C

Cliff Middleton
4439 Meadow View Drive
Shawnee, Kansas 66226

October 20, 2009

Mr. Jim Kanatzar
Prosecuting Attorney
Jackson County Courthouse
415 East 12th Street, 11th Floor
Kansas City, Missouri 64106
VIA U.S. CERTIFIED MAIL

Dear Mr. Kanatzar:

I want to thank you for your letter and the time you spent summarizing my father's case in your opinion, dated August 31, 2009. In your letter you mentioned some of our experts including Attorney Christopher Carter, former Head Public Defender, Circuit Court Judge, and current Prosecutor "opined that Duncan should have put Mr. Middleton on the witness stand to testify." (Tr. 222-223). Mr. Carter also testified that he had read everything in my father's criminal and civil cases. After studying your letter I had some serious questions that your letter didn't address. So, I ask expert Christopher Carter to review your letter and write me a letter with his opinion. (See, Mr. Carter's letter/opinion attached hereto as Exhibit "A").

1). Your letter addressed several things at my father's trial and cleared Prosecutor Pat Peters of any wrongdoing. However, your letter didn't address Pat Peters' sworn testimony in 2004, when questioned about his unheard-of cash bond restrictions: "Not to dispose of any marital or jointly held property without permission of Prosecuting Attorney & Probate Court". His answer was the following:

> "So I'm sure I would have done everything possible to preserve the assets and make sure that the **murderer** didn't get the assets." (emphasis added) (Tr. 48).

It should be noted that that bond hearing was held on April 13, 1990, **"tying-up"** all of my father's assets! He didn't go to trial until, 1991. (Nothing was filed in Probate, Exhibit "39").

My father was joined at the hip with Robert Duncan and testified in June, 2004 that he couldn't get Mr. Duncan to do anything, even gave him the name of an expert! You mentioned my father's testimony at page 98, but you didn't mention page 97, where he testified:

> "Q. If he had taken depositions, were you with financial means to be able to pay for those depositions?
> A. **My family was**, yes." (emphasis added).

Is it **"justice"** for a defendant who is financially secure to hire about any attorney he wants to when it became obvious that Mr. Duncan was not going to do anything to defend my father. But, was prevented from doing so by Mr. Peters' testimony above that he obtained in my father's **bond?** Dad had to depend on his family to pay for experts. He couldn't expect his family to pay for another attorney. Further, see an affidavit signed over a decade ago that **shows** that Pat Peters' father's law firm (Attorney Don Moore) knew more about my father's case than he did. How is that possible, if Prosecutor Pat Peters was not working with his father's law firm?? (See, Chris Carter's sworn affidavit attached hereto as Exhibit "B"). Pat Peters testified:

> "I was not aware of the probate case. I don't have any recollection of being aware of a civil case that had been filed, but I would have thought that there would have been a civil case filed. I mean I -- my recollection is that I thought the victim's family should sue for everything they possible could." (Tr. 60-62). Those statements are totally false! (See, Trial Tr. page 298-299).

2). Your letter completely brushed over expert, Charles Gay's irrefutable testimony, except that: "One expert presented an anecdotal report of having dropped a similar weapon in a locker room and the gun discharged. The expert's gun had been deliberately altered to make it a "hair trigger" weapon. Essentially, that anecdote was the sum total of the rebuttal to the ballistics expert testimony in the case." Expert, Charles Gay actually testified to the following:

> "Q. Is it possible to have a hair trigger on that model of a gun?
> A. Most definitely. Mine had one. (Tr. 158).
> CROSS-EXAMINATION BY (PROSECUTOR) MR. KELLEY:
> Q. Mr. Gay, you've previously testified that -- and I want to make just clarification here -- that you had a similar model to the firearm at issue in this case?
> A. That is correct.
> Q. And when you say similar, can you bring it down a little bit more for me?
> A. Well, mine was a .28, Mr. Middleton's was a -- mine was a six-inch Smith and Wesson model K38 revolver. His was six-inch Smith and Wesson .357 Magnum.
> Q. Are their mechanical actions the same?
> A. Yes.
> Q. You've read the trial transcript in this case?
> A. Yes, I have.
> Q. Okay. Are you familiar with the testimony in the underling case that suggested that this weapon, Mr. Middleton's weapon, could not have misfired but for a purposeful action on the trigger?

A. I read that, yes.
Q. Okay. Do you agree or disagree?
A. **I disagree.**
Q. Okay. And why is that?
A. Incident that happened to me when I was on the police department [for 18 years] with my weapon, which has the same safety feature his has....I took my gun to the gunsmith and had them look at my gun after the incident, because it had had me pretty well upset and nervous about using the gun after that. And he couldn't find anything. He did some tests on my gun and I watched him. He dropped my gun. And because at that point I told him I wasn't going to use the gun after that anyway. And he tried dropping it and doing several tests and never could get it to go off. But the fact was, it did go off and I was no longer confident of that gun." (emphasis added) (Tr. 168-170).

...

"Q. And are we talking about Mr. Middleton's gunshot residue documents or Mrs. Middleton's?
A. Mrs. Middleton's.
Q. Did you actually go in and look at those documents yourself?
A. I did at a later time.
Q. After Ms. Sallee, correct?
A. Yes.
Q. Can you tell us what happened and what you observed?
A. I compared her evidence sheet against the gunshot residue sheets -- reports against Mr. Middleton's, and noticed on the green evidence sheet that was used by -- at the medical examiner or at the crime lab, that it was a green paper but had White Out in areas where it showed the number of samples. And also on the line where it said left and right test kits, hers said "right." And there was a space where if you put the -- hers over the top of Mr. Middleton's, you could see this part scrolled of the writing still underneath the line that tied in exactly and had the word "left." You could see where the word "left" went in. Underneath the White out you could also see the word "left," and under the White Out where it said the number of test kits, you could see the number 2.
Q. Did you hold that document, that green document, up to the light?
A. Did.
Q. Can you tell me whether whiting out information on that kind of a document is a proper or improper procedure?
A. It would be an improper procedure." (emphasis added) (Tr. 151-152).

...

"Q. What are the conclusions you formed?

Blue Springs P.D.
Submitting Agency

REGIONAL CRIMINALISTICS LABORATORY

PHYSICAL EVIDENCE INVENTORY REPORT

LABORATORY USE ONLY	
Lab. Case #	90-022532
Lab. Page #	5
Exam and Date	JMW 23 Aug 90

PROPERTY ROOM USE ONLY	
Control	
Location	
Rec'd. by	
Date Rec'd.	
Disposition	

...roved by ___ Case Report No. 90-01111

...e of Offense Homicide Date 02/13/90

...overed From Middleton, Katherine B

...ictim [X] Suspect [ ] Indicate Other ( ) Race W Sex F D.O.B. 03/18/44

...ress 1409 N 48th Blue Springs Phone 228-4708

...spect (1) Middleton, Kenneth G. (2)

(3) (4)

Victim's Name Middleton, Katherine B

[ ] Firearms and Toolmark [ ] Chemistry [X] Trace Evidence [ ] Fingerprints [ ] Documents [ ] Indicate other

Item No.	No. of Articles	Description	Serial Number	Estimated Value
		BX.		
1	1	Gunshot Residue Tests for Right Hand		
		Victim		
		MYSTERIOUSLY: ALTERED!!!		
		Please test for GSR		
		Stub # 100		

TOTAL

Exhibit "18"

C... WD ... 211 ... Detective Unit

Blue Springs Police
Submitting Agency

REGIONAL CRIMINALISTICS LABORATORY

PHYSICAL EVIDENCE INVENTORY REPORT

LABORATORY USE ONLY	
Lab. Case #	90-022532
Lab. Page #	6
Exam and Date	JMN 23 Aug 90

PROPERTY ROOM USE ONLY	
Control	
Location	
Rec'd. by	
Date Rec'd.	
Disposition	

Approved by _____ Case Report No. 90-01111

Type of Offense Homicide Date 02/13/90

Recovered From Middleton, Kenneth G.

