

Memorandum



Subject

Operation Leap Year: Notification of Breach
USAO No. 2006R01181

Date

June 9, 2009

To

Jeffrey H. Sloman
Acting United States Attorney

[REDACTED]
First Assistant U.S. Attorney

[REDACTED]
Deputy Chief, Criminal Division, West Palm Beach

[REDACTED], Chief
Chief, Criminal Section I, Northern Division, WPB

From

[REDACTED]
AUSA, Ft Lauderdale

INTRODUCTION

This memorandum seeks approval to serve the attached letter providing notice of a breach of the Non-Prosecution Agreement on attorneys for Jeffrey Epstein. On Friday, June 12, 2009, Judge Marra will be presiding over a hearing on Jeffrey Epstein's motions to stay all of the civil lawsuits filed against him by victims identified through our investigation. In his Order setting the matter for a hearing, Judge Marra stated:

This hearing shall be limited to the issue of whether Defendant Epstein's defense of the civil actions filed against him violates the non-prosecution agreement between Epstein and the United States. The United States' position in this matter would be very helpful to the Court and, accordingly, the Court requests that the United States appear at the hearing.

Based upon a review of pleadings filed by Epstein in connection with the civil suits, Epstein has taken positions directly in contravention of the Non-Prosecution Agreement between Epstein

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and the United States. Accordingly, I recommend that we provide Epstein's counsel with Notice of the Breach at the hearing on June 12th, and proceed to indictment promptly thereafter.

BACKGROUND

In the summer of 2006, the FBI approached the U.S. Attorney's Office about an investigation of Jeffrey Epstein ("Epstein") into allegations of enticing minors to engage in prostitution. The Town of Palm Beach Police Department ("PBPD") had approached the FBI after it became convinced that Epstein's attorneys had placed undue pressure on the Palm Beach County State Attorney's Office ("SAO"), causing them to forego prosecution of Epstein. When the SAO presented the case to a state grand jury rather than proceeding by information, and when the state grand jury returned an indictment charging only solicitation of adult prostitution, PBPD asked the FBI to begin a federal investigation. FBI, in turn, approached the USAO about possible federal prosecution.

The federal grand jury investigation began in the summer of 2006, and the first grand jury subpoenas were issued in August 2006. Towards the end of 2006, Epstein's attorneys began making contact with the U.S. Attorney's Office to seek resolution of the case. A meeting in West Palm Beach was held with Epstein's attorneys in February 2007. After that meeting, the investigation continued, and an indictment package was prepared in May 2007 with the intent to present to the grand jury in mid-May. At the requests of Epstein's counsel, the indictment was delayed to allow Epstein's attorneys to meet with additional members of the U.S. Attorney's Office. A meeting was held on June 26, 2007, when Epstein's attorneys presented their arguments why federal prosecution was inappropriate.

On July 31, 2007, another meeting occurred between Epstein's attorneys and the U.S.

Attorney's Office. At that meeting, the United States presented a list of terms of a possible non-prosecution agreement. One of those terms was:

Epstein agrees that, if any of the victims identified in the federal investigation file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the U.S. District Court for the Southern District of Florida over his person and the subject matter. Epstein will not contest that identified victims are persons who, while minors, were victims of violations of Title 18, United States Code, Section(s) 2422 and/or 2423.

At that time, Epstein's attorneys advised that an agreement involving jail time would not be acceptable.

On August 31, 2007, the FBI agents and I met with [REDACTED], Chief of the Child Exploitation and Obscenity Section, to discuss the evidence and theory of the prosecution. He had previously been provided with a copy of the prosecution memo related to the indictment. On September 7, 2007, Epstein's attorneys met with the U.S. Attorney, [REDACTED], Jeff Sloman, [REDACTED], and I. Ken Starr presented federalism arguments, urging deferral to state prosecution. When those arguments failed, Epstein's attorneys stated that he wanted to engage in plea negotiations. Epstein's attorneys wavered back and forth between a Non-Prosecution Agreement, involving pleading to state charges, or a plea to federal charges. Finally, on September 24, 2007, the Non-Prosecution Agreement was signed.¹ The Agreement contains the following provisions:

¹An amended indictment package had been prepared and was scheduled for presentation to the grand jury on September 25, 2007. Judge Marra also had scheduled a hearing on Epstein's motion to quash grand jury subpoenas for the computer equipment removed from Epstein's home by Roy Black's investigator when they learned of the state investigation. This was postponed to allow plea negotiations and eventually was withdrawn pursuant to the terms of the Non-Prosecution Agreement.

