

Cosby's Conviction And How #MeToo Is Affecting Legal Cases

By **Ross Kramer and Suzanne Jaffe Bloom** (April 26, 2018, 8:50 PM EDT)

Bill Cosby's sexual assault conviction on Thursday after a retrial in Pennsylvania demonstrates how the #MeToo and #TimesUp movements — aimed at exposing systemic sexual harassment, assault and abuse, and empowering victims — are having a profound impact on the legal landscape, and on the entertainment industry in particular. The Cosby proceedings provide a perfect case in point, as seen in the stark contrast between his first trial in June 2017 — in which the judge permitted testimony from one alleged victim in addition to the accuser — and his retrial in April 2018 — in which the same judge permitted testimony from five alleged victims in addition to the accuser. The drastic change in the Cosby proceedings — and indeed the outcome of the case — may have hinged as much on a social climate that is now substantially more supportive and welcoming of the testimony of victims in these types of cases as on any legal arguments raised by the parties.

And the Cosby case does not stand alone. Recent, high-profile cases involving Larry Nassar and Harvey Weinstein suggest that the #MeToo and #TimesUp movements may be changing the way sexual harassment, assault and abuse allegations are treated in the legal system. In all three cases, judges and prosecutors gave substantial voice and powerful backing to victims and accusers. Taken together, they may signal a sea change in the way similar cases will be initiated, litigated and adjudicated going forward. In the current social and legal climate, victims are increasingly given the support and the platform to share their stories, and their voices — individually and collectively — are being heard over the historically louder voices of celebrities, both within and outside the entertainment industry.

In the Larry Nassar case, Michigan Judge Rosemarie Aquilina gave a powerful platform to an unprecedented number of sexual assault victims. Nassar, the disgraced former USA Gymnastics team doctor, pleaded guilty to molesting young female athletes who came to him for medical treatment. At Nassar's sentencing — and over Nassar's objections — the judge allowed more than 150 women to give victim impact statements over the course of a seven-day hearing. As the hearing proceeded and the public reacted with support for Nassar's victims, the number of survivors who wanted to be heard grew. The judge permitted every woman who asked to speak to do so, and many of them spoke with the world watching, their statements played on the news and retweeted. That so many victims chose to be heard, and that the judge gave them a public platform to do so, is a profound example of the power of the



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#MeToo and #TimesUp movements and our legal system.

As part of his plea agreement, Nassar was forced to sit in the witness box and listen as his victims confronted him and shared their horrific experiences of abuse. This type of sentencing hearing in a sexual assault case, with over 150 victims, including some family members, providing live, highly emotional testimony, is without precedent. It speaks not only to the enormity of the crime and the harm suffered by victims and their families, but also the growing social climate that values victim testimony in sexual abuse cases, and enables victims to develop the courage needed to share their stories and participate in the legal process. Nassar was sentenced to 40 to 175 years of imprisonment for his crimes.

In the Harvey Weinstein case, New York Attorney General Eric T. Schneiderman issued a powerful statement about the government's role in combating systemic workplace sexual harassment. The attorney general filed a lawsuit against The Weinstein Company LLC, its parent holding company, and co-owners Harvey and Robert Weinstein, alleging a systemic, company-wide culture of sexual harassment, perpetrated by one executive (Harvey Weinstein), and allegedly enabled, facilitated, and hidden for years by an assembly of managers, executives, and employees. According to the complaint, Weinstein used his role as co-CEO, and his power in the entertainment industry, to sexually harass and abuse numerous women, and his company not only knew about his misconduct and failed to take adequate steps to protect employees, but also took affirmative steps to shield the harassment and abuse.

In bringing the suit, the attorney general employed a section of New York's Executive Law that had not historically been used to target workplace sexual harassment. By doing so the attorney general put organizations doing business in New York on notice that if they allow or foster workplace sexual harassment, fail to take adequate steps to prevent it in the first place, or fail to investigate and address complaints that are made, they can incur severe consequences backed by the full investigative and enforcement power of the government. The larger message is clear — organizations and their principals, directors, managers and employees should fear more than private lawsuits; they now face the real possibility of government enforcement action and punishment if they fail to act responsibly, proactively, and decisively to prevent and address sexual harassment in the workplace. And there is a great likelihood that victims of abuse will be provided with the support and opportunity to participate in the legal process with a powerful voice — one that will not be drowned out by the voices of influential and powerful figures in the entertainment industry.

The Cosby case is perhaps the most striking example of how the legal landscape has changed in a relatively short period of time, sending a clear message that regardless of one's celebrity, power or money, victims will not be silenced. The contrast between Cosby's first trial in 2017 — which ended with a hung jury — and his second trial in 2018 — ending with a criminal conviction for sexual assault — shows the power of victim testimony when judges permit a jury to hear it. The verdict also suggests that the jurors acknowledged and appreciated the tremendous difficulty victims have in coming forward, including the reasons why victims sometimes delay in filing a complaint. Cosby was tried on charges of drugging and sexually assaulting Andrea Constand in 2004. In his original trial, one additional alleged victim was permitted to testify; in his retrial, the judge permitted testimony from five additional alleged victims. The testimony of those additional women, who claimed Cosby drugged and sexually assaulted them during the 1980s, was damning. That there is strength in numbers was never truer. It appears that the testimony of the additional victims changed the entire tenor of the case: from a largely he-said-she-said accusation to allegations of a pattern of sexual assault.

In the time between Cosby's first trial and his second, the #MeToo movement picked up substantial

momentum (in addition to Nassar, Weinstein and Cosby, ask Matt Lauer, Kevin Spacey, Senator Al Franken, and a host of others). The #MeToo and #TimesUp movements have changed the social fabric of the country. As these recent cases demonstrate, they're also having an immense impact on the American legal landscape, and appear primed to continue doing so going forward.

The new legal landscape is expanding the opportunities for victims to make an impact in the fight against sexual harassment and abuse. We have seen and heard powerful statements by victims within the entertainment industry who have been able to use their creative talents and media access to share their compelling stories of sexual harassment and assault by others within the industry. Now, victims outside the industry are being afforded the chance to have an equally important impact through the power of courtroom testimony. Each of these recent cases demonstrates that celebrity and industry power will no longer provide protection against allegations of sexual harassment and abuse; and that celebrity and industry power are not required for victims to have their voices heard.

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