[redacted] (USAFLS)

From: [redacted]>
Sent: Monday, June 02, 2008 4:25 PM
To: Villafana, Ann Marie C. (USAFLS)
Subject: draft letter to DAG

EXHIBIT B-127

U.S. Department of Justice

United States Attorney
Southern District of
Florida

First Assistant U.S. Attorney

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DELIVERY BY FEDERAL EXPRESS

June 2, 2008

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

Re: Jeffrey Epstein

Dear Judge Filip,

Jeffrey Epstein is a part-time resident of Palm Beach County, Florida. In 2006, the Federal Bureau of Investigation began investigating allegations that, over a two-year period, Epstein paid approximately 28 minor females from Royal Palm Beach High School to come to his house for sexual favors. In July 2006, the matter was presented to AUSA A. Marie Villafana of our West Palm Beach branch office to pursue a formal criminal investigation. That investigation resulted in the discovery of approximately one dozen additional minor victims. Over the last several months, approximately six more minor victims have been identified.

AUSA Villafana has been ready to present an indictment to a West Palm Beach federal grand jury since May 2007. The prosecution memorandum and proposed indictment have been extensively reviewed and re-reviewed by Southern District of Florida (SDFL) Deputy Chief of the Criminal Division Andrew Lourie, Chief of the Criminal Division Matthew Menchel[1], First Assistant United States Attorney Jeffrey H. Sloman, United States Attorney R. Alexander Acosta as well as various members of the Child Exploitation and Obscenity Section (CEOS) at the Department of Justice including, but not limited to its Chief, Andrew G. Oosterbahn. Many of these legal and factual issues have been discussed and approved by Deputy Assistant Attorney General for the Criminal Division (DAAG) Sigal Mandelker and the Assistant Attorney General for the Criminal Division (AAG) Alice S. Fisher, as well as the Criminal Division's Appellate Section and the Office of Enforcement Operations regarding the petit policy.

[1]Mr. Menchel resigned for private practice on August 3, 2007 and was replaced by Robert Senior.

By May 2007, AUSA Villafana began seeking approval from her supervisors to indict Epstein. Her immediate supervisor was Andrew Lourie. Mr. Lourie had served as the Chief of the Public Integrity Section at DOJ as well as in several supervisory positions in the SDFL. By mid-2006, he had returned to his position as the Deputy Chief of the Criminal Division in West Palm Beach (head of the West Palm Beach branch office), after serving as the interim Chief of the Public Integrity Section at DOJ at the request of AAG Fisher. By October 2007, Mr. Lourie would leave the SDFL to become AAG Fisher's Chief of Staff.[2] Above Mr. Lourie in the SDFL's chain of command were Matthew Menchel, Criminal Division Chief, First Assistant USA Sloman and finally, U.S. Attorney Acosta.

Prior to seeking approval to return an indictment, Epstein's legal team had been actively working to convince this Office that such action was not warranted. The legal team has consisted of many different local and national lawyers and law firms. It appears as though each lawyer and/or firm became actively involved depending upon which person from the SDFL and/or DOJ component was involved in the process. For example, at the end of 2006, former SDFL U.S. Attorney and EOUSA Executive Director Guy Lewis contacted AUSA Villafana when he learned that she was handling the federal investigation of Epstein. He asked to meet with her but she said that she believed such a meeting would be premature. In December, Lilly Ann Sanchez and Gerald Lefcourt again contacted AUSA Villafana to set a meeting. In advance of such a meeting, AUSA Villafana requested documents but that request was refused. Ms. Sanchez then contacted Deputy Chief of the Criminal Division, Andrew Lourie, who agreed to meet with Ms. Sanchez and Mr. Lefcourt. On February 1, 2007, Ms. Sanchez and Mr. Lefcourt met with AUSAs Lourie and Villafana, as well as a member of the FBI, and presented defense counsel's view of the case, and promised a willingness to assist in the investigation. The SDFL was unpersuaded by their presentation and the investigation continued.

By the late Spring and early Summer, the focus of the investigation left investigating the facts of the victims' claims and turned more to Epstein's background, his asserted defenses, co-conspirators, and possible witnesses who could corroborate the victims' statements. The investigation also began to look into financial aspects of the case, requiring the issuance of several subpoenas. At the time, Mr. Lefcourt began leveling accusations of improprieties with the investigation and sought a meeting with Criminal Division Chief Matthew Menchel. By that time, the proposed initial indictment package had been reviewed and approved by Mr. Lourie in West Palm Beach and by attorneys with CEOS; however, it awaited review by Mr. Menchel and me/FAUSA Sloman. The SDFL deferred presenting the indictment to the grand jury to accommodate the Epstein legal team's request for a meeting. We also agreed to wait several weeks for that meeting to occur to allow four of Epstein's attorneys to be present, and also provided counsel with a list of the statutes that were the subject of the investigation.

