

A PROPHETIC REALITY: LEGAL BUREAUCRACY IN KAFKA'S "THE TRIAL" AND ITS PARALLEL TO THE U.S. JUDICIAL SYSTEM

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INTRODUCTION

Franz Kafka's posthumous work, *The Trial*, is a literary exploration of legal systems and bureaucratic oppression. It depicts the law as a reflection of social anxieties about justice and autonomy.¹ *The Trial* follows Josef K., a man who is arrested for a crime that both he and the reader truly know nothing about. As the narrative unravels, the reader waits to finally learn the secret of this mysterious crime. However, the reader's expectations are left unfulfilled. The reader and Josef sit in the dark, while the rest of the book's characters become progressively clued in. Josef is weighed down by his guilt, constantly questioning and overthinking every action he has taken while he looks for an answer.² It is not forthcoming; there are no concrete indications of Josef's guilt or definite associations between him and a crime.³ Given the lack of information surrounding his trial and charges, the only concrete indication of guilt seems to be his execution.⁴ Of course, the reader grapples with the question: "Was he truly guilty?" But in *The Trial's* faceless bureaucracy, that may not matter much.

Critics have read this novel as a dark and horrifying parody of the complexities of the legal system and the traps that bureaucracies have the power to set.⁵ The story's salience has only grown with the view that the contemporary legal system mirrors Josef's bleak reality, where accusation alone can dictate fate. Kafka's narrative shows what happens when foundational protections fail. In *The Trial*, Josef is condemned and punished without ever being presumed innocent, showing how the absence of the presumption of innocence turns justice into ritualized cruelty.

In the U.S., the presumption of innocence, that one is "innocent until proven guilty," no longer ensures the protection it was designed to provide.

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1. FRANZ KAFKA, *THE TRIAL* (Breon Mitchell trans., 1999).
 2. *Id.* at 111–12, 124–25 (describing Josef's anxiety and inability to leave things alone despite displaying apathy at the situation earlier in the narrative).
 3. *See, e.g., id.* at 29.
 4. *Id.* at 228–31.
 5. Benjamin Winterhalter, *Franz Kafka's The Trial—It's Funny Because It's True*, JSTOR DAILY (July 2, 2019), <https://daily.jstor.org/franz-kafkas-the-trial-its-funny-because-its-true/>.

This precept prevents an individual from being branded “guilty” before conviction; the government must show that the individual on trial is the perpetrator of the crime, beyond a reasonable doubt.⁶ However, the media’s influence on contemporary society has contributed to the distortion of the phrase “innocent until proven guilty,” forcing those accused to prove their innocence despite the lack of conviction.⁷ The court of public opinion is a fierce opponent, and pretrial publicity has exposed many accused individuals who, though not convicted, have been linked to crimes.⁸ The media’s duty to inform the public often becomes entwined with the commercial aim of increasing reader and viewership, producing flashy titles and juicy taglines.⁹

The principle of “innocent until proven guilty” emphasizes the importance of not pre-judging an individual until conviction, but when defendants are exposed in the media, it becomes difficult to curtail the negative opinions surrounding them.¹⁰ As a result, even when individuals are acquitted, their peers may treat them as guilty. The stigma associated with publicized guilt persists indefinitely, despite efforts to counter the effects of a “trial by media” through the law’s objective framework.¹¹

But how objective is this “objective framework” when it comes to guaranteeing a fair and just trial despite public outcry against the individual at bar? Courts are often forced to navigate societal biases against a defendant, which can influence determinations of guilt despite the appearance of impartiality.¹² Though the legal system may do its best to insulate jurors, it is an increasingly difficult task as media coverage becomes more extensive and more people are exposed to relevant pre-trial publicity.¹³ With a biased jury and a court that is factoring in public opinion, the law, in some aspects, loses its necessary objectivity.

6. 3.02 *Presumption of Innocence; Proof Beyond a Reasonable Doubt*, U.S. DIST. CT. DIST. MASS., <https://www.mad.uscourts.gov/resources/pattern2003/html/patt4cfo.htm> [https://perma.cc/4CCG-Y74B].

7. Maria Stoyanova, *THE PRESUMPTION OF INNOCENCE AND THE MEDIA COVERAGE OF CRIMINAL CASES 27* (Ctr. for Study of Democracy 2021), <https://arisa-project.eu/the-presumption-of-innocence-and-the-media-coverage-of-criminal-cases-2/3/>.

8. Zakaria Islam, *Media Exposure and Presumption of Innocence*, DAILY STAR (Feb. 23, 2024), <https://www.thedailystar.net/law-our-rights/news/media-exposure-and-presumption-innocence-3550671> [perma.cc/NJ3R-LDQ3].

9. STOYANOVA, *supra* note 7.

10. Zakaria Islam, *supra* note 8.

11. *See generally* STOYANOVA, *supra* note 7.

12. Claire Caton, *Presumption of Innocence, Pre-Trial Media—And Social Media—Coverage*, TWIKI (May 4, 2021), <https://moglen.law.columbia.edu/twiki/bin/view/CompPrivConst/ClaireCatonSecondPaper> [perma.cc/LJ3K-HHY2].

13. *Id.*

Moreover, the act of publicly naming someone in connection to a crime prior to conviction can have devastating psychological and economic consequences, in addition to societal stigma.¹⁴ The more often those accused are called guilty, the higher the risk that they internalize this guilt, which renders them more susceptible to societal detachment and emotional strain.¹⁵

This pretrial exposure, despite lack of conviction, may also cause economic hardships, seeing as it serves as an obstacle to employment, which may endanger the psyche of the accused individual even more.¹⁶

The end of *The Trial* sees Josef executed, a sentence carried out before any formal judgment, showing how guilt is treated as assumed rather than proven. Accusation itself carries the weight of guilt, striking parallel to the court of public opinion, where, upon exposure, “guilt” is inevitable. In this paper, Part I examines the text of *The Trial* and its relation to the presumption of innocence and the court of public opinion. Part II.A discusses the development of the principle of presumption of innocence and its origins, both generally and in United States jurisprudence. Part II.B considers the modern difficulties in enforcing this principle, given the changing technologies and circumstances of daily life now in comparison to the time that this principle was enshrined. Within that discussion, Part III describes how the presumption of innocence does not exist in such a way that it protects the justice and fairness that it promised. Instead, this principle faces constant rebuke due to various government-sanctioned allowances and invasions, disproportionately affecting minority groups who are more frequently presumed guilty and subjected to harsher scrutiny. Part IV sets forth a series of reform proposals attempting to preserve the integrity of the presumption of innocence as it was once intended to function, and in doing so, prevent the criminal justice system’s deterioration into a bleak Kafkaesque reality.

I. *THE TRIAL* AND ITS REAL-WORLD IMPLICATIONS

The Trial, at first glance, is about doubt and fear. Fear for the complex and removed nature of inscrutable bureaucracy, for an inaccessible law. The result is a protagonist crushed by forces he cannot name.¹⁷ Upon closer look, however, one can also find a cautionary tale of a system that abandons the

14. Zakaria Islam, *supra* note 8.

15. Heidi Tobe, *Introjection, Internalization, Identification, Oh My!*, THERAPIST DEV. CTR. (Feb. 7, 2018), <https://therapistdevelopmentcenter.com/blog/introjection-internalization-identification-oh-my/>; Zakaria Islam, *supra* note 8.

