SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CRIMINAL TERM, PART 81

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THE PEOPLE OF THE STATE OF NEW YORK

-against- **ATTORNEY'S REPLY AFFIRMATION**

HARVEY WEINSTEIN, **Ind. No. 2335/18**

Defendant.

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STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

BENJAMIN BRAFMAN, being an attorney at law, duly admitted to practice in the courts of New York, affirms the following statements to be true under the penalty of perjury:

1. I am the principal attorney in the firm of Brafman & Associates, P.C., attorneys for Defendant Harvey Weinstein in this matter. I make this affirmation in Reply to that of Assistant District Attorney Kevin J. Wilson, dated November 19, 2018 ("Response"), which was submitted in opposition to Mr. Weinstein's pending supplemental motion, dated November 5, 2018. Such motion seeks an order, pursuant to CPL §§ 210.20(1)(c), 210.20(1)(a), 210.25(3), and 210.35(5), dismissing the entire indictment, or particular counts thereof, as arising out of a

Grand Jury proceeding that was irreparably tainted and rendered defective by police misconduct, Lucia Evans' and most likely another complainant's false testimony and the District Attorney's failure to provide exculpatory emails to the Grand Jury (all counts), unsupported by legally sufficient evidence (Count One) or based on an unconstitutional statute (Counts One and Three).

2. This affirmation is made upon information and belief. The sources of my information and the grounds for my beliefs are discovery material provided by the District Attorney, the results of investigative efforts undertaken by the defense to date, conversations had with numerous individuals, and those other documents and materials comprising counsel's file in this matter, including thousands of emails between Mr. Weinstein from and to virtually every woman who has made a public claim of sexual assault, including the two remaining complainants in this case. As we explain below the emails demonstrate that these women who now allege sexual assault by Mr. Weinstein have for years engaged in loving and often intimate conversations with him before and after the date of the alleged assault, conversations with a man they now claim to have sexually assaulted them.

3. Not all the People's arguments warrant a reply. It is submitted that Mr. Weinstein's principal and supplemental papers adequately anticipated, and appropriately disposed of, those remaining responses not herein addressed, and any further comment would only invite unnecessary repetition.

PRELIMINARY STATEMENT

Simply put, because of the unprecedented and outrageous misconduct already documented in this case, this Court should properly give serious consideration to dismissal of this deeply flawed indictment, either for the legal reasons we have provided or so that the integrity of the criminal justice system can be restored. In the alternative, the Court must order an evidentiary hearing so that the full extent of the police and prosecutorial misconduct can be exposed.

A. INTRODUCTION

4. In the past several months, this case has taken a remarkable turn, as counsel and the Court have already been provided evidence establishing unprecedented misconduct by the Police Department, and the District Attorney, conduct intended to hide exculpatory information from the defense and thereby improperly influence the case against Mr.

Weinstein. Moreover, as discussed below, counsel's continuing investigation has revealed substantial additional exculpatory information that has also been withheld from Mr. Weinstein—including the fact that one of the two remaining complaining witnesses, CW-1, may have attempted to fabricate a "prompt outcry" witness, years after the alleged assault. As a result of the misconduct unearthed to date, it should be evident to this Court that Mr. Weinstein is facing the possibility of life imprisonment based on a flawed and biased investigation and Grand Jury proceeding intentionally tainted by grave police misconduct and perjurious testimony countenanced by the People and the Police Department.

5. Moreover, it has now become even more clear, as documentary evidence only recently produced has revealed in this case, that the complaining witnesses in the remaining charged counts, much like a number of the civil plaintiffs suing Mr. Weinstein for money, have had ongoing, consistently congenial relationships with Mr. Weinstein in the years after they claim they were allegedly assaulted by him. This proof is supported by extensive evidence, including thousands of emails (that counsel has now reviewed) between Mr. Weinstein and many of his

alleged accusers, including his most vocal accusers, proof that demonstrates beyond question the fundamental falsity of the sexual assault claims being made against him.

6. Even the emails relating to the two remaining complaining witnesses in this case were withheld from the Grand Jury in an effort to hide the true nature of their relationship with Mr. Weinstein and, as a result, the Grand Jury was prevented from properly assessing their credibility.

7. The People's response, while addressing some of the technical legal issues raised in Mr. Weinstein's motions (albeit unconvincingly), either dismiss out of hand or fail to address at all the overarching constitutional and ethical issues relating to this prosecution, namely, that Mr. Weinstein was improperly indicted based on a Grand Jury presentation that was tainted by police misconduct (including withholding exculpatory evidence and tampering with witnesses and evidence), false testimony from a complaining witness and the District Attorney purposely withholding exculpatory information from the Grand Jurors in order to secure an indictment. Nevertheless, these concerns—which should be of paramount importance in any case (let alone a case

carrying a maximum sentence of life imprisonment)—seem not to bother the District Attorney at all. We submit, that Harvey Weinstein, a man vilified by a vicious media assault caused a case that was never critically examined or investigated, the falsity of the serious allegations being made as more fully discussed below were forced on the District Attorney by, a collective media that unfortunately placed unprecedented pressure on the District Attorney's Office and the Police Department to prosecute Mr. Weinstein.

8. To be clear, Mr. Weinstein is not asking this Court to dismiss the Superseding Indictment based only on some legal flaws and technicalities. Rather, Mr. Weinstein also seeks dismissal because the Police Department **and** the District Attorney's Office have consistently violated his constitutional rights to a fair Grand Jury, by irreparably tainting the Grand Jury proceedings through purposeful misconduct, false testimony and the withholding of exculpatory evidence that seriously undermined the integrity of those proceedings.

9. With great respect for the personal integrity and independence of this Court, we submit that fundamental fairness requires a dismissal of this tainted case that quite frankly portends a

doomed prosecution that will be preceded by an ugly and embarrassing public hearing that simply cannot be avoided. Indeed, should the Court dismiss this corrupted indictment without prejudice, counsel for Mr. Weinstein believes that with the additional evidence we have now gathered, no fair Grand Jury would ever again indict Mr. Weinstein for the crimes for which he is now wrongfully charged.

B. MR. WEINSTEIN'S REQUEST FOR AN EVIDENTIARY HEARING

10. Rather than seriously addressing Mr. Weinstein's grave concerns about police misconduct that are for the most part conceded, the District Attorney instead, flippantly suggests that counsel's request for an evidentiary hearing to address these issues is merely an attempt by Mr. Weinstein to create a "public circus." We respectfully remind this Court and the People that it is the District Attorney's Office that has accused Detective DiGaudio of lying to them and quite possibly the Grand Jury by acting unethically by withholding exculpatory evidence from the prosecutors and the Grand Jury and by also telling at least one other witness to erase possible evidence from her phones before producing those phones to the People.

11. Moreover, we also respectfully remind the Court and the People that Detective DiGaudio and the Police Department maintain that Detective DiGaudio provided the exculpatory evidence to the lead prosecutor in this case in front of yet another police officer—who, upon information and belief, was Detective DiGaudio's supervisor Sergeant Keri Thompson—and that it was the prosecutor who unethically withheld this information from the Grand Jury and it is they who are now lying to the Court to cover up their malfeasance.

12. Consequently, to the extent that there is a "public circus" in this case as the People argue, it stems from the unprecedented and sad reality that the District Attorney's Office and Police Department are publicly calling each other unethical liars, while Mr. Weinstein's freedom hangs in the balance, having been indicted by a purposefully corrupted Grand Jury.

13. Instead of pointing fingers at each other, counsel for Mr. Weinstein asks this Court to determine the truth. There can be no doubt that there has been misconduct in this case; the only questions that remain are what the extent of the misconduct is and how deeply it

undermined the integrity of the Grand Jury that indicted Mr. Weinstein on charges carrying a penalty of life imprisonment.

14. These issues can only be resolved by a dismissal of the Indictment now or at an evidentiary hearing. Absent this Court's intervention, the only parties investigating the misconduct in this case will be the Police Department (accused by the District Attorney of actually committing the misconduct) and/or the District Attorney's Office (accused by the Police Department of being notified of but ignoring the exculpatory information and thereby committing grave misconduct). Far from a "public circus," Mr. Weinstein is requesting an evidentiary hearing because it is absolutely necessary so that the Court—the only truly independent fact-finder in this case—can assess the extent of the misconduct, how it impaired the integrity of the Grand Jury investigation and why the only reasonably prudent decision would be to stop this chaos now and, if the People can do it again fairly and legally, allow a re-presentation to a new Grand Jury of any credible evidence of wrongdoing, which may or may not exist in this case.

15. As noted in counsel's November 5, 2018 affirmation, at a hearing, the Court would need to hear testimony from Detective

DiGaudio, ADA Joan Illuzzi-Orbon and Sergeant Keri Thompson, who was purportedly present when Detective DiGaudio informed ADA Illuzzi-Orbon about the witness' information regarding Lucia Evans' false sexual assault claim.

16. The Court would also need to hear from Lucia Evans herself **and**, most importantly, the **independent witness** who alleges that Ms. Evans lied about her claim of sexual assault by Mr. Weinstein. This witness would also need to testify about her interactions with Detective DiGaudio, who according to the witness advised her that **"less is more"** once he learned that her truthful testimony would contradict Ms. Evans' claims. The Court would also need to hear from the alleged rape victim (CW-1) to determine the extent to which Detective DiGaudio's attempt to have her clean up her phones further exposes another level of the police misconduct which occurred here.

