

[REDACTED] (USAFLS)

From: [REDACTED] (USAFLS)
Sent: Wednesday, December 19, 2007 4:03 PM
To: [REDACTED] (USAFLS)
Cc: [REDACTED] (USAFLS)
Subject: Your questions

[REDACTED] – I didn't see any reference to an immediate decision, but the only December 17th letter that I have is one signed both by Jay and by Ken Starr. If there is another letter, can you ask Annette to scan and e-mail it?

The December 17th letter that I have does contain a repetition of their allegation that someone in our office referred to the State Attorney's Office as "a joke." This is something that someone from the defense group (probably Jack Goldberger) told Barry Krischer that we had said. During the meeting between [REDACTED] I, [REDACTED] had to spend several minutes convincing Barry that it had never been said. We then told the defense group (Goldberger, Lefcourt, and Lefkowitz) that it had never been said, and they then denied that they had made such a statement to Barry. Since this is going up to DOJ, you may want to reiterate that we never have made such a statement.

You also may want to remind the defense that we had proposed only that the defendant agreed that the girls were "victims," not that they had suffered "injury," and that Mr. Lefkowitz proposed the waiver of liability and damages in his draft on September 21st so we are having to fix one of their invited errors (again).

Not that I am a conspiracy theorist, but one begins to wonder whether they created these two errors (choosing the wrong state statute and putting in broad liability waiver language) in order to create a problematic agreement.

[REDACTED]
Assistant U.S. Attorney
500 S. Australian Ave, Suite 400
West Palm Beach, FL 33401
Phone [REDACTED]
Fax 561 820-8777

Tracking:

2171

08-80736-CV-MARRA

P-014448

EFTA00189236

[REDACTED] (USAFLS)

From: [REDACTED] (USAFLS)
Sent: Wednesday, December 19, 2007 3:30 PM
To: [REDACTED] (USAFLS)
Cc: [REDACTED] (USAFLS)
Subject: RE:

[REDACTED] – I just made some small changes below. Also, footnote one seems to end mid-sentence. (My changes are in blue.)

[REDACTED]
Assistant U.S. Attorney
500 S. Australian Ave, Suite 400
West Palm Beach, FL 33401
Phone [REDACTED]
Fax 561 820-8777

From: [REDACTED] (USAFLS)
Sent: Wednesday, December 19, 2007 2:48 PM
To: [REDACTED] (USAFLS)
Cc: [REDACTED] (USAFLS)
Subject:

Running a bit late for the 2 45:

In the interim, here's a draft for review:

I write to follow up on the December 14th meeting between defense counsel and the Epstein prosecutors, as well as our First Assistant, the Miami FBI Special Agent in Charge and myself.ⁱ I write to you because I am not certain who among the defense team is the appropriate recipient of this letter. I address issues raised by several members of the defense team, and would thus ask that you please provide a copy of this letter to all appropriate defense team members.

First, I would like to address the Section 2255 issue.ⁱⁱ As I stated in my December 4th letter, my understanding is that the Non-Prosecution Agreement entered into between this Office and Mr. Epstein responds to Mr. Epstein's desire to reach a global resolution of his state and federal criminal liability. Under this Agreement, this District has agreed to defer prosecution for enumerated sections of Title 18 in favor of prosecution by the State of Florida, provided that the Mr. Epstein satisfies three general federal interests: (1) that Mr. Epstein plead guilty to an offense requiring sex offender registration; (2) that this plea include a binding recommendation for a sufficient term of imprisonment; and (3) that the Agreement not harm the interests of his victims.

With this in mind, I have considered defense counsel arguments regarding the Section 2255 portions of the Agreement. As I previously observed, our intent has been to place the victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less. During the course of negotiations

that intent was reduced to writing in Paragraphs 7 and 8, which, as I mentioned previously, appear far from simple to understand. I would thus propose that we say precisely what we mean, in a simple fashion. I would replace Paragraphs 7 and 8 with the following language:

“Any person who, while a minor, was a victim of a violation of an offense enumerated in Title 18, United States Code, Section 2255, will have the same rights to proceed under Section 2255 as she would have had if Mr. Epstein had been tried federally and convicted of an enumerated offense. For purposes of implementing this paragraph, the United States shall provide Mr. Epstein’s attorneys with a list of individuals whom it was prepared to name in an Indictment as victims of an enumerated offense by Mr. Epstein. Any judicial authority interpreting this provision, including any authority determining which evidentiary burdens, if any, a plaintiff must meet, shall consider that it is the intent of the parties to place these identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less.”

Second, I would like to address the issue of victims’ rights pursuant to Section 3771. I understand that the defense objects to the victims being given notice of time and place of Mr. Epstein’s state court change of plea hearing. I have reviewed the proposed victim notification letter and the statute. I would note that the United States provided the draft letter to defense as a courtesy. In addition, Mr. Sloman already incorporated in the letter several edits that had been requested by defense counsel. I agree that Section 3771, strictly interpreted, applies to notice of proceedings and results of investigations of federal crimes, as opposed to the state crime. It is our intent to provide victims with notice of the federal resolution, as required by law. We will defer to the discretion of the State Attorney to determine if he wishes to provide victims with notice of the state proceedings, although we will provide him with the information necessary to do so if he wishes.

