GUilty PEOPLE

Guilty People
Abbe Smith
Author of Case of a Lifetime

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Criminal defense attorneys protect the innocent and guilty alike, but, the majority of criminal defendants are guilty. This is as it should be in a free society. Yet there are many different types of crime and degrees of guilt, and the defense must navigate through a complex criminal justice system that is not always equipped to recognize nuances. In *Guilty People*, law professor and longtime criminal defense attorney Abbe Smith gives us a thoughtful and honest look at guilty individuals on trial. Each chapter tells compelling stories about real cases she handled; some of her clients were guilty of only petty crimes and misdemeanors, while others committed offenses as grave as rape and murder. In the process, she answers the question that every defense attorney is routinely asked: How can you represent these people? Smith's answer also tackles seldom-addressed but equally important questions such as: Who are the people filling our nation's jails and prisons? Are they as dangerous and depraved as they are usually portrayed? How did they get caught up in the system? And what happens to them there? This book challenges the assumption that the guilty are a separate species, unworthy of humane treatment. It is dedicated to guilty people—every single one of us.
Introduction

As I have often felt compelled to explain in the course of writing a book called Guilty People, this is not a history of the Jews. It is instead a book about people who run afoul of the law and end up in the criminal legal system.

Guilty People is a follow-up to a previous book, Case of a Lifetime, which recounts my efforts to free Patsy Kelly Jarrett, a woman who served nearly thirty years in prison for a crime she did not commit. Kelly (as she is known) was convicted of murder based on the testimony of a single shaky eyewitness and sentenced to life. This was a formative case for me. I met Kelly when I was a second-year law student. As I made my way from law student to public defender to clinical law professor in New York, Massachusetts, and Washington, DC, the injustice of Kelly’s case was a benchmark against which every other injustice was measured. Any victory felt tarnished while she languished in prison. Though I did everything I could on Kelly’s behalf, the best I could achieve was her release on parole. This was hardly a moment of lawyerly triumph. “Innocent client to be supervised on parole after three decades in prison” is not the kind of thing lawyers boast about on their websites.

In Case of a Lifetime, I describe the enormous burden of representing an innocent person: there is nothing more grueling. I acknowledge that Kelly was not a typical client—that, in fact, most criminal defendants are guilty. To quote one longtime criminal lawyer, “I am not unique in representing guilty defendants. That is what most defense attorneys do most of the time.” In Case of a Lifetime, I also wrote about the weighty responsibility of representing people accused or convicted of crime, whether or not they are actually innocent.

But perhaps not enough. Some former clinic students and postgraduate E. Barrett Prettyman fellows—criminal defense protégés of whom I am proud—were disappointed...
that I wrote a book about an innocent person. "Et tu, Brute?" they seemed to be saying. They couldn't believe I had jumped on the bandwagon, joining forces with Innocence Project founder Barry Scheck, who no longer calls himself a criminal defense lawyer because he "hasn't represented a guilty person in twenty years."3 "How could you, of all people, exalt the representation of the innocent when there is so much work to be done on behalf of the guilty?" they seemed to ask. They were not unkind. They appreciated Kelly's impact on my life. But I understood their disappointment. I am a committed, dyed-in-the-wool defender. I often say I run a "Guilty Project," not an Innocence Project. Although I acknowledge the many accomplishments of the "innocence movement," I have concerns about its focus on factual innocence in a time of mass incarceration.4 The United States may or may not be the most punitive nation on earth, but we are undeniably the world leader in putting human beings behind bars.5 This was so as we headed into the twenty-first century, and it remains the troubling reality now.6 We currently incarcerate more than two million people.7 As a proportion of its total population, the United States incarcerates five times more people than Britain, nine times more than Germany, and twelve times more than Japan.8 Our closest competitors, Russia and Belarus, lag well behind us.9 Despite signs that our incarceration policies and practices might be changing,10 the U.S. jail and prison population has hovered at the two million mark for some time, a disproportionate number of which are people of color.11 On top of this, more than seven million people are currently under the supervision of our criminal justice system.12 As things stand, roughly one in every one hundred adults is behind bars in America, and one in thirty-one is under the supervision of the correctional system.13 The numbers are even higher if you count everyone under some form of government control, including drug and other specialized "treatment" courts, and immigrant detention, which seems to be on the rise.14 The excessive length of American prison sentences is a big part of the problem. Never in our nation's history have so many individuals been locked up for so long. More shocking still, one in nine American prisoners is currently serving a life sentence—fifty thousand of these without the possibility of parole.15 While we talk about reducing our prison population, we seem to be increasing the time many prisoners serve, resulting in an ever-aging prison population.16 This is not to mention the squalid conditions of confinement in a time of private jails and prisons, where profit takes precedence and corruption prevails.17 As one commentator observed, "Nothing illustrates the full wretchedness and twisted nature of punishment in America as graphically as the sudden and rapid growth of private institutions of incarceration."18 It was not always this way. After touring American penitentiaries in the early nineteenth century, French diplomat and historian Alexis de Tocqueville exalted our enlightened approach to criminal punishment. "In no country is criminal justice administered with more mildness than in the United States," he wrote in Democracy in America.19 Now far from serving as a model, the United States is a cautionary tale. One British commentator calls the United States "a rogue state" when it comes to criminal justice.20 A focus on innocence is a problem for other reasons. First, it is hard to prove. A claim of innocence requires proving a "negative"—the accused wasn't there or didn't do it.21 The only
hard evidence is DNA, which is available in only a fraction of the criminal cases where there is testable biological evidence. Second, a focus on “actual innocence” threatens to erode the abiding principle of our criminal justice system—that the accused is presumed innocent unless and until guilt is proven beyond a reasonable doubt. This is an important check on state power. Moreover, the problems underlying DNA exonerations—mistaken identification, police and prosecutorial misconduct, false confessions, unreliable snitch testimony, defense lawyer incompetence—are not unique to those cases and ought to be a concern whether or not an accused “did it.” A conviction is “wrongful” when there is demonstrable unfairness. Even if we could identify and free all the innocent people in prison, our system would not be fixed. There would still be prisoners serving excessive sentences in brutal penal institutions, and too often, they would have landed there without the meaningful assistance of counsel envisioned nearly sixty years ago in Gideon v. Wainwright. Alas, Gideon’s promise—“of a vast, diverse country in which every [person] charged with crime will be capably defended, no matter what his economic circumstances, and in which the lawyer representing him will do so proudly, without resentment”—remains unmet. I agree with my former students and fellows that a focus on innocence comes at the expense of the not-so-innocent. Guilty people become the fall guys. But guilty people are not monolithic. While it is true that some people commit serious crime, others commit minor, even trivial crime. Some are guilty of something—but not what they are charged with. Others may have committed the crime charged but with significant mitigating or extenuating circumstances. Some have committed the crime, but they have never done anything like it before—they lost control in a trying situation. Others commit crime out of immaturity, imprudence, or impulse. Some are gifted criminals, others clumsy and feckless. Some people are all but destined to live a life of crime in view of what they’ve suffered in their lives. Others fall into it. Some people don’t mean to engage in crime at all but lack the will or resources to extricate themselves from bad company. As Professor Paul Butler writes: think the guy who works in the mailroom at your office, and the men who dry off your vehicle at the car wash, and the sweaty kids who come to your house to deliver the mattress. Think of your high school classmate, the dude who didn’t quite make it to graduation but who you got to know a little bit because he sold you weed. Maybe he wouldn’t be your ideal companion for lunch at the Four Seasons or your first choice to marry your daughter. But he’s not exactly a menace to society. He’s made some bad choices, done some stupid things, but he’s still young and his life is still salvageable. Spiritual folks might say, “God is not through with him yet.” This is an apt description of most people caught up in the criminal system. None of us is only the worst thing we’ve ever done. Most of us learn from our mistakes and are able to put them behind us. But both luck and privilege play a role in the ability to get past bad choices. As former chief of the Civil Rights Division of the Justice Department and secretary of labor Tom Perez once said, “I am ambivalent about using the term second chance for prisoners, because many of them never had a first chance.” As part of their training, I distribute index cards to the interns who work as investigators in Georgetown’s criminal and juvenile defense clinics and ask them to write down
the worst, most shameful thing they've ever done. (I assure them that we will shred the cards and no one will see what they write.) Then I ask them to imagine that what they have written is all anyone thinks of them—not their sparkling personalities, their various talents, their generosity to family and friends, their otherwise good characters. The exercise is not subtle. This is how our clients feel: reduced to their crime.

