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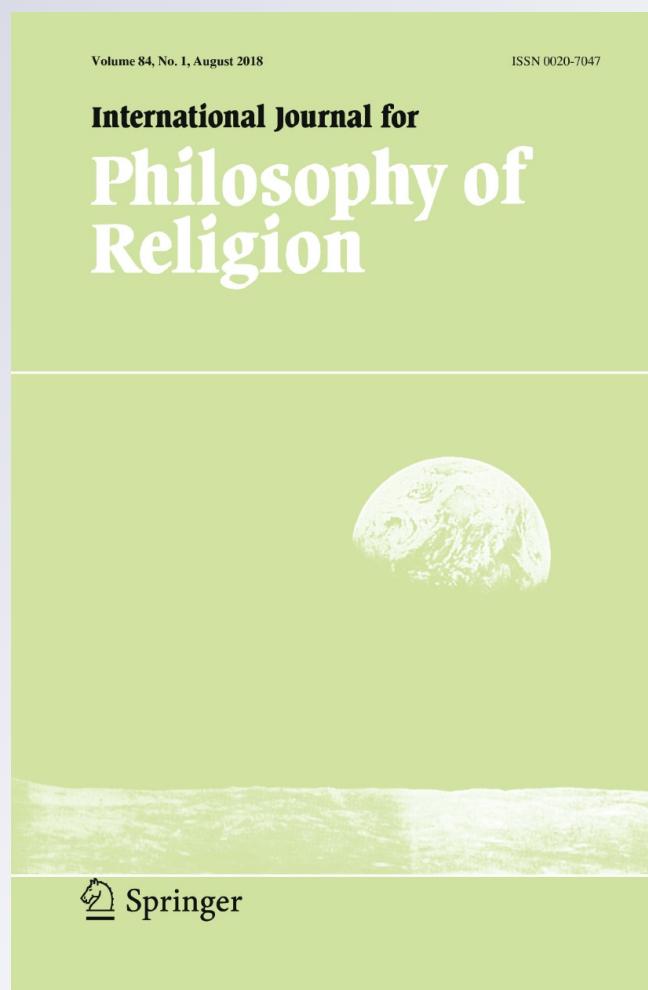
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# Rethinking the presumption of atheism

Keith Burgess-Jackson<sup>1</sup> 

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**Abstract** Is there—or rather, ought there to be—a presumption of atheism, as Antony Flew (1923–2010) so famously argued nearly half a century ago? It is time to revisit this issue. After clarifying the concept of a presumption of atheism (which includes clarifying the concept of a presumption), I take up the evaluative question of whether there ought to be a presumption of atheism, focusing on Flew’s arguments for an affirmative answer. I conclude that Flew’s arguments, one of which rests on an analogy with the (legal) presumption of innocence, fail.

**Keywords** Presumption · Theism · Atheism · Agnosticism · Burden of proof · Antony Flew (1923–2010) · Belief · Nonbelief · Disbelief · Presumption of innocence

In the current rhetorical climate, shifting the burden of proof to our opponents becomes an irresistible argument strategy. It tends to harden and exaggerate the differences between speakers on opposite sides of an issue. The debate over substance turns into a battle for the tacit authority to dismiss an opponent’s entire case. Each side declares, ‘I win, because you have not produced sufficient evidence to prove your point.’ (Gaskins 1992, p. 3)<sup>1</sup>

<sup>1</sup> Compare Simon Blackburn (2008, p. 50): “If in some situation there is a proper presumption that something is true, anyone seeking to prove its opposite is said to bear the burden of proof. A certain amount of philosophical jockeying consists in trying to shift the burden of proof.”

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## Introduction

Though much has changed during the past few centuries—technologically, culturally, legally, economically, politically, scientifically, and philosophically—one thing remains the same: there is widespread (and in some quarters *intense*) interest in the question whether God exists, and, if so, what God is like. Affirmative arguments (to the effect that God exists) continue to be made and responded to, both in and out of the academy. Some of these arguments are old, but others are comparatively new (or, as in the case of the Teleological Argument, have new twists). Negative arguments (to the effect that God does not exist) also continue to be made and responded to. Most of these negative arguments are rooted in the existence of evil, but even here there has been innovation. The so-called Logical Argument from Evil, which asserts that evil *per se* is incompatible with the existence of God, has given way to various Evidential Arguments from Evil, which assert that certain *types* of evil, such as gratuitous evil, constitute *evidence* against, or good reason to doubt, the existence of God.<sup>2</sup>

Despite (or perhaps *because of*) the widespread interest in the question whether God exists, there is no consensus on the answer. Some people, dismayed by the deadlock between those who insist that God exists and those who insist (just as vociferously) that God does not exist, attempt to impose a burden of proof on one side or the other in order to break the deadlock and force a resolution. Whether burden-imposition or burden-shifting of this sort is reputable is itself a debatable (and philosophically interesting) question. It seems to some participants to be a form of cheating or chicanery.

My aim in this essay is to inquire into the justifiability of a particular instance of burden-imposition: that which seeks to impose on *theists* the burden of establishing the existence of God. My focus will be the famous essay, now nearly half a century old, by Antony Flew (1923–2010), entitled “The Presumption of Atheism.”<sup>3</sup> There are three questions that one might ask about such a presumption:

<sup>2</sup> Both the Logical Argument from Evil and the Evidential Argument from Evil are deductive in nature. The former holds that the following propositions are inconsistent:

1. God exists;
2. If God exists, then evil does not exist; and
3. Evil exists.

The latter holds that the following propositions are inconsistent:

4. God exists;
5. If God exists, then gratuitous (i.e., pointless) evil does not exist; and
6. Gratuitous (i.e., pointless) evil exists.

Theists resolve the first inconsistency by denying 2 (though some deny 3). They resolve the second inconsistency by denying 6 (though some deny 5). What makes the Evidential Argument from Evil *evidential* is this: granted the truth of 5, any evidence *for* the truth of 6 constitutes evidence *against* the truth of 4. See Rowe (1979, pp. 335–338). There are, of course, inductive arguments from evil as well as deductive arguments from evil.

<sup>3</sup> Flew (1972a). Flew’s essay was published together with a reply by Donald Evans (Evans 1972) and a rejoinder by Flew (Flew 1972b).