16. Zakaria Islam, *supra* note 8.

17. *See generally* KAFKA, *supra* note 1.

presumption of innocence, allowing preemptive judgments to determine guilt long before any meaningful process can unfold. Kafka's imagined world shows the horror that awaits in a society where guilt is presumed everywhere.¹⁸

The novel's opening line establishes the inversion of foundational legal norms: "Someone must have slandered Josef K., for one morning, without having done anything wrong, he was arrested."¹⁹ This sentence, while also resoundingly atmospheric, serves to establish the dilemma at the heart of this novel—an individual has been arrested without wrongdoing and without explanation. In ordinary legal systems, the presumption of innocence functions as both a moral and procedural safeguard in that the state must justify coercion.²⁰

Scholars have observed how Kafka treats law and justice in an absurd manner, shown through Josef's entanglement in a "labyrinthine network of bureaucratic traps" without a fair judicial process.²¹ In this absurd legal world, a trial grounded in the presumption that the accused is innocent until proven guilty is not merely absent, but logically impossible. Josef does not even have the ability to confirm his innocence because the terms of his accusation are never revealed.²²

Josef, despite being innocent, makes every wrong move.²³ Though people, such as Fräulein Bürstner and Frau Grubach, started off believing his innocence, his inaction makes others doubt him. In a conversation with his uncle, he states, "[t]he calmer [he] is, the better, as far as the outcome is concerned."²⁴ To which his uncle replies, "that's not how an innocent man acts who still has his strength."²⁵ If lack of action is equated to guilt, one must ask what true innocence should look like.

As Josef's "trial" progresses, it becomes clear that guilt in this system is not inferred from actions, but rather from character, demeanor, and social positioning.²⁶ During Josef's first hearing, he attempts to assert rational

18. Sanan Bansal & Priyanshu Singh, *The Courtroom of Dreams: How Kafka's "The Trial" Reshapes Our Understanding of Due Process*, LHSS COLLECTIVE (Oct. 28, 2024), <https://lhsscollective.in/the-courtroom-of-dreams-how-kafkas-the-trial-reshapes-our-understanding-of-due-process/>.

19. KAFKA, *supra* note 1, at 3.

20. U.S. CONST. amends. V, XIV (Due Process Clause).

21. Barbita Ghosh, *Absurdity of Law and Order: An Existentialist Reading of Franz Kafka's The Trial*, 9 INT'L J. ENG. LITERATURE & SOC. SCI. 150, 150 (2024).

22. KAFKA, *supra* note 1.

23. *Id.* at xviii (discussing how this version of the novel, as the closest translation to the original work, makes it clear that, though the reader is unclear about the circumstances surrounding Josef's arrest, there is no doubt that he is innocent.)

24. *Id.* at 91.

25. *Id.* at 92.

26. *Id.* at 151–52, 156–57.

objections and expects procedural fairness.²⁷ Instead, his behavior itself is treated as incriminating.²⁸ His protestations are interpreted as arrogance, and his insistence on innocence as naïveté or denial.²⁹ Josef's uncle tells him that his attitude is not pleasing at all, emphasizing that Josef's indifferent demeanor is inconsistent with how an innocent man acts.³⁰ Furthermore, in response to Josef discussing the completion of his court petition, the priest responds that his guilt is assumed proven.³¹ Through this, Kafka exposes a dangerous legal logic: asserting one's innocence serves as evidence against oneself. This legal logic replaces the presumption of innocence with a presumption of duplicity—a maxim that only the guilty would protest so forcefully.

This sentiment is echoed later by both Josef's uncle and the painter, both of whom advise him to abandon open assertions of innocence and instead seek quiet accommodation.³² The painter explains that acquittal is rare and often meaningless, discussing how there is no such thing as acquittal in these cases and that the best one can hope for is “protraction.”³³ The goal of the defense, then, is to aim to functionally manage the optics of an unfavorable situation. In this system, innocence is not a legal status but a prejudged social performance.

It is inevitable that the erosion of the presumption of innocence ends up reshaping an individual's self-perception as well. Josef's treatment throughout the novel eventually leads to him internalizing accusations of guilt. Josef begins the novel confident in his blamelessness, with Kafka repeatedly emphasizing Josef's indifference to the substance of the legal proceedings.³⁴ Josef initially treats his arrest as a bureaucratic error and assumes that clarity will arrive once the confusion is resolved.³⁵ However, this assumption erodes over time. As one commentator observes: “[Josef K.] thinks it's all a mistake or joke. But as days turn into weeks and months, we see him change.”³⁶ By the middle of the novel, Josef oscillates between asserting innocence and anxiously endeavoring to assist his lawyer.

27. *Id.* at 45–53.

28. *Id.*

29. *Id.*

30. *Id.* at 92.

31. *Id.* at 212–13.

32. *Id.* at 152–62.

33. Protraction is where the trial is constantly kept at the lowest level. The defendant will meet the relevant judge at regular intervals, but the trial will never progress beyond its initial stage. With protraction, the defendant is spared the shock of sudden arrests and doesn't have to worry about the “stress and strain” connected with securing an apparent acquittal. *Id.* at 160–61.

34. *Id.* at 91.

35. *Id.*

36. Bansal & Singh, *supra* note 18.

Eventually, Josef’s anxiety regarding the case overwhelms his mental state, causing him to push his work aside in favor of attempting to draft general outlines of a petition to assist with his case.³⁷ The longer Josef exists under accusation without explanation, the more the accusation and the associated guilt become concrete in his mind.

This internalization is further reflected in the parable recounted by the prison chaplain.³⁸ The man from the country never enters the Law³⁹ because he accepts the gatekeeper’s authority without challenge.⁴⁰ The chaplain states, “[t]he court wants nothing from you. It receives you when you come and dismisses you when you go.”⁴¹ This statement frames the court as omnipotent—beyond the requirement of proving guilt. Instead, individuals functionally volunteer themselves into judgment by accepting its legitimacy, rather than challenging the bias protection of the court pre-conviction. In this system without a presumption of innocence, submission replaces fair adjudication.

This reading resonates with existentialist readings of *The Trial* that emphasize the absurdity of law in the novel. Scholars argue that Kafka’s world exposes the fragility of human rights and the incomprehensible nature of justice when procedural norms are distorted or absent.⁴² The novel turns the entire system into an absurd operation where rights cannot be asserted because the mechanisms for asserting them simply do not exist.

Kafka’s *The Trial* artfully anticipates the advent and logic of the court of public opinion. Josef’s case is widely known among court officials, painters, lawyers, neighbors, and the rest of the cast of characters featured in the novel, despite the absence of any formal record.⁴³ Rumors and theories, potential stains on Josef’s reputation, circulate faster than facts. People know of the accusations against Josef, and that knowledge alone alters their behavior toward him. For example, the painter, Titorelli, explains how judges are influenced by social networks and impressions rather than formal proof.⁴⁴ In this regard, guilt mutates into a social contagion sustained through rumor and institutional inertia.

37. KAFKA, *supra* note 1, at 126.
 38. The individual once described as the priest in *The Trial* is also titled the prison chaplain. *Id.* at 215.
 39. “[T]he Law” is used in the parable, I believe, to represent access to justice. *Id.*
 40. *Id.* at 215–22.
 41. *Id.* at 224.
 42. Ghosh, *supra* note 21, at 151.
 43. KAFKA, *supra* note 1.
 44. *Id.* at 147–51.

