

Attorneys debate time frame in Masten appeal

BY JESSIE GASCH
Managing Editor

How long is a minute and 48 seconds?

This is the central question before the three-judge panel of the Eighth Circuit Court of Appeals, which heard oral arguments March 13 on former Kirksville mayor Debbie Masten's appeal. Now the court might take several months to come to a decision. Masten was convicted last May of setting fire to her bar, Too Tall's Two Eatery and Spirits, and was sentenced to 63 months in a federal prison.

A tape provided to the jury and recorded by the Adair County Sheriff's Department on the night of the fire, Jan. 1, 2005, shows Masten's car driving away from the bar just one minute and 48 seconds after the last of her employees.

"Taking into consideration the timing that she had to commit this, I don't think that it was reasonable for the jury to find her guilty," Masten's attorney Brian Milliken said during the oral argument. Although Milliken was not Masten's defense attorney during the trial, he appealed the jury conviction on the grounds of insufficient evidence, saying it was impossible for Masten to have set the fire.

Milliken did not return several calls from the Index.

In an appellant brief, Milliken listed 16 tasks Masten would have had to complete to purposely ignite the fire, in

addition to gathering the timecards that she testified she dropped on the way out of the building.

"All of these steps had to have been accomplished by an intoxicated person in 90 seconds or less without spilling a trace of alcohol on her clothing," he wrote.

Milliken also gave other reasons Masten would have been disinclined to set a fire, including the fact that a cleaning service was scheduled to arrive soon after her departure.

"It would have been more than risky, it would have been terribly stupid," he wrote.

But the appellate judges waved off these other explanations during the March 13 oral argument.

Senior Judge Myron Bright said as the proceedings began that he was interested only in arguments concerning Masten's one-minute-and-48-second window.

"This is a very difficult issue for a defendant anyway, but the only thing that I am concerned about was [Milliken's] claim about this time interval ... [being] not enough for her to start the fire," he said.

Any other evidence would have been

taken into account by the jury, Bright said.

"You can argue all those points," he said. "But really to me, you either got a case or you haven't on one minute and 48 seconds. ... The other allegations, those are for the jury. Why would she do this, why would she do that, that's something that the jury — would be argued to the jury."

Later, Bright cut Milliken off as he spoke about Masten's behavior the evening of the fire, which witnesses had described as "happy" and "festive."

"That's a jury issue," Bright said. "... If you want to talk to us as the jury, you lose."

Milliken pointed out in his rebuttal that the federal trial judge, Carol Jackson, had expressed doubt that the jury would find Masten guilty.

"[Jackson], during the sentencing hearing, did state that ... she didn't believe, at the time that the government closed their case, that [Masten] would be convicted," Milliken said. "That's just a point I wanted to raise, to show you that there is reasonable doubt here."

Despite her statements, Jackson denied two motions by defense attorney Doug Forsyth for a directed verdict of acquittal that would have overruled the jury, according to court documents.

Assistant U.S. attorney Dean Hoag said Wednesday he is confident the appellate court will not disturb the jury verdict.

"I've had circumstantial evidence cases in arsons before — this isn't an off-the-wall case," he said. "... The evidence is overwhelming that the fire was deliberately set."

Hoag said one minute and 48 seconds is more than enough time to ignite a fire because the Sheriff's Department video does not take into account how long the employees were in their cars before they left the parking lot, but Masten might have been in the building alone for substantially longer.

"They could have been in their car a minute, arranging food, packing up, letting their car warm up, we don't know," he said. "Notwithstanding it, she still had plenty of time. The variables [Milliken] put in his argument are just that — we don't know that she did those things."

A suggested timeline provided by Hoag in a brief times Masten's actions at one minute and 21 seconds. Milliken disagreed with the reasonableness of the timeline.

"The government's timeline is not realistic and doesn't add up," he wrote in a brief.

In addition, flames in the bar reached 21 feet within minutes of Masten's de-

What has happened?

Former Kirksville mayor Debbie Masten was convicted by a jury last May for setting fire to Too Tall's Two Eatery and Spirits, which she owned. She was sentenced to 63 months in prison. She appealed the conviction.

What is happening?

Three federal appellate court judges heard arguments about the case last week.

What will happen?

In a few months, the court will decide whether to overturn the jury conviction.

parture, Hoag wrote.

"Any accidental electrical fire could not have accelerated as fast as the fire at Too Tall's Two restaurant did," he said.

Hoag explained that only certain kinds of arguments can be considered by an appellate court.

"If there are two reasonable hypotheses from which a jury could draw, one an inference of guilt, one of inference of innocence, the appellate court is not going to disturb the jury's decision," he said. "They're not going to be a second jury. ... If there's evidence to support the jury's verdict, it's going to stand."

Paying tribute



Daniel Glossenger/Index

Students on the Quad yesterday pause to observe the flags set up as part of 3,990 Too Many — End the War. The flags represent American casualties in the Iraq War so far. The College Democrats sponsored the event.