17. Finally, the Court would also need to hear from Michael Osgood, former chief of the NYPD's Special Victims Unit ("SVU"), who has publicly claimed to have personally interviewed all of the potential witnesses against Mr. Weinstein together with Detective DiGaudio. Notably, not only was Mr. Osgood recently removed as chief of the SVU

and transferred to Staten Island, it has now been reported that Osgood has resigned from the NYPD.

18. Simply put, counsel is not aware of any other sex crimes case in recent memory where the integrity of the investigation and the prosecution has been so severely compromised by evidence that is not even contested. Thus, this Court need not determine "if" there was corrupt misconduct, your Honor need only determine how extensive it was and how irreparably compromised this case now is.

i. Additional *Brady* Violations

19. The need for this evidentiary hearing is made even more pressing by information that counsel has only recently discovered demonstrating that the Police Department has withheld yet even more exculpatory information in this case.

20. Specifically, as part of counsel's ongoing investigation, the defense has recently located and interviewed a woman who was an extremely close friend of CW-1 before and after the alleged March 2013 rape.[1] In the defense interview, the witness stated, in substance, that

[1] The close nature of the relationship can be established by pictures that counsel has seen of CW-1 and the witness together in NYC, during the precise time period alleged in the indictment, as well as numerous

CW-1 and Mr. Weinstein were "hooking up" for a "very long time" and that she never heard CW-1 say anything bad about Mr. Weinstein during this time period, including March of 2013 when she CW-1 and Mr. Weinstein were all in New York together and also in 2015 when CW-1, Mr. Weinstein and the witness went out socially together. In fact, the witness stated that CW-1 actually spoke very highly of Mr. Weinstein. The witness also confirmed that she personally saw CW-1 and Mr. Weinstein "hanging out socially" on at least five separate dates, including dates subsequent to March 2013, when the claimed assault in NYC is alleged.

21. Perhaps most important, the witness further stated that the **first** time she ever heard CW-1 claim anything inappropriate against Mr. Weinstein was this past year. Thus, after not hearing from her friend for more than two years following a disagreement, CW-1 called her sometime last year. According to the witness, CW-1 reached out to her—after not speaking to her for more than two years—and said to her that Mr. Weinstein had assaulted CW-1 a few years ago in New York. She then

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references to the witness in email communications between CW-1 and Mr. Weinstein.

asked the witness to assist CW-1 with the accusation she was making against Mr. Weinstein, presumably so as to serve as a prompt outcry witness.

22. The witness responded that CW-1 never ever told her that she was assaulted or raped by Mr. Weinstein. The witness further told CW-1 that she did not want to be involved with CW-1's allegations against Mr. Weinstein.

23. Even more critical is the fact that, at some point after this conversation, the witness advises that she was approached by a male NYPD detective who traveled to where she was living outside of New York to interview her. The witness told the detective that she knew that CW-1 and Mr. Weinstein had a close, intimate relationship, and that she never heard CW-1 ever claim that Mr. Weinstein assaulted her. The witness further informed the detective that CW-1 had recently tried to get the witness to involve and/or assist her in pursuing her allegations against Mr. Weinstein, but the witness declined to make up a story.

24. Despite obtaining this highly exculpatory information from this witness, the Police Department and the District Attorney's Office have never at any time provided it to counsel. This evidence is

particularly disturbing because it shows that CW-1 was possibly attempting to use this woman as a "prompt outcry" witness to support her claim against Mr. Weinstein even though the woman was not an outcry witness to any allegation of sexual assault.

25. Moreover, the fact that CW-1 did not tell the witness about the rape when it allegedly happened in March 2013 in New York, is even more telling because counsel can prove, through pictures taken days before and after the alleged rape, that CW-1 and the witness were both spending considerable time together in New York City while they both visited the city at that time. Indeed, these photos are dated within days of the alleged rape in March 2013.[2]

26. Taken as a whole, this witness' statements corroborate that Mr. Weinstein and CW-1 were in a consensual, sexual relationship in March 2013, that CW-1 never claimed to her closest friend at the time that she was raped while they were all together in NYC and, most disturbingly, that CW-1 recently tried to enlist the witness who had

[2] Thus, knowing about the existence of the publicly posted photographs explains quite convincingly "why" CW-1 attempted to enlist the witness' help in trying to develop support for an untrue rape charge being made by CW-1, a woman who had a personal friendship and consensual, sexual relationship with Mr. Weinstein for years.

never heard her claim of any wrongful conduct, to assist her in going after Mr. Weinstein now, 6 years after their visit to New York City.

27. Counsel has also recently discovered yet another *Brady* violation, in that counsel has reason to believe that, shortly before Mr. Weinstein's arrest, the Police Department orchestrated a controlled call between an alleged victim and Mr. Weinstein, believing that Mr. Weinstein would incriminate himself. We have a good-faith basis to believe that Mr. Weinstein's statements during the call were completely exculpatory. To date, however, we have not been provided with the facts surrounding this call or the recording of Mr. Weinstein's exculpatory statement.[3]

28. These examples of hidden exculpatory materials are consistent with Detective DiGaudio's attempts to hide other exculpatory evidence in this case that caused his removal from the investigation. Furthermore, these additional examples show that the misconduct in this

[3] We previously requested that the District Attorney provide counsel with the *Brady* materials relating to this controlled call and we now also request all *Brady* material relating to the interview of CW-1's friend now disclosed.

case goes deeper than what the District Attorney's Office either already knows or is willing to admit to this Court.

29. The response from the District Attorney's Office, that they "are aware of their *Brady* obligations," does not work here. The defendant in this case should not be forced to rely on the District Attorney's statements or their investigation in determining the full scope of the misconduct which it has already conceded to have occurred here, especially where the Police Department has alleged that the District Attorney's Office is not representing the truth of what has occurred in this case. Accordingly, as argued in our motion to dismiss, an evidentiary hearing is proper and required.

ii. The Police Department's Unprecedented Campaign to Force the Prosecution of Mr. Weinstein

30. In evaluating the misconduct in this case and our request for an evidentiary hearing, or in the alternative a dismissal of the Indictment, this Court should not view Detective DiGaudio's alleged corrupt conduct in a vacuum. Rather, it is just another illicit step in the Police Department's public campaign to prosecute Mr. Weinstein using

whatever pressure on the District Attorney's Office they felt was necessary.

31. Thus, one of the first steps in this illicit and offensive drumbeat to criminally prosecute Mr. Weinstein, was the outrageous media campaign and pressure employed by the Police Department in an effort to force the District Attorney's Office to arrest Mr. Weinstein.

32. In what can only be described as unprecedented and offensive behavior, for many months before formal Grand Jury proceedings were even initiated, the then Chief of Detectives Robert Boyce literally and figuratively campaigned, often on the front page of the New York Post (*e.g.*, Exhibit 1: Cover, N.Y. Post, Nov. 4, 2017), publicly demanding the arrest and indictment of Mr. Weinstein for what he claimed to be a strong case involving Paz De La Huerta.

33. To achieve his desired result, Chief Boyce even went so far as to publicly discuss the ongoing sex crimes investigation—including publicly identifying the alleged complaining witness by name and even discussed the purported evidence he claimed to have gathered in the case, all the while, excoriating the District Attorney for not prosecuting Mr. Weinstein. In truth, after vetting Ms. De La Huerta's outlandish and

provably false claims, the District Attorney's Office rejected her as a witness based, in part, on evidence presented by Mr. Weinstein's counsel to the head of the District Attorney's Sex Crimes Unit, Martha Bashford, a seasoned, veteran prosecutor with impeccable professional experience.[4]

34. Although he failed with Ms. de la Huerta,[5] Chief Boyce's outrageous and unprecedented behavior publicly condemning the

[4] After her attempts to prosecute Mr. Weinstein failed, Ms. de la Huerta filed a $50 million-dollar civil lawsuit against Mr. Weinstein. Not surprisingly, Ms. De La Huerta, like several other women, decided to go after the money believing that Mr. Weinstein (or more accurately, his insurance policy) was a deep pocket. Unfortunately for virtually all of these women now alleging "assault," the actual evidence, including the universe of emails we have now reviewed, demonstrates beyond question that Mr. Weinstein had ongoing, consensual relationships with many of the accusers who now smell financial recovery, regardless of the untruthfulness or absurdity of their claims.

[5] Chief Boyce continues to try to influence the case against Mr. Weinstein with false information. Thus, in the Spring of 2018, Chief Boyce left the New York City Police Department to become a contributor for ABC News. Then on June 5, 2018, ABC News published an article titled *An insider's account of the NYPD investigation of Harvey Weinstein*. (Exhibit 2: June 5, 2018 Article.) This article relied on Chief Boyce as a contributor who shared his "first insider account of that seven-month investigation." Notably, although this article is replete with false information including the claim that CW-1 had worked for Mr. Weinstein for a year before the alleged March 2013 assault, the damage was done. In truth, CW-1 never worked for Mr. Weinstein or any of his companies; nevertheless, we submit that Chief Boyce included this false information in the article so as to create the fiction that Mr. Weinstein preyed upon women in the film industry. Why what Chief Boyce did (using confidential information

District Attorney's Office then pressured the Governor of New York to also publicly criticize the District Attorney about his handling of the Weinstein investigation, prompting him to appoint then New York State Attorney General Eric Schneiderman as a Special Prosecutor to investigate the Manhattan District Attorney's handling of the Weinstein investigation.

35. This public, humiliating and highly political action, counsel submits, was intended to further and unfairly push the District Attorney's Office into prosecuting Mr. Weinstein without first appropriately and fully investigating the credibility of the claims being made by the alleged victims. Once again, this outrageous and unprecedented rush to complete a Grand Jury presentation, resulted in the proceeding being deeply flawed and less than complete, with important witnesses not even questioned about email traffic between the accusers and Mr. Weinstein after the date of the alleged criminal conduct,

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gathered while a member of the NYPD) is not criminal or actionable is simply astonishing. Notwithstanding, neither the Police Department or the District Attorney's Office did anything in response to Chief Boyce's outrageous behavior.

and with that email traffic either ignored or simply not presented to the Grand Jury.