The truth is, I like guilty people. I prefer people who are flawed and complicated and do bad things to those who are irreproachable and uncomplicated and do the right thing. Flawed people are more interesting. Those we think of as "the worst" often turn out to be not so different from the rest of us. As Clarence Darrow once said, "Everybody is a potential murderer. I've never killed anyone, but I frequently get satisfaction reading the obituary notices."29 Or, as Katherine Hepburn argues as a defense lawyer in the movie Adam's Rib, "Assault lies dormant in all of us. It requires only circumstance to set it in violent motion."30

Fittingly, Hepburn objects to the characterization of a wronged wife accused of trying to kill her husband's mistress as a "criminal." This is a strange thing to call a "citizen, wife, and mother," she says. Unfortunately, this more nuanced view of criminal conduct is difficult for many to grasp—that is, until a friend or family member is arrested. Then miraculously, "criminals" become multidimensional people. As a criminal lawyer, I prefer a system of justice that is concerned with proof, not truth—a scheme that makes it very hard to deprive a person of liberty or life no matter what they have done. Our criminal justice system is only as good as it treats the worst—and the least—among us. These are the people on the fast train to prison or the purgatory of endless supervision. As Dostoyevsky said, "You can judge a society by how well it treats its prisoners." I believe that reducing our disproportionately black and brown prison population is the Civil Rights Movement of the twenty-first century.31 We need to stop discarding human beings, banishing them from society like they are "throw-away people."32

Through stories about my clients, their alleged crimes, and related commentary, this book offers answers to frequently asked questions about the criminal justice system. First, the questions about "criminals": Who are these people filling our nation's jails and prisons? Are the millions convicted of crime and serving time as dangerous and depraved as they are portrayed in the media? What are the crimes they commit? How did they get caught up in the system and what happens to them there? Then the questions about the lawyers who represent them, summarized by the familiar question posed to criminal defenders: How can you represent those people?
this, we might be a little less punitive and a little more forgiving. Petty Criminals

Misdemeanors are the great equalizer. People from all walks of life can end up in misdemeanor court for all kinds of reasons. My first case as a law student in the New York University criminal defense clinic was a misdemeanor: a young man accused of “turnstile jumping” (propelling oneself over a subway turnstile without paying). Although a transit officer witnessed this theft and immediately arrested my client, making it an easy case to prove, I spent hours interviewing my client (who admitted it), investigating the facts (which were exactly what was alleged), and researching the law (which wasn't helpful). I was relieved when my client’s case was ultimately “adjourned in contemplation of dismissal,” giving him an opportunity to keep his record clean if he stayed out of trouble.

A few years ago, an old childhood friend, whom I’ll call Lisa, was arrested for drunk driving. She had never been arrested before and was embarrassed about it. Her arrest had been videotaped. In the video she comes across as a little loopy, but not so different from her usual personality. When asked to walk a straight line, heel to toe, she complained that she could never do that in ballet class. She protested that she had only had a couple of glasses of wine, refused the breathalyzer, and declined to say anything further. She spent the night in jail.

I happened to have moved to where Lisa was living shortly after the arrest and accompanied her to meetings with her lawyer. The best way to get oriented to practicing law in a new town is to try a case, so I was pleased to help out. It was a triable case: there was no accident or injury and no forensic or medical evidence of intoxication. Plus, Lisa was an appealing defendant. She had no record and a good job. She might have been tired, inattentive, or not the best driver rather than a criminally intoxicated one.

The trial took a couple of hours. Like many misdemeanors, it was a “bench trial” before a judge sitting alone. (Contrary to what many people believe, there is a limited right to a jury in much of the country.) The trial featured the arresting officer’s testimony, the arrest videotape, and Lisa’s testimony. I thought Lisa was credible enough to raise a reasonable doubt. The judge did not. He found her guilty, placed her on probation, suspended her license, and ordered her to attend “drunk-driving school,” a series of classes on the horrors of drunk driving. If she completed probation successfully, she could petition the court to have her record sealed.

The case is memorable only because she was my friend. A more recent, haunting misdemeanor featured a young man in his early twenties, whom I’ll call Cal. He had no prior record and was accused of physically assaulting the thirteen-year-old son of his considerably older girlfriend. The basic facts of the case were not in dispute. Cal was at his girlfriend’s place babysitting the thirteen-year-old, whom Cal called “Little Man,” and his two younger siblings. Cal often stayed with his girlfriend’s kids when she went out. On this occasion, the girlfriend had been out until late. She came home intoxicated—with her older uncle in tow—and wanted to have sex with Cal. Cal told her he didn’t want to have sex while the uncle was there. The girlfriend tried to cajole him, putting her hands down the front of his pants. He took her hands out. She then began to taunt him. She called him a pussy, a girl. The girlfriend said she would go have sex with Cal’s brother if he wouldn’t have sex with her. She began to strike him with her fists. He did not fight back. When Cal tried to stop her from hitting him by holding her arms, Little
Man suddenly jumped on his back and began punching him. Cal grabbed Little Man and threw him onto the couch in a single motion. Little Man then called the police, who arrested Cal and charged him with two counts of simple assault—one for his girlfriend and one for Little Man—and one count of cruelty to children. Cal was dismayed to be arrested and especially to be accused of being cruel to a child. He loved Little Man. He had been in a relationship with Little Man's mother since Little Man was six years old. His own mother did not approve of the relationship. She was troubled by the age gap between Cal and the much older woman. Plus, Cal had some learning disabilities that made him seem younger than his age; she feared he could easily be taken advantage of. But she also saw that he was in love.

