

# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Citigroup Center  
153 East 53rd Street  
New York, New York 10022-4611

Jay P. Lefkowitz, P.C.  
To Call Writer Directly:  
[REDACTED]  
lefkowitz@kirkland.com

[REDACTED]  
www.kirkland.com

Facsimile:  
[REDACTED]

Dir. Fax: [REDACTED]

**Confidential. For Settlement  
Purposes Only, Pursuant to Rule 408.**

October 10, 2007

**VIA E-MAIL**

R. Alexander Acosta  
United States Attorney's Office  
Southern District of Florida  
500 South Australian Avenue, Suite 400  
West Palm Beach, Florida 33401

*Re: Jeffrey Epstein*

Dear Alex:

I write as [REDACTED] follow up to our conversation yesterday regarding the open issues that remain in the Epstein matter. As you are aware, we continue to have serious disagreements with Ms. [REDACTED] regarding the nature of the settlement process for identified individuals' § 2255 claims. Legal representation in [REDACTED] lawsuit was never contemplated by the Federal Plea Agreement (the "Agreement"). Over the course of the negotiations of the Agreement, the parties worked diligently to create an alternative dispute resolution for those identified individuals seeking [REDACTED] civil remedy for the conduct at issue, in an effort to avoid long drawn out disputes over liability in public adversarial litigations. Initially, we proposed that Mr. Epstein create [REDACTED] trust whereby [REDACTED] trustee would be appointed by the Circuit Court to disperse the funds to the identified individuals based on [REDACTED] good faith showing of injury. In response, Ms. [REDACTED] proposed the appointment of [REDACTED] guardian ad litem to represent the identified individuals, not an attorney, which suggests that litigation was never contemplated by either party. Ultimately, the parties agreed to Paragraphs 7 and 8 of the Agreement, which allow for [REDACTED] single attorney representative to settle the claims of the identified individuals and create [REDACTED] procedural alternative to public adversarial litigation.

In keeping with the parties' understanding of Paragraphs 7 and 8, you should know that we are in agreement with your choice of Judge Edward Davis, but we believe Judge Davis should act as the attorney representative to settle claims pursuant to the Agreement and the parties' longstanding understanding of the settlement process. Because the process we have agreed to does not contemplate litigation with respect to the attorney representative, Judge Davis can work to negotiate settlements with the identified individuals without further involvement by the government or its agents. Below, I've outlined our main areas of concern with the approach Ms.

Chicago

Hong Kong

London

Los Angeles

Munich

San Francisco

Washington, D.C.

RFP MIA 00001

EFTA00209047

R. Alexander Acosta  
October 10, 2007  
Page 2

█ has taken regarding the role of the attorney representative and the settlement process for § 2255 claims pursuant to Paragraphs 7 and 8 of the Agreement.

**First Issue: The Settlement Process and the Role of the Attorney Representative.** The settlement procedure we propose, and which we believe is made clear by the Agreement, is reasonable and consistent with the intention of the parties: the attorney representative will represent the identified individuals provided they opt to enter into █ settlement agreement with Mr. Epstein with respect to their § 2255 claims. The attorney representative will negotiate █ total settlement amount with Mr. Epstein. Once the United States has formally declined to prosecute Mr. Epstein in this matter, and each identified individual electing to settle has waived her right to pursue any other claims against Mr. Epstein, the attorney representative will distribute the proceeds in the manner he sees fit. If the identified individuals cannot settle or opt not to settle on █ damages amount with Mr. Epstein, then the attorney representative may not continue his representation and is barred from filing lawsuits pursuant to § 2255 and the identified individuals would not be suing under § 2255 as contemplated by Paragraph 8.

Based on the specific language in the contract and the intent of both parties, we believe that the Agreement clearly provides that the identified individuals may opt to make use of the attorney representative so long as they can reach █ settlement agreement with Mr. Epstein. If the parties cannot settle on █ damages amount with Mr. Epstein, then the attorney representative may not continue his representation and is barred from filing lawsuits pursuant to § 2255.

The provisions of the Agreement make clear that the role of the attorney representative is limited to settling claims brought by identified individuals pursuant to the Agreement. While Paragraph 7 defines who may be represented by the attorney representative, Paragraph 8 outlines the scope of that representation. Paragraph 7 states:

The United States shall provide Epstein's attorneys with █ list of individuals whom it has identified as victims, as defined in 18 U.S.C. § 2255, after Epstein has signed this agreement and has been sentenced. Upon the execution of this agreement, the United States, in consultation with and subject to the good faith approval of Epstein's counsel, shall select an attorney representative for these persons, who shall be paid for by Epstein. Epstein's counsel may contact the identified individuals through that representative.

Under Paragraph 8 of the Agreement, which provides the terms of the representation, the attorney representative is only appointed to protect the interests of those identified individuals who elect to waive any claim for damages other than the damages agreed to by the parties. Paragraph 8 states:

If any of the individuals referred to in paragraph (7), supra, elects to file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over this person and/or the subject matter, and Epstein waives his right to contest liability and also waives his right to contest damages up to an amount as agreed to between the

R. Alexander Acosta  
October 10, 2007  
Page 3

identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, as to those individuals whose names appear on the list provided by the United States, Epstein's signature on this agreement, his waivers and failures to contest liability and such damages in any suit are not to be construed as an admission of any criminal or civil liability.

Paragraph 8 addresses how Mr. Epstein's waivers are triggered pursuant to settlement with each identified individual. Paragraph 8 is clear that Mr. Epstein will only waive § 2255 liability "so long as" each identified individual proceeds exclusively under § 2255 and agrees to waive damages other than "an amount as agreed to between the identified individual and Epstein." The Agreement's silence with respect to what happens if the parties cannot settle on damages amount indicates that the parties intended for the scope of the attorney representative's representation to be limited to settling claims with Mr. Epstein, not representing these identified individuals in § 2255 lawsuits.

Ms. [REDACTED], however, insists that the attorney representative's duties include pursuing lawsuit under § 2255 on behalf of each identified individual in the event that settlement talks are unsuccessful. This interpretation is incorrect because Ms. [REDACTED] ignores Paragraph 8, which limits the scope of the attorney representative's representation.

The longstanding intention of the parties is also consistent with our interpretation of the Agreement based on prior iterations of the Agreement, which only refer to appointing trustee or guardian ad litem to protect the interests of the identified individuals. Thus, legal representation in lawsuit was never contemplated under the Agreement. Also, Mr. Epstein's agreement to pay the attorney representative's fees reaffirms that the parties never intended for the attorney representative to bring lawsuits. § 2255 includes provision for attorney's fees, but only if there is monetary recovery. If the Agreement contemplates, as Ms. [REDACTED] suggests, that the attorney representative could file suit on behalf of each identified individual, Mr. Epstein would never have agreed to pay attorneys fees for those that being suit and lose. It is clear that Mr. Epstein agreed to pay the attorney representative's fees because he assumed that each identified individual represented by the attorney representative would recover something by settling on their respective damages claim.

Ms. [REDACTED] interpretation of the Agreement would also trigger profound ethical problems due to the conflicts of interests that would arise. For instance, if Mr. Epstein agrees to pay for the attorney representative's fees and monthly expenses in any potentially litigated matter, then the attorney representative would effectively be incentivized to reject settlement under § 2255 in an effort to draw out the lawsuits and incur more fees. If the lawyer were allowed to represent the identified individuals in lawsuit, the best interests of each identified individual might not be served, because the attorney representative will always be more interested in pursuing lawsuits in lieu of settling claims against Mr. Epstein efficiently and fairly. This conflict

R. Alexander Acosta

October 10, 2007

Page 4

could compromise the attorney representative's duty of loyalty. See ABA Annotated Model Rules of Professional Conduct, Rule 1.8(f) ("lawyer shall not accept compensation for representing client from one other than the client unless... there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship"). And Mr. Epstein would essentially be paying the attorney representative to sue himself. Such result is inappropriate and unconscionable.

The attorney representative will face other conflicts as well. As general matter, multiple representation of group of individuals that elects to settle on damages as well as one or more individuals who reject settlement carries with it the heightened potential for irreparable conflicts. For example, the ethics rules preclude an attorney from simultaneously representing parties that are likely to end up in conflict. See ABA Annotated Model Rules of Professional Conduct, Rule 1.7 ("lawyer shall not represent client if...there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, former client or third person or by personal interest of the lawyer."). Here, I can imagine case where one of the identified individuals is called as witness by Mr. Epstein to dispute an allegation by another identified individual who is party to the case. The attorney representative would have to cross examine the witness, who is also his client. In another scenario, the attorney representative may receive privileged information from one identified individual, which precludes him from using that information with respect to another identified individual. In each scenario, the attorney representative will be simultaneously representing parties that may be in conflict, in violation of Rule 1.7.

For these reasons, we believe that Ms. interpretation of the Agreement in connection with the attorney representative's role in the settlement process must be rejected.

**Second Issue: Waiver of Liability.** Ms. incorrectly alleges that Mr. Epstein has waived liability even when claims are not settled. Pursuant to the Agreement, if the identified individuals choose not to settle with Mr. Epstein, he will not waive liability for those individuals whose claims are not settled by the attorney representative. Paragraph 8 is clear that Mr. Epstein will only waive § 2255 liability so long as each identified individual proceeds exclusively under § 2255 and agrees to waive damages other than "an amount as agreed to between the identified individual and Epstein." (Paragraph 8, Agreement) Consequently, those identified individuals who choose not to settle with Mr. Epstein are not covered by the terms of the Agreement and will have to prove, among other things, that they are victims under the enumerated statutes.

**Third Issue: Communication to Identified Individuals.** Ms. proposes that either she or federal agents will speak with the identified individuals regarding the settlement process. We do not think it is the government's place to be co-counsel to the identified individuals, nor should the FBI be their personal investigators. Neither federal agents nor anyone from your Office should contact the identified individuals to inform them of the resolution of the

R. Alexander Acosta  
October 10, 2007  
Page 5

case, including appointment of the attorney representative and the settlement process. Not only would that violate the confidentiality of the Agreement, but Mr. Epstein also will have no control over what is communicated to the identified individuals at this most critical stage. We believe it is essential that we participate in crafting [redacted] mutually acceptable communication to the identified individuals. We further believe that communications between your Office or your case agents and the identified individuals might well violate Rule 6(e)(2)(B) of the Federal Rules of Criminal Procedure. The powers of the federal grand jury should not, even in appearance, be utilized to advance the interests of [redacted] party to [redacted] civil lawsuit.

We propose that the following joint communication be made to Judge Davis, who will act as the attorney representative and communicate accordingly with the identified individuals:

As counsel for the United States of America and Jeffrey Epstein, we jointly write to you to provide information relevant to your services as the attorney representative to represent certain identified individuals who may have [redacted] civil claim against Mr. Epstein.

The United States has conducted an investigation of Mr. Epstein regarding his solicitation of females, some of whom the government alleges were underage, to engage in prostitution in his Palm Beach County home. Based on this investigation, the United States has identified certain individuals who may be eligible to seek [redacted] civil remedy against Mr. Epstein pursuant to 18 U.S.C. § 2255.

The United States and Mr. Epstein have agreed to [redacted] resolution of this investigation. As part of the resolution of this matter, the parties have agreed to [redacted] settlement process for these identified individuals. The parties agree that you will contact each identified individual and explain the nature of the resolution of this matter, including the settlement process, in accordance with [redacted] joint communication drafted by the United States and Mr. Epstein. The parties further agree that you will interview each identified individual to confirm that they have [redacted] viable claim against Mr. Epstein pursuant to 18 U.S.C. § 2255.

Pursuant to the resolution of this matter, you will represent only those identified individuals who elect to settle their claims with Mr. Epstein, and your duties will be limited to negotiating [redacted] settlement on the identified individuals' behalf and dispersing the settlement proceeds. Mr. Epstein has agreed that he will not contest jurisdiction in the Southern District of Florida, and he will not contest liability pursuant to 18 U.S.C. § 2255 for those identified individuals who elect to settle all potential claims against him regarding this matter. Mr. Epstein has also agreed to pay reasonable attorney's fees and expenses that you incur as [redacted] result of settlement negotiations and settlement administration of this matter.

R. Alexander Acosta  
October 10, 2007  
Page 6

To settle these claims, the parties agree that you will negotiate [redacted] total settlement amount with Mr. Epstein for each identified individual who elects to settle. After the United States formally declines to initiate any prosecution against Mr. Epstein related to this matter and each identified individual you represent executes [redacted] waiver of all rights to pursue any litigation regarding this matter, you may then distribute the proceeds from the total settlement amount to the identified individuals in the manner you see fit.

For those identified individuals who elect not to settle their claims, Mr. Epstein will not waive his right to contest jurisdiction, liability or damages. Furthermore, Mr. Epstein will not pay for their attorney's fees or expenses, and you may not represent these individuals in any capacity. Each of these individuals will be responsible for finding, hiring and paying for her own attorney.

The details regarding the United State's investigation of this matter and its resolution with Mr. Epstein is confidential. You may not make public statements regarding this matter. If you have any questions regarding this matter, including the settlement process, you must contact Mr. Epstein's counsel and request a joint clarification from said counsel and the United States. You should not contact the United States directly. The parties will make every effort to answer your questions via [redacted] joint communication.

