

TESTIMONY BEFORE THE DEATH PENALTY REFORM STUDY
COMMISSION—NOVEMBER 13, 2006

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My name is Larry Golden. I am an Emeritus Professor of Political Studies and Legal Studies at the University of Illinois at Springfield and I am Co-Director of the Downstate Illinois Innocence Project located at the University of Illinois at Springfield. We thank you for your good work thus far in capital punishment and criminal justice reform. And we thank you for inviting us to speak today as you assess the state of these reforms.

The Downstate Illinois Innocence Project has been in existence for 6 years. Its work has focused on providing investigative resources to individuals who are serving long prison sentences but where there is substantial evidence that they are actually innocent. Most of the cases the Project finds itself working on are capital eligible cases where the death penalty was withdrawn during the early stages of investigation.

Most recently the Project found much of the evidence that was used in the retrial of Julie Rea Harper, charged in the 1997 murder of her 10 year old son Joel in Lawrenceville, Illinois; Mrs. Harper was found not guilty in her retrial in July of this year after serving two years in prison after her first trial. We have also been assisting Herb Whitlock, the co-defendant of Randy Steidl. Randy was finally released from prison for a double murder in Paris, Illinois due to a lack of credible evidence and ineffective assistance of counsel. Mr. Whitlock, who did not receive the death penalty in his original trial, remains in prison despite the fact that he was convicted on the same evidence as Randy Steidl.

I start with somewhat of a challenge to you—I will posit that the success of your work has contributed to the number of potentially innocent people who are being put into prison in Illinois.

- As I indicated, the Downstate Illinois Innocence Project thus far has dealt primarily with capital cases where the death penalty has been withdrawn in the early stages of investigating the crime.

- Each of the cases we have been involved in has involved circumstantial or questionable evidence; there has been virtually no direct evidence—forensic or personal—that would implicate the defendant.
- In each of the cases there was an unwillingness of authorities to look deeply for alternative evidence.
- In each case, the effect of the prosecutor’s withdrawal of the death penalty immediately interfered with evidence gathering and the quality and extent of legal representation.
- In each case the defendant was found guilty despite the weakness of the evidence

It is fair to hypothesize that had the defendants been charged with the death penalty the ensuing resources for investigation, representation and trial would likely have resulted in findings of innocence.

It is also fair to hypothesize that downstate prosecutors, knowing that defendants would be at a disadvantage due to their inability to access resources from the Capital Litigation Trust Fund and some of the other reforms for capital punishment victims—such as the guarantee of quality, experienced legal representation, strategically withdraw the death penalty.

The Julie Rea Harper case serves as an excellent example of this problem. Mrs. Harper’s son Joel was killed in the early morning hours in her home. Prosecutors immediately focused on Julie, rejecting alternative evidence and turning evidence that could have exonerated her against her—such as the wounds she suffered in the struggle with the intruder, which the state argued were self-inflicted. Her crime appears to be that she was in the same house with her son when he was killed; and therefore no one else could have done it.

After Mrs. Harper was arrested, she requested the two experienced attorneys guaranteed in capital punishment cases. The prosecutor withdrew the death penalty and Julie was left with a public defender who never tried a capital murder case; and she lost the investigative and other resources that could have been accessed through the Capital Litigation Fund.

Julie was eventually found guilty despite there being no physical evidence linking her to the crime, but significant physical evidence that supported her report of what happened. Yet with the help of investigation by the Downstate Illinois Innocence Project a serial killer in Texas was identified as having been in the area at the time of the murder and he confessed to committing the crime. Other parts of the investigation found that local police lied about evidence in the case and that authorities did little to pursue the alternative evidence that would have proven Julie innocent. In a continuation of this focus on Mrs. Harper as the only possible perpetrator in this case, state prosecutors issued a statement following Julie's acquittal that no further investigation would be done, leaving the murder of a ten year old boy unsolved.

The point of all this is that something needs to be done to equalize the playing field—to take away the tool that prosecutors are using to put defendants in weak capital cases at a major disadvantage to defend themselves. While many changes may need to be made to the way capital cases are approached, we urge as a start that the Commission look carefully at the effect of the reforms and recommend to the legislature that they be extended to capital ELIGIBLE cases so that withdrawal of the death penalty does not result in innocent individuals being convicted and given long prison sentences.

I return to my original point with regard to capital punishment reform: the reforms have succeeded in not only providing meaningful protection to those who are facing capital punishment, but also having the result of prosecutors not asking for capital punishment in cases where prior to the reforms they would have. While there may be fewer prosecutions under the death penalty, potentially innocent individuals are being convicted because they are not facing the death penalty. We are sure that such a consequence is unintended and undesirable in the Commission's view.

I thank you for your time and will be pleased to provide you with more analysis and recommendations if you please.

WORK OF UIS INNOCENCE PROJECT EXONERATES JULIE REA HARPER



Julie Rea Harper thanks the Dominican Sisters

In March of 2002, Julie Rea Harper was wrongly convicted of killing her 10 year-old son. She was denied the benefit of reforms that were intended to protect the innocent. After being charged with capital murder--three years after the crime was committed--and having exhausted her life savings on private counsel, Julie petitioned pro se for the appointment of two capital qualified attorneys to defend her. In response to this, prosecutors reversed their earlier decision to seek the death penalty. This decision was made just four weeks before Supreme Court Rule 416 was scheduled to take effect, which set new standards for representation, by requiring in capital cases the appointment of two attorneys who are specially trained to defend a person charged with capital murder. Instead, Julie was represented by a lone public defender who was outmatched at trial, facing three experienced prosecutors.

In June of 2000, Bill Clutter, now Director of Investigations for the Downstate Innocence Project was contacted by Julie's attorney for appointment as an investigator using the Capital Litigation Trust Fund. Clutter suggested they investigate child serial killer Tommy Lynn Sells. After the decision to seek death was reversed funds for his appointment dried up. Two years later, after watching Julie's story on ABC 20-20, author Diane Fanning wrote to Sells, on death row in Texas for a crime hauntingly similar to that of Julie's son. Sells provided a detailed confession to the murder. The UIS Innocence Project took up her case. The Project interviewed key witnesses who corroborated Sells' confession. This evidence convinced Texas Rangers Sells was the killer. As in the case of Rolando Cruz, prosecutors ignored the confession of the real killer and sought to re-try her after her conviction was vacated. She was represented by the Blume Legal Clinic at Northwestern University Law School. Julie was acquitted on July 26, 2006. She hopes to continue work toward her Ph.D, now that she is free.