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A PROFESSIONAL CORPORATION
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February 1, 2007

BY HAND

[REDACTED], Assistant United States Attorney
[REDACTED], Deputy Chief, Northern Region
Office of the United States Attorney
Southern District of Florida
[REDACTED]
West Palm Beach, Florida 33401

Jeffrey Epstein

Dear [REDACTED] and [REDACTED]:

The following outlines the talking points we intend to cover in today's meeting.

The events at issue occurred in 2004 and 2005. The matter was investigated during the course of nearly a year beginning in March 2005 by the Palm Beach County Police Department (PBPD).

As will be discussed in detail below, it appears that a PBPD detective formed a view early on as to the criminality of the conduct of Jeffrey Epstein (Epstein). That view tainted both the determination of what to include in the Police Report¹ and led the PBPD to ignore evidence that did not support the initial conclusion of the investigating officers, including ignoring material evidence supplied to the State Attorney by defense counsel.

We understand that the PBPD has sought your intervention in this matter; we also believe that the misleading and inaccurate reports of the PBPD may well have affected how you view the

¹ A copy of the unredacted Police Report, to which we make reference throughout the letter, is provided at Tab 1. Note, pages 81 - 87 are taken from the redacted Police Report because we do not have an unredacted copy of these pages. Other documents cited herein, all of which were provided to you previously, are annexed in successive Tabs.

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matter and whether you believe it warrants federal intervention. We respectfully submit that there is no basis for the exercise of federal jurisdiction here. The conduct at issue is entirely local and subject to State prosecution under the State's standards and policies. And indeed, as you know, Epstein has been indicted for felony charges relating to this matter. That indictment is still pending.

Moreover, key elements that are necessary to support the invocation of federal jurisdiction in this area are wholly lacking. As we detail below, the evidence will not support a determination that Epstein knew or believed that any of the women was under the age of 18. Indeed, the witness statements² demonstrate that the opposite is true. As ██████████ herself told the PBPD: "██████████ told me to say I was 18 because ██████████ said . . . if you're not then he [Epstein] won't really let you in his house. So I said I was 18". Nor is there any evidence whatever that any of the women traveled in interstate commerce for the purpose of engaging in prohibited sexual activity or that Epstein ever traveled in interstate commerce for the purpose of engaging in prohibited sexual activity – the clear predicates for any federal violation. Neither is there any reason to breach the *Petite* Policy in favor of the discretionary exercise of federal jurisdiction: there has been a full investigation that has resulted in a prosecution by State authorities on charges deemed appropriate and that the facts will support. And, even if a case could be made, and the exercise of federal jurisdiction were warranted, the extraordinary forensic barriers to a successful prosecution, including the need to use witnesses who themselves have provided sworn statements that contradict key elements of any prosecution, compel that no case be brought. In fact, we believe the State's choice in which charges to pursue was informed by the significant credibility problems of the potential witnesses.

I. The Facts Will Not Support a Charge Under Federal Statutes Governing Sexual Conduct

Although to date the federal statutes Epstein may have violated have not been identified, nevertheless, there are certain key elements common to the statutes governing sexual conduct that we believe present insurmountable hurdles to any federal prosecution. We are, of course, prepared to provide further explication of why particular statutes are inapplicable to the conduct alleged here once the statutes you believe may apply have been specified.

² We are prepared to provide copies of all recordings if requested them.

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1. Epstein Did Not Know or Believe Any Women Were Under 18 Years of Age.

Each of the potential statutes requires that the government prove that Epstein knew or believed a particular woman was under 18 (or in some instances, under 16), at the time of the events at issue. Epstein did not. There is substantial evidence, found in the sworn statements of the women themselves, that to the extent any were in fact under the age of 18, each affirmatively lied about her age because she knew that Epstein would not "let [her] into his house" if she were under 18. Evidence also supports that Epstein took affirmative steps to ensure that every woman was at least 18 years of age. In fact, many were indisputably over the age of 18.³

• [REDACTED]:

Q: At any time, did he speak to you and does he know how old you are? Did he know how old you were?

