

American Injustice

by Conrad Black (February 2016)

Two relatively recent articles in respected publications have piercingly reminded me of what a rotting carcass much of the American legal system has become. The articles were a piece in *The Weekly Standard* of October 26 by retired attorney Paul Mirengoff and Georgetown law professor and former prosecutor William Otis, and a [the biggest public-policy success](#) of the last two generations.” The authors hold that legislated, preordained sentencing and “proactive policing” produced a dramatic reduction in crime. It happens that I engaged in a Federalist Society telephone forum on the American justice system with William Otis and Professor Ellen Podgor of Stetson University in Florida in February 2013, and [reported](#) on it in *National Review* on February 28 of that year. The issue was much broader than mandatory minimums, and the three of us roamed very cordially over a wide range of U.S. criminal-law matters. Familiar though they are to many readers, the concerns I expressed were that American prosecutors win 99.5 percent of their cases, 97 percent without a trial, because the plea-bargain system extorts inculpatory evidence from witnesses in exchange for reduced sentences or immunity from prosecution, including for perjury, and threatens them with prosecution if they decline to cooperate. In practice, this means being catechized by prosecutors in a largely false sequence of allegations against the target. Every informed person in America knows that is how the system operates and nothing is ever done about it.

Professor Podgor pointed out that there are now over 4,000 criminal statutes and that new laws and regulations with heavy sanctions are being feverishly adopted every year. The Otis view was that the system was seamlessly perfect and American prosecutors are more successful than prosecutors in other countries because they are more competent. He accepted that the aging of the population, improved police techniques (elevated in his *Weekly Standard* piece to co-responsibility for the greatest public-policy success of 40 years), and the profusion of security cameras might have helped. But he underestimated the number of incarcerated people in the country by 33 percent and was afflicted by glottal stops, incapable of answering when I asked him whether, since there are 48 million convicted felons in the U.S., he really believes that nearly one-sixth of all Americans and about a third of adult males really deserved to be

considered officially as criminals. His silence was more eloquent than the mellifluous whitewash that preceded it.

In the *New York Review of Books* in 2014, Judge Jed S. Rakoff of the U.S. District Court in Manhattan described the system of American criminal justice as [National Review Online](#).

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