36. Adding fuel to this orchestrated political firestorm, the District Attorney's Office was then further pressured to indict Mr. Weinstein by a May 27, 2018 New York Times front-page story headlined *Harvey Weinstein's Arrest May Define Manhattan D.A.'s Legacy*. (Exhibit 3: James C. McKinley Jr., N.Y. Times, May 27, 2018.) The article went so far as to hypothesize Mr. Vance would be forced to resign; that his legacy would be permanently tarnished and his reputation destroyed, if he did not bow to the increasing media and police demands to arrest and successfully prosecute Mr. Weinstein.

37. Although the preliminary decision to arrest Mr. Weinstein may have already been made, this outrageous news story, we submit, unfairly pressured the District Attorney's Office to proceed with an Indictment and then a Superseding Indictment that has now been shown to be wrong and unsupported by credible evidence. It unfortunately allowed a prejudiced Grand Jury to deliver charges that were the product of a hurried and sloppy investigation, compromised by grave police misconduct and, sadly, by the failure of the District Attorney to properly

investigate even the most basic matters, such as securing the extensive and available correspondence between the alleged complaining witnesses and the person they claimed to have assaulted them.

38. On this issue, for example, we again suggest that rarely if ever have alleged complaining witnesses in a sex crimes case been allowed to testify before the Grand Jury without first being confronted with their own, personal correspondence between themselves and the accused; correspondence that certainly calls into question the "story" presented to a Grand Jury which was asked to indict a man with no prior criminal record for crimes carrying the potential for a sentence of life imprisonment. This is especially troublesome in this case where the allegations were for the first time made 14, 12 and 5 years after the claimed conduct occurred, and in one instance only after appearing for the first time at a scripted public press conference, orchestrated by a media savvy personal injury lawyer.

39. As but one example of this inept investigation, we look to CW-1's extensive email communications with Mr. Weinstein **after** he allegedly raped her in March 2013; as this email traffic was admittedly ignored by the People. By their own admission, the People elected not to

confront CW-1 with these emails nor did they allow the Grand Jury to read and confront CW-1 about these damning emails that reflect an ongoing, consensual sexual relationship with Mr. Weinstein for many **years after** the alleged offense.

40. Furthermore, as discussed below, the email communications between Mimi Haleyi and Mr. Weinstein in the years following the July 2006 alleged assault (that she never reported but first announced with great fanfare at a press conference) were also not provided to the Grand Jury. In all likelihood, the District Attorney never even confronted Ms. Haleyi with these emails that counsel for Mr. Weinstein only recently won the right to use as formal court exhibits but were always available to the NYPD and the District Attorney if they had only bothered to ask.

41. As of now, one of the original three alleged victims has already been removed from this case by the District Attorney and the Court and each of the two remaining alleged victims are now compromised by the revelation of documentary and witness evidence reflecting their very own words. The actual evidence of malfeasance by the complaining witnesses and the prosecution team revealed thus far, undermines the integrity of

this case in a way that has rarely ever been available for presentation to a trial court on behalf of a defendant seeking dismissal of an indictment.

iii. Lucia Evans' False Testimony

42. Perhaps the best example, of the prejudicial errors that occurred because of a rushed Grand Jury presentation, is the false testimony provided by Lucia Evans. First, instead of conducting its own independent investigation, the District Attorney claims to have relied on the Police Department—the same Police Department that had already demonstrated its desire to prosecute Mr. Weinstein at any cost. As a result, Detective DiGaudio we submit, did everything he could to bury an independent witness who knew the truth and who would have truthfully testified before the Grand Jury that Lucia Evans admitted to her that her sexual contact with Mr. Weinstein was consensual. Without any appropriate supervision, the police were able to orchestrate a cover-up to hide this exculpatory evidence by trying to convince the witness that "**less is more**."[6]

[6] It strains credulity to believe that, in this high-profile investigation, no one else in the Police Department (including his supervisors or his partner) knew that Detective DiGaudio was speaking to this witness. This is particularly true because, as noted in the June 5, 2018 ABC News article to which Chief Boyce contributed, every time Detective DiGaudio

43. Notwithstanding the uncovered information about Lucia Evans, the People, in their motion response, boldly assert that "the information disclosed to the defendant by the People does not establish that the testimony that supported Count Six was false" because "[a]t worst, it creates an issue of fact as to [Lucia Evans'] credibility. (Response at ¶ 4.) In other words, the District Attorney still argues that Lucia Evans testified truthfully in the Grand Jury, but nevertheless dismissed Count Six of the Indictment!

44. While this position may be convenient for the People now assert, the People's position faces two obstacles. First, the People, after conducting their own weeks-long investigation, decided to take the highly unusual step of consenting to dismiss Count Six. That count was based solely on Lucia Evans' testimony. Counsel submits that the District Attorney would not have taken such an extreme step in such a high-

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and his partner returned to New York from conducting interviews their "first stop was to debrief Boyce and Deputy Chief Michael Osgood, Command Officer of the Special Victims Division." (Exhibit 2 at p. 2.) Consequently, by his own words, Chief Boyce confirms that others in the Police Department were supervising Detective DiGaudio's actions in this case.

profile case unless they had grave concerns about the truthfulness of her testimony.

45. Second, the credibility issues surrounding Lucia Evans do not stem only from her friend's statement (suppressed by Detective DiGaudio) that Lucia Evans told her that Evans' sexual interaction with Mr. Weinstein was consensual. As noted in the People's first *Brady* letter, the People's investigation into Lucia Evans and her claims also revealed a draft email that Lucia Evans had written to her husband (then fiancé) in 2015. According to the prosecutor, the email:

> recounts the incident that is the subject of Count Six of the Indictment. The account describes details of the sexual assault that differ from the account the [Ms. Evans] has provided to our office. [Ms. Evans] has told our office that the inconsistencies may be the product of a flawed memory. [Ms. Evans] has also told our office that she permitted her husband to read the email sometime after it was drafted. [Ms. Evans] had previously told investigators in this case that she never disclosed to her husband the details of the sexual assault at issue.

(Brafman 11/5/18 Affirmation at ¶ 8.)[7]

[7] The People have refused to provide counsel with a copy of this draft email, arguing that there is no need to provide it now as Count Six has been dismissed. Because the People are now arguing that Ms. Evans' Grand Jury testimony was not false, the Court and counsel should be provided with this email to determine the extent to which Ms. Evans'

46. This draft email, coupled with the witness' statement, leads to the inescapable conclusion that Lucia Evans provided false testimony to the Grand Jury. As argued below, this prejudicial false testimony affected the entire Grand Jury proceeding and cannot be remedied simply by dismissing Count Six, especially now that the District Attorney's own ethical behavior is being challenged.

iv. Mimi Haleyi

47. Another key witness at this hearing will be Mimi Haleyi, the only other complaining witness in the Indictment against Mr. Weinstein besides CW-1. As noted in counsel's November 5, 2018 Affirmation, Ms. Haleyi continued to contact Mr. Weinstein after the alleged July 2006 assault as evidenced by a February 12, 2007 text message—more than seven months after the alleged incident—where Ms. Haleyi texted Mr. Weinstein's phone with the following message: **"Hi! Just wondering if u have any news on whether harvey will have time to see me before he leaves? x Miriam."** (Brafman 11/5/18 Affirmation at ¶ 16.)

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narrative in the email contradicted her Grand Jury testimony and further corrupted those proceedings.

48. As part of our continuing investigation however, we have now discovered additional communications from Ms. Haleyi to Mr. Weinstein in the years after she was allegedly assaulted. For example, on May 27, 2007, Ms. Haleyi wrote Mr. Weinstein's assistant to thank him for arranging for Ms. Haleyi to attend a movie premiere; even though she did not attend the showing, Ms. Haleyi wrote "**please let Harvey know the gesture was most appreciated**." (Exhibit 4: 5/29/07 Email.)

49. Ms. Haleyi also emailed Mr. Weinstein on June 27, 2008, noting that it was "**[g]reat to see [Mr. Weinstein] in cannes**" a few weeks earlier and went on to discuss a conversation they had three years earlier at the Mercer bar in New York. Far from being upset at Mr. Weinstein (as she claimed in her October 2017 press conference with her attorney Gloria Allred), Ms. Haleyi ended her email wishing Mr. Weinstein **"Lots of love."** (Exhibit 5: 6/27/08 Email.)

50. In yet another email, Ms. Haleyi laments that she has not seen Mr. Weinstein "in so long" and asks how he is doing. (Exhibit 6: 2/25/09 Email.) Ms. Haleyi then asks Mr. Weinstein to help her find a job before ending her email "hope you're super well" and signing off with **"Peace & love."** (*Id.*)

51. Although these messages demonstrate that Ms. Haleyi wished to continue seeing and communicating with Mr. Weinstein after the alleged assault, counsel has reason to believe that the Grand Jury was never shown these exchanges that would have given the Grand Jury reason to doubt Ms. Haleyi's account of her alleged assault. As noted in counsel's November 5, 2018 Affirmation, however:

> Counsel does not know whether the District Attorney knew about Mimi Haleyi's continued communication with Mr. Weinstein but decided not to inform the Grand Jury (as with CW-1) or whether Detective DiGaudio told Mimi Haleyi that "**less is more**" and made sure that Ms. Haleyi never told the District Attorney about the continued communication. This would not be surprising considering that, as disclosed by the District Attorney in its October 16, 2018 *Brady* letter, Detective DiGaudio was willing to tamper with evidence by telling CW-1 that she should delete everything she wanted to hide from the District Attorney before turning over her phone to the prosecutors. According to CW-1, Detective DiGaudio further encouraged her to delete evidence by telling her "**we just won't tell Joan [Illuzzi-Orbon]**."