On June 26, 2007, Mr. Menchel, Mr. Lourie, AUSA Villafana, and FAUSA Sloman, and two FBI agents met with Alan Dershowitz, Roy Black, Gerald Lefcourt, and Lilly Ann Sanchez. During that meeting Professor Dershowitz and other members of the defense team presented

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[2]Rolando Garcia replaced Mr. Lourie as the Deputy Chief of the Criminal Division.

legal and factual arguments against a federal indictment. Counsel for the defense also requested the opportunity to present written arguments, which was granted. The arguments and written materials provided by the defense were examined by the SDFL and rejected.

On July 31, 2007, Mr. Menchel, Mr. Lourie, AUSA Villafana, and FAUSA Sloman, and two FBI agents met with Roy Black, Gerald Lefcourt, and Lilly Ann Sanchez. On that date, the SDFL presented a written sheet of terms that would satisfy the SDFL's federal interest in the case and discussed the substance of those terms. One of those terms was:

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

During that meeting, the focus was on Mr. Epstein's unwillingness to spend time in prison, and various suggestions were raised by defense counsel, including the proposal that he could serve a sentence of home confinement or probation. This was repeatedly mentioned by counsel for Epstein as being equivalent to a term of imprisonment in a state or federal prison. Epstein's counsel mentioned their concerns about his safety in prison, and the SDFL offered to explore a plea to a federal charge to allow Epstein to serve his time in a federal facility. Counsel were also presented with a conservative estimate of the sentence that Epstein would face if he were convicted: an advisory guideline range of 188 - 235 months' incarceration with a five-year mandatory minimum prison term, to be followed by lifetime supervised release. Counsel was told that Epstein had two weeks to accept or reject the proposal.

It is critical to note that Ms. Sanchez, one of Epstein's local lawyers, seized upon this method of restitution as a condition of deferring federal prosecution. In referring to the 18 U.S.C. Section 2255 method of compensation, Ms. Sanchez stated:

> [t]his would allow the victims to be able to promptly put this behind them and go forward 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 attached August 2, 2007 letter from Lilly Ann Sanchez to SDFL Criminal Division Chief Menchel, p.2, fn 1. Ironically, it is Epstein's "national" attorneys who are now representing to the Deputy Attorney General of the United States in their May 19, 2008 letter that:

> Perhaps most troubling, the USAO in Miami, as a condition of deferring prosecution, required a commingling of substantive federal criminal law with a proposed civil remedy engineered in a way that appears intended to profit particular lawyers in private practice in South Florida with personal relationships

to some of the prosecutors involved.

Not only did Epstein's lawyers like the idea of using 18 U.S.C. Section 2255 to compensate the victims but, they also sought to make their non-incarcerative state proposal even more attractive by offering payments to "a charitable organization benefitting victims of sexual assault," "law enforcement investigative costs" and "Court and probationary costs." *Id.* at p. 2.

Epstein's counsel, still dissatisfied with the Office's review of the case, demanded to meet with U.S. Attorney Acosta and to have the opportunity to meet with someone in Washington, D.C. To accommodate Mr. Black, the meeting was put off until September 7, 2007, despite the fact that the indictment was ready for presentation to the grand jury. In the interim, AUSA Villafana and the investigators met with CEOS Chief Oosterbahn, to review, yet again, the evidence and legal theories of prosecution. Chief Oosterbahn strongly supported the indictment and even offered to join the trial team and provide additional support from CEOS.

On September 7, 2007, U.S. Attorney Acosta met with Kirkland & Ellis partners Jay Lefkowitz and former Solicitor General Ken Starr and Ms. Sanchez, along with Chief Oosterbahn and AUSAs Villafana, John McMillan, and FAUSA Sloman. Messrs. Star and Lefkowitz presented arguments regarding the sufficiency of the federal interest in the case and other legal and factual issues. We discussed those legal arguments and the unanimous opinion of all of the attorneys present was in favor of prosecution. During that meeting, Mr. Lefkowitz also offered a plea resolution. His offer, in essence, was that Epstein be subjected to home confinement at his Palm Beach home, using private security officers who would serve as his "wardens," if necessary. Mr. Lefkowitz expressed the belief that such a sentence would be particularly appropriate because, as a wealthy white man, he may be the subject of violence or extortion in prison. Finally, Messrs. Star and Lefkowitz expressed the belief that Epstein's extensive philanthropy should be considered in our prosecution decision. U.S. Attorney Acosta summarily rejected these proposals, and indicated that the 24-month offer presented previously by the SDFL stood.

