

Marshall and #MeToo: A 77-year-old civil rights fight exposes the reactionary character of the sexual misconduct witch-hunt

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The 2018 Academy Award nominations have been announced, and among those films passed over was *Marshall*, the film biography of Thurgood Marshall, the first African-American Justice of the US Supreme Court.

The film, as we have previously noted, suffered from its one-sided portrayal of the career of its protagonist, but despite this weakness, its subject matter was significant and worth considering. It focused on a landmark criminal case in a Northern courtroom, in the period just before US entry into the Second World War.

In winning acquittal for a black defendant, Joseph Spell, accused of raping his white employer, Marshall and his co-counsel, Sam Friedman, struck an important blow for civil rights and liberties, against racial discrimination in the legal system. Marshall had been sent to Connecticut by the National Association for the Advancement of Colored People (NAACP) to assist Friedman, who was admitted to the Connecticut bar.

The case, *The State of Connecticut v. Joseph Spell*, was tried in January 1941, shortly after Eleanor Strubing, a wealthy white woman in the Connecticut suburbs of New York City, claimed that her chauffeur/butler had raped her while her husband was out of town. The charge generated lurid headlines in newspapers far beyond the immediate area.

The case against Spell illustrated the continuing discrimination facing African-Americans in the northern US states. While Jim Crow segregation continued in the South as it had for more than a half-century, housing segregation and employment discrimination in the North forced many black workers, especially where factory employment was not available, to take domestic jobs such as chauffeurs and housekeepers. The Connecticut trial made many workers worry that they would be dismissed from their jobs as a result of the fear being generated.

Spell was acquitted, but only after intense work by his defense lawyers, including relentless cross-examination of the prosecution witnesses, above all Mrs. Strubing herself.

This 1941 case poses awkward questions for those promoting the current MeToo witch-hunt triggered by charges of sexual harassment. The MeToo hysteria is premised on automatically and unquestioningly believing the accuser when charges of harassment or assault are made. The need for due process is dismissed, “trial by media” is welcomed, and anonymous accusations are also considered perfectly acceptable, along with the refusal to allow

those accused to confront or even know who their accusers are. The Connecticut case shows the crucial importance of such democratic rights as due process.

Mrs. Strubing accused Spell of attempted murder as well as rape. He faced up to 30 years in prison if convicted. “My houseman must have gone berserk,” Strubing was quoted in the press as telling the physician who examined her. “I’m awfully glad to be alive.” On cross-examination in the courtroom, she said, as reported on the historyvshollywood web site, “I was frightened to death and could hardly breathe.” According to Strubing’s sensational and improbable account, the chauffeur raped her four times that night. She also claimed that she was forced to write a \$5,000 ransom note addressed to her husband, and then kidnapped and driven into nearby New York State, to the Kensico Reservoir. It was there, on the edge of the reservoir, that Strubing was found by two truck drivers in the early morning hours. She maintained that Spell had thrown her out of the car and into the water.

The deck was stacked against the defendant. He was tried before an all-white jury at a time when discrimination was widespread. He had only been working for the Strubings for about one month. Furthermore, evidence was introduced that Spell had been arrested on his first day of employment with them, accused of threatening to hurt a former employee who refused to lend him money. Spell had also been discharged from the Army on a charge of stealing and crashing an officer’s car while drunk.

Marshall and Friedman got to work in finding the holes in the prosecution’s case. The most pressing matter in deciding how best to proceed was determining whether the defendant was in fact guilty. The film shows Marshall and Friedman gaining Spell’s confidence and obtaining his side of the story, which was that the sex was consensual. According to the defendant, he had gone to Strubing’s room to ask for money to send to his mother, who was ill. Spell said that Strubing “led him on,” and that there was no force used. They went for a drive, and she suddenly ordered him to pull over at the reservoir, and then ran out and told him “she was all right and for me to go on home.”

Attorney Sam Friedman was ruthless in his cross-examination. According to the contemporaneous account in the press, Friedman brought up the fact that Strubing had been married several times and had previously engaged in extramarital affairs. She could not account for the fact that the supposed ransom note was missing, as

were the ropes allegedly used to tie her up when she was kidnapped. Her story was full of other inconsistencies.