8. If any of the individuals referred to in paragraph (7),² *supra*, elects to file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and *Epstein waives his right to contest liability* and also waives his right to contest damages up to an amount as agreed to between the identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, as to those individuals whose names appear on the list provided by the United States, Epstein's signature on this agreement, his waivers and failures to contest liability and such damages in any suit are not to be construed as an admission of any criminal or civil liability.

10. Except as to those individuals who elect to proceed exclusively under 18 U.S.C. § 2255, as set forth in paragraph (8), *supra*, neither Epstein's signature on this agreement, nor its terms, nor any resulting waivers or settlements by Epstein are to be construed as admissions or evidence of civil or criminal liability or a waiver of any jurisdiction or other defense as to any person, whether or not her name appears on the list provided by the United States.

The Agreement also called upon Epstein to use his "best efforts" to enter a guilty plea and be sentenced not later than October 26, 2007. (¶ 11.) Citing conflicts with attorney schedules, Epstein's attorneys asked the USAO to extend the deadline for his plea and sentencing. After a series of delays, Epstein's attorneys sought review by members of the Justice Department. When it appeared that the Non-Prosecution Agreement would be undone, the indictment package was prepared again, and was reviewed in anticipation of presentation to the grand jury.

On June 23, 2008, Senior Associate Deputy Attorney General John Roth denied the various appeals of Epstein's attorneys and wrote, "Even if we were to substitute our judgment for that of the U.S. Attorney, we believe that federal prosecution of this case is appropriate. Moreover, having

²The "individuals referred to in paragraph (7)" are "individuals whom [the United States] has identified as victims, as defined in 18 U.S.C. § 2255."

reviewed your allegations of prosecutorial misconduct, and the facts underlying them, we see nothing in the conduct of the U.S. Attorney's Office that gives us any reason to alter our opinion."

After several more skirmishes regarding the wording of the plea agreement with the State Attorney's Office, Epstein entered his guilty plea and was sentenced on June 30, 2008. In accordance with the terms of the Non-Prosecution Agreement, later that day, Special Agent [REDACTED] and I met with Attorneys Jack Goldberger and Michael Tein and provided them with a written list of the 32 identified victims.

Since the entry of the plea and sentencing, a number of concerns have been raised with Epstein's attorneys, including: (1) their objections to our efforts to notify victims of the resolution of the case; (2) their refusal to abide by and pay for the victims' representative, Bob Josefsberg, who had been selected by Judge Michael Davis, acting *pro bono* as a Special Master; (3) their representations to the Court about the continued pendency of the motion related to the subpoena for the computer equipment removed by a private investigator; (4) inappropriate contact between people working for Epstein and the identified victims; and (5) Epstein's application for and participation in the work release program. Some written notifications of potential breaches have been provided to Epstein's counsel. Those have all been resolved without a determination of breach by the U.S. Attorney's Office and a resultant indictment.

THE CIVIL SUITS AGAINST EPSTEIN

Not surprisingly, since the entry of the guilty plea, a number of victims have filed suit against Epstein. In federal court, fourteen suits have been filed against Epstein. All of those cases have been assigned to Judge Marra who also was assigned the lawsuit filed against the United States by two of Epstein's victims. In the Victims' Rights suit, Judge Marra ordered the United States to make

the Non-Prosecution Agreement available to each of the victims and/or her attorney, so long as they agreed to be bound by a Protective Order. Each victim (or her attorney) was provided with notice of the Court's ruling, and several executed the Protective Order and were provided with copies of the Non-Prosecution Agreement.

From the beginning, Epstein has "vigorously defended" the suits, and has filed several motions to dismiss. In all of the early suits, the plaintiffs raised only common law tort claims or a combination of common law claims and a claim under 18 U.S.C. § 2255. A number of plaintiffs' attorneys have argued that Epstein's defenses violate the NPA. Reviewing the language of the NPA and resolving any ambiguities in favor of Epstein, those defenses do not breach the NPA. However, some of the later plaintiffs, especially those represented by Bob Josefsberg, filed claims *exclusively* under 18 U.S.C. § 2255. Epstein has filed answers and Motions to Dismiss those Complaints as well, asserting defenses to liability, including that there can be no liability because Epstein was not *convicted* of an offense enumerated in 18 U.S.C. § 2255. By doing so, Epstein has breached the NPA.