Athletics fee proposals roll in

BY MARIA KAESSE
for the Index

Almost one year after its approval by the Board of Governors, the student athletics fee continues to be a hot topic for Truman students.

Dave Rector, director of institutional research and budgets, said the \$50 per semester athletics fee brought in about \$543,000 in its first year. He said the stadium lighting project was approved for \$350,000, and most of the remaining balance of the first year and much of the funds from 2008-09 will be used for the stadium turf project.

"For the University, these are mid-sized projects," Rector said. "They're not as big as the \$15 million dorm renovations, but these are good-sized projects."

Jerry Wollmering, director of athletics, said the student athletics fee made several other purchases possible in addition to the stadium lights and the upcoming artificial turf.

"We also purchased some safety screens for our baseball program to use on the field during practices and bought some big circulation fans for the natatorium to help with air circulation problems in the pool area," he said.

Wollmering said he sees promise in the future of the athletics fee.

"The athletics fee is and will continue to be a great benefit," he said. "We sponsor more sports than any NCAA Div. I or II school in the state and in the surrounding states. The lighting project has been a great start. We had two night football games this fall with crowds better than normal, our track team uses it for practices that go into the dark, and we had the homecoming pep rally in the stadium instead of cramming into hot Pershing."

Wollmering said the changes to the stadium will help other campus organizations, not just school-sponsored teams.

"It will provide us more flexibility in the fall with football, band, club sports and intramurals," Wollmering said.

As for the overall effect of

the fee, Wollmering said the fee eventually will improve Truman's look and garner more University pride.

"It will then help with recruiting efforts for high school students who are already playing in some awesome facilities," he said.

Wollmering also said there have been many proposals for future use of the athletics fee.

These proposals are being considered now and include improving the south field and helping fund parts of future Pershing Hall building renovations. Some of the changes in Pershing could include equipment for a new weight room, new lockers for basketball and volleyball locker rooms and new wrestling mats. Wollmering also said adding a student bleacher section on the south side of Stokes Stadium and adding lighting and synthetic turf to other fields on campus are additional projects being considered.

Wollmering said the fee will be reviewed by the Student Organizational Fees Committee every three years, with the first review taking place in the spring of 2010.

Junior Tyler Fenton said he has noticed the changes that the fee has brought to campus, the most noticeable one being the new lighting system installed at Stokes Stadium.

"They're great lights," said Fenton, a wide receiver for the Bulldogs football team. "I've played under lights too bright to see the ball. These ones are not too bright."

Fenton said he is excited about the next major project being funded by the student athletics fee: the stadium turf project.

"It'll be great because we'll be able to practice on it all year round," Fenton said. "And the middle of the field is kind of

rough right now."

Student Senate president junior Matt Szweczyk said he sees a positive future for the athletics fee, although he said he has worried about the way the fee has been handled from early on.

"I was upset that student government started supporting it before it was voted on," Szweczyk said. "The job of Student Senate is to represent the student body, not to act as a persuading force."

Despite his concerns, Szweczyk said he personally supports the fee.

"I thought there were huge health concerns with the athletic facilities as they were," Szweczyk said. "It was important that the

facilities be improved upon to insure student's safety. I think we're all seeing benefits. You don't have to be a varsity athlete to use the facilities."

Szweczyk said his main concern for the fee's future is that the money will not be kept in the hands of the student body, where he thinks it belongs.

"We're doing our best to ensure that students maintain control over the athletic fee," Szweczyk said. "It isn't about a blank check being given to the athletics department to fill out as they want to. It's about every student having a say in where the money goes."

Junior Michelle Helf said she is unhappy with the implementation of the fee.

"It seems like an exorbitant amount of money," Helf said. "I'm not on a sports team. A lot of people aren't on sports teams. I think we'd rather see the money spent on other things like updating Baldwin Hall or spending the money on scholarships."

Helf said she also would like to see changes made in the way that the fee is handled.

"The athletics fee should be optional," Helf said. "If they want to make it mandatory it should be a lesser amount."

Our Jewish Roots...

Hear Dr. Jeffrey Seif of Zola Levitt Ministries April 5th & 6th
At First Baptist Church in Kirksville

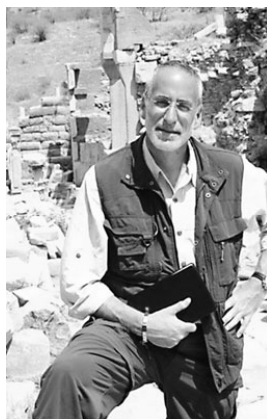
Saturday, April 5—7:00 p.m. "The Dead Sea Scrolls"

Sunday, April 6—10:45 a.m. "Christian Love Story"
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Listen as Dr. Seif shares insights and Biblical teachings and helps Believers understand their Jewish roots.

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Dr. Jeffrey Seif

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