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For more information, contact:

Mia Tripi, 414-390-5500

mtripi@muellercommunications.com

**DEAN STRANG, JERRY BUTING CALL ON GOV. TONY EVERS TO
GRANT CLEMENCY TO BRENDAN DASSEY ON THE ANNIVERSARY OF
HIS FALSE CONFESSION**

*Justice sought for wrongfully convicted Brendan, who has spent half his life in prison
for a crime he did not commit*

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 Zuluski, 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.

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A Summary of Brendan's Case

On October 31, 2005, Wisconsin resident Teresa Halbach went missing. Her remains, along with several other pieces of forensic evidence, were found days later on the Avery Salvage Yard property outside Manitowoc, leading to the arrest of Steven Avery. No forensic evidence connected Avery's nephew, sixteen-year-old special education student Brendan Dassey, to Ms. Halbach's disappearance in any way.

Months later, investigators questioned Brendan about Avery's activities on the night of Ms. Halbach's disappearance. Brendan was in the tenth grade at Mishicot High School, where special education professionals had assessed his overall cognitive functioning in the lowest percentile. His disabilities centered around his ability to use and understand speech, which also ranked in the lowest percentile.

Brendan was interrogated four times over a period of 48 hours spanning from February 27 to March 1, 2006. Despite Brendan's profound intellectual limitations, no parent or guardian was notified before questioning commenced on February 27. Indeed, no adult was present on Brendan's behalf during three of the four interrogations.

Over the course of these four interrogations, investigators falsely told Brendan that the D.A. was thinking of charging him unless he was willing to "fill in" the "gaps" in their understanding of what happened to Teresa Halbach. If he did provide information that fit with what the investigators already believed to be true, on the other hand, he was assured that the investigators would "go to bat" for him and ensure that he'd be "all right" and have "nothing to worry about." Thus motivated, Brendan offered a story that was rambling, inconsistent, and often nonsensical. Investigators repeatedly had to steer him back to a narrative that fit the evidence by revealing information about the crime that Brendan then incorporated into his account. In the most damning moment of the interrogation, Brendan was unable to describe how Ms. Halbach had died, despite multiple wrong guesses, until investigators told him that she had been shot in the head.

In a judicial opinion, Judge Ilana D. Rovner of the U.S. Court of Appeals for the Seventh Circuit described Brendan's confession as follows:

Unlike the ordinary course of a confession in which the narrative increases in clarity as the suspect reveals more information, this interrogation was just the opposite. Every time the interrogators protested the veracity of Dassey's account or fed Dassey information, his story changed. If one sits in front of the taped confession with a legal pad and tries to sketch out the details and timeline of the crime, the resulting map is a jumble of scratch outs and arrows that grows more convoluted the more Dassey speaks. In fact, despite what the State describes as a detailed confession, it has never been able to map out a coherent timeline of the crime, or to figure out in what order or where many of the events occurred.

Based on the resulting confession, Brendan Dassey was convicted and sentenced to life in prison with no eligibility for parole until 2048.

Brendan came within days of freedom in 2016, after Milwaukee-based federal magistrate judge William Duffin developed “significant doubts as to the reliability of Dassey’s confession” and overturned his conviction. After reviewing Brendan’s “exceedingly benign” prison record, which betrayed “no hint of violent or antisocial behavior,” Judge Duffin also ordered Brendan’s release from prison. That order was later stayed as a result of an appeal filed by the Wisconsin Solicitor General’s Office.

Upon appeal, Magistrate Judge Duffin’s decision was affirmed by a panel of the United States Court of Appeals for the Seventh Circuit, but it was later reversed in a 4-3 *en banc* decision. That *en banc* decision concluded, among other things, that evidence of a confession’s unreliability does not require, under the Constitution, that the confession be thrown out or that the resulting conviction be overturned. In dissent, Chief Judge Diane P. Wood called the decision “a profound miscarriage of justice.”