

Michael Evans Loses Compensation Lawsuit After 27 Years Of Wrongful Imprisonment

By James F. Love

Michael Evans and Paul Terry were 17-years-old in 1976 when they were arrested for the rape and murder of 9-year-old Lisa Cabassa on Chicago's South Side. Detectives from Chicago's notorious Area 2 violent crime division, led by Detective Jon Burge, investigated young Cabassa's murder.

Twenty-seven years later, Evans and Terry were exonerated in 2003 by DNA evidence and released from prison. Two years later Illinois Governor Rod Blagojevich pardoned the men on January 5, 2005. Evans and Terry were then paid \$160,000 by the State of Illinois for the 27 years they spent wrongfully imprisoned, which is the maximum allowed by a state law passed in the mid-1990's. That law is now under review as being inadequate. (See, Illinois Legislature To Review Compensation For Wrongfully Convicted, on page 13.)

Evans filed a civil rights lawsuit in federal court that included the Chicago Police Department and a number of police officers as defendants. The suit claimed that to obtain Evans' wrongful conviction the officers fabricated evidence and withheld exculpatory evidence from his attorneys. Evans also claimed that the police told him that if he cooperated he would be released to his mother. At the time of his arrest Evans was not only a minor, but he could barely read and write due to a learning disability. Evans asked for \$60 million dollars in damages and an additional \$2 million dollars for unspecified damages.

The civil trial began on July 11, 2006.

During the trial Kenneth Adams, who spent 18 years wrongfully imprisoned as a defendant in the infamous "Ford Heights Four" case, testified regarding the violence and squalor that prisoners are forced to live with every day. Adams had been imprisoned in both the Menard and Danville prisons where Evans had been imprisoned.

Adams testified, "You have to be cold. You have to be heartless at times. You feel no emotion at all." He also testified about when soon after his imprisonment he saw a prisoner stabbed: "The thing that struck me the most about that was no one else seemed to notice. It seemed no one cared about this



individual. I learned right away that you have to survive the best you can. No one's going to come to your aid or assistance."

The judge called a halt to the trial and recessed until the following day while Evans was describing the ordeal he had suffered through while wrongfully imprisoned for the rape and murder of a child. He testified, "My mother was experiencing something she shouldn't have been experiencing. I was trying to be strong for my mother," before he broke down sobbing on the witness stand about an hour into his testimony.

Andrew Hale, an attorney for the defendants, asserted the police had acted reasonably, pointing to the fact that Evans had advanced three different alibis for his whereabouts at the time of the crime. In 1976, Evans had told police he was in his cousin's basement at the time of Cabassa's abduction. He later said he was at 86th and Saginaw playing with a 7-year-old niece. Then in Evans' application for a pardon, his attorney claimed Evans had been home with influenza. Evans testified at the civil trial that he couldn't remember the exact time of the latter two of those alibis, in relation to the time of the crime.

What the defendant's lawyer tried to obscure is that Evans' lack of certainty about where he was at a specific time – in this case when Lisa Cabassa was a crime victim – is not unusual. In general, only people who know they are going to need an alibi have all the times and dates of when they were at particular places organized in their mind and ready to present to the police if questioned. Except perhaps when working, a person does not normally keep careful or deliberate track of where they were at a specific time during the day. When asked later to account for their whereabouts on a particular day, the person has to reconstruct their past from records, memory, and from the memory of other people.

Given time, an alibi may be reconstructed in detail, but when an innocent person is in the heat of a first confrontation with police who are making what seems to be an outrageous accusation — such as happened to the 17-year-old Evans — it is extremely difficult under the stress of the moment to think clearly, quickly and accurately. When asked for an alibi on the spur of the moment, the answer is usually a confused best guess that is vague and lacking in detail. It is not unusual for the person to give alternative answers, consisting of, "Well, I might have been here – no wait – I went over

there first, and then I think I...," and so on. This is especially true when an accused is asked to provide an alibi for a short period of time several months in the past.

Yet frequently prosecutors argue before juries that the first answer given by an accused is a "false" alibi that evidences a guilty mind. Although such practices are unfair because they disregard normal human behavior, they are nevertheless used to prejudice the jury by substituting an unfair and inaccurate insinuation of deceptiveness for proof of guilt.

Cook County State's Attorney Richard Devine testified during the civil trial that it was the DNA evidence, not allegations of police misconduct, that gave rise to the decision by his office not to retry Evans. In 2003 Devine wrote a letter to a local newspaper that expressed his opinion the new DNA evidence "undercut" the evidence in the case against Evans.

The only "eyewitness" in the case, Judy Januczewski, testified that she had been repeatedly subjected to marathon interrogations for six weeks by police before she named Evans as the person she claims was "wrestling on a street corner" with Cabassa. However, Januczewski didn't come forward until five days after Cabassa's murder, when she learned a group of people were offering a reward for information. It is unknown if Januczewski saw anything or if she made up her "recollection" in an effort to collect the reward.

On August 8, 2006, the jury found against Evans and denied all of his claims for damages. Unless Evans can prevail on appeal, that will mean that for over 27 years of wrongful imprisonment he will only receive the state paid compensation of \$160,000, which amounts to a mere \$6,000 per year while imprisoned for what the prison population considers the most horrid of all crimes.

Locke Bowman of the MacArthur Justice Center at Northwestern University told reporters in regards to the jury deciding against Evans' claim, "30 years ago a miscarriage of justice took place at 26th and California." (The Cook County Criminal Court where Evans was convicted.). Bowman then added, "Another miscarriage of justice took place here today."

