Acosta, Alex (USAFLS)

From: Jay Lefkowitz [JLefkowitz@kirkland.com]
Sent: Monday, May 19, 2008 10:54 AM
To: Acosta, Alex (USAFLS)
Subject: confidential communication
Attachments: Letter from CEOS.TIF

Dear Alex:

I am writing to you because I have just received the attached letter from [redacted] In light of that letter, and given the critical new evidence discussed below, I would like to request a meeting with you, mindful of our July 8 deadline, at your earliest opportunity. Given your personal involvement in this matter to date, and the fact that at this juncture it is clear that CEOS has referred the matter back to you, I respectfully request that you not shunt me off to one of your staff. You and I have both spent a great deal of time on this matter, and I know that we both would like to resolve this matter in a way that bestows integrity both on the Department and the process.

In our prior discussions, you expressed that you were "not unsympathetic" to our various federalism concerns, but stated that because you serve within the "unitary Executive," you believed your hands were tied by Main Justice. You were also extremely gracious in stating that you did not want the United States to be "unfair". Although CEOS limited its assessment to the federal statutes your Office had brought forth and to the application of those laws to the facts as presented, it is abundantly clear from Drew's letter that Main Justice is not directing this prosecution. In fact, CEOS plainly acknowledged that a federal prosecution of Mr. Epstein would involve a "novel application" of federal statutes and that our arguments against federal involvement are "compelling." Moreover, the language used by Drew in his concluding paragraph, that he cannot conclude that a prosecution by you in this case "would be an abuse of discretion" is hardly an endorsement that you move forward.

Moreover, as you know, Drew made clear that the scope of his review did not extend to the other significant issues we have raised with you, such as the undo interest by some members of your staff with the financial and civil aspects of this matter, or with the inappropriate discussion one member of your Office had with a senior reporter at the New York Times. (In fact, I have met with that reporter and have reviewed copious notes of his conversation with Mr. Weinstein). At this stage, we have no alternative but to raise our serious concerns regarding the issues Drew refused to address with the Deputy or, if necessary, the Attorney General, because we believe those issues have significantly impacted the investigation and any recommendation by your staff to proceed with an indictment. That being said, it would obviously be much more constructive and efficient if we could resolve this matter directly with you in the advance of further proceedings in Washington.

Because it is clear that national policy, as determined by Main Justice, is not driving this case, the resolution of this matter is squarely, and solely, your responsibility. I know you want to do the right thing, and it is because you have made clear to me on several occasions that you will always look at all of the relevant and material facts that I call the following to your attention. New information that has come to light strongly suggests that the facts of this case cannot possibly implicate a federal prosecutorial priority. Due to established state procedures and

EXHIBIT B-35

following the initiation of multiple civil lawsuits, Mr. Epstein's counsel was able to take limited discovery of certain women in this matter. The sworn statements provided by these women all confirm that federal prosecution is not appropriate in this case.

The consistent representations of witnesses such as [redacted] and the civil complainants and their attorneys, confirm the following key points: First, there was no telephonic communication that met the requirements of § 2422(b). For example, as many other witnesses have stated, Ms. Beale testified in no unclear terms that there was never any discussion over the phone about her coming over to Mr. Epstein's home to engage in sexual activity: "The only thing that ever occurred on any of these phone calls [with [redacted] or another assistant] was, 'Are you willing to come over,' or, 'Would you like to come over and give a massage.'" Beale Tr. A at 15. Second, the underage women who visited Mr. Epstein have testified that they lied about their age in order to gain admittance into his home and women who brought their underage friends to Mr. Epstein counseled them to lie about their ages as well. Ms. Miller stated the following: "I would tell my girlfriends just like Carolyn approached me. Make sure you tell him you're 18. Well, these girls that I brought, I know that they were 18 or 19 or 20. And the girls that I didn't know and I don't know if they were lying or not, I would say make sure that you tell him you're 18." Miller Tr. at 22. Third, there was no routine or habit suggesting an intent to transform a massage into an illegal sexual act. For instance, Ms. Laduke stated that Mr. Epstein "never touched [her] physically" and that all she did was "massage[ ] his back, his chest and his thighs and that was it." Laduke Tr. at 12-13. Finally, as you are well aware, there was no force, coercion, fraud, violence, drugs, or even alcohol present in connection with Mr. Epstein's encounters with these women.

