



Jeff Deskovic

Our Two-Tiered Justice System

Contrasts In Justice Between Rich And Poor

On Oct. 20, 2009, I read a story about former New York City Police Commissioner Bernard Kerik at *ABC News'* online publication about having his bail revoked. Kerik, it will be recalled, once held a heroic reputation across the country. As the *ABC* article reported, "Kerik's reputation took on heroic proportions in the immediate aftermath of the Sept. 11 attacks on the World Trade Center.

Side by side with 'America's Mayor' Rudolph Giuliani, Kerik was seen as part of the glue that held the city together and soon, owing to the support of Giuliani and a bond he had developed with President George Bush, Kerik was nominated to be 'America's Police Commissioner,' the head of the Department of Homeland Security."

The article quoted former president Bush recounting Kerik's career: "*Bernie Kerik is one of the most accomplished and effective leaders of law enforcement in America. In his career, he has served as an enlisted military police officer in Korea, a jail warden in New Jersey, a beat cop in Manhattan, New York City Corrections Commissioner, and as New York's 40th police commissioner, an office once held by Teddy Roosevelt. In every position he has demonstrated a deep commitment to justice, a heart for the innocent, and a record of great success.*"

In 2007 Kerik "was indicted on charges including the alleged acceptance of free rent and apartment renovations, tax evasion and lying on his application for the job as head of the Department of

Homeland Security. Kerik has pleaded not guilty to the charges."

"Following a pre-trial conference in White Plains, New York today, Federal Court Judge Stephen Robinson said towards the close of the three-and-a-half hour proceeding that Kerik 'sees himself as a victim' and rescinded Kerik's \$500,000 bail. The judge found that Kerik repeatedly leaked sealed information, apparently sharing documents with two lawyers who had not filed notices of appearance before the court, and who in turn leaked the information to a newspaper. Kerik was remanded after the court found he had obstructed justice and disobeyed its order." The judge "called him a 'toxic combination of self-minded focus and arrogance.'"

I was surprised, because Kerik's current situation is, of course, an aberration. Though justice is supposed to be blind, an expression that means that all are supposed to be considered equal in the eyes of the law, everybody knows that in reality there is one system of justice for the rich and/or politically connected and one for the poor.

The above-mentioned Kerik situation caused me to take a few moments and reflect upon the various ways in which the two-tiered system of justice manifests itself throughout various aspects of the court system. In this article, I intend to explore those ways.

Quality Defense Attorneys

Those who are rich and/or politically connected have the ability to obtain high quality defense attorneys who are able to mount a vigorous defense at trial, and hire plenty of experts for various aspects of a case. They are also famous for their ability to obtain what has sarcastically, because of its perversion of justice, come to be known a

"sweetheart deal" for a plea bargain.

Poor people are not able to afford to hire their own attorneys office, and hence are forced to proceed with an overworked, underfinanced, and sometimes incompetent public defender, who operates within a broken public defender system. In most instances, hiring the various experts to assist with case preparation is out of the question. In many cases middle class people cannot afford to hire their own attorneys either, and as for those instances when they can, they typically cannot afford to hire very many, experts, if any at all.

The difference in the quality of defense that the poor receive as compared to the rich and/or politically connected is like the difference between night and day. This inequality is simply not right, especially considering that a quality defense attorney is essential to a case's final outcome. This is true regarding convictions and acquittals, as well as the sentence.

The Issuance Of ROR'S

An ROR is an abbreviation for the phrase "released on one's own recognizance". In everyday language, that means that the court will release the defendant from jail while his or her case proceeds, upon a promise from the defendant that they will reappear in court for all of their court dates, as opposed to having to post bail to guarantee their appearance.

While it is true that poor people sometimes receive ROR'S in misdemeanor cases, it is virtually unheard of in felony cases. The rich, however, often ask for and receive ROR'S even in felony cases. Factors that their lawyers cite often include being an upstanding citizen other than the pending unresolved case, owning a house, being a local businessman, and being a high profile-public visible person—either by way of their being a celebrity or because of their high profile job which sometimes puts them in the

spotlight and because of their associations with various political figures.

For the poor and even many of the working class, owning a house is often not a financial reality. Save for the stories involving people whose career shows a meteoric risen from rags to riches, owning a house or a business is simply not a reality. Why should one's financial status make a difference? Why should poverty and even being middle classed be punished while being well off be rewarded by the court system?

Similarly, why should be a celebrity, holding a high profile job, and being connected with political figures be rewarded and the absence of those be punished? For the poor and the working class, the doors of such celebrity, jobs, and associations, are not open.

This recognition of the two tiered system of justice is implicitly confirmed by the fact that lawyers will make ROR applications on behalf of the rich and politically connected even in felony cases, whereas they will not when the person they represent is poor or middle class.

Bail

In those instances when the rich are not released ROR, they typically are released on bails that are low. Their status as rich people, or members of upper society, or celebrity, or being well connected politically, somehow means that they are better than others not of that status, and that recognition somehow means that they are somehow less of a flight risk than the poor. Is it that they are considered to have more to lose if they run?

But according to the statutes on the books regarding sentencing guidelines for various crimes, the sentencing ranges are the same. Of course, as I will discuss momentarily, the rich and politically connected are much more likely to receive lesser sentences. But to me this distinction merely represents another inequality that should be fixed, not a

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basis upon which to fix a lower bail.

In contrast to the rich and/or politically connected, the poor not only have bail amounts set much higher despite being charged with comparable crimes, but a good deal of the time they are so high that they are unable to make it, because neither they nor their friends or family can afford to post the bail or to give a bail bondsman the 10% that they require. As a result of that, they stay in jail while their case proceeds, with many consequences, including those that can sometimes impact upon how a case turns out.

