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OPINION | COMMENTARY

I Want to Be Investigated by the FBI

In the age of #MeToo, a claim of innocence—even a provable one—is itself treated as an offense.

By Alan M. Dershowitz

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PHOTO: DAVID KLEIN

If you are accused of a crime, you are entitled to the presumption of innocence. But in the age of #MeToo, people accused of sexual misconduct are subjected, at least in the court of public opinion, to a presumption of guilt. Worse, a claim of innocence—even a provable one—is itself treated as an offense, an assault on the accuser and on “survivors” in general.

Four years ago, a woman in her mid-30s accused me of having sex with her when she was underage. I produced incontrovertible evidence that I never met the accuser—

including a lawfully recorded admission by her lawyer, who examined my travel and phone records and said it would have been “impossible” for me to have been in four places where she claimed the sexual encounters occurred, and that she was “simply wrong” in accusing me. The evidence includes emails and a book manuscript (currently under court seal) in which the accuser acknowledges that she never had sex with me, and a recorded conversation of a friend

of the accuser, who says the accuser told her of feeling “pressured by her lawyers” to accuse me in order to get a big payday.

There is also evidence that the accuser fabricated stories about Al Gore, Tipper Gore and Bill Clinton, all of whom she claims she met in locations where Secret Service records and other evidence establish they could not have been. Her records establish that she was over the age of consent at the time of the purported sexual encounters.

After examining the evidence, former FBI Director Louis Freeh and a team of former law-enforcement officials retained by my lawyers concluded that “the totality of the evidence refutes the allegations” against me. The federal judge overseeing the civil lawsuit in which the accusation was filed struck it from the record and imposed sanctions on the lawyers responsible. As part of an agreement, they withdrew the filings that falsely accused me and acknowledged filing them was a “mistake.”

Yet there are some in the #MeToo movement for whom there is no such thing as innocence. Despite having proved I never even met my accuser, my appearances on college campuses have been greeted with protests accusing me of being part of a “rape culture.” People on Twitter have called me a child rapist and worse. There were calls on social media for Harvard to strip me of the emeritus status I earned after 50 years of teaching without a single complaint.

When I continued to fight back, I received information that a lawyer for my accuser was looking for another woman to accuse me. The second accuser was even less credible than the first. She had already falsely accused several prominent people—but not me—of having abused her when she was in her early 20s. She had also sent hundreds of pages of emails to a reporter for the New York Post claiming that she had sex tapes of Hillary Clinton, Donald Trump, Bill Clinton and Richard Branson. The Post did not pursue the story.

None of which stopped the lawyer from filing an affidavit from this noncredible woman, now in her 30s, claiming that she had been a 22-year-old “trafficking” victim and—falsely—that I had sex with her.

The second accusation—no matter how incredible—convinced even some in the established media that I must be guilty. “Where there’s smoke, there’s fire” became the mantra. A better metaphor is that a gang of arsonists are torching my reputation.

It is hard to imagine #MeToo accusations with more-compelling evidence of innocence than mine. In virtually every other case, there is evidence—and often no dispute—that the accuser had a relationship of some sort with the accused. The dispute is over consent or other issues, which are often matters of degree. In my case, there is no evidence that my accusers and I were ever even in the same place at the same time, and documented evidence that we were not. Yet a

journalist for the New Yorker told me she regards the evidence of my innocence as “inconclusive.”

My accusers refuse to make their accusations in public, outside of court documents. That shields them from defamation suits and leaves me with no legal recourse unless prosecutors decide to bring perjury charges. But it’s rare for prosecutors even to investigate false filings in civil cases.

I’ve decided, therefore, to do something unusual: I’m asking federal prosecutors and the Federal Bureau of Investigation to open a criminal investigation of me. But not of me alone—of my accusers as well. All three of us have filed sworn affidavits in federal court. These affidavits are in irreconcilable conflict: I have sworn that I never met either of them; they have both sworn that I engaged in sexual acts with them. Either I have committed perjury or they have.

Someone has committed a serious felony, a crime against America’s justice system. I’m asking law-enforcement authorities to figure out who. I will cooperate, showing them my evidence, testifying before the grand jury, invoking no privileges. I will challenge my accusers to do the same.

It’s no fun to be investigated for a felony by the FBI, but the current state of the law and public opinion gives me no alternative if I want to be vindicated.

In more than half a century of litigating criminal cases, I have never seen one in which the evidence of innocence is so incontrovertible and the evidence of guilt nonexistent. If my evidence is “inconclusive,” then no falsely accused person can ever clear his name.

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