

BOLO

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The Newsletter for The Los Angeles Airport Peace Officers Association



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On Combat

By Lieutenant Colonel Dave Grossman, U.S. Army (Ret.)

Lieutenant Colonel Dave Grossman retired from the military after serving in the U.S. Army as a sergeant and platoon leader, as well as parachute infantryman, U.S. Army Ranger and teacher of psychology at West Point. Worldwide, police officers know and respect Dave Grossman as an author, guest speaker, educator and highly qualified expert on the physical effects of stress created by violence — ranging from tunnel vision and changes in sonic perception to post-traumatic stress disorder.

In support of LAAPOA and all LAX police officers, Dave Grossman has generously granted permission to publish the following excerpts from his book, On Combat, which is available at <http://www.killology.com/bio.htm>.

On Sheep, Wolves and Sheepdogs

The sheepdog is cursed and blessed with the capacity for violence and a profound love for the flock. That is what makes the warrior different from the wolf.

Since all the school shootings, and the terrorist attacks on the World Trade Center and the Pentagon, the sheep have figured out that the wolf is not only at the door, but he is also in the house and in their kids' schools. The wolf is loose and now the sheep — or at least most of them — suddenly *like* their sheepdog, and the sheepdogs and they have learned to deeply value their fellow warriors in green and blue. At least for a while, we are becoming a nation that is appreciating its warriors in a way that has not been seen since the end of World War II. And that is a good thing, as long as they are righteous warriors; noble warriors who love their flock and are truly dedicated to their protection.

Knights and Paladins

“Nothing is so strong as gentleness; nothing so gentle as real strength.” — Francis de Sales

The best model for the warrior to internalize is that of the knights of old. The knight donned armor, hung a weapon on his hip and a shield on his left side. On that shield was the authority by which he went forth and did good deeds and administered justice in the land. Eventually, gunpowder defeated armor and the knights went away. Today for the first time in centuries there are warriors (law enforcement officers) who don armor every day, hang a weapon on their hip, and a shield on their left side. On that shield is the authority by which

they go forth and administer justice and do good deeds. If that is not a knight, a paladin, if that is not a new order of chivalry, then what is?

The ancient knight is part myth and part truth. Some knights were brutal thugs, but many of them were true paladins, struggling to maintain a standard for nobility and decency that echoes down to this very day. One of those who set a widely accepted standard for knighthood as a protector of the innocent was the Dutch theologian Desiderius Erasmus in his “Enchiridion Militis Christiani” (which translates roughly to “Guide for the Righteous Protector”), written in 1503. This profoundly influential manual guided the knight (the police officer of the day) by establishing 22 principles for being strong and remaining virtuous in a dangerous world.

In 1514 the artist Albrecht Durer, inspired by Erasmus, carved the image of the “Knight, Death and the Devil.” The subject has been interpreted as a knight (with his dog) embarking on a righteous mission, invulnerable to the rotting corpse of Death riding beside him (mortality), and the horned devil behind (temptation). The knight appears to be riding through the valley of the shadow of death, yet he fears not. Determined in his righteous mission, the knight looks ahead, drawing on his faith to give him the moral courage to confront evil.

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ON COMBAT

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A full list of Erasmus' 22 principles can be found in the appendix at the end of *On Combat*. For now, consider these sample guidelines for the behavior of a paladin, written 500 years ago, and see how they still apply to warriors today:

- *Make virtue the only goal of your life:* Dedicate all your enthusiasm, all your effort, your leisure, as well as your business.
- *Train your mind to distinguish good and evil:* Let your rule of government be determined by the common good.
- *Never let any setback stop you in your quest:* We are not perfect — this only means we should try harder.
- *Always be prepared for an attack:* Careful generals set guards even in times of peace.
- *Spit, as it were, in the face of danger:* Keep a stirring quotation with you for encouragement.
- *Treat each battle as though it were your last:* And you will finish, in the end, victorious!
- *Don't assume that doing good allows you to keep a few vices:* The enemy you ignore the most is the one who conquers you.
- *Never admit defeat, even if you have been wounded:* The good soldier's painful wounds spur him to gather his strength.
- *Speak with yourself this way:* If I do what I am considering, would I want my family to know about it?
- *Life can be sad, difficult and quick. Make it count for something!* Since we do not know when death will come, act honorably every day.



