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September 26, 2006

Joint Legislative Council Study Committee
Wisconsin State Capitol
225 Northwest
Madison, WI 53708-8953

RE: Proposed Legislation for the Benefit of Wisconsin's Exonerees

Dear Committee Members:

I am a Wisconsin resident, as well as, a graduate of the University of Wisconsin Law School practicing in this State. As a criminal defense attorney, I have been working pro bono to help Wisconsin Exonerees seal their criminal case files. Unfortunately, the procedure for doing this is much more difficult than it should be. I am writing to impress upon you the importance of proposing Legislation that would provide for the automatic removal of criminal court case information and the return or destruction of all information obtained in conjunction with a wrongful arrest, prosecution or conviction for past, present and future Exonerees.¹ With the support of the Wisconsin Innocence Project, the New York Innocence Project and Wisconsin Exonerees, I present the enclosed draft Legislation for your consideration.

Being an enlightened populous, we should all agree that, after a wrongful prosecution or conviction has been discovered, an Exoneree's full membership in society should resume as quickly and efficiently as possible. Society benefits, since restoring the Exoneree's reputation, dignity and livelihood as closely as possible to his/her pre-incarceration condition enables an Exoneree to become a fully contributing member. Unfortunately, as of yet, this has not come to fruition.

¹ "Exoneration" is generally defined as an official act declaring a defendant not guilty of a crime for which he or she has been previously convicted. Exonerations typically occur in four ways: 1) when Governors (or other appropriate executive officers) issue pardons based on evidence of the defendant's innocence; 2) when criminal charges are dismissed by courts after new evidence of innocence emerged, such as DNA; 3) when defendants were acquitted at a retrial on the basis of evidence that they had no role in the crimes for which they were originally convicted; 4) when states acknowledge innocence of a defendant who had already died in prison. (Gross, Jacobly, Matheson, Montgomery, Patil "Exonerations in the United States 1989 Through 2003" The Journal of Criminal Law and Criminology, Vol. 95 No. 2 523, 524 (2005).

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Continued disclosure and dissemination of the information associated with a wrongful arrest, prosecution or conviction is often an obstacle for an Exoneree. The disclosure of court records of citizens who have been exonerated for crimes for which they have been wrongfully accused can also be a hindrance. Arrest records can be a similar hindrance to the restoration of an arrestee's full citizenship by blocking his or her ability to obtain employment, an education, housing and credit.

Surveys reveal that the wrongfully imprisoned who eventually regain their freedom suffer profound economic losses. Studies by the Life After Exoneration Project found that over 90 percent of Exonerees lost all their assets -- savings, vehicles, houses -- while imprisoned. Frontline: Burden of Innocence (PBS television broadcast, May 1, 2003). Of those who are able to get jobs after their release, 43 percent are paid less than they earned prior to their imprisonment, 39 percent find work at similar pay, and only 17 percent are paid more than their pre-conviction salaries. Id. When corrected for inflation and unemployed Exonerees, the vast majority of Exonerees never recover their pre-conviction earning potential. Id.

This is also true for Wisconsin Exonerees. One such Exoneree, Fred Saecker, has noted from his Social Security Statement that in addition to seven years of wages lost while he was incarcerated, for years after his exoneration and release, his wages were 25% of his pre-conviction income. (Please see enclosed testimonial of Mr. Fred Saecker.) Another Exoneree, Mike Piaskowski, who has been out of prison for more than five years after six years of incarceration, indicated that his income is one-third of what it had been prior to his wrongful imprisonment. Moreover, he has none of the benefits that he enjoyed prior to his arrest - like health insurance, a pension or job security. (Enclosed is a testimonial of Mr. Piaskowski and his corresponding CCAP information. Please note, because Mr. Piaskowski's conviction was overturned on appeal, the recent changes to CCAP have had no effect on the way his case information is reported.)

In Wisconsin, this unfortunate situation is compounded by the fact that deficient and defective adult criminal case information is considered public information. In fact, the Wisconsin Court System maintains an internet site known as the Wisconsin Circuit Court Access Program (CCAP). This site contains criminal case information and is accessible online by anyone. The site includes information on all pending cases, not only those which have resulted in a conviction. In fact, criminal case information is published on CCAP regardless of the outcome of the case. Astonishingly, as of yet there is no provision for removal of this case information from the court's internet site when a case is dismissed or otherwise voided. Consequently, the site's contents are regularly misunderstood and misused.

Potential employers in Wisconsin rely upon this site in order to ascertain whether an applicant has a criminal record. If a case is reported, they often assume that the person named as the defendant was convicted. Evan Zimmerman, another Wisconsin Exoneree whose conviction was overturned by the Wisconsin Court of Appeals and whose case was dismissed with prejudice at retrial, was denied a janitorial job on the basis of the case information that his potential employer discovered on CCAP. As in Mr. Zimmerman's circumstance, many employers do not understand the content of the internet case file. This is likely, partially due to the dearth of information on the site.

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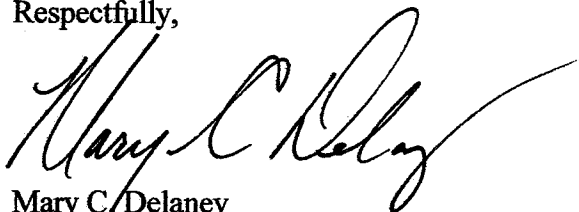
Recently, some changes have been made to the CCAP site in an effort to present information as clearly as possible and to better reflect the outcome of the case. However, for many Exonerees (like Mr. Piaskowski), this has had no effect upon the manner in which their case is reported. If the wrongful conviction was overturned on appeal, unless the case is retried, the fact that the conviction was voided is not reported on CCAP.

