Person of the Year
Kathleen Zellner
Rewriting the ending for the wrongly convicted
By Roy Strom

Ryan, pack your s— —,” the sergeant said.

Ryan Ferguson didn’t know where he was headed when he heard those words in his cell at a Missouri prison.

Maybe another facility. Maybe another cell. His best guess was solitary confinement.

Ferguson put his clothes and belongings into a cart he rolled in front of him. He passed through a door to a point where he was typically handcuffed. This time, no handcuffs.

Then, he went to another room where he saw Kathleen Zellner, 10 feet and two panes of plexiglass away from him.

Unable to talk to Zellner, Ferguson raised his hands, looking for guidance.

She picked up a light-blue jail pamphlet on the importance of parenting. She flipped it over, scribbled something and pressed it to the pane.

“It is over.”

“When Kathleen tells you it’s over,” Ferguson said, “it’s over.”

After 3,533 days of custody, Ferguson was freed on Nov. 12, 2013. What Zellner called Ferguson’s “Kafkaesque nightmare turned into a reality” began March 10, 2004, when police started questioning him about a 2001 murder in his hometown, Columbia, Mo. He always proclaimed his innocence, but after being convicted of second-degree murder and robbery, he was sentenced to 40 years in prison.

A crucial aspect of Zellner’s effort to overturn that conviction was obtaining two recantations from key witnesses whose testimony placed Ferguson at the crime scene. They admitted to lying after being pressured by police and prosecutors.

At a press conference following his release, a picture was taken of Ferguson holding up the pamphlet Zellner inscribed. A producer from the TV show “Dateline” — which covered Ferguson’s case, as did “48 Hours,” “20/20” and other TV news shows — sent him and Zellner a large wood-framed copy.

It is a fitting memento for the 15th person Zellner helped free from prison. No. 16 came last year, too. No private attorney in the country has represented more exonerated clients.

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In February, the Downers Grove-based partner at Kathleen T. Zellner & Associates won a $9 million verdict in a civil lawsuit on behalf of Clyde Ray Spencer against a police department in Washington state court. A former officer with the Vancouver (Wash.) Police Department, Spencer spent nearly 20 years in prison after being wrongfully convicted of sexually abusing his two children and a stepson. He was released in 2005.

In March, Zellner filed a civil complaint on behalf of Ferguson holding up the pamphlet Zellner inscribed. A producer from the TV show “Dateline” — which covered Ferguson’s case, as did “48 Hours,” “20/20” and other TV news shows — sent him and Zellner a large wood-framed copy.

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Also in February, Zellner obtained the last portion of a $7.75 million settlement for Jerry Hobbs, who served five years in prison after being convicted of murdering his 7-year-old daughter and her 9-year-old friend in 2005. DNA evidence later pointed to his innocence, and Hobbs filed a federal lawsuit in Chicago in 2010 against the city of Zion and other authorities in Lake County for malicious prosecution, resulting in a number of settlements.

In March, Zellner filed a civil complaint on behalf of Ferguson in U.S. District Court for the Western District of Missouri. The 50-page suit names 13 defendants and seeks $100 million in damages for nine counts, including four constitutional violations, conspiracy to deprive constitutional rights, false arrest and defamation. A trial is set for August.

In October, the media spotlight was back on Zellner: “20/20” aired an hourlong episode on one of her current cases. Mario Casciaro was sentenced to 26 years in prison in November 2013 for the 2002 McHenry County murder of Brian Carrick. On the show, a witness who originally said he beat Carrick to death on Casciaro’s command to collect a drug debt recanted that testimony.

That same month, “48 Hours” transformed Zellner’s office into a scene for an episode set to air this month on yet another criminal appeal she’s handling.

Melissa Galusinski, a 25-year-old former day care worker, was sentenced to 31 years in prison in 2012 for first-degree murder of a 16-month-old in her care. Zellner alleges Galusinski’s confession was coerced in a 10-hour interrogation session with police from Round Lake Park and Highland Park.
She also believes the baby died of a pre-existing condition.

She continues to represent plaintiffs in medical-malpractice cases, which she has done for as long as she has handled wrongful-conviction cases. In addition, her firm has provided $1 million in pro bono hours and expenses to clients in the past two years.

Zellner, 57, has become a standard bearer among civil rights attorneys and has long been known as a fierce courtroom advocate—armed with a recorder-like memory, trial techniques that include videotaped re-enactments of crime scenes and, perhaps most crucially for her clients, an ability to elicit the truth from co-defendants or witnesses who have previously lied about innocent defendants’ involvement in crimes in order to save themselves.

