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Kenneth W. Starr
To Call Writer Directly:

www.kirkland.com

Facsimile:

December 11, 2007

VIA FACSIMILE (305) 530-6444Honorable R. Alexander Acosta
United States Attorney
United States Attorney's Office

Re: Jeffrey Epstein

Dear Alex:

As we discussed during our telephone conversations on both Friday and Monday (yesterday), we are submitting two separate letters that address our broad areas of deep concern in this matter: First, the cluster of fundamental policy issues surrounding the use and implementation of 2255, a richly policy-laden but uncharted area of federal law; and second, our profound concerns as to the background and conduct of the investigation. Consistent with our conversations, we submit these letters with the assurance and understanding that our doing so in no manner constitutes a breach of the Non-Prosecution Agreement or unwinds that Agreement. We are grateful for your courtesy in agreeing to receive and consider these submissions, and then to meet to discuss them.

As you undertake your study and reflection, kindly allow me to make this pivotal point: In the combined 250 years experience of Jeffrey's defense team, we have together and individually concluded that this case is not only extraordinary and unprecedented, it is deeply and uniquely troubling. The constellation of issues, large and small, renders Jeffrey's matter entirely *sui generis*. We say this not lightly. Indeed, as you will glean from our two letters, we are gravely concerned that, in addition to its odd conceptualization and genesis, the matter in its day-to-day implementation has been handled in a manner that raises deeply troubling questions with respect to both federal policy and individual judgment in a system that is, at its best, assiduously devoted to the rule of law. The latest episodes involving 2255 notification to the alleged victims put illustratively in bold relief our concerns that the ends of justice, time and again, are not being served. By way of illustration, but it is only one among a cascading list of grave concerns, we now understand that the Assistant United States Attorney whose conduct has troubled us from day one has quite recently reached out to the attorney for [REDACTED] and

KIRKLAND & ELLIS LLP

Honorable R. Alexander Acosta
December 11, 2007
Page 2

provided oral notification of the victim notification letter. This notification, as we have stated time and again, is profoundly unfair. But quite apart from our substantive concerns, which are abiding and which had prompted our appeal to the Assistant Attorney General in the first instance, we had thought that the notification process had been held in abeyance until completion of our ongoing discussions with respect to that process. That appears not to be so. This latest in a baleful line of prosecutorial actions is dripping with irony. We respectfully call your attention to the transcript of the interview with [REDACTED], and guide you -- as the duly confirmed Executive Branch official charged with making judgments consistent with our constitutional order -- to the telling fact that Ms. Miler did not in any manner view herself as a victim. Quite to the contrary. She is not alone.

We draw attention to this episode as but a recent indication of the deepening need for your thoughtful and independent review. And for your agreeing to provide that review, our defense team is very grateful.

Respectfully Submitted,


Kenneth W. Starr

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Jay P. Infkowitz, P.C.
To Call Writer Directly

New

Facsimile:

www.kirkland.com

December 11, 2007

VIA FACSIMILE (305) 530-6444Honorable R. Alexander Acosta
United States Attorney
United States Attorney's Office*Re: Jeffrey Epstein*

Dear Alex:

I appreciate the opportunity you have provided to review some of the issues and concerns of Mr. Epstein's defense team. Importantly, I appreciate your agreement that this submission would neither be understood by you as constituting a breach of the Non-Prosecution Agreement ("Agreement") nor result in any unwinding of the Agreement by your Office. Implicit in this agreement is the understanding that I can share with you our concerns and request a review on the basis for these concerns, while at the same time assure my client that this submission will not in any respect result in formal or informal repercussions or attempts by any member of the prosecution or investigative team to involve themselves to Mr. Epstein's detriment in any matter related to the Agreement, particularly in the state prosecution. This letter is intended to support our assertion to you that the manner in which both the investigation of allegations against Mr. Epstein and the resolution thereof were highly irregular and warrant a full review. We appreciate your willingness to consider the evidence. We respectfully request that you review Judge Stern's letter to Alan Dershowitz, faxed to you on December 7, 2007, in connection with the concerns we set forth in this submission.

I. FEDERAL INVESTIGATORS RELIED UPON TAINTED EVIDENCE.

We have serious concerns that the summaries of the evidence that have been presented to you have been materially inaccurate. As you may know, the principal witnesses in this case were first interviewed by Detective [REDACTED] of the Palm Beach Police Department (the "PBPD") and other state law enforcement officers. These interviews (the "witness statements") were often tape-recorded thus providing a verbatim and detailed record of the recollections of the witnesses at a point in time prior to any federal involvement. Unfortunately, the police report authored by Detective [REDACTED] and certain affidavits executed by him contained both material misstatements

KIRKLAND & ELLIS LLP

R. Alexander Acosta

December 11, 2007

Page 2

regarding the specifics of what he was told by his witnesses and also contained omissions of critical and often exculpatory information that was recorded verbatim during the taped interview sessions. The federal investigation involved interviews with many of the same witnesses. We are aware that at least one federal interview ([REDACTED]) was recorded.

We understand that Detective Recarey provided his police report and certain affidavits to the federal authorities but did not provide the actual witness statements of the taped interviews to your Office or to the FBI. These witness statements constitute the best evidence available (they are verbatim and earlier in time to the federal interviews), and they contain statements that are highly exculpatory to Mr. Epstein. Because understanding the compromised nature of the "evidence" against Mr. Epstein is key to a proper view of this case, we summarize it in detail below.

A. The Witness Statements Establish That Mr. Epstein Did Not Target Masscuses Under 18.

Indeed, the witness statements demonstrate that the opposite is true. First, the evidence shows that the many of the masscuses were eighteen or over, including [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] at the time they visited Mr. Epstein's home. Also, there is substantial evidence, found in the sworn statements of the women themselves, which indicate that, to the extent others were in fact under the age of eighteen, many affirmatively lied about her age. As [REDACTED] herself told the PHPD: "[REDACTED] told me to say I was 18 because [REDACTED] said . . . if you're not then he [Epstein] won't really let you in his house. So I said I was 18". Detective Recarey, however, largely ignored these critical admissions in his Police Report and Probable Cause Affidavit.

• [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. (Sworn 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).

KIRKLAND & ELLIS LLP

R. Alexander Acosta
 December 11, 2007
 Page 3

• [REDACTED]

Q: Did he know your age?

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

A: I told him I was 18. (Sworn Statement of 10/3/05).

• [REDACTED] concerning [REDACTED]

Well with [REDACTED] 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. (Sworn Statement of 10/03/05).¹

• [REDACTED]

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

A: Eighteen. I'm 19 now this last March." (Sworn Statement of 10/12/05).

• [REDACTED]

Q: And all this occurred when you were 18 though?

¹ In addition to giving a sworn statement at the PRPD 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.

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 4

A: Uh-huh. I had been 18 for like 8 months, nine months already. My birthday is in June so I had been 18 for a while. (Sworn Statement of 2/3/05).

• [REDACTED]

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

A: I'm 20

Q: You're 20. So a couple months ago you would have been what, 19?

A: Uh-huh.

Q: Alright. So July, August you would have been 19, 20. On the verge of 20?

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

We believe that other witnesses have similarly told the FBI that Mr. Epstein attempted to monitor the ages of the masseuses who came to his home. We further believe that these transcripts would show that the federal interest in prosecuting Mr. Epstein for paradigmatic state offenses was far less compelling than the inaccurate police reports suggest.

B. Detective [REDACTED] Made Crucial Misstatements in the Police Report and Probable Cause Affidavits.

We have reviewed the sworn and recorded witness statements of many of the individuals who were interviewed (conducted in person or by telephone) as well as a number of the controlled calls cited in the Police Report. Time after time, we found statements in the Police Report attributed to statements made in the sworn recordings that either simply were not said, or in some instances, are flatly contradicted, by the witness who purportedly made the statement. In fact, they often stand in stark contrast to representations made by Detective [REDACTED] in both the official Police Report and in affidavits signed by him under oath. We highlight the most significant ones identified to date:

• **[REDACTED] Did Not Report that Epstein Told Her to Lie About her Age**

The Probable Cause Affidavit indicates that during her sworn statement "[REDACTED] advised that during her frequent visits Epstein asked for her real age. [REDACTED] stated she was sixteen [and that] Epstein advised her not to tell anyone her real age." Arrest Probable Cause Affidavit at 11. That statement appears nowhere in [REDACTED] sworn statement.

KIRKLAND & ELLIS LLP

R. Alexander Acosta

December 11, 2007

Page 5

- **██████████ Did Not State that Epstein Photographed Her Having Sex**

Detective ██████████ also reports ██████████ as claiming that "Epstein would photograph Marcinkova and her naked and having sex and proudly display the photographs within the home." *Id.* at 12. Again, this statement is not in ██████████ sworn statement. To the contrary, the transcript reflects that ██████████ stated: "I was just like, it was me standing in front of a big white marble bathtub . . . in the guest bathroom in his master suite. And it wasn't like I was you know spreading my legs or anything for the camera, I was like, I was standing up. I think I was standing up and I just like, it was me kind of looking over my shoulder kinda smiling, and that was that." Sworn Statement of 10/11/05 at 35.²
- **██████████ Said Epstein Did Not Touch Her Inappropriately**

Detective ██████████ recounts that ██████████ advised that "Epstein grabbed her buttocks and pulled her close to him." Probable Cause Affidavit at 6. *See also*, Police Report (10/07/05) at 30 (same). ██████████ never made this statement. In fact, when Detective ██████████ asked, "He did not touch you inappropriately?" ██████████ responded, "No." Sworn Statement of 10/04/05 at 11.
- **██████████ Was Not Sixteen When She First Went to Epstein's Home.**

Detective ██████████ states: "██████████ also stated she was sixteen years old when she first went to Epstein's house". Incident Report at 52. However, ██████████ affirmatively states that she was seventeen when she first went to Epstein's home: "Q: Okay. How old were you when you first went there? A: Seventeen. Q: Seventeen. A: And I was 17 the last time I went there too. I turned 18 this past June". Sworn Statement of 11/14/05.
- **██████████ Told Detective Recarey that Epstein Did Not Take out Sex Toys.**

The Probable Cause Affidavit indicates that ██████████ stated "Epstein ██████████
██████████
Epstein ██████████
Probable Cause Affidavit at 14; *see also* Police Report (11/10/05) at 49 ("Epstein ██████████
██████████"). This statement appears nowhere in the transcript of ██████████ sworn

² ██████████ was interviewed by Detective ██████████ twice, once by telephone, and once in person. The portions of the Police Report to which we refer specifically cite the in-person interview of ██████████ as the source for the information reported. We have reviewed the recording of that interview and base the comparison on that review. We have never heard a recording of the telephone interview.

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 6

statement. In fact, when Detective ██████ asked whether Mr. Epstein had "ever take[n] out any toys," ██████ responded, "No." Sworn Statement of 11/08/05 at 17.

• **██████████ Did Not Recall Mr. Epstein Masturbating**

Detective ██████ recounts that ██████ "advised she was sure [Mr. Epstein] was masturbating based on his hand movements going up and down on his penis area." Probable Cause Affidavit at 8. *See also* Police Report (10/07/05) at 35 (same). Detective ██████ account is in direct contradiction to ██████ true statement, specifically:

Q: Okay did he ever take off – did he ever touch himself?

A: I don't think so.

Q: No. Did he ever masturbate himself in front of you?

A: I don't remember him doing that. He might have but I really don't remember. (Sworn Statement of 10/05/05 at 7).

• **Juan Alessi Stated that *Only One Girl Looked Young***

Police Report at 57: "Alessi stated that towards the end of his employment, the masseuses were younger and younger". However, he said no such thing:

Q: Did they seem young to you?

A. No, sir. Mostly no. We saw one or two young ones in the last year. Before that, it was all adults . . . I remember one girl was young. We never asked how old she was. It was not in my job . . . But I imagine she was 16, 17". (Sworn Statement of 11/21/05)

C. Detective ██████ Made Material Omissions in the Police Report.

In addition to the misstatements in the Police Report and Probable Cause Affidavit as to the evidentiary record, there were also material omissions, both of facts known to the PBPD and also of facts not known to the PBPD, though known by the State Attorney. In the latter instance, the lack of knowledge was the result of the PBPD's refusal to receive the exculpatory evidence. In fact, they refused to attend a meeting called by the State Attorney specifically to provide the relevant evidence. Thus, the Police Report and Probable Cause Affidavit only offer a skewed view of the facts material to this matter. Examples follow.

1. ***The Video Surveillance Equipment Located in Mr. Epstein's Office and Garage.*** Both the Police Report (at 43) and the Probable Cause Affidavit (at 18) make

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 7

particular mention of the "discovery" of video surveillance equipment (or "covert cameras" as they are called) in Epstein's garage and library/office. Inclusion of this information insinuates a link between the equipment and the events at issue: in the Probable Cause Affidavit Detective [REDACTED] states, "on the first floor of the [Epstein] residence I [Detective [REDACTED]] found two covert cameras hidden within clocks. One was located in the garage and the other located in the library area on a shelf behind Epstein's desk . . . The computer's hard drive was reviewed which showed several images of [REDACTED] and other witnesses that have been interviewed. All of these images appeared to come from the camera positioned behind Epstein's desk". See Probable Cause Affidavit at 18.