The following is a brief synopsis of the suits filed in federal court.³

1. *Doe v. Epstein*, 08-CV-80804-KAM: This suit was filed in state court, but was removed to federal court on July 18, 2008 by Epstein. The suit was filed by [REDACTED], the first victim identified in PBPD's investigation. Plaintiff filed motion to remand to state court, which was granted by Judge Marra.
2. *Jane Doe #2 v. Epstein*, 08-CV-80119-KAM: Complaint filed on February 6, 2008, alleging: sexual assault (Count I), and intentional infliction of emotional distress (Count II). Epstein moved to stay the litigation, which was denied by Judge Marra. Epstein moved to dismiss Count I, claiming that there was no civil cause of action

³As mentioned above, the NPA provides protection only to victims who proceed exclusively pursuant to 18 U.S.C. § 2255. By definition, the lawsuits filed in state court do not contain claims for relief under section 2255. Accordingly, this memo will not address those lawsuits.

for “sexual assault.” Plaintiff filed an Amended Complaint asserting: sexual assault and battery (Count I), intentional infliction of emotional distress (Count II), and “coercion and enticement to sexual activity in violation of 18 U.S.C. § 2422 (Count III). Epstein again moved to dismiss, claiming that there was no civil cause of action for “sexual assault and battery,” and arguing that the plaintiff had not made sufficient factual allegations to support a claim under 18 U.S.C. § 2422. Plaintiff then filed a Second Amended Complaint raising the same claims, but providing additional factual allegations. Epstein filed an Answer, in which he cited his Fifth Amendment privilege from self-incrimination as the response to the allegations in the Second Amended Complaint. Epstein also raised the following affirmative defenses:

1. As to all counts, Plaintiff consented to and was a willing participant in the acts alleged.
2. As to all counts alleged, Plaintiff consented to and participated in conduct similar and/or identical to the acts alleged with other persons which were the sole or contributing cause of Plaintiff’s alleged damages.
3. As to all counts, Defendant reasonably believed that the Plaintiff had attained the age of 18 years old at the time of the alleged acts.
4. Plaintiff’s claims are barred by the applicable statute of limitations.

Epstein then filed another Motion to Stay all of the civil litigation. Judge Marra ordered the United States to file a written response, and the matter is set for hearing on Friday, June 12, 2009. Today, Epstein filed an Amended Answer, raising a number of additional affirmative defenses, including that the claims are barred by the statute of limitations and that the pre-2006 version of 18 U.S.C. § 2255 applies, which only creates a cause of action for a person who is still a “minor,” as opposed to “any person who, while a minor,” was a victim of an offense.

3. *Jane Doe #3 v. Epstein*, 08-CV-80232-KAM: This suit was filed by the same lawyers as in the Jane Doe #2 suit, and the procedural history is identical.
4. *Jane Doe #4 v. Epstein*, 08-CV-80380-KAM: This suit was filed by the same lawyers as in the Jane Doe #2 suit, and the procedural history is identical.
5. *Jane Doe #5 v. Epstein*, 08-CV-80381-KAM: This suit was filed by the same lawyers as in the Jane Doe #2 suit, and the procedural history is identical.
6. *Jane Doe #6 v. Epstein*, 08-CV-80994-KAM: This suit was filed by the same

lawyers as in the Jane Doe #2 suit, and the procedural history is identical.

