



Attorney

FOR THE

Damned

By Taking the Cases of People Whose Fates Appear Sealed, This Confident Lawyer Earns Her Self-Applied Moniker

STEPHANIE FRANCIS CAHILL

Opposite: Attorney Kathleen Zellner

KATHLEEN T. ZELLNER FEELS she has an ability to know whether others are telling the truth. “I think women are particularly good as trial attorneys because they are much more attentive to detail about credibility,” Zellner says. “Men will get an impression that someone is lying or not lying, but women will have the details.”

For backup, Zellner often runs witness testimony by a friend who is a real estate broker and “has the uncanny ability to tell if people are lying.”

“She’s very sensitive to the inflection in people’s voices,” Zellner says.

Zellner also relies on her hairdresser and her personal shopper at upscale retailer Neiman Marcus for advice. “I can hardly get out of the dressing room because I’m running all my cases by her,” Zellner says. “Usually I’ll find three or four weaknesses in a case, and I’ll ask somebody.”

Zellner may have an unorthodox research approach to her career as a plaintiffs lawyer in the Chicago suburbs, but it has kept her in good stead. She has won reversals

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of seven murder convictions based on DNA evidence.

Tall and slender, her voice still holding a trace of southwestern drawl, Zellner has a reputation as a formidable attorney who never does anything on the spur of the moment. Other lawyers say that, in her practice, everything seems to be carefully thought out, with a thorough evaluation of risks. Still, she has taken on and won cases that few lawyers would touch.

Zellner estimates that 90 percent of her practice involves plaintiffs medical malpractice matters, and 10 percent is criminal defense work. In the past four years, she has won \$17.7 million in verdicts.

THE ROSCETTI MURDER

ONE OF ZELLNER'S MOST CELEBRATED SUCCESSES WAS winning freedom for three Chicago men who were serving life terms for the murder of Lori Roscetti, a medical student at Chicago's Rush Medical College. Roscetti was raped and murdered in 1986.

Omar Saunders and cousins Larry and Calvin Ollins were found guilty in Roscetti's death. Another defendant, Marcellus Bradford, testified against Larry Ollins and received a 6½-year sentence.

Saunders had sent Zellner a letter asking for help. The men claimed their convictions were based on coerced confessions, and that a Chicago crime lab technician lied about the evidence against them.

Zellner's office gets about 300 letters a month from inmates seeking legal representation. She handles wrongful convictions pro bono, and only takes cases where there is significant DNA evidence in the inmate's favor. Zellner estimates that she agrees to represent 1 percent of the people who write to her.

"I'm not interested in the long, post-petition convictions where they really have no chance," she says. "I'm looking for those cases where you've got somebody without an extensive criminal background, who has been framed."

Saunders' letter said he and the others could not have been linked to the crime through their blood type as the crime lab alleged. Roscetti's killer had type O blood, identified through semen. But Saunders said the four men do not have any blood-type enzymes in their non-blood bodily fluids, a circumstance that is quite rare.

"I thought that if what he was saying was true, then he could not possibly have committed the crime," Zellner says.

She hired a DNA expert, who examined the police lab notes and found that none of the four men's blood types matched semen samples from the crime scene. Also, hair at the scene did not match any of the four.

"So they couldn't have done it," Zellner says. Saunders and the Ollinses were freed last December after almost 15 years in prison. In February, Chicago police arrested two men whose DNA profiles match evidence in the Roscetti murder.

Zellner spent about \$250,000 on the case, including her billing rate and fees for expert testimony. She is representing Bradford, Saunders and the Ollinses in a civil rights action against the lab technician, the city of Chicago and Cook County. The suit, *Ollins v. O'Brien*, No. 02 L 000749, was filed in Cook County Circuit Court

in January. Zellner hopes the civil action will get her more attention and help build a national practice on civil rights cases arising from wrongful convictions.

"I think this might be the trial where it's of such national importance that I can affect this area of law," she says.

A self-described political independent with conservative leanings—she likes to go target shooting and believes in the death penalty "in theory"—Zellner says she dreams of being seen as a female Clarence Darrow. As she puts it, "I really think of myself as the attorney for the damned."

If ever someone was damned, it may have been Zellner client Larry Eyler, who came to be known as the "highway killer" after the bodies of some of his victims were found alongside highways. He was a native Hoosier who favored Marine Corps caps and drove a pickup. In his early 30s, Eyler started picking up men under the guise of consensual sex, with a bit of bondage thrown in. Once he got the victims to a secluded area and handcuffed them, Eyler would brutally beat the victim, then kill him. Most of his victims were found with their pants pulled down and were disemboweled.