1. What is a (or *the*) presumption of atheism (and how is it related to the burden of proof)?
2. Is there, in fact, a presumption of atheism (and, if so, what are the contexts or situations in which the presumption exists or obtains)?
3. Is there any justification for a (or *the*) presumption of atheism (and, if so, what is that justification)?<sup>4</sup>

The first of these questions is conceptual in nature, and therefore, on any reasonable construal of what philosophy is, within the province of philosophy.<sup>5</sup> The second question is factual in nature, and therefore, just as certainly, *outside* the purview of philosophy (though philosophers, like anyone else, are entitled to answer it). The third question is evaluative in nature. Whether philosophers, *as such*, have evaluative expertise is controversial, but even if they *lack* such expertise (which happens to be my view), they are entitled to join the argumentative fray by making arguments that contain one or more evaluative premises.<sup>6</sup>

There are interesting logical relations between the three questions. For example, it makes little sense to try to answer either the second question or the third question until one has answered the first question. To take the relations in turn:

- How is one to tell whether there is, in fact, a presumption of atheism until one knows what a presumption of atheism *is*? (Compare: How is one to determine whether rape occurs, or, if it does occur, how pervasive it is, until one gets clear on what rape is, or what counts as rape?)<sup>7</sup>
- How is one to justify a presumption of atheism (or argue that there is no such justification) until one clarifies the concept? (Compare: How is one to determine how bad rape is, for purposes of criminal punishment [see, e.g., Davis (1984)], until one gets clear on what rape is, or what counts as rape?)

The first question is logically prior to the others, in the sense that answers to the others presuppose an answer to it. Unfortunately, this logical priority is not always noticed or, when noticed, respected. A considerable amount of factual and evaluative debate in the public square (and even—dare I say it?—in the pages of august philosophical periodicals) is unproductive (and therefore pointless) because the parties in question have divergent conceptions of key concepts. They only *appear* to be engaging one another. One important task of the philosopher, traditionally, has been to keep different types of question distinct, so that

<sup>4</sup> Put differently, “Ought there to be a presumption of atheism?”.

<sup>5</sup> As Joel Feinberg (1984, p. 17) expresses it, “Conceptual clarification is the most distinctively philosophical of enterprises.”.

<sup>6</sup> What I would deny is that one should *defer* to a philosopher on an evaluative matter merely because he or she is a philosopher. In other words, I maintain that philosophers, *as such*, have no special insight into—or access to—what is good, right, just, or beautiful. They do, however, have expertise in *analyzing* these important concepts. (My understanding of philosophy has been shaped by Wilson (1963), White (1975), and Wilson (1986).

<sup>7</sup> Rape is a contested concept. See, e.g., Estrich (1987), Burgess-Jackson (1996), Burgess-Jackson (1999).

meaningful and productive dialogue may occur. (We may think of this as the traffic-control function of philosophy).

The second and third questions are logically independent of one another, as is shown by the following:

- There may *be* a presumption of atheism (in a given context or situation) even though there is no *justification* for it. After all, not everything that is, ought to be.
- There may *not* be a presumption of atheism (in a given context or situation) even though there *is* a justification for it. After all, not everything that ought to be, is.

Bearing these questions (and their logical relations) in mind, I proceed to discuss the so-called presumption of atheism. I begin—in the section entitled “What is a presumption of atheism?”—with the conceptual question, which requires analysis of the concept of a presumption. In the longest section of the essay—entitled “Is there any justification for a presumption of atheism?”—I take up the all-important evaluative question whether there is a justification for a presumption of atheism.<sup>8</sup> Although I believe that there is no justification for, and hence *ought not to be*, a presumption of atheism (or of theism, for that matter), I will argue for a more modest claim, namely, that *Flew’s* arguments in favor of a presumption of atheism—the most important of which rests on an analogy with the (legal) presumption of innocence—misfire. I reserve for another occasion, if at all, the interesting but tangential factual question whether there is, in any identifiable context or situation, a presumption of atheism. (Recall that this is not a distinctively philosophical question).

## What is a presumption of atheism?

Let us begin at the beginning, with the concept of a presumption, for whatever else it is, a presumption of atheism is a *presumption*. According to the *Oxford English Dictionary*, the word “presumption,” which derives from the Latin word *praesumere* (“a taking beforehand, anticipation”), means:

The assuming or taking of something for granted; also, that which is presumed or assumed to be, or to be true, on probable evidence; a belief deduced from facts or experience; assumption, assumed probability, supposition, expectation.

As this definition suggests, a presumption is a determination (or decision), by either an individual or an institution, to take something for granted, i.e., to believe or to do something unless and until considerations to the contrary are adduced (by someone who wishes to *rebut* the presumption) or come to light.<sup>9</sup> The difference between a

<sup>8</sup> I make no attempt to cite, much less to engage, either (1) the secondary literature on Flew’s essay or (2) afterthoughts by Flew himself. The reason for this—besides not wanting to extend an already lengthy essay—is that Flew’s essay was, at the time of its publication, self-contained. That Flew modified his views (if he did) has no bearing on the quality of his original analyses, arguments, or criticisms.

<sup>9</sup> For an excellent summary of the main features of a presumption, see Ullmann-Margalit and Margalit (1982, pp. 437–439).

presumption and an assumption is that, when one *assumes*, one entertains a proposition—usually (but not always) in order to see what (if anything) follows from it.<sup>10</sup> For example, in her 1971 essay, “A Defense of Abortion,” Judith Jarvis Thomson (1971, p. 48) says that she will assume, for the sake of argument, that “the fetus is a person from the moment of conception.” Thomson disclaims belief in this proposition (indeed, she says it is false) and presumably would not say that there is a *presumption* that fetuses, from the moment of conception, are persons. She is, rather, *assuming* it, in the sense of bracketing it or setting it aside; her aim in the essay is to determine what (if anything) *follows* from the proposition, *should it (turn out to) be true*.<sup>11</sup>

It may help to frame the difference between a presumption and an assumption in terms of commitment. To presume something is to commit oneself to it even while acknowledging that the commitment may have to be set aside (as contrary evidence comes in). This is usually not the case with assumptions. When Thomson assumes that the fetus is a person from the moment of conception, she makes no commitment, even a tentative or provisional one, to its truth. By contrast, if I presume that my interlocutors are speaking literally, I commit myself to interpreting their speech as literal rather than as figurative or metaphorical—until I have reason to believe otherwise.<sup>12</sup>

