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### Symphonic metamorphoses

*Variations on vulnerability: orchestral musicians' employment in times of crisis*

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## 16. *Intermezzo*: Singing the #metoo classical blues

The purpose of this intermezzo is to juxtapose how two top-tier orchestras in the United States and the Netherlands reacted to serious allegations of sexual harassment brought against leading figures at the workplace. While one may argue that this topic does not figure within an inquiry into the state of orchestras and their workers post-financial crises, musicians interviewed indicated that the impact of these cases was of great import within the realm of employment considerations. Central to a well-functioning workplace, the concept of safety must take pride of place and the institution must be held accountable if it negates the well-being of its employees. Musicians voiced great concerns with regard to on-the-job functionality if #metoo issues were not addressed properly, and even pointed to possible ramifications beyond the workforce. “Think about it: if an orchestra cannot come to grips with such a critical matter that shakes its credibility and has a negative impact on our safety, should that orchestra merit significant financial support no matter whether it emanates from individuals, corporations and most certainly, the state?”<sup>1915</sup>

The news concerning the two cases that involved top-ranked orchestras in the United States and the Netherlands broke first in the *Washington Post* on July 26, 2018, causing a sensation in international and social media.<sup>1916</sup> Citing a significant number of sources both on and off the record, the pair of reporters who researched and wrote the article confirmed that: “over a six-month period starting last November, the *Washington Post* spoke to more than 50 musicians who say they were victims of sexual harassment. These artists, many of whom shared their stories for the first time, described experiences ranging from sexual harassment to sexual assault, at every level from local teachers to international superstars.”<sup>1917</sup> We begin in Cleveland, Ohio home of the famed Cleveland Orchestra (CO) before crossing the ocean to Amsterdam, home of the legendary Royal Concertgebouw Orchestra (RCO). The two cases are markedly different in terms of substance and outcome and are important in the discussion about how to come to terms with crises of impropriety in the orchestral workplace.

### 16.1 Classical blues in Cleveland

The announcement that Bill Preucil, an internationally renowned violin pedagogue and the consummate concertmaster since 1996 of one of America’s finest, the Cleveland

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<sup>1915</sup> Musician member RCO#1, anonymity assured.

<sup>1916</sup> Anne Midgette and Peggy McGlone. “Assaults in Dressing Rooms. Groping during lessons. Classical Musicians reveal a profession rife with harassment” *Washington Post* July 25, 2018.

<sup>1917</sup> Ibid.,

Orchestra (CO), would play concertmaster in Mahler's monumental Third Symphony brought a flush of excitement to many participants at the 2018 Grand Teton Music Festival. In anticipation of a week in 'his' violin section, the author tuned in to YouTube to listen to the man-at-work. In surround sound mode, it was easy to waft away on the wings of mellifluous melody: he is a great musician who possesses a gossamer sound, the magic and technique to soar above the orchestra as well as lead his section with finesse.

Since his arrival in 1995, Bill Preucil was prized inside the CO, not only for his playing but for his superlative rapport with Music Director Franz Welser-Möst. Member musicians spoke openly with respect concerning Mr. Preucil's impeccable performance skills and clear leadership. Yet, for years a shadowy side marred this perfection. Deleterious observations with regard to a darker side had been relegated to the back pages of social media, local newspapers and the 'everyone knows that about him' rumor mill. Some of these observations were related to his considerable overscale salary and other comments pointed to a perception of nepotism at the workplace. Yes, Preucil's salary was for a decade the highest in the concertmaster business, and yes, a dynasty of family members including his daughter, brother and sister-in-law had gained coveted places in the CO.<sup>1918</sup>

Bill Preucil's soft spot for female students at the Cleveland Institute of Music (CIM) where he was a star faculty member was the stuff of much speculation ever since specific allegations surfaced in 2007. A local Cleveland rag, *Cleveland Scene*, broke a story that detailed a much darker side of the concertmaster's activities.<sup>1919</sup> The relevant portion of the detailed article focused on a specific incident in which Preucil's unwanted advances led to a deal and a cover up: in exchange for silence, a female violin student was transferred to another top musical institution far from Cleveland and received a cash payout for the 'inconvenience.' The CIM's President David Cerone commenting by email offered a standard disclaimer:

*"The Cleveland Institute of Music is exceptionally sensitive to the welfare of its students and is thoroughly committed to providing a safe and comfortable working and learning environment for all of its constituents . . . When any issues are brought to the attention of the CIM administration, it has consistently taken prompt, immediate and decisive action to gather the facts and confidentially resolve the matter in full accordance with CIM's published policies."<sup>1920</sup>*

<sup>1918</sup> Salary information available on the ever-helpful Adaptistration website: [www.adaptistration.com](http://www.adaptistration.com). The story that many musicians tell speaks of a new concertmaster winning a coveted position in salary negotiation who makes the condition, "I'll take the job if I receive \$1 more than Bill Preucil," anonymity assured.