The jury found that there was reasonable doubt and voted to acquit Spell after 13 hours' deliberation. The prosecution decided not to appeal. Spell was freed, and lived another 27 years, until 1968.

What becomes immediately apparent when considering the case of *Connecticut v. Spell* is how much the prosecution case parallels the story line advanced in the current frenzy about sexual harassment.

A woman charges rape. The rapist tried to murder her, she claims, but she miraculously survives and identifies the assailant, who is arrested. Then, according to the "leaders" of the MeToo hysteria, instead of believing the victim of this awful crime, the defense attorneys make use of legal protections and procedures to argue for "reasonable doubt." They humiliate the survivor. They dredge up her past, claim that she was unhappily married, that she was lonely, and that her sexual needs were unfulfilled by her uncaring husband. The cross-examination by the defendant's lawyers is brutal, reducing the woman to tears and putting her and her sex life on trial.

The current self-appointed warriors against male supremacy would on this basis conclude, "*Marshall* is a film made by rape apologists. Why are they willing to believe the defendant but not the woman who cries rape? The film should never have been made. It should be boycotted or withdrawn from distribution. The filmmakers should be ostracized and barred from the industry." This is in fact the campaign that is currently being waged against Woody Allen, on the basis of child molestation charges that were dismissed as having no factual basis 25 years ago.

It is not at all far-fetched to imagine the above thoughts going through the heads of some of the members of the Academy of Motion Picture Arts and Sciences, who are charged with selecting the nominees for the Academy Awards, as they watched the film. Perhaps that had something to do with the fact that none of the actors in major roles, including Josh Gad as Sam Friedman and especially Chadwick Boseman as Thurgood Marshall and Sterling K. Brown as Joseph Spell, were nominated in their categories.

Eleanor Strubing reacted to the outcome of the trial by proclaiming it a blow against aggrieved women. In terms extremely similar to those used by the MeToo campaign, she declared, "The verdict leaves the women of America at the mercy of anyone who may seek their ruin. ... The verdict has done the very thing I braved the glare of publicity to avert. It has told all men so inclined that they may attack women with impunity and that there are men ready to supply the accused with brains by which to publicly further degrade the victim who dares to claim protection under the law."

And yet Spell, as is now known, was an innocent man. He came close to being railroaded to prison, as had happened numerous times in the past, most notoriously in the case of the Scottsboro Boys of the 1930s. Some of those accused of even minor sexual transgressions were murdered, as in the case of the 14-year-old Emmett Till, in 1955.

The fight against scare-mongering and witch-hunting is not confined to racial discrimination. In Hollywood and elsewhere

during the Red Scare and McCarthyism of the late 1940s and the 1950s, careers and lives were destroyed by anonymous accusations. Today the MeToo fanatics are resurrecting these methods, while a similar campaign against supposed "rape culture" on campuses is creating confusion and playing into the hands of the extreme right.

Today's right-wing feminists reject the call for due process, claiming it does not apply to the sex harassment campaign because these are not legal cases. The 1950s witch-hunt was also not conducted primarily in the courtroom, however, at least not at the beginning. The lack of due process means the inability to confront one's accusers, the acceptance of anonymous accusations and the lightning speed with which the careers of such men as Garrison Keillor, Kevin Spacey, Leonard Lopate, James Levine and many others have been abruptly ended without a chance for them to defend themselves.

Spell was unjustly charged because his accuser feared being exposed as having had extramarital relations with a black man. Yet today, 20- and 30-year-old incidents are being used to turn consensual sex, or "bad sex," into a weapon in a war in which all men, supposedly guilty of "male privilege," are considered fair game.

The State of Connecticut v. Joseph Spell, brought to movie screens in the depiction of the early career of Thurgood Marshall, exposes the reactionary character of MeToo's sexual misconduct witch-hunt.

It is driven by a layer of the upper middle class, indifferent or hostile to the struggles of the working class, women as well as men, which seeks more room for itself in the ruling elite. The political aim of this movement, as is clearly revealed by the way it has been lauded and promoted by the so-called mainstream media, is to drive a wedge between men and women, especially targeting young women, who have demonstrated growing concern about inequality and growing disdain for the nostrums of identity politics. The aim is to refurbish and revive the shibboleths of identity politics, the stock-in-trade of the Democratic Party and its pseudo-left apologists, in order to divide and weaken the working class.



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