Alex, as you know, when Mr. Epstein signed the Agreement, he did so in order to reach finality with your Office and with the express representation that the federal investigation against him would cease. To that end, I would like your assurance that after you and I agree to the issues raised in this letter, that it will be the end of the United States' involvement barring [redacted] willful breach of the Agreement. Specifically, the government or any of its agents will not make any further communications to the identified individuals and will not make any ex parte communications with Judge Davis.

I look forward to resolving these open issues with you during our 4:30 call today.

Sincerely,



Jay P. Lefkowitz

# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Citigroup Center  
153 East 53rd Street  
New York, New York 10022-4611

Jay P. Lefkowitz, P.C.  
To Call Writer Directly:  
[REDACTED]  
lefkowitz@kirkland.com

[REDACTED]  
www.kirkland.com

Facsimile:  
[REDACTED]

November 29, 2007

## VIA E-MAIL

R. Alexander Acosta  
United States Attorney's Office  
Southern District of Florida  
500 South Australian Avenue, Suite 400  
West Palm Beach, Florida 33401

*Re: Jeffrey Epstein*

Dear Alex:

I am responding to the draft letter-Marie- [REDACTED] to me last night, which purports to be [REDACTED] letter that you would sign and send to each of the individuals whom you have not even identified to us, and about whom the government has made clear it "takes no position" as to the validity of potential claims that these individuals may have against Mr. Epstein. I cannot reconcile your commitment to "take no position" regarding these potential claims with your intention to sign such [REDACTED] letter, which will surely find its way almost immediately into the press, refers to these individuals as "minor victims," refers to Mr. Epstein as [REDACTED] "sexual predator," misstates the terms of our federal non-prosecution agreement (the "Agreement"), and invites federal witnesses to attend Mr. Epstein's state sentencing in order to give victim impact statements, although they are in most respects not state victims at all.

More fundamentally, we don't understand the basis for your Office's belief that it is appropriate for any letter to be [REDACTED] to these individuals at this stage - before Mr. Epstein has either entered [REDACTED] plea or been sentenced. We respectfully disagree with your view that you are required to notify the alleged victims pursuant to the Justice for All Act of 2004. First, 18 U.S.C. § 2255, the relevant statute under the Agreement for the settlement of civil remedies, does not have any connection to the Justice for All Act. The Justice for All Act refers to restitution, and § 2255 is [REDACTED] civil remedy, not [REDACTED] restitution statute.

We also believe that the draft letter could not diverge more dramatically from your statement last week that your Office would not intervene in the state process from this point forward, and that you would merely monitor it. Indeed, the letter as currently drafted invites federal witnesses to become participants in [REDACTED] state proceeding, thus federalizing the state plea and sentencing in the same manner as would the appearance and statements of [REDACTED] member of your Office or the FBI.

Chicago

Hong Kong

London

Los Angeles

Munich

San Francisco

Washington, D.C.

RFP MIA 00007

EFTA00209053

KIRKLAND & ELLIS LLP

R. Alexander Acosta  
November 29, 2007  
Page 2

With that said, I respectfully identify below the specific objections we have with the proposed letter.

First, it states that "Mr. Epstein has agreed that he will not contest jurisdiction or liability if [the alleged victims] elect to seek damages from him . . ." This language implies that Mr. Epstein has agreed to concede jurisdiction and has waived liability whether or not each individual identified by the government as "victim" of federal crimes ultimately settles her claim pursuant to the Agreement. The letter as drafted invites the witnesses to whom it is to believe that they can litigate their claims without Mr. Epstein being able to contest jurisdiction or liability – construction of the Agreement that is in direct conflict with its terms. The Agreement we entered makes clear that Mr. Epstein's waiver of jurisdiction and liability is limited to those instances where the identified individual settles with him pursuant to Sections 7 through 8 of the Agreement and Addendum. As you are well aware, Mr. Epstein has no obligation or intention to concede jurisdiction or liability in any claim for damages – by an enumerated "victim" or anyone else – where that party fails to settle her claims pursuant to the terms of the Agreement.

Second, there is no basis to refer to Mr. Epstein as "sexual predator." Pursuant to the terms of the Agreement, Mr. Epstein will be required to register as "sexual offender," not "sexual predator." Those are very different categories under Florida law. Mr. Epstein has agreed to enter plea of guilty to two counts of violation of Florida Statutes §§ 796.03 and 796.07. Under Florida law, those charges do not classify him as sexual predator. See Florida Statute § 775.21(4). Rather, he is only sexual offender as defined by Florida Statute § 943.0435(1). To identify Mr. Epstein as sexual predator, in this letter or elsewhere, is inaccurate and would irreparably harm him.

Third, we find no basis in law that provides the identified individuals with either right to appear at Mr. Epstein's plea and sentence, or to submit written statement to be filed by the State Attorney. According to Florida Statutes §§ 960.001(k) and 921.143(1), the sentencing court permits only "the victim of the crime for which the defendant is being sentenced . . . to appear before the sentencing court for the purpose of making statement under oath for the record; and [s]ubmit written statement under oath to the office of the state attorney, which statement shall be filed with the sentencing court." Florida Statute § 960.001(k) citing § 921.143(1) (emphasis added). Here, Mr. Epstein is pleading guilty to, and being sentenced for, state offenses, not the federal offenses under which the government has recognized these identified individuals as "victims." The state charges for which Mr. Epstein will be sentenced are not coextensive with the federal investigation. Under Florida law, only those persons identified as victims of the state offenses may make statement at the hearing or submit written statement.

KIRKLAND & ELLIS LLP

R. Alexander Acosta  
November 29, 2007  
Page 3

With respect, encouraging these individuals to participate in the state sentencing will have the effect of creating █ media frenzy that will surely impact the sentence Mr. Epstein receives – precisely what your Office promised to avoid. Such an intrusion into state affairs, when the identified individuals are not even victims of the crime for which Mr. Epstein is being sentenced is highly inappropriate. The federal investigation of Mr. Epstein has been concluded, and witnesses or civil claimants identified as purported victims of federal offenses have no place in the state proceeding. We also think it will likely promote spurious civil litigation against Mr. Epstein, █ result that would be highly irresponsible to encourage.

Fourth, we take serious issue with the assertion in the letter that the government has identified each recipient of the letter as █ “minor victim.” The term “minor victim” is notably absent from the Agreement. Section 7 of the Agreement states only that the government will provide █ list of individuals “whom it has identified as victims, as defined in 18 U.S.C. § 2255.” Indeed, you have told us that at least one identified individual is currently 24 years old, and thus would appear not to have been █ minor at the time of the alleged conduct (and therefore is presumably not eligible to settle her claims under the Agreement). To confer on these women the imprimatur of █ government “finding” is both incendiary and unwarranted.

Fifth, your letter mischaracterizes the nature of Mr. Epstein’s liability under the 18 U.S.C. § 2255 provisions of the Agreement. Your letter states that every individual who receives the letter is █ victim of “certain offenses, including travel in interstate commerce to engage in prostitution with minors and the use of facilities of interstate commerce to induce minors to engage in prostitution.” This construction implies that these individuals are all victims of both offenses (travel in interstate commerce to engage in prostitution with minors and the use of facilities of interstate commerce to induce minors to engage in prostitution.) Clearly that is not the case. Consequently, the language should be revised to reflect that the identified individuals may be victims of certain offenses, but not necessarily both offenses. Additionally, for the sake of fairness and candor, we believe the same language contained in your letter to Judge Davis, stating that “[t]he United States takes no position as to the validity of any such claim under this statute,” should be included in any proposed letter.

Sixth, your letter states that Mr. Podhurst and Mr. Josefsberg may “represent” the identified individuals. Since we have not yet had the opportunity to speak with Mr. Podhurst or Mr. Josefsberg (though we hope to do so this week), we do not know that they will even agree to serve in this capacity. Since I believe the role you are casting for these attorneys creates █ significant ethical problem, specifically the conflict between counseling the clients to settle for the statutory amount and rewarding the attorneys for litigating rather than settling their claims, I would not assume that they, or any ethical attorney, would agree to accept this assignment as you define it. Whether that will mean that other attorneys will have to be sought, or you will realize that the role is untenable as described, either result will require modification of the letter.

KIRKLAND & ELLIS LLP

R. Alexander Acosta  
November 29, 2007  
Page 4

Seventh, the identified individuals should not contact lawyers in your Office or agents of the FBI. To encourage these individuals to contact federal law enforcement officials is entirely inconsistent with your promise that there will be no further federal involvement in this case. Moreover, such contact can only invite the possibility for impermissible or partial communications. Recently, you asked the defense not to contact potential witnesses in this matter in part because the Agreement contemplated the selection of an attorney representative. For the same reason there should be no continuing invitation for the witnesses to remain in contact with either your Office or the FBI. Any questions these individuals may have regarding their rights under the Agreement should be answered by Judge Davis or the attorney representative.

Eighth, this letter should be mailed rather than delivered by hand. We see no reason for hand delivery, and mailing will ensure that there are no impermissible or partial communications made to the identified individuals upon delivery of the letter. If your Office insists on hand delivery of any such letter, however, it should only be made by [redacted] third party service, not by law enforcement agents.

Finally, as you know, Judge Starr has requested [redacted] meeting with Assistant Attorney General Fisher to address what we believe is the unprecedented nature of the § 2255 component of the Agreement. We are hopeful that this meeting will take place as early as next week. Accordingly, we respectfully request that we postpone our discussion of sending [redacted] letter to the alleged victims until after that meeting. We strongly believe that rushing to send any letter out this week is not the wisest manner in which to proceed. Given that Mr. Epstein will not even enter his plea for another few weeks, time is clearly not of the essence regarding any notification to the identified individuals.

Sincerely,

  
Jay P. Lefkowitz



U.S. Department of Justice

United States Attorney  
Southern District of Florida

---

500 South Australian Ave., Suite 400  
West Palm Beach, FL 33401  
(561) 820-8711  
Facsimile: (561) 820-8777

November 29, 2007

DELIVERY BY UNITED STATES MAIL

Miss

Re: Crime Victims' Rights – Notification of Resolution of Epstein Investigation

Dear Miss \_\_\_\_\_:

Several months ago, I provided you with [redacted] letter notifying you of your rights as [redacted] victim pursuant to the Justice for All Act of 2004 and other federal legislation, including:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any public court proceeding, unless the court determines that your testimony may be materially altered if you are present for other portions of [redacted] proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, or sentencing.
- (5) The reasonable right to confer with the attorney for the United States in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

I am writing to inform you that the federal investigation of Jeffrey Epstein has been completed, and that Mr. Epstein and the U.S. Attorney's Office have reached an agreement containing the following terms.

First, Mr. Epstein agrees that he will plead guilty to two state offenses, including the offense of soliciting minors to engage in prostitution, which will require him to register as [redacted] sexual offender for the remainder of his life.

RFP MIA 000011

EFTA00209057

Second, Mr. Epstein has agreed to make [ ] binding recommendation of 18 months' imprisonment to the state court judge who sentences him. Mr. Epstein will serve that sentence of imprisonment at the Palm Beach County Jail.

Third, Mr. Epstein has agreed that he will compensate you for damages you have suffered, under the following circumstances. That portion of the agreement that relates to those claims reads as follows:

7. The United States shall provide Epstein's attorneys with [ ] list of individuals whom it has identified as victims, as defined in 18 U.S.C. § 2255, after Epstein has signed this agreement and been sentenced. Upon the execution of this agreement, the United States, in consultation with and subject to the good faith approval of Epstein's counsel, shall select an attorney representative for these persons, who shall be paid for by Epstein. Epstein's counsel may contact the identified individuals through that representative.
8. If any of the individuals referred to in paragraph (7), *supra*, elects to file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and Epstein waives his right to contest liability and also waives his right to contest damages up to an amount as agreed to between the identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, as to those individuals whose names appear on the list provided by the United States, Epstein's signature on this agreement, his waivers and failures to contest liability and such damages in any suit are not to be construed as an admission of any criminal or civil liability.
9. Epstein's signature on this agreement also is not to be construed as an admission of civil or criminal liability or [ ] waiver of any jurisdictional or other defense as to any person whose name does not appear on the list provided by the United States.
10. Except as to those individuals who elect to proceed exclusively under 18 U.S.C. § 2255, as set forth in paragraph (8), *supra*, neither Epstein's

signature on this agreement, nor its terms, nor any resulting waivers or settlements by Epstein are to be construed as admissions or evidence of civil or criminal liability or  waiver of any jurisdictional or other defense as to any person, whether or not her name appears on the list provided by the United States.

Pursuant to the terms of the agreement and an addendum, to assist you in making such  claim, the U.S. Attorney's Office has asked an independent Special Master to select attorneys to represent you. Those attorneys are Aaron Podhurst and Robert ("Bob") Josefsberg with the law firm of Podhurst Orseck, . They can be reached at (305) 358-2800. I anticipate that someone from their law firm will be contacting you shortly. I must also advise you that you are not obligated to use these attorneys. In fact, you have the absolute right to select your own attorney, so you can decide not to speak with Messrs. Podhurst/Josefsberg at all, or you can speak with them and decide at any time to use  different attorney. If you do decide to seek damages from Mr. Epstein and you decide to use Messrs. Podhurst/Josefsberg as your attorneys, Mr. Epstein will be responsible for paying attorney's fees incurred during the time spent trying to negotiate  settlement. If you are unable to reach  settlement with Mr. Epstein, you and Mr. Josefsberg can discuss how best to proceed.