A: . . . As a matter of fact, [REDACTED] told me to say I was 18 because [REDACTED] said tell him you're 18 because if you're not, then he won't really let you in his house. So I said I was 18. As I was giving him a massage, he's like, how old are you? And then I was like 18. But I kind of said it really fast because I didn't want to make it sound like I was lying or anything. (Statement of 3/15/05).

• [REDACTED]:

Q: Did he ask you your age?

A: Yeah, I told him I was 18. (Sworn Statement of 10/05/05).

• [REDACTED]:

Q: Did he know your age?

A: I don't think -- I think he did. Downstairs [REDACTED] was like oh, well if they ask you how old are you just say you're 18 but

³ In addition to the women referenced herein, the evidence reflects that witnesses [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] were all over the age of 18 at the time each visited Epstein's home.

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he never asked me how old I was. I thought you had to be 18 to give a massage (inaudible). (Sworn Statement of 12/13/05)

• [REDACTED]:

A: We were supposed to say we were 18.

Q: Who told you that, to say that?

A: [REDACTED]. (Sworn Statement of 11/8/05).

• [REDACTED]:

He likes the girls who are between the ages of 18 and 20. (Sworn Statement of 10/3/05).

• [REDACTED] concerning [REDACTED]:

Well with [REDACTED] I don't know how old she is because she lied about her age. She lied to me when I first met her. When I was 18 she told me she was 18. (Inaudible.) Well she left her purse at my house and she told me to make sure that I didn't look in her purse. When I went through her purse I found her state license that said she was 16 so she lied to me about her age. (Statement of 10/03/05).⁴

• [REDACTED]:

Q: Now, how old were you when you first started going there?

A: Eighteen. I'm [REDACTED] now this last [REDACTED]" (Sworn Statement of 10/12/05).

⁴ In addition to giving a sworn statement at the PBPB Station, [REDACTED] conversations with Detective [REDACTED] while being transported to and from the station were also recorded. This excerpt is taken from the recording of [REDACTED] traveling from the station.

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• [REDACTED]:

Q: And all this occurred when you were [REDACTED] though?

A: Uh-huh. I had been [REDACTED] for like 8 months, nine months already.
My birthday is in [REDACTED] so I had been [REDACTED] for a while. (Sworn
Statement of 2/3/05).

• [REDACTED]:

Q: Okay. How old are you now? You're -

A: I'm [REDACTED]

Q: You're [REDACTED] So a couple months ago you would have been
what [REDACTED]?

A: Uh-huh.

Q: Alright. So [REDACTED] you would have been [REDACTED] On the
verge of [REDACTED]?

A: Uh-huh. (Sworn Statement of 11/4/05).

• [REDACTED]:

Q: Okay. Did they appear young to you?

A: Yes. They were young. You know, that I never seen anybody
older than 28 or something like that.

Q: Anybody younger than 18?

A: It's hard to say that, sir. You know there were a lot of girls
that were very, very young, but you know for me to say they
were minors, you know, you know, I never see their driver's
license.⁵ (Sworn Statement of 1/4/06).

⁵ To put [REDACTED] comments about the age of the women in context, referring to Epstein's girlfriend,
[REDACTED], [REDACTED] stated she was "very, very young". Sworn Statement of 1/4/06. Since
[REDACTED] date of birth is [REDACTED], she was in fact twenty at the relevant time.

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Even as to those women with respect to whom there is no explicit evidence of their being at least 18 at the time or having made affirmative misrepresentations of being so, each was introduced to Epstein through either [REDACTED] or others,⁶ who instructed the women to say they were 18 even if they were not. Thus, proof of this critical element would be lacking.

