Punishing Inequalities: Race and Criminal Justice in Wisconsin

A shameful distinction: Wisconsin has the second most racially tilted criminal justice system in the country. Three UW-Madison law school professors put their heads together to illustrate the problem and point toward some solutions.

BY WALTER DICKEY, JOEL ROGERS, AND MICHAEL SMITH

RACIAL INEQUALITY AND THE CRIMINAL JUSTICE SYSTEM are pathologically intertwined in the United States—and nowhere more so than in Wisconsin. Today the first cannot be relieved without reform of the second. The second cannot even be understood without appreciation of the first, and the mass politics it engenders—politics that are helping produce what amounts to a social disaster while blocking rational consideration of ways we might avoid it.
TWO SERPENTS ENTWINED

To appreciate the racialized character of our criminal justice system, consider first its different treatment of blacks and whites in nearly every aspect of administration. Blacks are arrested at twice the rate of whites; once arrested, they are more likely to be convicted of some crime and are twice as likely to be sentenced to jail or prison; they are given longer sentences than whites convicted of identical crimes, and serve more time in prison even for identical sentences.

The net of all these differences is that the black rate of imprisonment is far greater than the white rate—among men (90 percent of those in prisons and jails), more than eight times greater. Finally, at the system’s deadly terminus, blacks are more likely than whites to receive capital sentencing and are much more likely to be executed.

In Wisconsin, despite our progressive tradition, racial disparities are even worse. Like many states with relatively small minority populations, Wisconsin has long imprisoned blacks at greater than their national rate, and whites at less than theirs. But in recent years the black/white disparity has risen dramatically. For example, the black incarceration rate here is now 21 times the white rate—more than two and a half times the national difference. On this measure, indeed, Wisconsin has the second most racially tilted criminal justice system in the country.

Racial disparities in criminal justice are by no means unique to the U.S. In France, Algerians and other North African Arabs are disproportionately the victims of crime and inmates of prisons; in the Netherlands, Moroccans suffer more than their share of the crime and imprisonment; in Australia and Canada, aboriginal peoples are similarly burdened; in Israel, Palestinian Arabs. What sets the U.S. apart, however, is that the disparities here are amplified and exacerbated by our distinctive national commitment to imprisonment as our favored public safety policy.

It is no mystery that crime everywhere is driven by poor background economic conditions and opportunities; by alcohol abuse and illegal drug use or dependence; and by weakened family, community, and social norms against “deviant” behaviors. On the most recent data available in the U.S., we know that about two-thirds of prisoners have not completed high school; about two-thirds were under the influence of alcohol or drugs at the time they committed their offense; and about a third were unemployed at the time, with most of the rest reporting extremely low earnings in the prior year. More difficult to measure, but known with near certainty, is that most current prisoners also grew up in broken families, economically distressed neighborhoods, or both. This, too, is true of prisoners elsewhere.

But other countries have fewer of these underlying problems than we do, or do more about them short of incarceration. Child poverty rates in other rich nations, for example, are a fraction of those in the U.S., and both child and adult poverty are less geographically concentrated—this is important because crime, though associated with poverty everywhere, rises exponentially with its concentration. Pretax worker earnings are much more equally distributed, because of both more government regulation and more extensive collective bargaining between employers and unions, and the “extension” of the outcomes of that bargaining to nonunion workers. The “citizen wage” of general benefits (e.g., health insurance, job training, day care) is set much higher, and special assistance for those in trouble—distressed families, those with drug problems, etc.—is more generous and available. As a result, the problems of the poor are less pronounced, and the burdens of living with them are more equally distributed.

Here in the U.S., by contrast, we do less to reduce poverty or repair dysfunction in the family, labor market, and neighborhood institutions that are the natural suppressants of crime, preferring instead to imprison people after impoverishment and institutional breakdown have run their predictable course. This longstanding choice has been sharpened in recent years, just at the time that American labor markets were also changing in fundamental ways—generating far more poverty, inequality, and “dead end” jobs than in the past, and thus more natural candidates for criminal behavior. More punitive policies also helped define a national “War on Drugs” declared by Ronald Reagan in the early 1980s. National drug use had already started to decline by the time of that War’s declaration. It had peaked in late 1970s, when 14 percent of the population had reported monthly use, but dropped throughout the 1980s and by the early 1990s was running at less than half those levels, a point it has remained near ever since.