Presumptions are either theoretical (contemplative) or practical (deliberative), in the following sense. If I presume that something *is (or is not) the case*, I endorse a theoretical presumption, for I am saying that a particular proposition is to be *believed* (or not believed) unless and until considerations to the contrary are adduced (or come to light). An example of this would be the legal presumption that someone who has been missing for seven years is dead.<sup>13</sup> If I presume that something *is (or is not) to be done*, I endorse a practical presumption, for I am saying that a particular act is to be *performed* (or not performed) unless and until considerations to the contrary are adduced (or come to light). An example of this would be the presumption that promises are to be kept. Indeed, each of W. D. Ross’s seven *prima facie* duties (see Ross 1930, pp. 20–22) can be viewed as a practical presumption. There is a presumption, Ross would say, that:

- Commitments—including the commitment to speak truthfully—are to be kept (Ross calls this “fidelity”);
- Wrongs are to be rectified (“reparation”);
- Gratitude is to be shown or expressed (“gratitude”);

<sup>10</sup> The difference between presumptions and assumptions is reflected in our language. According to Roland Hall (1961, p. 11), “we speak of ‘strong’ and ‘weak’ presumptions, but of ‘reasonable’ and ‘rash’ assumptions” (footnote omitted).

<sup>11</sup> Lexicographer (and lawyer) Bryan A. Garner (2016, p. 78) distinguishes between assumptions and presumptions as follows: “*assumption*; *presumption*. The connotative distinction between these words is that *presumptions* are more strongly inferential and more probably authoritative than mere *assumptions*, which are usually more hypothetical. *Presumptions* may lead to decisions, while *assumptions* typically don’t” (boldface and italics in original).

<sup>12</sup> This is the Presumption of Literalness. See Bach and Harnish (1979, pp. 12, 224).

<sup>13</sup> “The rule of presumption is that a person shall, in the absence of evidence to the contrary, be taken to be dead, when he has been absent for seven years and not heard from by those who would naturally have heard, if he had been alive” (Thayer 1889, p. 151).



- Justice is to be done (“justice”);
- Good is to be done to or for others (“beneficence”);
- Good is to be done to or for oneself (“self-improvement”); and
- Harm is not to be done to others (“non-maleficence”).

The idea is that, unless and until it is shown that some other *prima facie* duty comes into play in a particular situation, pulling one in a different direction (so to speak), one ought to keep one’s commitments, do good, refrain from harming others, &c.<sup>14</sup> Students of Ross know that he was uncomfortable with the adjective “*prima facie*” to describe provisional or conditional duties. Simon Blackburn (2008, p. 290) and others have suggested that a more appropriate term is “*pro tanto*,” which means “so far as it goes.” A presumption can be thought of as a *pro tanto* reason for believing or doing something.<sup>15</sup>

The words “unless and until” in my gloss on the definition of “presumption” indicate that presumptions, by their nature, are rebuttable. This means that they are *capable* of being rebutted, not that they *are* (in a particular situation) rebutted. Other words for “rebuttable” are “overthrowable,” “overcomeable,” “underminable,” “defeasible,” “overridable,” “overturnable,” “reversible,” “displaceable,” “nullifiable,” and “upsettable.”<sup>16</sup> The legal presumption that someone who has been missing for seven years is dead can be rebutted (overthrown, overcome, undermined, defeated, overridden, overturned, reversed, displaced, nullified, upset) by reliable evidence to the contrary, that is, by reliable evidence that the person in question is (still) alive. Every presumption is, by definition, rebuttable. Some presumptions are, in fact, rebutted, while others are not. As Ross would put it, if only one *prima facie* duty applies in a given situation, then that duty is one’s actual duty, one’s duty proper, or one’s duty, all things considered. For example, if I have made a promise to Joe, then, unless keeping the promise will prevent me from doing a significant amount of good to or for others or will require that I harm others in a significant way, & c., I ought to keep it.

Thus far, I have said that a presumption may be rebutted by considerations (or evidence) to the contrary. Exactly how much evidence is required to rebut a presumption depends on the nature (content, substance, matter) of the presumption. At one extreme, we might require overwhelming or compelling evidence to rebut a presumption. At the other extreme, we might require only some evidence (“one iota”) to rebut a presumption. The best way to understand this is in terms of a scale. Imagine a scale in equipoise, i.e., with nothing on either of its platters. A presumption can be thought of as putting something—at the outset—on one side (platter) of the scale. A *strong* presumption is analogous to putting something heavy on one side of the scale. To rebut such a presumption, i.e., to bring the scale back

<sup>14</sup> For a discussion (though not necessarily an endorsement) of this approach, see Miller (2002).

<sup>15</sup> A prominent example of a *practical* presumption is Joel Feinberg’s “presumption in favor of liberty.” Feinberg says that “Liberty should be the norm; coercion always needs some special justification” (Feinberg 1984, p. 9). For a discussion of this presumption by a philosopher who happens also to be a lawyer, see Husak (1983).

<sup>16</sup> Many of these terms are listed by Edna Ullmann-Margalit in her valuable essay, “On Presumption” (Ullmann-Margalit 1983, p. 149).



into equipoise, one will have to put something at least as heavy on the other side of the scale.<sup>17</sup>

Consider, as an example, the presumption of innocence from Anglo-American jurisprudence (to which we will recur in the section entitled “Is there any justification for a presumption of atheism?”). It is said that, in order to rebut this presumption (which obviously works to the advantage of the criminal defendant), the prosecutor must prove every element of the offense “beyond a reasonable doubt.” The presumption of innocence is (comparatively) strong, for if the factfinder has even one reasonable doubt about even one element of the offense, he or she is required by law to acquit (as opposed to convict). Other presumptions may be *weak* in nature, in that it takes only a small amount of evidence (“one iota”) to bring the scale back into equipoise. For example, it may be that the presumption of death (for people missing for seven years) is rebutted by the slightest evidence to the contrary, such as testimony by a sworn witness that he or she observed the person a year or two earlier.<sup>18</sup>

Correlative to the notion of a presumption is that of a burden. In social philosophy, it is sometimes said that rights and duties are (logically) correlative. This means that “attribution of rights to one person logically entails the existence of at least one *other* person who has duties toward him.”<sup>19</sup> Metaphorically speaking, rights and duties are flip sides of the same coin. Just as no coin has only one side, there is no right without a correlative duty and no duty without a correlative right. We might say, along similar lines, that presumptions and burdens are (logically) correlative.<sup>20</sup> This means that, for every presumption, there is (logically) a burden, and for every burden a presumption.<sup>21</sup> The burden here is one of proof or persuasion (rather than, say, of going forward). To use the aforementioned example from criminal law, to say that there is a presumption of innocence (where innocence means no more than the absence of *legal* guilt) is to say that the prosecutor bears the burden of *proving* the defendant’s guilt, i.e., of *persuading* the factfinder (usually, but not always, a jury) that the defendant is guilty of the offense charged (see Underwood 1977).

