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Lapointe's Previous Lawyers Let Him Down

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It's disturbing to sit in court and listen to how Richard Lapointe's lawyers failed him.

But their hard-to-comprehend mistakes, however unintentional, may now represent the convicted murderer's best shot at a new trial, and perhaps freedom 18 years after his murder conviction and life sentence.

Superior Court Judge John J. Nazzaro could grant a new trial for the mentally disabled dishwasher on the claim that the state suppressed exculpatory evidence – an arson investigator's notes – in the 1992 murder trial and conviction. Nazzaro, however, may find it easier to rule on the other claim made by Lapointe's supporters.

Lapointe's own lawyers didn't do the job.

Items seemingly from a movie script – unidentified pubic hair found on the victim's clothing, gloves at the crime scene, the location of the murder and the clothing worn by the victim – were left largely untouched by Lapointe's lawyers during the 1990s, when they could have been used, compellingly, to prove his innocence to a jury.

What Lapointe's current lawyers say is his constitutional "right to effective assistance of counsel" could prove pivotal as Nazzaro prepares to rule now that testimony is nearly finished in the two-week trial to determine whether Lapointe deserves a new murder trial.

A man with an I.Q. of 80 who spent his time in court this week doing simple word puzzles, Lapointe has made three flawed, recanted confessions, including one where the facts didn't match evidence gathered at the scene of the rape and murder of 88-year-old Bernice Martin, his wife's grandmother.

Lapointe's two public defenders from 1992 could only shrug when asked why they didn't bring up provocative and alarming inconsistencies and forensic evidence during testimony this week and in May.

"I don't recall," Christopher Cosgrove, one of Lapointe's two public defenders during the 1992 trial, said repeatedly this week when lawyer Paul Casteleiro kept asking him why he failed to make an issue of the gloves, pubic hair and other crime scene evidence. His colleague, Patrick J. Culligan, made similar statements during testimony in May.

Lapointe told police Martin was wearing a pink housecoat. She wore dark slacks and a blouse. His description of her strangulation doesn't match a medical examiner's report. His location of the murder is at odds with the crime scene evidence. A pubic hair not belonging to Lapointe and found on the victim was ignored. Gloves with no link to Lapointe or Martin and found on the bloody bed were barely mentioned during the 1992 trial.

Cosgrove and Culligan deserve credit for their honesty about the first trial and the shortcomings of their defense. Far worse is the performance of Lapointe's second lawyer, Henry Theodore Vogt – a commercial litigator whose one and only trial experience has been this case. After police handed him potentially exculpatory evidence, Vogt barely made an issue of the so-called "burn time" notes during Lapointe's first habeas trial in the late 1990s.

Vogt replied this week that he couldn't "recall" why he failed to bring up the burn time notes from an arson investigator, evidence that Casteleiro argues provides Lapointe with an alibi because it supports his client's argument that he was home watching TV when the murder took place.

The burn time notes, prepared by police investigators at the time of the crime and produced by the state years after the 1992 trial and conviction, could have been used in the first trial – if the handicapped man's lawyers had had them.

Perhaps searching for a technicality to use to justify a new trial, Judge Nazzaro has been especially interested in the Manchester police department's decision to secretly tape an interview with Karen Lapointe, Richard Lapointe's ex-wife. Curiously, police said they saw no reason to tape Lapointe's crucial confession on the same day – even though he recanted twice before and his words became the foundation for the state's case.

Nazzaro, of course, could also rule on what motivates Lapointe's hardy supporters, who have filled benches in the courtroom throughout this trial: that the small, uncoordinated man with the malformed brain was not capable of the vicious murder of 160-pound Bernice Martin, who was tied up, tortured, tossed about, raped and left to die in a burning apartment.

If you believe the state of Connecticut, Lapointe did this while on a 20-minute dog walk, returning in time to watch television with no sign of having completed a violent, messy murder.

"There simply was no viable motive for Mr. Lapointe to have committed this crime," Culligan, the public defender, told Judge Nazzaro.

There still isn't.