Firstly, defendants who are incarcerated while their case proceeds are more likely to plead guilty, in order to escape life in a county jail, which is often worse than state prisons that they will be sent to in order to serve out the sentence they receive.

Secondly, every time a continuance is ordered or there is a delay for any reason, including legitimate delays in order to allow both sides to prepare their case, review documents, investigate etc., it results in the defendant being subjected to continued incarceration, which is stressful, whereas a defendant who has been bailed out or has received an ROR is under no similar stress when a continuance, delay, or extension is granted.

Thirdly, it is not uncommon that law enforcement sends people into jail in order to try to get close to an incarcerated defendant so as to try to obtain incriminating statements. At times, prisoners volunteer to testify against other people in exchange for receiving a lighter sentence or the dropping of charges, and often the information that they offer is not truthful. A person who is bailed out is not subject to these things.

Fourthly, being incarcerated is dangerous. It is only too well known that violence, including violence involving weapons, is an everyday occurrence in jail. Again, it is the poor that are subjected to this most of the time, and not the rich.

In those instances when the rich have bail set at a high amount, including even a million dollars, they are able to make it. A poor person would never be able to make a bail of that amount.

Bail Pending Sentencing

For the middle class and the poor, upon being convicted—whether by a jury verdict or as a result of pleading guilty, bail is revoked and the defen-

dant is remanded into custody pending sentencing. Yet for the rich and/or politically connected, they are sometimes allowed to remain free even after conviction, pending sentencing.

Judges are sometimes heard to verbally justify their decision to allow bail to continue in order “to allow the defendant to get their affairs in order.” Don’t the poor and working class also have personal lives and affairs? Why is it important to allow one class of people to do so, and not the other?

Sentence Lengths

As a society, we are increasingly more surprised when famous people, the rich, and/or politically correct are sentenced to incarceration. It has become so commonplace that they are not sentenced to prison terms that we are surprised on those rare occasions when they are. But even when they are sentenced to prison terms, it is often to shorter terms of imprisonment than the poor would receive for a similar crime.

People who are rich and/or politically connected are also much more likely to receive sentences of community service or probation, whereas the poor and middle class typically receive prison terms for similar crimes. When the poor and working class do receive community service or probation, it is for a longer length of time than the rich and/or politically connected typically receive.

Appeal Bail

The rich and/or politically connected are sometimes granted appeal bail, which is a type of bail that enables the defendant to remain free while he or she appeals their conviction to a higher court. A big part of the rationale is that in the event that the conviction is overturned, it prevents the previously convicted defendant from having spent time in prison wrongfully upon a defective trial and/or verdict. The same criteria that is used for deciding whether to grant bail, and for what amount is used when deciding appeal bail. Yet, those factors, as I have previously argued, are class and wealth based, rather than being rooted in a “justice is blind” foundation.

Although one aspect, in addition to what I have mentioned above, of whether to grant appeal bail is the likelihood of the success of the appeal, has anyone ever heard of a conviction of a poor person or middle class being

overturned in which they were free on appeal bail?

It is virtually unheard of for either a poor person or a middle class person to be granted an appeal bail application.

Types Of Prisons

Poor and middle class defendants who are convicted in federal courts are sent to regular prisons, and in some instances, if the defendants are considered to be especially dangerous or an escape threat, to high security prisons.

But when the rich and/or politically connected are sent to prison, they are often sent to what newspapers refer to as “camps”, for their country-club type atmosphere as contrasted with ordinary prisons. It is so typical that when that turns out not to be the case, it is considered to be a noteworthy item.

The Death Penalty

In Sister Helen Prejean’s NY Times best-selling book “*Dead Man Walking*”, which went on to become an award winning movie because of the issues it raised regarding the death penalty, she recounted a conversation she had with a prison warden regarding the morality of the death penalty in light of his and her belief in Christianity, in which the warden agreed with her point that we will never see a rich person on death watch. The same is true regarding a person who is politically connected, as well as those who are famous. Instead, it is only the poor and the working class who are sentenced to death.

Conclusion

I believe that everybody is entitled to a competent defense attorney, with access to the same resources that a prosecutor has access to to mount a vigorous defense. It is only through this approach that we can have confidence that justice is served in each case; that the innocent

go free and the guilty are punished, and that the sentences of the guilty are fair and what the crime calls for.

I don’t believe that only the rich and the politically well-connected, who can afford their own private attorneys, are entitled to quality legal representation. As such, the public defender system needs to be revamped. I believe that the best method of doing so is the Independent Public Defense Commission, as I laid out in depth in a prior issue of *The Guardian* entitled “*Gideon Day*”. That article can be read on my the website, www.JeffreyDeskovicspeaks.org. The same is true regarding my article on the broken state and federal public defender system.

With respect to the death penalty, as I have written about in depth, I am unalterably opposed to it for a variety of reasons, including the risk that it poses to executing an innocent person. For this reason, it should be done away with. It is yet another strike against the death penalty that only the poor and middle class receive it.

In terms of ROR’S and the bail issues I have raised, as a society, we need to decide what policies we want to have regarding granting these things. I have not thought enough about it to have an opinion, at this time, regarding what those policies should be. But it is clear to me that we need to have one policy regarding all defendants, regardless of whether they are rich and/or politically connected or poor.

To continue down the road as we are traveling is to continue to maintain an official class system and a two-tiered systems of justice—one for the poor and another for the rich and/or politically connected.

To me, the current state of affairs is shameful and morally unacceptable. ■

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