Clearly omitted from both the Police Report and the Probable Cause Affidavit is the fact that the PBPD, and specifically Detective [REDACTED] knew about the cameras since they were installed in 2003, *with the help of the PBPD*, to address the theft of cash from Epstein's home. This fact is detailed in a Palm Beach Police Report prepared in October 2003 detailing the thefts, the installation of video equipment, the video recording capturing Juan Alessi (Mr. Epstein's then house manager) "red handed", and the incriminating statements made by Alessi when he was confronted at the time. See Alessi Police Report at 5, 8. The contemporaneous police report confirms the fact that the video footage was turned over to Detective [REDACTED] himself.

2. ***Polygraph Examination and Report.*** On May 2, 2006, Mr. Epstein submitted to a polygraph examination by [REDACTED] Slattery, a highly respected polygraph examiner who is regularly used by the State Attorney. The examination was done at a time when we were told that the sole focus of the investigation was the conduct with [REDACTED]

Mr. Epstein was asked (a) whether he had "sexual contact with [REDACTED]"; (b) whether he "in anyway threaten[ed] [REDACTED]"; (c) whether he was told by [REDACTED] "that she was 18 years old"; and (d) whether he "believed [REDACTED] was 18 years old". As set forth in the Report of the examination, the term "sexual contact" was given an extremely broad meaning in order to capture any inappropriate conduct that could have occurred.³ The results of the examination confirmed that (i) no such conduct occurred; (ii) Mr. Epstein never threatened [REDACTED]; (iii) [REDACTED] told Mr. Epstein she was 18 years old; and (iv) Mr. Epstein believed [REDACTED] was 18 years old.

³ The definition included: "sexual intercourse, oral sex acts (penis in mouth or mouth on vagina), finger penetration of the vagina, finger penetration of the anus, touching of the vagina for sexual gratification purposes, touching of the penis for sexual gratification purposes, masturbation by or to another, touching or rubbing of the breasts, or any other physical contact involving sexual thoughts and/or desires with another person".

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 8

3. ***Broken "Sex Toys" in Mr. Epstein's Trash.*** The Police Report details the police finding in Mr. Epstein's trash what is described as broken pieces of a "sex toy" and that this "discovery" purportedly corroborated witness statements. Omitted from both the Police Report and the Probable Cause Affidavit is the fact that during the course of executing the search warrant in Epstein's home, the police discovered the other piece of that key "sex toy" and realized it was in fact only the broken handle of a salad server. Though "sex toys" play a prominent role in the Police Report and Probable Cause Affidavit, the Police Report was never amended to reflect the discovery of this new and highly relevant evidence.
4. ***Failure to Consider Exculpatory or Impeaching Evidence.*** Other exculpatory and impeaching evidence known by the PBPB was omitted from the Police Report and Probable Cause Affidavit by, in our view, manipulating the date the investigation was allegedly closed. According to the Police Report (at 85), Detective ██████████ "explained [to ASA Belohlavek] that the PBPB had concluded its case in December of 2005". That assertion, which is false, conveniently resulted in the omission of all information adduced subsequent to that date. Thus, though the Police Report in fact contains information obtained after December 2005, the PBPB purported to justify its refusal to consider, or even to include, in the Police Report, the Probable Cause Affidavit or what it released to the public, all the exculpatory and evidence impeaching the witnesses submitted on behalf of Mr. Epstein, most of which was provided after December 2005. That evidence is listed below.
5. ***Unreported Criminal Histories and Mental Health Problems of the Witnesses Relied on in the Police Report and Probable Cause Affidavit.*** Evidence obtained concerning the witnesses relied upon to support the Probable Cause Affidavit casts significant doubt on whether these witnesses are sufficiently credible to support a finding of probable cause, let alone to sustain what would be the prosecution's burden of proof at a trial.⁴ Though such evidence was submitted to the PBPB, none of it was included in the Police Report or the Probable Cause Affidavit.
 - **Juan Alessi:** While the Police Report (at 57) and the Probable Cause Affidavit (at 21) contain assertions by Alessi, which allegedly support bringing a criminal charge, the evidence revealing Alessi's evident mental instability; prior criminal conduct against Epstein; and bias towards Epstein is notably omitted. As detailed above, in 2003, Alessi was filmed taking money from Epstein's home. After being caught on videotape unlawfully entering Epstein's home and stealing cash from a briefcase,

⁴ While we have never intended to and do not here seek to gratuitously cast aspersions on any of the witnesses, in previously asking the State and now asking you to evaluate the strength of this case, we have been constrained to point out the fact that the alleged victims chose to present themselves to the world through MySpace profiles with self-selected monikers such as "Pimp Juice" and "██████████" or with nude photos.

KIRKLAND & ELLIS LLP

R. Alexander Acosta

December 11, 2007

Page 9

Alessi admitted to the PBPD that he entered the house unlawfully on numerous occasions, stealing cash and attempting to steal Epstein's licensed handgun to commit suicide. Although this information was known by Detective [REDACTED] at the time the Police Report and Probable Cause Affidavit were prepared, and is clearly material to any determination of credibility, it was omitted.

- [REDACTED] [REDACTED] was the source of the vast majority of the serious allegations made against Epstein. While the Police Report and Probable Cause Affidavit rely on [REDACTED] numerous assertions, there are two significant problems with that reliance. First there is no mention of certain critical admissions made by [REDACTED] during her interview, as well as on her MySpace webpage (discovered by defense investigators and turned over to the State Attorney). Second, all but omitted from the Police Report is any reference to the facts known about her by the PBPD, specifically, that at the time [REDACTED] was making these assertions *she had been arrested by the PBPD and was being prosecuted for possession of marijuana and drug paraphernalia*. We take each in turn.

 - [REDACTED] *Admits Voluntary Sexual Conduct With Epstein, Refuses to Disclose the Disposition of the Monies She Earned, and Lies About Being "Given" a Car by Epstein:* Detective [REDACTED] failed to include in the Police Report [REDACTED] admission that on one occasion she engaged in sexual conduct with Epstein's girlfriend as her birthday "gift" to Epstein. Nor does Detective [REDACTED] include the fact that [REDACTED] flatly refused to discuss with him the disposition of the thousands of dollars she said she was given by Epstein, or that she falsely claimed that she did not use drugs, despite her MySpace entries in which she exclaims "I can't wait to buy some weed!!!!!!". Detective [REDACTED] was aware the car had been rented, not purchased, and only it was only leased on a monthly basis for two months. While [REDACTED] fanciful claim that she was given a car appears in the Police Report, it is never corrected.
 - [REDACTED] *Was Arrested for Possession of Marijuana and Drug Paraphernalia.* As noted, on September 11, 2005, [REDACTED] was arrested for possession of marijuana and drug paraphernalia. In response to this arrest, [REDACTED] "came forward" (as the Probable Cause Affidavit implies at 10-11), claiming she had knowledge of "sexual activity taking place" at Epstein's residence and misconduct by Epstein. (This "coming forward" appears no where in the Police Report.) Thus, it becomes clear that [REDACTED] assertions of misconduct by Epstein were motivated by a desire to avoid the repercussions of her own criminal conduct, which should have been taken into account when assessing her credibility as a witness.

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 10

- **██████████ Steals From a Victoria's Secret Store.** An investigation by private investigators working for the defense revealed that in late 2005 ██████████ was employed at a Victoria's Secret store in Florida. Three days after her marijuana case was terminated, Hall was caught by a store manager as ██████████ attempted to leave the store with merchandise in her purse, the security tag still attached. Seeing the manager, ██████████ claimed "someone is trying to set me up". Following an internal investigation, which disclosed additional thefts from both the store and a customer, she was fired. In a recorded interview, ██████████ admitted to stealing and asserted that her reason for doing so was that "she was not getting paid enough". This information and supporting documentation was presented to the PBPD, but was never included in the Police Report or Probable Cause Affidavit.
- **██████████ Lies on MySpace About Victoria's Secret Store Termination.** Also uncovered by defense investigators is ██████████ dissembling version of the Victoria's Secret debacle on her "MySpace" webpage. There, ██████████ announced that she "... forgot to let everyone know I quit my job at ██████████. They said they suspected me of 'causing losses to their company' which by the way is bullshit. I was 'by the book' on EVERYTHING!!! ... I got so fed up in that office that I handed the Loss Prevention lady back my keys and walked out". This information and supporting documentation was provided by the defense to the PBPD, but was not included in the Police Report or Probable Cause Affidavit.
- **██████████ Lies on her Victoria's Secret Job Application.** Additional information on ██████████ MySpace webpage casts further doubt on her credibility. For example, she boasts to having engaged in a fraudulent scheme to get hired by Victoria's Secret, explaining, "Oh, it was so funny I used [my boyfriend] as one of my references for my Victoria's Secret job and the lady called me back and told me that William Tucker gave me such an outstanding reference that she did not need to call anyone else back, ... he got me the job! Just like that. ... I lied and said he was the old stock manager at Holister she bought it. ..." This information and supporting documentation was provided by the defense to the PBPD, but was not included in the Police Report or Probable Cause Affidavit.
- **██████████ Boasts About Her Marijuana Use.** Also on her MySpace webpage can be found ██████████ admissions of purchasing and using marijuana and marijuana paraphernalia. Specifically, ██████████ states she "can't wait to buy some weed!!! ... I can't wait!!! ... (Hold on:

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 11

let me say that again) I can't wait to buy some weed!!!. . . I also want to get a vaporizer so I can smoke in my room because apparently there are 'nares' everywhere". [REDACTED] also posted a photograph of a marijuana cigarette and labeled it "what heaven looks like to me". This information and supporting documentation was provided by the defense to the PBPD, was not included in the Police Report or Probable Cause Affidavit (although there is both a fleeting reference in the Police Report to [REDACTED] use of marijuana with her boyfriend (at 67) and in the Probable Cause Affidavit to [REDACTED] marijuana arrest (at 10-11)).

- [REDACTED]: While the Police Report and Probable Cause Affidavit contain numerous assertions intended to negate [REDACTED] taped admission that she clearly told Epstein she was 18, omitted from these documents is reference to [REDACTED] MySpace webpage, presented to the State Attorney's Office, where, in no connection to this case, *she affirmatively represented to the world that she was 18*, thereby corroborating her lie to Epstein. Also omitted is any reference to her long history of run-ins with law enforcement. Among those are multiple runaway complaints by her parents and her assignment to a special high school for drug abusers.
 - [REDACTED] ***MySpace Webpage States She Drinks, Uses Drugs, Gets into Trouble, Has Beaten Someone Up, Shoplifts, Has Lost her Virginity, Earns \$250,000 and Higher, and Contains Naked and Provocative Photographs.*** The first image seen on [REDACTED] MySpace webpage, the photo [REDACTED] chose to represent her, is that of a naked woman provocatively lying on the beach. The illuminating webpage also contains [REDACTED] assertions that of all her body parts, she "love[s] her ass", she drinks to excess, uses drugs, "gets into trouble", has beaten someone up, has shoplifted "lots", "already lost" her virginity, and earns "\$250,000 and higher". As with the other impeaching information, this material, vital to determining credibility, was provided by the defense to the PBPD but was never included in the Police Report or Probable Cause Affidavit.
 - [REDACTED] ***Prior Record - Drugs, Alcohol, Running Away From Home.*** [REDACTED] has a history of running away/turning up missing from her parents' various homes; of using drugs and alcohol; and of associating with individuals of questionable judgment. For example, a Palm Beach County Sheriff's Office Report details how only two days after she returned to Florida to live with her father, on March 31, 2006, police were called to the home in response to her father's report that she and her twin sister were missing. The Police Report describes her as "under the influence of a narcotic as [she] could barely stand up,

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 12

[her] eyes were bloodshot, and [her] pupils were dilated [sic]". It further documents that [redacted] and her sister had stayed out all night and were returned home by a "drug dealer". This event coincided with [redacted] having been found at an "inappropriate location" by Georgia police in response to a call about [redacted] disappearance. Although this information, material to determining credibility, was provided by the defense and known to the PBPD, it was never included in the Police Report or Probable Cause Affidavit.

- [redacted] While the Police Report and Probable Cause Affidavit rely on statements of [redacted] father, [redacted] his federal bank fraud conviction, which defense investigators discovered and turned over to the PBPD during the course of the investigation, was omitted. [redacted] served 21 months in federal prison for his offense.
- [redacted] While the Police Report and Probable Cause Affidavit rely on statements of [redacted] stepmother, omitted is [redacted] state conviction for identity fraud. This information, uncovered by defense investigators, was also turned over to the PBPD during the course of the investigation.

