**THE INNOCENCE LEGAL TEAM PRESENTS**

**UNDERSTANDING THE CRIMINAL LAW PROCESS**

[www.innocencelegalteam.com](http://www.innocencelegalteam.com)

**INTRODUCTION**

Hi, I’m Patrick Clancy.

We have all heard the old adage, knowledge is power. That statement has never been truer than for one charged with a felony.

Before we begin, please note that if you are watching this video on the Innocence Legal Team website, the links below will provide you with this video’s script as well as an in depth look at the specific offense for your due diligence.

**CORROBORATION**

**Introduction**

One of the most common causes for a felony defendant losing their case at trial is corroboration.

Corroboration is defined as evidence which confirms or supports a statement, theory, or finding. In other words, confirmation. This can be in the form of a witness who testifies that he or she also saw the same thing.

It could be in the form of an email, text message, photographs, DNA, videos, documents and. the worst, more than one accuser.

Each element of corroboration must be defended as if a separate case (indeed a case within a case). This can double or triple the time needed for proper case preparation. However, it must be done as it is vital to your chances of prevailing.

Many lost cases can be traced to the failure to dispute, debunk and destroy any corroboration.

**Confessions**

 The most common form of corroboration is the accused’s own statements. Which is to say some form of confession, usually made unwittingly or as a result of coercion, trickery or misunderstanding.

For example, as a result of police interrogation.

The innocence Legal Team has the experience and know how to keep confessions from being admitted into evidence before the jury. If the statement is the product of coercion, it is legally unreliable and cannot be used for any purpose in the case.

Also, we know how to expose constitutional violations such as your right to remain silent and your right to counsel, your Miranda rights as they are commonly called.

Such violations are very common in criminal cases, but often go unchallenged to the detriment of the accused.

And even if admitted, we know how to demonstrate that such statements were the product of pressure and manipulation undermining its validity.

For important information on interrogations, please visit the Innocence Legal Team website at ILT.LAW and click on “Police Interrogations” on the menu across the top of the page.

**WARRANTLESS SEARCHES**

Generally speaking, the Fourth Amendment protects the accused from unreasonable search and seizure.

Unless covered by an exception, such as consent, police must obtain a search warrant from the court to conduct a search and seizure of an accused’s property.

Violation of these rules, the understanding of which can be quite complex, can result in exclusion of the illegally obtained evidence, but only if your attorney recognizes the violation and acts on it in your defense. Such violations can be far from obvious, but the Innocence Legal Team uses a systematized approach to analyze all evidence in a case.

And if an item of evidence was obtained in violation of your rights, the Innocence Legal Team knows how to get it excluded at trial.

**ELEMENTS OF AN CRIMINAL OFFENSE**

Generally, every criminal offense requires three elements. First, the defendant must commit one or more acts.

Second, the Defendant must have acted with a specific state of mind or intent. And third, there must be a causal connection between the act and an offense.

For example, the elements of Battery Causing Serious Bodily Injury are 1) The defendant willfully and unlawfully touched another in a harmful or offensive manner;

2) the other person suffered serious bodily injury as a result of the force used; and 3) The defendant did not act in self-defense or in defense of someone else.

The act is the harmful or offensive touching. The state of mind required is “willfully.” And the harmful touching must have caused serious bodily injury.

**PROOF BEYOND A REASONABLE DOUBT**

There are four basic standards or levels of proof.

The lowest standard is “Probable Cause” which means a ‘Reasonable Suspicion.” This is the standard for making an arrest and the standard at the preliminary hearing.

The next level up is known as “preponderance of evidence” which means evidence that has more convincing force than that opposed to it. In other words, more likely than not.

The next level is “clear and convincing” which means highly probable.

This standard, for example, applies to removal of minors by Children’s Protective Services from the care the accused.

Finally, the fourth and highest level of proof is beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you with and abiding conviction that the charge is true.

Every lawyer knows that the prosecution in a criminal case must prove every element of an offense beyond a reasonable doubt. That you are presumed innocent until proven guilty. Every lawyer will tell you that’s the law. However, not every lawyer will tell you that this is hardly more than a legal fiction in this day and age.

The sad reality is that, by and large, jurors will assume your guilty, just because you have been accused and are charged even though the judge will instruct them otherwise. A juror will commonly, but privately, ask themselves why the defendant would be in court if the defendant is not guilty?

The point is that everyone from the police, to prosecutor, to the judge, to the general public believes, to one degree or another, that you would not be before the court if you weren’t guilty. The Innocence Legal Team understands this. We understand that we are fighting two cases. The first is the case of the facts. The second is the case against the innate prejudice that is a result of the age-old impulse for law and order.

