

## **Brett Kavanaugh vs. The Exonerated Central Park Five: Exposing the President's "Presumption of Innocence" Double Standard**

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**BRETT KAVANAUGH VS. THE  
EXONERATED CENTRAL PARK FIVE:  
EXPOSING THE PRESIDENT’S  
“PRESUMPTION OF INNOCENCE” DOUBLE  
STANDARD**

Sofia Yakren\*

In the service of Justice Brett Kavanaugh’s confirmation to the United States Supreme Court, the President of the United States (and Republican Senators) both misappropriated and further eroded the already compromised concepts of due process and presumption of innocence. This Essay uses the prominent “Central Park Five” case in which five teenagers of color were wrongly convicted of a white woman’s widely-publicized beating and rape to expose the President’s disparate use of the presumption along race and status lines. This narrative is consistent with larger systemic inequities that leave poor black and brown criminal defendants less likely to benefit from the presumption of innocence than their white counterparts.

I. ORIGINS AND MEANING OF “PRESUMPTION OF INNOCENCE”

The principle “innocent until proven guilty” encompasses two historic protections for individuals accused of crimes: first, placing the burden of proving guilt on the accuser, and, second, prohibiting punishment until conviction.<sup>1</sup> The Babylonian Code of Hammurabi (1792-1750 B.C.), one of the oldest written codes of

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<sup>1</sup> See François Quintard-Morénas, *The Presumption of Innocence in the French and Anglo-American Legal Traditions*, 58 AM. J. COMP. L. 107, 149 (2010).

law, required anyone making a criminal accusation to prove guilt and emphasized the import of this procedural safeguard by imposing a death sentence on certain false accusers.<sup>2</sup> Similarly, early Roman law deemed it a serious offense to risk “the reputation, the fortunes and finally the status and the life of another” without compelling proof.<sup>3</sup> In 352 B.C., the Greek orator Demosthenes argued that one could not be labeled a criminal or be punished until convicted after a proper trial, at which point “conscience permits us to inflict punishment according to knowledge . . . .”<sup>4</sup>

In the early common law days, English monarchs often used imprisonment arbitrarily.<sup>5</sup> However, the Magna Carta, a charter of rights to which King John of England agreed in 1215, guaranteed “the king’s subject[s] immunity from imprisonment, or other punishment, save through the due process of the law.”<sup>6</sup> The common law adopted the presumption of innocence in subsequent centuries and colonists brought the principle with them to America.<sup>7</sup> Accordingly, in the United States, bail was presumed for all noncapital offenses and “a legal determination at trial” became a prerequisite for punishing a defendant for a crime.<sup>8</sup>

Despite the ancient origins of the presumption of innocence and the incomparably high stakes of the criminal process, United States laws have chipped away at the presumption over time by restricting the rights of pretrial detainees.<sup>9</sup> For instance, in 1979, the United States Supreme Court upheld as constitutional several challenged pretrial confinement conditions, reasoning that the “presumption of innocence is a doctrine that allocates the burden of proof in criminal trials . . . [and] has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun.”<sup>10</sup> While dealing “a

<sup>2</sup> *See id.* at 110-11.

<sup>3</sup> *Id.* at 111 (citation omitted).

<sup>4</sup> *Id.* at 112 (citation omitted).

<sup>5</sup> *See Shima Baradaran, Restoring the Presumption of Innocence*, 72 OHIO ST. L.J. 723, 727 (2011).

<sup>6</sup> *Id.* (citation omitted).

<sup>7</sup> *See id.*

<sup>8</sup> *Id.* at 727-28.

<sup>9</sup> *See id.* at 742-43.

<sup>10</sup> *Bell v. Wolfish*, 441 U.S. 520, 533 (1979).