2. No Travel Was For the Purpose of Engaging in Prohibited Sexual Activity.

Federal law criminalizes *travel for the purpose* of knowingly engaging in unlawful sexual activity with minors. *United States v. Hayward*, 359 F.3d 631, 638 (3d Cir. 2004); *United States v. Tykarsky*, 446 F.3d 458, 471 (3d Cir. 2006). This is the highest level of culpability in the four tier hierarchy of culpability that the Model Penal Code uses. "The different levels in this hierarchy are commonly identified, in descending order of culpability, as purpose, knowledge, recklessness, and negligence. . . [A] person who causes a particular result is said to act purposefully if 'he consciously desires that result, whatever the likelihood of that result happening from his conduct.'" *United States v. Bailey*, 444 U.S. 394, 404 (1980), quoting *United States v. United States Gypsum Co.*, 438 U.S. 422, 445 (1978).⁷

The Supreme Court has repeatedly interpreted this language to require that the illegal activity be the dominant motive for the travel. See, e.g., *Mortensen v. United States*, 322 U.S. 369, 373 (1944) (" . . . an intention that the women or girls shall engage in the conduct outlawed by Section 2 must be found to exist before the conclusion of the interstate journey and must be the dominant motive of such interstate movement") (emphasis supplied); *Hawkins v. United States*, 358 U.S. 74, 79 (1958) ("[T]he only factual issue in the case was whether petitioners dominant purpose in making the trip was to facilitate her practice of prostitution. . ."); *Cleveland v. United States*, 329 U.S. 14, 20 (1946) ("There was evidence . . . that the unlawful purpose was the dominant motive.").

There is no basis for concluding that Epstein's paramount or dominant purpose in going to Palm Beach on any occasion was to engage in proscribed sexual activity, even if we assume that some such conduct occurred while he was there. Epstein's interstate *travel* was motivated

⁶ As [REDACTED] said, "Like I said, some bring friends who bring friends". Statement of 10/3/03.

⁷ Indeed, a 2003 change in the law, redefining the *mens rea* necessary for a violation of 18 U.S.C. § 2423 with respect to international travel, left untouched the standard for domestic travel, and thus underscores the strict standard needed for a prosecution in this area. See *United States v. Clark*, 435 F.3d 1100, 1104-05 (9th Cir. 2006).

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by his need to be outside of New York for tax reasons. *That* was the principal purpose of his travel: to be certain not to be present in New York in excess of half of each year. That he chose Florida as his destination was a function of his decision made long ago to maintain a home there, which also was not motivated by any desire to or intention to engage in prohibited sexual activity. Epstein has maintained a connection to Florida for nearly 30 years, the last seventeen as a homeowner. Prior to that Epstein rented homes in the area. Epstein's parents also lived there for years and, before his mother's death in 2004, especially during the four years of illness that led to her death (his father died earlier), Epstein frequently traveled to see her. Since their deaths, he has traveled to Florida specifically to visit their graves. Epstein's brother, too, maintains a home in Palm Beach County.

Indeed, Epstein has been traveling there regularly, integrating into the Palm Beach community. He was a member of The Breakers Club from 1993 to 2006. He maintains bank accounts in Florida, including accounts at the First Bank of the Palm Beaches, in which bank he had an ownership interest, as well. He holds a concealed weapons permit from the State of Florida; maintains the corporate records of his two airplanes in Florida, which airplanes receive virtually all of their scheduled maintenance work in Florida; has titled and registered twelve automobiles in Florida, as well as his boat; the majority of all demonstrations and inspections of new aircraft and boats have been done in Florida; until recently has maintained a driver's license in Florida; and he employs pilots who reside in Florida. So ensconced in Florida is he that his regular physician is based in Florida and most medical procedures he has had performed over the years have been done in Florida. Foundations he controls have donated generously and regularly to Ballet Florida during the period from 2000 to 2007.

Epstein also uses his home in Florida for meeting regularly with important business contacts, many of whom either live or maintain residences in the Palm Beach area. Beginning in 2003 and continuing through most of 2004, Epstein also traveled frequently to Florida to negotiate the purchase of the Abraham Gosman Estate, which was finally sold at auction in November 2004. Although, Epstein was ultimately outbid, nearly a dozen trips to Florida were made in direct pursuit of his offer.

In furtherance of these activities – being out of New York for in excess of half of each year, visiting his mother and brother, meeting with business associates, and negotiating the purchase of the Gosman Estate – Epstein made 65 separate trips to Florida in 2004 and 2005⁸.