This core principle fits almost perfectly into analyses of contemporary media environments where allegations, especially those amplified by news cycles or media platforms, precede investigation and strongly shape public perception. Kafka's concern is about accusation without clarity and, much like Josef, modern defendants may find that the practical question has changed from "Did this happen?" to "How do you recover once allegations have been cast?" *The Trial's* key insight is that once innocence is undermined in the public eye, the damage is irreversible, even absent conviction.

The novel's final scene, where Josef is executed "like a dog," emphasizes Kafka's key warning: when innocence is not presumed, due process becomes ornamental and the exercise of bureaucratic power no longer requires reasonable justification.⁴⁵ Josef was not secretly guilty or ignorant about the behavior that caused these proceedings to commence.⁴⁶ By the time of his execution, Josef's friends, neighbors, and even his lawyer either withdrew support or proved incapable of intervening, leaving him isolated within a system that offered no real defense.⁴⁷ In this sense, his death was carried out with a ritualistic inevitability rather than as a result of any fair adjudication. The novel never even addresses the question of guilt beyond implications.⁴⁸ Resolution of this question of guilt is purposefully ignored, as it would be antithetical to the concern Kafka is trying to convey: the horror of this system is that it does not need to know whether a person is truly guilty to pass judgment.

II. THE EVOLUTION AND EROSION OF THE PRESUMPTION OF INNOCENCE

A. *Development of the Presumption of Innocence*

The importance of the presumption of innocence seems to be widely acknowledged, but the origins of it are quite murky. Many legal scholars believe that it originated in English law, while others postulate some French

45. *Id.* at 231.

46. *Id.* at xviii–xix.

47. *Id.* at 157–62, 196–98.

48. *Id.*

and Roman connections.⁴⁹ However, the concept traces all the way back to ancient Babylon's Code of Hammurabi, in which the accuser must present evidence against the accused.⁵⁰ The Code of Hammurabi was a seven-foot stone monument inscribed with an amalgamation of rules from various parts of the kingdom of Mesopotamia.⁵¹ These rules were extremely important when it came to economic, familial, and civil stability.⁵² The stone tablet also featured a carving of the king receiving the laws from Shamash, the Mesopotamian god of justice and equity, implying that this collection of rules was divinely ordained.⁵³ Perhaps there is some truth to the divine and inherent nature of this right, considering its existence in many of the great civilizations, despite language barriers preventing the decryption of the nuances in each civilization's interpretation of this ideal.⁵⁴

Although the principle is not mentioned by name in the American Constitution, it has been ingrained into common law through numerous cases.⁵⁵ *Coffin v. United States* is the first and most well-known of these cases.⁵⁶ In *Coffin*, the lower court refused to give an instruction regarding the presumption of innocence because they mistakenly believed that the reasonable-doubt instruction also encompassed the presumption of innocence statement.⁵⁷ However, the Supreme Court emphasized the importance of this presumption in its opinion, saying that presumption of innocence is an idea that is "the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law."⁵⁸ In reasoning as such, the Court held that the presumption

49. Don Pumphrey, Jr., *Innocent Until Proven Guilty: The History and Current Application of the Presumption of Innocence*, PUMPHREY L. (July 1, 2021), <https://www.pumphreylawfirm.com/blog/innocent-until-proven-guilty-the-history-and-current-application-of-the-presumption-of-innocence/> [perma.cc/9S3F-URUK]; Nate Bernard, *What Does "Innocent Until Proven Guilty" Really Mean?*, BERNARD L. (June 11, 2025), <https://natebernardlaw.com/blog/what-does-innocent-until-proven-guilty-really-mean> [perma.cc/9LH2-VXH2]; Kenneth Pennington, *Innocent Until Proven Guilty: The Origins of a Legal Maxim*, 63 JURIST 106, 107 (2003).

50. Pumphrey, *supra* note 49; Heather Wake, *How a 3,800-Year-Old Stone Tablet Helped Create Modern Legal Systems*, UPWORTHY (Oct. 1, 2022), <https://www.upworthy.com/history-of-innocent-until-proven-guilty> (last visited Apr. 26, 2026).

51. Wake, *supra* note 50.

52. *Id.*

53. *Id.*

54. Pumphrey, *supra* note 49.

55. Maedot Tekka, *Is the Presumption of Innocence in the Constitution?*, LAWINFO (Nov. 13, 2023), <https://www.lawinfo.com/resources/criminal-defense/is-the-presumption-of-innocence-in-the-consti.html> (last visited Apr. 26, 2026).

56. *Coffin v. United States*, 156 U.S. 432 (1895).

57. *Id.* at 452.

58. *Id.* at 453.

of innocence is more than just a rule of proof that could be lumped together with the burden of proof statement.

Though this is the primary example of the Court's recognition of the presumption of innocence, the Court further elaborated on this principle in *Hopt v. Utah*.⁵⁹ In *Hopt*, the Supreme Court considered jury instructions which stated that "[t]he court charges you [the jury] that the law presumes the defendant *innocent until proven guilty* beyond a reasonable doubt,"⁶⁰ and that "the guilt of the accused . . . must necessarily be deduced from a variety of circumstances leading to proof of the fact."⁶¹ In other words, the Court has historically recognized the importance of preserving an individual's innocence until concrete evidence emerges to suggest otherwise.

The primary importance of this innocence presumption is to prevent jurors from being misled in criminal trials, ensuring they do not construct speculative versions of the truth instead of recognizing the objective reality of the evidence that lies in front of them.⁶² This serves to constrain speculative biases introduced by external influences, such as the media or personal connections. As a result, the sequestration of jurors is an established practice whose aim is to insulate the jury from prejudicial information, media coverage, and community pressures that could serve as a threat to objective judgment.⁶³

Though the United States has integrated this principle, at one point declaring it a core tenet of the legal system, some see a devolution of its social and legal impact.⁶⁴ In 1979, the Supreme Court reduced the presumption of innocence—a once integral part of a just and fair trial—to nothing more than a shadow of its former glory.⁶⁵ Though the Court reiterated the importance of the presumption of innocence as extolled in *Coffin*, the Court limited the application of this principle in its analysis.⁶⁶ The Court expressly stated that the presumption of innocence does not apply to a determination of the rights of a pretrial detainee during confinement,

59. *Hopt v. Utah*, 120 U.S. 430 (1887).

60. *Id.* at 439 (emphasis added).

61. *Id.*

62. *Id.* at 440.

63. *State v. Mastrian*, 171 N.W.2d 695 (Minn. 1969); *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *State v. Willis*, 371 So. 2d 1327 (La. 1979).

64. Lily Rothman, *The Meaning of 'Presumed Innocent' Has Evolved. Here's How the Kavanaugh Hearings Fit into That History*, TIME (Oct. 5, 2018, 5:48 PM), <https://time.com/5417005/presumption-of-innocence-history/>; *Coffin v. United States*, 156 U.S. 432 (1895).

65. *Bell v. Wolfish*, 441 U.S. 520 (1979).

66. *Id.*

before their trial even begins.⁶⁷ Critics have responded that the pretrial setting is exactly where the presumption of innocence would do the most good, especially when it comes to the emergence of pretrial and societal biases.