<sup>1919</sup> Rebecca Meiser "Sour Notes" *Cleveland Scene* February 14, 2007.

<sup>1920</sup> The prominent violin pedagogue David Cerone served as President of the CIM from 1985-2007; his recalcitrance to handle the abuse situation in another manner was endemic to institutional reactions at the time. As a matter of full disclosure, the author studied violin with David Cerone.

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The reader might clamor for a stronger choice of words, however the actions of the CIM in this case of sexual harassment showed a strong desire to cover up the activity, treat it like an inconvenience and protect the institution and the alleged perpetrator from any further action. “It was a real nightmare and a total cover up. I was a close to the woman-in-question who only wanted to be handled with decency and within the boundaries of what we thought was ‘the law.’<sup>1921</sup> Silence and a quick-fix response would protect the reputation of not only the star concertmaster but also the prestigious CIM and, of course Preucil’s principal employer, the CO. Cleveland’s musical institutions were not the only examples of tarnished silence: in the months to follow leading conservatories and institutes of higher learning were exposed in similar coverups.<sup>1922</sup>

En route to the Grand Teton Music Festival in 2018 and the long-awaited chance to experience Bill Preucil’s artistry and leadership firsthand, the email message from Festival management struck me like lightning.

*“Many of you saw the unfortunate article in today’s Washington Post concerning sexual harassment in classical music. In that article, there were allegations of sexual misconduct by William Preucil, concertmaster of the Cleveland Orchestra. Mr. Preucil was scheduled to be concertmaster for Festival Orchestra during Week 6. Earlier this evening, the Festival rescinded its invitation to Mr. Preucil.”<sup>1923</sup>*

Had the *Washington Post* discovered something that smacked of predatory behavior? Cringing in the aftershock of Harvey Weinstein’s #metoo bevy of film star casualties, a growing number of classical musicians held their collective breaths wondering when the myriad of incidents of abuse on and offstage would capture media attention. “It had a sort of *veni, vidi, vici* feel to it – all of us, musician members of great orchestras as well as colleagues who teach at conservatories, had long lists of names, some secret and some not-so-secret, of those who operated on a dark side of what we now call abuse. That list was never shared to the outside world, nevertheless, we knew who was misbehaving and worse.”<sup>1924</sup> For decades, such stories were more apt to escape any media attention whatsoever or fuel *Mozart in the Jungle* scripts than reach courtroom scrutiny.<sup>1925</sup>

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<sup>1921</sup> Discussion with a former CIM violin-student, close friend of the ‘anonymous victim’ Bachelors/Masters graduate 2003-2008, anonymity assured.

<sup>1922</sup> In the U.S., published reports from inter alia, Indiana University, University of Michigan, Eastman School of Music, the Berklee College of Music, and the famed Curtis Institute report similar stories of abuse and coverups see, <https://www.theatlantic.com/education/archive/2020/01/conservatories-sexual-harassment-abuse/604351/>. U.K. reports from the prestigious Chetham’s School of Music in Manchester <https://www.bbc.com/news/uk-england-manchester-49907386>.

<sup>1923</sup> Email sent from management to GTMF participants after the *Washington Post* broke the #metoo story July 27, 2018.

<sup>1924</sup> Conversations with Judy Nelson, violist New York Philharmonic Orchestra, 1983-2019.

<sup>1925</sup> Blair Tindall’s *Mozart in the Jungle: sex, drugs and classical music*, first appeared in book form in 2005 (Atlantic Press) before its reincarnation as a popular Amazon Prime series in 2014. *Mozart in the Jungle* aired for four seasons.

