

# **Brosky Again**

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"People who don't learn from history are condemned to relive it," according to one historian. Another historian said, "The one lesson we learn from history is that we don't learn from history." Why are we proving both of these historians to be correct?

We are reliving judicial injustices that led our founding fathers to put precious rights in the Constitution. I could point to many contemporary events as illustrations, but I want to focus on one in March 1993, the trial of Christopher William Brosky in Fort Worth and its aftermath.

Brosky, a white supremacist, was convicted of participating in the heinous murder of Donald Thomas, a black man. Though Brosky did not pull the trigger, he was with two white men and one of them did. No one questions the conviction for a racially motivated hate crime, nor does any reasonable person question that Brosky should have received a sentence that corresponded to the crime and that 10 years probation was obviously too light. The public was and should have been outraged over the unjust sentence.

The justice system should be examined to see how such a thing could happen and be corrected. After all, the jurors said they were confused by the forms and had intended incarceration. The uniform call has been for another trial, but Brosky should not be tried again.

The fifth amendment to the United States Constitution contains the "due process" clause that has been so important in civil rights and protections such as the "Miranda warning." This amendment also has the clause, "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." Inherently, due process excludes double jeopardy.

The sixth amendment adds, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." We have the right to be tried by a jury of our peers-not an uncaring bureaucracy or an unprincipled mob.

Our forefathers came to America for many reasons-freedom being foremost. Our ancestors suffered injustices for centuries before our founding fathers resolved to labor through the birth pains of a new country. With history and experience as their tutor, they put the principles they learned into the Constitution so that their descendants would not have to suffer the same injustices. Yet we are suffering these injustices and allowing them to continue.

## **Double Jeopardy**

We will violate the principle of double jeopardy if we try Brosky again. Brosky was guilty of a horrible crime and a miscarriage of justice occurred in his sentencing. At this point we have a man guilty of a crime and a justice system that failed partially. If we try Brosky again, we add the injustice of an entire community to the picture. Deplore the mistake and fix the system. But don't be unjust to fix an injustice. Two wrongs have never equaled a right. We have one injustice in Brosky's sentence. If we try him again, we won't have justice, we will only have two injustices.

Extra intense emotions arise in Brosky's case because his conduct was a hate crime. People are properly concerned about the chilling effects washing over the entire black community-an awful state of affairs in America, the land of opportunity. But if we violate the principle of double jeopardy, chilling waves of injustice will roll over the entire community-black, white, Asian, native, female, male, young and old. The chilling waves for the black community would then be waves of double jeopardy instead of white supremacy. What happens when a community is not satisfied with a sentence handed to a black man who kills a white man? When due process is denied to one person it can and will be denied to another.

People were appalled by the sentence and called for further trials. Prosecutors said that they were dissatisfied and would look into trying Brosky on further charges. Federal officials were unhappy and said they would pursue federal charges since Brosky got off so lightly. What is being said? People are saying that if Brosky had received an adequate sentence, everyone would be satisfied and no further trials would occur. This attitude violates the principle of double jeopardy.

I question that a person should be charged with multiple crimes based on one set of actions. I think that a person should be charged with one crime for one set of actions-the most appropriate charge. But I don't need to argue this point now. For the sake of simplicity, I will concede here that one conduct can have multiple charges without technically violating double jeopardy. A problem still remains when we wait to see the outcome for one charge before filing other charges.

If a person's actions deserve multiple charges, then all charges should be pursued in a timely manner without regard for the outcome of the other charges. If Brosky's actions could and should be charged for murder, conspiracy, organized crime and civil rights violations, then all of these charges should have been actively pursued from the very beginning. If justice would be served by Brosky being convicted for all charges, then he should have been indicted for all crimes at the start. The system has already failed by waiting.

The truth is that we are violating the principle of double jeopardy when we wait to see what sentence a person receives. If we don't like the sentence, we try him again for the same actions till we get what we want. The legal arguments that trying him again does not technically violate double jeopardy are specious. Our founding fathers were protecting us against such actions.

In previous times, our ancestors could be tried for the same conduct

or charges until the state or certain people were satisfied with the outcome—a hideous procedure that our fathers tried to protect us from. It does no good to hide behind legal technicalities that there are multiple charges and agencies involved. Trying a person for the same actions until certain people or powers are satisfied is hideous injustice.

## **Trial by Jury**

The principle of double jeopardy goes hand-in-hand with the principle of being tried by a jury of peers. In our history uncaring governments have trampled on people for the sake of expediency and power. Unprincipled mobs have simply trampled on people in the emotions of the moment. History has taught us that the only way to ensure justice to people is to allow them to be judged by their peers following principles of law.

Brosky was tried, convicted and sentenced according to the precious principle and right of trial by jury. Now the public is outraged by the outcome. The result of that outrage should be to correct weaknesses and problems in the system, not to have another trial. When a community, in the heat of intense feelings, overrides a jury, we all lose.

When officials respond to the pressures of a crowd, the right to trial by jury is trampled and justice for all is trodden under foot.

Pilate made a similar mistake 20 centuries ago. Jesus was brought to him as a criminal to be tried. After Pilate examined Jesus, he found that he was not guilty of any crime deserving death and decided to release him. The crowd was outraged and shouted for the death sentence for Jesus. Mark tells us, "So Pilate, wishing to satisfy the crowd delivered him to be crucified." Pilate then washed his hands of the terrible miscarriage of justice he had just participated in.

The judgement of history has never allowed Pilate's symbolic washing to cleanse him from his failure when he gave in to the demands of the crowd nor has the crowd ever been excused. Neither will history excuse our officials or community if we try Brosky by crowd instead of by jury.

## **Conclusion**

On a practical level, multiple trials for the same conduct are inefficient for the state and expensive for defendants. Since all charges rely on the same conduct, we should have one trial proving the conduct and substantiating the charges. The state could easily break the financial back of most people by trying them over and over. No one wants such a procedure. Our system needs to be more efficient as shown by runaway crime in America. But now back to the main thrust of principles being violated dangerously.

We are condemning ourselves and our children to relive the injustices that led to the American revolution. We are dooming our grandchildren to worse injustices or bloodshed to stop the injustices. We already have these things in our history. Lets learn from history and not condemn us and our descendants to the cycle of injustice and corrective bloodshed. Lets learn from our founding fathers and steadfastly adhere to the principles given to us in the Constitution.