

100 Women vs. Harvey Weinstein

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January 6,
2020

It is true but incomplete to say that the word of one woman was not enough to bring down the law on Harvey Weinstein. The full truth is uglier; in the spring of 2015, Weinstein's own admissions of groping a woman without her consent, first overheard by officers and then caught on tape, weren't enough for prosecutors to bring charges.

Ambra Battilana Gutierrez was 22 when she reported to the NYPD that, earlier that day at a business meeting, the superstar Hollywood producer had grabbed her breasts and put his hands up her skirt. As she sat with special-victims detectives, Weinstein called her and police heard him acknowledge touching her breasts. Gutierrez was distraught, but she agreed to wear a wire to meet Weinstein the next day in the lobby of the Tribeca Grand, where he asked her to come to his hotel room while he took a shower. He said he wanted her to watch him shower. Gutierrez repeatedly said she wanted to leave, then demanded to know why he had groped her breasts. Weinstein replied, "Oh please, I'm sorry, just come on in ... I'm used to that."

He was also used to what happened to him after he was hauled in for questioning, which was nothing. The producer assembled a team of well-connected advocates, from Rudy Giuliani to the former chief of the Manhattan district attorney's Sex Crimes Unit, Linda Fairstein. Tabloids battered Gutierrez's reputation. "Page Six" referred to Weinstein as a "married dad of five" and quoted an anonymous source dismissing the case as extortion. Detectives later said prosecutors in Manhattan DA Cyrus Vance's office grilled Gutierrez about whether she was a sex worker. Days later, they announced they would bring no charges.

With no other recourse, Gutierrez decided that accepting payment from Weinstein (\$1 million, she has said) in exchange for her silence was the least-worst option. She couldn't have known at the time how many other women had faced the same decision. Two years later, in 2017, Gutierrez chose to break her NDA, playing the Weinstein recording for *The New Yorker's* Ronan Farrow. "I hope the other girls get justice," she told him.

Her account to Farrow, along with dozens of others in *The New Yorker*, the *New York Times*, and elsewhere, was enough to finally shame law enforcement into action. As of this writing, at least 100 women have come forward with allegations of sexual assault or harassment against Weinstein; over a dozen made formal complaints to the NYPD. This month, the same Manhattan DA who declined to pursue Gutierrez's allegations will finally put Weinstein

on trial. He has been charged with five counts of rape and sexual assault of two women — former production assistant Mimi Haley and an unnamed woman who says he raped her in a midtown-Manhattan hotel room in 2013.

Several other women are expected to testify to Weinstein's broader pattern of predation. The hope of prosecutors is that the cumulative effect of the accusers' testimony will establish a pattern harder to dismiss than any one woman's account. In that way, then, the trial will be yet another test of the strength of the larger Me Too reckoning. "This sort of testimony is really powerful," said attorney Douglas Wigdor, whose anonymous client plans to testify at trial that Weinstein sexually assaulted her in 2005. "It just takes the wind out of the sails of the defense team."

It's the same strategy that worked in the case against Bill Cosby. When he was tried in June 2017 for assaulting Andrea Constand, only one other accuser was allowed to testify; it ended in mistrial. A year later, five women testified. This time, Cosby was convicted. By then too, the public better understood why, for example, a sexual-assault survivor might not immediately report her assault or why she might stay in friendly contact with her abuser. An appeals court upheld the conviction in December, saying prosecutors had established Cosby's "unique sexual-assault playbook."

The testimony that may pose the greatest risk to Weinstein's defense is that of Annabella Sciorra, who has said Weinstein raped her in the early 1990s and afterward attempted to destroy her career. Prosecutors are hoping Sciorra's account will convince the jury that Weinstein was a serial offender, the gravest charge brought against him under New York's predatory-sexual-assault law, which carries a minimum sentence of ten years to life in prison. Weinstein's lawyers have fought — so far unsuccessfully — to suppress her testimony.

That's the best-case scenario for Weinstein's accusers, and yet the verdict is far from guaranteed. Vance's office has a long history of scuttling, ignoring, or mismanaging sexual-abuse accusations brought against powerful men, and the DA's record will be the subtext of the trial. The assistant DA on Weinstein's case was formerly Jennifer Gaffney, who, in 2011, argued before a judge that Jeffrey Epstein deserved a reduction in his sex-offender status. Joan Illuzzi-Orbon, who now leads the case against Weinstein, oversaw the prosecution and subsequent dropping of charges against Dominique Strauss-Kahn, who had been accused of sexually assaulting Nafissatou Diallo, at the time Sofitel housekeeper. Though there was physical evidence, the charges were dropped, in part because of inconsistencies on Diallo's asylum application, the New York *Times* has reported.

Prosecutors have already dropped charges related to one accuser, Lucia Evans, a marketing executive who says Weinstein sexually assaulted her in 2004. Her case is telling: When men claiming to be cops showed up at Evans's house late in 2017, she told me, she wasn't even sure if she could believe them. "It's so hard to trust people, especially after you go through

what we all went through," she says. Weinstein paid for private detectives to stake out homes and ex-spies to pose as journalists and feminists. Why not as cops? Once she confirmed they were who they said they were, Evans said, "they said I was the only one who could put [Weinstein] in jail." She spent a year talking to multiple detectives and prosecutors, and Weinstein was charged with assaulting her.

But in October 2018, Evans learned prosecutors planned to drop the sexual-assault charge related to her case. The stated reason was that a witness had given information to an NYPD detective partly "at odds" with Evans's; the witness, who had previously corroborated Evans's story to a *New Yorker* fact-checker, suggested the encounter might have been transactional but consensual. When her case was dropped, Evans says, she felt abandoned. "This has confirmed the worst fears that I had around the justice system," Evans said. Later, she wrote me an email to say that despite everything, she doesn't regret cooperating with authorities. "If survivors don't come forward and agree to press charges," Evans wrote, "there is no hope for any justice to be served or any positive systematic change to occur."

