SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 81
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THE PEOPLE OF THE STATE OF NEW YORK

NOTICE OF MOTION

-against- Indictment No. 2335/2018

HARVEY WEINSTEIN,

Defendant.
----------X

PLEASE TAKE NOTICE that upon the annexed affirmation of **Benjamin Brafman, Esq.**, duly affirmed on the 3rd day of August, 2018, upon the indictment, exhibits, supporting papers and all proceedings herein, defendant **Harvey Weinstein** will move this Court on September 20, 2018, for the following orders:

1. Dismissing the indictment because the District Attorney failed to provide the Grand Jury with exculpatory evidence of the long-term, consensual, intimate relationship between Mr. Weinstein and the alleged rape victim charged in Counts Three, Four and Five in the indictment;

2. Dismissing the indictment because the District Attorney failed to give adequate notice that it was presenting new, far more serious charges to the Grand Jury;

3. Dismissing Count Six for failure to contain a statement sufficiently indicating **when** the alleged crime occurred as required by C.P.L. § 200.50(6);

4. Dismissing Count Five because the five-year Statute of Limitations has passed;

5. Inspecting the Grand Jury minutes and dismissing or reducing relevant counts of the indictment pursuant to C.P.L. §§ 210.20(1)(b) and 210.30 based on the lack of legally sufficient evidence of **force**;

6. Dismissing the indictment pursuant to C.P.L. §§ 210.20(1)(c) and 210.35 on various grounds of defective Grand Jury proceedings;

7. Providing discovery pursuant to C.P.L. §§ 240.20 and 240.40;

8. Providing a Bill of Particulars pursuant to C.P.L. § 200.95;

9. Providing Brady material; and

10. Granting such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that Mr. Weinstein reserves the right to make such further motions pursuant to C.P.L. § 255.20(2) & (3) as may be necessitated by the Court's decision on the within motion and by further developments which, even by due diligence, Mr. Weinstein could not now be aware.

Dated: August 3, 2018
New York, NY

Respectfully submitted,

BRAFMAN & ASSOCIATES, P.C.
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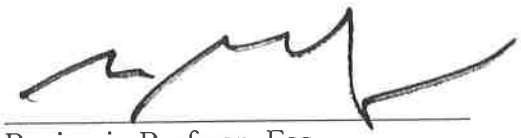
(212) 750-7800



By: Benjamin Brafman, Esq.
Jacob Kaplan, Esq.

To: Clerk of the Court
ADA Joan Illuzzi-Orbon

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 81
----------X
THE PEOPLE OF THE STATE OF NEW YORK

ATTORNEY AFFIRMATION

-against- Indictment No. 2335/2018

HARVEY WEINSTEIN,

Defendant.
----------X

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

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

1. I am Principal of the law firm **BRAFMAN & ASSOCIATES, P.C.**, attorneys for defendant Harvey Weinstein. I make this affirmation in support of a motion dated August 3, 2018, whereby respective orders are sought pursuant to C.P.L. §§ 210.20(1)(b) and 210.30, dismissing the indictment herein, or parts thereof, or reducing same, on various grounds, and granting such other and further relief as the Court deems just and proper.

2. This affirmation is made upon information and belief. The basis for such information and the grounds for such belief are the prior court proceedings, materials previously disclosed by the District Attorney's Office, information disclosed in court by the District Attorney's Office, applicable legal authorities and those other records and materials constituting counsel's file herein, including emails between Mr. Weinstein and the alleged rape victim in the

indictment and, where appropriate, public statements made by one or more of the alleged victims underlying the various counts of the indictment.

A. OVERVIEW

3. Defendant Harvey Weinstein is charged in a six-count indictment alleging the crimes of Predatory Sexual Assault (Penal Law § 130.95(2)) (Counts One and Three), Criminal Sexual Act in the First Degree (Penal Law § 130.50(1)) (Counts Two and Six), Rape in the First Degree (Penal Law § 130.35(1)) (Count Four) and Rape in the Third Degree (Penal Law § 130.25(1)) (Count Five).

4. This indictment results from an over eight-month investigation by the Manhattan District Attorney's Office into alleged misconduct by Mr. Weinstein. Based on published reports, the District Attorney's Office conducted its investigation amidst overwhelming pressure from the media, politicians and high-ranking police officials demanding the arrest of Mr. Weinstein, including, but not limited to, a November 2017 mock up of a "wanted" poster for Mr. Weinstein published on the cover of the New York Post. (Exhibit 1: Cover, N.Y. Post, Nov. 4, 2017).

5. Six months later, with no opportunity being given to Mr. Weinstein's counsel to respond to the allegations or present evidence of Mr. Weinstein's innocence, the District Attorney sought a single first-degree rape charge against Mr. Weinstein (relying on a complaining witness, CW-1,[1] who, the facts would reveal, had in fact been in a long-term, consensual, intimate relationship with Mr. Weinstein). A second sexual assault charge was also sought relating to Lucia

[1] Counsel for Mr. Weinstein has, to date, agreed not to identify the complaining witness in Counts Three, Four and Five of the indictment. Accordingly, we refer to this complaining witness as CW-1 and both her name and email address have been redacted from the attached exhibits, which include dozens of emails from among the approximately 400 communications between Mr. Weinstein and the accuser which continued for weeks and years after the alleged rape.

Evans (who claims to have no memory of when, during a three-month time span in **2004,** she was purportedly sexually assaulted by Mr. Weinstein).

6. Weeks later, the District Attorney filed a superseding indictment combining Lucia Evans and CW-1 with a third alleged victim, Mimi Haleyi, who claims that Mr. Weinstein assaulted her in 2006, and who not only waited nearly eleven years before making any claim to the authorities, but only did so after sending out a press release and holding a press conference orchestrated by her attorney Gloria Allred (who is observed on film at the press conference nodding alongside Ms. Haleyi as Haleyi read from a prepared script).

7. Mr. Weinstein categorically denies that he had non-consensual sex with any person, and specifically the three accusers in the pending indictment. As will be argued below and in the attached Memorandum of Law, the pending indictment against Mr. Weinstein must be dismissed at the pretrial stage because it is legally infirm based on the District Attorney's failure to provide exculpatory email evidence to the Grand Jury; failure to give adequate notice to the defense as requested that it was presenting new, far more serious charges to the Grand Jury; failure to indicate with sufficient specificity <u>when</u> the alleged crime in Count Six occurred; failure to prosecute Count Five within the five-year Statute of Limitations; and failure to provide the Grand Jury with sufficient evidence of the legally required element of **force**, as well as other Grand Jury deficiencies.

B. BACKGROUND OF THE INVESTIGATION LEADING TO THE INDICTMENT

8. In October 2017, the District Attorney's Office began an investigation into claims of sexual assault by Mr. Weinstein. Counsel for Mr. Weinstein had numerous discussions with the District Attorney's Office during the investigation and formally informed the prosecutors in both

October and December of 2017, by way of a C.P.L. § 190.50 letter, that Mr. Weinstein intended to testify before the Grand Jury that would ultimately hear this matter and would also ask the Grand Jury to consider other evidence as well. Counsel was adamant in asserting Mr. Weinstein's right to testify before the Grand Jury based not just on Mr. Weinstein's and counsel's insistence that he was innocent of any criminal conduct but also on counsel's belief in the existence of email and other documentary evidence that would corroborate Mr. Weinstein's non-criminal, consensual, intimate relationships and directly refute the claims made by many of the known accusers.

9. On May 16, 2018, counsel again served written C.P.L. § 190.50(5)(a) notice and requested that the District Attorney's Office provide specific information regarding the nature and scope of the Grand Jury investigation so that counsel could adequately prepare Mr. Weinstein for his Grand Jury testimony. (Exhibit 2: Brafman May 16, 2018 Letter at 1-4). Without such notice and information, counsel argued, Mr. Weinstein would have "no idea as to what specific charges he must address in his potential testimony." (Id. at 1). Counsel also noted that this additional information was necessary to determine whether the defense would offer witnesses to the Grand Jury pursuant to C.P.L. § 190.50(6). (Id. at 4).

10. On May 22, 2018, the District Attorney's Office refused to provide counsel with any additional information regarding the nature and scope of the Grand Jury investigation. Specifically, by withholding identification of CW-1 as the individual making the rape claim, the District Attorney's Office refused to allow Mr. Weinstein's counsel to make any pre-charging presentation demonstrating his actual innocence.

11. Then, in its rush to prosecute Mr. Weinstein and while a Grand Jury in the matter was actively convened, on May 25, 2018, the District Attorney charged Mr. Weinstein in a felony complaint (not an indictment) with the crimes of Criminal Sexual Act in the First Degree (Penal

Law § 130.50(1)), Rape in the First Degree (Penal Law § 130.35(1)) and Rape in the Third Degree (Penal Law § 130.25(1)).

12. At the felony complaint arraignment on Friday, May 25, 2018, the District Attorney's Office informed counsel that Mr. Weinstein would have the opportunity to testify before the Grand Jury, but if he wanted to do so, he must appear on May 30, 2018, less than two court days later given the Memorial Day weekend.

13. Subsequently, counsel requested that Your Honor adjourn Mr. Weinstein's scheduled appearance before the Grand Jury so as to allow the defense to obtain the exculpatory email evidence known to exist, which would establish that the alleged rape victim in the felony complaint (CW-1) had in fact been in a long-term, consensual, intimate relationship with Mr. Weinstein and never made any indication in any of her numerous communications with Mr. Weinstein that she believed she had been assaulted at any time. Counsel stressed to the Court at the time that the emails were particularly important in a first-degree rape case as Mr. Weinstein's entire life hangs in the balance. Counsel further noted that an adjournment would allow the defense to obtain the emails known to exist (but inaccessible at that time to Mr. Weinstein) and provide them to the District Attorney's Office, which would then be obligated by law to ask the Grand Jury if it wanted to hear that evidence. The People opposed, and the Court denied counsel's adjournment request.[2]

[2] Counsel's request for an adjournment was necessary in order to petition the Court in Delaware, in which The Weinstein Company (TWC) bankruptcy was pending, for approval of production of Mr. Weinstein's two relevant emails accounts, which were being held by the Trustee. It was only after counsel for Mr. Weinstein presented a due process argument that the Bankruptcy Court issued a production order and established a protocol that would permit Mr. Weinstein and his counsel access to the emails that would, in counsel's judgment, exculpate Mr. Weinstein by corroborating

14. Given the Court's ruling, counsel informed the District Attorney's Office that Mr. Weinstein would be unable to testify in the Grand Jury relating to the charges in the felony complaint as he would not have sufficient time to properly prepare for his testimony, nor would he yet have access to the necessary documents to rely on in doing so.

15. Shortly thereafter, on May 30, 2018, the Grand Jury indicted Mr. Weinstein for the same three charges in the felony complaint, including the forcible rape of CW-1.

16. Four weeks later, on July 2, 2018, the District Attorney filed a superseding indictment charging Mr. Weinstein with the crimes of Predatory Sexual Assault (Penal Law § 130.95(2)) (Counts One and Three), Criminal Sexual Act in the First Degree (Penal Law § 130.50(1)) (Counts Two and Six), Rape in the First Degree (Penal Law § 130.35(1)) (Count Four) and Rape in the Third Degree (Penal Law § 130.25(1)) (Count Five). These newly-added Predatory Sexual Assault charges are Class A-II felonies that carry an indeterminate minimum sentence of 10 years to life imprisonment.

17. Prior to arraignment on the superseding indictment, counsel had a conversation with the prosecutors about bail in which they indicated they were already aware of CW-1's email exchanges with Mr. Weinstein. Counsel has no information, however, that the District Attorney in

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that he was in a long-term, consensual, intimate relationship with CW-1 both at the time and after the claimed sexual assault. (Exhibit 3: Brafman May 3, 2018 Affirmation).

The Bankruptcy Court recognized the fundamental fairness in giving Mr. Weinstein access to this admittedly exculpatory material. But this Court denied even a brief adjournment of the Grand Jury proceedings so as to allow the Grand Jurors the option of considering this exculpatory material that may well have caused them to not indict Mr. Weinstein for the forcible rape of CW-1–a woman who shortly after the alleged rape communicated directly with Mr. Weinstein, her alleged rapist, in the most warm, complimentary and solicitous terms.

fact presented the Grand Jury with any of these exculpatory emails prior to asking the Grand Jury to indict on either the original or superseding indictments.

C. THE INDICTMENT SHOULD BE DISMISSED BECAUSE THE DISTRICT ATTORNEY WITHHELD EXCULPATORY EVIDENCE FROM THE GRAND JURY

18. In the face of outside pressure and political influences, the District Attorney presented the Grand Jury with an alleged rape victim who claimed to have been forcibly raped by Mr. Weinstein on March 18, **2013** in New York City, but the District Attorney likely did so without presenting the actual and complete communications between the parties. This flawed presentation, we submit, knowingly allowed the Grand Jury to receive a materially incomplete picture of the evidence known to exist in this case, namely the long-term, consensual, intimate relationship between CW-1 (the alleged victim) and Mr. Weinstein. If so, this created a false impression that this alleged incident in 2013 was either the last sexual contact between CW-1 and Mr. Weinstein and/or that CW-1 exhibited some indication that she had been assaulted or victimized by Mr. Weinstein in the weeks and months following March 18, 2013. What is apparent instead is that the prosecutors already knew that CW-1 and Mr. Weinstein had a long-term, consensual, intimate relationship at the time of the alleged rape and that it continued for years <u>after</u>.

19. Indeed, the pressure on the District Attorney to indict Mr. Weinstein was unprecedented, involving the outspoken public statements from the then Chief of Detectives Robert Boyce predicting the imminent arrest of Mr. Weinstein for the rape of Paz de la Huerta, (Exhibit 4: Rocco Parascandola And Larry Mcshane, <u>NYPD has 'actual' rape case against Harvey Weinstein</u>, N.Y. Daily News, Nov. 4, 2017), and repeating his public berating of District Attorney Cyrus Vance for months before Mr. Weinstein was actually arrested, most notably, not for any claimed rape of Ms. de la Huerta.

20. In addition, political pressure on Mr. Vance became even more intense with Governor Cuomo appointing then Attorney General Eric Schneiderman to investigate the District Attorney's failure to prosecute Mr. Weinstein for an alleged groping claim in 2015 (even after overwhelming evidence was presented establishing that the accuser had previously made other false claims of sexual assault) and for his continuing failure to prosecute Mr. Weinstein for any of the sexual assault claims heralded in several scathing articles that appeared in national media outlets.

21. To make matters even worse, a front-page story in the May 27, 2018 edition of the New York Times proclaimed that Mr. Vance's continued position as the District Attorney of New York County depended in large measure on his successful prosecution and conviction of Harvey Weinstein. (Exhibit 5: James C. McKinley Jr., Harvey Weinstein's Arrest May Define Manhattan D.A.'s Legacy, N.Y. Times, May 27, 2018). The article went so far as to also hypothesize that Mr. Vance's legacy would be permanently tarnished and his reputation destroyed if he did not bow to the demands to arrest and successfully prosecute Mr. Weinstein.

22. Mr. Vance's office then inexplicably authorized Mr. Weinstein's arrest on five-year and fourteen-year old alleged assaults, even though neither case is corroborated by any physical or forensic evidence. Thus, Mr. Weinstein was indicted for an alleged act of forcible oral sex by someone who claims she does not remember when it occurred and asserts only that it was purportedly sometime during a three-month period in 2004, nearly fourteen years ago. He was also indicted for the rape of CW-1, whose extensive communications and contact immediately following the now claimed forcible rape instead reflect a consensual, intimate relationship with Mr. Weinstein in an exchange of more than 400 warm, complimentary and solicitous emails with an alleged rapist for more than four years after the alleged rape, never once in those

communications claiming to have ever been harmed by Mr. Weinstein. (Copies of only some of the email exchanges are set out below and also attached as exhibits).

23. Specifically, upon information and belief, at the time of its Grand Jury presentation, the People purportedly had emails between CW-1 and Mr. Weinstein that, at the very least, on their face appeared inconsistent with the allegation that Mr. Weinstein had forcibly raped CW-1 in March 2013.[3] For example, in the weeks and months after the March 2013 alleged rape, CW-1 sent Mr. Weinstein–her alleged rapist–a slew of emails which would appear to contradict that CW-1 ever believed she had been forcibly raped weeks earlier, including the following CW-1 sent directly to Mr. Weinstein: "[I] hope to see you sooner than[] later. . . ." (Exhibit 6: April 11, 2013 Email); "I appreciate all you do for me, it shows" (Exhibit 7: April 12, 2013 Email); "It would be great to see you again, and catch up!" (Exhibit 8: April 17, 2013 Email); "It would mean a lot [] if we could catch up over a drink then" (Exhibit 9: April 21, 2013 Email); and "Miss you big guy." (Exhibit 10: September 11, 2013 Email).

24. Certainly, the Grand Jury should have been given the opportunity to review the messages that CW-1 emailed Mr. Weinstein within a month of the alleged rape and also to learn that, only months after the alleged rape, CW-1 was looking for some <u>private</u> time with Mr. Weinstein to discuss her life and "catch up," writing: "I was hoping for some time privately with you to share the direction I am going in life and catch up because its been awhile." (Exhibit 11: August 16, 2013 Email). The Grand Jury should have been given the ability to credit or discredit

[3] The prejudice is still manifest if the People did not in fact have possession of the emails but merely told the Grand Jury about CW-1's relationship with Mr. Weinstein. Indeed, having been notified about the existence of the exculpatory emails by Mr. Weinstein's counsel, the People should have consented to the short adjournment as there was no urgency, based on the Statute of Limitations or otherwise, to indict Mr. Weinstein on five-year-old charges on which he was already arrested.

CW-1's rape allegation by evaluating her allegations in the truthful context of the communications and contact she had with Mr. Weinstein, including, but not limited to, the fact that less than two months after her alleged rape, she chose to communicate with her alleged rapist by calling him "Dear," telling him that she is "Thinking" of him. (Exhibit 12: May 6, 2013 Email).

25. There exists a myriad of compelling examples of emails that CW-1 sent Mr. Weinstein in the weeks and months after the alleged rape in March 2013 that reasonably could be understood by the Grand Jury as far more consistent with an ongoing warm, friendly, relationship (fundamentally inconsistent with any forcible rape having occurred) than communications between a rape victim and her alleged rapist:

Exhibit 13	July 8, 2013	"Lets get together."
Exhibit 14	August 27, 2013	"I got a new number. Just wanted you to have it. Hope you are well and call me anytime, always good to hear your voice."
Exhibit 15	October 22, 2013	"By the way I was so happy you saw me today! Very honored. Talk soon."
Exhibit 16	January 5, 2014	"Your the one who makes it look good with your smile and beautiful eyes!!"

26. Moreover, additional email exchanges further demonstrate how CW-1 arranged to meet with Mr. Weinstein on numerous occasions <u>after</u> the alleged rape, conduct that could reasonably be understood as inconsistent with the manner in which a victim of a violent assault (rape) would choose to interact with her alleged rapist:

Exhibit 17	April 19, 2013	"Text or call me on saturday, ill be done around 9pm i believe earliest. We can work something out from there?"
Exhibit 18	July 9, 2013	"If your schedule won't be there when I return I can adjust my schedule to be flexible elsewhere."

Exhibit 19	September 15, 2013	"If your only here a day but are coming back for the Emmys next week, lets set something up?
Exhibit 20	October 22, 2013	"Hopefully I can run into you today!"
Exhibit 21	October 22, 2013	"I could take off for a lunch if u have a time or see u at 10"
Exhibit 22	October 28, 2013	"I can take a lunch if u have time?
Exhibit 23	October 29, 2013	"Depending on when I finish, I could swing by soho on my way home?

27. Furthermore, as evidenced by the following emails, this warm, friendly relationship between CW-1 and Mr. Weinstein continued on for several **years** after the alleged forcible rape in March 2013, and for years before February 2018 when, upon information and belief, CW-1 for the first time ever made any claim of an alleged rape to any law enforcement authority[4]:

Exhibit 24	August 22, 2014	"What time are you free at for a drink?"
Exhibit 25	August 28, 2014	"When u in [redacted] again?"
Exhibit 26	September 14, 2014	"Rough day : (when you back in [redacted] my Friend?" (emphasis added)[5]
Exhibit 27	August 19, 2016	"WOW! I know its a HUGE deal if you changed your plans for me. You know me, I'm there always if i can make it happen. Just juggling responsibilities with living." "Im home now, I do not know if you are here, but I have no plans tonight."