The issue of the inclusion of a restitution-type remedy for the victims pursuant to 18 U.S.C. Section 2255 was specifically raised and discussed at the September 7th meeting, and Mr. Starr thanked AUSA Villafana for bringing it to his attention as a novel approach to allowing the victims to receive essentially federal restitution while allowing a plea to a state charge. After considering everything said and written by Epstein's legal team, and after conferring with Chief Oosterbahn, U.S. Attorney Acosta informed Epstein's counsel that the SDFL still intended to proceed to indictment. Since counsel indicated a desire to appeal the matter to the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division, U.S. Attorney Acosta agreed to delay the presentation of the indictment for two weeks to allow them to speak with someone in Washington, D.C., if they so chose.

Instead, Mr. Epstein elected to negotiate the Non-Prosecution Agreement, and on September 12, 2007, counsel for the SDFL (AUSAs Lourie, Garcia, and Villafana) and counsel for Epstein (Messrs. Lefcourt, Lefkowitz, and Goldberger) met with Palm Beach County State Attorney Barry Krisher and Assistant State Attorney Lanna Belohlavek to discuss a plea to an

Information in the state court that would satisfy the federal interest in the case. As noted on the term sheet of July 31st, one of those essential terms was a guilty plea to a charge requiring sex offender registration. During that meeting, the issue of sex offender registration was raised, and Mr. Goldberger told the federal prosecutors that there was no problem, Mr. Epstein would plead guilty to the charge of solicitation of minors for prostitution (Fl. Stat. 796.03), which was one of the statutes listed on the original term sheet. Although the SDFL had wanted Epstein to plead guilty to three different offenses, we agreed to this compromise.[3] Of course, the SDFL later learned that, at the time Mr. Goldberger made that statement, he incorrectly believed, based upon a statement from ASA Belohlavek, that Fl. Stat. Section 796.03 did *not* require sex offender registration.

The parties then began working first on a plea agreement to a federal charge and, when it was clear that there was no guarantee that Epstein would serve his sentence in a minimum security prison camp, the discussion turned to a Non-Prosecution Agreement. Both the federal plea agreement and the Non-Prosecution Agreement included references to Section 2255 because neither the contemplated federal charges nor the proposed state charges encompassed all of the identified victims. If Epstein had been prosecuted under the planned indictment, the identified victims would have been eligible for restitution *and* damages under Section 2255. As explained above, one of our interests, which had to be satisfied by the Non-Prosecution Agreement, was providing appropriate compensation to the victims. This provision of the Agreement was heavily negotiated. As Mr. Lefkowitz wrote in his November 29th e-mail to FAUSA Sloman, Epstein "offered to provide a restitution fund for the alleged victims in this matter; however, that option was rejected by [our] Office." That option was rejected for several reasons. First, the SDFL does not serve as legal representatives to the victims and has no authority to bind victims, nor could it provide a monetary figure that would represent a "loss" amount for restitution purposes. Second, there would be no legal basis for federal restitution without a conviction for a federal offense. And, third, it was the U.S. Attorney's belief that the SDFL should not be put in the position of administering a restitution fund. Our Section 2255 proposal put the victims in the same position that they would have been in if we had proceeded to trial and convicted Epstein of his crimes, with the exception that the victims were provided with counsel. The appointment of counsel was not such a benefit to the victims but, rather, was done, in part, to benefit Epstein by allowing him to try to privately negotiate a group resolution of all claims with one attorney. Epstein and his lawyers agreed with this alternative.

