

# Laying groundwork for appeals

MSU law clinic will help clear a path even before a conviction

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The Detroit News

On a cloudy weekday morning just miles outside downtown Detroit, an attorney, private investigator and two Michigan State University law students gathered at the corner of an intersection on the city's east side, the same place that changed Darrell Ewing's life forever.

Charged in connection with a 2009 fatal shooting at that intersection, Ewing was convicted of

first-degree murder the following year and sentenced to life in prison. He spent 14 years in prison but was released earlier this year after a Wayne County judge found that evidence that had gone missing over the years violated his due process rights and dismissed his case. It had been set for a new trial because of a separate legal ruling.

Now, the 35-year-old, who has maintained he's innocent and wasn't at the intersection when the shooting occurred, could be tried again because the Wayne County Prosecutor's Office has appealed the case's dismissal.

That's why Ewing is working with the MSU students as part of a first-of-its-kind clinic focused on

what are called pre-conviction appeals. Led by attorney Brad Hall, the Public Defense Clinic will focus on appeals issues for clients across the state, including southeast Michigan, focusing specifically on issues that may be grounds for an appeal before a case's resolution in trial court. That can include evidence that was allowed into a trial that shouldn't have been or a defendant not being read his or her Miranda Rights.

Hall is the founder of the clinic and is defending Ewing against the Wayne County prosecutors' appeal of his case's dismissal.

"To have the opportunity to

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# Law clinic

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have a clinic come on and students help, this is the best idea in the world,” Ewing said.

MSU’s clinic comes as studies show indigent clients nationwide — meaning those who can’t afford to hire their own attorneys — struggle with getting fair and adequate representation, leading to plea deals and longer prison sentences. As many as 80% of those charged with crimes can’t afford their own attorneys, according to a 2023 paper in the Michigan Law Review. For those who are assigned a court-appointed attorney, they could have one with little criminal case experience, working for a flat fee and juggling a heavy caseload.

Pre-conviction appeals are growing in Michigan since the state introduced funding into trial-level defense for indigent clients, experts told The Detroit News. The specialized type of work, Hall said, is well-suited for a law school clinic. Because appeals tend to deal with narrow legal questions, students can focus on diving deep into research and developing arguments for the appellate court.

“The students ... have exposure to the public defender process and trial system,” Hall said.

Michigan Supreme Court Chief Justice Elizabeth Clement said pre-conviction appeals serve an important role not just for specific cases, but for addressing broader legal questions, especially if the appeals court has not dealt with the specific issue before.

“From the perspective of of an appellate court, the pre-conviction appeals are very important because they can help clarify important and consequential questions of law, and change the direction of a criminal case,” Clement said. “So they can help hold police, prosecutors and judges accountable, but they also help on the defense side as well, where they’re testing the reliability of evidence and (making) sure that the case doesn’t go all the way to the conclusion before they’re bringing appeals through our appellate system.”

## Fighting a conviction

Hall met with Ewing in late October, along with MSU College of Law students Ravyn Lockridge and Manisha Misra and private investigator Desiree Edwards, to discuss his case and visit the intersection where the shooting happened.

Ewing was identified and convicted in 2010 for the shooting, which also injured a second person, based on a disputed eyewitness account and forensics evidence. An-



Clarence Tabb Jr. / The Detroit News

Darrell Ewing, right, spent 14 years in prison on a murder conviction but was released earlier this year after a Wayne County judge found that evidence that had gone missing over the years violated his due process rights.

other man was convicted of second-degree murder.

The Wayne County Prosecutor’s Office has appealed County Circuit Judge Kiefer Cox’s decision to dismiss Ewing’s case before his new trial, arguing Cox abused his discretion by throwing it out. Prosecutors contend that Cox’s ruling that found a violation of Ewing’s due process rights and dismissed the case was wrong because he didn’t find that either the missing evidence could exonerate Ewing or that prosecutors acted in bad faith.

According to a brief filed in August by the prosecutor’s office, the main piece of evidence that allegedly went missing is a videotaped discussion between Ewing and the officer in charge of the investigation, in which Ewing denied involvement with a gang that had a rivalry with another gang of which the shooting victims were members. Prosecutors argue it’s unclear whether the video actually exists.

But Hall maintained that Cox made the right decision.

“He was more than justified in dismissing the case, so that’s going to be our argument,” Hall said.

## Michigan’s indigent defense

The Michigan Indigent Defense Commission was created in 2013 to enact and enforce statewide standards for indigent defense, or clients who can’t afford their own defense attorneys.

