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Committee on Criminal Justice  
Representative and Chair, Joel Kleefisch  
Room 307 North  
State Capitol  
P.O. Box 8952  
Madison, WI 53708

Re: AB 409

Dear Members of the Committee

I am a retired City of Kenosha police detective with over 31 years of law enforcement experience. During my career with the Kenosha Police Department, I earned 57 awards and letters of commendation and completed the Wisconsin Department of Justice Death Investigation School, along with numerous other police related training programs. For nine years, I served on the Board of Directors of the Kenosha Professional Police Association, most of those years as the Association treasurer. I was also an active member of the Wisconsin Professional Police Association for nearly three decades.

I graduated from UW-Parkside with Summa Cum Laude honors and a triple major of sociology, history, and political science. I hold five secondary teaching licenses with the Wisconsin Department of Public Instruction. I earned these licenses through the post-baccalaureate teacher certification program at UW-Milwaukee. I currently work as a full time social studies teacher at an alternative high school in Milwaukee for at-risk youth. In my spare time, I volunteer as an investigative consultant for the Chicago Innocence Project, where I work with college journalism students who intern with the project.

This letter, the attached affidavit with supporting documents, and my testimony will make many people uncomfortable. My testimony will address the elephant in this hearing room. We all know it is here. Most of us, including me, do not want to acknowledge it. I will be testifying about a law enforcement culture in some police agencies that fosters an environment where the concealment of facts and evidence, untruthfulness, and other unethical and criminal behavior by police officers is both tolerated, and in many cases, expected.

Only the most naïve among use will deny the evidence of the existence of police and prosecutor misconduct in their investigation duties.

On May 20, 2012, the National Registry of Wrongful Convictions issued a report titled, *Wrongful Convictions in the United States, 1989–2012*.<sup>1</sup> This report, which received extensive media coverage upon its release, documented 873 individual exonerations<sup>2</sup> in the United States from January, 1989 through the end of February, 2012. As of December 10, 2013, the number of individual exonerations is up to 1,255.<sup>3</sup> Of these 1,255 individual felony exonerations, thirty-one are Wisconsin cases. Of these thirty-one Wisconsin exonerations, “official misconduct” is listed as a contributing factor in six of these cases.<sup>4</sup> To put this in perspective, since 1989, it is confirmed that six Wisconsin citizens were deprived of their fundamental constitutional right of liberty by the misconduct of Wisconsin government officials. Taking a citizen’s liberty by official misconduct is just a notch below taking a citizen’s life.

The 2012 report also documents 1107 additional exonerations that occurred in groups due to thirteen police scandals where it was determined that law enforcement officers engaged in patterns of misconduct that affected the integrity of sets of criminal convictions.

Researchers concluded that the numbers of known individual and group exonerations is only a fraction of the total number of wrongful convictions that actually occur in the United States.

The report also lists the contributing causes for the wrongful convictions in the 873 cases of individual exonerations across categories of felonies. This data is contained in the table that follows that has been copied and pasted from page #40 of the 103-page report. The table shows that official misconduct, which includes perjury and failure to disclose exculpatory information or evidence by government agents, and perjury and false accusation, on the part of civilians, are the leading causes of the wrongful convictions in the set of 873 individual exonerations the report studies.

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<sup>1</sup> This report can be found at [http://www.law.umich.edu/special/exoneration/Documents/exonerations\\_us\\_1989\\_2012\\_full\\_report.pdf](http://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf)

<sup>2</sup> These individual exonerations are for all felony convictions, not only homicide convictions.

<sup>3</sup> Retrieved from <http://www.law.umich.edu/special/exoneration/Pages/browse.aspx> on December 10, 2013.

<sup>4</sup> Retrieved from <http://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={B8342AE7-6520-4A32-8A06-4B326208BAF8}&FilterField1=State&FilterValue1=Wisconsin> on December 10, 2013.

Table 13: Exonerations by Crime and Contributing Factors

	Mistaken Witness Identification	Perjury or False Accusation	False Confession	False or Misleading Forensic Evidence	Official Misconduct
Homicide (416)	27%	<u>64%</u>	25%	23%	<u>56%</u>
Sexual Assault (203)	<u>80%</u>	23%	8%	<u>37%</u>	18%
Child Sex Abuse (102)	26%	<u>74%</u>	7%	21%	<u>35%</u>
Robbery (47)	<u>81%</u>	17%	2%	6%	26%
Other Violent Crimes (47)	<u>51%</u>	<u>43%</u>	15%	17%	<u>40%</u>
Non-Violent Crimes (58)	19%	<u>52%</u>	3%	3%	<u>55%</u>
ALL CASES (873)	<u>43%</u>	<u>51%</u>	15%	24%	<u>42%</u>

The Innocence Project is a New York based national “umbrella” innocence project. According to its web page, it is a “. . . national litigation and public policy organization dedicated to exonerating wrongfully convicted individuals through DNA testing and reforming the criminal justice system to prevent future injustice.”<sup>5</sup>

The Innocence Project defines and illustrates “government [official] misconduct” as follows:<sup>6</sup>

Common forms of misconduct by law enforcement officials include:

- Employing suggestion when conducting identification procedures
- Coercing false confessions
- Lying or intentionally misleading jurors about their observations
- Failing to turn over exculpatory evidence to prosecutors
- Providing incentives to secure unreliable evidence from informants

Common forms of misconduct by prosecutors include:

- Withholding exculpatory evidence from defense
- Deliberately mishandling, mistreating or destroying evidence
- Allowing witnesses they know or should know are not truthful to testify
- Pressuring defense witnesses not to testify
- Relying on fraudulent forensic experts
- Making misleading arguments that overstate the probative value of testimony

<sup>5</sup> Retrieved from <http://www.innocenceproject.org/> on December 10, 2013.

