



The Scales of Justice Are Tipped Toward Government — and That's Wrong

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While Americans are divided on what feels like every issue under the sun nowadays, there are still a few premises from the nation's founding upon which most will agree. One of those relates to our justice system and the old Sir William Blackstone notion that it is better that ten guilty men go free than one innocent man suffer.

While our system may have been crafted with that principle in mind, it is difficult to argue that it has ever been exercised in practice. Instead, upon examination, it becomes apparent that the system is stacked against the individual in almost every conceivable way while the government maintains endless power and advantages.

This power is evident in the country's nearly **2,500 wrongful convictions** discovered thus far and the fact that one innocent person is exonerated from our death rows for every **nine executions**. It is especially obvious when one realizes that more than **95 percent** of cases are settled with a plea agreement. Something has gone sorely amiss.

There are a lot of reasons why 19 out of every 20 people answer the siren song of a plea deal and sacrifice their right to a speedy trial, but those reasons don't necessarily serve the pursuit of justice.

Let's start with the trial penalty. This **penalty** refers to the harsher sentences often given to those who choose to go to trial, the additional charges a prosecutor may add to discourage a jury trial, and the other intimidation tactics that push defendants into caving against the government's might.

To compound the threat of the trial penalty, the nation's funding for indigent defense is abysmal. As I wrote recently in **another article**, a person's right to an attorney in all cases was only upheld by the Supreme Court in 1963, but states still struggle to fund their public defender systems. This has resulted in insufficient defenses for the many who cannot afford to hire a private attorney — not because there aren't amazing public servants in this country — but because they are burdened with caseloads that no human can adequately carry. These officials also struggle to pay for the level of discovery, evidence testing, and testimony that prosecutors (representing the government) have at their disposal.

In addition to this unequal footing in the courtroom, a recent study by the Cato Institute found that a disproportionate number of federal judges are themselves former prosecutors. According to their **report**, "looking only at former prosecutors versus former criminal defense attorneys (including public defenders), the ratio is **four to one**. Expanding the parameters to include judges who previously served as courtroom advocates for government in civil cases as well as criminal

cases, and comparing that to judges who served as advocates for individuals *against* government in civil or criminal cases, the ratio is **seven to one.**”

It's hard to imagine that these judges do not bring with them some bias towards a certain side of the courtroom when they take the bench.

And judges aren't the only decision-makers in the courtroom who may harbor biases that work against the defendant.

According to another study that examined more than 75,000 criminal cases from 1989 to 2002, juries **voted to convict 84 percent** of the time (judges voted to convict 55 percent of the time for comparison). Part of this may be explained by the ability for prosecutors to shape a jury that favors the outcome they desire. While **jury stacking** (specifically on the basis of race) is a **Batson violation**, there are **little to no consequences** for prosecutors who employ these tactics.

Some outright bias is actually allowed, leading to juries that are more likely to convict and deliver harsh sentences. For example, it is completely legal for a potential juror to be struck from a capital case if they have issues with the death penalty, leading, of course, to a jury pool that is more likely to hand down a death sentence.

Numerous other factors and processes stack the deck against defendants, including investigation tactics and interrogation techniques that are not always above board, the **CSI effect** that shows jurors are more likely to convict when forensics are available (**despite many contradictions** in this type of evidence), media bias in reporting, socioeconomic and racial bias in sentencing, and crime labs that are **paid** based on their rate of conviction.

For time's sake, these other items will have to be expanded upon in a future article. For now, though, it should be evident that if the scales of justice are tipped in any direction it is certainly towards the government. When the battle is between an individual and the government, the odds are never in your favor.