

Two cases show justice system fallible

By JOAN FISCHER

It was the best of exonerees, it was the worst of exonerees. The contrast between Christopher Ochoa and Steven Avery, both wrongfully convicted of rape and murder and both freed by the Wisconsin Innocence Project, could not be more dramatic.

Now that the possibility of the death penalty in Wisconsin will go to referendum, who is the more compelling poster boy, Ochoa or Avery?

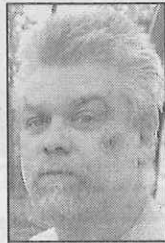
Ochoa served for 12 years in a Texas prison for a 1988 rape and murder he did not commit. Then 22, he confessed to the crimes when overzealous Austin police officers told him — falsely — that they had enough evidence to get him convicted and threatened him with the death penalty. He was told he'd be better off confessing in exchange for life in prison.

"Whites always walk, and Hispanics always get the needle," Ochoa says one detective told him. During several days of questioning with no legal representation, his interrogators also threatened him with prison rape and threw a chair at him that narrowly missed his head.

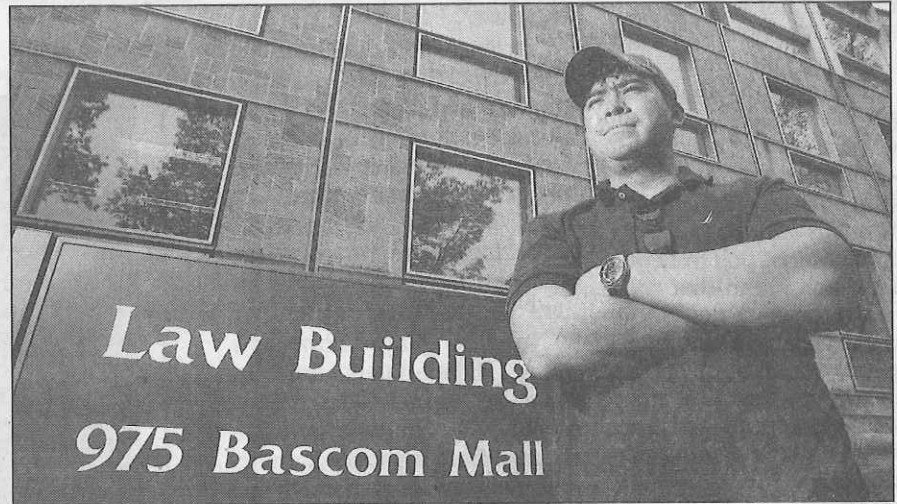
Ochoa was not released until 2001, when DNA testing of evidence ordered by the Wisconsin Innocence Project conclusively ruled him out. And it helped that, in the meantime, the real killer had confessed.

But the story doesn't end there. Ochoa went on to attend law school at UW-Madison, the very institution whose Innocence Project had set him free. Earlier this month, network television viewers across the nation were treated to the inspiring and moving ceremony of Ochoa's graduation.

Contrast this with the story of Steven Avery, who, after being freed by the Wisconsin Innocence Project in 2003 after serving 18 years for a rape and murder he did not commit, once again stands accused, this time of rap-



Avery



Associated Press archives

Christopher Ochoa is pictured in front of the UW-Madison Law School building. Now a graduate of the law school, he was the first person freed by the Wisconsin Innocence Project, a course at the law school.

ing, killing and mutilating a 25-year-old freelance photographer.

Last October Teresa Halbach vanished after visiting Avery's eastern Wisconsin auto salvage yard to take pictures for a trade magazine. Days later, investigators found her bones and teeth at the salvage yard and Avery's blood on her car key, which was found in Avery's trailer bedroom.

It was a horrific fall for Avery, 43, whose supporters had named a criminal justice reform package the "Avery bill" in his honor. Ironically, the bill passed unanimously in both houses of the Wisconsin Legislature the day after Halbach disappeared.

Now known simply as the "criminal justice reforms" bill, it includes such measures as requiring police to record custodial interviews and stricter regulations governing the use of eyewitness testimony, which was the prime evidence used to wrongfully convict Avery in 1985.

Passing the legislation was still the right thing to do. The current charges do not alter the fact that Avery did not commit the crimes of which he was convicted in 1985; his remains a "textbook case" of wrongful conviction, according to Wisconsin Innocence Project co-director Keith Findley. Nor do they make the reforms ushered in

by the Avery case any less needed.

Still, Wisconsin's death penalty advocates believe that the latest charges against Avery support their cause. A statewide referendum will be included on the general election ballot in November to allow the death penalty in cases where the conviction is supported by DNA evidence. Avery is expected to stand trial this fall. The grisly details will surely be fresh in the public's mind at election time.

DNA testing freed Chris Ochoa. It freed Steven Avery — and seems likely to convict him now. But it should not be set up as the arbiter of life or death. Humans make mistakes, and as hard as it is to compensate for years of wrongful incarceration, it is impossible to restore a life.

More than anything, what the Ochoa and Avery cases illustrate is the fallibility of our criminal justice system, and indeed of any system we are able to construct. What's more important, saving an Ochoa or executing an Avery? The twists and turns of their unpredictable stories should tell us we are in no position to make a final judgment.

Fischer is a writer and magazine editor in Madison.