



Written by [Steve Byas](#) on April 2, 2023

Pelosi Says Trump Must Prove His Innocence

In an indication of either her gross ignorance or her willingness to overthrow centuries of legal custom, former House Speaker Nancy Pelosi responded to the news that a New York grand jury had indicted former President Donald Trump by saying that Trump would now be given a chance to “prove his innocence” in court.

Pelosi praised the grand jury’s indictment of Trump late last week, saying, “No one is above the law, and everyone has the right to a trial to prove innocence. Hopefully, the former president will peacefully respect the system, which grants him that right.”



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Actually, in America and in each of the 50 states and the territories of the United States, the burden of proof lies with the government and its prosecutors, rather than the defendant. The prosecutor is obliged to present enough evidence before a trial jury to prove a person is *guilty* of the charged crime, beyond reasonable doubt. It takes all 12 members of that jury to convict the person of a crime. The legal system presumes the accused person is innocent. This is why juries return a verdict of either *guilty* or *not guilty*. A jury does not find an accused person “innocent,” as that is presumed.

Manhattan District Attorney Alvin Bragg, who pursued the indictment against Trump, ran for office on the explicit pledge that he would get Trump. Trump has denied doing anything criminal and has denied having had an affair with porn star Stormy Daniels. Bragg alleges that Trump falsified business records in connection with a “hush money” payout to Daniels before the 2016 presidential election. Such agreements — paying money to individuals to keep quiet about their accusations against public figures — is fairly common. It does not mean that the accused public figures have *actually done* whatever they have been accused of; it is often just considered easier to pay off accusers than to have ugly charges being made public.

Many Republicans have defended Trump, including former Vice President Mike Pence, who has otherwise criticized Trump on other matters. Appearing on CNN last week, Pence said, “It appears to millions of Americans to be nothing more than a political prosecution that’s driven by a prosecutor who literally ran for office on the pledge to indict the former president.” CNN interviewer Wolf Blitzer, however, interrupted Pence, asserting that it was not just Bragg, but the majority of a 23-member grand jury. (To obtain an indictment, a prosecutor only needs a majority of the grand jury, not a unanimous vote as with trial juries.)

Pence, however, reminded Blitzer of the old saying that a prosecutor — such as Bragg — who is desperate enough to get someone could “indict a ham sandwich.” He added that the indictment “offends the notion of the American people who believe in fairness, who believe in equal treatment before the law.”

It is unfortunate that much of the American public has limited understanding of what a grand jury does, and what an “indictment” actually means.



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The grand jury originated in England in the Middle Ages, under King Henry II in 1166. It was intended to be somewhat of a protection of accused persons against a vindictive or unscrupulous prosecutor. This is why the protection of a grand jury was placed in the Fifth Amendment: “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury.”

But the first ten amendments to the U.S. Constitution — popularly known as the Bill of Rights — only restricted the newly created United States government under the constitution. There was no requirement for *states* to use grand juries, and many states do not. While the U.S. Supreme Court has extended the protections of the Bill of Rights that restrict the federal government to states in many cases under the “Incorporation Doctrine,” they have done so selectively. The requirement to use a grand jury to bring formal charges against an individual is not used in all states, and, in fact, the United States and Liberia are the only two places left on earth that *do* use the system of the grand jury. In most states, a prosecutor may file charges, but is then required to convince a judge in a preliminary hearing that there is enough evidence to proceed.

As Pence has noted, while the grand-jury system was intended to protect individuals against vindictive or unscrupulous prosecutors, the reality is that grand jurors are ordinarily only presented with “evidence” that the prosecutor wants them to see, and he can keep any evidence from them that might tend to exonerate the accused. The person under investigation is not allowed to present contrary evidence to the grand jury.

An *indictment* is simply an accusation. Nothing has been proved beyond reasonable doubt, as is the requirement to obtain a conviction in a jury trial. And, as Pence told Blitzer, under these circumstances — in which the prosecutor cherry-picks the evidence — he could likely indict that ham sandwich.

Going before a trial jury, the burden of proof is quite different. The prosecutor must persuade the jury that the defendant is guilty beyond reasonable doubt. The accused is entitled to use counsel for defense, he can have accusers cross-examined in open court, and he can call his own witnesses and present his own evidence in his own defense. And, rather than a simple majority, a conviction requires a unanimous vote of all 12 jurors.

If it were as Pelosi argues, a person would be forced to prove a negative — that they did *not* do something, which is almost impossible. That is why the law presumes an accused person is innocent until proven guilty. An accused person does not have to prove his innocence.

Sadly, thus far, while many Republicans and conservative media have condemned Pelosi’s Stalinist position, very little has been heard from either Democrats or their allies in the mainstream media condemning what she has said.

As Boston lawyer John Adams said during his defense of British redcoats after the infamous so-called Boston Massacre, while the accused were very unpopular, they were not guilty of murder. “Facts,” Adams said, “are stubborn things.”



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