SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: PART 81

THE PEOPLE OF THE STATE OF NEW YORK -against- HARVEY WEINSTEIN, Defendant.	AFFIRMATION IN RESPONSE TO DEFENDANT'S SUPPLEMENTAL OMNIBUS MOTION Ind. No. 02335/2018

KEVIN J. WILSON, an attorney admitted to practice before the Courts of this State, affirms under penalty of perjury that I am an assistant district attorney in New York County assigned to the matter captioned above and am familiar with its facts.

1. This affirmation is submitted in response to defendant's supplemental motion to dismiss, in which defendant seeks dismissal of the indictment.

2. The defendant submitted his omnibus motion on August 3, 2018 seeking dismissal of the indictment, reduction of charges, discovery and other remedies. The People filed their response on September 12, 2018. On October 11, 2018, the People consented to the defense motion to dismiss count six. The defendant filed his supplemental motion on November 5, 2018. Through this supplemental motion, Defendant seeks to dismiss the indictment or counts thereof due to alleged defects or

deficiencies in the presentation of the matter to the Grand Jury. The People have consented to the Court's *in camera* review of the Grand Jury minutes. A review of the minutes will show the defendant's claims are baseless.

PEOPLE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL MOTION TO DISMISS THE INDICTMENT

3. Inspection will reveal that the evidence before the Grand Jury amply supported the offenses charged, that the Grand Jury was properly instructed on the law, and that the integrity of the proceedings was unimpaired. The People continue to deny all allegations to the contrary, and oppose disclosure of the Grand Jury minutes to the defense. The issues raised in defendant's motion do not require such disclosure for their resolution. CPL §210.30(3).

The People Presented Full and Fair Information to the Grand Jury And Were Not Required to Submit Additional Exculpatory Evidence[1]

4. The crux of defendant's supplemental motion is his claim that count six was based on false testimony, and that this defect infected the rest of the case. Contrary to the Defendant's assertions, however, the information disclosed to the defendant by the People does not establish that the testimony that supported count six was false. At most, it creates an issue of fact as to the credibility of the complaining witness. Such

[1] "CW1" refers to the complaining witness whose testimony supports counts 1 and 2 of the indictment.
"CW2" refers to the complaining witness whose testimony supports counts 3, 4 and 5 of the indictment.

testimony is simply not the type of evidence that impairs the integrity of the Grand Jury process. *See People v. Goetz*, 68 N.Y.2d 96, 116 (1986); *People v. Suarez*, 505 N.Y.S.2d 728, 862 (2d Dept. 1986); *People v. Williams*, 298 A.D.2d 535 (2d Dept. 2002).

5. In *Goetz*, damaging impeachment material came to light after the indictment was filed. The trial court dismissed the indictment based on *People v. Pelchat*, 62 N.Y.2d 97 (1984) because the court held that the impeachment material, which the prosecutor only learned of after indictment, strongly indicated that two witnesses had perjured themselves. The Court of Appeals reversed, noting that, unlike in *Pelchat*, the witnesses had not recanted any of their testimony. All that had come to light was hearsay testimony that conflicted with part of one witness's testimony. The Court stated, "There is no statute or controlling case law requiring dismissal of an indictment merely because, months later, the prosecutor becomes aware of some information which may lead to the defendant's acquittal." *People v. Goetz*, 68 N.Y.2d at 116. Though the defendant does his best to "shoehorn" the facts of this case into the *Pelchat* analysis, the facts here are clearly on point with those in *Goetz*, and dismissal is therefore unwarranted.

6. Nor were the People required to present exculpatory evidence to the Grand Jury. As we stated in our September 12, 2018 response, the Court of Appeals held in *People v. Lancaster*, 69 N.Y.2d 20, 25-26 (1986):

> [t]he People generally enjoy wide discretion in presenting their case to the Grand Jury and are not obligated to search for evidence favorable to the defense or to present all evidence in their possession

> that is favorable to the accused. In the ordinary case, it is the defendant who, through the exercise of his own right to testify and have others called to testify on his behalf before the Grand Jury (CPL 190.50[5][6]), brings exculpatory evidence to the attention of the Grand Jury. Except to the limited extent that CPL 190.50 (5)(6) gives the accused the right to present such testimony, the Grand Jury proceeding is not intended to be an adversary proceeding. The Grand Jury and the petit jury are different bodies with different functions, and the People do not have the same burden of proof before the Grand Jury (CPL 190.65[1], on evidence submitted by the People, Grand Jury must find reasonable cause to believe accused committed a crime) as they have before the petit jury (CPL 300.10[2], on evidence submitted by People, petit jury must find proof of guilt beyond a reasonable doubt). Neither do the People have the same obligation of disclosure at the Grand Jury stage as they have at the trial stage.