By that time, however, the War on Drugs had become a staple of American policy and political culture—and a steady feature of family entertainment on nightly TV—with huge police and military resources dedicated to its fighting and further justification. By the end of the 1990s, annual drug arrests were running at three times their level in the early 1980s. This despite the enormous decrease in drug use since that time, and the concentration of most remaining use on marijuana—for 60 percent of the user population, the only drug—a drug never associated with increased violence, but now the subject of 40 percent of drug arrests.

The net of all this—longstanding policy, recent toughening, a changing economy, and the imperfectly targeted but amply funded War on Drugs—has been an enormous increase in the U.S. prison population over the past generation. It more than sextupled over 1970–2000, growing from .2 to 1.3 million, and a national incarceration rate of .69 per-
race and criminal justice

sons per 100. An even larger pool of 5 million Americans are now serving long periods of probation or parole, at risk of entering prison upon their discretionary revocation. No other rich country comes close to this. Our national incarceration rate is about eight times that of France and Germany, 11 times the rate in Sweden, 17 times the rate in Japan. It now exceeds that of poor countries and former dictatorships as well. Recently, in fact, the U.S. rate rose above that of Russia, making this "land of the free" the No. 1 jailer in the world.

Moreover, the prisons to which the U.S. sends a growing share of its population are not benign places. They are rife with violence and disease and have minimal, if not negative, rehabilitative impact. Drug treatment, education and training, family counseling, and other rehabilitative programs have in fact been cut in recent years as part of the more general "get tough" turn of policy. Over the last decade (1991-97), for example, the share of state prisoners receiving some sort of drug treatment dropped from a quarter to less than a tenth, even as the number of prisoners with drug problems, or those who were sentenced for recreational use of soft drugs, dramatically increased.

Returning now to race, the sheer magnitude of U.S. incarceration, when combined with its racially disparate distribution, means that it claims a huge share of the black population. Nearly 30 percent of black men can now expect to spend some part of their lives in state or federal prisons—a rate of imprisonment equivalent to or worse than that found among militarily occupied peoples. And in the typical American city, Milwaukee being no exception, the criminal justice system has grown to be the leading public institution shaping the life of black communities—a lethal state of affairs that is difficult for middle class whites even to imagine.

But let’s try for a moment. For those of us Wisconsinites who are white and middle class, raising a couple of kids in neighborhoods where public safety is in pretty good repair, our chief concerns about public goods typically center around such things as snow removal, recreational opportunity, and the quality of our children’s education. In everyday life, the police are experienced as a distant protective force—threatening, if at all, only as a potential source of traffic tickets. Most of us have never even been detained by a cop for a nontraffic offense, much less patted down in public, arrested, strip-searched, or sentenced to jail or prison. In fact, most of us have never even seen the inside of a prison, or had the unnerving experience of trying to sleep there. And if we have ever been accused of a crime, we probably paid whatever was needed to get the best possible legal representation.

The experience is almost completely different for a working class black male in Milwaukee, or his child, wife, girlfriend, or mother. The numbers tell us so. A child growing up poor and black is much more likely to live in dilapidated housing, in a violent neighborhood, and attend (or stay truant from) dysfunctional schools. Good jobs are less available, and the leading locally owned businesses are check-cashing services, funeral homes, and cheap restaurants and bars. As likely as not, the child’s father is in or just out of jail or prison, or on parole, or unemployed. If employed, he is almost certain to be working for wages insufficient to keep his family in basics.