As I mentioned above, as part of the resolution of the federal investigation, Mr. Epstein has agreed to plead guilty to state charges. Mr. Epstein's change of plea and sentencing will occur on December 14, 2007, at \_\_\_\_\_, before Judge Sandra K. McSorley, in Courtroom 11F at the Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida. Pursuant to Florida Statutes Sections 960.001(1)(k) and 921.143(1), you are entitled to be present and to make  statement under oath. If you choose, you can submit  written statement under oath, which may be filed by the State Attorney's Office on your behalf. If you elect to prepare  written statement, it should address the following:

the facts of the case and the extent of any harm, including social, psychological, or physical harm, financial losses, loss of earnings directly or indirectly resulting from the crime for which the defendant is being sentenced, and any matter relevant to an appropriate disposition and sentence. Fl. Stat. 921.143(2).

You also are entitled to notification when Mr. Epstein is released from imprisonment at the end of his prison term and/or if he is allowed to participate in  work release program. To receive such notification, please provide the State Attorney's Office with the following information:

1. Your name
2. Your address
3. Your home, work, and/or cell phone numbers
4. Your e-mail address
5.  notation of whether you would like to participate in the "VINE system," which

MISS \_\_\_\_\_  
NOVEMBER 29, 2007  
PAGE 4

provides automated notification calls any time an inmate is moved. (To use this system, your calls must go to you directly, not through [REDACTED] switchboard.)

Thank you for all of your help during the course of the investigation. If you have any questions or concerns, please do not hesitate to contact me or Special Agent Nesbitt [REDACTED] at (561) 822-5946.

Sincerely,

R. Alexander Acosta  
United States Attorney

By: [REDACTED]  
Assistant United States Attorney

cc: Special Agent Nesbitt [REDACTED], F.B.I.  
Ms. Clearetha Wright, Victim-Witness Coordinator, U.S. Attorney's Office

**KIRKLAND & ELLIS LLP**

AND AFFILIATED PARTNERSHIPS

777 South Figueroa Street  
Los Angeles, California 90017Kenneth W. Starr  
To Call Writer Directly:  
(213) 680-8440  
kstarr@kirkland.com

(213) 680-8400

www.kirkland.com

Facsimile:  
(213) 680-8500

December 5, 2007

VIA FACSIMILE (305) 530-6444Honorable R. Alexander Acosta  
United States Attorney  
United States Attorney's Office  
Southern District of Florida  
99 NE 4th Street  
Miami, FL 33132Re: Jeffrey Epstein

Dear Alex:

We are in receipt of your letter faxed to Jay on December 4 and faxed to Ken today in Los Angeles, and write to inform you that we will respond in full to that letter no later than Friday, December 7. We take this opportunity to address a few of the initial issues.

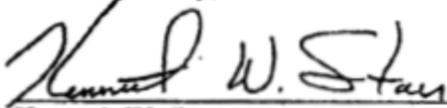
First and foremost, we reaffirm the Non-Prosecution Agreement (the "Agreement"). Mr. Epstein has no intention of unwinding the Agreement. Indeed, he has already performed under the Agreement by directing his lawyers to urge the State of Florida to allow him to plead guilty to crimes more egregious than the State believes he committed, and to sentence him more harshly than the State still believes is appropriate. However, as you know, we take serious issue with your staff's interpretation and implementation of the Agreement, in particular the use of Section 2255, but also other aspects of your office's investigation and prosecution of this matter. As we have expressed to you on prior occasions – where you have made clear you have no objection – we hope to address these issues with Assistant Attorney General Fisher in Washington.

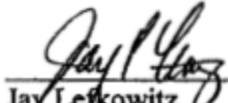
Second, your letter makes reference to "certain filings" that you state are due to your Office by December 7 and to "certain events" that must occur before December 14. We have no knowledge of any such deadlines and in fact do not know what filings and events to which you are referring. Please let us know what the December 7 and December 14 deadlines are, if any, so that we can make sure to comply with them.

Honorable R. Alexander Acosta  
December 5, 2007  
Page 2

Finally, you state that you intend to issue the victim notification letters on Friday, December 7. However, in discussion late last week between Jeff [REDACTED] and Lilly Ann Sanchez, Mr. [REDACTED] indicated that your Office would send us a revised version of the notification letter, which we have not received to date. While we believe that it is wholly inappropriate for your Office to send this letter under any circumstances, it is certainly inappropriate to issue this letter without affording us the right to review it. We strongly urge that you withhold the notification letter until after we are able to discuss this matter with Assistant Attorney General Fisher.

Yours Sincerely,

  
Kenneth W. Starr

  
Jay Leskowitz

cc: Honorable Alice Fisher, Assistant Attorney General  
~~Jeffrey H. [REDACTED]~~ First Assistant U.S. Attorney



**U.S. Department of Justice**

*United States Attorney  
Southern District of Florida*

---

*99 N.E. 4<sup>th</sup> Street  
Miami, FL 33132-2111  
(305) 961-9299  
Facsimile: (305) 530-6444*

December 6, 2007

**DELIVERY BY FACSIMILE**

Jay P. Lefkowitz, Esq.  
Kirkland & Ellis LLP  
Citigroup Center  
153 East 53rd Street  
New York, New York 10022-4675

Re: Jeffrey Epstein

Dear Jay:

I write in response to your recent e-mails and letters regarding victim notification and other issues. Our Office is trying to perform our contractual obligations under the Agreement, which we feel are being frustrated by defense counsel's objections. The Office also is concerned about Mr. Epstein's nonperformance.

More than three weeks ago we spoke about the failure to set [redacted] timely plea and sentencing date. At that time, you assured me that the scheduling delay was caused by the unavailability of Judge McSorley. You promised that [redacted] date would be set promptly. On November 15th, Rolando Garcia met with Barry Krisher on another matter, and was told by Mr. Krisher that he had just spoken with Jack Goldberger, and that Mr. Epstein's plea and sentencing were set to occur on December 14, 2007. Since that time, we have tried to confirm the date and time of the hearing in order to include that information in the victim notification letters. You continue to refer to the plea and sentencing as though it will be in January; Mr. Krisher's office has not confirmed any date; and Mr. Goldberger recently told Marie Villafra that "there is no date."

I must reiterate that [redacted] delayed guilty plea and sentencing – now more than two months beyond the original deadline – is unacceptable to the Office. As you will recall, the plea and sentencing hearing originally was to occur in early October 2007, but was delayed until October 26th to allow Mr. Goldberger to attend. It was delayed again until November to allow you to attend. Rather than using your best efforts to insure that the plea and sentencing occur in November, we recently learned that [redacted] plea conference had been scheduled with Judge McSorley for November 20, 2007, but was canceled at the request of the parties, not the judge. Judge McSorley has not been away for any extended period, and there is no basis for your assertion that the judge is the cause of

any past or future delay. Mr. Epstein currently has four Florida Bar members on his defense team, so attorney scheduling is not an adequate basis for delay.

Three weeks ago I also asked you to provide our Office with the terms of the Plea Agreement with the State Attorney's Office. It is now more than two months since the signing of the Non-Prosecution Agreement and we have yet to see any formal agreement, or even [redacted] list of essential terms of such an agreement.

Next, let me address your allegation that attorneys in our office and agents of the FBI have leaked information to the press in an effort to affect possible civil litigation with Mr. Epstein. This is untrue. There has been no contact between any member of the press and any employee of our office or the FBI since you incorrectly accused investigators of telling "Vanity Fair" about Mr. Starr's employment by Mr. Epstein several months ago. We intend to continue to refrain from commenting or providing information to the press. We would ask that your client and all of his representatives do the same.

I also want to address your interpretation of several statements that were included in correspondence – at your insistence – as proof that the designated victims have invalid claims. Let me make clear that each of the listed individuals are persons whom the Office identified as victims as defined in Section 2255, that is, as persons "who, while [redacted] minor, was [redacted] victim of [redacted] violation of section . . . 2422 or 2423 of this title." In other words, the Office is prepared to indict Mr. Epstein based upon Mr. Epstein's "interactions" with these individuals.<sup>1</sup> This conclusion is based upon [redacted] thorough and proper investigation – one in which none of the victims was informed of any right to receive damages of any amount prior to the investigation of her claim. The Office agrees that it is not [redacted] party to, and will not take [redacted] role in, any civil litigation, but the Office can say, without hesitation, that the evidence demonstrates that each person on the list was [redacted] victim of Mr. Epstein's criminal behavior. Mr. Starr's letter also suggests that the number of victims to whom Mr. Epstein is exposed by the Agreement is limitless. As you know, early drafts of the Agreement contained [redacted] numerical limit of 40 victims, which was removed at your request. The Office repeatedly confirmed that the number would not exceed 40; and the list is significantly shorter than that. Once the list is provided to you, if you have [redacted] good faith basis for asserting that [redacted] victim never met Mr. Epstein, we remain willing to listen and to modify the list if you convince us of your position.

Finally, let me address your objections to the draft Victim Notification Letter. You write that you don't understand the basis for the Office's belief that it is appropriate to notify the victims. Pursuant to the "Justice for All Act of 2004," crime victims are entitled to: "The right to reasonable, accurate, and timely notice of any public court proceeding . . . involving the crime" and the "right

---

<sup>1</sup>Unlike the State's investigation, the federal investigation shows criminal conduct by Mr. Epstein at least as early as 2001, so all of the victims were minors at the time of the offense.

JAY P. LEFKOWITZ, ESQ.  
DECEMBER 6, 2007  
PAGE 3 OF 4

not to be excluded from any such public court proceeding . . ." 18 U.S.C. § 3771(b)(2) & (3). Section 3771 also commands that "employees of the Department of Justice . . . engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (b)." 18 U.S.C. § 3771(c)(1).

Additionally, pursuant to the Victims' Rights and Restitution Act of 1990, our Office is obligated to "inform [redacted] victim of any restitution or other relief to which the victim may be entitled *under this or any other law* and [the] manner in which such relief may be obtained." 42 U.S.C. § 10607(c)(1)(B). With respect to notification of the other information that we propose to disclose, the statute requires that we provide [redacted] victim with the *earliest possible* notice of: the status of the investigation; the filing of charges against [redacted] suspected offender; and the acceptance of [redacted] plea. 42 U.S.C. § 10607(c)(3). Just as in 18 U.S.C. § 3771, these sections are not limited to proceedings in [redacted] federal district court. Our Non-Prosecution Agreement resolves the federal investigation by allowing Mr. Epstein to plead to [redacted] state offense. The victims identified through the federal investigation should be appropriately informed, and our Non-Prosecution Agreement does not require the U.S. Attorney's Office to forego its legal obligations.

With respect to your assertion that we are seeking to "federalize" the state plea, our office is simply informing the victims of their rights. It does not command them to appear at the hearing or to file [redacted] victim impact statement. In fact, the letter recommends the sending of any statement to the State Attorney's Office so that ASA Belohlavek can determine which, if any, statements are appropriate to file with the Court.

Next, you assert that our letter mischaracterizes Mr. Epstein's obligation to pay damages to the victims. To avoid that suggestion, I have asked AUSA [redacted] to simply quote the terms of the Agreement directly into the Notification Letter. We also have no objection to referring to Mr. Epstein as [redacted] "sexual offender" rather than [redacted] "predator."

We have no objection to using the conjunction "and/or" in referring to the particular offense(s) of which the recipient was [redacted] victim. We will not include the language that we take no position as to the validity of any claims. While the Office has no intention to take any position in any civil litigation arising between Mr. Epstein and any individual victim, as stated above, the Office believes that it has proof beyond [redacted] reasonable doubt that each listed individual was [redacted] victim of Mr. Epstein's criminal conduct while the victim was [redacted] minor. The law requires us to treat all victims "with fairness and with respect for the victim's dignity and privacy." 18 U.S.C. § 3771(b)(8). We will not include any language that demeans the harm they may have suffered.

The letter's assertions regarding representation by the Podhurst firm and Mr. Josefsberg are accurate. Judge Davis conferred with Messrs. Podhurst and Josefsberg to insure their willingness to undertake this assignment prior to finalizing his selection.

JAY P. LEFKOWITZ, ESQ.  
DECEMBER 6, 2007  
PAGE 4 OF 4

Lastly, you object to personal communication between the victims and federal attorneys or agents. We have no objection to sending the letters through the mail<sup>2</sup> but we will not remove the language about contacting AUSA [REDACTED] or Special Agent [REDACTED] with questions or concerns. Again, federal law requires that victims have the "reasonable right to confer with the attorney for the Government in this case." 18 U.S.C. § 3771(b)(5). The three victims who were notified prior to your objection had questions directed to Mr. Epstein's punishment, not the civil litigation. Those questions are appropriately directed to law enforcement. If questions arise related to the civil litigation, AUSA Villafaña and Special Agent [REDACTED] will recommend that the victims direct those questions to Mr. Josefsberg.

I have attached [REDACTED] revised letter incorporating the changes on which we can agree. Please provide any further comments by the close of business on Friday. In addition, please provide us with [REDACTED] definitive statement, signed by your client, of his intention to abide by each and every term of the Agreement by close of business on Friday, December 7, 2007. By that time, you must also provide us with the agreement(s) with the State Attorney's Office and [REDACTED] date and time certain for the plea and sentencing, which must occur no later than December 14, 2007. There must be closure in this matter.

