Trail of blood to death row

❒ Zeigler enters the final phase of appeals hoping to get DNA testing.

Editor's note: The following is the second in two articles on William "Tommy" Zeigler Jr., a death row inmate who still maintains his innocence 25 years after the crime. This week: What the defense characterizes as inconsistencies in the prosecution's case, the lengthy appeals process and Zeigler's attitude as described by his lawyers.

Jean Palombo-Gonzalez

ORLANDO

As William "Tommy" Zeigler Jr. sits on death row, his original trial attorney can't help but wonder what if his client took a plea 24 years ago.

"The prosecution offered Tommy a plea deal," recalled Terry Hadley, Zeigler's friend and former counsel. "If he would have taken it, he would be walking out of jail in February, and he never would have been on death row."

Zeigler was convicted of the Dec. 24, 1975, quadruple homicide of his wife, Eunice, his in-laws, Perry and Virginia Edwards, and friend and customer, Charlie Mays. The murders took place in Zeigler's furniture store, located in his hometown of Winter Garden.

Although the jury recommended a life sentence following a guilty verdict, the judge on the case sealed Zeigler's current fate by handing down a death sentence. He sits on Florida's death row at Starke.

Tested like Job

The prosecution in 1975, the 9th Judicial District in Orlando, consisted of now retired State Attorney Robert Eagan and Lawson Lamar, the current state attorney for that district. They contend they got the right man. Zeigler has always pleaded his innocence, and after examining the case, Hadley said he also believes in Zeigler's innocence.

Time is running out for Zeigler. With many appeals exhausted, his "last shot" appeal was put into place Nov. 27 with the 11th District Court of Appeals in Atlanta.

With time running out, Hadley said he cannot shake a feeling of guilt for not having his client take a plea. He is quick to add that Zeigler never would have made the move, however. Vernon Davids also served on Zeigler's original defense team. He said Zeigler would not confess to a parking ticket he did not receive.

"When the plea came up, Tommy said, 'I'm not guilty and I'm not going to have my name as a convicted murder.' And I don't blame him a bit and stand behind him," Davids said. "Tommy believes he is being tested. I believe he truly is. They may kill Tommy, they may execute him, but they will never take his faith."

Inconsistencies

To help prove Zeigler's innocence, he and his defense team are trying to get an appeal that would allow them to conduct DNA tests on evidence from the crime scene. Randy Means, executive director of the state attorney's office for the 9th circuit, is convinced that Tommy Zeigler is the "murderer," and that "blood sampling won't do anything to show different."

But according to Davids and Hadley, the case is not as cut and dried as the prosecution contends.

"This case was loaded with unfair tactics by the prosecution," said Terry Hadley, Zeigler's original lead trial attorney. "Tommy Zeigler did not get a fair shake from investigators or the judicial system.

"If there was ever a case that could warrant a moratorium on the death penalty, the Zeigler case would be one," Hadley continued.

The judge

Before the case was put to trial, a six-hour preliminary hearing was held Jan. 16, 1976, in which Judge Frank Kaney presided. He released Zeigler, a furniture businessman, on a $40,000 bond. The decision was considered an outright release from custody given Zeigler's financial worth at the time estimated to be $1 million.

According to court records, when then Assistant State Attorney Lamar protested, Kaney stood firm.

In an interview the week after the preliminary hearing ended, Kaney said the state did not present a clear case against Zeigler.

"They showed me very little hard evidence — they didn't show me enough to deny bond," Kaney said, according to the 1992 book, "Fatal Flaw," by Phillip Finch, published by Villard Books, New York.

Although not much more hard evidence would be produced at trial, Kaney did not preside at the trial. Instead Judge Maurice Paul, now a federal judge in North Florida, would preside and he was not a stranger to Tommy Zeigler.

A year before the murders, Zeigler was a key defense witness in a trial against Andrew James, a 54-year-old black man charged with selling marijuana to an undercover agent. James was a friend of Zeigler's, and was the only black man in West Orange to hold a full license to sell liquor.