Zellner, who at the time was working at a business litigation firm, got the case from the Illinois Capital Resource Center in 1991. She was interested in doing a capital matter at the urging of her law clerks, and Eyler's case had just been returned to the center by a University of Chicago law professor.

JAILHOUSE CONFESSIONS

Eyler was on death row for one murder, which he said he did not commit. However, over the course of a year and a half, he eventually confessed to Zellner that he did commit 21 other murders.

"He would give me one confession, then he would kind of shut down again, so it was back and forth." She says representing him "was difficult because I knew all of the things he had done."

To a certain extent, Zellner thinks Eyler confessed to her because he had AIDS and knew he would not live long. He died at age 41 of AIDS-related complications in 1994.

Two days after his death, Zellner went public with the information at a news conference. Eyler's confessions matched the physical evidence found at the murder scenes, and eventually the 21 cases were closed. "As a defense attorney, you don't have to do something like that," she says. "You can just let somebody die and write a book about it."

A book was written about Eyler. But *Freed to Kill: The True Story of Larry Eyler* was published by author Gerald Kolarik without Zellner's participation.

Despite her client's confessions, Zellner is confident that, had Eyler lived, she could have gotten him a new trial because there were significant conflict-of-interest matters in the first trial.

The Eyler experience caused Zellner to rethink who she was willing to represent. After Eyler died, she decided that she would not handle a criminal matter unless she truly believed in her client's innocence.

"That case led me to the conclusion that I was not cut

out to be the typical criminal defense lawyer," Zellner says. "Although I'm a very good attorney, I have no interest in representing criminals who are guilty. I think that's fine, and I applaud people who do that, ... but I'm not one of those people."

She told the Capital Resource Center her decision. Andrea D. Lyon, who then directed the center, says Zellner is different from most attorneys who take capital matters.

"She's a very contained person, ... which is not common in criminal defense lawyers," Lyon says. "But in terms of the general quality of her work, it's tremendously high. It's very thorough, and she did a great job of investigating a case without having to be told or coddled or threatened."

"This part of my practice is only a tiny part; I spend 90 percent of my time on medical malpractice cases," Zellner says. "But people always get caught up when you mention a serial killer, and no one wants to talk about high blood pressure, right?"

YOU'VE GOT TO WALK THE WALK

Zellner compares her work philosophy to that of Barbara Cook, the 70-something cabaret diva and Broadway star.

Cook maintains that to sing classics like "Come Rain or Come Shine," you have to have enough life experiences to understand the lyrics. Zellner, 52, says the same is true for trial lawyers.

"I've represented serial killers, children with cancer and women who have been raped. I've just really had an enormous range of experience with people, and it's rewarded me," Zellner says. "If I were a layperson, I'd

A Perry Mason Moment

In 1992, Kathleen Zellner agreed to represent another death row inmate—Joseph Burrows, who was convicted in the murder of a southern Illinois farmer.

The victim, William Dulin, was in his 80s and in poor health, Zellner says, yet there appeared to be a struggle at the crime scene. Burrows was a large man, and Zellner reasoned he could have killed Dulin with little effort.

"I was positive that he had not committed the murder, and I became more positive that a woman had committed the murder because of the struggle that took place," she says.

Gayle Potter, who admitted an involvement in the murder, was Zellner's suspect. "She was kind of slight and looked like a librarian," Zellner says.

Potter had testified at Burrows' original trial that Burrows and another man, Ralph Frye, killed Dulin. Frye corroborated her story in a deal to avoid the death penalty. But Zellner managed to uncover a letter Potter wrote to a friend, a letter asking that person to back up her story.

The result was a moment out of *Perry Mason*.

"I got her to confess to the murder on the stand," Zellner says. Burrows was given a new trial and found innocent.

want someone like me representing me."

That may sound like bragging, but Zellner presents herself with self-confidence, not arrogance.

Zellner was born in Texas, and her family moved to Oklahoma nine years later. Being a lawyer was not in her original career plan; she was planning on a master's degree in history. But at the urging of her husband, Robert, a private stock trader with a doctorate in economics, Zellner enrolled at Northern Illinois University College of Law.

"He thought I'd be a very good lawyer," she says. "He's always been very intuitive about me."

Zellner graduated from law school in 1981, and clerked for U.S. District Judge George W. Lindberg in Chicago. After that, she went to work at a suburban firm doing plaintiff and criminal defense work. She often second-chaired cases, which gave her the opportunity to learn trial preparation firsthand.

"Because women do a lot of the detail work in firms, I was doing all the detail work that it takes to be a great trial attorney," she says.

After two years, Zellner joined Hinshaw & Culbertson, a Chicago firm known for its insurance-defense work. She mostly represented hospitals and built cases against physicians whom her clients wanted to dismiss.