Sincerely,

R. Alexander Acosta  
United States Attorney



By: [REDACTED]  
First Assistant United States Attorney

Enclosure

cc: R. Alexander Acosta, U.S. Attorney  
AUSA [REDACTED]

---

<sup>2</sup>This is contingent, however, on being able to provide adequate notice of the change of plea and sentencing. The sooner that you schedule that hearing with Judge McSorley, the sooner we can dispatch these letters. If you delay further, we will have to rely on telephone or personal notification.



**U.S. Department of Justice**

*United States Attorney  
Southern District of Florida*

---

*500 South Australian Ave., Suite 400  
West Palm Beach, FL 33401  
(561) 820-8711  
Facsimile: (561) 820-8777*

December 6, 2007

**DELIVERY BY UNITED STATES MAIL**

Miss

Re: Crime Victims' Rights – Notification of Resolution of Epstein Investigation

Dear Miss \_\_\_\_\_:

Several months ago, I provided you with [redacted] letter notifying you of your rights as [redacted] victim pursuant to the Justice for All Act of 2004 and other federal legislation, including:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any public court proceeding, unless the court determines that your testimony may be materially altered if you are present for other portions of [redacted] proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, or sentencing.
- (5) The reasonable right to confer with the attorney for the United States in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

I am writing to inform you that the federal investigation of Jeffrey Epstein has been completed, and that Mr. Epstein and the U.S. Attorney's Office have reached an agreement containing the following terms.

First, Mr. Epstein agrees that he will plead guilty to two state offenses, including the offense of soliciting minors to engage in prostitution, which will require him to register as a sexual offender for the remainder of his life.

Second, Mr. Epstein has agreed to make a binding recommendation of 18 months' imprisonment to the state court judge who sentences him. Mr. Epstein will serve that sentence of imprisonment at the Palm Beach County Jail.

Third, Mr. Epstein has agreed that he will compensate you for damages you have suffered, under the following circumstances. That portion of the agreement that relates to those claims reads as follows:

7. The United States shall provide Epstein's attorneys with a list of individuals whom it has identified as victims, as defined in 18 U.S.C. § 2255, after Epstein has signed this agreement and been sentenced. Upon the execution of this agreement, the United States, in consultation with and subject to the good faith approval of Epstein's counsel, shall select an attorney representative for these persons, who shall be paid for by Epstein. Epstein's counsel may contact the identified individuals through that representative.
8. If any of the individuals referred to in paragraph (7), *supra*, elects to file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and Epstein waives his right to contest liability and also waives his right to contest damages up to an amount as agreed to between the identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, as to those individuals whose names appear on the list provided by the United States, Epstein's signature on this agreement, his waivers and failures to contest liability and such damages in any suit are not to be construed as an admission of any criminal or civil liability.
9. Epstein's signature on this agreement also is not to be construed as an admission of civil or criminal liability or a waiver of any jurisdictional

or other defense as to any person whose name does not appear on the list provided by the United States.

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

Pursuant to the terms of the agreement and an addendum, to assist you in making such [ ] claim, the U.S. Attorney's Office has asked an independent Special Master to select attorneys to represent you. Those attorneys are Aaron Podhurst and Robert ("Bob") Josefsberg with the law firm of Podhurst Orseck, [ ]. They can be reached at (305) 358-2800. I anticipate that someone from their law firm will be contacting you shortly. I must also advise you that you are not obligated to use these attorneys. In fact, you have the absolute right to select your own attorney, so you can decide not to speak with Messrs. Podhurst/Josefsberg at all, or you can speak with them and decide at any time to use [ ] different attorney. If you do decide to seek damages from Mr. Epstein and you decide to use Messrs. Podhurst/Josefsberg as your attorneys, Mr. Epstein will be responsible for paying attorney's fees incurred during the time spent trying to negotiate [ ] settlement. If you are unable to reach [ ] settlement with Mr. Epstein, you and Mr. Josefsberg can discuss how best to proceed.

As I mentioned above, as part of the resolution of the federal investigation, Mr. Epstein has agreed to plead guilty to state charges. Mr. Epstein's change of plea and sentencing will occur on December 14, 2007, at \_\_\_\_\_ [ ], before Judge Sandra K. McSorley, in Courtroom 11F at the Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida. Pursuant to Florida Statutes Sections 960.001(1)(k) and 921.143(1), you are entitled to be present and to make [ ] statement under oath. If you choose, you can submit [ ] written statement under oath, which may be filed by the State Attorney's Office on your behalf. If you elect to prepare [ ] written statement, it should address the following:

the facts of the case and the extent of any harm, including social, psychological, or physical harm, financial losses, loss of earnings directly or indirectly resulting from the crime for which the defendant is being sentenced,

MISS \_\_\_\_\_  
NOVEMBER 29, 2007  
PAGE 4

and any matter relevant to an appropriate disposition and sentence. Fl. Stat. 921.143(2).

You also are entitled to notification when Mr. Epstein is released from imprisonment at the end of his prison term and/or if he is allowed to participate in [redacted] work release program. To receive such notification, please provide the State Attorney's Office with the following information:

1. Your name
2. Your address
3. Your home, work, and/or cell phone numbers
4. Your e-mail address
5. [redacted] notation of whether you would like to participate in the "VINE system," which provides automated notification calls any time an inmate is moved. (To use this system, your calls must go to you directly, not through [redacted] switchboard.)

Thank you for all of your help during the course of the investigation. If you have any questions or concerns, please do not hesitate to contact me or Special Agent Nesbitt [redacted] at (561) 822-5946.

Sincerely,

R. Alexander Acosta  
United States Attorney

By:

[redacted]  
Assistant United States Attorney

cc: Special Agent [redacted], F.B.I.  
Ms. Clearetha Wright, Victim-Witness Coordinator, U.S. Attorney's Office

## KIRKLAND &amp; ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Citigroup Center  
153 East 53rd Street  
New York, New York 10022-4611

www.kirkland.com

Jay P. Lolkowitz, P.C.  
To Call Writer Directly:  
( ) 446-4970  
lolkowitz@kirkland.comFacsimile:  
( )

December 11, 2007

**VIA FACSIMILE (305) 530-6444**Honorable R. Alexander Acosta  
United States Attorney  
United States Attorney's Office  
Southern District of Florida  
99 NE 4th Street  
Miami, FL 33132*Re: Jeffrey Epstein*

Dear Alex,

I thank you for the opportunity to express my concerns with the Section 2255 component of the Non-Prosecution Agreement (the "Agreement"). I provide this submission as a good faith effort to communicate all of our concerns on this matter. I respectfully request that you consider the issues I discuss below in conjunction with the ethics opinion of Mr. Joe D. Whitley that I faxed to your Office on December 7.

**Background of Negotiations**

I believe it is important for you to be aware of the full scope and substance of our communications with your Office with respect to first, the negotiations regarding the inclusion of the Section 2255 component and second, the process of implementation of its terms. Contrary to your Office's view, we do not raise our concerns about the Section 2255 component of the Agreement at the "eleventh hour." Since the very first negotiation of the Non-Prosecution Agreement between the USAO and Mr. Epstein, we have verbalized our objections to the inclusion of and specific language relating to Section 2255. Also, when negotiating the settlement portion of the federal plea agreement, we immediately sought an alternative to the 2255 language. In fact, for the sake of expediting any monetary settlements that were to be made and to allow for quick resolution of the matter, we repeatedly offered 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. This option, however, was rejected by your Office. Notably, while in our December 4 letter to me, you indicate that the reason for the rejection of a fund was because it would place an upper limit on

Chicago

Hong Kong

London

Los Angeles

Munich

San Francisco

Washington, D.C.

RFP MIA 000025

EFTA00209071

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta  
December 11, 2007  
Page 2

the victims' recovery, we placed no such limit on the amount that the alleged victims could recover.

Our objections regarding the Section 2255 component of the Agreement began as early as August 2 when, after receiving the USAO's proposed Non-Prosecution Agreement, we suggested that the 2255 component of the Agreement could be satisfied by the creation of a restitution fund:

... Mr. Epstein is prepared to fully fund the identified group of victims which are the focus of the Office -- that is, the 12 individuals noted at the meeting on July 31, 2007. This would allow the victims to be able to promptly put this behind them and go forwards with their lives. If given the opportunity to opine as to the appropriateness of Mr. Epstein's proposal, in my extensive experience in these types of cases, the victims prefer a quick resolution with compensation for damages and will always support any disposition that eliminates the need for trial.

See letter from Lily Ann Sanchez to Chief [REDACTED] dated August 2, 2007.<sup>1</sup> For the duration of the negotiations, we then continued to encourage the use of a restitution fund in place of civil liability under Section 2255. For example, in our draft plea agreement [REDACTED] to your Office on September 16, 2007, we included the following paragraph:

Epstein agrees to fund a Trust set up in concert with the Government and under the supervision of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County. Epstein agrees that a Trustee will be appointed by the Circuit Court and that funds from the Trust will be available to be disbursed at the Trustee's discretion to an agreed list of persons who seek reimbursement and make a good faith showing to the Trustee that they suffered injury as a result of the conduct of Epstein. Epstein waives his right to contest liability or damages up to an amount agreed to by the parties for any settlements entered into by the Trustee. Epstein's waiver is not to be construed as an admission of civil or criminal liability in regards to any of those who seek compensation from the Trust.

See draft proposal [REDACTED] from Jay Lefkowitz to Andrew Lourie dated September 15, 2007. In response, Ms. [REDACTED] mandated that the Agreement contain language considering the inclusion of a guardian ad litem in the proceedings, despite the fact that, we are now led to believe that all but one of the women in question are in fact not minors. Interestingly, Ms. [REDACTED] not only raises the same concerns that now have become issues with respect to the implementation of the Section 2255 component, she also believes that the creation of a trust would be in the victims' best interests. [REDACTED] writes:

<sup>1</sup> It was not until after receipt of this letter that Mr. Menchel indicated to us that the scope of liability would encompass not just the 12 individuals named in the indictment, but "all of the minor girls identified during the federal investigation." See Menchel e-mail to Sanchez dated August 3, 2007.

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta  
December 11, 2007  
Page 3

As I mentioned over the telephone, I cannot bind the girls to the Trust Agreement, and I don't think it is appropriate that [redacted] state court would administer [redacted] trust that seeks to pay for federal civil claims. *We both want to avoid unscrupulous attorneys and/or litigants from coming forward, and I know that your client wants to keep these matters outside of public court filings, but I just don't have the power to do what you ask. Here is my recommendation. During the period between Mr. Epstein's plea and sentencing, I make [redacted] motion for appointment of the Guardian Ad Litem. The three of us sit down and discuss things, and I will facilitate as much as I can getting the girls' approval of this procedure because, as I mentioned, I think it is probably in their best interests. In terms of plea agreement language, let me suggest the following:*

The United States agrees to make [redacted] motion seeking the appointment of a Guardian ad Litem to represent the identified victims. Following the appointment of such Guardian, the parties agree to work together in good faith to develop [redacted] Trust Agreement, subject to the Court's approval, that would provide for any damages owed to the identified victims pursuant to 18 U.S.C. Section 2255. Then include the last two sentences of your paragraph 8.

See email from [redacted] to Lefkowitz dated September 16, 2007 (emphasis added). However, notably, in the draft agreement that follows, Ms. [redacted] keeps the same objectionable language and only adds a portion of what was suggested in her communication to us:

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

The United States shall provide Epstein's attorneys with [redacted] list of the identified victims, which will not exceed forty, after Epstein has signed this agreement and has been sentenced. The United States shall make [redacted] motion with the United States District Court for the Southern District of Florida for the appointment of [redacted] guardian ad litem for the identified victims and Epstein's counsel may contact the identified victims through that counsel.

See draft non-prosecution agreement e-mailed from [redacted] to Lefkowitz dated September 17, 2007. The inclusion of [redacted] guardian ad litem, however, only served to complicate matters. We continued to reiterate our objections to the inclusion of § 2255 in the Agreement repeatedly, as evidenced in an email from Ms. [redacted] to myself on September 23, 2005 where she writes: "we have been over paragraph 6 [the then relevant 2255 paragraph] an infinite number of times." During negotiations, it was decided that an attorney representative be appointed in the place of [redacted] guardian ad litem -- not for the sake of litigating claims, but based on the belief that [redacted] guardian ad litem would not be appropriate for adults that are capable of making their own decisions. However, the USAO included into the Agreement that we pay for the attorney representative -- when originally Ms. Villafana stated that the representative could be paid for by us or the federal court. See e-mail from [redacted] to Lefkowitz dated September 23, 2007.

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta  
December 11, 2007  
Page 4

The final agreement was very similar to what was proposed by Ms. [REDACTED] in her initial draft agreement on July 31, 2007:

The United States shall provide Epstein's attorney's with a list of individuals whom it has identified as victims, as defined in 18 U.S.C. § 2255, after Epstein has signed this agreement and has been sentenced. Upon the execution of this agreement, the United States, in consultation with and subject to the good faith approval of Epstein's counsel, shall select an attorney representative for these persons, who shall be paid for by Epstein. Epstein's counsel may contact the identified individuals through that representative.

