

# The New York Times gloats over the destruction of “the Monster” Weinstein

By Eric London  
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The conviction of former film producer Harvey Weinstein in a New York criminal courtroom Monday on one charge of third-degree rape and one charge of first degree criminal sex acts was the foreordained outcome of a trial that violated the most elemental principles of due process for the accused. Weinstein, now 67-years-old, faces a possible sentence of over 25 years in prison. It is more than likely that he will die in prison.

Anyone who has not been swept up in the frenzy of the anti-Weinstein media hysteria and who takes questions of democratic rights seriously can only be disgusted by the media-orchestrated travesty, instigated by the *New York Times*, that produced this result.

The viciously anti-democratic and reactionary agenda that underlay the conduct of the trial is summed up in the lead editorial published in yesterday's *Times*. The very first line of the editorial, titled “The Lessons of #MeToo's Monster,” hails “the hard-won, long-overdue conviction of Harvey Weinstein.” To assert that the conviction was “overdue” implies that the trial was unnecessary, that it was an obtrusive formality that unnecessarily delayed the destruction of the sub-human *thing*, the “Monster.”

The great achievement of the prosecution, the *Times* continues, was the prosecutors' ability “to break through a barrier common to many assault cases, a lack of physical or other corroborating evidence.” In other words, the prosecution succeeded in securing a conviction without having to present verifiable and reliable evidence of Weinstein's guilt, let alone proof beyond a reasonable doubt.

But how was this blatant violation of the rights guaranteed to all defendants by the Constitution to be achieved? First, it required the escalation of the hysterical media campaign that would strip Weinstein of any semblance of humanity and make him an object of universal hatred. However, that was not sufficient. The success of the prosecution required the collaboration of an unprincipled and cowardly judge who was willing to violate his responsibility to conduct the trial in a manner that protected Weinstein's Constitutional rights.

In the violently hostile climate in which the case came to trial, Judge James M. Burke's principal responsibility was to insulate the jury from the extraordinarily prejudicial impact of the media's campaign for Weinstein's destruction.

But Burke did precisely the opposite. He did everything he could to facilitate the transmission of anti-Weinstein news and sentiment to the jury. Casually dismissing the scale of the media campaign and its potential impact on the jurors, the judge ignored an important legal precedent.

In 1966, the Supreme Court issued its landmark ruling in *Sheppard v. Maxwell* overturning the conviction of a doctor, Sam Sheppard, who was convicted of killing his wife in Cleveland, Ohio. The court denounced the Cleveland media for creating a “carnival atmosphere” that “inflamed and prejudiced the public” in a case that later inspired the long-running 1960s' television series and 1993 film, *The Fugitive*. The court sharply criticized the judge for failing to take appropriate measures to counteract

the manipulation of the jury by the media's campaign for Sheppard's conviction. “Due process,” the court wrote, “requires that the accused receive a trial by an impartial jury free from outside influences.”

Ignoring this legal precedent, the judge presiding over Weinstein's trial—James M. Burke—flouted its principles from start to finish. He orchestrated the case in a manner intended to prejudice the jury and guarantee Weinstein's conviction.

Burke's conduct of the trial reflects the impact of the aftermath of the 2017 trial of 19-year-old Stanford University student Brock Turner. The humane sentence handed down by the presiding judge, Aaron Persky, was followed by a savage retaliatory campaign led by the Democratic Party, which organized a successful recall campaign to remove the judge.

Burke's procedural rulings—consistently hostile to the defense—leave little doubt that the judge was most concerned about what would happen to his career if he was perceived as being “soft” on Weinstein.

The most basic measure that had to be taken to limit the influence of the press campaign would have been to order the sequestration of the jury during the trial. This was not done, and so the media's message was able to reach the jurors every day.

Burke refused the defense's request for a change of venue to escape the hostile media climate of New York City. He allowed jury selection to continue even when Los Angeles County's Democratic district attorney, Jackie Lacey, announced new charges the day before potential jurors reported to court in New York in order to generate prejudice and present Weinstein's ultimate conviction as inevitable. Press reports from the first days of jury selection show a large portion of potential jurors excused themselves because they felt they could not be fair to Weinstein.

Burke publicly scolded Weinstein for using a cell phone in court as the latter awaited the commencement of a hearing, spurring a wave of media denunciations of Weinstein, which the jurors would have been able to learn about through television, the print media, or by surfing the internet once they returned home.

Weinstein's attorney, who recognized Burke's hostile attitude, asked the judge to recuse himself from the case. He denied the motion.

Burke cynically refused to acknowledge the very real danger that media coverage of the trial would prejudice the jury, baldly stating that jurors “will be deciding... based on what they hear inside the courtroom regardless of what the press or anybody else has said about the case outside the courtroom.”

