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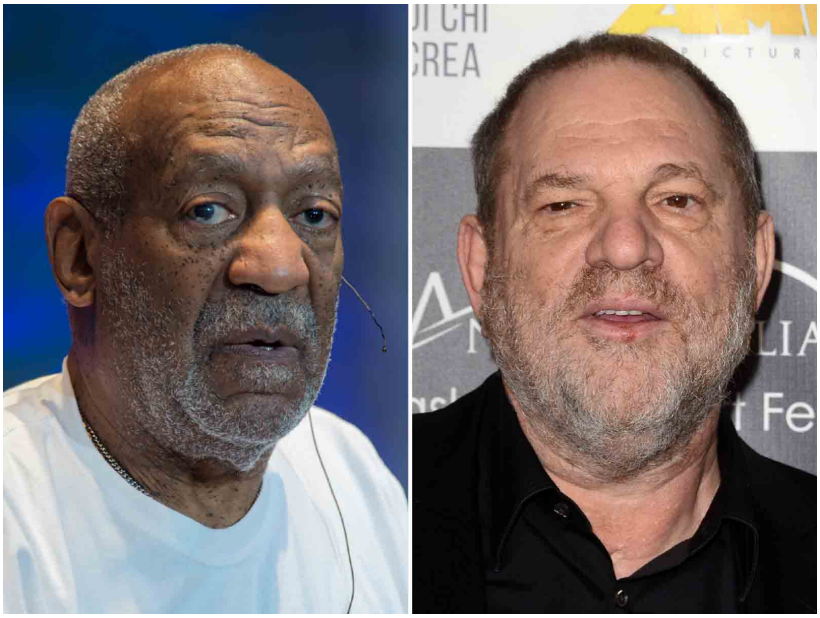
Bill Cosby has a fair shot at acquittal — Harvey Weinstein, not so much



dian Bill Cosby, left, and film producer Harvey Weinstein, right, are embroiled in separate controversies involving le allegations of sexual assault. (Left: Courtesy photo; Right: David Edwards/DailyCeleb/Sipa USA/TNS)

By Lara Yeretsian on October 26, 2017 1:00 am

Few public figures have fallen further from grace over their alleged sexual assault of women than Bill Cosby and Harvey Weinstein.

However, should New York City prosecutors decide to charge Weinstein with rape, he'll face much worse odds than America's dad.

The public has sometimes complained that celebrity status helps ensure acquittal, but Weinstein flips the equation. Although he may once have cast a tall shadow over aspiring actresses, he is not, nor has he ever been, one billionth as famous or beloved as some of the women he is accused of manhandling or worse, such as Angelina Jolie and Gwyneth Paltrow.

As is often common in high-profile cases, Weinstein is already being tried and on his way to being convicted in the court of public opinion. The New Yorker exposé describing in detail the alleged sexual assaults and the effects of Weinstein's alleged misconduct on these women is not merely viscerally unsettling but a strong preconditioning tool for any potential jury if criminal charges are filed against Weinstein. And it is more than likely for charges to be filed against him, especially in light of charges having been filed against Cosby. Remember, information coming out in the public arena through the news media and other social media platforms do not go through the same filters of the criminal justice system and are raw information that can easily taint a jury pool against any high-profile suspect or defendant.

Unsurprisingly, Weinstein is not as sympathetic of a figure as Cosby. Cosby was a loving, caring, perfect father figure that we all grew up with, a household name in our living rooms for decades! It is almost unimaginable that the same father figure could have committed the alleged heinous crimes, let alone be convicted.

accusation era, the prosecution has a good chance of getting a conviction with less evidence than it would need to garner a conviction in the Cosby case. All of that makes it more likely that the New York District Attorney's Office will file charges against him involving at least one or more complaining witnesses.

The other difference between the two cases is that the Cosby accusers were unknowns, but many of the Weinstein accusers are Hollywood A-listers, like Jolie and Paltrow, or well-known actresses including Academy Award-winning actress Mira Sorvino of "Mighty Aphrodite" and, most recently, actress Rose McGowen. By virtue of their celebrity status in the Hollywood community, these women have strong credibility and even give credibility to the other women and aspiring actresses who have come out and accused Weinstein of sexual assault.

Additionally, Cosby has the added advantage of being old and feeble. With Cosby, the natural inclination of most jurors would be to nullify, in other words, to turn a blind eye because they feel sympathetic toward him especially because of his old age. On the other hand, Weinstein is still seen as a middle-aged, high-powered movie producer and does not come across as sympathetic.

Most importantly, there is no statute of limitations for first-degree rape or for first degree criminal sexual act in New York, and the statute of limitations for rape and other serious sexual crimes committed in California is 10 years. New York and California are the two most likely places where most of the alleged sexual assaults by Weinstein could have happened. Unlike in the Cosby situation, the prosecution in these two jurisdictions will not be shackled by the statute of limitations.

Finally, Cosby's alleged accusers were mostly unconscious during the alleged sexual assaults. It is generally more difficult to prove guilt where the accuser's memory is hazy, unclear or incomplete. On the other hand, Weinstein's accusers were all conscious and very aware of the alleged assaults.

A tough question the Weinstein accusers will have to face is: Why didn't they just walk away after they said "no"? Many of the accusers who have come out against Weinstein have described how they fought off his alleged aggressive overtures by saying "no" and walking out. Why didn't the women now crying rape do the same? Were the circumstances different? Was he using force? Did they stay because they wanted to advance their careers? These are issues that NYPD and the New York DA's Office will have to grapple with during the investigation of these alleged crimes. They will have to decide if these allegations are instances of glorified sexual harassment leading to consensual sexual acts or actual sexual assaults before making a decision regarding filing of charges against Weinstein.

It is fair to assume that we will find out very soon, especially in light of the pressure on the New York DA's Office for failing to file against Weinstein for the 2015 groping allegations by Filipina-Italian model Ambra Battilana Gutierrez.

Lara Yeretsian is a criminal defense attorney in Los Angeles who has represented high-profile clients such as Scott Peterson, Michael Jackson, James Bond film director Lee Tamahori and famed rapper Nate Dogg.

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