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

*See* final plea agreement. The Agreement requires Mr. Epstein to waive jurisdiction and liability under 18 U.S.C. §2255 for the settlement of any monetary claims that might be made by alleged victims identified by the USAO (the "identified individuals"). Mr. Epstein is precluded from contesting liability as to civil lawsuits seeking monetary compensation for damages for those identified individuals who elect to settle the civil claims for the statutory minimum of either \$50,000 (the amount set by Congress as of the date of the occurrences) or \$150,000 (the amount currently set by statute) or some other agreed upon damage amount. Mr. Epstein must pay for the services of the selected attorney representative [REDACTED] as long as they are limited to settling the claims of the identified individuals.

The implementation of the terms of the Agreement was just as contentious as was the drafting and negotiation this portion of the Agreement. The first major obstacle was [REDACTED] direct result of Ms. [REDACTED] improper attempt to appoint, Mr. Bert Ocariz, [REDACTED] close, person friend of her boyfriend's for the role of attorney representative. We objected in the strongest terms to such an appointment due to our serious concerns regarding the lack of independence of this and the appearance of impropriety caused by this choice. As [REDACTED] result, the USAO drafted an addendum to the Agreement. This addendum provides for the use of an independent third party to select the attorney representative and also specifies that Mr. Epstein is not obligated to pay the cost of litigation against him. Upon the decision that we would appoint an independent party to choose the attorney representative, we were engaged in consistent and constant dialogue with your staff as to the precise language that would be transmitted to the independent party to explain his or role.

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta  
December 11, 2007  
Page 5

At each juncture, the inclusion of [redacted] civil remedy in the Agreement has resulted in unending debates and disagreements with respect to the appropriate manner in which to implement the terms of the Section 2255 component. The main issues that have arisen since the drafting and execution of the final agreement include the process for the selection of an attorney representative; the scope of Mr. Epstein's waiver of liability and jurisdiction; the role of the attorney representative; the language contained in various drafts of the letter to the independent third party; the correct amount of minimum damages pursuant to Section 2255; the extent and substance of communications between the witnesses and alleged victims and the USAO and the FBI, particularly with respect to the settlement process; the language contained in the letters proposed to be [redacted] to the alleged victims; and the extent of continued federal involvement in the state procedures of Mr. Epstein's state plea and sentence.

Notably, neither Section 2255, nor any other civil remedy statute, has been used as [redacted] prerequisite to criminal plea agreement and it is clear that the use of these terms creates unanticipated issues. Furthermore, the waiver of rights of which the USAO insisted is also not [redacted] traditional aspect of criminal resolutions. While we were reluctant and cautious about [redacted] Non-Prosecution Agreement in which [redacted] criminal defendant gives up certain rights to contest liability for [redacted] civil settlement, we did not believe there was room for contention given the USAO's, and specifically, Ms. [redacted] ultimatums that required that we acquiesce to these unprecedented terms.

### Concerns Regarding Section 2255

Mr. Epstein unconditionally re-asserts his intention to fulfill and not seek to withdraw from or unwind the Agreement previously entered. He raises important issues regarding the implementation of the 2255 provisions not to unwind the provisions or invalidate the Agreement but instead to call attention to serious matters of policy and principles that you are requested to review.

As you will see below our main policy-related concerns are (1) the inclusion of Section 2255, [redacted] civil remedies statutes in [redacted] criminal plea agreement, (2) the blanket waiver of jurisdiction and liability as to certain unidentified individuals to whose claims the government has asserted they take no position, and (3) any communications between federal authorities, including your staff and the FBI, and witnesses and alleged victims and the nature of such communications. With respect to the interpretation of the terms of the Agreement, we do not agree with your Office's interpretation of the expansive scope of Mr. Epstein's agreement to waive liability and jurisdiction. Nor do we agree with your Office's view of the expansive role of the attorney representative. Below, I describe first, the policy implications and the practical problems that these terms have created or will create. Second, I describe points of contention as to the interpretation of various terms of the Section 2255 component of the Agreement.

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta  
December 11, 2007  
Page 6

## I. Policy Considerations

The inclusion of Section 2255 in [ ] criminal plea agreement is unprecedented and raises significant policy-related concerns. Some of these issues can create and have created problems as to the ability of this component to (1) maintain the integrity and independence of the USAO, (2) serve its purpose, namely to provide fair and appropriate recovery to any victims in [ ] prompt fashion, and (3) protect the rights of the defendant. While we appreciate your consideration of our concerns described below, we are also confident that your commitment to justice and integrity will cause you to consider any additional policy and ethical issues that the Section 2255 component raises.

### A. Government Involvement

The inclusion of Section 2255, [ ] purely civil remedy, raises the risk of excessive government interference in private, civil matters. As Mr. Whitley states in his opinion, ". . . unnecessary entanglement of the government in such cases and the use of federal resources could improperly influence such cases and create the appearance of impropriety." It is well established that the government should refrain from getting involved in lawsuits. However, to include Section 2255 in [ ] federal agreement inherently exacerbates the risk of federal involvement in civil litigation and thus far, in practice, the inclusion of this statute, as opposed to the creation of [ ] restitution fund, has resulted in continued federal involvement in this matter.

Federal criminal investigators and prosecutors should not be in the business of helping alleged victims of state crimes secure civil financial settlements as [ ] condition precedent to entering non-prosecution or deferred prosecution agreements. This is especially true where the defendant is pleading to state crimes for which there exists [ ] state statute allowing victims to recover damages. See Florida Statutes § 796.09. The fact that state law accounts for the ability of victims to recover truly eliminates the need for [ ] waiver of liability under [ ] federal statute.

Furthermore, the vehicle for the financial settlement under the Agreement requires restitution in [ ] lump sum without requiring proof of actual injury or loss. Federal authorities should therefore be particularly sensitive to avoid causing [ ] prejudiced and unfair result. Section 2255 is [ ] civil statute implanted in the criminal code that in contrast to all other criminal restitution statutes fails to correlate payments to specific injuries or losses and instead presumes that victims under the statute have sustained damages of at least [ ] minimum lump sum without regard to whether the complainants suffered actual medical, psychological or other forms of individualized harm. We presume that it is for this reason that Section 2255 has never before been employed in this manner in connection with [ ] non-prosecution or deferred prosecution agreement.

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta  
December 11, 2007  
Page 7

Mr. Epstein's blanket waiver of liability as to civil claims gives the appearance of impropriety. While your Office has, on several occasions, asserted that they take no position as to the claims of the individuals it identifies as "victims," the fact that they continue to promote the award of civil settlement to these individuals is problematic. As you know, government contracts and plea agreement must not diminish or undermine the integrity of the criminal justice system. See *U.S. v. McGovern*, 822 F.2d 739, 743 (8th Cir. 1987) ("plea agreement, however, is not simply contract between two parties. It necessarily implicates the integrity of the criminal justice system and requires the courts to exercise judicial authority in considering the plea agreement and in accepting or rejecting the plea."). The requirement that Mr. Epstein blindly sacrifice his rights, as civil litigant, to contest allegations made against him seem to contradict the principles of justice and fairness that are embedded in the tenets of the United States Attorney's Office.

I also assert that on both principled and practical level, the mere involvement of your Office in the matter with respect to civil settlement is inappropriate. Even though we understood from you that federal involvement in this matter would cease after the attorney representative was selected, your Office continues to assert their obligation to be in contact with the alleged victims in this matter. Had we agreed to restitution fund for the victims instead of the civil remedies provision, we would not have objected to your Office's communications with these individuals. However, because the alleged victims have the ability to recover damages based on civil claim pursuant to the Agreement, we are concerned with your Office's ongoing efforts to stay involved in this matter. Contact with federal authorities at this point can only invite the possibility for impermissible or partial communications. Most recently, your Office us drafts of letter that your Office proposed to send to the alleged victims (the "victim notification letter"). While the revised draft of this letter states that victims should contact the State Attorney's Office for assistance with their rights, there is no phone number provided for the office and instead, the letter provides the telephone number and an invitation to contact Special Agent Nesbitt Kuyrkendall of the FBI. Indeed, the letter as currently drafted invites not only contact between your Office and the victims, it also asserts that federal witnesses may become participants in state proceeding, thus federalizing the state plea and sentencing in the same manner as would the appearance and statements of a member of your Office or the FBI.<sup>2</sup>

---

<sup>2</sup> We are concerned with the fact that some of the victims were previously notified, as Mr. Jeffrey states in his letter of December 6 letter. In your letter of December 4, you state that you would not issue the Victim Notification Letter until December 7. Thus, it is troubling to learn that some victims were notified prior to that date. Please confirm when the victims were notified, who was notified, the method of communication for the notification, and the individual who notified them.

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta  
December 11, 2007  
Page 8

The proposed victim notification letter asserts that the federal 'victims' have the right to appear at Mr. Epstein's plea and sentence or to submit a written statement to be filed by the State Attorney. However, as agreed to in the federal non-prosecution Agreement, Mr. Epstein will be pleading to the charges and he will be sentenced for the commission of *state offenses*. The 'victims' the government identifies relate only to the federal charges for which Mr. Epstein was under investigation. The draft victim notification letter cites Florida Statutes §§ 960.001(k) and 921.143(1) as the authority for allowing the alleged victims to appear or give statements, however these provisions apply only to "the victim of the crime for which the defendant is being sentenced . . ." Thus Florida law only affords victims of state crimes to appear or submit statements in criminal proceedings and the state charges for which Mr. Epstein will be sentenced are not coextensive with the federal investigation. Further, any questions at this point involving the charges against Mr. Epstein or the proper state procedures under which he will plead or be sentenced are appropriately made to the State Attorney's Office.

Continued federal involvement in this matter has led to an impropriety that was unanticipated as well. Ms. Villafana attempted to manipulate the terms of Mr. Epstein's settlement so that persons close to her would personally profit. Ms. [REDACTED] inappropriately attempted to nominate Bert Ocariz for attorney representative, despite the fact that Mr. Ocariz turns out to be a very good personal friend of Ms. [REDACTED] boyfriend, a fact she assiduously kept hidden from counsel. We requested alternate choices immediately, but were told that Mr. Ocariz had been informed of the charges the government would bring against Epstein and in response, he asked in an e-mail whether his fees would be capped. Needless to say, we were alarmed that Ms. [REDACTED] would attempt to influence the settlement process on such improper grounds. And even after the USAO conceded that it was inappropriate for its attorneys to select the attorney representative, Ms. Villafana continued to improperly 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. Although it is unclear how Mr. Ocariz even knows that Judge Davis has been chosen to administer the settlement process, it can only be understood as Ms. [REDACTED] attempts to compromise the fairness of the settlement process.

**B. Integrity of the Process and the Legitimacy of the Claims**

The waiver of liability Mr. Epstein must make in relation to Section 2255 endangers the legitimacy of the claims made by the alleged victims. There is a heightened risk that the alleged victims will make false and exaggerated claims once they are informed of Mr. Epstein's waiver under Section 2255 for the settlement of claims pursuant to the Agreement. Indeed, Mr. Whitley states, ". . . the Department [of Justice] should consider developing processes and procedures to ensure that the investigative process is insulated from such risks." It is also well settled that witnesses cannot be given any special treatment due to the fact that it may affect the reliability of

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta  
December 11, 2007  
Page 9

their testimony. Any and all communications between the federal authorities and the alleged "victims" and witnesses in this matter has the ability to influence the reliability of the testimony obtained and the validity of the civil settlements that result.

Thus, there is still [redacted] real concern that some of the statements that federal prosecutors relied upon in its prosecution of this matter may have been tainted. An inquiry is required to confirm that at the time witness statements were given, there were no communications made by federal agents regarding potential civil remedies. The government should not provide promises of guaranteed monetary settlements to encourage cooperation because they run the risk of seriously tainting the reliability of witness statements. While we by no means are accusing your Office of making improper communications at this point the fact that the award of [redacted] civil settlement, without any requirement to prove liability, is available to the identified individuals, raises cause for concern as to the nature of all communications that are made to the 'victims.'

You previously stated that the USAO's main objective with respect to the Section 2255 component of the Agreement was to "place the victims in the same position as they would have been had Mr. Epstein been convicted at trial." However, to accomplish this goal, your Office rejected using traditional terms that allow for the restitution of victims. Instead, your Office chose to insert itself into the negotiations, settlement, and potential litigation of [redacted] civil suit. With all due respect, we object to your Office's attempt to make the victims whole by requiring that Mr. Epstein deprive himself of rights accorded to him as [redacted] potential civil defendant. While we are aware one of the responsibilities of your Office is to provide for restitution for victims of crimes, this does not give the government the responsibility to enable alleged victims to collect [redacted] civil settlement.

Despite this concern, it should also be noted that, the Agreement, both as written and as interpreted by your Office significantly enlarges the victims' ability to recover from Mr. Epstein. For instance, if the individuals attempted to litigate against Mr. Epstein, they would have been determined to be victims only after [redacted] lengthy trial, in which they would have been thoroughly deposed, their credibility tested and their statements subject to cross-examination. The defendant, under these circumstances, would not have had pay the plaintiffs' legal fees. Moreover, these individuals would face significant evidentiary hurdles, unwanted publicity, and most importantly, no certainty of success on the merits. Therefore, the notion that your Office is merely attempting to restore these "victims" to the same position as they would have been had Mr. Epstein been convicted at trial misunderstands the Agreement and your Office's implementation of its terms.