People v. Lancaster, 69 N.Y.2d 20, 25-26 (1986)(citations omitted). *See also People v. Diaz*, *938* N.Y.S.2d 8, 10-11 (1st Dept. 2012); *People v. Williams*, 298 A.D.2d 535 (2d Dept. 2002); *People v. Suarez*, 122 A.D.2d 861 (2d Dept. 1986).

7. The defendant's myriad arguments in support of the dismissal of counts one through five all boil down to the claim that the new information that led to the dismissal of count six must somehow have impaired the integrity of the entire grand jury process, requiring the dismissal of every count. The law, however, is clear and to the contrary.

8. The Court of Appeals has held that the analysis of this issue requires a two-pronged test. The first is that the integrity of the Grand Jury was impaired, and second is that the defendant may have been prejudiced. CPL 210.35(5); *People v. Darby*, 75 N.Y.2d 449, 455 (1990). The first prong is a "high test" and dismissal is an "exceptional

remedy." *People v. Darby*, 75 N.Y.2d at 455; *People v. Davis*, 938 N.Y.S.2d 8, 10 (1st Dept. 2012). Where there is no evidence that a prosecutor acted knowingly, there is no impairment of the Grand Jury process or prejudice to the defendant where an indictment is not based entirely on false evidence. *Goetz*, 68 N.Y.2d at 116 (1986); *People v. Hansen*, 95 N.Y.2d 227, 232 (2000); *People v. Crowder*, 843 N.Y.S.2d 37, 38 (1st Dept. 2007); *Davis*, 938 N.Y.S.2d at 11; *People v. Williams*, 163 A.D.3d 1422 (4th Dept. 2018).

9. Where a count of an indictment is based on false testimony and is dismissed, courts will not dismiss the remaining counts of the indictment that are supported by competent evidence. *People v. DeFreece*, 581 N.Y.S.2d 91 (2d Dept. 1992) (where witness recanted Grand Jury testimony supporting a sexual assault charge, court upheld separate count involving a separate victim because "the events involving the two victims were separate and the Grand Jury had to investigate and vote upon the facts of each on their own merits"); *see also, Williams*, 163 A.D.3d *at* 1422-23. In this regard, the defendant's reliance on *People v. Pelchat*, as discussed above, is misplaced since the counts dismissed in *Pelchat* rested *solely* on false testimony. Here, the remaining charges were supported by competent and ample evidence: evidence that was completely independent of the proof presented in support of count six.

10. In particular, count six, and the testimony supporting it, did not serve as a basis for either of the Predatory Sexual Assault charges. A review of the Grand Jury minutes will reveal that count six was presented as a completely separate charge, and

that the Grand Jury was clearly and strictly instructed to treat it as such. The Grand Jury is presumed to follow the legal instructions it is given. *People v. Morales*, 76 N.Y.S.2d 682, 687 (4th Dept. 2018); *see also, People v. Johnson*, 625 N.Y.S.2d 892 (1st Dept. 1995). Count six was clearly delineated and separated from the rest of the indictment, as was reflected in the People's instructions. In short, there is no evidence that anything related to the presentation or the instructions on count six could reasonably have affected the Grand Jury's determination related to the rest of the indictment.

11. The defendant makes a further attempt to avoid this conclusion by repeating the arguments from his first motion to the effect that the People were required to introduce detailed emails relating to CW2[2] and straining to tie that issue to the disclosures relating to count six. To this end, the defendant repeats his conclusory claim that a woman who has been sexually assaulted would never continue to engage with her attacker after the assault. Again, a review of the Grand Jury minutes will demonstrate that the People provided full, accurate and fair evidence supporting the remaining counts of the indictment. The People were not required to present any additional evidence to the Grand Jury, and the defendant made no request that the Grand Jury hear any particular evidence. The dismissal of count six does not somehow change this legal reality.