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STATE OF THE UNION DINNER RECEPTION

Thursday, July 25, 2013

5:30 p.m.

The Proud Bird Restaurant

Red Barron/Fireside

11022 Aviation Blvd., Los Angeles, CA 90045



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Number: 2013-14 **Date: 06-10-13**
By: Devallis Rutledge **Topic: Presumption of Innocence**

Issue: Where and when does the “presumption of innocence” operate?

On November 24, 1963, two days after Lee Harvey Oswald assassinated President Kennedy, Oswald was himself shot and killed by Jack Ruby, while a national television audience looked on. The Dallas jury in Ruby's subsequent murder trial presumed him innocent, and then found him guilty (he died in prison of lung cancer).

How about the millions of viewers who watched either the live broadcast or the seemingly endless replays of the shooting of Oswald? Did *they* also have to presume Ruby innocent, and pretend that they had not seen with their own eyes what they had repeatedly watched? Did news commentators have to invoke this presumption in their every report, as they often do today when discussing current crimes and defendants? Short answer: no.

Contrary to popular misconception, the Constitution does not expressly guarantee a presumption of innocence. Members of the media and the general public may be forgiven such a misunderstanding, when even appellate courts inaccurately speak of “the constitutional right to be presumed innocent.” *Tiffany A. v. Superior Court* (2007) 150 Cal.App.4th 1344, 1355. In fact, “**the right to be presumed innocent ... appear[s] nowhere in the Constitution or Bill of Rights.**” *Richmond Newspapers v. Virginia* (1980) 448 US 555, 579-80.

However, the Supreme Court has long held that a presumption of innocence *is* a requirement of a fair trial, *Coffin v. US* (1895) 156 US 432, 453-461, and is therefore implicitly protected by the constitutional guarantee of due process. “*The presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial....*” *Estelle v. Williams* (1976) 425 US 501, 503. In California, the presumption is statutorily provided as well. PC § 1096. It applies in both adult and juvenile cases. *In re Winship* (1970) 397 US 358, 364-65.

But what are the function and scope of the presumption? “*The presumption of innocence is a doctrine that allocates the burden of proof in criminal trials...*” *Bell v. Wolfish* (1979) 441 US 520, 533

(holding the presumption inapplicable to conditions of pretrial confinement). “*The presumption of innocence has never been applied to situations other than the trial itself.*” *In re York* (1995) 9 Cal.4th 1133, 1148 (holding the presumption inapplicable to conditions attached to O.R. release).

For some purposes, those arrested and charged with crimes are legitimately presumed *guilty* — e.g., in setting or denying bail. *Ex parte Duncan* (1879) 53 Cal. 410, 411, and Cal. Const. Art. I, sections 12 and 28(e) (which deny bail in certain cases where “*the presumption [of guilt] is great*”).

Since the presumption of innocence is merely a mechanism for placing the burden of proof on the prosecution to establish guilt beyond a reasonable doubt, *Taylor v. Kentucky* (1978) 436 US 478, 484-85, *it has no application outside the courtroom.* The presumption begins with the criminal trial and applies to the trial of the case until the jury has deliberated and arrived at a verdict. *People v. Booker* (2011) 51 Cal.4th 141, 185. It does not continue on appeal from conviction: “*Once a defendant has been afforded a fair trial and convicted of the offense for which he was charged, the presumption of innocence disappears.*” *Herrera v. Collins* (1993) 506 US 390, 399.

Members of the media and the general public are under no obligation to presume anyone innocent. They are free to believe their own eyes and ears and form their own opinions, unless and until they are sworn as jurors in the trial of the case.

Bottom line: “The presumption operates at the guilt phase of a trial to remind the jury that the State has the burden of establishing every element of the offense beyond a reasonable doubt.” *Delo v. Lashley* (1993) 507 US 272, 278.

(Emphases added, citations and punctuation omitted in some quoted material.)

For information on prosecutorial and law enforcement training offered by the Los Angeles County District Attorney's Criminal Justice Institute, please visit <http://da.lacounty.gov/CJI>.

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.



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