### C. Rights of [redacted] Defendant

Requiring Mr. Epstein to make [redacted] blanket waiver of liability and jurisdiction as to unidentified victims whose claims to which the government takes no position can be construed as

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta  
December 11, 2007  
Page 10

violative of his Due Process rights. Furthermore, the fact that the statute at issue in this matter does not connect harm to the minimum amount available to the victim and simply includes a lump sum exacerbates the potential for injustice and an abridgement of Mr. Epstein's rights. At the very least, Mr. Epstein should be given the right to know the identity of the victims and the evidence upon which each one was identified as a victim by the government.

The USAO has provided no information as to the specific claims that were made by each identified individual, nor were we given the names or ages of the individuals or the time-frame of the alleged conduct at issue. The USAO's reluctance to provide Mr. Epstein with any information regarding the allegations against him leaves wide open the opportunity for misconduct by the federal investigators and eliminates the ability for Mr. Epstein and/or his agents to verify that the allegations at issue are grounded in factual assertions and real evidence. Indeed, the requirement that a target of federal criminal prosecution agree to waive his right to contest liability as to unnamed civil complainants creates at minimum an appearance of injustice, both because of the obvious Due Process concerns of waiving rights without notice of even the identity of the complainant and because of the involvement of the federal criminal justice system in civil settlements between private individuals. We reaffirm the right to test the veracity of the victims' claims as provided to us in the letter from you to Judge Davis dated October 25, 2007.

It has recently come to our attention that your staff has identified [REDACTED] as a "victim" for purposes of Section 2255 relief. Ms. [REDACTED], who initially and repeatedly refused to cooperate with federal authorities during the course of the investigation, only submitted to an interview after she was conferred with a grant of immunity. Surely this is not a demand typically made by someone who is a crime "victim". Moreover, Ms. Miller's sworn testimony does not suggest that she is a victim. Ms. [REDACTED] has not only admitted that she lied to Mr. Epstein about her age claiming she was 18 years old, but that she counseled others to lie to Mr. Epstein in the same manner. Ms. [REDACTED] also states that Mr. Epstein was clear with her that he was only interested in "women" who were of age and that most of the young women she brought to his home were indeed over 18 years of age. Moreover, while Ms. [REDACTED] claims to have provided massages to Mr. Epstein, she does not allege to have engaged in sexual intercourse with Mr. Epstein; does not claim she provided him with oral sex; does not purport that Mr. Epstein penetrated her in any manner; denies Mr. Epstein ever used a vibrator, massager, or any type of "sex toy" on her; denies he touched her breasts, buttocks, or vagina; and states that she never touched Mr. Epstein's sexual organs - nor was she asked to do so by Mr. Epstein. Without a right to contest the liability of claims, Ms. Miller will likely receive far more in civil damages than what would be she would have had Mr. Epstein been convicted.

In addition, the Agreement with the USAO only defers federal prosecution of Mr. Epstein; it does not assert a declination to prosecute, as was first contemplated in the negotiation of the Agreement. Any payments made and/or settlement agreements reached with the alleged

**KIRKLAND & ELLIS LLP**

R. Alexander Acosta

December 11, 2007

Page 11

victims prior to the foreclosure of any future federal prosecution carries the potential of being used as evidence against Mr. Epstein. Thus, to protect his rights as [redacted] defendant, Mr. Epstein should not be required to pay any of the alleged victims until after the threat of prosecution no longer exists.

**II. Misinterpretations of the Agreement**

The contentiousness caused by the implementation of the Section 2255 portion of the Agreement has also been caused by what we believe are misinterpretations of the terms by your Office. These problems, which I describe below, are [redacted] practical outgrowth of the fact that civil settlement, as opposed to restitution, is considered in the Agreement.

**[redacted] Role of the Attorney Representative**

The USAO has improperly emphasized that the chosen attorney representative should be able to litigate the claims of individuals, which violates the terms, and deeply infringes upon the spirit and nature of, the Agreement. However, after the parties agreed to the appointment of an independent third party to select the representative, the government announced that the criteria for choosing an appropriate attorney representative would include that they be [redacted] plaintiff's lawyer capable of handling multiple lawsuits against high profile attorneys." This interpretation of the scope of the attorney representative's role is far outside the common understanding that existed when we negotiated Mr. Epstein's settlement with the USAO. Moreover, we have made the USAO aware of the potential ethical problems that would arise should the selected representative be allowed to litigate *and* settle various claims against Mr. Epstein. The initial draft victim notification letter contained language that confirmed your Office's interpretation and indicated 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 the USAO, which we believe is patently incorrect. To suggest this notion in [redacted] letter to victims who have limited or no knowledge of the ethical principles at issue will only lead to confusion, misunderstanding and disappointment among the identified individuals when they learn that such representation is foreclosed.

**B. Scope of Mr. Epstein's Waiver**

Your Office has taken the position that Mr. Epstein waives liability beyond the settlement of claims and that he will waive liability even in lawsuits brought by the identified individuals. However, this overstates the scope of Mr. Epstein's waiver pursuant to the Agreement. Mr. Epstein has only agreed that he will waive the right to contest liability and jurisdiction for the purpose of settling claims with the alleged victims pursuant to Sections 7 through 8 of the Agreement and Addendum. Mr. Epstein has no obligation to waive this right to contest liability

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta

December 11, 2007

Page 12

in any claim for damages -- by an enumerated "victim" or anyone else -- where that party fails to settle her claims pursuant to the terms of the Agreement. The revised draft of the letter avoids this misinterpretation and directly quotes Paragraphs 7, 8, 9 and 10 of the Agreement. While we do not have any objection to including this portion of the Agreement in the proposed letter, we request that Paragraphs 7A, 7B, and 7C of the Addendum to the Agreement also be included because the language contained there in most clearly outlines the scope of Mr. Epstein's obligation to pay damages under the Agreement.

**C. Right of the Alleged Victims to Be Notified**

As we have expressed to you previously, we do not agree with your Office's assertion that it is either an obligation and even appropriate for the USAO to send [redacted] victims notification letter to the alleged victims. The Justice for All Act of 2004 only contemplates notification in relation to available restitution for the victims of crimes. However, since Section 2255 is only one of many civil remedies, there is no requirement that the USAO inform alleged victims pursuant to the Justice for All Act of 2004. Notably, if the USAO had agreed to include [redacted] restitution fund in the Agreement as opposed to [redacted] civil remedy statute, the alleged victims would have the right to be notified pursuant to the relevant Act.

Further, we note that the reasons you cite in favor of issuing the proposed Victims Notification letter in your correspondence of December 4 are also inapplicable to this scenario. For instance, you cite 18 U.S.C. § 3771 for the proposition that your Office is obligated to provide certain notices to the alleged victims. However, 18 U.S.C. § 3771([redacted])(2) & (3) provide:

[redacted] crime victim has the following rights:

(2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, *involving the crime* or any release or escape of the accused.

(3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at the proceeding.

(emphasis added). Your interpretation of § 3771 is erroneous because the rights conferred by the statute indicate that these rights are for the notification and appearance at public proceedings involving the crime for which the relevant individual is [redacted] victim. As you know, the public proceeding in this matter will be in state court for the purpose of the entry of [redacted] plea on state charges. Therefore, 18 U.S.C. § 3771 clearly does not apply to "victims" who are not state "victims." You additionally cite your Office's obligations under § 3771(c)(1) of the Justice for All Act of 2004. However, this subsection relates back to the "rights described in subsection ([redacted])." Thus, since the rights set forth in subsection ([redacted]) only apply to the victims of the crimes for

## KIRKLAND &amp; ELLIS LLP

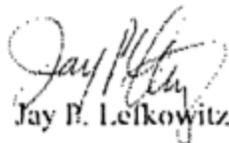
R. Alexander Acosta  
December 11, 2007  
Page 13

which the public proceeding is being held, the individuals identified by your Office have no rights to notification or appearance under this Act.

You further cite 42 U.S.C. § 10607(c)(1)(B) and (c)(3) which, you state, obligates your Office to inform victims of "any restitution or other relief" to which that victim may be entitled and of notice of the status of the investigation; the filing of charges against [redacted] suspected offender; and the acceptance of [redacted] plea. Although we do not believe this applies here for the same reasons stated above, we further assert that your proposed Victims Notification letter seeks to go beyond what is prescribed under 42 U.S.C. § 10607. Indeed, there is nothing in the statute that requires your Office to solicit witness testimony or statements for the purposes of Mr. Epstein's sentencing hearing. Furthermore, we assert that any notification obligation you believe you have under this statute should be addressed by Judge Davis.

We submit to you based on the policy concerns of including [redacted] civil remedies statute in [redacted] criminal agreement and requiring the waiver of [redacted] defendants' rights under that agreement creates [redacted] host of problems that, in this case, have led to [redacted] serious delay in achieving finality to the satisfaction of all parties affected. We appreciate your consideration of these issues and hope that we can find [redacted] solution that resolves our concerns.

Sincerely,

  
Jay D. Lelkowitz



U.S. Department of Justice

United States Attorney  
Southern District of Florida

R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

99 N.E. 4 Street  
Miami, FL 33132  
(305) 961-9100 - Telephone  
(305) 530-6444 - Facsimile

December 19, 2007

DELIVERY BY FACSIMILE

Lilly Ann Sanchez  
Fowler White Burnett, PA  
1395 Brickell Ave, 14<sup>th</sup> Floor  
Miami, FL 33131

Re: Jeffrey Epstein

Dear Ms. Sanchez:

I write to follow up on the December 14<sup>th</sup> meeting between defense counsel and the Epstein prosecutors, as well as our First Assistant, the Miami FBI Special Agent in Charge and myself.<sup>1</sup> I write to you because I am not certain who among the defense team is the appropriate recipient of this letter. I address issues raised by several members of the defense team, and would thus ask that you please provide [redacted] copy of this letter to all appropriate defense team members.

First, I would like to address the Section 2255 issue.<sup>2</sup> As I stated in my December 4<sup>th</sup> letter, my understanding is that the Non-Prosecution Agreement entered into between this Office and Mr. Epstein responds to Mr. Epstein's desire to reach [redacted] global resolution of his state and federal criminal liability. Under this Agreement, this District has agreed to defer prosecution for enumerated sections

<sup>1</sup> Over the past two weeks, we have received several hundred pages of arguments and exhibits from defense counsel. This is not the forum to respond to the several items raised, and our silence should not be interpreted as agreement; I would, however, like to address one issue. Your December 11<sup>th</sup> letter states that as [redacted] result of defense counsel objections to the appointment process, the USAO proposed an addendum to the Agreement to provide for the use of an independent third party selector. As I recall this matter, before I had any knowledge of defense counsel objections, I *sua sponte* proposed the Addendum to Mr. Lefkowitz at an October meeting in Palm Beach. I did this in an attempt to avoid what I foresaw would likely be [redacted] litigious selection process. It was only after I proposed this change that Mr. Lefkowitz raised with me his enumerated concerns.

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

of Title 18 in favor of prosecution by the State of Florida, provided that the Mr. Epstein satisfies three general federal interests: (1) that Mr. Epstein plead guilty to "registerable" state offense; (2) that this state plea include binding recommendation for sufficient term of imprisonment; and (3) that the Agreement not harm the interests of his victims.

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

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

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

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

Finally, I would like to address [redacted] more general point. Our Agreement was first signed on September 24<sup>th</sup>, 2007. Pursuant to paragraph 11, Mr. Epstein was to use his best efforts to enter his guilty plea and be sentenced no later than October 26, 2007. As outlined in correspondence between our prosecutors and defense counsel, this deadline came and went. Our prosecutors reiterated to defense counsel several times their concerns regarding delays, and in fact, asked me several weeks ago to declare the Agreement in breach because of those delays. I resisted that invitation. I share this fact because it is background to my frustration with what appears to be an 11<sup>th</sup> hour appeal, weeks before the now scheduled January 4<sup>th</sup> plea date.

This said, the issues raised are important and must be fully vetted irrespective of timeliness concerns. We hope to preserve the January 4<sup>th</sup> date. I understand that defense counsel shares our desire not to move that appearance and will work with our office to expedite this process over the next several days. With this in mind, and in the event that defense counsel may wish to seek review of our determinations in Washington D.C., I spoke this past Monday with the Assistant Attorney General Fisher, to inform her of [redacted] possible appeal, to ask her to grant the potential request for review, and to in fact review this case in an expedited manner to attempt to preserve the January 4<sup>th</sup> plea date.

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

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

Sincerely,



R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

cc: Alice Fisher, Assistant Attorney General  
[redacted], First Assistant U.S. Attorney  
AUSA [redacted] Marie [redacted]

## KIRKLAND &amp; ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Citigroup Center  
153 East 53rd Street  
New York, New York 10022-4611

Facsimile

Jay P. Lefkowitz, P.C.  
To Call Writer Directly  
(212) 446-4970  
lefkowitz@kirkland.com

www.kirkland.com

December 21, 2007

VIA FACSIMILE (305) 530-6444

Honorable R. Alexander Acosta  
United States Attorney  
United States Attorney's Office  
Southern District of Florida  
99 NE 4th Street  
Miami, FL 33132

*Re: Jeffrey Epstein*

Dear Alex:

We again extend our appreciation for meeting with us on December 14 and for carefully considering the issues we have raised both at that meeting and in our submissions to your Office. Having received your letter of December 19, we can see that you have made significant effort to address our concerns regarding the § 2255 portion of the non-prosecution agreement (the "Agreement"), and we recognize that you have proposed some substantial and important modifications. Respectfully, however, I would suggest that your proposal raises several troubling questions that require careful consideration. We are authoring this letter to respond to your request that we set forth our position regarding §§ 2255 and 3771 as quickly as possible.