Conversely, the principle has been strengthened in England and France. Regarding seventeenth-century France, in particular, scholars observed its historical fluctuations and attributed them to a competing principle—“the idea that he who spares the guilty punishes the innocent.”⁶⁸ France thus saw a normalization of torture to elicit confessions and punishments being administered upon accusation rather than conviction.⁶⁹ However, scholarly analysis showed that strengthening the right to the presumption of innocence could change this trend, as it had slowly become cemented as a principle that affected human dignity.⁷⁰ The French Civil Code goes so far as to proclaim that “everyone has the right to respect of the presumption of innocence,” leading to the legal recognition of the right not to be handcuffed upon arrest as well as the prohibition of showing the suspect in handcuffs, as it interferes with an individual’s personal right to dignity.⁷¹ Constables in London, too, were warned against handcuffing an “unconvicted prisoner except in case of actual necessity” in an effort to avoid exposing the suspect to “avoidable degradation.”⁷²

In contrast, American scholars have emphasized that adopting a literal and broad interpretation of the presumption of innocence would severely damage the legal system, considering the difficulty it would cause for the police who would no longer be able to arrest people without convictions as easily.⁷³ Even law-and-order campaigners have agreed that this interpretation would lead to severe ramifications.⁷⁴ This narrowed perception of an essential principle has become a human rights issue, allowing police and the public to conflate those accused with those convicted and strip them of their dignitary rights.⁷⁵ From an outsider’s perspective, consequently, it is reasonable to see treatment of this principle

67. *Id.* at 533.

68. Rothman, *supra* note 64.

69. *Id.*

70. *Id.*

71. François Quintard-Morénas, *The French Have a Legal Point*, N.Y. TIMES (May 26, 2011, 10:05 PM), <https://www.nytimes.com/roomfordebate/2011/05/26/can-strauss-kahn-get-a-fair-trial/the-french-have-a-legal-point> [perma.cc/BY2R-8W6U]; Loi 93-2 du 4 janvier 1993 portant réforme de la procédure pénale [Law 93-2 of January 4, 1993 on the Reform of Criminal Procedure], Journal Officiel de la République Française [J.O.] [Official Gazette of France], Jan. 5, 1993, p. 215 (Fr.).

72. Quintard-Morénas, *supra* note 71.

73. *Id.*

74. *Id.*

75. *Id.*

as superficial and closer to a popular social norm rather than the legal principle it was meant to be. This perspective is further substantiated by the government's lack of enforcement of this principle, even when it led to many deaths.⁷⁶

This lack of will to preserve the established principle raises Sixth Amendment concerns, particularly regarding the right to a fair trial. In 1978, the Supreme Court held that the trial court's refusal to give an instruction on the presumption of innocence violated the defendant's right to a fair trial under the Due Process Clause of the Fourteenth Amendment.⁷⁷ In fact, this refusal was considered so egregious that the conviction was reversed due to this fundamental error.⁷⁸ However, not even a full year later, the Supreme Court commented again on this principle of presumption of innocence, saying that it is not a requisite instruction that needs to be issued in every criminal case.⁷⁹ In fact, the instruction need only be given if, in light of the totality of the circumstances, it is required.⁸⁰

B. Modern Difficulties in Enforcing the Innocence Presumption

Modern decisions have diverged from the long-held idea that confinement of the jury is required, at least in criminal cases, to ensure an uninfluenced verdict.⁸¹ Reluctance to order sequestration may also stem from the trial court's perspective, balancing the need for a fair trial against the hardships imposed and the costs involved.⁸² Though the exposure of jury members to the media coverage and the opinions of the general public regarding various cases can present a variety of legal issues and negatively impact how the accused individual is viewed, jury sequestration could also result in sympathy to the accused in a way that may also affect objectivity.⁸³

76. *Id.*

77. U.S. CONST. amend. XIV, § 1; *Taylor v. Kentucky*, 436 U.S. 478 (1978).

78. *Taylor*, 436 U.S. at 490.

79. *Kentucky v. Whorton*, 441 U.S. 786, 790 (1979) (discussing that the Court's inquiry regarding whether the instruction should be given depends on their determination of whether the failure to give such an instruction in the present case deprived the respondent of due process of law).

80. *Id.*

81. *State v. Pontery*, 117 A.2d 473 (N.J. 1955) (emphasizing the age of the decisions that favored mandatory jury sequestration).

82. *State v. Mastrian*, 171 N.W.2d 695 (Minn. 1969); *Sheppard v. Maxwell*, 384 U.S. 333 (1966); 2 Richard B. McNamara, *New Hampshire Practice: Criminal Practice and Procedure* § 31.25 (7th ed. 2023). These cases are all more recent in comparison to the *Pontery* case. In these cases, jury sequestration is not a requirement as it was in *Pontery*.

83. See Ryan P. Barry, *Is Jury Sequestration Actually Effective?*, BARRY, TAYLOR & LEVESQUE, LLC (Apr. 9, 2020), <https://www.bbsattorneys.com/blog/is-jury-sequestration-actually-effective/> [perma.cc/6NDW-EAYG].

Proper jury sequestration would require total control regarding a juror's access to everything—mail, television news, cell phones, etc.⁸⁴ Life for these individuals may become something comparable to confinement and, as a result, may cause them to view the accused in a more sympathetic light, consequently affecting their objectivity in determining a suitable verdict.⁸⁵ Though there are difficulties in implementing a mechanism such as this, the result would be a system where those accused would not be preemptively judged and, therefore, subject to baseless assumptions, preserving a principle that was once declared to be “the undoubted law . . . [whose] enforcement lies at the foundation of the administration of our criminal law.”⁸⁶

The presumption of innocence is also negatively affected by the allowance of various surveillance programs and new-age policing.⁸⁷ Much like Josef in *The Trial* was subjected to a faceless judicial process, many individuals today face scrutiny and judgment based on their online data, often without their knowledge or consent. This information can also lead to assumptions of guilt or character without the necessary due process. In cases like *Olmstead v. United States*⁸⁸ and *Katz v. United States*,⁸⁹ the Supreme Court has ruled that each individual is guaranteed a reasonable expectation of privacy, but this rule has proven to be insufficient when it comes to maintaining what a reasonable person would term as private information. In light of *Dobbs v. Jackson Women's Health*, the Supreme Court cast doubt on the scope of previously recognized substantive due process rights, including aspects of privacy.⁹⁰ This means that states may have greater leeway to regulate or require disclosure of medical information.⁹¹ However, *Dobbs*' impact reaches beyond just women's medical history and data being exploited. From surveillance through geolocation monitoring of abortion clinics to monitoring women's search history and private messages under the guise of adhering to preventative tactics, the dystopian reality of an oppressive and almost omniscient bureaucracy risks being brought to life.⁹²

84. *Id.*

85. *Id.*

86. *Coffin v. United States*, 156 U.S. 432, 453 (1895).

87. Antonella Galetta, *The Changing Nature of the Presumption of Innocence in Today's Surveillance Societies: Rewrite Human Rights or Regulate the Use of Surveillance Technologies?*, 4 EUR. J. L. & TECH. (2013), <https://ejlt.org/index.php/ejlt/article/view/221/377> [perma.cc/HPF6-336Z].

88. *Olmstead v. United States*, 277 U.S. 438 (1928).

89. *Katz v. United States*, 389 U.S. 347 (1967).

90. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

91. *Id.*

92. For more on the risks that *Dobbs* poses to privacy, see generally Mikayla Domingo, *One Nation, Under Dobbs: How Dobbs v. Jackson Women's Health Impacts Data Privacy for All*, 15 U.C. SCI. & TECH. J. 35 (2024).