[4] CW-1 also first made her allegations to authorities after there was a world-wide media firestorm demonizing Mr. Weinstein and suggesting that anyone close to Mr. Weinstein who did not condemn or accuse him was therefore complicit. By February 2018, there was also already wide-spread speculation about massive potential civil and criminal liability Mr. Weinstein would be facing.

[5] Among other personal aspects of their relationship was the fact that Mr. Weinstein arranged for CW-1 to obtain employment.

28. Even more telling is this clearly warm and solicitous email exchange that took place on July 26, 2014 that should have been presented to the Grand Jury (Exhibit 28):

- CW-1 (4:45 pm): Hi! :)
- HW (4:47 pm): Where r u. How r u
- CW-1 (5:55 pm): I'm at work. Just had u cross my mind and thought u would send a hello. I am well
- HW (6:15 pm): Love to cross your mind it's my favorite exercise
- CW-1 (8:50 pm): Lol that made me laugh so hard

(emphasis added).

29. In this exchange, the alleged rape victim writes she is "**laughing out loud**" ("Lol") because her alleged rapist was making her think about him. It was fundamentally unfair that the Grand Jury was prevented from making any inquiry of CW-1 as to her direct and seemingly solicitous and complimentary communications with her alleged rapist immediately after and consistently for years after the alleged rape.[6]

30. Notably, this communication by CW-1 to Weinstein also occurred two weeks after CW-1 told Mr. Weinstein that "There is no one else I would enjoy catching up with that understands me quite like you." (Exhibit 29: July 10, 2014 Email; emphasis added).

[6] This is not to ignore that rape can occur in relationships such as an abusive marriage or where the parties have been dating each other for a time. But the relationship here–while it occurred over a long period–was not a relationship where CW-1 and Mr. Weinstein saw each other regularly, lived together or were even in any kind of committed relationship. It was not a relationship in which CW-1 was trapped by matrimony, employment or financial need. No matter the nature of the relationship, however, the People had a legal obligation to let the Grand Jury see and read these critical communications composed by CW-1 and sent to Mr. Weinstein shortly after CW-1 now claims a forcible rape occurred before making an informed decision as to whether there was evidence Mr. Weinstein raped CW-1 on March 18, 2013, sufficient to indict him.

31. In yet another email exchange reasonably understood as also being inconsistent with an indictment being returned, CW-1 writes to Mr. Weinstein following her alleged forcible rape about how she looks forward to introducing Mr. Weinstein to her own mother: "She would love to meet you, plus you can see how good my genes are **;)**."[7] (Exhibit 30: July 29, 2014 Email; emphasis added). Surprisingly, CW-1 again reached out to her alleged rapist when she needed help securing a job (Exhibit 31: September 8, 2013 Email), when she needed a sponsorship for a Soho membership (Exhibit 32: February 23, 2015 Email), when her license was suspended (Exhibit 33: April 9, 2015 Email) and for comfort when her father got sick (Exhibit 34: July 6, 2014 Email).

32. These emails, we submit, confirm the highly relevant fact that the relationship between CW-1 and Mr. Weinstein was both consensual and intimate; importantly, particular emails sent to Mr. Weinstein by CW-1 could also be reasonably understood to reflect CW-1's intention that she wanted the relationship to be deeper. For example, on February 8, 2017, CW-1 emailed Mr. Weinstein saying **"I love you, always do. But I hate feeling like a booty call. :)."** (Exhibit 35: February 8, 2017 Email; emphasis added). Although reflecting neither Mr. Weinstein's words nor feelings, by using the term **"booty call,"** the complaining witness appears to acknowledge the consensual, intimate nature of her relationship with Mr. Weinstein and perhaps, most importantly, signaled her desire for a fuller and more emotionally committed relationship. This evidence should not have been kept from the Grand Jury.

33. What is absolutely clear from these emails is that CW-1 had a long-term, consensual, intimate relationship with Mr. Weinstein that continued for years after the alleged rape

[7] Ending her emails with the proverbial :) "Smiley face," is normally used, we submit, by someone reasonably intending it as a symbol of friendship and that, as CW-1 tells Mr. Weinstein, communicating with Weinstein makes the sending party, in this case CW-1, "happy."

and that the extensive communications from CW-1 to Weinstein evinced not a single indication that CW-1 had ever been the victim of a forcible rape. That is precisely why counsel had requested an adjournment of Mr. Weinstein's Grand Jury testimony in order for counsel to physically obtain these exculpatory emails so that the Grand Jury could be presented with this highly relevant documentary evidence. In refusing to agree to even a brief adjournment or to provide these emails to the Grand Jury, the People violated all sense of fair dealing by presenting the Grand Jury with an incomplete and misleading impression about CW-1's actual contact and communications with Mr. Weinstein, thereby preventing the Grand Jury from properly contextualizing and assessing her testimony when they made the decision as to whether the evidence presented was sufficient to indict on a forcible rape.[8]

34. This failure is made even worse by the fact that counsel had written the District Attorney on May 16, 2018 and May 22, 2018,[9] prior to the original and subsequent indictments, and specifically requested that the prosecutors provide the Grand Jury with "exculpatory evidence that would materially influence the Grand Jury's determination." (Exhibit 2: Brafman May 16, 2018 Letter at 4). The defense also asked the District Attorney's Office to adjourn the time for Mr. Weinstein's Grand Jury testimony so as to allow the defense to obtain these exculpatory emails for use in the Grand Jury. The District Attorney refused, and instead re-presented the case to the

[8] Even if the District Attorney informed the Grand Jury that CW-1 and Mr. Weinstein had a relationship, this would not be adequate to avoid prejudice without providing the Grand Jury with the actual communications that were sent by CW-1 to Mr. Weinstein during the highly relevant period immediately following the claimed rape. Otherwise, it is impossible for the Grand Jury to properly assess the evidence and CW-1's testimony in determining whether CW-1 was forcibly raped.

[9] This letter is not attached to counsel's affirmation as the letter was filed under seal with this Court.

Grand Jury without further notice to the defense, thereby depriving the defense of the opportunity to bring these exculpatory emails to the Grand Jury's attention.[10]

35. As noted above, counsel believes that the People have indicated they had these emails in their possession at the time of the Grand Jury presentations based on the prosecutor's previous statement that she was aware of CW-1's email exchanges when counsel referenced them in a discussion about bail prior to Mr. Weinstein's arraignment on the superseding indictment. Even if the District Attorney did not have the actual emails in their possession when presenting their case to the Grand Jury, they certainly knew about the exculpatory nature of these emails from counsel's representations and should have properly adjourned the Grand Jury presentation to further investigate before asking the Grand Jury to indict Mr. Weinstein on charges that carry a maximum sentence of **life** imprisonment.

[10] The People may point to the fact that after the Court denied counsel's request for an adjournment, counsel informed the People that Mr. Weinstein would not testify because he did not have sufficient time to prepare in only two court days once notified for the first time of the identity of the alleged rape victim. In response to a question by ADA Joan Illuzzi-Orbon, counsel confirmed that he was accordingly withdrawing his previously given C.P.L. § 190.50 notice as to a sex crime presentation. The People have now used that conversation and a similar conversation after the original indictment to argue that they were therefore not required to provide notice as to "any" further sex crime presentment when, in truth, Mr. Weinstein was withdrawing notice as to CW-1 and Lucia Evans, the only two alleged victims whose allegations Mr. Weinstein was notified the Grand Jury was considering. Thereafter, without further notice, the District Attorney presented the case of Mimi Haleyi without any notice to Mr. Weinstein's counsel, and again used the cases of Lucia Evans and CW-1 to seek a Predatory Sexual Assault indictment; again, upon information and belief, the prosecution failed for the second time to provide the Grand Jury with the identified emails.

Even if the People relied on counsel's statement as to the withdrawal of C.P.L. § 190.50 notice, it did not cure the failure to again ask the Grand Jury to consider the alleged "rape" of CW-1 without presenting the highly exculpatory emails. Indeed, the prejudice was only exacerbated, as the Grand Jury relied on the CW-1 rape allegation to secure an even more serious indictment, thereby exposing Mr. Weinstein to the potential of a life sentence.

36. While the exculpatory email evidence may directly pertain to only Counts Three (Predatory Sexual Assault), Four (Rape in the First Degree) and Five (Rape in the Third Degree) of the indictment relating to CW-1, the District Attorney's failure to fairly present an accurate and complete presentation of the evidence infected the entire Grand Jury proceeding and subsequent indictment. Indeed, the case against Mr. Weinstein is significantly weaker without CW-1's alleged rape claim, as the alleged conduct relating to both Lucia Evans and Mimi Haleyi occurred fourteen and twelve years ago, respectively, and Ms. Evans claims she does not even remember when the alleged crime occurred in 2004–asserting it occurred at some unknown time between June and September of 2004. The Grand Jury would also be skeptical of Ms. Evans' claims, we submit, given that the alleged assault took place during daytime hours at Mr. Weinstein's transparent glass-enclosed office with four employees stationed within feet of Ms. Evans. Similarly, Ms. Haleyi's own version on its face is not credible. She claims to have repeatedly rebuffed Mr. Weinstein at various locations, only to subsequently choose to visit him at his residence, where the alleged incident took place. In addition, both Ms. Evans and Ms. Haleyi were adult women who had reportedly retained personal injury lawyers and scrubbed their social media accounts prior to their cooperation with law enforcement, and neither ever reported their alleged assaults until after Mr. Weinstein was vilified by an unrelenting and insatiable media drumbeat that aggressively promoted the false narrative that those who had any intimate relationship with Mr. Weinstein must either publicly identify as being his victim or else be forever labeled as being complicit in his alleged predatory abuse.

37. By presenting CW-1 to the Grand Jury as a 2013 rape victim, the District Attorney portrayed Mr. Weinstein as a "rapist" in an attempt to bootstrap the two weaker, older cases to a seemingly stronger recent case. In doing so, the District Attorney allowed the Grand Jury to hear

a sanitized and distorted version of CW-1's true relationship and interactions with Mr. Weinstein (without reading her exculpatory emails) and ignored defense counsel's request–prior to both the original and subsequent indictments–that the District Attorney provide the Grand Jury with "exculpatory evidence that would materially influence the Grand Jury's determination." (Exhibit 2: Brafman May 16, 2018 Letter at 4).

38. In the end, a prosecutor's duty in the Grand Jury is not just to secure indictments, "but also to see that justice is done." People v. Huston, 88 N.Y.2d 400, 406 (1996). Justice was not done here. As argued more fully in the enclosed Memorandum of Law, to the extent the prosecutors failed to introduce this crucial and exculpatory evidence, the indictment should be dismissed pursuant to C.P.L. § 210.35(5) as this failure impaired the integrity of the Grand Jury and has irreparably prejudiced Mr. Weinstein.

D. THE INDICTMENT SHOULD BE DISMISSED BECAUSE THE DISTRICT ATTORNEY FAILED TO GIVE ADEQUATE NOTICE THAT IT WAS PRESENTING NEW, FAR MORE SERIOUS CHARGES TO THE GRAND JURY

39. The original May 30, 2018 indictment in this case charged Mr. Weinstein with three crimes (Criminal Sexual Act in the First Degree, Rape in the First Degree and Rape in the Third Degree) based on two victims–Lucia Evans and CW-1.

40. On July 2, 2018, without any further notice to counsel, the District Attorney filed a superseding indictment adding another victim, Mimi Haleyi, and three additional charges: two counts of Predatory Sexual Act (one for Mimi Haleyi and one for CW-1) and an additional count of Criminal Sexual Act in the First Degree (for Mimi Haleyi). The two new Predatory Sexual Assault charges are class A-II felonies that carry a maximum of life imprisonment.

41. As argued in footnote 10 and the accompanying Memorandum of Law, the superseding indictment should be dismissed because the District Attorney failed to provide adequate notice that it was presenting new, far more serious charges to the Grand Jury.

E. COUNT SIX SHOULD BE DISMISSED BECAUSE THE INDICTMENT FAILS TO CONTAIN A STATEMENT SUFFICIENTLY INDICATING WHEN THE ALLEGED CRIME OCCURRED AS REQUIRED BY C.P.L. § 200.50(6)

42. Count Six of the indictment alleges that Mr. Weinstein committed Criminal Sexual Act in the First Degree by engaging in oral sexual conduct by forcible compulsion "during the period from on or about June 1, 2004 to on or about September 1, 2004."

43. While neither the indictment nor the Voluntary Disclosure Form provide any additional facts surrounding the alleged incident, the victim, Lucia Evans, has openly discussed her claim in the media, including an interview with The New Yorker. (Exhibit 36: Ronan Farrow, From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories, The New Yorker, Oct. 10, 2017).

44. In that interview, Ms. Evans describes how she gave Mr. Weinstein her number after meeting him at a NYC nightclub in the summer of 2004 before her senior year in college. Soon after, she claims she agreed to meet Mr. Weinstein in his Tribeca office for a daytime meeting, first with Mr. Weinstein and then, immediately thereafter in the same office space, with a female casting executive.

45. Ms. Evans further alleges that, during her meeting with Mr. Weinstein, he forced her to perform oral sex by pulling her head down onto his penis. Ms. Evans goes on to explain that she told Mr. Weinstein that she did not want to perform oral sex and tried to get away, but then states in her press interview that "maybe I didn't try hard enough" and that she did not want to

kick or fight him so she "just sort of gave up." (Id. at 3). Immediately after the alleged sexual assault, Ms. Evans chose to meet with a casting executive in the same office space, who she stated subsequently sent her scripts and also attended one of her acting-class readings weeks later.

46. Despite providing a detailed account of the alleged incident to The New Yorker, Ms. Evans now claims she does not remember the date on which she was sexually assaulted. As a result, no specific date is provided and the indictment instead charges a "season"–alleging that Mr. Weinstein engaged in this conduct at some point "during the period from on or about June 1, 2004 to on or about September 1, 2004." As argued in the attached Memorandum of Law, this Count is defective and should be dismissed under C.P.L. § 200.50(6) because a three-month time frame is unreasonable and prevents Mr. Weinstein from adequately preparing his defense to the charge.

F. COUNT FIVE MUST BE DISMISSED BECAUSE THE FIVE-YEAR STATUTE OF LIMITATIONS HAS PASSED

47. Count Five charges Mr. Weinstein with third-degree rape of CW-1 on March 18, 2013. The Statute of Limitations for this crime is five years (see C.P.L. § 30.10(2)(b)) and it expired on March 18, 2018. Because Mr. Weinstein was not arrested on this charge until May 25, 2018–more than two months after the Statute of Limitations expired–this charge must be dismissed.

G. THE COURT SHOULD INSPECT THE GRAND JURY MINUTES AND DISMISS OR REDUCE RELEVANT COUNTS OF THE INDICTMENT PURSUANT TO C.P.L. §§ 210.20(1)(B) AND 210.30 BASED ON THE LACK OF LEGALLY SUFFICIENT EVIDENCE OF FORCE

48. Counts One, Two, Three, Four and Six of the indictment require that Mr. Weinstein committed sexual assault "[b]y forcible compulsion." See Penal Law §§ 130.35(1), 130.50(1),

130.95. This requirement involves either the use of physical force or threats that place the victim in fear of immediate death or physical injury. See Penal Law § 130.00(8).

49. Over the last 10 months, several women have made accusations against Mr. Weinstein of forced sexual contact but who, upon further questioning, acknowledged that Mr. Weinstein did not actually exert any force or threat of force; rather, they claim to have acquiesced to the sexual contact because they believed that Mr. Weinstein would continue to insist until they complied. This would not constitute "forcible compulsion" under New York law. Lucia Evans, the alleged victim in Count Six, stated a similar claim in her interview with The New Yorker, first stating she told Mr. Weinstein that she did not want to perform oral sex and tried to get away, but then describes that "maybe I didn't try hard enough" and that she did not want to kick or fight him so she "just sort of gave up." (Exhibit 36: Ronan Farrow, From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories, The New Yorker, Oct. 10, 2017 at 3).

50. Based on the quoted statements repeatedly made by Ms. Evans in her press interviews, we ask that this Court review the Grand Jury minutes to determine whether the testimony of each of the victims sufficiently established the required "forcible compulsion" element as a matter of law. Acquiescence in the face of insistence without physical force or threat of violence is certainly not a legally sufficient basis to charge someone with the crimes of Rape, Criminal Sexual Act or Predatory Sexual Assault.

51. Counsel also requests that this Court release the pertinent portions of the Grand Jury testimony to the defense so that we may assist the Court in adjudication of the current motion to dismiss. See CPL § 210.30 (3); Matter of Attorney Gen. of the State of N.Y. v. Firetog, 94 N.Y.2d 477 (2000).

H. THE INDICTMENT SHOULD BE DISMISSED, PURSUANT TO C.P.L. §§ 210.20(1)(C) AND 210.35, ON VARIOUS GROUNDS OF DEFECTIVE GRAND JURY PROCEEDINGS

I. Voir Dire of the Grand Jury (C.P.L. §§ 210.20(1)(c) and 210.35(5))

52. Given the highly public nature of the case against Mr. Weinstein, counsel had requested, prior to the Grand Jury presentations, that the District Attorney's Office take measures, along with this Court, to individually voir dire each Grand Juror to make certain that the publicity would not unduly and improperly influence the Grand Jury.[11] See e.g., Democratic Cty. Comm. of Bronx Cty. v. Nadjari, 52 A.D.2d 70, 74 (1st Dep't 1976) ("To the extent that petitioner challenges the general absence of a Grand Jury voir dire, it is noted that respondent asserts that the Grand Jury has been repeatedly admonished to disregard media accounts and this factor must be taken into consideration as to whether publicity has unduly and improperly influenced the Grand Jury." (citing People v. King, 48 A.D.2d 457 (1st Dep't 1975) and Beck v. Washington, 369 U.S. 541, 546 (1962))); see also In re Grand Jury Investigation of Death of Diallo, 180 Misc. 2d 223, 224 (Sup. Ct. Bronx Co. 1999) ("the Court, mindful 'that an accused individual has a constitutional right to have his case presented before a fair and impartial Grand Jury,' and guided by the more stringent rules applicable to the discharge of sworn petit jurors, informed the respective parties that it would promptly conduct an in camera inquiry of the Grand Jury panel to explore and resolve the impact, if any, of the publicity engendered by this incident on the Grand Jurors' ability to fairly and impartially consider the evidence in this case." (citations omitted)).

[11] This request was made as part of counsel's May 22, 2018 letter to the District Attorney's Office and this Court, which has been filed under seal.

53. Counsel is not privy to the Grand Jury minutes and is therefore not aware whether the District Attorney or this Court actually conducted voir dire of the Grand Jurors. To the extent the requested voir dire was not undertaken, or undertaken meaningfully and repeated with each new presentation of charges, we move this Court to dismiss the indictment, pursuant to C.P.L. §§ 210.20(1)(c) and 210.35(5), because this failure impaired the integrity of the Grand Jury and prejudiced Mr. Weinstein.

II. Lack of Twelve Grand Jurors Hearing all the Evidence (C.P.L. § 210.35(3))

54. Mr. Weinstein notes that at least twelve grand jurors, during the course of what might have been several weeks of presentation over a possibly non-consecutive time period, were required to have heard all the evidence. Should this prove not to have been the case–a proposition which, at this point, can only be determined by the Court's scrutiny of the proceedings–the indictment is further subject to dismissal.

55. Additionally, not only must twelve grand jurors hear all the evidence, but the minutes themselves must reflect that to have occurred.

56. It is therefore respectfully requested that the Court scrutinize the necessary attendance records and minutes to determine if there was appropriate compliance. If not, the indictment should be dismissed.

III. Possible Improper Presentation During an Extended Grand Jury (C.P.L. §190.15(1); C.P.L. § 210.35(1))

57. It is respectfully requested that the Court scrutinize the evidence with regard to any potential extension that might have been ordered for this Grand Jury. If the instant matter was not part of the authorized extension, then the Grand Jury was not legally empowered to return a true bill and the indictment must be dismissed.