Victim ☐ Suspect ☒ Indicate Other _____) Race W Sex M D.O.B. 08/11/44

Address 1409 N. 45th Blue Springs, MO Phone 228-4788

Suspect (1) _____ (2) _____

(3) _____ (4) _____

Victim's Name Middleton, Kenneth B.

☐ Firearms and Toolmark ☐ Chemistry ☒ Trace Evidence ☐ Fingerprints ☐ Documents ☐ Indicate other _____

Item No.	No. of Articles	Description	Serial Number	Estimated Value
1	2	GSR TEST KITS FOR RIGHT & LEFT HANDS		
		PLEASE TEST FOR GSR. IT IS IMPORTANT TO DISTINGUISH BETWEEN RIGHT & LEFT HANDS		
		Stub # [redacted] 102		
		rt hand		
			TOTAL	

Reporting Officer Sgt Jeff Rogers Serial No. 211 Unit or Station Detective Unit

A. My conclusions was she was shot on the left side of the head, which means -- which would tell me that she if she had shot herself, she would have had to have a gun in her left hand. ... My conclusion was that both hands were bagged. And if I could talk about belief, I believe that the tests were probably made, and that means there's no other evidence of Ken Middleton firing a weapon, even on his clothes or his hands. I believe that the evidence was altered.
Q. You've read the trial transcript in this case?
A. I have.
Q. Do you have an opinion as to whether the gunshot residue test and its altered fashion would have been significant to this trial?
A. Oh, I definitely think it would have been.
Q. Significant as to guilt or innocence?
A. Both. I mean if we could show that -- if the evidence would have been tested, if there was the evidence shown they tested the left hand, means there's no evidence that Mr. Middleton fired a weapon or no evidence on even his clothing that there was any indication he had fired a weapon, or blood spattering, I think it would have been significant evidence to show either she was handling the gun at the time that the gun went off, or it possibly could have accidentally gone off, it could have been dropped.
Q. And in your investigation, did you also have opportunity to evaluate the Blue Springs Police Department investigation?
A. I have.
Q. Can you tell me what your findings were?
A. I felt that the entire investigation, from the time the first patrolman arrived on the scene, was entirely improper as far as crime scene preservation." (emphasis added) (Tr. 159-160).

...

"Q. In reviewing the case, can you tell us what the State's theory was concerning the distance between the gun and Ms. Middleton's head?
A. I believe it was anywhere from four to eight inches from her head, different various testimonies.
Q. In your experience as a law enforcement officer and handling weapons and as an investigator, is it possible to shoot someone in the head four and a half to eight inches away and not get blood or gunshot residue on your clothing, skin, or hands?
A. In my years of investigation, I have never found someone without any type of residue on their clothes or hands, blood or residue from the gun." (emphasis added) (Tr. 165).

3). You seemed to **praise** attorney Gerald Handley for the good job he did. Handley actually filed an "amended motion" of three (3) pages and never cited a single case in support of his motion.

Which my father had never seen. Mr. Handley attached a **"coerced" fraudulent affidavit** to his motion that he knew was **false!** And filed it with Messina, which the record shows she was deceived. Messina, "...finds Mr. Middleton is not at fault." (See, ruling page 6). Further, see my father's 2003 motion of eighty one (81) pages, with numerous cases cited in support. That made a huge difference! (See, Judge Messina's 2005, 38 page ruling).

That is **hard** for me to understand when "fraud on the court" is perpetrated by an "officer of the court", then that conduct is supported by another "officer of the court"?? See, In Re Oberhellmann, 873 S.W.2d 851 (Mo. banc 1994):

> "Disbarment is appropriate when a lawyer, with the intent to deceive a court, makes a false statement or submits a false document to a court. This Court orders Elmer C. Oberhellmann disbarred. He cannot apply for readmission until at least five years after the effective date of his disbarment." (emphasis added)

You further stated: "The petition was amended on November 25, 1991. A hearing was held on March 13, 1992. At the time of the hearing, Gerald Handley represented Mr. Middleton." The rest of the story is that all of my father's witnesses were "lock-out" of the courtroom, including expert, Charles Gay:

> "I was present on the 13th, day of March, 1992; waiting before the evidentiary hearing started, and stayed until the hearing was over. There was a "uniformed-guard" placed at the courtroom door, throughout the hearing, and I was not allowed to enter the Courtroom, or even speak to Mr. Middleton. I was never called to testify; by Mr. Middleton's attorney or by anyone else. I was paid for time spent, mileage traveled to and from Independence, Missouri and all expenses, etc." Affidavit by Charles Gay. (See, Exhibit "46").

> Also, eight (8) other witnesses gave affidavits:

> "I observed Patrick W. Peters approach Geraldine Lockhart and Mildred Anderson, in the hallway of the courthouse, prior to the start of Kenneth G. Middleton's 29.15 evidentiary hearing. Thereafter, Mr. Peters immediately approached a "uniformed-guard" standing in the hallway; the "guard" then took-up post outside the courtroom door, and would not let any of Ken Middleton's witnesses enter the courtroom; including his **"expert-witness,"** Mr. Charles D. Gay. I was **prevented** from testifying." (See, 2003 motion at page 17, and 8-affidavits as Exhibits "46").

Pat Peters was not the attorney of record for that hearing, it was Jim Penner I believe. Why was Pat Peters there getting all my father's witnesses "lock-out" of the evidentiary hearing?? (The exclusion of witness Rule was never invoked by anyone). **Witness tampering is a serious offense!** See, The Federal Witness Protection Act. 18 U.S.C.A. § 1512-1515, and RSMo. § 575.270.

More than one of these same witnesses testified at my father's "evidentiary hearing" in June, 2004. (See Messina's 2005 ruling).

4). At last, your letter completely ignored the most important testimony at the "evidentiary hearing". Showing my father's actual innocence in 2004, by our unopposed expert, Mr. Robert Tressel, who gave the following irrefutable testimony:

> "Q. With respect to Mrs. Middleton, can you tell the Court your specific factual findings?
> A. Well, Mrs. Middleton received a close-range gunshot wound to the left side of her face....That the bullet, once it exited Ms. Middleton, it struck the door framing of the door in the dining room in which the incident to place, ricocheted off the door framing and struck the ceiling approximately four feet out from the door framing, and then was found across the room on a towel.
> Q. With those measurements, were you able to conduct any calculations or perform any calculations?
> A. Well yes. So I did a graph to portray the measurements. And using the graph, I came up with a departure angle or ricochet angle of 59 degrees from the door frame.
> Q. Okay. Now let's kind of put this in Englich. Once you've got those angles established, how are you able to use those angles?
> A. One of the reasons I looked at DeMaio's book was it talks about ricochet angles. So what I wanted to do was try and determine, what was the angle the bullet traveled from the wall to the ceiling, and then knowing that it either struck at an angle less than or equal to that, to try to determine where Mrs. Middleton would have been standing at the time she received the fatal gunshot wound.
> Q. Once you draw that line from the ceiling back down to the door back into Ms. Middleton's head, correct?
> A. That's correct.
> Q. They didn't follow through with these calculations, correct?
> A. I saw nothing in the material that I received that they ever did a calculation as to where she had to have been.
> Q. So they did measurements, correct?
> A. They did.
> Q. But they didn't follow it with calculations to kind of back-calculate where the gun would have been when it went off?
> A. Well, I saw nothing to indicate that they took the measurements from the autopsy and the information they finally got from the laboratory about muzzle-to-target distance to go back and try to determine where she had to be.

Q. But you've done that?
A. I have done that, yes.
Q. And are these things that you were about to factor in, given the measurements from the Blue Springs police?
A. Yes.
Q. Any other findings with respect to this aspect?
A. Well, findings indicate that if we use the 59-degree angle and we bring it down to the -- create that to make the impact angle where it's coming through, taking the measurements that were provided, the barrel of the weapon, using the 12-inch muzzle-to-target that the crime lab gave us on a five by five pattern, the barrel of the weapon has to be at a 59-degree angle pointed upward towards that door frame from a height of four feet one inch off the floor.
Q. Now is that the highest the weapon could have been or lowest?
A. That's the highest it could have been. It could have been much lower than that, because if you bring the angle down and shallow out the angle, then it takes the weapon closer to the floor." (Tr. 187-195).

