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Why Bill Cosby's Defense Lasted Only Six Minutes

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The sexual assault trial of Bill Cosby, which has been called the most high-profile celebrity criminal court case since O.J. Simpson, went to the jury yesterday. Specifically, Cosby has been charged with three separate counts of felony aggravated indecent assault, each covering a different aspect of one alleged crime against just one of the more than 50 women who have accused the legendary actor and comedian of drugging and raping them.

After a prosecution that lasted several days and included testimony from 12 witnesses, Cosby's attorneys put on a defense that lasted a total of six minutes and included just one witness, Sergeant Richard Schaffer, the detective who investigated victim Andrea Constand's original accusations in 2005 and who was first called as a witness for the prosecution.

In such a high-profile, high-stakes case and after such an in-depth prosecution, a six-minute defense feels whiplash-inducingly short. It feels like hubris, like the perfect encapsulation of how much of the burden falls to accusers in cases of sexual assault. Especially when you factor in the power of celebrity, a man who appears untouchable, who believes he'll be acquitted whether he's guilty or not, whether he gets a vigorous defense or not.

But it's actually not that unusual. "The state has the burden of proving a client's guilt beyond a reasonable doubt, and Mr. Cosby is presumed innocent unless or until the state meets this heavy burden," explains criminal defense attorney Court Will. "It may be tempting to try and put on an elaborate defense but what this can often do in the mind of the jury is to think the defense is trying to prove their client's innocence, thereby shifting the burden of proof onto the defense. This can be very dangerous and can increase the odds of a conviction.

But, as Jill Stanley, an attorney and legal analyst who has been present for the entirety of the trial, points out, the defense's case is about more than just the witnesses they call (or don't call).

"They are, in effect, putting on a defense when they cross-examine witnesses when they make an impassioned opening statement, when they move for a mistrial like this defense did," she says. "That defense team fought from the minute the jury sat in the box."

Plus, Stanley explains, there weren't many options for other witnesses they could have called.

"Who are they gonna call? His wife?" she asks, who would be asked about her husband's long-standing infidelity.

"We knew Cosby wasn't going to take the stand. It would open him up to a complete character assassination and let in more accusations against him," Stanley says. With more than 50 accusations against Cosby, it would have been a disaster for the defense if the defendant took the stand, as it would have been a way for the prosecution to bring up all of those other accusations, to ask him to deny each and every one of them in front of the jury. As it stands, the prosecution was allowed to bring up only one of the dozens of other accusers, because her accusation was so strikingly similar to Constand's that they were able to argue that it showed a pattern of behavior on Cosby's part.

Reiterating the fact that Cosby's defense was vigorous even if they called only one witness, Stanley says that lead defense counsel Brian McMonagle was so aggressive in his cross-examination of this pattern witness, the other accuser Kelly Johnson, that he "had to calm down for the rest of the trial and even apologized to the jury in closing."

And there was, in fact, one other witness that the defense wanted to call, a coworker of Constand's who had once given her some Advil. The defense wanted to use this testimony to impeach Constand's testimony that she didn't often take medication, but the judge didn't allow it.

When Constand first came forward in 2005, the district attorney's office declined to prosecute. So she filed a civil suit instead, for which Cosby was deposed on four separate occasions. Those depositions became the basis of the prosecution in this case, when the seal on them was lifted in 2015 and the prosecutors got wind that they included admissions by Cosby that he routinely got quaaludes in the seventies with the express purpose of incapacitating young women so that he could have sex with them. Charges were filed in this case just two weeks before the 12-year statute of limitations ran out.

Stanley expects a verdict to come down today and says that the longer it takes the more it looks like things will go in Cosby's favor. But, she points out, the jurors may have agreed on one or two of the three charges right away and may have been debating the remaining charge or charges.

“To send this message, we really only need one,” she says.