IV. Failure to Properly Instruct the Grand Jury (C.P.L. § 210.35(5))

58. It is respectfully requested that the Court examine all the legal instructions given to the Grand Jury and that the Court give particular scrutiny to the instruction regarding how the Grand Jury must evaluate the evidence for each crime separately. For instance, the prosecutors must instruct the Grand Jury that it could not consider any of the evidence relating to the criminal sexual act charges when deciding whether Mr. Weinstein committed the rape charges. And vice versa.[12] A failure to properly instruct the Grand Jury regarding this matter would constitute an error so substantial that it would render the Grand Jury proceedings legally defective requiring a dismissal of the entire indictment.

I. DEMAND FOR DISCOVERY

59. Pursuant to C.P.L. § 240.40(1), Mr. Weinstein seeks an Order of this Court allowing discovery of all reports, memoranda, affidavits and other documents relating to this case, including but not limited to all reports, memoranda, records of interviews and reports generated by police officials or the District Attorney's Office as well as other documents relating to this case which were prepared by the New York Police Department, or used by the New York Police Department and/or the District Attorney's Office in their investigation of this case. All of the information sought is material to Mr. Weinstein's preparation of a defense.

60. Mr. Weinstein also requests an Order of this Court directing the District Attorney to provide any "prompt outcry" evidence that it intends to use at trial.

[12] While evidence that a defendant committed a prior sexual assault may, in certain circumstances, be considered in evaluating whether he committed the crime of Predatory Sexual Assault, that is because committing a previous sexual assault is an element of that crime. The same is not true for the other charges in the indictment.

61. Mr. Weinstein further requests, pursuant to C.P.L. § 240.43, that the People notify him of all specific instances of his conduct believed to constitute prior uncharged criminal, vicious, immoral or bad acts which the District Attorney's Office intends to seek to use at trial for purposes of impeaching his credibility.

62. Mr. Weinstein also moves, pursuant to People v. Sandoval, 43 N.Y.2d 371 (1974), to preclude the District Attorney's Office from cross-examining as to prior specific uncharged criminal, vicious, immoral, or bad acts. The probative value of such evidence is vastly outweighed by the unduly prejudicial impact such evidence would have on the jury and will force this Court to conduct a series of contested mini-trials on that claimed evidence as Mr. Weinstein will seek to preclude any such evidence at trial.

J. DEMAND FOR BILL OF PARTICULARS

63. Pursuant to C.P.L. § 200.95, Mr. Weinstein requests a Bill of Particulars to allow the defense to properly defend against the charges in the superseding indictment. Specifically, Mr. Weinstein requests the following information:

Count 1

> The exact time and location of the alleged conduct that occurred on July 10, 2006;
>
> The nature of the forcible compulsion required to commit Criminal Sexual Act in the First Degree;
>
> The identity of the "one or more additional persons" that serve as the predicate act for Predatory Sexual Assault;
>
> The exact crime(s) that constitute(s) the predicate act for Predatory Sexual Assault; and
>
> The exact time and date of the alleged crime(s) that serve(s) as the predicate act for Predatory Sexual Assault.

Count 2

The exact time and location of the alleged conduct that occurred on July 10, 2006;

The nature of the forcible compulsion required to commit Criminal Sexual Act in the First Degree.

Count 3

The exact time and location of the alleged conduct that occurred on March 18, 2013;

The nature of the forcible compulsion required to commit Rape in the First Degree;

The identity of the "one or more additional persons" that serve as the predicate act for Predatory Sexual Assault;

The exact crime(s) that constitute(s) the predicate act for Predatory Sexual Assault; and

The exact time and date of the alleged crime(s) that serve(s) as the predicate act for Predatory Sexual Assault.

Count 4

The exact time and location of the alleged conduct that occurred on March 18, 2013; and

The nature of the forcible compulsion required to commit Rape in the First Degree.

Count 5

The exact time and location of the alleged conduct that occurred on March 18, 2013;

The basis of the victim's lack of consent (other than incapacity to consent); and

The reason why this crime is not time barred by the five-year Statute of Limitations.

Count 6

The exact time and location of the alleged conduct that occurred between July 1, 2004 and September 1, 2004; and

The nature of the forcible compulsion required to commit Criminal Sexual Act in the First Degree.

K. DEMAND FOR BRADY MATERIAL

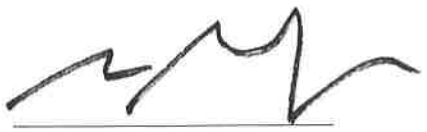
64. Pursuant to Brady and its progeny, Mr. Weinstein seeks any and all exculpatory or impeaching material in the District Attorney's possession, custody or control, or otherwise known to the prosecution, or which by the exercise of due diligence may become known to the prosecution, including but not limited to the requests made by defense counsel.

65. Mr. Weinstein specifically requests that the District Attorney provide the defense with all communications (e.g., call logs, call messages, texts or emails) between the alleged victims and Mr. Weinstein that are inconsistent with their sexual assault claims.

WHEREFORE, for all the above-stated reasons, Mr. Weinstein's motion should be granted in all respects.

Dated: August 3, 2018
New York, NY

Respectfully Submitted,



Benjamin Brafman, Esq.
Jacob Kaplan, Esq.

To: Clerk of the Court
ADA Joan Illuzzi-Orbon

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 81
----------X
THE PEOPLE OF THE STATE OF NEW YORK

MEMORANDUM OF LAW

-against- Indictment No. 2335/2018

HARVEY WEINSTEIN,

Defendant.
----------X

MEMORADUM OF LAW IN SUPPORT OF MR. WEINSTEIN'S MOTION TO DISMISS

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I. INTRODUCTION

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II. THE INDICTMENT SHOULD BE DISMISSED BECAUSE THE DISTRICT ATTORNEY FAILED TO PROVIDE THE GRAND JURY WITH EXCULPATORY EVIDENCE OF THE LONG-TERM, CONSENSUAL, INTIMATE RELATIONSHIP BETWEEN THE DEFENDANT AND THE ALLEGED RAPE VICTIM

A. General Principles Governing the District Attorney's Obligations in the Grand Jury

Pursuant to C.P.L. § 210.35(5), on a motion to dismiss an indictment, a Grand Jury proceeding will be found to be defective when it "fails to conform to the requirements of article one hundred ninety to such degree that the integrity thereof is impaired and prejudice to the defendant may result." Thus, even where the evidence before the Grand Jury may be legally sufficient, C.P.L. § 210.35(5) requires only the possibility of prejudice, not actual prejudice, to warrant dismissal. See People v. Sayavong, 83 N.Y.2d 709, 711 (1994); People v. Darby, 75 N.Y.2d 449, 455 (1990); People v. Wilkins, 68 N.Y.2d 269, 276 (1986); People v. Di Falco, 44 N.Y.2d 482 (1978).

To be sure, "[i]nasmuch as C.P.L. § 210.35(5) is an 'all embracive cowcatcher' subdivision, each case relying on its provisions must be analyzed on an individual basis to determine whether the integrity of the Grand Jury was impaired and whether the possibility of prejudice existed." People v. Howard, 152 Misc. 2d 956, 958 (Sup. Ct. Kings Co. 1991) (quoting Bellacosa, Practice Commentary, McKinney's Cons. Laws of N.Y., Book 11A, C.P.L. § 210.35, p. 139). Upon such analysis, however, as the Court of Appeals admonished in People v. Huston, a motion court must be mindful that:

> [t]he prosecutor's discretion during Grand Jury proceedings, however, is not absolute. As legal advisor to the Grand Jury, the prosecutor performs dual functions: that of public officer and that of advocate. The prosecutor is thus charged with the duty not only to secure indictments but also to see that justice is done. With this potent authority, moreover, comes responsibility, including the prosecutor's duty of fair dealing. As this Court has explained, [t]hese duties and powers, bestowed upon the District Attorney by law, vest that official with substantial control over the Grand Jury proceedings, requiring the exercise of completely impartial judgment and discretion.

88 N.Y.2d 400, 406 (1996) (quoting People v. Lancaster, 69 N.Y.2d 20, 26 (1986); People v. Pelchat, 62 N.Y.2d 97, 105 (1984); and People v. Di Falco, 44 N.Y.2d 482, 487 (1978)) (internal quotation marks omitted).

Further, as recalled in People v. Thompson, 22 N.Y.3d 687, 697 (2014), the obligation of "fair dealing to the accused and candor to the courts" requires:

> the prosecutor not only to seek convictions but also to see that justice is done. This duty extends to the prosecutor's instructions to the grand jury and the submission of evidence. The prosecutor also cannot provide an inaccurate and misleading answer to the grand jury's legitimate inquiry, nor can the prosecutor accept an indictment that he or she knows to be based on false, misleading or legally insufficient evidence.

22 N.Y.3d at 697 (quoting Pelchat, 62 N.Y.2d at 105 and People v. Hill, 5 N.Y.3d 772, 773 (2005) and citing People v. Lancaster, supra (internal quotation marks omitted; emphasis added)).

In determining when the finding of such a risk of prejudice could be made, the Huston court advised that:

> Dismissal of indictments under CPL §210.35(5) should thus be limited to those instances where prosecutorial wrongdoing, fraudulent conduct or errors potentially prejudice the ultimate decision reached by the Grand Jury. The likelihood of prejudice turns on the particular facts of each case, including the weight and nature of the admissible proof adduced to support the indictment and the degree of inappropriate prosecutorial influence or bias.

88 N.Y.2d at 409.

With regard to the issue of exculpatory evidence, in People v. Mitchell, 82 N.Y.2d 509, 510 (1993), the Court of Appeals addressed "whether a prosecutor is required to present exculpatory statements of a defendant to the Grand Jury in addition to the inculpatory statements which were submitted." Based "on the facts presented," the Court held there to be no such requirement, since the "exculpatory statements were not a part of a single statement in which inculpatory and exculpatory thoughts were expressed." 82 N.Y.2d at 513. Consequently, they were inadmissible hearsay. Yet, in so concluding, the Court announced no broad-based and encompassing rule that the prosecution is never under an obligation to present exculpatory evidence in his/her possession which is admissible under the rules of evidence.

To be sure, given the purpose of a Grand Jury, the prosecution is not under any obligation to search out and thereupon present evidence of an exculpatory nature. On the other hand, since the prosecution is "charged with the duty not only to secure indictments but also to see that justice is done," Huston, 88 N.Y.2d at 406, where the prosecution is on clear notice of and/or already in possession of "materially influencing" and admissible proof that does more than chip away at a witness' credibility (here, the withheld information shakes the core of the accusation), it has been held that such a responsibility does in fact exist in certain circumstances. See People v. Williams, 298 A.D.2d 535 (2d Dep't 2002); People v. Suarez, 122 A.D.2d 861 (2d Dep't 1986); People v. Thompson, 108 A.D.2d 942 (2d Dep't 1985).

Acting on this guidance, motion courts have dismissed indictments under appropriate circumstances. See, e.g., People v. Lee, 178 Misc. 2d 24, 29 (Sup. Ct. Nass. Co. 1998) (dismissing indictment upon stating that "[n]or may the prosecutor withhold evidence which would materially influence the grand jurors."); People v. Scott, 150 Misc. 2d 297, 298 (Sup. Ct. Queens Co. 1991)

(indictment dismissed due to failure to present exculpatory evidence, while holding that "[i]t is not a question of whether the result 'would' be different but whether such evidence could 'possibly cause the Grand Jury to change its findings'" (citation omitted)); People v. Abbatiello, 129 Misc. 2d 831 (Sup. Ct. Bronx Co. 1985) (same); People v. Monroe, 125 Misc. 2d 550, 558-59 (Sup. Ct. Bronx Co. 1984) ("materially influencing" means evidence which would possibly cause the Grand Jury to change its findings); cf., People v. Lincoln, 159 Misc. 2d 242 (Sup. Ct. Queens Co. 1993) (Grand Jury proceeding defective where District Attorney instructed jurors to disregard already admitted exculpatory evidence); People v. Hunter, 126 Misc. 2d 13 (Sup. Ct. N.Y. Co. 1984) (People's failure to turn over exculpatory evidence prior to Grand Jury proceeding prejudiced Defendant's rights under C.P.L. § 190.50(5) and (6), requiring dismissal of indictment).

Put another way, the prosecutor's wide exercise of discretion in presenting evidence to the Grand Jury, which may include the decision not to present exculpatory material, must be balanced by the Grand Jury's right to hear the "full story so that it [can] make an independent decision that probable cause [exists] to support an indictment." People v. Isla, 96 A.D.2d 789, 790 (1st Dep't 1983). Thus, in Pelchat,

> the indictment was fatally defective because the Grand Jury had no evidence before it worthy of belief that defendant had committed a crime. Possessing the knowledge he did before the entry of the plea, 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. Just as he could not sit by and permit a trial jury to decide a criminal action on evidence known to be false, he could not permit a proceeding to continue on an indictment which he knew rested solely upon false evidence.

Pelchat, 62 N.Y.2d at 107 (citations omitted); see also People v. Berrios, 173 Misc. 2d 76, 79 (Sup. Ct. Kings Co. 1997) ("Once a prosecutor becomes aware that a witness has perjured herself before

the grand jury, disclosure of the perjurious testimony to another grand jury should be complete and precise").

In the final analysis, "whether a particular defense need be charged depends upon its potential for eliminating a needless or unfounded prosecution." People v. Valles, 62 N.Y.2d 36 (1984). In such event, evidence in the prosecutor's possession which would tend to wholly exculpate the accused should certainly be presented.

B. Analysis Relating to the Facts of this Case

The absence of "fair dealing" in this case, in violation of Pelchat, and the failure of the prosecutor to disclose materially influencing information to the Grand Jury is readily apparent. From any objective standpoint, there is no question here that, had the prosecutors disclosed to the Grand Jury the readily available and wholly exculpatory email evidence in their possession, a True Bill herein might not have been returned.

Specifically, the nature and extent of email communications by CW-1 to Mr. Weinstein following her claimed forcible rape objectively raise significant doubt relating to her only recently made allegation of forcible rape. Having purportedly just been raped by Mr. Weinstein, it would be objectively reasonable to expect that CW-1 would either choose to have no further interaction with her rapist or that her interactions would be negative or at least reference the recent sexual assault. That is not what happened here. Not only are CW-1's subsequent email exchanges with Mr. Weinstein devoid of any suggestion she believed she was the victim of a crime, the emails demonstrate that CW-1 affirmatively wished to continue her long-term, consensual, intimate relationship with Mr. Weinstein. For example, her statement to Mr. Weinstein on April 11, 2013–three weeks after the alleged rape–that "[I] hope to see you sooner than[] later" (Exhibit 6: April

11, 2013 Email) would objectively appear to be inconsistent with having just been sexually assaulted by Weinstein. The same is true for CW-1's other written comments in the six months after the alleged rape: "I appreciate all you do for me, it shows" (Exhibit 7: April 12, 2013 Email); "It would be great to see you again, and catch up!" (Exhibit 8: April 17, 2013 Email); "Hi Dear, Thinking of you as well as I was on the plane" (Exhibit 12: May 6, 2013 Email); and "Miss you big guy" (Exhibit 10: September 11, 2013 Email).

In this case, as more fully set out in the accompanying Affirmation of counsel for Mr. Weinstein, there are dozens of such emails between CW-1 and Mr. Weinstein that, taken individually or collectively, reflect communication and contact which directly refute the recently made claim that Mr. Weinstein raped CW-1 on March 18, 2013. Unlike collateral issues like credibility, this exculpatory email evidence went directly to the "very heart of the charge" (People v. Golon, 174 A.D.2d 630, 632 (2d Dep't 1991)), i.e., whether Mr. Weinstein raped CW-1 on March 18, 2013.

Similarly, it is objectively inconceivable that an alleged rape victim would continuously seek opportunities to again meet with and spend more time with her alleged rapist. Yet that is exactly what CW-1 does with Mr. Weinstein as reflected in her own communications for years after the March 2013 alleged rape: "It would be great to see you again, and catch up!" (Exhibit 8: April 17, 2013 Email); "It would mean a lot [] if we could catch up over a drink then" (Exhibit 9: April 21, 2013 Email); "I got a new number. Just wanted you to have it. Hope you are well and call me anytime, always good to hear your voice." (Exhibit 14: August 27, 2013 Email); "Im home now, I do not know if you are here, but I have no plans tonight." (Exhibit 27: August 19, 2016

Email). CW-1 even asks for Mr. Weinstein to meet her mother. (Exhibit 30: July 29, 2014 Email: "She would love to meet you, plus you can see how good my genes are **;)**." (emphasis added)).

Counsel submits that the Grand Jury would understandably be quite skeptical of CW-1's claim that she was raped by Mr. Weinstein had it been allowed to review documentary evidence that she told her alleged accuser after the alleged rape, "I was hoping for some time privately with you to share the direction I am going in life and catch up because its been awhile" (Exhibit 11: August 16, 2013 Email) and that **"[t]here is no one else I would enjoy catching up with that understands me quite like you**" (Exhibit 29: July 10, 2014 Email; emphasis added).

Moreover, any doubt about the consensual, intimate nature of the continuous relationship between CW-1 and Mr. Weinstein is dispelled by CW-1's statement, for example, on February 8, 2017 that she feels like a "booty call." (See Exhibit 35: February 8, 2017 Email). For the Grand Jury not to have been provided with this evidence–that the prosecutor herself claimed was in the prosecution's possession–violated any sense of fair dealing in the Grand Jury and prevented the Grand Jurors from hearing evidence that would materially influence their findings. See People v. Scott, 150 Misc. 2d 297, 298 (Sup. Ct. Queens Co. 1991) (indictment dismissed due to failure to present exculpatory evidence while holding that "[i]t is not a question of whether the result 'would' be different, but whether such evidence could "possibly cause the Grand Jury to change its finding" (citation omitted)).

Having chosen to present CW-1 to the Grand Jury as the "only" alleged rape victim in support of both the initial and the superseding indictment, the prosecutors were obliged, as advocates and public officers, to give the Grand Jury the complete picture of the relationship–including that Mr. Weinstein and CW-1 were in a long-term, consensual, intimate relationship and

there was never the slightest intimation by CW-1 in her many communications to Mr. Weinstein that she believed she had ever been raped–because the "Grand Jury was entitled to the full story so that it could make an independent decision that probable cause existed to support an indictment." See People v. Isla, 96 A.D.2d 789, 789 (1st Dep't 1983) (prosecutor improperly omitted part of sentence in the defendant's confession where the defendant stated that he fired gun in self-defense); see also People v. Goldstein, 73 A.D.3d 946, 949 (2d Dep't 2010) (affirming dismissal of the grand larceny indictment where the prosecutors informed the Grand Jury that the defendant and the complainant had litigated their issues in civil court but failed to inform the Grand Jury "that the defendant obtained specific performance of the contract after a [civil] court made a credibility determination in favor of the defendant and against the complainant, who failed to prove by a preponderance of the evidence her claims that the contract of sale was a forgery or was procured by fraud or misrepresentation"); People v. Falcon, 204 A.D.2d 181, 182 (1st Dep't 1994) (affirming the dismissal of an indictment where the prosecutors elected to introduce the defendant's written statement and purposely chose not to admit the defendant's videotaped statement that supported his defense).[13]

Compounding this issue is the fact that the District Attorney did not inform counsel that it was seeking a superseding indictment including additional sexual assault charges. In the usual case, a defendant has the option to provide the Grand Jury with exculpatory evidence through his own testimony or by offering witnesses to the Grand Jury pursuant to C.P.L. § 190.50(6). Mr.

[13] The mere fact that the Grand Jury may have been informed that CW-1 and Mr. Weinstein had a pre-existing relationship is not adequate when, as in this case, there existed documentary evidence that was directly communicated by CW-1 and continued for years after the alleged rape that indisputably demonstrated that CW-1 viewed and treated Mr. Weinstein as a friend, not a rapist.

Weinstein was deprived of those opportunities when the District Attorney's Office failed to provide notice to the defense that the prosecutors were re-presenting the case with an additional victim to obtain a superseding indictment with new, far more serious charges.