...

"Q. So he'd have to be crouched under that table to fire that gun?
A. He'd have to be somehow underneath the table to fire it and in the position that his body is not exposed to her falling onto him.
Q. And to do that, he'd have to fire the gun and get out of there?
A. He'd -- he's got less than a tenth of a millisecond to clear before she falls to the ground." (Tr. 202) (emphasis added).

...

"Q. And is it fair to say that it would be even more difficult to also have a hand or an arm upon their throat and holding a gun all at the same time? **(As Pat Peters told the jury at my father's trial!)**.
A. You'd have no balance. You could easily be pushed over. I don't see any way that could happen.
Q. And still be under the table?
A. And still be under the table and not get any blood or gunpowder residue on you." (Tr. 206)(emphasis added)

...

"Q. As you're sitting here today, can you state that your opinions are within a reasonable degree of scientific and mathematical certainty?
A. Yes, sir, I can.
Q. And to what -- to what degree are you certain?
A. In my position, I believe it's 100 percent certain." (emphasis added) (Tr. 214).

You did mention Tressel appears to have assumed this distance (gun was fired approximately one foot from her face)

at page 188. Mr. Tressel gave the state the benefit of the doubt of all measurements, distances, diagrams and room sizes and the distance between the dinning room table and the wall, which was less than four (4) feet. Robert Tressel's experience is substantial: "During his career, Robert has been involved in **over 6,000 death investigations** and had personally been involved in **over 500 homicide investigaions.**" (emphasis added) (See, Robert Tressel's resume attached hereto as Exhibit "C").

5). You stated on page 3: "One of the documents in the file is a pleading filed in a civil case that Kenneth Middleton brought against Mildred Anderson. The pleading is captioned "Motion To Reconsider Disqualifying Defendant's Attorney Donald R. Moore And His Entire Law Firm." The pleading was filed on July 24, 2000. Attached to that pleading are a number of exhibits, including four affidavits which were signed by Bob Duncan.'" You failed to mention that in Robert Duncan's same affidavit, he described a 3-way collusion:

> "I further state that I have also since learned that this same law firm represented the Blue Springs Police Department and that the Police Department had kept a secret file..." (emphasis added) (See, Robert G. Duncan's affidavit attached hereto as Exhibit "D").

Also, attached to the Middleton v. Anderson pleading was another affidavit by Dixie J. Busby, stating:

> "I, Dixie J. Busby, D.O.B. 11/20/63 state that Katherine B. Middleton was my aunt; Geraldine Lockhart is my mother, and Mildred Anderson is my aunt (sisters). I was in a conversation with Geraldine and Mildred in the spring of 1990, after Kenneth G. Middleton was released from jail, when Geraldine and Mildred stated that the capital prosecutor, Pat Peters, had **"tied up"** all of Ken and Kathy's estate for them. Also, Pat Peters requested they hire a Blue Springs, Missouri law firm to file civil lawsuits against Kenneth Middleton, and his property. Geraldine and Mildred said they hired the law firm which Peters had suggested, and were guaranteed that they would take Ken for everything he had and would help keep him in prison." (See, Dixie J. Busby's Affidavit dated September 17, 1996, attached hereto as Exhibit "E").

It should be noted that Robert Duncan's four affidavits, Dixie Busby's affidavit and the nine (9) affidavit's above stating that they were "lock-out" of my father's hearing on March 13, 1992 and numerious other exhibits were attached to that same civil lawsuit you referred to, Middleton v. Anderson. See, Jackson County Judge, Thomas Clark, on August 30th, 2000:

> "Additionally, plaintiff, a convicted murderer, **discredits** Donald R. Moore and the reputable law firm

of Cochran, Oswald, McDonald, Roam and Moore, P.C. for allegedly unethical and, perhaps, **worse conduct.** Assertions of conspiracy, bribery, perjured testimony, **"sabotaged"** post conviction relief hearings before Judge Messina, destructive and unconstitutional searches and seizures, witness tampering, improper associations by Judge Ely and Peters constituting "conflicts of interests," alteration of police investigation reports, "lying," are explicitly stated with supporting argument **and documentation.'"** (emphasis added) (See, Judge Thomas C. Clark's ruling attached hereto as Exhibit "F").

It should be noted that Mildred Anderson committed **"perjury" (by fraudulently creating a "motive")** in my father's murder trial, with the help of Pat Peters when Peters ask:

"Q. **Quite a bit** of holding[s] down in Arkansas that you and your family, including your sister, were unaware of?
A. **Yes.**
Q. And your testimony here is for the purpose of **telling the jury the truth?**
A. **Yes.** (emphasis added) (See, Trial Tr. p. 299-300).

Eight years later, on March 25, 1999, in her lawsuit in Arkansas against my father, Mildred Anderson testified that she knew everything my father owned in Arkansas, and provided the court with photos taken the Christmas before this tragedy happened. Anderson also provided the court with a list of assets down to a **"Hydraulic Jack"** and collaborated by her sister, Geraldine Lockhart. (Plaintiff's Arkansas Exhibit "7") (See, Arkansas Trial Tr. filed with 29.15 motion in 2003, Exhibit **"44"** and Anderson and Lockhart's list attached hereto as Exhibit "G").

Perjury in a Missouri murder trial is a serious offense with no statute of limitations. See, RSMo § 575.040(1): "It is committed during a criminal trial for the purpose of securing the conviction of an accused for murder, in which case it is a class A felony. RSMo § 558.011(1): For a class A felony, a term of years not less than ten years and not to exceed thirty years, or life imprisonment."

6). You stated in your letter on page 4: "Baney specifically testified that the Middleton gun was not a "hair trigger." (See page 415). (After the state admitted that Middleton's gun had been tampered with, by disassembling the gun and putting it back together; before Baney tested the gun). Robert Duncan knew two (2) witnesses before trial that were ready and willing to testify that they had fired the Middleton gun in question. And later on December 9, 1994, gave affidavits that it was a:

"Target Pistol, with a broad target hammer, broad target trigger, and target sights....I have been associated with fire-arms all my life, the pistol in question had the most "light" and/or "hair trigger" of any gun I have ever fired." (See, Exhibits "16").

7). It should be further noted that I provided all the criminal and civil trial transcripts, legal files, police reports, etc., to former Governor of the State of Missouri, Joseph P. Teasdale and he reviewed same and testified under oath to the following:

> "Q. Mr. Teasdale, did you compile a letter reflecting your findings?
> A. Yes. And I also in that letter pointed out that in my 41 years as a lawyer that I had not witnessed such a violation of a defendant's constitutional rights.
> Q. If this case had been presented to you in your capacity as governor, what action would you have taken?
> A. I've thought about that, and I would clearly have pardoned Mr. Middleton of all wrongdoing." (See, 2004 "evidentiary hearing" Tr. page 42-43).

Furthermore, you stated to me and Mr. Alvin Brooks on November 5, 2008 that your office had been fair and had offered my father an Alford plea to time served and an immediate release (which was in July, 2004) and my father had turned it down.

Based upon all the **shenanigans** that have been discovered since my father's murder trial, I clearly disagree with your opinion, clearing Pat Peters of all wrongdoing!

It is almost impossible to get the same conservative trial Judge to reverse their own ruling in a murder case, 14-years latter. But, that is exactly what I think expert, Robert Tressel did to changed Judge Messina's mind and her ruling. Who better to know the evidence and testimony than the same trial judge who sat over the entire trial, and the "evidentiary hearing" in 2004; than Judge Edith Messina?

Unless my father had the skills of Houdini, which he don't, it would be physically and mathematically impossible according to our unopposed expert, Robert Tressel for my father to be guilty of shooting my stepmother. With no gunshot residue or blood on his long sleeve shirt and all his clothing that the Blue Springs Police seized immediately off his person.

I want to thank you again for your letter and time!

Sincerely,

Cliff Middleton

Cliff Middleton

cc: file
Mr. Alvin Brooks
Mr. Victor Terranella
Mr. Kent E. Gipson
Mr. Ken Middleton

LAW OFFICES OF CHRISTOPHER O'HARA CARTER, P.A.

