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.

- Introduction
- Jack Glasser
- Elizabeth Loftus
- Steven Drizin
- Charles D. Weisselberg

Steven A. Drizin, Clinical Law Professor, Northwestern University School of Law

In the United States, more than 250 wrongfully convicted inmates have been proven innocent as a result of DNA testing and hundreds more have been exonerated in non-DNA cases in the past two decades alone. The organized Innocence Movement in the United States traces its roots back to the early 1990s when DNA evidence first began to be used regularly as part of criminal investigations. Today, the Movement is organized through an Innocence Network of over 50 projects in the United States, Great Britain, Canada, Australia and New Zealand, most of which are housed in law schools or journalism schools. Many of these projects investigate both DNA and non-DNA cases.

The film **Presumed Guilty** is being aired at an especially exciting time for the Innocence Movement. On April 8-10, 2011, the Innocence Network will host its first ever International Innocence Conference in Cincinnati, Ohio and has invited scholars, lawyers, journalists, human rights activists and exonerees from around the world to the conference in the hopes of expanding the movement into a unified international human rights movement. The Innocence Network recognizes that we have much to teach to and much to learn from our colleagues around the world who are tackling the problem of wrongful convictions in their home countries. This essay will focus on some of the enduring lessons that arise from the wrongful conviction of Antonio “Toño” Zuniga, whose case is the subject of **Presumed Guilty**.

Both the United States and Mexico need to have more transparent criminal justice systems. Secrecy is the

enemy of truth. Very few jurisdictions in the United States would have allowed the filmmakers the kind of access to court proceedings and prisons that were given to the filmmakers here. The United States should not be so fearful of televising court proceedings (it exists in only a minority of jurisdictions).

Members of the Mexican public have little idea of how the court system really works. There are no jury trials in Mexico, the public is kept out of the hearings, defense attorneys provide very little advocacy and the trials are often not even presided over by judges. Most judges simply review the paper record (mostly documents read into the record by the prosecution) and simply pronounce defendants guilty (there is a conviction rate of about 95%). Because of the cameras, however, Antonio received a trial that was more adversarial than the norm. His defense attorney was at the top of his game and the judge allowed greater leeway to the defense in its questioning of witnesses. And because the proceedings were recorded and sent to the appeals court, all of the weaknesses of the government's case were plain to see.

Mexico should implement a jury system and open its trials to the public so that the public can get a better understanding of how the justice system works. Judges should not be permitted to rule on a paper record and should be required to see and hear each witness as the witness gives his testimony and is cross-examined. Defendants in Mexico should also be allowed to sit at the table with trial counsel, to be dressed in regular and not prison clothing, to be unshackled, and should not have to watch the trials through the bars of a holding cell. Without such changes, the presumption of innocence in Mexico (which is a new reform already spurred by the film), will have little meaning.

The case against "Toño" was built on the basis of a single eyewitness identification. Mistaken eyewitness identification is the single greatest cause of wrongful convictions in the United States, accounting for more than 75 percent of convictions overturned through DNA testing. Eyewitness testimony is notoriously unreliable and the procedures used by police officers during the identification process often contribute to the problem. Police officers, often signal to a witness which suspect to identify, either deliberately or unintentionally. A simple change in tone of voice or a note of affirmation can skew an identification. Once a suspect becomes convinced he has identified the right suspect, his memory is forever altered. There are specific reforms concerning the procedures of lineups and photo arrays that the Innocence Network promotes to enhance the reliability of identifications but at a minimum, all identification procedures should be videotaped to allow for a judge and the lawyers to see if overly suggestive procedures were used.

Police interviews of witnesses and interrogations of suspects should also be electronically recorded to prevent false or coerced confessions and false witness statements. The lone identification witness in Toño's case may have been coerced into identifying Toño or threatened with prosecution for the same

crime if he did not name Toño. The attitude of the detectives in the film suggests that they are used to being able to operate with impunity. Recording helps prevent police coercion and enables judges to tell whether the details in a suspect's confession came from the suspect or were fed to him by detectives. It also protects police officers from false allegations of abusing suspects and helps build the public's confidence in law enforcement. In the United States, seventeen states now require some recording of interrogations and hundreds more police agencies have voluntarily agreed to record interrogations. Mexico's police agencies should follow suit.

These days, the news we receive north of the border suggests that the Mexican criminal justice system is focused almost exclusively on law enforcement in trying to combat internal corruption of the police forces and the power and violence of the drug cartels. In such a context, concerns over due process and fairness for defendants and the presumption of innocence typically take a back seat to concerns over public safety. In this environment wrongful convictions can flourish. When leaving the film, I could not help wondering how many thousands of other innocents are languishing in Mexican prisons.

I also left thinking how important it will be for Mexico to join the global Innocence Movement, create its own innocence projects, and build a constituency for the kinds of reforms needed to prevent wrongful convictions. When it is ready to do so, the Innocence Network will welcome Mexico's first innocence project with open arms.

Steven A. Drizin is a Clinical Law Professor at Northwestern University School of Law in Chicago and the Legal Director of the Law School's Center on Wrongful Convictions.