

2019

# Guilty Before Proven Guilty

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## Recommended Citation

Bolser, Calvin, "Guilty Before Proven Guilty" (2019). *A with Honors Projects*. 266.  
<https://spark.parkland.edu/ah/266>

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# Guilty before proven guilty

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Eng-102 A with Honors project

## ABSTRACT

**This research project is about identifying if there is a problem with the current justice system on how prosecutors handle pleas and the impact they have with their sole discretionary power. Prosecutors have been shown to hold an unbalanced amount of power and leave the system unjust. Focusing on the legal, moral and ethical standings that prosecutors should follow and whether or not the acts that some prosecutors use break those principles. The American Bar Association has set up specific guidelines for prosecutors to follow, however they may be too broad and thus allow them to manipulate the system with surreptitious tactics that allow them to unfavorably sway cases into their favors without factoring in whether the defendant is guilty or not. The second problem is there is no limit to the amount of charges they can rack up on an individual to increase the amount of time they would spend in jail.**

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## Context

Imagine that one day you were home with your significant other. Tragically she dies and there were no witness to her death. As unfortunate as that sounds what is there that protects you from having a prosecutor want to pursue you for murdering your significant other. Whether you commit the crime or not is irrelevant to the fact that they can charge you and put you away with little defense to your name. Prosecutors can also add additional charges and keep piling them on to ensure that one of them will stick and create what they think is the appropriate amount of time. Instead of focusing on one thing done they could find other ways to make someone guilty

## Issue and Position

**Issue- do some prosecutors hold too much power and does prosecutorial discretion impact pleas and sentencing**

**Yes- they have little to no checks and it creates an unjust system in need of calibration**



## Description of the Issue

- Is the tactics used by prosecutors, breaking any conventional terms set up by the American bar association
- Is what they do legal
- Is what they do moral
- Is what they do ethical
- How might the tactics used create an unjust system
- How does this effect the average defendant
- Should there be stricter guide lines set up for plea deals
- If there is an issues what would an alternative be and would that alternative be practical
- Would their tactics be considered surepitous

## Position and Support

- I believe that prosecutors hold too much power and it creates an unjust system
- There are several cases where the prosecutors would withhold information for the defense until the last minute and make it difficult to evaluate the legitimacy of the case.
- Prosecutors can give you essentially an ultimatum in plea deals before they represent the evidence collected, take the plea for 6 months in jail or go to trial and face 20 years, this is not an exaggeration.
- In the case of Booker VS Washington the guidelines that prosecutors had to follow went from mandatory to advisory giving them sole responsibility and discretion to apply several different crimes against the defense in an attempt to increase the amount of jail time spent rather then argue with the defense on the actual crime committed

“The overwhelming Majority (90 to 95 percent) of cases result in plea bargaining. Prosecutorial discretion in plea bargaining is known to cause discrepancies in sentencing outcomes. Those who go to trial rather than accept the plea are more likely to receive harsher sentences.”

Devers, Lindsey. “Plea and Charge Bargaining.” U.S Department of Justice, 24 Jan. 2011. [www.bja.gov/Publications/PleaBargainingResearchSummary.pdf](http://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf).

## Concerns/Response

- **Some prosecutors would argue that the guidelines set are already strict and that there are several people they must go through anyways. This may be true however, the problem lies in the fact that the judge doesn't determine the harshness of the crime it's left to prosecutors who do not have strict guidelines to follow and may add additional charges to any crime.**
- **Another concern is that the laws that are written have good groundwork and foundation for a balanced system. The problem is that in the case of Booker VS Washington the guidelines set up went from mandatory to advisory thus creating a system were the prosecutor is the only person with the responsibility to decide charges with no one countering what he says, just advising.**



## Future

The future largely depends on further research to create a just system. Implementing something new is difficult and would take time and large amount of resources. Two potential changes could be to have the Judge be apart of the plea deal process to act as a balance to the charges given. Another is to use a plea jury to have a jury of peers decide if the plea and charges are adequate given the circumstances.