

# Harvey Weinstein lawyer says indictment must be thrown out, grand jury do-over warranted

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By Shayna Jacobs

A new grand jury should get to hear evidence favorable to Harvey Weinstein — and the disgraced movie mogul's current indictment should be tossed, his attorney argued Wednesday.

In the latest filing in Weinstein's sexual assault case in Manhattan, the accused predator's attorney, Ben Brafman, says the grand jury probe was so flawed and misleading a do-over is necessary.

"Because of this misconduct, as well as the numerous other instances of misconduct in this case enumerated in Mr. Weinstein's previous motions, this Court should dismiss the flawed indictment," Brafman wrote in a letter to Justice James Burke.

"In the alternative, this Court should conduct an evidentiary hearing to determine the extent of the misconduct and how deeply it undermined the integrity of the Grand Jury."

Since Weinstein was charged in May, a count of committing a criminal sex act relating to one accuser was tossed after prosecutors revealed problems with her story.

Weinstein is still charged with raping an unidentified woman in 2013 at a Doubletree Hotel on Lexington Ave. and with forcing oral sex on ex-production assistant Mimi Haleyi in 2004. None of the alleged acts were reported until last year once the global #MeToo movement was underway.

The defense has turned up evidence both those accusers continued relationships with the former Hollywood honcho after his alleged attacks.

The defense team also turned up what they say is proof the rape accuser approached a friend years after the alleged incident and asked the woman to support the case by saying the accuser had confided in her about the assault at the time it happened.

The friend, who also knew Weinstein, refused, saying she was never told of the rape, according to the defense.

Weinstein's team previously turned up other evidence that Brafman believes the grand jury should have been privy to. In some 40 emails with Weinstein swapped after the date of the reported attack, the rape accuser was flirty and flattering — and at one point said she "loved" him.

Prosecutors have argued the case remains strong. Weinstein still faces a minimum of 10 years behind bars on the top count — predatory sexual assault — which requires abuses against two or more victims.

They have argued that the grand jury presentation was not deceptive and the information the other side has turned up does not amount to much.

“That the defendant has a misguided and antiquated view of how a rape victim should react after having been assaulted does not change this reality,” Assistant District Attorney Kevin Wilson wrote in a recent letter to the court.

Weinstein is back in court on Dec. 20, when Burke is due to decide on Brafman’s bid to toss the charges or at least order a hearing.

The Manhattan DA’s office declined to comment on Brafman’s most recent legal push.

On Wednesday, a law firm representing a woman in a civil case against Weinstein argued that his legal team should not get to put off proceeding with the lawsuit until the criminal case is resolved.

Attorneys Douglas Wigdor, Bryan Arbeit and Kevin Mintzer, who represent an alleged rape victim referred to as “Jane Doe,” argued that “criminal accusations that have been leveled against Weinstein are not a shield that he can wield to deflect and delay civil liability.”

The woman has accused Weinstein of forcibly assaulting her at a hotel in Beverly Hills in 2016.

Weinstein denies having non-consensual contact with any of the women who have come forward against him.