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30 September 2000

Mr. Cliff Middleton
4439 Meadow View Drive
Shawnee, Kansas 66226

RE: Letter from Prosecutor Kanatzar

Dear Cliff:

Thank you for forwarding Mr. Kanatzar's letter of August 31, 2009 to my office. I have read it a number of times and here are my thoughts and comments.

The first obligation that Mr. Kanatzar has is to uphold the integrity of his office and the court process. In the 14th Judicial District of Arkansas I handle all of our Rule 37 hearings which are the equivalent of a Missouri 29.15 hearing. Mr. Kanatzar's rendition of the State's evidence at trial is essentially an accurate description of the testimony. Likewise Mr. Kanatzar correctly summarizes the first 29.15 hearing and Judge Messina's conclusion that "Movant received effective assistance of counsel at all stages of his trial from Mr. Duncan, an experienced trial lawyer." and the Missouri Court of Appeals affirmed the conviction. Based solely on those facts I, as a prosecutor, would have ignored you and your father would just sit in prison.

Unfortunately for the State of Missouri your father's sisters-in-law continued to pursue him in Civil Courts in both Arkansas and Missouri and in doing so caused a number of attorneys, myself included, to look at the civil and then the criminal cases to discover many cover-ups and shenanigans by prosecutors, attorneys, law enforcement to the extent that there is no question that your father did not receive a fair trial based upon the Strickland standards and ultimately once these facts were laid bear Judge Messina reversed her earlier statement about "effective assistance of counsel at all stages." I have not heard one person allege that Judge Messina was wrong in this assessment. Given the facts no one can with a straight face.

While motive in a murder case is not required, it tends to be an important aspect. In this case the implication was that Kathy was thinking of divorcing Ken and he killed her to protect his assets. There was testimony at trial to support that allegation and that was certainly the State's contention. What Mr. Kanatzar does not address is my testimony concerning the (a) unusual bond requirements; (b) the fact that charges were filed only after the police reported substantial assets in Arkansas (c) Mildred Anderson's admittedly false testimony concerning assets because she had photos taken months before Kathy's death of the Arkansas Farm (d) the release of un-probated assets to her that she initially stated in a deposition Ken had stolen until it was revealed to her attorney that Ken had the receipt from the Blue Springs police Department she signed. These are questions that no one has adequately explained and need to be addressed.

The letter completely ignores other aspects such as Kathy's niece, who lived with Ken and Kathy and has signed a statement contradicting the State's theory of discord (as well as gave one to the police), who was

Exhibit "A"

whisked off to Arizona and no deposition was taken of her and no subpoena issued. That is clearly a deficiency in Mr. Duncan's representation. That combined with Duncan's legal problems, case load, and admitted deficiencies in other cases he took around the same time lead one to conclude Mr. Duncan just barely did enough to get by. However, the whiteout and lack of test on Kathy's left hand is bizarre—especially when that very test was requested by the Blue Springs Police Department. In later depositions officer Dave Link could not explain why the test was not performed or who altered the submission form and why. I still do not understand the reading of the 911 call into the record as opposed to having the tape played.

No one is entitled to a perfect trial and no trial is perfect. However we are guaranteed due process and a fair trial with competent counsel. That was my opinion when I testified and I still stand by my opinion. Only one court has addressed all these facts (Judge Messina) and ultimately reached the same conclusion as I did albeit for slightly different reasons). I can keep an open mind, but until all the issues that I raised in this letter and the second 29.15 are adequately addressed no one will change my opinion.

I encourage you to continue to fight for your father because there are the "uncomfortable" facts that just will not go away and cannot be adequately explained.

Sincerely,

Christopher O'Hara Carter
Attorney at Law

Exhibit "A"

AFFIDAVIT

STATE OF ARKANSAS

COUNTY OF MARION

Now comes before me, Christopher Carter, who being duly sworn and identified pursuant to law states on oath as follows:

1. That my name is Christopher O'Hara Carter and I am a duly licensed attorney in the State of Missouri, Missouri Bar No. 38636 and I am licensed to practice law in the State of Arkansas. Arkansas Bar No. 88025.

2. That in February, 1997 I was appointed by the Chancery Court of Newton County, Arkansas to represent the interest of Kenneth G. Middleton entitled Geraldine Lockhart, et ux v. Middleton, et al, Newton County Chancery Case No. E-91-17-1.

3. That the Plaintiffs in that case are represented by attorney Steve Davis of Harrison and the case was six (6) years old when I was appointed. I met with attorney Davis in February and March of 1997 to get a "feel" for the case.

4. Steve Davis told me that Ken Middleton was doing life plus two hundred (200) years for First Degree Murder and that he would be a difficult client. Davis has stated more than once that in his Missouri murder case he had turned down an offer of Second Degree Murder and ten (10) years flat in the Missouri Department of Corrections.

5. That I am the Head Public Defender for the Fourteenth Judicial District in Arkansas and in one of my earlier conversations with Kenneth G. Middleton I pointed out to him that if he had accepted the State's offer he would probably be out at this point. Mr. Middleton seemed genuinely shocked and it appears that is the first he had ever heard of any such plea offer.

6. Mr. Davis has mentioned this on more than one occasions and I have looked through the court records in Missouri as well as correspondence from Robert Duncan, Ken Middleton's trial attorney, and I have not seen any place where that offer, if such an offer existed, was conveyed to Mr. Middleton.

7. After the December 17, 1998, court hearing in Boone county Courthouse, Attorney Steve Davis stated that Attorney Don Moore (who represents the Plaintiffs in Missouri) of Missouri told him that the Missouri Prosecutor has offered Ken Middleton a plea of Murder in the Second Degree and a ten (10) year sentence.

Exhibit "B"

8. I have taken the time to examine both the civil, criminal and probate cases concerning Mr. Middleton and normally whether one accepted or did not accept a plea offer or whether one was made would be fairly irrelevant. However, what concerns me about the turn of events is the manner in which Mr. Middleton's trial attorney handled his case combined with the hidden interests of the Prosecutor who had referred a civil lawsuit, of which I am now a part, to his father's law firm. Mr. Middleton and his wife, either jointly or separately, had assets, of over two hundred thousand dollars ($200,000.00) and if the Prosecutor could get Mr. Middleton to accept any sort of plea, under the laws of both Missouri and Arkansas, he could not share in the estate and further he would not have much of a defense in a civil action for wrongful death which the family had already filed. I therefore believe that under the specific circumstances of this case that a plea offer of ten (10) years and a charge of Second Degree was discussed, and certainly the family of Katherine Middleton (the decedent) were aware of such discussions, but it also seems clear that this offer was never conveyed to Kenneth Middleton.

FURTHER THE AFFIANT SAYETH NOT.

CHRISTOPHER O'HARA CARTER
ARKANSAS BAR NO. 88025
MISSOURI BAR NO. 38636
THE LAW OFFICES OF
CHRISTOPHER O'HARA CARTER, P.A.
P. O. BOX 369
FLIPPIN, ARKANSAS 72634
PHONE: (870) 453-8001
FAX: (870) 453-8003

Subscribed and sworn to before me on this the 6th day of May, 1999
My commission expires on the 7th day of September 19 2005

NOTARY PUBLIC

SHARON I. HERNER NOTARY PUBLIC COMM. EXP. 9-7-2005 BAXTER COUNTY, ARKANSAS

Exhibit "B"

BIOGRAPHICAL INFORMATION FOR R. ROBERT TRESSEL

In July of 1973 Robert joined the Cobb County Police Department as a Uniform Patrol Officer. In October of 1973 he completed Basic Mandate Training at the Georgia Police Academy.

In February of 1975 he was transferred to the Crimes Against Persons Unit, commonly known as the Homicide Unit. This unit is responsible for all death investigations including homicide, suicide, accidental and natural death cases. That unit also worked robberies, rapes and any case involving person to person contact.

