

Connecticut jury acquits Yale student in campus sexual assault case

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In the first high-profile criminal trial since the launching of the #MeToo movement, a Connecticut jury acquitted 25-year-old Saifullah Khan on four charges of sexual assault on March 7.

The charges stemmed from a Halloween party that took place at Yale College in 2015. After drinking and texting throughout the day, Khan and his accuser spent the night together. When she awoke, she became upset and confronted him. The next day, she went to Yale's sexual assault resource center where an administrator reported Khan to the police. A week later, Yale suspended Khan without a hearing. Three days after his suspension, police arrested him.

Khan, whose family lives in Afghanistan and could not be present for his trial, was a semester away from graduating with a degree in cognitive science. His bail was set at \$100,000. Had he been convicted, he would have faced years in prison.

The trial acquired national attention and took place amid a highly toxic atmosphere on campus. Yale students demanding Khan's conviction were vocal in the student newspaper and present in the courtroom throughout his trial.

But Khan's lawyers challenged this prevailing mood and waged a rigorous defense. Khan's defense attorney, Norm Pattis, said during closing arguments: "These are dangerous times for everyone on campus." After the verdict, Pattis told the press that the defense team used the case to challenge "the outer limits of the #MeToo movement," which he said was "a form of mass hysteria. Sex happens, especially on college campuses."

He added, "We're grateful to six courageous jurors who were able to understand that campus life isn't the real world. Kids experiment with identity and sexuality. When an experiment goes awry, it's not a crime."

The jury deliberated for just two-and-a-half hours before acquitting Khan on all charges. One juror, speaking anonymously after the decision, said the jurors consciously tried to ignore the #MeToo fervor surrounding the trial. The anonymous juror told the press that the jurors asked themselves whether there was "enough evidence to show that there could not have been consent. And we couldn't get there." Another juror, James Galullo, said the jury members "were able to see their way through all the noise."

The *New York Times* could barely contain its anger over the acquittal. In a March 7 article, the *Times* wrote, "Mr. Khan's lawyers worked relentlessly to discredit the account of the woman, who was not identified by name in the arrest warrant application. They asked repeatedly how much she had to drink, and how she could claim not to remember certain details, such as how she arrived back at her dorm room, but remembered others, such as the alleged assault itself. They parsed her text messages with Mr. Khan, asking if she had not been flirting with him in the days before the incident."

The *Times* cited Laura Palumbo, a representative of the National Sexual Violence Resource Center, who attacked defense counsel's cross-examination. Such questions are "all victims' worst fears in coming forward. It is very intentionally working to trigger victim-blaming and stereotypes and misconceptions about sexual assault."

These statements expose the antidemocratic foundations of the #MeToo campaign's attack on the Sixth Amendment's confrontation clause, which states, "in all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him."

In the Anglo-American legal tradition, this centuries-

old due process right emerged in the aftermath of the 1603 trial of Walter Raleigh for treason. Raleigh was charged with attempting to kill King James I based on a declaration from his alleged co-conspirator, Henry Brooke (Lord Cobham). Raleigh's request to cross-examine Brooke was denied and as a result he was imprisoned in the tower of London for 13 years. The bourgeois revolutionaries of the English Civil War and American Revolution made repeated reference to the injustice of Raleigh's conviction in their elaboration of the right to cross-examine and confront.

The right to cross-examine protects the accused from the police powers of the state. Without this protection, the English jurist Lord Blackstone wrote, the state could convict based on "the private and secret examination taken down in writing before an officer."

Following the argument that cross-examination equates to "victim blaming" to its logical legal conclusion, defendants could be convicted based on hearsay. This would effectively end the adversarial nature of criminal proceedings by preventing defendants from questioning the prosecution's allegations. By comparison, prosecution witnesses have no "right" to make accusations without being subjected to potentially uncomfortable questions aimed at revealing whether their claims are true or false.

Yale's backseat prosecutors have not relented in the wake of the verdict and are demanding the school reject Khan's appeal to be reinstated as a student. An opinion article in the *Yale Daily News* by staff writer Amelia Nierenberg titled "Not 'not guilty'" said "readmitting Khan would be a grievous mistake, as using legal standards of 'not guilty' do not apply in a private community like Yale. Legal acquittal does not mean 'innocence.' It does not mean that Khan did not engage in deeply dubious sexual conduct."

Nierenberg continues, "Fortunately, a courtroom and a college community have different standards of proof. Here, the question is not, 'Is this person absolutely guilty?' Instead, the question is more, 'Has this person acted in such a way that their right to continued participation in our community is forfeit?'"

This is the language of a witch hunt. The proponents of the #MeToo movement admit that their goal is to ostracize (take away the "right to continued participation in our community") without any due process protections for the accused (which "do not

apply in a private community"). According to such arguments, not only does the presumption of innocence not apply *before* trial, it also does not apply after an acquittal in criminal court ("legal acquittal does not mean 'innocence'").

So far, many careers and livelihoods have been ruined by mere accusations of sexual assault, and none of the major denunciations have led to criminal trial.



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