

The Guardian

Harvey Weinstein: could #MeToo's highest-profile case be crumbling?

New York's criminal case is proving how hard it is to prosecute the powerful, even as our culture evolves



Harvey Weinstein arrives at the New York state supreme court in October. Photograph: Stephanie Keith/Getty Images

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Harvey Weinstein kicked off the #MeToo movement, but whether he will face criminal repercussions looks increasingly uncertain.

The criminal case against him hit a snag earlier this month when the prosecution threw out the charge of Lucia Evans, one of three women who have spoken out against him in the case. Meanwhile, Weinstein is looking to settle various civil cases against him out of court.

The sweeping investigations of Weinstein's sexual misconduct helped encourage women all around the world to come forward, accusing powerful men with long-buried sexual misconduct stories of their own. But a year later, while many men have faced professional setbacks and public disgrace - and Bill Cosby, whose misdeeds came to light before #MeToo, has been convicted of sexual assault - the man who started the avalanche has yet to be convicted of anything.

Now it looks as if Weinstein's criminal case could become an example of how difficult it is to prosecute the powerful, even as the culture has evolved. And some fear missteps in the prosecution's handling of the case in New York could discourage women from seeking justice after all. "People ask why survivors of sexual assault don't come forward in the criminal system - this is why," said Evans's lawyer, Carrie Goldberg.

In May, Weinstein was charged with six counts brought by three women, including Evans. He has denied all allegations of non-consensual sex, and is fighting remaining charges in the courts.

But a major problem in the case was revealed recently when the Manhattan district attorney's office acknowledged that a detective involved in the case had "failed to inform" their office of evidence that could support Weinstein's defense.

At issue is Evans's claim that Weinstein forced her to perform oral sex in his office in 2004, an allegation first reported in the New Yorker last year. That was drawn into question when a friend of Evans's told detective Nicholas DiGaudio that Evans had told her the encounter with Weinstein was consensual - with Evans agreeing to sexual demands in return for career prospects.

That's according to a letter made public at the request of Weinstein's lawyer, which alleges that DiGaudio coached this friend to downplay her conflicting evidence, telling her she was under no obligation to cooperate with authorities and that "less is more".

The contentious letter also notes an email Evans wrote - which she says she never sent - to her husband several years ago, in which Evans allegedly described the interaction with Weinstein differently than how she described it to police.

Evans says the account drafted over email does not differ meaningfully from what she told investigators. And she insists that she never told her friend the interaction with Weinstein was consensual, and also claims that her friend verified her claim to the New Yorker magazine previously.



A #MeToo rally in New York in December 2017. Photograph: via ZUMA Wire/Rex/Shutterstock

Weinstein's lawyer Ben Brafman has argued Evans lied to the *New Yorker* and perjured herself before the grand jury earlier in the process, and that the dismissal of her friend's story has "tainted" the entire prosecution. The *New Yorker* has denied wrongdoing.

Then earlier this month, DiGaudio was accused of telling another claimant, a woman who says Weinstein raped her in his hotel room in 2013, to feel free to delete personal material from her cellphone before turning it over to prosecutors.

"The primary question in my mind was what in the hell is going on behind the scenes?" said Norm Pattis, a New Haven criminal defense lawyer. "When you've got a state investigator basically telling a witness that they can destroy phone messages or text messages, it creates an inference that perhaps they were hiding something that the defense was entitled to."

Pattis added: "The prosecution's missteps may not yield a complete victory for Weinstein but they signal serious trouble for the state's case."

The assistant district attorney, Joan Illuzzi, agreed to dismiss the relevant count, but said nothing about the dismissal of that element of the case "impacts the strength of the remaining case and the remaining counts in the indictment", which include predatory sexual assault.

Brafman, unsurprisingly, doesn't agree. "The fact is that these issues undermine the fundamental integrity of the judicial process. This case is falling apart because it is a fundamentally bad case, and bad cases eventually fall apart even when law enforcement officials try and stack the deck against the accused," he told the *Guardian*.

But the more surprising split in opinion is within the prosecution itself. "Essentially there's an ongoing dispute between investigators and actual district attorneys in terms of what kinds of information was provided," said Todd Spodek, a New York criminal lawyer and managing partner at Spodek Law Group, told the *Guardian*. "It's come to a point where they're pointing fingers at each other and it really does affect the integrity of the case."

Earlier this year the New York state governor, Andrew Cuomo, asked the state's attorney general to launch an investigation into the Manhattan district attorney Cyrus Vance's handling of a much earlier sexual misconduct case against Weinstein, which was the result of a sting set up by the New York

police department. Cuomo later put the case on hold and both he and Vance have received campaign contributions from Weinstein's lawyers. Critics note that after Vance declined to prosecute a 2015 incident involving Weinstein, his campaign received \$10,000 from a lawyer who has worked with the Hollywood mogul.

Unlike many states, district attorneys in New York are elected positions, a potential conflict of interest. Facing mounting criticism, Vance said earlier this year he will no longer accept contributions from lawyers with cases before him. And the FBI is reportedly currently conducting an investigation into the impact of political contributions on decisions made by the Manhattan district attorney's office, including the Weinstein case.



Cyrus Vance leaves a Manhattan court in May 2012. Photograph: Andrew Kelly/Reuters

Richard Klein, a professor at Touro Law Center in Long Island called questions around political contributions a "huge issue" that go far beyond Weinstein, all the more so when they contribute to tensions with police.

"Our criminal justice system is damaged when the DA and the police have discord. The DA relies on the police on a daily basis and in any particular case, if they're at odds with one another ... that damages the effectiveness of seeking justice," Klein told the Guardian.

"Detectives need to be neutral," the Los Angeles lawyer Tre Lovell, told the Guardian, and DiGaudio has been removed from the case. But the New York City police union has defended their detective, saying "he was simply trying to get to the truth," and was sensitive to potentially re-victimizing the complainant.

The union also had harsh words for the district attorney's office. "The Manhattan DA's office needs to enter the 21st century. This is the age of technology. People keep loads of personal info on their phones that they prefer remains confidential," said Michael Palladino, the union president of the Detectives' Endowment Association.

"A woman should not have to surrender confidential intimate information that's immaterial to the case to defend herself against a sexual predator," Palladino added. "This appears to be just another smear campaign against Detective DiGaudio to cover up the Manhattan DA's own incompetence."

The developments play into a previous argument by Brafman that relationships between Weinstein and complainants were consensual. For instance, he noted in court papers, Weinstein and one

woman in question exchanged 400 emails in the “weeks and years after the alleged rape”.

“The prosecutor did the right thing, she had to drop that count,” Jill Stanley, a trial lawyer and former New York prosecutor, told the Guardian. “Not because Lucia’s story was untrue, but because this is a very high-profile case and any weakness can hurt the rest of the case.”

She concluded: “The bummer is going to be if there is anything else that is not clean. And it’s really scary to victims of sexual assault to come forward and have this happen to them.”

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