Similarly, the Wisconsin Department of Justice Crime Information Bureau (CIB) makes background criminal records checks available online or by mail to the public. In many instances, a CIB report is an arrest record without any information regarding subsequent events (i.e., whether the person was charged, convicted, sentenced, exonerated, etc.) With an incomplete CIB report on file, an individual cannot have their arrest information removed from their criminal record. Upon review, potential employers often assume the person is guilty of the offense alleged in the CIB report.

The reputation as well as the livelihood of the Exoneree is perpetually injured by the State's publication of information associated with their wrongful conviction. Legislation requiring the sealing of criminal court case files and the removal of information from CCAP, CIB and other State-run databanks is the least that we can do for individuals who have already suffered enormously in Wisconsin.

We would very much appreciate any efforts you might make in proposing or furthering Legislation requiring the removal of criminal court case information and the return or destruction of all information connected with a wrongful arrest, prosecution or conviction. If you would like more information or to hear testimony from some of Wisconsin's Exonerees on this subject, please do not hesitate to contact me. Thank you for your time and attention to this matter.

Respectfully,

A handwritten signature in cursive script, appearing to read "Mary C. Delaney". The signature is written in black ink and is positioned above the typed name.

Mary C. Delaney
Attorney at Law

Enclosures

Sec. _____ A Statement of Policy. After a wrongful arrest, prosecution or conviction has been discovered, the state has the responsibility to restore the exoneree's full membership in society as quickly and efficiently as possible to ensure the exoneree does not have to continue to bear the burdens associated with the stigma of criminality. Procedures for restoring the exoneree to his or her pre-arrest, prosecution or conviction position serve both the needs of society and the rights of all citizens. Restoring the exoneree's reputation, dignity and ability to pursue a productive future, through work and education, will help repair the personal losses that come from being wrongfully accused. It will also help ensure that exonerees will, over the course of their lives, contribute to the state's economy by supporting their families, paying taxes, and otherwise function as full citizens. This General Assembly/ Wisconsin Legislature finds that arrest records can be a hindrance to the restoration of an arrestee's full citizenship by blocking his or her ability to obtain employment, an education, housing, to obtain credit and other benefits of citizenship. It further finds that police and court records of those of its citizens who have been exonerated of crimes for which they have been unjustly charged and/or convicted can also be a hindrance. This legislation is thus intended to protect Wisconsin citizens from the deleterious consequences which may occur as a result of having been wrongfully accused by restoring exonerees, as closely as possible, to the positions they occupied before their wrongful arrests, prosecutions or convictions.

Sec. _____ B Right to Have Records/Files Sealed. (1) A person who has been placed under custodial or noncustodial arrest for commission of a felony or misdemeanor is entitled to have all records and files relating to the arrest sealed if:

- (a) The person was arrested or taken into custody and subsequently released without charge;
 - (b) The person was cleared of the offense through court proceedings by:
 - 1. a dismissal of the entire case by the prosecutor or judge and there has not been and will not be an appeal by the prosecution;
 - 2. a verdict of complete acquittal by a judge or jury;
 - 3. a conviction after adjudication that has been reversed, set aside or vacated by the judge where there has not been, and will not be, an appeal by the prosecution;
 - (c) The person was pardoned by a Governor (or other appropriate executive officers) based on evidence of the person's innocence;
 - (d) The person's case was reviewed by the Wisconsin Claims Board and there was a finding by the Board that the prisoner was innocent of the crime for which he or she suffered imprisonment; or
 - (e) There was an acknowledgment by the State of a defendant's innocence after their death (in prison.)
- (2)** this statute applies retroactively to all matters that meet the qualifications set out in sub (1) of this section.

Sec. ____ C Procedure for Sealing Records/Files. (1) Upon the termination of a criminal investigation, action or proceeding against a person in favor of such person, as defined in sec. ____B, unless the district attorney upon motion with not less than five days notice to such person or his or her attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise, or the court on its own motion with not less than five days notice to such person or his or her attorney determines that the interests of justice require otherwise and states the reasons for such determination on the record, the record of such action or proceeding shall be sealed and its reference shall be removed from CCAP. The clerk of the court in which the criminal investigation, action or proceeding was terminated shall immediately notify the Department of Justice and the heads of all appropriate police departments and other law enforcement agencies, including but not limited to the Federal Bureau of Investigation and the Federal Department of Justice, that the action has been terminated in favor of the accused and unless the court has directed otherwise, that the record of such action or proceeding shall be sealed. Upon receipt of notification of such termination and sealing:

(a) every photograph of such person and photographic plate or proofs, and all palmprints and fingerprints taken or made of such person pursuant to the provision of this article in regard to the action or proceeding terminated, except a dismissal pursuant to 971.31(6) or 971.31(7), and all duplicates and copies thereof, except a digital finger print image where authorized pursuant to paragraph (e) of this section, shall forthwith be, at the discretion of the recipient agency, either destroyed or returned to such person, or to the attorney who represented such person at the time of termination of the action or proceeding, at the address give by such person or attorney during the action or proceeding, by the Department of Justice services and by any police department or law enforcement agency having any such photograph, photographic plate or proofs, palmprints or fingerprints in its possession or under its control;

