

The Presumption of Innocence¹

By Ira Belkin²

The “presumption of innocence” is a bedrock principle of American criminal justice. As stated in a unanimous opinion of the U.S. Supreme Court in 1895 in Coffin v. United States, 156 U.S. 432:

The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.

Despite the foundational nature of the “presumption of innocence” in American criminal justice, the words, “presumption of innocence” or the “accused shall be presumed innocent” or some other version, cannot be found anywhere in the text of the United States Constitution. Despite the lack of reference in the nation’s founding documents it is well settled that the presumption applies in all criminal cases and that juries must be instructed on the presumption of innocence in every criminal trial.

I will leave it to legal historians and political scientists to explain why there is no mention of the presumption of innocence in the Constitution and why, despite its absence, the principle is virtually universally accepted.

What I would like to discuss is whether and how the existence of the presumption of innocence actually influences the way criminal cases are investigated, prosecuted and adjudicated in the United States. Based upon my experience as a federal prosecutor for over a decade, the presumption of innocence does have a profound effect on the way criminal cases are investigated, prosecuted and tried. The presumption impacts a criminal case in several profound ways.

First, American judges instruct potential jurors and actual jurors on the presumption of innocence at the beginning of every case, sometimes during the trial and again before the jury retires to deliberate on its verdict. What the presumption of innocence instruction makes clear is the fact that although the accused has been charged with serious crimes by representatives of the very government in charge of the country, state or locality, the fact of that charge and the allegations against him are not evidence. The accusation cannot be taken into consideration at all in determining guilt or innocence. An indictment is not evidence. As the defendant sits before the jury he is innocent.

¹ These remarks were prepared for The Presumption of Innocence Online Experts Workshop organized by the University of Melbourne and Vietnam National University on July 23, 2020.

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Why is this significant? Common sense would lead the average citizen to conclude that if the government has charged someone with a serious criminal offense then there must be some good reason for the charge. The government, “my” government, probably wouldn’t have hauled the defendant into court to answer for these serious charges unless they had done a thorough investigation and found a great deal of damning evidence. Such sentiments are commonly heard in public and private discussions of high profile cases. Without an explicit presumption of innocence, jurors might believe that they would be within their rights to indulge this type of speculation and conjecture.

The authority figure in the court, the judge, tells that jury that they must consider that the defendant is innocent unless and until proven guilty with evidence.³ The judge will, in essence, instruct them to dismiss any speculation or suspicions from their minds. Their mission is to determine what the evidence proves and not to consider anything extraneous to the evidence. In

³ Here is a typical jury instruction on the presumption of innocence taken from the U.S. District Court in the District of Massachusetts:

3.02 Presumption of Innocence; Proof Beyond a Reasonable Doubt

It is a cardinal principle of our system of justice that every person accused of a crime is presumed to be innocent unless and until his or her guilt is established beyond a reasonable doubt. The presumption is not a mere formality. It is a matter of the most important substance.

The presumption of innocence alone may be sufficient to raise a reasonable doubt and to require the acquittal of a defendant. The defendant before you, [_____], has the benefit of that presumption throughout the trial, and you are not to convict [him/her] of a particular charge unless you are persuaded of [his/her] guilt of that charge beyond a reasonable doubt.

The presumption of innocence until proven guilty means that the burden of proof is always on the government to satisfy you that [defendant] is guilty of the crime with which [he/she] is charged beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to [defendant]. It is always the government’s burden to prove each of the elements of the crime[s] charged beyond a reasonable doubt by the evidence and the reasonable inferences to be drawn from that evidence. [Defendant] has the right to rely upon the failure or inability of the government to establish beyond a reasonable doubt any essential element of a crime charged against [him/her].

If, after fair and impartial consideration of all the evidence, you have a reasonable doubt as to [defendant]’s guilt of a particular crime, it is your duty to acquit [him/her] of that crime. On the other hand, if, after fair and impartial consideration of all the evidence, you are satisfied beyond a reasonable doubt of [defendant]’s guilt of a particular crime, you should vote to convict [him/her].

sum, the presumption of innocence first acts as a counterweight to the prosecution's accusation of serious misconduct by the defendant.

Second, the presumption of innocence, makes clear that the trial is only about the evidence. It is not about opinions. It is not about rumors or conjecture. It is not about whether the accused is likable or not. It is not about whether the government's view of the accused is as a friend or an enemy. It is only about whether the evidence proves each and every element of the crime charged beyond a reasonable doubt. The defendant is cloaked with the presumption of innocence from the first moment of jury selection until and unless the jury determines in its deliberations that the evidence is sufficient to prove the crime charged beyond a reasonable doubt. If the evidence never reaches that threshold the jury must acquit.

The exclusive focus on evidence brought about by the presumption of innocence is one of the most important rights protecting by an individual citizen from arbitrary and baseless prosecutions by the state. From the beginning of a criminal investigation, criminal investigators and prosecutors understand that the coin of the realm is evidence. They may harbor deep suspicions about the dangerousness of a particular individual. Perhaps their suspicion are well-founded and based upon numerous second and third hand accounts of reliable witnesses. Unless, they can discover sufficient admissible evidence against the suspect, however, they would be foolish to bring charges and even more foolish to bring him to trial.

Historically, the presumption of innocence incorporated other procedural rights necessary to ensure that the defendant receive a fair opportunity to defend himself against a government accusation. These include the "right to a defense, a lawyer, and the means to conduct a defense."⁴ Most of these other procedural rights found expression in specific provisions of the Bill of Rights incorporated in the U.S. Constitution. As the Supreme Court made clear in the Coffin case, and as the practice of criminal justice in the United States continues to make clear, the presumption of innocence remains a foundational principle despite its absence from the list of express rights set forth on the Constitution.

Finally, I have been asked to address whether the presumption of innocence protects against wrongful convictions, that is, the convictions of innocent individuals of crimes for which it can be proven that they are factually innocent. As an empirical matter, we know that the American criminal justice system does convict innocent people of serious crimes despite the presumption of innocence. According to the Innocence Project⁵, since 1989, 367 defendants who had been convicted of serious crimes, including 20 on death row, were exonerated after being proven to be factually innocent with DNA evidence.

Accordingly, we know that presumption of innocence is not an absolute protection against wrongful convictions. While wrongful convictions occur in spite of the presumption of innocence we do not know how many more wrongful convictions would occur in the absence of a presumption of innocence and there is no reasonable way to test that proposition empirically.

⁴ Kenneth Pennington, *Innocent Until Proven Guilty: The Origins of a Legal Maxim*, 63 JURIST: STUD. CHURCH L. & MINISTRY 106, 119 (2003).

⁵ <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/>

Analysis of wrongful convictions in the United States suggests that additional reforms are necessary to prevent wrongful convictions. These include reforms of eyewitness identifications methods to eliminate bias and mistake, reforms of coercive and manipulative interrogation techniques that produce false confessions, and the elimination of “expert” opinions based upon unverified forensic scientific methods.

The presumption of innocence is critical to ensuring that the fact-finder, whether judge or jury, focuses on the evidence alone in determining guilt or innocence. To prevent wrongful convictions, however, additional reforms are necessary to reduce or eliminate unreliable forms of evidence. We cannot expect the presumption of innocence to do all the work of preventing wrongful outcomes by itself. We must ensure that the evidence presented against the accused is reliable and untainted by bias, prejudice and mistake.

Thus, the presumption of innocence is a necessary but insufficient protection against the wrongful convictions of innocent persons.