The negotiation of the Agreement was lengthy and difficult. Mr. Lefkowitz and AUSA Villafana went through several drafts of both a federal plea agreement and a Non-Prosecution Agreement. Throughout these negotiations, when a member of the defense team was dissatisfied with the SDFL's position, it was repeatedly appealed throughout the Office. So several members of the defense team spoke with the chain of command regarding the terms of the Agreement, including the Section 2255 provisions. At the eleventh hour, when Epstein's legal team realized

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[3] Another significant compromise reached at the meeting was a reduction in the amount of jail time - from 24 months down to 18 months, which would be served at the Palm Beach County Jail rather than a state prison facility.

that Fl. Stat. 796.03 *would* require him to register as a sex offender, they sought to change the most essential term of the agreement - a term that Messrs. Goldberger, Lefkowitz, and Lefcourt had specifically agreed to at the September 12th meeting with the State Attorney's Office - asking to allow Epstein to plead to a charge that would not require registration. When this was rejected, several members of the defense team appealed directly to U.S. Attorney Acosta which also failed. When that failed, according to press reports, apparently Mr. Lefcourt "leaked" a letter intended for the U.S. Attorney to the press containing the reasons why he/Lefcourt did not believe Epstein should have to register.

Prior to signing the Non-Prosecution Agreement, Mr. Epstein's defense team included Ken Starr, Jay Lefkowitz, Lilly Ann Sanchez, Alan Dershowitz, Gerald Lefcourt, Roy Black, Guy Lewis, Martin Weinberg, Jack Goldberger, Stephanie Thacker, and the associates at Kirkland & Ellis who conducted research on discrete issues. This impressive legal team reviewed the Agreement and counseled Epstein. Based upon that counsel, Epstein decided that it was in his best interest to execute the Non-Prosecution Agreement which was signed on September 24, 2007 by Mr. Lefcourt, Ms. Sanchez and Epstein. A copy of which is attached hereto. The core principles of the Agreement are incarceration, registration as a sex offender and a method of compensation.[4] Furthermore, and significantly, Epstein agreed that he had the burden of ensuring compliance of the Agreement with the Palm Beach County State Attorney's Office and the Judge of the 15th Judicial Circuit and *"that the failure to do so will be a breach of the agreement"* (emphasis added). To this day, the SDFL has never divulged its evidence to Epstein's lawyers.

Within a week of the execution of the Agreement, the SDFL unilaterally proposed to divest its right to select the attorney representative for the victims. This was done to avoid even the appearance of favoritism in the selection of the attorney representative. As a result, the parties executed an addendum which documented the SDFL's right to assign the selection of an attorney representative to an independent third-party. A copy of the October 29, 2007 Addendum is attached hereto. The parties subsequently agreed that retired Federal District Court Judge Edward B. Davis should be that independent third-party. Ultimately, Judge Davis selected Robert C. Josefsberg of the law firm of Podhurst, Orseck, Josefsberg, *et al.* During this same time frame, Epstein lawyer Jay Lefkowitz sought to delay the entry of his guilty plea and sentence. After the SDFL accommodated his request (from October 26th to November 20th), Mr. Starr began taking issue with the methodology of compensation, notification to the victims, and the issues that had been previously considered and rejected during negotiations, *i.e.*, that the conduct does not require

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[4] Specifically, the Agreement mandates, *inter alia*, (1) a guilty plea in Palm Beach County Circuit Court to solicitation of prostitution (Fl. Stat. Section 796.07) and procurement of minors to engage in prostitution (Fl. Stat. Section 796.03) (an offense that requires him to register as a sex offender); (2) a 30-month sentence including 18 months' incarceration in county jail; (3) a methodology to compensate the victims identified by the United States utilizing 18 U.S.C. Section 2255 such that they would be placed in the same position as if Epstein had been convicted of one of the enumerated offenses set forth in Title 18, United States Code, Section 2255; (4) entry of the guilty plea and sentence no later than October 26, 2007; and (5) the start of the above-mentioned sentence no later than January 4, 2008.

registration and the contemplated state and federal statutes have no applicability to the instant matter.

In response to Mr. Starr's protests, the SDFL offered numerous and various reasonable modifications and accommodations which ultimately resulted in U.S. Attorney Acosta's attached December 19, 2007 letter to Lilly Ann Sanchez. In that letter, U.S. Attorney Acosta tried to eliminate *all* concerns which, quite frankly, the SDFL was not obligated to address, let alone consider. In consultation with DAAG Mandelker, Mr. Acosta proposed the following language regarding the 2255 provision:

> "Any person, who while a minor, was a victim of a 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 a 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 a 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."

Mr. Starr also objected to the SDFL's intention to notify the victims pursuant to 18 U.S.C. Section 3771. In response to Mr. Starr's concerns, USA Acosta again consulted with DAAG Mandelker who advised him to make the following proposal: "[w]e 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." These proposals were immediately rejected by Epstein. *See* attached December 26, 2007 correspondence from Jay Lefkowitz to USA Acosta.