Posing questions to former Preucil students, netted two types of answers exemplified by the following quotes. One former student, at present a member of a leading European orchestra, observed: “Is this all the press has to focus on? I really don’t have much to say about what may have gone on or may not have gone on at the CIM in the three years I studied there with Mr. Preucil. For me, he was an imaginative teacher, a great listener and the person who helped me reach my musical goals. He was warm, friendly but never ever did I experience anything remotely untoward, although there were many rumors. I stayed away from rumors and practiced a lot!”<sup>1926</sup> Another former student, who credits her present position of leadership to the superb training received at the CIM, shared: “I studied with Mr. Preucil, an amazing musician, a witty and imaginative pedagogue and never had any personal interaction with what the press now calls the ‘dark side’ of Bill Preucil. Who is to know what really went on in such situations? Everything is based personal recollection, for some, more traumatic than for others. What remains questionable is the whole idea of consent: if students are of age, why is it impossible to believe that they might have a crush on their teacher and act accordingly?”<sup>1927</sup> Underlying the accusations detailed in the *Washington Post* is the insinuation that Mr. Preucil’s sexual advances were tied to a threat: satisfy my needs or suffer in your career down the road. The career-loss threat as an implication is dastardly and the situation bears resemblance to the now-notorious casting couch of Harvey Weinstein and countless others. As the CO eventually admitted in a comprehensive investigation report, abuse is often driven by performers, “positions of power within the orchestra and in the broader world of classical music.”<sup>1928</sup>

Within days of the *Washington Post* revelations, Mr. Preucil resigned from the faculty of the CIM and was suspended from further duties at the CO.<sup>1929</sup> On August 16, 2018, the CO announced that it had hired a leading New York-based law firm, Debevoise & Plimpton bolstered by a committee comprised of five members of the CO’s Board of Trustees, to investigate the claims brought against Mr. Preucil. A *Report to the Special Committee of the Board of Trustees of the Cleveland Orchestra* (Report) compiled by Debevoise et al., was damning and further contained enough information to lead to the suspension and eventual dismissal of another orchestra member accused of harassment, principal trombonist, Massimo La Rosa. In the Preucil case, the committee interviewed more than 70 people, including Mr. Preucil. He admitted to “engaging in sexual contact

<sup>1926</sup> Former Bill Preucil student, anonymity assured.

<sup>1927</sup> Anonymity assured resulting from the #metoo focus on Bill Preucil.

<sup>1928</sup> Anastasia Tsioulcas. “Cleveland Orchestra Fires 2 Leading Musicians After Sexual Misconduct Investigation” *NPR* (National Public Radio) October 24, 2018.

<sup>1929</sup> Michael Cooper. “Cleveland Orchestra Suspends a Star After Allegations of Assault” *New York Times* July 27, 2018.

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with three female students during or after lessons” but offered no comment on other questions concerning the issue.<sup>1930</sup> On October 24, 2018, Mr. Preucil was fired by the CO and the orchestra presented a comprehensive press release.

## 16.2 Midwest #metoo responses from Cleveland

This release stressed the importance to provide a safe and ethical working environment and outlined three major changes to the previous, toothless policies: the establishment of an anti-harassment hotline; a revised Ethics and Whistleblower Policy and a training program facilitated by the Human Resources department. The orchestra’s spokesperson refused to give any further description of orchestral policies, stating that “the independent investigation speaks for itself”.<sup>1931</sup> Sections IIIA.2-IIIa.5. of the Report spell out:

*“Two then-members of the executive committee of the Board were separately approached by members of the Orchestra who were concerned about the allegations in the Cleveland Scene article. During at least one of those discussions, a musician raised concerns about... sexual misconduct at CIM and reported that Preucil had made unwanted verbal sexual advances to a female player in the Orchestra... Neither former Orchestra management nor former Board leadership took steps to investigate or otherwise act upon the sexual misconduct allegations in the Cleveland Scene article or the additional allegation of sexual misconduct that was reportedly relayed to a Board member in 2007. Former Orchestra leadership should have done more to investigate the reports about Preucil’s behavior following the Cleveland Scene article.”*

What is missing regrettably from the Report as well as from the CO’s website is any form of apology for more than a decade of silence following the *Cleveland Scene* allegations in 2007. Tellingly, it took the clout of a *Washington Post* article and the swift, damning responses to the article in international and social media to motivate changes in Cleveland. This demonstrates a questionable track record in terms of responsibility and ethics. To protect its musicians, the orchestral organization needs to put measures in place to police itself, to make sure that the most vulnerable are protected at all times.