(Brafman 11/5/18 Affirmation at ¶ 19.)

52. In its response, the District Attorney contends that counsel's argument is "based on pure speculation" and that "in fact there is no evidence that [Mimi Haleyi] ever even met the detective." We know, however, that Ms. Haleyi did not initially report her claim of assault to

law enforcement in 2006. Rather, she announced her allegation in an orchestrated press conference in **October 2017** by reading from a statement prepared by her attorney, Gloria Allred, **eleven years** after the alleged assault.

53. It was only subsequently that Ms. Haleyi was in fact interviewed by members of the SVU, the unit that Detective DiGaudio was assigned to until his misconduct was discovered. Even assuming that Ms. Haleyi never met with Detective DiGaudio personally, this does not end the relevant inquiry. We know that Chief Michael Osgood of the NYPD's SVU claimed to have personally interviewed **all** of the potential witnesses against Mr. Weinstein along with other members of the SVU unit and of course we have a right to assume that Ms. Haleyi met with members of the District Attorney's staff before her Grand Jury appearance.

54. Given the Police Department's public, shameful campaign to force the District Attorney to prosecute Mr. Weinstein, it is incumbent on this Court—as the only independent fact finder in this case—to conduct an evidentiary hearing to determine whether the police misconduct that

has infected both Lucia Evans and CW-1 has also infected Mimi Haleyi as well.

55. It is simply inconceivable to believe that an experienced lawyer like Gloria Allred who represents Mimi Haleyi (and personally appeared in court here in NYC when Mr. Weinstein was arraigned) did not ask her own client if she ever attempted to contact Mr. Weinstein again after what she claimed to have been a vicious sexual assault. Nor do we believe that an experienced prosecutor like Ms. Illuzzi-Orbon did not make the same inquiry of Ms. Haleyi, especially after acknowledging that they had CW-1's emails but withheld them from the Grand Jury. We are either dealing with a high degree of incompetence, or worse: willful blindness, or a concerted effort to hide evidence that could very well clear Harvey Weinstein of untrue claims of sexual assault.

56. To be clear, counsel's request for an evidentiary hearing is not a "fishing expedition" hoping to find police or District Attorney misconduct to distract the Court from the other serious issues in this case. Rather, the misconduct issues are indisputable and already front and center in this high-profile case based on the District Attorney's own *Brady* letters. Without a hearing, however, neither the Court nor the

public can have any confidence about the scope of the police misconduct, exactly when the District Attorney's Office became aware of the misconduct and, most importantly, whether Mr. Weinstein's case has been handled properly and in accordance with the law.

C. CONCERNS RELATING TO *MOLINEUX*

57. Before addressing the specifics of the People's response, counsel would like to address one additional concern in this case. For months, the People have been threatening to file a motion with this Court to allow evidence at trial of other bad acts committed by Mr. Weinstein. Obviously, there would be no such *Molineux* motion should this Court dismiss the current indictment based on the irreparably tainted Grand Jury proceedings or as a matter of principle to help restore confidence in the fundamental fairness of this process.

58. Should any counts of the indictment survive Mr. Weinstein's motion to dismiss, however, then the People may try to file a *Molineux* motion. In doing so, counsel is concerned that, once again, the District Attorney will be relying on the Police Department's investigation into alleged assaults by Mr. Weinstein. Given the witness and evidence

tampering that took place in regard to the pending Indictment, counsel has reason to fear more of the same in the *Molineux* investigation.

59. This concern is elevated because, as part of counsel's investigation, the defense has found thousands of emails between Mr. Weinstein and many of those who have publicly claimed sexual assault either through civil litigation or the media. As with CW-1 and Mimi Haleyi, these emails would also demonstrate the fundamental falsity of the claims by any potential *Molineux* witnesses who have also had a continuing respectful and loving relationship with Mr. Weinstein *after* they were allegedly assaulted.

60. For example, a woman we now identify only as CW-4 has filed a civil suit publicly proclaiming that Mr. Weinstein sexually assaulted her several times between 2010 - 2014. Yet, emails between her and Mr. Weinstein during that same time period demonstrate that CW-4 and Mr. Weinstein remained in a close personal relationship throughout the entire span.

61. Thus, CW-4 claims in her lawsuit (where she is identified) that she was first sexually assaulted by Mr. Weinstein on August 12, 2010 in Manhattan. The very next day, however, Mr. Weinstein and CW-

4 were emailing each other about a movie script. During this exchange, Mr. Weinstein told CW-4 "**the really good news is how much I think about you**."; in response, CW-4 fondly tells Mr. Weinstein—the man she claims sexually assaulted her hours earlier—"**I have been thinking about you too**." (Exhibit 7: 8/13/10 Email.)

62. In a similar vein, less than two months after the alleged assault, CW-4 responds to Mr. Weinstein's invitation for a night out together by confirming that she "would love to" spend an evening with him at Opera. (Exhibit 8: 10/4/10 Email.) Similarly, a few months later, CW-4 emails Mr. Weinstein again stating that she misses him and sends her love to him and his daughters. (Exhibit 9: 1/2/11 Email.)

63. In her civil lawsuit, CW-4 claims that Mr. Weinstein assaulted her numerous times between November 2011 and March 2012. The next month, however, CW-4 and her friend agree to go out for dinner with Mr. Weinstein and she then thanked him the next day for the "great time" that she had out with him. (Exhibit 10: 4/20/12 Email.) CW-4 ends this email to her alleged **rapist** by wishing him a "**lovely day**" and hoping to "**speak soon**." (*Id.*)

64. Less than two weeks later, after another night out with Mr. Weinstein, CW-4 sends him an email with the subject "**Fun**" and tells him that she and her friends "had so much fun last night" and then thanks him for "**being [his] usual charming self**." (Exhibit 11: 5/11/12 Email.)[8]

65. CW-4 is just one example of a potential *Molineux* witness whose fabricated allegations of sexual assault will be exposed by her correspondence with Mr. Weinstein. Counsel's concern, however, is that the Police Department may try to cover up these email exchanges just as they have withheld exculpatory evidence relating to Lucia Evans and also attempted to have CW-1 erase evidence from her phones.

66. Accordingly, to avoid these issues, we are formally requesting that the District Attorney be required to meet and confer with counsel before filing a *Molineux* motion in order to prevent the People's public *Molineux* filing from including allegations that are demonstrably false

[8] We have agreed to redact the name of this woman who has previously identified herself in a public lawsuit. This sampling of emails is mild when compared to the other emails purposely ignored by her own lawyers, the District Attorney and journalists who, upon information and belief, never even sought or considered this information.

and that would only serve to further prejudice Mr. Weinstein and his fundamental right to be treated honestly and fairly.

D. OVERVIEW OF THE PEOPLE'S RESPONSE

67. Underpinning the People's response to Mr. Weinstein's motions to dismiss this indictment, which is based on the rank perjury of one, and most probably two, if not all three complainants, is their claim, under the heading, *The People Presented Full and Fair Information to the Grand Jury And Were Not Required to Submit Additional Exculpatory Evidence*, is the prosecution's essential argument that

> 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.

(Response at p.2.)

68. Yet, if all that resulted from Lucia Evans's perjury in the Grand Jury was "an issue of fact as to" her credibility, why would the People not fight to maintain that count and thereby leave Lucia Evans' credibility to be evaluated by a petit jury at trial? Declining to concede what is reality, the People understood well that their investigation had been hasty, faulty, incomplete and constitutionally insufficient. As a consequence, they ultimately came to the determination that they should

cut their losses as quickly as possible, with the hope of salvaging the tainted counts remaining.

69. Further, citing *People v. Lancaster,* 69 N.Y.2d 20, 25-26 (1986), the district attorney strenuously argues, "[n]or were the people required to present exculpatory evidence to the grand jury." (Response at p.3.) While this claim is debunked below as a matter of law, the startling reality is that, in so arguing, the prosecutors forcefully maintain that they had an absolute right—although a right at war with their long-assigned status as quasi-judicial officers—to shield the Grand Jury from the truth. To characterize this view as "shocking" is not at all to engage in the slightest hyperbole. For the People thereby effectively argue that the end surely justifies the means and, hence, that virtually *all* is fair when it is Harvey Weinstein in their cross-hairs.

70. Any doubt that it is precisely this mindset which has long constrained every prosecutorial decision in this case is immediately dispelled by the People's additional claim that

> 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.

(Response at p. 8.) In other words, false testimony is not an absolute affront to justice—again, as long as it accomplishes the otherwise elusive goal of placing Harvey Weinstein in handcuffs.

71. In the final analysis, the startling reality is that the District Attorney seems most willing to sacrifice the truth in this case on the altar of political expediency. For the reasons that follow, this Court should interdict this effort and thereby salvage long-settled rules of justice and fair play – even in the case of the *People v. Harvey Weinstein*.