At our December 14, 2007 meeting at the U.S. Attorney's Office in Miami, counsel for Epstein articulated that it was a "profound injustice" to require Epstein to register as a sex offender and reiterated that no federal crime, especially 18 U.S.C. Section 2422(b), had been committed since the statute is only violated if a telephone or means of interstate commerce is used to do the persuading or inducing. This particular attack on this statute had been previously raised and thoroughly considered and rejected by the SDFL and CEOS prior to the execution of the Agreement. Epstein's lawyers also argued that the facts were inapplicable to the contemplated state statutes and that he should not have been allowed to have been induced into the Agreement because the facts were not what he understood them to be. To reiterate, the SDFL has never divulged its evidence to anyone on the Epstein legal team. Once counsel for Epstein failed to persuade us that federal involvement was inappropriate, they mounted an aggressive campaign to defer federal prosecution. They did this by offering to restitute victims and make other payments in hopes of avoiding incarceration and registration as a sex offender. When we refused to compromise on anything except the length of incarceration, they finally executed the Agreement realizing the federal alternative exposed Epstein to too much jail time.

Subsequent to the December 14, 2007 meeting, the SDFL received three letters from Mr. Lefkowitz and/or Mr. Starr which expanded on some of the themes announced in the December 14th meeting. Essentially, trying to portray the SDFL as trying to coerce a plea to unknown allegations and incoherent theories. In his December 17, 2007 correspondence, Mr. Lefkowitz decreed that Epstein's conduct did not meet the requirements of one of the state statutes Epstein agreed to plead guilty to - solicitation of minors to engage in prostitution (Fl. Stat. Section 796.03); that Epstein's conduct does not require registration under Florida law in contravention of the September 24th Agreement; and the State Attorney's Office does not

believe the conduct is registrable. On December 21, 2007, Mr. Lefkowitz rejected the U.S. Attorney's proposed resolution of the 2255 provision because they "strongly believe that the provable conduct of Mr. Epstein with respect to these individuals fails to satisfy the requisite elements of either 18 U.S.C. Section[s] 2422(b) ... or ... 2423(b)." In his December 26, 2007 correspondence, he stated that "we have reiterated in previous submissions that Mr. Epstein does not believe he is guilty of the federal charges enumerated under section 2255" and requiring "Mr. Epstein to in essence admit guilt, though he believes he did not commit the requisite offense."

The SDFL reiterated time and time again that it had never wanted nor expected Epstein to plead guilty to a charge he does not believe he committed. As a result, the SDFL obliged his request for an independent *de novo* review of the investigation and facilitated such a review at the highest levels of the Department of Justice. As you know, on May 15, 2008, after months of considering the matter, the Criminal Division considered whether there is a legitimate basis for the U.S. Attorney's Office to proceed with a federal prosecution of Mr. Epstein. CEOS Section Chief Oosterbahn concluded that "federal prosecution would not be improper or inappropriate." *See* attached May 15, 2008 letter from CEOS Section Chief Oosterbahn to Jay Lefkowitz. On May 19, 2008, I notified Mr. Lefkowitz that the SDFL would give Epstein a full two weeks (close of business on Monday, June 2, 2008) to comply with the terms and conditions of the Agreement, as modified by the USA's December 19th letter to Ms. Sanchez.[5]

The SDFL was recently notified that the Office of the Deputy Attorney General has agreed to consider additional allegations not considered by CEOS which were recently raised in correspondence by two former high-ranking members of the Department of Justice - Ken Starr and Joe Whitley. On May 28, 2008, I notified Mr. Lefkowitz by e-mail that the SDFL has postponed the June 2, 2008 deadline until the DAG's Office has completed its review of this matter. Their correspondence to the DAG alleges that the SDFL's investigation lacks integrity because it has leaked "highly confidential aspects" of the investigation and negotiations to the New York Times and that I/FAUSA Sloman directed some of the victims to my former law partner. They also claim that the "unprecedented extension of federal law" by the SDFL suggests that this is politically motivated because Epstein is a prominent figure with "close ties to former President Clinton." Messrs. Starr and Whitley go on to claim that I/FAUSA Sloman unilaterally, arbitrarily and unnecessarily imposed a June 2, 2008 deadline in order to prevent Epstein from seeking your Office's review and that "the unnecessary deadline is even more problematic because Mr. Epstein's effort to reconcile the state charge and sentence with the terms of the Agreement requires an unusual and unprecedented threatened application of federal law."