Quite simply, she gets people to talk. And to tell the truth.

“I’m not really practicing law when I do this,” she said. “This is really who I am. It’s an integral part of who I am. It’s what I get great satisfaction out of. And I love the people that I’ve worked with. So for me, it’s not that I’m just practicing law. It’s a lot more than that.”

An unlikely path to justice

When Stephen G. Michaud sat down in a Florida prison with serial killer Ted Bundy, the reporter and author encountered a man unwilling to admit to the 30 or more murders he would later say he committed.

Instead, Bundy was willing to “speculate” on details of the murders in chilling third-person narratives. He was confessing, just not saying as much. This is what led to the eponymous title of Michaud’s book, “The Only Living Witness,” which Zellner read after its release in 1983.

“I remember being struck by that,” Zellner said. “So I thought I’d try it with Eyler.”

How Zellner came to represent Larry Eyler, a serial killer who targeted gay people in Illinois, Indiana and Ohio in the 1980s, is almost as unlikely as the effect he would have on her career.

Born May 7, 1957, to Owen Daniel and Winifred Thomas in Midland, Texas, Zellner was the second oldest of eight children. One brother died in infancy, another at age 23 from an undiagnosed medical condition. Her mother was a longtime nurse in a pediatric intensive care unit, and her father was a geologist and engineer for oil company ConocoPhillips.

She remembers her father picking up a rock and using geology to explain its origins. He was taking a small clue and using it to construct a larger narrative.

“He could make it all make sense,” she said.

She discovered she could do the same thing in an English class at Concordia University in Montreal, Quebec. She lived there with her husband, Robert Zellner, who held a post-doctorate fellowship in econometrics (he went on to be CEO of Citibank Futures Inc. and Citibank Options. The couple’s daughter, Anne Zellner Nolte, is a Denver-based lawyer).

The English class required reading short stories by authors including Franz Kafka and Henry James. Zellner was then tasked with crafting an argument to support her interpretations of the books’ events. For instance, was Gregor Samsa really transformed into an insect in Kafka’s “The Metamorphosis”? Unanswerable questions like these were how the young couple, without a television, entertained themselves.

“Once I would believe I had put all the pieces together, then I’d be able to present it in a way that was absolutely what the truth was,” she said.

After moving to the Chicago area for her
husband’s job, Zellner graduated from Northern Illinois University College of Law in 1981. She was a clerk for a 2nd District Appellate Court justice, an associate at a small law firm in DuPage County and then a lawyer in Hinshaw & Culbertson’s Wheaton office, where she was a civil defense attorney.

She opened her own practice in 1991. Around that time, she was representing criminal defendants and handling appeals with a group of law students, including Doug Johnson, who has now been her law and trial partner for more than 20 years. At their urging, she applied to represent death row inmates.

Eyler was facing the death penalty following a 1986 conviction in the murder of 15-year-old Daniel Bridges. At the time, he was a suspect in more than 20 deaths of young men and boys. Zellner agreed to represent him in post-conviction proceedings in the Bridges case.

While reinvestigating the death, she discovered two important things. One, Eyler was HIV- and AIDS-positive. Second, she was absolutely certain he did not murder Bridges.

Zellner was asked by a number of possible victims’ families if she could find out who killed their sons — the obvious implication being that it was her client.

When she realized he was nearing death, she asked him to confess to the other murders. “Wouldn’t that be the right thing to do?” she asked. He was also seeking a plea deal that would take him off death row.

Zellner had strived to make Eyler feel understood throughout her work with him. There is some evidence she was successful. After he died of AIDS, he left her with a number of his personal belongings, including a poster board of family photos: Eyler in a suit at what may have been a high school dance. Eyler with his longtime lover. Eyler and his brothers, his mother, her husbands.

This relationship helped her to obtain his confessions to 21 murders and his approval to tell the world about his crimes after he died. She did just that in a press conference in March 1994.

While speaking with Eyler in prison, Zellner used the same relational approach she had read about in the Bundy book.

“I’d start by saying, ‘Well, I think this is the way it happened. I think that the killer met him, he was hitchhiking and he picked him up and I think when he got in the car he tried to tie him up in some way,’” Zellner said.

“Then he’d say, ‘No, no. That’s not the way it happened.’ And then he’d want to correct what I was saying. That’s how we started.

And I remember that was such a breakthrough moment.”

Eyler’s death penalty conviction was on appeal when he died. Zellner still believes he did not murder Bridges.