The Innocence Legal Team knows how to fight and win the battle against jury prejudice. First by getting to know the jury panel intimately by use of questionnaires, by selecting the best 12 to hear your case and by educating them about the true facts of your case. Step by step we educate the jury on the bias and prejudice of prosecution witness and the source of these prejudices.

**DIRECT AND CIRCUMSTANTIAL EVIDENCE**

This so-called proof of guilt beyond a reasonable doubt is by either direct evidence, circumstantial evidence of a combination thereof. California jury instructions define direct and circumstantial evidence as follows:

Direct evidence can prove a fact by itself. For example, if a witness testifies that he saw it raining outside before he came into the courthouse, that testimony is direct evidence that it was raining. Circumstantial evidence also may be called indirect evidence.

Circumstantial evidence does not directly prove the fact to be decided but is evidence of another fact or group of facts from which you may logically and reasonably conclude the truth of the fact in question.

For example, if a witness testifies that he saw someone come inside wearing a raincoat covered with drops of water, that testimony is circumstantial evidence because it may support a conclusion that it was raining outside.

The defense of a criminal case also uses direct and circumstantial evidence to attack one or more elements of the offense.

**DEFENSES**

**Introduction**

Defenses are generally of two varieties.

1) An accusation can be wrongfully. You simply did not commit the offense charged. A defense of this nature goes well beyond pleading not guilty.

The Innocence Legal Team understands how to find evidence of your innocence…after all, it’s in our name. For example, if it was not you, we can search for and find the actual perpetrator. Maybe you have an alibi, for example, a witness who saw that you were not in the location where the crime was committed at the time it was committed.

Or that although you may have been present, you didn’t commit the offense.

2) More often, an attack can be launched negating one or more of the elements that the prosecution is required to prove beyond a reasonable doubt.

**Intent**

One of the most common defenses is to attack the intent element. After all, the prosecution is obligated to prove what someone was thinking and there can be many ways to raise reasonable doubt about that. Sometimes there will be direct evidence of intent such as when a defendant makes a direct statement of his or her intention. More often, intent is proven with circumstantial evidence.

There are three types of criminal intent:

General intent, which is presumed from commission of the act (such as speeding).

Specific intent, which requires preplanning and predisposition (such as burglary).

And constructive intent, the unintentional results of an act (such as a pedestrian death resulting from the actions of a negligent driver).

If a person purchases a firearm and is later accused of using that firearm in the commission of a crime, the purchase of the weapon may be circumstantial evidence of a preparation to commit the offense.

However, there may be an alternative reason for the weapon’s purchase. It could be shown for example that the weapon was purchased for sport or self-protection.

A jury must then be instructed that the alternative explanation must be accepted if it is found to be reasonable.

The Innocence Legal Team attorney Team Leaders are skilled at searching for and finding alternative explanations of evidence that might at first appear damning.

**Self Defense**

If accused of a violent crime such as homicide or assault, self-defense or defense of others can be employed to establish a non-criminal intent for your actions.

While easy to claim, self-defense requires proving the existence of a credible danger or risk that justifies the force the defendant is accused of using.

An important factor is showing that the accused was not the aggressor. If self-defense is a viable defense in your case, the Innocence Legal Team will find, uncover, and present such evidence in court.

**Entrapment**

Entrapment occurs when the government induces the commission of a crime that the person wouldn't have otherwise committed. Poof requires evidence that official conduct was overbearing applying pressure, harassment, fraud, flattery, or threats. Merely providing the opportunity to commit a crime does not qualify as entrapment.

Often the key to the entrapment defense is understanding that the overbearing conduct need not be by law enforcement itself.

Rather, such conduct by others acting at law enforcement’s direction can be key in proving entrapment. For example, a “friend” (acting as a police informant) might repeatedly ask you to commit a criminal act on behalf of law enforcement especially if that friend himself has been accused of a crime for which he is seeking leniency.

**Insanity**

An insanity defense is both complicated and risky. It requires proof that defendant was unable to differentiate right from wrong while committing the crime. This is generally done through expert psychological testimony. Also, an insanity defense requires admitting guilt after a fashion.

Further, defendants found not guilty by reason of insanity are subject to confinement in a mental institution often for longer times than they would have spent if incarcerated following conviction.

Thus, notwithstanding what you may have seen on TV, defendants rarely enter pleas of "not guilty by reason of insanity."

**Intoxication**

In California, voluntary intoxication does not excuse criminal conduct. However, involuntary intoxication, where applicable, may be a defense. For example, medication taken under prescription might have an unexpected adverse side effect affecting behavior.

Thus, if accused of a crime that requires proof of a "specific intent," a defense may bethat the accused could not have formed the required intent in such a drug induced mental state. It should be noted that involuntary intoxication may be only a partial defense. Such as reducing a first-degree murder charge to second degree or manslaughter.