(b) any police department or law enforcement agency, including the Department of Justice, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of Wisconsin copies of such photographs, photographic plates or proofs, palmprints and fingerprints, including those relating to investigations, actions or proceedings which were dismissed pursuant to 971.31(6) or 971.31(7), shall forthwith request in writing that all such copies be destroyed or returned to the police department or law enforcement agency which transmitted or forwarded them, and, if returned, such department or agency shall either destroy or return them as provided herein, except that those relating to dismissal pursuant to 971.31(6) or 971.31(7) shall not be destroyed or returned by such department or agency;

(c) all DNA records, profiles and samples collected from such person pursuant to the provision of this article in connection with the action or proceeding terminated, except a dismissal pursuant to 971.31(6) or 971.31(7), and all duplicates and copies thereof shall be either destroyed or returned to such person, or to the attorney who represented such person at the time of termination of the action or proceeding, at the address give by such person or attorney during the action or proceeding, by the Department of Justice and the State Crime Laboratory's Wisconsin DNA Databank Manager and by any police department or law enforcement agency having any such records or samples and employ the procedures currently in place to comply with this subsection.

(d) any police department or law enforcement agency, including the Department of Justice and the State Crime Laboratory, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of Wisconsin copies of the DNA records or profiles or samples collected including those relating to investigations, actions or proceedings which were dismissed pursuant to 971.31(6) or 971.31(7), shall request in writing that all such copies be destroyed or returned to department or agency which transmitted or forwarded them, and, if returned, such department or agency shall either destroy or return them as provided herein, except that those relating to dismissal pursuant to 971.31(6) or 971.31(7) of this Statute shall not be destroyed or returned by such department or agency;

(e) any arrest cycle generated in connection with the action or proceeding terminated, except a dismissal pursuant to 971.31(6) or 971.31(7), shall be removed from the Department of Justice Crime Information Bureau by the Department of Justice and by any police department or law enforcement agency having any such information and employ the procedures currently in place to comply with this subsection.

(f) any police department or law enforcement agency, including the Department of Justice, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of Wisconsin copies of the arrest cycle referenced in subsection(e) above, including those relating to investigations, actions or proceedings which were dismissed pursuant to 971.31(6) or 971.31(7), shall request in writing that all such copies be destroyed or returned to department or agency which transmitted or forwarded them, and, if returned, such department or agency shall destroy them as provided herein, except that those relating to dismissal pursuant to 971.31(6) or 971.31(7) of this Statute shall not be destroyed or returned by such department or agency;

(g) all official records and papers, including judgments and orders of a court but not including published court decisions or opinions or records and briefs on appeal, relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the Department of Justice, any court, police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency;

(h) such record shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to sec. ____D of this Statute, or (ii) a law enforcement agency upon ex parte motion in any trial court, if such agency demonstrates to the satisfaction of the court that justice requires that such record be made available to it, or (iii) any state or local officer or agency with responsibility for issuing licenses to possess guns, when the accused has made application for such a license, or iv) the Wisconsin Division of Community Corrections when the accused is on supervision as a result of conditional release or parole release, and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision or (v) any prospective employer of a police officer or other law enforcement

agency in relation to an application for employment as a police officer or other law enforcement agent; provided, however, that every person who is an applicant for the position of police officer or law enforcement agent shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation thereto, or (vi) the community correction office responsible for supervision of the accused on probation when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision; and

(i) where fingerprints subject to the provisions of this section have been received by the Department of Corrections and have been filed by the division as digital images, such images may be retained, provided that a fingerprint card of the individual is on file with the division which was not sealed pursuant to sec. ____ .C of this Statute.

(2) A report of the termination of the action or proceeding in favor of the accused shall be sufficient notice of sealing to the Department of Justice unless the report also indicates that the court directed that the record not be sealed in the interest of justice. Where the court has determined pursuant to subsection one of this section that sealing is not in the interest of justice, the clerk of court shall include notification of that determination in any report to such department of the disposition of the action or proceeding.

(3) Where all charges against such person are dismissed pursuant to ____ .B of this Statute, the clerk of court shall serve a certification of such disposition upon the Department of Justice and upon the appropriate police department or law enforcement agency which upon receipt thereof, shall comply with the provisions of subsections (1) (a)-(i) of Section C of this Statute in the same manner as is required thereunder with respect to a notice of termination and sealing by a court entered pursuant to Sec. C; or

(4) Where a conviction is voided/overturned through pardon by a Governor (or other appropriate executive officers) based on evidence of the person's innocence, that office shall serve a certification of such disposition upon the Department of Justice and upon the appropriate police department or law enforcement agency which upon receipt thereof, shall comply with the provisions of subsections (1) (a)-(i) of Section C of this Statute in the same manner as is required thereunder with respect to a notice of termination and sealing by a court entered pursuant to Sec. C.

(5) Where there has been a finding by the Wisconsin Claims Board that a prisoner was innocent of the crime for which he or she suffered imprisonment, the Claims Board shall serve a certification of such disposition upon the Department of Justice and upon the appropriate police department or law enforcement agency which upon receipt thereof, shall comply with the provisions of subsections (1) (a)-(i) of Section C of this Statute in the same manner as is required thereunder with respect to a notice of termination and sealing by a court entered pursuant to Sec. C.

(6) Where there has been an acknowledgment by the State of a defendant's innocence after his or her death, the State agency making that acknowledgment shall serve a certification of such disposition upon the Department of Justice and upon the appropriate police department or law

enforcement agency which shall, upon receipt thereof, comply with the provisions of subsections (1) (a)-(i) of Section C of this Statute in the same manner as is required thereunder with respect to a notice of termination and sealing by a court entered pursuant to Sec. C.