Lastly, the District Attorney's failure to provide the exculpatory evidence tainted the entire Grand Jury proceeding, not only as to the charges that rely on CW-1 as the victim but to all charges. Thus, the prosecutor presented three alleged victims to the Grand Jury, with Lucia Evans and Mimi Haleyi claiming historical alleged assaults in 2004 and 2006, respectively. Because the passage of time reduces the marginal quality of testimony and fading memories, older cases such as these are generally harder to prove–as is highlighted by the fact that Ms. Evans claims that she does not even remember when within a three-month-period in 2004 she claims she was sexually assaulted. Moreover, Ms. Evans' allegations are highly suspect because they allegedly occurred during a daytime meeting at Mr. Weinstein's office (which has transparent glass walls) with four employees stationed feet away from Ms. Evans. Similarly, Ms. Haleyi's claims are dubious because she alleges to have repeatedly rebuffed Mr. Weinstein at different locations only to visit him alone weeks later at his residence.

To strengthen these very old and unsupported cases, the District Attorney presented the Grand Jury with a more recent alleged victim asserting rape. As a consequence, the Grand Jury would of course be more inclined to believe that Mr. Weinstein committed the 2004 and 2006 assaults if they believed he committed the 2013 rape of CW-1. Unfortunately, however, CW-1's allegations are objectively far more implausible if considered in the context of CW-1's own communications and interactions with Mr. Weinstein in the weeks, months and years after the claimed rape. To avoid this issue, we submit, the District Attorney chose not to present these

exculpatory emails to the Grand Jury nor, upon information and belief, to confront CW-1 with these communications. Consequently, the District Attorney's violation tainted the entire Grand Jury proceedings, not just Counts Three, Four and Five relating to CW-1. The entire indictment should therefore be dismissed.

III. THE INDICTMENT SHOULD BE DISMISSED BECAUSE THE DISTRICT ATTORNEY FAILED TO GIVE ADEQUATE NOTICE THAT IT WAS PRESENTING NEW, FAR MORE SERIOUS CHARGES TO THE GRAND JURY

From the beginning of the District Attorney's investigation in October 2017, counsel for Mr. Weinstein has repeatedly given the District Attorney C.P.L. § 190.50 notice that Mr. Weinstein wished to testify before the Grand Jury in this matter. Counsel has also requested that the prosecutors provide specific information regarding the nature and scope of the Grand Jury investigation so that counsel could adequately prepare Mr. Weinstein for his Grand Jury testimony. (Exhibit 2: Brafman May 16, 2018 Letter at 1-4). Counsel noted that, without such notice and information, Mr. Weinstein would have "no idea as to what specific charges he must address in his potential testimony." (Id. at 1). Counsel also noted that they needed this additional information to determine whether the defense would offer witnesses to the Grand Jury pursuant to C.P.L. § 190.50(6). (Id. at 4).

Despite this request, the District Attorney refused to provide counsel with any additional information regarding the nature and scope of the Grand Jury investigation and instead arrested Mr. Weinstein on May 25, 2018 based on a felony complaint charging the crimes of Criminal Sexual Act in the First Degree (Penal Law § 130.50(1)), Rape in the First Degree (Penal Law § 130.35(1)) and Rape in the Third Degree (Penal Law § 130.25(1)).

Weeks later, on July 2, 2018, the District Attorney, without further notice to counsel, filed a superseding indictment charging Mr. Weinstein with the crimes of Predatory Sexual Assault (Penal Law § 130.95(2)) (Counts One and Three), Criminal Sexual Act in the First Degree (Penal Law § 130.50(1)) (Counts Two and Six), Rape in the First Degree (Penal Law § 130.35(1)) (Count Four) and Rape in the Third Degree (Penal Law § 130.25(1)) (Count Five). This superseding indictment added a new victim, Mimi Haleyi, and new, far more serious Predatory Sexual Assault charges that are Class A-II felonies carrying a minimum indeterminate sentence of 10 years to life imprisonment.

Here, we submit, the District Attorney's refusal to provide specific notice that the re-presentment related to an additional victim and far more serious additional charges made it impossible for counsel to adequately advise Mr. Weinstein whether to testify before the Grand Jury. In this regard, this case is similar to People v. Suarez, 103 Misc. 2d 910 (Sup. Ct. N.Y. Co. 1980), where the defendant was charged in a felony complaint with two counts of third-degree criminal possession of a weapon but was ultimately indicted on the armed felony of second-degree criminal possession of a weapon, which was a "substantially more serious offense" than that charged in the felony complaint. Id. at 911. In dismissing the indictment, the court ruled that withholding notice that the Grand Jury was considered an armed felony "smacks strongly of undue surprise and denial of fair play, otherwise." Id. at 914. The court explained:

> the District Attorney, by denying defendant the information he needed to make a decision in his client's best interests as to whether to exercise the statutory right which the notice requirement was created to protect, rendered ineffectual the notice which was served, consequently prejudicing defendant's right to appear as a witness before the grand jury and by implication his constitutional right to effective assistance of counsel.

Id. at 912.

Other trial courts have similarly found that the District Attorney's Office's notice should give a defendant "'some idea' about the nature and scope of the grand jury's inquiry":

> [i]mplicit in the statutory guarantees of C.P.L. Section 190.50(5)(a) and (b) is that a defendant against whom charges are being submitted to a grand jury is entitled to have "some idea" about the nature and scope of the grand jury's inquiry. This will presumably aid him in making an informed decision as to whether or not to testify, the subject of his testimony, and is consistent with his constitutional right to the effective assistance of counsel. Cases have held that this does not mean that a defendant must be advised of each and every potential charge relating to the alleged criminal transaction which is the subject of the complaint, but it should certainly mean that he must be advised as to what criminal transaction will be the focus of the inquiry.

People v. Diaz, 144 Misc. 2d 766, 768-69 (Sup. Ct. Bronx Co. 1989) (citing People v. Natoli, 112 Misc. 2d 1069 (Sup. Ct. Kings Co. 1982); People v. Martinez, 111 Misc. 2d 67 (Sup. Ct. Queens Co. 1981); People v. Suarez, supra; People v. Root, 87 Misc. 2d 482 (Sup. Ct. Bronx Co. 1976); People v. Scott, 141 Misc.2d 623 (Sup. Ct. Queens Co. 1988); and People v. Fletcher, 140 Misc. 2d 389 (Sup. Ct. Queens Co. 1988)) (emphasis added).

This rule has been embraced at the appellate level by the Second Department. In People v. Adams, 190 A.D.2d 677, 678 (2d Dep't 1993), that Court, quoting Root, 87 Misc. 2d at 487, and citing Martinez, recognized that:

> [t]he District Attorney's papers must at least give the defendant some idea of the nature and scope of the Grand Jury's inquiry so as to enable him to appear meaningfully as a witness and, if necessary, secure the effective aid of counsel.

(internal quotation marks omitted).[14]

[14] People v. Hernandez, 223 A.D.2d 351 (1st Dep't 1996) does not require a different result. In that case, the First Department found that "although the second degree possession charge was not contained in the felony complaint, the People met their statutory obligation when they gave notice regarding the two weapon possession charges listed in the complaint." Id. at 352. There, however, the First Department relied on that fact that the defendant could not "seriously argue that he was

Ultimately, in Adams, the motion court's dismissal of the indictment was reversed because "the crimes charged in the indictment were not more serious than those charged in the felony complaint, and arose out of the same incident, i.e., the December 18, 1991, encounter with the complainant." 190 A.D.2d at 678. See also People v. Qaharr, 165 Misc. 2d 939, 942 (Sup. Ct. Bronx Co. 1995) (citing Adams). Here, however, the charges in the superseding complaint are far more serious, as Mr. Weinstein was indicted on two new charges of Predatory Sexual Assault, a Class A-II felony with a maximum of life imprisonment. Moreover, one of the Predatory Sexual Assault charges (Count One) was based on a new victim that was not referenced at all in the felony complaint or original indictment. By failing to provide adequate notice of the new victim and new charges, the District Attorney prejudicing Mr. Weinstein's "right to appear as a witness before the grand jury and by implication his constitutional right to effective assistance of counsel." Suarez, 103 Misc. 2d at 912.[15] Additionally, by failing to give proper notice, the District Attorney prejudiced Mr. Weinstein by preventing him from proffering witnesses to the Grand Jury pursuant to C.P.L. § 190.50(6). See, e.g., People v. Freeman, 24 Misc. 3d 1212(A), 2009 WL 1939398, at *2 (Sup. Ct. N.Y. Co. 2009) ("In light of the People's acknowledgment that defendant's request

not aware of the potential scope of the proceedings inasmuch as the circumstances pertaining to the gun charges involved the same complainant as the menacing charge." Id. Here, the superseding indictment relied on a new victim, not referenced in the felony complaint or original indictment, to seek new, far more serious charges.

[15] To the extent the District Attorney relies on counsel's statement, after the original indictment, that he was withdrawing C.P.L. § 190.50 notice as to sexual assaults, this reliance is misplaced. Counsel, in that comment, was stating to the prosecutor that he was withdrawing notice as to the victims in the felony complaint and original indictment. Counsel was not withdrawing notice for all sexual assaults in perpetuity. Counsel has since made that point clear by serving C.P.L. § 190.50 notice after the superseding indictment, again notifying the District Attorney that Mr. Weinstein would testify in the Grand Jury should the prosecutors again seek to re-present the case.

was not communicated to the Grand Jury, I find that the integrity of the Grand Jury proceedings was impaired"). Accordingly, the indictment should be dismissed.

IV. COUNT SIX OF THE INDICTMENT SHOULD BE DISMISSED BECAUSE THE THREE-MONTH TIME FRAME OF THE ALLEGED CONDUCT AS CHARGED IN THE INDICTMENT IS UNREASONABLE UNDER THE CIRCUMSTANCES AND PREVENTS MR. WEINSTEIN FROM PREPARING A DEFENSE

In her press interview with The New Yorker, Lucia Evans claims that she met Mr. Weinstein at a New York nightclub in the summer before her senior year of college and gave him her number. Soon thereafter, she agreed to meet with him in his Tribeca office. It is during this daytime meeting that she claims he forced her to perform oral sex on him. This alleged incident forms the basis for Count Six of the indictment, which alleges that Mr. Weinstein committed first-degree criminal sexual act against Ms. Evans by engaging in oral sexual conduct by forcible compulsion "during the period from on or about June 1, 2004 to on or about September 1, 2004." As argued below, this Count must be dismissed because this three-month time period is unreasonable given the age of the victim at the time of the crime and the fact that the crime is alleged to have been committed nearly 14 years ago.

A. Legal Standard

To enable a defendant to defend himself "'with all reasonable knowledge and ability' and to have 'full notice of the charge,' it is important that the indictment 'charge the time and place and nature and circumstances of the offense with clearness and certainty.'" People v. Morris, 61 N.Y.2d 290, 295 (1984) (quoting United States v. Cruikshank, 92 U.S. 542, 566 (1875)). Accordingly, the "paramount purpose of an accusatory instrument is to provide sufficient information regarding the nature of the charge and the conduct which underlies the accusation to

allow defendant to prepare or conduct a defense." People v. Sedlock, 8 N.Y.3d 535, 538 (2007); see also People v. Keindl, 68 N.Y.2d 410, 416 (1986) ("We begin our discussion by again reaffirming the principle that an indictment must provide the accused with fair notice of the nature of the charges against him, and of the manner, time and place of the conduct underlying the accusations, so as to enable him to answer to the charges and to prepare an adequate defense.").

With this goal in mind, New York's Criminal Procedure Law requires than an indictment contain a "statement in each count that the offense charged therein was committed on, or on or about, a designated date, or during a designated period of time." C.P.L. § 200.50(6). "When time is not an essential element of an offense, the indictment, as supplemented by a bill of particulars, may allege the time in approximate terms." People v. Watt, 81 N.Y.2d 772, 774 (1993). Nevertheless, while the "explicit language of the statute does not require the exact date and time" (Morris, 61 N.Y.2d at 294), the time interval in the indictment "must reasonably serve[ ] the function of protecting defendant's constitutional right to be informed of the nature and cause of the accusation" (People v. Keindl, 68 N.Y.2d at 417.

In determining whether the indictment alleges sufficient specificity to adequately prepare a defense, courts must make its decision "on an *ad hoc* basis by considering all relevant circumstances." Watt, 81 N.Y.2d at 774. As the Court of Appeals noted:

> The test for adequacy embraces good faith. Reasonableness and fairness demand that the [accusatory instrument] state the date and time of the offense to the best of the People's knowledge, after a reasonably thorough investigation has been undertaken to ascertain such information. In evaluating the possibility that a more specific date could have been obtained through diligent efforts, the court might consider, among other things: (1) the age and intelligence of the victim and other witnesses; (2) the surrounding circumstances; and (3) the nature of the offense,

> including whether it is likely to occur at a specific time or is likely to be discovered immediately.

Sedlock, 8 N.Y.3d at 538 (quoting Morris, 61 N.Y.2d at 296)). Even when the People have acted in good faith, the court should still examine "whether, under the circumstances, the designated period of time set forth is reasonable." Morris, 61 N.Y.2d at 296. In making this determination:

> factors to be considered might include but should not be limited to the length of the alleged period of time in relation to the number of individual criminal acts alleged; the passage of time between the alleged period for the crime and defendant's arrest; the duration between the date of the indictment and the alleged offense; and the ability of the victim or complaining witness to particularize the date and time of the alleged transaction or offense.

Id.

Where an indictment charges a single act offense, "a reasonable time period will generally be shorter than that which would be acceptable to charge a continuing offense, which by its nature may be committed over a broad period of time." People v. Sanchez, 84 N.Y.2d 440, 448 (1994). Moreover, "[t]he significantly longer period . . . is a factor to be considered, with proportionately heightened scrutiny given to whether the People's inability to provide more precise times can be justified as against the important notice rights of the defendant." Watt, 81 N.Y.2d at 775. Finally, "[w]here an indictment charges a time interval which is so large that it is virtually impossible for a defendant to answer the charges and to prepare a defense, dismissal should follow even though the People have acted diligently and a shorter time period cannot be alleged." People v. Beauchamp, 74 N.Y.2d 639, 641 (1989).

B. Analysis Relating to the Facts of this Case

Two cases from the New York Court of Appeals are particularly instructive and support dismissal of Count Six. In People v. Morris, the defendant was indicted for sodomizing his five-

year-old daughter and raping a six-year-old child, both events occurring in November 1980 in the defendant's house. Through a Bill of Particulars, the government narrowed the time frame of the crime to a 24-day period between November 7 - 30, 1980. In affirming the defendant's conviction, the Court of Appeals relied on the fact that the young victims were unable to provide more precise dates and times because they were only five and six years old. The Court also considered that the defendant was arrested twelve days after the 24-day period and was indicted within five months after the alleged crimes. Considering these factors, the Court found that the defendant received adequate notice of his crimes and was not prevented from preparing a defense.

In contrast, the Court of Appeals in People v. Keindl reversed numerous counts of the defendant's conviction that alleged he had committed various criminal sexual acts against his step-children–ages 8, 9, and 11–during 10-, 12- and 16-month periods. In reversing and dismissing those counts in the indictment, the Court found the time periods unreasonably excessive because, unlike the young Morris victims, the Keindl victims were old enough to discern more precise dates by using seasons, school holidays, birthdays or other events "to assist them in narrowing the time spans alleged." Id. at 420; see also id. at 421 ("the children in this case, although of tender years, appear to have been old enough to parse the various acts within the time spans with more particularity."). Because the victims were able to give more precise dates, but failed to do so, the Court found the time periods to be excessive and unreasonable.

Here, Ms. Evans was twenty-one years old at the time she now claims a crime occurred – 13 years older than the youngest of the Keindl victims. Given that the prosecution asserts that Ms. Evans was an adult and unimpaired when the crime allegedly occurred, there is no reason why Ms. Evans should be unable to provide a more specific time frame of the claimed assault. This is

particularly problematic given that Ms. Evans has claimed to be able to provide a detailed account of the alleged crime to The New Yorker, but is now unable to provide a more specific date or even a shorter time period of her alleged assault. Every factor the Court of Appeals considered to determine whether "a more specific date could have been obtained through diligent efforts" (Sedlock, 8 N.Y.3d at 538) supports a finding here that the time period in Mr. Weinstein's indictment is unreasonable and that this charge here must be dismissed.

- the age and intelligence of the victim:
    - Ms. Evans was a 21-year-old college student and on her way to being an honors graduate of a prestigious college at the time of the alleged assault
- the surrounding circumstances:
    - the incident allegedly took place during an afternoon meeting at Miramax's office, apparently the only time Ms. Evans was in that office
- the nature of the offense, including whether it is likely to occur at a specific time or is likely to be discovered immediately:
    - the offense was immediately discoverable and yet there was never any report of Ms. Evans' claim to any law enforcement agency for 14 years

Furthermore, in Morris, the defendant was able to present a defense because he was arrested and indicted soon after his crimes and therefore could reasonably recall the circumstances surrounding the alleged incidents. Here, Mr. Weinstein was arrested and indicted nearly **fourteen** years after the alleged conduct. While this considerable delay makes it difficult in general to present a defense, this difficulty approaches near impossibility when the delay is coupled with an unreasonably long three-month time frame within which the crime is alleged to have occurred. In

other words, as hard as it would be to recall the circumstances surrounding an office meeting on a specific day fourteen years ago, it is even more difficult to recall an office meeting that took place at some point during the summer of 2004. This lack of specificity prevents Mr. Weinstein from determining for example, whether he has an alibi for the day or week or month of the incident, or whether he can now identify the other people in the office that day who could contradict Ms. Evans' allegations. Consequently, Count Six of the indictment should be dismissed. See People v. Beauchamp, 74 N.Y.2d 639, 641 (1989) (dismissing an indictment alleging a nine-month period excluding weekends where the three victims were between four- and six-years old: "Where an indictment charges a time interval which is so large that it is virtually impossible for a defendant to answer the charges and to prepare a defense, dismissal should follow even though the People have acted diligently and a shorter time period cannot be alleged."); People v. Sedlock, 8 N.Y.3d 535, 539-40 (2007) (dismissing an indictment alleging a seven-month period where the victim was seventeen years old after concluding that "the People failed to meet their duty to delineate a sufficiently narrow time frame for the alleged act" because "seven months cannot be deemed reasonable when weighed against the imperative notice rights of the defendant.").

V. THE INDICTMENT SHOULD BE DISMISSED BECAUSE THE PEOPLE FAILED TO PROVIDE THE GRAND JURY WITH LEGALLY SUFFICIENT EVIDENCE OF FORCIBLE COMPULSION

All the allegations in this case took place more than five years before Mr. Weinstein's May 2018 arrest. The only reason why each of these allegations, from 2004 (Lucia Evans), 2006 (Mimi Haleyi) and 2013 (CW-1), are not time-barred as a matter of law is because the prosecution alleges that Mr. Weinstein committed these acts using "forcible compulsion," thus taking them out of the

realm of the usual five-year statute of limitations.[16] As argued below, however, we believe the evidence before the Grand Jury was insufficient to meet the required standard of forcible compulsion and therefore all of these charges must be dismissed.

Under Penal Law § 130.00(8), forcible compulsion is defined as follows:

> a. use of physical force; or
>
> b. a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person, or in fear that he, she or another person will immediately be kidnapped.

In this case, based on the felony complaint, there are no allegations that Mr. Weinstein's alleged forcible compulsion relating to Lucia Evans or CW-1 was based on any express or implied threats of force or physical harm. Similarly, in all of Mimi Haleyi's numerous press interviews she has never alleged that Mr. Weinstein threatened her in any way. As such, the only basis for forcible compulsion in these allegations is the alleged use of physical force.