D. In Light Of The Compromised Nature Of The Evidence, A Fulsome Review Should Be Conducted.

These tainted and inaccurate reports compromised the federal investigation.⁵ As you may know, the PBPD took the unprecedented and highly unethical step of releasing these reports to the media as well. These reports spread across the Internet, and were undoubtedly read by the other individuals who were later interviewed by the FBI for giving Mr. Epstein massages. As we have shown, these reports contain multiple fabrications, omissions, and outright misstatements of fact. Moreover, the evidence and the allegations were undeniably misrepresented to the FBI, with no inclusion of the evidence exposing the deficiencies of the "proof" and the exculpatory evidence upon which the State relied. Furthermore, it should be noted that many of these same individuals were also interviewed by the FBI after their state interviews but prior to Mr. Epstein's counsel providing the government with the transcripts of the recorded interviews. The

⁵ Although we have been informed that the FBI identified and then interviewed additional potential witnesses, many of their discoveries are believed to have emanated from message pads containing contact information that were seized from Mr. Epstein's home pursuant to a state search warrant that was deeply and constitutionally flawed by Recarey's misstatements and omissions as well as other facial deficiencies.

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 13

transcripts and tapes, which we hope to share with you in person, will likely present a very different view of those interviews taken afterwards.

Therefore, in the interest of truth, we ask you to review the transcripts, compare them to the FBI reports upon which the indictment was predicated, and then determine whether the FBI summaries and the prosecution memorandum upon which the charging decisions were made overstate Mr. Epstein's federal culpability. Concomitant to these requests, we would ask that you determine whether the investigative team ever provided these trustworthy tapes and transcripts to those in your Office who were being asked to authorize the prosecution so that they could themselves assess the reliability of the FBI interview reports against a verbatim record of the same witness's prior statements. We believe that this request is fair and would not be unduly burdensome.

II. THE IMPROPER INVOLVEMENT AND CONDUCT OF FEDERAL AUTHORITIES.

As established above, the State's charging decision, of one count of the solicitation of prostitution, was hardly irrational or irregular. Indeed, Lana Belohlavek, a Florida sex prosecutor for 13 years, concluded that the women in question were prostitutes and that "there are no victims here." There was no evidence of violence, force, drugs, alcohol, coercion or an abuse of a position of authority. Each and every one of the alleged "victims" knew what to expect when they arrived at Mr. Epstein's house and each was paid for her services. In fact, Mr. Epstein's message book establishes that many of these women routinely scheduled massage sessions with Mr. Epstein themselves, without any prompting. Ms. Belohlavek also noted that many of these individuals worked either as exotic dancers or in one of the many massage parlors dotted across West Palm Beach. Ms. Belohlavek also specifically stated that [REDACTED] could not be trusted and was "only interested in money." She further found that it was inappropriate for Mr. Epstein to register as a sex offender because she did not believe that he constituted a threat to young girls and because registration had not been required in similar or even more serious cases. Ms. Belohlavak thought, and still believes, that the appropriate punishment is a term of probation.

Yet, the government has devoted an extraordinary amount of its time and resources to prosecute Mr. Epstein for conduct the State believes amounts to a "sex for money" case. While we are loathe to single-out for criticism the conduct of any particular professional, we cannot escape the conclusion that the cumulative effect of the conduct of Assistant United States Attorney Marie Villafana led your Office to take positions during the investigation and negotiation of this matter that has led to unprecedented federal overreaching. In fact, Judge Herbert Stern's states " . . . the federal authorities inappropriately involved themselves in the investigation by the state authorities and employed highly irregular and coercive tactics to override the judgment of state law enforcement authorities as to the appropriate disposition of their case against your client." See Judge Stern's letter faxed to you on December 7, 2007.

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 14

A. The Petite Policy Should Have Precluded Federal Involvement.

As you know, prior to negotiating the terms of the Agreement, we requested that the government consider the *Petite* Policy and the problems associated with conducting a dual and successive prosecution. We stressed to your Office, on a number of occasions, that we had reached a final negotiated resolution with the State and were only being forced to postpone the execution of that agreement for the sake of the federal investigation. We made submissions and met with your Office to present analyses of the fact that federal prosecution in this matter was in direct conflict with the requirements of the *Petite* Policy. It was our contention, and remains our contention, that federal prosecutors had never intervened in a matter such as this one. And because there was no deficiency in the state criminal process that would otherwise require federal intervention, the express terms of the *Petite* Policy precluded federal prosecution *regardless of the outcome of the state case*. Since the state investigation was thorough and in no way inadequate and the concerns implicated by the matter all involved local issues and areas of traditionally local concern, we urged your Office to contemplate whether a federal prosecution was appropriate.

However, on August 3, 2007, Matthew Menchel rejected a proposed state plea which included that Mr. Epstein serve two years of supervised custody followed by two years of incarceration in a state prison, with the option of eliminating incarceration upon successful completion of the term of supervised custody, among other terms. Mr. Menchel stated that "the federal interest will not be vindicated in the absence of a two year term in state prison." See August 3, 2007 letter. Such an articulation of the federal interest, we believe, misunderstands the *Petite* Policy on two grounds. First, the Office's position that the federal interest would not be vindicated in the absence of a jail term for Mr. Epstein, runs contrary to Section 9-2.031D of the United States Attorney's Manual, because this section requires the federal prosecutor to focus exclusively on the *quality or process* of the prior prosecution, not the sentencing outcome. Second, the state plea agreement offered was not "manifestly inadequate" under U.S.A.M. § 9-2.031D. Indeed, the only real difference between the state and federal plea proposals was whether Mr. Epstein served his sentence in jail or community quarantine.

We formerly believed that our *Petite* Policy concerns were being addressed or, at least, preserved, but we learned that only after reaching a final compromise with your Office as to the terms of the Agreement, and at the very last minute, that language regarding the *Petite* Policy was removed from the final version. The two following references to the *Petite* Policy had been included in the draft prosecution Agreements up until September 24, 2007, the day the Agreement was executed, at which point they were eliminated by your Office:

IT APPEARING, after an investigation of the offenses and Epstein's background, that the interest of the United States pursuant to the *Petite* policy will be served by the following procedure . . .

Epstein understands that the United States Attorney has no authority to require the State Attorney's Office to abide by any terms of this agreement. Epstein understands that it is his

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 15

obligation to undertake discussion with the State Attorney's Office to ensure compliance with these procedures, which compliance will be necessary to satisfy the United States' interest, pursuant to the *Petite* policy.

We reiterate that this case was at heart a local matter that was being fully addressed by the state criminal justice system. The state process resulted in an appropriate resolution of this matter and would have vindicated any conceivable federal interest. Thus, there was no substantial federal interest that justified a federal prosecution. It has recently come to our attention that the CEOS chief statements may be relevant to this matter. While we welcome the opportunity to consider these statements, our extensive research had found only one federal action that was remotely similar to the federal investigation for the prosecution of this matter, and that case has since been distinguished as well.

B. [REDACTED] Prompted An Unduly Invasive Investigation Of Mr. Epstein.

[REDACTED] investigation of Mr. Epstein raises serious questions. Despite the fact that she was made aware of the inaccuracies in the PBPB's Probable Cause Affidavit, she chose to include the affidavit in a document filed with the court knowing that the public could access it. Then, [REDACTED] issued letters requesting documents whose subject matter have no relation to the allegations against Mr. Epstein. Notably, after we objected to these overly broad and intrusive requests, Deputy Chief Andrew Lourie denied knowledge of [REDACTED] actions and Mr. Lourie commendably sought to significantly narrow the list of documents requested. In a subsequent court filing, [REDACTED] referred to our agreement to remove these items from her demand list as evidence of Mr. Epstein's "non-cooperation".

This was only the beginning. [REDACTED] also subpoenaed an agent of Roy Black (without following the guidelines provided in the United States Attorney's Manual that require prior notification to Washington necessary to seek a lawyer's records). We once more requested Mr. Lourie to intervene. Despite these efforts, [REDACTED] followed up with a subpoena for Mr. Epstein's confidential medical records served directly on his chiropractor (with no notice to Mr. Epstein). [REDACTED] also made the unusual request of asking the State Attorney's Office for some of the grand jury materials. She threatened to subpoena the State when she was informed that it was a violation of Florida law to release this information.

After compiling this "evidence", [REDACTED] stated she would be initiating an investigation into purported violations of 18 U.S.C. §1591 (again without the required prior DOJ notification). [REDACTED] then broadened the scope of the investigation without any foundation for doing so by adding charges of money laundering and violations of a money transmitting business to the investigation. Mr. Epstein's counsel explained that there could be no basis for these charges since Mr. Epstein did not commit any prerequisite act for a money laundering charge and has never even been engaged in a money transmitting business. Ms. [REDACTED] responded that Mr. Epstein could be charged under these statutes because he funded

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 16

illegal activities. To suggest that Mr. Epstein could violate these statutes simply by spending his legally earned money on prostitutes is manifestly an erroneous interpretation of the law.

To our relief, after briefing Matthew Menchel at a meeting regarding the spurious application of these statutes, we were told to ignore the laundry list and that defense counsels' focus should be turned to 18 U.S.C. §2422(b). Once Mr. Epstein's counsel submitted and presented the reasons why a federal case would require stretching the relevant federal statutes beyond recognition, and that federal involvement in this matter should be precluded based on federalism concerns, the *Petite* Policy, and general principles of prosecutorial discretion, the parties commenced discussions of a possible plea agreement. Around this time, we received an e-mail from [REDACTED] suggesting that she wanted to discuss the possibility of a concurrent federal and state resolution. We were immediately informed by your Office that [REDACTED] did not have the authority to make any such plea proposals and would not be involved in any further negotiations of a plea. Despite this commitment, [REDACTED] was the principle negotiator of the Agreement. At our meeting on September 7, she made reference to an allegation against Mr. Epstein involving a 12 year old individual. This allegation is without merit and without foundation. Though your last letter suggests there was "no contact" between individuals in your Office and the press, we were previously told by Mr. Lourie that the FBI was receiving "information" specifically from Connolly, a Vanity Fair reporter, and not vice versa.

C. [REDACTED] Included Unfair Terms in the Agreement.

[REDACTED] took positions in negotiating this matter that stray from both stated policy and established law. First, [REDACTED] insisted that as part of the federal plea agreement, the State Attorney's Office, without being shown new evidence, should be convinced to charge Mr. Epstein with violations of law and recommend a sentence that are significantly harsher than what the State deemed appropriate. In fact, the State Attorney viewed this matter as a straightforward prostitution case and believed that a term of probation was - and is - the appropriate sentence. At [REDACTED]'s insistence, however, Mr. Epstein was forced to undertake the highly unusual and unprecedented action of directing his defense team to contract the State prosecutors themselves and ask for an upward departure in both his indictment and sentence. There was no effort by the state and federal prosecutors to coordinate the prosecutions, a practice which is against the tenets of the *Petite* Policy. In our view, it is unprecedented to micro-manage each and every term of Mr. Epstein's State plea, including the exact state charges to which Mr. Epstein plead guilty; the time-frame within which Mr. Epstein must enter that state plea and surrender to state officials; and the amount of time he must spend in county jail. This is particularly true where the State

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 17

Attorney's Office has a different view of the case and there has been no coordination with state authorities.⁶

In addition, ██████████ required that Mr. Epstein's sentence include a registerable offense. As you know, requiring sexual offender registration will have a significant impact both immediately and forever after. This harsh term, which is said to be suggested by the FBI, was added despite the fact that the State believed that Mr. Epstein's conduct did not warrant any such registration. As you know, state officials have special expertise in deciding which offenders pose a threat to their community. Moreover, this demand places the state prosecutors' credibility at issue and diminishes the force of sexual registration when it is applied to offenders who state prosecutors do not believe are dangerous or require registration. ██████████ decision not to permit the State Attorney to determine a matter uniquely within its province was unwarranted.

What is more, when negotiating the settlement portion of the Agreement, ██████████ insisted that a civil settlement provision be included in the Agreement, namely, the inclusion of 18 U.S.C. § 2255, a negotiating term which is unprecedented in nature.⁷ While we were reluctant and cautious about a plea agreement in which a *criminal* defendant gives up certain rights to contest liability for a *civil* settlement, ██████████ ultimatums required that we acquiesce to these unprecedented terms. For instance, when plea discussion stalled as a result of ██████████ demands, Mr. Epstein's counsel received a letter from her stating as it "now appears you will not settle." At this point, ██████████ expressed her intention to re-launch the government's previously set aside money laundering investigation. She also issued a rash of subpoenas and sent target letters to Mr. Epstein's employees, adding new federal charges including obstruction of justice. She then personally called Mr. Epstein's largest and most valued business client without any basis to inform him of the investigation.