<sup>17</sup> “It is this image of some fancied scales being ailt prior to any weighing which is conveyed by the ‘pre-’ of ‘presumption’. And it is the strength of the presumption which determines the weight required for reversing the balance” (Ullmann-Margalit 1983, 154).

<sup>18</sup> The standards of proof most used by lawyers are (1) “proof beyond a reasonable doubt,” (2) “proof by clear and convincing evidence,” and (3) “proof by a preponderance of the evidence.” The presumption in the first case is stronger than the presumption in the second case, and the presumption in the second case is stronger than the presumption in the third case. Strength, of course, is transitive, so the presumption in the first case is stronger than the presumption in the third case.

<sup>19</sup> Feinberg (1973, p. 61) (italics in original). This is known as the “correlativity thesis.”

<sup>20</sup> “Burden of proof and presumption represent correlative conceptions, inseparably coordinated with one another throughout the range of rational inquiry. They are, in effect, opposite sides of the same coin, either as throwing the advantage of a presumption on one side, or as throwing the burden of proof on the other” (Rescher 2006, p. 14). Rescher’s book, though repetitive in places, brims with insights about (and applications of) presumptions and their correlative burdens.

<sup>21</sup> For a general discussion of burdens of proof in argumentation, see Walton (1988), Godden and Walton (2007).

Earlier, as will be recalled, I distinguished between strong and weak presumptions. A strong presumption correlates with a heavy burden; a weak presumption correlates with a light burden. If there is no presumption at all in a given case, then obviously nobody bears a burden of proof or persuasion, heavy or light. The language of burdens, like the language of rebuttal, is variable. A carryable burden is one that is capable of being carried; a bearable burden is one that is capable of being borne; a dischargeable burden is one that is capable of being discharged. If, in a given case, a prosecutor proves every element of the offense in question beyond a reasonable doubt, then he or she may be said to have carried, borne, or discharged the relevant burden of proof. (I will most often use the term “bear” rather than one of its synonyms.) Note that it does not follow from the fact that a burden is *bearable* that it is *borne* (in a given case). A burden can be bearable but not borne, just as a presumption can be rebuttable but not rebutted. To say that a presumption is rebuttable is to say that its correlative burden is bearable. To say that a presumption is rebutted is to say that its correlative burden is (or has been) borne.

Now that we have gone some way toward clarifying the concept of a presumption (in general), let us focus more particularly on the concept of a presumption of *atheism*. I will make only a few preliminary remarks here, saving the bulk of my discussion for the section entitled “Is there any justification for a presumption of atheism?” That is where we will examine Flew’s arguments in favor of such a presumption.

Suppose one defines “theism” as the doctrine (or belief) that God exists and “atheism” as the doctrine (or belief) that God does not exist. So understood, theism and atheism are contradictories. Either God exists or God does not exist. If God exists, then theism is true and atheism false; if God does not exist, then atheism is true and theism false. A presumption of atheism, on this understanding of the terms, would be a theoretical (contemplative) presumption rather than a practical (deliberative) presumption, for it has to do with belief rather than action (which is not to say that the two are unconnected). To put it in the terms employed earlier, a presumption of atheism is a determination (or decision) to take for granted that God does not exist, unless and until considerations to the contrary are adduced (by someone who wishes to rebut the presumption) or come to light.

I am *not* claiming that what I have just said is *Flew’s* understanding of the presumption of atheism. As we shall see—in the section entitled “Is there any justification for a presumption of atheism?”—he is unfortunately less than clear about how he understands the term “presumption of atheism.” He *seems* to endorse a presumption of *nonbelief* (in either the existence of God or the nonexistence of God) rather than a presumption of *nonexistence* (of God). I discuss the latter presumption here only because (1) it is a natural understanding of the presumption of atheism (based on a common definition of “atheism” as “the doctrine [or belief] that God does not exist”) and (2) the purpose of this part of the present essay is conceptual rather than normative. I suspect that when most people hear the term “presumption of atheism,” they think that it means presuming the *nonexistence* of God rather than presuming *nonbelief* in God (i.e., that one will not believe in God).

It may be worth noting, before closing this section, that someone—some anti-Flew—could just as easily argue in favor of a presumption of *theism*. Such a

presumption would be a determination (or decision) to take for granted that God exists, unless and until considerations to the contrary are adduced (by someone who wishes to rebut the presumption) or come to light. Obviously, both presumptions cannot be operative at the same time in the same context or situation. To see this, imagine a criminal-justice system in which defendants are presumed to be both innocent (in the sense of not guilty) and guilty. The very idea is incoherent. What is *not* incoherent is the idea that there is no presumption at all. We, as a society, might well decide that nobody is to be presumed either innocent *or* guilty. By the same token, we—as a society or as individuals—might decide that there is neither a presumption of theism nor a presumption of atheism. The scale in such a case would begin (though presumably not end) in equipoise.

### Is there any justification for a presumption of atheism?

Now that we have clarified the concept of a presumption of atheism, let us turn to the all-important evaluative question. Flew divides his essay into five parts. In the first part, he explains what *he* means by the expression “presumption of atheism.” In the second part, he draws a comparison between the presumption of atheism (which is comparatively unfamiliar) and the presumption of innocence (which is comparatively familiar). In the third part, he makes a case for (i.e., attempts to justify) a presumption of atheism. In the fourth part, he replies to various objections to a presumption of atheism. In the fifth part, he argues, provocatively, that Thomas Aquinas (1225–1274) both *accepted* and claimed to have *defeated* a presumption of atheism.