While the statute itself does not define the term "physical force," courts in this jurisdiction have interpreted the term "forcible" to "require[] something more than mere bodily contact." People v. Helm, 45 Misc. 3d 1207(A) at *2 (Crim. Ct. N.Y. Co. 2014); see also People v. Parbhu, 191 Misc. 2d 473, 479 (Crim. Ct. N.Y. Co. 2002) ("'Bodily contact alone . . . especially when it is effected by a mere touching' does not rise to the level of physical force contemplated by the Penal Law"); People v. Flynn, 123 Misc. 2d 1021, 1023 (Sup. Ct. N.Y. Co. 1984) ("although the use of actual violence is not the *sine qua non* of physical force, bodily contact alone is not its functional equivalent either, especially when it is effected by a mere touching."). Rather, physical

[16] As argued in ¶ 47 of counsel's attached Affirmation, Count Five of the indictment has a five-year Statute of Limitation and must therefore be dismissed.

force requires some "power or strength or violence exerted against a body." Flynn, 123 Misc. 2d at 1023; see, e.g., People v. Thompson, 158 A.D.2d 563, 563 (2d Dep't 1990) (force existed where victim testified that "defendant cornered her, threw her down and . . . had sexual intercourse with her against her will"). Even acting without a victim's consent, without more, is insufficient. See People v. Chapman, 54 A.D.3d 507, 509 (3d Dep't 2008) (reversing the defendant's convictions for Rape in the First Degree and Criminal Sexual Act in the First Degree because, although the victim testified that she did not consent to the defendant performing oral sex on her and having sexual intercourse, there was no evidence establishing that the defendant used physical force.).

Other examples of physical force are found where the defendant uses his greater physical size and strength to take advantage of a smaller victim. These cases, however, require that the defendant use his size to trap the victim or prevent the victim from escaping. See, e.g., People v. Roman, 179 A.D.2d 352, 353 (1st Dep't 1992) ("Forcible compulsion can be established by evidence that the defendant used his superior age, size and strength to prevent the victim from escaping, and to compel her to have sexual intercourse with him."); People v. Yeaden, 156 A.D.2d 208, 208 (1st Dep't 1989) ("Forcible compulsion was shown by evidence of the defendant's dominating his smaller and weaker daughter and preventing her from leaving him."); People v. Dorsey, 104 Misc. 2d 963, 963 (Sup. Ct. Bronx Co. 1980) (finding forcible compulsion where the seven-inch taller and seventy-pound heavier defendant trapped the smaller victim by stopping the elevator between floors).

Lucia Evans' description of her encounter with Mr. Weinstein sometime in the summer of 2004 underscores the lack of "forcible compulsion" sufficient to support the conduct charged in the indictment. In her interview with The New Yorker, Ms. Evans claims that, after initially

meeting Mr. Weinstein at a NYC club, she agreed to see him again at a daytime meeting at his office. Ms. Evans alleges that during this meeting, Mr. Weinstein "forced [her] to perform oral sex on him" by taking his penis out of his pants and describes "pull[ing] her head down onto it." (Exhibit 36: Ronan Farrow, From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories, The New Yorker, Oct. 10, 2017 at 3). She further claims: "I tried to get away, but maybe I didn't try hard enough. I didn't want to kick him or fight him." (Id.) Without further explanation, she simply stated: "he's a big guy. He overpowered me." (Id.)

This allegation is strikingly similar to the allegations in People v. Mirabal, where the victim testified that the defendant "placed his penis in her mouth and had his hands on the back of her head" and further claimed, "without detailed elaboration, that she unsuccessfully attempted to stop the act." Mirabal, 278 A.D.2d 526, 527 (3d Dep't 2000). In reversing the defendant's conviction for Sodomy in the First Degree, the Third Department found that "the record does not contain any evidence to support the victim's contention that defendant used physical force to compel her to engage in the sexual act." Id. at 527. The Court made this ruling even after "[v]iewing the evidence in the light most favorable to the People." Id. at 526.

What is clear from Mirabal is that pulling a woman's head down on to the defendant's penis, without more, is not sufficient to constitute the aggravating element of forcible compulsion.[17] Moreover, the Mirabal victim's claim that she unsuccessfully tried to stop the act

[17] In each of the cases where grabbing or pulling a victim's head to a defendant's penis has been found to be forcible compulsion, the defendant's conduct involved physical beatings or threats of bodily injury or death. See, e.g., People v. Randall, 86 A.D.2d 918, 919 (3d Dep't 1982) (affirming the jury's guilty verdict where the victim claimed that "the defendant grabbed her by the hair and continually held her in a firm grip while forcing her to engage in sexual intercourse, fellatio and anal intercourse" because the jury, "presented with questions of credibility of the differing

was not sufficient to establish the requisite force. Consequently, if Lucia Evans' Grand Jury testimony is consistent with the allegations she made in her attributed quotes to The New Yorker, then, just as in Mirabel, her claims about what occurred do not as a matter of law constitute forcible compulsion. Nor can forcible compulsion be demonstrated by simply stating that Mr. Weinstein was "a big guy"; there is no allegation made here, as required, that Mr. Weinstein used his physical size and strength to trap Evans in that office or prevent her from leaving.

While we have focused here on Lucia Evans, the same forcible compulsion element is missing as to both Mimi Haleyi (alleged forcible oral sex on her) and CW-1 (alleged rape). See People v. Chapman, 54 A.D.3d 507, 509 (3d Dep't 2008) (reversing the defendant's convictions for Rape in the First Degree and Criminal Sexual Act in the First Degree because, although the victim testified that she did not consent to the defendant performing oral sex on her and having sexual intercourse, there was no evidence establishing that the defendant used physical force). We therefore respectfully request that, when inspecting the Grand Jury minutes, this Court pay close attention to the specific allegations made by each accuser to determine if the claims as made are sufficient to establish that Mr. Weinstein used physical force that meets the forcible compulsion standard required as a matter of law. As noted in counsel's attached Affirmation, there have been other women who have made accusations against Mr. Weinstein of forced sexual assault, only to acknowledge later that he did not actually exert any force or threat of force and that they instead

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testimony, chose to accept complainant's version that she was placed in fear of bodily harm by defendant's superior physical strength and implied threats of immediate death or serious physical injury.') (emphasis added); People v. Wakefield, 208 A.D.2d 783, 784 (1st Dep't 1994) (Finding forcible compulsion where the testimony "established that the defendant told the complainant that he had a gun, that he would kill her if she tried to run away, that he pulled her by her hair to keep her from leaving, and that he put her into his closet before he forced her, against her will, to engage in various sexual acts.").

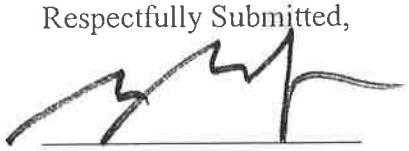
acquiesced to the sexual contact because they believed that Mr. Weinstein would continue to insist until they complied or thought they might gain an economic advantage. Without proof of any forcible compulsion, however, the District Attorney has failed to establish that Mr. Weinstein committed the crimes of Rape, Criminal Sexual Act or Predatory Sexual Assault.

VI. CONCLUSION

WHEREFORE, for all the above-stated reasons, the defendant's motion should be granted in all respects.

Dated: August 3, 2018
New York, NY

Respectfully Submitted,



Benjamin Brafman, Esq.
Jacob Kaplan, Esq.

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

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May 16, 2018

By Hand
Joan K. Illuzzi-Orbon, Esq.
Assistant District Attorney
New York County District Attorney's Office
1 Hogan Place
New York, New York 10013

Re: *Grand Jury Inquiry/ Harvey Weinstein*

Dear Ms. Illuzzi-Orbon:

Pursuant to CPL §190.50(5)(a), in furtherance of our earlier notification that our client seeks a reasonable opportunity to appear before the grand jury which will be considering any potential charges against him, request is made for specific information regarding the nature and scope of any Grand Jury inquiry. Only then can counsel be enabled to adequately prepare our client to address the specific charges that are being considered.

Because no Felony Complaint has been filed against our client, he currently lacks sufficient knowledge of the nature of the Grand Jury proceeding to determine whether and how he can assist the Grand Jury in its inquiry. He certainly has no idea as to what specific charges he must address in his potential testimony.

In *People v. Suarez*, 103 Misc.2d 910 (Sup. Ct. N.Y. Co. 1980), the Court addressed the claim, pursuant to CPL §190.50(5)(c), that such vital information had been improperly withheld from the defense. There, the Grand Jury ultimately returned an Armed Felony charge, which was a "substantially more serious offense" than that charged in the Felony Complaint. Dismissing the

Indictment upon distinguishing earlier cases, the Court ruled that the withholding of the requested information "smacks strongly of undue surprise and denial of fair play, otherwise." *Id.* at 914. The Court explained that

> the District Attorney, by denying defendant the information he needed to make a decision in his client's best interests as to whether to exercise the statutory right which the notice requirement was created to protect, rendered ineffectual the notice which was served, consequently prejudicing defendant's right to appear as a witness before the grand jury and by implication his constitutional right to effective assistance of counsel.

Id., at 912.

In contrast, where a Felony Complaint has been filed, and the charges submitted to the Grand Jury virtually mirror the original offenses therein alleged, the defendant has been deemed to be adequately apprised of the nature of the inquiry, thereby enabling an intelligent decision to be made concerning whether the accused should even testify. *See e.g. People v. Miranda*, 11 Misc. 3d 241, 243 (Sup. Ct. Bronx Co. 2005) ("Here, the charges and facts in the felony complaint, which included defendant's act of firing a loaded weapon in the direction of others, together with defendant's concession of notice of the attempted murder charge concerning a civilian complainant, were of sufficient scope to satisfy the notice required by CPL §190.50(5)(a).").

Balancing these competing considerations, the rule has emerged that

> [i]mplicit in the statutory guarantees of C.P.L. Section 190.50(5)(a) and (b) is that a defendant against whom charges are being submitted to a grand jury is entitled to have "some idea" about the nature and scope of the grand jury's inquiry. This will presumably aid him in making an informed decision as to whether or not to testify, the subject of his testimony, and is consistent with his constitutional right to the effective assistance of counsel. Cases have held that this does not mean that a defendant must be advised of each and every potential charge relating to the alleged criminal transaction which is the subject of the complaint, *but it should certainly mean that he must be advised as to what criminal transaction will be the focus of the inquiry.*

People v. Diaz, 144 Misc. 2d 766, 768–69 (Sup. Ct. Bronx Co. 1989) (citing *People v. Natoli*, 112 Misc.2d 1069 (Sup. Ct. Kings Co. 1982); *People v. Martinez*, 111 Misc.2d 67 (Sup. Ct. Queens Co. 1981); *People v. Suarez, supra*; *People v. Root*, 87 Misc.2d 482 (Sup. Ct. Bronx Co. 1976); *People v. Scott*, 141 Misc.2d 623 (Sup. Ct. Queens Co. 1988); and *People v. Fletcher*, 140 Misc.2d 389 (Sup. Ct. Queens Co. 1988)) (emphasis added) .

Notably, this rule has been embraced at the appellate level by the Second Department. In *People v. Adams*, 190 A.D.2d 677, 678 (2d Dept. 1993), that Court, quoting *Root*, 87 Misc.2d at 487, and citing *Martinez*, recognized that

> [t]he District Attorney's papers must at least give the defendant some idea of the nature and scope of the Grand Jury's inquiry so as to enable him to appear meaningfully as a witness and, if necessary, secure the effective aid of counsel" (internal quotation marks omitted.

In *Adams*, however, the motion court's dismissal of the Indictment was reversed because "the crimes charged in the indictment were not more serious than those charged in the felony complaint, and arose out of the same incident, i.e., the December 18, 1991, encounter with the complainant." 190 A.D.2d at 678.[1] *See also People v. Qaharr*, 165 Misc. 2d 939, 942 (Sup. Ct. Bronx Co. 1995) (citing *Adams*).

Here, of course, no Felony Complaint has been earlier filed. Thus, in light of the myriad groundless -- and certainly time-barred -- complaints that have been publicly aired in the various media, our client has no viable basis of

---

[1] Because we have been unable to uncover any First Department case that holds to the contrary, *Adams*, of course, is binding on any Criminal Term Justice to whom any potential indictment would be assigned. *See Mountain View Coach Lines, Inc. v. Storms*, 102 A.D.2d 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 in this department to follow precedents set by the Appellate Division of another department until the Court of Appeals or this court pronounces a contrary rule.") (citations omitted). *See also People v Turner*, 5 NY3d 476, 482 (2005).

knowledge regarding the specific focus of the Grand Jury's inquiry that could possibly result in the filing of formal charges. That being so, in addition to our §190.50(5)(a) request for a reasonable opportunity to testify, we respectfully request that you provide us with adequate information amounting to "some idea of the nature and scope of the Grand Jury's inquiry so as to enable him to appear meaningfully as a witness and, if necessary, secure the effective aid of counsel." *Adams*, 190 A.D.2d at 678.

Additionally, once we are apprised of the nature and the specifics of your investigation, we reserve the right, pursuant to CPL §190.50(6), to offer witnesses to the Grand Jury for its consideration. In such event, as you are undoubtedly aware,"[t]he request to call witnesses *must* be made to the Grand Jury." *Relin v. Maloy*, 182 A.D.2d 1142 (4th Dept. 1992). *See also People v. Calkins*, 85 A.D.3d 1676, 1677 (4th Dept. 2011) ("the possibility of prejudice was increased by the failure of the prosecutor to inform the grand jury of defendant's request to call a witness to the incident giving rise to the charges.") (citing *People v Butterfield*, 267 A.D,2d 870, 873 (3rd Dept. 1999), *lv denied* 95 N.Y.2d 833 (2000); *People v Ali*, 19 Misc 3d 672, 674 (Sup. Ct. Queens Co.2008); and *People v Andino*, 183 Misc 2d 290, 292-293 (Sup. Ct. Bronx Co. 2000)).

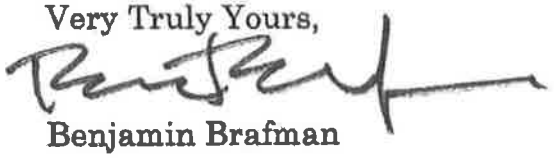
In a similar regard, in the event that you are already in possession of exculpatory evidence that would "materially influence" the Grand Jury's determination, and such admissible proof would implicate more than issues of mere credibility, we remind you that it is your responsibility to introduce such 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). *See also People v. Isla*, 96 A.D.2d 789, 790 (1st Dept. 1983).

Finally, given the high public profile that any subject allegations have assumed, it is respectfully requested that the Court and the Prosecutor individually *voir dire* each Grand Juror that will be hearing this matter. *See e.g. Democratic Cty. Comm. of Bronx Cty. v. Nadjari*, ("To the extent that petitioner challenges the general absence of a Grand Jury *voir dire*, it is noted that respondent asserts that the Grand Jury has been repeatedly admonished to disregard media accounts and this factor must be taken into consideration as to whether publicity has unduly and improperly influenced the Grand Jury." 52 A.D.2d 70, 74 (1st Dept. 1976) (citing *People v. King*, 48 A.D.2d 457 (1st Dept., 1975) and *Beck v. Washington*, 369 U.S. 541 , 546 (1962)). *See also In re Grand Jury Investigation of Death of Diallo*, 180 Misc. 2d 223, 224 (Sup. Ct. 1999) (""the

Court, mindful 'that an accused individual has a constitutional right to have his case presented before a fair and impartial Grand Jury [citations omitted]', and guided by the more stringent rules applicable to the discharge of sworn petit jurors, informed the respective parties that it would promptly conduct an in camera inquiry of the Grand Jury panel to explore and resolve the impact, if any, of the publicity engendered by this incident on the Grand Jurors' ability to fairly and impartially consider the evidence in this case.") (citations omitted).

Thank you for your courtesy and professionalism in this matter.

Very Truly Yours,



Benjamin Brafman

Exhibit 3

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re THE WEINSTEIN COMPANY HOLDINGS LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 18-10601 (MFW) (Jointly Administered)

DECLARATION OF BENJAMIN BRAFMAN IN SUPPORT OF HARVEY WEINSTEIN'S REPLY TO OBJECTIONS TO AND IN FURTHER SUPPORT OF HIS MOTION FOR ENTRY OF AN ORDER COMPELLING LIMITED DISCOVERY UNDER RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Pursuant to 28 U.S.C. § 1746, I, Benjamin Brafman, hereby declare under penalty of perjury that the following is true and correct:

1. I make this declaration in support of *Harvey Weinstein's Motion for Entry of an Order Compelling Limited Discovery Under Rule 2004 of the Federal Rules of Bankruptcy Procedure* [D.I. 275] (the "**2004 Motion**").

2. I am engaged in the private practice of law specializing in criminal defense. I am a principal of the law firm Brafman & Associates, P.C. located in New York City.

3. I am admitted to the practice of law in the State of New York, to the United States District Courts for the Southern and Eastern Districts of New York, to the United States Court of Appeals for the Second Circuit, to the United States Supreme Court and on a *pro hac vice* basis to numerous other state and federal courts throughout the United States of America.

[1] The last four digits of The Weinstein Company Holdings LLC's federal tax identification number are (3837). The mailing address for The Weinstein Company Holdings LLC is 99 Hudson Street, 4th Floor, New York, New York 10013. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors and the last four digits of their federal tax identification is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at http://dm.epiq11.com/twc.

4. I am a Fellow in the American College of trial Lawyers, have served as an Assistant District Attorney for the Manhattan District Attorney's Office and since 1980 been the principal of a boutique law firm engaged in the practice of criminal defense.

5. Since, November 5, 2017 I have been retained as counsel to Harvey Weinstein. I now represent Mr. Weinstein in two separate pending criminal investigations being conducted simultaneously by the New York County District Attorney's Office and the United States Attorney's Office for the Southern District of New York.

6. In both jurisdictions, I have been advised that Mr. Weinstein is a principal "target" of the investigations.

7. Having now been involved in representing Mr. Weinstein in these matters for more than 6 months, I have had the opportunity to review and investigate many of the allegations against Mr. Weinstein that have been the subject of widespread media exposure. In doing so, even with the very limited materials that I have had access to, it has quickly become apparent to me that the allegations relating to forcible sexual misconduct are entirely without merit.

8. It is important to note that Mr. Weinstein is currently in treatment for personal issues in the hope of becoming a better person and one day soon hopefully restoring his life and again continuing the pursuit of the extraordinary charity that he has always engaged in. Mr. Weinstein vigorously denies ever engaging in criminal sexual misconduct and if given the opportunity to fully defend himself, he believes that all of these allegations will be shown to be without merit.

9. It is also important for your Honor to understand that despite public pronouncements for many months, that the arrest of Mr. Weinstein on charges related to sexual criminal conduct was "imminent," no criminal charges have to date been filed against Mr.

Weinstein in any jurisdiction, primarily we submit because upon further investigation by Mr. Weinstein's experienced criminal defense lawyers and experienced veteran prosecutors, there does not appear to be any compelling evidence to support many of the criminal allegations under investigation.

10. The investigations of Mr. Weinstein are continuing as we speak. I am trying my very best to persuade both the federal and state prosecutors that he should not be arrested and or indicted, because he did not knowingly violate the law despite the severely prejudicial publicity he has been the focus of. As the Court can appreciate, saving someone from unwarranted criminal prosecution, is far more significant than having a baseless prosecution implode months or years from now after Mr. Weinstein's life and the lives of his family have been irreparably destroyed.

11. Upon information and belief, there are currently, hundreds of thousands of emails, texts and pieces of personal correspondence in the possession of and under the control of The Weinstein Company and their counsel, including virtually all of Mr. Weinstein's personal emails and text messages.

12. I believe that the relief requested in the 2004 Motion is of vital importance to Mr. Weinstein's ability to exercise his due process rights and to have a fair opportunity to defend himself against the allegations in each of the actions identified in paragraph 6, as much of the email traffic is upon information and belief, between Mr. Weinstein and many of the women who are now accusing Mr. Weinstein of inappropriate and even criminal conduct.

13. In the cases in which I represent him, Mr. Weinstein cannot fully refute the charges being levied against him, many of which are more than 20 years old, without access to the discovery requested in the 2004 Motion. I believe that without the requested access to his

email and personal files, he has been and will continue to be significantly inhibited in and deprived of his due process rights, in that he cannot properly defend himself against these investigations and may well be prosecuted for crimes he did not in fact commit.

14. Counsel has reason to believe that the materials we are requesting access to are highly exculpatory in nature and although these materials would undoubtedly be made available to Mr. Weinstein and his counsel "after" arrest or indictment, his ability to defend himself require their production now, so that a terrible miscarriage of justice can be avoided.

15. We are not seeking sympathy for Mr. Weinstein who is working very hard to address his own behavioral issues. We seek only fairness. Fundamental fairness that simply requires The Weinstein Company to provide Mr. Weinstein now, with copies of his own personal emails and other correspondence, which can be done quickly and without cost to Debtor or its counsel.

