

# Wisconsin Criminal Justice Study Commission

A Partnership of the State Bar of Wisconsin, Marquette University Law School, the Wisconsin Attorney General's Office, and the University of Wisconsin Law School

## ***Charter Statement***

The criminal justice system, like all human creations, is imperfect. At every stage of a case, system actors—victims, police officers, prosecutors, defense attorneys, and judges—make difficult decisions that both determine the fate of individuals and reflect the legitimacy of the system to the larger community. When the system fails, the consequences can be disastrous for both individuals and society.

One mission of the criminal justice system is to convict the guilty, and only the guilty. Recent events make clear that the system sometimes fails this fundamental mission by allowing people guilty of crimes—sometimes very serious ones— to go free and unpunished. And even more intolerable, innocent people are convicted and punished in their place. This is unjust to individual victims and defendants and also undermines the legitimacy of the system by eroding public trust in its accuracy and fairness. Justice and legitimacy also suffer when the guilty go free, even if no one is wrongly convicted.

Between 1989 and 2003, at least 328 wrongly convicted people nationwide were legally exonerated and freed from prison. In many of those cases, the wrongful conviction of an innocent person meant that a violent and dangerous offender was allowed to escape detection and remain free in the community to commit other crimes. More than half of the 328 exonerated people served more than 10 years in prison. Eighty percent served at least five years. Overall, they served more than 3,400 years, at an estimated cost to taxpayers of \$85 million. Based on the

number of discovered exonerations, one worries that the actual number of wrongful convictions might be much higher.

Acknowledging the system's imperfections affords an opportunity for improvement. The exoneration cases have revealed specific, proven instances of system error, and other countries and states- including Great Britain, Canada, Illinois, North Carolina, Virginia, and others- have taken the opportunity to investigate those cases and the problems revealed by them. These other jurisdictions have created commissions to study their own wrongful convictions (and unsolved crimes) and learn how the system can be improved to better deliver justice.

Wisconsin has had its share of wrongful convictions, including three exposed by post-conviction DNA testing and a number of others based upon other types of new evidence. The exoneration of Steven Avery in 2003 is the most recent example of error in Wisconsin's system. Avery was convicted of a Manitowoc rape in 1985 based on the testimony of a single eyewitness and microscopic hair comparison that supposedly tied Avery to the crime. Eighteen years later, Avery was exonerated by DNA testing that proved the eyewitness and the hair comparison evidence were wrong. In addition, the DNA testing identified the real perpetrator, a serial rapist whom a neighboring police department had been investigating in the weeks before the crime.

Avery's case spurred the creation of the Avery Task Force which examined the Avery case and addressed some of the issues raised by wrongful convictions. While its work has been valuable, the Task Force will of necessity disband soon. There is still work to be done, including review of: the use of expert testimony and jury instructions to address eyewitness error, jailhouse snitch testimony, junk science, false confessions, prosecutorial discretion, "tunnel vision" and "confirmation bias" in criminal investigations, crime lab standards and funding, defense attorney training and funding, and appellate standards of review.

These issues demand attention. Yet no forum exists in Wisconsin to explore them systematically. Unfortunately, when it comes to organized discussion of system-wide problems, the various groups in the system keep to themselves. Police, prosecutors, victims, judges, defense attorneys and correctional officers hold their own separate conventions and discuss problems common to their own members. This compartmentalization prevents the different groups from seeing that they have common problems and joining forces to solve those problems. The

lack of communication also leads to entrenched adversarial stances among system actors.

In order to build on the work already done and to provide the various system actors with a forum for communication, the State Bar of Wisconsin, Marquette University Law School, the Wisconsin Attorney General's Office, and the University of Wisconsin Law School have decided to create a Criminal Justice Study Commission to identify and help correct problems in the Wisconsin criminal justice system. The goal of our commission will not be to point fingers or assign blame for past mistakes, as some might understandably fear. And while the wrongful convictions of Steven Avery and others are a major stimulus for the commission, the commission's role will not be to identify specific cases of wrongful conviction. Rather, the overriding purpose of the commission will be to produce the best possible criminal justice system, one that justly convicts the guilty and not the innocent.

All four of the Commission's sponsors are responsible for educating criminal justice professionals. Because of our keen interest in the administration of justice- an interest shared by many others- we feel a particular responsibility for the improvement of the criminal justice system.

Together, we have assembled a commission made up of members from all facets of the criminal justice system, including police, defense attorneys, prosecutors, judges, and victims' advocates. Our commission also includes community leaders from outside the system, people who we hope will contribute fresh ideas to criminal justice problems. In order to foster a non-political environment, we have not invited legislators to serve on the commission; instead, we plan to identify and contact four legislators to serve as liaisons to the commission in the event that the commission's work requires a connection to the legislature.

The commission members will have a broad mandate to study different aspects of the system and craft solutions to problems they identify. While the commission members will have freedom to determine their own agenda and product, we anticipate that product will include reports, conferences, guidelines, research papers, legislation, and jury instructions, to name a few possibilities. While we anticipate the commission's work to take at least three years, we expect reports and recommendations to be made public periodically, as they are completed.

We anticipate that the commission will meet between three and five times each year, for a maximum three-year total of fifteen meetings. The

majority of the meetings will be held in Madison, but some meetings will be held in different locations around the state, depending on logistical convenience.

The University of Wisconsin-Madison has provided funding to hire a staff attorney for the commission. The staff attorney, who has begun working already, will attend all commission meetings and conduct research, scheduling and any other necessary administrative support. The other three co-sponsors have agreed to provide funding for work group gatherings and support.