

Memorandum



Subject

Self Reporting - [REDACTED]
Corrected Version of the previously submitted
April 21, 2008 Letter to OPR

Date

April 23, 2008

To

Office of Professional Responsibility

From


[REDACTED], First Assistant
United States Attorney SDFL

On April 21, 2008, I sent OPR a letter referenced "Self Reporting - [REDACTED], FAUSA S.D.F.L." Upon further review, I noticed some minor typographical errors. Attached is the corrected version along with the referenced documents.



U.S. Department of Justice

United States Attorney
Southern District of Florida

[REDACTED]
First Assistant U.S. Attorney

99 N.E. 4 Street
Miami, FL 33132
(305) 961-9100

Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Room 3266
Washington, DC 20530-0001
VIA Federal Express

April 21, 2008

Re: Self Reporting - [REDACTED], FAUSA S.D.F.L.

Dear Sir or Madam,

I am taking this opportunity to advise you that I have learned that lawyers for an individual named Jeffrey Epstein have raised ethical concerns regarding my involvement in his potential prosecution in the Southern District of Florida. Upon information and belief, Epstein has notified Assistant Attorney General Alice Fisher and/or her staff that I have an actual and/or perceived conflict of interest because two of Epstein's alleged victims hired my former law firm to represent them in civil proceedings against Epstein. Although I am not privy to the actual allegations, I understand that Epstein's counsel claims that I should be removed from supervising the current investigation and/or disciplined. Mr. Epstein is represented by Jay Lefkowitz, Esq. and Dean Kenneth Starr of Kirkland & Ellis LLP, Harvard Law Professor, Alan Dershowitz, Gerald Lefcourt, Esq., Martin Weinberg, Esq., Lilly Ann Sanchez, Esq., Guy Lewis, Esq. and Michael Tein, Esq. to name a few.

Background.

On September 24, 2007, the United States Attorney's Office for the Southern District of Florida ("SDFL") entered into a Non-Prosecution Agreement ("the Agreement") with Jeffrey Epstein regarding his sexual conduct involving minor victims. Since then, members of Epstein's defense team have claimed that the Agreement was the product of adhesion. 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 his objections.

The Agreement was the product of months of negotiations. Specifically, counsel for Epstein 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 the allegations; 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, but before proceeding any further, the SDFL provided Epstein with 30 days to appeal the decision to the Assistant Attorney General of the United States, Alice Fisher. Epstein and his lawyers decided to forego this opportunity.

The crux of the Agreement deferred 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 mandated, *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). Within weeks of the execution of the Agreement, Epstein sought to delay the entry of his guilty plea and sentence. After the SDFL agreed to accommodate his 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.

At a 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. Counsel 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. Ultimately, by the beginning of January 2008, Epstein's lawyers requested an independent review, which was granted. As of April 21, 2008, members of AAG Alice Fisher's staff are still conducting that review.

Upon information and belief, lawyers for Epstein have alleged that I have a conflict of interest and, presumably, should be disciplined and/or removed from all involvement in this matter. The basis for this allegation is the fact that one or more of Epstein's alleged victims is/are being represented by a law firm that I was associated with between May 2001 and October 2001. I presume that Epstein's lawyers have alleged that I referred these victims to this law firm.

Response.

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. A copy of the filing is attached. 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 and returned to the SDFL.

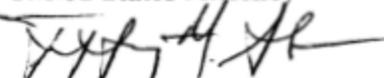
On July 2, 2002, articles of amendment were filed with the Florida Division of Corporations to reflect that the firm name of "Herman Sloman & Mermelstein" was changed back to "Herman & Mermelstein." The article of amendment indicates the amended was adopted on July 1, 2002, without shareholder action. Although the filing was not immediate, 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. A copy of that document is also attached. 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 lawyer Jeff Herman. Herman told me that he was planning to file a civil lawsuit the next week against Jeffrey Epstein. He said that his clients are frustrated with the lack of progress of the state's investigation and wanted to know whether the USAO could file criminal charges even though the state was looking into the matter. I told Herman that I would not answer any questions related to Epstein – hypothetical or otherwise. I asked him how the family 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 refused to answer any questions he asked of me. I immediately documented this conversation and informed the United States Attorney who informed Senior Litigation Counsel and Ethics Advisor [REDACTED]. AUSA [REDACTED] opined that he did not see a conflict. Should you require any additional information, please feel free to contact me.