2019] *THE "PRESUMPTION OF INNOCENCE" DOUBLE STANDARD* 103

drastic blow to the presumption of innocence” with its disregard of the presumption’s historic pretrial liberty requirement,<sup>11</sup> the Court did not preclude the principle’s application before trial, outside the confinement context.<sup>12</sup>

Selective use of the presumption of innocence along race and class lines has further degraded the principle. “People of color in the United States, particularly young black men, are often assumed to be guilty and dangerous.”<sup>13</sup> Even “innocent children [] are being victimized by a presumption of guilt that never sees black and brown youth as blameless . . . .”<sup>14</sup> Creating an insidious pipeline from school to prison, “[t]he presumption of guilt follows too many poor and minority children to school.”<sup>15</sup> As a result of these systemic oppressions, one out of three black boys born in 2001 is likely to serve time in jail or prison during his lifetime.<sup>16</sup> The rate of incarceration per capita is 6.4 times higher for black men and 2.6 times higher for Latino men than for white men.<sup>17</sup> Further, research shows that prosecutors are more likely to seek the death penalty against black and Latino defendants accused of victimizing a white person, and jurors are more likely to issue the death penalty in such cases.<sup>18</sup>

Most typically, the presumption of innocence is a protection associated with the criminal rather than civil law arena. After all, “[w]ith reputation, liberty, and at times even life on the line, every legal and moral precept counsels caution in bringing down the hammer of justice on a criminal defendant.”<sup>19</sup> To the extent that Judge J. Harvey Wilkinson III has argued for a presumption of innocence in the civil context, he has limited the concept’s relevance to “civil defendants [who] are frequently subject to

<sup>11</sup> Baradaran, *supra* note 5, at 743.

<sup>12</sup> *See id.*

<sup>13</sup> Bryan Stevenson, *A Presumption of Guilt*, THE N.Y. REV. OF BOOKS (July 13, 2017), <https://www.nybooks.com/articles/2017/07/13/presumption-of-guilt>.

<sup>14</sup> John Lewis & Bryan Stevenson, *On the Presumption of Guilt*, 40 HUM. RTS. 15, 15 (Dec. 2013).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Jennifer S. Hunt, *Race, Ethnicity, and Culture in Jury Decision Making*, 11 ANN. REV. L. & SOC. SCI. 269, 270 (2015).

<sup>18</sup> *Id.* at 272.

<sup>19</sup> Hon. J. Harvie Wilkinson III, *The Presumption of Civil Innocence*, 104(4) VA. L. REV. 589, 597 (2018).

immense, unrecoverable costs prior to any real forecast or determination of liability” in “a system in which civil plaintiffs enjoy tremendous procedural advantages at almost every stage of litigation . . . .”<sup>20</sup> Even assuming the presumption of innocence could or should apply to the protection of civil defendants, using the concept loosely in connection with accusations outside a litigation context would distort its origins and purposes irredeemably.

## II. PRESUMPTION OF GUILT FOR THE EXONERATED CENTRAL PARK FIVE

In the late 1980s, Donald Trump publicly refused to grant a group of teenagers labeled the “Central Park Five” the presumption of innocence to which they were entitled under the law.<sup>21</sup> Indeed, presuming them guilty of a brutal crime in Central Park, he effectively called for their executions before trial.<sup>22</sup> Even after their convictions were vacated on the basis of incontrovertible evidence, Trump maintained that the young men were guilty.<sup>23</sup>

In the spring of 1989, Antron McCray, Kevin Richardson, Yusef Salaam, Raymond Santana, and Kharey Wise (the “Central Park Five” or the “Exonerated Central Park Five”)<sup>24</sup> – five black and Latino teenagers from Harlem ranging in age from fourteen to sixteen years – were wrongly accused of beating (to near death)

<sup>20</sup> *Id.* at 589.

<sup>21</sup> See Sarah Burns, *Why Trump Doubled Down on the Central Park Five*, N.Y. TIMES (Oct. 17, 2016), <https://www.nytimes.com/2016/10/18/opinion/why-trump-doubled-down-on-the-central-park-five.html>.