C. Effects of Weakening the Presumption of Innocence

Weakening the presumption of innocence can lead to the government unfairly intruding on an individual's privacy. The Supreme Court has authorized, for instance, surveillance based merely on suspicion instead of searches based on evidence.⁹³ Even if police only have probable cause, rather than concrete proof, regarding the guilt of an individual, authorities may still investigate them. Critics have caught on to this apparent erosion of privacy, noting that the behavior of the individual, "[their] guilt or innocence" and their "use of putatively 'private' space—is irrelevant" to whether they may be investigated.⁹⁴ The Court in *Terry v. Ohio* sanctioned stops and searches based on reasonable suspicion rather than probable cause.⁹⁵ In enforcing laws based on suspicion, there emerges an increased risk of lines blurring in this legal demarcation—what is sufficient to prompt suspicion? Consequently, what level of suspicion results in preconceived societal judgment?

New-age policing also threatens the innocence-presumption principle, especially in relation to warrantless searches and unconstitutional investigatory stops.⁹⁶ The twentieth century saw the emergence of rules such as the exclusionary rule, inevitable discovery doctrine, and attenuation doctrine.⁹⁷ By ruling that certain evidence is admissible despite procurement stemming from an unconstitutional investigatory stop, the Court gives officers the liberty to probe and examine individuals despite a lack of reasonable suspicion, as long as the officer can point to some "pretextual justification after the fact."⁹⁸ If an officer believes an individual to be dangerous, the Supreme Court has given law enforcement the power to stop them for no reason, sometimes even allowing them to go as far as to perform

93. *Florida v. Riley*, 488 U.S. 445, 448–50 (1989) (discussing use of helicopters to surveil property based on a suspicion of a crime).

94. Sherry F. Colb, *Innocence, Privacy, and Targeting in Fourth Amendment Jurisprudence*, 96 COLUM. L. REV. 1456, 1468–73 (1996) (further discussing how even if parties are injured by unreasonable searches, there is no violation of the right of privacy nor any constitutional harms despite a sense of discomfort being created because the "reasonable" search is not a strict standard).

95. *Terry v. Ohio*, 392 U.S. 1 (1968).

96. *Utah v. Strieff*, 579 U.S. 232 (2016).

97. See generally ERWIN CHERMERINSKY & LAURIE L. LEVENSON, CRIMINAL PROCEDURE: INVESTIGATION (4th ed. 2022). In criminal procedure, these doctrines and rules are used to justify whether evidence can or should be suppressed such that they cannot be introduced in trials to induce conviction of an individual. However, these rules share a common characteristic in that, despite warrant protections in the Fourth Amendment implemented to assure a sense of security from invasion (bodily or privacy), they allow law enforcement to circumvent the warrant requirement such that, if there is sufficient societal or government interest in preventing a crime, the warrantless procurement of evidence will be ruled as constitutional and not in violation of an individual's Fourth Amendment rights.

98. *Strieff*, 579 U.S. at 252 (Sotomayor, J., dissenting).

a full body frisk that encompasses more than just a mere pat down.⁹⁹ Despite their innocence, many are, in this way, subjected to the social humiliation of these probably-unconstitutional searches, and those onlookers surrounding this situation subject the searched individual to a level of scrutiny akin to accusation, dooming legally innocent individuals to a civil death.¹⁰⁰ Justice Sotomayor emphasizes the possibility of this horrific sentiment, saying, “[This decision declares] your body is subject to invasion while courts excuse the violation of your rights. It implies that you are not a citizen of a democracy but the subject of a carceral state, just waiting to be catalogued.”¹⁰¹ Without the principle of presumption of innocence, it becomes easy to allow groundless searches, since the assumption is that individuals must fight to assert their innocence rather than be afforded the right of the State taking on the burden to prove guilt.

The advent of corporate technology that allows for widespread misinformation and unjust penalties also has a negative impact on the presumption of innocence. Social media companies’ dissemination of incriminating information encourages the general consumer to pass lightning-fast judgments on individuals without understanding the truth of the situation or even caring to explore further to verify the reality.¹⁰² These algorithms create echo chambers, insulating individuals to the point where they truly believe that they are always in the right, and they inevitably create spaces where the spread of fake news and misinformation runs rampant.¹⁰³ This less-than-ideal distortion of information when disseminated is made worse due to the fact that most Americans do not fact-check the information they encounter.¹⁰⁴ Though this may stem out of a sense of trust in their family, friends, and those they surround themselves with in the online space, the effects are no less devastating when it comes to the presumption of innocence.¹⁰⁵ Many studies have discussed the bias that stems from the amount of pretrial publicity a case receives, which is a glaring problem considering that media can disseminate opinions and inaccuracies about a

99. *Id.* at 253.

100. *Id.*

101. *Id.* at 254.

102. William Brady & THE CONVERSATION US, *Social Media Algorithms Warp How People Learn from Each Other*, SCI. AM. (Aug. 25, 2023), <https://www.scientificamerican.com/article/social-media-algorithms-warp-how-people-learn-from-each-other/> [perma.cc/NG2D-MEZM].

103. Yichang Gao et al., *Echo Chamber Effects on Short Video Platforms*, 13 SCI. REPS. 1 (2023).

104. Eileen Brown, *9 out of 10 Americans Don't Fact-Check Information They Read on Social Media*, ZDNET (May 10, 2017, 2:00 PM), <https://www.zdnet.com/article/nine-out-of-ten-americans-dont-fact-check-information-they-read-on-social-media/> (last visited Apr. 26, 2026).

105. *Id.*

case without facing much liability due to First Amendment Protections.¹⁰⁶ In fact, the United States has recognized this issue of pretrial publicity's impact on making "accused" and "convicted" synonymous, particularly with the Scott Peterson case.¹⁰⁷

In the early 2000s, Scott Peterson was suspected to have killed his wife and unborn child and, before Peterson got his chance at a fair trial, the *New York Post* ran an article entitled "Monster in Chains," with a picture of Peterson in an orange jumpsuit with his hands bound.¹⁰⁸ Years later, the Los Angeles Innocence Project would take on this case and new evidence would be put forth, causing the Court to re-examine Peterson's innocence, especially considering the bias of previous jurors in the early trial of the case.¹⁰⁹ Nevertheless, Peterson was vilified through multiple forms of media before judgment; the truth of his innocence or guilt was irrelevant because he was condemned before any formal verdict—much like *The Trial*'s Josef. Despite the effect of these privacy harms, courts are unwilling to do much.¹¹⁰ Frustration, aggravation, anxiety, and inconvenience are all effects that lack legal remedy, but when these "minor issues" are suffered at a major scale, they produce significant harms, many of which do not align with the current judicial definitions of harm.

III. THE EROSION OF THE PRESUMPTION OF INNOCENCE IN THE LEGAL SYSTEM AND ITS EFFECTS ON SOCIETY

In *The Trial*, Kafka portrays a legal system whose primary goal appears to be domination, subjugation, and the perpetuation of its own power. The system is completely self-serving—indifferent to the rights of individuals and obsessed with prioritizing its own survival. In contrast, the U.S. system seems to be built on ideas of protecting individuals, ensuring justice, and maintaining social order. To establish a legal system and government that is truly for the people as lauded in the Constitution, it becomes undoubtedly vital to understand and establish exactly what the purpose of the system is

106. Ariana Tanoos, Note, *Shielding the Presumption of Innocence from Pretrial Media Coverage*, 50 IND. L. REV. 997, 1004, 1008–09 (2017).

107. See Quintard-Morénas, *supra* note 71.

108. See *id.*; Denise Noe, *Scott Peterson: The Pregnant Wife Killer*, CRIME MAG. (Oct. 6, 2010), <https://www.crimemagazine.com/scott-peterson-pregnant-wife-killer> [perma.cc/DAK4-AWTX].

