

# State bears unacceptable risk of convicting the innocent

By DAVID RAYBIN

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"How can you defend those people?" This is a question every criminal defense attorney has heard. I respond by asking what should I do if your son or daughter is one of "those people?" Folks have a hard time with that reply and the conversation dissolves into notions of the guilty and the not-so-guilty.

The fact is that guilt or innocence is a legal conclusion that we should consider only at the end of the trial and not when a person is first arrested.

A better question is, why are so many folks freed years later when new evidence surfaces that somebody else committed the crime? We are happy that we have DNA tests. But how did the poor devil — with all those "rights" — get convicted in the first place if he or she was actually innocent?

The root causes of most erroneous convictions are not misguided prosecutors or police. Rather, the problem is almost always a lawyer who lacked the tools to properly defend the case.

A real defense requires a significant legal arsenal of attorneys, investigators and expert witnesses. Go ask the Duke athletes who were accused of a rape that never happened. Speak to the two respected Nashville real estate lawyers who were recently acquitted of a conspiracy that never existed. The defense in these cases was enormously expensive. Would the results have been the same if the accused were indigent? You know the answer to that question.

A recent study by the Spangenberg Group for the Tennessee Justice Project demonstrates that, on average, publicly funded defense receives less than half the resources allocated to the prosecution in the same case. That is an important qualification, since not every defendant is poor and thus those cases were excluded from the analysis, so that it was an apples-to-apples comparison.

Nobody suggests decreasing the prosecutor's budget to even the scales of justice. Rather, we should commit sufficient resources so both sides are on a level playing field. This is not a question of theoretical fairness. In my view, it is an issue of reducing an unacceptable risk of convicting the innocent.

The public defenders do a heroic job with modest resources. The problem is even more profound for those who can barely afford both a bond and an attorney but lack the additional money to hire investigators and experts. These semi-indigents should have access to limited public assistance after making significant financial contributions to their own case. Perhaps "matching funds" might be made available to provide the tools for a real defense.

If you are a crime victim — no matter your station in life — the government prosecutes the offender to vindicate your rights as well as to protect society. Society has an equal obligation to be certain that those poor devils who are imprisoned are incarcerated only because they are devils and not because they are poor. Our system requires no more, and justice demands no less.