E. DISMISSAL OF ENTIRE INDICTMENT

i. All Counts, Each of Which is Supported by Only One Witness, Are Inter-related

72. Arguing in opposition to Mr. Weinstein's claim that the entire indictment must now be dismissed because "each remaining complainant is cross-referenced as to the other, thereby establishing the separately charged counts as mutually dependent[,]" (Mr. Weinstein's 11/5/18 Memorandum of Law ("Memo") at p. 14, the People, distinguishing *People v. Pelchat*, 62 N.Y.2d 97 (1987), maintain, with repeated reliance on *People v. Goetz*, 68 N.Y.2d 96, 116 (1986), that the latter case controls. The People argue that the Court of Appeals in *Goetz* noted 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, "[t]here 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.

(Response at p. 3.)

73. The defense obviously envisioned that the People would seek to find solace in *Goetz*, which is why it was preemptively distinguished in our memorandum of law. But we noted therein that

> [i]n contrast, *Pelchat* was held inapplicable in *People v. Goetz*, 68 N.Y.2d 96, 116 (1986) because two of the gunshot victims still adhered to their incriminating Grand Jury testimony, even though the testimony of a third might have been later undermined. *See also People v. Hansen*, 95 N.Y.2d 227, 232 (2000). Thus, unlike in our case as to any one count, there remained legally sufficient cases in those instances.

(Memo at p. 10, n. 1.)

74. This point was obviously lost on the People. The fact remains, however, that *Goetz* is entirely distinguishable. There, the People had presented each of the four claimed shooting victims, all of whom were injured in, and therefore were addressing, the same alleged criminal

transaction. In our case, however, there was only one witness per claimed incident. Thus, perjurious testimony in support of any of the isolated instances in this case requires dismissal of all respective counts, as there is no other witness.[9]

75. As we earlier argued,

> the failure to provide the emails of CW-1 to the Grand Jury, or to confront the witness with her own damning words, *when coupled with the perjury of Lucia Evans, has so compounded the unfairness in the presentation to the Grand Jury* as to constitute overwhelming prejudice as to require a dismissal of the balance of the superseding Indictment. The fact remains that, had those materials been presented, the grand jurors would have been hard-pressed to accept the claim of CW-[2]

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[9] As noted, the People rather curiously maintain that Lucia Evans did not commit perjury in the Grand Jury when she testified to the allegations supporting Count Six which they earlier consented to dismiss. (*See* Response at pp. 2-3 ("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 testimony is simply not the type of evidence that impairs the integrity of the Grand Jury process." [citations omitted]); *id.* at p. 7 ("Again, the disclosures do not, in the first place, demonstrate that the testimony supporting count six was false...")). We can only respond that where a public prosecutor baldly insists that perjury is not committed when a complainant testifies in the Grand Jury that a defendant had forced her to commit sodomy, yet it is later determined that any such conduct had actually been consensual, the fallacy of such a notion is self-evident. Accordingly, no further rejoinder is warranted.

> that her alleged interactions with Mr. Weinstein had not been consensual. The end result, just as in *Pelchat*, is that, well aware of such compelling proof, "the prosecutor was duty bound to obtain a superseding indictment on proper evidence or to disclose the facts and seek permission from the court to resubmit the case." 62 N.Y.2d at 107.

(Memo at pp. 12-13 (emphasis added).)

76. Otherwise stated, it

> becomes crystal clear that the Grand Jury's consideration of the remaining counts of the indictment, supported by CW-[2] and Haleyi, who also had conversations with Det. Nicholas DiGaudio, was irreparably tainted and prejudiced. For each remaining complainant is cross-referenced as to the other, thereby establishing the separately charged counts as mutually dependent.

(Memo at p. 14.)

77. Moreover, persuasive authority—ignored by the People—supports the defense claim that "this court's inquiry does not end at determining whether there exists sufficient evidence, aside from the false testimony, to support the indictment." *People v. Jones*, 27 Misc. 3d 1208(A), at *4 (Sup. Ct. Kings Co. 2010). Rather, "[t]he court must also address whether or not the irregularity in the proceeding resulted in potential prejudice to the defendant, so as to impair the integrity of the Grand Jury." *Id.*

78. No further comment, therefore, is warranted beyond reiterating what was earlier stated -- but which the People have likewise also elected to ignore:

> Accordingly, now that it has been demonstrated that the charges arising from one complainant, Lucia Evans, and most likely a second, CW-[2] (based upon such highly illuminating emails which demonstrate the post-incident intimacy of the complainant's relationship with Mr. Weinstein), have been manufactured out of whole cloth and are not supported by evidence that Mr. Weinstein committed any crime, the Grand Jury was inappropriately influenced to return a true bill on the remaining complainants' testimony as a matter of course. Put another way, just like a petit jury can be improperly influenced, here, in the Grand Jury, there was prejudicial "spill-over" from the tainted counts to the one count remaining. *Cf. People v. Doshi*, 93 N.Y.2d 499, 505 (1999) ("[t]he paramount consideration in assessing potential spillover error is whether there is a 'reasonable possibility' that the jury's decision to convict on the tainted counts influenced its guilty verdict on the remaining counts in a 'meaningful way.' If so, then the spillover effect of the tainted counts requires reversal on the remaining charges.") (quoting *People v. Baghai-Kermani*, 84 N.Y.2d 525, 532, 533 (1994)).

(Memo at pp. 17-18.)

ii. The People Fail To Appreciate That Their Responsibility is To Seek Justice Rather Than Only Convictions

79. As they did in response to Mr. Weinstein's initial motion, the People, citing *People v. Lancaster*, 69 N.Y.2d 20, 25-26 (1986), again maintain that they were "not required to present exculpatory evidence to

the Grand Jury." (Response at pp. 3-4. *See also* Response at p. 6 ("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."); and p. 7 ("the evidentiary and disclosure standards that apply to the Grand Jury differ from those 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.")). *Simply stated, the district attorney argues that it is not his responsibility to present the truth to the Grand Jurors.*

80. But unlike the district attorney at the time of the Grand Jury presentation, the defense did not have possession of CW-1's emails to Defendant. Hence, counsel could not request the introduction of evidence before the Grand Jury, pursuant to CPL §190.50(6), that he did not possess. On the other hand, because the People well knew, therefore, that CW-1 was sending Mr. Weinstein correspondence that explicitly reflected her endearing feelings toward Defendant in the time frame immediately

following her alleged rape, surely such would have had a "materially influencing" impact on any finding by the Grand Jury as to the veracity of CW-1's allegation.

81. In such instance, it has been held that a prosecutorial responsibility in fact exists to present exculpating information. *See People v. Williams,* 298 A.D.2d 535 (2d Dept. 2002); *People v. Suarez*, 122 A.D.2d 861 (2d Dept. 1986); *People v. Thompson*, 108 A.D.2d 942 (2d Dept. 1985).

82. *People v. Lancaster* is not to the contrary. Indeed, given that "'[t]he language of any opinion must be confined to the facts before the court'...[citations omitted]..." (*People v. Anderson*, 66 N.Y.2d 529, 535-536 [1985]), the reality is that *Lancaster* was solely concerned with the rule announced in *People v. Valles*, 62 N.Y.2d 36 (1984), requiring only complete defenses, not merely mitigating ones, to be presented to the Grand Jury. *Lancaster,* therefore, only held that because the defense of mental disease or defect does not eliminate a needless prosecution, it was not necessary to be charged. On the other hand, "where evidence establishes a potential defense of justification, prosecution may be needless and the Grand Jury should be charged on the law regarding that

potential defense because its consideration is properly within that body's province." 69 N.Y.2d at 28. The factual innocence of Mr. Weinstein is a defense that required presentation.

83. Obviously, had the Grand Jury heard the "materially influencing" emails from CW-1, the count based on her testimony might very well have become "needless." The only viable conclusion, therefore, is that the People had an obligation to present them to the unknowing and unwitting Grand Jurors.

E. Counts One and Three, Alleging Predatory Sexual Assault

84. Seeking to convince the Court to ignore the mandatory holding in *People v. Lancaster*, 143 A.D.3d 1046 (3rd Dept. 2016), *lv denied*, 28 N.Y.3d 1147 (2017), *recon. denied*, 29 N.Y.3d 999 (2017),[10] the People argue that "[t]here is absolutely nothing in the plain language of the statute creating a temporal element." (Response at p. 11.) But the

[10] *See People v. Turner*, 5 N.Y.3d 476, 482 (2005) (citing *Mountain View Coach Lines v Storms*, 102 AD2d 663, 664 (2d Dept.1984) (Titone, J.) ("The Appellate Division is a single State-wide court divided into departments for administrative convenience ... and, therefore, the doctrine of stare decisis requires trial courts [and the Appellate Term] in this department to follow precedents set by the Appellate Division of another department until the Court of Appeals or [the Appellate Division of this department] pronounces a contrary rule.")).

Kings County Supreme Court holding in *People v Hairston,* 35 Misc.3d 830 (Kings Co. Sup. Ct. 2012), which the People regard as an "outlier decision of a single trial court" (Response at p. 15), specifically rejected this analysis which was later embraced by the Third Department in *Lancaster*.

85. Instead, as we earlier noted, *Hairston* concluded that

> the *temporal implications* of the language of PL § 130.95(2) must be recognized when charging the crime. The section specifically requires that*, at the time of the underlying violent sexual offense*, the defendant "has engaged" in the conduct constituting the aggravating factor. *This means that the aggravating factor must precede the underlying offense*.

35 Misc. 3d at 838; emphasis added.

86. Thereafter, utilizing precisely the same verbiage, the Third Department's *Lancaster* court disagreed with that appellant's claim that the jury had not been properly instructed on such premise. Rather, the Appellate Division concluded that

> 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.

