

Jerome Buting and Dean Strang: Call on Gov. Tony Evers to grant clemency to Brendan Dassey on the anniversary of his false conviction

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MILWAUKEE - Sixteen years ago yesterday, Brendan Dassey was arrested for a crime he did not commit. On the anniversary of that arrest, Dean Strang and Jerry Buting sent an open letter to Governor Tony Evers urging the governor to exercise his constitutional power to free Brendan by commuting his sentence. A copy of the letter is enclosed. Strang and Buting never have represented Brendan Dassey. They represented his uncle, Steven Avery, in a trial that occurred before Brendan Dassey's on the same crime.

In their letter, Strang and Buting describe the injustice of Brendan's case and the Governor's responsibility to use the tools at his disposal to right this wrong. They write, "By constitutional design, you can be a governor of grace, not of cruelty or cowardice. We urge you now to be exactly that."

The Wisconsin Constitution grants Governors of the State of Wisconsin the sole constitutional power of clemency. Governor Evers has, in part, used this power to grant pardons to deserving individuals. The Governor has not yet exercised his ability to

commute or cut short a sentence for other deserving Wisconsin inmates, like Brendan.

In October 2019, lawyers for Brendan Dassey filed a petition for executive clemency with the Wisconsin Board of Pardons. The petition asked the Board to consider both a pardon, which would result in Brendan's immediate release and the restoration of his civil rights, and a commutation, which could result in his immediate release or shorten his sentence but would leave the convictions intact. Grounds for clemency included Brendan's innocence, his provably false confessions, and the extreme length of his sentence. More than 250 legal and psychological experts supported that clemency petition and Brendan's freedom, and hundreds of thousands of people from Wisconsin to Australia expressed their own support by signing an online petition, at www.bringbrendanhome.org/.

The history of his case is familiar. In 2007, special education student Brendan Dassey was sentenced to life in prison based on a videotaped confession he gave at age 16 that is now widely understood to be false and was inconsistent with the physical evidence at the crime scene. Incarcerated since age 16, Brendan turned 32 years old on October 19, 2021. He is not eligible for parole until 2048, at which time he will be 59 years old.

Brendan came within days of release in 2016, after a federal judge in Milwaukee found "significant doubts as to the reliability of Dassey's confession" and ordered his release and retrial. That order was reversed by a sharply divided appeals court, which found, in a 4-3 decision, that even though Brendan was "offer[ing] what seemed like guesses" during the interrogation, that did not create a legal requirement that his conviction

be overturned. The dissenting judges, led by Chief Judge Diane Wood, called the ruling a “profound miscarriage of justice.” A summary of Brendan’s case is attached.

Brendan’s case has led to some reforms, including new statutes in Illinois and California requiring counsel for young children in the interrogation room and prohibiting police from lying to juveniles during interrogation. His interrogation videotape is also now used to train police nationwide “how not to interrogate” disabled kids, said David Thompson, president of leading police training firm Wicklander Zuluwski, the second-largest such firm in the United States.

Still, Governor Evers has not granted any form of clemency to Brendan Dassey. Neither has he commuted a single sentence for any inmate in Wisconsin during his first three years in office. In that limited respect, Governor Evers has the same record as his predecessor, former Governor Scott Walker, who never granted a single request for clemency of any kind.

While Governor Evers does deserve credit for granting hundreds of pardons of people whose sentences were completed long ago, pardons do not address the ongoing mass incarceration problem in Wisconsin and the country. Commutations—which shorten the sentences of current, deserving inmates—could begin to address that mass incarceration problem, as Buting and Strang note in their letter.

About Jerome F. Buting and Dean A. Strang

Jerome Buting has been a criminal defense lawyer in Wisconsin for over 40 years and is a partner in the Brookfield firm of Buting, Williams & Stilling, S.C. He is a frequent public

speaker and the author of *Illusion of Justice: Inside Making a Murderer and America's Broken System* (Harper Collins 2017). He and Dean Strang are co-founders, with Prof. Keith Findley, of the non-profit Center for Integrity in Forensic Sciences.

Dean Strang has been a criminal defense lawyer in Wisconsin for over 33 years, was the state's first Federal Defender, and is a fulltime law professor at Loyola University Chicago School of Law. He is the author of two books of legal history and several law review articles. Strang remains Of Counsel to StrangBradley, LLC in Madison.