Cal was a beautiful young man—tall, thin, and espresso-colored, with deep-set, soulful eyes and high cheekbones. He could have been a model. He wore his hair in dreadlocks, sometimes pulled back.

Cal's student attorney and I did everything we could to get the case removed from the criminal justice system to a "diversionary program" that would allow our client to maintain his clean record. There was no suggestion of any previous domestic violence—no restraining order against Cal for abusing the girlfriend, her kids, or anyone else. The incident was a perfect storm of intoxication and misguided filial loyalty. But the prosecutor was unbudging. He took accusations of child abuse seriously. Cal would have been eligible for first-time-offender domestic violence diversion if he had only assaulted his girlfriend. But an assault on a child made this option inappropriate.

We kept pressing the prosecutor. This was not a case we wanted to try, largely because of the judge before whom Cal was scheduled to appear. This judge was known for being incapable of uttering the words "not guilty," no matter the evidence. In his courtroom, proof beyond a reasonable doubt was accomplished by virtually any case a prosecutor put on. He often disparaged defense arguments as "unreasonable doubt." Once a defendant was convicted, especially of an assaultive crime, he or she went to jail. The prosecutor held firm.

We prepared for trial. We investigated the case and got signed statements from the girlfriend, the uncle, and Little Man. Much of what they said corroborated what Cal had told us. The arresting officers wouldn't talk to us, but their police reports confirmed that neither Little Man nor Cal's girlfriend was injured. Cal had made statements to the police that both harmed and helped him: he admitted what he had done but said he hadn't meant to hurt anyone.

The trial lasted two days—long for a bench trial. Little Man, the chief witness for the prosecution, was smart, well-spoken, and fiercely loyal to his mom. He said Cal had no right to put his hands on him or his mom. The police acknowledged that Cal was quiet and cooperative when they arrested him. We called the uncle, the girlfriend, two witnesses who testified to Cal's good character, a student investigator who testified that Little Man had offered a slightly different account of the incident to us shortly after it had happened than he had given at trial, and Cal. The girlfriend was a mess. She wept throughout her testimony, saying Cal was a good man who would never hurt a flea. She said she loved her son too and didn't want to be caught in the middle. It was all her fault, she said; she'd had too much to drink and had behaved badly. In the hall outside of the courtroom, when trial was not in session, she sat on Cal's lap, her legs and arms wrapped around him, his arms...
around her. Sometimes they made out in the courthouse hall like a couple of oblivious teenagers. Cal was an excellent witness even though he was nervous. He described everything that happened honestly and simply. He was incapable of guile and came across that way. He said he threw Little Man off him instinctively, without thinking, because the attack took him by surprise, and had done so in self-defense. He denied striking or doing anything other than trying to restrain his girlfriend when Little Man jumped on him. He said he was sorry about the whole thing, that he would never hurt anyone. He loved his girlfriend and her kids.

We argued hard for an acquittal. The prosecution argued equally hard for a conviction. The judge found Cal guilty of simple assault on Little Man and cruelty to children and not guilty of simple assault on the girlfriend. He seemed to consider this an exceptionally fair verdict. He told Cal there was enough evidence to support a conviction for simple assault on the girlfriend but that he was giving him a break. He then sentenced Cal to two weeks in jail and ordered the marshal to take him into custody. Cal burst out crying. He begged the judge not to send him to jail. He said he was afraid. He had learned his lesson and would never do anything wrong again. He was weeping hard, his body heaving. His mother and girlfriend were also crying, and so was the student attorney. We tried to get the judge to change his mind. This was not a case that required a jail sentence, we urged. This was not a young man who needed to be put in a cage. A conviction itself was sufficient punishment—a permanent blemish on Cal's record that would likely prevent him from ever working with kids. Certainly probation with domestic violence classes or community service would suffice. If necessary, the judge could also order a period of electronic monitoring. The judge allowed us to make our arguments and then ordered that Cal be taken away.

I can still hear the sound of his sobs. It is unusual for a twentysomething man to cry like that in court. I found it disturbing. Others seemed disturbed too—the court clerk, the marshal, people in the audience. Even the prosecutor, who had called for jail time, did not seem to derive much satisfaction from the outcome. Only the judge seemed unmoved.

Over the next few days, we visited Cal in jail and petitioned the court to modify the sentence. The client had adjusted to his sentence better than we had. We had mixed feelings about this. Although his ability to adapt to his circumstances made it less painful to see him behind bars, he should not have had to adapt to jail. He did not need to be there. The judge denied our petitions.

Such losses can be difficult, so it's a good thing we win sometimes. Diane Brewer (not her real name) was a young mother who had graduated from high school and was planning to enroll in community college. She worked as a cashier at one of the popular Shake Shack restaurants in downtown Washington, DC. Like almost all the cashiers, clerks, and food preparers at this Shake Shack, Ms. Brewer was African American. The restaurant managers—a general manager named Amy Rogers, who oversaw several shops, and the store manager, Alan Thompson—were white. (Again, these are not their real names.)

One day, Ms. Brewer got into an altercation with Thompson. He scolded her for not wearing a belt, which was part of the Shake Shack uniform. She replied that she wasn't the only one not wearing a belt and that general manager Rogers often failed to wear a belt, allowing everyone to see her "butt crack." This angered Thompson, who was close to Rogers. He told Ms. Brewer she
was rude and disrespectful and ordered her to go back to work. Later that day, Ms. Brewer and Thompson quarreled again—this time over Thompson's delay in changing a large bill for a customer at Ms. Brewer's register, which had caused a line to gather. At the end of her shift, Thompson told Ms. Brewer to collect her belongings and meet him in the back office. She did as she was told. When she walked into the office, she found Rogers there as well—not a good sign. Together with Rogers, Thompson fired Ms. Brewer and told her to leave the store immediately. Her final paycheck would be mailed to her. According to the criminal complaint and police reports, Ms. Brewer reacted badly. She grabbed a bunch of wires attached to the office computer system and yanked them out. As she stormed out of the office, she spat at Thompson.

She was arrested a couple of days later on a warrant charging her with destruction of property and simple assault. Ms. Brewer told the postgraduate fellow appointed to represent her that the accusation was essentially true. She felt she had been unfairly fired and lost her temper. She was not proud of her behavior that day. She said there was more to the story than was in the police reports, but she hoped she could admit guilt and be placed into some kind of first-offender program so that she might avoid a criminal record. She wanted her daughter to have a college graduate as a mother, not a criminal.

The fellow tried, but his efforts went nowhere. Ever since the AIDS/HIV epidemic, prosecutors have had a thing about spitting. It's the misdemeanor version of a mass shooting—or maybe of sexual assault without a condom. Any sort of diversion is out of the question, the prosecutor said. In a previous negotiation of a spitting case involving a first-time offender—a female graduate student who was being harassed by a man at a bar—a prosecutor declared that she would rather be punched in the face than spat on. Doesn't it matter where the spit lands, I asked her? I mean, would you rather be punched in the face than have someone spit on your leg? What about at your feet? On your shoe? Being punched in the face is pretty brutal, I offered. She did not reply. The spit in the bar case had allegedly landed on the man's shoulder. We went to trial, putting forward an argument of self-defense and/or accident (our client hadn't really meant to spit; she was sputtering in anger because the guy wouldn't back off)—and our client was found guilty. Judges generally don't like spitters either.