Robert was subsequently promoted to sergeant in July of 1978 and assigned to the evening shift as a supervisor in the Crimes Against Persons Unit. At that time he managed one other sergeant and four criminal investigators.

In January of 1985 Robert transferred to the Cobb County Medical Examiner's Office as a Forensic Investigator. This position represents the Medical Examiner at all death scenes and is responsible for crime scene processing around the body of the deceased, collection of evidence, and documenting the conditions and circumstances under which the body was discovered.

Robert took the role as Operations Manager of the Medical Examiner's Office in 1993. This position required overseeing a staff of four investigators, autopsy technicians and support staff. This position also acted as chief investigator for the Medical Examiner.

In December of 1998 Robert took an early retirement from Cobb County and went into private business.

During his employment with Cobb County he received additional training in the field of death investigation including, but not limited to, crime scene processing, crime scene analysis, blood spatter interpretations, death investigations, and interpreting injuries and their causes. This training was from some of the most respected trainers in the country. He has received training at the University of Georgia, the University of Miami in association with the Dade County medical Examiner's Office, the University of St. Louis School of Medicine in association with the St. Louis Medical Examiner's Office, the National Law Enforcement Institute in Santa Rosa California, and through the FBI Training Center in Quantico Virginia. All total Robert has over 700 hours of continuing education in the field of death investigations.

During his tenure with the Cobb County Medical Examiner's Office Robert trained under Dr. Joseph L. Burton, a renowned Forensic Pathologist. Robert has been involved with all aspects of the death scene evaluation, gathering and documenting forensic evidence, autopsy and autopsy procedures and evaluating these findings in making determinations as to cause and manner of death.

During his career, Robert has been involved in over 6,000 death investigations and has personally been involved in over 500 homicide investigations. He has testified in four states and in Federal Court as an expert witness in death investigations, crime scene analysis and blood spatter interpretations.

Exhibit "C"

AFFIDAVIT

STATE OF MISSOURI)
) ss
COUNTY OF CLAY)

COMES NOW, Robert G. Duncan, Attorney at Law, of lawful age and having first been duly sworn upon his oath, states as follows:

1. That I represented Kenneth G. Middleton as his criminal defense lawyer in his trial in the Circuit Court of Jackson County, Missouri in Case No. CR90-0348, before Judge Edith Messina, wherein Middleton was charged with the offense of First Degree Murder and Armed Criminal Action.

2. I had no knowledge prior to or during the trial or appeal, but I have recently learned that prosecutor, Patrick W. Peters' father, the former Circuit Judge William J. Peters was an attorney with the law firm of Cochran, Oswald, McDonald, Graham & Roam, P.C., which firm was suing Mr. Middleton in a civil suit. Had I known William J. Peters was an attorney in that law firm, I would have filed a Motion to disqualify Patrick W. Peters as trial prosecutor.

3. If I had been aware that Patrick W. Peters' father's law firm was representing the sister of the victim against Mr. Middleton, I would have investigated the matter further and would have discovered the improper concealment of discoverable material and perhaps used that in our defense, and possibly called either or both Peters as a witness.

4. I further state that I have also since learned that this same law firm represented the Blue Springs Police Department and that the Police Department had kept a secret file concerning the civil claim of her sister. Further, I believe my ability to defend Mr. Middleton was impaired because I wasn't given information of the connection between the Police Department, the Prosecutor and the civil claim against Middleton seeking a substantial monetary recovery. This information, if for no other purpose, would have been admissible as impeachment evidence showing the bias of the police and some of the witnesses.

Robert G. Duncan

Subscribed and sworn to before me a Notary Public this 27th day of September, 1996.

Notary Public

My Commission Expires:

JOELLEN R HYDE
NOTARY PUBLIC STATE OF MISSOURI
PLATTE COUNTY
MY COMMISSION EXP FEB. 19,1998

Exhibit "D"

STATE OF ARKANSAS)
) SS.
COUNTY OF JEFFERSON)

AFFIDAVIT

Came this day before me a person well known to me as Dixie J. (Atkinson) Busby, and having had the oath required by law administered to her, she did depose:

1. I, Dixie J. Busby, D.O.B. 11/20/63 state that Katherine B. Middleton was my aunt; Geraldine Lookhart is my mother, and Mildred Anderson is my aunt (sisters). I was in a conversation with Geraldine and Mildred in the spring of 1990, after Kenneth G. Middleton was released from jail, when Geraldine and Mildred stated that the capital prosecutor, Pat Peters, had "tied up" all of Ken and Kathy's estate for them. Also, Pat Peters requested they hire a Blue Springs, Missouri law firm to file civil lawsuits against Kenneth Middleton, and his property. Geraldine and Mildred said they hired the law firm which Peters had suggested, and were guaranteed that they would take Ken for everything he had and would help keep him in prison.

Having stated the above, the affiant said no more and in witness of the truth of the above statement did affix her signature below on this 12th day of Sept, 1996.

Dixie J. Busby

Sworn and subscribed to before me a Notary Public on this 17th day of September, 1996, for and in the above county and state.

Notary Public

My Commission Expires: 2/14/2005

Exhibit "E"

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

KENNETH G. MIDDLETON,

Plaintiff

Case No. 00CV202147

vs.

Division Three

MILDRED M. ANDERSON,

Defendant.

ORDER

Now, on this 30th day of August, 2000, the Court considers the following:

1. Plaintiff's Motion to Clarify the Record and To Join Donald Moore's Motion for Additional Time to Respond (filed August 8, 2000).

2. Plaintiff's Motion for Leave to Reply/Traverse Defendant's Suggestions in Opposition to Plaintiff's Motion to Reconsider Disqualifying Defendant's Attorney Donald R. Moore and His Entire Law Firm (filed August 22, 2000).

3. Plaintiff's Motion to Reconsider Disqualifying Defendant's Attorney Donald R. Moore and His Entire Law Firm (filed July 24, 2000).

After examining and considering the suggestions and pleadings filed by the parties, and being fully advised in the premises, the Court orders as follows:

1. Plaintiff's Motion to Clarify the Record and To Join Donald Moore's Motion for Additional Time to Respond (filed August 8, 2000) is SUSTAINED.

2. Plaintiff's Motion for Leave to Reply/Traverse Defendant's Suggestions in Opposition to Plaintiff's Motion to Reconsider Disqualifying Defendant's Attorney Donald R. Moore and His Entire Law Firm (filed August 22, 2000) is SUSTAINED. The Court has considered this motion in these rulings.

3. Plaintiff's Motion to Reconsider Disqualifying Defendant's Attorney Donald R. Moore and His Entire Law Firm (filed July 24, 2000) is DENIED.

Furthermore, after reading with dismay plaintiff's exhaustive motion to reconsider, and considering both the accusatory contents of plaintiff's motion and

Exhibit "F"

the targeted persons, this Court is compelled to recuse itself from any further proceedings in this matter.

Memorandum

As explanation for the above decision, this Judge has served on the Sixteenth Judicial Circuit with each of the four circuit judges criticized or mentioned in plaintiff's comments. Specifically, Judges Edith Messina, John A. Borron, Jr. and "all of his clerks,"[1] William J. Peters and William W. Ely are mentioned or criticized.

Additionally, plaintiff, a convicted murderer, discredits Donald R. Moore and the reputable law firm of Cochran, Oswald, McDonald, Roam and Moore, P.C. for allegedly unethical and, perhaps, worse conduct. Assertions of conspiracy,[2] bribery,[3] perjured testimony,[4] "sabotaged" post conviction relief hearings before Judge Messina,[5] destructive and unconstitutional searches and seizures,[6] witness tampering,[7] improper associations by Judges Ely and Peters constituting "conflicts of interests,"[8] alteration of police investigation reports,[9] "lying,"[10] are explicitly stated with supporting argument and documentation. Additional targets include the Blue Springs Police Department and specified police officers as well as designated prosecuting attorneys of Jackson County. Particular attention is focused on the decedent's sister, Mildred M. Anderson for "inconsistent testimony" and her alleged possession of the decedent's "14 carat yellow gold ring."[11] (Emphasis added).

Frankly, these matters are pervasive and require consideration and adjudication by an impartial and thoughtful judge.

