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CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

Hon. James Burke
New York County Supreme Court
100 Centre Street, Part 99
New York, NY 10013

August 15, 2019
Re: *People v. Weinstein*,
Ind.No. 2335/2018

Dear Judge Burke:

I am writing in response to the letter of Mr. Aidala and Ms. Rotunno, dated August 14, 2019, in order to correct numerous misstatements of fact and law contained therein, and to clarify that the People's presentation of this case to the grand jury at this time is entirely proper and does not raise any issues calling for the relief sought by defense counsel.

First, the People are authorized to supersede an indictment at any time before entry of a plea of guilty or commencement of a trial on the pending indictment. *See* CPL § 200.80; *People v. Cade*, 74 N.Y.2d 410, 415-16 (1989) (holding that, after filing an indictment, the District Attorney may "then re-present the matter to the same or another Grand Jury"). Further, judicial permission to re-present charges to a grand jury is required only "when the first Grand Jury hearing the evidence has rejected it as insufficient." *Id.* at 414. That is not the case here where the prior grand jury voted to indict the defendant on each charge it was asked to consider.

Second, contrary to defense counsel's assertion, this Court did not find that the "District Attorney had illegally charged Mr. Weinstein with a crime in an amended Bill of Particulars" (Letter of Aug. 14, 2019). The Court made an evidentiary ruling, precluding the testimony at trial of an additional witness supportive of the Predatory Sexual Assault counts in the indictment because that witness had not testified in the grand jury. The People are well within their statutory authority to re-present the case to a different grand jury and to seek a superseding indictment in order to present additional evidence or testimony of additional witnesses. *See Cade*, 74 N.Y.2d at 414-15 (prosecutor was permitted to re-open case after grand jury voted true bill in order to present testimony that shotgun used to kill victim had been in defendant's exclusive possession, and prosecutor could do the same to "an entirely new Grand Jury").

Accordingly, our letter of August 13 to the Court and defense counsel was both a courtesy as well as a notification to defendant that if he chooses to testify before the grand jury, he must appear on Friday, August 16, 2019. We hereby further notify counsel that the time and place of defendant's appearance is at 10:00 a.m. in Room 911, at One Hogan Place, New York, New York, and, further, that the grand jury's term ends on Monday, August 26, 2019. Therefore, the grand jury will not be able to accommodate counsel's request to hear from a witness on or after August 30, 2019. In any event, the mere representation that said witness has "critical evidence as to the new charge" without any further information or

Deadline

supporting documentation does not meet the standard of CPL § 190.50(3) of a witness who the grand jury may choose to call because such witness possesses "relevant information or knowledge." *See, e.g.*, *People v. Manragh*, 32 N.Y.3d 1101, 1103 (2018) (holding, where substance of witness's testimony, as contained in affidavit, was largely inadmissible, exclusion of such testimony did not implicate integrity of grand jury).

Third, the People's decision to call an additional witness is not an "eleventh hour maneuver," nor is this the "fourth time" the People are seeking "to re-charge this case," as defendant now claims. The Amended Bill of Particulars providing the defense and the Court with notice of the People's intent to present that witness at trial was filed and served on February 13, 2019. The defense did not file a motion seeking to exclude that testimony until June 21, 2019, 120 days after receiving the Amended Bill of Particulars. As stated in the People's letter of August 13, 2019, the new presentation and anticipated indictment in no way alters the charges under the Penal Law or the witnesses in this matter. However, after searching through various records and documentation, the additional witness referred to above realized that the sexual assault listed in Sections I(2) and II(2) of the Amended Bill of Particulars occurred in the winter season spanning 1993 and 1994.

Finally, the defense's request that the Court decide the defendant's motion to dismiss on the grounds of duplicity or an ex post facto violation is premature in that an indictment charging counts involving the additional witness has not been voted and is thus not presently before the Court.

Sincerely,

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Cc: Nina Keller, Esq.
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