143 A.D.3d at 1048.[11]

87. Under such circumstances, even though *Lancaster* did not specifically cite *Hairston*—as the People note in their affirmation at p. 17: ("Clearly, if the court meant to endorse the holding in *Hairston*, it would have done so directly.")—it certainly embraced *Hairston's* signature phraseology. Surely, there can be no other purpose for *Lancaster* to have adopted the term "temporal implications" had it not

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[11] The People maintain that *Lancaster* "held that the only temporal requirement of the statute applied to jury deliberations: 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." (Response at p. 17.) This reading ignores that the *Lancaster* court used the "subsequent" terminology when referring to the second victim. Although we have earlier addressed that usage as potentially *contradicting* the "previous victim" conclusion of *Hairston*, either way it is read, it had nothing to do with the order in which the jury considers the complainants, as the People profess. Rather, it was obviously directed to the "temporal implications" concerning the sequence in which the alleged acts had been committed—as *Hairston* concluded in employing that phrase and thereby determining that the aggravating crime had to have been previously committed.

accepted the reasoning which *Hairson* had thereby employed. The District Attorney's recourse to the comments of sponsoring Senator Morahan at the time of the bill's passage (Response at p. 13) does not alter this result. Morahan's statement does no more than track what already is provided in the statute itself, in the three separate subdivisions. Nonetheless, given our reading of *Lancaster*, as incorporating the holding in *Hairston* with respect to § 130.95(2), there still needs to be a predicate offense for this recidivist statute to be applicable.

88. Accordingly, for reasons earlier stated, there must be a temporal aspect to the statute, involving succeeding offenses, if PL § 130.95(2) is not to otherwise foment great constitutional concerns. As we earlier cautioned, which the People further ignore:

> were the People's theory under Count One taken to its logical conclusion, it would mean that Mr. Weinstein could conceivably have been earlier tried, convicted, sentenced and incarcerated for the July 10, 2006 charge of Criminal Sexual Act in the First Degree against Mimi Haleyi. Then, seven years later, when the March 18, 2013, offense was allegedly committed, he could be retried for the July 10, 2006 charge, now aggravated by the later offense as a newly component element. The double jeopardy implications of such a scenario, both constitutionally and statutorily under CPL §40.20(2), would be staggering (citation omitted).

(Memo at p. 35.)[12]

F. In the Alternative, the Requested Hearing Must be Conducted

89. The People, in their response, give short shrift to the published allegations against both Det. DiGaudio and the prosecutor in this case. They instead contend that a mere inspection of the Grand Jury minutes will eliminate any concerns. We respectfully submit that, in the event of any truth to these allegations, an inspection of the Grand Jury minutes will not at all be revealing or helpful.

90. As noted in our supplemental papers, at the very least, if the Court is not disposed to dismiss the indictment in its entirety, it should conduct an evidentiary hearing and receive evidence and testimony regarding the extent of police and/or prosecutorial misconduct in this case and its impact on the Grand Jury proceedings which resulted in the indictment of Mr. Weinstein. Then, of course, there are the allegations

[12] While this constitutional concern is real, those hypothetical scenarios confabulated by the People are not, because they are each otherwise easily resolvable. All that need be done when the temporal implications are not provable is to charge those potential perpetrators with successive offenses. If provable, the consecutive sentences that would be meted out would more than compensate for the inability of proof with regard to any allegation pursuant to PL § 130.95(2).

against the detective himself, and the lead prosecutor, who are alleged to have purportedly sought to wholly conceal exculpatory evidence.

91. At such proceeding, therefore, in addition to airing the allegations against Detective DiGaudio by Lucia Evans, allegations by the NYPD concerning the conduct of the District Attorney's Office also need to be addressed. As we have maintained, the reality is, that in the event of evidence proving misconduct by the latter, not only would it be established that the ADA has deceived this Court, but it would be further evident that the prosecution had directly and purposely withheld highly exculpatory evidence from the grand jury.

92. Such a hearing, in furtherance of which the testimony of both DiGaudio and his supervisor Sergeant Keri Thompson is necessitated because it would only add to the already obvious impairment of the integrity of the grand jury proceeding. It would thus demonstrate *actual, not just potential,* prejudice to Mr. Weinstein.

93. The bottom line is that the public "circus" (Response at p. 9), if any, the People fear is solely one which has been created by the conduct of the People and the NYPD in this case. Indeed, where each law enforcement agency claims the other has lied when addressing the

allegations of misconduct, an unprecedented public dispute arises which directly jeopardizes the fairness of these proceedings, the legitimacy of the indictment returned, and which cannot be disposed of in the absence of an evidentiary hearing.

CONCLUSION

It is not our objective in this motion to seek to endorse the lifestyle of Mr. Weinstein who by his own admission has acknowledged several extramarital consensual sexual relationships. Nor for that matter would I now attempt to list the many wonderful causes, charities and important institutions for which Mr. Weinstein has raised many hundreds of millions of dollars in years past, including the many millions raised by him personally for the First Responders and their families in the aftermath of 9/11 and then again after Hurricane Sandy devastated so many of the homes of those who serve our city.

The only purpose of this submission is to hopefully convince your Honor that whether Mr. Weinstein's behavior was good or bad, the evidence we have gathered suggests that as to the women accusers in this case, it was NOT criminal and as a consequence this prosecution is doomed to fail.

Unfortunately, the terrible media onslaught we have endured forced the filing of this deeply flawed case. We respectfully argue that it is in the cases of those most publicly vilified that the integrity of the legal process must be carefully safeguarded. In this case, the only way to ensure fairness is to require the People to start over, this time with the strictest of supervision and the presentation to the Grand Jury of all the exculpatory evidence we have now gathered.

WHEREFORE, for all the above-stated reasons and those stated in Mr. Weinstein's original and supplemental papers, Mr. Weinstein's motion should be granted in all respects and the indictment dismissed. In the alternative, this Court should conduct an evidentiary hearing to determine the full extent of the misconduct and whether the police department, District Attorney's Office or both are responsible for purposefully tainting the Grand Jury proceeding against Mr. Weinstein.

Dated: November 29, 2018
New York, NY

Benjamin Brafman, Esq.
Mark M. Baker, Esq.
Jacob Kaplan, Esq.

To: Clerk of the Court
Hon. James M. Burke
ADA Joan Illuzzi-Orbon
ADA Kevin J. Wilson

EXHIBIT 1

NEW YORK POST

Page Six

SATURDAY, NOVEMBER 4, 2017 / Cooler, 60° / Weather: P. 14 LATE CITY FINAL nypost.com $1.25

WANTED

BY THE NYPD

HARVEY WEINSTEIN

NYPD officials say they have a "credible case" to arrest Harvey Weinstein for alleged rape, but they're waiting on the DA for an out-of-state warrant. PAGE 7

TANAKA OPTS TO STAY WITH YANKS

SEE SPORTS

EXHIBIT 2

An insider's account of the NYPD investigation of Harvey Weinstein

ABC News

New York sex-crimes detectives were dispatched around the world in recent months to gather evidence that could bring the case against disgraced Hollywood producer Harvey Weinstein from the headlines to the courtroom.

Interested in Harvey Weinstein?

Add Harvey Weinstein as an interest to stay up to date on the latest Harvey Weinstein news, video, and analysis from ABC News.

After reports of sexual misconduct by Weinstein were published by the New York Times in October, sparking a global reckoning with sexual assault and harassment in the workplace and beyond, New York Police Department investigators pursued leads in at least four countries, culminating in three serious charges that could put the once-powerful movie mogul in prison for more than two decades.

On the eve of Weinstein's arraignment on Tuesday on two counts of rape and one count of a criminal sex act, the NYPD's former Chief of Detectives Robert Boyce, who recently retired and joined ABC News as a contributor, shared the first insider account of that seven-month investigation, which Boyce described as unique in several ways.

"Reading news reports for leads, is that normal?" Boyce said in an interview. "No, nothing's normal about this case."

Because of the ongoing investigation and prosecution, Boyce remains prohibited from revealing all he knows, but his account was complemented with reporting from additional sources.

Investigators felt they had been burned once before, Boyce said, when Manhattan prosecutors declined to proceed with charges in 2015 despite receiving an audio recording which seemed to capture Weinstein confessing to touching the breasts of a model. This time, Boyce said, the NYPD's top brass was determined to pursue every lead.

Mike Segar/Reuters, FILE
Film producer Harvey Weinstein leaves the 1st Precinct in Manhattan in New York, May 25, 2018.

Boyce assigned a pair of ace detectives – Sgt. Keri Thompson and Det. Nicholas DiGaudio of the elite Special Victim's Division Cold Case Unit – to the case and asked to be personally informed of their progress.

They started with tips – calls to the NYPD's rape hotline, referrals from women who said they witnessed abuse or had been victims themselves and, crucially, according to Boyce, media reports detailing years of abusive behavior from his perch atop the film industry that helped investigators home in on Weinstein's alleged *modus operandi*.

"We saw common threads," Boyce said. "The same type of thing -- luring women to the locations. He isolates women under a lure of career opportunities."

They took statements. Claims ranged from sexual misconduct – like touching or groping or harassment - to rape. Some women said they were willing to testify, while others recoiled at the prospect of having to go public and confront the man they said assaulted them.

Detectives knew from the beginning there would be little chance of finding forensic evidence, often rare in sexual assault cases, so corroboration from "eye and ear witnesses" and "outcry witnesses," people that accusers may have confided in at the time of an alleged incident, would be key.

They flew domestic -- to Los Angeles, where they interviewed Weinstein's former employees – and international, to Canada and London and Paris.

Every time Thompson and DiGaudio returned to New York, their first stop was to debrief Boyce and Deputy Chief Michael Osgood, Command Officer of the Special Victims Division.