The civil suits confirm that the plaintiffs did not discuss engaging in sexually-related activities with anyone prior to arriving at Mr. Epstein's residence. This reinforces the fact that no telephonic or Internet persuasion, inducement, enticement or coercion of any kind occurred. Furthermore, Mr. Herman, the attorney for most of the civil complainants, was quoted in the Palm Beach Post as saying that "it doesn't matter" that his clients lied about their ages and told Mr. Epstein that they were 18 or 19. In short, the new evidence establishing that the women deliberately lied about their age because they knew Mr. Epstein did not want anyone under 18 in his house directly undercuts the claim that Mr. Epstein willfully blinded himself as to their ages. Willful blindness is not a substitute for evidence of knowledge nor is it a negligence standard. It requires proof beyond reasonable doubt of deliberate intent and specific action to hide one's knowledge. There is absolutely no such evidence of that here, so it is not even a jury issue. Furthermore, willful ignorance cannot constitute the required mens rea for a crime of conspiracy or aiding and abetting.

Through the recent witness statements, we have also discovered another serious issue that implicates the integrity of the federal investigation. We have learned that FBI Special Agent Kurkendayl attempted to convince these adult women, now in their twenties, that they were in fact "victims" even though the women themselves strongly disagreed with this characterization. This conduct, once again, goes to the heart of the integrity of the investigation. In a sworn statement, Ms. Beale was highly critical of the overreaching by federal law enforcement officers in this case. She testified—in no uncertain terms—that she does not, and never did, feel like a "victim," despite the fact that the FBI repeatedly tried to convince her otherwise.

I am mindful of the fact that we have a state court date of July 8 on which either to enter a plea or to commence trial. As I review the trial options with Mr. Epstein, I certainly want to make

sure I do everything within my power to obviate a need for trial through a reasonable alternative resolution. Although it is clear that CEOS is not directing a prosecution here, and has stated only that you have the authority to commence such a prosecution, I am well aware that the decision whether to proceed, subject to any further process in Washington, is now within your discretion. I think the new facts should greatly influence your decision and accordingly, I hope you will agree to meet with me, both to discuss the new evidence and to discuss a resolution to this matter once and for all. I am available to meet with you at your earliest convenience subject to our mutual availability.

Respectfully,

Jay

Campos, Cyndee (USAFLS)

From: [redacted]
Sent: Monday, May 19, 2008 5:04 PM
To: 'lefkowitz@kirkland.com'
Subject: Epstein

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U.S. Department of Justice

United States Attorney
Southern District of Florida

UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF FLORIDA
99 NE 4TH STREET
MIAMI, FLORIDA 33132-2111

[redacted]

FACSIMILE TRANSMISSION
COVER SHEET

DATE: May 19, 2008

TO: Jay P. Lefkowitz, Esquire

FAX NUMBER: [redacted]

SUBJECT: Epstein

NUMBER OF PAGES, INCLUDING THIS PAGE: 7

U.S. Department of Justice

United States Attorney
Southern District of Florida

First Assistant U.S. Attorney [redacted]

DELIVERY BY FACSIMILE

May 19, 2008

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

Re: Jeffrey Epstein

Dear Mr. Lefkowitz,

I am in receipt of your e-mail dated May 19, 2008 to the United States Attorney. The U.S. Attorney would like me to advise you that all communications and inquiries related to the Epstein matter, will be handled by [redacted] or her supervisor, [redacted] he does not intend to respond to your e-mail or calls unless [redacted] d/or her supervisors advise him otherwise. Furthermore, you make reference to "*our July 8 deadline*." Respectfully, the United States Attorney's Office for the Southern District of Florida ("SDFL") has never agreed to any such deadline. Should you decide to provide the SDFL with any additional information, please do so through [redacted] and, in her absence, [redacted]

