

The Presumption of Innocence Should Not Be Taken Lightly

Last month, Congress voted to strip Rep. William Jefferson (D-La.) of his seat on the powerful Ways and Means Committee, even though he has not been charged with, let alone convicted of, any crime.

True, the allegations contained in FBI documents about cash in his freezer and other potential wrongdoing are serious, but for now, they are allegations.

Jefferson is not alone. Some months ago,

Congress stripped then-Rep. Tom DeLay (R-Texas) of his position as Majority Leader because he had been charged with, but not even tried for, state offenses in Texas. In the past few weeks, CEOs of various public companies have been removed from their positions as a result of media reports, not official investigations, of the backdating of stock options.

Members of Congress have endorsed the actions against their colleagues, stockholders have ratified the actions of their corporate boards, and media editorials have applauded the removals of officials and officers alike. But in the wake of these actions demonstrating how our society is "tough" on crime and ethics, something precious is being lost: the

presumption of innocence.

Our country is unique in its historic adherence to the presumption of innocence, where juries are instructed throughout a case that the high burden of proof lay only with the prosecutors, and the accused never has to prove his or her innocence. We take this fundamental right for granted, and many of us fail to realize that in most other countries — even those of allies and democracies — there is no such presumption, with citizens having to prove their innocence in fear of conviction and penalty.

The same Members of Congress, stockholders and editorial writers who quickly cheer on demotions and firings against those

who merely are accused would, if asked in a neutral setting, surely declare that our country should never give up the presumption of innocence. Yet these actions, where officials and private citizens are disciplined before they are ever charged, tried or convicted, are part of a process that is eroding one of the most important standards of our criminal justice system.

And the erosion continues. More companies are firing employees merely implicated in an investigation, then compounding the problem by refusing to pay for that employee's legal defense simply because a law-enforcement agency has threatened prosecution. In the HealthSouth, KPMG and others' cases, employers penalize their employees even when no charges have been filed, no trials have occurred, and no convictions have resulted, and do so against the employees who claim they were doing no more than carrying out their employer's policies and directions.

When Congress strips one of its Members of a leadership position or when a private employer fires an employee or deprives him or her of attorney's fees, the result (often intended by investigators and prosecutors) is to weaken the individual being investigated and to make that person more susceptible to conviction, even though the system, premised on the presumption of innocence, ought to work the other way. This creates a self-fulfilling result: The conviction of the weakened individual seems to vindicate the initial disciplinary decision to take action against someone who was "guilty" to start off with.

What a contradiction we have created. On the one hand, from the moment a juror is called to duty to the time of jury deliberations, jurors are instructed that a defendant is presumed innocent. Yet all around that trial, the rest of society is taking action to declare just the opposite — demoting, firing and eliminating defense costs.

A few weeks ago, Speaker Dennis Hastert (R-Ill.) began to champion the cause of improper leaks from government investigations because he was the subject of such a leak. Similarly, those applauding these "tough" actions against individuals under investigation would feel differently if they or the breadwinners in their family were the ones being so shabbily treated as a result of an accusation that has not been formally charged or a charge that had not yet been proved in court.

Last week, a federal judge in New York reprimanded federal prosecutors and the accounting firm KPMG for cutting off the legal fees of employees who had been charged, stating: "The imposition of economic punishment ... before anyone has been found guilty of anything, is not a legitimate government interest — it is an abuse of power."

Usually, nature's strongest structures do not simply disappear at one stroke; we lose them through a more gradual erosion, one weather event at a time. The same is true with constitutional rights. There is not much hope for the average American facing charges when, along the way to his or her trial, a high-ranking official is made to leave office, a corporate CEO is asked to step down, or a company's employee is cut off from a legal defense before charges are filed or proved.

It is hard enough to get juries to genuinely accept and believe that a presumption of innocence exists when they stand accused by prosecutors. Judges can instruct all they can, but if the rest of the messages sent by society undermine the notion, then the presumption of innocence, like some of our natural resources, may be gone before we realize it.

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An open letter to the Bush administration and members of Congress:

Innovation is the backbone of the American economy. Innovation-based American businesses make up 40% of domestic economic growth and 60% of export growth. When it comes to new innovations, small business is leading the way.

With increasing competition from overseas, we're looking to the Bush administration and Congress to help America's small businesses stay ahead of the curve with an Innovation Agenda that includes:

Pro-innovation patent reform

The U.S. Patent system should reward small businesses willing to take big risks.

Make the research and development tax credit permanent

Small businesses count on incentives to help fund research and development. Without it, there is no "next big thing."

Create the next generation of innovators

America is lagging behind when it comes to science education. We need to invest in programs that encourage kids to pursue careers in technology-related fields.

The future of America's economy depends on small business innovation. We urge Congress to act now.

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