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> Known for decades as the “Central Park Five,” these men have rightly claimed a different title – the “Exonerated Five” – since Ava DuVernay’s *When They See Us* miniseries brought renewed attention to the profound injustices they suffered as teenagers at the hands of the state. Gabrielle Bruney, *The Exonerated Five Made a Triumphant Appearance at the BET Awards*, ESQUIRE (June 24, 2019), <https://www.esquire.com/entertainment/a28167094/exonerated-central-park-five-bet-awards/#>. To honor and emphasize the men’s innocence, while also maintaining clarity, this Essay refers to the men as the “Exonerated Central Park Five” when possible to do so without confusing the timeline of events.

2019] *THE "PRESUMPTION OF INNOCENCE" DOUBLE STANDARD* 105

and raping a white female jogger in Central Park.<sup>25</sup> These children were trapped within a divided New York – a city at once emerging from near-bankruptcy and entering a period of Wall Street-fueled “lavish conspicuous consumption,” and transitioning from the “empowerment of the Black Power Movement” to “disenfranchisement [] fueled by the Crack Era of the 1980s.”<sup>26</sup> Public discourse turned the horrific attack into an issue of race, as reflected by the media’s descriptions of the accused children in “animalistic” terms,<sup>27</sup> which comparative analysis of press coverage in New York City in 1989 suggests were “reserved for black men [] accused of attacking white women.”<sup>28</sup> The Central Park Five were labeled “wolf packs,” “rat packs,” “savages,” and “animals.”<sup>29</sup> Moreover, press reports and the general public coined the crime a “wilding.”<sup>30</sup>

Just two weeks after the attack on the jogger, before any of the accused teenagers had been tried and while the jogger remained in a coma,<sup>31</sup> Donald Trump stepped in from the affluent side of the city’s divide to declare the teenagers guilty.<sup>32</sup> He spent \$85,000 on full-page advertisements in four New York City newspapers, including the New York Times, demanding the return of the death penalty and “implicitly calling for the boys to die.”<sup>33</sup>

<sup>25</sup> See Burns *supra* note 21; see also Brent Staples, *When Mass Hysteria Convicted 5 Teenagers*, N.Y. TIMES (Oct. 27, 2012), <https://www.nytimes.com/2012/10/28/opinion/sunday/when-mass-hysteria-convicted-5-teenagers.html>.

<sup>26</sup> See Eisa Nefertari Ulen, *The Central Park Five: Exploring race, rape and redemption*, WASH. POST, Apr. 16, 2013.

<sup>27</sup> See N. Jeremi Duru, *The Central Park Five, The Scottsboro Boys, And The Myth Of The Bestial Black Man*, 25 CARDOZO L. REV. 1315, 1348 (2004).

<sup>28</sup> Indeed, the case of a black woman, raped two weeks later in Brooklyn by three men who threw her from the roof of a four-story building, received little media attention. See *id.* at 1349-50.

<sup>29</sup> See *id.* at 1348; see also Staples, *supra* note 25.

<sup>30</sup> See Duru, *supra* note 27, at 1348.

<sup>31</sup> The jogger never regained memory of the attack and therefore was unable to identify her rapist. See *id.* at 1362.

<sup>32</sup> See Oliver Laughland, *Donald Trump and the Central Park Five: the racially charged rise of a demagogue*, GUARDIAN (Feb. 17, 2016, 1:15 PM), <https://www.theguardian.com/us-news/2016/feb/17/central-park-five-donald-trump-jogger-rape-case-new-york>.

<sup>33</sup> See *id.*; see also Leonard Greene, *Trump called for death penalty after Central Park jogger attack, and still has no sympathy for accused despite convictions overturned*, DAILY NEWS (July 19, 2018), <https://www.nydailynews.com/new-york/ny-news-trump-death-penalty-central-park-five-20180713-story.html>.