Flew begins his essay with what is (by now) a familiar distinction: between positive atheism and negative atheism. The best way to understand this distinction—which figures prominently in Flew’s argument—is by way of a diagram. Let belief be a two-place relation between a believing subject and a proposition. For any subject *S* and any proposition *p*, either *S* believes that *p* (represented by “Bsp”) or it’s not the case that *S* believes that *p* (represented by “~Bsp”). Let us call these states, respectively, “*belief* (that *p*)” and “*nonbelief* (that *p*).” The nonbelief category is subdivided. Either *S* believes that non-*p* (represented by “Bs ~p”) or it’s not the case that *S* believes that non-*p* (represented by “~Bs ~p”). Let us call the first of these two subsidiary states “*disbelief* (that *p*).”<sup>22</sup> Here is the aforementioned diagram:

<sup>22</sup> “It is important to distinguish between disbelief and nonbelief—between believing a sentence false and merely not believing it true. Disbelief is a case of belief; to believe a sentence false is to believe the negation of the sentence true. We disbelieve that there are ghosts; we believe that there are none. Nonbelief is the state of suspended judgment: neither believing the sentence true nor believing it false. Such is our attitude toward there being an even number of Paul Smiths in Boston” (Quine and Ullian 1978, p. 12).

Bsp	$\sim$ Bsp	
1	Bs $\sim$ p	$\sim$ Bs $\sim$ p
	2	3

If we let “g” be the proposition that God exists, we get three jointly exhaustive and mutually exclusive categories:<sup>23</sup>

1. *theism* (belief that God exists, or “Bsg”);
2. *atheism* (belief that God does not exist, or “Bs  $\sim$  g”); and
3. *agnosticism* (the conjunction of [i] nonbelief that God exists, or “ $\sim$  Bsg,” and [ii] nonbelief that God does not exist, or “ $\sim$  Bs  $\sim$  g”).

It is tempting to stop here and refer to theists, atheists, and agnostics, respectively, as Believers, Disbelievers, and Nonbelievers, but that would be misleading, because both theism and atheism involve *non*belief as well as belief. Here is a diagram that shows exactly what each of the three protagonists believes and doesn’t believe:

	Belief in the nonexistence of God (Bs $\sim$ g)	Nonbelief in the nonexistence of God ( $\sim$ Bs $\sim$ g)
Belief in the existence of God (Bsg)	$\emptyset$	Theism
Nonbelief in the existence of God ( $\sim$ Bsg)	Atheism	Agnosticism

Since no rational person can both believe that God exists and believe that God does not exist,<sup>24</sup> one of the four categories in the diagram is empty (represented by the null-set symbol). What the diagram discloses are two salient facts: (1) theists are both believers (in the existence of God) and nonbelievers (in the nonexistence of God) and (2) atheists are both believers (in the nonexistence of God) and nonbelievers (in the existence of God). Agnostics are nonbelievers through and through.<sup>25</sup>

Let us examine Flew’s terminology in light of these distinctions, so that we are in a position to evaluate his arguments. The “atheism” in Flew’s title, he insists, is *negative* atheism, not positive atheism. According to Flew, a negative atheist is “not someone who positively asserts the non-existence of God [that is positive atheism]; but someone who is simply not a theist” (p. 30). (The word “atheist,” he says, is

<sup>23</sup> The names—“theism,” “atheism,” and “agnosticism”—are mine, not Flew’s.

<sup>24</sup> The propositions “God exists” and “God does not exist” are contradictories.

<sup>25</sup> The three positions can be arrayed in a square of opposition, with “Bsg” (theism) in the upper left, “Bs  $\sim$  g” (atheism) in the upper right, “ $\sim$  Bs  $\sim$  g” in the lower left, and “ $\sim$  Bsg” in the lower right. (Agnosticism is the conjunction of the two lower positions.) The square of opposition shows (1) that if theism is true, then both atheism (its contrary) and agnosticism are false (i.e., that no theist is either an atheist or an agnostic); (2) that if atheism is true, then both theism (its contrary) and agnosticism are false (i.e., that no atheist is either a theist or an agnostic); and (3) that if agnosticism is true, then (by contradictories) both theism and atheism are false (i.e., that no agnostic is either a theist or an atheist).

analogous to “amoral,” “atypical,” and “asymmetrical.”) The presumption of atheism, therefore, is a presumption of *nonbelief* (in the existence of God). Later in his essay (on p. 38), when Flew *argues* for this presumption, he seems to say that the same presumption applies to belief in the *nonexistence* of God. So what Flew objects to (so to speak) is not belief in the existence of God in particular, but belief or disbelief in God in general. Indeed, *all* beliefs, whether in the existence of God, in the nonexistence of God, or in anything else, must be justified (according to Flew) in order to count as knowledge.

Let us turn to Flew’s arguments, the first of which I call “the knowledge argument.” According to Flew, whatever else knowledge is, it is justified true belief. A belief may be ever so true, but will not count as knowledge unless (and until) it is justified (or, as Flew at one point puts it, “properly warranted” [p. 37]). Flew writes:

If it is to be established that there is a God, then we have to have good grounds for believing that this is indeed so. Until and unless some such grounds are produced we have literally no reason at all for believing; and in that situation the only reasonable posture must be that of either the negative atheist or the agnostic. So the onus of proof has to rest on the proposition. It must be up to them: first, to give whatever sense they choose to the word ‘God’, meeting any objection that so defined it would relate only to an incoherent pseudo-concept; and, second, to bring forward sufficient reasons to warrant their claim that, in the present sense of the word ‘God’, there is a God (p. 38).

This argument, it seems to me, proves too much. It proves not only that there is a burden of proof on theists and atheists (which is, of course, Flew’s objective), but that there is a burden of proof on anyone who believes *any* proposition! This being so, there is a generic presumption against *belief* and not merely a particular presumption against *theistic* or *atheistic* belief. But this drains Flew’s argument not only of its originality but also of its interest, for the very same point had been made (rightly or wrongly) nearly a century earlier by W. K. Clifford (1845–1879), who wrote the immortal words, “it is wrong always, everywhere, and for any one, to believe anything upon insufficient evidence” (Clifford 1877, p. 295). Flew is saying, in effect, that there is a standing presumption, applicable to everyone, everywhere, at all times, against believing anything.