"I would bring them in, bleary eyed and jetlagged," Boyce said. "We would talk about how each of those statements they took contributed to the case."

Frank Franklin II/AP,FILE
New York Police Chief of Detectives Robert K. Boyce responds to questions during a news conference in this Jan. 24, 2015 file photo in the Queens borough of New York.more +

From all the complaints that were pursued, Boyce said, detectives narrowed the field to seven specific women whose stories both could be confirmed and also met the legal criteria for criminal charges that could be prosecuted in New York. Three of those women have not been identified in media accounts.

“We always expected more people to come forward,” a police source told ABC News.

The first woman mentioned in the indictment accused Weinstein of forcing her to engage in oral sex at his Tribeca office in 2004. That woman has since publicly identified herself as Lucia Evans. One police source summarized Evans case as “the ideal person to go forward.”

The second woman mentioned in the Manhattan indictment has not been publicly identified and her accusations involve the more serious charge of rape, which carries a potential 25-year prison term. A law-enforcement official briefed on the investigation said that the second woman had done work for Weinstein for one year prior and “out of nowhere, he raped her.”

The alleged rape took place at a DoubleTree Hotel in midtown Manhattan. The same law enforcement source said this alleged crime "was different. He didn’t just meet her and try to get her alone. They had known each other” and that the accuser was hesitant at first about testifying against Weinstein.

Weinstein has denied all accusations of non-consensual sex. He pleaded not guilty when arraigned following his arrest last week. And on Tuesday, Weinstein again pleaded not guilty when he was arraigned on the indictment handed up last week.

Following Weinstein’s arrest, Brafman told reporters that the rape allegation involves a woman “who he [Weinstein] has had a 10-year consensual sexual relationship with” and that the relationship continued long after the alleged assault occurred.

At Tuesday's arraignment, Brafman criticized the NYPD, and Boyce specifically, accusing them of forcing prosecutors to proceed with a weak rape case.

“There’s a law enforcement community that they (prosecutors) do not control,” Brafman said. “Chief of Detectives Robert Boyce publicly proclaimed Mr. Weinstein’s arrest imminent and was shaming the Manhattan DA” into pressing charges. After the hearing, Boyce said Brafman had "mischaracterized" his statements to reporters during a press conference.

Steven Hirsch-Pool via Getty Images, FILE
Harvey Weinstein along with his attorney Benjamin Brafman, left, appears at his arraignment in Manhattan Criminal Court, May 25, 2018.more +

A financial investigator was assigned to look into the funding behind those widely reported settlements paid by Weinstein. Phone and medical records were requested from those who said they were victimized.

“If they said Harvey called or texted them after the alleged attack, we needed to prove that,” Boyce said.

At the same time, criminal probes in Los Angeles and London were also opened. The U.S. Attorney’s Office in Manhattan launched its own investigation. A source confirmed that federal officials have secured the cooperation of one woman who is not among the seven alleged victims in the NYPD case.

But in the end, it would be Boyce’s team who got to slap the cuffs on Weinstein first.

Seven months and twenty days later after that first report in the Times, it was Thompson and DiGaudio who escorted Weinstein before dozens of flashing cameras, as the mega-mogul was walked out of the NYPD’s 1st Precinct -- the famed producer now an infamous alleged perpetrator.

“The arrest and indictment of Mr. Weinstein is gratifying to the investigators who have spent countless hours laboring to find the truth,” Boyce said. “However, to the victims, the true heroes,

it is hopefully a relief to some of the pain they have endured for so many years."

EXHIBIT 3

The New York Times

Harvey Weinstein's Arrest May Define Manhattan D.A.'s Legacy

By James C. McKinley Jr.

May 27, 2018

Cyrus R. Vance Jr. ran for Manhattan district attorney nine years ago on a promise to aggressively prosecute sex crimes — and now, with Friday's arrest of Harvey Weinstein, he faces a defining moment in a career shadowed by his earlier decision not to prosecute him.

One paradox of Mr. Vance's tenure is that his treatment of sex crimes has both enhanced and tarnished his reputation. He made a name as the scourge of men who traffic in underage prostitutes and reduced the national backlog of untested rape-evidence kits. But he also faced withering criticism for dropping the prosecution of a French politician on sexual assault charges in 2011 and steadily mounting outrage over his decision in 2015 that there was a lack of sufficient evidence to make a case against Mr. Weinstein, the movie producer.

On Friday, Mr. Vance brought charges of rape and criminal sexual acts against Mr. Weinstein in cases involving two women, the first prosecutor to do so. The arrest has appeased some critics of Mr. Vance, but it is also a moment fraught with political peril. If he wins a conviction, he will restore his reputation as a progressive champion for women's issues. A loss, however, could seal his political fate, especially among his liberal base in Manhattan.

"The world will be watching to see if any lessons have been learned," said Jane Manning, the director of advocacy for Women's Justice NOW, a group that helps rape victims navigate the criminal justice system. "We want to see if there is a different approach going forward not only in Harvey Weinstein's case but in all the cases that don't make headlines."

Sexual assault cases are notoriously challenging to prove in court; indeed, Mr. Vance dropped both earlier cases because of questions about whether witnesses would be believed. There is no doubt that the ground has shifted since complaints about Mr. Weinstein touched off the global #MeToo movement, but Mr. Vance's office will face a long legal battle against a wealthy defendant and one of the city's best defense lawyers, who will spare no effort to portray Mr. Weinstein as someone who behaved badly but did not break the law by having consensual sex with women seeking to further their careers.

Mr. Vance's assistants must first present the case to a grand jury and obtain an indictment. The prosecution will have to prove Mr. Weinstein used physical force or threats of harm to get what he wanted, a high bar in cases with little or no physical evidence. The woman in the rape case has

not been publicly identified, but prosecutors have said the attack occurred in Manhattan more than five years ago — a gap in time that creates an additional hurdle for prosecutors. Mr. Vance himself was careful not to crow on Friday, saying, "We are at the beginning, not the end."

A year ago, Mr. Vance could make a case that he was a champion for victims of sexual violence, domestic abuse and sex trafficking. He had spent more than $38 million in forfeited funds to clear a backlog of rape-evidence kits across the country and had successfully convicted many people charged with the trafficking of underage prostitutes. His sex crimes unit had won convictions in difficult rape cases and had successfully pioneered strategies for pursuing cold cases with DNA evidence. Since 2010, when Mr. Vance took office, through 2017, his sex crime prosecutors have won 83 percent of their felony trials.

Mr. Vance also established the city's first Family Justice Center in his office, improving how victims of domestic abuse and their cases were handled. His prosecutors had convicted men who assaulted their domestic partners even when the victims were not willing to cooperate. His long list of supporters included feminists like Gloria Steinem.

Still, there was grumbling among advocates for rape victims about his office's grueling questioning of women raped by acquaintances before an arrest was made. Several critics, speaking on the condition of anonymity to avoid antagonizing prosecutors, said the questioning of rape victims in Manhattan was unnecessarily harsh.

Former members of the sex crimes unit said it is standard procedure to rigorously vet a victim's credibility to avoid surprises at trial. "You better know everything that might come out," one said. "It's not personal."

Manhattan prosecutors were also known for nixing arrests they felt would not stand up in court. As a result, the police closed proportionately fewer rape cases in Manhattan than other boroughs, but prosecutors had a high conviction rate. "They spend an exorbitant amount of time doing those kinds of investigations, working with victims, going through the facts and screening out cases that don't fall within the penal law," said one former Manhattan prosecutor, speaking on the condition of anonymity because he still has professional dealings with the office.

The advocates' complaints about the sex crimes unit remained muted until last October, when exposés in The New York Times and The New Yorker revealed that numerous women had made sexual harassment complaints about Mr. Weinstein. The reports led to a cascade of sexual misconduct accusations against other powerful men.

Mr. Vance came under fire for his decision not to prosecute Mr. Weinstein in 2015 after an Italian model, Ambra Battilana, accused him of groping her breasts and trying to put his hand up her skirt during a business interview at his office.

Ms. Battilana had recorded Mr. Weinstein admitting touching her breasts, but Martha Bashford, chief of the sex crimes unit, determined the case could not be proven, in part because Ms. Battilana had given shifting accounts of sworn testimony in another sexual assault case in Italy. Mr. Vance agreed.

Mr. Weinstein had hired Elkan Abramowitz, a friend and campaign donor to Mr. Vance, to represent him and had paid for private investigators to dig up information about her statements in the Italian case.

Michael Bock, a former sergeant in the special victims division, said Ms. Bashford had questioned Ms. Battilana for hours about her statements in Italy, reducing her to tears. "The whole thing smells," he said.

Mr. Vance's press office said the questioning of Ms. Battilana was "a normal, typical interview" and pointed out "it is customary for prosecutors to discuss potential areas of cross-examination when meeting with complainants."

Mr. Vance's decision not to bring charges angered the police and advocates for sexual assault victims. Onetime allies of Mr. Vance, like the National Organization for Women, staged protests. Advocates said it was time for prosecutors to take a different approach to victims of acquaintance rapes and sexual harassment.

Some critics in the Police Department said Mr. Vance had become gun-shy of taking on powerful men after being forced to drop a sexual assault charge in 2011 against Dominique Strauss-Kahn, the former head of the International Monetary Fund, because his assistants had questions about the victim's credibility. Mr. Vance has denied this and said his office regularly prosecutes wealthy defendants for rape.

Still, the Weinstein case fed an impression that Mr. Vance's office gave the wealthy preferential treatment. Public defenders pointed out poor defendants are often arrested and charged with forcible touching on nothing more than a woman's complaint. "They are prosecuting our black and brown clients on sex crimes with far less," said Justine M. Luongo, the chief of the criminal practice of the Legal Aid Society.