Finally, without adopting plaintiff's commentary, this Judge must concur with and does adopt plaintiff's conclusion "that there could be no Court in or near Jackson County, Missouri that could sit in judgment of this lawsuit" – for certain, not this Judge!

[1] See Claim II, page 6 of plaintiff's motion.
[2] See Claim III, page 6 of plaintiff's motion.
[3] See Claim III, page 12 of plaintiff's motion.
[4] See Claim III, page 12 of plaintiff's motion.
[5] See Claim III, page 21 of plaintiff's motion.
[6] See Claim III, page 22 of plaintiff's motion.
[7] See Claim III, page 22 of plaintiff's motion.
[8] See Claim III, pages 9, 27 of plaintiff's motion.
[9] See Claim III, page 29 of plaintiff's motion.
[10] See Claim III, pages 35, 46 et. seq. of plaintiff's motion.
[11] See Claim III, pages 36, 44 of plaintiff's motion.

Exhibit "F"

Under these circumstances, perhaps, a judge of great distance from Jackson County might be an appropriate jurist for these issues.

Dated this 30th day of August, 2000

Thomas C Clark
THOMAS C. CLARK, Judge

CERTIFICATE OF MAILING

Copies of the foregoing were mailed this 30th day of August, 2000, to:

Mr. Kenneth G. Middleton
Pro Se
Crossroads Correctional Center
1115 East Pence Road
Cameron, Missouri 64429

Donald R. Moore, Esq.
One Jefferson Place
Post Office Box 550
Blue Springs, Missouri 64013

S. Snyder, Judicial Administrative Assistant

A TRUE COPY ATTEST
CIRCUIT COURT OF JACKSON COUNTY, MO.
COURT ADMINISTRATOR'S OFFICE
DEPARTMENT OF JUDICIAL RECORDS
BY Sharon B. Snyder DCA

Exhibit "F"

SCHEDULE B

Vendor, Newton County, Arkansas House

D. M. Middleton Homeplace

1985 Buick (Kathy's)
Yellow Truck
Dump Truck
Dozer
Low-Boy Trailer - Tractor
16' or 18' Cattle Trailer
Horse
John Deere Tractor
Hay Rake
Lincoln Welder with Trailer
Floor Jack
Overhead Camper

1988 Ford Truck
Two 3-Wheelers
Backhoe
Jeep Canvas Top
Horse Trailer
100-130 Cattle (Cows - calves)
Ford Tractor
Hay Bailer
Washer & Dryer
Power Washer
Hydraulic Jack

Iron Bed (Mother's)
Antique Dresser with Mirror (Mother's)
3-leg Round Oak Table (Mother's)
Oval Picture of White House (Mother's)

Bookcase (Mother's)
Refrigerator (small - 1 door) (Mother's)

FOLLOW UP FACTS AND QUESTIONS:

1). Pat Peters' sworn testimony in 2004, quoted verbatim on page one of my letter to Jim Kanatzar. Clearly, **confirms** Dixie J. Busby's 1996 affidavit. (See, Exhibit "E" attached to my letter to Mr. Jim Kanatzar).

2). Pat Peters got all my father's out-of-state witnesses "lock-out" of the courtroom at his "evidentiary hearing" on **March 13, 1992.** Clearly, set it up for Pat Peters' father's law firm, just weeks later, too obtain a "default judgment" on **May 26, 1992** against my father for $1,350,000.00 dollars. (Attorney Donald R. Moore vehemently argued to Judge Ely to deny Dad's pro-se Writ to be present for his jury trial. Judge Ely denied his Writ. Then, Don Moore dismissed Dad's jury and asked for a "default judgment" which Ely granted!) (See, "default judgment" attached: shows filed in Arkansas 3-days later). Which would have been physically impossible, if Judge Edith Messina had reversed my father's convictions, in her ruling on **April 9, 1992.** As Judge Messina did set his convictions aside, on May 26, 2005. It should also be noted that the state would have had "no" claims of Judge Messina not having jurisdiction in **1992.** See, Middleton v. State, 200 S.W.3d 140 (Mo. App. W.D. 2006).

3). In a totally circumstantial case and in 2004, my father proved his innocence beyond doubt. Why is Jim Kanatzar ignoring attorney Gerald Handley's "fraud on the court"? To keep an innocent man in prison? And, not sending Gerald Handley to the Bar, like he did his assistant, Dan Miller, in the Matthew Davis case? Mr. Kanatzar told the K.C. Star on Feb. 12, 2009, that he did send Miller to the Bar. (See, MO. SUPREME COURT RULE 8.3(a): REPORTING PROFESSIONAL MISCONDUCT!, attached to my letter to Mr. Jim Kanatzar).

4). Why is Jim Kanatzar ignoring a class A felony of **"perjury"** by Mildred Anderson? Clearly, shown by her and Lockhart's sworn testimony; and their list of my father's Arkansas assets. (See Exhibit "G" attached to my letter to Kanatzar). And, not prosecute Mildred Anderson for perjury? Which has no statute of limitations. (I think his oath of office, requires prosecution?). After, Pat Peters put on Anderson's perjury; in the last portion of closing argument, Peters told the jury: "For this man to walk out of here free at the end of your deliberation so that he can spend the property of Mr. and Mrs. Middleton". (Trial Tr. page 535). Furthermore, Peters ordered Det. Ray Vasquez to give Mildred Anderson the following Monday, after her **perjury: $18,700.00** worth of Rings belonging to my stepmother. Peters did not deny it in June, 2004, on the witness stand. (Tr. 48-49 & 63). Peters' father's law firm, **attorney Donald R. Moore, "lied"** to Judge Thomas C. Clark about the transactions of these same Rings, and Dad proved it pro-se from prison. (See, Exhibit "F" attached to my letter to Mr. Kanatzar).

5). Why is Jim Kanatzar ignoring all the absolute **"corruption"** in my father's case? To keep an innocent man in prison.

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

GEARLDINE LOCKHART, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CV90-18801
	)	Division Two
KENNETH G. MIDDLETON,	)	
	)	
Defendant.	)	

JUDGMENT ENTRY UPON DEFAULT BY DEFENDANT

NOW on this day, the Court having taken up for consideration this matter, and the Plaintiffs appearing in person and by counsel, and the Defendant appearing not, and the Court having considered the evidence.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the Court hereby finds in favor of Plaintiffs on their Petition For Wrongful Death against the Defendant and awards damages in favor of Plaintiffs in the amount of 1,350,000.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court hereby apportions damages to the Plaintiffs in the following manner:

Plaintiff	% of Damages	Amount of Award
Gearldine Lockhart	37%	$500,000
Mildred M. Anderson	37%	$500,000
Joyce M. Henson	15%	200,000
Jesse J. Brewer	11%	150,000

Dated: May 26, 1992

FILED
OFFICE OF THE CIRCUIT CLERK
NEWTON COUNTY, ARKANSAS
MAY 29 1992
A.M. 152 P.M.

William W Ely
Judge

MISTRIAL DECLARED IN MURDER

This was third time man was accused of murder. Detective's comment was deemed prejudicial.

By TONY RIZZO
The Kansas City Star

"I knew him prior."

Those four words uttered recently by a police detective in front of a jury prompted a Jackson County judge Wednesday to dismiss the murder case against a Kansas City man.

The dismissal "with prejudice" means that prosecutors cannot re-try Markus D. Lee for the 2007 drive-by killing of Eliseo Thomas. Assistant Public Defender Molly Hastings requested, and the judge ordered, that Lee be released Wednesday.

It was the third time this decade that Lee, 25, was charged with committing a murder and the third time he has avoided conviction.

Jackson County Prosecutor Jim Kanatzar could not be reached Wednesday about whether he will seek an appeal.

Kansas City police officials said they wanted to see the judge's written order before commenting. The judge said he planned to have the written order available Monday.

In Wednesday's oral ruling, Circuit Judge Robert M. Schieber said he believed that the detective's comment during Lee's trial earlier this month was an intentional effort to "goad" Lee's attorneys into seeking a mistrial because the case wasn't going well.

