

Kenosha Prosecutors Exemplify the Problem with America's Justice System



It is undoubtedly true that the acquittal of Kyle Rittenhouse in Kenosha, Wisconsin on Friday was a victory over dishonest and overreaching prosecutors, over a largely dishonest national media, and over the same elements that produced mob rule in Kenosha in the summer of 2020.

The jurors, in their questions and their diligence, clearly overcame the immense media bias against Rittenhouse, and the intermittent chanting and howling by mobs outside the courthouse of often rather explicit threats against the jurors if they did not convict. The case was widely misrepresented as a trial of white-supremacist vigilantism intruding into Wisconsin from outside to aggravate the oppression of blacks in Kenosha. The jurors deduced that the defendant was invited to Kenosha by his family, had been asked to help defend an automobile dealership in the event of violence, was a legal carrier of the specific weapon that he owned, which was

legally in the home of relatives in Kenosha.

The initial portrayal of the case, including by then-candidate Joe Biden, of white supremacist violence, was exposed as defamatory fiction, and even the prosecution witnesses powerfully contributed to the perception that Rittenhouse, who was 17 years old at the time of the incident, had acted in self-defense. It emerged that he was a very well motivated and presentable young man, a good kid, and in no way a troublemaker or a bigot, contrary to what was instantly claimed by most of the media, all the way up to and through the trial.

The judge, too, deserves credit for criticizing the prosecution when it attempted to construe the defendant's previous silence as an acknowledgment of guilt, in plain contravention of approximately 50 years of overwhelming constitutional interpretation, and for the prosecution's attempt to hold that shooting someone had no legal character of self-defense if the gunshot victim was himself not armed.

The footage of the defendant being kicked in the face by one of those he shot, bashed over the head with the skateboard by another, and responding in the third case to having a gun pointed at his face at point-blank range, were all of great assistance to the defense. Yet as the facts unfolded, and the lies of the media and political lynch mob that had attempted to try and convict young Rittenhouse for the last 15 months before the matter could get to court were exposed, there was no accommodation of the sharply evolving picture of what had actually occurred in Kenosha on August 25, 2020. Not only did the defendant's good character and background come to light; the fact that the two deceased and the other complainant party were all rioters and to some extent vandals and bullies, did not visibly shake the prosecution in its determination to proceed with four counts of actual or attempted homicide, plus a related lesser count.

Despite the profoundly contemptible, morally bankrupt efforts of CNN, MSNBC, the traditional networks, and much of the written press to portray the verdict as a travesty of justice and a triumph of bigotry, it was a sensible and courageous judgment on the adduced evidence. It was clear to anyone who watched the proceedings that Kyle Rittenhouse had a legitimate self-defense answer to the charges and is not a bad or nastily intended young man.

The Wrong Takeaway

In all of this, the trial in Kenosha was indeed a vindication of the American criminal legal system. But unfortunately, many of the media celebrants have taken it as a legitimate occasion to praise the American criminal justice system and to claim that it has been entirely upheld by virtue of this *one successful case*, and even to pronounce it the best criminal justice system in the world. If any such conclusion is the principal consequence of the Rittenhouse trial, it would be a disaster on a scale considerably exceeding the proportions of the individual victory for equitable justice that it was.

Because of the confluence of a competent and determined judge, courageous and diligent jurors, ludicrously incompetent and dishonest prosecutors, and enough intelligent media attention to counter the 15 months of biased reporting that could easily poison the jury pool, justice was clearly done, to the peals of horror of the Americophobic riffraff that infects most of America's media. It would be a tragedy if this exemplary outcome were to whitewash what is in large measure an evil justice system.

American federal prosecutors get a conviction on 98 percent of their cases, 95 percent of those without a trial, such is the hideous abuse of the plea-bargaining system. As that system functions, prosecutors can and very frequently do summon a number of witnesses to whatever conduct they claim is objectionable and tell those witnesses that unless they are

able to recall evidence valuable to the prosecutors, with an absolute guarantee against prosecution for perjury, they are clearly participating in a conspiracy to obstruct justice and will themselves be indicted.

With this heavy-handed encouragement, such a mountain of effectively incontrovertible evidence piles up on top of designated defendants, that they are advised that they have no chance and get a minor level of leniency for simply folding and pleading guilty, regardless of the real facts. This is why 95 percent of these cases don't go to trial.

Again and again we have seen cases where prosecutory abuse generated unjust outcomes including outcomes the prosecutors knew to be unjust: The case against [Senator Ted Stevens \(R-Alaska\)](#), the [Duke University lacrosse team prosecution](#), and the [John Thompson](#) case where a man spent 14 years on death row for a crime prosecutors *knew* he did not commit. These are all examples of outright prosecutorial dishonesty. But there are thousands of cases in which false evidence was extorted or suborned and convictions unjustly obtained.

This is why the United States has six to 12 times as many incarcerated people *per capita* as those countries most comparable to it: the large prosperous democracies of Australia, Canada, France, Germany, Japan, and the United Kingdom.

No Real Vindication

Senior American judicial figures and eminent attorneys regularly inveigh against this lopsided system that has produced the shameful anomaly that the United States has five percent of the world's population and more than 25 percent of its incarcerated people. It is precisely the kind of lawlessness demonstrated by Kyle Rittenhouse's prosecutors when they attempted to poison the well against the defendant by misrepresenting both the constitutional right to silence

and to self-defense that leads to these disgraceful figures.

In Canada the prosecution succeeds 61 percent of the time and in Britain a little over 50 percent. This is because cases can only be brought in those countries when approved by judges in preliminary hearings rather than by American grand juries rubber-stamping whatever they're told by prosecutors; and because prosecutors would be disbarred for attempting to impose anything like the plea-bargaining system in the United States, and because as in other civilized countries except the United States, the defense speaks to the jury last, and not the prosecutors.

It is galling to have to listen to demagogues like Nancy Grace try to convict suspects on television before they are even arraigned, and it is sickening to hear well-intentioned people like Sean Hannity and Judge Jeanine Pirro claim that American justice is "the envy of the world."

I can assure them that it is not; it is regarded as probably the greatest failing of American society and government.

Writing as someone who is unfortunately very familiar with it, the American criminal justice system is an abomination: a mockery of impartial justice and a conveyor belt to the bloated and corrupt prison system in which millions of innocent or grossly over-sentenced Americans are ground to powder every generation. The Rittenhouse case avoided the curse; it certainly did not exonerate or vindicate it.

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