

# The New York Times attempts to discredit defense as Harvey Weinstein trial begins

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A New York City jury heard opening arguments in the criminal prosecution of Harvey Weinstein yesterday, more than two years after the so-called #MeToo campaign was instigated by a series of salacious articles in the *New York Times* and the *New Yorker* accusing the film producer of sexual misconduct.

Now that the accusations against Weinstein have arrived in a courtroom, Weinstein and his attorneys are attempting to mount a legal defense. Indeed, his attorneys have announced that they intend to present a “trove of emails” that, at the very least, appear likely to substantially undermine the credibility of his accusers.

The *New York Times* is compelled, wringing its hands nervously, to warn its readers that the allegations that constituted the premise for the entire #MeToo campaign may be called into doubt in court.

In an article describing the proceedings Tuesday, the *Times* described how Weinstein’s attorneys “offered a first glimpse of their plan to undermine his accusers’ credibility.”

“From the start,” the *Times* warned, “Harvey Weinstein’s lawyers have made it clear they intend to secure an acquittal in his rape case by destroying the credibility of his accusers.”

On Tuesday, Weinstein’s defense attorneys obtained permission from the judge to refer to the allegedly exculpatory emails in their opening statement. The *Times* reported: “Mr. Weinstein’s lawyers have long made it clear that they intend to discredit his accusers by focusing on emails that suggest the producer’s relationship with the women was consensual and lasted long after the alleged crimes.”

In other words, Weinstein is going to try to defend himself. He intends to avail himself of the democratic legal protections available to a criminal defendant. It may come as a source of shock and indignation to those who would prefer the summary execution of all those accused,

but Weinstein has every right to confront his accusers—and yes, attempt to discredit them.

The Sixth Amendment, ratified in 1791 as part of the Bill of Rights, provides: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury, [and] to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.”

On the essential democratic character of what came to be known as the “Confrontation Clause,” the US Supreme Court in the 1899 case of *Kirby v. United States* wrote that the right of confrontation is “[o]ne of the fundamental guarantees of life and liberty,” and “a right long deemed so essential for the due protection of life and liberty that it is guarded against legislative and judicial action by provisions in the Constitution of the United States and in the constitutions of most if not of all the States composing the Union.”

US Supreme Court Justice Hugo Black, overturning a conviction that was secured in violation of the Confrontation Clause in Texas in 1965, wrote: “It cannot seriously be doubted at this late date that the right of cross-examination is included in the right of an accused in a criminal case to confront the witnesses against him. And probably no one, certainly no one experienced in the trial of lawsuits, would deny the value of cross-examination in exposing falsehood and bringing out the truth in the trial of a criminal case.”

Black continued: “The fact that this right appears in the Sixth Amendment of our Bill of Rights reflects the belief of the Framers of those liberties and safeguards that confrontation was a fundamental right essential to a fair trial in a criminal prosecution.”

One of the chief demands of the #MeToo campaign has been to undermine this essential safeguard, replacing it with an accuser’s unconditional “right to be believed.” If

they could have their way, Weinstein's trial would feature the testimony of the accusers one by one, preferably anonymously and free from any attempts to discredit them, followed promptly by a frog march to the scaffold.

"What we will be able to show is that witnesses who claim Harvey Weinstein sexually assaulted them also bragged about being involved in sexual relations with him," the *Times* quoted defense attorney Damon Cheronis arguing to the judge on Tuesday. "They bragged about these things he allegedly forced them to do."

"The evidence will show the complaining witnesses sent dozens and dozens of loving emails to Harvey Weinstein," Cheronis said.

One of the accusers, actress Jessica Mann, had a five-year relationship with Weinstein following the alleged sexual assault, calling him her "casual boyfriend" and in general expressing friendly sentiments towards him. "I love you, I always do. But I hate feeling like a booty call. :)" She wrote in 2017, four years after the alleged attack.

In reading the *Times* and other promoters of the #MeToo campaign, such a defense is treated as illegitimate, an effort to "destroy" the credibility of the accusers. Since the allegations must be believed, any defense is only further proof of guilt.

There are definite interests at stake. In yesterday's article, the *Times* recalls: "Revelations about Mr. Weinstein's treatment of women in *The New York Times* and *The New Yorker* set in motion the global #MeToo movement, a public reckoning about the harassment endured by women for centuries." Setting to one side the attempt to commingle the accusations against Weinstein with centuries of abuse endured by women, it is clear that the *Times* is anxious about the significant possibility that the allegations that "set in motion" the whole #MeToo "movement" could fail to survive contact with a courtroom.

Scores of individuals have been targeted and "cancelled" in over two years of the #MeToo crusade, with *New York Times* and other establishment media outlets haranguing their audiences relentlessly with lurid depictions of alleged sexual improprieties perpetrated by famous people. Without charges or trial, the targeted individuals have been publicly denounced and disgraced. Images of these individuals were digitally erased from magazine covers and edited out of film scenes. Weinstein himself has been universally condemned in unceasing media coverage as the grandfather of all the other supposed monsters, someone for whom no punishment could be too severe.

Every effort has been made to whip the public into a frenzy and prevent Weinstein from receiving a fair trial. Anyone expressing doubts about the #MeToo campaign is denounced as a "rape apologist." Harvard Law School Professor Ronald Sullivan, who joined Weinstein's legal defense team, was the target of a particularly vicious campaign last year, despite—or rather because of—his insistence that "everyone is presumed innocent until proven guilty" and "everyone is entitled to due process of law under our Constitution."

The *Times* acknowledges that Weinstein's lawyers have argued to the judge that it is impossible at this point for a fair trial to take place with a "carnival-like atmosphere" prevailing around the courthouse, "reporters and camera crews filling courthouse hallways and protests against Mr. Weinstein taking place on the streets outside."

In Weinstein's particular case, one hopes that the individual jurors will do their best under the circumstances to weigh the evidence conscientiously and determine the guilt or innocence of the accused on this basis. But given the overheated and sensational media campaign that has become inseparable from the charges against Weinstein, it will be difficult to make any independent and objective assessment of what actually happened. As the *Times* itself acknowledges, "The prosecution's case largely hinges on the jury believing the women's accounts; there is no physical evidence to support the allegations."

Regardless of the question of Weinstein's individual guilt or innocence, the reactionary character of the #MeToo campaign should be clear by now. Crusades for moral and sexual purity have always been the province of the political right, accompanied always with demands for "law and order."

Leaving the biggest criminals in the government, military and intelligence agencies, and financial and corporate boardrooms unscathed, the function of the #MeToo campaign is to undermine due process and the presumption of innocence, redirect public opposition towards designated scapegoats and cultivate a base of support in the upper-middle class for the pro-war, right-wing, imperialist politics of the Democratic Party.



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