1. *The Alleged "Leak" to the New York Times.*

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[5] Mr. Lefkowitz was placed on notice on February 25, 2008, that in the event that CEOS disagreed with Epstein's position, I would give Epstein one week to comply with the terms and conditions of the Agreement, as modified by the USA's December 19th letter to Ms. Sanchez.

AUSA David Weinstein became involved in this matter in his capacity as back up for the District's Public Information Officer (PIO). While the District's PIO was on annual leave, he was the acting PIO during the first week of January 2008. The entirety of his conduct in connection with the Epstein matter began on January 2, 2008 and ended on January 7, 2008.[6] Specifically, his contact involved five telephone conversation with Landon Thomas, a reporter for the New York Times. These conversations occurred on 1) the morning of January 2, 2008, 2) the afternoon of January 2, 2008, 3) the afternoon of January 3, 2008, 4) the afternoon of January 4, 2008, and 5) the afternoon of January 7, 2008.

A. *The Morning of January 2, 2008.*

AUSA Weinstein began his conversation with Mr. Thomas by explaining that he was the acting PIO for the week and that he had received Mr.Thomas's December 31, 2007 e-mail requesting an interview and asking for comments on the following five statements.[7] First, "that in the summer of 2005 the palm beach police department referred the Epstein case to you." Second, "that the case is being overseen by Jeffrey Sloman, and above him, R. Alexander Acosta." Third, "that Mr. Acosta has made child pornography a focus are [sic] for your office." Fourth, "that this summer your office gave Mr. Epstein an ultimatum: plead guilty to a charge that would require him to register as a sex offender, or the government would release a 52 page indictment, charging him with crimes that could include procuring sex for a third party or engaging in sexual tourism. Both of these charges carry jail sentences of as much as 15 years." Fifth, "that your office told Mr. Epstein and his lawyers: we are ready to pull the trigger." Sixth, "I also wanted to ask Mr. Sloman about his role in a case involving Jonathan Zirulnikoff and his daughter earlier this year."

At the outset, Weinstein said that he could not comment on any specific pending matters and that he would do his best to answer some of his questions. Thomas said that his questions were based, in part, upon conversations that he had already had with members of Mr. Epstein's defense team, prior published reports of a pending State case against Mr. Epstein and public information available through the State Court system.

Weinstein refused to answer the first question. As to the second question, Weinstein told him that any matter arising out of conduct in Palm Beach County, was prosecuted by our West Palm Beach branch office. He also told him that as First Assistant, the FAUSA had supervisory authority over all AUSAs throughout the District. In turn, the FAUSA answered directly to the U.S. Attorney.

In response to the third question, Weinstein discussed the difference between child exploitation and child pornography. Weinstein said that federal crimes involving child exploitation were one of several focus points of our Office. He further explained that in addition

[6]AUSA Weinstein has self-reported to the Office of Professional Responsibility.

[7]After reviewing his e-mail, AUSA Weinstein discussed the matter with U.S. Attorney Acosta. Pursuant to USAM 1-7.530 and the Media Relations Guide, Section III D2, after consultation with and prior approval from the US Attorney, he called Mr. Thomas on the morning of January 2nd.

to traditional federal areas of prosecution the other focus points included health care fraud and gang prosecutions.

Weinstein refused to answer the fourth and fifth topics but did discuss the general nature of pre-trial proceedings in federal court. He said that the SDFL does not offer ultimatums, nor are we in the business of issuing ultimatums. He explained that in cases where a party wants to plead guilty prior to indictment, we will discuss the parameters of guilty pleas and that people always have the right to proceed to trial if they choose to do so and that we do not favor one resolution over the other. Weinstein told Mr. Thomas that he would not discuss his specific question about Mr. Epstein's lawyer's statement that someone from our Office told them that "we are ready to pull the trigger." Nor would he discuss anything about who might or might not be representing Mr. Epstein. Weinstein told Mr. Thomas that he should not allow himself to be spun one way or the other in response to statements Mr. Thomas said he had received from attorneys who said that they represented Mr. Epstein. Weinstein ended the conversation by telling Mr. Thomas that he would check further into his sixth and final topic and get back to him later in the day.

B. *Afternoon of January 2, 2008.*

Weinstein informed Mr. Thomas that in regard to his sixth topic, the SDFL had no reason to question FAUSA Sloman's judgment or integrity. He also said that this particular subject matter was a private matter that FAUSA Sloman did not want to discuss with him.[8] Mr. Thomas told him that if he had any further questions, he would call back.