Earlier, we defined “agnosticism” as the conjunction of nonbelief in the existence of God and nonbelief in the nonexistence of God. In light of this, a more accurate title for Flew’s essay would be “The Presumption of Agnosticism.” However, he resists this title on the ground that agnostics, as commonly understood, “have a legitimate concept of God” (p. 30) but “claim[] not to know either that there is or that there is not such a being” (p. 30). Flew believes that the burden of proof borne by theists and atheists has two components: first, to show that the concept of God (or theism) is *coherent*; and second, to show that the concept has (in the case of theism) or lacks (in the case of atheism) *application*. In what follows, I shall ignore Flew’s point about coherence (without implying that it is problematic in any way) and focus on the knowledge claim. I will interpret Flew as arguing for a presumption of agnosticism (i.e., thoroughgoing nonbelief). The burden of proof, in

his view, lies on both theists and atheists, for both of them, unlike the agnostic, *believe* something.

Flew's second argument for a presumption of atheism is more plausible (and original) than the first, though it, too (I submit), ought to be rejected. This argument, which I call "the analogical argument," rests on a comparison between the presumption of atheism and the (legal) presumption of innocence. As Flew puts it, "My presumption of atheism is closely analogous to the presumption of innocence in the English Law; a comparison which we shall later find it illuminating to develop" (pp. 29–30). In the second part of his essay, Flew identifies at least four relevant similarities between the two presumptions:

- In both cases, when it is said that someone bears the burden ("onus") of proof, what is meant is not proof in some formal sense, such as (deductive) demonstration, but proof "in the ordinary sense in which it can embrace any and every variety of sufficient reason" (p. 33).
- In both cases, the presumption is defeasible. The presumption of atheism "lays it down that thorough and systematic inquiry must start from a position of negative atheism, and that the burden of proof lies on the theist proposition. Yet this is not at all the same thing as demanding that the debate should proceed on a positive atheist assumption, which must preclude a theist conclusion" (p. 34). Flew assures his readers that, just as the presumption of innocence is compatible with a guilty verdict, the presumption of atheism is compatible with a "verdict" that God exists.
- In both cases, though the presumptions are "procedural and not substantive" (p. 34), it "can matter a lot which presumption is adopted" (p. 35). The gulf between a presumption of theism and a presumption of atheism is as great as the gulf between a presumption of guilt and a presumption of innocence.<sup>26</sup>
- In both cases, a defeat of the presumption "does not thereby show that the original contention about the onus of proof was mistaken" (p. 35). In other words, there are no *counterexamples* to the presumption of innocence, as there are to universal claims such as "all persons accused of murder are in fact innocent" (p. 35).

Though Flew never says as much, I shall interpret him as making an analogical *argument* and not merely using the presumption of innocence to illustrate or illuminate the presumption of atheism. In other words, I shall interpret him as claiming that the considerations that ground or support the presumption of innocence *also* ground or support the presumption of atheism.<sup>27</sup>

<sup>26</sup> I will not pursue, here, the apparent contradiction between (1) "the presumption of atheism is merely procedural" and (2) "it matters (substantively?) whether there is a presumption of atheism as opposed to a presumption of theism." Flew's repeated claims that his presumption of atheism is "neutral" (see, e.g., p. 32), or a mere "methodological framework" (see p. 40), are puzzling. Perhaps he means to say that the presumption is neither that God exists nor that God does not exist, but rather that one is not to *believe* either of these propositions. The presumption is therefore "neutral" as between the theist and what Flew calls the "positive atheist." See Flew's p. 34.

<sup>27</sup> Before examining the justification for the presumption of innocence to see whether it applies, *mutatis mutandis*, to the presumption of atheism, let us note an odd feature of Flew's presumption of atheism. As

How strong is Flew's analogical argument? I believe that there are two relevant disanalogies that weaken it significantly. The first is that there is an *urgency* to the presumption of innocence that does not obtain in the case of the presumption of atheism. In a criminal case, someone's vital interests—in life, liberty, property, bodily integrity, reputation, or some combination thereof—are at stake. Depending on the verdict, the defendant will either remain in the clutches of legal authorities or be released from custody, to go about his or her business unmolested. What is urgent is the making of a decision, *one way or another*. The presumption of innocence responds to this urgency by decreeing a default position that has the effect of bringing the matter to a close. It says to the prosecutor: "Either prove every element of the offense beyond a reasonable doubt, or release the defendant from custody." This does not mean, obviously, that criminal trials must be conducted swiftly, for they may, if the underlying facts or issues are complicated, take time; it means, rather, that the legal system, for practical purposes, requires finality or resolution. This explains (or at least sheds light on) the dictum "Justice delayed is justice denied."

Where is the urgency in the case of belief (or disbelief) in God? Why is there a need for finality or resolution? For what practical purpose must a decision be made? Each of us, after all, has ample time (some more than others, obviously) to:

- sift through the evidence for and against the existence of God;
- examine the various arguments for theism, atheism, and agnosticism;
- make careful observations of the natural world for signs of design (or miraculous occurrences);
- study religious documents that purport to be divine in origin or inspiration; and
- solicit and evaluate testimony from those who claim to have had religious experiences.

There is, in the case of religious belief, no criminal defendant whose liberty is being limited by authorities; there are no vital interests at stake (except perhaps the chance for eternal life!); and there are no ongoing court costs that need to be minimized by limiting the length of the trial. There is, in short, no urgency, as Chaïm Perelman (1912–1984) has so well noted:

[T]he authority of *res judicata*, which is necessary in law in order to end controversy, is, in no way, recognized in philosophy. In fact, in philosophy where the controversies are such that each attempts to justify his own position, to convince his interlocutor, *the controversies may continue indefinitely, and*

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Footnote 27 continued

we have seen, Flew claims that the presumption of atheism is a presumption of *nonbelief* (both in the existence of God and in the nonexistence of God). At no point does he say, or imply, that the presumption of atheism is a presumption of *nonexistence* (of God). If we were to make a parallel claim about the presumption of innocence, we would have to say that there is a presumption of *nonbelief* (in the defendant's guilt) rather than a presumption of *nonguilt*. This is odd, because, as every legal practitioner knows, the presumption of innocence says (in effect) that if the prosecutor fails to bear the burden of proof (beyond a reasonable doubt), the defendant is (for legal purposes) *not guilty*. It does not say that the factfinder (judge or jury) is *not to believe* that the defendant is guilty.