After some deliberation, we decided to go to trial in the Shake Shack case. It wasn't an easy decision. Spitting cases are often jail cases. Many judges would be offended by our client's conduct and identify with the two managers. We could hear a judge saying at sentencing that a manager should be able to fire an employee without the employee damaging the office computer system and spitting at her boss. But we had drawn a good judge—someone who tended to hold the prosecution to its burden of proof no matter the allegation. A student investigator had managed to get ahold of personnel records that gave us a better picture of what had been going on at that Shake Shack. Thompson could have been a character in the movie Horrible Bosses. He was known for lashing out at employees and having temper tantrums. In the seven months that Thompson and Rogers had run the store together, they had fired over fifteen people. A number of others had quit. This was not a hospitable work environment. Maybe these two hadn't exactly been well behaved on the day of the incident either. Maybe they weren't entirely truthful in their
account of what happened. Moreover, Thompson was essentially on probation himself for his unpredictable behavior, which had been documented in a formal reprimand in his personnel file. At trial, we relied mostly on cross-examination. The fellow working with me conducted a dogged and detailed cross-examination, catching both managers in inconsistencies, contradictions, and evasions. Neither prosecution witness seemed able to tell the truth about anything—that Thompson had gotten physical with Ms. Brewer in the back office before she allegedly did what she did; that he was known for having a temper; that he was on probation; that so many employees had been fired or quit. We called a Shake Shack employee who heard Ms. Brewer shout “Get off of me” while in the back office and who, in his low-key way, offered testimony about Thompson’s “bad character.” We also called an elderly neighbor of Ms. Brewer who testified to her good character. We did not call Ms. Brewer. By the time both sides rested, we were in surprisingly good shape. The prosecution’s case was in shambles. Although we had intended to argue a combination of self-defense (the spitting occurred after Thompson physically assaulted Ms. Brewer) and accident or lack of criminal intent in destruction of property (she had gotten caught up in the wires in her frenzy to leave the office and hadn’t meant to yank out the cords), we ended up arguing that there was insufficient evidence on which to convict because the prosecution witnesses were unworthy of belief. When the judge acquitted Ms. Brewster, our client threw her arms around us in joy. “I can’t thank you enough,” she said. “Now I can face my daughter.” She promised she would never be in trouble again. We went out and celebrated—at Shake Shack.

Though a particular case may be gripping at the time—especially if it involves a trial—misdemeanors tend to blend together for longtime criminal lawyers. Only the rare case sticks with you. This is partly because of volume, especially for public defenders and court-appointed lawyers. As a defender and clinical law teacher, I have had more misdemeanor cases than I can count. In busy urban courts, misdemeanors tend to be processed rather than tried. The goal of the system is to move cases, not meaningfully resolve them. The experience of one former Cook County, Illinois, prosecutor captures the atmosphere in many big-city misdemeanor courts:

After six months in traffic court, [Locallo] was transferred to the municipal division, where he handled misdemeanor cases in police station branch courtrooms. . . . In a grimy courtroom in the police headquarters building . . . . Locallo helped the judge rush hookers and shoplifters past the bench. “Defendant pleads guilty, found guilty, two days’ time served,” the judge would say over and over. Locallo soon moved on to a south-side branch where he helped process waves of accused wife-beaters, barroom brawlers, and window-breakers—defendants who paused at the bench long enough to have their cases tossed out because the complaining witness hadn’t shown, or to grab conditional discharge or probation. According to the television show The Good Wife, things haven’t changed much in Cook County. In the first episode of season seven, lead character Alicia Florrick has had a fall from grace and is representing defendants in “bond court” (arraignment court) for $135 a case. The judge initially refuses to appoint her because he doesn’t believe she can handle the volume with sufficient “alacrity”—his word of choice to convey the pace required. But Alicia ultimately
proves that she can handle one case every ninety seconds: standard practice in bond court. Defendants in misdemeanor court—sometimes called "McJustice"—get more than ninety seconds, but not by much. In Florida, they get three minutes. According to a 2011 study by the National Association of Criminal Defense Lawyers, misdemeanor defendants in twenty-one Florida counties spent far more time driving to the courthouse, parking, and sitting in court waiting for their case to be called than actually appearing before a judge. Even defendants who waive counsel and plead guilty get no more than three minutes. One commentator describes misdemeanor court as a "meat grinder," processing guilty plea after guilty plea. Group pleas, in which a judge lines up all those who intend to plead guilty that day and conducts a collective plea colloquy—a set piece that establishes the pleas are knowing and voluntary—are routine.

First, the defendants are sworn, and then the judge establishes that each knows the charge and potential penalty in the case and is pleading guilty because he or she is in fact guilty. The judge then advises the group about the various rights they give up by pleading guilty—the right to plead not guilty and have a trial, to cross-examine witnesses against them, to present evidence on their own behalf, and to file an appeal—pausing only to ask whether they understand. As a young lawyer at the Defender Association of Philadelphia in the early 1980s, I cut my teeth on misdemeanor cases. Some days were so long it felt like I lived in misdemeanor court. Courtroom 146, an especially large courtroom in City Hall where such cases were initially scheduled, was packed with defendants, especially on Mondays. The vast majority were represented by me—the lone public defender in the room. I would meet my clients for the first time that morning, calling out their names one at a time to introduce myself and share whatever information I had about their cases. Some had met with other lawyers from my office soon after their arrests; others were seeing a lawyer for the first time. I understood this wasn't optimal representation, but I learned to convey knowledge and concern. Clients had a critical decision to make: whether to ask for a trial date or resolve the case that day through a guilty plea or diversionary program. Defense lawyers were allowed to conduct the guilty plea colloquy. This was good practice, and the script soon became part of my counseling spiel. Plus, it was my first big "speech" in court: a rousing tribute to all the rights afforded to the criminally accused. I learned that a well-delivered colloquy could cause a defendant to change his or her mind about giving up those magnificent rights. This, however, is not necessarily a good thing. Once a person backs out of a plea, he or she may not be able to return to it. There is an absolute right to go to trial but not to plead guilty.

Misdemeanor trials do not generally take up much time either. As one former prosecutor writes, "Justice is processed with extreme efficiency—a good judge and prosecutor, working as a team, can get through four or five trials a day." Typical misdemeanors include theft, drunk driving, prostitution, assault, disorderly conduct, trespass, destruction of property, possession of controlled substances, and possession of certain weapons. Some sex offenses, like indecent exposure and nonconsensual touching and groping, are also usually misdemeanors.