Zeigler vouched for James' character and helped his lawyer, Terry Hadley, to organize a defense based on the theory that James was being framed. Hadley said that defense would have been impossible without Zeigler.

One of the witnesses for the prosecution was Maurice Paul, who was a former attorney for the Beverage Department and was a circuit judge at the time. For a sitting judge to testify as a character witness was unusual, according to Hadley. What was even more confusing was seeing that judge preside over Zeigler's trial, he said.

Early in the trial, the defense asked Paul to disqualify himself from the Zeigler case because of his involvement in the James case, which Hadley described as bitter and rancorous.

The motion included affidavits claiming that Paul's demeanor in court, his voice and manner showed prejudice against the defense. Paul denied the motion. When the defense asked a second time, he again denied it.

Zeigler's account

Zeigler's version of the events on Dec. 24, 1975, has not changed.

He said he entered the store in the dark because the lights would not turn on. He was then assaulted at the back of the showroom. He struggled with at least two assailants, but in the darkness, and having lost his glasses at the beginning of the fight, he couldn't identify them, he has said.

His memory of the fight was hazy, he said. He had perhaps fired the automatic .22-caliber weapon that he carried with him. He remembers ejecting a jammed cartridge from the little pistol.

After he was thrown into the hallway, he managed to pull a Colt revolver from the drawer

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ZEIGLER

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there. He might have fired it, maybe several times, but he didn't know whether he had hit anyone. He was shot in the abdomen.

After he was shot, and passed out, he woke up on the floor and crawled around in the darkness trying to find his glasses. Eventually, he got his spare pair from the desk in his office. He remembered Officer Robert Thompson bringing him to the hospital.

Except for having fired in self-defense, he knew nothing of the four deaths in the store.

The state believed his gunshot wound was self-inflicted. The prosecution theorized that Zeigler shot his wife and in-laws, left the store to meet up with two men he was going to "frame" for the murder. He then returned to the store to meet Charlie Mays, shoot him and then shoot himself to make it appear that he was shot in a robbery.

Guns and witnesses

The state based that theory on testimony and blood splatterings on the walls.

According to defense attorneys, the state's case was full of inherent inconsistencies — some inconsistent with testimony actually offered by the state and some with testimony that the state suppressed and hid from the defense until after the trial.

Key witnesses for the prosecution were Edward Williams, a black man who had known the Zeigler family for almost 20 years as a customer and a part-time employee, and Felton Thomas, a local migrant worker who did not know Zeigler.

Williams went to the Orange County Sheriff's office in Orlando around midnight on Christmas morning. He claimed that Zeigler pulled a gun on him outside the store where the murders took place and threatened to kill him. Instead, Zeigler changed his mind and gave Williams the weapon. Williams then put it the gun in his pocket and ran away.

Although Zeigler had supposedly murdered four people and been involved in a bloody struggle with two of the victims — Charlie Mays and Ziegler's in-law Perry Edwards — Williams never mentioned seeing blood on Zeigler.

No one ever answered the question — why would a supposed ruthless man such as Zeigler hand the murder weapon to Williams so Williams could turn him in to the police. Although Williams had what turned out to be the gun used in the murder, he was never considered a suspect.

Ownership of that gun and others used in the crime were verified to belong to Frank Smith, a friend of Williams. Although Smith had never met Zeigler, he claims the guns were purchased at Zeigler's request.

Vernon Davids remembered another peculiar aspect about Williams that evening. The clothes Williams wore that evening were put into evidence. The defense wanted to test it for blood and gunshot residue. Davids does not believe these were the clothes Williams wore the evening of the murder.

Although Williams had placed a recently fired gun in his pocket, he had no gun residue in his pockets. The clothes looked new, according to the defense. Also, Davids recalled Williams' shoes. Although he had walked around in the shoes extensively that evening, the soles were perfect. Davids added there was an adhesive price tag on the bottom of the shoes.

"I couldn't believe that those shoes were ever used," he said.

Felton Thomas' testimony is also full of holes and inconsistencies, defense counsel said.