(7) if prior to the filing of a charging document in a local criminal court against such person, the prosecutor elects not to prosecute such person, the prosecutor shall serve a certification of such disposition upon the Department of Justice and upon the appropriate police department or law enforcement agency which shall, upon receipt thereof, comply with the provisions of subsections (1) (a)-(i) of Section C of this Statute in the same manner as is required thereunder with respect to a notice of termination and sealing by a court entered pursuant to Sec. C. Failure to comply within ___ days of the decision not to prosecute will result in a \$ _____ fine upon the prosecuting agency.

(8) Following the arrest of such person, the arresting police agency, prior to the filing of a charging instrument in a local criminal court but subsequent to forwarding a copy of the fingerprints of such person to the Department of Justice, elects not to proceed further, the head of the arresting police agency shall serve a certification of such disposition upon the Department of Justice which, upon receipt thereof, shall comply with the provisions of subsections (1) (a)-(i) of Section C of this Statute in the same manner as is required thereunder with respect to a notice of termination and sealing by a court entered pursuant to Sec. C. Failure to comply within ___ days of the decision not to prosecute will result in a \$ _____ fine upon the arresting agency.

Sec. _____ D Filing a Petition for Sealing on Matters Terminated Prior to Enactment: A person in whose favor a criminal investigation, action or proceeding was terminated, as defined in subsection (1)(b) of section B, prior to the effective date of this section, may apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting the relief set forth in subsection one of this section, and such order shall be granted unless the district attorney demonstrates by clear and satisfactory evidence that the interests of justice require otherwise. A person in whose favor a criminal investigation, action or proceeding was terminated as defined in subsection (1)(b) of section B, prior to the effective date of this Statute, may apply to the appropriate prosecutor or police agency for certification as described in said subsection (7) or (8) of Sec. C. granting to such person the relief set forth therein, and such certification shall be granted by such prosecutor or police agency.

Sec. _____ E Duties of Clerk of Court: (1) When required by statute or court order to seal a court, records, the clerk of court shall do all of the following:

(a) send a certified copy of the disposition along with the Notification of Termination and Sealing with an explanation of the effect of the disposition and a request that the receiving agency either destroy or return them to such person or to the attorney who represented such person the information and/or documentation in its possession that are subject to the order.

(b) the certified copy of the disposition and explanation shall be sent by secure electronic mail or facsimile transmission, if requested by person who is subject of order, or otherwise by certified mail, return receipt requested or by hand delivery with a receipt for that hand-delivered Order to Department of Justice and the heads of all appropriate police departments and other law

enforcement agencies.

(c) any returned receipts received by the clerk from notices of hearing and copies of the disposition shall be maintained in the file.

(d) When required by the statute or order to seal a court record, not earlier than the 60th day after the date of the disposition is issued the clerk of court shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection by doing all of the following:

1. Remove any paper index and nonfinancial court record and place them in the case file.
2. Electronically remove any automated nonfinancial record, including the case number.
3. Seal the entire case file.
4. Seal all the court records in accordance with the provisions of this section.
5. the clerk shall certify to the court the sealing of files or other records.

(e) prepare a Certification of Exoneration in accordance with subsection H of this statute.

Sec. _____ F When the Notification of Termination and Sealing Has Been Entered:

(1)(a) the release, dissemination, or use of the sealed records and files for any purpose other than a purpose described in Sec. _____ C is prohibited;

(b) the individual whose record has been sealed under this statute may deny the occurrence of the matters for which the records have been sealed and the existence of the notification of termination and sealing.

(c) such individuals may when questioned under oath in a criminal proceeding about the matter for which the records have been sealed, may state only that the matter in question has been terminated and sealed.

Sec. _____ G Penalties for Violation of Notification of Termination and Sealing.

(1) (a) A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state, and who knows of the termination and sealing of the information and documentation related to that matter, commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

(b) A person who knowingly fails to return or to obliterate identifying portions of any record or file that is the subject of a notification of termination and sealing under this section commits an offense.

(c) A private agency that fails to update their information on a yearly basis by removing any information or documentation that has been the subject of a notification of termination and sealing is subject to a \$ _____ fine as well as any additional financial damages the dissemination of this information has caused to the person who is the subject of the information.

(d) An offense under (a) and (b) of this section is a Class B misdemeanor.

Sec. ____ H. Certification of Exoneration.

(1) When a court records are sealed pursuant to this statute, the individual whose record has been sealed under this statute shall be provided with a laminated, wallet-sized certification from the State of Wisconsin that shall be used as notification of termination of the corresponding criminal investigation, action or proceeding against a person in favor of such person. Information on the card shall include:

- (a) the municipality or county where the investigation was initiated;
- (b) the criminal charges that were dropped, dismissed or overturned;
- (c) any corresponding law enforcement file number;
- (d) any corresponding court case number;
- (e) the state or federal agency that dropped, dismissed or overturned the matter;
- (f) the federal identification number applied to this individual (if applicable);
- (g) the A file number applied to this individual (if applicable);
- (g) any other identifying or relevant information relied upon by state or federal agencies for criminal background checks.



Faculty Director
Walter J. Dickey

Director
Meredith J. Ross

September 8, 2006

**Wisconsin
Innocence
Project** Joint Legislative Council Study Committee
c/o Representative Robin Vos
Wisconsin State Capitol
PO Box 8953
Madison, WI 53708-8953

Keith A. Findley
John A. Pray
Co-Directors

Byron Lichstein

Dear Committee Members:

On behalf of the Wisconsin Innocence Project, we would like to add our support to a revision to Wisconsin law which would expunge or seal the criminal records of the wrongfully convicted.