A few years ago, a student and I represented a man accused of grabbing a woman's buttocks as the nightclubs emptied out at 2:00 a.m. in a trendy DC neighborhood. I'll
Mr. Martinez worked as a waiter in one of the nearby restaurants. He was arrested and charged with misdemeanor sexual assault. The case was serious because of the charge and because Mr. Martinez, a Salvadoran immigrant, was not a citizen. If found guilty of sexual assault—a crime of “moral turpitude”—he could be deported. We investigated the case and got statements from the complainant, who claimed to have felt the butt-grabbing, and her boyfriend, who claimed to have seen it. They were both white professionals in their twenties. They seemed credible, if a little more outraged than we thought was merited. But this often happens in a criminal prosecution. People get ramped up. The complainant and her boyfriend acknowledged that they had been drinking martinis for a couple of hours before the alleged incident, that lots of people poured onto the street when the clubs closed, that they did not know Mr. Martinez, and that Mr. Martinez had said and done nothing to them prior to the alleged assault. Mr. Martinez was adamant that he didn’t do it. He was also terrified about being deported. He said he had just gotten off work and was going home when the boyfriend started yelling at him, tackled him, and summoned the police. At that time, Immigration and Customs Enforcement (ICE) was not much of a presence in the Superior Court of the District of Columbia, the state-level trial court in Washington, DC. The fact that our client was a noncitizen had so far gone unnoticed. But it would surely come to the attention of immigration officials if he was convicted of sexual assault. Fortunately, Mr. Martinez was free on “personal recognizance,” his promise that he would appear in court. We had a dilemma. If Mr. Martinez appeared for trial and was found guilty—which could easily happen if the two witnesses testified that our client had inappropriately touched the complainant—he would likely be taken into custody and deported. This was precisely what he did not want. But not showing up—“bail jumping”—is a criminal offense, something lawyers cannot ethically advise their clients to do. We tried to walk a fine line. We advised Mr. Martinez that we could not tell him not to come to court, but if he showed up for trial, he would likely end up in ICE custody. If he did not appear, a bench warrant would be issued for his arrest, but we doubted it would be urgently pursued. He was young and working off the books. He wouldn’t be easy to find. We told him to think hard about this. He either didn’t understand what we were trying to tell him or chose to disregard it. Maybe he really didn’t do it and wanted vindication. He showed up for every court date. We gave him the same advice each time. He showed up early on the morning of trial, neatly dressed in a button-down shirt and dress pants. By a stroke of luck, the judge before whom we were originally scheduled to appear was in the middle of another trial. We were sent to another judge—a much better one. The student defender with whom I was working was ready for trial. Our theory was that the complainant and her boyfriend had been jostled on a crowded street, and because they’d been drinking, they jumped to a conclusion that something more had happened. If the complainant’s butt was indeed grabbed, Mr. Martinez didn’t do it. Mr. Martinez was prepared to testify if necessary. As sometimes happens when more than one witness testifies, the complainant and her boyfriend contradicted each other in important respects—about how much they’d had to drink, where they were when the alleged assault occurred, and most importantly, how the groping occurred. The
complainant claimed that Mr. Martinez managed to put his hand up her knee-length pencil skirt. The boyfriend said he saw Mr. Martinez's hand grab the complainant's buttocks over her clothing. It was helpful that the judge, a woman, understood that a pencil skirt is close-fitting, with a straight, narrow cut. It's not easy to get a hand under it. That the incident allegedly occurred in the wee hours of the morning was also helpful. So was the fact that both prosecution witnesses acknowledged they had been drinking. We thought we were in the land of reasonable doubt. But we weren't sure the judge was with us yet. We felt we needed to call our client, who would testify with the assistance of a Spanish-to-English interpreter. Mr. Martinez was an excellent witness, even with an interpreter, who can sometimes get in the way. He came across as humble and respectful. He was small—no taller than 5′5″—and thin. The complainant was a couple of inches taller than Mr. Martinez, and her boyfriend was a big guy, at least 6′3″ and well-built. Would this tiny guy really grab the ass of a woman who came with a giant bodyguard who could easily kick his? We argued that it made no sense. Why would our client approach this complainant under these circumstances and assault her? (The fact that our client had also had a couple of drinks went unmentioned.) We outlined the many problems with the prosecution's case. We pointed out that, in contrast to the complainant and her boyfriend, Mr. Martinez had testified credibly and consistently during both direct and cross-examination. There was more than enough reasonable doubt. The judge agreed. When she acquitted Mr. Martinez, he seemed unsurprised. “Thank you,” he said in a quiet voice. We were thrilled and stunned. Our client had apparently known something we did not—that he would be OK, that it was better to trust the system than flee.

In federal court and most state courts in the United States, a misdemeanor is punishable by one year of incarceration or less; a felony is punishable by more. Although misdemeanors are considered less serious than felonies, multiple misdemeanor charges can lead to a substantial sentence, and even a single misdemeanor conviction can carry significant collateral consequences—such as loss of housing and educational opportunities—in addition to jail and heavy fines. Moreover, some serious felonies—such as sexual or physical assaults—can be charged as misdemeanors when there are problems of proof. Still, because they are considered low-level offenses, misdemeanors do not get the attention—or due process—afforded to felonies. This is so even though the vast majority of criminal cases are misdemeanors; more than thirteen million are filed every year in the United States. As legal scholar Alexandra Natapoff points out, misdemeanor processing is characterized by high-volume arrests, limited screening by police and prosecutors, an overwhelmed defense bar, and high plea rates. Together, these engines generate criminal convictions “in bulk,” often without meaningful scrutiny of whether those convictions are supported by evidence or are the product of a lawful arrest. Moreover, many misdemeanor defendants are convicted without counsel. Guilty pleas are prevalent in misdemeanor court because, contrary to conventional wisdom, the accused do not always claim to be innocent. Instead, they often want to plead guilty to “get it over with” or because they did it. Neither of these is a good reason to plead guilty. Good defense lawyers urge clients to allow them to investigate, negotiate, file motions, and make a considered decision about trial versus
plea instead of rushing to take a plea. It is especially foolish for a defendant who is out on bail to plead guilty at the first opportunity, because misdemeanors often fall apart. Time passes, rifts heal, damaged or lost property is replaced, and witnesses fail to appear. Even initially angry crime victims think twice about spending the day in criminal court for a misdemeanor. But clients do not always heed this advice. A student and I represented a woman I’ll call Shalanda Graves. Ms. Graves, who was thirty-eight years old and had never been in trouble before, was charged with simple assault and malicious destruction of property in connection with a “bad breakup.” On the evening of the incident, Ms. Graves came home to the apartment she shared with her longtime girlfriend and found her belongings in plastic garbage bags, a new girlfriend installed. Ms. Graves flew into a rage, striking her now-former girlfriend and trashing the apartment. When we met her in lockup, she said she deserved to be there for what she had done. She allowed us to obtain her release on bail but insisted she wanted to plead guilty the first chance she got. We spent hours trying to talk her out of it. We managed to persuade her to let us investigate the case and pursue diversion. We got some helpful information from the former girlfriend, who felt bad that Ms. Graves had been arrested. It turned out the girlfriend had given as good as she got; there were grounds for arguing self-defense. Moreover, DC law states that “adequate provocation”—the kind of provocation that would cause an ordinary, reasonable person to lose self-control and act without reflection—rebuts the element of “malice” in destruction of property. The District of Columbia prefers that people, when provoked, damage property rather than human beings. We thought the circumstances here—Ms. Graves suddenly finding herself cast out and replaced—were sufficiently provoking. This was also a perfect case for diversion. Ms. Graves was in her late thirties and had no record. She was a high school graduate with a couple of years of community college and a strong work history. A conviction would affect her future employment. Moreover, there was no injury, no indication that Ms. Graves had ever been violent before, and significant mitigating circumstances. But the prosecutor refused diversion because of the amount of damage done to the apartment. With diversion off the table, there was no downside in going to trial. Even if Ms. Graves lost, she wouldn’t be going to jail in this case. Plus, my student and I desperately wanted to go to trial. We didn’t want our client to end up with a criminal record. But Ms. Graves felt she had done something wrong and should pay for it. She had struck her girlfriend, someone she still loved. She wanted to plead guilty. We found her contrition both endearing and annoying. It spoke to her good character, but it was shortsighted. She needed to get over it. She could be sorry without being guilty. We did everything we could think of to persuade her to go to trial. We met with her repeatedly. We enlisted the support of her best friend and her sister. Everyone who cared about her agreed that she should not plead guilty. We obtained postponements to give her more time. The passage of time also made it less likely that the complainant would appear for trial. The new girlfriend was no longer in the picture, so she likely wouldn’t be showing up either. But Ms. Graves wouldn’t change her mind. She pled guilty and received a short period of nonreporting probation. The lenient sentence confirmed how utterly ridiculous it was for this woman to be convicted of a crime. When a client is in
custody, the counseling calculus is different. Notwithstanding the Constitution's prohibition of “excessive bail,”¹² in much of the country, “bail acts as a tool of compulsion, forcing people who would not otherwise plead guilty to do so.”¹³ The coercive impact of bail falls heaviest on those who cannot afford to pay it. Faced with the prospect of an indefinite jail stay for lack of money to get out, many defendants accept plea deals instead. In some places, this happens as early as arraignment, the first court appearance.¹⁴ Both the guilty and innocent plead guilty to get out. Sometimes the innocent feel more pressure to plead than the guilty. As legal scholar Stephen Schulhofer says:

The major problem with plea bargaining is that it forces the party into a situation where they have to take a guess about what the evidence is, about how strong the case might be, and they have to make that guess against the background of enormously severe penalties if you guess wrong. So defendants, even if they have strong defenses, and even if they are innocent, in fact face enormous pressure to play the odds and to accept a plea. And the more likely they are to be innocent, and the . . . strong[er] their defenses are, the bigger discount and the bigger benefits the prosecutor will offer them. Eventually at some point it becomes so tempting that it might be irresistible, especially when the consequences of guessing wrong are disastrous.¹⁵ In misdemeanor court, even a seemingly benign offer of diversion can undermine the right to trial. The accused—innocent or guilty—has to choose between an unknown trial verdict and a virtual guarantee of no conviction (if a diversion program is completed successfully). What lawyer would counsel the vagaries of trial over a sure bet, even for an innocent person? It's a bird in the hand. Only the truly determined will insist on a trial.

Darlene Williams (not her real name), a substitute teacher with no record, refused diversion and insisted on going to trial in a threats case. She was accused of telling her landlord she would “fucking kill her” when she came home and found the landlord and two U.S. marshals removing all her possessions, pursuant to an eviction order. Ms. Williams had asked to be informed of any final order of removal so that she could make her own arrangements. The two had been in an ongoing and rancorous landlord-tenant dispute. Ms. Williams had stopped paying rent because of uninhabitable living conditions. The landlord had filed for eviction for nonpayment of rent. The landlord had prevailed. Ms. Williams used to be a caseworker for a child-welfare agency. She left the agency in order to adopt a baby girl born with HIV. She raised her daughter as a single mother and public-school teacher. The daughter was now sixteen and at a prestigious New England private school on a full scholarship. Ms. Williams was substitute teaching because she had recently been diagnosed with ovarian cancer and was undergoing treatment.

I understood why Ms. Williams refused diversion. This was a ludicrous prosecution. Who wouldn't become enraged upon finding all their earthly belongings in the street? This wasn't a criminal threat; our client wasn't going to kill anyone, and the landlord knew it. But the prosecutor wouldn't dismiss the case because she felt confident she could prove it with two marshals and a middle-aged female landlord. Plus, she had offered diversion; it wasn't her fault our client had rejected it. The trial was ugly. The judge identified with the landlord. She didn't buy our argument that these were mere angry words. She slapped down every innocent analogy—an exasperated parent saying,
“It’ll be murder when I get you home, young man”; one rivalrous sibling saying to another, “You’re dead”; a coach saying, “Let’s get out there and kill.” These would all be criminal threats according to the judge. She found Ms. Williams guilty. Ms. Williams knew this was coming. “There is no justice,” she declared. This angered the judge. “I was going to sentence you to probation,” she said, “but perhaps you’d rather go to jail.” “Fine with me,” said Ms. Williams, who received a fifteen-day jail sentence and was taken into custody. We tried to tell the judge that Ms. Williams had cancer, but she wouldn’t listen. She released her early when we submitted the oncology records.

I do not mean to tilt the balance by sharing stories of first-time offenders only. I acknowledge that their lack of record might make them more appealing. But first-timers are prevalent in misdemeanor court. One scholar calls misdemeanor court the “gateway to the criminal system, the primary door through which Americans encounter the penal process and acquire a criminal record.”

Take, for example, Walter Winston (not his real name). Mr. Winston had a long criminal record, consisting largely of petty offenses—theft, bad checks, drug possession, and disorderly conduct. On this occasion, he was accused of stealing two cans of Budweiser Lime-a-Rita (an unappealing-sounding margarita-flavored beer) from a convenience store. The store clerk testified at trial that Mr. Winston put the beer in his pockets while walking around the store. The clerk confronted him, found the beer, and called the police. The defense was that there was insufficient evidence to prove criminal intent, as our client was in the store when arrested and had never tried to leave. The judge agreed with us that there was an innocent explanation for carrying beer in a pocket, since DC had recently passed a tax on plastic shopping bags. It wasn’t that Mr. Winston was innocent, she said, just that there wasn’t enough evidence to prove guilt.

“Antoine Buckley” also had a bit of a rap sheet. He had been living with his girlfriend at an apartment complex when they got into an argument and she kicked him out. They were still going at it outside when a neighbor called the police. Two security guards from the complex arrived first and told him to leave. He said OK. He had a suitcase and a very shiny, bright-orange bag with a Puma logo. When the police came, Mr. Buckley fled and was seen by the police and security guards tossing the orange bag. The police caught him, retrieved the bag, searched it, and found an orange Puma shoe box containing several ounces of marijuana in a large ziplock bag, a scale, and dozens of small, empty ziplock baggies. Mr. Buckley swore up and down that he was innocent. Those weren’t his drugs. He was on parole and a conviction would mean jail for both possession with intent to distribute marijuana and violating parole. He couldn’t take a plea. So we did what we could and constructed a trial theory: it was nighttime and difficult to see; this was a high crime and drug area; people often discard drugs when the police appear; the drugs could have been anyone’s; police and security guards jumped to a conclusion. The problem was that this particular bag could not have been more distinctive. It wasn’t a muted orange that blended into the fall foliage. It was fluorescent.

