

The Wisconsin Innocence Project (WIP) located at the University of Wisconsin Law School was instrumental in Steven Avery's exoneration of involvement in a 1985 rape. Avery was released in September 2003 after serving 18 years of a 60-year sentence. DNA testing had established the truthfulness of Avery's 16 alibi witnesses who supported his claim that he had been over 40 miles from the rape scene. Another man, convicted of another rape, has been implicated as the actual perpetrator of the 1985 rape. The WIP proudly showed Avery's case on its website.

On November 15, 2005, Avery was arrested for suspicion of murdering 25-year-old Teresa Halbach two weeks earlier. Halbach was a photographer for *Auto Trader* magazine, and on October 31 she had been at the Avery family auto salvage business in Manitowoc county photographing a car for the magazine.

At the time of Avery's arrest he and Manitowoc county authorities were locked in battle over a \$36 million federal civil rights lawsuit he had filed against the county and several of its law enforcement agents over his wrongful conviction and imprisonment for the 1985 rape. Avery's arrest was fortuitous for the county's position in the lawsuit. Faced with a \$500,000 bail and the desire to retain a private defense lawyer, Avery agreed to what can charitably be described as the county's "sub-ball" offer of \$400,000 to settle the lawsuit. Avery's arrest likely saved the county untold millions of dollars, because he had compelling evidence there had been unconscionable wrongdoing in his case.

Avery's arrest is the kind of story that is used to attract television viewers and newspaper readers. The Manitowoc County DA's office has taken full advantage of the media's thirst for salacious news about Avery's case. They have effectively used the press to smear Avery and have him portrayed as guilty. His jury pool will likely be comprised of people who, in spite of their assurances of impartiality during *voir dire*, will be predisposed to a guilty verdict.

Let's be clear. The Manitowoc County DA isn't doing anything in Avery's case that isn't done by prosecutors in cases all over this country every day. After all, prosecutors are like the house in Vegas; they'll do whatever it takes to stack the odds in their favor. It's all about winning.

While the disdain of Avery's prosecutors for the presumption of innocence is to be expected, the reaction of the WIP to Avery's arrest is disturbing. They removed his photo from their website and references to his case except for seven paragraphs on a single page. They

## Wisconsin Innocence Project Needs To Show Backbone In Steven Avery's Case

JD Editorial

were released ... by the prosecution of course.

Avery claims he is being framed in retaliation for having filed his lawsuit. At this point it is unknown if Avery had anything to do with Halbach's murder – just as his innocence was unknown at this point of his prosecution for the 1985 rape. We now know he was innocent of that crime.

The core principle of this country's due process, that includes reasonable doubt, trial by jury, right to counsel, confrontation of one's accuser, etc., is the idea that an accused person is presumed innocent. Otherwise there would be no need for a trial. Just go straight from indictment to sentencing. The WIP ought to know from helping free innocent people what happens when the presumption of innocence intended to cloak Avery from prejudice is disregarded.

Although if asked Avery's prosecutors would give lip service to respecting Avery's presumption of innocence, their actions infer they think his guilt is obvious without having a trial. However, skipping a trial and imprisoning Avery indefinitely on the suspicion he is guilty would be too obvious a violation of the law. So the Manitowoc County DA is willing to settle for the public spectacle of a trial intended to confirm his guilt.

By distancing itself from their efforts on Avery's behalf in the 1985 case, the WIP conveys the underlying message that it agrees with the prosecution's assumption of Avery's guilt in his current case. That position is incompatible with due process. That position is incompatible with the very idea of justice. By failing to unabashedly defend Avery's presumption of innocence the WIP aids his prosecutors; indeed, they become part of his prosecution.

Even if the prosecution achieves a guilty verdict in Avery's current case, it does not alter the fact that he was innocent of the 1985 rape. He spent 18 years in prison for a crime he did not commit. Anything that came later doesn't diminish that fact.

The WIP has earned an outstanding reputation and is much respected for its commitment to the innocent. It does a disservice to itself and its supporters by sully that reputation. Avery's presumption of innocence is sacrosanct. The WIP should restore its website.

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jail. It's by the grace of God."

When asked how he got through the 18-year ordeal, Mumphrey said, "Personal determination to clear myself and move on with my life."

Under Texas law, Mumphrey will be eligible for compensation for wrongful imprisonment. At the current rate of \$25,000 per year as allowed by law, Mumphrey stands to be awarded almost a half-million dollars.

Sources: Fort Worth *Star-Telegram*, *Houston Chronicle*, Denton *Record-Chronicle*, and Associated Press reports.



### John Spirko Update

John Spirko's first-person story of being on Ohio's death row when there is evidence he was over 100 miles from the scene of Elgin, Ohio Postmistress Betty Jane Mottinger's 1982 abduction and murder, was in *Justice Denied*, Winter 2005, Issue 27.

Ten days before his scheduled January 19, 2006, execution, Ohio Governor Bob Taft granted Spirko a third stay of execution. The governor granted a six month stay until July 19, 2006, so that the painting tarp and duct tape wrapped around Mottinger's body, and a cinder block found near her body can be tested for the presence of the killer's DNA — who a witness has identified is a house painter who the witness also claims was the tarp's owner. That witness is willing to testify. His information has been ignored for years by law enforcement authorities even though it is credible, and he passed a polygraph examination conducted by a former FBI examiner on October 26, 2005.