## 16.3 Superstar predators: artistic license

Like the infamous Weinstein and others in film business, classical musicians of fame and power are often free to engage in abusive behavior. Historically, the notion of the riveting musician who possesses superpowers that transformed all within earshot was personified by several superhuman performers in the 19<sup>th</sup> century, most infamously,

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<sup>1930</sup> See, Tsioulcas, *supra* at fn. 1928.

<sup>1931</sup> Justin Holden, Senior Director of Communications, the Cleveland Orchestra, quoted on *Adaptistration* November 14, 2018.

Franz Liszt and Nicola Paganini (see, *Haydn rewrites history*). Their performances and behavior both on and off the podium documented in diaries, letters and numerous newspaper reports challenged the accepted social mores of chastity and self-control, especially when it came to the behavior of female audience members. “Devout women lost their simplicity of faith. . . and become filled with sinful agitation.”<sup>1932</sup> Performances interrupted by mass hysteria and stories of personal downfall filled the pages of scandal sheets and in the case of the charismatic Franz Liszt, convinced Heinrich Heine to coin the term ‘Lisztomania’ to characterize the audiences’ “veritable insanity, one unheard of in the annals of furor.”<sup>1933</sup> The myth of the larger-than-life artist and conductors who wield control over the collective orchestral instrument created the image of the genius whose often uncontrollable behavior was condoned in the name of art. “As long as the persons in question are great musicians, so-called geniuses, they receive a kind of carte blanche for misbehavior. There is this perverse idea that greatness can excuse the inexcusable and that if you do not play along with it, either your career will be ruined or that there is something wrong with you. These disturbing patterns run through music schools and continue on into the professional circuit, when the lucky few get jobs in orchestras.”<sup>1934</sup>

## 16.4 The physical nature of music lessons

Music lessons are one-on-one, deeply personal, and to a substantial degree, physical in nature. Karen Tuttle, a force of nature amongst 20<sup>th</sup> century viola educators insisted that her students pull their shirts uncovering the left shoulder in order to place the instrument on ‘bare skin’ to expose the body to the unique contact and the vibrations of ‘a piece of wood.’ Memory lane takes the author back to a master class with the legendary concertmaster-soloist-conductor Joseph Silverstein, in sweltering Sarasota, Florida. Hands-on demonstration was key to unlearn bad habits. The maestro pummeled and pushed in an attempt to coax some modicum of relaxation as sweat poured down my face. In the context of the #metoo epoch, Ms. Tuttle and Mr. Silverstein might well have been named, blamed, and perhaps even chastised for their actions in the heat of studio master class action.

Where do we draw the line between unwanted attention and camaraderie, between

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<sup>1932</sup> Anatoli Vinogradov. *The Condemnation of Paganini* (translation Stephen Garry) p. 816.

<sup>1933</sup> Heinrich Heine. *Florentine Nights* in the *Works of Heinrich Heine* vol. 1 translated by Charles Leland pp. 71-72.

<sup>1934</sup> Conversations with several graduates of Manchester’s storied Chetham’s School of Music after Independent Inquiry into Child Sexual Abuse (IICSA) hearings took place 1-2 October 2019. Anonymity assured.

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inappropriate behavior and criminal actions? What happens when the #metoo floodgates open and the domino effect of accusations gathers momentum? Enter the grey zone between victim and accused, a zone in which august institutions pray for silence and the media clamors for more on 'the story.' Part of the puzzle that relates to how institutions can and should deal with allegations of sexual assault is related to the fact that even with exemplary best practices on reporting, confidentiality and action plans, there is no blueprint to deal with those who find that they have been victimized. As the celebrated Weinstein actress-accusers proved, some victims keep these experiences quiet for decades whereas others attempt to tell authorities, even the police. Accusations, especially those pinpointed against celebrities, roam in rough terrain. Mr. Preucil and others who have been placed in classical music's #metoo limelight are celebrities whose status helps grab headlines: scandal sells. Since the #metoo revolution, social media and the press, often willing to pay for a story that casts a famous person in disrepute, serves to sway public opinion.<sup>1935</sup> No apologist for behavior that crosses into the legal no-fly zone and a vociferous opponent of inappropriate behavior at work or school, legal beagles (pun intended) plead for a dogged investigation of the bad, i.e. predatory actions/criminal behavior coupled with true caution regarding actions that fall within an acceptable spectrum of behavior.