Third, I would like to address the issue raised regarding Florida Statute Section 796.03. At our meeting, Professor Dershowitz took the position that Mr. Epstein believes that his conduct does not satisfy the elements of this offense. His assertion raises for me substantial concerns. This Office will not, and cannot, be a party to an agreement in which Mr. Epstein pleads guilty to an offense that he believes he did not commit. We are considering how best to proceed.

Finally, I would like to address a more general point. Our Agreement was first signed on September 24th, 2007. Pursuant to paragraph 11, Mr. Epstein was to use his best efforts to enter his guilty plea and be sentenced no later than October 26, 2007. As outlined in correspondence between our prosecutors and defense counsel, this deadline came and went. Our prosecutors reiterated to defense counsel several times their concerns regarding delays, and in fact, asked me several weeks ago to declare the Agreement in breach because of those delays. I resisted that invitation.

It is for this reason that I have expressed frustration with what appears to be an 11th hour appeal, weeks before the now scheduled January 4th plea date. That said, timeliness concerns aside, the issues raised are important and must be fully vetted. We hope to preserve the January 4th date. With this in mind, and in the event that defense counsel may wish to seek review of our determinations in Washington D.C, I conferred this past Monday with the Assistant Attorney [REDACTED] to inform her of a possible appeal, to asked her to grant the potential request for review, and to in fact review this case in an expedited manner to attempt to preserve the January 4th plea date. I understand that defense counsel shares our desire not to move that appearance and will work with our office to expedite this process over the next several days.

I want to again reiterate that it is not the intention of this Office ever to force the hand of a defendant to enter into an agreement against his wishes. Your client has the right to proceed to trial, and he should do so if he believes that he did not commit the elements of the charged offense.

I will respond to the pending issues shortly. In the interim, I would ask that you communicate your position with respect to the sections 2255 and 3771 issues.

Sincerely,


UNITED STATES ATTORNEY

¹ Over the past two weeks, we have received several hundred letters and exhibits from defense counsel. Our failure to respond to each item should not be taken to imply concurrence. I would like to note two items. First, your December 11th letter states that as a result of defense counsel objections to the appointment process, the USAO proposed an addendum to the Agreement to provide for the use of an independent third party selector. As I recall this matter, before we had any knowledge of defense counsel objections, I proposed the Addendum *sua sponte* to Mr. Lefkowitz at an October meeting in Palm Beach. I did this in an attempt to avoid a confusion selection process. It was only after I proposed this that Mr. Lefkowitz raised with me his concerns. Second,

² Section 2255 provides that: “[a]ny person who, while a minor, was a victim of a violation of [enumerated sections of Title 18] and who suffers personal injury as a result of such violation . . . may sue in any appropriate United States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney’s fee.”

Tracking:

2185

08-80736-CV-MARRA

P-014451

EFTA00189239

[REDACTED] (USAFLS)

From: [REDACTED] (USAFLS)
Sent: Wednesday, December 19, 2007 2:48 PM
To: [REDACTED] (USAFLS)
Cc: [REDACTED] (USAFLS)

Running a bit late for the 2 45:

In the interim, here's a draft for review:

I write to follow up on the December 14th meeting between defense counsel and the Epstein prosecutors, as well as our First Assistant, the Miami FBI Special Agent in Charge and myself.ⁱ I write to you because I am not certain who among the defense team is the appropriate recipient of this letter. I address issues raised by several members of the defense team, and would thus ask that you please provide a copy of this letter to all appropriate defense team members.

First, I would like to address the Section 2255 issue.ⁱⁱ As I stated in my December 4th letter, my understanding is that the Non-Prosecution Agreement entered into between this Office and Mr. Epstein responds to Mr. Epstein's desire to reach a global resolution of his state and federal criminal liability. Under this Agreement, this District has agreed to defer prosecution for enumerated sections of Title 18 in favor of prosecution by the State of Florida, provided that the Mr. Epstein satisfies three general federal interests: (1) that Mr. Epstein plead guilty to a "registerable" offense; (2) that this plea include a binding recommendation for a sufficient term of imprisonment; and (3) that the Agreement not harm the interests of his victims.