109. Alex Stone et al., *Scott Peterson Case Taken Up by Los Angeles Innocence Project*, ABC NEWS (Jan. 18, 2024, 5:42 PM), <https://abcnews.go.com/US/innocence-project-takes-case-notorious-killer-scott-peterson/story?id=106487571> [perma.cc/JN24-7NN2].

110. Danielle Keats Citron & Daniel J. Solove, *Privacy Harms*, 102 B.U. L. REV. 793, 798 (2022) (citing Danielle Keats Citron, *The Privacy Policymaking of State Attorneys General*, 92 NOTRE DAME L. REV. 747, 798–99 (2016) ("For most courts, privacy and data security harms are too speculative and hypothetical, too based on subjective fears and anxieties, and not concrete and significant enough to warrant recognition.")).

and the aims that the system should accomplish. And, at the core of the legal system, based on the historical context from which the nation was forged, is the aspiration to promote equality, safeguard freedoms, and provide a framework within which a society can function harmoniously. Over time, though, it seems as if these objectives have been distorted or transformed, resulting in practices that undermine the presumption of innocence—a key principle that is integral to ensuring true justice and fairness within the justice system and society generally.

Kafka's *The Trial* critiques the justice system by illustrating the devastating consequences of disregarding the presumption of innocence. The protagonist, Josef, is arrested without explanation and denied any meaningful opportunity to defend himself. The legal system in *The Trial* operates on assumptions of guilt, and the overwhelmingly incomprehensible nature of the law traps Josef in a state of helplessness, stripping him of true agency. The absence of the presumption of innocence here distorts the law into an oppressive force that does not protect or serve justice in the traditional sense, but rather works to victimize and subjugate individuals.

The United States justice system seems to reflect this desolate reality with the justice system often isolating disadvantaged individuals, leaving them on the outside looking in, unable to access the protections promised by the law. Throughout history, there have been various policy initiatives that were designed only to benefit members of a specific socioeconomic group. The policies neglected to consider the intersection of race and class as there is a racial component to socioeconomic class.¹¹¹ Criminal justice reformers focus on these policies that fail to consider the intersection of race, class, and even gender.¹¹² Neglecting to provide various disadvantaged groups with the proper equitable policies to close the gaps between various demographics is not only detrimental to the promotion of unity among communities, but also serves as reinforcement of a divide between groups, isolating individuals and communities in a way that is contrary to our best

111. *Id.*

112. Olena Hankivsky & Renee Cormier, *Intersectionality and Public Policy: Some Lessons from Existing Models*, 64 POL. RSCH. Q. 217 (2011).

interest as a country.¹¹³ In this reality, the individual exists apart from society, always on the outside looking in, never feeling the protection of justice that the law promised to uphold. This alienation reflects a breakdown of the presumption of innocence, as marginalized individuals are treated as guilty until proven innocent, whether through racial profiling, socioeconomic bias, or discriminatory practices.

Many judges and justices consciously, or unconsciously, wield their power to increase the presence of chasms in equality such as the race, class, and gender-race gap. For example, many Black Americans have reported that they have been subject to racial profiling.¹¹⁴ Racial bias in policing is one of many details that describe a system that presumes guilt disproportionately when it comes to certain demographics. It is also one that carries heavy consequences. Racial bias in policing can lead to many wrongful convictions, completely disregarding the principle of presumption of innocence, considering that racial injustice is “ingrained in the criminal legal system” in such a way that it leads to a frequent denial of a “fair shot at justice.”¹¹⁵ This racial bias is present in tools used for policing as well, with facial recognition mechanisms violating the privacy of Black and Brown people.¹¹⁶

New tools further undermine the presumption of innocence. For example, algorithmic risk assessment is often used in the criminal justice system to predict a defendant’s likelihood of reoffending and to guide decisions about bail, sentencing, and parole.¹¹⁷ Risk assessment algorithms may rate a person high risk in regards to committing more crimes, but the algorithm does not take into account the fact that certain communities, often those filled with people of color, are typically policed more heavily and, as a result, see a higher number of arrests.¹¹⁸ However, this tool does not take

113. RISA WILKERSON, *SOCIALLY CONNECTED COMMUNITIES: SOLUTIONS FOR SOCIAL ISOLATION, HEALTHY PLACES BY DESIGN* (Sarah Moore ed., 2021), [https://healthyplacesbydesign.org/wp-content/uploads/2021/03/Socially-Connected-](https://healthyplacesbydesign.org/wp-content/uploads/2021/03/Socially-Connected-Communities_Solutions-for-Social-Isolation.pdf)

[Communities_Solutions-for-Social-Isolation.pdf](https://healthyplacesbydesign.org/wp-content/uploads/2021/03/Socially-Connected-Communities_Solutions-for-Social-Isolation.pdf) (focusing on how social well-being is based on the strength of an individual’s relationships and social inclusion and how socially connected communities contain individuals that are bolstered by their support despite systemic oppression and exclusion). The rise of social isolation is not a personal choice or individual problem, but rather one that is rooted in community design, social norms, and systemic injustices. Without community and social acceptance, an individual suffers from feelings of isolation that may lead to bouts of loneliness, depression, and may even trigger feelings of suicide.

114. See *Racial Profiling*, ACLU, <https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/racial-profiling> [perma.cc/L54T-SBBZ].

115. Daniele Selby, *How Racial Bias Contributes to Wrongful Conviction*, INNOCENCE PROJECT (July 17, 2021), <https://innocenceproject.org/how-racial-bias-contributes-to-wrongful-conviction/>.

116. *Id.*

117. *Id.*

118. *Id.*

into account the “false positives”—where the people arrested were later found innocent—that were caused by the exorbitant amount of arrests.¹¹⁹

This risk assessment tool was also found to incorrectly predict that Black defendants were twice as likely to commit more crimes in the future compared to their White counterparts.¹²⁰ A ProPublica article highlighted this machine bias and also found that, inversely, the risk assessment tool underestimated the risk of White defendants committing future crimes.¹²¹ One of the main issues here seems to be that this risk assessment tool uses information that comes from unregulated databases—a mechanism that is subject to the unfair discretion of police officials adding whomever they please.¹²² Predictably, people of color are overrepresented in these databases and, since the police are generally not required to inform people that they have been added to this database, there is an extremely low level of transparency surrounding these records.¹²³ When the tools that officials utilize operate on stereotypes and harmful biases, how is the presumption of innocence able to be adhered to? The very purpose for the founding of the principle seems to have gotten lost through the years, with the need for control overwhelmingly outweighing the interest and autonomy of the individual.

Kafka’s novel also comments on the isolationist tendencies of the law, specifically how the legal system seems to victimize and dominate innocent people in such a way that it becomes almost incomprehensible as a mechanism of establishing and perpetuating order.¹²⁴ From the very beginning of the novel, Kafka has established the law to be an overpowering and inescapable presence, creating a chilling sense of helplessness that surrounds Josef, suffocating him through an unjust justice system. The system built to protect its constituents has insulated itself from growth, uncaring of a proper administration of justice and obsessed with maintaining

119. *Id.*

120. Julia Angwin et al., *Machine Bias*, PROPUBLICA (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing> [perma.cc/2K2B-TRJM].

121. *Id.*

122. Peter DeAngelis, *Racial Profiling and the Presumption of Innocence*, 43 NETH. J. LEGAL PHIL. 43, 43–58 (2014) (specifically discussing how, though the Fourth Amendment could offer protection against the police searches and seizures, it doesn’t actually provide enforceable protections in the occasions of “spurious accusation by state agents that the citizen who is profiled is engaged in criminal wrongdoing”).

