

The New York Times and the presumption of guilt

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Over the past several days, the criminal case against former International Monetary Fund chief Dominique Strauss-Kahn for rape has been completely discredited. Information has come out undermining the credibility of the alleged victim, including the fact that she repeatedly lied about the events surrounding the incident, lied about her past and had discussions with her boyfriend, in jail for drug trafficking, about potential financial gain from the case.

Despite these revelations, the *New York Times* is conducting a rearguard action to justify the conduct of the prosecutor, and, by implication, the newspaper's own reprehensible role in the whole affair. The *Times* and its columnists led the media campaign that presented the guilt of Strauss-Kahn as an unchallengeable fact before a serious investigation into what happened had even begun.

In the Tuesday edition of the *Times*, business columnist Joe Nocera writes: "For the life of me, I can't see what [Manhattan District Attorney Cyrus] Vance did wrong."

The arguments advanced by Nocera in defense of Vance testify to the political backwardness and appalling stupidity of the columnist.

Nocera insists that Vance had no choice but to act with extraordinary speed. Strauss-Kahn was "on an airplane about to depart for his native land. This is the same country that, for decades, helped shield Roman Polanski from being prosecuted for statutory rape in the United States."

At least in the mind of the chauvinist columnist, the precipitous arrest of Strauss-Kahn was "payback" for the Polanski case, an opportunity to teach the French a lesson. Does one really need to point out that the Polanski case had absolutely nothing to do with the issues that confronted District Attorney Vance? If, as Nocera seems to believe, recollections of the Polanski affair influenced the precipitous seizure of Strauss-Kahn, it testifies to the bad judgment and inappropriate behavior of the prosecutor.

Nocera offers another justification for Strauss-Kahn's seizure: he "appears to have left the hotel where the rape allegedly occurred in some haste." *Appears? In some haste?* As it turns out, Strauss-Kahn was going to meet his daughter for a scheduled lunch in the vicinity of the hotel. Nocera then serves up another indication of suspicious behavior: "He [Strauss-Kahn] even forgets to take one of his cellphones." If that isn't proof of having committed rape, Nocera suggests, what is?

Nocera writes breathlessly: "With no time to spare, detectives lure him [Strauss-Kahn] off the plane and arrest him." As a matter

of fact, Strauss-Kahn was not "lured" off the airplane. He had previously called the hotel to report his missing phone. He informed the hotel that he was at the airport, about to depart for France in accordance with an itinerary arranged well in advance. When detectives boarded the plane and asked to speak with him, Strauss-Kahn left his seat without resisting. Nothing in his behavior suggested that he suspected that he was about to be arrested.

The next passage is particularly chilling. "When he is arrested, he refuses to talk about the incident, having already 'lawyered up.'" As far as Nocera is concerned, the constitutional right of an individual to remain silent and request counsel is suspect behavior, evidence in its own right of guilt.

After casually dismissing the subsequent treatment of Strauss-Kahn—"He is forced to the 'perp walk,' and spends the next five days in jail, at which point he is indicted"—Nocera writes, "Now that the man can't flee, prosecutors turn their attention to the alleged victim."

In other words, only after throwing Strauss-Kahn into jail—and forcing his resignation from the IMF—did the prosecutors begin to investigate in any serious manner the allegations against him!

Vance sought the arrest of Strauss-Kahn for rape within hours of the first interview with the hotel employee who claimed she had been sexually assaulted. The decision to pull Strauss-Kahn off the airplane and arrest him was based on nothing but the untested claims of the alleged victim.

When Vance ordered the arrest, what did he actually know? On the basis of what facts did he conclude that a crime had been committed and that the allegations of the housekeeper were credible? How carefully was the story of the alleged victim examined? Did the prosecutor take the time to consider the possibility that Strauss-Kahn—the managing director of the IMF and a major figure in French politics—may have been set up by political enemies? Clearly, the prosecutor selected the most extreme and reckless course. Five days later, without having uncovered any evidence other than the unexamined claims of the accuser, the district attorney sought and obtained an indictment.

Strauss-Kahn's imminent departure for Paris—in accordance with travel plans which had been previously made—did not justify a reckless indictment. The investigation could have been carried out with all deliberate speed without arresting Strauss-Kahn.