**EXPERTS**

The Innocence Legal Team employs top experts. Whether computer forensics, psychology, DNA or any other expert area, the Innocence Legal Team will have the right person to not only rebut the prosecution experts, but also to actively destroy the case against you. The key is recognizing an expert issue and calling the right expert at the right time.

**THE LEGAL PROCESS**

**Arraignment**

After arrest, the first step in the criminal justice process is the arraignment. This is generally a defendant’s first court appearance where the charges are read from a document known as a Complaint. A defendant’s constitutional rights are recited, and a plea is entered.

It can be guilty, not guilty or No Contest (also known as “Nolo Contendere”). Almost always a defendant will plead “not guilty.”

**Bail hearing**

Initially, bail is set according to a “bail schedule” maintained by each California County.

If a Defendant is facing a high bail amount, the Innocence Legal Team can bring a bail reduction motion before the court. At a bail hearing, the Innocence Legal Team can argue for O.R. or “Own Recognizance” release, which means without the need to post a bond.

In March of 2021, the Supreme Court of California released its decision in People v. Humphry that potentially impacts every person arrested and detained pretrial in the California justice system.

After Humphrey, whether someone remains in jail before even being convicted should no longer depend solely on “the accused’s ability to post the sum provided in a county’s uniform bail schedule.” After Humphrey, the court must consider whether bail is even necessary in your case, and, if necessary, then it must also consider your ability to pay in setting that bail’s amount.

The Innocence Legal Team has already successfully leveraged the Humphrey decision to allow our clients to face charges outside of the walls of jail. The Innocence Legal Team has a strong track record of successfully reducing client bail. In one case we got bail reduced from $3 million to $0.

There are some caveats regarding the timing of bail motions. First, it may be advisable to wait until after the arraignment to post bail as it is then more difficult for the prosecution to argue for a bail increase absent a change in circumstances.

We have had clients pay substantial money for a bail bond, before retaining the innocence Legal Team, only to have the prosecution advise the judge the matter is a no bail case resulting in the client being taken into custody and the loss of funds paid for the bond. Waiting until after the arraignment is a substantial hedge against this happening to you. Second, absent a change of circumstances, a Defendant is limited to only a single bail motion.

This rule was enacted to prevent the same motion being brought before multiple judges; a practice commonly known as “judge shopping.”

 At the bail hearing the judge must, by law, presume the charges are true. In other words, the presumption of innocence does not apply to bail hearings.

In setting, reducing, or denying bail, the judge weighs the following factors:

* The defendant's prior criminal history
* The probability of the defendant attending all court appearances
* Public safety
* The seriousness of the crime charged
* Any previous Failures to Appear at court proceedings)
* The defendant's ability to pay.
* The defendant's ties to the community (family, relatives, work, etc.).
* The defendant’s age and physical condition.

The Innocence Legal Team has long experience and success in conducting bail hearings.

 **Discovery and Investigation**

 Following an arrest, the prosecution and the Innocence Legal Team exchange information. This is called “discovery.”

 The Innocence Legal Team will take all necessary steps to obtain from the prosecution all of the evidence that they have, including “exculpatory” evidence which is evidence tending to prove a defendant’s innocence.

This includes all police reports, photographs, transcripts and audio video files of all witness statements including the defendant’s own statement, if any.

While the process is generally informal, if the prosecution refuses to turn over relevant evidence, the Innocence Legal Team will file a formal discovery motion asking the court to require the prosecution to provide the evidence and, in an appropriate case, asking for sanctions either monetary and/or evidentiary such as asking the evidence be excluded.

 Next, the Innocence Legal Team has all audio/video recordings transcribed. We then go through these statements with a fine-tooth comb looking for contradictions, coercion, improper questioning, and other constitutional violations.

 We then form an investigation plan. This may include witness interviews, issuance of subpoenas for medical, school, psychological and other records.

 Once complete, all information is summarized and a timeline is developed. From this, the Innocence Legal Team formulates your best defense.

 **Preliminary Hearing**

A preliminary hearing is the first time the judge actually looks at the evidence in a felony case. While it is called a preliminary hearing, it is a bit of misnomer as a preliminary hearing usually occurs about halfway through the criminal justice process.

At the preliminary hearing, a Judge will decide if there is enough evidence that the defendant committed the crime to require the defendant to stand trial. This is known as being “bound over” or “held to answer.”

At a preliminary hearing, the standard of proof is a “probable cause”, the lowest legal standard which means a “reasonable suspicion.”

The right of the defense to present evidence and cross examine witnesses can be sharply limited at a preliminary hearing. Further the word of a single accuser without any corroboration can be sufficient to hold a defendant to answer. Even worse, in some cases, the accuser need not even be present in court as an investigating officer can simply read the accuser’s statement into the record.