16. Not only will these materials allow Mr. Weinstein and his counsel to mount a serious and compelling defense to the many scurrilous, serious allegations, in doing so it may also cause the government to conserve vast resources by closing out many of the public accusations that we may be able to demonstrate to be entirely without merit.

17. As an example, through the personal courtesy and intervention of Counsel, we were able to obtain one important email that substantially undermined the credibility of one of the principal protagonists who has publicly claimed to have been forcibly raped by Mr. Weinstein on two separate occasions. The email in question, proved that within days after the alleged first forcible rape, the woman through her agent, reached out to Mr. Weinstein, begging to be invited to a high profile industry party, as Mr. Weinstein's personal VIP guest, hardly

conduct consistent with a claim of forcible rape allegedly committed by the person who the "victim" is then demanding personal and very public access to.

18. Based on our investigation, counsel has a good-faith basis to believe that comparable emails and other correspondence was exchanged between Mr. Weinstein and many if not all of the women who now accuse him of abusive behavior. These personal email exchanges of a very friendly and often intimate character will substantially undermine claims of an abusive relationship between Mr. Weinstein and these women who now portray themselves to be his "victims".

19. I believe that the Debtors' continued refusal to permit Mr. Weinstein access to his emails and personal files has significantly impinged his ability to effectively defend himself from the allegations and is a continuing deprivation of and manifest injustice to his due-process rights.

20. Finally, it is imperative for Mr. Weinstein to preserve e-mails that are the subject of the various criminal and civil litigations in order to avoid being forced to assert his rights under the Fifth Amendment to the United States Constitution, thereby risking sanctions and an automatic adverse inference.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: May 3, 2018

Benjamin Brafman

Exhibit 4

NYPD has 'actual' rape case against Harvey Weinstein

Rocco Parascandola, Larry McShane

NYPD investigators assembled a viable rape case against accused serial sex offender Harvey Weinstein over the last eight days, police officials said Friday.

Chief of Detectives Robert Boyce said authorities became aware of the alleged victim on Oct. 25, and now "have an actual case" against the Oscar-winning Hollywood pariah.

The complainant is apparently actress Paz de la Huerta, who claimed in a Vanity Fair piece published Friday that Weinstein raped her twice in 2010.

Boyce said cops followed up after receiving a phone call from the accuser with her account of the incidents involving Weinstein — who stands accused by dozens of women as a sexual predator.

Chief of Detectives Robert Boyce said they "have an actual case" against Oscar-winning Hollywood pariah Harvey Weinstein (pictured). (Richard Shotwell/AP)

"We spoke to her," said Boyce. "She put forth a credible and detailed narrative to us. Then we sought to garner corroboration ... and we found it."

De la Huerta told the magazine the rapes occurred at the end of 2010, with the first occurring after Weinstein gave the actress a ride home.

"It wasn't consensual," she said. "It happened very quickly. He stuck himself inside me. When he was done, he said he'd be calling me. I kind of just laid back on the bed in shock."

- harvey weinstein

Women who have accused Harvey Weinstein of sexual harassment and assault

The second sexual assault took place a few weeks later when Weinstein appeared uninvited in the lobby of de la Huerta's apartment, the actress said.

De La Huerta, one of the stars of the HBO series "Boardwalk Empire," appeared in the Weinstein film "Cider House Rules" when she was 14. The attacks allegedly occurred when she was 26.

A source told the Daily News that corroboration of the claims came a friend of the victim.

Actress Paz de la Huerta said the rapes occurred at the end of 2010.

Actress Paz de la Huerta said the rapes occurred at the end of 2010. (Jemal Countess/Getty Images)

Weinstein, who has retained a lawyer, is currently staying in Arizona, the chief of detectives said.

According to Boyce, the NYPD and the Manhattan district attorney's office are now collaborating on the probe.

"We are happy with where the investigation is right now," said Boyce. "So right now we're gathering evidence. We'll continue to do so every day."

Daily News front page for Nov. 4, 2017.

Daily News front page for Nov. 4, 2017. (New York Daily News)

The NYPD official said their interview of Weinstein's accuser, along with the corroboration, persuaded them to pursue the 65-year-old suspect.

"She made the case why she didn't come forward," explained Boyce. "She was frightened. And she gave every little step."

Exhibit 5

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 6

From: [redacted]
To: Harvey Weinstein [redacted]
Sent: 4/11/2013 11:24:57 PM
Subject:

I was able to talk to [redacted] today and will be connected with [redacted]

:)

Thanks, and I hope to see you sooner thank later....

Exhibit 7

From: [redacted]
To: Harvey Weinstein [redacted]
Sent: 4/12/2013 6:33:48 PM
Subject:

I appreciate all you do for me, it shows.

Exhibit 8

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 4/17/2013 8:32:22 PM
Subject: Re:

It would be great to see you again, and catch up!

Here is my schedule with my work.

I cant do friday at all and saturday i work as well from 12:30-9pm. I would have time in the morning or after, as well as sunday afternoon.

[redacted]

On Apr 17, 2013, at 3:31 PM, Weinstein, Harvey wrote:

> Dear [redacted],
>
> I'm going to be in [redacted] on Saturday and maybe Friday night too. Will you be around?
>
> All my best,
> Harvey

Exhibit 9

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 4/21/2013 12:47:19 AM
Subject: Re: Hey r we meeting tonite

I cant make any promises tonight on my schedule, im overwhelmed with work and some of our international friends & fam are staying at our apt last minute. It will probably be later than 10 when my evening frees up. I work early am tomorrow but am off by 3pm if you are still in town as have nothing going on after work tomorrow. It would mean alot of if we could catch up over a drink then?

On Apr 20, 2013, at 04:22 PM, "Weinstein, Harvey" wrote:

Exhibit 10

From: [redacted]
To: Harvey Weinstein [redacted]
Sent: 9/11/2013 4:41:09 PM
Subject:

I wanted to share something with you I overheard the other day -

[redacted] was talking about the top people in the industry because he's [redacted] revolving around that- And your name came up and the most beautiful well spoken praise I've ever heard came from his lips.

He said that you Have set the bar with every project in the industry that says this is now the standard.

And that made me smile because I do Know that that is true!

You have mastered storytelling and continually Are outdoing yourself and the competition. You are the bar!

Miss you big guy

Sent from my iPhone

EXHIBIT 11

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 8/16/2013 7:17:39 PM
Subject: Re:

[redacted] is out of town in [redacted]. I don't know if I met your friend, I will know in person as I am a face person.

I was hoping for some time privately with you to share the direction I am going in life and catch up because it been awhile.

Do you have another guest you could invite for your friend or should I hair meet you another time?

Sent from my iPhone

On Aug 16, 2013, at 3:46 PM, "Weinstein, Harvey" [redacted] wrote:

> Dear [redacted],
>
> Why don't we meet at 9:30 at the [redacted] and then we'll go to the restaurant called [redacted]. My friend [redacted] in town and he's very single. He owns the [redacted]. Does [redacted] want to come and join us for dinner or if you have another friend?
>
> All my best,
> Harvey

EXHIBIT 12

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 5/6/2013 11:39:04 PM
Subject: Re:

Hi Dear,
Thinking of you as well as I was on the plane. [redacted] and I have to move out of our apt temporarily until they deal with the repairs, so it's been quite an adventure! Landed in [redacted], enjoy [redacted]!

[redacted]

Sent from my iPhone

On May 6, 2013, at 8:06 PM, "Weinstein, Harvey" [redacted] wrote:

> Dear [redacted],
>
> I guess we're going to miss each other but let's stay in contact.
>
> All my best,
> Harvey

EXHIBIT 13

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 7/8/2013 4:16:04 PM
'ubject: Re:

I fly back on the 12th from [redacted].

Lets get together!

Sent from my iPhone

On Jul 8, 2013, at 12:01 PM, "Weinstein, Harvey" [redacted]

> Dear [redacted],
>
> Will you be in [redacted] this week?
>
> All my best,
> Harvey

EXHIBIT 14

From: [redacted]
Sent: Tuesday, August 27, 2013 7:29 PM
To: Harvey Weinstein
Subject: New contact...

Dear Harv,

I got a new number. Just wanted you to have it. Hope you are well and call me anytime, always good to hear your voice.

[redacted]

[redacted]

Sent from my iPhone

EXHIBIT 15

From: [redacted]
To: Harvey Weinstein [redacted]
Sent: 10/22/2013 9:53:01 PM
Subject:

Update,

One of the [redacted] I [redacted] for called me earlier to [redacted] at 8. I had to take this, I am headed to [redacted] now. Let's reschedule as I don't know when they will be back tonight. By the way I was so happy you saw me today! Very honored. Talk soon

[redacted]

Sent from my iPhone

EXHIBIT 16

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 1/5/2014 4:44:36 PM
Subject: Re:

Your the one who makes it look good with your smile and beautiful eyes!! But thank you that makes me so happy to hear :)

[redacted]

Sent from my iPhone

> On Jan 5, 2014, at 12:36 PM, "Weinstein, Harvey" [redacted] wrote:
>
> Dear [redacted],
>
> That's the [redacted] and [redacted] I've gotten. I've gotten a million compliments. Thank you.
>
> All my best,
> Harvey

EXHIBIT 17

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 4/19/2013 7:39:34 PM
ubject: Re: Re:

Text or call me on saturday, ill be done around 9pm i believe earliest. We can work something out from there?

On Apr 17, 2013, at 06:00 PM, "Weinstein, Harvey" wrote:

Sat night ?

----- Original Message -----
From: [redacted]
Sent: Wednesday, April 17, 2013 08:32 PM
To: Weinstein, Harvey
Subject: Re:

It would be great to see you again, and catch up!

Here is my schedule with my work.

I cant do friday at all and saturday i work as well from 12:30-9pm. I would have time in the morning or after, as well as sunday afternoon.

[redacted]

n Apr 17, 2013, at 3:31 PM, Weinstein, Harvey wrote:

> Dear [redacted],
>
> I'm going to be in [redacted] on Saturday and maybe Friday night too. Will you be around?
>
> All my best,
> Harvey

EXHIBIT 18

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 7/9/2013 3:19:18 AM
ubject: Re:

If your schedule won't be there when I return I can adjust my schedule to be flexible elsewhere.

Sent from my iPhone

On Jul 8, 2013, at 2:14 PM, "Weinstein, Harvey" [redacted] wrote:

> Will try
>
> ----- Original Message -----
> From: [redacted]
> Sent: Monday, July 08, 2013 04:44 PM
> To: Weinstein, Harvey
> Subject: Re:
>
> Will you still be in town?
>
> Sent from my iPhone
>
> On Jul 8, 2013, at 1:46 PM, "Weinstein, Harvey" [redacted] wrote:
>
>> I'm gonna be in [redacted] on wed. U ?
>>
>> ----- Original Message -----
>> From: [redacted]
>> Sent: Monday, July 08, 2013 04:42 PM
>> To: Weinstein, Harvey
>> Subject: Re:
>>
>> Yes
>>
>> Sent from my iPhone
>>
>> On Jul 8, 2013, at 1:28 PM, "Weinstein, Harvey" [redacted]
>>
>>> U r in [redacted] now
>>>
>>> ----- Original Message -----
>>> From: [redacted]
>>> Sent: Monday, July 08, 2013 04:16 PM
>>> To: Weinstein, Harvey
>>> Subject: Re:
>>>
>>> I fly back on the [redacted] from [redacted].
>>>
>>> Lets get together!
>>>
>>> Sent from my iPhone
>>>
>>> On Jul 8, 2013, at 12:01 PM, "Weinstein, Harvey" [redacted] wrote:
>>>
>>>> Dear [redacted],
>>>>
>>>> Will you be in [redacted] this week?
>>>>
>>>> All my best,
>>>> Harvey

EXHIBIT 19

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 9/15/2013 3:30:47 PM
Subject: Re:

Tonight is really busy for me with a [redacted] and [redacted] bday. Ill be [redacted] and unsure of my location and timeline.

If your only here a day but are coming back for the [redacted] next week, lets set something up?

[redacted]

EXHIBIT 20

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 10/22/2013 10:49:46 AM
Subject: Re:

Hello,
I just got back in [redacted]. On my way to work as we speak. I have Sundays and Mondays off and was out of town as a [redacted] in a [redacted]. Hopefully I can run into you today!

[redacted]

Sent from my iPhone

> On Oct 21, 2013, at 6:46 PM, "Weinstein, Harvey" [redacted] wrote:
>
> Dear [redacted],
>
> I'm in [redacted] now and I haven't heard from you.
>
> All my best,
> Harvey

EXHIBIT 21

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 10/22/2013 12:38:57 PM
ubject: Re: RE: Re:

I could take off for a lunch if u have a time or see u at 10

Sent from my iPhone

> On Oct 22, 2013, at 9:35 AM, "Weinstein, Harvey" [redacted] wrote:
>
> Dear [redacted],
>
> Maybe let me know if you don't have a client and we'll figure it out.
>
> All my best,
> Harvey
>
> _____
> From: [redacted]
> Sent: Tuesday, October 22, 2013 12:17 PM
> To: Weinstein, Harvey
> Subject: Re:
>
> If I don't have a client I'm usually finished around 6. And I can swing back on my way home. But I'll be floating around
>
> Sent from my iPhone
>
>> On Oct 22, 2013, at 9:05 AM, "Weinstein, Harvey" [redacted] wrote:
>>
> Im here at [redacted] lets meet when ? If not tonight at ten
>
>> ----- Original Message -----
>> From: [redacted]
>> Sent: Tuesday, October 22, 2013 07:49 AM
>> To: Weinstein, Harvey
>> Subject: Re:
>>
>> Hello,
>> I just got back in [redacted]. On my way to work as we speak. I have Sundays and Mondays off and was out of town as a [redacted] in a [redacted]. Hopefully I can run into you today!
>>
>> [redacted]
>>
>> Sent from my iPhone
>>
>>> On Oct 21, 2013, at 6:46 PM, "Weinstein, Harvey" [redacted] wrote:
>>>
>>> Dear [redacted],
>>>
>>> I'm in [redacted] now and I haven't heard from you.
>>>
>>> All my best,
>>> Harvey

EXHIBIT 22

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 10/28/2013 8:25:40 PM
Subject: Re:

I will be at work :)

I can take a lunch if u have time? [redacted] and I were going to have lunch around there but can u make time for us??

Sent from my iPhone

> On Oct 28, 2013, at 2:40 PM, "Weinstein, Harvey" [redacted] wrote:
>
> Dear [redacted],
>
> I'm coming to [redacted] tomorrow afternoon. Are you around?
>
> All my best,
> Harvey

EXHIBIT 23

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 10/29/2013 8:15:31 PM
Subject: Re:

Depending on when I finish, I could swing by [redacted] on my way home?

Sent from my iPhone

> On Oct 29, 2013, at 4:53 PM, "Weinstein, Harvey" [redacted] wrote:
>
> Dear [redacted],
>
> Even if you can't come to the [redacted], will I see you later?
>
> All my best,
> Harvey

EXHIBIT 24

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 8/22/2014 6:54:03 PM
Subject: Re:

What time are you free at for a drink?

Sent from my iPhone

> On Aug 22, 2014, at 3:51 PM, "Weinstein, Harvey" [redacted] wrote:
>
> Dear [redacted],
>
> I'm in [redacted] for about 7 hours tonight, if you're around.
>
> All my best,
> Harvey

EXHIBIT 25

From: [redacted]
To: Harvey Weinstein [redacted]
Sent: 8/28/2014 10:39:47 PM
Subject:

When u in [redacted] again?

Sent from my iPhone

EXHIBIT 26

From: [redacted]
To: Harvey Weinstein [redacted]
Sent: 9/14/2014 6:53:45 PM
Subject:

Rough day :(when you back in [redacted] my Friend?

Sent from my iPhone

EXHIBIT 27

From: [redacted]
To: Office, HW [redacted]
Sent: 8/19/2016 9:11:03 PM
Subject: Re: Harvey Weinstein Calling For You

WOW! I know its a HUGE deal if you changed your plans for me. You know me, I'm there always if i can make it happen. Just juggling responsibilities with living.

I just received this email now that I'm home on my computer. I wouldn't have been able to make noon as I was still doing the [redacted].

Im home now, I do not know if you are here, but I have no plans tonight.

On Aug 19, 2016, at 10:59 AM, Office, HW <[redacted]> wrote:

Dear [redacted],

Can you see me at noon at the [redacted]? I waited for you - heard nothing but changed my plans.

All my best,
Harvey

From: [redacted]
Sent: Friday, August 19, 2016 1:37 PM
To: Office, HW
Subject: Re: Harvey Weinstein Calling For You

Im sorry I missed you, saw your calls and texts this am. Im working two jobs [redacted] which is always unpredictable with time. I should have been done last night but I was [redacted] and she was so late. I ran home after to change and eat and ended up passing out. Not intentional, my apologies.

I have another [redacted] this afternoon I'm prepping for at the moment.

On Aug 19, 2016, at 10:28 AM, Office, HW <[redacted]> wrote:

Dear [redacted],

I just tried you - are you reachable for a call now? I am available through my office at [redacted].

All my best,
Harvey

EXHIBIT 28

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 7/26/2014 8:50:41 PM
Subject: Re:

Lol that made me laugh so hard

Sent from my iPhone

> On Jul 26, 2014, at 3:15 PM, "Weinstein, Harvey" [redacted] wrote:
>
> Love to cross your mind it's my favorite exercise
>
> Sent from my iPad
>
>> On Jul 26, 2014, at 5:55 PM, [redacted] wrote:
>>
>> I'm at work. Just had u cross my mind and thought u would send a hello. I am well
>>
>> Sent from my iPhone
>>
>>> On Jul 26, 2014, at 1:47 PM, "Weinstein, Harvey" [redacted] wrote:
>>>
>>> Where r u. How r u
>>>
>>> ----- Original Message -----
>>> From: [redacted]
>>> Sent: Saturday, July 26, 2014 04:45 PM
>>> To: Weinstein, Harvey
>>>
>>> Hi ! :)
>>>
>>> Sent from my iPhone

EXHIBIT 29

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 7/10/2014 5:36:42 PM
Subject: Re:

There is no one else I would enjoy catching up with that understands me quite like you.

I don't get off work usually till after 7 and coming from [redacted].

I know I will be hungry, what is your timing? Do you have time for dinner?

Sent from my iPhone

On Jul 9, 2014, at 9:30 PM, "Weinstein, Harvey" <[redacted] wrote:

Dear [redacted],

Are you around on Friday evening? I'm going to be in [redacted].

All my best,
Harvey

EXHIBIT 30

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 7/29/2014 9:38:31 PM
Subject: Re:

Yea! She would love to meet you, plus you can see how good my genes are ;) Which is easier? You wanna go to the [redacted] with us or stay at [redacted]?

On Jul 29, 2014, at 6:36 PM, Weinstein, Harvey [redacted] wrote:

> Dear [redacted],
>
> If you want to stop by with your mom at 9:30pm, you can come - or come by the [redacted] at 9:30pm.
>
> All my best,
> Harvey
>
> From: [redacted]
> Sent: Tuesday, July 29, 2014 7:44 PM
> To: Weinstein, Harvey
> Subject: Re:
>
> It would be great to see you... however my mother would be with me if we stopped by. She is here till thur afternoon. I have thur evening free so far. Tomorrow depending on if you want us to swing by, we are thinking of going to [redacted] with [redacted] if she gets back in time.
>
>
>
> On Jul 29, 2014, at 2:57 PM, Weinstein, Harvey [redacted] wrote:
>
>> Dear [redacted],
>>
>> I'll be in [redacted] tomorrow night. Are you free around 9:30pm for a drink?
>>
>> All my best,
>> Harvey
>>
>> From: [redacted]
>> Sent: Tuesday, July 29, 2014 4:46 PM
>> To: Weinstein, Harvey
>> Subject: Re:
>>
>> When are you back? I never know hat your up to these days.
>>
>> Sent from my iPhone
>>
>>> On Jul 26, 2014, at 7:22 PM, "Weinstein, Harvey" [redacted] wrote:
>>>
>>> Wiitty aint it
>>>
>>> ----- Original Message -----
>>> From: [redacted]
>>> Sent: Saturday, July 26, 2014 08:50 PM
>>> To: Weinstein, Harvey
>>> Subject: Re:
>>>
>>> Lol that made me laugh so hard
>>>
>>> Sent from my iPhone
>>>
>>>> On Jul 26, 2014, at 3:15 PM, "Weinstein, Harvey" [redacted] wrote:
>>>>

EXHIBIT 31

From: [redacted]
To: Office, HW
CC: [redacted]

Sent: 9/8/2013 5:26:42 PM
Subject: Re: From Harvey Weinstein

Hello Harvey, please send her resume and have her contact [redacted] (in copy)in my office, thanks

Best,

[redacted]

EXHIBIT 32

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 2/23/2015 6:04:23 PM
Subject:

Im going to apply for a membership at soho to be able to take my business meetings there for the [redacted] I am doing and [redacted] will [redacted] of it.