C. *Afternoon of January 3, 2008.*

This call was in response to a voice mail message that Mr. Thomas had left regarding legal issues involving specific state and federal statutes. Specifically, Mr. Thomas had some questions about the burden of proof and strict liability in some state and federal statutes that governed illegal sexual activity. Again, Weinstein told him that he would not discuss any specific cases, but that he would assist him in understanding the statutes about which he had some questions. Weinstein explained that some statutes contained defenses that must be proven

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[8] The case involving "Jonathan Zirulnikoff " involved a March 7, 2007 early morning attempted break-in of my/Sloman's house. Zirulnikoff, age 19 at the time, confessed and said that he wanted to "talk" to my daughter who was then 16. He also confessed to a prior unrelated break in which Zirulnikoff caressed the inner thigh of a 15 year old female. Zirulnikoff who had graduated from my daughter's high school in June 2006, dated my daughter's friend and had little if any contact with my daughter for over one year. Zirulnikoff negotiated a plea deal, over my objection, with the Miami-Dade State Attorney's Office to a misdemeanor trespass. That conviction resulted in a sentence of two years probation and a withhold of adjudication upon successful completion of his probationary period. Since this information was completely irrelevant to the facts and issues in the instant Epstein matter, I refused to allow Mr. Weinstein to comment about this matter to Mr. Thomas. Furthermore, none of this information had been publicized and, upon information and belief, only one member of Epstein's legal team knew anything about this matter, my former colleague, Lilly Ann Sanchez.

by a defendant, while there were other statutes that did not require a defendant to affirmatively prove a defense. The discussion centered around Title 18, United States Code, Section 2423(g). Once again, Mr. Thomas told Weinstein that if he had any further questions, he would call back.

D. *Afternoon of January 4, 2008.*

This was another call in response to a voice mail message that Mr. Thomas had left regarding some additional questions. Weinstein prefaced the conversation by saying that he would not discuss any specific cases. The conversation centered around three specific statutes, 18 United States Code, Section 2422(b), 18 United States Code, Section 1591, and 18 United States Code, Section 2423(b) as well as the burden of proof and the applicability of affirmative defenses. They discussed the difference between an attempt and a substantive charge pursuant to Section 2422(b) and how that affected the government's burden of proof *vis-a-vis* the age of a child. They also discussed the fact that a charge pursuant to Section 1591 required the government to prove that the defendant had actual knowledge of the age of the victim. Finally, they discussed the fact that if the government was charging a defendant with traveling to engage in prostitution, pursuant to Section 2423(b), there was an affirmative defense available to the defendant regarding the reasonable belief of the defendant about the age of the victim.

E. *Afternoon of January 7, 2008.*

This final call was made after the U.S. Attorney and FAUSA Sloman had received a call from a member of Mr. Epstein's defense team alleging that the SDFL had provided case specific information to the media. Weinstein called Mr. Thomas who acknowledged that both before and after each of the above-mentioned conversations, he had also called attorneys who were representing Mr. Epstein on his pending State charges. Mr. Thomas also acknowledged that all of our prior conversations had been about general legal issues and that Weinstein never spoke about any specific case. Since the January 7,2008 conversation, Weinstein has not had any further contact with Mr. Thomas.

2. *Herman Sloman & Mermelstein.*

Seven years ago, I resigned from the SDFL for private practice. Less than five months later, I resigned from the law firm and returned to the SDFL. Public records reflect the following: on May 8, 2001, articles of amendment were filed with the Florida Division of Corporations to reflect that the firm name of "Herman & Mermelstein" was changed to "Herman Sloman & Mermelstein" on May 7, 2001. I joined the firm at that time and remained a non-equity partner until on or about October 1, 2001. At that time, I resigned from the firm and returned to the SDFL. Since I was a partner in name only, I never retained any interest in the firm nor did I ever receive any compensation other than my final paycheck. That was over six and one half years ago.

Unbeknownst to me, on July 2, 2002, articles of amendment were filed with the Florida Division of Corporations to reflect that the firm name of "Herman Sloman & Mermelstein" was changed back to "Herman & Mermelstein." The article of amendment indicates the amendment was adopted on July 1, 2002, without shareholder action. Although the filing was not immediate upon my departure from the law firm, it pre-dated for years any dealings with the subject case now under

consideration by the SDFL. Recently, I learned that there is a reference to the law firm of "Herman *Sluman* & Mermelstein" on the Florida Bar website, under a section called "Find A Lawyer." This reference appears when Stuart Mermelstein's name and information is accessed. To reiterate, since October 2001, I have had no relationship with that law firm, financial or otherwise, and no input or control over the firm's filings with the Florida Division of Corporations and/or the Florida Bar.