<sup>6</sup> Retrieved from <http://www.innocenceproject.org/understand/Government-Misconduct.php> on December 10, 2013.

One may ask, "What does data regarding official misconduct in wrongful conviction cases have to do with AB-409, which is the subject of this hearing?" The link is clear. Some police officers and prosecutors commit perjury, conceal evidence and other critical information, and disregard basic rules of conflict of interest to deprive innocent citizens of their liberty by incarcerating them by wrongful conviction.

It is not a stretch to think they would engage in this type of misconduct to protect their co-workers from being held accountable for unlawful use of deadly force. It is the mirror image of wrongful conviction. This type of official misconduct is intended to shield a co-worker from being held accountable for unlawful use of deadly force, thus depriving a citizen of another fundamental constitutional right, the right to their life.

In the fall of 2012, Investigative Consultant Ira Robins asked me to provide an affidavit related to evidence that I possessed related to criminal misconduct by many high ranking City of Kenosha Police officials, including the Chief of Police. Mr. Robins submitted this affidavit, along with other information that he developed, to the United States Attorney for the Eastern District of Wisconsin. Mr. Robins asked for a federal investigation into a pattern and practice of criminal civil rights violations on the part of the Kenosha Police Department. Arguably, the most egregious of these civil rights violations was the death of Michael Bell at the hands of the Kenosha Police in November of 2004. Based on information that I have obtained, I believe the federal government is conducting this investigation. We will, of course, have to wait and see if indictments are issued.

My affidavit documented and provided evidence of numerous cases of concealment of evidence, altering of evidence, perjury, and other criminal acts by high ranking Kenosha Police officials, in addition to the numerous illicit acts involving the Kenosha Police investigation into the death of Michael Bell. Some, but not all, of this information is already available in documents that I filed with the City of Kenosha Police and Fire Commission, the Kenosha County District Attorney, and the Wisconsin Department of Justice. None of these agencies acted on this information. Their indolence ultimately forced the unresolved issues to be submitted to the federal government so they could step in and protect the interests and constitutional rights of Wisconsin citizens. Currently, the affidavit that I provided to the United States Department of Justice is not a public record because, as far as I know, they are investigating these crimes.

Investigative Consultant Ira Robins also asked me to review the thousands of pages of documents, still photos, and videos that the City of Kenosha turned over to Michael Bell's attorneys in his federal civil suit over the death of his son. After my review of these materials, I have concluded that the shooting of Michael Bell was an intentional act that resulted from an

unfortunate, unavoidable, but entirely understandable circumstance. I believe that one of the four officer's holstered handgun got caught in the side mirror of a car during the struggle with Michael Bell. This caused the officer who's handgun was caught in the mirror to honestly believe that Michael was attempting to disarm him. His hysterical cries to the other officers due to his mistaken belief that he was being disarmed resulted in Michael being shot in the head. This officer compounded the tragedy when he committed suicide in October 2010.

The affidavit related to my theory is included in the packet of material that I provided to all of you. I respectfully request and strongly recommend that you take the time to read it.

However, based on the thousands of pages of discovery documents that the City of Kenosha provided Michael Bell's attorneys, the likely scenario that the Officer's holstered gun was caught in the car mirror during the struggle was never considered nor explored as a factor in the death investigation. To this day, unless the Feds are conducting an inquiry, this likely "gun getting caught on the car mirror" theory, has yet to be officially investigated. There are only two possible reasons why the Kenosha Police Department, who were investigating their own officers, failed to traverse this avenue of inquiry.

1. Utter and inexcusable incompetence.
2. Intentional conspiracy to conceal and deceive.

With either reason, AB-409, should it become law, would prevent future instances in which a police department pre-disposed to corruption or incompetence could attempt to investigate their own officers who are involved in the death of a citizen.

My dear sister is a police officer in southeastern Wisconsin. Several years ago she shot an armed attacker in the line of duty. Recently, during one of our discussions about this bill, she told me that any police officer involved in a justifiable shoot would have no fear of and would welcome the review of their actions by the entity established when AB-409 becomes law. If I was not retired from law enforcement and was still an active officer, I would also prefer having the protection of the law to prevent a life sentence in a virtual prison for submitting to the peer pressure and participating in the crime of covering up a questionable or unlawful use of deadly force.

Many critics of this bill claim it adds an unnecessary level of government bureaucracy. I ask you and these critics these questions. Is protecting the natural right of the individual to life and liberty unnecessary? Is having a legal system where individual citizens are protected by due process unnecessary? I proclaim that critics of this bill demonstrate either inexcusable ignorance or a prince-like disregard of our country's founding moment.

Respectfully,  
Russell Beckman