7. *Jane Doe #7 v. Epstein*, 08-CV-80993-KAM: This suit was filed by the same lawyers as in the Jane Doe #2 suit, and the procedural history is identical.
8. ██████ *v. Epstein*, 08-CV-80811-KAM: This suit was filed in state court and removed to federal court. Plaintiff sued Epstein and ██████ (Epstein's assistant). ██████ is represented by Bruce Reinhart. ██████ initial Complaint alleged sexual abuse and intentional infliction of emotional distress. ██████ later filed a First Amended Complaint, which alleged 30 separate claims pursuant to 18 U.S.C. § 2255. Epstein filed a motion to dismiss, arguing that a victim can raise only one claim under section 2255, not a separate claim for each occurrence. A few days ago, ██████ filed a document entitled "Conditional Notice of Intent to Exclusively Rely on Statutory Damages provided by 18 U.S.C. § 2255." In that document, ██████ states that, if the statutory floor applies to each of her 30 claims under § 2255, then she will forego her civil claims. If, however, the Court decides that the statutory floor can apply to each victim only once, then she wants to be able to pursue both her statutory and common law claims.
9. *Doe v. Epstein*, 08-CV-80893-KAM: This suit was filed by one of the victims who brought the victim's rights suit against the United States. She is represented by Brad Edwards. The Complaint raises the following claims: sexual exploitation, sexual abuse and/or sexual assault of a minor (Count I), "Cause of Action pursuant to 18 U.S.C. § 2255" (Count II), intentional infliction of emotional distress (Count III), and "Civil Remedy for Criminal Practices" (Count IV). Plaintiff also filed a separate "Civil RICO Statement." Epstein filed a motion to dismiss or for a more definite statement, which was granted in part by Judge Marra. Plaintiff filed an Amended Complaint in April, adding a claim for damages under a Florida statute providing compensation for crime victims. Epstein has filed several motions to extend the time to file his Answer pending the outcome of his motion to stay all the civil litigation. Epstein must file his Answer to this Amended Complaint by June 12th, the date of the hearing on the Motion to Stay.
10. *Doe II v. Epstein*, 09-CV-80469-KAM: This Complaint is based exclusively on 18 U.S.C. § 2255. Plaintiff alleges that she was a victim of a violation of 18 U.S.C. § 2422(b), and that Epstein "has made an agreement with the United States Attorney's Office to not contest liability for claims brought exclusively pursuant to 18 U.S.C. § 2255, in exchange for avoiding federal prosecution under 18 U.S.C. § 2422(b), which provides a sentence of 10 years for each violation of the law." On May 6, 2009, Epstein filed a motion to dismiss, alleging that the case should be dismissed because the plaintiff had already filed a state court suit for common law claims arising from the same activity. Epstein also argued that the version of 18 U.S.C. § 2255 that was in effect at the time of the sexual encounters applies (with its \$50,000

minimum rather than the \$150,000 minimum).⁴

11. *Doe No. 101 v. Epstein*, 09-CV-80591-KAM: This was the first suit filed by [REDACTED] firm. On May 1, 2009, Plaintiff filed an Amended Complaint alleging six claims under 18 U.S.C. § 2255 – a separate count for each predicate offense that Epstein committed. Thus, Count 1 alleges that defendant Epstein “used a facility or means of interstate and/or foreign commerce to knowingly persuade, induce, entice, or coerce Jane Doe No. 101, when she was under the age of 18 years, to engage in prostitution and/or sexual activity for which any person can be charged with a criminal offense . . . in violation of 18 U.S.C. § 2422(b).” The other counts charge that Epstein violated § 2423(b) (travel with intent to engage in illicit sexual conduct); § 2251 (production of child pornography); §2252(a)(1) (transportation of child pornography); § 2252A(a)(1) (distribution of child pornography); and § 2252A(g) (engaging in a child exploitation enterprise).
12. *Doe No. 102 v. Epstein*, 09-CV-80656-KAM: This suit also was filed by Josefsberg’s firm. On May 1, 2009, Plaintiff filed suit alleging the same claims raised by Doe No. 101. Epstein has not yet filed his answer to that Complaint.
13. *Doe No. 8 v. Epstein*, 09-CV-80802-KAM: This is the most recently filed suit. It was filed on May 28, 2009. This suit was filed by the same lawyers as in the Jane Doe #2 suit, and the procedural history is identical.

THE PLEADING THAT VIOLATED THE NON-PROSECUTION AGREEMENT

Epstein’s Non-Prosecution Agreement speaks of waiving challenges to liability and damages and one could certainly argue that the liability waiver applies to any 2255 claim filed by one of the listed victims. However, construing any ambiguity in favor of Epstein, the most conservative reading of the NPA requires him to waive challenges to liability in those cases where the plaintiff proceeds *exclusively* under 18 U.S.C. § 2255. Jane Doe #101 has stated all claims pursuant to 18 U.S.C. § 2255 and is not seeking any common law, state, or other federal statutory remedies. In response to those claims, Epstein has made the following arguments in his Motion to Dismiss the

⁴Although not raised in the Motion to Dismiss Jane Doe II’s Complaint, Epstein has argued in another suit that, under the pre-2006 law, only persons who are still “minors” can file suit under 18 U.S.C. § 2255. In the 2006 version of the law, the language was changed to allow suit by any person who, “while a minor,” was a victim of a violation.