In an attempt to prevent further persecution and intimidation tactics, we proposed that Mr. Epstein establish a restitution fund specifically for the settlement of the identified individuals' civil claims and that an impartial, independent representative be appointed to administer that fund. There was no dollar amount limit discussed for the fund, but the idea was still rejected. We then pointed out that the state charges to which Mr. Epstein was to plead guilty carried with it a state restitution provision that would allow "victims" to recover damages. Ms. ██████████ however, rejected this idea and suggested requiring a guardian ad litem, implying that

⁶ When asked whether Department of Justice policies regarding coordination with state authorities had been followed, ██████████ gave no response other than stating, "it is none of your concern."

⁷ In fact, Stephanie Thacker, a former deputy to Drew Osterbalm, has stated that she knew of no other case like this being prosecuted by CEOS. With that in mind, we welcome the opportunity to review the extensive research that CEOS has done, as indicated by your Office.

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 18

the alleged "victims" in question were currently minors and needed special representation. We later learned that the government's list of individuals included a woman as old as twenty-four, which flies in the face of prior representations (it should be noted that any person who is currently twenty four years old or older could not have been a "victim" under 18 U.S.C. § 2255, even if the conduct occurred in 2001). At ██████████ insistence, the parties ultimately agreed to the appointment of an attorney representative, but ██████████ then took the position that Mr. Epstein should pay for the representative's fees, which effectively meant that Mr. Epstein must pay to sue himself.⁸

██████████ also proposed wholly irrelevant charges such as making obscene phone calls and violations of child privacy laws. When Mr. Lourie learned of these proposed charges he asked Mr. Epstein's defense team to ignore them as they would "embarrass the Office."

D. ██████████ Continually And Purposefully Misinterpreted The Critical Terms of the Agreement.

Since the execution of the Agreement, ██████████ has repeatedly misconstrued the terms contained therein. As you know, several facets of this matter have been highly contested by the parties. We sometimes have obtained two competing views as to your willingness to compromise on specific issues that we have raised with your Office. In particular, there are times when we have received verbal agreement from you or your staff (and sometimes from Ms. ██████████ herself) on a particular issue, only to subsequently receive a contradictory interpretation from Ms. ██████████ that negates our prior common understanding. Her misinterpretations appear to be attempts to effectively change the spirit and the meaning of the Non-Prosecution Agreement. We offer several examples of significant misinterpretations.

First, despite the fact that we received several commitments from your Office that it would monitor Mr. Epstein's state sentencing but not interfere with it in any way, Ms. ██████████ sought to do just that. Ms. ██████████ decision to utilize a civil remedy statute in the place of a restitution fund for the alleged victims eliminates the notification requirement under the Justice for All Act of 2004, a federal law that requires federal authorities to notify victims as to any available restitution, not of any potential civil remedies, to which they are entitled. Despite this fact, Ms. ██████████ proposed a Victims Notification letter to be sent to the alleged federal victims. Ms. ██████████ has gone even further, alleging that the "victims" may make written statements or testify against Mr. Epstein at the sentencing. We find no basis in law or the Agreement that provides the identified individuals with either a right to appear at Mr. Epstein's plea and sentence or to submit a written statement to be filed by the State Attorney. Here, Mr.

⁸ This arrangement does not put these alleged "victims" in the same position as they would have been had Mr. Epstein been convicted at trial -- in fact, they are much better off.

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 19

Epstein is pleading guilty to, and being sentenced for, state offenses, not the federal offenses under which the government has unilaterally recognized these identified individuals as "victims". The notion that individuals whose names are not even known to the charging prosecutor in a state action should somehow be allowed to speak at a proceeding is unjustifiable.

Furthermore, only after obtaining the executed Agreement did Ms. [REDACTED] begin insisting that the selected representative's duties go beyond settlement and include litigating claims for individuals. In Ms. [REDACTED] Victims Notification letter, she states that Mr. Podhurst and Mr. Josefsberg, the selected attorney representatives, may "represent" the identified individuals. This language assumes that the selected representatives will agree to serve in the capacity envisioned by Ms. [REDACTED] which is patently incorrect. Yet, neglecting the spirit of the negotiations; neglecting the terms of the Agreement; and neglecting commonly-held principles of ethics with respect to conflicts, Ms. [REDACTED] continues to improperly emphasize that the chosen attorney representative should be able to litigate the claims of individuals.

In a similar fashion, Ms. [REDACTED] has overstated the scope of Mr. Epstein's waiver of liability pursuant to the Agreement. Ms. [REDACTED] began asserting that Mr. Epstein has waived liability even when claims with the identified individuals are not settled just after the execution of the Agreement. Despite the fact that at that time, we obtained an agreement from you that Mr. Epstein's waiver would not stretch past settlement, Ms. [REDACTED] continues to espouse this erroneous interpretation.

F. Ms. [REDACTED] and The Settlement Process.

We are concerned that Ms. [REDACTED] has repeatedly attempted to manipulate the process under which Mr. Epstein has agreed to settle civil claims. First, she inappropriately attempted to nominate Humbert "Bert" Ocariz for attorney representative, despite the fact that Mr. Ocariz has a longstanding relationship with Ms. [REDACTED]. Mr. Ocariz turns out to be a very good personal friend and law school classmate of Ms. [REDACTED]'s boyfriend, a fact she assiduously kept hidden from counsel. We also learned from Ms. [REDACTED] that she shared with Ocariz the summary of charges the government was considering against Mr. Epstein. Even after your Office conceded that it was inappropriate for its attorneys to select the attorney representative, Ms. [REDACTED] continued to lobby for Mr. Ocariz's appointment. On October 19, 2007, retired Judge Edward B. Davis, who was appointed by the parties to select the attorney representative, informed Mr. Epstein's counsel that he received a telephone call from Mr. Ocariz directly requesting that Judge Davis appoint him as the attorney representative in this matter.

Furthermore, federal interference continues to plague the integrity of the implementation of the Agreement. We recently learned that despite the fact that there was no communication between state and federal authorities as to the investigation of Mr. Epstein, the FBI visited the State Attorney's Office two weeks ago to request that Mr. Epstein be disqualified to participate in work release even though the Agreement mandates that Mr. Epstein be treated as any other inmate.

KIRKLAND & ELLIS LLP

R. Alexander Acosta
December 11, 2007
Page 20

III. CONCLUSION

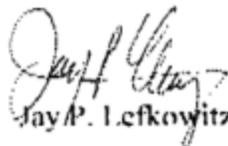
In sum, we request that you review the evidence supporting the prosecution of Mr. Epstein. Such a review would serve to address similar concerns as those raised in *Brady v. Maryland*, which mandate the disclosure of evidence material to guilt or innocence even after the execution of an Agreement to enter a plea of guilty. See 373 U.S. 83 (1963). We believe that the "prosecution team" was informed by its witnesses (including persons other than [REDACTED] and [REDACTED] who are discussed at length above) that Mr. Epstein's practice was to seek women older than 18 rather than targeting those under 18. We would expect, for instance, that [REDACTED] a key witness whose interview with the FBI was recorded, would have provided such exonerating information as well as many others. We would also expect the review to uncover clear evidence that demonstrates that Mr. Epstein did not travel to Florida for the purpose of having illegal underage sex nor that he induced underage women by using the Internet or the phones.

Furthermore, we ask you to consider whether there is reliable evidence not just that Mr. Epstein had sexual contact with witnesses who were in fact underage but whether the allegations are based on trustworthy (and corroborated) evidence that (i) Mr. Epstein knew that the female(s) in question was under 18 at the time of the sexual contact, (ii) Mr. Epstein traveled to his home in Palm Beach for the purpose of having such sexual contact to the extent the allegation charges a violation of 18 U.S.C. § 2423(b) and (c) Mr. Epstein induced such sexual contact by using an instrumentality of interstate commerce to the extent the allegations charge a violation of 18 U.S.C. § 2422(b) (there is no evidence of internet solicitation which is the norm upon which federal jurisdiction is usually modeled under this statute). We believe that the information we provide to you in this submission will be informative and spark a motivation to gain more information with respect to the investigation of this matter.

Again, we are not seeking to unwind the Agreement; we are only seeking for you to exercise your discretion in directing that an impartial and respected member of your Office test the evidence upon which the draft federal indictment was based against the "best evidence," including the transcripts of the tape recorded pre-federal involvement interviews.

Finally, I would like to reiterate our appreciation for the opportunity you have provided to review some of our issues and concerns. I look forward to speaking with you shortly.

Sincerely,


Jay P. Lefkowitz



U.S. Department of Justice

United States Attorney
Southern District of Florida

December 13, 2007

DELIVERY BY ELECTRONIC MAIL

Jay P. Lefkowitz, Esq.
Kirkland & Ellis LLP

Re: Jeffrey Epstein

Dear Jay:

I am writing not to respond to your asserted "policy concerns" regarding Mr. Epstein's Non-Prosecution Agreement, which will be addressed by the United States Attorney, but the time has come for me to respond to the ever-increasing attacks on my role in the investigation and negotiations.

It is an understatement to say that I am surprised by your allegations regarding my role because I thought that we had worked very well together in resolving this dispute. I also am surprised because I feel that I bent over backwards to keep in mind the effect that the agreement would have on Mr. Epstein and to make sure that you (and he) understood the repercussions of the agreement. For example, I brought to your attention that one potential plea could result in no gain time for your client; I corrected one of your calculations of the Sentencing Guidelines that would have resulted in Mr. Epstein spending far more time in prison than you projected; I contacted the Bureau of Prisons to see whether Mr. Epstein would be eligible for the prison camp that you desired; and I told you my suspicions about the source of the press "leak" and suggested ways to avoid the press. Importantly, I continued to work with you in a professional manner even after I learned that you had been proceeding in bad faith for several weeks – thinking that I had incorrectly concluded that solicitation of minors to engage in prostitution was a registrable offense and that you would "fool" our Office into letting Mr. Epstein plead to a non-registrable offense. Even now, when it is clear that neither you nor your client ever intended to abide by the terms of the agreement that he signed, I have never alleged misconduct on your part.

The first allegation that you raise is that I "assiduously" hid from you the fact that Bert Ocariz is a friend of my boyfriend and that I have a "longstanding relationship" with Mr. Ocariz.

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I informed you that I selected Mr. Ocariz because he was a friend and classmate of two people whom I respected, and that I had never met or spoken with Mr. Ocariz prior to contacting him about this case. All of those facts are true. I still have never met Mr. Ocariz, and, at the time that he and I spoke about this case, he did not know about my relationship with his friend. You suggest that I should have explicitly informed you that one of the referrals came from my "boyfriend" rather than simply a "friend," which is the term I used, but it is not my nature to discuss my personal relationships with opposing counsel. Your attacks on me and on the victims establish why I wanted to find someone whom I could trust with safeguarding the victims' best interests in the face of intense pressure from an unlimited number of highly skilled and well paid attorneys. Mr. Ocariz was that person.

One of your letters suggests a business relationship between Mr. Ocariz and my boyfriend. This is patently untrue and neither my boyfriend nor I would have received any financial benefit from Mr. Ocariz's appointment. Furthermore, after Mr. Ocariz learned more about Mr. Epstein's actions (as described below), he expressed a willingness to handle the case *pro bono*, with no financial benefit even to himself. Furthermore, you were given several other options to choose from, including the Podhurst firm, which was later selected by Judge Davis. You rejected those other options.

You also allege that I improperly disclosed information about the case to Mr. Ocariz. I provided Mr. Ocariz with a bare bones summary of the agreement's terms related to his appointment to help him decide whether the case was something he and his firm would be willing to undertake. I did not provide Mr. Ocariz with facts related to the investigation because they were confidential and instead recommended that he "Google" Mr. Epstein's name for background information. When Mr. Ocariz asked for additional information to assist his firm in addressing conflicts issues, I forwarded those questions to you, and you raised objections for the first time. I did not share any further information about Mr. Epstein or the case. Since Mr. Ocariz had been told that you concurred in his selection, out of professional courtesy, I informed Mr. Ocariz of the Office's decision to use a Special Master to make the selection and told him that the Office had made contact with Judge Davis. We have had no further contact since then and I have never had contact with Judge Davis. I understand from you that Mr. Ocariz contacted Judge Davis. You criticize his decision to do so, yet you feel that you and your co-counsel were entitled to contact Judge Davis to try to "lobby" him to select someone to your liking, despite the fact that the Non-Prosecution Agreement vested the Office with the exclusive right to select the attorney representative.

Another reason for my surprise about your allegations regarding misconduct related to the Section 2255 litigation is your earlier desire to have me perform the role of "facilitator" to convince the victims that the lawyer representative was selected by the Office to represent their interests alone and that the out-of-court settlement of their claims was in their best interests. You now state that doing the same things that you had asked me to do earlier is improper meddling in civil litigation.