The judge refused to unseat a female juror when information surfaced that the individual had lied to the court during jury selection about the content of a book she had authored. The juror said the book was merely about the relationship between parents and young adult characters. In fact, it depicts three girls who are victims of predatory older men.

Burke allowed the prosecution to show photographs of Weinstein's naked body to humiliate the defendant and reinforce the notion that no Hollywood starlet could possibly consent to have sex with a physically unattractive man.

Shortly before the start of jury deliberations, Burke scolded Weinstein's defense attorney for writing an article in *Newsweek* calling for an acquittal. Reported and amplified in the media, the judge's angry remarks sent a hostile signal to the jurors just as they were about to decide Weinstein's fate.

But the decision most harmful to the defense was Burke's decision to allow several witnesses whose allegations against Weinstein were not a part of any criminal case to testify that Weinstein committed prior wrong acts.

This enabled the prosecution to open their case with testimony from actress Annabella Sciorra. Although her allegations had never been the subject of a criminal case and were well past the statute of limitations, Sciorra's harrowing testimony set the tone for the trial of the "Monster."

Ultimately, the acquittal of Weinstein of predatory rape—the charge which Sciorra's testimony was intended to prove—indicates that some jurors did not believe her. But it strains credulity to believe that her ghastly account of her relationship with Weinstein did not have some impact on the jurors as they rendered judgment on the other charges.

This "bad character" or "criminal propensity" argument—that Weinstein must be guilty now because of his past general treatment of women—is incompatible with the protection of the rights of the accused. In 1967, the Supreme Court wrote in *Spencer v. Texas*:

Evidence of prior crimes introduced for no purpose other than to show criminal disposition would violate the Due Process Clause... [it] has been forbidden because it jeopardizes the presumption of innocence of the crime currently charged. A jury might punish an accused for being guilty of a previous offense, or feel that incarceration is justified because the accused is a 'bad man' without regard to his guilt of the crime currently charged.

Burke's handling of the case and the press hysteria surrounding the trial violate nearly every principle enumerated by the Supreme Court in its *Sheppard* ruling, which ostensibly remains good law.

There, the court ruled that "despite the extent and nature of the publicity to which the jury was exposed during trial, the judge refused defense counsel's other requests that the jurors be asked whether they had read or heard specific prejudicial comment about the case, including the incidents we have previously summarized."

The court reproached the judge for allowing the influence of the press to render meaningless the judge's pro forma declarations respecting due process: "The prosecution repeatedly made evidence available to the news media which was never offered in the trial. Much of the 'evidence' disseminated in this fashion was clearly inadmissible. The exclusion of such evidence in court is rendered meaningless when news media make it available to the public."

As a result, the court said:

Murder and mystery, society, sex and suspense were combined in this case in such a manner as to intrigue and captivate the public fancy to a degree perhaps unparalleled in recent annals. Throughout the pre-indictment investigation, the subsequent legal skirmishes and the nine-week trial, circulation-conscious editors catered to the insatiable interest of the American public in the bizarre. ... In this atmosphere of a 'Roman holiday' for the news media, Sam Sheppard stood trial for his life.

The decision concluded: "Collaboration between counsel and the press

as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable, and worthy of disciplinary measures."

The final verdict in the Weinstein case, apparently reached through a compromise among the jurors, is inherently contradictory and indicates the prosecution and the press succeeded in confusing the specific legal issues involved. How otherwise could the jury believe accuser Jessica Mann's testimony as it related to the lesser charge but disbelieve it on the heavier charge?

The conviction establishes a rule where guilt can be established on nothing more than the statements of accusers who, the *Times* and prosecutors claim, must always be believed, even where, as here, there existed substantial evidence showing the accusers maintained longstanding consensual relationships with Weinstein.

On the basis of these new rules, an untold number of people—almost all of them poor, most of them black—will be locked up for crimes they did not commit.

Many people remember the *Times*' calls for vengeance in the case of the Central Park Five, when working-class black youth were convicted and jailed for a murder they did not commit. On April 26, 1989, the *Times* wrote an editorial titled "The Jogger and the Wolf Pack," dehumanizing the innocent children.

"A pack of teenagers rampages through Central Park... raping an innocent young woman," the *Times* wrote. "New Yorkers respond with unanimous fury: Those guilty of the atrocity deserve swift, stern punishment."

The great trials in American history are those which defended or, in the best instances, expanded democratic rights. People remember with gratitude the cases which ended, in the face of a witch-hunting environment, with acquittals.

There is nothing uplifting, let alone enlightening, about a trial in which a conviction is secured through the gross manipulation of public opinion. Those who justify their adaptation to the witch-hunting because they do not like Harvey Weinstein should think about the consequences of their indifference to the defense of democratic rights.

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