



The Defender

IN THE #METOO ERA, CRIMINAL DEFENSE ATTORNEY **DONNA ROTUNNO** MIGHT EASILY BE SEEN AS A TRAITOR TO HER SEX, BUT TO HER CLIENTS, SHE'S A HERO.

BY BRYAN SMITH
PHOTOGRAPHY BY JEFF SCIORTINO



e'd had enough. Having been accused of sexual assault by a female acquaintance who lived in his Gold Coast apartment building, he was in a fight for, well, everything—his reputation, his career, his freedom. But the two lawyers he'd hired didn't seem to grasp the shattering magnitude of his predicament.

It was the fall of 2013, and in the two weeks since the news of his arrest broke, Elhadji “Haj” Gueye, a Senegalese-born fashion designer whose clients had included the likes of Mike Tyson and Bernie Mac, had watched \$350,000 in new contracts vanish—for clothes he'd already begun making. He'd been yanked from a special showing at a North Shore luxury car dealership. More crushing still, he'd had to cancel the launch of his high-end boutique downtown.

Devastating as those setbacks were, they were nothing compared with the humiliations he'd suffered. There was his mug shot flashed on TV. There was the ride in the back of a Cook County sheriff's van, crammed toe to toe with a group of tattoo-covered men he recognized from news reports as the suspects in a deadly Hyde Park shooting. There were the three nights in a holding cell. The longtime friends who refused to make eye contact once he got out. The neighbors who got off the elevator when he got on.

All of it on the word of a woman who alleged that he had raped her. He'd explained in his official statement to the police that he and the woman had had consensual sex after she'd invited him over for dinner, that she'd told him she'd stay quiet about her accusations if he gave her \$50,000. But no one seemed to want to listen. Now, out on \$100,000 bond, he was shocked at how nonchalant his two high-priced attorneys acted. “My life is on the line here,” Gueye told them. “I am going to fight this with everything I have, but I don't feel like you are fighters.”

Then a friend suggested another lawyer, a private criminal defense attorney who specialized in cases involving men accused of sexual assault. The moment Gueye met Donna Rotunno, he knew she was the right person to represent him. Tall, confident, and dressed in a perfectly tailored designer suit, she had a demeanor that struck him as both caring and tough. When they sat down at Gueye's shop to discuss the case, she asked him to tell his

story in the most minute detail, interrupting him frequently to ask for clarification or more information, cross-examining him as relentlessly as if he were on the stand. She asked him to go over the timeline repeatedly, prodded him on fuzzy recollections and seemingly irrelevant points. “You have daughters? You left them at home? Did you get a babysitter for them? When did you arrive at her apartment? When did you leave?”

Gueye was grateful for the aggressive questioning. He got the impression Rotunno wasn’t just listening to him, she was hearing him. Most important, he says, “I could tell she is a fighter.”

Just a few months after Gueye’s arrest, a real estate attorney named Stanley Stallworth, a partner at the prestigious firm Sidley Austin, found himself in a similar situation. A man claimed he’d been plied with alcohol and sexually assaulted in Stallworth’s house after being brought there by a young acquaintance of the lawyer.

Largely on the accuser’s word, police officers surrounded Stallworth’s home. “There were eight of them,” recalls Stallworth. “Some of them were investigators in those blue jumpsuits. Some of them looked like they might be going into combat.” He remembers his neighbors watching the scene unfold. “There was a car parked behind my garage door, I guess to block me from getting out.”

The arrest led the news broadcasts, followed by more media coverage in the days that followed. “It was like being convicted already, it really was,” says Stallworth.

Like Gueye, Stallworth hired Rotunno based on a recommendation, in this case by a man whom Rotunno had represented in the past. “She had done a very good job for him,” says Stallworth, “and had gotten him acquitted on charges that really should never have been brought against him. He actually used the word ‘bulldog’ in describing her.”



Clothing designer Elhadji Gueye was acquitted of sexual assault charges in 2014 after Rotunno confronted his accuser on the stand with inconsistencies in her story. “I could tell she is a fighter,” he says of Rotunno.