First Amended Complaint or, in the Alternative, for a More Definite Statement (which is attached hereto):

A. The applicable version of § 2255 only permits “minor” to sue: . . . Yet the FAC [First Amended Complaint] affirmatively admits that Plaintiff is over the age of 18. . . . Plaintiff is bound by that admission, and the FAC must be dismissed with prejudice. . . .

B. Nor is Plaintiff the “victim of a violation” of a predicate criminal statute within the meaning of § 2255. 18 U.S.C. § 2255(a). In our system of justice, those accused of “violating” a criminal statute are innocent until proven guilty beyond a reasonable doubt in criminal court. With due respect to the courts that have concluded otherwise, it defies common sense to think that Congress intended to invert that fundamental legal norm, and the legislative history of § 2255 expressly confirms that Congress intended to condition § 2255 actions on an antecedent criminal conviction. The FAC therefore must be dismissed because it does not—and cannot—allege that Defendant has been convicted of a predicate criminal offense.

C. Even if the applicable version of § 2255 were construed to allow adults to sue in the absence of a predicate conviction, the FAC . . .—even taken as true—would not establish a legally “plausible” claim that Plaintiff is a victim of any predicate criminal offense giving rise to a § 2255 cause of action.

(Epstein’s Mot’n at 2-3.)

The motion expands each of these arguments. With respect to his argument that only “minors” can sue for damages under 18 U.S.C. § 2255, Epstein asserts that the 2006 amendment to § 2255 was not meant to apply retroactively and cannot apply retroactively because it would violate the *Ex Post Facto* Clause.⁵

⁵The pre-2006 statute reads: “Any minor who is a victim of [certain federal crimes] 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 minor sustains and the cost of the suit, including a reasonable attorney’s fee. any minor as described in the preceding sentence shall be deemed to have sustained damages of no less than \$50,000 in value.”

In 2006, the statute was revised to state: “Any person who, while a minor, was a victim of [certain federal crimes] and who suffers personal injury as a result of such violation, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United

As to his second argument, Epstein reiterates that the “FAC still would fail as a matter of law because it does not (and cannot consistent with Rule 11) allege that Defendant is guilty of ‘a violation’ of a predicate statute. . . . As set forth below, the plain text of the statute and its legislative history demonstrate that § 2255 is conditioned on a prior federal conviction. Because Defendant has never been convicted of a predicate federal offense, the FAC must be dismissed.” (Epstein’s Mot’n at 14-15.) He explains:

Given the presumption of innocence that animates our system of criminal justice, Congress’s reference to “a victim of a violation” of a criminal statute can only be interpreted to require proof that the defendant has been convicted of a predicate federal offense against the plaintiff. After all, an individual accused of “violating” a criminal statute is deemed innocent until proven guilty beyond a reasonable doubt. It would turn that principle upside down if plaintiffs could sue in the absence of an antecedent criminal conviction.

(*Id.* at 15.) Epstein notes that the only district courts to have addressed § 2255 have held that an “antecedent conviction” is not required, but argues that those cases were wrongly decided. In her Complaint, Jane Doe #101 asserted that Epstein had been convicted of state law crimes and, taking language directly from Alex Acosta’s letter to Lilly Ann Sanchez, wrote that Epstein “is in the same position as if he had been tried and convicted of the sexual offenses committed against Plaintiff and, as such, must admit liability unto Plaintiff.” (*Id.* at 20.) Epstein quotes from the state plea colloquy and the state charging instrument to show that the state charges do not relate to Jane Doe #101. Further, he writes, “even if Defendant’s state-law pleas did involve state-law offenses against Plaintiff—which they did not—§ 2255 only authorizes suit based on predicate convictions under certain *federal* statutes. . . .” (*Id.* at 21 (emphasis added).)

States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney’s fee. Any person as described in the preceding sentence shall be deemed to have sustained damages of no less than \$150,000 in value.”

