Beyond a Reasonable Doubt: Juries Don't Get It

by Judge James A. Shapiro

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Proof beyond a reasonable doubt has been *de rigueur* in criminal cases almost since the dawn of the republic. It is based on the premise that it is better to let several guilty people go free in order to save one innocent person from wrongful conviction.

The jury in a criminal case is not merely an audience. It is the central mechanism without which the wheels of American criminal justice cannot turn—and operates as the final safeguard against a grave error. However, while the Constitution describes the importance, composition, and role of the jury, it does not explicitly use the phrase "proof beyond a reasonable doubt."

Though not mentioned in our founding document, proof beyond a reasonable doubt is "an ancient and honored aspect of our criminal justice system." As such, this Article does not question its conceptual wisdom, but rather its jurisprudential implementation.

Yet the meaning of "beyond a reasonable doubt" is apparently not self-evident. Jurors constantly ask for definitions of beyond a reasonable doubt. Some jurisdictions allow such a definition. Some require it. Others (like Illinois, in both state and federal courts) forbid it entirely under the supposition that its meaning is obvious and requires no definition.

Juries are understandably curious and concerned about the meaning of "proof beyond a reasonable doubt." They correctly assert to judges that it is not self-explanatory (despite many judges' erroneous insistence to the contrary). This creates real and significant risk the standard under which defendants are convicted is constitutionally inadequate.

When jurors misapprehend how high the burden of proof beyond a reasonable doubt is, they are in danger of convicting the innocent, the gravest kind of mistake, called "Type I error." When they let a guilty person go free, they commit a less serious kind of mistake called "Type II error." In fact, the theory behind proof beyond a reasonable doubt (letting several guilty people go free in order to save one innocent person) actually contemplates Type II error.

Many jurors simply don't understand how high a burden of "proof beyond a reasonable doubt" is supposed to be. "Proof beyond a reasonable doubt" should be redefined to make it more intelligible to the average juror. Although the beyond a reasonable doubt standard is veritably sacrosanct in American law, "that's the way it's always been" is not a good reason to perpetuate a standard of proof that is unintelligible to the average juror. The burden should be changed to a two-step analysis: (1) Did the prosecutor prove each and every element of the crime charged? (2) If so, keeping in mind the extraordinary injustice in the possibility of convicting an innocent person, are you convinced to a moral certainty? If American law can somehow let go of its "beyond a reasonable doubt" tradition, the incidence of grievous Type I error will be much lower.

The Honorable James A. Shapiro is a Cook County Circuit Court Judge assigned to the Domestic Relations division and is a past president of the Decalogue Society.