I have to have a member sponsor me though, I don't know anyone - would you be able to sponsor me or direct me to someone who would?

Thanks!

[redacted]

EXHIBIT 33

From: [redacted]
Sent: Thursday, April 9, 2015 6:34 PM
To: Weinstein, Harvey [redacted]
Subject:

Hi,

So i know your busy and won't be in [redacted] for awhile for this time I really don't know what to do. But this is what i called about the other day.

When i was out of state during [redacted] final two months my car registration expired and it had a fix it ticket on it. Apparently i had a court date for it, that I missed which put a suspension on my [redacted]. I found all this out because i got pulled over. I was lucky as they let me go but told me if i drive again they can impound my car.

I had no idea as i was handling all i could and IF they sent a notice, it didnt properly forward to my current address.

Im pretty stressed out and don't know how to handle it. Sell my car? Etc. More than ever this is something I'm not sure how to properly handle and fix. Can you help me navigate this?

[redacted]

ps make sure you call my right number [redacted]

EXHIBIT 34

From: Weinstein, Harvey [redacted]
To: [redacted]
Sent: 7/6/2014 6:41:20 AM
Subject: Re:

Just know I think of u. My prayers for your dad Will be in [redacted] Friday if u have a chance

Sent from my iPad

> On Jul 6, 2014, at 2:51 AM, [redacted] [redacted] wrote:
>
> I am very behind on responding.
>
> My fathers cancer came back and it has just broken my heart. Inbetween work I have been driving to [redacted]
>
> Needless to say, that has left me exhausted at times!!
>
> Sent from my iPhone

EXHIBIT 35

From: [redacted]
To: Weinstein, Harvey [redacted]
Sent: 2/8/2017 10:01:52 AM
Subject: Re: Back in [redacted]

I have an appointment then to see a room to rent. Ive got to make my housing a priority this week.

I love you, always do. But I hate feeling like a booty call. :)

> On Feb 8, 2017, at 9:47 AM, Weinstein, Harvey [redacted] wrote:
>
> [redacted] hotel at five ?
>
> ----- Original Message -----
> From: [redacted]
> Sent: Wednesday, February 08, 2017 09:18 AM
> To: Weinstein, Harvey
> Subject: Re: Back in [redacted]
>
> Whats the addy?
>
>
>> On Feb 8, 2017, at 9:17 AM, Weinstein, Harvey [redacted] wrote:
>>
>> I'm here this afternoon let's say hi around three
>>
>> ----- Original Message -----
>> From: [redacted]
>> Sent: Wednesday, February 08, 2017 08:39 AM
>> To: Weinstein, Harvey
>> Subject: Re: Back in [redacted]
>>
>> I just got this! I did not see your email until now. Let me know when your back. I should be here.
>>
>>
>>> On Feb 7, 2017, at 8:38 PM, Weinstein, Harvey [redacted] wrote:
>>>
>>> Leaving for [redacted] tom will I see u tonite
>>>
>>> ----- Original Message -----
>>> From [redacted]
>>> Sent: Tuesday, February 07, 2017 05:06 PM
>>> To: Weinstein, Harvey
>>> Subject: Re: Back in [redacted]
>>>
>>> I am temporary staying in [redacted] but only have a week left here. Still looking for permanent housing in [redacted]. (if you know anyone who needs a roommate?) Hardest city to move to!
>>>
>>>
>>>> On Feb 7, 2017, at 5:05 PM, Weinstein, Harvey [redacted] wrote:
>>>>
>>>> Where r u
>>>>
>>>> Sent from my iPad
>>>>
>>>>> On Feb 7, 2017, at 4:59 PM, [redacted] wrote:
>>>>>
>>>>> Ive returned!
>>>
>>> NOTICE OF CONFIDENTIALITY: This email is confidential and may also be privileged. If you are not the intended recipient please delete it and notify us immediately by telephoning or e-mailing the sender. You should not copy it or use it for any purpose nor

EXHIBIT 36

THE NEW YORKER

NEWS DESK

FROM AGGRESSIVE OVERTURES TO SEXUAL ASSAULT: HARVEY WEINSTEIN'S ACCUSERS TELL THEIR STORIES

Multiple women share harrowing accounts of sexual assault and harassment by the film executive.

By Ronan Farrow 10:47 A.M.

1.

Since the establishment of the first studios a century ago, there have been few movie executives as dominant, or as domineering, as Harvey Weinstein. As the co-founder of the production-and-distribution companies Miramax and the Weinstein Company, he helped to reinvent the model for independent films, with movies such as "Sex, Lies, and Videotape," "The English Patient," "Pulp Fiction," "The Crying Game," "Shakespeare in Love," and "The King's Speech." Beyond Hollywood, he has exercised his influence as a prolific fund-raiser for Democratic Party candidates, including Barack Obama and Hillary Clinton. Weinstein combined a keen eye for promising scripts, directors, and actors with a bullying, even threatening, style of doing business, inspiring both fear and gratitude. His movies have earned more than three hundred Oscar nominations, and, at the annual awards ceremonies, he has been thanked more than almost anyone else in movie history, just after Steven Spielberg and right before God.

For more than twenty years, Weinstein has also been trailed by rumors of sexual harassment and assault. This has been an open secret to many in Hollywood and beyond, but previous attempts by many publications, including *The New Yorker*, to investigate and publish the story over the years fell short of the demands of journalistic evidence. Too few people were willing to speak, much less allow a reporter to use their names, and Weinstein and his associates used nondisclosure agreements, monetary payoffs, and legal threats to suppress these myriad stories. Asia Argento, an Italian film actress and

director, told me that she did not speak out until now—Weinstein, she told me, forcibly performed oral sex on her—because she feared that Weinstein would "crush" her. "I know he has crushed a lot of people before," Argento said. "That's why this story—in my case, it's twenty years old; some of them are older—has never come out."

Last week, the New York *Times*, in a powerful report by Jodi Kantor and Megan Twohey, revealed multiple allegations of sexual harassment against Weinstein, a story that led to the resignation of four members of his company's all-male board, and to Weinstein's firing from the company.

The story, however, is more complex, and there is more to know and to understand. In the course of a ten-month investigation, I was told by thirteen women that, between the nineteen-nineties and 2015, Weinstein sexually harassed or assaulted them, allegations that corroborate and overlap with the *Times*' revelations, and also include far more serious claims.

Three women—among them Argento and a former aspiring actress named Lucia Evans—told me that Weinstein raped them, allegations that include Weinstein forcibly performing or receiving oral sex and forcing vaginal sex. Four women said that they experienced unwanted touching that could be classified as an assault. In an audio recording captured during a New York Police Department sting operation in 2015 and made public here for the first time, Weinstein admits to groping a Filipina-Italian model named Ambra Battilana Gutierrez, describing it as behavior he is "used to." Four of the women I interviewed cited encounters in which Weinstein exposed himself or masturbated in front of them.

Sixteen former and current executives and assistants at Weinstein's companies told me that they witnessed or had knowledge of unwanted sexual advances and touching at events associated with Weinstein's films and in the workplace. They and others describe a pattern of professional meetings that were little more than thin pretexts for sexual advances on young actresses and models. All sixteen said that the behavior was widely known within both Miramax and the Weinstein Company. Messages sent by Irwin Reiter, a senior company executive, to Emily Nestor, one of the women who alleged that she was harassed at the company, described the "mistreatment of women" as a serial problem that the Weinstein Company was struggling with in recent years. Other employees described what was, in essence, a culture of complicity at Weinstein's places of

business, with numerous people throughout the companies fully aware of his behavior but either abetting it or looking the other way. Some employees said that they were enlisted in subterfuge to make the victims feel safe. A female executive with the company described how Weinstein assistants and others served as a "honeypot"—they would initially join a meeting, but then Weinstein would dismiss them, leaving him alone with the woman.

Virtually all of the people I spoke with told me that they were frightened of retaliation. "If Harvey were to discover my identity, I'm worried that he could ruin my life," one former employee told me. Many said that they had seen Weinstein's associates confront and intimidate those who crossed him, and feared that they would be similarly targeted. Four actresses, including Mira Sorvino and Rosanna Arquette, told me they suspected that, after they rejected Weinstein's advances or complained about them to company representatives, Weinstein had them removed from projects or dissuaded people from hiring them. Multiple sources said that Weinstein frequently bragged about planting items in media outlets about those who spoke against him; these sources feared that they might be similarly targeted. Several pointed to Gutierrez's case, in 2015: after she went to the police, negative items discussing her sexual history and impugning her credibility began rapidly appearing in New York gossip pages. (In the taped conversation with Gutierrez, Weinstein asks her to join him for "five minutes," and warns, "Don't ruin your friendship with me for five minutes.")

Several former employees told me that they were speaking about Weinstein's alleged behavior now because they hoped to protect women in the future. "This wasn't a one-off. This wasn't a period of time," an executive who worked for Weinstein for many years told me. "This was ongoing predatory behavior towards women—whether they consented or not."

It's likely that women have recently felt increasingly emboldened to talk about their experiences because of the way the world has changed regarding issues of sex and power. These disclosures follow in the wake of stories alleging sexual misconduct by public figures, including Bill O'Reilly, Roger Ailes, Bill Cosby, and Donald Trump. In October, 2016, a month before the election, a tape emerged of Trump telling a celebrity-news reporter, "And when you're a star, they let you do it. You can do anything. . . . Grab 'em by the pussy. You can do anything." This past April, O'Reilly, a host at Fox News, was forced to resign after Fox was discovered to have paid five women millions of dollars in

exchange for silence about their accusations of sexual harassment. Ailes, the former head of Fox News, resigned last July, after he was accused of sexual harassment. Cosby went on trial this summer, charged with drugging and sexually assaulting a woman. The trial ended with a hung jury.

On October 5th, in an initial effort at damage control, Weinstein responded to the *Times* piece by issuing a statement partly acknowledging what he had done, saying, "I appreciate the way I've behaved with colleagues in the past has caused a lot of pain, and I sincerely apologize for it." In an interview with the New York *Post*, he said, "I've got to deal with my personality, I've got to work on my temper, I have got to dig deep. I know a lot of people would like me to go into a facility, and I may well just do that—I will go anywhere I can learn more about myself." Weinstein went on, "In the past I used to compliment people, and some took it as me being sexual, I won't do that again." In his statement to the *Times*, Weinstein claimed that he would "channel that anger" into a fight against the leadership of the National Rifle Association. He also said that it was not "coincidental" that he was organizing a foundation for women directors at the University of Southern California. "It will be named after my mom and I won't disappoint her."

Sallie Hofmeister, a spokesperson for Weinstein, issued a statement in response to the allegations in this article. It reads in full: "Any allegations of non-consensual sex are unequivocally denied by Mr. Weinstein. Mr. Weinstein has further confirmed that there were never any acts of retaliation against any women for refusing his advances. Mr. Weinstein obviously can't speak to anonymous allegations, but with respect to any women who have made allegations on the record, Mr. Weinstein believes that all of these relationships were consensual. Mr. Weinstein has begun counseling, has listened to the community and is pursuing a better path. Mr. Weinstein is hoping that, if he makes enough progress, he will be given a second chance."

While Weinstein and his representatives have said that the incidents were consensual, and were not widespread or severe, the women I spoke to tell a very different story.

2.

Lucia Stoller, now Lucia Evans, was approached by Weinstein at Cipriani Upstairs, a club in New York, in 2004, the summer before her senior year at Middlebury College. Evans wanted to be an actress, and although she had heard rumors about Weinstein she let him have her number. Weinstein began calling her late at night, or

having an assistant call her, asking to meet. She declined, but said that she would do readings during the day for a casting executive. Before long, an assistant called to set up a daytime meeting at the Miramax office, in Tribeca, first with Weinstein and then with a casting executive, who was a woman. "I was, like, 'Oh, a woman, great, I feel safe,' " Evans said.

When Evans arrived for the meeting, the building was full of people. She was led to an office with exercise equipment and takeout boxes on the floor, where she met with Weinstein alone. Evans said that she found him frightening. "The type of control he exerted, it was very real," she told me. "Even just his presence was intimidating."

In the meeting, Evans recalled, "he immediately was simultaneously flattering me and demeaning me and making me feel bad about myself." Weinstein told her that she'd "be great in 'Project Runway' "—the show, which Weinstein helped produce, premièred later that year—but only if she lost weight. He also told her about two scripts, a horror movie and a teen love story, and said one of his associates would discuss them with her.

"At that point, after that, is when he assaulted me," Evans said. "He forced me to perform oral sex on him." As she objected, Weinstein took his penis out of his pants and pulled her head down onto it. "I said, over and over, 'I don't want to do this, stop, don't,' " she said. "I tried to get away, but maybe I didn't try hard enough. I didn't want to kick him or fight him." In the end, she said, "He's a big guy. He overpowered me." At a certain point, she said, "I just sort of gave up. That's the most horrible part of it, and that's why he's been able to do this for so long to so many women: people give up, and then they feel like it's their fault."

Weinstein appeared to find the encounter unremarkable. "It was like it was just another day for him," Evans said. "It was no emotion." Afterward, she said, he acted as if nothing had happened. She wondered how Weinstein's staff could not know what was going on.

After the encounter, she met with the female casting executive, who sent her the scripts, and also came to one of her acting-class readings a few weeks later. (Evans does not believe that the executive was aware of Weinstein's behavior.) Weinstein, Evans said, began calling her again late at night. Evans told me that the entire sequence of events had a routine quality. "It feels like a very streamlined process," she said. "Female casting director, Harvey wants to meet. Everything was designed to make me feel comfortable

before it happened. And then the shame in what happened was also designed to keep me quiet."

Evans said that, after the incident, "I just put it in a part of my brain and closed the door." She continued to blame herself for not fighting harder. "It was always my fault for not stopping him," she said. "I had an eating problem for years. I was disgusted with myself. It's funny, all these unrelated things I did to hurt myself because of this one thing." Evans told friends some of what had happened, but felt largely unable to talk about it. "I ruined several really good relationships because of this. My schoolwork definitely suffered, and my roommates told me to go to a therapist because they thought I was going to kill myself."

In the years that followed, Evans encountered Weinstein occasionally. Once, while she was walking her dog in Greenwich Village, she saw him getting into a car. "I very clearly saw him. I made eye contact," she said. "I remember getting chills down my spine just looking at him. I was so horrified. I have nightmares about him to this day."

3.

Asia Argento, an actress born in Rome, played the role of a glamorous thief named Beatrice in the crime drama "B. Monkey," which was released in the U.S. in 1999. The distributor was Miramax. In a series of long and often emotional interviews, Argento told me that Weinstein assaulted her while they worked together.

At the time, Argento was twenty-one and a rising actress who had twice won the Italian equivalent of the Oscar. Argento said that, in 1997, one of Weinstein's producers invited her to what she understood to be a party thrown by Miramax at the Hôtel du Cap-Eden-Roc, on the French Riviera. Argento felt professionally obliged to attend. When the producer led her upstairs that evening, she said, there was no party—only a hotel room, empty but for Weinstein: "I'm, like, 'Where is the fucking party?' " She recalled the producer telling her, "Oh, we got here too early," before he left her alone with Weinstein. (The producer denies bringing Argento to the room that night.) At first, Weinstein was solicitous, praising her work. Then he left the room. When he returned, he was wearing a bathrobe and holding a bottle of lotion. "He asks me to give a massage. I was, like, 'Look, man, I am no fucking fool,' " Argento said. "But, looking back, I am a fucking fool. And I am still trying to come to grips with what happened."

Argento said that, after she reluctantly agreed to give Weinstein a massage, he pulled her skirt up, forced her legs apart, and performed oral sex on her as she repeatedly told him to stop. Weinstein "terrified me, and he was so big," she said. "It wouldn't stop. It was a nightmare."

At some point, Argento said, she stopped saying no and feigned enjoyment, because she thought it was the only way the assault would end. "I was not willing," she told me. "I said, 'No, no, no.' . . . It's twisted. A big fat man wanting to eat you. It's a scary fairy tale." Argento, who insisted that she wanted to tell her story in all its complexity, said that she didn't physically fight him off, something that has prompted years of guilt.

"The thing with being a victim is I felt responsible," she said. "Because, if I were a strong woman, I would have kicked him in the balls and run away. But I didn't. And so I felt responsible." She described the incident as a "horrible trauma." Decades later, she said, oral sex is still ruined for her. "I've been damaged," she told me. "Just talking to you about it, my whole body is shaking."

Argento recalled sitting on the bed after the incident, her clothes "in shambles," her makeup smeared. She said that she told Weinstein, "I am not a whore," and that he began laughing. He said he'd put the phrase on a T-shirt. Afterward, Argento said, "He kept contacting me." For a few months, Weinstein seemed obsessed, offering her expensive gifts.

What complicates the story, Argento readily allowed, is that she eventually yielded to Weinstein's further advances and even grew close to him. Weinstein dined with her, and introduced her to his mother. Argento told me, "He made it sound like he was my friend and he really appreciated me." She said that she had consensual sexual relations with him multiple times over the course of the next five years, though she described the encounters as one-sided and "onanistic." The first occasion, several months after the alleged assault, came before the release of "B. Monkey." "I felt I had to," she said. "Because I had the movie coming out and I didn't want to anger him." She believed that Weinstein would ruin her career if she didn't comply. Years later, when she was a single mother dealing with childcare, Weinstein offered to pay for a nanny. She said that she felt "obliged" to submit to his sexual advances.

Argento said that she knew this contact would be used to attack the credibility of her allegation. In part, she said, the initial assault made her feel overpowered each time she

encountered Weinstein, even years later. "Just his body, his presence, his face, bring me back to the little girl that I was when I was twenty-one," she told me. "When I see him, it makes me feel little and stupid and weak." She broke down as she struggled to explain. "After the rape, he won," she said.

In 2000, Argento released "Scarlet Diva," a movie that she wrote and directed. In the film, a heavyset producer corners the character of Anna, who is played by Argento, in a hotel room, asks her for a massage, and tries to assault her. After the movie came out, women began approaching Argento, saying that they recognized Weinstein's behavior in the portrayal. "People would ask *me* about *him* because of the scene in the movie," she said. Some recounted similar details to her: meetings and professional events moved to hotel rooms, bathrobes and massage requests, and, in one other case, forced oral sex.

Weinstein, according to Argento, saw the film after it was released in the U.S., and apparently recognized himself. "Ha, ha, very funny," Argento remembered him saying to her. But he also said that he was "sorry for whatever happened." The movie's most significant departure from the real-life incident, Argento told me, was how the hotel-room scene ended. "In the movie I wrote," she said, "I ran away."

Other women were too afraid to allow me to use their names, but their stories are uncannily similar to these allegations. One, a woman who worked with Weinstein, explained her reluctance to be identified. "He drags your name through the mud, and he'll come after you hard with his legal team."

Like other women in this article, she said that Weinstein brought her to a hotel room under a professional pretext, changed into a bathrobe, and "forced himself on me sexually." She said no, repeatedly and clearly. Afterward, she experienced "horror, disbelief, and shame," and considered going to the police. "I thought it would be a 'He said, she said,' and I thought about how impressive his legal team is, and I thought about how much I would lose, and I decided to just move forward," she said. The woman continued to have professional contact with Weinstein after the alleged rape, and acknowledged that subsequent communications between them might suggest a normal working relationship. "I was in a vulnerable position and I needed my job," she told me. "It just increases the shame and the guilt."

4.