As we have all discovered, the problem of integrating in an unprecedented manner what is at its core a \$150,000 minimum lump sum damage federal civil statute (§ 2255 in its current form) into a federal deferred/non-prosecution agreement that requires pleas of guilty to state criminal offenses that are correlated to state criminal restitution statutes but not to a disparate federal civil non-restitution statute has proved very challenging. The concomitant problem of how fairly to implement the § 2255 portions of the Agreement so that real victims, if any, who in fact suffered "personal injury as a result of [the] violation" if any of specified federal criminal statutes such as 18 U.S.C. § 2422(b) are placed in the same position as if there had been a trial and conviction also requires serious and careful consideration. In this letter, I want to highlight some specific concerns. See also Whitley Opinion.

First, your proposal regarding the § 2255 remedy provisions continues to ask us to assume that each and every woman not only was a victim under § 2255, but that the facts alleged could have been proven to satisfy each element of either § 2422(b) (the Internet luring statute) or § 2423 (the sex-tourism statute), within § 2255 of Title 18. Although we have been denied the

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta  
December 21, 2007  
Page 2

list of alleged "victims" (and lack definitive information as to which federal statutes would serve as [redacted] predicate for each particular alleged victim), or even [redacted] firm number as to how many you suggest there are, we strongly believe that the *provable* conduct of Mr. Epstein with respect to these individuals fails to satisfy the requisite elements of either 18 USC § 2422(b) (which we understand from prior discussions to be the principal predicate offense upon which the § 2255 provisions rely) or 18 USC § 2423(b) (another predicate of § 2255 that has been the subject of discussions between the parties). See Stern Opinion. We believe that the problem arises from the incongruity that exists when attempting to fit [redacted] federal civil remedies statute into [redacted] criminal plea agreement. Again, I note that this problem could have been avoided had the government opted instead for [redacted] restitution fund as we suggested.

Our knowledge of the "list" of alleged victims is limited. However [redacted] prototypical example of [redacted] witness whom the government has requested we compensate and we believe is inaccurately labeled as [redacted] "victim" of [redacted] federal crime is [redacted] (whom we have been told remains on the government's "list"). The transcript of her interview with the Palm Beach Police over [redacted] year before the FBI became involved in any investigation shows that Ms. [redacted] admitted to lying about her age, that she did not engage in sexual intercourse with Mr. Epstein, and that she was never induced over the telephone, computer or any other means of communication required by § 2422(b). In fact, Ms. [redacted] came to Mr. Epstein's home on only one occasion. She testified that she was informed [redacted] about the opportunity to give [redacted] massage to Mr. Epstein not on [redacted] telephone, computer or any other facility of interstate commerce, but rather in [redacted] face-to-face discussion with [redacted] third party who was her friend (Ms. [redacted] and who told her to lie to Mr. Epstein about her age. As such, it is simply impossible to shoehorn this conduct into any of the above-discussed federal statutes.

In addition, Mr. Epstein did not know of Ms. [redacted] before she actually came to his home, did not induce or persuade her to come by phone, did not speak to her at all by phone prior to her visit, did not induce or persuade Ms. [redacted] to bring an underage girl to his residence, and did not otherwise violate either the federal statute § 2422(b) nor the travel for the purpose statute § 2423(b). Indeed, in her statement, Ms. [redacted] testified: "'Haley told me to say I was 18 because Haley said . . . if you're not then he [Epstein] won't really let you in his house. So I said I was 18.'" (Sworn Statement at 38-39). In fact, there is no evidence that Mr. Epstein expected an underage girl to visit him prior to his regular travel to Florida, his home of fifteen years. Thus the travel could not have been for the purpose of having illegal sexual contact and § 2423(b) is no more available as [redacted] predicate for § 2255 recovery than is § 2422(b). Never having reached the threshold violations enumerated under of § 2255, Ms. [redacted] would still have to prove that she suffered [redacted] personal injury. Further, unknown to Mr. Epstein at the time, Ms. [redacted] represented herself to be 18 not only to him but also to the public on her web page where she posted [redacted] nude photo clearly looking at least 18 years old.

At the December 14 meeting, we also discussed [redacted] as emblematic of our concerns surrounding the government's selection of "victims." As you are aware, Ms. [redacted]

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta  
December 21, 2007  
Page 3

was identified in previous correspondence as [REDACTED] person who remained on the Government's list of "victims" even after (at least according to Ms. [REDACTED] letter) the list was subjected to careful multi-party review. Ms. [REDACTED] sworn statement clearly reflects the fact that she is not [REDACTED] "victim" under § 2422(b). She plainly admits that she suffered no injury; the conduct was consensual; she lied to Mr. Epstein about her age; she instructed others to lie about their ages; there was no sexual contact between herself and Mr. Epstein at any time; and there was never any inducement over the telephone, computer or through any other means of interstate commerce. We ask that you consider the most relevant highlights from her testimony offered below:

- **Consent**

[REDACTED]: I said, I told Jeffrey, I heard you like massages topless. And he's like, yeah, he said, but you don't have to do anything that you don't feel comfortable with. And I said okay, but I willingly took it off. ([REDACTED] Sworn Statement at 10)

- **Lied About Her Age**

[REDACTED]: . . . I had [REDACTED] fake ID anyways, saying that I was 18. And she just said make sure you're 18 because Jeffrey doesn't want any underage girls. ([REDACTED] Sworn Statement at 8)

\*\*\*\*\*

[REDACTED]: . . . of course, he thought I was 18. . . ([REDACTED] Sworn Statement at 13)

- **Instructed Others to Lie About Their Ages**

[REDACTED]: . . . 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. ([REDACTED] Sworn Statement at 22)

- **No Sexual Contact**

Q: He never pulled you closer to him in [REDACTED] sexual way?

[REDACTED]: I wish. No, no, never, ever, ever, no, never. Jeffrey is an awesome man, no. ([REDACTED] Sworn Statement at 21)

- **No Inducement**

[REDACTED]: No, I gave Jeffrey my number. And I said, you know, any time you want me to give you [REDACTED] massage again, I'll more than welcome to. ([REDACTED] Sworn Statement at 8)

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta

December 21, 2007

Page 4

\*\*\*\*\*

█: Every girl that I brought to Jeffrey, they said they were fine with it. And like, for instance, Courtney -- Courtney Wild, █ lot of girls begged me to bring them back. They wanted to come back for the money. And as far as I know, we all had fun there. (█ Sworn Statement at 45)

The sworn testimony of █ contains explicit denials from the alleged "victim" herself that she suffered any physical, emotional, or personal injury as required by the express language of § 2255. Further, the sworn testimony of Ms. █ contains █ complete disavowal that Mr. Epstein or anyone on his behalf used █ facility of interstate commerce to knowingly persuade, coerce, entice, or induce her to engage in sexual offenses as required by § 2422(b). Likewise, the transcript provides no basis for █ § 2423(b) violation in that Mr. Epstein had █ residence in Palm Beach for over 10 years at the time of these events, traveled to Palm Beach for █ myriad of legitimate reasons ranging from medical appointments to business appointments having nothing to do with █ sexual objective, and could not be legally charged with traveling to his own home particularly in the absence of any provable nexus between the travel and █ dominant purpose to engage in illicit sexual conduct. Although Ms. █ informed us during the December 14 meeting that she had █ telephone toll record showing an out-of-state call to or from Ms. Miller's phone to █ phone number associated with Mr. Epstein, such █ record fails to prove the content of the call, the identity of the communicators, whether the call discussed or resulted in █ plan for Ms. █ to visit Mr. Epstein's residence, whether any inducement occurred on the out of state call or, more importantly for purposes of the sex tourism statute, whether any travel was planned to Florida or resulted from the phone call. Ms. █ testimony is that she believed that at any time she was called by Mr. Epstein or anyone on his behalf, Mr. Epstein was already in Florida. She also testified to the absence of any sexual contact other than topless massages (topless massages are lawful in Florida at age 16, unless the definition of prostitution is unnaturally expanded). █ complete transcript of the federal interview of Ms. █ has previously been provided to you.

Your wish to put these women in the same position as they would have been had there been █ federal conviction assumes they are each legitimate victims of at least one of the two specific federal crimes enumerated under § 2255. We respectfully have to disagree with that assumption, and even your current formulation of § 2255 would prejudice Mr. Epstein in this regard.

Second, your proposal also effectively deprives Mr. Epstein of his opportunity to test the validity of these womens' claims █ claims that would have been extensively tested at trial. In light of what we have already learned about █ and Tatum █, it is inappropriate to deny Mr. Epstein and his counsel the right to test the merits of each of these womens' cases, in order to verify that they in fact suffered "personal injury" as required by § 2255 and to assess whether they are in fact victims of any violations of § 2422(b) or § 2423(b) as also required by

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta  
December 21, 2007  
Page 5

§ 2255. Given your Office's informing us that Ms. [REDACTED] remained on [REDACTED] reduced list of federal "victims" and given our understanding that Ms. [REDACTED] as well was one of those who is also on the list of persons the Government contends were victims of Mr. Epstein's alleged violation of federal law, we have [REDACTED] principled concern about adopting your recommended language which would leave Mr. Epstein without [REDACTED] basis to challenge the good faith premise of an application to recover \$150,000.

**Third**, the Agreement, even if modified in accord with your December 19 letter, would put the witnesses in [REDACTED] better position than if Mr. Epstein had been federally prosecuted rather than in an equal position and, in fact, encourages the witnesses to make unfounded claims with impunity. Had there been [REDACTED] conviction, these women would have been thoroughly cross-examined, for the veracity of their statements, their credibility and the foundations, if any, for claiming personal injury. Also, Mr. Epstein would have received, pursuant to either Brady or Jencks, material in the form of prior inconsistent statements made by these women before they learned of any financial benefit that may be available to them—evidence that should be considered in determining the credibility of their application for [REDACTED] substantial civil recovery. Furthermore, Mr. Epstein would be without the means to challenge whether the claimant could make out [REDACTED] prima facie case that she was [REDACTED] victim of a violation by Mr. Epstein of § 2422(b) or any other federal statute—[REDACTED] denial of his rights that would insulate potential claimants such as Ms. [REDACTED] and Ms. [REDACTED] from any challenge on this element even if under other circumstances [REDACTED] challenge would result in [REDACTED] summary judgment in Mr. Epstein's favor under Fed. R. Civ. P. 56. Lastly, the modified language recommended by you presupposes that Mr. Epstein would have been charged and convicted of substantive violations rather than charged and convicted of [REDACTED] conspiracy allegation. Conspiracy convictions are not amongst the predicates enumerated by § 2255 and do not, without more, result in the basis for [REDACTED] determination of "personal injury". Since our request to view the draft indictment was rejected on December 14, we have no means to know what it contained by way of allegations.

**Fourth**, I want to respond to several statements in your letter that we believe require immediate correction. With regard to your first footnote, I want to be absolutely clear. We do not believe for one moment that you had prior knowledge of the AUSA's attempt to require us to hire the friend of her live-in boyfriend, and pay his fees on [REDACTED] contingency basis to sue Mr. Epstein. We realize you corrected that irregular situation as soon as you discovered it. We thought this was precipitated by our complaint, but have no real knowledge as to the timing of events. Furthermore, your letter also suggests that our objection to your Office's proposed victims notification letter was that the women identified as victims of federal crimes should not be notified of the state proceedings. That is not true, as our previous letter clearly states. Putting aside our threshold contention that many of those to whom 3771 notification letters are intended are in fact not victims as defined in the Attorney General's 2000 Victim Witness Guidelines—[REDACTED] status requiring physical, emotional or pecuniary injury of the defendant—it was and remains our position that these women may be notified of such proceedings but since they are neither witnesses nor victims to the state prosecution of this matter, they should not be informed of

## KIRKLAND &amp; ELLIS LLP

R. Alexander Acosta  
December 21, 2007  
Page 6

fictitious "rights" or invited to make sworn written or in-court testimonial statements against Mr. Epstein at such proceedings, as Ms. [REDACTED] repeatedly maintained they had the right to do. Additionally, it was and remains our position that any notification should be by mail and that all proactive efforts by the FBI to have communications with the witnesses after the execution of the Agreement should finally come to an end. We agree, however, with your December 19 modification of the previously drafted federal notification letter and agree that the decision as to who can be heard at [REDACTED] state sentencing is, amongst many other issues, properly within the aegis of state decision making.

