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# How the Bill Cosby Guilty Verdict Will Impact Civil Litigation

The Cosby verdict is a sign that there has been a shift, particularly in he said, she said cases, toward an understanding about how hard it is to come forward.

By **John D. Winer** | May 18, 2018



**Bill Cosby arrives for his sexual assault trial April 26, 2018, at the Montgomery County Courthouse in Norristown, Pennsylvania. (AP Photo/Matt Slocum)**

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On April 26, a Pennsylvania jury handed down a historic verdict (<https://www.law.com/thelegalintelligencer/2018/04/26/bill-cosby-found-guilty-in-sexual-assault-case/>), finding Bill Cosby guilty on three counts of aggravated indecent assault for drugging and sexually assaulting Andrea Constand at his home in a Philadelphia suburb in 2004.

Far too often powerful executives and celebrities have escaped conviction on such crimes, but now justice has prevailed. There were a number of unique elements to this case, including the fact that Cosby had settled previously with Constand for a reported \$3.38 million. Constand reported the assault to police in 2005, a year after it occurred, but she chose not to file charges at that time.

During his deposition related to the civil lawsuit brought by Constand, Cosby admitted to giving Quaaludes to other women, admitted to having seven prescriptions for Quaaludes during the 1970s and intended to give them to women he socialized with. He admitted to having sexual intimacy with Constand but claimed it was consensual even though she was drugged and had never actually consented verbally.

Given this historic criminal verdict, and how so many of the facts came out through a civil deposition, many plaintiff and defense attorneys are left wondering how this case will impact civil litigation going forward in sexual misconduct lawsuits. Cosby was known as “America’s Dad” and up until the last few years he had a stellar reputation and public persona. In fact, Cosby’s downfall began when a comedian made a joke in passing while on stage, making the entire process far more out of left field.

Roughly 60 women have come forward to make claims against Cosby, and many have filed civil lawsuits as opposed to filing criminal cases in part because of the statute of limitations in the states where the alleged assaults took place. Now, with Cosby having admitted to certain behaviors and been convicted in criminal court, he faces a wave of civil litigation involving allegations of dozens of past assaults.

Why the guilty verdict this time? We will never know exactly, but jurors who have spoken out have said that the main thing was Cosby's much earlier deposition admission that he had provided Quaaludes to other women he wanted to have intercourse with.

One juror, Harrison Snyder, wrote:

"We understood the consequences to human lives, to an American icon, and to all who are victims and we knew we needed to be comfortable with our decisions in order to sleep at night with clear consciences. Each of us is walking away with that sense of peace, knowing that we performed our duty in the manner it deserved."

Although the jurors claimed they weren't affected by the #MeToo movement, it is hard to believe that they weren't, at least on an unconscious level.

Having represented thousands of sexual assault and harassment victims over the last 39 years, I have seen that there has definitely been a shift in the way that people view sexual abuse in the last six months. As more and more victims have come forward, often not asking for money, but instead to support their fellow victims, in my view the credibility of sexual abuse victims has soared.

In the first 38 years of my practice it felt like my clients would start a trial at a disadvantage with the perpetrator, particularly if it was a she said, he said situation. That is a problem since my guess is 90 percent of cases involve he said, she said fact patterns. That has changed a little bit since the internet and cellphones, because sometimes there are text messages and emails that provide proof, at least to some wrongdoing, but the feeling was that the perpetrator received the benefit of the doubt, and my clients, who were suing for monetary damages, had a built-in interest to lie.

It is my belief that the #MeToo movement, to at least some extent has changed that. Whether jurors realize or don't realize that they have been affected by the #MeToo movement, it feels like the benefit of the doubt has shifted from perpetrator to victim. The public is now realizing what plaintiff sexual abuse and harassment lawyers have

known all along: it takes days and days and nights and nights, and sometimes years and years, to work up the courage to eventually come forward with complaints of sexual abuse and harassment, but it only take five seconds for a perpetrator to deny wrongdoing.

It appears that Cosby found that out in his second trial. Constand and the other victims who testified were believed and sometimes all they had for evidence was their words.

If this can happen in a criminal case where the standard of proof is beyond a reasonable doubt, it seems that with a civil preponderance standard, the rules of engagement have changed. Although the handicap of asking for money in a civil case remains, the fact that thousands of women not asking for money have come forward in the press has lessened the burden.

Victims of severe sexual abuse and harassment almost invariably require thousands and sometime hundreds of thousands of dollars in future psychotherapy to heal from their wounds. That, obviously, costs money. Hopefully, moving forward, the second Cosby trial has taught us that jurors will now think more about the victims and their needs, rather than the perpetrators, who can just so easily say “never happened.”

Obviously, not every sexual abuse or harassment case is meritorious, and many men rightfully have the fear of someday being falsely accused. In those cases, hopefully, justice wins out and the defendant prevails in a case. But I believe that the Cosby verdict is a sign that there has been a shift, particularly in the he said, she said cases, toward an understanding about how hard it is to come forward in a sexual abuse case versus how easy it is to deny accountability.

## **About the Author**

*John D. Winer is an attorney at the California law firm Winer, McKenna & Burritt with over 35 years' experience representing women from all walks of life who have bravely called out sexual predators, including recent cases involving U.C. Berkeley and U.S.C. (the latter of which was featured in an op-ed in the Washington Post*



[https://www.washingtonpost.com/opinions/i-am-a-victim-of-sexual-harassment-and-i-want-you-to-question-my-story/2017/12/05/e4bc780a-d626-11e7-a986-d0a9770d9a3e\\_story.html](https://www.washingtonpost.com/opinions/i-am-a-victim-of-sexual-harassment-and-i-want-you-to-question-my-story/2017/12/05/e4bc780a-d626-11e7-a986-d0a9770d9a3e_story.html)

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