Although Trump did not name the teenagers, “it was clear to anyone in the city that he was referring to them” in his advertisements.<sup>34</sup> Entitled “Bring Back the Death Penalty. Bring Back Our Police!,” Trump’s advertisements referenced the loss of safety in “the Park at dusk” and the threat of “roving bands of wild criminals” – language much like that used by the media at the time to describe the accused teens.<sup>35</sup> Moreover, Trump specifically mentioned the attack on the jogger, writing, “At what point did we cross the line from the fine and noble pursuit of genuine civil liberties to the reckless and dangerously permissive atmosphere which allows criminals of every age to *beat and rape a helpless woman . . .*?”<sup>36</sup> All five accused children had already been “paraded in front of the cameras and had their names and addresses published,” but they received “more death threats after the papers ran Trump’s full-page screed.”<sup>37</sup>

With Trump’s help,<sup>38</sup> and in utter violation of the presumption of innocence, the five teenagers’ convictions “were almost assured before the first juror was called.”<sup>39</sup> Despite the absence of physical evidence against the teens, a timeline suggesting they were likely elsewhere in the park at the time of the attack on the jogger, and coerced “confessions” that were inconsistent with each other on nearly every major aspect of the crime,<sup>40</sup> all five accused teenagers were convicted and sentenced to prison terms.<sup>41</sup> As a result, they spent their adolescence – between seven and thirteen years – in prison for a sex crime they did not commit.<sup>42</sup>

In 2002, a serial rapist and murderer named Matias Reyes confessed to the crimes against the jogger and said he acted alone.<sup>43</sup> DNA tests revealed that semen and pubic hair found at

<sup>34</sup> Burns, *supra* note 21.

<sup>35</sup> Laughland, *supra* note 32.

<sup>36</sup> *Id.* (emphasis added).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Staples, *supra* note 25.

<sup>40</sup> *Id.*

<sup>41</sup> Duru, *supra* note 27, at 1317.

<sup>42</sup> See Benjamin Weiser, *Settlement is Approved in Central Park Jogger Case, but New York Deflects Blame*, N.Y. TIMES (Sept. 5, 2014), <https://www.nytimes.com/2014/09/06/nyregion/41-million-settlement-for-5-convicted-in-jogger-case-is-approved.html>.

<sup>43</sup> See Staples, *supra* note 25; see also Duru, *supra* note 27, at 1315-16.

2019] *THE "PRESUMPTION OF INNOCENCE" DOUBLE STANDARD* 107

the crime scene belonged to Reyes and not to the Central Park Five.<sup>44</sup> “Manhattan District Attorney Robert Morgenthau immediately launched an investigation” and concluded “that Reyes’s confession accurately described the crime scene and the jogger’s injuries, while the Central Park Five confessions were inconsistent with each other and with the physical evidence.”<sup>45</sup> On December 5, 2002, Morgenthau filed with the court a fifty-eight page recommendation that the convictions of the Central Park Five be vacated.<sup>46</sup> New York State Supreme Court Justice Charles Tejada vacated the convictions just two weeks later.<sup>47</sup> The court order came four months after the last of the Exonerated Central Park Five had already been released from prison.<sup>48</sup> By that point, all five young men had been “robbed of their young lives.”<sup>49</sup>

In 2003, the Exonerated Central Park Five filed a civil rights lawsuit seeking \$250 million in damages from city authorities for false arrest and malicious prosecution.<sup>50</sup> On September 5, 2014, the case finally settled for \$41 million, or \$1 million for each year of wrongful imprisonment that the five men had suffered collectively.<sup>51</sup>

Despite the volumes of exonerating evidence leading to vacated convictions, two months before the 2014 settlement was finalized, Donald Trump wrote a piece for The New York Daily News warning that settlement of the case would be “a disgrace.”<sup>52</sup> He opined, “As a long-time resident of New York City, I think it is ridiculous for this case to be settled — and I hope that has not yet taken place. . . . Speak to the detectives on the case and try listening to the facts. These young men do not exactly have the

<sup>44</sup> See Duru, *supra* note 27, at 1317.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See *id.*

<sup>48</sup> *Id.*

<sup>49</sup> Staples, *supra* note 25.

<sup>50</sup> See Margaret Hartmann, *Central Park Five Settle with the City for \$40 Million*, INTELLIGENCER (June 19, 2014), <http://nymag.com/intelligencer/2014/06/central-park-five-case-settled-40-million.html?gtm=bottom&gtm=bottom>.

