Justice and Democracy: An Exploration

Introduction

In theory, in a democracy and under the law, everyone is equal. But sometimes what's true in theory isn't so true in practice, and outcomes can be very different for different types of people. When two Riverbend City residents are arrested for the same crime, differences between the suspects lead to very different experiences.

Two DUI Arrests

Brent Damascus is a forklift operator who works the second shift at the paper mill on the outskirts of Riverbend City. Last night, he was driving back from Artie's, a bar just down the road from the mill, where he was having some beers with friends after work. When a police officer saw that he was driving erratically, she pulled Brent over. He failed the roadside test and breathalyzer, so she arrested him.

Jack Blair is a senior account executive with Emergency Planning Partners, a security risk management firm in Riverbend City. On the road home from his friend's wedding last night, he was pulled over for not signaling a lane change. As he was providing his license and registration, the officer noticed he was slurring his words. Jack failed his roadside test and breathalyzer, and the officer arrested him.

Brent Learns His Options

Brent's arraignment before Judge Anita Banks reveals that he doesn't have much money with which to pursue his defense.

**Anita Banks:** All right, next case. Is Mr. Brent Damascus here?

**Brent Damascus:** I'm here, your honor.

**Anita Banks:** All right, Mr. Damascus, it looks as though the charge is driving while under the influence, with no priors. Mr. Damascus, are you represented? Do you have a lawyer?

**Brent Damascus:** No, your honor.

**Anita Banks:** Are you planning to represent yourself, or to get a lawyer? I would suggest that a lawyer is a better bet, sir.

**Brent Damascus:** Yes, ma'am. I don't have a lot of money, though.

**Anita Banks:** Well, you may need to go with the public defender, then. Regardless, we'll continue this until the issue of representation is resolved.

After the arraignment, Brent talks to someone in the public defender's office.

**Brent Damascus:** I need a lawyer.

**Taylor Adams:** What's the charge?

**Brent Damascus:** DUI.

**Taylor Adams:** Okay, you must have had the arraignment already. I take it the judge continued it because you didn't have representation?

**Brent Damascus:** Yep. She said I should get a lawyer and you folks could help me.

**Taylor Adams:** Well, let's see if we can. First: your income. What do you make an hour?

**Brent Damascus:** What's that got to do with it?

**Taylor Adams:** There's an eligibility requirement for public defender services. These attorneys are for people who can't afford legal representation, so we need to know what you can afford.

**Brent Damascus:** It's not your business what I make!

**Taylor Adams:** I'm sorry, sir, it's a requirement. Can you give me a ballpark, maybe of what you make in a year? What did your last tax return say?

**Brent Damascus:** About $30,000.

**Taylor Adams:** Oh, boy. I think that's too high.

**Brent Damascus:** Too high? Are you kidding me?

**Taylor Adams:** No, I'm sorry. Now, you can still apply; I'm not telling you not to. But my guess is that you're going to come in too high. We can't serve anyone who doesn't meet the eligibility requirements.

**Brent Damascus:** Who isn't poor enough, you mean!

**Taylor Adams:** Look, you're going to have to find a lawyer another way. But there are plenty in town, and they'll usually work with you on the price. There are a few I'd recommend who are honest and will really go to bat for you.

**Brent Damascus:** Maybe, but I can't afford much, even if I'm not poor enough for you guys. How much would one of these lawyers charge me?

**Taylor Adams:** I don't know, but it depends on how they charge. Sometimes they just do a flat fee, and that can be… I'd guess… between $3,000 and $10,000.

**Brent Damascus:** I don't have that much! Not even close!

**Taylor Adams:** Is there something you could sell to come up with it?

**Brent Damascus:** Now you want me to sell my motorcycle? Not that I'd get much for it anyway.

**Taylor Adams:** Well, look. I can't legally give you advice. But you really might want to consider pleading guilty. If the evidence against you is solid, even with the kind of lawyer you can afford, you're not likely to get off. Plus, the judge is probably going to look more favorably upon you and your case if you go that route. But it's up to you.

Jack Meets His Lawyer

Jack meets with a lawyer who was recommended to him by a friend.

