

Harvey Weinstein Could Be Criminally Charged Over 2004 Rape Claim – But Probably Won't Be

Criminal defense attorney tells TheWrap that mogul's accuser would have "a lot of explaining to do"

By Harriet Alexander

Harvey Weinstein could face criminal charges over accusations made by at least one of the women who accused the disgraced mogul of rape in a New Yorker story published on Tuesday. But it would be an uphill climb for the prosecution.

According to Connecticut criminal-defense attorney Norman Pattis, the conduct that former aspiring actress Lucia Evans described — being forced to perform oral sex on Weinstein in a 2004 meeting at Miramax's Manhattan headquarters — would constitute either rape or aggravated rape, depending on the circumstances. That's a felony with no statute of limitations in the eyes of New York law.

But the major obstacle to bringing a case is the passage of 13 years, according to Pattis and other attorneys who spoke to TheWrap. Memories can

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Harvey Weinstein, the disgraced film producer

fade, accounts can be harder to corroborate, and physical evidence can be impossible to produce.

"It is very unlikely that a prosecutor would go forward on a case that's 13, 14 years old. That's a very difficult case to prosecute due to the passage of time, especially when it may come down to a 'she-said, he said' scenario," said Manny Medrano, a Los Angeles-based criminal defense attorney and former federal prosecutor. "The vast majority of prosecutors

would not pursue the case.”

“Arguably, the case can be brought,” said Pattis. “I say arguably because she’s got, obviously, a lot of explaining to do about why there was a [13]-year interval between the time of the alleged conduct and now ... she’s gonna have some issues on her hands. Delayed disclosure is always a fundamental issue in sex cases.”

Prosecutors would also need lots of help from the woman who says Weinstein assaulted her.

“She’d need to make a statement, at least, to law enforcement,” said David Shapiro, a San Diego criminal defense attorney. “They don’t want to file a case they’re not sure they’re going to be able to win.”

He added: “We’re not going to have any DNA. The prosecution is going to have to answer what took this accuser so long to reveal these accusations. They’re going to have to deal with what I’m sure is the best defense money can buy picking apart this accuser’s accusations.”

He added that jurors “want to see DNA, they want to see a confession, they want to see something.”

The growing number of women who’ve come forward to accuse Weinstein of sexual misconduct have generated headlines, giving other women the courage to come forward. But a defense

attorney could try to put a negative spin on the number of recent accusers, according to Pattis.

“If it was rape [then], why wait until he’s in the newspaper to jump on this? I’m not sure she can give a credible explanation,” he said. “Has she retained physical evidence all these years? It’s easy to cry rape against Weinstein right now — it’s sort of like crying ‘fries’ in McDonald’s.”

“The problem with these high-profile-defendant rape cases is that as the number of complainants multiplies, the likelihood of a fair trial decreases and at some point reaches a vanishing point,” Pattis said.

A representative for Weinstein denied the allegations in a statement to the publication, saying: “Any allegations of non-consensual sex are unequivocally denied by Mr. Weinstein. Mr. Weinstein has further confirmed that there were never any acts of retaliation against any women for refusing his advances.”

If a prosecutor does bring charges, the company Weinstein founded may not defend him.

“We are committed to assisting with our full energies in all criminal or other investigations of these alleged acts, while pursuing justice for the victims

and a full and independent investigation of our own,” the Weinstein Co. board said in a statement Tuesday, three days after firing him.

In the *New Yorker* piece, Farrow writes that three women “told me that Weinstein raped them.”

Actress-director Asia Argento said that Weinstein sexually assaulted her after inviting her to a party at the Hôtel du Cap-Eden-Roc outside Cannes, France in 1997.

But bringing a case in France could be difficult given the country’s statute of limitations on sexual assault offenses, which hampered the attempted prosecution of former International Monetary Fund chief Dominique Strauss-Kahn in 2011.

Farrow’s story does not name the third rape accuser or provide details of her allegations.

In the story, Evans, who at the time went by Lucia Stoller, recalled meeting Weinstein at the New York City club Cipriani Upstairs and then followed up with a meeting at his Miramax office.

Weinstein “immediately was simultaneously flattering me and demeaning me and making me feel bad about myself,” Evans said, telling her that she would “be great in ‘Project Runway’” — a fashion reality TV show the company produced — and

telling her about a horror movie script and a teen romance script that he said one of his associates would discuss with her.

“At that point, after that, is when he assaulted me,” Evans told the New Yorker. “He forced me to perform oral sex on him.” ■