

Even Vile Defendants Deserve Good Representation

By **Lara Yeretsian** (March 1, 2019, 5:22 PM EST)

It's a sad day for our legal system when a Harvard professor must defend himself for representing Hollywood movie mogul Harvey Weinstein. More than 40 Harvard students called for the ouster of Law School Professor Ronald S. Sullivan Jr. after he joined Weinstein's legal defense team, and now the university is considering **stripping Professor Sullivan of his position** as dean of the Winthrop House at Harvard. Rather than join in the opprobrium, we should be vocally and vociferously supporting him.



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It is at moments like this that all of us — especially those Harvard students who will soon start their own careers — need to revisit the basic tenets of our legal system.

The criminal justice system is not a popularity contest. It is not my job as a defense attorney to represent only the most popular defendants and seek the approval of the masses in such representation. In my career, I have represented a host of unpopular defendants, including working on legal teams defending celebrity defendants such as Michael Jackson and Scott Peterson. I cannot count the number of times I've been questioned and even vilified for doing my job. We continue to do it because I believe the very foundation of our democracy depends on it.

The right of a criminal defendant to counsel and effective representation is one of our most sacred constitutional rights. Equally important is the right to counsel of one's choice,[1] considered a "root meaning" of the constitutional guarantee to counsel. As we digest the latest celebrity crime news, namely the indictment of R&B superstar R. Kelly on charges that he engaged in aggravated criminal sexual abuse with minors and the filing of solicitation charges against New England Patriots owner Robert Kraft, we must remember that our legal system — which is better than any other legal system in the world — presumes innocence.

The presumption of innocence, however, is meaningless without the right to counsel, a constitutional right most basic to a fair trial. The Sixth Amendment guarantees the right to counsel in criminal cases, a right that has been expanded by the U.S. Supreme Court to encompass access to public representation for indigent defendants,[2] the right to effective counsel[3] and the right to choose one's own attorney.

The protections afforded criminal defendants came about precisely because of the most infamous cases, but we should never forget that they also protect the innocent. Every person, whether innocent or guilty, is entitled to the best possible defense. People need to know that, whatever they've done, their defense attorneys will be their true advocates. That is the cornerstone of our justice system.

The idea that a criminal defense attorney may be penalized and could potentially lose a position such as dean of Harvard's Winthrop House as a result of representing a "vile" client such as Harvey Weinstein is a direct attack on the criminal defense institution and our Constitution. Moreover, it is offensive because it promotes the message that criminal defense attorneys — who by the nature of their positions must advocate for the most hated people in society — are not worthy or ethical enough to hold important positions such as head of a department at an educational institution.

So how do I advocate for a client who has been charged with a truly heinous crime? I remind myself

that our justice system is not about mob justice; it's about the constitutional right of every defendant, "vile" or not, to a vigorous representation through an attorney of his or her choice. As important and necessary as the #MeToo movement is, it should not be used to undermine our criminal justice system. Just as a doctor cannot turn his back on a terminal patient, neither should a lawyer be forced to decline representing notorious defendants. Especially when a case has been virtually tried in the public eye — as with Scott Peterson and now Harvey Weinstein — the defense attorney must be a bulwark against the lynch mob.

Although Peterson was convicted by a jury of his peers, to this day I believe in his innocence and am proud to have played a role in providing a robust representation against the prosecution's questionable circumstantial evidence. Likewise, Weinstein's attorneys must believe that he deserves the best possible representation, regardless of the ultimate verdict.

Moreover, criminal cases are not only about guilt or innocence. Defendants may have had horrible pasts, struggled with mental illness or acted in the heat of the moment. Good defense attorneys play a key role in presenting mitigating factors while negotiating settlements or facing sentencing.

Telling a defense attorney not to represent a guilty party is like telling a doctor not to treat a terminal patient. Every guilty person deserves a fair sentence, just as the victims of their crimes deserve justice. It is our job to do everything possible for our clients. If lawyers jumped ship at an admission of guilt, far fewer cases would settle and many more would go to trial. Of course, criminal defense attorneys are duty-bound to protect the integrity of the judicial process and must advise clients against committing perjury in defending against criminal charges.[4]

The true nightmare for a criminal defense attorney is representing someone whom we believe to be innocent but whom we cannot prevent from being a victim of the criminal justice system. These are the cases that keep me up at night — not the guilty clients for whom I obtained a lesser sentence or a more favorable outcome.

Being a criminal defense lawyer means being asked, "How can you represent that person?" We represent those people because we swore to support and defend the U.S. Constitution. The Constitution protects the accused, whether guilty or innocent, through safeguards including the right to counsel.

I know it is convenient to forget, but defendants are human beings just like the rest of us. They have families, children, parents and friends. Some may be accused of heinous crimes, but they are all presumed innocent until proven otherwise and have an inviolable right to present a defense. Most importantly, the public censure of figures like Harvey Weinstein is all the more reason to stand up for them and our Constitution.

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[1] *Id.*, at 53; [United States v. Gonzalez-Lopez](#) , 548 U.S. 140,147-148 (2006)

[2] [Gideon v. Wainwright](#) , 372 U.S. 335 (1963)

[3] [Powell v. Alabama](#) , 287 U.S. 45 (1932)

[4] [United States v. Shaffer Equip. Co.](#) , 11 F.3d 450 (4th Cir. W. Va. 1993)