

“Criminal Justice and the Coercion of Guilty Pleas”

Essay by; J. John Probe

Recently, through mainstream media news sources, I learned of the case of Mr. Brian Banks. Mr. Banks is a California man who was imprisoned on accusations of rape and than later exonerated of those charges.

Perhaps you may recall this story? Mr. Banks, a stand-out high school athlete who was awarded a scholarship to play football for U.S.C. had his conviction overturned after his accuser issued an apology on Face Book, admitting that she had fabricated the allegations of rape against Mr. Banks.

The media and subsequent interviews with Brian Banks have portrayed this as a feel good story of redemption and second chances. However; I have come to view Brian Banks' story as an indictment of our country's' criminal justice system and every thing that is wrong with the way our courts operate. I find it appalling that the public and media conversation, as it concerns this case, has completely failed to address the means employed by the criminal justice system and the court, means that compelled an innocent man to voluntarily plead guilty to the heinous and serious offense of rape. Means including threat, intimidation, and coercion. Means that are employed as measures which dissuade those persons charged with criminal offenses from exercising one of our most basic and fundamental rights; the right to a trial, a right which the court has sworn to uphold and to protect.

The coercion of guilty pleas as described herein have become standard operating procedure amongst all of our over-burdened criminal justice systems. The climate that has brought about such procedures and deprivations of our basic constitutional right to a trial is the result of failed *tough on crime & tough on drugs* policies. Policies that have criminalized and often established mandatory minimum sentencing measures for what were once considered relatively minor offenses. These policies and measures have in-turn resulted in an exponential increase in the number of criminal offenses being prosecuted in our courts at a time when budgets and tax dollars are in decline. This decline in dollars available for court budgets is reflected directly in cuts to the service provided to the criminal defendants who cannot afford to hire a private attorney and are assigned court appointed counsel. Court appointed public defenders do not have the resources necessary to conduct an exhaustive investigation to locate or discredit witnesses, an endeavor which often requires the hiring of an investigator, private firms most often keep such investigators on staff. Court appointed counsel does not have the funding for independent analysis and examination of physical evidence outside of that which is conducted and presented by the prosecution. Court appointed counsel does not receive the funding necessary for expert witnesses and the testimony provided by such witnesses that presents a counter-argument to the professional witnesses presented by the prosecution. These professional witnesses presented by the prosecution almost always work directly for state and the prosecution. Prime examples of this are police officers, forensic experts, medical examiners, coroners and the like.

Also, consider that court appointed counsel is often assigned such a large and overwhelming number of cases that they often have very little time to review evidence or to prepare for challenging the prosecution and their witnesses*, let alone prepare and provide a competent

defense. In all but the most sensational of cases, those cases that garner media attention, will any resources be allocated which would allow court appointed counsel to mount a vigorous defense. In fact; budget cuts to our criminal justice system have depleted resources to such a level that many courts now impose mandatory furlough days in which close courts one or more extra business days each month. These furloughs add to an already over crowded court docket and effectively force the courts to process more cases in less time. Couple an overcrowded caseload, budget shortfalls, district attorneys whose main concerns are conviction rates and appearing tough on crime come election time who have little or no regard whatsoever for actual justice. Add a system in which the same hand signs the paychecks of the prosecution, the defense, and the judge. What is left is no longer the adversarial proceeding overseen by an impartial adjudicator. What you have now is a team of co-workers who are working as efficiently as possible so that they may process as many cases possible each day.

The case of Brian Banks is prototypical of how the constituents described above combine in such a way as to elicit a guilty plea from an innocent man.

Once a defendant is arrested for a serious offense, after days in custody and enduring interrogation, he is ordered to appear in court; at this first appearance in court the defendant is assigned court appointed counsel. Within a week or so of this hearing court appointed counsel will meet with a defendant. This is usually the only meeting that will take place between the defendant and court appointed counsel. All future communications with counsel will most often take place in the courtroom at the time of subsequent court proceedings related to the offense. These communications are very brief, often no more than a brief description of the agenda of that days proceeding. Counsel will often divide his attention in court between the numerous defendants that he will have scheduled in that court room for that day in an effort to save time. The initial meeting with court appointed counsel is seldom longer than half of an hour, especially if a defendant was unable to post bond and is awaiting trial in a county jail, counsel will most likely have scheduled this one day to meet with as many of his clients in the jail as possible.

At the time of this initial and often only meeting with counsel, counsel will provide his assessment of the case.

In the case of Mr. Banks, this meeting most likely went something along these lines: Court appointed counsel advised Mr. Banks that although there were no witnesses and no physical evidence it was his word against that of his accuser. That rape is an emotional subject that jury trials often hinge upon emotional testimony of the accuser and that Mr. Banks probably had a fifty percent chance of prevailing at trial. At this juncture court appointed counsel *ALWAYS* cautions that if a defendant chooses to exercise his right to trial and loses that the judge will be inclined to impose the harshest available sentence. Directly implying that any penalty received upon a guilty verdict will substantially be increased just for exercising the right to trial. An action that effectively discourages most defendants from exercising this time consuming and costly option.

The courts are sworn to uphold and protect this right to trial. Yet the protection of this right has become a *technicality* that is served by informing a defendant on the court record that he has this right and that he agrees to forgo this right.