Much of your letter reiterates the challenges to Detective [REDACTED] investigation that have

already been submitted to the Office on several occasions and you suggest that I have kept that information from those who reviewed the proposed indictment package. Contrary to your suggestion, those submissions were attached to and incorporated in the proposed indictment package, so your suggestion that I tried to hide something from the reviewers is false. I also take issue with the duplicity of stating that we must accept as true those parts of the Recarey reports and witness statements that you like and we must accept as false those parts that you do not like. You and your co-counsel also impressed upon me from the beginning the need to undertake an independent investigation. It seems inappropriate now to complain because our independent investigation uncovered facts that are unfavorable to your client.

You complain that I “forced” your client and the State Attorney’s Office to proceed on charges that they do not believe in, yet you do not want our Office to inform the State Attorney’s Office of facts that support the additional charge nor do you want any of the victims of that charge to contact Ms. Belohlavek or the Court. Ms. Belohlavek’s opinion may change if she knows the full scope of your client’s actions. You and I spent several weeks trying to identify and put together a plea to federal charges that your client was willing to accept. Yet your letter now accuses me of “manufacturing” charges of obstruction of justice, making obscene phone calls, and violating child privacy laws. When Mr. Lourie told you that those charges would “embarrass the Office,” he meant that the Office was unwilling to bend the facts to satisfy Mr. Epstein’s desired prison sentence – a statement with which I agree.

I hope that you understand how your accusations that I imposed “ultimatums” and “forced” you and your client to agree to unconscionable contract terms cannot square with the true facts of this case. As explained in letters from Messrs. Acosta and [REDACTED] the indictment was postponed for more than five months to allow you and Mr. Epstein’s other attorneys to make presentations to the Office to convince the Office not to prosecute. Those presentations were unsuccessful. As you mention in your letter, I – a simple line AUSA – handled the primary negotiations for the Office, and conducted those negotiations with you, Ms. Sanchez, Mr. Lewis, and a host of other highly skilled and experienced practitioners. As you put it, your group has a “combined 250 years experience” to my fourteen. The agreement itself was signed by Mr. Epstein, Ms. Sanchez, and Mr. Lefcourt, whose experience speaks for itself. You and I spent hours negotiating the terms, including when to use “a” versus “the” and other minutiae. When you and I could not reach agreement, you repeatedly went over my head, involving Messrs. [REDACTED] and Acosta in the negotiations at various times. In any and all plea negotiations the defendant understands that his options are to plead or to continue with the investigation and proceed to trial. Those were the same options that were proposed to Mr. Epstein, and they are not “persecution or intimidation tactics.” Mr. Epstein chose to sign the agreement with the advice of a multitude of extremely noteworthy counsel.

You also make much of the fact that the names of the victims were not released to Mr. Epstein prior to signing the Agreement. You never asked for such a term. During an earlier meeting, where Mr. Black was present, he raised the concern that you now voice. Mr. Black and I did not have a chance to discuss the issue, but I had already conceived of a way to resolve that

issue if it were raised during negotiations. As I stated, it was not, leading me to believe that it was not a matter of concern to the defense. Since the signing of the Non-Prosecution Agreement, the agents and I have vetted the list of victims more than once. In one instance, we decided to remove a name because, although the minor victim was touched inappropriately by Mr. Epstein, we decided that the link to a payment was insufficient to call it "prostitution." I have always remained open to a challenge to the list, so your suggestion that Mr. Epstein was forced to write a blank check is simply unfounded.

Your last set of allegations relates to the investigation of the matter. For instance, you claim that some of the victims were informed of their right to collect damages prior to a thorough investigation of their allegations against Mr. Epstein. This also is false. None of the victims was informed of the right to sue under Section 2255 prior to the investigation of the claims. Three victims were notified shortly after the signing of the Non-Prosecution Agreement of the general terms of that Agreement. You raised objections to any victim notification, and no further notifications were done. Throughout this process you have seen that I have prepared this case as though it would proceed to trial. Notifying the witnesses of the possibility of damages claims prior to concluding the matter by plea or trial would only undermine my case. If my reassurances are insufficient, the fact that not a single victim has threatened to sue Mr. Epstein should assure you of the integrity of the investigation.¹

¹There are numerous other unfounded allegations in your letter about document demands, the money laundering investigation, contacting potential witnesses, speaking with the press, and the like. For the most part, these allegations have been raised and disproven earlier and need not be readdressed. However, with respect to the subpoena served upon the private investigator, contrary to your assertion, and as your co-counsel has already been told, I did consult with the Justice Department prior to issuing the subpoena and I was told that because I was not subpoenaing an attorney's office or an office physically located within an attorney's office, and because the business did private investigation work for individuals (rather than working exclusively for Mr. Black), I could issue a grand jury subpoena in the normal course, which is what I did. I also did not "threaten" the State Attorney's Office with a grand jury subpoena, as the correspondence with their grand jury coordinator makes perfectly clear.

With regard to your allegation of my filing the Palm Beach Police Department's probable cause affidavit "with the court knowing that the public could access it," I do not know to what you are referring. All documents related to the grand jury investigation have been filed under seal, and the Palm Beach Police Department's probable cause affidavit has never been filed with the Court. If, in fact, you are referring to the *Ex Parte* Declaration of Joseph Recarey that was filed in response to the motion to quash the grand jury subpoena, it was filed both under seal and *ex parte*, so no one should have access to it except the Court and myself. Those documents are still in the Court file only because you have violated one of the terms of the Agreement by failing to "withdraw [Epstein's] pending motion to intervene and to quash certain grand jury subpoenas."

JAY P. LEFKOWITZ, ESQ.
DECEMBER 13, 2007
PAGE 5 OF 5

With respect to Ms. Miller, I contacted her attorney – who was paid for by Mr. Epstein and was directed by counsel for Mr. Epstein to demand immunity – and asked only whether he still represented Ms. Miller and if he wanted me to send the victim notification letter to him. He asked what the letter would say and I told him that the letter would be forthcoming in about a week and that I could not provide him with the terms. With respect to Ms. Miller's status as a victim, you again want us to accept as true only facts that are beneficial to your client and to reject as false anything detrimental to him. Ms. Miller made a number of statements that are contradicted by documentary evidence and a review of her recorded statement shows her lack of credibility with respect to a number of statements. Based upon all of the evidence collected, Ms. Miller is classified as a victim as defined by statute. Of course, that does not mean that Ms. Miller considers herself a victim or that she would seek damages from Mr. Epstein. I believe that a number of the identified victims will not seek damages, but that does not negate their legal status as victims.

I hope that you now understand that your accusations against myself and the agents are unfounded. In the future, I recommend that you address your accusations to me so that I can correct any misunderstandings before you make false allegations to others in the Department. I hope that we can move forward with a professional resolution of this matter, whether that be by your client's adherence to the contract that he signed, or by virtue of a trial.

Sincerely,

R. Alexander Acosta
United States Attorney

By:


Assistant United States Attorney

cc: R. Alexander Acosta, U.S. Attorney
 First Assistant U.S. Attorney

You also accuse me of "broaden[ing] the scope of the investigation without any foundation for doing so by adding charges of money laundering and violations of a money transmitting business to the investigation." Again, I consulted with the Justice Department's Money Laundering Section about my analysis before expanding that scope. The duty attorney agreed with my analysis.

Jay Lefkowitz/New
York/Kirkland-Ellis
02/29/2008 03:11 PM

To [REDACTED]
cc [REDACTED]
bcc [REDACTED]
Subject Fw: Epstein

Dear Alex,

I received the attached email from [REDACTED] this week and to put it mildly, I was shocked. As you will recall, back at the beginning of January, when we both agreed that there were significant irregularities with the deferred prosecution agreement, you called a time-out. You had decided to ask Drew's Office to take a look at the matter and suggested that we would be hearing him within days.

At that time, we welcomed the development -- especially given that we had reason to be concerned that some of the individuals in your Office were not acting appropriately in relation to this matter. In particular, we were very concerned that one of your prosecutors had given a substantial amount of information to a New York Times reporter -- telling him not only about specific aspects of our plea negotiations, but also sharing with him details about your Office's theory concerning what laws you believe Mr. Epstein has violated. In broad strokes, Mr. David Weinstein told Mr. Thomas that the Office was contemplating charging Mr. Epstein under Sections 2422(b) (with a full discussion of principal liability), 2423, and 1591. He also complained about Mr. Epstein's lawyers and told Mr. Thomas not to "believe the spin from Mr. Epstein's high priced attorneys." Mr. Weinstein even informed Mr. Thomas that we had "asked for privately paid armed guards" as part of a house arrest proposal we had made. Even more surprising, he subsequently told Mr. Thomas that we had learned of the conversation, complained about it and suggested an explanation. Needless to say, we were very troubled by these conversations.

At this same time, we agreed that in order to provide Drew a sufficient amount of time to evaluate the matter, it made sense to move the deadline for state plea to March, which we did. I was therefore quite surprised to receive, in rapid succession, a call from Drew asking to begin the review process and then only two days later, an email from Jeff informing me of new and extremely short and arbitrary deadlines.

The one thing I had become certain about in this case was that you were sincere in your desire to ensure that the DOJ took a proper and principled position with respect to this matter, and that you fully accepted our desire, and our right, to appeal any adverse decision by your Office to the DOJ. In fact, on several occasions -- including our meeting before Thanksgiving in your Office -- you stated precisely as much to me. That is why I am so surprised by Jeff's latest email. We are very interested in having the meetings you suggested with Drew. It would be very unfortunate to begin the review process that you have asked Drew to conduct and at the same time artificially constrict it. As you know, the timing of a thorough review would cause no prejudice to the government's prosecution of Mr. Epstein. To the contrary, we hope that our dialogue with Drew will allow for the government to make a more informed decision concerning this matter.

We have been waiting eagerly for a call from Drew for nearly two months. Now that he is prepared to meet with us, it is unfair for [REDACTED] to seek to impose artificial deadlines. Since I will be in trial next week, we are planning to begin our meetings with Drew during the second week in March.

I sincerely hope we can resolve this matter in the near future. To be clear -- at this stage -- we are not asking for anything but the same due process that you promised to afford to us when we last spoke in early January.

Best, Jay

cc: [REDACTED]

Kenneth W. Starr
Kirkland & Ellis LLP



Joe D. Whitley
Alston & Bird LLP



May 19, 2008

VIA FACSIMILE (202) 514-0467

CONFIDENTIAL

Honorable Mark Filip
Office of the Deputy Attorney General
United States Department of Justice



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.

Honorable Mark Filip
May 19, 2008
Page 2

By way of background, we were informed by Mr. Acosta that, at his request, CEOS would be conducting a review to determine whether federal prosecution was both appropriate and, in his words, "fair." That is not what occurred. Instead, CEOS has now acknowledged that we had raised "many compelling arguments" against the USAO's suggested "novel application" of federal law in this matter. Even so, CEOS concluded, in minimalist fashion, that "we do not see anything that says to us *categorically* that a federal case should not be brought" and that the U.S. Attorney "would not be *abusing his prosecutorial discretion* should he authorize federal prosecution of Mr. Epstein" thus delegating back to Mr. Acosta the decision of whether federal prosecution was warranted (*emphasis added*). Rather than assessing whether prosecution would be *appropriate*, CEOS, using a low baseline for its evaluation, determined only that "it would not be impossible to prove . . ." certain allegations made against Mr. Epstein. The CEOS review failed to address the significant problems involving the appearance of impermissible selectivity that would necessarily result from a federal prosecution of Mr. Epstein.

We respect CEOS's conclusion that its authority to review "misconduct" issues was precluded by Criminal Division practice. We further respect CEOS's view that it understood its mission as significantly limited. Specifically, the contemplated objective was to determine whether the USAO would be abusing its discretion by bringing a federal prosecution rather than making its own *de novo* recommendations on the appropriate reach of federal law. However, we respectfully submit that a full review of all the facts is urgently needed at senior levels of the Justice Department. In an effort to inform you of the nature of the federal investigation against Mr. Epstein, we summarize the facts and circumstances of this matter below.

The two base-level concerns we hold are that (1) federal prosecution of this matter is not warranted based on the purely-local conduct and the unprecedented application of federal statutes to facts such as these and (2) the actions of federal authorities are both highly questionable and give rise to an appearance of substantial impropriety. The issues that we have raised, but which have not yet been addressed or resolved by the Department, are more than isolated allegations of professional mistakes or misconduct. These issues, instead, affect the appearance and administration of criminal justice with profound consequences beyond the resolution in the matter at hand.

* * *

In a precedent-shattering investigation of Jeffrey Epstein that raises important policy questions—and serious issues as to the fair and honorable enforcement of federal law—the USAO in Miami is considering extending federal law beyond the bounds of precedent and reason. Federal prosecutors stretched the underlying facts in ways that raise fundamental questions of basic professionalism. Perhaps most troubling, the USAO in Miami, as a condition of deferring prosecution, required a commingling of substantive federal criminal law with a proposed civil remedy engineered in a way that appears intended to profit particular lawyers in

Honorable Mark Filip
May 19, 2008
Page 3

private practice in South Florida with personal relationships to some of the prosecutors involved. Federal prosecutors then leaked highly sensitive information about the case to a New York Times reporter.¹ The immediate result of this confluence of extraordinary circumstances is an onslaught of civil lawsuits, all save one brought by the First Assistant's former boutique law firm in Miami.

