

# HOT LIST

## PRO BONO

A SPECIAL REPORT

## This win required a trip to the Legislature

Jenner helped a pro se appellant win a chance for redemption, and set precedent in the process.

BY LISA HOLTON

**A**s of late December, Patrick Pursley, an Illinois inmate found guilty of first-degree murder in a 1993 attempted robbery and sentenced to life in prison, was waiting for results of a post-conviction ballistics test result that could exonerate him.

So were Jenner & Block attorneys Andrew Vail, Robert Stauffer and Kyle Palazzolo and staff members of Northwestern University School of Law's Center on Wrongful Convictions.

All helped Pursley in his 14-year effort to get the state to retest the ballistics evidence—an uphill battle that included multiple appeals despite Pursley's successful petition to the Illinois Legislature to write post-conviction ballistics testing into the state's existing law.

The effort paid off in a big way on Jan.

26, 2011, when the Jenner team convinced the Illinois 2d District Court of Appeals to overrule a lower court and order post-conviction ballistics testing in Pursley's case. The court cited the possibility that the testing could provide new, material evidence relevant to Pursley's claim of actual innocence. It marked a precedent: the first time post-conviction ballistics testing would actually be performed under Illinois state law.

Vail, who started the case while an associate and is now a partner working in commercial, antitrust and Employee Retirement Income Security Act litigation, said Pursley was a model defendant who had worked tirelessly on his own behalf. "The case came to us through [the Northwestern Center], and we first took it on because of Patrick himself," he said. "His story is so powerful, and he's done good things in and around

the prison, and he's worked very hard on his case. The second thing was that this was going to be a case of first impression under the post-conviction ballistics statute, which could set a major precedent for other inmates."

Pursley had been in court for years, filing three separate pro se motions—each denied by the trial court—and three subsequent visits to the appellate court—which affirmed those denials.

Success came only after lobbying efforts on Pursley's behalf persuaded the Illinois Legislature to change the state's post-conviction evidence testing laws in 2007 to allow ballistics testing. After that, Jenner and the center assisted with Pursley's fourth pro se motion. Notwithstanding the new law, the trial court again rejected the petition, only to be overruled—finally—by the appeals court. Now, Pursley's evidence

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TODD WINTERS

is back in the state's crime lab being tested with technology that's presumably more advanced than was available at the time of Pursley's conviction.

Vail said that's an important point. "We realize we're adding more work to an already overworked system, but in the years after people are convicted of crimes, the technology that convicted them is evolving," Vail said. "It's not just about reversing a wrongful conviction. It means uncovering evidence that may find the person who actually committed the crime."

### JENNER'S RECORD

"This was a case that could have been handled by a number of other law firms, but I chose Jenner because we knew they'd be in for the long haul," said Steven Drizin, director of the Northwestern center. "We faced a hostile court when we went back in, because no court likes a do-over.

Prosecutors make it difficult to reopen old cases," even though Pursley's team had the new statute to work with.

Drizin credited Jenner for its "strong commitment to wrongful-convictions work," pointing to the mid-December reversal for the thrice-convicted Juan Rivera for the sexual assault and first-degree murder of an 11-year-old in 1992.

Jenner partners Vail, Terri Mascherin and Thomas Sullivan joined Rivera's defense team in 2009 and were able to prove after 12,000 hours a lack of physical evidence at

the crime scene and problems with Rivera's signed confessions. His second conviction was vacated after the Northwestern center produced fresh test results that proved his DNA was not found in the victim.

Jenner's pro bono program dates to the 1950s and the work of former federal court judge Prentice Marshall, then an attorney with the firm. The firm's first death penalty case was 1968's landmark *Witherspoon v. Illinois*.

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According to Esther Lardent of the Pro Bono Institute, "What's particularly striking about Jenner is that they're a firm with a remarkable pro bono culture. It's in their DNA. We get excited when we see an attorney move around who's been at Jenner. They carry that culture with them."

*Lisa Holton is a freelance reporter in Chicago.*