



U.S. Department of Justice

Washington, D.C. 20530

June 23, 2008

Jay Lefkowitz, Esq.
Kenneth Starr, Esq.
Kirkland and Ellis LLP

Gentlemen:

This Office has completed a thorough review of the U.S. Attorney's handling of the matter involving your client, Jeffrey Epstein. We have received and reviewed your letters of May 19, June 3 and June 19, 2008, the attachments to the June 19 letter, as well as your submissions to the Criminal Division and the U.S. Attorney's Office. Additionally, we have reviewed an extensive set of materials provided by the U.S. Attorney's Office and conferred with a number of highly experienced Department attorneys about this matter. The Deputy Attorney General has also been briefed.

As you know, the Department of Justice vests considerable discretion in its U.S. Attorneys, and the Deputy Attorney General will intervene in only the most unusual of circumstances. We do not believe such intervention is warranted here. 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 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.

Sincerely,

John Roth
Senior Associate Deputy Attorney General

cc: Alex Acosta

EFTA00208767

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June 19, 2008

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Mr. John Roth
Senior Associate Deputy Attorney General
Office of the Deputy Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Roth:

I write to offer my reaction to the May 15, 2008 correspondence from the United States Department of Justice Child Exploitation and Obscenity Section ("CEOS") regarding the federal investigation of Jeffrey Epstein by the United States Attorney's Office for the Southern District of Florida ("USAO").¹ I will refrain from recounting Mr. Epstein's arguments in detail here, but, rather, will highlight salient points responsive to the CEOS letter.

In particular, I write from a background well familiar with child exploitation cases and victim/witness issues. As the CEOS letter points out (CEOS letter at p. 3), I was a member of CEOS. In fact, I served as a federal prosecutor for twelve years; five years as an Assistant United States Attorney for the Southern District of West Virginia, and seven years at CEOS. I began working as a trial attorney for CEOS in 1999, and was promoted to Deputy Chief for Litigation in 2002, and ultimately to Principal Deputy Chief for the Section in 2004.

As those who have worked with me know, I have a history of working diligently on behalf of victims of crime. While at the United States Attorney's Office for the Southern District of West Virginia, I was a part of the prosecution team that prosecuted the first case in the country under the federal Violence Against Women Act. United States v. Bailey, 112 F.3d 758 (4th Cir.), cert denied, 522 U.S. 896 (1997). The case went to trial and the defendant was sentenced to life in prison. I also spearheaded the domestic violence and federal criminal child support prosecution efforts for that office, prosecuting some of the first cases in the country under the federal Child Support Recovery

¹ Citations to the May 15, 2008 correspondence will be referenced herein as "CEOS letter at p. ____."

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U.S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

June 3, 2008

Mr. Kenneth Starr
Kirkland & Ellis
777 South Figueroa Street
Los Angeles, CA 900017

Mr. Joe D. Whitley
Alston & Bird
950 F Street, NW
Washington DC 20004

Gentlemen:

I am in receipt of your letters to the Deputy Attorney General dated May 19 and May 27. The Deputy has asked me to take a look at these issues. We will get back to you in the near future. I can be reached at 202-307-2090 should you need to get in touch with me.

Sincerely,

John Roth
Senior Associate Deputy Attorney General

cc: Alex Acosta
U.S. Attorney, SDFL

Kenneth W. Starr
First Law & Ellis LLP

Joe D. Whitley
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May 27, 2008

VIA FACSIMILE (202) 514-0467

CONFIDENTIAL

Honorable Mark Filip
Office of the Deputy Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Judge Filip:

This letter briefly supplements our prior submission to you dated May 19, 2008. In that communication, we urgently requested that your Office conduct an independent review of the proposed federal prosecution of our client, Jeffrey Epstein. The dual reasons for our request that you review this matter are (i) the bedrock need for integrity in the enforcement of federal criminal laws, and (ii) the profound questions raised by the unprecedented extension of federal law by the United States Attorney's Office in Miami (the "USAO") to a prominent public figure who has close ties to former President Clinton.

The need for review is now all the more exigent. On Monday, May 19, 2008, First Assistant Jeffrey Sloman of the USAO responded to an email from Jay Telkowitz informing U.S. Attorney Alex Acosta that we would be seeking your Office's review. Mr. Sloman's letter, which imposed a deadline of June 2, 2008 to comply with all the terms of the current Non-Prosecution Agreement (the "Agreement"), plus new unilateral modifications, on pain of being deemed in breach of that Agreement, appears to have been deliberately designed to deprive us of an adequate opportunity to seek your Office's review in this matter.

The USAO's desire to foreclose a complete review is understandable, given that the Child Exploitation and Obscenity Section ("CEOS") has already determined that our substantive arguments regarding why a federal prosecution of Mr. Epstein is not warranted were "compelling." However, in contradiction to Mr. Sloman's assertion that CEOS had provided an independent, *de novo* review, CEOS made clear that it did not do so. Indeed, CEOS declined to examine several of the more troubling aspects of the investigation of Mr. Epstein, including the deliberate leak to the *New York Times* of numerous highly confidential aspects of the investigation and negotiations between the parties as well as the recent crop of civil lawsuits filed against Mr. Epstein by Mr. Sloman's former law partner.