*the decision of a third party cannot put an end to them.* (Perelman 1980, p. 158 [second set of italics added])

Flew must explain why it is *urgent* that a decision be made about whether to believe (or disbelieve) in God. Why should there be a presumption of *any* sort in this area, much less the particular presumption (of atheism, or nonbelief) that Flew advocates? Unfortunately, he fails to supply an explanation. What is urgent in one case (ascertaining guilt or innocence) is simply not urgent in the other case (deciding whether to believe or disbelieve in God).<sup>28</sup> One important rationale for the presumption of innocence, therefore, seems to be inapplicable to Flew's presumption of atheism.

The second relevant disanalogy between the presumption of innocence and the presumption of atheism poses an even greater difficulty for Flew's argument. Understanding it requires a brief digression into criminal justice. A criminal trial exemplifies what John Rawls (1921–2002) calls “imperfect procedural justice” (Rawls 1971, p. 86).<sup>29</sup> One can understand this type of justice by contrasting it with two other types:

- In “*pure*” *procedural justice*, which is illustrated by a poker game, there is no “independent standard for deciding which outcome is just” (p. 85), but “there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed” (p. 86; italics added).
- In “*perfect*” *procedural justice*, which is illustrated by the division of a cake by the person who gets the last piece, there is “an independent standard for deciding which outcome is just” (p. 85) and it is “possible to devise a procedure that is sure to give the desired outcome” (p. 85).
- In “*imperfect*” *procedural justice*, there is “an independent standard for deciding which outcome is just” (p. 85), *but* it is not “possible to devise a procedure that is sure to give the desired outcome” (p. 85).

A criminal trial is “imperfect” in that, while the just outcome is known, there is no way to ensure its production. (The just outcome is that all and only the guilty are to be adjudged guilty, i.e., convicted.) Consider the following matrix of possibilities:

	Adjudged not guilty	Adjudged guilty
Not guilty	1	2
Guilty	3	4

Categories 2 and 3 represent injustices, or what we might call “errors.” In category 2, someone who is *not guilty* is adjudged guilty. In category 3, someone

<sup>28</sup> An anonymous reviewer observes, helpfully, that this difference in urgency is related to the difference between a theoretical (contemplative) presumption and a practical (deliberative) presumption. See the second section of this essay—entitled “What is a presumption of atheism?”—for the distinction.

<sup>29</sup> Subsequent references to this work are in the text.

who is *guilty* is adjudged not guilty.<sup>30</sup> Categories 1 and 4 represent cases in which justice is done, i.e., in which no error occurs.

If we, as a society, were indifferent as between errors 2 and 3, then presumably there would be no need for a presumption either of guilt or of innocence. If error 3 were thought to be worse (in some sense) than error 2, then we would have reason to create a presumption of guilt and impose a (correlative) burden of proof on the defendant.<sup>31</sup> As a matter of fact, error 2 is thought to be worse than error 3. We—in Anglo-American jurisdictions, at any rate—believe (and say) that it is better for a guilty person to be adjudged not guilty (and set free) than for an innocent person to be adjudged guilty (and punished). Indeed, it is routinely asserted that it is better for 10 guilty persons to be adjudged not guilty (and set free) than for *one* innocent person to be adjudged guilty (and punished). The 10-to-one ratio reflects the degree to which one error is (thought to be) worse than the other.<sup>32</sup>

The presumption of innocence is justifiable as a means to minimize (though not, unfortunately, to eliminate) the occurrence of what we take to be the worst of two distinct errors.<sup>33</sup> The higher the ratio, the stronger the presumption. That the prosecutor must prove every element of the offense “beyond a reasonable doubt,” as opposed to (1) “by clear and convincing evidence” or (2) “by a preponderance of the evidence,” indicates that the presumption of innocence is strong indeed. This does not mean, obviously, that it is irrebuttable; it means that it takes a lot to rebut it. To use the familiar scale metaphor, we should say that at the outset of a criminal trial, one side of the scale—the innocence side—is weighted down. The prosecutor must put enough evidence on the other side of the scale—the guilt side—to alter the balance. Prosecutors sometimes discharge this (heavy) burden and sometimes do not.

Can Flew’s presumption of atheism be similarly justified? The reader will recall that there are two interpretations of Flew’s presumption. The first is a presumption of *nonbelief* (in either the existence of God or the nonexistence of God) and the second a presumption of *nonexistence* (of God). Here is the matrix for the first (i.e., *nonbelief*) interpretation<sup>34</sup>:

<sup>30</sup> Rawls (1971, p. 86) writes: “Even though the law is carefully followed, and the proceedings fairly and properly conducted, it may reach the wrong outcome. An innocent man may be found guilty, a guilty man may be set free.”

<sup>31</sup> As Flew (1972a, pp. 36–37) puts it, “If for you it is more important that no guilty person should ever be acquitted than that no innocent person should ever be convicted, then for you a presumption of guilt must be the rational policy. For you, with your preference structure, a presumption of innocence becomes simply irrational. To adopt this policy would be to adopt means calculated to frustrate your own chosen ends; which is, surely paradigmatically irrational.” Flew goes on to provide an historical example of a presumption of guilt. See also Katzner (1973, p. 91): “[O]ur legal system would be every bit as effective procedurally if it were based on the presumption that a man is considered guilty until he is proved innocent (i.e., the burden of proof is switched from the prosecution to the defense).”

<sup>32</sup> According to Associate Justice John Marshall Harlan (1899–1971) of the Supreme Court of the United States, “the requirement of proof beyond a reasonable doubt in a criminal case [is] bottomed on a fundamental value determination of our society that it is *far* worse to convict an innocent man than to let a guilty man go free.” *In re Winship*, 397 U.S. 358, 372 (1970) (concurring opinion) (*italics added*).

<sup>33</sup> Instead of “the lesser of two evils,” we seek “the lesser of two errors.”

<sup>34</sup> This matrix reflects belief (or nonbelief) in the *existence* of God. A similar matrix can be constructed for belief (or nonbelief) in the *nonexistence* of God.

	Nonbelief in God	Belief in God
Belief in God unjustified	1	2
Belief in God justified	3	4

Categories 2 and 3 represent errors. In category 2 (a “false positive”), the subject believes that God exists, but the belief in question is unjustified (and does not, therefore, constitute knowledge). In category 3 (a “false negative”), the subject does not believe that God exists, even though such a belief is (i.e., *would be*) justified. Obviously, this is also a case in which the person in question lacks knowledge. Neither of the other two categories represents an error. In category 1 (a “true negative”), the subject does not believe that God exists, and belief that God exists is (i.e., *would be*) unjustified. In category 4 (a “true positive”), the subject has a justified belief that God exists.

