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The \$40/Hr Defense Lawyer: 'Making A Murderer' Attorney Dean Strang Discusses The Economics of Innocence

One of the central themes of the Netflix's documentary *Making a Murderer* was the imbalance of resources between the prosecution in the Steven Avery case, and Avery's own defense team. But with a few brief exceptions, there wasn't much attempt to actually examine it in terms of dollars and cents.

The numbers do add up. For example, a study revealed that in the State of [Washington](#) prosecuting a non-capital murder case like Avery's [costs upwards of \\$2 million](#). (In a death penalty case, FWIW, that number rises to \$3 million.)

So we talked to Avery's attorney Dean Strang about the numbers—and dollars—behind the courtroom battle.

In the first part of a two-part interview, he explains how much the state can spend on prosecuting a case, and how much—or little—court-appointed defense attorneys are paid to make the case for their client's innocence, and how the state can—and does—outspend the richest defendants, from O.J. Simpson to Bill Cosby. He ends with a remarkably frank critique of the defense attorney provided to Steven Avery's nephew Brendan Dassey.

Please share your thoughts about *Making a Murderer*, Strang's defense of Avery, and the impact of money on the judicial system in the comments below.

[Here's a link to Part II of the interview](#) in which Strang follows the money in the Steven Avery case.





Steven Avery's defense attorney Dean Strang gives his closing arguments in the courtroom on Thursday, March 15, 2007 in the Steven Avery case. AP Photo/Morry Gash, Pool

While Steven Avery did pay you and Jerry Buting to defend him (more on that later and [in Part II](#)) most defendants don't have that option, right?

Let's think big. Nationwide, in almost any county, in any state, in any federal district court, something more than 90 percent of the 2.5 million people charged with a crime cannot afford to hire a lawyer, let alone carry the other costs of a defense: expert witnesses, private investigation, [laboratory] testing or whatever.

State government or federal government carries the cost of defense of most people charged with a crime. Either through funding an institutional public defender system, or paying private lawyers to take court appointments for some reduced compensation.

I gather that's a good news/bad news situation, given that this system gives prosecutors resources that defense attorneys don't have.

Most of those systems for providing indigent defense provide you a lawyer and not much else. The money allocated for private investigation in most places is very minimal. Money for expert witnesses, even less. Money allocated for independent testing of physical evidence less still.

If you look at what the state has, it's got whatever law enforcement resources that are needed, not just one private investigator. And they can pull in state level resources, resources from neighboring counties. And in an important case, where there's a potentially long sentence or one that's gotten a lot of publicity, the federal government will often lend its resources to state governments, and the federal government is lavishly funded by comparison to any state's criminal justice apparatus.

In Steven's case, the FBI lent its resources to Manitowoc County.

I use the verb lend and I mean that. The FBI, at least to my knowledge, doesn't charge Manitowoc county for work done in the Steven Avery case. It's provided gratis.

At the investigative level, the State far outstrips anybody. You can be O.J. Simpson and you can't match State resources at an investigative level.

So the State outspends everyone, not just less-affluent clients?

Lets assume, probably safely, that Bill Cosby is a man of considerable means. He's not just a one percenter but a 1/10th of one percenter. The State of Pennsylvania will far outspend Bill Cosby. And if it wanted to, the State of Pennsylvania could break Bill Cosby financially.

What would that look like?

Let's just say that analysis of disputed bodily fluids became important [hypothetically, in Cosby's trial.] Or analysis of mitochondrial DNA or whatever. And let's say the defense invested money in a defense expert and defense testing. If the defense was going to use that at trial they'd have disclose its results and the expert and his or her opinions to the prosecution.

Once the defense made its disclosure, you would assume, in a high profile case, that the State of Pennsylvania would vastly outspend him on rebuttal experts or additional testing to try to rebut whatever the defense expert was going to offer.

Whether you're Bill Cosby or John DeLorean or O.J. Simpson or Robert Durst, if we cast about and find the rare really wealthy person who finds himself or herself charged in criminal court, that person is still no match for the state or federal government.