<sup>51</sup> See Weiser, *supra* note 42.

<sup>52</sup> Donald Trump, *Donald Trump: Central Park Five settlement is a 'disgrace,'* N.Y. DAILY NEWS (June 21, 2014), <http://www.nydailynews.com/new-york/nyc-crime/donald-trump-central-park-settlement-disgrace-article-1.1838467>.

pasts of angels.”<sup>53</sup> In October 2016, Trump continued to maintain publicly that the Central Park Five were guilty, stating to CNN: “The fact that that case was settled with so much evidence against them is outrageous.”<sup>54</sup>

Sarah Burns, author of “The Central Park Five: The Untold Story Behind One of New York City’s Most Infamous Crimes” and co-director/writer/producer of “The Central Park Five” documentary,<sup>55</sup> highlighted the injustice and racism behind Trump’s continued presumption of the young men’s guilt:

None of the Central Park Five had ever been arrested before, so Mr. Trump’s reference to their pasts has no basis in truth. The five were in the park that night, but they maintain that they did not participate in other attacks, and there is no evidence that they did.

So we are left with Mr. Trump’s presumption that because they were black and brown teenagers from Harlem, they must have committed a crime. The idea that teenagers who were in a park while crimes were being committed by others deserved to be labeled rapists and sent to prison for [] years is an affront to our Constitution.<sup>56</sup>

### III. PRESUMPTION OF INNOCENCE FOR BRETT KAVANAUGH

After leveraging his prominence and vast financial resources to wield the presumption of *guilt* against the Central Park Five in 1989 (and beyond), as President, Trump turned around and touted the presumption of *innocence* in Justice Brett Kavanaugh’s defense during his confirmation to the United States Supreme

<sup>53</sup> *Id.*

<sup>54</sup> Burns, *supra* note 21.

<sup>55</sup> See Felicia R. Lee, *Compelling Reason for Following Father’s Footsteps*, N.Y. TIMES (Nov. 15, 2012), <https://www.nytimes.com/2012/11/18/movies/sarah-burns-and-the-documentary-central-park-five.html>.

<sup>56</sup> Burns, *supra* note 21.

2019] *THE "PRESUMPTION OF INNOCENCE" DOUBLE STANDARD* 109

Court.<sup>57</sup> The President did so not for the principle's intended purpose – to protect an innocent criminal defendant's liberty and right to due process – but in the name of securing a lifetime appointment to the highest court of the land for a man who already enjoyed the profound privilege of presiding over cases on the District of Columbia Court of Appeals.<sup>58</sup> Misappropriating the presumption of innocence well outside the criminal context in this way, Trump manipulated and extended the reach of biases that have long unjustly benefitted privileged white criminal defendants over poor defendants of color.

While the Exonerated Central Park Five came from modest beginnings,<sup>59</sup> Kavanaugh enjoyed privilege throughout his life.<sup>60</sup> Indeed, "Kavanaugh has *never* known a time without [] connections" to "the country's most powerful . . . elites."<sup>61</sup> He is the son of a judge and a lobbyist, who raised him in Bethesda, Maryland, "a tony suburb" of Washington, D.C. Kavanaugh attended a private high school "largely populated by the sons of elites," and received both his undergraduate and law school degrees from Yale.<sup>62</sup>

As an extension of his lifelong privilege, unlike the Exonerated Central Park Five, Kavanaugh received every benefit of the doubt from President Trump. On September 26, 2018, the day before Dr. Christine Blasey Ford testified to the Senate Judiciary Committee about her allegations of sexual assault against then-Supreme Court nominee Brett Kavanaugh, the President answered press

<sup>57</sup> See Laughland, *supra* note 32 (showing Trump's involvement in the conviction in the Central Park Five case); Stevenson, *supra* note 13 (defining the presumption of guilt); Quintard-Morénas, *supra* note 1 at 112 (defining the presumption of innocence).