The unnecessary and arbitrarily imposed deadline set by the USAO was done without any respect for the normal functioning and scheduling of state judicial matters. It requires that Mr. Epstein's counsel persuade the State Attorney of Palm Beach to issue a criminal information

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Kenneth W. Starr
Kirkland & Ellis LLP

Joe D. Whitley
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May 19, 2008

VIA FACSIMILE (202) 514-0467

CONFIDENTIAL

Honorable Mark Filip
Office of the Deputy Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Judge Filip:

In his confirmation hearings last fall, Judge Mukasey admirably lifted up the finest traditions of the Department of Justice in assuring the United States Senate, and the American people, of his solemn intent to ensure fairness and integrity in the administration of justice. Your own confirmation hearings echoed that bedrock determination to assure that the Department conduct itself with honor and integrity, especially in the enforcement of federal criminal law.

We come to you in that spirit and respectfully ask for a review of the federal involvement in a quintessentially state matter involving our client, Jeffrey Epstein. While we are well aware of the rare instances in which a review of this sort is justified, we are confident that the circumstances at issue warrant such an examination. Based on our collective experiences, as well as those of other former senior Justice Department officials whose advice we have sought, we have never before seen a case more appropriate for oversight and review. Thus, while neither of us has previously made such a request, we do so now in the recognition that both the Department's reputation, as well as the due process rights of our client, are at issue.

Recently, the Criminal Division concluded a very limited review of this matter at the request of U.S. Attorney Alex Acosta. Critically, however, this review deliberately excluded many important aspects of this case. Just this past Friday, on May 16, 2008, we received a letter from the head of CEOS informing us that CEOS had conducted a review of this case. By its own admission, the CEOS review was "limited, both factually and legally." Part of the self-imposed limitation was CEOS's abstention from addressing our "allegations of professional misconduct by federal prosecutors"—even though such misconduct was, as we contend it is, inextricably intertwined with the credibility of the accusations being made against Mr. Epstein by the United States Attorney's Office in Miami ("USAO"). Moreover, CEOS did not assess the terms of the Deferred Prosecution Agreement now in effect, nor did CEOS review the federal prosecutors' inappropriate efforts to implement those terms. We detail this point below.

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SUBMISSION TO THE OFFICE OF THE DEPUTY ATTORNEY GENERAL

IN THE MATTER OF JEFFREY E. EPSTEIN

Jeffrey Epstein, a successful businessman and noted philanthropist with no prior criminal record, has been investigated for potential violations of 18 U.S.C. §§ 1591, 2422(b) and 2423(b). Since the limited review conducted by CEOS, two Supreme Court decisions—one authored by Justice Scalia and the other by Justice Thomas—have revitalized the bedrock principles that federal criminal statutes must be narrowly construed, that they may not be stretched to federalize conduct not clearly covered by their prohibitions, and that whenever there are two plausible constructions of a criminal statute, the narrower construction (high safeguards liberty) rather than the broader construction (which expands the federal prosecutor's arsenal) controls under the venerable rule of lenity.

Mr. Epstein's conduct—including his misconduct—falls within the heartland of historic state police and prosecutorial powers. Absent a significant federal nexus, matters involving prostitution have always been treated as state-law crimes even when they involve minors. Mr. Epstein's conduct lacks *any* of the hallmarks that would convert this quintessential state crime into a federal one under any of the statutes prosecutors are considering.

Mr. Epstein lived in Palm Beach, and his interstate travel was merely to go home. Any sexual conduct that occurred after he arrived was incidental to the purposes for his travel. Even CEOS admitted that applying § 2423(b) to a citizen traveling home would be "novel." In fact, it would be both unprecedented and in conflict with Supreme Court cases that have withstood the test of time for over 60 years.

Moreover, Mr. Epstein did not use the internet (either via email or chatrooms) to communicate with any of the witnesses in this investigation. Indeed, he did not use any other facility of interstate commerce, including the phone, to knowingly persuade, entice, or induce anyone to visit his home—the "local" locus of all the incidents under investigation—much less to persuade, entice, or induce a known minor to engage in prohibited sex acts, as § 2422(b) requires. Nor did anyone on his behalf "persuade" or "induce" or "entice" or "coerce" anyone as these words are ordinarily understood and as the new Supreme Court decisions mandate they be applied: narrowly, without stretching ordinary usage to conform to a prosecutor's case-specific need for a broad (and in this case unprecedented) application. In addition, as will be shown below, § 2422(b) requires that the object of the communication be a state law offense that "can be charged." Yet because the state of Florida's statute of limitations is one year for the first prostitution offense and three years for other targeted offenses, and because all or virtually all of the offense conduct at issue in the federal investigation occurred prior to June 20, 2005, those acts can *not* be charged by the State, and thus cannot meet this essential element of federal law.

