

# Republican Perspective

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## Presumed Guilty

The tsunami of “sexual harassment” charges, denials, confessions, resignations, and summary executions has dominated the news lately and is not likely to die out soon. It is very troubling the way this is being handled by those in authority over the accused, by his peers, and by the media.

High profile cases in the firestorm include politicians, media figures, and Hollywood hot-shots. But the common denominator of the accused harassers seems not to be their occupation or political persuasion---or that they are strikingly handsome and impeccably well-mannered like Harvey Weinstein and Al Franken. Instead, what the accused have in common is that they are rich or famous or powerful---or some combination of those qualities.

So why do I dissent from the mad dash from accusation to execution?

First of all, there seems to be no real definition of “sexual harassment.” The U.S. EEOC provides a definition, but it is of no practical use in assessing the situations that have been in the news. Here’s a dictionary definition: *uninvited and unwelcome verbal or physical behavior of a sexual nature especially by a person in authority toward a subordinate (such as an employee or student)*. From that, it seems that the victim gets to define sexual harassment by deciding what is uninvited or unwelcome.

Is it harassment to ask for someone’s phone number? To ask her for a date? To compliment her appearance? To take her arm while crossing the street? To pinch her butt while you are both drinking at a party? To steal a

kiss? To tell a risqué joke? What about repeated occurrences as opposed to a single incident? And so on....

There's obviously a wide range of behavior, from a verbal compliment to forcible rape. Some of which almost everyone would agree is criminal, and some of which almost everyone would agree is benign. To lump these under the sexual harassment umbrella seems wrong. It elevates the benign to a punishable offense and at the same time diminishes the recognition of truly heinous behavior including rape.

My second problem is that there is no process for adjudication of accusations. Or, where there is a process, it is bypassed in the rush to punish.

If the alleged acts were criminal, and reported timely, then the judicial system could be used to resolve the accusation. But for the most part, the acts involved are either not criminal at all or else lack sufficient evidence for prosecution.

So what's left is a non-judicial process such as investigation by an ethics panel. But even that remedy is ignored---as with the accusations against Rep. John Conyers and Sen. Al Franken. Both were pushed into agreeing to resign their positions without recourse to the existing ethics panels of the House or Senate.

Why is the rush to punish over-ruling the application of investigatory procedures? Well, it's because the peers of the accused (and society at large, for that matter) are afraid to be "on the wrong side" of the Me Too movement. The demand that the accusers must be believed and the fear of being branded as sexist or misogynist has overwhelmed almost all those who dare to question the lynch mob approach. (I would have called it a kangaroo court approach, but decided that was unfair to kangaroo courts.) Thus the accusation alone requires punishment. No investigation required.

To be fair, there are some dissenting voices but they are generally not among the peers of an accused. Fox News anchor Tucker Carlson speaks about this almost nightly, and Paris-based freelance journalist Claire

Berlinski has written an excellent article “The Warlock Hunt” which you can find on line. And Sen. Joe Manchin has spoken forcefully that his colleague Franken should have received a fair hearing. But such public dissenters are few.

My third issue is that most of the accusations describe long-ago events. These are particularly hard to defend against (which I guess does not matter since the accusation alone mandates summary execution without investigation). Some of the accused have claimed no memory of the events and, with a decades-old incident, there’s even a chance this might be true.

A fourth problem is that what one person understood to be consensual may not have been so in the mind of the other. Or if it was consensual, that consent may have dissolved over time—or on “the cold gray dawn of the morning after.” Consent may indeed be in the eye of the beholder, such as described in Donald Trump’s 2005 Access Hollywood tape, in which he said “I don't even wait...when you're a star, they let you do it...” Does that describe consent or not? I suppose you could interpret and argue it either way.

The fifth and final concern I will raise here is that punishment is arbitrary---determined on-the-fly by the accused’s employer or peers in their haste to outrun the lynch mob. How could it be otherwise when there is no agreed upon and ranked list of offenses?

No, I am not advocating in favor of sexual harassers. What I do favor is defining sexual harassment adequately, adjudicating accusations timely and fairly, and tailoring the punishment to the offense. But most importantly, the now-in-vogue presumption of guilt---that all accusations are true---should be replaced by a presumption of innocence until proven guilty.

That’s my dissenting opinion.