123. Selby, *supra* note 115.

124. Espen Hammer, *Kafka’s Modernism: Intelligibility and Voice in The Trial*, in *KAFKA’S THE TRIAL: PHILOSOPHICAL PERSPECTIVES* 227 (Espen Hammer ed., 2018). It is important to note that where Hammer discusses intelligibility as the communication between characters breaking down, I see this intelligibility as lying within the relationship between an individual and the government. Essentially what I seek to put forward is the intelligibility of the law.

its own power. The law is a quietly dominating force, distant and impersonal—with courtrooms hiding in obscure and decaying parts of the city.¹²⁵ These aspects further serve to create a reality where the law is not even interested in ideas of innocence and guilt, simply acting on a whim.

IV. REFORM PROPOSAL

Kafka's narrative introduces this idea of both the psychological and societal impact of this convoluted bureaucracy that refuses to acknowledge the most basic of rights—the idea of inherent innocence until proven otherwise. This fundamental principle, once a cornerstone of justice, is eroded in Kafka's world, replaced by an impenetrable legal system that thrives on secrecy and fear. In such a structure, the law is used as an oppressive force, stifling the potential bonds of community that an individual can create as well as hindering societal development. Kafka's version of bureaucracy is unaccountable and detached from the people it is meant to serve. It is both a harrowing vision for the future and an eerily apt analogy for the present.

Modern parallels can be observed in the overwhelming complexity and subsequent inaccessibility of the judicial process, where prolonged trials, excessive legal jargon, and systemic barriers, such as racial profiling and the consequent mass incarceration, prevent equitable access to justice. These details illustrate how Kafka's critique of bureaucracy is not merely paranoid ramblings, but is rather a mirror that reflects the flaws within our societal structure.

A. Media Coverage and the Court of Public Opinion

In practice, it may be difficult to curb the instinct to jump to conclusions about an individual's guilt—a challenge made harder only by the media's reach and the rapid dissemination of information.¹²⁶ As mentioned in the first section of this paper, the court of public opinion that the media fuels is dangerous, especially for those individuals that have been branded as guilty without conviction. The Goliath-like media conglomerates may only truly be restrained by the very system that otherwise lets them run rampant. Recognizing this, our approach to law and the media must dramatically change to preempt any First Amendment arguments that would allow large

125. KAFKA, *supra* note 1, at 38–43, 164 (explaining how Josef is attending proceedings in the attic of a dilapidated tenement and that court offices are located in cramped attic spaces of run-down buildings).

126. Emily Denniss & Rebecca Lindberg, *Social Media and the Spread of Misinformation: Infectious and a Threat to Public Health*, 40 HEALTH PROMOTION INT'L. 1 (2025).

media corporations to continue eviscerating a core tenet of the legal system—the presumption of innocence.

Though the U.S. has repeatedly held that legislation limiting how the media spreads information risks First Amendment challenges, this issue also demands a sociopsychological perspective. Information is a powerful tool and, if wielded carelessly, many may be harmed. In this light, these First Amendment claims should be considered relatively trivial when compared to the lasting damage many individuals can experience due to biased or incomplete reporting. Misleading media coverage can fuel societal judgment and tarnish reputations, affecting employment opportunities and the creation of communal bonds—even when the person in question is legally innocent.

Media sensationalism often frames innocent individuals as villains, though they may have just been wrongfully suspected. Media guidelines must be stricter and enforced in such a way that they prevent prejudicial reporting. Ideally, these guidelines would take the form of legislation that prohibits language that assumes guilt or the requirement of judicial approval for the release of certain details, such as names of accused individuals or mugshots, before a verdict is reached. This may be in the wheelhouse of “prior restraints,” but the government interest in ensuring that individuals are given a fair trial in accordance with the presumption of innocence substantially outweighs any minor burden that may be borne by the media.¹²⁷ Sanction-like penalties must be established for media outlets that violate these guidelines, considering that peoples’ livelihood, reputation, goodwill, and self-worth are all at stake. These penalties, could, for example burden the outlets’ ability to publish or cut their air time. After the offending article has been published and a rousing negative impact is seen, the media outlet should also be subject to retraction of the article, along with a statement assuming responsibility of the misinformation that was published.

The promotion of media literacy must also be considered. Many members of the public unquestioningly accept media narratives, leading to a distortion of truth in the minds of the public and society generally.¹²⁸ Developing public education campaigns that emphasize the importance of withholding judgment until all evidence is presented in court can shift societal norms and foster critical thinking in legal cases. In addition, the

127. *The Doctrine of Prior Restraint*, JUSTIA, <https://law.justia.com/constitution/us/amendment-01/07-the-doctrine-of-prior-restraint.html> (last visited Feb. 20, 2026) (discussing the definition of prior restraints and how the government may be able to pass a law that resembles a prior restraint as long as the government has carried the “heavy burden of showing justification for the imposition of such a restraint”).

128. Catherine Happer & Greg Philo, *The Role of the Media in the Construction of Public Belief and Social Change*, 1 J. SOC. & POL. PSYCH. 321, 321–26 (2013).

integration of media literacy programs in school curricula would teach individuals, in a stage where they arguably need it most, to critically evaluate news and social media content. Social media platforms can become breeding grounds for mob mentality, perpetuating misinformation and rushing to judgment. Addressing this may also help protect the rights of an individual.¹²⁹ When it comes to media scrutiny, the court of public opinion, and general accusation-based prejudice stemming from split-second judgments, are they not sufficient to warrant express implementation of the presumption of innocence according to the totality of the circumstances? And these biases are overwhelmingly common, so one might argue that this should be reflected in the implementation of this innocence-preservation principle.

It is crucial to recognize that allegations alone can destroy an individual's personal and professional life, even if they are later exonerated. Legal protections that allow falsely accused individuals to seek expedited legal recourse should be passed to help assuage defamation or reputational harms. Penalties for violating these protections could take the form of severe fines or temporary restrictions on publication. A framework will have to be developed to distinguish legitimate newsgathering from reporting that is merely inflammatory. The goal of the penalty is to incentivize media organizations, and people generally, to exercise caution in what they say before they air unchecked allegations that could have a devastating domino effect on the reputation of a person who is falsely accused or unfairly portrayed. There should be some framework in place that can distinguish between responsible, fact-checked reporting and exploitative content that hides behind the First Amendment to generate clicks. For instances where the media did engage in proper fact-checking processes but reputational harm still resulted, funds should be available to support those wrongfully accused. This support could address mental health impacts and job placement, helping those individuals rebuild after the systemic failures led to wrongful convictions.¹³⁰ This fund could also be used for reputation restoration efforts because if significant effort is placed into reputation restoration, perhaps the antisocial effects or general stigma surrounding the

129. *How and Why Does Misinformation Spread?*, AM. PSYCH. ASS'N (Mar. 1, 2024), <https://www.apa.org/topics/journalism-facts/how-why-misinformation-spreads> [perma.cc/3XC5-D23P]; *Research Finds Peer Pressure Drives the Spread of 'Fake News'*, DUKE FUQUA SCH. BUS. (Mar. 9, 2023), <https://www.fuqua.duke.edu/duke-fuqua-insights/research-finds-peer-pressure-drives-spread-%E2%80%9Cfake-news%E2%80%9D> [perma.cc/BFS4-J8PP].