While exoneration restores a person's legal innocence, it does not repair a shattered personal or professional reputation. Those are to be rebuilt by the exoneree, who must begin life anew following his (or her) release from prison. The exoneree will have lost his job, his home, his savings, his social relationships and years of his life serving a sentence for a crime he did not commit. Incarceration is a uniquely devastating experience. For the wrongfully incarcerated, though, the injury is compounded by public access to records of arrest, prosecution and conviction. In Wisconsin, all records of criminal and civil court proceedings are accessible to anyone with an internet connection, through the Consolidated Courts Automation Programs ("CCAP").

While an exoneree's CCAP record will ultimately reflect that a conviction has been overturned, the disposition appears to the casual reader to be a mere procedural footnote, in fine print at the end of a court document. (See, for example, the enclosed printout of Evan Zimmerman's first-degree intentional homicide dismissal.) A potential employer doing a background check will certainly see details of the criminal charges, the conviction and the sentencing. Whether the potential employer will continue reading long enough to see that the conviction was, in fact, wrongful, is an open question. And, sadly, that question may be moot: "innocent until proven guilty" is an institutional ideal which is somewhat at odds with human nature. Citizens have faith that the criminal justice system operates fairly and with as few mistakes as possible; thus, it is intuitive that if an individual has been arrested and charged, he must have done *something*. And so the existence of a criminal record, even a demonstrably false one, haunts and stigmatizes an exoneree every time another person reads it.

Frank J. Remington Center

University of Wisconsin Law School 975 Bascom Mall Madison, WI 53706-1399
608/262-1002 FAX: 608/263-3380

Joint Legislative Council Study Committee
September 8, 2006
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Surprisingly, in Wisconsin there is no statutory mechanism for expunging or sealing criminal records following exoneration. The proposed legislation codifies the simple, just and fair notion that if a person has not committed a crime, he should not have a criminal record.

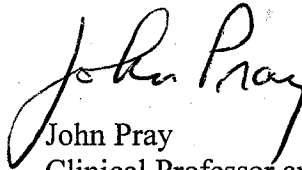
Thank you for considering this proposal. If you would like any additional information or input, please do not hesitate to contact us.

Sincerely,

WISCONSIN INNOCENCE PROJECT



Keith Findley
Clinical Professor and Co-director
(608) 262-4763



John Pray
Clinical Professor and Co-director
(608) 263-7461



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State of Wisconsin vs. Evan M. Zimmerman

Eau Claire County Case Number 2001CF000063

Filing Date	Case Type	Case Status	Court Record Events
02-05-2001	Criminal	Closed	<input checked="" type="radio"/> Ascending Date Order <input type="radio"/> Descending Date Order
Defendant Date of Birth	Address		
06-19-1946	5409 Mormon Coulee Rd Apt 4, LaCrosse, WI 54601		
Branch Id	DA Case Number		
4	001399		

Charge(s)

Count No.	Statute	Description	Severity	Disposition
1	940.01(1)	1st-Degree Murder	Felony A	Dismissed /Pr Motion

[View history and details of Charge\(s\)/Sentence\(s\)](#)

Defendant Owes the Court: \$ 557.60

Responsible Official	Prosecuting Agency	Prosecuting Attorney	Defense Attorney
Proctor, Benjamin D.	District Attorney	White, G. Richard	Belzer, Keith A; Delaney, Mary C.

Defendant

Defendant Name	Date of Birth	Sex	Race ¹
Zimmerman, Evan M.	06-19-1946	Male	Caucasian
Address			Address Updated On
5409 Mormon Coulee Rd Apt 4, LaCrosse, WI 54601			10-14-2004
JUSTIS ID	Finger Print ID		

Defendant Attorney(s)

Attorney Name	Entered	Withdrawn
Walsh, Kieran J	02-05-2001	02-19-2001
Schembera, William A	02-19-2001	08-28-2002
Findley, Keith A	08-28-2002	01-26-2005
Wachowski, Richard L	02-05-2004	02-17-2004
Belzer, Keith A	02-17-2004	
Delaney, Mary C.	01-26-2006	

Charge(s)/Sentence(s)**The Defendant was charged with the following offense:**

Count No.	Statute Cite	Description	Severity	Offense Date	Plea
1	940.01(1)	1st-Degree Murder	Felony A	02-26-2000	Not Guilty on 07-15-2001

On 05-17-2001 there was a finding of:

Action	Court Official
Guilty / Jury Trial	Wahl, Eric J

On 07-12-2001 the following was ordered:

Sentence	Time	Begin Date	Notes
Costs			
State prison	1 Life		Eligible for release to extended supervision after serving 20 years AMENDED 7-16-01 to delete term of extended supervision of 10 year AMENDED 8-8-01 to indicate 156 days jail credit per court order

On 04-29-2005 there was a finding of:

Action	Court Official
Dismissed /Pr Motion	Proctor, Benjamin D.

Total Receivables

Court Assessments	Adjustments ³	Paid to the Court	Probation/Other Agency Amount ⁴	Balance Due to Court	Due Date ⁵
\$ 627.60	\$ 0.00	\$ 0.00	\$ 70.00	\$ 557.60	

¹ The designation listed in the Race field is subjective. It is provided to the court by the agency that filed the case.

² Non-Court activities do not require personal court appearances. For questions regarding which court type activities require court appearances, please contact the Clerk of Circuit Court in the county where the case originated.

³ Includes collection agency fees; bankruptcy discharge of debt; Department of Revenue collection fees; and forgiven debts due to indigence, death, time served, or community service.

⁴ Some amounts assessed by the courts are collected by the Department of Corrections or other agencies. This column is rarely updated by the courts and may be less than the actual amount owed.