After a while, she got bored. "I knew I could run a business well, I wanted to have my own cases and I didn't want to have somebody telling me what to do," Zellner says. "And I knew I could get business. I could tell by the way that clients reacted to me that people form strong attachments to me."

E. Michael Kelly, a Hinshaw partner, has worked with Zellner as both opposing and co-counsel. "She's very detail-driven," Kelly says. "She doesn't waste a lot of time on silly motions and she tends to have a pretty good idea of what a case is worth. With Kathleen there's no wasted energy and no phony toughness."

Zellner left the defense firm for a smaller business litigation shop, which offered her a partnership. After a few years she opened the firm bearing her name in west suburban Naperville. She lives 10 minutes from her office, and prefers to practice in a town that offers wide open spaces rather than a big city like Chicago, about 40 minutes east.

"And you can't really drop by and see me here," she says. "If I was on LaSalle Street [in Chicago], you'd have everybody in the world dropping by."

Zellner switched to plaintiff work 10 years ago; medical malpractice actions fund her wrongful conviction work. She also handles some criminal cases on a retained basis at a billing rate of \$300 an hour.

PERSONAL PREPARATION

ZELLNER SAYS SHE USES SIMILAR METHODS TO PREPARE for civil and criminal trials. She does all her own depositions, generally limiting them to a few questions. Lawyers often give away too much during the deposition process, Zellner says, and she'd rather use the procedure to garner information.

"I don't want to put the witness in a defensive posture, and it's remarkable what gets disclosed," she says.

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IN RE TECHNOLOGY

WINDOWS REVISITED

year or so after their initial release. Quit wasting your time on Windows-XP. Windows2000 has support for SSE2 [instructions allowing software developers to provide performance enhancements for graphics software] and although it's not as user-friendly in some ways as XP, it's been tested and refined for nearly two years.

"There is no good reason to even look at XP for another year unless you enjoy being frustrated. For most intents and purposes, XP is essentially Windows 2000, but slower. Software that supports the Pentium4 SSE2 instruction sets is virtually nonexistent at this point, anyway. Why give yourselves a headache over nothing?"

B I have had none of the headaches you experienced, and I love the WindowsXP home edition. My Linux firewall is on a separate machine at home, but I had no problems getting it to work with XP.

Also, I enjoy XP's automatic screen slide show of any directory containing pictures. I like how pictures in

any directory can be printed intelligently—all pictures four to a page, for example. I like the ease and usefulness of logins that work for multiple users on one computer. CD burning is built-in.

H I am sufficiently hooked—stubborn might be a better word—not to want to downgrade to 2000 at home. Meanwhile, I'll continue to knock my head against the wall.

But let's keep XP off our office machines. Maybe we should consider Lindows, a version of Linux that claims it will run Windows applications: www.lindows.com.

B While I am not willing to rule out XP for the office, right now the office works smoothly, so sticking with Windows2000 makes sense. Soon it will become difficult to purchase a new machine without WindowsXP.

H If there is a message here, it is this: Don't fix it if it isn't broken. I thought I already knew that but got stuck in, anyway. If only I could push a button and go back to 2000. ■

ZELLNER *Continued from page 58*

That tactic is the opposite of what she was taught as a defense lawyer.

"We were told to make plaintiffs feel really bad, and if they went to trial, it would be a miserable experience," Zellner says. "I've found that doesn't really work."

While getting ready for trial, Zellner relies on a fairly rigorous organization plan. Her trial notebooks match up perfectly with her evidence boxes, and everything is printed in block letters so that she can easily read the documents during trial.

"I'm very disciplined," she says, "that's the key thing."

Zellner believes discipline is only part of her success. "The key thing in being a trial attorney is you have to be totally honest and believable," she says. "There isn't a single case I've ever done that I'm not 100 percent sure what I told the jury is really true."

Besides using her broker friend, hairdresser and personal shopper, Zellner has an informal network of lawyers and judges for more technical advice. She also looks to her law

clerks, most of whom are recent graduates from nearby Wheaton College and are planning to attend law school. Previously, Zellner has had as many as five associates, but she found that the nonlawyers were more useful.

"They were smarter, they were not trained the wrong way to think and they were much more like jurors," she says.

Zellner looks down on trial advocacy programs, which teach lawyers how to improve courtroom work. She's never taken any such class and has turned down requests to teach them.

She doesn't use jury consultants but often puts on mock trials. And she has watched a video of celebrated defense attorney Gerry Spence, which she liked for its promotion of passionate advocacy.

But basically she believes the best trial lawyers, who have great rapport with juries, come by their talents naturally. "I'm not sure you could teach someone to do this," Zellner says. "I don't think you can teach someone to believe in stuff and be sincere." ■