130. *The Issues*, INNOCENCE PROJECT, <https://innocenceproject.org/the-issues/> (last visited Feb. 20, 2026).

wrongfully convicted will slowly dissipate.¹³¹ If it is a community that needs to be built and reinforced, the focus should be on making sure that those who do not deserve the public’s critical scrutiny do not have to bear it.

B. Enhancing Transparency and Accountability

Enhanced transparency and accountability would help us avoid Kafka’s harrowing vision. The public’s ability to keep the government accountable fosters trust and faith, two factors essential to maintaining societal bonds. In addition, a transparent system ensures that individuals understand the charges against them and the steps of the judicial process, affirming their rights and dignity.

In modern bureaucracies, there is an established lack of accountability. Citizen input and oversight is required. Though it could be said that citizen input is present, given our democratic system where citizens engage in direct representation practices, this process has caused citizen representatives to become distant from their constituents, and there is a constant feeling from the general public that their elected representatives fail to capture the essence of their constituents’ worries and needs.¹³² People posit that this divide is due to the status elevation granted to politicians.¹³³ People that come to hear the politicians speak end up looking up to them—elevated figures cordoned off from the general public, as if being elected to represent their constituents means that they are no longer peers in democracy; rather, the constituents sit at their feet, gazing up at them.¹³⁴ As a society, some sort of mechanism needs to be implemented that prevents this divide from forming, increasing accountability and transparency within the government that the individual constituent may be able to reach. Methods like town halls and local meetings may seem to fix this issue, but if one engages in a deeper than surface-level analysis, they will find that attendance rates to these meetings are in a constant decline.¹³⁵

131. Claudio Lombardi, *The Illusion of a “Marketplace of Ideas” and the Right to Truth*, 3 AM. AFFS. 198 (2019) (discussing the “marketplace of ideas” theory, where the general consensus is that if everyone is able to voice their opinions, the truth will rise to the top). However, this theory is flawed in practice, in modern day, especially considering that not all thoughts are heard equally given the algorithms’ inclinations to widely disseminate only certain information—viral moments that hold untrue information, but posts refuting this misinformation are rarely as viral.

132. Alex Betley, *The Great Divide: Why We Feel Distant from Our Politicians*, STAR TRIBUNE (Jan. 24, 2016, 8:58 PM), <https://www.startribune.com/the-great-divide-why-we-feel-distant-from-our-politicians/366372001> (last visited Apr. 26, 2026).

133. *Id.*

134. *Id.*

135. See BoxCast Team, *This is Why Your City Council Meeting Attendance is Low*, BOXCAST (July 11, 2018), <https://www.boxcast.com/blog/this-is-why-your-city-council-meeting-attendance-is-low> [perma.cc/8U3R-8ZBC].

The U.S.'s non-local modern economy has created non-local social, political, and legal systems. Town halls or city council meetings were started when people worked nine-to-five jobs that were, in fact, strictly nine-to-five, allowing people to fill their weekly schedule with other social activities.¹³⁶ Nowadays, many people lack the luxury of free time, working all hours to make a living.¹³⁷ In addition, it may be too difficult for constituents to attend the meeting in person because of transportation difficulties or the meeting may run too long, causing individuals to lose time that they needed to finish up other tasks.¹³⁸ The residents of a municipality may care deeply about an issue but may feel excluded when it comes to voicing their opinions because these forums have become inaccessible to them. Failing to give residents the ability to (1) educate themselves about systematic workings and (2) communicate with their representatives erodes trust, leaving constituents doubtful of both officials and the institution.¹³⁹ Public oversight mechanisms to monitor and audit the government, in particular the judicial and legislative systems, are integral to ensure that the government is not acting on biased whims that may lead to an unfair persecution of certain people or unfair policies that create a sense of fear within communities. Without the trust of the public and its ability to keep the government accountable, the government may become an enemy—an overbearing and controlling presence operating at its own discretion without any checks on its power.

The current legal system is one that was founded on many important ideals such as the presumption of innocence but has also reinforced many socioeconomic inequities and granted unequal amounts of power to certain groups. For example, individuals with greater financial means are better positioned to secure experienced legal counsel and, consequently, navigate complex legal procedures, while those from lower-income communities may face prolonged pretrial detention or rely on overburdened public defenders. Similarly, patterns of policing and prosecution have not been evenly distributed, leading to disproportionate surveillance and enforcement in marginalized communities.¹⁴⁰

The amount of precedent accumulated that has permitted intimate surveillance and unchecked investigation is also not something that can be

136. *Id.*

137. *Id.*

138. *Id.*

139. Barbara Gutierrez, *The Public Continues to Lose Trust in Major Institutions—and Each Other*, NEWS @ THEU (Nov. 19, 2021), <https://news.miami.edu/stories/2021/11/the-public-continues-to-lose-trust-in-major-institutionsand-each-other.html>. See particularly the Karin Wilkins sections.

140. Hossein Zare, *Disparities in Policing From Theory to Practice*, 114 Am. J. Pub. Health 384 (2024), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10937607/>.

undone by the mere adoption of new legislation. In fact, the passage of new legislation, in many cases, only serves to slow down the efficacy of the government.¹⁴¹ It is also impossible to say whether the legislation will also be properly enforced, considering that legislation being passed does not always guarantee proper enforcement. And an unenforced piece of legislation is not better than nothing; in fact, in some cases it may actually be worse than no law at all.¹⁴² An unenforced law comes across as a statement of societal indifference—that, though the public seemed to desire legislation that protected a certain aspect of society, the government does not see the importance to expend resources to actually do what the public desired.¹⁴³

CONCLUSION

From institutional complexities to oppressive bureaucratic forces, *The Trial* serves as a powerful literary lens through which Kafka critiques the systemic failures of the legal system, offering reflection on societal anxieties surrounding justice, autonomy, and human dignity. Josef’s plight exposes the alienation and oppression inherent in a system where the presumption of innocence is hollow and where guilt is determined not by evidence, but by societal perception and the judgment of authority figures. In particular, the novel’s parallels to the modern “court of public opinion,” the disregard as to genuine “reasonable belief” surrounding the implication of an individual’s actions, and the lack of respect to an individual’s right of privacy highlight the fragility of foundational legal principles in the face of societal evolution and growing systemic flaws.

The presumption of innocence, once a cornerstone of justice, now struggles to maintain relevance in an era dominated by instantaneous (mis)information and public judgment. The interplay between Kafka’s depiction of a dystopian legal system and contemporary realities underscores the urgent need to uphold this principle and find ways to establish mechanisms through which this principle is truly enforced, not just referenced. In such a system where the presumption of innocence is not respected as paramount, truth becomes secondary and the rights of the

141. See generally Gabriele Gratton et al., *From Weber to Kafka: Political Instability and the Overproduction of Laws*, 111 AM. ECON. REV. 2964 (2021). See Editorial, *Unenforced Law is Worse Than No Law at All*, BOZEMAN DAILY CHRON. (Jan. 23, 2002), https://www.bozemandailychronicle.com/unenforced-law-is-worse-than-no-law-at-all/article_da0f1c03-e2a1-519b-898e-6d146a32af06.html [perma.cc/6QYU-NLH4] [hereinafter *Unenforced Law Is Worse Than No Law at All*].

142. *Unenforced Law Is Worse Than No Law at All*, *supra* note 141.

143. *Id.*

individual are sacrificed at the altar of an uncaring bureaucracy. Without meaningful reinforcement of this protection, society is bound to find itself staring down the barrel of a future where fairness and objectivity are desecrated by the forces of prejudice, unchecked publicity, and institutional stagnation.

