

## 99.8% Conviction Rate In U.S. Federal Courts Can Make Japanese Prosecutors Jealous

The presumption of innocence is often touted in the United States as the fundamental principle shielding an accused person from being unjustly convicted of a crime. The basis of that claim is that to overcome the presumption of innocence the government is required to present substantial evidence that proves beyond a reasonable doubt the defendant's guilt of every essential element of his or her accused crime(s).

There is, however, a sharp disconnect between the reality of how the legal system actually works, and the theory that the presumption of innocence provides a protective shield to a defendant.

A defendant who goes to trial forces the prosecution to present the evidence proving its case to a jury or a judge. However, that process is short-circuited by a defendant who enters a plea of guilty.[1] For judges the gold standard of evidence is a public confession of guilt. Consequently, a guilty plea effectively relieves the government of having to present independent evidence a defendant is actually guilty.

The Sixth Amendment to the U.S. Constitution guarantees a defendant has the right to a jury trial.[2] That looks good on paper and makes for a good sound bite in a 4th of July speech. However, in 2015 *only 1.6%* of federal court defendants whose case was adjudicated had a jury trial. and 0.8% of defendants waived their right to a jury trial and elected to be tried by a judge.[3] Conse-

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supervisor liability; Vicarious liability against the ECPO and City of Newark; and legal malpractice by Martone. Eutsey's motion to dismiss the claims against him was still pending.

Sources:

[Man Exonerated by DNA](#) Test Moves Forward With Civil Suit, *New Jersey Law Journal*, August 15, 2016

[Rodney R. Roberts v. County of Essex, et al.](#) Case No. 2:15-cv-07061-KM-JBC (USDC Dist of NJ) (Ruling on summary judgment motion by the defendants — denying dismissal by some defendants)

[Newark man set free after serving 17 years](#) for a rape he says he did not commit, By Thomas Zambito, NJ.com, April 8, 2014

[Detained 17 years for kidnapping he didn't commit](#), man sues for \$72M, *The Star-Ledger* (Newark, NJ), October 06, 2015



Federal Court House with 'Abandon hope all ye who enter here' inscribed above entrance.

quently about 1 of every 63 defendants in federal court is convicted by a jury -- and 1 out of 42 is convicted after a trial of any kind. State courts aren't appreciably different, since about 4% of state court defendants are convicted after a jury or bench trial.

Whether tried by a jury or a judge, it is a shaky roll of the dice for a defendant to go to trial in federal court. Only 258 of the 3,024 defendants who went to trial in 2015 were acquitted. Thus a federal defendant who decides to go to trial has about a 1 in 12 chance of an acquittal.

The 41 out of 42 (97.6%) of federal defendants in 2015 whose case was adjudicated without a trial, were convicted by a plea of guilty -- a public confession. The federal judge or magistrate were minor participants with the U.S. Attorney's Office relying on the defendant's mouth to obtain those convictions.

Between guilty pleas and trials, the conviction rate was 99.8% in U.S. federal courts in 2015: 126,802 convictions and 258 acquittals. That wasn't an anomaly. In 2014 the conviction rate was 99.76% and in 2013 it was 99.75%.

There is nothing new about the high conviction rate in federal courts, although it has been consistently rising since 1973. The conviction rate has been above 99% since 2003, above 98% since 1995, above 97% since 1985, above 96% since 1982, above 95% since 1975, and above 94% every years since 1955.[4] As the conviction rate has increased, the number of acquittals has precipitously declined. The 2,371 defendants acquitted in federal court in 1973 was *more than* the 2,362 defendants acquitted in the *six years* from 2010 to 2015. That was the case even though in 1973 40,493 defendants were convicted, compared with the 850,365 defendants convicted from 2010 to 2015. Even more graphically, in 1973 there were 17 convictions for every defendant acquitted in federal court, while in 2015 *there were 493 convictions for every acquittal*. So a federal defendant is now about

2,900% more likely to be convicted than in the early 1970s.

