

'Guilt by Accusation': Torment With No Exit

Even hardened veterans of media brawls can stumble. Take Alan Dershowitz's appearance on "[Tooning Out the News](#)," a new CBS show which features fictional animated news anchors interviewing real personalities. It's vulgar, insulting and surreal. And there is only one way out – through the dog house.

But, somehow, for some inexplicable reason, Dershowitz accepted a call from the producers and was roasted about his links to multi-millionaire sex abuser Jeffrey Epstein.

Dershowitz is one of the most controversial and skilled lawyers in the United States and there is a lot more to him than being the friend and lawyer of Epstein.

A professor of constitutional and criminal law at Harvard, the author of numerous books, a passionate advocate for Israel, a civil libertarian, he is one of the best trial lawyers of his generation. He successfully acted for Claus von Bülow, who was accused of murdering his wife, and O.J. Simpson, ditto.

He is not afraid of appearing for unpopular clients. He was a consultant for Harvey Weinstein's legal team and for Julian Assange. Although he is a Democrat, he worked on President Trump's legal team when he was impeached by the House of Representatives last year. Even more controversially, he defended Jeffrey Epstein in 2008 and secured a slap-on-the-hand sentence of 18 months for Epstein's abuse of underage girls.

It's no surprise that the CBS show focused only on the links to the lurid Epstein saga. Dershowitz probably believed that he was appearing on a conventional talk show. Instead, he was plastered with innuendo and smut. Throughout, he maintained a

wide smile, but it must have been agonizing for him.

Why did “Tooning Out the News” pick on the 81-year-old Dershowitz?

Because they wanted to mock someone who couldn’t hit back. He was a wolf attacked by a swarm of bees.

It’s a complicated story which he related in a recent short book, [Guilt by Accusation: The Challenge of Proving Innocence in the Age of #MeToo](#). Briefly, one of the girls trafficked by disgraced New York financier Jeffrey Epstein, Virginia Roberts Giuffre, accused Dershowitz of having had sex with her on seven occasions when she was underage. He vehemently denied all of her allegations and claims that he has proved conclusively that it could never have happened.

So why didn’t he sue for defamation? Aha! This is Dershowitz’s first message. He couldn’t. Her allegations were protected by a sneaky device called “litigation privilege”.

This is how it works.

The accuser spins a story which is recorded in sealed court documents. Then she or her lawyers leak the story to the media. Journalists report the allegations (or lies) without fear of being sued for defamation because they are reporting on court proceedings. The accusers are effectively laundering their libels in the media. And because articles are based on court documents, they are even more credible.

And then, sure enough, the lawyers who made the false accusations . . . sue you for defaming them—though they claim you can’t sue them for falsely accusing you of a crime.

Welcome to the Kafkaesque world of American justice. But Kafka was writing fiction when he described the ordeal faced by Josef K in his famous novel, “The Trial.” What I have described is real. It is happening to me right now. And if it

can happen to me, it can happen to anyone.

And this is one of America's finest trial lawyers speaking.

The second message is less technical, but no less frightening. Just when he thought that he had successfully established his innocence, the #MeToo movement erupted. Dershowitz, a lawyer for Epstein and Weinstein, had a huge target painted on his back. Not only did he defend abusers, he had been accused of being an abuser himself.

Evidence was no longer important. It was the accusation that mattered, as well as the identities of the accuser and accused. The presumption shifted from innocence to guilt. For a man to call a false accuser a liar became a political sin, even if the accused had hard evidence of the accuser's lies, as I did.

And since he was being tried not in a court of law, but in the court of public opinion, almost no one was prepared to listen to his side of the story – as “Tooning out the News” demonstrates.

Much of the media, especially but not exclusively the social media, bought into the narrative of guilt by accusation instead of by proof. They refused to report on evidence of innocence that contradicted the narrative of guilt. For some an accusation of sexual guilt is so horrible that it must be true, regardless of the evidence. For others, it is irrelevant whether I did or did not have sex with Giuffre. I'm “guilty” of having defended Jeffrey Epstein, the porn star Harry Reems, the boxer Mike Tyson, and the football player O.J. Simpson, as well as having raised doubts about the credibility of some accusers. For these zealots, my history of defending a small number of accused rapists and wife-killers (even when combined with my history of representing many female victims) is enough to overcome any

presumption of innocence or absence of evidence of guilt.

Guilt by Accusation was published before the controversy erupted about #BelieveWomen. But Dershowitz has harsh words for those who believe that all women must be believed: "There is no gender-linked gene for truth telling or lying," he says.

Despite the sordid history of women not being believed, there is no place for "affirmative action" when accusations of sexual abuse are disputed. Women and men should be treated equally when it comes to credibility. The presumption of innocence should be applied to both genders and the burden of proof should fall on accusers, regardless of their gender.

Dershowitz is a persuasive and eloquent writer. He makes a powerful case for the primitive injustice of trial by social media. But it's unlikely that he will ever erase the stain on his reputation. There's no court of appeal against the furies of #MeToo.

Lawyers like to point out that when prejudicial evidence is presented to a jury and then struck by the judge, it's like "throwing a skunk into the jury box: when the skunk is removed the smell remains."

Dershowitz's critique is valid no matter what you think of him. He's a lawyer and lots of people find it difficult to sympathize with rich lawyers. He's a civil libertarian and defends pornographers. He's a Democrat who strongly supported Hillary Clinton. But like everyone else, he is entitled to the presumption of innocence. And now he finds himself in danger of being punished by a court for denying a false accusation. If can happen to him, it could happen to any American.

Dante places the malicious Twitter mob* deep in the eighth circle of his *Inferno* – where they are punished with darkness, stench, thirst, filth, loathsome diseases, and shrieking

noise. The bleak message of *Guilt by Accusation* is that the next world may be the best hope Dershowitz and others like him have for justice.

**Liars and false witnesses, that is.*

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