The child’s mother is likely to be a “single mom” raising the child alone. She generally has a poor education and little career opportunity. In the past, she might have been on welfare. This made her a favored object of public scorn, derided as a social parasite because the state supported her in part to spend time with her children, even if it would not provide the day care that might permit her to go back to school. Now, with the implementation of W2 (or similar welfare abolition programs elsewhere), the state has withdrawn that income support. And so she has probably entered the ranks of the working poor (or has simply dropped off the system’s radar completely). She is employed now as a day care worker, home health care worker, nursing home aide, or chambermaid in a downtown hotel—all jobs averaging about $7 an hour, without benefits. Even if pursued full-time and year-round, these jobs leave a family of three below the federal government’s “poverty line”—a measure calculated in the early 1960s and since adjusted only for inflation—which declares the income needed to secure such minimal basics as “a diet fit only for temporary and emergency use.”

As the child grows—and let us assume now it is a boy we’re talking about—he is much more likely than his middle class white counterpart to suffer from health problems, learning disabilities, and soon enough, disciplinary problems in school. Frustrated there and falling behind, without much adult guidance or support, or a constructive recreational outlet for his energies, he is more likely to develop habits of violence. He is also marginally more likely to develop recreational drug habits. For these habits, given the openness of their practice compared to middle-class suburbia, and the greater concentration of drug enforcement in the central city, he is far more likely to be arrested. And once arrested, he is also more likely to be imprisoned, even if that runs against the instincts of those judges and prosecutors in Milwaukee—and there are some—who notice that the price of drugs keeps
going down even as the War on Drugs grinds on, and who now believe that the lives of thousands of black kids in Milwaukee are being sacrificed to barrenly political objectives.

Once behind bars, of course, the kid learns next to nothing of value—certainly not a skill marketable in the legitimate economy. And now he has a record, and so upon release a harder time finding an employer willing to hire him, even if he has the requisite skill. He is also not likely to be actively supervised (or assisted) by the probation and parole agent to whose caseload he’s assigned, but he will be sent back to prison if he gets in trouble. And it is more likely than not that he will get in trouble again. Each year in Wisconsin, about half of prison admissions are of people who at arrest were on probation or parole.

And so it goes. But note finally that the bottom line—the goal of public safety that justifies this system—is not achieved by it, especially in those nonwhite neighborhoods that are the system’s disproportionate focus, and where the disproportionate share of crime’s victims currently reside. On the contrary, the current operation of the system actually contributes to crime in those neighborhoods, first by decimating economic and family life there by locking up hordes of their young men, then by returning those men—largely unsupervised but hardened by prison, and no better equipped to find and keep legitimate employment or to form and keep a family—to those very same neighborhoods.³

But the intertwining of race and criminal justice finally goes even beyond the disparate impact and failure of present criminal justice policies. Because it is our heavily racialized politics that most directly explain the persistence of these policies despite their failure, and the lack of public discussion of alternatives.

In our white-majority nation (and state), for example, it is difficult to understand popular support for imprisonment but for the fact that its burdens fall disproportionately on nonwhites. Difficult, too, to understand popular acquiescence in the destruction of the inner cores of American cities—the key source from which our prison population flows—were they not, after generations of “white flight” to restricted suburbs, increasingly populated by blacks and other racial minorities. Difficult to understand the more recent failure of white working class suburbs, even as those suburbs fell prey to the economic rot that first claimed their metropolitan cores, to join with the city against the outward sprawl that is now harming them as well.

But how might we do better, even with this one example? In such a large and complicated policy field, where might we even start?

UNTANGLING THE SERPENTS

The problem of correcting the racial disparities and ineffectiveness of our criminal justice system is undeniably large and complex. But that is no argument for inaction. The question is how to act in ways that are informed and have some real prospect of succeeding.

To be informed means, in the first instance, to recognize both the pervasiveness of the racial disparities in the system’s administration and the fact that they interact with a whole host of other factors and institutions—the educational system, the labor market, etc.—in producing their final result. So stated, it should be obvious that there is no “silver bullet” solution to the problem,
not even one that aims directly at equalizing treatment of the races. And yet, of course, this is precisely where well-meaning reform has typically inclined.

