

We'd like to think an innocent person could rely on the integrity of the justice system when they are accused of a crime. We'd like to think that all parties would act ethically and honestly and that truth would prevail. We'd like to believe that our courts are fair.

Some are. But Columbia University law professor James Liebman has conducted a study which shows that two-thirds of death penalty cases were overturned due to error; and the majority of those errors appear to be malicious. He studied only death penalty cases. Because of the serious nature of a death penalty case, one could expect the highest levels of due process protections would be enforced during the pendency of the case; certainly much higher than a non-death penalty case. Therefore, I would suggest that his findings could be reasonably applied throughout the entire spectrum of the criminal justice process and the family Dependency and Neglect process as well. It is manifestly clear that the problems exposed in this death penalty study are inherent throughout the entire judicial system.

In examining his study of serious errors warranting relief, I found that a whopping 50% of those errors involved misconduct by the prosecutor. Such misconduct included withholding exculpatory evidence or allowing false witness testimony 36% of the time. This is an astonishing finding since many of us already know that much of the lying, cheating, stealing, and cover-ups committed by prosecutors are not acknowledged publicly. It's just that in these cases which were reversed, the level of prosecutorial misconduct rose so high that it simply could not be ignored.

And lest the reader be misled that the pursuit of justice requires integrity, let me remind you that prosecutors are permitted to lie, cheat, steal, and cover-up with impunity. They are immune from civil recourse or criminal prosecution. They don't lose their jobs. They are not disbarred. They are not even sanctioned. The system actually encourages them to lie, cheat, steal and cover-up. Is it any wonder the reversible error rate is so high? There are no consequences.

The next worst problem was ineffective assistance of counsel which represented 32% of the cases studied. This finding was no surprise to me, I see lazy and incompetent defense counsel at work all the time. If nearly a third of all overturned death penalty cases indicate that the attorney didn't do his job for his client, shouldn't that give us cause for concern? These are, after all, the most serious of cases which traditionally require the most due process protections. How bad is it for cases which do not have as dire consequences? Once again, this overwhelming incompetence is not often acknowledged by a court until it rises to a level that cannot be ignored any longer. This is especially prevalent with court appointed counsel.

As the appellate court in one case stated, the "state [having] paid defense counsel \$11.84 an hour[,] . . . [u]nfortunately got only what it paid for". I can confirm this attitude based on the many reports I receive of attorneys who will actually state to their clients that they don't get paid enough to put on a proper defense and will coerce their clients into false admissions with severely detrimental consequences based on nothing more than their outright refusal to do the job they're getting paid for.

Sometimes the errors compound, and usually against those least able to protect themselves from it. 6% of the overturned cases represented both prosecutorial misconduct and ineffective assistance of counsel.

But shouldn't the judges, those imposing figures of fairness on whose decisions the scales of justice are balanced catch these errors? Can't we trust them to be fair, honest, and unbiased themselves?

Not according to this study. Fully 14% of the reversed cases were based on judicial abuse of discretion or power, incompetence and/or bias. Since many accused people don't have the resources for appeal in criminal cases, much judicial misconduct or incompetence is never exposed. This would be a very conservative figure.

This is scary. 86% of all reversible errors were maliciously or incompetently caused by members of the bar. Let's extrapolate that. 66% of cases were overturned on appeal, and 86% of those were attorney misconduct or incompetence. That means that 57% of all criminal cases could reasonably involve attorneys who act with malice or incompetence.

Officers of the court who profess the highest standards of conduct and training have clay feet. No wonder they want to police themselves. No wonder they don't want an outside body to regulate, oversee or sanction them. Just imagine what would happen if 57% of attorneys were to be disbarred for misconduct or incompetence.

It kinda makes you want to smile, doesn't it?