U.S. Department of Justice

United States Attorney
Southern District of Florida

99 N.E. 4th Street
Miami, FL 33132-2111
[redacted]
Facsimile: [redacted]

November 30, 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. Some of these issues also are addressed in the U.S. Attorney's letter to Mr. Starr, but in light of our discussions, I believe a separate response is needed.

In a recent e-mail, you write that you were surprised at the tone of my e-mail of November 27, 2007. That tone was engendered by the continuing failures to abide by the terms of the Non-Prosecution Agreement, unfounded allegations of misconduct on the part of our office, attacks upon our investigation and the victims in the press, and the mounting evidence that you did not enter into our plea negotiations in good faith. This letter and U.S. Attorney Acosta's letter are the last opportunity for your client and his entire defense team to conform unwaveringly to all of the terms of the Non-Prosecution Agreement. As stated by the U.S. Attorney in his letter:

> Accordingly, please provide us with a definitive statement, signed by your client, of his intention to abide by each and every term of the Agreement by close of business on Tuesday, December 4, 2007. By that time, you must also provide us with the agreement(s) with the State Attorney's Office and a date and time certain for the plea and sentencing, which must occur no later than December 14, 2007. If we do not receive these items by that time, we will deem the agreement to be rescinded and will proceed with the prosecution. There must be closure in this matter.

Before I address your continued allegations of some sort of misconduct on the part of the Office for trying to abide by both the letter of the Agreement and of the law, I need to address you and your client's failure to comply with the Agreement.

Three weeks ago we spoke about the failure to set a timely plea and sentencing date. At that time, you assured me that a new prompt date would be set, and that the delay in scheduling the date was caused by the unavailability of Judge McSorley. You promised that a 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 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, 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 told [redacted] that "there is no date."

I have repeatedly told you that a delayed guilty plea and sentencing – now more than two months beyond the original deadline – is unacceptable to the Office. Contrary to your past assertions, the Non-Prosecution Agreement does not contemplate a staggered plea and sentencing. Instead, the Agreement contemplates a combined plea and sentencing followed by a later surrender date for Mr. Epstein to begin serving his jail sentence. 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. You have provided no showing of how you and your client have used your best efforts to insure that the plea and sentencing occur in November. In fact, we recently learned that a 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 a list of essential terms of such an agreement. The only conclusion that we can draw is that you are trying to avoid providing the Office with adequate time to review your agreement prior to the change of plea and sentencing to determine whether Mr. Epstein is complying with the terms of the Non-Prosecution Agreement.

Your letters make reference to a failure by the United States to abide by the "spirit" of the Agreement, but recent correspondence shows that Mr. Epstein hopes to serve his sentence on "work release." This is plainly contrary to both the terms and spirit of the Agreement. The Agreement clearly indicates that Mr. Epstein is to be incarcerated, and during your joint meeting with representatives of our office and the State Attorney's Office, the parties specifically discussed that Mr. Epstein would serve his time in solitary confinement at the Palm Beach County Jail to obviate your safety concerns. In addition to the terms of the Agreement, the Florida Department of Corrections does not allow persons who are registered sex offenders to participate in "community

release" (which includes "work release"). Since Mr. Epstein will have to register as a sex offender promptly after his guilty plea and sentencing, he will not be eligible for such a program. Thus, the U.S. Attorney's Office is simply putting you on notice that it intends to make certain that Mr. Epstein is "treated no better and no worse than anyone else" convicted of the same offense. If Mr. Epstein is somehow allowed to participate in a work release program despite the Department of Corrections' rules and practices, the Office intends to investigate the reasons why an exception was granted in Mr. Epstein's case.

Next, let me address various accusations that you and Mr. Starr, amongst others, have raised. You have repeatedly alleged 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. As you have been told before, prior to that, the press had provided information to the FBI, but no comment was ever made about the ongoing investigation, it was simply referred to as an "open investigation." Your accusations on this point are ironic in light of the amount of information that Mr. Epstein's team has provided to the press, much of which is completely inaccurate and which is obviously intended to intimidate your client's victims. 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.