Before the commission’s creation, counties didn’t receive money from the state for public defense at the trial level, and attorneys representing indigent clients were sometimes paid flat fees for their work that amounted to as little as

\$10 per hour, said Kristen Staley, the commission’s executive director.

A class-action lawsuit filed in 2007 by the American Civil Liberties Union of Michigan argued that the state’s practice of putting the responsibility of funding and the administration of trial-level indigent defense completely on counties violated defendants’ constitutional rights to adequate representation. The creation of the Indigent Defense Commission was one of the changes spurred by the lawsuit.

“It wasn’t the attorneys. It was the system that was set up to make everyone fail,” Staley said. “So we’ve changed the entire culture ... of public defense services in the state.”

The commission awards grant money from the state to indigent defense systems. Once the funding’s distribution began in 2019 and the amount of money available for attorneys doing the work rose, pre-conviction appeals filed by attorneys representing indigent clients jumped 250% from 2019 to 2023, according to a presentation by the commission in March to a state House committee.

The indigent defense commission approved more than \$295 million in grant funds for the 2025 fiscal year with more going to cities and counties.

Staley said about 80%-90% of the grant money pays attorneys and staff working on indigent defense.

## A specialized practice

Hall — who spent 10 years as the administrator of Michigan’s Appellate Assigned Counsel System, which assigns attorneys for post-conviction appeals in criminal

cases — said trial attorneys have traditionally shouldered the responsibility for pre-conviction appeals, but the work often falls outside their expertise. Appeals are fundamentally a different type of practice with different procedural requirements than trial work, he said. Appellate work also requires a lot of time for deliberation, research and writing, which trial attorneys often don’t have because of their caseloads, Hall said.

The jump in pre-conviction appeals across Michigan, while welcome because of their importance to adequate representation of defendants, led to an overburdening of the assigned appellate attorney system, he said.

The existing defense system is “working structurally, but it hasn’t been able to keep up,” Hall said. “So I pitched this idea to develop a law school clinic to step into that area where there’s no system capacity to handle these cases.”

Ewing said he spent 14 years, two months and 14 days in prison before his release earlier this year. He is studying in Wayne State University’s LawStart program, which allows students to earn a bachelor’s degree and a law degree in six years. He also does community violence intervention work with the city.

Ewing’s family was able to pay for private attorneys to represent him for several years, but he became eligible for indigent defense earlier this year, and the challenge of his case’s dismissal required specialized appellate representation. He said he’s grateful for the MSU clinic taking on his case, and Ewing likes the concept of having help from a team deeply invested in the

work.

“I knew that there would be more eyes on it,” Ewing said.

While helping clients with appeals, students such as Misra are getting hands-on legal experience.

She said she first discovered her passion for public defense work during a college internship in Alaska. She got the internship while working at a coffee shop, where she struck up a conversation with an attorney who was a customer. Misra said she worked on a murder case involving a defendant with severe mental health issues. It was a privilege to help the person through the difficult time, she said.

Misra, now a third-year law student, had no experience with pre-conviction appeals before she learned about the program from Hall, and the chance to try something new drew her in.

“So it was to unlock a new facet of public defense for me,” Misra said.

During the clinic team’s visit to the intersection of the 2009 shooting for which Ewing was convicted, Hall and the rest of the group studied the nearby buildings: churches, a few gas stations and a liquor store with a sign advertising lottery tickets. The lot where the abandoned, now-demolished Easttown Theater stood is nearby.

As a few cars drifted through the traffic lights on the gray late Thursday morning, Hall pointed out the spot on Harper at the light where the victims’ car was traveling. Even though the MSU team isn’t handling Ewing’s case at the trial level, they wanted to get a sense of the scene that changed their client’s life.

The clinic has accepted six students for the spring 2025 semester, when they will officially begin their work. The clinic plans to take at least six cases to start, four in Wayne County and two in Genesee County. Michigan has other public defender clinics, but none that are specifically focused on pre-conviction appeals.

Chief Justice Clement said MSU’s law school has done an excellent job of identifying areas of need in law practice around the state that offer ripe training opportunities for law students. She said the rise in pre-conviction appeals is a natural result of Michigan’s systemic quality improvements to indigent defense trial cases.

“When you’re increasing quality based on better resources and training, it’s natural that you’re going to see that need increase further in steps down the road,” she said. “Whether that’s pre-conviction appeals or post-conviction appeals, you’re going to see, I think, a greater need in those areas.”

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