On September 24, 2007, your client, Jeffrey Epstein, in consultation with Gerald Lefcourt, Esq. and Lilly Ann Sanchez, Esq., as well as numerous other nationally-renowned lawyers, including but not limited to Harvard Law Professor Alan Dershowitz, former Independent Counsel and Solicitor General of the United States Kenneth Starr, just to name a few, entered into a global resolution of state and federal liabilities faced by your client ("the Agreement") with the SDFL. Although you and other members of the defense team have since claimed that the Agreement was the product of adhesion, the following facts demonstrate that Epstein knowingly and voluntarily entered into the Agreement in order to avoid a federal indictment regarding his sexual conduct involving minor victims. Despite the fact that by signing the Agreement, Epstein gave up the right to object to its provisions, the SDFL bent over backwards to exhaustively consider and re-consider your objections. Since these objections have finally been exhausted and Epstein has previously expressed his intent to not comply with several of the terms and conditions of the Agreement as set forth below, the SDFL hereby notifies you that unless he complies with all of the terms and conditions of the Agreement, as modified by the United States Attorney's December 19, 2007 letter to Ms. Sanchez by close of business on Monday, June 2, 2008, the SDFL will elect to terminate the Agreement.

Background

The Agreement was the product of months of negotiations. Specifically, you requested and received numerous meetings, at the highest levels of the SDFL and DOJ's Child Exploitation and Obscenity Section (CEOS) concerning claims that (a) the investigation merely produced evidence of relatively innocuous sexual conduct with some minors who, unbeknownst to Epstein, misrepresented their ages; (b) the authorities investigating Epstein engaged in misconduct; (c) the contemplated federal statutes have no applicability to this matter; and (d) the federal authorities disregarded the fundamental policy against federal intervention with state criminal proceedings. After careful review, the SDFL ultimately rejected those claims. Subsequent to its decision, however, but before proceeding any further, the SDFL provided you with 30 days to appeal the decision to the Assistant Attorney General of the United States, Alice Fisher. As you recall, you chose to forego an appeal to AAG Fisher, and instead pursued a negotiated resolution which, ultimately, resulted in the execution of the Agreement.

The Negotiation Phase

During negotiations, you tried to avoid a resolution that called for incarceration and registration as a sexual offender – both of which would be triggered by a successful federal prosecution. The SDFL believed and continues to believe that should this matter proceed to trial, your client would be convicted of the federal statutes identified in the Agreement. In order to achieve a global resolution, the SDFL indicated a willingness to defer to the State the length of incarceration; however, it remained adamant that Epstein register as a sex offender and that all victims identified during the investigation remain eligible for compensation. In order to achieve this result, the parties considered two alternatives, a plea to federal charges that limited Epstein's sentencing exposure, or, as suggested by you, a plea to state charges encompassing Epstein's conduct. Ultimately, the parties agreed to, *inter alia,* a plea to the state charges outlined in the Agreement, registration and a method of compensation.

The Agreement

The crux of the Agreement defers in favor of the State federal prosecution of Epstein for his sexual conduct involving those minor victims identified as of September 24, 2007, in exchange for a guilty plea to a state offense that requires registration as a sex offender; a sufficient term of imprisonment; and a method of compensation for the victims 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. 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; (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.

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).

Post-Execution of the Agreement

Within weeks of the execution of the Agreement, you sought to delay the entry of Epstein's guilty plea and sentence. After the SDFL agreed to accommodate your request, counsel for Epstein 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 registration and the contemplated state and federal statutes have no applicability to the instant matter.

A. Delay.

The Agreement required that "Epstein shall use his best efforts *to enter his guilty plea and be sentenced not later than October 26, 2007.* The United States has no objection to Epstein self-reporting to begin serving his sentence not later than January 4, 2008." Agreement, pages 4-5, paragraph 11 (emphasis added). After the Agreement was executed, the SDFL accommodated your request to extend the October 26th plea deadline to November 20th based upon, what seemed to be, reasonable scheduling conflict issues.[1] By early November, you represented that the presiding state court judge would not "stagger the plea and sentencing as contemplated in the Agreement." Although the Agreement clearly did not contemplate a staggered "plea and sentencing," the SDFL again agreed to accommodate Epstein's request to appear in state court for plea and sentencing on January 4, 2008.[2]

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[1] "Accordingly, I have now confirmed with Mr. Epstein's Florida counsel that the state's attorney's office and the court will be available to have him enter his plea on November 20. So we will plan to proceed on one that date." October 18, 2007 email from Jay Lefkowitz to USA R. Alexander Acosta.

