

A Captivating, Satisfying Read for Lawyers

BY JEFFREY M. WINN

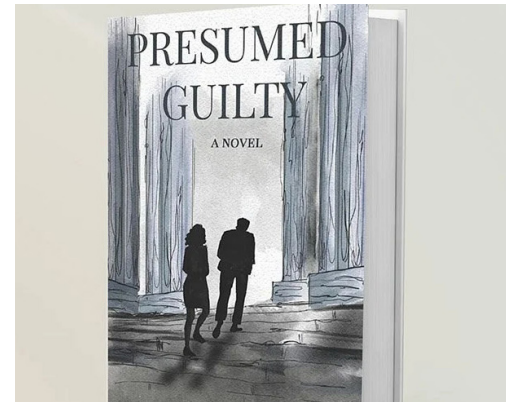
In her debut novel, Alexandra Shapiro has crafted a captivating tale of a prominent portfolio manager, Emma Simpson, who unwittingly becomes embroiled in a federal criminal case brought by an unscrupulous prosecutor who is more interested in headlines than justice. Although written for a general audience, the book is a satisfying read for lawyers because of its fulsome character development, strategic thinking, realistic dialog, and building drama. Because Simpson's fate is not revealed until the book's final pages, and a strength of the book is the curiosity created over whether the protagonist will be found guilty by the jury, this review will not reveal the ending of the story.

Shapiro is a graduate of Columbia Law School who specializes in white-collar criminal defense, investigations, and commercial litigation. During the formative years of her legal career, she clerked for Hon. Stephen F. Williams (D.C. Circuit) and Hon. Ruth Bader Ginsburg (U.S. Supreme Court). Prior to her entry into private practice,

she served as a federal prosecutor, where she developed into a preeminent appellate advocate. In 2016, she argued for the defense in *Salman v. U.S.*, the first insider trading case heard by the U.S. Supreme Court in 20 years.

The moral tone of the book is established in the preamble, where the author quotes a famous phrase from Attorney General Robert H. Jackson's April 1, 1940 speech titled "The Federal Prosecutor," delivered at the Second Annual Conference of U.S. Attorneys. In the speech, Jackson seminally described the professional judgment, mature discretion, and legal acuity that a wise prosecutor should always bring to the job. The author quotes Jackson's closing admonishment that a prosecutor should temper zeal with human kindness, seek truth and not victims, serve the law and not factional purposes, and approach the task with humility.

The book's main character is Simpson, who is the head of the New York office of a Boston-based hedge fund, Otis Capital. Simpson's forte is health care investments. In the alpha-male world of private equity, Simpson has worked herself to the top, earning several million



Presumed Guilty, A Novel
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dollars per year. All the while, she commutes five hours per workday to her home in Dutchess County, which she shares with her French husband (an ex-lawyer and budding vintner) and two teenage children. One of the strengths of the book is the author's development of these family members, as Simpson becomes increasingly ensnared in a prosecutorial web.

Simpson's antagonist is the U.S. Attorney's Office in Manhattan, which is investigating Otis Capital for insider trading. AUSA Ted Hardin's probe is focused not on Simpson or health care stocks, but on suspicious trading by the Boston office of Otis Capital in a media stock, Delphun, which produced splashy profits. Hardin suspects

that the Boston office employed a consultant, who was really a Delphun employee selling tips. Convinced that Otis Capital is dirty, Hardin seeks the evidence to prove it. Thus, a sweeping subpoena is served on Otis Capital, requesting a broad array of documents and ESI related to trading activities.

Meanwhile, the New York office of Otis Capital is bustling. On the fateful day of her “crime,” March 14, 2012, Simpson attends a staff meeting, where someone mentions the subpoena in passing. Multi-tasking, Simpson does not focus attention on the subpoena, which she does not see.

A more significant agenda item in the March 14th staff meeting is a computer system upgrade and the transition to a new server. In preparing for the upgrade, Simpson’s top aide, Ben Noguchi, sends an office-wide email asking analysts to organize and de-clutter their files. According to the Otis retention policy, only typed investment reports were supposed to be kept, not drafts or rough notes. Wanting to support Noguchi, Simpson sends a follow-up March 14th email, further urging the de-clutter.

One of Otis Capital’s analysts is Frances O’Brien, who has an income-tax evasion problem: He has not been declaring his casino gambling winnings. In meetings with Hardin and FBI agents, O’Brien feels the heat. Speculating, he recalls that the March 14th emails were sent just after the staff meeting that discussed the subpoena, and

that as a result analysts destroyed trading-related documents.

Hardin’s investigation turns up no evidence of insider trading by Simpson, but she is indicted for obstruction of justice. To prove the case, the prosecutor needs to show that the defendant acted with corrupt intent. In Simpson’s case, the prosecutor is unbothered by the difficulty of having to show corrupt intent where there is no underlying crime being concealed by the accused.

Seeking to distance itself from the angry press headlines ginned up by the prosecutors, Otis Capital fires Simpson. In unfurling the tale, the author masterfully walks the reader in a linear fashion through Simpson’s lawyering up, the investigation, the misgivings about the prosecution’s bona fides voiced by Hardin’s colleague (Annie Waters), the charging decision, the arrest, the sensational news articles, the disgrace, the disbelief, the family and marital discord, the anger, the self-doubt, the pre-trial preparation, and the trial.

In so doing, the author enriches the narrative with a colorful cast of characters, including Simpson’s supportive husband, confused son, fearful daughter, and earnest defense counsel. The U.S. Attorney, Peter Weisman, and Simpson’s chief tormenter, AUSA Hardin, are depicted as ambitious in their pursuit of the accused, who they consider to be a Wall Street trophy defendant. Simpson and her trial attorney find additional obstacles

in the trial judge, Hon. Robert Gregory, a gruff former prosecutor who always seems to rule against the defense. Rounding out the story are the jurors, several of whom appear to have agendas that Simpson tries to read from the defense table.

The quality of the narrative is enhanced by the author’s deft descriptions of the various characters’ motivations, the lawyers’ strategic decisions, numerous evidentiary disputes, and the Kafka-esque trap-pings that bedevil Simpson. The author also employs an interesting technique, in which she tells the story as a first-person narrative, but with constantly changing narrators. Although Simpson is the most recurring narrator, she is not a lawyer. Thus, the story—which is quintessentially legal in nature—is told through the eyes of a dismayed and often-overwhelmed layperson.

The true morality play at the center of this book was aptly described in 1940 by Attorney General Jackson, but in a different part of his famous speech: The most dangerous power of a prosecutor is that he will pick defendants that he thinks he should get, rather than pick the cases that should be prosecuted.

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