Sincerely,

R. Alexander Acosta
United States Attorney

By:



[REDACTED]
First Assistant United States Attorney

cc: R. Alexander Acosta
United States Attorney



U.S. Department of Justice

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Southern District of Florida*

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April 22, 2008

VIA FEDERAL EXPRESS

H. Marshall Jarrett, Counsel
Office of Professional Responsibility
U.S. Department of Justice
Room 4304
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Re: Self-Report of Allegation of Conflict of Interest

Dear Mr. Jarrett:

I write to advise you that I have learned that lawyers for a target of one of my investigations, Jeffrey Epstein, have raised ethical concerns regarding my involvement in his potential prosecution in the Southern District of Florida. Specifically, I understand that Epstein's attorneys have notified Assistant Attorney General Alice Fisher and/or her staff that I have an actual conflict of interest. As part of pre-indictment plea negotiations, the parties agreed that Epstein's victims would be allowed to collect civil damages from Epstein and that Epstein would provide counsel for the victims. I provided Epstein's counsel with a series of possible attorneys, including Humberto Ocariz ("Ocariz"), who is a friend of my boyfriend, E.J. [REDACTED] ("[REDACTED]"). At the time, I identified Ocariz as a friend of a "good friend." Epstein's attorneys rejected the other suggestions and selected Ocariz. After conferring with the First Assistant and the U.S. Attorney, we decided that, despite the terms of the non-prosecution agreement, the Office should not be responsible for selecting the attorney to represent the victims, and that a Special Master, working pro bono, should make the selection. Accordingly, the matter was submitted to a Special Master, and Ocariz was not selected as the attorney for the victims. Despite this resolution, Epstein's counsel continue to allege that my suggestion of Ocariz to serve as counsel for the victims represents a conflict of interest and that I should be removed from prosecuting the case and/or disciplined. Therefore, I am self-reporting this allegation for review by the Office of Professional Responsibility.

Background of Investigation

Operation Leap Year is a child exploitation investigation where the main target, Jeffrey Epstein, used his personal assistants and others as "recruiters" who would find high school girls, most of whom were minors, to travel to his home in Palm Beach, where they would perform "sexual massages." The sexual behavior ranged from fondling the girls, placing vibrators on their vaginas, digitally penetrating them, performing oral sex on them, asking them to engage in sexual activity with Epstein's girlfriend, and engaging in vaginal intercourse with them. In all cases, Epstein masturbated in the presence of the minor females. More than twenty-five minor victims have been identified.

The case was originally investigated by the City of Palm Beach Police Department and was presented to the Palm Beach County State Attorney's Office. Epstein immediately hired "high-powered" attorneys¹ with connections to the State Attorney and pressured the State Attorney's Office to forego filing charges. As part of their presentation to the State Attorney's Office, Epstein's attorneys raised allegations of misconduct on the part of the lead investigator from the Palm Beach Police Department. They also presented information from the "MySpace" pages of several victims that portrayed them as drug and/or alcohol abusers and liars.

The Palm Beach Police Department, seeing that the State Attorney's Office was likely to do nothing about Epstein, approached the FBI, who, in turn, approached me. We met with the police detective, [REDACTED], and discussed the investigation. When the State Attorney's Office presented the case to a grand jury (an extremely unusual step for a non-murder case) and obtained an indictment charging only three counts of solicitation of adults to engage in prostitution, we decided to open an investigation.

The investigation was lengthy and extensive. Because I was aware of the allegations of wrongdoing by the police department, the FBI and I consciously decided to undertake an independent investigation, which involved an independent review of the audio and videotaped interviews of the victims, subsequent interviews by FBI agents, and obtaining and reviewing extensive documentary evidence.

¹In connection with the state litigation, Epstein hired Guy Fronstin and Jack Goldberger from West Palm Beach, television legal commentators Roy Black and Gerald Lefcourt, and author and Harvard Law Professor Alan Dershowitz. In connection with the federal investigation, Epstein added former Independent Counsel Kenneth Starr and Jay Lefkowitz from Kirkland and Ellis, former U.S. Attorney Guy Lewis, former Assistant U.S. Attorneys Lilly Ann Sanchez and Michael Tien, and Massachusetts defense attorney Martin Weinberg.

From the start, Epstein's attorneys tried to convince me to stop the investigation and defer to the state prosecution. As part of this, they presented the same allegations of wrongdoing by the police detective and by the victims that they had presented to the State Attorney's Office. I assured them that we would do an independent review of the evidence before making a decision. As part of the investigation, I asked the FBI to follow up on the allegations of wrongdoing by the police detective. They did so, and determined that, with the exception of one error in a police report, the allegations were false. We also reviewed the "MySpace" pages and considered how they would affect the prosecution of the case.

