

Bruce A Green

[REDACTED]
Email: [REDACTED]

June 7, 2022

Office of the United States Attorney for the Southern District of New York
One Saint Andrews Plaza
New York, NY 10007
Attn: AUSAs Maurene Comey, Alison Moe & Alex Rossmiller

Re: United States v. Maxwell

Dear Counsel:

I have been retained on behalf of Professor Alan Dershowitz to provide my opinions as a legal ethics expert regarding prosecutors' candor obligations relating to [REDACTED] submissions at Ghislaine Maxwell's upcoming sentencing.

The relevant facts, provided for my consideration, are, in brief, as follows. Although Ms. [REDACTED] was not a witness at Ms. Maxwell's trial, she has been notified of her right to make a victim's impact statement in connection with Ms. Maxwell's sentencing. She may submit a written statement or testify at the hearing. The presentence report may incorporate her submission, the prosecution might refer to it, and even if not, the District Judge might rely on it in imposing sentence. Professor Dershowitz has informed the U.S. Attorney's Office ("Office") that Ms. [REDACTED] recent civil deposition testimony in their pending case before District Judge Preska establishes Ms. [REDACTED] serious lack of credibility with respect to the Epstein-Maxwell matter and would cast doubt on the reliability of her submission at the upcoming sentencing. Professor Dershowitz has further advised that although the deposition transcript is sealed, it is available for the Government's review before the sentencing. I have been asked whether, under these circumstances, the Office has a professional responsibility to review the transcript and, if it agrees that Ms. Giuffre's statement lacks credibility, to so advise the Court.

My qualifications to render an expert opinion on questions of prosecutorial ethics such as this one are set forth more fully in my curriculum vitae, which is available here: https://www.fordham.edu/download/downloads/id/1503/bruce_green.pdf. I assume my qualifications would not be disputed, given that I provided advice to the Office in the 1980s when I served as Deputy Chief and Chief Appellate Attorney and have done so more recently as a consultant on legal ethics questions. Of particular significance, for the past three decades I have taught a seminar on Ethics in Criminal Advocacy using self-produced course materials that I regularly update; I have written extensively on prosecutors' ethics, including on questions of prosecutors' candor to the court (*see* Bruce A. Green, *Candor in Criminal Advocacy*, 44 HOFSTRA L. REV. 429 (2016)); and as a member and chair of the ABA Criminal Justice Standards

Committee, I oversaw the drafting of the current version of the Prosecution Function Standards and participated in drafting and discussing prosecutors' candor obligations in particular.

In general, as "ministers of justice," prosecutors have more demanding candor obligations than other lawyers. Prosecution Function Standards, Standard 3-1.4(a) states: "In light of the prosecutor's public responsibilities, broad authority and discretion, the prosecutor has a heightened duty of candor to the courts . . ." Prosecutors' candor obligations are not fully incorporated in the professional conduct rules or in courts' sanctions decisions. To a significant extent, courts expect candor from prosecutors regardless of whether the expectations are fully incorporated in enforceable law or whether a lack of candor is sanctionable. In rendering this opinion, I address what courts should expect of prosecutors as "ministers of justice" – expectations that are not fully codified in professional conduct rules and sanctions decisions.

If the Government were to call Ms. [REDACTED] as its witness in connection with the sentencing, then it would have the ordinary obligation first to satisfy itself of the truthfulness of her testimony and then to disclose impeachment material. See, e.g., NY Rules of Professional Conduct, Rule 3.8(b); ABA Prosecution Function Standards, Standard 3-1.4(b) ("The prosecutor should not make a statement of fact or law, or offer evidence, that the prosecutor does not reasonably believe to be true . . .") *id.*, Standard 3-5.4(c) ("a prosecutor should make timely disclosure to the defense of information [that tends to impeach the government's witnesses] that is known to the prosecutor, regardless of whether the prosecutor believes it is likely to change the result of the proceeding.").

I assume that the Government does *not* intend to make Ms. [REDACTED] its witness, and that insofar as Ms. [REDACTED] makes a presentation to the court, she will do so pursuant to her statutory right as a putative victim. Even if so, in my judgment, equivalent candor obligations arise if the Government were to rely on Ms. [REDACTED] statement in its submissions to the court, thereby essentially making her its witness. Before asking the court to credit Ms. [REDACTED] information, the Government should consider available evidence bearing on her credibility, including deposition testimony that, it has been told, raises serious questions concerning the credibility of her relevant testimony. The prosecutors should not rely on Ms. [REDACTED] information unless, in the language of Standard 3-1.4(b), they "reasonably believe [it] to be true." Their belief in Ms. [REDACTED] reliability would not be reasonable unless they consider readily available information that, they have been told, discredits her and, given the totality of the circumstances, reasonably find her account truthful.

Finally, even assuming the Government does not intend to advance or rely on Ms. [REDACTED] statement or testimony, its duty of candor to the court may be implicated, because prosecutors bear some responsibility to protect the sentencing court from relying on false information. As I have previously written: "Since the judge has no independent investigative authority, the sentencing judge must rely in large part on the prosecution for the relevant facts about the offense. If any lawyer must make full and frank disclosure of factual matters relevant to the sentencing court's decision-making, it is surely the prosecutor." Green, *Candor in Criminal Advocacy*, *supra*, at 446; cf. *United States v. E.V.*, 500 F.3d 747, 754 n.12 (8th Cir. 2007) (referring to "prosecutors' obligation to apprise the court of facts relevant to sentencing"). Consequently, the Office cannot consciously disregard Ms. [REDACTED] deposition testimony bearing on the credibility of her submission to the court; further, if the Office concludes that Ms. [REDACTED] submission is unreliable,

it has a candor obligation to raise this concern with the court, to protect it from relying on false information.

I would be happy to discuss my opinion with the Office, if doing so might assist its consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce A. Green". The signature is fluid and cursive, with a prominent initial "B" and a long, sweeping underline.

Bruce A. Green