The facts in this case all revolve around the classic state crime of solicitation of prostitution.² The State Attorney's Office in Palm Beach County had conducted a diligent investigation, convened a Grand Jury that returned an indictment, and made a final determination about how to proceed. That is where, in our federal republic, this matter should rest. Mr. Epstein faces a felony conviction in state court by virtue of his conduct, and the only reason the State has not resolved this matter is that the federal prosecutors in Miami have continued to insist that we, Mr. Epstein's counsel, approach and demand from the State Attorney's Office a harsher charge and a more severe punishment than that Office believes are appropriate under the circumstances. Yet despite the USAO's refusal to allow the State to resolve this matter on the terms the State has determined are appropriate, the USAO has not made any attempt to coordinate its efforts with the State. In fact, the USAO mandated that any federal agreement would be conditioned on Mr. Epstein persuading the State to seek a criminal punishment unlike that imposed on other defendants within the jurisdiction of the State Attorney for similar conduct.

From the inception of the USAO's involvement in this case, which at the end of the day is a case about solicitation of prostitution within the confines of Palm Beach County, Florida, we have asked ourselves why the Department of Justice is involved. Regrettably, we are unable to suggest any appropriate basis for the Department's involvement. Mr. Epstein has no criminal history whatsoever. Also, Mr. Epstein has never been the subject of general media interest until a few years ago, after it was widely perceived by the public that he was a close friend of former President Bill Clinton.

The conduct at issue is simply not within the purview of federal jurisdiction and lies outside the heartland of the three federal statutes that have been identified by prosecutors—18 U.S.C. §§ 1591, 2422(b), and 2423(b).

¹ One of the other members of Mr. Epstein's defense team, Jay Lefkowitz, has personally reviewed the reporter's contemporaneous notes.

² Although some of the women alleged to be involved were 16 and 17 years of age, several of these women openly admitted to lying to Mr. Epstein about their age in their recent sworn statements.

Honorable Mark Filip

May 19, 2008

Page 4

These statutes are intended to target crimes of a truly national and international scope. Specifically, § 1591 was enacted to combat human trafficking, § 2422 is aimed at sexual predation of minors through the Internet, and § 2423 deals with sex tourism. The nature of these crimes results in multi-jurisdictional problems that state and local authorities cannot effectively confront on their own. However, Mr. Epstein's conduct was purely local in nature and, thus, does not implicate federal involvement. After researching every reported case brought under 18 U.S.C. §§ 1591, 2422(b), and 2423(b), we found that not a single case involves facts or a scenario similar to the situation at hand. Our review of each precedent reflects that there have been no reported prosecutions under § 1591 of a 'john' whose conduct with a minor lacked force, coercion, or fraud and who was not profiting from commercial sexual trafficking. There have likewise been no cases under § 2422(b)—a crime of communication—where there was no use of the Internet, and where the content of phone communications did not contain any inducing or enticing of a minor to have illegal sexual activity as expressly required by the language of the statute. Furthermore, the Government's contention that "routine and habit" can fill the factual and legal void created by the lack of evidence that such a communication ever occurred sets this case apart from every reported case brought under § 2422(b). Lastly, there are no reported cases of violations of § 2423(b) of a person whose dominant purpose in traveling was merely to go to his own home.³

Although these matters were within the scope of the CEOS review, rather than considering whether federal prosecution is appropriate, CEOS only determined that U.S. Attorney Acosta "would not be abusing his prosecutorial discretion should he authorize federal prosecution" in this case. The "abuse of discretion" standard constitutes an extremely low bar of evaluation and while it may be appropriate when the consideration of issues are exclusively factual in nature, this standard fails to address concerns particular to this situation, namely the "novel application" of federal statutes. The "abuse of discretion" standard in such pure legal matters of statutory application risks causing a lack of uniformity. The same federal statutes that would be stretched beyond their bounds in Miami have been limited to their heartland in each of the other federal districts. Also, because this case implicates broader issues of the administration of equal justice, federal prosecution in this matter risks the appearance of selectivity in its stretching of federal law to fit these facts.

³ Federal prosecution of a man who engaged in consensual conduct in his home that amounted to, at most, the solicitation of prostitution, is unprecedented. Since prostitution is fundamentally a state concern, (*see United States v. Evans*, 476 F.3d 1176, n.1 (11th Cir. 2007) (federal law "does not criminalize all acts of prostitution (a vice traditionally governed by state regulation)"), and there is no evidence that Palm Beach County authorities and Florida prosecutors cannot effectively prosecute and punish the conduct, there is no reason why this matter should be extracted from the hands of state prosecutors in Florida.

Honorable Mark Filip
May 19, 2008
Page 5

In fact, recent testimony of several alleged "victims" contradicts claims made by federal prosecutors during the negotiations of a deferred prosecution agreement. The consistent representations of key Government witnesses (such as [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] confirm the following critical points: *First*, there was no communication, telephonic or otherwise, that meets the requirements of § 2422(b). For instance, Ms. [REDACTED] confirmed that Mr. Epstein never emailed, text-messaged, or used any facility of interstate commerce whatsoever, before or after her one (and only) visit to his home. [REDACTED] Tr. (deposition) at 30. *Second*, the women who testified admitted that they lied to Mr. Epstein about their age in order to gain admittance into his home. Indeed, the women who brought their underage friends to Mr. Epstein testified that they would counsel their friends to lie about their ages as well. Ms. Miller stated the following: "I would tell my girlfriends just like [REDACTED] approached me. Make sure you tell him you're 18. Well, these girls that I brought, I know that they were 18 or 19 or 20. And the girls that I didn't know and I don't know if they were lying or not, I would say make sure that you tell him you're 18." Miller Tr. at 22. *Third*, there was no routine or habit of improper communication expressing an intent to transform a massage into an illegal sexual act. In fact, there was often no sexual activity at all during the massage. Ms. Miller testified that "[s]ometimes [Mr. Epstein] just wanted his feet massaged. Sometimes he just wanted a back massage." Miller Tr. at 19. [REDACTED] also stated that Mr. Epstein "never touched [her] physically" and that all she did was "massage[] his back, his chest and his thighs and that was it." [REDACTED] Tr. at 12-13. *Finally*, there was no force, coercion, fraud, violence, drugs, or even alcohol present in connection with Mr. Epstein's encounters with these women. Ms. [REDACTED] stated that "[Mr. Epstein] never tried to force me to do anything." [REDACTED] Tr. A at 12. These accounts are far from the usual testimony in sex slavery, Internet stings and sex tourism cases previously brought. The women in actuality were not younger than 16, which is the age of consent in most of the 50 states, and the sex activity was irregular and in large part, consisted of solo self-pleasuring.

The recent crop of civil suits brought against Mr. Epstein confirm that the plaintiffs did not discuss any sexually-related activities with anyone prior to arriving at Mr. Epstein's residence. This reinforces our contention that no telephonic or Internet persuasion, inducement, enticement or coercion of a minor, or of any other individual, occurred. In addition, Mr. Jeffrey Herman, the former law partner of one of the federal prosecutors involved in this matter and the attorney for most of the civil complainants (as described in detail below), was quoted in the Palm Beach *Post* as saying that "it doesn't matter" that his clients lied about their ages and told Mr. Epstein that they were 18 or 19.

Not only is a federal prosecution of this matter unwarranted, but the irregularity of conduct by prosecutors and the unorthodox terms of the deferred prosecution agreement are beyond any reasonable interpretation of the scope of a prosecutor's responsibilities. The list of improprieties includes, but is not limited to, the following facts:

Honorable Mark Filip
May 19, 2008
Page 6

- Federal prosecutors made the unprecedented demand that Mr. Epstein pay a minimum of \$150,000 per person to an unnamed list of women they referred to as minors and whom they insisted required representation by a guardian ad litem. Mr. Epstein's counsel later established that all but one of these individuals were actually adults, not minors. Even then, though demanding payment to the women, the USAO eventually asserted that it could not vouch for the veracity of any of the claims that these women might make.
- Federal prosecutors made the highly unusual demand that Mr. Epstein pay the fees of a civil attorney chosen by the prosecutors to represent these alleged "victims" should they choose to bring any civil litigation against him. They also proposed sending a notice to the alleged "victims," stating, in an underlined sentence, that should they choose their own attorney, Mr. Epstein would not be required to pay their fees. The prosecutors further demanded that Mr. Epstein waive his right to challenge any of the allegations made by these "victims."
- The Assistant U.S. Attorney involved in this matter recommended for the civil attorney, a highly lucrative position, an individual that we later discovered was closely and personally connected to the Assistant U.S. Attorney's own boyfriend.
- Federal prosecutors represented to Mr. Epstein's counsel that they had identified (and later rechecked and re-identified) several alleged "victims" of federal crimes that qualified for payment under 18 U.S.C. § 2255, a civil remedy designed to provide financial benefits to victims. Only through state discovery provisions did we later learn that many of the women on the rechecked "victim list" could not possibly qualify under § 2255. The reason is that they, themselves, testified that they did not suffer any type of harm whatsoever, a prerequisite for the civil recovery under § 2255. Moreover, these women stated that they did not, now or in the past, consider themselves to be victims.
- During the last few months, Mr. Herman, First Assistant [REDACTED] former law partner, has filed several civil lawsuits against Mr. Epstein on behalf of the alleged "victims." It is our understanding that each of Mr. Herman's clients are on the

Honorable Mark Filip
May 19, 2008
Page 7

Government's confidential "list of victims." Most of these lawsuits seek \$50 million in money damages.⁴

- Assistant U.S. Attorney ██████ spoke about the case in great detail to Landon Thomas, a reporter with the *New York Times*, and revealed confidential information about the Government's allegations against Mr. Epstein. The Assistant U.S. Attorney also revealed the substance of confidential plea negotiations.
- When counsel for Mr. Epstein complained about the media leaks, First Assistant ██████ responded by asserting that "Mr. Thomas was given, pursuant to his request, non-case specific information concerning specific federal statutes." Based on Mr. Thomas' contemporaneous notes, that assertion appears to be false. For example, Mr. ██████ told Mr. Thomas that federal authorities believed that Mr. Epstein had lured girls over the telephone and traveled in interstate commerce for the purpose of engaging in underage sex. He recounted to Mr. Thomas the USAO's theory of prosecution against Mr. Epstein, replete with an analysis of the key statutes being considered. Furthermore, after Mr. Epstein's defense team complained about the leak to the USAO, Mr. ██████, in Mr. Thomas' own description, then admonished him for talking to the defense, and getting him in trouble. Mr. ██████ further told him not to believe the "spin" of Mr. Epstein's "high-priced attorneys," and then, according to Mr. Thomas, Mr. ██████ forcefully "reminded" Mr. Thomas that all prior conversations were merely hypothetical.

We are constrained to conclude that the actions of federal officials in this case strike at the heart of one of the vitally important, enduring values in this country: the honest enforcement of federal law, free of political considerations and free of the taint of personal financial motivations on the part of federal prosecutors that, at a minimum, raise the appearance of serious impropriety.

We were told by U.S. Attorney Acosta that as part of the review he requested, the Department had the authority, and his consent, to make any determination it deemed appropriate regarding this matter, including a decision to decline federal prosecution. Yet, CEOS's only conclusion, based on its limited review of the investigation, is that U.S. Attorney Acosta would not abuse his discretion by proceeding against Mr. Epstein. Thus, the decision of whether

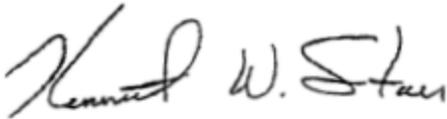
⁴ As recently as two months ago, Mr. ██████ was still listed publicly as a part of his former law firm. While we assume this was an oversight, Mr. ██████ identification as part of the firm raises the appearance of impropriety.

Honorable Mark Filip
May 19, 2008
Page 8

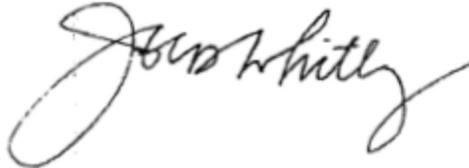
prosecution *is fair and appropriate* has been placed, once again, in U.S. Attorney Acosta's hands.

In light of the foregoing, we respectfully ask that you review this matter and discontinue all federal involvement so that the State can appropriately bring this matter to closure. We would greatly appreciate the opportunity to meet with you to discuss these important issues. Such a meeting would provide the Department with an opportunity to review the paramount issues of federalism and the appearance of selectivity that are generated by the unprecedented attempts to broaden the ambit of federal statutes to places that they have never before reached. We sincerely appreciate your attention to this matter.