Although overall federal courts generate convictions at a remarkable rate, there were twenty federal judicial districts that had a *100% conviction rate* in 2015. Not a single defendant was acquitted in:

- Colorado: 466 convictions, 0 acquittals.
- Delaware: 88 convictions, 0 acquittals.
- District of Columbia: 262 convictions, 0 acquittals.
- Illinois, Central: 346 convictions, 0 acquittals.
- Illinois, Northern: 898 convictions, 0 acquittals.
- Illinois, Southern: 412 convictions, 0 acquittals.
- Indiana, Northern: 266 convictions, 0 acquittals.
- Indiana, Southern: 386 convictions, 0 acquittals.
- New Hampshire, 154 convictions, 0 acquittals.
- North Carolina, Eastern: 529 convictions, 0 acquittals.
- North Carolina, Western: 791 convictions, 0 acquittals.
- Pennsylvania, Middle: 392 convictions, 0 acquittals.
- Pennsylvania, Western: 495 convictions, 0 acquittals.
- Tennessee, Eastern: 722 convictions, 0 acquittals.
- Texas, Eastern: 1,071 convictions, 0 acquittals.
- Vermont: 201 convictions, 0 acquittals.
- Washington, Western: 518 convictions, 0 acquittals.
- West Virginia, Southern: 301 convictions, 0 acquittals.
- Wisconsin, Eastern: 336 convictions, 0 acquittals.
- Wisconsin, Western: 98 convictions, 0 acquittals.

It is particularly notable that in 2015 there were *zero* federal court acquittals in Illinois -- the fifth most populous state with 12.9 million people.[5]

Twenty-eight other federal judicial districts had one defendant acquitted in 2015:

- Alabama, Middle: 162 convictions, 1 acquittal.
- Alaska: 183 convictions, 1 acquittal.
- Arkansas, Western: 262 convictions, 1 acquittal.
- California, Northern: 470 convictions, 1 acquittal.
- Georgia, Southern: 445 convictions, 1 acquittal.
- Guam: 100 convictions, 1 acquittal.

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- Iowa, Northern: 359 convictions, 1 acquittal.
- Iowa, Southern: 329 convictions, 1 acquittal.
- Kentucky, Western: 238 convictions, 1 acquittal.
- Louisiana, Eastern: 412 convictions, 1 acquittal.
- Louisiana, Middle: 171 convictions, 1 acquittal.
- Louisiana, Western: 353 convictions, 1 acquittal.
- Maine: 188 convictions, 1 acquittal.
- Massachusetts: 456 convictions, 1 acquittal.
- Mississippi, Southern: 306 convictions, 1 acquittal.
- Missouri, Eastern: 464 convictions, 1 acquittal.
- Missouri, Western: 891 convictions, 1 acquittal.
- Nevada: 671 convictions, 1 acquittal.
- New York, Eastern: 648 convictions, 1 acquittal.
- North Carolina, Middle: 526 convictions, 1 acquittal.
- North Dakota: 457 convictions, 1 acquittal.
- Northern Mariana Islands: 20 convictions, 1 acquittal.
- Ohio, Northern: 738 convictions, 1 acquittal.
- Oklahoma, Eastern: 99 convictions, 1 acquittal.
- Oregon: 640 convictions, 1 acquittal.
- South Carolina: 737 convictions, 1 acquittal.
- Utah: 650 convictions, 1 acquittal.
- West Virginia, Northern: 424 convictions, 1 acquittal.

So more than half of the 94 federal judicial districts had zero to one acquittal in 2015.

The five federal judicial districts with the most convictions were:

- Texas, Southern: 28,359 convictions, 7 acquittals. (99.9753% conviction rate)
- Arizona: 22,195 convictions, 10 acquittals. (99.9752% conviction rate)
- Texas, Western: 18,897 convictions, 11 acquittals.
- New Mexico: 4,869 convictions, 6 acquittals.
- California, Southern: 4,309 convictions, 12 acquittals.

Six federal judicial districts had less than a 99% conviction rate in 2015:

- Hawaii: 497 convictions, 12 acquittals. (97.6% conviction rate)
- Rhode Island: 130 convictions, 3 acquittals.

(97.7% conviction rate)

- Washington, Eastern District: 487 convictions, 8 acquittals.
- Montana: 451 convictions, 6 acquittals.
- Alabama, Southern: 329 convictions, 4 acquittals.
- Georgia, Northern: 677 convictions, 7 acquittals.

Statistically, the two best places to be prosecuted in federal court are Hawaii and Rhode Island. Those are the only two federal judicial districts with conviction rates less than 98% — 97.6% and 97.7% respectively.

The worst place to be prosecuted? Hard to say, but making a blind pick would be reasonable since deciding to go to trial can legitimately be considered either suicidal or the sign of a severely deranged mind in almost every other federal district. Of the federal courts that actually had an acquittal, the Southern District of Texas stands out with more than 4,051 convictions for every acquittal — a 99.9753% conviction rate.