In August 2018, Weinstein's team asked judges to dismiss the criminal case, claiming their client had a "long-term, consensual, intimate relationship" with the unnamed woman; emails between her and Weinstein, wrote his attorneys in filings, are "so unlike what one would expect to be communications between a true rape victim and her alleged rapist." And Haley, the attorneys argued, could not have been assaulted because seven months later, she texted him to arrange a meeting. This past December, in an interview with ABC anchor Amy Robach, Weinstein's defense attorney Donna Rotunno went further. After Robach suggested that it's common for women who are assaulted to keep communicating, to "normalize something traumatic that happened to them," Rotunno responded, "There are some doctors that will say that. We will discredit the fact [*sic*] that there is no research to prove that.

"If you don't want to be a victim, don't go to the hotel room," Rotunno continued. Weinstein's legal strategy, it seems, is to not only claim that the sex was consensual but that his accusers are breaking the compact they supposedly consented to — their bodies for their work. "When women don't want to take certain responsibilities for our actions," Rotunno told the ABC anchor, "we infantilize ourselves."

Weinstein has been showing up to court appearances tottering on a cane, then a walker. (He was later snapped at a Westchester Target walking unassisted.) In the hospital in December for back surgery, he told the *New York Post* that no one appreciated how much he had done for women.

Even if New York prosecutors fail to convict Weinstein, it might not keep him out of jail. Their counterparts in Los Angeles and Beverly Hills have signaled they might soon bring their own charges. In the meantime, civil cases against Weinstein, seeking compensation from what's left of his fortune and company, have piled up. Most controversial is a sweeping case spearheaded by attorney Elizabeth Fegan and brought against the bankrupt Weinstein

Company, which late in the year reached a tentative settlement on behalf of any of Weinstein's victims who opt in. Wigdor, the attorney representing several Weinstein accusers, calls it "one of the worst settlements I've ever seen." The trouble is partly structural: Bankruptcy law is set up to protect a board of directors and secured creditors but not, say, a hundred-odd women arguing that a company was a sex-trafficking operation.

What's left after the bones are picked is around \$18.5 million, Fegan tells me. "We recognize that there's not enough money," she says. "For what Harvey did, there's no amount of money that could really heal any of these women." She has defended taking up to 25 percent of that pot in attorneys' fees, calling it "less than the value of time spent on the case using industry-standard-defined billing rates." The proposed resolution includes women whose claims would be too old to qualify if they sued on their own, which is both more inclusive and leaves less money for each woman. "Our clients thought it was only fair to create a space where all Harvey's victims were eligible," Fegan says. "Not follow these arcane judgments that the laws of men have put in place that don't recognize that it takes a long time for women to find their voice."

Fegan says if the settlement is approved, a judge will appoint a special master to "take a holistic look at each person's individual claim." Louise Godbold, who accused Weinstein of making unwanted sexual advances and runs a survivor-focused nonprofit, tells me wearily, "What it really boils down to is what are my breasts worth, what is my vagina worth? It's codified." The settlement is no done deal; a judge will ultimately have to approve it.

Some women have already opted out of the proposed class-action settlement to pursue their own cases. Wigdor represents Kaja Sokola, who says Weinstein assaulted her in 2002, when she was 16. Her suit is made possible by a temporary lifting of the statute of limitations for child abuse in New York State. Rose McGowan is suing not just Weinstein but the team he hired to fight allegations against him, including attorneys David Boies and Lisa Bloom and the investigative firm Black Cube; she accuses them of a racketeering scheme.

Ashley Judd, the first to fully tell her Weinstein story on the record, filed suit against Weinstein in Los Angeles Superior Court armed with the rare piece of evidence pointing to Weinstein retaliating against her professionally for refusing his advances: *Lord of the Rings* director Peter Jackson has admitted he passed her over after Weinstein said she was a "nightmare" to work with. She argues that not only did Weinstein defame her; he interfered with economic relations and engaged in unfair competition, invoking laws that usually apply to disputes between businesses. If Weinstein's defense is to suggest that his abuse of power was a mere transaction, why not turn it on him? Judd's case is on hold pending the criminal proceedings, and Judd is appealing a ruling that employment law governing sexual harassment didn't apply to the producer-actress relationship at the time. Judd has said that if she prevails, she'll donate any damages to the Time's Up Legal Defense Fund.

I asked Judd if she thinks Weinstein will ever take responsibility for his actions. "His defiance and lack of humility remain intractable at this stage," Judd replied. "I would welcome someone who has aggressed who wants to learn and make it right." A restorative justice process, she suggested, with "a mediator, a wisdom teacher." Is Weinstein that man? "So far," she said dryly, "it's not him."

For decades, Weinstein had successfully isolated his targets from one another by telling them about the famous actresses who had supposedly given in to his ugly dealmaking. His exposure brought them together. Last month, 21 of Weinstein's accusers gathered in Los Angeles and New York on the eve of his trial for a group photograph. "It's essential and tender and powerful," says Judd of the bond between the women, who stay in touch on an email chain.

That bond has been necessary over the two-plus years it has taken for the case to move to trial. "As much as everyone wants you to be a warrior," Godbold said, she's exhausted. It's so hard to stay mad. It's so hard to stay focused. This too is by design. She pointed out that Weinstein's legal team had successfully filed for several delays, a strategy he may yet deploy again. "He knows," she said, "you can't run a trailer for a film for two years without people tuning out."