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## **Like US Supreme Court, US Voters Split on Bad Legal Advice**

You have a right to counsel, but do you have a right to good counsel? Get bad legal advice, and you could end up doing more time. According to a recent national study by Fairleigh Dickinson University's PublicMind, voters offer a split decision on the question of whether a sloppy lawyer means a re-trial.

In *Laffler v. Cooper*, the US Supreme Court ruled yesterday by a narrow 5 to 4 vote that defendants have a right to effective counsel even in plea bargaining situations. This was long after one lawyer told his client, Anthony Cooper, that he should hold out for a trial instead of accepting a deal with a prosecutor. But when Cooper followed his lawyer's advice and a trial took place, not only was he convicted, but he got a much longer sentence than if he had just pleaded guilty when he had the chance.

Consequently, 44% of voters nationally agree with five Justices that this was "a case of unfair legal procedure and should be a do-over." But a statistically equal number, 42% say "you can't jam up the legal system with re-trials just because lawyers sometimes give bad advice" – the position that Antonin Scalia and three other justices took.

In the national poll, both Democrats and liberals were significantly more likely than other groups to say the lawyer was at fault in the plea-bargaining and the defendant should have been off the hook.

"The Court split pretty much like the public," said [Bruce Peabody](#), FDU professor of political science and editor of the book *The Politics of Judicial Independence*. "The four justices usually identified as liberals, and who were appointed by Democratic presidents, agreed it should have been a do-over. Four conservative justices appointed by Republican presidents had a different idea."

"The partisan differences of voters on this issue tell us that, like the justices, many 'law and order' conservatives are skeptical of giving suspects too many chances to go free, while liberals want constitutional rights to be extended," said Peabody.

Setting aside the issue of bad legal advice, what should happen if a lawyer goes on vacation and doesn't manage to get through to his client to tell him that a plea bargain is available, the issue at hand in a second case decided yesterday, *Missouri v Frye*? A majority (53%) of US voters say the defendant's sentence should be overturned because he didn't get the chance to consider a lesser sentence, while a third (34%) say the defendant doesn't have a right to the plea bargain, just a right to a fair trial. Like the public, the Court agreed that the accused's right to a competent lawyer applied in this case and that the lawyer should have told his client about the deal offer.

In both scenarios, non-white voters were more sympathetic to the idea of a retrial or overturned conviction than white voters. "Racial minorities tend to be more skeptical of the fairness of prosecutors and the courts than whites," said Peabody.

“For all Americans,” said Peabody, “regardless of your background and experiences, the moral of this story is the same: get yourself a good lawyer.” Voters nationwide expressed their opinions *before* the Supremes issued their decision yesterday. The national poll was taken in early December of 2011, a month after the case was argued before the nation’s highest court (on Oct. 31, 2011). Nine of ten voters said they had heard nothing about the two cases. The [Fairleigh Dickinson University](#) poll of 855 registered voters nationwide was conducted by telephone using both landlines and cell phones from November 29, 2011, through December 5, 2011, and has a margin of error of +/-3.5 percentage points.

*Methodology, questions, and tables on the web at: <http://publicmind.fdu.edu>  
For more information, please call 201.692.7032*

**Methodology, Questions, and Tables**

The most recent survey by Fairleigh Dickinson University's PublicMind was conducted by telephone from Nov. 29 through Dec. 5, 2011, using a randomly selected national sample of 855 registered voters contacted on both landlines and cell phones to comprise all voters. The margin of error for a sample of 855 randomly selected respondents is +/- 3.5 percentage points. The margin of error for subgroups is larger and varies by the size of that subgroup. Survey results are also subject to non-sampling error. This kind of error, which cannot be measured, arises from a number of factors including, but not limited to, non-response (eligible individuals refusing to be interviewed), question wording, the order in which questions are asked, and variations among interviewers. PublicMind interviews are conducted by Opinion America of Cedar Knolls, NJ, with professionally trained interviewers using a CATI (Computer Assisted Telephone Interviewing) system. Random selection is achieved by computerized random-digit dialing. This technique gives every person with a land-line phone number (including those with unlisted numbers) an equal chance of being selected. Landline households are supplemented with a separate, randomly selected sample of cell-phone-only-households, interviewed in the same time frame. The total combined sample is mathematically weighted to match known demographics of age, race and gender among the voting population.

Are you aware or not aware that the US Constitution gives people the right to a lawyer in criminal cases...	
<b>All</b>	
Aware	92%
Not aware	8%
Don't know	1%

In one case, a defendant turned down a plea bargain with the prosecutor because his lawyer told him to hold off for a better deal. But instead of getting a better deal, he got a long jail term. Have you heard about this case?	
<b>All</b>	
Yes	11%
No	88%
Don't know	1%

Some people argue that... ROTATE. Others argue that...ROTATE. Which comes closer to your view?												
...the defendant has a right to good advice from his lawyer and this was a case of unfair legal procedure and should be a do-over.												
...You can't jam up the legal system with re-trials just because lawyers sometimes give bad advice.												
Rotate order	All	gender		party ID			ideology			race		
		men	women	D	I	R	lib	mod	con	white	Non-white	Afr. Am.
Do over	44%	42	46	53	31	38	51	43	42	41	53	66
Don't do over	42%	47	38	36	49	49	37	43	45	45	37	24
Unsure	14%	10	16	11	19	13	12	14	14	15	9	10