Respectfully submitted,



Kenneth W. Starr
Kirkland & Ellis LLP



Joe D. Whitley
Alston & Bird LLP

KIRKLAND & ELLIS LLP

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 First Assistant United States Attorney to participate in such a communication, FAUSA ██████████ 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, FAUSA ██████████ reported to local police an attempted trespass by a 17-year-old male. Mr. ██████████ claimed that the individual had attempted to enter Mr. ██████████'s 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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same individual had previously fled the home of another neighbor after entering that house uninvited, when, looking for the bedroom of their 17-year-old daughter, he mistakenly entered the bedroom of their 14-year-old daughter, touched her on the leg and startled her awake. *State of Florida v. Johnathan Jeffrey Zirulnikoff*, Case No. F078646 (June 28, 2007).

7. After a thorough review by the Miami State Attorney's Office, and sex-crimes prosecutor Laura Adams, the investigation revealed that the defendant and both the neighbor's 17-year-old daughter and Mr. ██████ daughter were previously acquainted. The defendant was charged with simple trespass in connection with his unauthorized entry into the neighbor's house. *Id.*
8. FAUSA ██████, however, demanded that the young man be *registered as a sex offender* and objected to any sentence short of incarceration. The Assistant State Attorney in charge of the sex-crimes unit reported Mr. Sloman's conduct during the proceedings as "outrageous." The defendant's attorney described Mr. ██████ as being "out of control." Shortly after, Mr. ██████ began publicly deriding the elected State Attorney, his office and the state process for prosecuting sex offenses, as "a joke."

Unauthorized Tactics in Disregard of the United States Attorney's Manual are Used

9. In June 2007, AUSA ██████ subpoenaed the investigating agent of Epstein's attorney, Roy Black, in a clear effort to invade the defense camp. The subpoena was specifically drafted to discover the investigator's contacts, with all prospective witnesses, Mr. Epstein and his attorneys.¹ Not surprisingly, Ms. ██████ issued this subpoena *without the requisite prior approval* by the DOJ's Office of Enforcement Operations. See United States Attorneys' Manual, § 9-13.410. When confronted, she misleadingly responded that she had consulted with the Department of Justice and *was not required to obtain OEO approval* because her subpoena was not directed to "an office physically located within an attorney's office." See Tab 18, December 13, 2007 Letter from ██████ at 4 n.1. This answer clearly suggests that ██████ had intentionally misled the Department officials about the items that her subpoena sought.²

¹ The subpoena sought, among other things: "All documents and information related to the nature of the relationship between [the investigator and/or his firm] and Mr. Jeffrey Epstein, including but not limited to . . . records of the dates when services were performed . . . telephone logs or records of dates of communications with Mr. Epstein (or with a third party on Mr. Epstein's behalf); appointment calendars/datebooks and the like (whether in hard copy or electronic form) for any period when work was performed on behalf of Mr. Epstein or when any communication was had with Mr. Epstein (or with a third party on Mr. Epstein's behalf) . See Tab 17, June 18, 2007 Subpoena to William Riley/ Riley Kiraly, ¶ 3.

² Indeed, we are aware of two other recent instances in which ██████ placed serious misrepresentations before a court. On July 31, 2007, in the grand-jury litigation arising out of this case, she filed the "Declaration of ██████," attaching the state detective's affidavit in support of a search warrant for Epstein's house. See *In Re Grand Jury Subpoenas Duces Tecum OLY-63 and OLY-64*, No. FGJ 07-103(WPB) (S.D. Fla. July 31, 2007). At the time she filed Detective ██████ affidavit, she knew it contained numerous material misrepresentations, including gross misstatements of witness statements and other evidence. Second, we (Continued...)

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Mr. Epstein is Required to Agree to Civil Liability In Order to Avoid a Federal Indictment

10. On July 31, 2007, during negotiations over a possible federal plea agreement, FAUSA [REDACTED] demanded that Mr. Epstein agree to the imposition of civil liability under 18 U.S.C. § 2255 as a pre-condition to deferral of federal prosecution. To the best of our knowledge, the inclusion of such a term in a deferred prosecution agreement of this kind is absolutely unprecedented.³ Specifically, Ms. [REDACTED] demanded that Mr. Epstein waive the right to contest civil liability to a list of individuals she said were "victims" of § 2255, *whose names, however, she refused to disclose*, and agree to *pay damages of a minimum of \$150,000* to each and every one of such undisclosed individuals, and *hire an attorney to represent them if they decided to sue him*. See Tab 20, July 31, 2007 Draft of Deferred Prosecution Agreement.
11. FAUSA [REDACTED] and ROSA [REDACTED] insisted that the identities of the individuals on the list not be disclosed to Mr. Epstein or his counsel *until after Mr. Epstein was already sentenced* in the state case.
- (a) Over the next two months, Mr. [REDACTED] refused to negotiate these terms. They ultimately became incorporated into the final deferred prosecution agreement. See Tab 21, September 24, 2007 Non-Prosecution Agreement, ¶¶ 7-11.
- (b) It was not until seven months later, in February 2008, that Epstein's lawyers were able to take their first official statement from one of the women FAUSA [REDACTED] alleged were minor victims of federal offenses.
- (c) This statement, a deposition of [REDACTED] the initial complainant in the state case, taken in the presence of her lawyer, proved that none of the necessary elements for any federal charge could be satisfied based on Ms. [REDACTED] brief contact with Mr. Epstein. The witness also admitted lying to Mr. Epstein, testifying that she told him that she was an adult and wanted him to believe that she was an adult. See Tab 13, [REDACTED] Tr. (deposition), p. 35 ("Q. So you told Jeff that you were 18 years old, correct? A. Yes."), 37 ("Q. You wanted Mr. Epstein to believe that you really were 18, right? A. Correct.").
- (d) Shortly after this deposition, the defense was able to obtain statements from other women on Mr. [REDACTED] so called "list of § 2255 victims" and, so far, all such statements also continue to demonstrate that Mr. [REDACTED] repeated representations to the defense about the existence of federal jurisdiction were false.

understand that [REDACTED] was recently reprimanded at a special hearing convened by a United States District Judge in the West Palm Beach Division of the Southern District of Florida, for making misrepresentations during a prior sentencing proceeding.

³ In fact, Stephanie Thacker, a former deputy to CEOS Chief Drew Oosterbaan, has stated that she knew of no other case like this being prosecuted by CEOS.

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12. In August 2007, in a clear attempt to coerce a state settlement, Ms. ██████ threatened to broaden the investigation to include a money laundering violation (18 U.S.C. § 1956), though all the funds expended were simply Mr. Epstein's, and a violation for operating an unlicensed money-transmitting business (18 U.S.C. § 1960), though Mr. Epstein never had such a business. See Tab 22, August 31, 2007 Letter from ██████ha to Ross (reciting, in a target letter to one of Epstein's employees, that the investigation concerns "suspected violations of federal law, including but not limited to, possible violations of Title 18, United States Code, Sections . . . 1591, . . . 1956, 1960 . . .") (emphasis added).
13. On the very same day that the grand jury issued subpoenas to the records-custodian and employees of Epstein's businesses for *all financial transactions* from 2003 forward, Ms. Villafana (who we were told was not authorized to act in this regard without supervisory approval) *promised to close the money-laundering investigation* "if the sex offense case is resolved." See Tab 23, August 16, 2007 Letter from ██████ to G. Lefcourt ("In other words, if the sex offense case is resolved, the Office would close its investigation into other areas as well. The matter has not been, and it does not appear that it will be, resolved so the money laundering investigation continues, and Request Number 6 [seeking records of every financial transaction conducted by Epstein and his six businesses from "January 1, 2003 to the present"] will not be withdrawn.").
14. Two weeks later, when Mr. Epstein continued to oppose federal prosecution during negotiations and Mr. Epstein's counsel sought a meeting with the United States Attorney, ██████ ██████ classified all of Mr. Epstein's assistants as targets (sending a target letter to one of them and promising the attorney of the other two that additional target letters would be served on them as well), dispatched FBI agents to the homes of two of his secretaries, and personally telephoned Mr. Epstein's largest business client to advise him of the nature of the investigation. See Tab 22, August 31, 2007 Letter from M. Villafana to A. Ross.

FAUSA ██████ Forces Mr. Epstein's Lawyers to Convince the State Prosecutors To Impose a More Severe Sentence Than They Believe Is Appropriate

15. Throughout the plea negotiations with the USAO, Mr. ██████ continually insisted that the only way they would agree not to bring a federal indictment was if Epstein's lawyers, not the state prosecutors as required under the *Petite Policy*, convinced the state prosecutors to impose a more severe punishment than the state believed was appropriate under the circumstances.
16. FAUSA ██████ version of the history with respect to the sentence he required Mr. Epstein's lawyers to seek from the State contradicts his later assertion, which is patently false—that "*the SDFL indicated a willingness to defer to the State the length of incarceration*" and "*considered a plea to federal charges that limited Epstein's sentencing exposure . . .*" See Tab 1, May 19, 2008 Letter from J. ██████ In fact, by a email dated August 3, 2007, Criminal Division Chief ██████ advised the defense that the federal government required a minimum term of two years of incarceration. See Tab 40, August 3, 2007 Email from ██████ Subsequently, Ms.

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██████████ emailed the defense stating that United States Attorney Acosta would accept no less than 18 months of incarceration, following by a one-year term of house arrest.

Federal Prosecutors Misrepresented the Number of Alleged "Victims."

17. In September 2007, in order to add additional pressure on Mr. Epstein to execute a deferred prosecution agreement, AUSA ██████████ claimed that there were "40" minors on the government's list of purported § 2255 victims. To compound that misleading characterization, she continued to insist that a guardian-ad-litem be appointed to represent these purported "minors" in the proceedings. See Tab 24, September 19, 2007 Email from M ██████████ to J. Lefkowitz.
18. When challenged as to whether there was a genuine need for a *guardian*, given that Ms. ██████████ continued to refuse to disclose the names or any other information about her putative list of "minors," she eventually conceded that *only "I is definitely under 18 still, and I think there is another minor."* See Tab 25, September 23, 2007 Email from M. ██████████ to J. Lefkowitz (emphasis added).
19. The next day, AUSA ██████████ retreated from the number "40," stating that she had now "compiled a list of 34 confirmed minor victims with no definition of how they would be considered as such.. There are six others, whose names we already have, who need to be interviewed by the FBI to confirm whether they were 17 or 18 at the time of their activity with Mr. Epstein." See Tab 26, September 24, 2007 Email from M. ██████████ to J. Lefkowitz (emphasis added). This statement indicated that, at least the "six others" (and, as it turns out, all those identified except two) had reached the age of majority, and, in fact, no guardian was necessary to represent their interests.

Defense Counsel was Falsely Advised That the Non Prosecution Agreement Would Be Kept Confidential.

20. On September 24, Epstein and the USAO executed a Non Prosecution Agreement.
21. His attorneys asked Ms. ██████████ to "please do whatever you can to keep this from becoming public." See Tab 27, September 24, 2007 Email from J. Lefkowitz to M. ██████████
22. Ms. ██████████ replied that she had "forwarded your message *only to Alex [Acosta],* ██████████ ██████████ ██████████]. I don't anticipate it going any further than that." *Id.*
23. Ms. ██████████ stated that the agreement would be "placed in the case file, which will be kept confidential since it also contains identifying information about the girls." *Id.*

The Prosecution Immediately Notifies Three Plaintiffs That Mr. Epstein Has Executed A Non Prosecution Agreement

24. In direct violation of these representations, "shortly after the signing," the government notified "three victims" of the "general terms" of the Non Prosecution Agreement. See

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Tab 18, December 13, 2007 Letter from M. [REDACTED] (admitting that the notification occurred "shortly after the signing").