Mr. Starr's letter to Assistant Attorney General Alice Fisher contains several false statements and accusations. First, Mr. Epstein was never forced to enter into any agreement and all terms of the agreement were fully negotiated, including the terms regarding the payment of monetary damages to the victims under 18 U.S.C. § 2255. In fact, some of those terms were re-negotiated as part of the Addendum. Second, if Mr. Epstein's cadre of attorneys was concerned about a way to test the validity of the victims' claims prior to placing the names of those victims on the list prepared by our office, that term could have been negotiated. In fact, at one of our early meetings, Roy Black raised that concern, and possible solutions were contemplated by our office prior to the negotiations. However, since none of Mr. Epstein's team of attorneys requested the inclusion of such a term, it was omitted from the Agreement.

To the extent that you now object to the Agreement that you negotiated, this is akin to "buyer's remorse." However, you and Mr. Starr have, instead, made claims to the Justice Department that these thoroughly negotiated terms "leave[] wide open the opportunity for misconduct by federal investigators." You then misinterpret 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 a minor, was a victim of a violation of section . . . 2422 or 2423 of this title." In other words, the Office is prepared to indict Mr. Epstein based upon what Mr. Starr refers to as Mr. Epstein's "interactions" with these individuals. This conclusion is based upon a 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. Each of the victims' claims was corroborated – again, prior to anyone being notified of a potential civil claim for damages. In fact, after the Agreement was signed, the FBI only had the opportunity to inform three victims of the resolution of the matter before you raised complaints and, in deference to your request, the Office asked that they defer further notifications. The Office agrees that it is not a party to, and will not take a role in, any civil litigation, but the Office can say, without hesitation, that each person on the list was a 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 a numerical limit of 40 victims. At your request, that number was removed. The Office repeatedly confirmed that the number would not exceed 40, after conducting additional investigation, it was reduced to 34, and we recently removed another name because, despite the fact that Mr. Epstein offensively touched the victim, in our opinion, the touching was not "sexual" enough to properly include her as a victim as defined in Section 2255. Once the list is provided to you, if you have a good faith basis for asserting that a victim never met Mr. Epstein, we remain willing to listen and to modify if you convince us of your position.

Mr. Starr also asserts that the Office has "improperly insisted that the chosen attorney representative should be able to litigate the claims of individuals, which violates the terms of the Agreement and deeply infringes upon the spirit and nature of the Agreement." Again, this was a term that could have been discussed and negotiated prior to entering into the Agreement. At least five extremely experienced attorneys reviewed the Agreement prior to its execution. Your failure to consider what would happen if a victim refused to accept the minimum settlement you offered to her does not render the Agreement void, unconscionable, or violative of Due Process. Whether counsel for the victims decides that there is a conflict is something to be addressed by him, but the Agreement speaks for itself.

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. Allow me to explain our legal obligations. In 2004, Congress enacted the "Justice for All Act of 2004." Section 102 of that Act amended Title 18 by adding Section 3771, entitled "Crime victims' rights." Those rights include: "The right to reasonable, accurate, and timely notice of any public court proceeding . . . involving the crime" and the "right not to be excluded from any such public court proceeding . . ." 18 U.S.C. § 3771(a)(2) & (3). In our opinion, the broad language of Section 3771 encompasses the change of plea and sentencing of Mr. Epstein, especially because Section 3771 uses the term "district court" when it seeks to limit its application to a federal district court proceeding. 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 (a)." 18 U.S.C. § 3771(c)(1).

Additionally, the Victims' Rights and Restitution Act of 1990 enacted Title 42, United States Code, Section 10607, entitled "Services to victims." Pursuant to that statute, our Office is obligated to "inform a 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).[1] With respect to notification of the other information that we propose to disclose, the statute requires that:

> (3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of –
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> (A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
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> . . .
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> (C) the filing of charges against a suspected offender;
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> . . .
>
> (F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial.