While those confessions provided closure for 21 families, it took a toll on Zellner, who said she never wanted to represent a guilty defendant again.

“I don’t think he had any remorse,” she said. “And so that was very chilling, to be around someone who was that evil.”

The truth whisperer

The Eyler case marked a major shift in her legal practice — from representing defendants to freeing the innocent. And her ability to elicit confessions by witnesses or co-defendants, often against their self-interest, has been crucial in that work.

The career transition was a quick one.

Less than six months after Eyler’s confession, she walked out of a Kankakee County courthouse with her first exonerated client, Joseph Burrows, in September 1994.

Burrows had been on death row for five years, convicted in the 1988 murder of William Dulin, an 88-year-old in rural Sheldon, Ill. When Zellner got the case, she also got the prosecutor’s file, which had previously been withheld from Burrows’ attorneys in the two trials that ultimately led to his conviction.

The file had a letter from a witness that corroborated Burrows’ alibi that he wasn’t at the crime scene. Zellner used that letter to get the case back in front of the judge.

But she also wanted to solve the murder — to be able to tell the judge that a woman, Gayle Potter, had shot Dulin in the head.

Potter had been convicted of Dulin’s murder after she testified to being part of what she called a robbery gone wrong that ended with Burrows pulling the trigger. Potter was sentenced to 30 years in prison; Burrows was put on death row.

Zellner had a feeling it was Potter alone who killed Dulin because of two bullet holes in the ceiling of the room where he died, which suggested a struggle. The man was 88. He would not have presented a challenge to the burly Burrows. But Potter, on the other hand, was a small woman.

Zellner began meeting with Potter in prison. Zellner pointed out...
that, to her, the story didn’t add up — the letter, the bullet holes, how she had a friend attempt to cash a check from Dulin after the murder and the fact that another co-defendant was backtracking on Burrows’ involvement.

Most of all, Zellner said, she empathized with Potter. She could imagine the fear a detective struck into Potter when he told her she would face the death penalty. She could understand why she would lie to save her own life. And, furthermore, Potter thought Burrows or a relative had previously burglarized her trailer. She held a grudge. It made sense. But, of course, what Potter did was wrong.

And now she could fix it, Zellner told her.

“Once they realize you actually understand it, why they did what they did, then they’re much more willing to listen to what you have to say about why this needs to be fixed,” Zellner said.

“And you’re also conveying information to them about your client and his children. (Burrows’ daughter ended up dying at age 13 of a kidney disease. She was in dire straits at that point. I was telling Potter, ‘The other thing is, his daughter is just gravely ill, and you know you did this, and you know they can’t retry you. And are you really going to let this little girl die and have her father executed? Are you going to do this?’”

Potter didn’t. She testified in a new court hearing that she killed Dulin. She could not be retried for the murder she’d already been convicted of, so her 30 years was extended by five for her earlier perjury.

Burrows walked out of the courthouse.

Zellner’s father may have passed down a knack for piecing facts together into a compelling story. But it was a phrase often said by her mother, a nurse who retired at 82 and who died this year at age 90, that proved prophetic regarding Zellner’s career: Money and fame are fleeting, but the memory of saving a life never leaves you.

“She was right,” Zellner said. “It never does. And the feeling makes you want to do it again and again.”

‘Missionary zeal’

Mary Budaj was a juror in the nearly eight-week long 2007 civil trial in the Dirksen Federal Courthouse in which Zellner represented Kevin Fox, the Wilmington, Ill., man charged in the murder of his 3-year-old daughter, Riley.

Fox had confessed to the crime during a 14-hour interrogation with Will County sheriff’s office detectives roughly four months after his daughter was found dead in a creek, sexually assaulted and bound with duct tape. For Budaj, the disclosure of his confession at trial initially left her unsympathetic toward Fox.

“But after he was on the stand and they showed some of the interviews, I really felt that he was really pressured,” Budaj said. “He just seemed very young and very impressionable. ... I felt what you saw is
what he was. He was a young, married guy trying to get along, make a living and take care of his family.

When Budaj references seeing “some of the interviews” in court, she isn’t actually talking about video recordings of Fox’s confession. Zellner successfully kept that video out of the trial, arguing that, as less than five minutes of a 14-hour interrogation session, it wasn’t representative of what occurred.

Instead, Budaj and the other jurors saw photographs of a videotaped re-enactment of Fox’s interrogation that Zellner’s team produced.

It was a serious bit of lawyering: Blocking the actual recorded confession and replacing it with photographs of a re-enactment.

