

A reply to a commenter

Jussie Smollett, #MeToo and the presumption of innocence

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On February 22, the *World Socialist Web Site* published an article, “The Jussie Smollett controversy: Must all accusations be believed?” The commentary argued that the collapse of Smollett’s claim to have been attacked by racist thugs in Chicago exposed the right-wing character of the #MeToo campaign, which asserts that the accuser must always be believed, lack of corroborating evidence notwithstanding.

One reader, commenting on the article, wrote that the WSWS was hypocritical for calling Smollett a liar while defending his presumption of innocence in the criminal case against him.

“So Smollett is a liar but also has the right to the presumption of innocence?”, the commenter, Urfubar, wrote. “This can’t both be true. You can’t presume someone innocent of a felony you just declared guilty of a felony. Either Smollett is a liar who falsified a police report, or he’s innocent until proven guilty. Pick one.”

This comment provides the opportunity to further probe the anti-democratic rationale and reactionary implications of the #MeToo campaign.

As a preliminary matter, the WSWS opposes Smollett’s former supporters who are now rushing to condemn him just as blindly as they rushed to believe him three weeks ago. We oppose the criminal prosecution and the premature decision by Fox to write Smollett’s character out of the show “*Empire*” before his guilt has been proven. The efforts by the media to make an example of Smollett before he has been found guilty are hypocritical and serve to confuse, not clarify.

However, the facts that have emerged make clear that Smollett lied about the January 29 attack. He claimed that two white men he did not know hit him, poured bleach on him and put a noose around his neck.

Dozens of security cameras at or near the scene of the alleged crime failed to show any attack, and the two men seen leaving turned out to be brothers, who are friends of Smollett and of Nigerian descent. The brothers had bleach (which Smollett alleged was thrown on him) and magazines with missing pages (Smollett alleged he received a death threat with letters cut out of magazines) at their home.

Financial records also show that the brothers purchased the

same piece of rope that was later found on Smollett’s neck, which the pair is shown on closed-circuit video buying at a store. Phone records show that days before the alleged attack, Smollett texted one of the brothers: “Might need your help on the low [i.e., in secret]. You around to meet up and talk face to face?”

The WSWS correctly characterized and condemned Smollett’s selfish, careerist behavior, which only feeds the growth of the extreme-right and casts doubt on future allegations of right-wing vigilante attacks.

But does this mean he forfeits the right to be presumed innocent? Does it mean he is necessarily guilty of a crime?

The answer to both questions is “no.” Smollett has the right to challenge the charges against him in court and the evidence presented. Moreover, even if the defense accepts the specific allegation—that Smollett filed a false report—a trial such as this, in the course of a vigorous defense, invariably raises issues as to the significance and context of these facts, which could lead to a verdict of not guilty.

For example, §5/26-1(5) of the Illinois criminal code penalizes anyone who “knowingly... transmits or causes to be transmitted a false report to any public safety agency without the reasonable grounds necessary to believe that transmitting the report is necessary for the safety and welfare of the public.”

Central to Smollett’s legal defense could be his state of mind. To be guilty of a crime, a defendant must have the requisite level of intent. In this case, he must “*know*” there is no “reasonable ground” to believe the report is “necessary for the safety and welfare of the public.”

This presents a complex question. Did Smollett perhaps convince himself in the present political climate that his race and sexual orientation justify his actions and make them “reasonable?” Did he think bringing attention to bigotry and right-wing attacks was “necessary” for the public welfare, even if this particular “attack” was invented?

Or, was Smollett blinded by ambition and acting under a passion and pressure that so clouded his judgment that he could not “intend,” with clear mind, to carry out a crime?

Could he argue in court that he was operating in conformity

with the conventions of a sick and corrupt society that encourages professionals to use their racial and sexual identities in opportunistic ways? Could he say he was an avid reader of the *New York Times*, which tells him it is “reasonable” to assume accusations must be believed no matter what? Could he say that the #MeToo hysteria has made the reasonable unreasonable and the unreasonable reasonable, and that he can’t tell which way is up?