Your December 19 letter references Professor Dershowitz's position on the inapplicability of Florida Statute § 796.03. Professor Dershowitz made such arguments in the context of saying that he had been unable to discern, after great effort, and supported by years of experience, any basis for the application of § 2422(b) or other federal sex statutes to Mr. Epstein's conduct and that the federal statutes required more of [REDACTED] stretch to fit the facts than the proposed state statute to which Ms. Villafana wanted Mr. Epstein to plead. Professor Dershowitz also stated that Ms. [REDACTED] had represented that it was she who had the facts to support, both the threatened federal charges of § 2422 and/or § 2423 and the proposed state charge of § 796.03 (which the parties understood to be the state charge of soliciting [REDACTED] minor, as Ms. [REDACTED] last letter clearly states). Only last week we learned for the first time that Ms. [REDACTED] did not realize that the charge was actually for "procuring" not "soliciting". The charge ([REDACTED] pimp statute) of procuring [REDACTED] prostitute for [REDACTED] third party for financial gain is one for which Ms. [REDACTED] now states she does not have the facts to support.

Furthermore, you suggest that we have purposefully delayed the date of Mr. Epstein's plea and sentencing in breach of the Agreement and now seek an "11th hour appeal" in Washington. I believe we have already responded to this objection satisfactorily, both in our discussion earlier this week and in the email I [REDACTED] to you two days ago in which I specifically addressed this issue. Indeed, any impediment to the resolution at issue is [REDACTED] direct cause of the disagreements between the parties as to [REDACTED] common interpretation of the Agreement, and we have at all times made and will continue to make sincere efforts to resolve and finalize issues as expeditiously as possible. In fact, since the initiation of negotiations between Mr. Epstein's counsel and your Office, we have always proceeded in [REDACTED] timely manner and made several efforts to meet with the attorneys in your Office in person when we believed that [REDACTED] face-to-face meeting would facilitate [REDACTED] resolution.

Finally, the suggestion by your staff that you hold Mr. Epstein in breach of the Agreement by his failure to plea and be sentenced on October 26, 2007 is directly contradicted by Mr. [REDACTED] e-mail to me dated October 31 in which he states, "Your understanding from Jack Goldberger conforms to my understanding that Mr. Epstein's plea and sentence will take place on the same day. I understand that the plea and sentence will occur on or before the January 4th date." This has been our common understanding for some time, which we have now

KIRKLAND & ELLIS LLP

R. Alexander Acosta  
December 21, 2007  
Page 7

reiterated several times. With that said, please be advised that we are working for quick resolution and do not seek to delay the proceedings.

Thank you again for your time and consideration. We look forward to your response to the concerns we have raised that have not yet been addressed.

I wish you very happy and healthy new year.

Sincerely,



Jay P. Leskowitz

cc : [REDACTED] Assistant Attorney General  
[REDACTED] First Assistant U.S. Attorney

## KIRKLAND &amp; ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Citigroup Center  
153 East 53rd Street  
New York, New York 10022-4611

JB / P. Lefkowitz, P.C.  
To Call Writer Directly:

lefkowitz@kirkland.com

Facsimile:

www.kirkland.com

December 26, 2007

VIA FACSIMILE (305) 530-6444

Honorable R. Alexander Acosta  
United States Attorney  
United States Attorney's Office  
Southern District of Florida  
99 NE 4th Street  
Miami, FL 33132

*Re: Jeffrey Epstein*

Dear Alex:

I write to address the questions you posed to me during [redacted] conversation we had late last week. Specifically, you requested [redacted] clarification of our position on two issues: (1) our view on your latest proposal regarding notification to the alleged victims under 18 U.S.C. § 3771; and (2) our response to your proposed language regarding the 18 U.S.C. § 2255 component of the deferred-prosecution agreement (the "Agreement"). Before I turn to these questions, I would like to reiterate that this letter responds to your invitation to discuss proposed modifications to the Agreement and should not be construed in any way as [redacted] breach of the Agreement. With that said, I must tell you that the more I look into these issues, the more difficulties I see in trying to tie the resolution of [redacted] federal criminal matter with [redacted] federal civil matter involving minors, and this is even further complicated when the premise of the resolution is [redacted] deferred federal prosecution conditioned on [redacted] plea to specific state offenses with [redacted] specific sentence predetermined and required to be imposed by the state court, without consideration of the fact that the State view of this case differs dramatically from yours. With that in mind, I turn to each of your questions below.

First, although we appreciate your willingness to modify your Office's § 3771 notice, which is embodied in your latest proposal, we must still object to aspects of your proposal on the ground that notice under § 3771 is per se inapplicable to this case under the Attorney General's own guidelines, because the alleged victims are not "crime victims" under § 3771. The Attorney General Guidelines for Victim and Witness Assistance defines "crime victim" as follows:

For the purpose of enforcing the rights enumerated in article I.B, [redacted] victim is [redacted] person directly and proximately harmed as [redacted] result of the commission of [redacted] Federal offense or an offense in the District of Columbia' (18 U.S.C. § 3771(e)) if the offense is charged in Federal district court. If [redacted] victim is under 18 years of age, incompetent, incapacitated, or

Chicago

Hong Kong

London

Los Angeles

Munich

San Francisco

Washington, D.C.

RFP MIA 000048

EFTA00209094

December 26, 2007

Page 2

deceased, [redacted] family member or legal guardian of the victim, [redacted] representative of the victim's estate, or any other person so appointed by the court may exercise the victim's rights, but in no event shall the accused serve as [redacted] guardian or representative for this purpose. (18 U.S.C. § 3771(e)).

The Attorney General Guidelines for Victim and Witness Assistance, at 9 (emphasis added).

Here, the women are clearly not "crime victims" under the Attorney General Guidelines definition. To be [redacted] "crime victim", [redacted] person or entity must be harmed by an offense that has been charged in Federal district court. See *U.S. v. Guevara-Toloso*, 2005 WL 1210982 at \*2 (E.D.N.Y. May 23, 2005) (noting that § 3771's reference to "the crime" suggests "[redacted] focus only on the crime with which [redacted] defendant is charged in the case in which [redacted] victim seeks to assert her statutory rights.") (emphasis added) Since there has been no offense charged in Federal district court in this matter, the identified individuals necessarily do not qualify as "crime victims". In addition, the Attorney General Guidelines further defines [redacted] "crime victim" as "[redacted] person that has suffered direct physical, emotional, or pecuniary harm as [redacted] result of the commission of [redacted] crime. (18 U.S.C. § 10607(e)(2))" *Id.* As you know, we believe we have shown that at least some (if not all) of the identified individuals did not suffer any injury at all in connection with Mr. Epstein's alleged conduct.<sup>1</sup>

In addition, under the Attorney General Guidelines, notification must be balanced against [redacted] any action that may impinge on Mr. Epstein's due process rights. The Attorney General Guidelines clearly call into question "the wisdom and practicality of giving notice" to [redacted] "possible witness in the case and the effect that relaying any information may have on the defendant's right to [redacted] fair trial." The Attorney General Guidelines for Victim and Witness Assistance, at 30. The Attorney General Guidelines caution federal prosecutors from providing notice to potential witnesses in instances where such notice could compromise the defendant's due process rights. This is particularly true, as here, if the notice includes confidential information, including the conditions of [redacted] confidential deferred-prosecution agreement or non-prosecution agreement. In light of these concerns, we respectfully request that you reconsider sending notices to the alleged victims pursuant to § 3771.

Our objection to § 3771 notwithstanding, we do not object (as we made clear in our letter last week) that some form of notice be given to the alleged victims. To that end, we request an opportunity to review the notification before it is [redacted] in order to avoid any confusion or misunderstandings. We believe, however, that any and all notices with respect to the alleged victims of state offenses should be [redacted] by the State Attorney rather than your Office, and we

<sup>1</sup> See for example, our prior submissions regarding [redacted] and [redacted].

December 26, 2007

Page 3

I agree that your Office should defer to the discretion of the State Attorney regarding all matters with regard to those victims and the state proceedings.

Second, the more we work to resolve our mutual concerns regarding the § 2255 component of the Agreement, the more our growing fears are realized that the implementation of § 2255 in this case is inherently flawed and becoming truly unmanageable. In the first instance, the implementation of § 2255 in this matter causes manageability concerns because it appears the civil component of this case must be stayed until after all phases of [redacted] criminal action have been resolved. 18 U.S.C. § 3509(k), which codifies child victims' and child witnesses' rights, seems on its face to preclude any interference arising from [redacted] potential or pending civil action on [redacted] related criminal proceeding in order to protect [redacted] defendant's right to due process. The statute states:

If, at any time that [redacted] cause of action for recovery of compensation for damage or injury to the person of [redacted] child exists, [redacted] criminal action is pending which arises out of the same occurrence and in which the child is the victim, the civil action shall be stayed until the end of all phases of the criminal action and any mention of the civil action during the criminal proceeding is prohibited. As used in this subsection, [redacted] criminal action is pending until its final adjudication in the trial court.

18 U.S.C. § 3509(k). *See also, John Doe I v. Francis*, 2005 WL 517847, at \*2 (N.D. Fla. Feb. 11, 2005) ("the language of 18 U.S.C. § 3509(k) is clear that [redacted] stay is required in [redacted] case such as this where [redacted] parallel criminal action is pending which arises from the same occurrence involving minor victims. *See* 18 U.S.C. § 3509(k). Inasmuch as Plaintiffs have offered no authority or evidence to the contrary, the Court finds that the stay in this case must remain in effect until final adjudication of the criminal case by the state court.")

It appears that any attempt to resolve the civil component of this case (be it through structured settlements or civil litigation) may be precluded by § 3509(k) insofar as all phases of the criminal action have not yet been resolved. To allow for [redacted] civil cause of action while [redacted] related criminal action remains pending can unduly bias the witnesses who could be improperly incentivized by [redacted] potential monetary recovery. The prevention of such [redacted] result is precisely the reason that § 3509(k) was enacted. Indeed, there can be no such resolution of "all phases of the criminal action" here, until Mr. Epstein's state sentence is concluded and all opportunity for the initiation of [redacted] federal prosecution is foreclosed.

In addition, we have reiterated in previous submissions that Mr. Epstein does not believe he is guilty of the federal charges enumerated under § 2255. For this reason, we believe that your proposed language regarding an appropriate § 2255 procedure unfairly asks Mr. Epstein to agree that each and every alleged victim identified by the Government is [redacted] victim of an enumerated federal offense under § 2255 and should, therefore, be placed in the same position

December 26, 2007

Page 4

she would have been had Mr. Epstein been convicted of such an offense. As we discussed last week, it is this requirement that makes your § 2255 proposal so problematic. As much as we appreciate your willingness to revisit the § 2255 issues, we cannot accept your language as proposed, because we believe that the conduct of Mr. Epstein with respect to these alleged victims fails to satisfy the requisite elements of any of the enumerated offenses, including 18 U.S.C. § 2422(b) or 18 U.S.C. § 2423(b). In light of the information we have presented to you regarding the two alleged victims whom we understand appear on your list, we hope you understand why your language presents us with these concerns. Essentially, you are asking us to help put these women in [redacted] position that may not be warranted.

In short, your proposed language regarding § 2255 states that Mr. Epstein should be treated "as if he had been convicted" of an enumerated federal crime. This requires Mr. Epstein to in essence admit guilt, though he believes he did not commit the requisite offense. The United States Attorney Manual ("USAM") 9-27.440, Principles of Federal Prosecution, sets forth [redacted] clear requirement when [redacted] defendant tenders [redacted] plea of guilty but subsequently denies committing the offense to which he has offered to plead. Specifically, 9-27.440 provides, in part:

In [redacted] case in which the defendant tenders [redacted] plea of guilty but denies committing the offense to which he/she offers to plead guilty, the attorney for the government should make an offer of proof of all facts known to the government to support the conclusion that the defendant is in fact guilty. *See also* USAM 9-16.015.

To date, your Office has refused our requests to share such information with us. For the purposes of attempting to resolve the § 2255 issue, we once again request that your Office make this proof available. Specifically, your Office has represented that liability exists under § 2422(b) and § 2423(b), as well as the state offense, Florida Statute § 796.03. We would welcome this previously sought information at your earliest convenience to enable us to resolve this matter in [redacted] timely fashion.

Finally, I would like to address your request that we provide revised language to your Office regarding the appropriate § 2255 procedure. Given the inherent complexities described above, we have not been able to find language that comports with the Agreement and your stated goals, especially given your insistence that the women be placed in the same position as if Mr. Epstein "had been convicted".<sup>2</sup> However, if you so choose — and keeping in mind that we

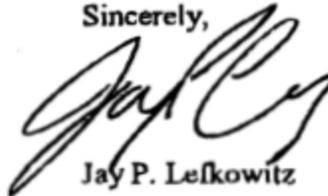
<sup>2</sup> In addition, we remind you that wholly and apart from the judicial stay that appears to be required under § 3509(k), we believe that the minimum damages amount referenced in § 2255 (\$150,000) is subject to an ex-post facto motion, as the statutory minimum was \$50,000 at the time of the alleged conduct and the statute is being implemented in [redacted] deferred-prosecution agreement.

December 26, 2007  
Page 5

intend to abide by the Agreement — we would be willing at your earliest convenience to discuss possible alternatives.

Thank you for your time and consideration. We remain available to work with you to resolve these difficult issues in a constructive manner, and we look forward to your response to the concerns we have raised that have not yet been addressed by your Office.

Sincerely,



Jay P. Leskowitz

cc: Jeffrey H. [REDACTED], First Assistant U.S. Attorney