

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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Hernandez and Negrete's **Presumed Guilty** is one of those films that's "stranger than fiction." If I hadn't known it was a documentary, I would have found the circumstances literally incredible. A criminal defendant is tried on the basis of a single witness's account. That witness's testimony is glaringly circumspect. The defendant must appear in "court" (really a small office cubicle with a single judge, a reticent and hopelessly bureaucratic "prosecutor," and, initially, no defense attorney). Actually, he is not in the courtroom, but rather, on the other side of a wall, behind a barrier, wearing a prisoner's uniform. He must question his own witness, but only through the judge's superfluous reiteration of his questions to the witness, who stands mere feet away. Between appearances, he returns to his implausibly overcrowded, roach-infested cell, where he sleeps on the floor, under a set of tiny, densely packed bunk beds. It looks more like theatre of the absurd than the criminal justice system of a large, North American country with a rich history of art, literature and civilization.

One of the telling aspects of the film is the access that the filmmakers had to the defendant, Toño, both in prison and on trial. The U.S. criminal justice system has its flaws, but from our perspective it is unimaginable that authorities would not try to hide the abysmal conditions of the prison and the ethical bankruptcy of the trial. The access could only be explained by a widespread acceptance, and therefore

perceived normalcy of the system. Showing to the world in vivid detail the deep flaws in the system, undermining the most basic ideals of justice, this film has the potential to blow the lid on the Mexican criminal justice system, and systems like it.

From a legal perspective, the question crying out for consideration is, can a criminal defendant get a fair trial when he is presented in court with the trappings (prison uniform; behind bars) of a criminal? The answer in the United States was clearly articulated in 1976 by the Supreme Court in *Estelle v. Williams*. The court recognized the potential for bias and ruled that criminal defendants have a right to appear at trial in civilian clothes.

From a psychology and law perspective, the answer is also a resounding "no!" Social psychological research has shown across countless domains that context matters. People, even jurors and judges, do not make unbiased, purely rational judgments about others based solely on cold, hard facts. Rather, we are influenced by peripheral information, like attractiveness, similarity, gender, race/ethnicity and physical surroundings.

One relevant study is especially poignant. Eberhardt, Davies, Purdie-Vaughns and Johnson (2006) collected a large set of photographs of real African-American capital defendants and had research subjects, who were unaware of the cases or their dispositions, rate them for how stereotypically Black they looked. When the victims were White (but not when they were Black), Black defendants who were rated as more stereotypically Black-looking were more likely to receive the death penalty, even when statistically controlling for race-neutral variables known to influence verdicts and sentencing. Similarly, Stewart (1985) found that defendants' whose physical appearances were rated more positively received less harsh sentences. A meta-analysis (statistically combining effects across multiple studies) of dozens of mock jury experiments found greater leniency for defendants who were physically attractive, high in socio-economic status, or female (Mazzella and Feingold, 1994). These studies show how aspects of physical appearance that should be irrelevant to verdicts and sentencing nevertheless have powerful effects on real, sometimes life or death, criminal justice outcomes. The likelihood is great that appearing for trial dressed as a prisoner and/or behind bars increases a defendant's chances of being convicted.

If you're not convinced, do a little honest thought experiment: Imagine yourself accused (wrongly, of course) of a serious crime, preparing for trial. Given the choice of appearing in court wearing a prison jumpsuit and encased in a cage, or sitting at a table in clothing of your choosing, which would you opt for?

No doubt, the presentation of defendants in prison garb and/or behind bars during trial is part and parcel of Mexico's system of presumed guilt. If the court views the accused as most likely guilty, then it will seem

wholly appropriate to present them with all the trappings of guilt. But the combination of the biasing effects of presenting defendants as inmates with the actual high evidentiary burden that accompanies a presumption of guilt (and the correspondingly low evidentiary burden on the prosecution) makes for a troublingly great risk of wrongful conviction. There will always be innocents convicted and guilty people acquitted. Criminal justice systems seek to strike the best balance, keeping such error to a minimum. What is evident from **Presumed Guilty** is that the Mexican system, to the extent that it is accurately represented by this film, favors wrongful convictions, and is therefore off balance by most modern standards of liberty and justice.

Recommended reading:

Eberhardt, J.L., Davies, P.G., Purdie-Vaughns, V.J., & Johnson, S.L (2006). "Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes." *Psychological Science*, 17, 383-386.

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