

# Responses to Presumed Guilty

Experts in law and psychology watched **Presumed Guilty** and reacted to Antonio's case. Their essays shed light on what causes wrongful convictions, the Mexican justice system and why reform is needed in Mexico and in the United States.

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**Presumed Guilty** is a terrific film — gripping, shocking and quite illuminating.

The title of the documentary captures a basic difficulty with the criminal justice system in Mexico. The defendant is presumed to be guilty, and that presumption infects the way crimes are investigated and criminal charges are adjudicated. The filmmakers created a remarkable record of the second trial of José Antonio "Toño" Zúñiga Rodríguez, who was charged with the murder of Juan Reyes. It is impossible to know the extent to which Toño's case is representative of other investigations and prosecutions. The filmmakers were given extraordinary access to Toño and the courtroom, and trials are not typically recorded. But the problems that surfaced during Toño's retrial were those that one might expect in a system that does not provide a rigorous test of the evidence gathered by the police.

Mexico is poised to change its criminal justice system from one that presumes guilt at trial to one that presumes innocence, effective 2016. If this reform is implemented and the new presumption of innocence is taken seriously, it should lead to important changes in police practices and trial procedures that could prevent miscarriages of justice like the one depicted in the documentary. While one can think of other reforms that would improve the integrity of Mexico's criminal justice system, this single change has the potential to accomplish much.

First and foremost, if the prosecution is required to prove guilt beyond a reasonable doubt at a trial, the police will have to collect evidence and maintain the integrity of that evidence so that it can be assessed meaningfully at trial. There was no physical evidence linking Toño to the shooting. While the sole eyewitness, Victor Reyes, testified at the retrial, there was no real effort to obtain or preserve any evidence supporting his testimony. Victor was initially arrested and — it appears — pressured. He did not mention Toño until his third statement to the police. At the retrial, Victor was confronted quite forcefully by Toño, and there was a strong implication that officers had told Victor to implicate Toño. But officers did not record their interviews with Victor. Having a real burden of proof at trial could lead police officers to reform their interview and interrogation practices and record their interactions with defendants and witnesses.

While taping is not a panacea, it is one important tool used by police when the state has to shoulder the burden of proof at trial. Taping can ensure that a witness' recollections are promptly and accurately preserved. And as long as the entire interaction is recorded, taping is a powerful deterrent to coercive police practices. Many police officers and prosecutors in the United States promote taping because it can rebut false claims of police coercion and because a taped voluntary confession is quite strong evidence for the prosecution at trial. Recording is a more useful tool for preventing police misconduct than, for example, requiring Miranda warnings. The experience in the United States with the Miranda doctrine has been quite mixed. My own view is that Miranda is not effective in protecting suspects' ability to exercise their rights during a custodial interrogation, nor does it prevent police misconduct.

With a presumption of guilt and not innocence, officers will also have to document their investigations in greater detail. There was no documentation of the way Reyes identified Toño prior to trial, and there was no established process for identification, such as through a lineup. At the trial, several detectives testified that they could not remember investigating the case or aspects of their investigation. Of course, if there is a presumption of guilt, the officers' failure of recollection does not counter that presumption and result in a finding of not guilty. But if there is a presumption of innocence, the officers' failure to remember would tend to lead to an acquittal, since the prosecution would be unable to prove its case at trial. This shift in the presumption should also lead law enforcement officers to document their work carefully so that officers will be able to testify, in detail, about their investigations and refresh their memories by looking at their own reports.

While a shift to presuming innocence can help accomplish much, it is not a magic solution and it does not automatically mean that all prosecutions will be scrutinized carefully by judges. There are many components of a fair and just system in addition to the presumption of innocence.

Innocence is presumed in the United States. Yet a relatively small percentage of prosecutions proceed to trial. In large urban counties in the United States, about 25 percent of felony cases in the state criminal courts are dismissed early, prior to trial. Nearly two-thirds of all defendants plead guilty. Guilty pleas account for about 95 percent of convictions. In the federal district courts (where defendants charged with federal crimes are prosecuted), charges were dismissed against fewer than 9 percent of defendants in the most recent year. Of those defendants whose charges were not dismissed, 96 percent pleaded guilty, 3 percent were convicted at trial and fewer than 1 percent were acquitted after a trial. So even though the United States has a presumption of innocence, it nevertheless processes cases with guilty pleas, and only a small percentage of defendants actually require the government to prove guilt with a trial.

In our plea-based system, many factors may affect the quality of justice, including the quality of defense counsel (and funding for defense lawyers and investigators) and the training and administrative oversight of police and prosecutors, not to mention race, gender and income inequality. A change to a presumption of innocence is quite important, and it has the potential to be transformative. But reformers must not overlook other important aspects of the criminal justice system.

## **Resources**

### **Homicide Units and Investigations**

Simon, David. *Homicide: A Year on the Killing Streets*. New York: Houghton Mifflin, 1991.

### **Police Interrogation**

Dixon, David. *Interrogating Images: Audio-Visually Recorded Police Questioning of Suspects*. Sydney: The Federation Press, 2007.

Leo, Richard A. *Police Interrogation and American Justice*. Cambridge: Harvard University Press, 2008).

Leo, Richard A. and George C. Thomas III. *The Miranda Debate: Law, Justice and Policing*. Boston: Northeastern University Press, 1998.

Weisselberg, Charles D. "[Mourning Miranda](#)" *California Law Review* 96, no. 6, 2008. (PDF)

### **Case Statistics**

Cohen, Thomas H. and Tracey Kyckelhahn. "[Felony Defendants in Large Urban Counties, 2006](#)." U.S. Department of Justice/Bureau of Justice Statistics. (PDF)

U.S. District Courts. "[Criminal Defendants Disposed of, by Type of Disposition and Major Offense, During](#)

[the 12-Month Period Ending September 30, 2009." \(PDF\)](#)

**Standards for Criminal Justice Systems**

American Bar Association. "[About Criminal Justice Standards.](#)"

American Bar Association. "[ABA Policies and Guidelines on Indigent Defense.](#)"

U.S. Department of Justice. "[Department of Justice Compendium of Standards for Indigent Defense Systems.](#)"

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