On a raw gray December morning, less than a week after *Time* magazine named as its 2017 Person of the Year the “silence breakers”—the women and men who forced the issue of sexual misconduct to the forefront of the national dialogue by sharing their own stories—Donna Rotunno arrives at Cook County’s Domestic Violence Courthouse to argue on behalf of a man whose daughter is seeking to extend an order of protection against him. Though he hasn’t been charged with a sex crime, the daughter has told her lawyer that he’d abused her sexually when she was younger.

It’s roughly the 40th sexual-misconduct-related case the 42-year-old Rotunno has handled as a criminal defense attorney in the past 15 years, making her by one estimate (conveyed to Rotunno by a law firm that had researched her before hiring her) the busiest female attorney in this particular niche in the country. Past clients include former Bears cornerback Shaun Gayle, whom

Rotunno represented during the investigation of the murder of his girlfriend (he was ultimately not implicated in the crime), and Mohammad Abdullah Saleem, a suburban Islamic leader who was accused of molesting a student and a female employee (he pleaded guilty before the case went to trial). She's also been asked to consult on numerous cases involving celebrities and star athletes. (Rotunno won't name names but says, "Any high-profile sex case you hear on the news in Chicago, odds are I've gotten a phone call.")

Rotunno, who lives alone in a River West condo, stands out the moment she enters the building, if only for the fact that she's one of the few female criminal defense lawyers here. She's wearing rectangular designer eyeglasses, a cropped leather jacket, a plaid skirt that falls just below the knee, and suede heels—a look she readily admits is carefully calibrated to convey both strength and femininity. Her gender, she acknowledges, is an asset in her job.

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“I have the ability to get away with a lot more in a courtroom cross-examining a female than a male lawyer does,” she says. “He may be an excellent lawyer, but if he goes at that woman with the same venom that I do, he looks like a bully. If I do it, nobody even bats an eyelash. And it's been very effective.”

Rotunno strides to the front of a courtroom packed with litigants. Her client's 20-year-old daughter is standing, visibly ill at ease, with her lawyer, Elizabeth Koziol of the Domestic Violence Legal Clinic, a few feet away from Rotunno and the judge.

Koziol tells the judge that the father, while bound by the protective order, indirectly tried to contact his daughter through a relative, who had messaged the young woman on Facebook. As the lawyer makes this statement, Rotunno's client shakes his head.

When Koziol has finished, Rotunno begins sharply questioning the daughter. In an icy manner, she points out inconsistencies in the young woman's story. Is she aware that several DCFS reports—and a lie detector test her father agreed to take—found no evidence to support her claims that he had sexually abused her? Sustaining an objection from Koziol, the judge interrupts before the young woman can answer, but Rotunno bores in elsewhere. Who exactly was that Facebook message from? Was it only one message? What did it say? It did not mention her father at all, correct? It did not say he wanted to get in touch, correct? It was, in fact, just a single message asking about her well-being and had nothing to do with her father, isn't that right?

Rotunno's questioning also establishes the previously undisclosed fact that the daughter had traveled to Los Angeles to tell her story on the *Dr. Phil* show and, during the segment's taping, admitted that she might be open to talking to her father, who also appeared in the as-yet-unaired segment, in the presence of a therapist.

The hearing lasts about an hour. The judge seems to be wavering. But then a final question comes from the bench: "Are you still afraid of him?"

"Yes," the young woman replies.

With that, the judge extends the order of protection—but for just one year instead of the requested two.

Some defense attorneys would consider the reduced extension a victory, but Rotunno cannot hide her irritation as she huddles with her client in a conference room afterward. "It's a shitty ruling," she says. The father has lived up to every aspect of the order, she explains, but in the face of that lone "yes," it means nothing.

From the beginning, a central tenet of the #MeToo movement—the social-media-driven phenomenon that has encouraged victims of sexual misconduct to come forward—has been "believe women." Or, as a T-shirt for sale recently on Etsy reads: "I Believe Her ... and Her, and Her, and Her."

Rotunno thinks that philosophy is laudable, even noble. Accusers *have* been doubted for too long. But often lost in the flood of accusations, she says, is a stark and undeniable fact: Not all people claiming they've been sexually assaulted or harassed are telling the truth. It's a circumstance that occasionally makes headlines—most notably in 2006, when members of the Duke University lacrosse team were falsely accused of rape, and in 2014, when a *Rolling Stone* article about an assault at the University of Virginia was discredited after the alleged victim admitted making up her story—but in Rotunno's eyes it has been largely eclipsed by the #MeToo dam break.

