

## **Joseph Sommers** for WISCONSIN SUPREME COURT

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### **Why Innocent People Often Plead Out**

The great majority of people convicted in Wisconsin (and Dane County) are guilty. The great majority in prison belong there. However, from my years as a defense attorney, I believe that far too many innocent people are convicted. And, to the amazement of many, innocents are usually convicted as the result of a plea rather than a trial. In Dane County, 1.5% of felony cases result in a trial, with less than 1% of misdemeanor cases going to trial.

To give further context, 25 years ago, roughly 1.8 million Americans were incarcerated, while today this number stands at approximately 7 million. One would think that given this tremendous increase, there must be many more jury trials today than there was 25 years ago. In fact, the opposite is true. What can explain such a paradox? The answer relates in part to a compromising attitude toward a defendant's constitutional right to counsel. Below are three everyday realities that go a long way in explaining the paradox.

**First**, after being criminally charged one often goes to the yellow pages. One sees ads (sometimes full page) where attorneys proclaim to be "tough", "aggressive", "experienced", etc. Often unknown to the consumer is that the advertising attorney maybe has not handled a jury trial in years, let alone won any. The unknowing consumer then is persuaded to fork over a large retainer (sometimes \$10,000, \$15,000, \$20,000, etc.), only to find out that the attorney appears to have little interest in aggressively defending their case. The consumer often will then find that if he wants to take his case to trial, considerably more money will be required. At this point, whether innocent or guilty, the consumer is trapped. He does not have the money to continue, and there is no money left over to hire someone else, with the result being a plea due to the financial constraints.

One remedy for the above scenario would be to mandate truth in advertising. Simply require that all criminal defense attorneys provide prospective clients with the names and case numbers of jury trials they've handled in the previous six years, and which ones they have won. This reform alone, perhaps vehemently opposed by the bar, would protect many an unwitting consumer and greatly enhance the quality of representation.

**Second**, a little-known fact of the legal world is the ever-growing percentage of cases where the court appoints the defense attorney. There can be no greater proof to the decreasing effect this has on jury trials than what has happened in Dane County in Child in Need of Protective Services (CHIPS) cases. While parents in these matters have a right to a jury trial, no one can remember the last time one ended in a jury trial. Why? Because the defense attorneys are court contracted.

There are good judges, but even the best of judges are subject to human nature. The present 'assembly line' reality of our criminal justice system tempts all judges to become trial-avoidant. Jury trials are often messy and play havoc with the already overburdened court schedules. Court appointments have created a perverse incentive for defense attorneys not to aggressively defend their clients, and to obtain ironically a reputation for not going to trial. The situation is aggravated in that court appointments (which relate to cases where the client is not indigent enough to qualify for the State Public Defender, but not wealthy enough to afford an attorney), pay \$30 more per hour than State Public Defender appointments. The simple fact of the matter is that court appointments tend to be the domain of attorneys who are trial-avoidant. This results at times in people pleading out because they feel they have little choice.

One practical solution that would greatly remedy the problem would be to substitute vouchers for court appointments. If defendants were given the opportunity to pick their own attorneys, this would reward attorneys who are more inclined to actively defend them. Further, the cost to the taxpayers, due to more cases going to trial, would be greatly alleviated if the pay rate for these cases was made the same as it is for the

SPD rate. This reform would go a long way in protecting innocent defendants.

Third, there are many Public Defenders who are good defense attorneys. However, Public Defenders often handle hundreds and hundreds of cases per year. This makes it extremely difficult for a quality Public Defender not to get burned out. The end result is that some Public Defenders never take a case to trial. For all practical purposes, for a defendant assigned to one of these Public Defenders, by definition, a guilty plea becomes the inevitable result. While I realize that the remedy to this scenario is more complex than to the above two, I also realize it is a problem that needs to be addressed. The price for not addressing it is innocent people being convicted.

While it is something to be addressed at another time, the 'assembly line' model of justice is not inevitable. Much of it relates to overcharging, and in some instances, unwarranted charges to begin with. The result of this has been to turn our courthouses into primarily bureaucratic institutions, rather than halls of justice.

If I am elected to the Wisconsin Supreme Court, I will make it a priority to alert the public to these scenarios and to possible remedies.

***Vote for Joe Sommers on February 20th and April 3rd.***

Authorized and paid for by Joseph Sommers for Supreme Court, Robert Ruth, Treasurer.