[2] Defendant refers to this complaining witness as CW1 in his motion papers.

12. The defendant next makes a series of highly speculative arguments relating to certain conduct by Detective Nicholas DiGaudio that was described in two disclosures made by the People. The first disclosure related only to count six and, for the reasons described above, there is no reasonable possibility that such conduct affected the rest of the indictment. The second disclosure related to CW2. Here, the conduct in question occurred after the indictment and the disclosure did not involve facts that were in any way relevant to evidence presented to the Grand Jury. Again, a review of the Grand Jury minutes will reveal that this conduct in no way affected the evidence that supported the remaining counts of the indictment.

13. The defendant next suggests that the Detective's conduct be imputed to the People and the prosecutor, so that he can argue that the prosecutor knowingly presented false information to the Grand Jury. Again, the disclosures do not, in the first place, demonstrate that the testimony supporting count six was false, and the People, who were unaware of the information in the disclosures until after the Grand Jury presentation was voted, were under no obligation to present such information to the Grand Jury. As discussed above, the evidentiary and disclosure standards that apply to the Grand Jury differ from those that apply at trial, People *v. Lancaster, supra*, and it is clear that courts do not apply the *Brady* rule relating to a prosecutor's constructive knowledge of exculpatory information possessed by the police to the analysis of whether prosecutorial misconduct affected the integrity of the Grand Jury.

14. For instance, in *People v. Johnson*, the First Department approved a trial court's refusal to dismiss the indictment that was based at least in part on perjurious testimony of a police officer. *People v. Johnson*, 628 N.Y.S.2d 672, 674 (1st Dept. 1995). In its decision, the trial court specifically noted that the prosecutor was unaware that the testimony was false at the time. *People v. Johnson*, 591 N.Y.S.2d 325 (Sup. Ct. N.Y.Co. 1992). *See also People v. Figueroa,* 561 N.Y.S.2d 428 (1st Dept. 1990) (perjured testimony of police officer did not invalidate indictment where prosecutor had no reason to know testimony was false at the time and there was ample other evidence to support the indictment)[3]. Indeed, even a prosecutor's direct knowledge of, and failure to correct, false testimony in a Grand Jury does not lead an automatic finding that the Grand Jury was so impaired and the defendant so prejudiced as to warrant dismissal. *See, e.g., People v. Hagmann*, 553 N.Y.S.2d 908 (3d Dept. 1990). The information in the disclosures at issue here do not demonstrate that any testimony was false, and even if they did, the People were not aware of this evidence at the time of the Grand Jury presentation. As we have demonstrated, and as a review of the Grand Jury minutes confirms, there is no possibility that this issue in any way impaired the integrity of the Grand Jury or prejudiced the defendant.

[3] Interestingly, the defendant cites this same case. However, he completely ignores the court's language that is actually applicable to the issue of this motion and quotes irrelevant language about standards applicable at trial. *See Defendant's supplemental motion,* at 25. Notably, though the appellate court ordered a new trial, it specifically held that the false testimony at issue did not require dismissal of the Indictment. This underscores the very different purposes of a Grand Jury proceeding versus a trial, and the very different standards that are applicable to each.

15. Finally, the defendant claims that he has developed (in the form of a text message to the defendant) evidence that Detective DiGaudio could have improperly influenced the testimony of CW1. This argument is based on pure speculation (in fact there is no evidence that CW1 ever even met the detective): speculation which has no bearing on the integrity of the grand jury presentation. As such, there is no hearing necessary here; in truth, the only reason the defendant wants a hearing is to provide a public circus that will further the public relations campaign the defendant has been waging from the outset of this case.[4] There are no facts that could be determined at a hearing that would be relevant to the evaluations of the sufficiency of the remaining counts of the indictment.