**HOW NOT TO THINK ABOUT REFORM**

Take the issue of racial disparities in sentencing—an issue "discovered" in the early 1970s that has since prompted remedial efforts in the federal court system and in most states. The typical fix for the problem has been to strip judges of sentencing discretion and instead mandate use of a set formula. In the current Federal Sentencing Guidelines, for example, sentencing is determined by just two factors: the offender’s current crime and prior record. Judges find the "correct" sentence simply by looking for it on a factor grid resembling a tax table, and off to prison the offender goes.

But does formula sentencing actually relieve racial bias in outcomes? Perhaps it does where judges themselves are biased. But note that it does nothing to alter the mix of rich or poor or white or black offenders coming before those judges, or the greater ability of the generally better-off white ones, with aid of counsel, to secure more favorable charge and plea agreements from prosecutors. Notice, too, that while sentencing formulas limit the discretion of judges, they do nothing to limit the less visible discretion of prosecutors to decide whom to charge and what to charge them with—decisions which largely determine the sentences judges ultimately impose by guideline formulas. Sentencing formulas also do nothing to equalize across races the power of police to target whatever conduct and whichever individuals they please. And they do nothing to curb legislator discretion to increase penalties for crimes more frequently detected in black communities than in white.

Looked at this way, guidelines for uniform sentencing are a distinctly mixed bag. They do nothing to alter the racially cast surroundings of sentencing while stripping judges of the power to correct, via sentencing, the effects of those surroundings.

If mechanically uniform sentencing is no particular solution, neither would be the equal distribution of policing or arrests. Here in Wisconsin, it would not be politically possible, and certainly not beneficial to public safety, to de-police black neighborhoods in Milwaukee. Nor, in an effort to equalize incarceration rates between white and black Wisconsinites, would it help much to increase the white prison rate 21 times over.

Not that the latter couldn’t be achieved, however, with changed administration of our War on Drugs, the most obvious line of attack. At present, the War’s victims are disproportionately black. Comprising 13 percent of the nation’s drug users, blacks are 35 percent of those arrested for drug possession, 55 percent of those convicted for it, and 74 percent of those sentenced to prison. But whites use illegal drugs at almost the same rate as blacks, and, being the majority, actually account for the overwhelming share of national use. So if we ever decided to extend our War to the white suburbs—where use of marijuana, powder cocaine, Ecstasy, and other illegal drugs is rampant (as any teenager there, perhaps your own, can tell you)—we could rather quickly equalize the racially disparate arrest, conviction, and imprisonment rates.

Such a shift in policy might improve the quality of our public discussion about drugs. With enough legislators’ kids (or legislators) behind bars, Wisconsin’s political and racial majorities would likely come to Traffic’s Academy Award-winning conclusion—that the War on Drugs is being lost, that it can’t be won the way we’re waging it, and that the cost in lives (suddenly, “lives like ours”) is far too great to be justified by meager, temporary, and largely symbolic gains. At that point, perhaps, they might even be open to considering alternatives. But in the meantime, and returning to present realities, we can ask: How would destroying the lives of some white teenagers for getting high, as we now routinely do to black teenagers, do anything for racial justice? If a poison is now found largely in black neighborhoods, does it help to start dropping it on white ones as well?

**SOME STEPS WE MIGHT TAKE**

But if formulaic procedural reform is not the answer to racial injustice and inutility in criminal justice administration—what is?

One answer is to treat offenders differently, aiming at not just their punishment but their active reintegration into society. That means expanding rather than contracting literacy, training, drug remediation, and other treatment programs in prison. And once prisoners are paroled (or, under Wisconsin’s "Truth-in-Sentencing" law, which abolished the old parole system, released to "extended supervision"), it means devoting more resources to their active supervision, job placement, or further treatment or training rather than merely watching for opportunities to revoke and recycle them back behind bars. With so many prison admissions now coming from revocation of probation and parole, it’s not rocket science to see that if prison were more rehabilitative and parole or probation more constructive, our prison population would quickly begin to shrink; and the neighborhoods that our offenders now disproportionately come from and return to would become safer.