In one case, the defendant found out after he pleaded guilty in court and was sentenced, that the prosecutor had offered him a deal – a reduced sentence in return for a guilty plea. But the defendant's lawyer didn't tell him about the deal. Have you heard about this case?	
<b>All</b>	
Yes	8%
No	92%
Don't Know	1%

Some people argue that... ROTATE. Others argue that...ROTATE. Which comes closer to your view?													
...the defendant's sentence should be overturned because he never got a chance to consider a lesser sentence.													
...the defendant doesn't have a right to a plea bargaining, only a right to a fair trial.													
Rotate order	All	gender		party ID			ideology			race			age 18-34
		men	women	D	I	R	lib	mod	con	white	Non-white	Afr. Am.	
Overturned	53%	50	57	65	48	42	64	58	46	49	63	67	62
Fair trial	34%	40	28	26	28	46	24	30	42	36	29	22	30
Unsure	13%	10	15	9	24	11	12	12	12	15	7	11	8

## Exact Question Wording and Order for this US Supreme Court Series

*US1-4, D1, USP1a-b released 12.7.11.*

*USP2. Released 12.14.11.*

Now let me ask you about some cases that the US Supreme Court is considering...

SC1a. In one case, the question is whether police need a warrant—like a search warrant—in order to put a GPS tracking device on a suspect's car... Have you heard or read about this case...?

YES

NO

DK

SC1b. Some people argue ... Other people argue... Which comes closer to your view?

...once you drive your car, your movements are public anyway. Using a tracking device just saves police the expense and difficulty of following the car with detectives.

...the car is private property. Police need permission from the owner, or from a judge, to put a tracking device on personal property.

[*Lafler v. Cooper*, 10-209, orals Oct. 31, 2011, linked with *Missouri v. Frye* 10-444]

SC2. Are you aware or not aware that the US Constitution gives people the right to a lawyer in criminal cases....

Aware

Not aware

Dk

ROTATE 2a and 2b with 2aa and 2bb

SC2a. In one case, a defendant turned down a plea bargain with the prosecutor because his lawyer told him to hold off for a better deal. But instead of getting a better deal, he got a long jail term. Have you heard about this case...?

Yes/no/dk

SC2b. Some people argue ... Other people argue... Which comes closer to your view?

ROTATE

...the defendant has a right to good advice from his lawyer and this was a case of unfair legal procedure and should be a do-over.

...You can't jam up the legal system with re-trials just because lawyers sometimes give bad advice.

SC2aa. In one case, the defendant found out after he pleaded guilty in court and was sentenced, that the prosecutor had offered him a deal—a reduced sentence in return for a guilty plea. But the defendant's lawyer didn't tell him about the deal. Have you heard about this case...?

Yes/no/dk

SC2bb. Some people argue ... Other people argue... Which comes closer to your view?

ROTATE

...the defendant's sentence should be overturned because he never got a chance to consider a lesser sentence.

...the defendant doesn't have a right to a plea bargaining, only a right to a fair trial.

[Hosanna-Tabor Church v. EEOC 10-760 Orals Oct 5, 2011.]

SC3a. Are you aware or not that there are a lot of court cases about the Constitution's First Amendment and the separation of church and state....?

Yes/no/dk

SC3b. Some people argue ... Other people argue... Which comes closer to your view?

[ROTATE]

...to protect religious freedom, churches have the right to hire and fire employees for religious reasons without interference from government rules.

...to protect individual rights, churches have to follow the same rules as government and business when it comes to hiring and firing.

[ Florence v. Board of Freeholders]

SC4a. In this case, the Supreme Court is being asked about strip searching everyone sent to jail. Have you heard or read about this case...?

Yes/no/dk

SC4b. Some people argue ... Other people argue... Which comes closer to your view?

...prison officials can automatically strip search any person admitted to a jail, even if it is for a minor offense like failing to pay a traffic ticket.

...prison officials need to have a reasonable suspicion before they strip search any person admitted to a jail, especially if it is for a minor offense like failing to pay a traffic ticket.

SC5. [PROGRAMMER: DO NOT ROTATE WITH SC1-4. MAKE SC5 ALWAYS LAST in SERIES.]

- a. The US Supreme Court will also rule on the health care bill, passed by Congress, that requires everyone to have health care insurance. How much have you heard or read about the Health Care Bill... READ?

A great deal  
Some  
Just a little or  
Nothing

- b. So a key question the Court will answer is whether the US Congress can legally require everyone to have health insurance or not. What's your view? Can Congress require everyone to have health insurance or not?

Yes  
No  
Dk

### Sample Characteristics %

#### Gender

Male	48
Female	52

#### Party ID

Democrat	34
Ind. Lean Dem.	14
Independent	12
Ind. Lean Rep.	13
Republican	23
Other/ref.	3

#### Age

18-29	12
30-44	26
45-59	32
60+	28
ref.	2

#### In addition to being American, would you say you are...?

White	67
Black	13
Hispanic or Latino	11
Asian	5
Other/ref.	4

#### Census regions

Northeast	19
North central	22
South	34
West	25

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Opinion for other US Supreme Court cases is found at <http://publicmind.fdu.edu>

[Brown v. Entertainment Merchants](#)

[Camreta v. Greene \(aka. Alford v. Greene\)](#)

[Brown v. Plata](#)

[Arizona Christian School Tuition Organization v. Winn](#)