Epstein then addresses each of Jane Doe #101's claims. Taking his arguments directly from the various "position papers" that Epstein submitted to our office to urge declination, he argues:

(1) Epstein could not have violated 18 U.S.C. § 2422(b) because he did not *use* a facility of interstate commerce to persuade Jane Doe #101 to engage in sexual activity – the persuasion always occurred in person.

(2) Epstein could not have violated 18 U.S.C. § 2423(b) because the "dominant motive" for Epstein's interstate travel was not to engage in unlawful sexual activity. "Instead, as the FAC makes clear, Defendant is a successful businessman who maintains homes and properties around the world. Even if the FAC's fanciful allegations regarding Defendant's conduct while at those homes were true, the FAC does not remotely allege that his *dominant motive* for travel was to engage in illicit sexual acts . . ." (*Id.* at 28 (emphasis in original).)

(3) Plaintiff failed to adequately plead violations of 18 U.S.C. § 2251, 2252(a)(1) and 2252A(a)(1) because she does not allege that Epstein intended to transmit or actually did transmit images of child pornography in interstate commerce, and alleged only that Epstein "may have taken lewd photographs of Plaintiff . . ."

(4) Epstein could not have violated 18 U.S.C. § 2252A(g) because the statute was not enacted until 2006, and Jane Doe #101 alleges that her interactions with Epstein occurred in 2003.

RECOMMENDATION

As explained above, the Non-Prosecution Agreement provides, in relevant part, that "If any of the individuals referred to in paragraph (7),⁶ *supra*, elects to file suit pursuant to 18 U.S.C. § 2255,

⁶The "individuals referred to in paragraph (7)" are "individuals whom [the United States] has identified as victims, as defined in 18 U.S.C. § 2255."

Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and *Epstein waives his right to contest liability* and also waives his right to contest damages up to an amount as agreed to between the identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law.” The United States has performed its obligations under the NPA, and Jane Doe #101 has proceeded exclusively under 18 U.S.C. § 2255, yet Epstein is contesting liability. Moreover, Epstein is not simply contesting whether Jane Doe #101 is owed damages because of the particular circumstances of his interactions with Jane Doe #101, he is asserting that he can *never* be forced to pay damages pursuant to 18 U.S.C. § 2255 because—in reliance on the NPA—the United States never prosecuted and convicted him of a predicate offense. The protection of the victims’ rights to restitution was one of the most important aspects of the NPA and the failure of that key piece of consideration cannot be tolerated. This is especially true when one considers that Epstein has served virtually no jail time, in contravention of the NPA and representations made to our Office by Epstein’s attorneys. The importance of this consideration is reiterated later in the NPA: “In consideration of Epstein’s agreement to plead guilty *and to provide compensation in the manner described above*, if Epstein successfully fulfills all of the terms and conditions of this agreement, the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein.” (NPA at p.5.) The Agreement continues: “By signing this agreement, Epstein asserts and certifies that each of these terms is material to this agreement and is supported by independent consideration and that a breach of any one of these conditions allows the United States to elect to terminate the agreement and to investigate and prosecute Epstein and any other

individual or entity for any and all federal offenses.” (NPA at p.6.)

Accordingly, I recommend that the Office declare that Epstein has breached the NPA and proceed promptly to indictment.

NOTICE REQUIREMENTS OF THE NPA

Pursuant to the NPA, the U.S. Attorney’s Office is required to provide prompt notice of a breach:

If the United States Attorney should determine, based on reliable evidence, that, during the period of the Agreement, Epstein willfully violated any of the conditions of this Agreement, then the United States Attorney may, within ninety (90) days following the expiration of the term of home confinement discussed below, provide Epstein with timely notice specifying the condition(s) of the Agreement that he has violated, and shall initiate its prosecution on any offense within sixty (60) days’ of giving notice of this violation. Any notice provided to Epstein pursuant to this paragraph shall be provided within 60 days of the United States learning of facts which may provide a basis for a determination of a breach of the Agreement.

(NPA at p.2.)

The pleading that is the subject of the breach was filed with the Court on May 26, 2009. Thus, we must provide notice of the breach not later than Saturday, July 25, 2009. The Office also must indict within 60 days of giving notice. In light of Judge Marra’s directive that the Office address the issue of breach at the hearing on Friday, June 12, 2009, I recommend that we provide that Notice at the hearing.