the work of Zellner and lawyers with her firm led to the exonerations of 15 criminal defendants. Most were Illinois cases.

“I decided I wanted to do plaintiffs’ work (in civil rights and medical-malpractice cases) because I always wanted to be on the side of the victim or the underdog,” said Zellner, who opened her own law firm in 1991.

The owner of the five-lawyer Zellner & Associates in Downers Grove has won eight multimillion-dollar verdicts in civil rights and medical-malpractice cases. Those include a $6.5 million Cook County Circuit Court jury verdict in 1999, reduced from $18 million due to a suicide victim’s comparative negligence.

About 75 percent of the firm’s work involves exoneration cases or related civil rights matters.

Zellner was born in Midland, Texas, and raised in Bartlesville, Okla. After living in Canada with her husband for a time, they moved to the Chicago area for his job, and she enrolled at Northern Illinois University College of Law. She graduated from there in 1983.

Her first job out of law school was as a clerk for a 2nd District Appellate Court justice.

After that, she worked for nearly two years at Aldo E. Botti’s law firm in DuPage County. She next joined Hinshaw & Culbertson LLP’s Wheaton office, where she was a defense attorney in civil cases.

Zellner spoke to the Daily Law Bulletin about her firm’s pro bono work representing wrongfully convicted defendants, her work on civil rights cases and opting out of a movie deal about one of her cases.

Law Bulletin: How did you start working on wrongful-conviction cases?

Zellner: I contacted the Illinois Capital Resource Center. I had been an appellate clerk and I had done a number of criminal appeals at that point in my career. In 1991, I was appointed by the Illinois Supreme Court in the Larry Eyler case.

child’s clothing that led to the testing that exonerated Kevin Fox and led to the apprehension and conviction of the real killer.

We later had a $15.5 million verdict in Kevin Fox’s civil rights case against several Will County sheriff’s detectives who investigated the girl’s murder.

LB: What is the biggest challenge facing your law firm and how do you address that challenge?

Zellner: The biggest challenge is we do our work pro bono on a lot of these exoneration cases. Obviously, it’s very costly to fund pro bono cases.

The civil rights and medical-malpractice cases we take to trial result in multimillion-dollar verdicts and are based on contingent fees. The fees from those verdicts cover the expenses for our work on exoneration cases. It’s a juggling act.

LB: What is it like to be one of the few female criminal defense lawyers working at the Leighton Criminal Court Building and other criminal courts?

Zellner: I just like being a trial attorney. I don’t feel that I am treated differently because I’m a female. But I am treated differently because my name has become associated with clients that are innocent.

LB: How are you treated differently?

Zellner: I think I get more respect.

LB: Do you see an end in sight to wrongful-conviction matters?

Zellner: Not until (states) change the absolute immunity that they give to prosecutors. It insulates them from any liability. They can present perjured testimony. They can fabricate evidence and conceal evidence without any accountability. I think it’s still very widespread because they have absolute immunity. I think there are thousands of cases. There are about 1,500 exonerations in the U.S. to date. But there are thousands of more innocent people incarcerated. The estimates are that there are up to 20,000 people who are wrongly convicted.

LB: Did a movie about the Larry Eyler case with actress Jessica Biel set to portray you get made?

Zellner: I did not renew the (movie rights) contract because, of all my cases, it’s not the one that I would want to be remembered for. If a movie was going to be made, I would want it to be about someone who was actually innocent.