THE PREDATORY ASSAULT CHARGES

16. It is axiomatic that "the starting point in any case of [statutory] interpretation must always be the language itself, giving effect to the plain meaning thereof." *People v. Golo*, 26 N.Y.3d 358, 261 (2015). If the plain words of the statute "have a 'definite meaning, which involves no absurdity or contradiction, then there is no room for construction and courts have no right to add or take away from the meaning.'" *People v. Roberts*, 31 N.Y.3d 406 (2018), *citing People v. Robinson*, 95 N.Y.2d 179, 182 (2000). In other words, "when the statutory language is clear and unambiguous, it

[4] Defendant's desire to try this case in the media is evident not only from his request for a "hearing," and his attachments designed to publicly air a one-sided view of the relationship between CW2 and the defendant, but also his misplaced reference to a dismissed case from three years ago and his attachment of a settlement-driven letter from a complainant who has no part in this litigation.

should be construed so as to give effect to the plain meaning of the words used." *People v. Finnegan*, 85 N.Y.2d 53, 58 (1995) (citations omitted). Courts "are not to legislate under the guise of interpretation." *Id.*

17. When interpreting the plain meaning of a statute, courts must examine the words used as well as what the legislature excluded. It is well established that "the failure of the Legislature to include a substantive, significant prescription in a statute is a strong indication that its exclusion was intended." *Id. See also People v. Tychanski*, 78 N.Y.2d 909 (1991) ("[T]he failure of the legislature to include a matter within a particular statute is an indication that its exclusion was intended."). As stated in section 74 of McKinney's Consolidated Laws of New York:

> A court cannot by implication supply in a statute a provision which it is reasonable to suppose the Legislature intended intentionally to omit; and the failure of the Legislature to include a matter within the scope of an act may be construed as an indication that its exclusion was intended.

18. Therefore, when interpreting a statute, courts must rely on the plain meaning of the text, giving weight to the words used and excluded content. To do otherwise is to improperly legislate rather than apply the law. With these well-established doctrines in mind, the People turn to the two counts of Predatory Sexual Assault charged in the above-referenced indictment.

19. The defendant is charged with two counts of Predatory Sexual Assault pursuant to Penal Law § 130.95(2). This offense is defined as follows:

> A person is guilty of predatory sexual assault when he or she commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article and when ... he or she has engaged in conduct constituting the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, against one or more additional persons.

20. Under the "plain meaning" of the statute, a defendant is guilty of subsection two of Predatory Sexual Assault when he commits an enumerated offense against one person and "has engaged in conduct constituting" an enumerated offense "against one or more additional persons." There is absolutely nothing in the plain language of the statute creating a temporal element. Instead, subsection two of Predatory Sexual Assault focuses solely on the number of victims; specifically requiring that the defendant assault two or more people.

21. If the legislature had intended to impose a temporal element to the offense, nothing would have prevented it from explicitly doing so. Indeed, it would have been as simple as inserting the word "*previously*" to make the statute read: "and he or she has *previously* engaged in conduct constituting" an enumerated offense "against one or more additional persons." The legislature's omission of a temporal element is a strong

indication that the exclusion was intentional. Therefore, the plain meaning of the statute does not include a temporal element and the Court should not read such a requirement into the statute.

22. The omission of a temporal requirement in subsection two is particularly stark given subsection three of the Predatory Sexual Assault statute. A person is guilty of subsection three when he commits one of the enumerated offenses "and when . . . he or she has *previously* been subjected to a conviction for a felony defined in this article, incest as defined in section 255.25 of this chapter or use of a child in a sexual performance as defined in section 263.05 of this chapter." P.L. § 130.95(3) (emphasis added). The plain language of subsection three thus explicitly requires a temporal element by necessitating that a defendant "has previously been" convicted of an enumerated offense. The use of the word "previously" in subsection three and its omission from subsection two shows a deliberate choice by the legislature to include a temporal element in one subsection but not the other.[5]

23. Therefore, the plain language of the Predatory Sexual Assault statute focuses solely on the number of victims at the time of charging and does not impose a temporal element. Given that focus, there is no bar to charging one count of Predatory Sexual Assault for each victim. To hold otherwise would send the message that the

[5] *See also,* P.L. §125.27(1)(a)(ix); P.L. §120.04(3)(5); P.L. §120.04-a(3)(5); P.L. §125.13(3), and P.L. §125.14(3)(6).

first victim's assault is somehow less significant than those of subsequent victims, simply because she was unfortunate enough to be the first. Such a reading is absurd based on the plain language of the statute and offensive to women who experience sexual abuse at the hands of repeat offenders. It also gives the most heinous type of sexual predators a pass for their first victims, suggesting that their actions towards these women are not as serious and somehow less significant. Instead, the plain language of this statute makes clear that it targets repeat offenders and is designed to penalize their conduct. It has no temporal element and the defendant can be charged for one count of Predatory Sexual Assault for each victim and enumerated offense.