Finally, Mr. Epstein neither coerced, nor enslaved, nor trafficked, nor derived any profit from his sexual conduct. He was an ordinary "John," not a pimp. But § 1591 is directed only against those who engage in force or fraud or coercion or who are in the business of commercial

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SUMMARY OF MISCONDUCT ISSUES IN THE MATTER OF JEFFREY E. EPSTEIN

The manner in which federal prosecutors have pursued the allegations against Mr. Epstein is highly irregular and warrants full review by the Department. While we repeatedly have raised our concerns regarding misconduct with the United States Attorney's Office in Miami (the "USAO"), not only has it remained unwilling to address these issues, but Mr. Epstein's defense counsel has been instructed to limit its contact to the very prosecutors who are the subject of this misconduct complaint. For your review, this document summarizes the USAO's conduct in this case.

Background

1. In March 2005, the Palm Beach Police Department opened a criminal investigation of Palm Beach resident, Jeffrey E. Epstein. The press has widely reported that Mr. Epstein is a close friend of former President Bill Clinton.
2. In July 2006, after an intensive probe, including interviews of dozens of witnesses, returns of numerous document subpoenas, multiple trash pulls and the execution of a search warrant on his residence, Mr. Epstein was indicted by a Florida Grand Jury on one count of felony solicitation of prostitution.
3. In a publicly released letter, Palm Beach Police Chief Michael Reiter criticized the Grand Jury's decision and the State Attorney's handling of the case. Shortly after the Grand Jury's indictment, the Chief took the unprecedented step of releasing his Department's raw police reports of the investigation (including Detective Recarey's unedited written reports of witness statements and witness identification information), that were later proven to be highly inaccurate transcriptions of witnesses' actual statements. The Chief also publicly asked federal authorities to prosecute the case.

██████████ Becomes Involved in Mr. Epstein's Case at the Earliest Stage

4. In early November of 2006, Epstein's lawyers had their initial contact with the newly assigned line federal prosecutor ██████████. Although it is extremely unusual for a ██████████ to participate in such a communication, ██████████ was present on that very first phone call.
5. On November 16, 2006, despite the fact that the investigation exclusively concerned illegal sexual conduct during massage sessions, AUSA ██████████ issued irrelevant official document requests seeking Mr. Epstein's 2004 and 2005 personal income-tax returns, and later subpoenaed his medical records. See Tab 16, November 16, 2006 Letter from ██████████

██████████ Becomes Personally Involved in a Dispute Over Another State Sex Case

6. In March 2007, ██████████ reported to local police an attempted trespass by a 17-year-old male. ██████████ claimed that the individual had attempted to enter ██████████ home without invitation to make contact with his 16-year-old daughter, but he spotted the young man before the perpetrator had an opportunity to enter the house. The

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Response to Letter by [REDACTED] Dated May 19, 2008

In a May 19, 2008 letter to Jay Lefkowitz (See Tab 1), SDFL [REDACTED] provided what purported to be a summary of the events that have occurred during the investigation of Mr. Epstein. [REDACTED] letter is fraught with inconsistencies, false and misleading characterizations and outright falsehoods. The comparison below between the false assertions in [REDACTED] letter and what actually transpired is only the tip of the iceberg. We respectfully submit that [REDACTED] letter alone demonstrates the degree to which the record of facts have been distorted and these distortions have permeated this unprecedented investigation.

1. "INDEPENDENT" AND "DE NOVO" REVIEW.

[REDACTED] Letter:

- "[W]e obliged your request for an independent *de novo* review of the investigation and facilitated such review at the highest levels of the Department of Justice." Tab 1, May 19, 2008 Letter from J. Sloman, p. 5, ¶ 3.

The Truth:

- CEOS' review, concluded in May 2008, was neither independent nor *de novo*.
 - CEOS' review was not "independent:"
 - [REDACTED] who conducted the review on behalf of CEOS, *had already reviewed the prosecution memo on this matter eight months earlier*. During a meeting with defense counsel at the United States Attorney's Office in Miami (the "USAO") in September of 2007, he opined that he so believed in the prosecution that he "*would try the case myself*."
 - Indeed, [REDACTED] acknowledges that [REDACTED] had previously opined on this matter, stating:

This particular attack on this statute [18 U.S.C. § 2242(b)] had been *previously* raised and thoroughly considered *and rejected by . . . CEOS* prior to the execution of the [Deferred Prosecution] Agreement [in September 2007].

Id., p. 5 (emphasis added).

- The statute [REDACTED] referred to (§ 2422(b)) lies at the heart of the Epstein investigation. Thus, according to [REDACTED], [REDACTED] was tasked with *reviewing his own prior decision* regarding applying the key statute under which the SDFL proposed prosecuting Mr. Epstein.

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