

## Long Road to Justice

BY RONALD KAYE

**I**n March 2004 I was at the Los Angeles County Jail to visit a potential client who was awaiting retrial for first-degree murder. After 24 years in prison, Tom Goldstein needed to make one of the most important decisions of his life: Should he accept the prosecution's plea deal of manslaughter for a 1979 murder he did not commit and be released immediately, or stay in prison and fight the charge again?

Tom's habeas attorney, Sean Kennedy, our former colleague from the Federal Public Defender's office, had referred him to our firm. The Ninth Circuit had ordered Tom's release the previous December, but the Los Angeles District Attorney's office immediately refiled murder charges against him. When my law partner, David McLane, and I met with Tom at the jail that March, he was shackled in handcuffs and locked to a stool behind thick, bulletproof glass. He asked us whether we could handle bringing a civil rights case on his behalf against the Long Beach Police Department and the DA's office.

It was a legitimate question. After all, our firm had never litigated a civil rights case before, and we had only been open for six months. However, we did have 40 years of collective experience working for the public defender's office, representing clients in all types of complex federal criminal cases. I assured Tom that we could do it.

A few days later we returned to the jail, and Tom told us he was not going to take the DA's deal. He'd already spent more than 20 years

challenging prison psychologists at parole hearings who urged him to "accept responsibility" for a crime he wasn't guilty of, and Tom had decided to fight to prove his innocence.

Several weeks later, the Long Beach Superior Court Judge ruled that the prosecution could not reuse evidence that had been discredited at the habeas hearing. The DA's office dismissed the second set of murder charges, and Tom was freed.

But his civil case would take six years to resolve, hundreds of thousands of dollars of investment by our start-up firm, untold months of searching for long-scattered witnesses, interlocutory appeals in both the California and U.S. Supreme courts, and more emotional energy than any case we had ever undertaken.

We had the difficult task of proving the Long Beach homicide detail's pattern and practice in the 1970s and '80s of withholding exculpatory evidence. Our client's conviction was based partly on the testimony of a notorious jailhouse informant—appropriately named Edward Fink—who lied under oath when he claimed that he received no benefits for his testimony. However, informants from that time period were either dead or unwilling to talk to us. And the police officers? ... Well, they denied everything.

Through leads from criminal defendants serving life terms and their habeas attorneys, we hunted down new witnesses who could attest to the corrupt practices of Long

Beach detectives at that time. Our search took us to five other states and all over California. None of the testimony came easily.

In Guymon, Oklahoma, I had to hire a local lawyer to compel testimony from an eyewitness who worked in a pig slaughterhouse. I flew to the closest airport, in Amarillo, Texas, and then drove three hours to meet my witness. He testified that he told a Long Beach homicide detective that the perpetrator he'd seen in 1986 looked more like his brother-in-law than the suspect he picked out from the police photo line-up. This clear exculpatory evidence was never mentioned in the police report.

In Bullhead City, Arizona, we tracked down a transient ex-convict and heroin addict of interest. Although she cursed at me throughout the deposition, she established that the homicide detective had provided her ex-husband, an informant in another Long Beach murder case, with the police report to "study" before he testified in the preliminary hearing.

This past June, with the trial date closing in, the City of Long Beach finally settled the case for a record sum. Tom Goldstein, now 60, will never get back the best years of his life, but he can at least retire comfortably. I hope that this settlement demonstrates to law enforcement that actions have consequences—and to other wrongfully convicted defendants that justice can prevail. <sup>1</sup>

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