24. As the plain language of the statute is clear, there is no need to consider the legislative history of the bill. Nevertheless, an examination of that history underscores the intent to omit a temporal element from section two. In passing section 130.95, the legislature sought to prohibit particularly egregious sexual conduct and increase penalties for the most heinous sexual offenders. *See* Legislative History (Attachment A). As Senator Morahan stated during the introduction of the Predatory Sexual Assault bill:

> Today, we're going to strengthen the penalties by creating these new felonies. These will cover such crimes as when they cause serious physical injury to the victim uses or threatens the immediate use of a dangerous instrument, or if he or she commits a Class B violent felony sex offense against more than one person, or he or she has previously been convicted of a felony sex offense.

25. Senator Morahan's statements mirror the plain language of the statute and make clear that the legislature intended to penalize persons who commit violent sexual offenses against multiple persons without requiring a temporal element. In other words, the statute focuses on repeat offenders without requiring proof of the order in which such assaults took place.

26. More importantly, adding a temporal requirement to the statute would create significant loopholes allowing sexual predators to avoid a Predatory Sexual Assault charge under certain factual circumstances. For example, imagine a scenario when a suspect rapes two unconscious persons on the same date and time. While the actual penetration could not occur at the same time, the People would likely be unable to prove which person was attacked first. Should the Court adopt the defendant's construction of the statute, the individual committing such offenses would be immune from the Predatory Sexual Assault charge even though he or she committed multiple qualifying offenses against "two or more persons" that could not have occurred at the same time. Another such example involves multiple victims and multiple suspects. Consider the factual scenario when two women are raped by two offenders during one incident. If the women can articulate that both suspects committed forcible rape against them but are unable to state which suspect assaulted them in which order, the suspects would be immune from the charge, obviously contrary to the words of the statute itself and the intent of the legislature in enacting it.

27. Another example of the absurdity of including a temporal element involves instances where victims can only identify a range of dates during which the crime occurred, and the dates for each victim overlap with each other. For example, if a defendant committed an enumerated offense against a person known to the Grand Jury on a date between January 1, 2018 and January 30, 2018, and he committed another enumerated offense against a second person known to the Grand Jury on January 15, 2018, these crimes would have occurred on different dates making it impossible that these crimes occurred at the same time. Considering this, one of the enumerated offenses occurred before the second. However, as the date range of count one overlaps with the date of the offense against the other, requiring the People to prove a strict sequence of events would make the defendant immune from the charge or require one of the offenses to be reduced from Predatory Sexual Assault to the underlying enumerated offense. Such a reading defies the plain meaning and legislative intent of the statute by emphasizing the sequence of events over what the provision actually prohibits—the violent sexual assault of multiple victims. Moreover, it would shield the defendant and other repeat and predatory sexual offenders based on a technicality deliberately excluded from the plain meaning of the statute.

28. The defendant relies on *People v. Hairston*, 35 Misc.3d 830 (Sup. Ct. Kings County, Mar. 16, 2012) as a basis for his motion. *Hairston*, however, is an outlier decision of a single trial court. This decision has absolutely no precedential authority

for this Court. More importantly, the *Hairston* court incorrectly interpreted the Predatory Sexual Assault statute by adding a temporal element instead of relying on the plain language of the text. In its decision, the Supreme Court in Kings County stated "it should be noted that the temporal implication of the language of Penal Law §130.95(2) must be recognized when charging the crime." In reaching this decision, the Court treated the commission of the first enumerated offense as an "aggravating factor" to the subsequent assault. For the reasons articulated above, this decision fails to rely on the plain meaning and legislative intent of the statute. The Court therefore improperly legislated criminal conduct under the guise of statute interpretation and this Court should avoid the same error.