Other courses of action were available to District Attorney Vance. The police could have simply asked Strauss-Kahn to delay

his departure while they looked into allegations made against him. And what if Strauss-Kahn had departed for France? If the investigation uncovered evidence that warranted an indictment, Strauss-Kahn—as head of the IMF, whose headquarters are in Washington, DC, and who is a prominent figure in French politics—would have been under intense pressure to return to the United States and clear his name.

In any event, it is now clear that if the prosecutor had taken the time to conduct an investigation, no arrest warrant would ever have issued.

The implications of prosecutorial misconduct for democratic rights are obvious: what the district attorney did to Strauss-Kahn could be done to any innocent person. In fact, if a man as powerful as Strauss-Kahn can be subject to such a despicable violation of his rights by an ambitious, politically motivated and vindictive prosecutor, what does this mean for ordinary people who lack the means and public profile to defend themselves?

Nocera attempts to dress up the rapid collapse of the prosecution's case as a triumph of its integrity. "The prosecutors wasted no time divulging these exculpatory facts [about the accuser] to [Strauss-Kahn's] lawyers.... Vance didn't try to pretend that he still had a slam dunk, something far too many prosecutors do... Vance didn't dissemble or delay or hide the truth about the victim's past."

Nocera treats the divulging of these facts as though it was an act of generosity and benevolence on the part of the prosecutors. In fact, under the Fourteenth Amendment to the US Constitution, the prosecution *must* turn over exculpatory evidence to the defense. This democratic right, which is necessary for due process, was elaborated and defended by the Supreme Court during the civil rights period in the famous and historic case of *Brady v. Maryland* (1963).

Nocera states that the prosecution now confronts the "painful" decision of whether or not to go forward with the prosecution. As a matter of law, a prosecutor is prohibited from going forward without probable cause. To prosecute without probable cause is known as "malicious prosecution."

After noting that the details of the accuser combine to form "a devastating profile of her past, filled with troubling inconsistencies, outright lies and the possibility that she hopes to profit from the alleged ordeal," Nocera quickly goes on to declare Strauss-Kahn's guilt regardless.

"As for Strauss-Kahn's humiliation, clearly something very bad happened in that hotel room." *Clearly?* There is absolutely nothing that is clear about what occurred in the hotel suite of the Sofitel. *Something very bad happened?* Is this the opinion of a self-appointed moralist or an expert in criminal law? He adds that "Quite possibly a crime was committed." *Quite possibly?* It is also quite possible—and perhaps even quite probable—that no crime was committed. Should we be concerned about facts?

The *Times* columnist declares that Strauss-Kahn's "sordid sexual history makes it likely he was the instigator." Here, Nocera, an unscrupulous journalist, is simply retailing salacious gossip. Moreover, from a legal standpoint, Strauss-Kahn's "sexual history"—which does not involve criminal behavior—is irrelevant. And if this is not the case, does Mr. Nocera believe it is

appropriate to examine the "sexual history" of Strauss-Kahn's accuser?

In one of the most unpleasant passages in his despicable column, Nocera writes of the treatment meted out to Strauss-Kahn: "If the worst he suffers is a perp walk, a few days in Rikers Island and some nasty headlines, one's heart ought not to bleed. Ah, yes, and he had to resign as the chief of an institution where sexual harassment was *allegedly* rampant, thanks, in part to a culture he helped to perpetuate. Gee, isn't that awful." [Emphasis added]

Yes, as a matter of fact, it was awful. The fundamental democratic rights of a man were trampled, his career and reputation were ruined, and he was jailed before an investigation even began, much less before he was found guilty by a jury. Nocera treats all this as a big joke. Even if he were innocent, according to Nocera, Strauss-Kahn got what he deserved. That will teach the Frenchies not to mess with us!

Nocera concludes his article with a chauvinist rant against France, which he describes as "a country where the elites are rarely held to account, where crimes against women are routinely excused with a wink and a nod and where people without money or status are treated like the nonentities that the French moneyed class believe they are."

How lucky we Americans are, Nocera bombastically proclaims, to live in a country where the principles of democracy and equality infuse public life! He writes that the prosecution of Strauss-Kahn "is a case that actually lives up to our ideal of who we like to think we are. Even the way the case appears to be ending speaks to our more noble impulses."

Spare us the patriotic drivel. The American ruling class is second to none when it comes to treating the great mass of the citizenry with contempt.

Nocera is a scoundrel, who contributes through the exercise of his ignorance and backwardness to the pollution of public opinion.



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