### **16.5 Be careful of what you wish for: presumption of innocence**

Our screens transmit nascent buzz words that mold public opinion as commentary shared on social media platforms for all who click and share. As with all movements, both off and online, the #metoo movement revolutionized thinking regarding sexual abuse and harassment. Not only was awareness raised but on a more questionable side a tsunami of politically correct disclosures followed the initial outrage. From the legitimate consciousness raising exercise to the ensuing witch hunt of many public figures, especially in the media-ripe turf of the performing arts, cries of 'he is guilty' negated true proof. "It was as if we all had our personal #metoos to share, overnight. Some doubtlessly legitimate hidden by a noxious combination of angst and bad memories however, as distressful as it might seem, I can't help but think that some of these articulations are based on faulty recollection or unproven states of affairs."<sup>1936</sup> To critics, #metoo had the power to create a disconcerting herd mentality, replacing

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<sup>1935</sup> *Huffington Post* is an excellent source for reporting on journalistic 'dig up the dirt for money' scandals at: [www.huffpost.com](http://www.huffpost.com).

<sup>1936</sup> Conversations with a female musician at the Curtis Institute of Music as allegations pointed to inappropriate behavior on the part of several distinguished faculty members, anonymity assured.



fact-finding with a thought police without any regard for questions of a legal nature. To disregard the sacrosanct principle enshrined in the presumption of innocence smacks more of witch hunt, and less of a movement committed to improving the lives of the abused. A still small voice begs for caution before we enter into the stone-throwing arena. Until the parameters of appropriate behavior at workplaces and schools are subject to open discussion first and rulemaking second, the temptation to sit back and applaud as ‘another one bites the dust’ prompts smug hypocrisy or as the Royal Concertgebouw (RCO) situation played out, false accusation.

## **16.6 The whole truth or just plain jumping the gun? #metoo at the Royal Concertgebouw**

On August 2, 2018, the RCO’s Music Director, Daniele Gatti, the seventh Music Director in the illustrious lineup at the Royal Concertgebouw Orchestra (RCO) was fired following the aforementioned *Washington Post* allegations of inappropriate behavior. Mr. Gatti had served a mere two years at the helm of the famous orchestra. Reports had surfaced alleging unwanted sexual advances on the part of the maestro at opera houses in Italy back in 1996 and 2000 compounded by accusations reportedly made by three female members of the RCO. Yet, unlike the well-documented case that put the Cleveland Orchestra’s concertmaster into the shadows, #gattigate (to quote the hashtag that trended in the Netherlands)<sup>1937</sup> was based on cries, whispers and as hindsight teaches, unproven allegations. The justifications for Maestro Gatti’s fall from grace have occupied the thoughts and minds of many beyond the hallowed halls of the Concertgebouw. Months of speculative newspaper articles, punctuated by television appearances in which direct questions concerning the nature of the inappropriate behavior were deflected by the RCO’s general manager (2008-2020) Jan Raes, increased the uneasy speculation that there was something egregiously wrong with the dismissal. A star-studded lineup of conductors voiced support for their dismissed colleague and several well-known conductors publicly voiced their disapproval of the RCO’s guilty before innocent decision even refusing to accept invitations from the RCO to replace the deposed Gatti. The prestigious Rome Opera took the bold move to respond to the Gattigate allegations by hiring Mr. Gatti as music director in December 2018.<sup>1938</sup> Speculations in the Dutch press regarding overly rash decision-making lingered for more than a year.

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<sup>1937</sup> #gattigate surfaced within minutes of the *Washington Post* article and remained as a much-cited tag until Jan Raes, General Manager RCO left the orchestra in late December 2019.

<sup>1938</sup> As reported internationally by *Associated Press* et al., see: <https://www.insider.com/ap-rome-opera-hires-gatti-who-lost-job-over-metoo-allegations-2018-12>

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Frustration leaked to the press and social media brought to the fore an orchestra divided by musicians in disagreement over ‘the affair,’ with consensus supporting the view that the situation is “something of a nightmare. Instead of Gatti we get to work with many conductors, who fill the weeks he was forced to drop, the majority of these conductors are totally unsuited to lead this great orchestra. And, in the meantime, our management has demanded that we obey a ‘no comments’ order. All our demands for transparency were met with silence, and we were told to rely on the care and expert judgment of our management and board with regard to the issue.”<sup>1939</sup> Sworn silence on the part of the musicians led to robust criticism from deep inside the orchestra, “we were told that three women had brought forward charges, yet, if any of us knew who these colleagues were or for that matter, what they alleged, that remained a mystery for the rest of the orchestra.”<sup>1940</sup>