Also upon this initial meeting with counsel, counsel will inform you that the district attorneys office is offering the opportunity to plead guilty in exchange for a sentence that is less than the maximum sentence allowed by the law. Counsel then *ALWAYS* conveys threats made by the district attorneys office indicating that if you choose not to take this *opportunity* to forgo exercising your right to trial that the district attorneys office intends to pursue charges of a higher degree or nature, charges that call for much stiffer penalties. In addition, counsel will convey that if you fail to take this *opportunity* to pass on your constitutionally protected rights that the district attorneys office intends to seek sentence enhancements for "*aggravating*" or "*extenuating*" circumstance. District attorneys, regardless of whether these aggravating circumstances are present as it involves the accused offense, always convey such threats. These enhancement factors potentially double the length of any sentence that the court may impose upon a defendant.

In the case involving Brian Banks; Mr. Banks was threatened with a forty-one year prison sentence if he chose to take his case to trial and was found guilty, **OR**, a guaranteed five-year prison sentence in exchange for a guilty plea.

In the case of Mr. Banks, what I found to be most striking is the disparity between the threatened sanction of forty-one years and the five-year sanction imposed as the result of a guilty plea. Consider that Rape is such seriously harmful and damaging crime. Further consider that sexual predators of the type that violently rape women are fundamentally *wired* in a way which statistically raises them to the highest risk for re-offense. This is a fact well known by any experienced prosecuting attorney. Yet, the prosecuting attorney in this case was willing to cut not five years, not ten years, but a thirty-six year break off the possible sentence in exchange for forgoing the right to trial; for not taking up too much of the courts time or meager resources. In this light I am given serious cause to consider whether the district attorneys had any concern to protect the public or whether it was concerned only with moving another case through the system as efficiently and cost effectively as possible. Perhaps the district attorney's office knew the case against Mr. Banks was not *airtight*. Perhaps the district attorney's office acted and operated in the manner that is most assured to gain another conviction, another notch in a young assistant district attorneys belt, another win.

Now place yourself in the shoes of Brian Banks, an african american male, who was under the age of twenty-one at the time of the offense, making Mr. Banks a member of the most incarcerated demographic in our country. A country which incarcerates a much, **MUCH**, larger percentage of its' population per capita than any other "*civilized*" nation. Far more than the countries that our *free* society has deemed to be dictatorships or totalitarian regimes such as Cuba and China.

Presented with the option of accepting a five year sentence or rolling the dice and risking a forty-one year sentence, any innocent person who cannot afford to mount a high powered defense, regardless of their race, is most likely to take the five year sentence.

Now let us consider another very similar case. A case in which allegations of rape were leveled against another young african american male. Another incident in which it was also the word of the accuser verses the word of the defendant. I refer to the case the state of Colorado made and prosecuted against the Los Angles Lakers star, Kobe Bryant. In the matter involving Mr. Bryant, Mr. Bryant chose to take his case to trial and was able to provide himself with *EFFECTIVE* legal counsel, the best legal defense that *MONEY* can buy, a defense that was allotted unlimited resources. A defense that was able to locate and present dozens of character witnesses. A defense that was able to provide independent professional analysis of DNA and physical evidence. A defense that was able to provide professional witnesses to refute the physical and DNA evidence and bolster the defenses' interpretation of physical evidence. –And to no ones' surprise; Kobe Bryant was found innocent of the charges made against him. Now ask yourself, if Kobe Bryant had the same financial resources as Brian Banks would he have exchanged a guilty plea for a reduced sentence? If Mr. Banks had the available resources of a Kobe Bryant, would he have been found guilty? I think the answer in a resounding **NO**.

Upon making his rounds to the various news programs following his exoneration, Mr. Banks has indicated that he harbors no ill will towards his accuser and is interested only in putting this misfortune behind him. Understandable, even commendable, as anger and bitterness do nothing other than compound the damage already done, impeding any aspirations towards a better life.

However; I am disappointed in Mr. Banks utter failure to utilize his ten minutes of fame and fleeting media attention to launch a campaign of awareness as a means to focus attention on our nations criminal justice policies. Policies that are poised to steamroll over the innocent and those without the means to employ a costly high-powered defense.

Squandered was the opportunity to shine a light on a criminal justice system which would rather spend countless resources to pursue a losing war on drugs as opposed vigorously pursuing and prosecuting the rich and the large corporations who defraud our ailing economy of literally billions of dollars of tax revenue each year. Squandered; the opportunity to grab a national spotlight and expose a criminal justice system that wages war against our countrys' most poor and those most vulnerable to prosecution, while protecting and rewarding the rich. This was an opportunity to demonstrate how these criminal justice policies bankrupt state budgets with out of control prison expenses, in turn destroying our public education system, and gutting essential public services. This was an opportunity to attempt to return some semblance of fairness by exposing this farce of a criminal justice system in which "*Innocent until proven guilty*" has become a perverse joke. A system whose new motto has become "*Guilty until proven financially solvent.*" And this will continue to be the case as long as our criminal justice system goes unchecked and such *faux* cost saving measures are exposed.

**Note: Overwhelming caseloads have recently caused the state of Washington to impose limits on the number of cases that may be assigned to a single public defender at any given time due to inability of court appointed counsel to provide an adequate defense.*

***Note: The writer welcomes any commentary, feedback, criticism and intelligent discussion in regards to the views and information contained herein.*

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