

TESTIMONY OF GERARD A. SMYTH, ESQ.
ON BEHALF OF JAMES C. TILLMAN
IN SUPPORT OF HB 6673,
AN ACT COMPENSATING JAMES C. TILLMAN FOR HIS WRONGFUL
CONVICTION AND INCARCERATION

Judiciary Committee
April 10, 2007

On behalf of my client, James C. Tillman, I respectfully request the Committee's support for *HB 6673*, which would compensate Mr. Tillman in the amount of \$5 million for his wrongful conviction in 1989 of kidnapping and sexual assault, and for the 18 years, 4 months and 11 days that he was incarcerated for a crime that he did not commit. In June 2006 DNA test results exonerated Mr. Tillman, leading to his release from prison and the dismissal of all of his charges.

The amount of compensation proposed is both fair and reasonable under the circumstances, and the bill provides that this amount would be in full settlement of any and all claims that Mr. Tillman has against the state or any of its agents, its employees or its officials. This would include claims against the State and several of its employees for actions contributing to his wrongful conviction, against the City of Hartford and members of the Hartford Police Department, and against the UConn Health Center and its medical personnel for malpractice in its treatment of Mr. Tillman for an injury that he sustained while incarcerated.

One of the most significant of Mr. Tillman's legal claims involves the failure of the State Health Department laboratory to test all of the biological evidence that was available to them at the time of Mr. Tillman's trial and the misleading expert testimony that it provided to the jury based upon inadequate forensic testing. If all of the available evidence had been tested in 1989, Mr. Tillman would have been excluded as the perpetrator of the crime, as he subsequently was by DNA evidence.

The damages to which the State and its agents are exposed are far in excess of the \$5 million amount proposed in the bill. In cases of wrongful conviction and incarceration that have been litigated around the country, the typical award is in the range of \$1 million per year, for each year of wrongful imprisonment. In Mr. Tillman's case this would amount to at least \$18 million. While no amount of monetary compensation can ever repay him for the years of his life that he lost, Mr. Tillman is desirous of settling these claims and moving forward with his life, rather than litigate.

The losses endured by Mr. Tillman as a result of this injustice are considerable, and include the loss of liberty and enjoyment of life from age 26 to 45, the prime years of his life. He also endured mental suffering, psychological damage, and physical injury. In addition, he lost wages, has had his future earning capacity significantly reduced, and suffered a loss of familial relationships, including the fact that he was prevented from marrying, raising a family and owning a home.

In addition to whatever legal liability that the State has, I believe that we as a society have a moral obligation to compensate Mr. Tillman, since it was our own court system and legal institutions that produced this grave injustice. It is now approaching one year since Mr. Tillman was released, and he has received nothing to compensate him for what he lost. In order to live and make ends meet, Mr. Tillman has been working 2 jobs for most of the time since his release. If he is forced to litigate his claims, it will only result in a further delay in his receiving any monetary compensation for what he has suffered. Considerable time has passed since his release and he continues to struggle financially.

While the amount proposed is substantial, you should also be aware that it is the position of the IRS that any compensation that Mr. Tillman or others like him receives for anything other than "physical injury" is income for federal tax purposes and would be taxable at a rate of 35%. While Mr. Tillman would contest this with the IRS, there is a strong possibility that he would have to pay federal income taxes on the award of up to \$1.75 million. The bill does provide that the award would be exempt for state income tax purposes.

In addition to *HB 6673*, there is another bill before the committee which proposes an alternative method for compensating Mr. Tillman. *SB 1456* provides for an initial payment to Mr. Tillman of \$500,000, followed by annual payments of an unspecified amount for the duration of his life. I have submitted separate testimony in regard to *SB 1456*. However, as between the two methods of compensation, Mr. Tillman strongly prefers the one time, lump sum payment provided by *HB 6673*, which would enable him, in consultation with his financial advisors, to make his own decisions as to how to invest and use his money. After 18 years of having his entire life controlled by others, he understandably would like to be in full control of his own life and decisions.

While passage of this bill is in Mr. Tillman's interest, it would also be in the State of Connecticut's best interest. The cost of litigation alone would be considerable to the state, as well as the amount of any potential jury verdict. I would respectfully urge you to rectify the wrong that was done to Mr. Tillman by voting to approve this bill. Thank you.