



Ann Marie Villafana <[REDACTED]>

Fw: confidential communication

1 message

Thu, May 22, 2008 at 3:38 AM

----- Original Message -----

From: [REDACTED] (USAFLS)
To: [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS)
Sent: Mon May 19 12:40:32 2008
Subject: FW: confidential communication

For your records.

From: Jay Lefkowitz [mailto:JLefkowitz@kirkland.com]
Sent: Monday, May 19, 2008 10:54 AM
To: [REDACTED] (USAFLS)
Subject: confidential communication

Dear [REDACTED]:

I am writing to you because I have just received the attached letter from Drew Oosterbaan. 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

EXHIBIT B-36

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 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 ██████ M ██████ ██████ ██████ 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. ██████ 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 ██████ or another assistant] was, 'Are you willing to come over,' or, 'Would you like to come over and give a massage.'" ██████ 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 ██████ 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. ██████ 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." ██████ 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 [REDACTED] 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. [REDACTED] 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

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Kirkland & Ellis LLP or Kirkland & Ellis International LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail or by e-mail to postmaster@kirkland.com, and destroy this communication and all copies thereof, including all attachments.

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535
4000
1-800-368-5848
www.fbi.gov



To: [Redacted]
From: [Redacted]
Subject: [Redacted]

Letter from CEOS.TIF
360K