In such cases, people are often summarily convicted in the court of public opinion, and this deeply disturbs Rotunno, precisely because she worries that the “believe women” creed risks seeping into courts of law. “We are in an era of conviction by allegation in this country right now,” she says, “which flies in the face of the entire principle of innocent until proven guilty.”

Rotunno, a Wheaton native who earned her degree at the Chicago-Kent College of Law and started her career prosecuting deadbeat dads, contends that sexual assault is “the only crime in our statutes where somebody can be charged with zero evidence to back up the allegation, other than someone's word. ... If I went to the 18th District and said, ‘John Doe sold me nine kilos of cocaine,’ but I don't have the cocaine, I don't have the money, I don't have any proof that we had any communication, I have no text messages, the police would be like, ‘You're crazy. Have a nice day.’ But if I walk into a police station and say, ‘John Doe raped me,’ they ask me no more questions.”

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That characterization seems to flagrantly contradict the widespread contention by victim advocates—a view supported by a number of studies—that police and prosecutors, if anything, don't lend enough credence to rape allegations. But Rotunno is firm in her belief that the cards are stacked against defendants in the kinds of cases she handles. “We start every trial,

every game, down 21 to nothing.” It begins, she argues, when the allegation is first made. “Police will sit down [with accusers] and say, ‘Tell us what happened,’ and the nurse will say, ‘Tell us what happened,’ but when what they are saying happened doesn’t match physical evidence, why aren’t they being questioned before somebody’s charged with a crime?”

Prosecutors often compound the problem, she says. “To me, it’s the prosecutor’s responsibility to weed through a case and say, ‘Wait a minute, there may be some issues here. Before I uproot somebody’s whole existence, we may need to delve into this a little bit more.’ And I get that the court system is for that. But you still have to charge in good faith, and you still have to be able to say that you have a credible person here.”

Rotunno cites as an example the case of one of her new clients, who was arrested and interrogated after a woman accused him of reaching his hand under her skirt at a nightclub. “The police report says right on it: ‘No video available at this time,’ ” she says. Yet the man has already been charged, and his reputation irreparably harmed. “I have so many of these cases,” says Rotunno, who wonders why the police don’t wait to review footage before arresting someone.

Jose Villareal, a Cook County state’s attorney who has gone up against Rotunno in court several times, thinks Rotunno’s “stacked cards” assessment is off-base: “I disagree with the idea that we just willy-nilly take a woman’s word.

When a woman is coming in with a serious allegation, I personally tend to believe her, but we don’t just take her word. We’re looking for corroboration—medical records, witnesses, the kind of physical evidence you might expect to find.”

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Rotunno, though, maintains that such diligence may be more the exception than the rule and offers Gueye’s case as an example. One of the aspects of it Rotunno found shocking was how little investigation the police actually did. Officers searched neither Gueye’s home nor the accuser’s. When they showed up at the building where the accuser lived, Rotunno says, the woman refused

to allow them up. Instead, they relied on her to provide evidence such as bedsheets and the pajamas she said Gueye had forcibly removed from her, and even then she turned over only the pajama top to investigators, a fact that apparently did not prompt questions from the police. Nor did the investigators put much stock in Gueye's claim, reiterated at trial, that the woman was trying to shake him down.

It ultimately fell to Rotunno to find the smoking gun, and she did. When the pajama top was entered as evidence at the outset of the trial, she recalled closed-circuit TV footage she'd viewed of a meeting between Gueye and his accuser in a common area of their building several days after the alleged assault but before the woman had gone to the police. (It was during this meeting, according to Gueye's official statement to police, that the woman made her demand for money, an allegation she would deny during the trial.) When the woman took the witness stand, Rotunno asked her what had happened to the pajama bottoms, and the woman said she could not remember. Then Rotunno showed her a still from the footage, pointing at what she was wearing, and the woman acknowledged that she had indeed been wearing the pajama bottoms during that meeting with Gueye.

