

Justice Delayed is Better than Justice Denied



Donald G. Rockwell

As you can easily guess, I have seen and met untold numbers of our colleagues over the last several months. All have their own interesting, if not unique, stories. Some stories are more interesting than others; some, like the one I am about to retell, are downright compelling.

At last year's State Bar of Michigan NEXT Conference in Detroit, I attended the Representative Assembly meeting and saw F. Martin Tieber, one of the nation's top criminal appellate lawyers who hails from East Lansing, receive the *Unsung Hero Award*.¹ It was then that I first became aware of Tieber's efforts on behalf of Dennis Tomasik, who was found guilty of first-degree sexual assault of a child under the age of 13 in Kent County in 2007. I was impressed with the brief synopsis of Tieber's work that preceded presentation of the award, but admit I wasn't fully aware of what Tieber had done for Tomasik.

I didn't give the matter further thought until weeks later. At a dinner and award presentation for the Women Lawyers Association of Michigan, I met Mary Chartier, a criminal defense colleague from Lansing. While chatting before dinner, Chartier mentioned she was involved with a criminal exoneration of Dennis Tomasik. At first, I didn't

connect the Tomasik matter with Tieber's award, but the memory finally came to me.

I've always had a great curiosity about innocence and exoneration projects around the country. Somehow, I didn't expect that a local example of such a project would come to my attention and on separate occasions. I knew I needed to take a closer look at this particular case, and below is a cursory view of the complexities associated with the Tomasik matter.²

In 2006, a 15-year-old boy accused 42-year-old Dennis Tomasik of sexual assault. The boy made the accusation shortly after being caught on videotape stealing money from a purse at his high school. The alleged theft was one more incident of years of behavioral issues for the boy, which included suspected suicide attempts.

The sexual assault claims ostensibly began when the boy was six and visited Tomasik's son at the family's nearby home. The boy claimed that the assaults continued over the next two years until he stopped visiting the Tomasik home. At one point, the boy claimed there were more than 300 assault incidents. However, over the course of police interviews, the boy's description of the frequency of the alleged incidents varied dramatically. During one interview, the boy claimed he was raped on only two occasions; later he claimed he was sexually

assaulted approximately three times a week over the two-year period. The boy's specific descriptions of the physical nature of the assaults also varied in the numerous police interviews.

One of the investigating officers interviewed Tomasik, telling him an investigation had been completed and that the boy's accusations against him had been verified—although Tomasik was not given the specifics of the allegations. Initially, Tomasik denied having any knowledge of the accusations, but later said to the officer, "child molestation or something." Tomasik was arrested and, in 2007, tried on two counts of first-degree sexual assault. He was convicted on both charges even though the alleged victim changed his testimony on several points during the trial. Significantly, the jury was able to see the recorded interview with Tomasik in which the investigating officer repeatedly indicated that the alleged victim's version of the assaults "had been verified."

For the next *nine years*, the case moved through several stages of appeal between the Court of Appeals and the Supreme Court. Marty Tieber and his son, Kris Tieber, represented Tomasik. Ultimately, the Supreme Court allowed the appellate defense team to obtain psychological records of the alleged victim, which revealed a preexisting

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history of learning disabilities including oppositional defiant disorder, a chronic disorder in children marked by defiant and disobedient behavior to authority figures. Despite this new evidence, the trial court denied Tomasik a new trial. Finally, the Supreme Court granted a new trial, ruling that it was improper for the jury to see video of the Tomasik interview in which the investigating officer kept indicating that the boy's version of the assaults had been verified.³

After years of appeals, Tomasik was retried in early 2017. Additional evidence was presented on his behalf and, of course, jurors didn't see the aforementioned video. Tomasik also had new trial lawyers, Mary Chartier and Takura Nyamfukudza. This time around, the jury found Tomasik not guilty after deliberating *only 19 minutes*.⁴

Chartier, along with many others, nominated Martin Tieber for the Unsung Hero Award. In her letter supporting Tieber's nomination, Chartier wrote:

Throughout those 9 years, Mr. Tieber and his son Kris Tieber stood by his side and fought for his release. The vast majority of the work was done pro bono. Mr. Tieber never gave up because he knew

Mr. Tomasik was innocent.... Without his work, there would never have been an opportunity for the retrial and exoneration.⁵

While I reluctantly relate Tomasik's unfortunate story about what can only be described as dreadful justice resulting in years of wrongful imprisonment, I'm pleased to give you the ending of appropriate justice, albeit delayed.

On numerous occasions throughout the more than four decades of my career, I have witnessed several of our colleagues undertake herculean efforts to ensure that justice is obtained for their clients. Tomasik's story is another example of the dedication of the members of our Bar—and one of the reasons I am honored to call these individuals my colleagues. ■

ENDNOTES

1. SBM, *Representative Assembly to Present Awards at NEXT Conference* (September 28, 2017) <<https://www.michbar.org/news/newsdetail/nid/5477>>. All websites cited in this article were accessed June 22, 2018.
2. See the following for background information about this complex case and the source of the quotes cited in this column: Nat'l Registry of Exonerations, *Dennis Tomasik* (February 24, 2017) <<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5102>>; *People v Tomasik*, unpublished opinion per curiam of the Court of Appeals, issued January 26, 2010 (Docket No. 279161) ("*Tomasik I*"); *People v Tomasik*, 488 Mich 1053 (2011) (vacating *Tomasik I* and remanding to trial court for further proceedings); *People v Tomasik*, unpublished opinion per curiam of the Court of Appeals, issued April 22, 2014 (Docket No. 279161) ("*Tomasik II*," on second remand); and *People v Tomasik*, 498 Mich 953 (2015) (reversing *Tomasik II* and ordering a new trial).
3. Marty Tieber has described the duration of this direct appeal as likely the longest in the history of Michigan jurisprudence. For a first-hand account of this appellate history, please see the transcripts and audios of SBM interviews with Marty and his son Kris: *The Tomasik Exoneration, Part 1*, On Balance Podcast (January 16, 2018) <<https://legaltalknetwork.com/podcasts/state-bar-michigan-on-balance/2018/01/the-tomasik-exoneration-part-1/>> and *The Tomasik Exoneration, Part 2*, On Balance Podcast (January 16, 2018) <<https://legaltalknetwork.com/podcasts/state-bar-michigan-on-balance/2018/01/the-tomasik-exoneration-part-2/>>.
4. Nat'l Registry of Exonerations, *Dennis Tomasik and Hogan, Convicted Michigan child rapist acquitted at second trial*, Detroit Free Press (February 10, 2017) <<https://www.freep.com/story/news/local/michigan/2017/02/10/convicted-child-rapist-acquitted/97744412/>>.
5. Chartier letter to SBM nominating F. Martin Tieber for Unsung Hero Award (March 9, 2017) <https://www.michbar.org/file/generalinfo/pdfs/4-22-17_unsung_nom_tieber.pdf>.



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