When it became evident that I would not stop the investigation, Epstein's attorneys complained to others in my chain of command that I was harassing Epstein, violating various rules, and was simply trying to advance my career. In the press, his counsel even suggested that he was being persecuted based upon his religion or because he was wealthy. Epstein also began to hire additional attorneys with connections to our Office (a series of former Assistant U.S. Attorneys and a former U.S. Attorney) to try to influence the Office's decision.

The Pre-Indictment Plea Negotiations

I prepared an indictment package for review by the Office. By this time, Epstein's counsel had already met with the head of the West Palm Beach office (██████████) and I, and was demanding the opportunity to meet with the Chief of the Criminal Division (██████████) and the First Assistant (██████████). The four of us met with counsel for Epstein and rejected their proposed resolution of the case, which involved no jail time. A counter-proposal was made by the Chief of the Criminal Division, which included a plea to a state charge that carried a sex offender registration requirement, a jail term, and the payment of damages to the victims pursuant to a federal law that would have been implicated if we had proceeded on the federal charges, 18 U.S.C. § 2255.

Epstein's counsel asked to meet with the U.S. Attorney (Alexander Acosta) and the Chief of the Child Exploitation and Obscenity Section at the Department of Justice. After that meeting, Epstein's counsel was again informed that we intended to proceed. At that point, Epstein's counsel asked for the opportunity to "appeal" the decision to Washington, D.C. The U.S. Attorney agreed to give them two weeks for that appeal. At the same time, Epstein's counsel asked to begin negotiations to resolve the dispute in accordance with the terms set forth by the Chief of the Criminal Division.

At the Office's request, I began crafting an agreement containing those terms. Epstein's counsel expressed concerns about Epstein's safety while incarcerated, and asked if there was a way to plead to a federal charge that would bring about the desired outcome. I, therefore, undertook drafting two separate sets of documents: (1) a Non-Prosecution Agreement setting forth a plea to state offenses; and (2) a federal Plea Agreement with a federal Information to

be filed with the Court. The negotiations were difficult and tedious. Whenever Epstein's attorneys and I reached an impasse, they would "appeal" to the powers above me, starting with the head of the West Palm Beach office, then to the Chief of the Criminal Division, then to the First Assistant and the U.S. Attorney. Although the U.S. Attorney continued to defer to Mr. Lourie and me, Epstein's counsel would constantly ask the U.S. Attorney to intervene.

As mentioned above, with respect to the terms of the Non-Prosecution Agreement,² from the Office's perspective, there were three necessary terms: (1) a sentence of eighteen months' imprisonment [reduced from twenty-four months after negotiations with the defense]; (2) a plea to one state offense that required sex offender registration [reduced from pleading to three separate state offenses that each required sex offender registration]; and (3) an agreement to pay damages to the victims in accordance with federal law. Because of the state component of the agreement, [REDACTED], [REDACTED] (also from our Office), and I met with the State Attorney for Palm Beach County and an Assistant State Attorney, and three of Epstein's lawyers, Jack Goldberger, Gerald Lefcourt, and Jay Lefkowitz.³ At that meeting, we discussed the issue of sex offender registration, and Jack Goldberger said that Epstein was willing to plead guilty to procuring minors to engage in prostitution, one of the three charges for which sex offender registration was required. Goldberger specifically noted that this charge required registration but was still acceptable to the defense. After several weeks of negotiations, Epstein's attorneys began to complain about the sex offender registration requirement and, in some drafts, tried to "slip in" a citation to a different state offense that did not require registration. When I inquired why there was a sudden objection to a term that had been agreed upon several weeks before, I learned that, when Goldberger made that representation and throughout the first few weeks of negotiations, the defense believed that procuring minors to engage in prostitution did *not* require sex offender registration. When they learned that my research was correct, and that the charge did require registration, they then tried to avoid that term, first by trying to "slip in" the change to the agreement, and then by re-arguing the point with me, [REDACTED], [REDACTED], and the U.S. Attorney. Their arguments were rejected, and the term remained in the Agreement.

²I note that for at least the first two weeks of the negotiations, Epstein's counsel shifted back and forth between a plea to state charges and a plea to federal charges, so I was drafting both a Non-Prosecution Agreement and a plea agreement. The federal plea agreement did not go through because Epstein's counsel were concerned that Epstein would not be eligible to serve his term in a "prison camp" and because the Office was concerned about finding appropriate federal charges that would "cap" Epstein's sentence at the agreed eighteen months.

³Jay Lefkowitz handled the majority of the negotiations with me.

With respect to the second term, regarding a jail sentence, we later learned that Epstein's attorneys had been trying to arrange with the State Attorney and the Palm Beach Sheriff's Office to allow Epstein to serve his term on "work release," which would allow him to be out of custody all day, just returning to a "halfway house" to sleep at night.