Rotunno then asked what amounted to a coup de grâce: "Of all the clothes in your closet, the ones you choose to wear to meet your 'rapist' were the pants you were raped in?"

Rotunno sneaked a peek at the jury. "There were nine women, and I have to tell you, they had this expression, eyes wide open, mouths pursed. I knew it was all over." Though the accuser continued to stick to her story, the jury took barely an hour to return not-guilty verdicts on all counts.

In Stallworth's case, DNA testing proved that semen turned over as evidence did not belong to Stallworth or his friend. That fact, along with inconsistencies in the accuser's story and, as in Gueye's case, a lack of rigorous police investigation, earned Stallworth acquittals on all charges.

Not all of Rotunno's cases have been such cut-and-dried examples of false accusations. She estimates that of the men she represents, roughly 20 percent are innocent, 20 percent are guilty, and 60 percent fall into a gray area in

between. She openly acknowledges that she will represent someone she thinks is guilty, mainly because she believes that every person deserves a defense—and, moreover, that by providing one, even to those accused of heinous crimes, she is protecting the legal system and making sure police and prosecutors are doing their jobs. Still, there are potential clients she turns down. “I don’t like to take cases where the victims are children,” she says. “I just don’t want to be put in that position.”

Rotunno does not lack critics, who range from victim advocates to legal aid lawyers—at least one of whom Rotunno says “despises” her. She recalls a recent dinner at which her tablemates were all women. “When I told them what I do, the rest of the entire night was me defending myself—the judgmental looks, the ‘ughs’ when I made a point. The questions were all some version of ‘How can you stand by a man who has done such unspeakable things?’ These were questions they never would have asked a man. They never would have said things like ‘Why are you defending someone like that?’ ”

Whenever she’s confronted in that way, Rotunno invokes the “everyone has the right to a defense” credo. “You have to really believe in that idea,” she says. “Everyone deserves their day in court.”

She makes the analogy of a doctor faced with treating someone accused of a terrible crime—say, the Boston Marathon bomber. “That doctor is tasked with providing the best medical help possible, regardless. Well, I have to do the same thing.” Whether she personally likes her clients or is bothered by something they’re alleged to have done “just can’t be a factor,” she says. “If you want to be in my life, you understand that or you’re out. As for the rest of the world, it is not my job to convince them.”

It’s not a stretch to characterize Rotunno’s approach to sexual misconduct cases as the opposite of “believe women.” Indeed, she says, her duty as a criminal defense attorney—and, for that matter, justice itself—*demand*s that she question everything about an accuser and assume nothing: motive, credibility, circumstances, you name it. By doing so, she maintains, “I’m not saying something crazy like ‘Rape is OK.’ Of course it isn’t. It is a terrible crime that needs to be punished.”

That said, Rotunno is troubled by an increasingly widespread tendency in public discussions to treat all sexual misconduct allegations the same: “I’m not this advocate where men should be able to do whatever they want. But we are stepping onto a very large, very dangerous slippery slope when we say every allegation is considered rape. It’s not.”

Given her views, one might be tempted to think of Rotunno as the anti-Gloria Allred, and she doesn’t mind that characterization. In Rotunno’s opinion, the Los Angeles-based lawyer—who has attracted attention for representing women making various accusations against high-profile men like Bill Cosby and Tiger Woods—has “used the media to her benefit in circumstances that vilify other human beings before evidence is actually vetted in any way. What her career has turned into is throwing herself in front of a TV camera before any investigation has been done.”



Rotunno with DeMarco Whitley, a Glenbard West high school football player accused of rape in 2010; his is the only case to date that Rotunno has lost at trial. PHOTO: JOE LEWNARD/DAILY HERALD



With client Mohammad Abdullah Saleem, a suburban Islamic leader who pleaded guilty to sexual misconduct in 2016. PHOTO: JOE LEWNARD/DAILY HERALD



With Stanley Stallworth, a real estate attorney acquitted of sexual assault charges in 2015.

PHOTO: ERICA DEMAREST

Rotunno keeps a photo of a former client in her office to remind her how high the stakes are in the cases she takes. DeMarco Whitley was 17, a running back on the Glenbard West High School football team, when, in 2010, a classmate, then 15, accused him and his friend of raping her in the back of the friend’s car in a Rolling Meadows church parking lot.