29. The defendant also relies on *People v. Lancaster*, 41 N.Y.S.3d 129 (3d Dept. 2016), claiming that, in *Lancaster*, the Appellate Division "specifically" endorsed *Hairston*. The court, however, did no such thing. Instead, the defendant's brief makes it appear that the court in *Lancaster* endorsed *Hairston* by sandwiching a quote—most likely taken from the *Lancaster* defendant's appellate brief—in between citations to the Appellate Division's opinion in *Lancaster*. *See* Defendant's Supplemental Motion at 33.[6] In reality, the Third Department did not mention *Hairston* at all. Presumably, the defendant believes the court endorsed *Hairston* because it used the phrase "temporal

[6] It is difficult to know where the defendant's quoted language comes from. This may be why he offers to provide some unnamed "materials" to the Court upon request.

implications." However, the *Lancaster* court went on to state that the trial court's instruction to the jury was proper because:

> County Court specified that the jury first had to "[find] . . . defendant guilty beyond a reasonable doubt of either criminal sexual act in the first degree, rape in the first degree or aggravated sexual abuse in the first degree against one alleged victim" and, second, find defendant guilty of one of those crimes against "a different, separate victim." County Court's instructions made clear that the jury had to preliminarily find defendant guilty of one of the enumerated crimes before finding him guilty of one of the same crimes against a separate, subsequent victim, thus addressing the inherent "temporal implications" of the predatory sexual assault statute.

People v. Lancaster, 41 N.Y.S.3d at 135. Clearly, if the court meant to endorse the holding in *Hairston*, it would have done so directly. Instead, it held that the only temporal requirement of the statute applied to jury deliberations: that the jury had to first find the defendant guilty of one enumerated offense before considering whether the defendant committed another enumerated crime against a second person. The *Lancaster* opinion supports the plain reading of the statute, that there is no requirement that one enumerated offense preceded any others.

30. Instead of following *Hariston*, a case with no binding authority, the Court should rely on the long-standing rules of statutory interpretation requiring justices to rely on the plain language and legislative intent of statutory provisions. Of course, even if the Court is inclined adopt the defendant's interpretation in contradiction with the plain meaning of the text, dismissal of both Predatory Sexual Assault counts is not

warranted. Under such a scenario, the defendant would remain properly charged with the second count of Predatory Sexual Assault.

31. Finally, P.L. §130.95(2) is not unconstitutionally vague. The defendant describes at length the relevant law on the issue of unconstitutionally vague statutes, but fails thereafter to apply it to the facts of this case. Instead, he makes a conclusory pronouncement that, if this Court rules there is no temporal requirement, then there are two ways to interpret this statute, and it is somehow therefore impermissibly vague. As discussed above, however, if the Court holds—correctly—that there is no temporal requirement between the enumerated offenses, there is only one way to interpret this statute: that it requires that a defendant commit conduct constituting enumerated offenses against two more people. This is clear, simple, unambiguous and puts defendants on notice as to exactly what conduct is prohibited.

Defendant's Remaining Claims are Without Merit

32. In his latest motion, the defendant repeats his earlier argument that prosecutorial misconduct and other evidentiary and presentational errors rendered the indictment constitutionally defective. As this response and the Grand Jury minutes demonstrate, these arguments again must fail. A review of the Grand Jury minutes will reveal that evidence was presented properly and with correct legal instructions. The defendant also seeks the disclosure of all communications between Detective DiGaudio and the remaining complaining witnesses and any potential *Molineux* witnesses. The

People are aware of their continuing *Brady* and *Giglio* obligations. Outside of those obligations, the discovery of those materials is premature for the reasons delineated in the People's original motion response.

Wherefore, it is respectfully requested that, except as consented to herein, defendant's motion be denied.

Dated: New York, New York
November 19, 2018

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SENATOR ROBACH: Madam President, if we could now proceed to Calendar 2209, please.

ACTING PRESIDENT LITTLE: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 2209, Senator Morahan moves to discharge, from the Committee on Codes, Assembly Bill Number 8939A and substitute it for the identical Senate Bill Number 8459, Third Reading Calendar 2209.

ACTING PRESIDENT LITTLE: The substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 2209, by the Assembly Committee on Rules,

Assembly Print Number 8939A, an act to amend the Penal Law and the Correction Law.

ACTING PRESIDENT LITTLE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT LITTLE: Senator Morahan, to explain his vote.

SENATOR MORAHAN: Thank you, Madam President.

This bill creates a new Class A-II felony -- actually, two of them -- for predatory sexual assault.