In order for Flew’s presumption of atheism (interpreted as nonbelief in the existence of God) to be justified, he must show that error 2 is worse than error 3. That is, he must give reasons for supposing that it is *worse*, other things being equal, for someone to have an unjustified belief (a “false positive”) than for someone to fail to believe what he or she would be justified in believing (a “false negative”). Flew makes no attempt to do this, or even to suggest that he thinks he *must* do it in order to establish a presumption of atheism. This, I submit, seriously weakens—if it does not altogether destroy—his analogical argument.

For the sake of completeness, let us examine the matrix for the second (i.e., *nonexistence*) interpretation of Flew’s presumption of atheism, for even if Flew himself doesn’t understand atheism in this way, others may (since, as we saw earlier, it is a natural understanding of the presumption of atheism):

	Nonbelief in God	Belief in God
God does not exist	1	2
God exists	3	4

As before, categories 2 and 3 represent errors. In category 2, someone has a false belief (that God exists). In category 3, someone fails to have a true belief (that God exists). Flew (on this interpretation) must show that error 2 is worse than error 3. That is, he must give reasons for supposing that it is *worse*, other things being equal, for someone to have a false belief that God exists than for someone to fail to have a true belief that God exists. Unfortunately for Flew—and for the persuasiveness of his case for a presumption of atheism—he makes no attempt to do this. This does not mean that it cannot be done, to be sure, only that Flew has not done it.

Before concluding this part of the essay, let me show that all three of the presumptions that we have been considering—of innocence, of nonbelief, and of nonexistence—have the same form, to wit:

In order to minimize the likelihood (i.e., risk) of  $\emptyset$ , we make it more difficult to  $\Psi$ .

Let us put flesh on this skeleton:

- *Presumption of innocence* In order to minimize the likelihood (i.e., risk) of convicting the innocent, we make it more difficult *to convict*.
- *Presumption of nonbelief* In order to minimize the likelihood (i.e., risk) of believing something (such as the existence or nonexistence of God) without justification, we make it more difficult *to believe*.
- *Presumption of nonexistence* In order to minimize the likelihood (i.e., risk) of believing, falsely, that God exists, we make it more difficult *to believe that God exists*.

The presumption of innocence makes it more difficult (though not, of course, impossible) to convict. The presumption of nonbelief makes it more difficult (though not, of course, impossible) to believe either that God exists or that God does not exist. The presumption of nonexistence makes it more difficult (though not, of course, impossible) to believe that God exists. The problem for Flew—and for anyone who shares his view—is that there are good articulable reasons for the presumption of innocence. There may well be good articulable reasons for the presumptions of nonbelief and nonexistence, but Flew has not articulated them. For that reason, together with the reasons given earlier (having to do with knowledge and urgency), Flew's case for a presumption of atheism, as presented in his 1972 essay,<sup>35</sup> must be judged a failure.

## Conclusion

Ought there to be a presumption of atheism? Nearly half a century ago, Antony Flew answered this question in the affirmative. The aim of the present essay has been to revisit (and re-evaluate) his analyses and arguments. In the first section (entitled “Introduction”), I distinguished three questions—conceptual, factual, and evaluative—concerning the presumption of atheism. I showed that the evaluative question—whether there *ought* to be a presumption of atheism—cannot be answered without first clarifying the concepts of a presumption (in general) and a presumption of atheism (in particular), which I proceeded to do in the second section (entitled “What is a presumption of atheism?”). In the third section (entitled “Is there any justification for a presumption of atheism?”), having clarified the relevant concepts, I addressed the evaluative question whether there ought to be a presumption of atheism. Although I did not argue that there ought *not* to be a presumption of atheism, I did address two arguments (by Flew) to the effect that there *ought* to be, concluding that both arguments fail. Perhaps, in light of this failure by one of the presumption's most ingenious and forceful proponents, we should endorse a presumption against a *presumption* of atheism.

**Acknowledgements** This essay is dedicated to the memory of Antony Garrard Newton Flew (1923–2010), a towering figure in 20th-century philosophy and author of such works as *An Introduction*

<sup>35</sup> Recall that I have not addressed Flew's subsequent essays on the topic.

to *Western Philosophy: Ideas and Argument from Plato to Sartre* (1971). Flew was a scholar and a gentleman whose trenchant writings on religion and other topics enlivened his discipline. As William Grimes put it in his *New York Times* obituary on 16 April 2010, Flew was “a mild-mannered polemicist, respectful of his opponents and driven, as he often said, by simple curiosity and a determination to go where the facts led him.”

In December 1994, while an untenured assistant professor, I published a four-page review (in *Teaching Philosophy*) of one of Flew’s books: *Does God Exist? A Believer and an Atheist Debate* (1991), co-authored with “Christian metaphysician” Terry L. Miethe. See Burgess-Jackson (1994). My review was scathing. Among other things, I wrote that the main value of the book was to show readers (especially students) how *not* to conduct a debate! I was particularly critical of the lack of engagement of the participants. “[S]o many issues are raised, so many assumptions made (many implicitly), and so many arguments broached (although few consummated) that the debaters end up spinning their wheels.”

To my surprise, I soon received a handwritten letter from Flew (then 72 years old) in which he said that he was in “near total agreement” with me about the poor quality of the debate. He explained that he had had “no real say in arranging the form that the whole debate took. Had it been for [him] to decide this [he] should have insisted that the theist proposition began [*sic*] by explaining what it is that they believe and are asking others to believe; and this done went on to tell us what their evidence is for holding what they do hold.” Flew spent the next three paragraphs explaining the concept of “a Creator God who is a participant in disputes within his creation.” (Flew’s letter is available to readers upon request.)

I was (and am) grateful to Flew (and told him as much in a reply) for taking my critique of his book seriously and for overlooking my sharp comments. I am also grateful to an anonymous reviewer for the present journal, whose gently worded comments, criticisms, and suggestions improved the essay considerably. (I, of course, am responsible for what remains.) Finally, I wish to thank the journal’s Editor-in-Chief, Ronald L. Hall, for his unfailing courtesy and professionalism. It is always a pleasure to work with him.

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