There are also broader changes in state policy that might be considered, with drug policy perhaps the most obvious place to start. We know now

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that unless something is done about
the demand for illegal drugs, anything
done to limit their supply will be tem-
porary at best. But we know, too, that
no politician can afford to be cast as
"soft" on drugs. What is really needed,
then, is a broader and more explicit
public conversation about what sorts
of drug use we are prepared to live with
and which not, followed by greater con-
centration of public effort on reducing
demand, with incarceration generally
reserved for those guilty of crimes
beyond mere use.

Just where we should draw the new
lines of permissible drug use, education
and treatment, and punishment is a
matter on which reasonable people can
reasonably disagree. But we owe it to
ourselves at least to be clear on the
ends sought by drug policy, and open to
evidence on alternative ways to achieve
them. At present, state and national
drug policy permit free adult purchase
of alcohol and tobacco—even though
the first is implicated in violent conduct
more than any other drug, and the
wildly addictive second causes far more
death—while use of the relatively
innocuous marijuana is heavily
restricted where not banned, and stiff
penalties await those caught using
other drugs that do not induce violence.
If punitive drug laws are defended on
grounds of health or public safety, these
choices seem difficult to defend. At
present, we also widely favor manda-
tory sentencing, rather than treatment,
to reduce the demand for drugs. But all
evidence suggests that treatment is
more effective in curbing demand, as
well as cheaper. In cases like these,
where the costs and effects of different
policies are known, we should let
reason and evidence carry the day, not
ignorance and myth.

THE REAL DEAL:
FROM BAND-AIDS
TO STOPPING
THE BLEEDING

Steps such as these are overdue in
Wisconsin, and we should take them.
They would improve the workings of our
system and reduce its costs, which are
already crowding out needed public
investment in more constructive pur-
poses than prisons. We should also con-
tinue to resist—as Wisconsin has thus
far—the false temptation of formulaic
sentencing as a cure for racial disparities.

But to get to the heart of racial dis-
parities in our treatment of crime, we
should best pay more attention to the
sources of its opposite: public safety.
What is this thing, and what do we
know about how it is produced? It is not
in the first instance more arrests, more
imprisonment, or more cops and guards
to produce the arrests and confine the
shared appreciation that violating those
rules will meet with punishment pro-
portional to the harm done; and 3) a
further shared appreciation that playing
by the rules will be rewarded.

Increasing public safety in places
where it is now lacking—a state, a city,
a neighborhood, a nation—means
everything as simple and as complex as
restoring those conditions within that
space. Cops are essential to this
restoration. But a much larger role is to
be played by parents, relatives, neigh-
bors, employers, churches, service
organizations, and other natural
guardians of public safety—those indi-
viduals or institutions that teach kids
what it means to behave, what conse-
quences follow from misbehavior, and
what rewards await those who play by
the rules. Where those guardians are no
longer able to do their work—work that
the criminal justice system can never
hope to do—it is never because they do
not want to. It is because their ability to
do so has been undermined by collapse
of the institutional infrastructure upon
which their own capacity and authority
depend. This infrastructure, taken for
granted in middle class neighborhoods,
includes adult access to good jobs and
career advancement; functioning
schools; adequate health care and other
social services; attractive public
libraries, senior centers, and other
public community spaces; wholesome
and supervised recreational opportuni-
ties, especially for teenagers after
school; and a medley of clubs and vol-
unteer associations reflecting diverse
interests and talents.

BLACKS BEHIND BARS

• Blacks 18 and older make up
  39 percent of Wisconsin's jail
  and prison population but only
  5.7 percent of the state's total
  population.

• Whites 18 and older make up
  55 percent of Wisconsin's jail
  and prison population and
  89 percent of the total state
  population.