<sup>58</sup> See Meghan Keneally, *Trump Said 'innocent until proven guilty' for Kavanaugh, but not for others*, ABC NEWS (Oct. 16, 2018), <https://6abc.com/trump-said-innocent-until-proven-guilty-for-kavanaugh-but-not-for-others/4496962/>.

<sup>59</sup> See Sarah Burns, *The Central Park Five* 3-4 (2012) (stating that the Central Park Five were raised in the 1980s in apartment buildings on 110th, 111th, and 119th streets in East Harlem. Three of the children lived in the Schomburg Plaza, built in 1975 as a city development for middle and low-income families).

<sup>60</sup> See Conor Friedersdorf, *A Non-scandalous, Non-ideological Case Against Brett Kavanaugh*, ATLANTIC (Sept. 27, 2018), <https://www.theatlantic.com/ideas/archive/2018/09/kavanaugh-supreme-court/571462/>.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

questions on the subject.<sup>63</sup> Trump attributed the accusations of sexual misconduct by three separate women, including Dr. Ford, to a “big, fat con job” by the Democrats and he insisted “there was nothing to investigate . . .”<sup>64</sup> Asked if he considered all of the accusers “liars” and whether anything said at the hearing could make him withdraw Kavanaugh’s nomination, Trump maintained Kavanaugh’s innocence:

[T]his is one of the highest quality people that I’ve ever met. And everybody that knows him says the same thing, and these are all false to me. These are false accusations in certain cases, and certain cases even the media agrees with that. I can only say that what they’ve done to this man is incredible.”<sup>65</sup>

In defending Kavanaugh, President Trump relied unabashedly on the presumption of innocence. He told reporters, “Always, I heard you’re innocent until proven guilty. I’ve heard this for so long and it’s such a beautiful phrase. In this case, you’re guilty until proven innocent. I think that is a very, very dangerous standard for our country.”<sup>66</sup> Trump seemed to have forgotten about his own use of that “dangerous standard” against five innocent teenagers in 1989. While the passage of 30 years could explain such hypocrisy, in Trump’s case, it does not. Just two years prior to defending Kavanaugh, Trump had publicly criticized New York City’s settlement of the Central Park Five lawsuit on the theory that the young men were guilty despite extensive exonerating evidence and vacated convictions.<sup>67</sup> In contrast, Trump’s defense of Kavanaugh continued despite evidence of Kavanaugh’s culpability. The day after Dr. Ford’s Senate testimony, the President described Dr. Ford as “a very credible

<sup>63</sup> See Katie Reilly, *Here’s Everything President Trump Said During an 81-Minute Press Conference about Kavanaugh, Rosenstein and More*, TIME (Sept. 27, 2018), <http://time.com/5407665/president-trump-press-conference-transcript/>.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> See *supra* Part II.

2019] *THE "PRESUMPTION OF INNOCENCE" DOUBLE STANDARD* 111

witness" and her testimony as "very compelling."<sup>68</sup> Nonetheless, on October 4, the day before the Senate voted to end debate and move to a final vote on Kavanaugh's confirmation, the President tweeted, "Due Process, Fairness and Common Sense are now on trial!"<sup>69</sup> Moreover, the day the Senate confirmed Justice Kavanaugh's nomination to the United States Supreme Court, despite Dr. Ford's testimony that she was "one hundred percent" certain Kavanaugh sexually assaulted her, Trump told reporters that he was "a hundred percent" certain Kavanaugh was innocent.<sup>70</sup>

Trump's hypocrisy is matched only by his profound misapplication of the presumption of innocence standard. He artificially superimposed the standard onto a non-criminal process for which it was never intended. Any threat to Kavanaugh's confirmation to the United States Supreme Court could not possibly be compared to the life and liberty stakes of criminal defendants who therefore require special protection from presumptive guilt.<sup>71</sup> Moreover, consequences aside, Kavanaugh's confirmation process was procedurally incomparable to a criminal trial, as it lacked "the kind of extensive investigation that happens in the criminal justice system — the kind of investigation that makes the legal system's high standard for culpability workable in the first place."<sup>72</sup> Republican Senators might have tried to justify their own pro-Kavanaugh invocations of the presumption of innocence and proof "beyond a reasonable doubt"<sup>73</sup> with an

<sup>68</sup> Renae Reints, *Trump Calls Christine Blasey Ford a 'Very Credible Witness'*, FORTUNE (Sept. 28, 2018), <http://fortune.com/2018/09/28/trump-ford-credible-witness/>.

