
Opinions

‘Making a Murderer’ shows that our justice system needs a healthy dose of humility

	48	
--	----	--



Steven Avery listens to testimony at the Calumet County Courthouse in Chilton, Wis., in 2007. (Morry Gash/Associated Press)

By Keith A. Findley January 15

Keith A. Findley is co-director of the Wisconsin Innocence Project at the University of Wisconsin Law School.

Guilty or innocent?

Viewers addicted to the Netflix documentary series “[Making a Murderer](#)” are fiercely debating the case of Steven Avery and his nephew, Brendan Dassey. In separate trials, the two were convicted of the 2005 rape and murder of 25-year-old Teresa Halbach. These were no ordinary murder convictions — they came just a few years after Avery was exonerated by DNA evidence, with the assistance of the Wisconsin Innocence Project (I served as his attorney at that time), after doing 18 years for a sexual assault and attempted murder that he did not commit.

The film centers on concerns that both men might have been wrongly convicted in this go-round. One cannot know at this point whether Avery and Dassey are indeed innocent victims of police misconduct and prosecutorial overreaching. No documentary could address all the nuances of the evidence needed to make those judgments in this case.

But “Making a Murderer” is about more than Avery and Dassey’s guilt or innocence, because the injustices the series suggest are hardly unique. The enduring takeaway ought to be the recognition that the criminal justice system, as a human system, is inevitably flawed. It does sometimes send innocent people to prison. And while most police, prosecutors, defense

lawyers and judges are good, honest people who do their best to achieve justice, they do sometimes fail and even, on occasion, cross the line into misconduct in their zeal to secure what they perceive to be a just outcome.

Wrongful conviction doesn't only mean an innocent person ends up in prison. It also means a guilty person goes free. When the system fails, there is no justice for victims and their loved ones.

We have known for decades that the system is prone to error. Since the advent of forensic DNA testing in the late 1980s, at least [337 people](#), who each have spent an average of 14 years in prison, have been proved innocent by DNA evidence. According to the [National Registry of Exonerations](#) hosted by the University of Michigan Law School, exonerations based on all types of evidence, not just DNA, amount to at least 1,728 people who have been exonerated of serious crimes since 1989. The number is continually growing.

By presenting these issues in human terms, "Making a Murderer" has done a service by forcing us to look beyond the numbers to remind us that each such case is a real human tragedy that affects real people with real lives. It reminds us that eyewitnesses sometimes make mistakes, that forensic science is not always all that scientific, and that, contrary to what a prosecutor in the Dassey trial disingenuously told the jury, innocent people do indeed sometimes confess. (Indeed, more than a quarter of the DNA exoneration cases involved false confessions.) And it has reminded us that, regardless of

whether the system gets it right or wrong, it is a system deeply affected by class and, as we know well from other cases, racial biases.

Dean Strang, a defense attorney for Avery who is now an adjunct professor at the University of Wisconsin Law School, summed it up best in Episode 9: “Most of what ails our criminal justice system lie[s] in unwarranted certitude on the part of police officers and prosecutors and defense lawyers and judges and jurors that they are getting it right, that they simply are right. Just a tragic lack of humility of everyone who participates in our criminal justice system.”

Humility — that’s a pretty good prescription for fixing what ails our system. The humility to recognize that sometimes we are wrong, even when we are most certain. The humility to recognize we are all affected by cognitive biases that can mislead us. The humility to recognize that the system and the evidence it relies upon are flawed and can be improved. And the humility to recognize that when we occasionally get it wrong, we must do something about it.

Millions of people are talking about this documentary now, but discussion is not enough. We need to take a hard look at our criminal justice system — a much harder look than a 10-episode documentary allows.

We can and must, for example, change the way police collect eyewitness identification evidence — as many departments are beginning to do — to eliminate suggestion by law enforcement

and comply with science-based best practices. We must mandate that all law-enforcement agencies record interrogations and that police change interrogation practices so they are less coercive, suggestive and presumptive of guilt. We must ensure that the forensic disciplines we rely on are based on science and that forensic analysts are shielded from biasing information and allegiances that can taint their analyses. We must ensure that the use of incentivized witnesses is regulated and that promises of leniency in exchange for testimony are disclosed to the defense. We must ensure that we provide adequate financial support for prosecutors and defense lawyers alike, so that prosecutors can adequately screen cases and that competent defense lawyers can present vigorous defenses. We must expand criminal discovery — the process by which the parties share evidence before trial — to avoid trial by ambush, and then we must hold state officials accountable when they conceal evidence pointing to a defendant’s innocence. We must make the system more responsive to post-conviction claims of injustice and less bound by blind obedience to finality.

We can and must do all of this and more. Only then will we have learned the real lessons of “Making a Murderer.”