Another musician voiced discomfort at the speed with which purported harassment could change into a definite condemnation. “Yes, Maestro Gatti was the stereotype of an Italian macho flirt, yet this does not mean that his gauche remarks are tantamount to sexual harassment, at least from what I observed firsthand here at our hall. How far should we dig into the past is another question: if allegations from 20 years ago that were not criminally charged can lead us to take such a decision, how many others would be brought down? Not that two wrongs should make a right, however there is too much glee when the world waits to see how many of the mighty will fall and how fast.”<sup>1941</sup>

### ***16.6.1 The #metoo legal landscape: defamation in the grey zone***

Although the RCO refused to comment on Gattigate,<sup>1942</sup> several insiders<sup>1943</sup> affirmed that the Maestro’s defense team could press for defamation charges. For women and men on both sides of #metoo, defamation lawsuits have provided the chance to triumph on the legal and media battlegrounds where accusations of sexual misconduct are at issue.<sup>1944</sup> This intermezzo aims to bring forward the differences between how #metoo accusations are dealt with at orchestras in the two countries of focus.

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<sup>1939</sup> Musician member #2 RCO, anonymity assured.

<sup>1940</sup> Musician member #3 RCO, anonymity assured.

<sup>1941</sup> Musician member #2 RCO, anonymity assured.

<sup>1942</sup> The author, not to speak of the mainstream Dutch press were left in the dark despite for numerous attempts to gain clarity concerning the allegations.

<sup>1943</sup> Individuals with contracts to Maestro Gatti as well as two individuals close to the RCO board, anonymity assured.

<sup>1944</sup> Much has been written on actress Ashley Judd’s defamation charges and their link to the sexual harassment cases against Harvey Weinstein, see <https://www.courthousenews.com/ashley-judd-defamation-suit-against-harvey-weinstein-advances/>

Regarding the Gatti accusations, Anne Midgette, the principal journalist who wrote and researched the *Washington Post* article that caused consternation and retaliation, was “frankly shocked by the dismissal.”<sup>1945</sup> In a YouTube interview, she clarified that in order to publish such damning information in the U.S., she needed two sources to come forward and allow identification by name. After these sources were vetted, the decision to publish was made. Considering the fact-checking elements on the part of the employer, the RCO, Ms. Midgette articulated, “the RCO only consulted me once and that was after the article was running. They wanted to know whether I knew when Maestro Gatti had known about the article.”<sup>1946</sup>

In an initial response, Maestro Gatti released a statement to clarify that he had never engaged in any illegal or offensive behavior and that he was accused of purported behavior that had taken place ‘a long time ago.’ Following the advice of the U.S.-based crisis advisory firm, the Reputation Doctor,<sup>1947</sup> the ‘media’ beleaguered conductor released an apology to all women: “I would like to say that if I have hurt anybody, I am very sorry.” Clumsy at best, his apology backfired: he was subjected to massive amounts of ridicule on social media and intensified speculation in the press as to why he was apologizing for something he had distanced himself from.

### ***16.6.2 Shame and denial: what took so long to come forward?***

The deeper issues related to shame and denial embedded in harassment allegations from ‘why now? why didn’t accusers come forward sooner?’ point to the degree of power that the abuser might sway over the abused. In all of the high profile #metoo sexual abuse cases, from the Bill Cosby trial<sup>1948</sup> to the Harvey Weinstein cases, the fact that it took victims more than a decade to come forward was linked not only to shame and the tendency to take partial blame but also to career factors. The abusers, “threaten what you hold dear- your safety, financial freedom and yes-career. Now is the time to listen and learn, not make ethical judgments about women who were intimidated, coerced, and harmed.”<sup>1949</sup>

<sup>1945</sup> Interview with the *Washington Post* music critic and journalist Anne Midgette available at: <https://www.youtube.com/watch?v=ZIXE4PaGkWg>

<sup>1946</sup> *Ibid.*,

<sup>1947</sup> <https://reputationdoctor.com/>

<sup>1948</sup> “America’s Dad” comedian Bill Cosby received a three to ten-year prison sentence for assault without consent on September 25, 2018 following years of complex court proceedings with multiple accusations from a long list of women, for a timeline, see: <https://www.latimes.com/entertainment/la-et-bill-cosby-timeline-htmlstory.html>