Sometime back, in Florida, a young girl by the name of Jessica Lunsford was abducted right under a TV camera, taken away and murdered. This young lady had no chance.

But the sexual predator, the murderer, who's now under the sentence for murder, under conviction, when he was convicted had previously committed a sexual assault as we are now creating today.

If he had been convicted under that on one of his prior assaults which he did commit, he would not have been on the streets to abduct this young kid.

And therefore, today, we're going to strengthen the penalties by creating these new felonies. These will cover such crimes as when they cause serious physical injury to the victim or uses or threatens immediate use of a

dangerous instrument, or if he or she commits a Class B violent felony sex offense against more than one person, or he or she has previously been convicted of a felony sex offense, incest, or use of a child in a sexual

performed, or he or she commits a Class B violent felony sex offense and the victim is less than 13 years of age.

Upon conviction under these felonies, the person to be sentenced will be subject to life in prison with a minimum of not less than 10 years to 25.

So I think it's a good, strong bill. It's in answer to the Megan's Parents people who are out there lobbying for this bill. And hopefully we'll get this sort of measure across the United States.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you.

Senator Robach.

SENATOR ROBACH: Yes, Madam President, very briefly.

Let me thank Senator Morahan for this work. This is a bill that is very, very

much needed. There's no question we wish this didn't happen in our society. But as has been pointed out already, when you look at who the perpetrators of this are, rarely it is a new area. They're oftentimes involved in these types of activities repeatedly.

And we have a small sliver of our society wreaking a tremendous amount of damage, havoc, loss of life and long-term damage to women and children in our society.

So I feel that this bill will really not only go a long way to address that and get some of these people that need to be off the streets and away from people they can violate, but I also think it's going to restore a little bit more confidence into our system. Because this is one of the areas when children are abducted, when they're brutalized, killed, society and people often talk about this -- and this is an area where people frequently say to me, having worked in the criminal justice system prior to my time

in the Senate, how do we have a system that allows this guy to be out there violating once already and then be out there again now to not

only violate but take the next step and even take a life on top of that.

This will do both of those things, stop that from happening and, I also believe, be responsive to the public that wants that confidence restored in protecting our women and children.

So I applaud Senator Morahan in getting this bill through, and I think it will serve New Yorkers well and make them safe.

Thank you.

ACTING PRESIDENT LITTLE: Thank you.

Senator Skelos.

SENATOR SKELOS: Thank you, Madam President.

I want to congratulate Senator

Morahan on this great bill because really it caps off what I think has been an extremely successful year in this Legislature in terms of reforming and even making better our criminal justice system.

We started off this year in reforming Megan's Law to make sure that all violent Class 3, lifetime registration. Level

2, lifetime registration with an opportunity after 30 years to petition. And Level 1, 20 years requirement of registration.

We've moved along now with this piece of legislation, which is critically important to the whole picture.

We've expanded the DNA database so that we can capture some of these individuals that commit these horrendous crimes and hopefully prevent future crimes. And of course we've removed the statute of limitations on rape, which is really probably

the biggest injustice that has been in our criminal justice system.

So I think this year's criminal justice package is something that we can all be very proud of. And I'm very happy that Laura Ahearn, from Parents for Megan's Law, is here, because I know that she's been a strong advocate of reforming and improving Megan's Law.

This is something again, if I can repeat, all of us can go back to our respective constituents, to the parents within our communities, our law-abiding citizens, and

say: We've done right by you.

This has been a great year. And, Madam President, I'm happy to vote for Senator Morahan's bill.

ACTING PRESIDENT LITTLE: Thank you.

The Secretary will announce the results.

THE SECRETARY: Ayes, 61. Nays, 0.

ACTING PRESIDENT LITTLE: The bill is passed.

Senator Robach.

SENATOR ROBACH: Yes, Madam President. If we could go to the controversial reading of Calendar Number 62A, Calendar Number 2221, by Senator Bonacic.

ACTING PRESIDENT LITTLE: The Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 2221, by Senator Bonacic, Senate Print 8349A, an act to amend the Transportation Corporation Law.

SENATOR SCHNEIDERMAN:

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

HARVEY WEINSTEIN,

Defendant.

AFFIRMATION IN RESPONSE TO DEFENDANT'S SUPPLEMENTAL OMNIBUS MOTION

IND. NO. 02335/2018

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