Source: 2000 Census, U.S. Census Bureau

convicted. These are all measures of the
breakdown in public safety, not its
achievement. Public safety instead
refers to the state of affairs in which
those living somewhere feel free of
threat of harm to their persons and
property, and are justified in that belief.
In such places we find occasional police
or other state intervention to maintain
or restore order. But far more perva-
sively and importantly we find: 1) will-
ing obedience to a certain set of
commonly agreed-upon rules; 2) a

In Wisconsin, the most important barrier to achieving racial balance in criminal justice and the positive good of public safety is not that our judges, prosecutors, or cops are bigoted, but that our most populous black neighborhoods, in Milwaukee, now face high levels of poverty without this basic infrastructure of opportunity and support.

On poverty, we know—from the last national decennial census for which we have relevant data (1990)—that black child poverty in Milwaukee is spectacularly high, high enough indeed to bring the statewide black child poverty rate to second in the nation. We know, too, that overall Milwaukee poverty is increasingly concentrated in "ghetto" census tracts in which 40 percent or more of the residents live below the poverty line. In 1970, less than one-tenth of Milwaukee blacks lived in such ghetto conditions; by 1990 nearly half did; today, the share is almost certainly higher still.

Such severe concentrations of poverty almost guarantee social disorder and starve even the most stalwart "public safety guardians" of much authority. These and other poor black neighborhoods have much poorer health than middle class white neighborhoods—among children, ailments include much more asthma and such exotica as lead poisoning and tuberculosis; among adults, worse scores on virtually any measure of health—and also the worst access to medical care. Their housing is dilapidated or worse; their streets are punctuated by abandoned buildings. Their elementary schools are troubled and overtaxed by a largely poor student population, and their high schools are increasingly dysfunctional. Well over half of black kids in Milwaukee now drop out before graduating high school, or read at a fourth grade level when they do. Not surprisingly, good employment opportunities in these poor neighborhoods are scarce, and unemployment is always well above Milwaukee metro levels. And even if their residents could find and qualify for a good job elsewhere, nearly half of them don't have cars and would have a very hard time commuting to those jobs via the region's dismal public transit system.

In brief, these neighborhoods are increasingly isolated from the surrounding society—in racial composition, housing, income status, job opportunity, education, and more—and they are gradually imploding. In such a context, even the positive efforts at crime prevention and rehabilitation suggested here will be fragile and have sharply diminishing returns. Some offenders will be better treated, some will find opportunity after jail or prison, and more will find it before. But in their achievement of public safety, stand-alone programs for "at risk" youth, felons, or ex-felons amount to pouring cool water on an overheated skillet. It would be much better to turn down the flame—through policies and programs that reintegrate Milwaukee's central city into the labor and housing markets, transportation systems, social services, and education available to the white majority.

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by William Shakespeare

Grand Theater
Wausau
Thursday, Oct. 18 - 7:30 p.m.
715-842-0988

Performing Arts Center
Wisconsin Rapids
Saturday, Oct. 20 - 7:30 p.m.
715-421-4552

Wisconsin Union Theater
Madison
Thursday, Oct. 25 - 7:30 p.m.
608-262-2201

West High School
Appleton
Saturday, Oct. 27 - 7:30 p.m.
920-734-8797

Pabst Theater
Milwaukee
Friday, Nov. 2 - 7:30 p.m.
414-286-3663

Coming to a City near You
That, of course, is a very large task. Not impossible, but large, and whether Wisconsin ever finds the political resolve to take it on is at least an open question. But however that question is answered, we should be clear on what is at stake. The real remedy for racial inequity in our criminal justice system is the same as the remedy for racial inequity elsewhere. If we want to avoid it at the back end, we need to reduce it drastically up front. This means according black children and their parents, no less than white ones, the full benefits and protections of our common citizenship, genuine equality of opportunity, and the education and other support needed to grab it. Anything less and we shall forever have a race problem in America, and never a truly democratic society.

