

New York judge dismisses a sexual assault charge against producer Harvey Weinstein

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On October 11, a New York State Supreme Court judge dismissed one of the six sexual assault charges against Hollywood film producer Harvey Weinstein. Judge James Burke took the action on a defense motion, unopposed by the prosecution, after it came to light that a New York City police detective had failed to report an interview with a friend of one of the complainants, Lucia Evans, that casts doubt on her version of events.

Weinstein was charged in May with forcing Evans to perform oral sex on him. In the interview, the unnamed friend told the detective, Nicholas DiGaudio, that Evans had told her in 2004, at the time of the incident with Weinstein, that the sex act was consensual.

This was the only charge involving Evans. Five other charges against Weinstein in connection with alleged sexual assaults on two other women remain.

The role of Evans' claims in the #MeToo movement is not incidental. Ronan Farrow prominently featured her allegations in his *New Yorker* magazine piece, "From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories," posted on October 10, 2017. Farrow's sensationalized piece, very short on evidence or facts, along with a *New York Times* article posted five days earlier, helped launch the sexual misconduct campaign.

In 2004, Evans was a 21-year-old student and aspiring actress. She told Farrow that Weinstein approached her at a club in New York and she gave him her number. "Weinstein began calling her late at night, or having an assistant call her, asking to meet. She declined, but said that she would do readings during the day for a casting executive," the *New Yorker* piece asserted. Evans claimed that she was led to an office where Weinstein was alone and that he forced himself on her.

Farrow's article continued, "I tried to get away, but maybe I didn't try hard enough. I didn't want to kick him or fight him.' In the end, she said, 'he's a big guy. He overpowered me.' She added, 'I just sort of gave up. That's the most horrible part of it, and that's why he's been able to do this for so long to so many women: people give up, and then they feel like it's their fault.'"

However, Evans' friend told Detective DiGaudio a very different story. A September 12 letter from Assistant District Attorney Joan Illuzzi-Orbon, the lead prosecutor in the case, describes the second woman being present with Evans in the bar of a Manhattan restaurant in the summer of 2004 when the latter was first approached by Weinstein. The producer, according to the friend, offered to give the two women cash "if they exposed their breasts to him."

Later that evening, according to the witness, Evans told her friend that she "had exposed her breasts to the defendant [Weinstein] in a hallway of the restaurant that evening." Sometime later that summer, Evans told her friend that Weinstein had promised her an acting job if "she agreed to perform oral sex upon him. According to the Witness, the Complainant [Evans] told her that she thereupon performed oral sex on the defendant."

In the September 12 letter, Illuzzi-Orbon also discloses that the prosecution had recently obtained a draft email Evans wrote to her husband (then fiancé) that "describes details of the sexual assault that differ from the account the Complainant provided to our office."

The Weinstein case has other difficulties. Prior to the dropping of the charge related to Evans, Weinstein's lawyer, Ben Brafman, argued in court filings—*Time* magazine reported last week—"that prosecutors

withheld evidence that would have made the grand jury think twice about charging him [Weinstein], such as friendly emails one accuser sent after the alleged rape.” The “friendly emails” are from one of the other accusers, not Evans.

On October 10, the *New York Post* ran an article, “Harvey Weinstein sexual assault case in danger of falling apart,” which noted that in “court papers, Brafman previously argued that the case against the *Shakespeare in Love* producer should be dismissed because prosecutors hid the fact that he had a ‘long-term, consensual’ relationship with one of the accusers [the second complainant]. Weinstein and the woman, whose name has not been released, exchanged 400 emails during the ‘weeks and years after the alleged rape,’ the papers state. In a February 2017 email sent nearly four years after the alleged sex attack, she wrote, ‘I love you, always do. But I hate feeling like a booty call.’”

Following the judge’s dismissal of the one count last Thursday, according to *Deadline*, “Brafman maintained the jettisoned count is a sign the entire case is built on a weak foundation, one he and the legal team intend to spend the next several weeks undermining. ‘Some of the most vocal, outspoken critics of Mr. Weinstein have put their opinions into the media’ without a legitimate legal claim, he argued... ‘I have deep regret that the thoroughness of the investigation did not prevent them [the District Attorney’s office] from charging Mr. Weinstein with a crime he did not commit.’”

Brafman told reporters he believed Evans had lied to the grand jury about her encounter with Weinstein and suggested she be charged with perjury. “This is an attack on the fundamental integrity of the grand jury process,” the lawyer said. “If you have a person willing to commit perjury in the grand jury, that is as serious as the crime of sexual assault because it undermines the fairness of the process for all of us.” He suggested the entire case was “tainted” and that the judge would have no choice “but to dismiss the entire indictment.”

Weinstein’s attorney also raised questions about the role of the *New Yorker*. He indicated that he planned to file a subpoena against the magazine, “claiming,” reported *Vanity Fair*, “that a [*New Yorker*] fact-checker stumbled upon the letter—which may have cast doubt on Evans’s claim.” The magazine denied any wrongdoing. “In addition to *The New Yorker*, Brafman

plans to file a subpoena against an N.Y.P.D. detective [DiGaudio] on the Weinstein case, citing the detective’s conduct.”



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