Mr. Vance's office also angered top police officials when his chief assistant suggested detectives had blown the Battilana investigation by not consulting with prosecutors before the sting operation. Police commanders insisted they did consult Ms. Bashford.

As women's groups and police officials turned on Mr. Vance, Gov. Andrew M. Cuomo, facing his own challenge on the left, joined in. He called for the attorney general's office to review Mr. Vance's handling of the case, then blocked Mr. Vance from investigating allegations of physical abuse against the same attorney general, Eric T. Schneiderman.

Advocates for rape victims have met repeatedly with Mr. Vance and his top lieutenants, demanding that Ms. Bashford and her assistants adopt more modern, less confrontational interview techniques for sexual assault victims, which take into account that trauma often scrambles memories. They also urged prosecutors to employ more expert witnesses to explain why women sometimes do not fight with their attackers or report rapes right away.

Mr. Vance brought in outside consultants to review his office's practices and to train his staff in the new interviewing techniques and hired a therapist to work with rape victims. At the same time, he impaneled an investigatory grand jury to dig into other complaints against Mr. Weinstein, expanding the inquiry to include financial crimes. He also put one of his most successful homicide prosecutors, Joan Illuzzi, in charge of the investigation, taking it away from a seasoned sex-crimes prosecutor. He had called on Ms. Illuzzi once before — to handle the investigation of Mr. Strauss-Kahn.

The district attorney's investigation faced many obstacles to making a viable case against Mr. Weinstein, people with direct knowledge of the inquiry said. His investigators and prosecutors interviewed dozens of potential witnesses in New York, Los Angeles and elsewhere, and subpoenaed hundreds of records related to Mr. Weinstein's businesses.

Most of the complaints the investigators examined, however, were too old to be prosecuted under New York law, these people said. Some women with viable complaints did not want to testify, for fear of being torn apart by a defense lawyer.

Mr. Vance and his team hope more women will come forward now that Mr. Weinstein has been arrested. Some of the older cases in which he cannot be charged may yet come into play too, as evidence of a pattern of behavior.

"These things take time," one senior official in the D.A.'s office said. "He's not going to bring a charge just because it's politically popular and people are demanding a head on a stake. That's not how prosecutors make decisions and it's not how Cy makes decisions."

For now, the arrest of Mr. Weinstein has given Mr. Vance some breathing room.

"Sexual predators are now on notice: No one is too rich or too powerful to fall," said Sonia Ossorio, the president of National Organization for Women-New York City. "What's happening now is bigger than this case. Harvey Weinstein's arrest really represents an era of new accountability."

Jan Ransom contributed reporting.

Follow James C. McKinley Jr. on Twitter: @jamesmckinleyjr

A version of this article appears in print on May 28, 2018, on Page A1 of the New York edition with the headline: Movie Mogul's Arrest Sets Stage For Prosecutor's Defining Hour

EXHIBIT 4

From: [redacted]

To: miriam
Sent: 5/29/2007 12:17:46 PM
Subject: RE: cannes

Miriam,

We relayed the message to Harvey and he asked if you were presently in London.

All my best,
[redacted]

-----Original Message-----
From: miriam [mailto:[redacted]
Sent: Sunday, May 27, 2007 8:41 AM
To: [redacted]
Subject: cannes

Hi [redacted]
I never made it to the film on friday, though I tried.. but please let
Harvey know the gesture was most appreciated.
Thank you
Miriam

EXHIBIT 5

From: miriam <[redacted]>
To: Office, HW
Sent: 6/27/2008 11:33:20 AM
Subject: For harvey pls

Hi Harvey,
How are you? Great to see you in cannes. I noticed an article in todays ny post about the Addams Family being turned into a broadway musical..
Just to remind you what a genius i am - didn't i tell you that was a great idea like, 3 years ago, at the mercer bar..hmm?
Lots of Love
Miriam

EXHIBIT 6

From: miriam <[redacted]
To: Office, HW <[redacted]>
Sent: 2/25/2009 2:11:31 PM
Subject: For Harvey

Dear Harvey,

I haven't seen you in so long, how are you?
Listen, I'm saving up to become a kundalini yoga teacher and I just wanted to announce myself available for work if you happen to, by any chance, have anything shooting in London. I'll be a runner, whatever. I'd really appreciate any leads. my cat needs feeding!

Either way, hope you're super well.
Peace & love
Miriam

EXHIBIT 7

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 8/13/2010 9:17:56 AM
Subject: Re: Fw: [redacted]

I have been thinking about you too.. Where is your UK office?

On 8/13/10, Weinstein, Harvey [redacted] wrote:
> The good news is they need help. So we can get u involved. The bad news is
> [redacted] wants to direct. the really good news is how much I think about
> u. The bad news is u r there and I am here. Do u want to meet [redacted] head
> of our uk office?
>
> ----- Original Message -----
> From: [redacted]
> To: Weinstein, Harvey
> Sent: Fri Aug 13 05:12:24 2010
> Subject: Re: Fw: [redacted]
>
> Very interesting.
> All tied up. I feel like their approach is rather different from ours
> but am fascinated to see that script.
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> On 8/12/10, Weinstein, Harvey [redacted] wrote:
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>> [redacted]

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Sent from my mobile device

EXHIBIT 8

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 10/4/2010 4:55:24 PM
Subject: Re: FYI

I would love to

Sent on the Sprint® Now Network from my BlackBerry®

From: "Weinstein, Harvey"
Date: Mon, 4 Oct 2010 16:40:57 -0400
To: [redacted]
Subject: Re: FYI

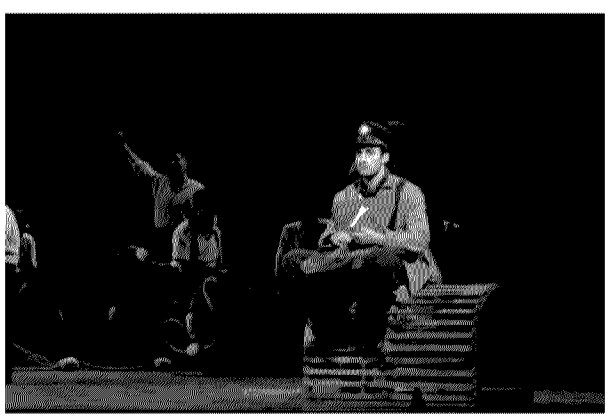
Can we see this thursday nite sounds great

From: [redacted]
To: Weinstein, Harvey
Sent: Mon Oct 04 15:11:00 2010
Subject: FYI

Just thought you should know...

"Il Postino," which is having its debut run at [redacted] right now, is almost shockingly easy to like. Operatic premieres aren't supposed to be like this. They're supposed to be challenging to the ear and gritty to the mind and at least a little unpleasant. They're supposed to make you think about how awful things are in this world. They're supposed to leave you impressed with the profound and lofty talents of the composer, who is way ahead of the audience.

[redacted] the [redacted] composer and librettist of "Il Postino," seems not at all interested in such things, and it's rather refreshing – even, in its way, rather daring. A composer who wants to please the average audience member, even while not selling out, is a pretty rare creature. Hats off to [redacted]



'Il Postino'

Who: [redacted]

Where: [redacted]

When: Sept. 29

Next: 2 p.m. Oct. 2; 7:30 p.m. Oct. 5; 2 p.m. Oct. 9; 7:30 p.m. Oct. 16

EXHIBIT 9

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 1/2/2011 7:13:12 PM
Subject: Re: Where r u

Hahaha! That email made me laugh! Thank you, poor old fashioned Dad, if it's any consolation I have no desire to download the paper, it's much more satisfying in hand. In saying that, I'm also old in [redacted]'s eyes, so not much help.
Miss you too. Love to you and the girls.
xxx

On Sun, Jan 2, 2011 at 4:06 PM, Weinstein, Harvey [redacted] wrote:
Thank god the crew is male. [redacted] told everyone today that I was a bad father because I force her to get the sunday papers with her. A good dad would download them. But my dad doesn't know how, miss u. Love to the family especially dad

---

From: [redacted]
To: Weinstein, Harvey
Sent: Sun Jan 02 18:42:03 2011
Subject: Re: Where r u

I was out for a drink with my girlfriend [redacted], just got home and heard your message to the family.
So sweet, thank you so much. I'm very touched by your well-wishes.
I didn't want to call knowing that you are with your wife, ex-wife, kids and however many other people but you have been in my thoughts.
I hope you've been having a lovely break and have taken a much needed breather from work.
When are you back in the US?
OH and NO please do not get lost at sea....
xxxxx

On Sun, Jan 2, 2011 at 2:43 PM, Weinstein, Harvey [redacted] wrote:
And happy u know what. Been lost at sea which is where most people w ant me

EXHIBIT 10

From: [redacted]
To: [redacted]
Sent: 4/20/2012 1:47:11 PM
Subject: Lunch

Hey,
Thank you for last night, [redacted] and I had a great time! You mentioned having lunch today, I'm sorry but I won't be able to plan something as we just had a meeting come up with an artist who is heading out of town tonight as well so we can't push it.
I am in discussion with [redacted]'s agent today so should have a number for you by next week regarding the piece you want to commission.
Then we can get a sketch drawn out!
Have a lovely day, speak soon.

[redacted]

Sent from my iPhone

EXHIBIT 11

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 5/11/2012 8:45:30 PM
Subject: Fun

The girls had so much fun last night, thank you for being your usual charming self!
[redacted] and I have moved the art show to 9th June. Will you now be able to make it?
x

--
[redacted]