⁵ For cases with multiple assessments, the due date represents the assessment with the latest date.

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Barry C. Scheck, Esq.
Peter J. Neufeld, Esq.
Directors

Maddy deLone, Esq.
Executive Director

Innocence Project
100 Fifth Avenue, 3rd Floor
New York, NY 10011
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www.innocenceproject.org

July 28, 2006

Joint Legislative Council Study Committee Members
Wisconsin State Capital
PO Box 8953
Madison, WI 53708-8953

Re: Proposed Legislation for Expungement/Sealing of the Criminal Records of the Wrongfully Convicted

To Whom It May Concern:

On behalf of the Innocence Project, I would like to voice our support for a revision to Wisconsin law, which would expunge and/or seal the arrest, police and court records of the wrongfully convicted.

An innocent person wrongly convicted of a crime is robbed of his freedom, his family and friendships, and his livelihood – in order to be subjected to the unique horror of prison. Unfortunately, the nightmare does not end there. With no money, housing, transportation, health services or insurance, and a criminal record that is rarely cleared despite innocence, the punishment lingers long after innocence has been proven and the difficulty of reentering society is profound.

Each state has a responsibility to restore these innocents' lives to the best of its ability. Time and again, we hear accounts from exonerated individuals of their inability to secure employment due to the existence of records connected to their wrongful conviction. The onus should not fall upon the individual who has already been victimized by a wrongful conviction to obtain a clean criminal record. Passage of legislation that would revise the current law would create a more fair and streamlined process, allowing for the immediate and automatic record expungement/sealing for the wrongfully convicted.

We thank you for exploring this sensible proposal and urge the Committee to report upon the proposed changes favorably. With the passage of this proposed legislation, the state of Wisconsin has the potential to aide the wrongfully convicted, support the fair administration of justice, and become a national leader in addressing this issue.

Should you require any additional information or resources, please do not hesitate to contact me at (212) 364-5360.

Sincerely,



Rebecca Brown
Policy Analyst

When I, Freddie Saecker, was exonerated in 1996, I had issues with my self-esteem and anxiety. Some of these I am still working on. I was asked to be interviewed by different television stations but I could not handle doing that. I thought perhaps the same thing that happened at my trial might happen with the media. The facts become misrepresented and all of a sudden you said or did something you didn't really say or do.

I kept to myself and was afraid to leave my brother's house and have had issues going out into public places, for example, grocery stores, laundromats or even walking the street. I went to counseling for anxiety, depression, and post-traumatic stress. This was paid for by the county of Winona in Minnesota, because I had no income.

I couldn't see myself functioning in a work environment and had no skills. Then somebody I knew from high school contacted me. He called me up and later I began working for him. He was logging and I would go out to his job site and cut firewood. I had an annual income of

a few thousand dollars. I had learned not to need much in prison and was largely supported by his generosity in exchange for my helping him. He eventually started a co-op and I continued to work there and my income went to between 10 and 15 thousand by 2001. The co-op collapsed and I went to work for another logger who also had a sawmill. I worked there, but because of chronic Lyme disease, I was forced to find less strenuous work.

In 2002 my conviction was finally overturned. I felt I could seek out work with an explanation for the missing years of work history. It turns out they were not too concerned anyway because I had obtained the skill necessary to drive a forklift by that time. I currently make, after three years, \$11.25 an hour. My highest income has been \$22,800. That is comparable to my income in 1981. Given the increase in cost of living that is not very much, but I still am better off than a lot of the rest of the world.

What would be a great help is IF I was able to get an education. Largely

because of anxiety, self-esteem and some health issues, fatigue from the Lyme disease, and barely being able to get through the day, I have not had the time and energy for school. I still plan to do so if the treatment I am receiving for the Lyme disease takes hold.

I was supposed to receive training while in prison for graphic arts. I was approved and put on a waiting list. I was there for 3 years and interviewed by the teacher but never started the class. Maybe because I didn't admit to committing the crimes I was in prison for.

My income has suffered greatly because of the time I spent in prison. My age and health are both issues. Mostly I still fear what will happen with retirement benefits and social security. I can probably look forward to working long after 70. The post-traumatic stress and depression I am still receiving treatment for. Records could possibly be made available. I am single otherwise my loss would be even greater.

signed, Judie Karl Sacher
7/16/06

Help Us Keep Your Earnings Record Accurate

You, your employer and Social Security share responsibility for the accuracy of your earnings record. Since you began working, we recorded your reported earnings under your name and Social Security number. We have updated your record each time your employer (or you, if you're self-employed) reported your earnings.

Remember, it's your earnings, not the amount of taxes you paid or the number of credits you've earned, that determine your benefit amount. When we figure that amount, we base it on your average earnings over your lifetime. If our records are wrong, you may not receive all the benefits to which you are entitled.

▼ **Review this chart carefully** using your own records to make sure our information is correct and that we've recorded each year you worked. You're the only person who can look at the earnings chart and know whether it is complete and correct.

Some or all of your earnings from **last year** may not be shown on your *Statement*. It could be that we still were processing last year's earnings reports

when your *Statement* was prepared. Your complete earnings for last year will be shown on next year's *Statement*. **Note:** If you worked for more than one employer during any year, or if you had both earnings and self-employment income, we combined your earnings for the year.

▼ **There's a limit on the amount of earnings on which you pay Social Security taxes each year.** The limit increases yearly. Earnings above the limit will not appear on your earnings chart as Social Security earnings. (For Medicare taxes, the maximum earnings amount began rising in 1991. Since 1994, all of your earnings are taxed for Medicare.)

