

## Until Proven Innocent by Dan Jacoby

When I was growing up, I was taught that a person is innocent until proven guilty, that someone accused of a crime is merely under an accusation and not a criminal, and that it is better to let 1,000 guilty people go free than to convict one innocent person. Unfortunately, none of that was ever really true, and over the past 30 years the rush to “get tough on crime” has made things even worse.

Once a person is arrested, the question of actual guilt or innocence becomes irrelevant, as the rules of procedure take over. Those rules are onerous at best, and at worst lead to convictions for crimes never committed, or committed by someone other than the person convicted of the crime, while the true criminal is free to commit more crimes.

In the middle, those rules often mean that someone arrested for even a minor offense can make several court appearances, running up legal fees, while nothing is accomplished. If that person has been arrested for something more than a minor offense, that person may be remanded back to a jail cell due to an inability to make bail; sometimes the time spent in jail awaiting trial can exceed the maximum sentence if the person were convicted.

It’s an absolute guarantee, under such a misguided system of “justice,” that many people plead guilty to crimes or violations for which they are not guilty. It’s also a guarantee that prosecutors, whose “conviction rate” is the top guideline to career success, are eager to get these pleas. Defense lawyers profit from this system, for every time they appear with a client they can bill the client for their time – even if nothing gets done. It’s a cushy gig.

Meanwhile, many people spend time in prison for crimes they didn’t commit, or for crimes that they would never commit again if they were punished differently. Instead, during the time spent in prison, many people who could otherwise be rehabilitated learn to think like career criminals.

No wonder so many people are disenchanting with the system. No wonder police and corrections officers affect an attitude of callousness – how can they empathize with so many people whom they see, and often bring, through this dysfunctional system without going insane?

And no wonder so many convicted criminals, upon release from “the system,” commit more, and often more heinous, crimes. According to the Bureau of Justice Statistics of the U.S. Department of Justice, over two-thirds of all criminals released from prison in 1994 were arrested again within three years, an increase of 62.5% over 1983 numbers.<sup>1</sup> The average person discharged in 1994 had been arrested 15 times, and would be arrested almost three more times within three years of their release.<sup>2</sup>

We are all paying the cost of this folly. Why isn’t there enough money for schools, roads, and true police protection? Perhaps it’s because our prisons are overcrowded, our courts are overstressed, and as a result our society is overtaxed. We are also experiencing a much higher crime rate than is necessary, because we have such a high rate of recidivism.

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<sup>1</sup> <http://bjs.ojp.usdoj.gov/content/reentry/recidivism.cfm>

<sup>2</sup> <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1134>

Something must be done.

The first thing we must do is stop pretending that “getting tough on crime” does much more than punish people who don’t deserve it, because they are unfairly convicted, or ends up becoming a career criminal rather than a one-time convict, because a milder punishment will keep them from committing another crime rather than teaching them that a life of crime is the only choice they have. Every time some legislator gets a complaint from some well meaning but ignorant organization, a bill is introduced to provide harsher penalties for some “horrible crime of the month.” Legislators need to be taught about the consequences of these shortsighted actions, and need to be provided with the tools to resist such organizations, such as ways to find alternatives that work.

The second thing we must do is make sure that every time someone accused of a crime appears in a courtroom something substantial is done to move the case forward. Prosecutors and defense attorneys should be punished if they fail to accomplish anything on their own, and judges should be empowered require them to come up with something before continuing the case. Prosecutors, for instance, can be docked pay for failing to do their job, and defense attorneys can be prohibited from charging for the wasted time.

The third thing we must do is speed up the process. There is sometimes a good reason for a long delay between appearances – the defense attorney has to study the materials provided under the discovery process, witnesses must be examined, prosecutors must wait for lab tests, etc. But the long delay is often completely unnecessary; it is regularly possible to set the next court appearance for a week or less in the future, instead of a month or longer. When a long delay is not necessary, it should not be allowed.

The fourth thing we must do is treat people who are merely accused, but not convicted, of a crime as if they are decent citizens. Holding cells obviously cannot be insecure, but they needn’t be inhumane. Precinct officers and corrections officials who deal with the merely accused must not work under the assumption that all of the people who go through their part of the system are criminals.

The fifth thing we must do is give prosecutors both the means and the incentive to determine if someone accused of a crime is, in fact, innocent. We must find a way for a suspect to explain his or her side of the story to a prosecutor without endangering that person’s immunity from self-incrimination. Perhaps there could be two prosecutors assigned to a disputed case, one who performs the current functions and another who cannot actually prosecute, or even help the prosecution, but who can investigate with an eye toward determining innocence.

The sixth thing we must do is teach people what I was taught growing up – that everyone is innocent until proven guilty, and that someone accused of a crime does not have to prove anything.

These steps will ultimately result in greater justice at far lower cost, diminished prison populations, reduced recidivism, and a better society for all of us. There is no excuse for not beginning the process now.