AUSA [REDACTED] Misleads Mr. Epstein In An Attempt To Refer Plaintiffs to Her Boyfriend's Close Friend

25. On September 25, Ms. [REDACTED] recommended a local products-liability defense attorney, Humberto "Bert" Ocariz, Esq., for the highly lucrative post of attorney representative for the government's list of as-yet-undisclosed "victims."⁴
- (a) Ms. [REDACTED] wrote to the defense, "I have never met Bert, but *a good friend in our appellate section* and one of the district judges in Miami are good friends with him and recommended him." See Tab 28, September 25, 2007 Email from M. [REDACTED] to J. Lefkowitz (bottom email) (emphasis added).
 - (b) Ms. [REDACTED] failed to disclose that this "*good friend* in our appellate section" was her *live-in boyfriend*. See Tab 18, December 13, 2007 Letter from M. [REDACTED] (conceding the "relationship" with "my boyfriend").
 - (c) Beyond her clear conflict-of-interest and affirmative effort to conceal it, it is unimaginable that AUSA [REDACTED] would have engaged in an *ex-parte* communication with a United States District Judge in the same district about the details of a pending grand-jury investigation without prior disclosure and supervisory approval.
 - (d) Later, it became clear that Ms. [REDACTED] also had at least one other *ex-parte* communication with that same United States District Judge about the grand jury's investigation. See Tab 29, October 5, 2007 Email from [REDACTED] to J. Lefkowitz (stating that "one of the District Judges in Miami mentioned [retired Judge Joseph Hatchett] as a good choice" to decide any fee disputes concerning Epstein's paying for a lawyer to represent the unnamed women in claims against Epstein).
26. The next day, AUSA [REDACTED] advised the defense that she was removing one of the alternatives to Mr. Ocariz from our consideration, on the basis that "one of his partners is married to an AUSA here," and explained that, because of that personal relationship,

⁴ These actions were improper. As you know, the Department prohibits employees from using any nonpublic information to secure private benefits of any kind: "An employee *shall not ... allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.*" 5 C.F.R. § 2635.703 (emphasis added). Among the examples of prohibited disclosure specifically illustrated by this regulation is the disclosure of nonpublic information to "friends" to further their financial interests, *id.*, at Example 1, and the disclosure of nonpublic information to a newspaper reporter, *id.*, at Example 5 (see allegations below regarding the leak to the *New York Times*). Furthermore, the Justice Department prohibits its employees from using their position to benefit friends or relatives. See 5 C.F.R. § 2635.702; see also 5 C.F.R. § 2535.502.

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"[t]here is too great a chance of an appearance of impropriety." See Tab 28, September 26, 2007 Email from M. ██████████ to J. Lefkowitz.

27. The following day, Ms. ██████████ relayed that, and asked us to respond to, the very first concern raised Mr. Ocariz, which was "how are they going to get paid" and whether "there is any cap or other limitation on attorney's fees that [Epstein] will pay in the civil case." See Tab 30, September 27, 2007 Email from M. ██████████ to J. Lefkowitz.
28. Ms. ██████████ clearly contemplated that Mr. Epstein would be paying for Mr. Ocariz at his "hourly rate" to represent the alleged "victims" against Epstein even "if all [the] girls decide they want to sue." *Id.*
29. When the defense complained of Ms. ██████████'s undisclosed conflict-of-interest in selecting her boyfriend's friend to prosecute civil claims against Mr. Epstein on behalf of her undisclosed list of purported "victims," Ms. ██████████ later argued that Mr. Epstein had no right to complain because "the Non-Prosecution Agreement vested the Office with the exclusive right to select the attorney representative." See Tab 18, December 13, 2007 Letter from M. ██████████. Shortly after being notified, however, United States Attorney Acosta removed Mr. Ocariz from consideration, and requested an amendment to the Non Prosecution Agreement.
30. In response to the many complaints about Ms. ██████████'s misconduct and violations of the United States Attorney's Manual, Criminal Division Chief ██████████ characterized her as "unsupervisable."
31. Contrary to the express agreement of United States Attorney Acosta that the federal government would not interfere in the administration of any state sentence, FAUSA ██████████ continued to try to deny the right of the State to issue work release and/or gain time by stating that Mr. Epstein must "make a binding recommendation that the Court impose" a sentence of 18 months of continuous confinement in the county jail. See Tab 21, September 24, 2007 Non Prosecution Agreement. Shortly thereafter, Mr. ██████████ sent the FBI to meet with the state sex-crimes prosecutor in an attempt to secure her commitment to oppose a work release option.

FAUSA ██████████ Attempts to Thwart Discovery

32. On October 31, Mr. ██████████ emailed Mr. Epstein's counsel, confirming that "I understand that the plea and sentence will occur on or before the *January 4th* [2008] date." See Tab 41, October 31, 2007 Email from J. ██████████ to J. Lefkowitz (emphasis added).
33. On November 5, despite Mr. ██████████'s having sent that email just one week before, after learning that the defense had begun to question women on their "list," Mr. ██████████ wrote Mr. Epstein's attorneys demanding that his plea and sentencing in the State case now *be moved up to November* 2007. See Tab 2, November 5, 2007 Letter from J. ██████████
34. Mr. ██████████ further demanded in the letter that Mr. Epstein's attorneys "confirm that there will be no further efforts to contact any victims" until the victims are represented by counsel. *Id.* As the women were all adults, there could be no lawful justification for Mr.

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██████████ demand, other than to protect prospective plaintiffs from being interviewed prior to their retaining an attorney (including, as it turned out, Mr. ██████████'s former law partner) to bring civil lawsuits against Epstein.

35. Mr. ██████████ also demanded that Epstein "begin his term of incarceration not later than January 4, 2008," *id.*, which turned out to be just three weeks before the first civil lawsuit would be filed against Epstein.
36. Contrary to the express agreement of United States Attorney Acosta that the federal government would not interfere in the administration of any state sentence, Mr. ██████████ tried to limit gain time and or work release by stating that Mr. Epstein must "make a binding recommendation that the Court impose a sentence of 18 months of continuous confinement in the county jail." *Id.* (This followed Mr. ██████████ position that the Office would consider a state sentence ordering probation in lieu of incarceration to be a breach of the deferred-prosecution agreement.) Shortly thereafter, Mr. ██████████ sent the FBI to meet with the state sex-crimes prosecutor in an attempt to secure her commitment to oppose work release.
37. Mr. ██████████ insisted that Mr. Epstein not learn the identities of the government's list of alleged "victims" *until after Epstein was sentenced and incarcerated.*
38. We have reason to believe that, around this same time, Mr. ██████████'s former law partner, Jeffrey Herman, had met with the father of one of the prospective plaintiffs, ██████████. At the same time (and until as recently as March of 2008), the Official Florida Bar website continued to identify Mr. Sloman as a named partner in Mr. Herman's firm. *See* Tab 31, Florida Bar Website page.
39. Mr. Herman, who is the named partner in the former firm of Herman, ██████████, & Mermelstein, filed five lawsuits, each asking for \$50 million, against Mr. Epstein. Each lawsuit is entitled "*Jane Doe # vs. Jeffrey Epstein,*" despite the fact that each of the plaintiffs is an adult and not entitled to plead anonymously. *See* Tab 32, Examples of Federal Complaints.
40. Mr. Herman convened press conferences contemporaneously with filing three of the suits. In the most recent press conference, he admitted that all of the plaintiffs lied to Epstein about their ages. *See* Tab 33, Herman Public Statement. One of the supposedly traumatized "victims" actually pled in her complaint that she returned to Epstein's house "on many occasions for approximately three years." Another of these supposedly traumatized "victims" herself acted to introduce her friends and acquaintances to Mr.

⁵ The Justice Department rules disqualify employees from working on matters in which their former employers have an interest: "*an employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering Government service.* The two-year period of disqualification begins to run on the date that the extraordinary payment is received." 5 C.F.R. § 2635.503(a) (emphasis added).

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Epstein. All of these plaintiffs are apparently on the above-described government "victim" list.

FAUSA ██████ Attempts to Encourage Civil Suits and the Hiring of the Government's Choice of Attorney

41. On November 27, Mr. ██████ sent an email to Mr. Epstein's attorneys stating that "I intend to notify the victims by letter after COB Thursday [two days later]." See Tab 34, November 27, 2007 Email from J. Sloman to J. Lefkowitz.
42. The morning of November 28, attorneys for Mr. Epstein faxed a letter to Assistant Attorney General Alice Fisher, requesting a meeting with her to discuss the impropriety of the USAO's encouraging civil lawsuits against Mr. Epstein under the guise of the terms of the Non Prosecution Agreement. See Tab 35, November 28, 2007 Letter from K. Starr to A. Fisher.
43. Late in the day on November 28, Epstein's attorneys received from AUSA ██████ a copy of the USAO's proposed victim-notification letter that "J█████ asked that I forward." See Tab 36, November 28, 2007 Email from M. V█████ to J. Lefkowitz.
 - (a) The proposed victim-notification letter cited as authority the "Justice for All Act of 2004" (which U.S. Attorney Acosta later agreed had no application to these circumstances). It referred to the addressees as minor "victims," suggested they make statements in state court, that they were not entitled to make, and referred incorrectly to Mr. Epstein as a "sexual predator." *Id.*
 - (b) FAUSA ██████ also proposed advising recipients, in an underlined sentence that, "You have the absolute right to select your own attorney" to "assist you in making . . . a claim" for "damages from [Epstein]." But that "[i]f you do decide to use [two attorneys selected by the U.S. Attorney's "special master"] as your attorneys, Mr. Epstein will be responsible for paying attorney's fees incurred during the time spent trying to negotiate a settlement." *Id.*

The USAO Leaks Confidential Information to the New York Times

44. Perhaps most troubling of all, the USAO has repeatedly leaked information about this case to the media—including to Landon Thomas, the senior business correspondent for the *New York Times*. We have personally reviewed Mr. Thomas's own notes, and they are remarkably detailed about highly confidential aspects of the prosecution's theory of the case and the plea negotiations.
45. Mr. Thomas's calls to the USAO initially were referred to Assistant United States Attorney ██████. AUSA ██████ informed Mr. Thomas that federal authorities were considering charging Mr. Epstein under 18 U.S.C. §§ 1591, 2422 and 2423, and told the reporter that Mr. Epstein had both lured girls over the telephone and traveled in interstate commerce for the purpose of engaging in sex with minors. AUSA ██████ also divulged the terms and conditions of the USAO's negotiations with Mr. Epstein—including the fact that Mr. Epstein had proposed "house arrest" with extra

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stringent conditions—which Mr. ██████ could only have learned from FAUSA ██████, AUSA ██████ or United States Attorney Acosta himself.

46. AUSA ██████ then asked why Mr. Epstein should ... be treated differently than anyone else. Mr. Thomas apparently stated that he understood that there was evidence that the women had lied about their ages. AUSA ██████ replied that this was not a defense and that Mr. Thomas should not believe “the spin” of Mr. Epstein’s “high-priced attorneys.” Indeed, Mr. ██████ told Mr. Thomas that the USAO was very concerned about a Palm Beach editorial that questioned whether Mr. Epstein would receive a rich man’s justice. AUSA ██████ then stated that, in fact, Mr. Epstein “doesn’t have a defense.”
47. Mr. Epstein’s attorneys learned of the call and complained to the USAO. Counsel for Mr. Epstein then had an in-person meeting with FAUSA ██████ and United States Attorney Acosta describing these leaks to the *New York Times*. During Mr. Thomas’ next call to the USAO, made two weeks later, AUSA ██████ “admonished” him (in the words of Mr. Thomas) for disclosing the contents of their prior conversation to the defense, and strongly “reminded” Mr. Thomas that AUSA ██████’s prior comments about Mr. Epstein had only been “hypothetical” in nature. That claim is sheer nonsense: AUSA ██████ had disclosed specific details of Mr. Epstein’s case, including plea terms proposed by the defense, as revealed based on Mr. Thomas’s own contemporaneous hand-written notes.
48. Shortly thereafter, Mr. ██████ wrote to the defense that Mr. Thomas was given, pursuant to his request, *non-case specific information concerning specific federal statutes.*” See Tab 37, February 27, 2008 Email from J. ██████ Again, that claim was utterly false; Mr. Thomas’s contemporaneous hand-written notes, reviewed by Jay Lefkowitz, confirm that the USAO had violated settled Department policy and ethical rules by providing case-specific information about the Department’s legal theories and plea negotiations.

Conclusion

We bring these difficult and delicate matters of misconduct to your attention not to require any disciplinary action or review by the Office of Professional Responsibility. Although we have been told that some of this misconduct has been self-reported (only after we raised these complaints in writing), we feel confident that not all the facts were adequately presented. Rather, we believe that they are highly relevant to your decision whether to authorize a federal prosecution in this case. This pattern of overzealous prosecutorial activity strongly suggests improper motives in targeting Jeffrey Epstein, not because of his actions (which are more appropriately the subject of state prosecution), but, rather, because of who he is and who he knows. We also bring this pervasive pattern of misconduct to your attention because we believe it taints any ongoing federal prosecution. The misconduct pervades the evidence in this case. The offers of financial inducement to witnesses, improperly encouraged by the government, make their potential testimony suspect. The reliance on tainted evidence gathered by the state will require a careful sorting out of poisonous fruits.

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Most important, however, is that the extraordinary nature of this misconduct, so unusual in ordinary federal prosecutions, raises the gravest of concerns about why prosecutors would go to such lengths in a case already being prosecuted by the State and with so little, if any, federal concern. Accordingly, we ask you to conduct your own investigation of these matters, because we believe that what we have provided you may constitute only the tip of a very deep iceberg. Without the power of subpoena, which we currently lack, we are unable to dig deeper. We strongly believe that there is far more exculpatory evidence that has not been disclosed, more leaks that we have not yet uncovered and more questionable behavior. This is a case that cries out for a deeper investigation than we are capable of conducting, before any decision to prosecute is permitted.