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***Molineux* and Joinder in a #MeToo World: Lessons From the Harvey Weinstein Prosecutions**

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Harvey Weinstein has now been tried three times in Manhattan on sex-crimes charges. The arc of those prosecutions offers a useful lens through which to examine New York's renewed scrutiny of *Molineux* evidence and a related problem: the risk that joinder in multi-complainant sex-crimes prosecutions can create the practical equivalent of propensity evidence.

The Molineux Framework

For more than a century, New York law has recognized that evidence of a defendant's uncharged crimes or prior bad acts is inadmissible when offered solely to prove criminal propensity. The rule takes its name from *People v. Molineux*, 168 N.Y. 264 (1901), but rests on older common-law principles tied to the presumption of innocence. Other-act evidence carries a particular risk that jurors will give it excessive weight, treat it as proof that the defendant is the kind of person who would commit the charged crime, or substitute generalized condemnation for proof beyond a reasonable doubt.

The process for admitting *Molineux* evidence is well established. The proponent must first identify a material, non-propensity purpose. If that threshold is met, the trial court must determine whether the evidence's probative value outweighs its potential for unfair prejudice, with substantial doubt resolved in favor of exclusion. The first determination is a question of law, reviewed *de novo* on appeal; the second is reviewed for abuse of discretion. *See People v. Weinstein*, 42 N.Y.3d 439, 455-59 (2024).

The First Weinstein Trial: Reversal on Molineux

At the 2020 trial, Weinstein was tried before a single jury on sexual assault charges involving Miriam Haley, Jessica Mann, and Annabella Sciorra. The two predatory sexual assault counts he faced alleged that the Haley and Mann offenses occurred after Weinstein raped Sciorra; her testimony therefore supplied proof of an element of those counts. The joinder of those indictments and charges was thus driven by cross-admissibility, not by the "same or similar in law" theory this article discusses.

The prosecution also called three non-complainant *Molineux* witnesses to testify about independent, uncharged sexual encounters with Weinstein, arguing that the testimony established his intent and awareness of non-consent for the charged counts. The jury acquitted Weinstein of the predatory sexual assault counts and the Mann first-degree rape count but convicted him of the Haley-related first-degree criminal sexual act count and the Mann third-degree rape count. The First Department affirmed these convictions.

The Court of Appeals reversed, holding that the combined effect of erroneous Molineux and Sandoval rulings deprived Weinstein of a fair trial. As to Molineux, the Court concluded that the testimony of the three non-complainant witnesses served no material non-propensity purpose because the complainants' testimony, if credited, established lack of consent and Weinstein's awareness of it, leaving no meaningful possibility that the jury could credit their accounts yet believe Weinstein thought they consented. The Court also rejected the prosecution's argument that the testimony explained why the complainants maintained relationships with Weinstein, finding it merely bolstered credibility through propensity reasoning.

The Retrial: Joinder and the Residual Propensity Risk

The 2025 retrial proceeded without the three non-complainant Molineux witnesses and without the first trial's element-driven joinder because of Weinstein's acquittal on the predatory sexual assault charges. But propensity evidence still played a role.

Before trial, the prosecution obtained a separate indictment charging Weinstein with first-degree criminal sexual act involving Kaja Sokola and moved to consolidate it with the remaining Haly and Mann charges. Because Molineux-joinder under CPL 200.20(2)(b) was foreclosed by the Court of Appeals' decision, the prosecution sought consolidation under CPL 200.20(2)(c), which permits joinder of offenses that are the same or similar in law. The trial court granted consolidation because joinder was more efficient and any prejudice could be overcome through limiting instructions. The trial court also used the first trial's acquittals as proof that Weinstein suffered no prejudice by having jurors hear multiple, unrelated allegations in the same trial. On the latter point, it warrants mention that several appellate courts have held that an acquittal on one joined count does not establish that propensity reasoning played no role in the convictions on others. *See People v. Davis*, 225 A.D.3d 62 (1st Dep't 2024), *People v. Gadsden*, 139 A.D.2d 925 (4th Dep't 1988).