<sup>1949</sup> *Girls* star Lena Dunham discussing the Weinstein case, see: <https://www.eonline.com/news/885842/every-star-who-has-spoken-out-against-harvey-weinstein-amid-his-sexual-harassment-allegations>

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### 16.6.3 Silence and institutional accountability

How could an orchestra with such a strong, protective structure have failed so utterly with regard to Gattigate? As illuminated in the FAQs, the RCO's organizational structure differentiates itself from all other Dutch orchestras. In a move to ensure that the musicians have a voice at the most centralized level of decision-making, three members of the orchestra serve on the RCO's governing board.<sup>1950</sup> "Our system ensures that the musicians have more powers than other Dutch orchestras that operate on a standard state system in which a works council cooperates with management to give employees a voice."<sup>1951</sup> Yet, even with musicians advising at the highest echelons, the perceived unfairness inherent to Maestro Gatti's guilty- until-proven-innocent situation reflected poorly on the RCO.

RCO fans worldwide and the scores of individuals who commented in Dutch national newspapers and on social media<sup>1952</sup> expressed great uneasiness with what was considered to be a cavalier approach to the presumption of innocence, enshrined in European law in Article 6, para. 2 of the European Convention on Human Rights (ECHR).<sup>1953</sup> Rumors reached fever pitch as the press speculated on the fact that the orchestra was looking for an excuse to get rid of a Music Director who had been hastily chosen. Speculation abounded that the hasty decision to terminate Maestro Gatti's contract masked a very different decision: any hint of #metoo provides a perfect excuse to dispose of an employee who might not meet the approval of the board for other reasons. "We were not permitted to know who his accusers were, nor why he was actually fired so quickly without a thorough review of what he had or had not done. The very notion that #metoo accusations could be used for other means is inexcusable."<sup>1954</sup>

In April 2019, the RCO announced that both parties, Maestro Gatti and the RCO, had come to an agreement, the contents of which was not disclosed to the orchestra members, the public and certainly not to the press.<sup>1955</sup> In what many perceived of as a

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<sup>1950</sup> See additional information in the FAQs.

<sup>1951</sup> Conversations with David Bazen, Director of Business and Media RCO.

<sup>1952</sup> For example, Peter Glesen. "Daniele Gatti werd haastig geofferd op het altaar van het reputatiemanagement" *Volkscrant*, 27 Februari 2019.

<sup>1953</sup> Art. 6 (2) ECHR reads: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law." Available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>1954</sup> Musician member #2 RCO, anonymity assured.

<sup>1955</sup> Press Release, RCO website 23 April 2019. "Het Concertgebouworkest en Daniele Gatti zijn verheugd te melden dat het ongenoegen tussen beide partijen na uitvoerig overleg is opgelost. Het Concertgebouworkest is Daniele Gatti erkentelijk voor zijn artistiek leiderschap van het orkest en de bijdrage die hij heeft geleverd aan de positie van het orkest in de wereld van de klassieke muziek." Author's translation: The Concertgebouw Orchestra and Daniele Gatti are pleased to report that the disagreement (literally, displeasure, dissatisfaction) between the two parties has been resolved following extensive consultation. The Concertgebouw Orchestra is grateful to Daniele Gatti for his artistic leadership and the contribution he has made to the orchestra's position in the world of classical music. Available at: <https://www.concertgebouworkest.nl/nl/concertgebouworkest-en-daniele-gatti-sluiten-hoofdstuk-af>

gratuitous gesture, the orchestra's website subsequently heralded, 'the return of Daniele Gatti,' wished him well in the future and as a token of by-gones-be-by-gones, announced the release of and to show their appreciation of his artistry, three recent Gatti-RCO recordings were to be made available to the public.<sup>1956</sup> All's well that ends well?

#### **16.6.4 Dutch Touch #metoo rulings in the Netherlands**

It is interesting to note that since the #metoo revolution, Dutch courts' rulings on situations in which employers terminate employment contracts of those who have been accused of sexual harassment at the workplace do not show massive support for the victims of harassment. Case law in recent years shows that at least at the district courts in Amsterdam and the Hague the employer bore a great deal of the responsibility to put procedures in place that would have precluded such actions on the part of the employee. In 2017, the Amsterdam district court<sup>1957</sup> held that a university lecturer<sup>1958</sup> accused of sexual intimidation would be eligible to receive €10,00 plus the customary transition payment stipulated by statute. His employer had failed in its duty of care to apply specific internal procedures with regard to the accusation. Thus, although the university was correct to terminate the employment contract, nonetheless, the lecturer was entitled to extra compensation.