On the same day, Mr. Lefkowitz confirmed with First Assistant Jeffrey H. Sloman that this postponement " will not affect when Epstein begins serving his sentence."

[2] Correspondence from Jay Lefkowitz to [redacted] ted November 8, 2007 ("the judge has invited the parties to appear for the plea and sentencing on January 4th, we do not anticipate any delay beyond that date.")

B. Method of Compensation and Notification.

During this same time period, you and others, including the former Solicitor General of the United States Kenneth Starr, took issue with the *implementation* of the methodology of compensation (hereinafter "the 2255 provision")[3] and the SDFL's intention to notify the victims under 18 U.S.C. Section 3771 (you objected to victims being notified of time and place of Epstein's state court sentencing hearing). In response, the SDFL offered, in my opinion, numerous and various reasonable modifications and accommodations which ultimately resulted in United States Attorney R. Alexander Acosta's December 19, 2007 letter to Lilly Ann Sanchez. In that letter, the United States Attorney tried to eliminate *all* concerns which, quite frankly, the SDFL was not obligated to address, let alone consider. He 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."

Regarding the issue of notice to the victims, USA Acosta proposed to notify them of the federal resolution as required by law; however, "[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." As you know, you rejected these proposals as well. *See* December 26, 2007 correspondence from Jay Lefkowitz to USA Acosta.

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[3] Prior to any issues arising concerning the implementation of the 2255 provision, the SDFL unilaterally agreed to assign its responsibility to select the attorney representative for the alleged victims to an independent third-party. This was done to avoid even the appearance of favoritism in the selection of the attorney representative. As a result, on October 29, 2007, the parties executed an Addendum wherein it was mutually agreed that former United States District Court Judge Edward B. Davis would serve as the independent third-party. Judge Davis selected the venerable law firm of Podhurst and Josefsberg to represent the approximately 34 alleged identified victims.

C. "Mr. Epstein Does Not Believe He Is Guilty Of The Federal Charges Enumerated Under Section 2255."

At our December 14, 2007 meeting at the U.S. Attorney's Office in Miami, counsel for Epstein announced, *inter alia*, 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. You also argued that the facts were inapplicable to the contemplated state statutes and that Epstein should not have been allowed to have been induced into the Agreement because the facts were not what he understood them to be. It should be noted that the SDFL has never provided you with any evidence supporting its investigation. This is not, and has never been, an *Alford* plea situation (*see North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970)). Ultimately, you requested an independent review.

Subsequent to the above-mentioned meeting, the SDFL received three letters from you and/or Mr. Starr which expanded on some of the themes announced in the December 14th meeting. Essentially, you portrayed the SDFL as trying to coerce a plea to unknown allegations and incoherent theories. On December 17, 2007, you decreed that Epstein's conduct did not meet the requirements of solicitation of minors to engage in prostitution (Fl. Stat. Section 796.03) one of the enumerated crimes Epstein had previously agreed to plead guilty to; that Epstein's conduct does not require registration under Florida law; and the State Attorney's Office does not believe the conduct is registrable. On December 21, 2007, you rejected the USA's proposed resolution of the 2255 provision because you "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 your December 26, 2007 correspondence you 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."

As the SDFL has reiterated time and time again, it does not want, nor does it expect, Epstein to plead guilty to a charge he does not believe he committed. As a result, we obliged your request for an independent *de novo* review of the investigation and facilitated such a review at the highest levels of the Department of Justice. It is our understanding that that independent review is now complete and a determination has been made that there are no impediments to a federal prosecution by the SDFL.

Conclusion

On February 25, 2008, I sent you an e-mail setting forth a timetable for moving forward in the event that CEOS disagreed with your position. That time is now. As you know, my February 25th email stated that I would give you one week to comply with the terms and conditions of the Agreement, as modified by the USA's December 19th letter to Ms. Sanchez. In light of the upcoming Memorial Day weekend, I have decided to extend that timetable to the close of business on Monday, June 2, 2008, which is a full two weeks.

Sincerely,

R. Alexander Acosta
United States Attorney

[redacted]

cc: R. Alexander Acosta
United States Attorney

[redacted]