Walter Dickey, Joel Rogers, and Michael Smith all teach at the University of Wisconsin Law School. Dickey has served as Wisconsin’s Secretary of Corrections (1983–87), and was chair of the 1995–96 Governor’s Task Force on Sentencing and Corrections. Smith was research director of that task force and before coming to Wisconsin served for many years (1978–95) as president of the New York City-based Vera Institute of Justice. Along with teaching law, Rogers is a member of the departments of political science and sociology, and is director of the Center on Wisconsin Strategy (COWS), a research and experimental policy center on improving Wisconsin living standards.

Notes

1 We concentrate here on African American (or “black”) versus European American (or “white”) comparisons. Other nonwhite populations in the U.S. also show significant disparities, though not as pronounced as those registered by our oldest and, in Wisconsin (historically and today), largest minority population.

2 About 32 million Americans (more than 12 million of them children) live below this line. If nonpartisan Census Bureau recommendations for a modest increase in the threshold level were accepted and applied today, that number would rise to 47 million.

3 These are not impressionistic observations. We know that the two most powerful forces for bringing delinquent careers to an end are labor market participation and family formation, and we know that, for a very large portion of young black males, incarceration actually decreases the subsequent chances of either.
Shirley Says:
Let's Celebrate
Wisconsin's Legal History

BY SHIRLEY ABRAHAMSON
WISCONSIN SUPREME COURT CHIEF JUSTICE AND WISCONSIN ACADEMY FELLOW

Nineteen ninety-eight was a statewide, yearlong party. It was a year for historic hoopla and serious discussion as communities celebrated Wisconsin’s 150 years of statehood. We explored our heritage in song, dance, theater, books, food, and seminars, with events as diverse as the people who built this state.

In 2003, another sesquicentennial will occur: the 150th anniversary of the first meeting of the Wisconsin Supreme Court as a separate body. Should we have special license plates designed for the occasion? Probably not. Should we set aside a “Courthood Day,” like Statehood Day, to celebrate the anniversary? Not a bad idea. Should we use the Wisconsin Supreme Court’s sesquicentennial as an opportunity to encourage study about Wisconsin legal history and promote public understanding of the courts and the legal system? Absolutely!

Wisconsin has a rich legal history. During the state sesquicentennial we documented and celebrated this history and spoke around the state about our past. A play and an Emmy-nominated television documentary brought to life the story of the battle between the state and federal courts over the 1850 Fugitive Slave Law; a book presented portraits and biographies of Wisconsin Supreme Court Justices from 1848 to 1998; and an oral history project preserved the recollections of senior Wisconsin judges.

The time is right, I believe, to start working toward establishing a Wisconsin legal history project. Here’s why:

• The Supreme Court is returning to its newly restored historic space on the second floor in the State Capitol’s East Wing after being away for two years. The East Wing is the only wing of the Capitol in which members of all three branches of government—the executive, legislative, and judicial branches—reside. A public “open house” this fall could serve as a kickoff for a Wisconsin legal history project.

• The Wisconsin Academy of Sciences, Arts and Letters is sponsoring an October forum in Milwaukee entitled “Private Rights, Public Good: The Bill of Rights in Our Lives.” This forum promises to generate statewide interest in the legal system.

• The 2003 Supreme Court sesquicentennial is a milestone that can serve as a focal point for a Wisconsin legal history program.

A Wisconsin legal history project could take any number of forms. One thing is certain, however—a great many organizations (and their members) can and will, I hope, play a role: the Wisconsin Academy of Sciences, Arts and Letters; the Wisconsin Historical Society; county historical societies; the University of Wisconsin Law School; Marquette University Law School; the Wisconsin Humanities Council; the Wisconsin Bar Foundation; and lawyers, judges, court staff, and history buffs across the state.

United States Supreme Court Chief Justice William H. Rehnquist, a Wisconsin native son, reminds us that “the enduring nature of an institution lies in the story of its past.”

Together we can tell the story of the past, present, and future of the Wisconsin legal system. Several people have joined me this past summer to start working on the Wisconsin legal history project. Are you interested? If so, please write John Voelker, Executive Assistant to the Chief Justice, P.O. Box 1688, Madison, WI 53701.