Consolidation in the second trial raised the same concern that animates Molineux: that jurors will infer guilt from propensity. The same-or-similar-in-law standard in CPL 200.20(2)(c) is broad, but joinability is cabined by CPL 200.20(3), which permits courts to decline consolidation in the interest of justice and for good cause shown. Current Court of Appeals doctrine does not require cross-admissibility under Molineux before same-or-similar offenses may be under subdivision (2)(c). In *People v. Mero*, 43 N.Y.3d 407 (2024), the majority rejected a categorical cross-admissibility requirement because the defendant never raised that issue and instead focused on whether the proof was materially imbalanced, whether jurors could segregate it, and whether limiting instructions could reduce prejudice. Chief Judge Wilson and Judge Rivera dissented, emphasizing that legally joinable charges may nevertheless create an impermissible propensity risk.

Mero's emphasis on segregability, however, does not fully resolve the propensity concern. Jurors may understand which evidence relates to which count, yet still treat one accusation as corroborating another. Although the absence of cross-admissibility does not compel severance under current law, it should inform the discretionary prejudice analysis. Otherwise, consolidation risks accomplishing indirectly what Molineux prohibits directly: inviting jurors to infer guilt from the number and similarity of other accusations.

The retrial produced mixed results: the jury convicted Weinstein of the Haley-related charge, acquitted him of the Sokola-related charge, and deadlocked as to the Mann-related charge.

The Mann Retrial: A Narrower Case

The 2026 Mann retrial sharpened the contrast. With the case narrowed to the unresolved third-degree rape count, Mann was the sole complainant whose charge was before the jury. The jury again deadlocked, with public reporting indicating that nine jurors favored acquittal. Read together, the three trials trace a single charge weakening as the surrounding accusations fell away: conviction when the Mann allegations were tried alongside other accusers and uncharged-act witnesses, deadlock when only two other accusers remained and no uncharged-act witnesses testified, and a second deadlock once Mann stood alone. That progression does not prove causation—as each trial had its own record and dynamics—but it is consistent with the concern that multiple accusations may affect whether jurors find a particular charge proved beyond a reasonable doubt.

Practical Takeaways

First, Molineux applications should be litigated and decided with precision. *Weinstein* reflects renewed scrutiny of efforts to admit other-act evidence where the asserted non-propensity purpose is duplicative of the charged proof or serves primarily to bolster credibility. Where the complainant's testimony, if credited, establishes lack of consent and the defendant's awareness of that lack of consent, testimony from unrelated witnesses may add little beyond propensity reasoning.

Second, joinder, consolidation, and severance in multi-complainant sex-crime cases should be evaluated with sensitivity to the same concern for propensity reasoning that animates Molineux. CPL 200.20(2)(c) serves legitimate interests in efficiency and consistency, but joinability should not end the analysis. CPL 200.20(3) permits severance where the risk of unfair prejudice outweighs the benefits of a joint trial, and nothing in the statute requires courts to ignore propensity concerns when exercising that discretion. Courts should ask both whether jurors can identify and consider separately the evidence applicable to each count and whether they are likely to use the accusations as mutually reinforcing.

Third, limiting instructions are important but should not be treated as a complete answer to every joinder problem. *Mero* confirms that New York courts continue to ask whether the proof of each offense can be considered separately and whether instructions can adequately reduce the risk of prejudice. In multi-complainant sex-crimes cases, a generic instruction to consider each count separately may not address the actual danger: that jurors will treat the number and similarity of accusations as corroboration by accumulation. At a minimum, courts should consider whether the jury will need more focused instructions explaining that each charge must be decided independently, that the number of complainants is not evidence of guilt, and that evidence relating to one complainant may not be used to prove the allegations of another. And where the risk of cumulative reasoning is too great, an instruction should not be used to justify joinder that should not have been permitted in the first place.

The Molineux rule exists because our system of justice requires that a person be tried for what they are accused of doing, not for who they are accused of being. CPL 200.20(2)(c) permits same-or-similar offenses to be tried together but preserves discretion to prevent undue prejudice. Courts need not collapse joinder into Molineux to recognize the shared danger that one allegation may be used improperly to validate another. Just as a defendant's right to a fair trial should not be compromised through the inappropriate admission of propensity evidence as Molineux evidence, that right should not be sacrificed to the efficiencies of joinder. As the Court of Appeals admonished, "[t]he compromise of a defendant's fundamental right to a fair trial free of undue prejudice as the *quid pro quo* for the mere expeditious disposition of criminal cases will not be tolerated." *People v. Lane*, 56 N.Y.2d 1, 8 (1982).

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