My favorite moment at trial was when Mr. Buckley passed us a note complaining that the shoe box wasn’t even his size. He wanted us to argue that. We declined. The judge had no trouble finding Mr. Buckley guilty. But Mr. Buckley was indignant at
He felt unfairly treated, wronged; railroaded. The judge gave him fifteen days. He was still carrying on when he was taken into custody. Somehow, we persuaded the parole board to not give him any more time, so Mr. Buckley ended up serving only those fifteen days. He later admitted to the whole thing.

When people ask how I feel about my clients lying to me, I often say if I had a court-appointed attorney with hundreds of other clients, I’d probably claim to be innocent too. How else to motivate the lawyer? But what I really want to say is a variation on a scene from Woody Allen’s classic movie Annie Hall that shows a flashback to Alvy Singer’s childhood living under the Coney Island Thunderbolt (roller coaster). In the scene, a cleaning woman is discovered stealing, and Alvy’s mother fires her. Alvy’s father is not happy about this. “She has no money!” he proclaims. “She’s got a right to steal from us! After all, who is she gonna steal from if not us?” I feel the same way about my clients. Who else are they gonna lie to?

Of course, some clients lie because they are ashamed—of what they’ve done and of having been arrested. They revisit the shame with their lawyer, no matter how nonjudgmental we try to be. They want us to think better of them. It reminds me of a story from my friend Kathy’s childhood. When she learned to write, she took a bright-red crayon and wrote her name—“Kathy, Kathy, Kathy”—all over the family’s white piano. When confronted by her father, Kathy denied she had done it. Still, many clients are painfully honest. Take, for example, a client I’ll call Renee Cooper. Ms. Cooper was African American, in her midfifties, obese, toothless, and always fretting about something—how she would get to court, how she would get to the mental health clinic, the long lines at drug testing, various family problems. Ms. Cooper had been in and out of trouble much of her life. She had a long record consisting mostly of drug possession and prostitution, but she had also done time for selling drugs. She was doing well on parole when she “caught” a new prostitution charge.

The facts of the case were memorable and not in dispute: Ms. Cooper had offered to perform oral sex on an undercover police officer in exchange for fried chicken. Ms. Cooper was only slightly humiliated to have been arrested under these circumstances. As far as she was concerned, she was hungry, and a blow job in exchange for dinner was not a bad trade. But the arrest was a problem. It was a violation of her parole and meant she had to go to court on the new case. We tried hard to get her to complete mental health diversion—a therapeutic, treatment-oriented alternative to criminal prosecution—so that Ms. Cooper might avoid a new conviction and parole violation. But she missed meetings, tested positive for drugs or “water loaded” before testing, and otherwise failed to comply with the requirements of diversion. So the mental health judge put her back on the regular criminal calendar.

This was not a triable case, and Ms. Cooper knew it. She figured she would plead guilty and throw herself on the mercy of the court. Her goal was to stay out of jail. By some miracle, her parole officer took pity on her and did not charge her with a violation for the new crime. So the only thing we had to worry about was whether the judge before whom Ms. Cooper was scheduled to appear would send her to jail for doing something as desperate as offering a blow job for fried chicken—assuming she was going to continue to test “dirty” or otherwise fall short on pretrial release. I got
a kick out of Ms. Cooper. She always greeted me with a big bear hug. She called me “Ms. Abbe.” She was funny and charming. She said she had heard of me, and that I was known as a great lawyer. I doubted this. The case dragged on for a while, Ms. Cooper trying her best to comply with pretrial release conditions. She was ultimately placed on probation notwithstanding her less-than-perfect performance. The judge said the important thing was she had no new arrests. I think I wasn't the only one charmed by Ms. Cooper. A client I’ll call Lester Johnson, who was accused of shoplifting a pair of electric clippers from a CVS pharmacy, was also truthful—if challenging. Even though the crime was captured on videotape, Mr. Johnson refused to plead guilty for probation and insisted on going to trial. He was forty-nine years old. He had been in trouble when he was younger but not for years since. He did a stupid, impetuous thing but thought the store should have let him go when they recovered the clippers. He understood the system enough to know that sometimes even strong cases fall apart: witnesses fail to appear; evidence is lost. He wanted a trial or dismissal. The trial date happened to fall on Mr. Johnson’s birthday. When the prosecution declared it was ready—the store security guard was present, videotape in hand—Mr. Johnson was unmoved. He was ready too. It was unclear to me whether this was a matter of principle—he felt the government should have to prove its case—or if he had backed himself into a corner by maintaining that he wanted a trial. I tried to uncover exactly what his objectives were. We didn’t have much time. We also didn’t have much privacy; as often happens, we talked in the hall just outside the courtroom. The judge had given the case a brief recess and would recall us momentarily. Although the original deal was off the table, Mr. Johnson still had the option of pleading guilty rather than go to trial. The judge who would hear the trial or plea was someone I’d appeared before many times. He was fair minded. If Mr. Johnson pled guilty and expressed regret, he would likely be sentenced to no more than a year of probation. But a pointless, time-consuming trial would test the judge’s goodwill. I explained this to Mr. Johnson. I told him we were prepared to go to trial if that’s what he wanted but he should understand that in this case, a trial would be more like a “slow guilty plea.” If Mr. Johnson’s objective was to avoid jail, he should plead guilty. If his objective was to have his “day in court” no matter the consequences, he should go to trial. I acknowledged that he might still receive probation if convicted at trial. We went back and forth. He remained adamant. In the end, I told him it was his decision and we would go to trial. I went to check on a case in another courtroom. By the time I returned, things had changed drastically. A busload of middle-school children had suddenly descended on the courtroom where the shoplifting trial would occur. There must have been forty kids on some kind of field trip. I grabbed Mr. Johnson and threw all that “client-centered counseling” to the wind. Forget trial, I said. There’s no way the judge won’t make an example of you in front of all those kids. He’ll use you to teach them not to shoplift. He’ll talk about how we all suffer when people steal—shops have to hire security, consumers pay higher prices, there is greater surveillance. But if you plead guilty—if you “man up” and throw yourself on the mercy of the court—the judge will be generous. He will show those kids that judges have a heart when an accused takes responsibility for his actions. I didn’t give him much of a choice;
he went with the plea. Mr. Johnson was so good during the plea and sentencing—he made no excuses, said he was ashamed of himself, and swore it would never happen again—that the judge gave him only six months nonreporting probation. When it was over, he threw his arms around me. He said he couldn't thank me enough for saving his fiftieth birthday.