With this in mind, I have considered defense counsel arguments regarding the Section 2255 portions of the Agreement. As I previously observed, our intent has been to place the victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less. During the course of negotiations that intent was reduced to writing in Paragraphs 7 and 8, which I as mentioned previously, appear far from simple to understand. I would thus propose that we say precisely what we mean, in a simple fashion. I would replace Paragraphs 7 and 8 with the following language:

"Any person, who while a minor, was a victim of a violation of an offense enumerated in Section 2255, will have the same rights to proceed under 2255 as they would have had, if Mr. Epstein been tried federally and convicted of an enumerated offense. For purposes of implementing this paragraph, the United States shall provide Epstein's attorneys with a list of individuals whom it was prepared to name in an Indictment as victims of an enumerated offense by Mr. Epstein. Any judicial authority interpreting this provision, including any authority determining which evidentiary burdens if any a plaintiff must meet, shall consider that it is the intent of the parties to place these identified victims in the same position as they would have been had Mr. Epstein been convicted at trial. No more; no less."

Second, I would like to address the issue of victim's rights pursuant to Section 3771. I understand that defense objects to the victims being given notice of time and place of Mr. Epstein's state court change of plea hearing. I have reviewed the proposed victim notification letter and the statute. I would note that the United States provided the draft letter to defense as a courtesy. In addition, Mr. Sloman already incorporated in the letter several edits, which had been requested by defense counsel. I agree that Section 3771, strictly interpreted, applies to notice of proceedings involving the federal crime, as opposed to the state crime. It is our intent to provide victims with notice of the federal resolution, as required by law. We will defer to the

discretion of the State Attorney to determine if he wishes to provide victims with notice of the state proceedings, although we will provide him with the information necessary to do so if he wishes.

Third, I would like to address the issue raised Florida Statute Section 796.03. At our meeting, Professor Dershowitz took the position that Mr. Epstein believes that his conduct does not satisfy the elements of this offense. His assertion raises for me substantial concerns. This Office will not, and cannot, be a party to an agreement in which Mr. Epstein pleads guilty to an offense that he believes he did not commit. We are considering how best to proceed.

Finally, I would like to address a more general point. Our Agreement was first signed on September 24th, 2007. Pursuant to paragraph 11, Mr. Epstein was to use his best efforts to enter his guilty plea and be sentenced no later than October 26, 2007. As outlined in correspondence between our prosecutors and defense counsel, this deadline came and went. Our prosecutors reiterated to defense counsel several times their concerns regarding delays, and in fact, asked me several weeks ago to declare the Agreement in breach because of those delays. I resisted that invitation.

It is for this reason that I have expressed frustration with what appears to be an 11th hour appeal, weeks before the now scheduled January 4th plea date. That said, timeliness concerns aside, the issues raised are important and must be fully vetted. We hope to preserve the January 4th date. With this in mind, and in the event that defense counsel may wish to seek review of our determinations in Washington D.C, I conferred this past Monday with the Assistant Attorney [REDACTED], to inform her of a possible appeal, to asked her to grant the potential request for review, and to in fact review this case in an expedited manner to attempt to preserve the January 4th plea date. I understand that defense counsel shares our desire not to move that appearance and will work with our office to expedite this process over the next several days.

I want to again reiterate that it is not the intention of this Office ever to force the hand of a defendant to enter into an agreement against his wishes. Your client has the right to proceed to trial, and he should do so if he believes that he did not commit the elements of the charged offense.

I will respond to the pending issues shortly. In the interim, I would ask that you communicate your position with respect to the sections 2255 and 3371 issues

Sincerely,

[REDACTED]
UNITED STATES ATTORNEY

¹ Over the past two weeks, we have received several hundred letters and exhibits from defense counsel. Our failure to respond to each item should not be taken to imply concurrence. I would like to note two items. First, your December 11th letter states that as a result of defense counsel objections to the appointment process, the USAO proposed an addendum to the Agreement to provide for the use of an independent third party selector. As I recall this matter, before we had any knowledge of defense counsel objections, I proposed the Addendum *sua sponte* to Mr. Lefkowitz at an October meeting in Palm Beach. I did this in an attempt to avoid a contentious selection process. It was only after I proposed this that Mr. Lefkowitz raised with me his concerns. Second,

² Section 2255 provides that: "[a]ny person who, while a minor, was a victim of a violation of [enumerated sections of Title 18] and who suffers personal injury as a result of such violation . . . may sue in any appropriate United States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney's fee."

[REDACTED] (USAFLS)

From: [REDACTED] (USAFLS)
Sent: Wednesday, December 19, 2007 2:07 PM
To: [REDACTED] (USAFLS); [REDACTED] (USAFLS); Castillo, Annette (USAFLS)
Subject: RE: I am back from my depositions

[REDACTED] – Wasn't there a letter in which Jay said we made a decision to proceed the same day as the WPB meeting? I'm trying to list various factual errors, and as I recall, we did not make an on the spot decision but waited for the FBI to confirm certain views.

From: [REDACTED] (USAFLS)
Sent: Wednesday, December 19, 2007 12:16 PM
To: [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS)
Subject: I am back from my depositions

You can reach me at [REDACTED]. Thank you.

[REDACTED]
Assistant U.S. Attorney
500 S. Australian Ave, Suite 400
West Palm Beach, FL 33401
Phone [REDACTED]
Fax 561 820-8777