According to evidence that prosecutors presented at the trial, the friend, Pierre Washington-Steel, another Glenbard West football player, invited the girl to take a drive with him and Whitley. At some point, according to the girl's testimony, Washington-Steel suggested that she should have sex with Whitley. She laughed off the remark, but when the two boys became more insistent, the situation took on a frightening tone. Then, the girl told investigators, Washington-Steel and Whitley began sexually assaulting her in the back seat.

Rotunno suggested that Whitley request a bench trial—that is, one conducted before a judge without a jury. (Only Whitley stood trial on the charges, the result of a tragic twist: Washington-Steel had been killed in a car crash later that night.) During the trial, Rotunno centered her defense on the fact that there was no physical evidence of a struggle—no bruising or scratches—and contended that the sex had been consensual, pointing out that the girl had never tried to exit the unlocked car and allowed the boys to drive her home.

But her argument did not convince the judge, Thomas Fecarotta, who handed down a conviction, saying he had “no doubt” that the events occurred the way the girl described them. He sentenced Whitley to 16 years. Whitley's remains the only sexual assault case Rotunno has ever lost at trial.

Suggesting a bench trial is a decision she regrets to this day. “I thought that the judge would understand the potential severity of the penalty, and a jury is not privy to that information,” she explains. But she now believes a jury would have had more sympathy for Whitley and would have looked at the victim “with a more scrutinizing eye.”

“The case still haunts me,” she says, “because even if he was responsible for some of it, the penalty was much too harsh. People who shoot people dead on the street get less time.”

But Rotunno felt bad for the accuser, too. Providing a vigorous defense meant asking her some very tough questions. “She was a young girl. She was in high school,” Rotunno says. “And I really had to go at her.”

After the trial, in fact, Rotunno buttonholed the prosecutor in the case, Cook County assistant state's attorney Maria McCarthy, and said: "Please tell that girl that I don't want this time in her life to define her. I want her to make good choices going forward and not let this hold her back. And just explain to her that I do feel for her, but I have a job to do."

McCarthy, who agreed to speak about the case only in general terms, says she remembers that Rotunno, despite her aggressive style, was never less than respectful with Whitley's accuser. "She was even compassionate at times. She never exhibited anger or treated her poorly. It is a fine line to walk as a defense attorney."

The fact is, even in the cases Rotunno wins, her clients face profoundly altered lives. Reputations and careers can be left in ruins before the first hearing.

"It did not matter what the truth was," says Gueye of his case. "I was guilty until proven innocent." Four and a half years after he was charged with rape and more than three years after his acquittal, he has finally had a grand opening for his boutique, but it was far from the glitzy gala he'd dreamed of. Many of his clients have abandoned him, and he has focused much of his energy since the trial on trying to persuade news websites to take down the original stories about his arrest. "I was found not guilty!" he says. "Why should they be there? It isn't right."

As for Stallworth, he left Sidley, saying at a press conference after his acquittal that he'd been "encouraged to retire." Unlike Gueye, Stallworth is not nursing a grudge against the media. "I'm upset with the state's attorney's office for not having a better system of investigating and trying to figure out, 'Is this really someone that we should charge?'"

Neither Gueye nor Stallworth takes issue with the #MeToo movement. "No one should be subjected to sexual harassment, sexual abuse," Stallworth says. "And I think that everyone deserves an opportunity to be heard. But I also

think that we as a society have to figure out a way to determine who's credible and who's not."

Gueye echoes that sentiment. "I have three daughters. I am looking to protect them more than anything. I would never say this kind of thing doesn't happen. But all men cannot be demonized, and everybody is not guilty. There needs to be a thorough investigation before you ruin somebody's life."

Rotunno knows she can't singlehandedly repair exonerated clients' reputations, "but for them to be able to walk out of there—even if they've been beaten, battered, scarred, bruised—and at least have that order that says 'A court found me not guilty,' that's important to me."

Regarding the #MeToo movement, she says that, if nothing else, it will likely mean more work. As if to prove this point, she checks her voicemail at her office after the order-of-protection hearing and finds she has several inquiries from potential clients. "It's a hell of a time to do what I do," she says with a rueful chuckle. Maybe the best time.

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