When a Client's Not Perfect
By: DUNCAN OSBORNE

At first blush, Bruce Wilborn is not the ideal client for a lawyer. The 46-year-old gay man has been incarcerated in Massachusetts since 1985, after being given a life sentence with the possibility of parole.

Wilborn and his partner in 1983, Robert Gonzalez, conspired to kill Stanley Weinstock, a 54-year-old gay man, to collect the proceeds from his will that named Wilborn as the beneficiary.

This was not an impulsive murder. Wilborn and Gonzalez, who were 20 and 24 in 1985, made a pact to kill Weinstock on October 11, 1983. They put a great deal of thought into a plan that they hoped would hide their involvement, and they executed that plan 11 days later.

"It was a predetermined act of both of these people that [Weinstock] should die for their love and for money," said Matthew J. Ryan, Jr., the district attorney who handled the 1985 trial, in a published report from that year. "Either or both of them expected to benefit from Stanley Weinstock when he died, either by way of a will or by an insurance policy."

What drew the attention of a leading gay rights lawyer and a group of law students at Columbia University was how Wilborn was treated when he applied for parole in 2006. Three parole board members made comments and asked questions that suggested that Wilborn was denied parole because he was gay, he charged in a later lawsuit.

"The judge did suggest that the kind of behavior the parole board engaged in would constitute discrimination had it gone to trial," said Keren Zwick, one of six law students who worked on the case with a private attorney and Suzanne B. Goldberg, director of the university's Sexuality and Gender Law Clinic.

At a second look, Wilborn might be the perfect client. He had one disciplinary infraction during his prison time, and that was in 1991. He published two books while incarcerated and is working on a third. His family in Illinois will aid him if he is released.

And then he was wronged by the parole board, his student lawyers assert.

"At the baseline level, there was no rational basis for their negative consideration of his sexual orientation," said Mollie Kornreich, one of the students.

The students did what good lawyers do when they represent clients who have committed heinous and violent crimes -- they fought back.

"Even if you believe your client is guilty, you represent him zealously," said Abram Seaman, who is gay and one of the students.
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When Wilborn was denied parole in 2006, he appealed. That appeal was denied in 2007. He sued in federal court that year, initially representing himself, and then was aided by the Columbia students.

While sexual orientation is not a protected class in federal anti-discrimination laws, that does not mean that government entities are free to discriminate on that basis at will. Wilborn's advocates asserted that his equal protection and due process rights under the US Constitution were violated when the board denied him parole because he was gay.

"It's not unprotected, it just gets less protection," Kornreich said.

Wilborn and the Columbia students won. In 2008, the state settled without admitting to any wrongdoing and agreed to give Wilborn another parole hearing on May 28. Normally, an inmate such as Wilborn gets a hearing every five years, so this latest hearing will come more than two years early.

The students are helping Wilborn prepare for the hearing and they fully believe that he deserves to be paroled.

"The function of a parole system is to recognize that people can rehabilitate themselves," Seaman said. Zwick added, "Our personal feeling is that he isn't likely to re-offend."

While the settlement is not a legal precedent for other courts, it can be cited by attorneys or inmates who find themselves in a similar situation. "It's not binding, of course, but it is persuasive," Zwick said.

Judges can sometimes be reluctant to be the first to rule favorably for a gay or lesbian person, Wilborn's advocates argue. His case, in their view, solves that problem and it is one more step forward for the queer community.

"Cases like this are exciting because they establish incrementally this is not okay, this is not okay," Kornreich said.

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