⁸ There trips are reflected on the flight records previously provided to you. We are not reproducing them here because of their bulk. If you would like an additional copy we will provide it.

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Having massages were entirely incidental to the purpose of his travel to Florida. And given the other purposes of his travel to Florida, the act of going there cannot itself give rise to any inference of an improper purpose. Indeed, it can be demonstrated that Epstein typically spent between one third and one half his time at his home in Florida.

Likewise, there is no evidence that any of the women traveled in interstate commerce for the purpose of engaging in the conduct alleged. Though the Police Report suggests that one of the witnesses, ██████████ claimed that one or more of the women in question traveled on Epstein's plane, a careful reading of the interview itself shows that the detective confused Epstein's assistants, his girlfriend, and her friends, all of whom are indisputably over the age of 18, with the women at issue here. More to the point, even if ██████████ did so claim, the flight records and the statements of the pilots show conclusively that none of these women ever traveled in interstate commerce on any of Epstein's planes to engage in any of the conduct alleged.

3. There Was No Intent To Engage in the Conduct at the Time of the Travel.

Even assuming *arguendo* that any travel occurred for the purpose of getting massages from women, there is no evidence that *at the time he was traveling to Florida* Epstein had planned to engage in the conduct with a person he knew or believed was under 18. Thus, even if, once in Florida, Epstein purposefully engaged in a proscribed act (which is denied), that purpose arose long after his travel to Florida was complete, while a particular massage with a particular masseuse was in progress.

It is for these reasons that no prosecution would lie for the conduct alleged to have occurred with ██████████. According to the Police Report (at 13-15) ██████████ a woman evidently in fact under 16 at the time of the events, met with Epstein on only one occasion. The evidence is that *at the time he traveled to Florida*, Epstein had no knowledge that he would see anyone at all, let alone knowledge that he would see ██████████ or any person whom he knew or believed was under 16. Thus, whatever the evidence shows occurred during the time ██████████ was in Epstein's home, any case would be fatally flawed because there is no evidence Epstein traveled in interstate commerce with any intention of meeting ██████████.

Similarly, there is no evidence that *at the time he was traveling to Florida* on any particular occasion he intended to engage in prohibited activity with any other person whom he knew or believed was under 18.

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II. Statements in the Police Report that Have No Factual Basis or Are Contradicted by the Record

We have reviewed recordings of many of the interviews (conducted in person or by telephone) and controlled calls cited in the Police Report. We have compared them to the statements purporting to summarize them in the Police Report and Probable Cause Affidavit.⁹ In instance after instance, we find material statements in the Police Report attributed to these sworn recorded statements that either simply were not said, or in some instances, are flatly contradicted, by the witness who purportedly made the statement. We highlight the most significant ones identified to date:

1. [REDACTED] (Sworn Statement of 3/15/05)
 - Police Report at 15: "[REDACTED] stated [REDACTED] seemed upset or jealous when she told her that she received three hundred dollars". PBPD Transcript at 26-27:¹⁰ "[REDACTED] like, let me see what he gave you. And then I showed her my \$300 and she's like, we're going to Marshalls".
2. [REDACTED] (Sworn Statement of 10/04/05)
 - Police Report at 30: "Sometime during the massage Epstein [REDACTED] pulled her close to him." Sworn Statement: "Q: Did he touch you in any way? A: He was like kind of like leaning towards me but I was like you could tell I was shy so I think that's why he didn't. Q: He did not touch you inappropriately? A: No".
3. [REDACTED] (Telephone Interview of 10/04/05)
 - Police Report at 34: "As [REDACTED] was [REDACTED] on Jeff was unable to [REDACTED]". There is no mention in her

⁹ There were three Probable Cause Affidavits prepared and executed by Detective [REDACTED] on the same date. The affidavits are in all material respects identical and we here refer to the one concerning Epstein. It is annexed at Tab 2. Because the Probable Cause Affidavit merely parrots the Police Report, for simplicity we refer solely to the Police Report.

¹⁰ We have not reviewed a recording of the bulk of the [REDACTED] interview. Instead we are relying on a transcript with which we were provided.