Dean Strang Discusses Steven Avery's Case #...  



Let's go back to the less-affluent clients who have to rely on the services of a public defender. How much does a court-appointed attorney get paid?

My state [Wisconsin] is a pretty stark example. The current rate of pay for someone who takes a court appointment for an indigent client is \$40 an hour for in-court time and \$25 an hour for travel time.

That has not changed since 1994 and it's gone up only \$5 an hour for in-court time since 1978.

A lot of people would say "Forty dollars an hour? I'd be happy to work for \$40 an hour. What are you lawyers bitching about?" But he or she is not putting that in his or her pocket. The \$40 an

hour has to cover the lawyer's overhead office expenses. Out of that has to come the phone bill and the Westlaw and the light bill. More and more lawyers can't afford secretaries or assistants, but if they do, they're paying that.

I gather you're going to tell us that that overhead is going to eat up a sizeable portion of that \$40 an hour.

To give you a concrete example in 1997, I founded a two-lawyer criminal defense firm with a wonderful guy named Mike Fitzgerald here in Milwaukee. Two lawyers, doing nothing but criminal defense, and one secretary. We had offices. Fairly modest. No granite on the countertops and no marble on the floor. The cost to us to walk in, unlock it and turn on the lights—the operating costs spread across a 40-hour week—was \$46 an hour. In 1997.

So that money isn't even covering your overhead?

If I take a court appointment at \$40 an hour, I am perversely subsidizing the government that's prosecuting my client to the tune of \$5 an hour. Plus I'm working for free. I'm kicking \$5 an hour into the kitty to fund the prosecution of my client.

What kind of lawyers end up taking these court-appointed cases?

People who end up taking them are the ones for whom the opportunity cost is presumably under \$40 an hour.

Let's think about this in *Forbes* terms. I made a substantial investment in my human capital by staying in school for three years after I got my undergraduate degree. All people want some ROI [return on investment.]

For some people the ROI is intangible. It's feeling good, doing public interest work, they're happy paying rent on an efficiency apartment because they're saving the world. For a lot of people the ROI is more tangible. They're looking for income that warrants the investment in their human capital. Although most lawyers wouldn't use this jargon, they do make an opportunity-cost calculation.

And to state the obvious, there are plenty of lawyers who may a lot more than \$40 an hour.

The large firms in New York City, they have partners who are billing \$1,000 and \$1,200 an hour. They have first-year associates who are being billed at \$250 an hour or more. That's what they need to support the apparatus of a large firm and hire top law school graduates. If you want to compete for the best of the law school graduates that's what you have to do. And people are willing to pay it.

Compare that to the \$40 an hour that a lawyer who takes a court-appointed case in Wisconsin is getting. And let's assume that even with whatever distortions—law has a long *pro bono* tradition and people will do it for altruistic reasons—there's still something that's like a free-market operating here.

And to bring it back to the film that prompted you to call me, you see one example of court appointed counsel for a 17-year-old boy who couldn't possibly afford to hire a lawyer. You see what \$40 an hour buys in the market.

Does the system encourage a court-appointed attorney to plea bargain a case, as seemed to be happening in the beginning of Brendan Dassey's case?

I have no idea about Brendan's case. But do I think that goes on? Yes, I do think that goes on.

Here's why there's an incentive, or at least a pressure, the lawyer can feel. You might say, "The lawyer is being paid by the hour. Why would he want to wrap it up early? Why wouldn't he just sort of 'churn' the case?"

The reason is that most indigent defense systems, in addition to having a low hourly rate, also have have a cap on total compensation in a case.

That's where the incentive comes to plead the case out very quickly. If you hit that cap, you're not working for \$40 an hour or \$60 an hour or whatever your state pays. You're working for zero dollars an hour.

Follow [this link for Part II of the interview](#) with Dean Strang in which he discusses the economics of the Steven Avery case.

Please share your thoughts about *Making a Murderer*, Strang's defense of Avery, and the impact of money on the judicial system in the comments below.

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Allen St. John is the author of [Newton's Football: The Science Behind America's Game](#)

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