Thomas supposedly traveled with Mays and Zeigler to an orange grove on Dec. 24. The time was estimated to be after Eunice Zeigler and her parents were killed in the store. Thomas claims that Zeigler asked him and Mays to fire guns, which were used during the murder, into the groves to test if they were working. The prosecution claims Zeigler went to those great lengths to get other people's fingerprints onto the guns. But the guns were wiped clean of fingerprints.

Again, although Thomas had seen Zeigler after three of the murders were committed, he never mentioned blood being on Zeigler's clothes.

A buried tape

Several years after the trial, the defense discovered witness testimony that should have been included in the trial.

In April 1987, Zeigler's lawyers made a Florida Public Records Act request for the files of the state attorney in Orlando. In the files they discovered a tape-recorded telephone interview of John Jellison.

Jack Bachman, a state investigator, conducted the interview on April 30, 1976. The state attorney's office failed to disclose anything about this interview before trial or even in answering requests for disclosure in conjunction with Zeigler's appeals.

According to the taped interview, Jellison, his parents and his sister were staying at a motel next to and behind the Zeigler furniture store on Christmas Eve 1975. They said they witnessed some of the happenings outside the store. Jellison told Bachman that at about 9 p.m., he and his family saw a police car at the back of the store. They said a police officer was aiming his gun toward the store over the top of the car, and had then heard shots. They said other police cars arrived on the scene after the shots.

In response to Jellison's recollections, Bachman said, "As long as you heard the gunshots after, you know, you saw the police car, that wouldn't help us a bit."

When Jellison asked if Bachman wanted to interview his mother, Bachman replied, "Not unless, you know, you all get together and decide you heard those gunshots before you saw the police car. In that case, we'd give you a free trip back to Florida."

In the next petition filed with the State Court of Appeal, Zeigler's attorneys raised the issue of the Jellison tape and the fact that the state hid the tape from the trial court, the defense and from discovery, during trial and all the appeals.

The Court of Appeal held that the issue should have been raised before Jan. 1, 1987, the time period for Zeigler's state claims for relief. Although Zeigler's lawyers said the state had hid the tape until April 1987, the court denied relief and the Florida Supreme Court affirmed the denial.

As a representative of the state attorney's office in Orlando, Means would not comment on any of the specifics of the case. Although he said many people were questioned

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Retired senator joins election task force

Tom Tracy

WEST PALM BEACH

Retired Florida state senator and Catholic philanthropist Phillip Lewis — recently appointed to Florida Gov. Jeb Bush's new task force on voting procedures in Florida — said this may be one committee he looks forward to.

"I've been on a lot of committees, but this one I will enjoy; we could really do something with this," Lewis said from his home in West Palm Beach.

Following one of the closest presidential elections in U.S. history, Gov. Bush signed an executive order last week creating the 21-person Task Force on Election Procedures, Standards and Technology.

Lewis, who served for two years as a democratic president of the Florida Senate 20 years ago and who is active in a host of Catholic associations and charities, joins a group of nine other Democrats, 10 Republicans and one independent. Four of them are Florida legislators.

Jim Smith, a former attorney general and secretary of state in Florida, and University of Miami President Tad Foote, will chair the task force. The group will meet no later than Jan. 3, and is being asked to compile a report to state legislators in March.

"Obviously, this has to be pretty quick, and then we will have five weeks to get a report out," Lewis said. "My guess is we will hit the high points — the voting equipment, the election dates, the overseas votes and whatever can be done in the way of improvements."

Lewis speculated it will be an expensive proposition to revamp the state's voting mechanisms. He predicted some of the concerns will no doubt be addressed at the federal level.

Nevertheless, he has remained an optimist throughout the post-election confusion in Florida. He said the situation was an "extraordinary test of our constitution."

Lewis does regret, however, that Theresa LePore, the embattled elections supervisor for Palm Beach County and designer of the now-infamous "butterfly" ballot, was criticized following the election.

"This type of thing, in one form or another in terms of problems with the election, has been going on for 200 years, so now finally its getting some attention," he said. "The media would have you think we invented (these problems) here in Florida."