<sup>69</sup> Brian Ries et al., *Senators vote on Kavanaugh's nomination*, CNN (Nov. 25, 2018, 1:11PM), [https://www.cnn.com/politics/live-news/kavanaugh-fbi-investigation-oct-18/h\\_ff4d3625f90ca2425c9099c020ace884](https://www.cnn.com/politics/live-news/kavanaugh-fbi-investigation-oct-18/h_ff4d3625f90ca2425c9099c020ace884).

<sup>70</sup> Tal Axelrod, *Trump: 'Hundred percent' Ford named wrong person*, HILL (Oct. 6, 2018, 7:30PM), <https://thehill.com/homenews/administration/410253-trump-hundred-percent-ford-named-wrong-person>.

<sup>71</sup> Nor could an unsuccessful nomination to the highest court of the land legitimately be compared to the costs confronted by those civil defendants whom Judge Wilkinson III deems worthy of a presumption of innocence. *See infra* Part I.

<sup>72</sup> German Lopez, *The Kavanaugh problem: "presumption of innocence" can't work without real investigations*, VOX (Sept. 28, 2018, 1:25 PM), <https://www.vox.com/policy-and-politics/2018/9/28/17914134/kavanaugh-ford-vote-republicans-senate-innocence-reasonable-doubt>.

<sup>73</sup> *See id.* (Sen. Jeff Flake (R-AZ) argued that "our system of justice affords a presumption of innocence to the accused, absent corroborating evidence." Commenting on

investigation worthy of analogy to criminal process, but they actively refused to do so.<sup>74</sup>

#### CONCLUSION

Presumed guilty from the start, the Exonerated Central Park Five waited a quarter of a century for the government to pay damages for unjustifiably stripping them of their freedom and their youth.<sup>75</sup> Even then, Donald Trump continued to presume their guilt in the press.<sup>76</sup> Brett Kavanaugh waited just 20 days after sexual assault allegations against him surfaced publicly to be confirmed onto the United States Supreme Court.<sup>77</sup> Under the guise of due process, President Trump gave Kavanaugh his unequivocal support the entire time. The President's inconsistent application of the presumption of innocence standard reflects and reinforces the ease with which the standard is disregarded when the lives of black and brown criminal defendants are at stake, but then quickly resurrected to perpetuate white privilege.

Christine Blasey Ford's sexual assault allegations against Kavanaugh, Sen. Lindsey Graham (R-SC) said, "You have to prove beyond a reasonable doubt that it did happen.")

<sup>74</sup> *Id.*

<sup>75</sup> See Mueller et al., *City Releases Trove of Documents in Central Park Jogger Case*, N.Y. TIMES (July 20, 2018), <https://www.nytimes.com/2018/07/20/nyregion/documents-from-the-central-park-jogger-case-are-released.html>

<sup>76</sup> See Benjy Sarlin, *Donald Trump Says Central Park Five Are Guilty, Despite DNA Evidence*, NBC NEWS (Oct. 7, 2016, 6:07 PM), <https://www.nbcnews.com/politics/2016-election/donald-trump-says-central-park-five-are-guilty-despite-dna-n661941>.

<sup>77</sup> See Erin Kelly & Jessica Estepa, *Brett Kavanaugh: A timeline of allegations against the Supreme Court nominee*, USA TODAY (Sept. 28, 2018, 10:49 AM), <https://www.usatoday.com/story/news/politics/onpolitics/2018/09/24/brett-kavanaugh-allegations-timeline-supreme-court/1408073002/>.