For these reasons, it is rare that a defendant is not held to answer.

Following preliminary hearing the Defendant is arraigned on the prosecution filing of a document known as an Information. As in the original arraignment, a defendant will then enter a plea of guilty, not guilty or No Contest.

 **Dismissal Motions**

A motion to dismiss may be brought per California Penal Code Section 995 for insufficient evidence presented at the preliminary hearing. This is what lawyers refer to as a “995 motion.” Such a motion can be brought to ask the court to dismiss or reduce felony charges after a preliminary hearing.

**Trial Preparation**

 Following preliminary hearing the primary focus moves from discovery and investigation to trial preparation.

 During Trial Preparation, the Innocence Legal Team will work with you to formulate and finalize your defense strategy and theory.

During this phase of the proceedings, the Innocence Legal Team will file multiple evidentiary motions in an attempt to exclude harmful evidence pointing to guilt and admit helpful evidence pointing to your innocence. The prosecution does the opposite, and we will file opposition to any such prosecution motions.

In ruling on these motions, a judge can, in effect, essentially decided a case long before a jury hears a shred of evidence. Thus, these motions are of critical importance.

Finally, the Innocence Legal Team will take all necessary steps to compel testimony with trial subpoenas and witness on-call agreements.

**Trial**

Before trial, both the Innocence Legal Team and the prosecution are supplied with a list of potential jurors called a panel. The parties can then confer on a jury questionnaire for the panel to fill out and return. The Innocence Legal Team will use the panel’s responses to identify jurors who are prejudiced and, even worse, may not be amenable to being educated on the true facts of your case.

Generally, those panel members can be dismissed out right.

At trial, each side gets as a set number of what are known as “peremptory challenges” by which a juror can be released for any reason other than membership in a protected class such as race, national origin, religion and so forth.

In this way the Innocence Legal Team is skilled in selecting the 12 best jurors for your case.

The parties then make opening statements by which each side tells the jury what they expect the evidence to show.

The prosecution always goes first because the prosecution is said to carry the burden of proof which, as noted earlier, is beyond a reasonable doubt, the highest legal standard.

The prosecution will then put on its witnesses usually consisting of the investigating officers, the complaining witnesses or alleged victims and any other witnesses who have firsthand knowledge of any relevant facts. Those are facts which tend to prove elements of charged offenses. The prosecution will first conduct what is known as a direct examination of its witness.

The defense then conducts a cross examination pointing out any inconsistencies and presenting any evidence to impeach the witness which means evidence which casts doubt on the witness’s credibility. The prosecution will then conduct what is known as “redirect” to attempt to rehabilitate any impeachment and otherwise “clarify” points raised during cross.

When the prosecution finishes presenting its case it will “rest.” It is then the defenses turn to present its evidence. I should note that the defense is not technically required to put on a case due to the presumption of innocence. It is at this point that the defense may bring a motion to dismiss based on the prosecution’s failure to prove one or more elements of the offenses charged.

Such motions are rarely successful.

In almost every case the Defense goes on to presents its case in mirror image of the prosecution case with defense performing the direct examination of the witness, the prosecution performing cross and the defense redirect.

The defense will then rest and the prosecution will be given the opportunity to put on its rebuttal case to refute the defense evidence.

The next step is closing argument. This is a crucial stage and the defense’s final chance to convince the jury of your innocence. It takes skill and determination. It is a practiced art which the Innocence Legal Team has mastered.

Again, the prosecution goes first. Then the defense makes its argument and again, because the prosecution caries the burden of proof, it is allowed to make a final rebuttal argument.

The court will then instruct the jury on the law and the jury will be sent to a special room to deliberate and decide if a defendant is guilty or not guilty.

**Sentencing**

If a defendant is found guilty, the next step is sentencing. The Innocence Legal Team will then create and organize what is known as a sentencing brief presenting evidence in mitigation. That is persuading the court that you should be subject to the least possible punishment. For example, if allowed, we will argue for probation.

To do this we may present psychological evidence as well as evidence of your history including stable employment, family, and community service. We will also present letters, and in some cases testimony, of your good character.

**Post Trial**

Time is of the essence following a conviction.

First, it is important to understand that evidence and issues not raised before the trial court cannot be presented in the court of appeal. Thus, if a defendant wishes to present evidence that is not on the trail court record, such as ineffective assistance of counsel where an attorney has failed to conduct an adequate investigation, a motion for new trial is the best vehicle for this.

However, a motion for new trial must be brought prior to sentencing.

Following sentencing a defendant has sixty days to file a notice of appeal.

The Innocence Legal Team is second to none and is expert at handling all post trial matters.

The Innocence Legal Team

Criminal Defense Lawyers

Criminal Defense Attorneys

Criminal Defense Law firm