42 U.S.C. § 10607(c)(3). Again, these sections are not limited to proceedings in a federal district court. Our Non-Prosecution Agreement resolves the federal investigation by allowing Mr. Epstein to plead to a state offense. The victims identified through the federal investigation should be appropriately informed, and our Non-Prosecution Agreement does not and cannot require the U.S. Attorney's Office to forego its legal obligations. As noted, Section 10607 commands our office to make these notifications at "the earliest possible opportunity." The unnecessary delays engendered by your continued objections to the Office's performance of its contractual and legal obligations will no longer be tolerated.

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

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[1]Based upon the language of this statute, your statement that our notification must be limited to a right to restitution alone is incorrect.

Next, you assert that our letter mischaracterizes Mr. Epstein's obligation to pay damages to the victims. It does not. The Agreement provides:

> If any of the [identified victims] *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 up to an amount as agreed to between the identified individual and Epstein, so long as the 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.

Contrary to your assertion, this Agreement specifically contemplates possible litigation – it would be nonsensical to include a waiver of personal jurisdiction in the District Court if the Agreement was supposed to bar any victim from filing suit. A violation of this provision, by contesting jurisdiction or otherwise, will be considered a material breach.

It had been my suggestion to AUSA [redacted] that we simply quote the terms of the Agreement directly into the Notification Letter or include a photocopy of the relevant sections. If you would prefer that we proceed in that manner, that is acceptable. We also have no objection to referring to Mr. Epstein as a "sexual offender" rather than a "predator."

Your objection to the use of the term "minor victim" is unfounded. The letter states that the *United States* has identified the person as a "minor victim," and Section 2255 requires that the victim be a minor at the time of the commission of the offense. As I stated above, each and every person contained in our list was a "minor victim" as defined in Section 2255. Again, the federal investigation found that Mr. Epstein's illegal conduct occurred at least as early as 2001. Our "imprimatur" is neither incendiary nor unwarranted.

We have no objection to using the conjunction "and/or" in referring to the particular offense(s) of which the recipient was a 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 a reasonable doubt that each listed individual was a victim of Mr. Epstein's criminal conduct while the victim was a 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(a)(8). We will not include any language that demeans the harm they have suffered. Our Office's obligation to remain uninvolved in the civil litigation cannot be used by your client as both a shield and a sword.[2] Thus, while we will not involve ourselves in the civil litigation, we will not allow you to

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[2]You may want to review *United States* [redacted]. *Crompton Corp.*, 399 F. Supp. 2d 1047 (N.D. Cal. 2005), where the district court would not allow an unindicted co-conspirator to have his

use that neutrality to create a false impression that we do not believe in the validity of the victims' claims.

The letter's assertions regarding representation by the Podhurst firm and Mr. Josefsberg are accurate and will not be changed. Judge [redacted] conferred with Messrs. Podhurst and Josefsberg to insure their willingness to undertake this assignment prior to finalizing his selection. As I stated in my earlier correspondence, there is no legitimate basis for you to object to the firm or the individual attorney. Also, contrary to your assertion, the Podhurst firm was recommended to you as early as October 7th, as one of the firms that should be included on a list of firms for Judge [redacted] to consider in making his selection. No further investigation is required and attempts to convince Messrs. Podhurst and Josefsberg to rescind their agreement to undertake this assignment would be yet another example of your attempts to stop the United States from effectuating the terms of the Non-Prosecution Agreement.

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 but we will not remove the language about contacting AUSA [redacted] or Special Agent [redacted] with questions or concerns.[3] 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(a)(5). We will not undermine that right. 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 [redacted] and Special Agent [redacted] will recommend that the victims direct those questions to Mr. Josefsberg.

I have attached a revised letter incorporating the changes on which we can agree. Please provide any further comments by the close of business on Tuesday.

Sincerely,
R. Alexander Acosta
United States Attorney

By: [redacted]
First Assistant United States Attorney

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name redacted from a plea agreement in order to assist him in defending or avoid civil claims.

[3]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.

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