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CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

September 12, 2018

Benjamin Brafman, Esq.
Brafman & Associates, P.C.
767 Third Avenue
New York, NY 10017

Re: People v. Harvey Weinstein
Indictment #: 02335/2018

Dear Mr. Brafman:

In connection with the above-captioned case, the People disclose the following information pursuant to our obligations under Criminal Procedure Law 240.20, as well as Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), and their doctrinal progeny. The following facts relate to the allegations in Count Six of the above-captioned indictment. As is described more fully below, a third-party witness (the "Witness") has recently described to the People an account by the complainant in Count Six of the Indictment (the "Complainant") that is at odds with the factual account the Complainant previously provided to our Office. The People have recently learned that this account was earlier provided by the Witness to a detective of the New York City Police Department (the "Detective"), who failed to inform our office of important aspects of the account prior to the indictment in this case.

The Witness' Account

In December 2017, during an early stage of the investigation of this matter, the Complainant stated to the Detective and to attorneys in this Office that, at the time she first met the defendant at a restaurant in Manhattan in the summer of 2004, she was accompanied by the Witness, who was a friend of hers.* The Detective later interviewed the Witness by telephone on February 2, 2018, and thereafter reported on various occasions to the attorneys in this Office that he had spoken by phone to the Witness (along with her attorney); that she was reluctant to cooperate; that she was difficult to reach; and that the Detective would attempt to conduct an in-person interview.

* The identities of the Witness and the Detective are being contemporaneously provided to defense counsel in a separate letter.

On August 14, 2018, attorneys from this Office arranged to speak by telephone to the Witness, after the Complainant informed our Office that the Witness recalled being told by the Complainant about the incident at issue in Count Six of the Indictment. In that telephone call, and in a follow-up in-person meeting on August 29, 2018, the Witness, in the presence of her attorney, related to our Office the following, in substance:

- The Witness was present with the Complainant in the summer of 2004 in the bar of a Manhattan restaurant when the Complainant was first approached by the defendant.
- According to the Witness, the defendant offered that evening to give the Complainant and the Witness cash if they exposed their breasts to him.
- According to the Witness, she refused to do so, and she never saw the Complainant do so.
- According to the Witness, the Complainant nonetheless later told her, as they walked home from the restaurant that evening, that the Complainant had exposed her breasts to the defendant in a hallway of the restaurant that evening.
- According to the Witness, sometime later that summer or the following summer, the Complainant told the Witness that, sometime after the evening in the restaurant, the Complainant had gone to the defendant's office, where the Defendant told her, in substance, that he would arrange for the Complainant to receive an acting job if she agreed to perform oral sex upon him. According to the Witness, the Complainant told her that she thereupon performed oral sex on the defendant.
- According to the Witness, at the time of this discussion about the incident, the Witness and the Complainant had been drinking, and the Complainant appeared to be upset, embarrassed and shaking. According to the Witness, the Witness' memory about the exchange is imperfect, but has been consistent over time.

During the discussions with the Witness and her attorney about these issues in August 2018, the Witness and her attorney told the lawyers in our Office that the Witness described the above recollections to the Detective in his call with her and the attorney on February 2, 2018. The Witness and her attorney stated the following, in substance:

- The Witness related to the Detective on February 2, 2018 her account of how the defendant had asked her and the Complainant to expose their breasts, and how the Complainant had, later that evening, told the Witness that she had exposed her breasts to the defendant in the restaurant.
- The Witness related to the Detective on February 2, 2018 her account of how the Complainant had, sometime later, stated that the defendant had offered her employment in exchange for oral sex, and that the Complainant thereupon had performed oral sex on the defendant.

- The Witness related to the Detective on February 2, 2018 that, sometime prior to that date, she had been contacted by a 'fact checker' from the New Yorker magazine to confirm the Complainant's account of the sexual assault in the defendant's office in 2004. According to the Witness and her attorney, she told the Detective that, in her discussion with the magazine, she decided not to relate the Complainant's statements about exposing her breasts, or the circumstances under which she had performed oral sex on the defendant. Instead, according to the Witness, she told the magazine that "something inappropriate happened."
- According to the Witness and her attorney, the response from the Detective on February 2, 2018 was, in substance, that the explanation the Witness had provided to the magazine was more consistent with the account the Complainant had earlier provided the magazine; that, going forward, "less is more;" and that the Witness had no obligation to cooperate.

The Complainant's Response to the Witness' Account

Our office again interviewed the Complainant, in the presence of her attorney, on August 27, 2018. In that interview, the Complainant stated that, contrary to the Witness' account:

- The Complainant was never at any time asked to expose her breasts to the defendant, she never did so, and she never advised the Witness otherwise.
- After the evening at the restaurant, the Witness was so intoxicated that she was put into a taxi home, and the Complainant never had a discussion with the Witness as they walked home together that night.
- The Complainant never consented to any form of sex with the defendant.
- The Complainant does not recall describing to the Witness the incident that is the subject of Count Six in the indictment.
- With respect to the Detective's February 2, 2018 telephone interview of the Witness, the Complainant stated that, shortly after that interview, the Detective called the Complainant's attorney to share the Witness' account of the 'breast exposure' incident and the circumstances surrounding the sexual encounter with the defendant. According to the Complainant, she denied both accounts at the time.

The Detective's Explanation

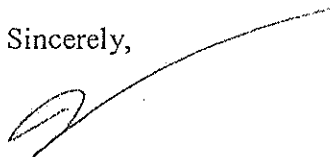
Our Office also conducted recent interviews of the Detective about the foregoing subjects. In those interviews, the Detective acknowledged that he spoke by phone to the Witness and her attorney on or about February 2, 2018. According to the Detective, in that discussion, the Witness provided the account of the facts attributed to her above. The Detective said that he thereafter failed to inform our Office of the important details of that discussion. The Detective also denied making the above statements attributed to him by the Witness and her attorney.

Disclosure of Draft Email

The People have recently obtained a draft email that the Complainant wrote to her husband (then her fiancé) in 2015, which recounts the incident that is the subject of Count Six of the Indictment. The account describes details of the sexual assault that differ from the account the Complainant has provided to our office. The Complainant has told our office that the inconsistencies may be the product of a flawed memory. The Complainant has also told our office that she permitted her husband to read the email sometime after it was drafted. The Complainant had previously told investigators in this case that she never disclosed to her husband the details of the sexual assault at issue.

Our office's review of the above facts is ongoing. Any additional disclosures will be made promptly to defense counsel and the Court.

Sincerely,



Joan Illuzzi-Orbon
Special Counsel to the District Attorney

Deadline