**Darlene Parker:** Good afternoon, Mr. Blair.

**Jack Blair:** Please, it's Jack. Thank you for doing this. I know it's not your usual practice.

**Darlene Parker:** Well, I did it for years before I became an employment lawyer. I'm happy to help out. Why don't you get me up to speed on what happened?

**Jack Blair:** I went to my best friend's wedding the other night, and it was a good time. I left about 8:30 — the dancing was starting, and that's not my thing — and I thought I was fine, but I must have had more of that champagne than I thought. It sure was good.

**Darlene Parker:** I'll bet. So the officer pulled you over, and why?

**Jack Blair:** I didn't signal a lane change. Can you believe that?

**Darlene Parker:** I surely can. But that's one of the things we'll take a look at, whether the stop was proper or not. If it wasn't, then everything after is improper, and there's a good chance we can get the charges dropped.

**Jack Blair:** Really? That's great!

**Darlene Parker:** Well, let's not get ahead of ourselves. If the officer made a mistake we're home free — but they usually don't, so don't get your hopes up. Still, that's not our only play. Go ahead.

**Jack Blair:** Well, she asked for my license and registration, and I was getting them but I guess I was talking a lot. I handed them to her and that's when she asked if I had been drinking.

**Darlene Parker:** And you said yes?

**Jack Blair:** I told her where I'd been and how many drinks I thought I'd had.

**Darlene Parker:** Okay, then you're on the record as admitting to drinking and estimating your consumption. That's not optimal, but it's not terrible either. I take it that once she had your answer, she asked you to get out of the car?

**Jack Blair:** Yep, she made me walk and recite the alphabet.

**Darlene Parker:** And how did that go?

**Jack Blair:** Not great.

**Darlene Parker:** And then you took the breathalyzer?

**Jack Blair:** Yes.

**Darlene Parker:** Okay, we'll file a motion to get the records on when that machine was last calibrated and whether the officer used it properly. Are you on any medications I should know about?

**Jack Blair:** Like what?

**Darlene Parker:** Oh, cold medicines, Anbesol — you know, that cold sore medication — cough syrup, even Albuterol, the asthma drug. You'd be surprised how many medications can cause a false positive.

**Jack Blair:** Not that I remember.

**Darlene Parker:** Well, give it some thought and make a list of possibilities. We've got some more options. It helps that it's your first offense. Let's get more into the details and see how we can get this thrown out. But before I do that, I need to remind you of my retainer. It's $10,000, and half of that is due up front. Will that be a problem?

**Jack Blair:** No, I'll just dip into the kids' college fund. [pause] That was a joke. Yes, I can get that for you.

**Darlene Parker:** All right. The remainder is due once your case is closed, which will be within a few days. Will that be a problem?

**Jack Blair:** No, that's fine.

**Darlene Parker:** Great!

# Comparing Outcomes

You've seen how different the options look for Brent and Jack as they decide how to handle their DUI charges. Both men committed the same act. But the outcomes are quite different.

Brent opts to plead guilty, and now has a felony DUI conviction on his record. Jack, on the other hand, is successful in getting the charges dropped, and has a clean record.

Below is an accounting for the costs for each man. As you'll see, Brent faces costs related to his DUI conviction for years. But Jack, who had the funds to pay for effective representation, does not. And even if the costs were the same, it's much more difficult for Brent to pay his costs — and that's especially true if he loses his job.

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| **1977** | **Duration** | **Brent** | **Jack** |
| Attorney retainer | One time | $3,000—$10,000 | $10,000 |
| Fines | One time | $1,000 | - |
| Bond | One time | $5,000 (less $1,500 for bail bondsman) | $5,000 (refunded in full) |
| DUI Classes | One time | $650 | - |
| Vehicle impound |  | 2 days: $300 | 1 day: $150 |
| Driver's license restoration fee | Three years | $750 | - |
| Wages lost (jail time) | One time | $120 (before taxes) | - |
| Insurance premium increase | Three years | $3,255 | - |
| Probation Supervision | Depends on sentencing | $600-$1,200 | - |
| Community Service Supervision Fee | Depends on sentencing | $60 per month | - |

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