Mira Sorvino, who starred in several of Weinstein's films, told me that he sexually hara her and tried to pressure her into a physical relationship while they worked together. She said that, at the Toronto International Film Festival in September, 1995, she found herself in a hotel room with Weinstein, who produced the movie she was there to promote, "Mighty Aphrodite," for which she later won an Academy Award. "He started massaging my shoulders, which made me very uncomfortable, and then tried to get more physical, sort of chasing me around," she recalled. She scrambled for ways to ward him off, telling him it was against her religion to date married men. (At the time, Weinstein was married to Eve Chilton, a former assistant.) Then she left the room.

A few weeks later, in New York City, her phone rang after midnight. It was Weinstein, saying that he had new marketing ideas for the film and asking to meet. Sorvino offered to meet him at an all-night diner, but he told her he was coming over to her apartment and hung up. "I freaked out," she told me. She called a friend and asked him to come over and pose as her boyfriend. The friend hadn't arrived by the time Weinstein rang her doorbell. "Harvey had managed to bypass my doorman," she said. "I opened the door terrified, brandishing my twenty-pound Chihuahua mix in front of me, as though that would do any good." When she told Weinstein that her new boyfriend was on his way, Weinstein became dejected and left.

Sorvino said that she struggled for years with whether to come forward with her story, partly because she was aware that it was mild compared to the experiences of other women, including another actress she spoke to at the time. (That actress told me that she locked herself in a hotel bathroom to escape Weinstein, and that he masturbated in front of her. She said it was "a classic case" of "someone not understanding the word 'no'. . . I must have said no a thousand times.") The fact that Weinstein was so instrumental to Sorvino's success also made her hesitate: "I have great respect for Harvey as an artist, and owe him and his brother a debt of gratitude for the early success in my career, including the Oscar." She had professional contact with Weinstein for years after the incident, and remains close friends with his brother and business partner, Bob Weinstein. (She said that she never told Bob about his brother's behavior.)

Sorvino said that she felt afraid and intimidated, and that the incidents had a significant impact on her. When she told a female employee at Miramax about the harassment, the woman's reaction "was shock and horror that I had mentioned it." Sorvino appeared in a few more of Weinstein's films afterward, but felt that saying no to Weinstein and

reporting the harassment had ultimately hurt her career. She said, "There may have been other factors, but I definitely felt iced out and that my rejection of Harvey had something to do with it."

5.

In March, 2015, Ambra Battilana Gutierrez, who was once a finalist in the Miss Italy contest, met Harvey Weinstein at a reception for "New York Spring Spectacular," a show that he was producing at Radio City Music Hall. Weinstein introduced himself to Gutierrez, who was twenty-two, remarking repeatedly that she looked like the actress Mila Kunis.

Following the event, Gutierrez's agency e-mailed to say that Weinstein wanted to set up a business meeting as soon as possible. Gutierrez arrived at Weinstein's office in Tribeca early the next evening with her modelling portfolio. In the office, she sat with Weinstein on a couch to review the portfolio, and he began staring at her breasts, asking if they were real. Gutierrez later told officers of the New York Police Department Special Victims Division that Weinstein then lunged at her, groping her breasts and attempting to put a hand up her skirt while she protested. He finally backed off and told her that his assistant would give her tickets to "Finding Neverland," a Broadway musical that he was producing. He said that he would meet her at the show that evening.

Instead of going to the show that night, Gutierrez went to the nearest N.Y.P.D. precinct station and reported the assault. Weinstein telephoned her later that evening, annoyed that she had failed to appear at the show. She picked up the call while sitting with investigators from the Special Victims Division, who listened in on the call and devised a plan: Gutierrez would agree to see the show the following day and then meet with Weinstein. She would wear a wire and attempt to extract a confession or incriminating statement.

The next day, Gutierrez met Weinstein at the bar of the Tribeca Grand Hotel. A team of undercover officers helped guide her through the interaction. On the recording, which I have heard in full, Weinstein lists actresses whose careers he has helped and offers Gutierrez the services of a dialect coach. Then he presses her to join him in his hotel room while he showers. Gutierrez says no repeatedly; Weinstein persists, and after a while she accedes to his demand to go upstairs. But, standing in the hallway outside his room, she refuses to go farther. In an increasingly tense exchange, he presses her to enter.

Gutierrez says, "I don't want to," "I want to leave," and "I want to go downstairs." She asks him directly why he groped her breasts the day before.

"Oh, please, I'm sorry, just come on in," Weinstein says. "I'm used to that. Come on. Please."

"You're used to that?" Gutierrez asks, sounding incredulous.

"Yes," Weinstein says. He later adds, "I won't do it again."

After almost two minutes of back-and-forth in the hallway, Weinstein finally agrees to let her leave.

According to a law-enforcement source, Weinstein, if charged, would have most likely faced a count of sexual abuse in the third degree, a misdemeanor punishable by a maximum of three months in jail. But, as the police investigation proceeded and the allegation was widely reported, details about Gutierrez's past began to appear in the tabloids. In 2010, as a young contestant in a beauty pageant associated with the former Italian Prime Minister Silvio Berlusconi, Gutierrez had attended one of his infamous Bunga Bunga parties. She claimed that she had been unaware of the nature of the party before arriving, and eventually became a witness in a bribery case against Berlusconi, which is still ongoing. Gossip outlets also reported that Gutierrez, as a teen-ager, had made an allegation of sexual assault against an older Italian businessman but later declined to coöperate with prosecutors.

Two sources close to the police investigation said that they had no reason to doubt Gutierrez's account of the incident. One of them, a police source, said that the department had collected more than enough evidence to prosecute Weinstein. But the other source said that Gutierrez's statements about her past complicated the case for the office of the Manhattan District Attorney, Cyrus Vance, Jr. After two weeks of investigation, the District Attorney's office decided not to file charges. The D.A.'s office declined to comment on this story but pointed me to its statement at the time: "This case was taken seriously from the outset, with a thorough investigation conducted by our Sex Crimes Unit. After analyzing the available evidence, including multiple interviews with both parties, a criminal charge is not supported."

"We had the evidence," the police source involved in the operation told me. "It's a case that made me angrier than I thought possible, and I have been on the force a long time."

Gutierrez, when contacted for this story, said that she was unable to discuss the incident. According to a source close to the matter, after the D.A.'s office decided not to press charges, Gutierrez, facing Weinstein's legal team, and in return for a payment, signed a highly restrictive nondisclosure agreement with Weinstein, including an affidavit stating that the acts Weinstein admits to in the recording never happened.

Weinstein's use of such settlements was reported by the *Times* and confirmed to me by numerous sources. A former employee with firsthand knowledge of two settlement negotiations that took place in London in the nineteen-nineties recalled, "It felt like David versus Goliath . . . the guy with all the money and the power flexing his muscle and quashing the allegations and getting rid of them."

6.

Last week's *Times* story disclosed a complaint to the Weinstein Company's office of human resources, filed on behalf of a temporary front-desk assistant named Emily Nestor in December, 2014. Her own account of Weinstein's conduct is being made public here for the first time. Nestor was twenty-five when she started the job, and, after finishing law school and starting business school, was considering a career in the movie industry. On her first day in the position, Nestor said, two employees told her that she was Weinstein's "type" physically. When Weinstein arrived at the office, he made comments about her appearance, referring to her as "the pretty girl." He asked how old she was, and then sent all of his assistants out of the room and made her write down her telephone number.

Weinstein told her to meet him for drinks that night. Nestor invented an excuse. When he insisted, she suggested an early-morning coffee the next day, assuming that he wouldn't accept. He did, and told her to meet him at the Peninsula in Beverly Hills, where he was staying. Nestor said that she had talked with friends in the entertainment industry and employees in the company who had warned her about Weinstein's reputation. "I dressed very frumpy," she said.

Nestor told me that the meeting was the "most excruciating and uncomfortable hour of my life." After Weinstein offered her career help, she said, he began to boast about his

sexual liaisons with other women, including famous actresses. "He said, 'You know, we could have a lot of fun,' " Nestor recalled. "I could put you in my London office, and you could work there and you could be my girlfriend." She declined. He asked to hold her hand; she said no. In Nestor's account of the exchange, Weinstein said, "Oh, the girls always say 'no.' You know, 'No, no.' And then they have a beer or two and then they're throwing themselves at me." In a tone that Nestor described as "very weirdly proud," Weinstein added "that he'd never had to do anything like Bill Cosby." She assumed that he meant he'd never drugged a woman. "It's just a bizarre thing to be so proud of," she said. "That you've never had to resort to doing that. It was just so far removed from reality and normal rules of consent."

"Textbook sexual harassment" was how Nestor described Weinstein's behavior to me. "It's a pretty clear case of sexual harassment when your superior, the C.E.O., asks one of their inferiors, a temp, to have sex with them, essentially in exchange for mentorship." She recalled refusing his advances at least a dozen times. " 'No' did not mean 'no' to him," she said. "I was very aware of how inappropriate it was. But I felt trapped."

Throughout the breakfast, she said, Weinstein interrupted their conversation to yell into his cell phone, enraged over a spat that Amy Adams, a star in the Weinstein movie "Big Eyes," was having in the press. Afterward, Weinstein told Nestor to keep an eye on the news cycle, which he promised would be spun in his favor. Later in the day, there were indeed negative news items about his opponents, and Weinstein stopped by Nestor's desk to be sure that she'd seen them.

By that point, Nestor recalled, "I was very afraid of him. And I knew how well connected he was. And how if I pissed him off then I could never have a career in that industry." Still, she told the friend who referred her to the job about the incident, and he alerted the company's office of human resources, which contacted her. (The friend did not respond to a request for comment.) Nestor had a conversation with company officials about the matter but didn't pursue it further: the officials said that Weinstein would be informed of anything she told them, a practice not uncommon in smaller businesses. Several former Weinstein employees told me that the company's human-resources department was utterly ineffective; one female executive described it as "a place where you went to when you didn't want anything to get done. That was common knowledge across the board. Because everything funnelled back to Harvey." She described the

department's typical response to allegations of misconduct as, "This is his company. If you don't like it, you can leave."

Nestor told me that some people at the company did seem concerned. Irwin Reiter, a senior executive who had worked for Weinstein for almost three decades, sent her a series of messages via LinkedIn. "We view this very seriously and I personally am very sorry your first day was like this," Reiter wrote. "Also if there are further unwanted advances, please let us know." Last year, just before the Presidential election, he reached out again, writing, "All this Trump stuff made me think of you." He described Nestor's experience as part of Weinstein's serial misconduct. "I've fought him about mistreatment of women 3 weeks before the incident with you. I even wrote him an email that got me labelled by him as sex police," he wrote. "The fight I had with him about you was epic. I told him if you were my daughter he would have not made out so well." (Reiter declined to comment, but his lawyer, Debra Katz, confirmed the authenticity of the messages and said that Reiter had made diligent efforts to raise these issues to no avail. Katz also said that Reiter "is eager to coöperate fully with any outside investigation.")

Though no assault occurred, and Nestor completed her temporary placement, she was profoundly affected by the incident. "I was definitely traumatized for a while, in terms of feeling so harassed and frightened," she said. "It made me feel incredibly discouraged that this could be something that happens on a regular basis. I actually decided not to go into entertainment because of this incident."

7.

Emma de Caunes, a French actress, met Weinstein in 2010, at a party at the Cannes Film Festival. A few months later, he asked her to a lunch meeting at the Hôtel Ritz in Paris. In the meeting, Weinstein told de Caunes that he was going to be producing a movie with a prominent director, that he planned to shoot it in France, and that it had a strong female role. It was an adaptation of a book, he said, but he claimed he couldn't remember the title. "But I'll give it to you," Weinstein said, according to de Caunes. "I have it in my room."

De Caunes replied that she had to leave, since she was already running late for a TV show she was hosting—Eminem was appearing on the show that afternoon, and she hadn't written her questions yet. Weinstein pleaded with her to retrieve the book with him, and finally she agreed. As they got to his room, she received a telephone call from

one of her colleagues, and Weinstein disappeared into a bathroom, leaving the door open. She assumed that he was washing his hands.

"When I hung up the phone, I heard the shower go on in the bathroom," she said. "I was, like, What the fuck, is he taking a shower?" Weinstein came out, naked and with an erection. "What are you doing?" she asked. Weinstein demanded that she lie on the bed and told her that many other women had done so before her.

"I was very petrified," de Caunes said. "But I didn't want to show him that I was petrified, because I could feel that the more I was freaking out, the more he was excited." She added, "It was like a hunter with a wild animal. The fear turns him on." De Caunes told Weinstein that she was leaving, and he panicked. "We haven't done anything!" she remembered him saying. "It's like being in a Walt Disney movie!"

De Caunes told me, "I looked at him and I said—it took all my courage—but I said, 'I've always hated Walt Disney movies.' And then I left. I slammed the door." She was shaking on the stairs down to the lobby. A director she was working with on the TV show confirmed that she arrived at the studio distraught and that she recounted what had happened. Weinstein called relentlessly over the next few hours, offering de Caunes gifts and repeating that nothing had happened.

De Caunes, who was in her early thirties at the time, was already an established actress, but she wondered what would happen to younger and more vulnerable women in the same situation. Over the years, she said, she's heard similar accounts from friends. "I know that everybody—I mean *everybody*—in Hollywood knows that it's happening," de Caunes said. "He's not even really hiding. I mean, the way he does it, so many people are involved and see what's happening. But everyone's too scared to say anything."

8.

One evening in the early nineties, the actress Rosanna Arquette was supposed to meet Weinstein for dinner at the Beverly Hills Hotel to pick up the script for a new film. At the hotel, Arquette was told to meet Weinstein upstairs, in his room.

Arquette recalled that, when she arrived at the room, Weinstein opened the door wearing a white bathrobe. Weinstein said that his neck was sore and that he needed a massage. She told him that she could recommend a good masseuse. "Then he grabbed my hand,"

she said. He put it on his neck. When she yanked her hand away, she told me, Weinstein grabbed it again and pulled it toward his penis, which was visible and erect. "My heart was really racing. I was in a fight-or-flight moment," she said. She told Weinstein, "I will never do that."

Weinstein told her that she was making a huge mistake by rejecting him, and named an actress and a model who he claimed had given in to his sexual overtures and whose careers he said he had advanced as a result. Arquette said she told him, "I'll never be that girl," and left.

Arquette said that after she rejected Weinstein her career suffered. In one case, she believes, she lost a role because of it. "He made things very difficult for me for years," she told me. She did appear in one subsequent Weinstein film, "Pulp Fiction," which she attributes to the small size of the role and Weinstein's deference to the filmmaker, Quentin Tarantino. (Disputes later arose over her entitlement to payment out of the film's proceeds.) Arquette said that her silence was the result of Weinstein's power and reputation for vindictiveness. "He's going to be working very hard to track people down and silence people," she explained. "To hurt people. That's what he does."

There are other examples of Weinstein's modus operandi. Jessica Barth, an actress who met Weinstein at a Golden Globes party in January, 2011, told me that Weinstein invited her to a business meeting at the Peninsula. When she arrived, he asked her over the phone to come up to his room. Weinstein assured her it was "no big deal"—because of his high profile, he simply wanted privacy to "talk career stuff." In the room, Barth found that Weinstein had ordered champagne and sushi.

Barth said that, in the conversation that followed, he alternated between offering to cast her in a film and demanding a naked massage in bed. "So, what would happen if, say, we're having some champagne and I take my clothes off and you give me a massage?" she recalled him asking. "And I'm, like, 'That's not going to happen.' "

When she moved toward the door to leave, Weinstein lashed out, saying that she needed to lose weight "to compete with Mila Kunis," and then, apparently in an effort to mollify her, promising a meeting with one of his female executives. "He gave me her number, and I walked out and I started bawling," Barth told me. (Immediately after the incident, she spoke with two individuals who confirmed to me that she related her account to them at the time.) Barth said that the promised meeting at Weinstein's office seemed to

be purely a formality. "I just knew it was bullshit," she said. (The executive she met with did not respond to requests for comment.)

9.

Weinstein's behavior deeply affected the day-to-day operations of his company. Current and former Weinstein employees described a pattern of meetings and strained complicity that closely matches the accounts of the many women I interviewed. The employees spoke on condition of anonymity, they said, because of fears about their careers in Hollywood and because of provisos in their work contracts.

"There was a large volume of these types of meetings that Harvey would have with aspiring actresses and models," one female executive told me. "He would have them late at night, usually at hotel bars or in hotel rooms. And, in order to make these women feel more comfortable, he would ask a female executive or assistant to start those meetings with him." She said that she was repeatedly asked to join the meetings but refused.

The female executive said that she was especially disturbed by the involvement of other employees. "It almost felt like the executive or assistant was made to be a honeypot to lure these women in, to make them feel safe," she said. "Then he would dismiss the executive or the assistant, and then these women were alone with him. And that did not feel like it was appropriate behavior or safe behavior."

One former employee said that she was frequently asked to join for the beginning of meetings that, she said, had in many cases already been moved from day to night and from hotel lobbies to hotel rooms. She said that Weinstein's conduct in the meetings was brazen. During a meeting with a model, the former employee said, he turned to her and demanded, "Tell her how good of a boyfriend I am." She said that when she refused to join one such meeting, Weinstein became enraged. Often, she was asked to keep track of the women, who, in keeping with a practice established by Weinstein's assistants, were all filed under the same label in her phone: F.O.H., which stood for "Friend of Harvey." She said that the pattern of meetings was nearly uninterrupted in her years working for Weinstein. "I have to say, the behavior did stop for a little bit after the groping thing," she said, referring to Ambra Battilana Gutierrez's allegation to the police, "but he couldn't help himself. A few months later, he was back at it."

Two staffers who facilitated these meetings said that they felt morally compromised by them. One male former staffer said that many of the women seemed "not aware of the nature of those meetings" and "were definitely scared." He said most of the encounters that he saw seemed consensual, but others gave him pause. He was especially troubled by his memory of one young woman: "You just feel terrible because you could tell this girl, very young, not from our country, was now in a room waiting for him to come up there in the middle of the day, and we were not to bother them." He said that he was never asked to facilitate these meetings for men.

None of the former executives or assistants I spoke to quit because of the misconduct, but many expressed guilt and regret about not having said or done more. They spoke about what they believed to be a culture of silence about sexual assault inside Miramax and the Weinstein Company and across the entertainment industry more broadly.

10.

Weinstein and his legal and public-relations teams have conducted a decades-long campaign to suppress these stories. In recent months, that campaign escalated. Weinstein and his associates began calling many of the women in this story. Weinstein asked Argento to meet with a private investigator and give testimony on his behalf. One actress who initially spoke to me on the record later asked that her allegation be removed. "I'm so sorry," she wrote. "The legal angle is coming at me and I have no recourse." Weinstein and his legal team have threatened to sue multiple media outlets, including the New York *Times*.

Several of the former executives and assistants in this story said that they had received calls from Weinstein in which he attempted to determine if they had talked to me or warned them not to. These employees continued to participate in the article partly because they felt there was a growing culture of accountability, embodied in the relatively recent disclosures about high-profile men like Cosby and Ailes. "I think a lot of us had thought—and hoped—over the years that it would come out sooner," the former executive who was aware of the two legal settlements in London told me. "But I think now is the right time, in this current climate, for the truth."

The female executive who declined inappropriate meetings told me that her lawyer advised her that she could be exposed to hundreds of thousands of dollars in lawsuits for violating the nondisclosure agreement attached to her employment contract. "I believe

this is more important than keeping a confidentiality agreement," she said. "The more of us that can confirm or validate for these women if this did happen, I think it's really important for their justice to do that." She continued, "I wish I could have done more. I wish I could have stopped it. And this is my way of doing that now."

"He's been systematically doing this for a very long time," the former employee who had been made to act as a "honeypot" told me. She said that she often thinks of something Weinstein whispered—to himself, as far as she could tell—after one of his many shouting sprees at the office. It so unnerved her that she pulled out her iPhone and tapped it into a memo, word for word: "There are things I've done that nobody knows."

Ronan Farrow is a television and print reporter and the author of the forthcoming "War on Peace: The End of Diplomacy and the Decline of American Influence," from W. W. Norton. *Read more »*

Video

Harvey Weinstein, Caught on Tape
The film executive admits to groping a woman, in a recording secretly captured during an N.Y.P.D. sting operation.