The same court emphasized the importance of taking heed of internal anti-harassment regulations at the workplace in a 2018 case.<sup>1959</sup> An inebriated employee was suspended after inappropriate sexual advances at a corporate Christmas celebration. The employee was suspended and dismissed by his employer who defended the decision as "fitting in the context of the current #MeToo discussion."<sup>1960</sup> The court demurred, finding that dismissal was disproportionately severe because the employer did not abide by its own sanctions: the employee should have been notified of his right to seek counsel, and, importantly, his right to react to the accusation within 48 hours. Thus, although the employee's misconduct was actionable, the measures taken were too severe. An employer may escape liability for unlawful harassment if it can demonstrate that it took reasonable steps to prevent the harassment (including the existence of a

<sup>1956</sup> Toef Jaeger. "Danielle Gatti en Concertgebouworkest bereiken 'overeenkomst'" *NRC Handelsblad* 23 april 2019.

<sup>1957</sup> ECLI:NL:RBAMS:2017:9966. Rechtbank Amsterdam, 08-12-2017 / 6216391 EA VERZ 17-728. Available in Dutch at: <https://linkeddata.overheid.nl/front/portal/document-viewer?ext-id=ECLI:NL:RBAMS:2017:9966>

<sup>1958</sup> Amsterdam University of Applied Sciences (Hogeschool van Amsterdam) is named, the lecturer's name is anonymous in keeping with privacy regulations.

<sup>1959</sup> ECLI:NL:RBAMS:2018:3327. Rechtbank Amsterdam, 01-05-2018/ 6656369 EA VERZ 18-136 Available in Dutch at: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2018:3327>

<sup>1960</sup> *Ibid.*, author's translation.

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policy prohibiting harassment) and the victim unreasonably failed to avail himself or herself of the employer's preventive mechanisms, including avenues for reporting the harassment.

An important lesson to take from these decisions is that employers should be prepared to re-evaluate how the organization's sexual harassment-related protocols and investigations are implemented and monitor the procedures actually followed after a claim is brought forward. In most countries, including the Netherlands and the United States, the employer bears the responsibility to ensure that the workplace is free of any form of discriminatory behavior including unlawful harassment. The CO's disturbing Preucil story is a sad reminder of how employers attempt to ignore such claims: twelve years is an unforgivably long time to wait for an investigation. It is essential that employers develop and strengthen their complaint procedures with proper confidentiality safeguards. In addition, procedures and protocols must be brought to the attention of all employees with great regularity. Last, but certainly not least, training programs and awareness campaigns need to be revisited in order to move with the demands of employees and their protection. Although the #metoo movement accelerated an awareness of harassment issues in the orchestra's world most musicians agree that their institutions as well as their fellow musicians have a long path to tread. For different reasons, both the CO and the RCO were poles apart in handling similar claims. Both the CO's initial choice to ignore claims in 2007 and the RCO's hasty decision that sullied a conductor's good name before adequate fact-checking took place gave rise to substantial reputational impact. It can be argued that the RCO still carries a stigma of shady dealings post-Gattigate. More than two years have passed since Maestro Gatti was forced to leave the orchestra and the RCO remains rudderless with no new music director appointed to replace him. Adding to widespread speculation of managerial misjudgment, Jan Raes stepped down as managing director in December 2019: he has been replaced temporarily by an interim manager, the organization's former Director of Business and Media, David Bazen.

As the dust settles on #metoo claims, will those who have really suffered at the hands of #metoo perpetrators, do the voiceless and vulnerable benefit? Real change, 'change we can believe in,' moves slowly, is totally unspectacular, and its legalistic detail will not make headlines or even the back pages. The power of the #metoo narrative will dissipate unless the discourse widens to analyze and take steps to change the culture that has permitted pervasive abuse and that continues to turn a blind ear to skewed

power relationships and protected hierarchies. Without respect and trust, without tight protocols administered by trustworthy custodians, the music profession and all professions for that matter will drift into a witch-hunting frenzy where individuals lose their careers, and discriminatory behavior persists leaving the vulnerable out in the cold.