▼ **Call us right away at 1-800-772-1213 (7 a.m.-7 p.m. your local time)** if any earnings for years **before last year** are shown incorrectly. If possible, have your W-2 or tax return for those years available. (If you live outside the U.S., follow the directions at the bottom of Page 4.)

Your Earnings Record at a Glance

Years You Worked	Your Taxed Social Security Earnings	Your Taxed Medicare Earnings	Years You Worked	Your Taxed Social Security Earnings	Your Taxed Medicare Earnings
1966	\$ 422	\$ 422	1990	\$ 0	\$ 0
1967	0	0	1991	0	0
1968	411	411	1992	0	0
1969	897	897	1993	0	0
1970	772	772	1994	0	0
1971	62	62	1995	0	0
1972	858	858	1996	0	0
1973	1,582	1,582	1997	0	0
1974	3,090	3,090	1998	0	0
1975	5,357	5,357	1999	4,375	4,375
1976	2,471	2,471	2000	5,090	5,090
1977	1,618	1,618	2001	13,558	13,558
1978	2,379	2,379	2002	8,665	8,665
1979	2,462	2,462	2003	13,633	13,633
1980	8,388	8,388	2004	22,817	22,817
1981	14,414	14,414	2005	16,327	16,327
1982	19,566	19,566			
1983	21,191	21,191			
1984	21,647	21,647			
1985	19,751	19,751			
1986	19,964	19,964			
1987	21,282	21,282			
1988	13,904	13,904			
1989	575	575			

Total Social Security and Medicare taxes paid over your working career through the last year reported on the chart above:

Estimated taxes paid for Social Security:	Estimated taxes paid for Medicare:
You paid: \$15,818	You paid: \$3,705
Your employers paid: \$14,645	Your employers paid: \$3,432

Note: You currently pay 6.2 percent of your salary, up to \$94,200, in Social Security taxes and 1.45 percent in Medicare taxes on your entire salary. Your employer also pays 6.2 percent in Social Security taxes and 1.45 percent in Medicare taxes for you. If you are self-employed, you pay the combined employee and employer amount of 12.4 percent in Social Security taxes and 2.9 percent in Medicare taxes on your net earnings.

To Whom It May Concern:

My name is Michael L. Piaskowski. On Oct 28, 1995 myself and five co-workers (Michael Hirn, Rey Moore, Keith Kutska, Michael Johnson and Dale Basten) were convicted of PTAC First Degree Intentional Homicide – WI cases 95CF237 thru 95CF242 – in the death of another co-worker, Thomas Monfils on Nov 21, 1992. Over three years later in early Dec 1995, after a six-defendant twenty-eight day joint trial, we were all sentenced to Life in prison with differing parole eligibility dates. Those dates ranged from the Statute minimum of 13 years 4 months up to 20 years.

On Jan 8 2001 Senior District Judge Myron L. Gordon of The Eastern District Court Of WI overturned my conviction for a lack of evidence. In his decision Judge Gordon ruled that, “No reasonable jury could have found Mr. Piaskowski guilty...” It “required the jury to pile speculation on top of inferences drawn from other inferences...Such a verdict is not rational”. On Feb 2, 2001 Eastern District Judge Lynn Adelman confirmed Judge Gordon’s decision. On July 10, 2001 Justices Evans, Easterbrook and Manion of The United States Court Of Appeals For The Seventh Circuit granted me my permanent unencumbered freedom. Judge Gordon’s ruling also states, “The issuance of a writ of habeas corpus is a ‘grave remedy’ reserved for ‘grave occasions’...this is such an occasion... Because the evidence was not sufficient to support his conviction the Double Jeopardy Clause of the Fifth Amendment bars a retrial.” I was released from incarceration on Apr 3, 2001. As of this writing all five of the other defendants remain in prison for a crime that I firmly believe they did not commit, a crime that may not have even happened.

The double jeopardy clause guarantees I cannot be re-prosecuted for this crime. There is nothing preventing me from coming forward with the truth, the whole truth and nothing but the truth. I have no reason to hide information or shield anyone. The fact of the situation is; I have done nothing but tell the truth since day one. I do not claim to know what happened to Tom and emphatically state the following; **I had absolutely nothing to do with his death. I have no knowledge about his death. I never witnessed anything concerning his death. And nobody has ever confided in me with information about his death.** In their wayward effort to resolve Tom’s death the State tried to destroy my credibility and tarnish the Piaskowski name without success. I am proud to tell the world who I am and what I stand for.

Before all of this my life was basically the 'American dream' for a blue-collar worker. I had a wonderful marriage with a beautiful wife and daughter. I was gainfully employed with a rewarding career. We had health and life insurance. We owned our own home. We had vacation property. We had a savings account and a great retirement plan. We had a car, a truck, a camper, and a boat. We took annual vacations around the United States, Mexico and Canada, even to Europe once. I enjoyed hunting, fishing and competitive shooting sports. I had a passionate hobby as a highly respected volunteer certified measurer/scorer of North American big game species for several State and National record keeping organizations. I was a notary public for the community. I was an active 7-gallon A-pherisis and whole blood donor for the Red Cross. My mental and physical healths were good. My wife and I worked long and hard to achieve a good life. She was employed at one local paper mill and I at another. I began by sweeping floors for \$3.17 per hour. Twenty-three years later I had worked myself up to the paper mill specialist position earning \$19.81 per hour, annually about \$53,000.00 plus benefits. Sadly, as a direct result of the injustice, most of this is all now gone.