Not only is a defendant who goes to trial very likely to be convicted, but once convicted there is a very low probability a wrongly convicted federal defendant can win exoneration. In 2015 there were only 31 known exonerations of a federal defendant, similar to 2014 when there were 29.[6] Likewise, of the thousands of federal habeas corpus petitions filed each year by state prisoners seeking to overturn their conviction, in 2015 only eight were exonerated by a state court after their federal petition was granted. That was slightly abnormal, because in 2014 three were exonerated, in 2013 four were exonerated, and in 2012 and 2011 two were exonerated each year. [7] So in five years 19 state prisoners in the U.S. were exonerated with the assistance of the federal courts.

Federal courts were not defendant friendly in 1955, or 1973, but now the odds are so heavily stacked against a defendant that it would be appropriate if every federal courthouse had Dante's admonition inscribed above its entrance: "Abandon hope all ye who enter here."

That is only a slight exaggeration since the statistics clearly show that a federal criminal court today functions as little more than a processing facility to transform hapless defendants into convicts.

The conviction culture that prevails in federal courts is resulting in the majority of U.S. District Court and magistrate judges going for a year and more without a single defendant being acquitted in their courtroom. So it is not only the prosecutors in the

U.S. Attorney's Office who have a conviction mentality, but it can also infect federal judges who experience a parade of defendants convicted by a plea bargain or after a trial. The acquittal of a federal defendant is becoming rare enough that it is almost as newsworthy as a confirmed story of a man biting a dog. For all but a handful of federal defendants the presumption of guilt is the operative principle underlying their prosecution, with the presumption of innocence an illusory catch phrase.

Ironically, the legal system in Japan is often criticized because of that country's conviction rate of more than 99%. A part of that criticism is prosecutors in Japan inordinately rely on a defendant's confession to obtain a conviction. [8] Yet, Japanese prosecutors don't have anything on federal prosecutors in the U.S. who have a 99.8% conviction rate, and as monopsonists, are able in almost 98% of cases to extract a confession of guilt to obtain a conviction.

Endnotes:

[1] An Alford plea is a face saving way to pled guilty, because it is legally considered indistinguishable from an outright guilty plea. A defendant entering an Alford plea admits the prosecution likely has enough evidence to convict.

[2] All federal defendants are entitled to a jury trial except those charged with a "petty offense" under 18 U.S.C. § 19, for which the maximum penalty for an individual is a \$5,000 fine.

[3] Federal Court statistics in this article are from U.S. Attorneys' Statistical Reports that are available for the years 1955 to 2015 (excluding 1976) at, <https://www.justice.gov/usao/resources/annual-statistical-reports> . (last viewed 5-17-2016)

In 2015, 2,032 of 127,060 federal court defendants whose case was adjudicated were tried by a jury and 992 were tried by a judge. In U.S. District Court of 69,791 defendants, 2,014 were tried by a jury, 206 were tried by a judge, and the remainder pled guilty. In U.S. Magistrate Court of 57,269 defendants, 18 were tried by a jury, 786 were tried by a magistrate, and the remainder pled guilty. An additional 9,133 defendants had the charges dismissed without an adjudication — 4,052 in U.S. District Court and 5,081 in U.S. Magistrates Court. [4] 1955 is the earliest year the U.S. Attorneys' Statistical Report is available online at, <https://www.justice.gov/usao/resources/annual-statistical-reports> . (last viewed 5-17-2016)

[5] U.S. Census Bureau at, <https://www.census.gov/quickfacts/table/PST04521/5/17>

[6] Innocents database, <http://forejustice.org/idb1989us.html> (Viewed 5-17-2016)

[7] *Id.*

[8] Forced to confess: Suspects in Japanese police cells are far too vulnerable to abuse, *The Economist*, Dec. 5, 2015. Available online at, <http://www.economist.com/news/leaders/21679472-suspects-japanese-police-cells-are-far-too-vulnerable-abuse-forced-confess> (Viewed 5-17-2016)

Sources:

[United States Attorneys' Annual Statistical Report, Fiscal Year 2015](#) (Esp. Tables 2 and 2B)

[United States Attorneys' Annual Statistical Report, Fiscal Year 1955 to 2014](#), (excluding 1976 that is unavailable online)

[Forced to confess](#): Suspects in Japanese police cells are far too vulnerable to abuse, *The Economist*, Dec. 5, 2015

