

Trump Can Help Debunk Alleged College "Rape Culture"

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Due process protections for the accused in campus cases alleging sexual assault have been under attack for decades. In the guise of enforcing Title IX—a 1972 federal law prohibiting educational institutions that receive federal funds from discriminating on the basis of sex—the Obama administration intensified the attack.

Restoring due process on campuses does not seem to be a top priority for President Trump and congressional Republicans. If they wish to uphold the rule of law—for men and for women—it should be.

Sexual assault is a grave crime. It ought to be promptly reported to the police. Perpetrators should be punished to the full extent of the law. But stripping the accused of due process rights—shared with those accused of murder, assault and battery, and other violent crimes—violates the promise of equality under the law and undermines the most effective means available for pursuing the truth about claims of serious criminal wrongdoing.

University administrators and professors, politicians, and many journalists who write about this issue believe that an allegedly pervasive college “rape culture” justifies university authorities taking the law into their own hands and, in righteous pursuit of the monsters roaming our campuses, sweeping the innocent away with the guilty.

A “rape culture” does not pervade our campuses. Despite a determined campaign of disinformation—to which former President Barack Obama, former Vice President Joe Biden, and Sen. Kirsten Gillibrand (D-NY) prominently contributed—the incidence of sexual assault on campus dropped by more than half between 1997 and 2013, is below the off-campus rate, and affects approximately one in 40 women, according to the Department of Justice.

Nevertheless, our universities have curtailed basic civil liberties and perpetrated gross miscarriages of justice. Their attack on due process also obscures the principle source of regretted sexual experience among undergraduates: a campus hook-up culture of alcohol-fueled promiscuity that drives romance, courtship, and love from the undergraduate lexicon.

Those who doubt due process has been degraded in college disciplinary proceedings—and those inclined to believe it but who have yet to acquaint themselves with the hard facts and life-altering consequences of campus justice—should read “The Campus Rape Frenzy: The Attack on Due Process at America’s Universities” by KC Johnson and Stuart Taylor, Jr. The authors of the indispensable “Until Proven Innocent: Political Correctness and the Shameful

Injustices of the Duke Lacrosse Rape Case” have once again performed an outstanding public service. In tale after harrowing tale, they expose “a system on our nation’s campuses in which accused students effectively have to prove their innocence, often under procedures that deny them any meaningful opportunity to do so.”

The authors are anything but partisans. They are not even conservatives. Johnson is a history professor at Brooklyn College who has written abundantly about the betrayal of due process on campus. Taylor is a contributing editor at National Journal and, for more than three decades, has been one of the nation’s preeminent legal journalists. Both, they note, voted for Obama in 2008 and 2012. They write in defense of America’s classical liberal heritage, a heritage that increasingly has come under attack by progressives as, allegedly, a tool of institutionalized white male privilege.

A case that arose out of a drunken, late night sexual encounter at Amherst College in February 2012 is emblematic of the Alice-in-Wonderland administration of justice in higher education. A woman whose roommate was away invited her roommate’s boyfriend to her room, Johnson and Taylor report, where she performed oral sex on him. Twenty months later, she filed a complaint with the college accusing *him* of sexual assault. An employment attorney the college hired to investigate the complaint determined—wrongly, it turned out—that the woman had not emailed or texted about the incident. A panel of three administrators from nearby colleges, all of whom had received special and secret training from their home institutions’ Title IX offices, conducted a hearing. Despite the woman’s varying and incoherent account and the panel’s judgment that the man had probably “blacked out” during the encounter, they found him guilty and recommended expulsion. Rejecting the man’s appeal, Amherst expelled him.

The man sued Amherst in federal district court. In the lawsuit, still pending, it emerged from the accuser’s text messages that on the night in question she blamed herself for the oral sex, and within an hour she invited another man to her room, pursued him, and had sex with him. When shown this exculpatory evidence—which its own investigator not only failed to obtain but denied existed—Amherst refused to reopen the case.

How is it possible that, in the authors’ words, “even overwhelming evidence of innocence isn’t enough to avoid a guilty finding by a campus tribunal”? The answer is that a surreal ideology, promulgated for decades by our top law schools and social science and humanities faculties, has become deeply embedded in the federal bureaucracy.

In the 1980s, law professor Catharine MacKinnon shot to prominence by blurring the distinction between sex and sexual assault. “Perhaps the wrong of rape has proved so difficult to define,” she wrote in a 1983 article, “because the unquestionable starting point has been that rape is defined as distinct from intercourse, while for women it is difficult to distinguish the two under conditions of male dominance.”

In effect, the Obama administration has given legal force to MacKinnon's insinuation that sexual assault occurs when a woman feels aggrieved by sex, even long after the fact. In April 2011, Russlynn Ali, assistant secretary in the Department of Education's Office of Civil Rights, issued a "[Dear Colleague letter](#)." Ali instructed the thousands of colleges and universities in the country that if they wished to continue to receive federal funding, they would have to comply with new government-prescribed disciplinary procedures for dealing with allegations of sexual assault. The result, according to the authors, is that "the federal government, joined by virtually all colleges and universities, has mounted a systematic attack on bedrock American principles including the presumption of innocence, access to exculpatory evidence, the right to cross-examine one's accuser, and due process."

So extreme is the campus witch-hunt mentality that Johnson and Taylor find university officials who believe that unreliable memories and incoherent accounts offered by female accusers are dispositive evidence of trauma while discerning in the use of reason and logic by accused men hard evidence of cold, calculating duplicity. For these men, once caught in the vortex of these proceedings, it's heads-I-win-tails-you-lose.

If, under the disciplinary regime that governs most universities today, a male student has sex with a female student after she has had a drink or two, then he has committed sexual assault because she is incapable of truly and fully consenting. If a male student has sex with a female student after he has had a drink or two, then he has committed sexual assault because he is incapable of determining whether she has truly and fully consented. Woe to the male student who has sex with a female student after both have had a drink or two.

Due process seeks to provide both the accuser and the accused fair and impartial treatment. It is not an accessory to, but rather a cornerstone of, the rule of law and individual freedom. The contempt for it taught by our colleges and universities presents an acute threat to American constitutional government.

The Trump administration's first step in restoring campus due process should be to rescind the Obama administration's ill-conceived April 2011 Dear Colleague letter. This will not only return to the accused their rights. By removing obstacles to the enforcement of laws against sexual assault by the police and the courts, it will also enhance women's safety and uphold the rule of law.

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