Leon Dash's Rosa Lee may be the best book ever written about a chronic petty offender. Dash, a longtime reporter for the Washington Post, based the book on his Pulitzer Prize–winning series of articles about the hard life of Rosa Lee Cunningham and her children, who lived in one of the poorest neighborhoods in Washington, DC. Born into abject poverty and violence, Rosa Lee was a school dropout at thirteen, mother at fourteen, battered wife by sixteen, single mother thereafter, and ultimately a heroin addict. She had eight children by six men, supporting them first as a nightclub waitress and then through prostitution, theft, and drugs. Between 1951, when she was first arrested for stealing, and 1996, when the book was published, she went to jail twelve times, serving a total of five years. In that same period, she moved eighteen times, twice to homeless shelters.

In less skilled hands, Rosa Lee could have been an ugly poster child for the "urban underclass." But Dash manages to convey the deeper context of her story: the deprivation that disproportionately affects African Americans in blighted inner cities, along with the "debilitating history of racial oppression, economic exploitation, and segregation." He also conveys Rosa Lee's humanity—who she is as a person, how she makes sense of her life—notwithstanding her failings. And she has many. She does some terrible things: introduces her children to drugs; has her children collect from her johns; prostitutes her daughter; teaches her children and grandchildren how to steal; uses a young grandson as a drug runner; does not encourage her children to go to school or work; and brazenly lies—in court, in treatment, to Dash. All but two of her children end up in the criminal system. Dash is unflinching in his depiction of Rosa Lee and is "deeply troubled by her choices."

But Dash also recognizes that some of the most disturbing things about her might also be her strengths. Along with being deceitful and manipulative, she is resourceful and charming. Her ability to survive—from the abuse she suffered as a child and violence at the hands of men to the ravages of drugs and periods of incarceration—is itself remarkable. Rosa Lee is resilient. She also does some good things—she is devoted to her church, provides for her family, is a loyal friend, never physically abuses her children (managing to stop that cycle of violence), makes real efforts to stop using drugs, feels genuine remorse about the bad things she has done, and manages to raise two successful children.

For some, Rosa Lee is too extreme, too bleak. I agree that she is not the prototypical misdemeanant. But I have seen male and female versions of Rosa Lee in courtrooms across the country—badly damaged people who seem destined to cycle in and out of the criminal justice system (and whose children follow in their footsteps). They are frequent offenders but not terribly serious ones.

One repeat client—I'll call him B. J.—had a longstanding drug problem. He was in and out of treatment, in and out of jail. His drug abuse mirrored local trends: he went from heroin to crack to PCP and back to heroin. His record consisted mostly of theft, drug possession, possession of drug paraphernalia, and failing to come to court. When he was clean, he was a sweetheart. He
would come around to the clinic just to say hello and “borrow” a couple dollars for a cup of coffee. These were periods when he had stable housing through a drug treatment program or shelter. When he was using, he looked awful—unclean and unkempt. He lived on the street during those periods. He had no family; he had been abandoned as a child and placed in foster care. He was especially attached to one of my colleagues, who represented him well over the years, getting him out of a number of jams. Then B. J. stole my colleague’s laptop. This pretty much ended B. J.’s relationship with my colleague—at least so far.
What people say about this book

BJW, “Must read!!. Thoroughly enjoyed this book. The author really captured the essence of criminality in society… we are all human. An easy read. Will seek out more from this author.”

Detrick, “Impressive read. If you want a perspective on what it is like to be a public defender, this is the book for you. It is really generous in the highlights and struggles of balancing and juggling the personal values and virtues having hope in people in the criminal justice system but understanding the trauma, bias, and effects of crime and life, not only for the victims or survivors but the accused and convicted. You get to read the personal thoughts and experiences of a Public Defender who admits to struggles with her work at times like many but shows that it is great work and it a form of good.”

ANDREW FREEDMAN, “This is the best book I've read in the last decade.. I was concerned about paying the high price after having read the sample, but not having put it down and knowing I was reading something that was extraordinary, there was no question. My (deceased) Grandfather, Benjamin D Avan, did what Abbe did in Los Angeles from the 20's through the 70's. This is just a fantastic book and I congratulate Abbe Smith on her accomplishments. - - Andrew L Freedman”

Lucy, “Criminal Defense: It's Not Just Important to Represent the Innocent; the Guilty Deserve the Best. Abbe Smith's first book, Case of A Lifetime: A Criminal Defense Lawyer's Story, was about her decades-long defense of an innocent woman who languished in prison because she refused to take a plea or express remorse for a crime she did not commit. Guilty People is the complement to that book -- the tale of many cases, spanning a full career, with defendants more typical of those a criminal defense attorney represents: those who are factually guilty. But Smith has an appreciation for these defendants, too, and recognizes that but for better circumstances growing up, lives less pressured by racism and poverty and just bad luck, many, if not most people probably have a latent criminal in them. She looks for the good in people. Even for those who are so twisted as to be utterly unsympathetic, Smith's affinity for the mothers of defendants propels her to give each case her best, and to mentor young attorneys at the Georgetown Law Criminal Defense and Prisoner Advocacy Clinic as they and fellows with the E. Barrett Prettyman Fellowship Program represent the full range of defendants. Smith reconciles her feminism with the defense of rapists, and argues that even for the most violent offenders, the U.S. system of justice imposes sentences that are vastly too long to serve any purpose. This book seems to be her book length take on the anthology she edited, How Can You Represent Those People?, as she explores her psychology and that of other criminal defense attorneys amid her descriptions of cases, the ethical questions they raise, and the policy points she makes about our justice system. Even for those with a tough-on-crime prosecutorial bent, this book offers many points for finding common ground, and it shows numerous instances of truly alarming conduct by
judges. For those who wonder if Alicia Florrick’s experience when she tried being a court-appointed defense attorney in The Good Wife was realistic, as attorneys had only minutes to meet their client, without privacy, before entering pleas, she offers the dispiriting answer of “yes” – at least in misdemeanor court in many jurisdictions. One of the most appealing aspects of this book is that Smith does not set herself up as a hero, but rather as a human who has much in common with her clients, who themselves must be seen as full humans, not just as the labels given to them by their worst acts: thieves, rapists, even murderers. Anyone interested in poverty law or inequities in the U.S., legal ethics, criminal law, jurisprudence, even just advice on how to keep going professionally in the face of work that could lead to burnout or despair would find Guilty People a great read. Don’t be fearful that Abbe Smith is a professor -- Guilty People is gloriously free of legal jargon; devoid of long passages giving close readings of cases; lacking in must-read footnotes making key legal points. It’s just well-written and insightful, with a novelist’s ability to depict individual characters.”

Ebook TopsReader, “You won’t want to put this book down.. I could not put this book down. Though she denigrates the term, Abbe Smith is a hero to the many clients and students who have been lucky enough to meet her in a courtroom, prison or classroom. These stories of her experiences walking alongside damaged, complicated, fully human, guilty people sometimes made me laugh, sometimes made me angry, but always made me want to keep reading.”