The re-enactment of Fox’s interrogation includes threats and intimidation. At one point, an actor playing a detective screams, an inch from Fox’s face, “f——— child killer!” It stands in stark contrast to Zellner’s descriptions of her own interrogation sessions with murderers like Eyler and Potter. While the detectives’ threats, intimidation and lies obtain a confession from an innocent man, Zellner elicits the truth by appealing to a guilty conscience, a desire to right a wrong.

“I tell jurors the same thing: I know you’ll do the right thing here,” she said. “And I believe that. And it’s actually very encouraging about human behavior that people will do that.”

Re-enactments, just like reinvestigations, have long been part of Zellner’s trial arsenal.

In a wrongful-death lawsuit against the Chicago Police Department that settled in 2006 for $4.25 million, Zellner taped a re-enactment in which she drove a rented police car the route that officers took to respond to a 911 call.

A wife was at home, being threatened by her husband. As the re-enactment rolls, a timer counts down. When it hits zero, the wife has been shot.

The suit alleged police were waiting outside the house for an unnecessary length of time when the husband broke down a door, then shot and killed his wife. And when the timer reached zero, the police were still sitting in the car outside the home. As the clock ticked, the jury — had the case actually gone to trial — would question why the police waited in their car for so long.

Back in Fox’s trial, Zellner was allowed to show still-frames of the re-enactment she created — an image of a detective screaming in Fox’s face during an interrogation, another of him being shown photographs of his daughter after she was found in a creek.

“They’re persuasive, (but) I certainly didn’t like them,” said Robert Smith, Zellner’s opposing attorney in Fox’s civil trial, referring to the re-enactments. “She’s sophisticated, so it’s all to her advantage in terms of how it’s staged and so forth. I don’t think it’s a fair representation, but it certainly gives the jury a visual representation of what was going on. And the verdict, obviously, shocked us in the case.”

Fox won $15.5 million, the largest Illinois verdict for a false arrest, according to the Jury Verdict Reporter. After a series of challenges, it was reduced to $8 million by the 7th U.S. Circuit Court of Appeals.

The videotape helps explain something many people have difficulty with: Why confess to something you did not do?

For Zellner, that’s an easy question to answer. She met Fox for the first time about 10 minutes after he confessed. She agreed to take his case immediately after seeing him. She believed him. Once she’s convinced of a client’s innocence, she said she has one goal: “Just get him out. And then I want to get onto the next case.”

“I still remember when she first came to my office with Doug (Johnson), after she just had filed the (civil complaint), long before he was exonerated,” said Mike Rathsack, an appellate attorney who has worked with Zellner over the years.

“I said, ‘But he confessed, where are you going with this?’ But she was convinced it was wrong, and I learned a lot from that. I was just wrong. It’s not that hard to get somebody to confess. … And I remember her saying, ‘Mike, I know I’m right on this.’”

Smith, the opposing lawyer, described her determination as “missionary zeal.”

“She believes she is not just there as an attorney. She is a believer,” Smith said. “It’s not just another case for her — far from it. Other attorneys can go into court and be fierce advocates for their client, but there’s not that personal connection. And she had a deep, personal connection to the Foxes.”
James Glasgow, the Will County state’s attorney who agreed to Zellner’s request to retest DNA evidence in the case, also praised her work for the Foxes. That test ultimately led to Fox’s release, and the actual killer, convicted sex offender Scott Eby, eventually confessed in 2010. Zellner was at Glasgow’s office when the DNA results came back excluding Fox.

“We’re not in the ‘gotcha’ business. We’re here to make sure that justice is done,” Glasgow said. “And defense attorneys like Kathleen make that system work. Obviously that situation, standing there at the fax machine, was one of a kind. And I don’t know if any other defense attorney would have brought it to that point. But it’s a real credit to her and her belief in her client.”

Zellner credited Glasgow for retesting the DNA.

“People in these things, they want to do the right thing,” she said. “It’s not like there’s all these evil people out there trying

What the judges say

In addition to representing clients who are appealing criminal convictions, Kathleen Zellner maintains a trial practice that ranges from representing plaintiffs in medical-malpractice cases to filing civil suits on behalf of those who successfully prove their innocence.

In less than a year — from March 1999 to March 2000 — she tried five cases that each resulted in multimillion-dollar verdicts, for a total of $15.9 million. They ranged from an award of $6.5 million for a claim of medical malpractice that resulted in a suicide to a $2 million verdict on behalf of a prisoner who lost his eye after being treated at a prison hospital.

Here are comments from the judges that presided over three cases in her career.