The prosecution will claim, as the proponents of #MeToo always argue, that the accused is a monster and that monsters always have evil intent.

But Smollett has the right to exercise all the rights that flow from the presumption of innocence. He is protected from the state by the Sixth Amendment, which grants him the right to present his case to a jury and cross-examine the Nigerian brothers to examine their motives. If the case goes to trial, Smollett’s attorneys will have the benefit of *voir dire* to keep prosecutors from loading the panel with prejudiced panelists.

The Fifth and Fourteenth Amendments mean the judge may bar jurors from reading the *New York Times* so their ability to objectively hear testimony does not become clouded by the media hate campaign. The judge will tell jurors to ignore evidence, even if it is relevant, if its probative value is substantially outweighed by a danger that it is unfair, prejudicial, confusing or misleading.

How critical these protections are and yet how dangerous it is that none of them are available to the targets of the #MeToo campaign, whose lives and careers are ruined in the court of public opinion! The #MeToo proponents explicitly call for believing all accusers, having adopted the slogan “I believe.” Asking for corroborating evidence is “victim blaming.” Asking accusers about their intentions is “victim shaming.” If the accused claims innocence, it is presented as further proof of guilt.

It is precisely in such cases, however, that presumption of innocence and due process are so critical. Even in cases where everything appears clear on the surface—or, especially in such cases—it is in the course of a trial that the underlying complexities emerge.

The campaign to reject these basic democratic conceptions has been deliberately whipped up by the most powerful and profitable media corporations, working in conjunction with Democratic Party strategists and the editors of newspapers like the filthy *New York Times*. To advance their own money-grubbing, right-wing agendas, these powerful forces are creating a hysterical mood by playing on the prejudices, emotions, insecurities and ambitions of the affluent upper-middle class like keys on a piano.

Passionate public moods demanding vengeance have long been the vehicle for the most dangerous assaults on democratic rights. Hundreds of African Americans were lynched based on allegations by lying white women. One such woman, 85-year-old Carolyn Bryant Donham, is alive and free today. The lie she

told in August 1955 was “believed” and, as a result, 14-year-old Emmett Till was tortured and killed, his mangled body dumped in the river.

Progressive politics has always fought such right-wing popular sentiments, even where the accused is clearly guilty. In the famous 1924 death penalty case of Leopold and Loeb, defense attorney Clarence Darrow argued against hanging two young men who admitted to murdering a 14-year-old boy. The newspapers were demanding the boys be hanged and attacking due process as an obstacle to justice.

In a democratic society, Darrow said, the court must ignore the clamor in the press and the reactionary hidden agendas of those braying for blood. It meant, instead, “that you must appraise every influence that moves [the defendants], the civilization where they live, their living, their society, all society which enters into the making of a child.”

The same principle was captured by Theodore Dreiser in his masterpiece *An American Tragedy*. Clyde Griffiths’ defense attorney, Belknap, made an appeal to jurors inundated with hysterical calls to sentence young Clyde to death:

“And I venture to say that if by some magic of the spoken word I could at this moment strip from your eye the substance of all the cruel thoughts and emotions which have been attributed to him [Clyde] by a clamorous and mistaken and I might say (if I had not been warned not to do so) politically biased prosecution, you could no more see him in the light that you do than you could rise out of that box and fly through those windows.”

Irreconcilable opposition to such witch hunts in the face of popular pressure is the trademark of principled socialist politics. Leon Trotsky insisted that socialists are socialists only insofar as they maintain “complete and absolute independence of bourgeois public opinion.”

Writing in 1922, the co-leader of the Russian Revolution described bourgeois public opinion as “composed of two parts: first, of inherited views, actions, and prejudices which represent the fossilized experience of the past, a thick layer of irrational banality and useful stupidity; and second, of the intricate machinery and clever management necessary for the mobilization of patriotic feeling and moral indignation, of national enthusiasm, altruist sentiment, and other kinds of lies and deceptions.”

These words may as well have been written about the #MeToo movement, which genuine socialists rightfully oppose.



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