Because he considered the mistrial to be the result of governmental misconduct, Schieber ruled that trying Lee a second time would violate his constitutional protection against double jeopardy.

"It is with a great deal of angst that I do this," Schieber said.

But the judge said that he had to hold law enforcement officers to the same rules and standards that attorneys must follow to ensure a "level

SEE DRIVE-BY | C5

FROM C1

playing field" in the courtroom.

"For me to not do that would render those rules meaningless," he said.

Schieber said that if there was no sanction against such intentional misconduct then anytime a law enforcement officer felt a case "was going south" he could say something inappropriate and prompt a mistrial.

"I can't allow that to happen," Schieber said.

He noted that after he declared a mistrial in Lee's case, the jurors and alternates told him that they would have voted unanimously for acquittal. They also told him that the detective's statement about knowing Lee implied to them that he had been arrested previously.

That demonstrated that the comment was prejudicial, the judge said.

Lee

Lee, who has been in custody since shortly after the March 2007 incident, was charged along with two other men with killing Thomas and wounding three others during a drive-by shooting near 30th Street and Agnes Avenue. The shooting sparked a high-speed chase in which suspects fired shots at pursuing police officers.

The two other defendants are in custody pending their trials.

In 2006, a jury acquitted Lee on charges that he killed a man during a 2002 block party and later gunned down a witness to that crime. At trial, witnesses who had initially identified Lee changed their stories and said they didn't witness the shootings.

His trial for allegedly killing Thomas began Nov. 9 and was close to wrapping up Nov. 12 when Detective Danny Phillips testified about collecting shell casings and obtaining a DNA sample from Lee after his arrest.

Phillips was being cross-examined by Hastings about when he collected the DNA sample when he added "I knew him prior." Hastings moved for a mistrial, which Schieber granted.

She later filed the motion that Schieber ruled on Wednesday. Phillips could not be reached for comment after Wednesday's ruling.

After Wednesday's hearing, Hastings said she appreciated the judge holding police accountable.

"They are not exempt from following the rules," she said.

To reach Tony Rizzo, call 816-234-4435 or send e-mail to trizzo@kcstar.com.

Withheld evidence muddies '05 case

In tossing guilty pleas in case of abandoned corpse, a judge cites prosecutor misconduct.

By MARK MORRIS
The Kansas City Star

A Jackson County judge cited prosecutorial misconduct Tuesday when she threw out the guilty pleas of a man convicted in 2005 of abandoning a woman's body in his Jeep.

Assistant Prosecutor Dan Miller withheld hundreds of pages of investigative records from Matthew Davis' defense lawyers and "deliberately and fraudulently misled the court and defense counsel," Judge Edith L. Messina wrote.

Miller

"As a result," Messina wrote in her ruling, "a continuing fraud was perpetrated upon the trial and motion courts."

Her order represents the third time in recent years that courts have criticized the prosecutor's office for not sharing all its evidence with defense lawyers.

Jackson County Prosecutor Jim Kanatzar responded to Messina's ruling by asking for an investigation by state authorities who oversee lawyer discipline. Kanatzar said he has taken Miller off the Davis case.

"Like any other investigation, we'll wait to see the results before deciding what to do," Kanatzar said. "He will continue to be an assistant prosecuting attorney and take on any cases I deem appropriate."

SEE JUDGE | A10

JUDGE: Jackson County prosecuto

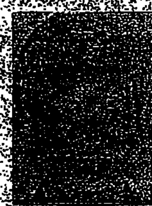
FROM A1

In an interview, Miller defended his handling of Davis' case and noted that Davis had acknowledged three times under oath that he had abandoned Amber McGathey's body — once in his guilty plea and twice in civil proceedings. Miller acknowledged withholding some records related to an ongoing homicide investigation into McGathey's death.

"I felt my conduct was aboveboard," Miller said. "I disclosed what I felt I was obligated to disclose. I did not disclose reports of a pending investigation. If the judge disagrees with my interpretation of the discovery rules, that's one thing. But to say it was fraudulent conduct, I disagree with strongly."

Davis was sentenced to 22 years — seven years for abandoning a corpse and 15 years for three counts of possession of a controlled substance.

McGathey, 22, died of a drug overdose in Davis' apartment in June 2004. He loaded her body into his Jeep, parked it in the River Market area and let it decompose for days.



Davis

Davis, however, had contended that he contacted a lawyer and discussed the body with him. Messina noted in her order that the records withheld from Davis' criminal defense attorney contained evidence supporting that claim. She noted that Davis' first criminal lawyer, John Picerno, had testified that such information would have provided a "complete defense" to the charge of abandoning the body.

McGathey was the daughter of Parkville resident Boyd McGathey, a member of the Crime Stoppers TIPS Hotline board of directors, and Debra Augustine of Waterloo, Ill.

"It's very frustrating," Augustine said Wednesday. "It's five years later and it's kind of like a bad dream. It's a nightmare."

Because of the withheld evidence, Davis' guilty plea was neither "voluntary or intelligent," Messina concluded.

Defense lawyer Pat Peters said his client has spent more than $100,000 fighting his case and called for Davis' immediate release. Peters said he has spent two years arguing the evidence issue in court, which he described as an "outrage" of its own.

"The Jackson County prosecutor learned about this and spent two years defending the indefensible," Peters said. "Every day Matt Davis stays incarcerated is additional damage."

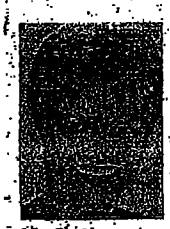
Peters said his client was thrilled to hear of the ruling.

"The touching part was he said, 'I just want to go spend time with my two little girls,'" Peters said.

Miller is an experienced, well-regarded prosecutor specializing in violent crimes, and has been with the office since the early 1990s, Kanatzar said. In addition to his work in state courts, Miller helped prosecute five people in federal court in the deaths of six Kansas City firefighters in 1988.

Miller's future now lies in the hands of the state Office of

rs' evidence-sharing faulted again



McGathey

Chief Disciplinary Counsel, which investigates allegations of lawyer misconduct.

Speaking generally, Alan Pratzel, Missouri's chief disciplinary counsel, said that disciplinary measures could range from a written admonition issued by his office to disbarment, which would be ordered by the Missouri Supreme Court.

Messina's ruling is the latest in a series of cases in which courts have criticized how Jackson County prosecutors have shared evidence.

Last year, former lawyer Richard Buchli II was released from prison as prosecutors prepared to retry him in the May 2000 murder of his law partner, Richard Armitage.

A Missouri appeals court earlier had thrown out his 2002 first-degree murder conviction because prosecutors failed to disclose a building surveillance videotape that might have exonerated him.

Buchli, who was serving a life sentence, is scheduled for a new trial in September.

Also in 2008, a federal jury awarded $16 million to Theodore W. White Jr., who was tried three times in Jackson County before a jury acquitted him on child molestation charges. That jury learned that the investigating officer and White's wife had become romantically involved before the first trial.

Prosecutors later acknowledged that they knew the couple had seen each other socially, but did not disclose it to defense lawyers because they were told it was a one-time meeting for drinks or dinner.

And late last week, lawyer Dan Ross filed a motion with Messina, asking for sanctions against prosecutors for allegedly withholding evidence in the case of Gary S. Shephard, who is accused of second-degree murder and child abuse in the death of his 13-month-old stepson.

Ross contends that, through his own investigation, he obtained medical examiners' documents that Miller never disclosed to him. One of the reports, Ross contended, contained evidence supporting Shephard's contention that his stepson died accidentally after he tried to administer CPR at the urging of 911 operators. The tape of that 911 call also is missing, Ross noted.

"When I do not get all those reports, the defense and justice suffer," Ross said Wednesday.

Two years ago, a Jackson County judge ruled that Miller did not improperly withhold evidence in a 1995 murder case involving the drive-by shooting of a baby. Judge Jay Daugherty found there was no evidence that Miller withheld reports, saying it was more likely that defense lawyers had lost them.

In testimony during hearings on the Matt Davis issue, Miller suggested that the information he withheld was part of an ongoing murder investigation, an explanation that Messina wrote "defies logic."

