

Kenneth W. Starr
To Call Writer Directly:

[REDACTED]
[REDACTED]

Dir. Fax: 213-680-8500

October 5, 2007

VIA FEDERAL EXPRESS

[REDACTED]

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

Re: Jeffrey Epstein

Dear [REDACTED]:

I write in response to your emails dated October 3, 2007 in which you propose the use of a Special Master to select an attorney representative (the "selected attorney"), a general outline of how the selected attorney should proceed pursuant to the Federal Plea Agreement (the "Agreement"), and a draft joint letter to the Special Master. Below, I've outlined our main areas of concern with the approach you have taken in your proposed drafts. Once we can come to a resolution on the issues detailed herein, we would be happy to cooperate with you on the specific drafting of the proposals.

First, the Agreement does not provide for the appointment of a Special Master to appoint the selected attorney. In fact, the Federal Plea Agreement clearly states that "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." (Paragraph 7, Agreement). Thus, the Agreement only contemplates the selection of one selected attorney who will represent the identified individuals in a limited capacity. We see no need for the appointment of a Special Master, nor does the Agreement call for one.

Second, if the parties cannot settle on a damages amount with Mr. Epstein, then the selected attorney may not continue his representation and is barred from filing lawsuits pursuant to § 2255. Paragraph 7 and Paragraph 8 of the Agreement outline the scope and manner of representation of the identified individuals. Specifically, Paragraph 7 defines who may be represented by the selected attorney and Paragraph 8 outlines the terms of that representation. And under Paragraph 8 of the Agreement, the selected attorney is only appointed to protect the interests of those 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 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 a settlement with each identified individual. The Agreement's silence with respect to what happens if the parties cannot settle on a damages amount indicates that the parties intended for the scope of the selected attorney's representation to be limited to settling claims with Mr. Epstein, not representing these identified individuals in § 2255 lawsuits.

Otherwise, the selected attorney will be faced with serious conflicts of interest. For instance, if Mr. Epstein agrees to pay for the selected attorney's fees and monthly expenses, then the selected attorney would effectively be incentivized to reject settlement under § 2255 in an effort to draw out the lawsuits and incur more fees. If allowed to represent the identified individuals in a lawsuit, the best interests of each identified individual may not be served because the selected attorney will always be more interested in pursuing lawsuits in lieu of settling claims against Mr. Epstein efficiently and fairly. Multiple representation of a 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, a conflict could arise if the selected attorney represents both a client who may be a potential witness and a client who is a civil plaintiff. And the fact that Mr. Epstein could pay compensation to the plaintiff's attorney in such a case only underscores this conflict.

The procedure we propose is reasonable and consistent with the Agreement and intention of the parties: the selected attorney should evaluate the claims of each identified individual, negotiate a total fund amount with Mr. Epstein, then distribute the monies based on the strength of each case. For those identified individuals who elect not to settle with Mr. Epstein, they may proceed on their own, but by doing so, they would not be suing under § 2255 as contemplated by Paragraph 8 and therefore may not continue to be represented by the selected attorney.

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Third, 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 selected attorney. 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) This interpretation is supported by your own language in the draft proposed joint letter to the Special Master (“Mr. Epstein...agreed to waive any challenge to liability under that section up to an amount agreed to by the parties.”). Consequently, those identified individuals who choose not to settle with Mr. Epstein are not covered by the Agreement and will have to prove, among other things, that they are victims under the enumerated statutes.

Fourth, our objections to the appointment of a Special Master notwithstanding, we have serious concerns regarding the language in your draft joint letter to the Special Master, which describes Mr. Epstein’s alleged conduct. Specifically, we will not concede that “Mr. Epstein, through his assistants, would recruit underage females to travel to his home in Palm Beach to engage in lewd conduct in exchange for money,” because we think this overstates the facts. In addition, we will not concede that his most benign conduct involved topless or nude massage by the identified individuals while he masturbated. Nor will we concede that some of the identified individuals visited Mr. Epstein’s home over one hundred times. Any joint statement must be such that it cannot be construed as a stipulation to liability that could be utilized against Mr. Epstein as to any individual who elects to reject the settlement contemplated by the Agreement.

Fifth, neither federal agents nor anyone from your Office should contact the identified individuals to inform them of the resolution of the case, including appointment of the selected attorney and the settlement process. Not only would that violate the confidentiality of the agreement, but Mr. Epstein also will have no control of what is communicated to the identified individuals at this most critical stage. We believe it is essential that we participate in crafting a mutually acceptable communication to the identified individuals — perhaps in the form of a joint letter explaining the resolution and the settlement process. We further believe that communications between yourself 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 a party to a civil lawsuit.

Finally, we are also concerned that you have been engaging in conversations with judges about this matter.

We look forward to resolving these open issues with you at your earliest convenience.

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Sincerely,

Jay P. Lefkowitz