Burge and other detectives of Chicago's Area 2 are presently awaiting disposition of numerous civil suits brought against them by citizens claiming they were tortured as

Evans cont. on p. 13

Illinois Legislature To Review Wrongful Conviction Compensation

By James F. Love

One day after Michael Evans' federal civil rights lawsuit seeking \$60 million dollars for 27 years wrongful imprisonment was rejected by a jury, Illinois legislators began discussing increasing the \$160,000 compensation cap set by a state law passed in the mid-1990's.

Illinois House Majority Leader Barbara Flynn Currie stated her belief the \$160,000 the state awarded Evans was inadequate compensation. She stated she hoped the Illinois Legislature would re-address the issue. State Rep. Mary Flowers (D-Chicago), said she would reintroduce a bill, which has twice before been rejected, to increase the compensation paid to a person found to have been wrongfully convicted.

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criminal suspects. Court appointed special prosecutors have found evidence that dozens of suspects might have been beaten, dunked in water, and hooded with a typewriter cover to simulate suffocation, in the interrogation room of Area 2 headquarters. Although the special prosecutors found there was sufficient proof of criminal conduct by the officers to support their prosecution, the cases were "too old" for charges to be filed.

The degree of wrongdoing by the Chicago PD is indicated by the fact that eight of the ten officers named as defendants in Evans' civil suit invoked their Fifth Amendment right to remain silent and not incriminate themselves during the court ordered depositions.

Even though Evans did not claim the defendant officers personally subjected him

Karen Daniel, a senior staff attorney at the Northwestern University School of Law's Center on Wrongful Convictions, said, "It doesn't matter whether police acted wrongly or a prosecutor acted wrongly, it's the same damage for the innocent person who went to prison. You're harmed regardless of how you got there. You're still losing that part of your life."

DNA exonerations nationwide have contributed to state legislatures addressing or revisiting compensation for the wrongfully convicted. In the past seven years at least eight states have enacted compensation laws, or raised the amount of compensation. California allows \$100 a day; New York has no limit; Ohio recently doubled its amount of compensation to over \$43,000 per year; Tennessee has a \$1 million cap on an award. Twenty-one states and the federal government have some law providing for compensation.

Source: "More pay sought in wrongful jailings." by Michael Higgins, *Chicago Tribune*, August 10, 2006.

to torture, the practice is now documented as having been widespread in Area 2. Such practices become well known throughout the communities where they are practiced. So it is little wonder Evans testified he was in great fear of his interrogators when questioned as a 17-year-old in 1976.

Evans' attorney, Jon Loevy, told reporters that evidence of the practice of torture on suspects by the Area 2 detectives had been ordered by the judge to be withheld from Evans' civil jury. Loevy said Evans will appeal that the judge's evidentiary rulings prejudiced Evans and unfairly affected the outcome. Loevy added that he believes that "at the end of the day when all the evidence is heard, we will prevail."

Paul Terry, Evans' co-defendant, has a federal civil rights lawsuit pending that has not yet come to trial.

Previous JD article about Evans and Terry, "DNA tests may prove yet another quarter century injustice in Illinois," *Snapshots, Justice:Denied*, Vol. 2, Issue 9.

Sources:

27-year inmate in tears at wrongful conviction trial, by Frank Main, *Chicago Sun-Times*, July 12, 2006.

DNA results precluded retrial, prosecutor says. Says police misconduct had no influence. *Associated Press*, July 30, 2006.

1 of Ford Heights 4 helps former inmate, by Jeff Coen, *Chicago Tribune*, August 2, 2006.

Ex-inmate's \$60 million suit against city denied, by Rudolph Bush and Jeff Coen, *Chicago Tribune*, August 8, 2006.

"Wrongly convicted, but he gets zilch," by Natasha Korecki, *Chicago Sun-Times*, August 9, 2006.

Wrongful Conviction Compensation

Comment By James Love

While the question of what monetary compensation is adequate is extremely complicated, a flat "daily" or "yearly" rate of compensation does not take into account the progressive harms caused by lengthy imprisonment. Compensation should be determined based on a geometric progression, as opposed to a linear flat-line increase. What is the first day of wrongful imprisonment worth compared with the last day of a 20-year wrongful imprisonment – due to the harm that has accumulated between the first and last day?

The longer the period of wrongful imprisonment, the greater the harm personally and psychologically. Friends and family die. Acquaintances who may have initially supported the wrongfully convicted person's battle for freedom, fade away as time passes. The wrongfully convicted person still unexonerated after years of effort, finds him or herself more or less alone in the battle for justice, and faced with greater and greater skepticism, not only from fellow prisoners, but also from society in general. Most of society firmly believes that if a person is truly innocent, the courts would have already corrected the error that led to the wrongful conviction before 10, 15 or 20 years have passed. Even though DNA exonerations of people after their imprisonment for years shows this common belief to be untrue, it is still a reaction people have to a prisoner's claim of innocence.

What price should be placed on a wrongfully convicted person's loss of hope, as the years pass, that vindication will ever happen? What price should be placed on a person prevented from attending a parent's funeral? What price can be placed on a person being wrongly branded as a criminal and forcibly separated from a child whose mind is poisoned by a bitter ex-spouse, or family or friends, or a new step-parent? What price can be placed on a person's personal and professional losses, the loss of years in which to live and in the quality of life left in those years?

A flat per diem or annual rate of compensation doesn't account for the cumulative effect of losses a wrongly convicted person experiences. The amount paid should increase for each year of imprisonment, and the annual increase should not be flat-lined. The multiple harms caused by long-term wrongful imprisonment increase geometrically as the years pass, and should be compensated accordingly.

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