"Mr. Miller's suggestion that a prosecutor can determine whether material may be withheld because, in the mind of the prosecutor, it is not relevant has been resoundingly rejected by the court of appeals," Messina wrote.

Messina wrote that she soon would begin considering how to penalize the prosecutor's office for the discovery violations. She warned lawyers that such litigation likely would be complex. Generally, when guilty pleas and convictions are thrown out, a defendant merely returns to the same position he was in before the guilty plea — that is, facing a trial.

In this case, however, Messina noted that Davis already has paid three criminal lawyers for years and also has faced a civil case in which he was ordered to pay $500,000 to McGathey's parents.

"Due to the fraud perpetrated by the prosecutor, to place (Davis) in the position he would have been prior to the fraud will be difficult," Messina wrote.

Kanatzar said that shortly after taking office he moved to tighten record-keeping so that lawyers would know exactly what documents had been shared and when. Such disputes arose because lawyers couldn't document exactly what had been turned over, he said.

"This is a professionally run prosecutor's office that handles one of the highest caseloads in the state," Kanatzar said.

"I can speak for every attorney in our office that they diligently follow all the rules of criminal procedure."

To contact Mark Morris, call 816-234-4310 or send e-mail to mmorris@kcstar.com.

New Efforts Focus on Exonerating Prisoners in Cases Without DNA Eviden

By JOHN ELIGON

In 1988, nine years after Gary Dotson was convicted of raping a woman in a Chicago suburb, his lawyer tried to clear his name with what was then a novel approach: DNA testing, which was conducted on the woman's underwear.

The DNA did not match Mr. Dotson's, and a year later, the rape charge was overturned, making him one of the first people in the country exonerated as a result of DNA evidence.

Two decades later, DNA evidence has been used to exonerate more than 230 people wrongfully convicted nationwide, including

Many wrongful convictions result from old-fashioned mistakes.

24 in New York State. The resulting stories of innocent men being freed after decades in prison have captured the public's imagination and provided fodder for a number of Hollywood dramas.

But the proliferation of such exonerations, as well as the wider availability of DNA evidence, has also made it harder for prisoners seeking to prove their innocence in the much larger number of cases that do not involve DNA evidence. Many lawyers have grown more reluctant to take on these kinds of cases because they are much harder and more expensive to pursue.

Now efforts are emerging to change that.

Glenn A. Garber, a defense lawyer in Manhattan, in January began the Exoneration Initiative, a clinic devoted to investigating wrongful-conviction cases without DNA evidence.

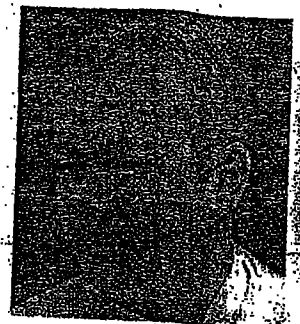
A similar clinic began operating the same month at the University of Michigan, and a new clinic at the University of Virginia is also planning to handle mostly non-DNA cases.

So-called innocence projects at Northwestern, the University of Wisconsin and the University of Cincinnati have reported that their non-DNA caseloads have risen. And for almost a year the district attorney in Dallas has been focusing on wrongful-conviction claims that lack DNA evidence.

"All these hundreds of DNA exonerations across the country have demonstrated to anyone who's paying attention that there are far more innocent people in prison than anybody could imagine," said James McCloskey, the founder of Centurion Ministries, an innocence project based in New Jersey.

Cases that lack what many call the "magic bullet" of DNA often require cumbersome investigations, including finding and reinterviewing witnesses or poring over thick files to find anything vital that a trial lawyer might have missed. Even when crucial evidence is uncovered — witness recantations or exculpatory statements that were ignored by prosecutors — judges, juries and prosecutors often treat it with skepticism.

One of the most recent successes for Centurion Ministries illustrates the promise and challenges of trying to exonerate a prisoner without DNA evidence.



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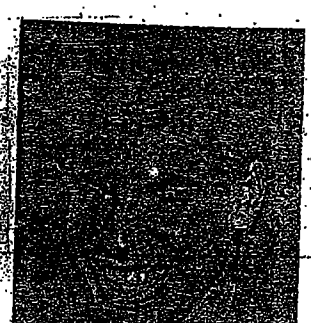

ROBERT SPENCER/ASSOCIATED PRESS

DNA testing cleared Gary Dotson, left, and Hector Gonzalez.

A state judge in Missouri last August overturned the conviction of a man who had served 23 years for a murder in St. Louis. The judge cited the credibility of the prosecution's main witness, who had recanted his testimony that the convicted man was the killer.

But the judge's decision came six years after a panel of federal judges, having considered much of the same evidence, ruled that though it had "a nagging suspicion that the wrong man may have been convicted of capital murder," it could not overturn the conviction of the man, Darryl Burton, because of numerous procedural impediments. The panel suggested that the state court take another look at the case.

Despite the challenges, a study by Samuel R. Gross, a law professor at the University of Michigan, said that 195 prisoners were exonerated without the help of DNA from 1989 to 2003, with the number spiking from 2000 to 2003.

The New York State Bar Association, in a report issued last month, found that a majority of wrongful convictions it examined in New York were reconciled not because of new DNA evidence but because of mistakes by law enforcement officials, as well as the misidentification of the accused by victims or witnesses.

And the National Academy of Sciences, in a draft report, has found that forensic evidence, like fingerprinting and firearms identification, was often based on poor science practices. That finding from an influential scientific research group is likely to drive even more exoneration efforts.

Criminal justice experts say exonerations have shed light on two circumstances once thought to be extremely rare or even inconceivable: Witnesses are sometimes wrong, and people sometimes confess to crimes they did not commit.

As a result, about a dozen states are considering legislation that would require the taping of police interrogations and mandate new guidelines for the use of lineups to identify suspects.

But those involved in prosecuting crimes say that while the legal system is far from perfect, exonerations represent only a tiny fraction of those convicted of crimes. "Innocence projects try to paint the problem as epidemic," said Joshua Marquis, a member of the board of directors of the National District Attorneys Association. "I believe the problem is episodic."

At least one prosecutor in Texas, however, has moved aggressively to uncover wrongful convictions in cases that do not involve DNA.

Craig Watkins, the Dallas County district attorney, said he began taking aim at such cases after DNA tests performed by his office led to 13 exonerations. Now his office has established a conviction integrity unit to re-examine the validity of hundreds of convictions.

"This is about the duty of the district attorney to seek justice," Mr. Watkins said. "Justice means we right the wrongs of the past."

Mr. Garber, the lawyer in Manhattan, said he was inspired to start an innocence project after helping to free a relative of his secretary. The relative, Hector Gonzalez, who was convicted of murder, was freed in 2002 after DNA testing proved that blood found on his clothes did not belong to the victim. But Mr. Gonzalez might never have gotten that far if not for some unscientific help: Several witnesses stepped forward to say that he had no role in the killing.

"There's a huge void in New York — there's no program dling non-DNA cases," Mr ber said. "These are the mo ficult cases. They're heavi ing and we need a program going to do that."

At the University of Mich David A. Moran, a director new innocence project there it was "scary" that comp evidence of innocence was times not enough to per judges or prosecutors.

In its first case, the cli working to clear two men, awn Reed and his uncle M Reed, who were convicted i of shooting another man in urb of Detroit, leaving the v paralyzed.

Though the victim origi identified the Reeds as the pects, he has since recanted, ing he was coaxed into acc the two men by family mem according to court papers. yond that, ballistics testing ducted by defense experts li a gun recovered from an man to the one used in the s ing, Mr. Moran said.

Still, two Michigan app courts have denied motions f new trial, and the Reeds conti serving prison sentences o least 20 years. According to c papers, prosecutors remain sk tical for two reasons: The vi has been inconsistent in desc ing what happened, and in his est account, he simply said he not know who shot him.

"One thing we've learned studying these cases and liti ing these cases is it could re happen to anybody," said Da S. Medwed, a professor at University of Utah who stud wrongful convictions. "Nobod immune."