Upon my release, in spite of the frightening idea of 'starting over' as a 52-year-old over-the hill, out-of-touch, unemployed, out-of-money, divorced exonerree; I was very fortunate - certainly in much better shape than some of the other exonerees I had heard about. I had a wonderful family and many friends, all of them more than willing to help me get restarted. They gave me money and food. One of my sisters let me live in her basement. Another sister and a friend lent me the use of their cars until I was able to get my old truck road worthy again. Even complete strangers offered assistance. I was given a job delivering supplies for an auto paint store. The union was trying to get my old job back, with health benefits, seniority and possibly back pay. By law I would be receiving up to \$25,000.00 help from the State for the wrongful incarceration. Things were looking up.

Unfortunately in the big picture it didn't work out quite that well. Living in my sister's basement became an imposition. The union wasn't able to get my old job back. My old truck gave out. And I hadn't received anything from the State. A sympathetic friend told me that nobody should have to go through what I went through and gave me a slightly better paying job with overtime and benefits. I found a found a place to rent, got a decent truck and with the money still coming from the State, things were looking up again - at least for a while.

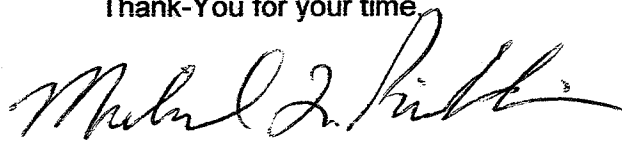
Just before Christmas last year, after three productive years for my friends company and catching up on my bills, I was laid off. I searched for work from November thru March landing only one interview. In April that same friend rehired me full time, only with no insurance and fewer hours. In May my friend informed me that he had hired a replacement for me and I should start looking for a new job. He said, and I quote, **"It took us a long time to get over the Margaret Anderson thing (a local rape and murder case from the late 1970's) and your thing is just taking to long. I'm tired of answering questions to everybody about who I have working for me... I gave it a try and it just isn't worth it anymore."** I was devastated. In a few days the replacement came, but quit after a day and a half. A

second replacement lasted a week and a half. As of today I'm still working, but my hours have been reduced to part-time. I've been looking for a different work but as usual I seem to be met with deaf ears. The help from the State continues to elude me.

Two years ago I won a 20-gauge shotgun in a Whitetails Unlimited Inc. fund raising raffle. In spite of my complete exoneration, including (supposedly) having all of my rights restored, I was denied possession when the background check was made. After jumping through red tape hoops at my expense for more than six months I was sent a document for a one-time transaction allowing me to take possession of the shotgun. I have been informed that I will have to jump through hoops every time I make a firearm transaction. I have been invited on several Canadian fishing and hunting trips and a vacation to Mexico with friends and family, only to decline each invite because of the obvious traveling problems and delays my presence will cause when crossing borders.

If I had not been prevented from continuing my career by this injustice, I would still be gainfully employed and paying taxes. My former job is currently paying \$26.19 per hour, annually about \$65,370.00, plus full benefits. Right now, if I don't get laid off or have my benefits reduced again, my gross wages this year will be about \$20,000. - no insurance. Which is less than last year – which was less than the year before. In order to enhance my chances to get a better job I have been trying to clear my record. So far, because of technicalities, the results have been disappointing. Why do we exonerees have to be the ones to clear up the States mistakes; haven't we been persecuted enough? I and all the other exonerees are American citizens vindicated of all wrongdoing. Where are our rights? How long will these unfair convictions be allowed to continue to haunt us? Please don't let this story repeat itself to anymore innocent citizens.

Thank-You for your time.

A handwritten signature in black ink, appearing to read "Michael L. Piaskowski". The signature is fluid and cursive, with a large initial "M" and "P".

Michael L. Piaskowski

1308 Melody Dr.

Green Bay, WI. 54303

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State vs MICHAEL L PIASKOWSKI

Brown County Case Number 1995CF000239

The defendant MICHAEL L PIASKOWSKI was found guilty of the following charge(s) in this case.

- 1ST DEG INTENT HOMICIDE, an unclassified felony, Wisconsin Statutes 940.01(1).

Notice to employers: It may be a violation of state law to discriminate against a job applicant because of an arrest or conviction record. Generally speaking, an employer may refuse to hire an applicant on the basis of a conviction only if the circumstances of the conviction substantially relate to the particular job. For more information, see [Wisconsin Statute 111.335](#) and the Department of Workforce Development's [Arrest and Conviction Records under the Law publication](#)

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State vs MICHAEL L PIASKOWSKI

Brown County Case Number 1995CF000239

Filing Date	Case Type	Case Status
04-12-1995	Criminal	Closed
Defendant Date of Birth	Address	
03-02-1949	2854 WHITE PINE RD, GREEN BAY, WI 54313	

Court Record Events
<input checked="" type="radio"/> Ascending Date Order
<input type="radio"/> Descending Date Order

Charge(s)

Count No.	Statute	Description	Severity	Disposition
1	940.01(1)	1ST DEG INTENT HOMICIDE	Felony U	Guilty / Jury Trial

[View history and details of Charge\(s\)/Sentence\(s\)](#)

Responsible Official	Prosecuting Agency	Prosecuting Attorney	Defense Attorney
Bayorgeon, James T.	District Attorney	Zakowski, John P	

Defendant

Defendant Name	Date of Birth	Sex	Race ¹
PIASKOWSKI, MICHAEL L	03-02-1949	Male	
Address	Address Updated On		
2854 WHITE PINE RD, GREEN BAY, WI 54313	04-12-1995		
JUSTIS ID	Finger Print ID		