George Cvejanovich, a professor of political science at Barry University in Miami, predicted the governor's new task force will be a priority next year.

"It looks like the optical scanning systems that were used in a few counties worked pretty well, so there is a staring point," Cvejanovich said.

As for how the governor himself will fare in the wake of a close election which put his older brother in the White House remains unclear, he added.

"As for Jeb's future, two years is a long time in politics, so it is hard to call it," Cvejanovich said, adding that some citizens were already unhappy about smaller matters, including his One Florida initiative to do away with racial preference for college admonition in Florida.

Tallahassee trial attorney Dino Kitchen, who worked with Vice President Al Gore's attorneys David Boise and Dexter Douglas, said that "not one shot was fired, the system worked."

> *"(W)e will hit the high points — the voting equipment, the election dates, the overseas votes and whatever can be done in the way of improvements.'*
>
> – Phillip Lewis

"If there was criticism, it was directed to the Supreme Court of the United States," said Kitchen, who is a member of Blessed Sacrament Parish in Tallahassee.

"We are bound to take a hard look at some things that need to be taken a look at (voting mechanisms), but hopefully some good will come of this," he said.

As for the standing of the justices of the Florida Supreme Court, Kitchen said they were outstanding.

"I am not worried about them one bit," he said. "If there is anything sad, it's the political side that tries to bash."

Death row inmate hopes appeal will grant the right for DNA testing on blood evidence

■ ZEIGLER

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about what they saw the night of Dec. 24, 1975, he said he had no personal knowledge about the Jellison tape. He described motions such as that as "smoke screens" put up by the defense to delay the execution.

"Tommy Zeigler has aggressively used the courts to save his life," Means said. "He should not have been on death row for as long as he has been. To me that is an injustice."

Waiting 24 years

The 1987 appeal concerning the Jellison tape was not the first or the last appeal made by Zeigler and his lawyers.

John Pope is the lawyer in charge of Zeigler's latest appeal. Pope works in New York City with Hogan & Hartson, a law firm that has been working on Zeigler's appeals pro bono since 1991.

Pope describes the motions not as smoke screens, but as important issues that need to be observed by the court.

"From a legal perspective this is a case in which somebody did not get a fair shake from the legal system," Pope said. "Regardless of what people may think about the evidence, whether it establishes his innocence or raises questions about his guilt, there are inconsistencies there that need to be addressed."

But why has Zeigler been on death row for more than 24 years?

The answer according to Means is the defense's motions for appeals. But Pope said the delay of the appeals is not the fault of the defense.

Zeigler was convicted in 1976 and the first appeal was drawn soon after the conviction. But that appeal was not decided until 1981 because of delays made by the state, according to Pope.

"There is an understandable unwillingness by the state to stick by the prosecution during the appeals," Pope said. "This case is not likely to succeed in state court. Those courts don't want to see the errors made by the state. It is not that there is anything bad about the state judges, they just wouldn't see the problems."

Currently Pope is working to get a certificate of appeal on several issues about the Zeigler case. On Nov. 27, Pope submitted an appeal to the 11th U.S. Circuit Court of Appeals in Atlanta.

He said it is the first step in the last set of appeals that Zeigler can make. If Zeigler loses in the federal court, his only chance against a death warrant might be clemency from Gov. Jeb Bush.

At press time, Pope had not received word about the appeal. He said he does not expect to hear anything until January.

One of the key issues Pope raises is the value of a DNA on the blood found on Zeigler's shirt. He said blood is a central issue in the case and was a key part of the prosecution's case.

"It is not important whether the conviction is final or not; what is important is whether the right person is convicted," Pope said. "A proposal to do DNA testing is not against what the state claimed. Results could come back and confirm everything they said or it could prove doubt of Zeigler's guilt."

Pope said the state would not have to pay for the DNA testing because there are donors that would pay for the test on Zeigler's behalf.

"I've got to maintain a level of optimism about this appeal. I am disappointed about the lack of success thus far, but I think the appeal will be different in the federal court," he added. "I think DNA testing is so important in this case because it will get some answers for questions that have plagued the case from the beginning."

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