On Friday, January 18, 2008, at approximately 1:15 pm, I received a call from Jeffrey Herman of Herman & Mermelstein. Herman said that he was planning to file a civil lawsuit the next week against Jeffrey Epstein. He said that his clients were frustrated with the lack of progress of the state's investigation and wanted to know whether the SDFL could file criminal charges even though the state was looking into the matter. I told Herman that I would not answer any question related to Epstein – hypothetical or otherwise. I asked him how his clients retained him and he said that it was through another lawyer. I then specifically asked him whether the referral was the result of anyone in law enforcement contacting him and/or the other lawyer. He said no. At the conclusion of the conversation, I reiterated and confirmed with him that I had refused to answer any questions he asked of me. I immediately documented this conversation and informed the U.S. Attorney who informed Senior Litigation Counsel and Ethics Advisor Dexter Lee. AUSA Lee opined that he did not see a conflict.

3. *The Alleged Unprecedented Extension of Federal Law.*

It is my hope that this letter has sufficiently explained how thoroughly this matter has been reviewed, how seriously the issues have been considered, and how additional delays may adversely affect the case going forward and, more importantly, the victims. Attached please find the proposed prosecution memo and indictment. You are invited to evaluate whether I, along with U.S. Attorney Acosta, Criminal Division Chiefs Menchel and, later Robert Senior, Deputy Criminal Division Chiefs Lourie, followed by Rolando Garcia, and AUSA Villafana have somehow steered this investigation toward "an unprecedented extension of federal law"despite being simultaneously and/or subsequently reviewed by CEOS, DAAG Mandelker, and AAG Fisher. I also hope that the reputations of the above-mentioned professional prosecutors combined with the documented layers of methodical and thorough review of all issues raised by Epstein are enough to summarily dismiss the idea that this matter is politically motivated. It seems incomprehensible how Messrs. Starr and Whitley could expect *further* review when the due process rights of their client have been considered and reconsidered to the point of absurdity. In contrast to Messrs. Starr and Whitley's allegation that my June 2, 2008 deadline was "arbitrary, unfair, and unprecedented," please consider that Mr. Lefkowitz was advised several months ago (February) that in the event that CEOS disagreed with his position, Epstein would be given one-week to comply with the Agreement. I expanded that from one to two-weeks. Furthermore and more importantly, please consider that all further delays will have the following impact:

(1) at the time of the offenses, the victims ranged in age from 14 to 17 years old. The change in physical appearance of many of the victims since then has been dramatic. Epstein has been claiming that he did not know they were minors. Obviously, the older they look when the case is at issue, the

harder it will be to overcome that defense;

(2) it allows Epstein's lawyers to conduct depositions of the victims in the pending state criminal case and allows his private investigators to further harass and intimidate the victims;

(3) more victims will seek the services of civil lawyers to file lawsuits thus allowing Epstein to make more powerful arguments demeaning the credibility of the victims;

(4) the federal grand jury which has dozens of hours invested in this matter will soon expire and re-presenting this matter to a new grand jury will cause a hardship upon the agents and prosecutors;

(5) the prosecutors and agents may retire, transfer and/or leave the Department for other opportunities thus affecting the potential outcome and prosecutorial resources. Additionally, several of the victims have relocated thus increasing the likelihood that crucial witnesses will be lost;

(6) the SDFL has afforded more consideration to Epstein's arguments than any other defendant in my years of being the FAUSA and, before that, the Chief of the Criminal Division (January 1, 2004 to the present). I believe that we have been disproportionally fair to Epstein at the expense of other matters; and

(7) prolonged delay may adversely affect the statute of limitations for some of the victims.

On behalf of the SDFL and the victims in this case, I would request an expedited review and decision of the issues raised by the above-mentioned May 27, 2008 letter from Messrs. Starr and Whitley.

Sincerely,

R. Alexander Acosta
United States Attorney

By:

Jeffrey H. Sloman
First Assistant United States Attorney

Encls.

cc: Robert Senior, Chief
Criminal Division
A. Marie Villafana
Assistant U.S. Attorney
Karen Atkinson
Assistant U.S. Attorney