**Case:** Catherine Skol v. Dr. Scott Pierce
**Claims:** A woman was physically and emotionally abused during childbirth, including the withholding of painkillers while the physician stitched lacerations against her will. She won a $1.4 million verdict, an Illinois record for negligent/intentional infliction of emotional distress in a medical-malpractice case, according to the Jury Verdict Reporter.

**Judge:** Cook County Circuit Judge Thomas L. Hogan

“I think she’s one of the finest lawyers who has tried a case in front of me. ... It was a very emotionally charged case, and she underplayed the emotional part of it all the way through. It could have been much more difficult to preside over that case because of the emotion on both sides. And she just never let it get that far.

“The descriptions from the witnesses as to what occurred were pretty shocking. And other lawyers, given the same set of facts, would have played to those shocking facts to a much greater degree than she did. ... I thought she was a pleasure to work with, and she seemed to be very intelligent and practical — two character traits that I really appreciate and don’t often see together.”

**Case:** Kevin Fox v. Sheriff of Will County, Edward Hayes, Scott Swearengen, Michael Guilfoyle, Brad Wachtel, Estate of John Ruettiger, Will County
**Claims:** A man was held in jail for eight months after he was coerced into providing a confession that he murdered his 3-year-old daughter. He won a $15.5 million verdict, an Illinois record for false arrest, according to the Jury Verdict Reporter. It was reduced to $8 million by the 7th U.S. Circuit Court of Appeals.

**Judge:** U.S. District Judge John W. Darrah

“I teach evidence and trial advocacy at John Marshall (Law School), and she would be a poster child for that course. She speaks in a very deliberate, easily understood, very articulate manner. And it was a long, very difficult trial, emotionally difficult trial.”

Referring to Zellner’s investigatory work to determine that a videotape from a local gas station had an incorrect time stamp, which debunked the prosecution’s claim that the video showed a car similar to Kevin Fox’s drive a route to where the 3-year-old was found: “She was resourceful enough to do that. ... That was a really nice piece of work.”

**Case:** Estate of Mary Ann Martino v. Illinois Masonic Hospital
**Claims:** A woman committed suicide after not being admitted to the hospital. Her estate won a $6.5 million verdict, an Illinois record for a suicide, according to the Jury Verdict Reporter.

**Judge:** Former Cook County associate judge Paddy McNamara

“You know how a lot of lawyers are doing a trial, and there are big stakes and they ... have somebody who is acting as an assistant, doing all the papers for them, that’s a little bit hesitant, and it’s kind of a mess? She just did it (by herself), like, amazing. Everything went smoothly. There was no crisis. There was no drama. I was very impressed with her skills.”
to block me."

That’s not to say the work is easy. It comes with a heavy burden — knowing someone’s life is in your hands. But Zellner relishes that role.

“I am a rescuer,” she said. “There’s no question about that. And I feel very fortunate, in that I’ve spent an entire career feeling like I’m not working. We’re caught up in the drama of life. Of high stakes, life-and-death situations. Love and hate.

“And I think that in life, you can walk around and be anesthetized to it, but if you’re in it, then you’re going to confront all those struggles.”

The rescued

Fox was in Zellner’s office in October when Ferguson recounted the story of his final day in prison.

The two had not met before, but they quickly bonded. After a couple of hours talking, they were making plans to attend an O.A.R. concert in southwest Florida, where Ferguson now lives and where Fox often travels to go fishing. Zellner believes a relationship between the two could be helpful for Ferguson, who is still adjusting to life outside of prison.

Ferguson discussed how he felt he had no control of his life.

“I was just this pawn from beginning to end,” he said. “My life was completely controlled by all these other people. What other people were doing. What other people were saying. What people were manipulated into saying and doing. ... And the whole time, I never did or said anything. I just sat there like a lump on a log. And that’s how scary it is. Because you’re just there.”

Fox, who spent about eight months in jail and has been out for nine years, told Ferguson how it felt to see another man walk away from a wrongful conviction. Fox said the first time his freedom really washed over him was when he was finally able to hug his family members.

“I thought that feeling would stop,” Fox said, sitting on a couch in Zellner’s office, speaking to Ferguson. “But man, when you got out, I felt like I was there. Man, I know that feeling. There’s not many people in this world that go through that. And just that feeling, the hairs on the back of my neck are standing right now. I was just happy. And she continues to do it. It’s amazing.”

When describing his feelings toward Zellner, Fox showed off the same personality that his opposing trial lawyer saw when he called Fox a “what-you-see-is-what-you-get kind of guy.”

“I could go on and on, bud,” Fox said. “She saved my life.”