With respect to the third term, there were also intense negotiations. Epstein's attorneys wanted us to bind the victims to a set settlement amount or pool of funds, bar them from litigating any issues, and require them to waive their federal claims in lieu of a state restitution fund. All of these requests were refused for several reasons, including, first, that the Office did not have the power to bind the victims to any contractual terms; and second, that the federal statute *presumed* damages in an amount not less than \$150,000, so binding them to a state restitution fund would greatly decrease their opportunity to recover. Under the federal damages statute, 18 U.S.C. § 2255, a victim's attorney was entitled to recover attorney's fees from the defendant. This, however, would require the victims to find their own attorneys. The defense wanted to avoid this to keep from having to litigate against several different attorneys at the same time, and as a way to keep the terms of the agreement from widespread disclosure. I considered it in the victims' best interests to provide a way for them to have an attorney who was competent to represent them and to negotiate on their behalf without each victim having to run the gauntlet of finding a plaintiffs' attorney.⁴ I therefore developed a list of criteria for the attorney who should be appointed to represent the victims. I also began thinking about possible attorneys to serve in that position.

Virtually all of the drafts of the Non-Prosecution Agreement contained an agreement that the United States would move for the appointment of a Guardian ad Litem to represent the victims in the U.S. District Court, using the following language:

Upon the execution of this agreement, the United States will file a motion with the United States District Court for the Southern District of Florida for the appointment of a guardian ad litem for these persons [referring to the victims].

On September 24, 2007, for the first time, Epstein's attorney, Jay Lefkowitz, revised the paragraph regarding the Guardian ad Litem to the following:

Upon execution of this agreement, the United States will either file a motion under seal with the United States District Court for the Southern District of Florida for the appointment of a representative who is: (a) a lawyer; (b)

⁴The agreement provided that the girls would not be *required* to use the attorney, he or she would simply advise the victim of her rights and she could then decide to stay with that attorney or find another attorney on her own.

independent; (c) selected by a federal judge; and (d) paid for by the federal court or, in consultation with Epstein's counsel, the United States shall select a representative who shall be paid for by Epstein.

September 24, 2007 was the final deadline that had been set for the signing of the Non-Prosecution Agreement (it had been extended several times over several months at the request of Epstein's lawyers), so this significant change needed to be dealt with quickly. I explained to Lefkowitz that, unless a case was pending, there was no basis for the United States to file such a motion and there was no basis for the federal court to pay for the attorney, especially since the statute at issue called for the defendant to pay for attorneys' fees. Lefkowitz then suggested that we drop the first half of the sentence and just have the attorney selected by the United States in consultation with Epstein's attorneys. I agreed, and the final language was the following:

Upon the execution of this agreement, the United States, in consultation with and subject to the good faith approval of Epstein's counsel, shall select an attorney representative for these persons, who shall be paid for by Epstein.

The agreement was completed and signed that day, September 24, 2007.

The Selection of the Attorney Representative

As mentioned above, I had given some thought to the attributes of the attorney appointed to represent the victims, which I had planned to include in the motion for appointment of a guardian ad litem. These attributes included experience representing plaintiffs and defendants, employment with a firm large enough to handle multiple lawsuits simultaneously, federal trial experience, tenacity, honesty, and a person at a place in his or her career where he or she could put the interests of the victims first and not be concerned about currying favor with Epstein's high-profile attorneys or the press.

Although I had never met him, I was aware of Bert Ocariz, a friend of my boyfriend, E.J. [REDACTED].⁵ Ocariz was a seasoned trial attorney who had represented both plaintiffs and defendants and who had litigated against other high profile attorneys under difficult circumstances. I knew that [REDACTED] and another mutual friend of [REDACTED] and Ocariz found him very trustworthy and I felt that he could be trusted to protect the victims' interests. I asked [REDACTED] whether he thought Ocariz was suitable for and would be willing to accept the assignment and

[REDACTED] He is assigned to the Appellate Section. Contrary to allegations raised by Epstein's attorneys, [REDACTED] has no business relationship with Ocariz; they have been friends since law school.

he said he thought so. [REDACTED] recommended that I give Ocariz a call and provided me with his contact information. I then called Ocariz and told him a little bit about what I was looking for under the terms of the agreement. I told Ocariz that I had gotten his contact information from [REDACTED], but I did not tell him about my relationship with E.J. To avoid any claim that I had disclosed grand jury information to him, I told Ocariz that if he wanted detailed information about the case, he could "Google" Epstein's name and find all the public sources of information about the case.⁶ Ocariz and I corresponded by e-mail and he ran a conflicts check to insure that he was able to accept the appointment, if it was made.

After the agreement was signed, I mentioned Ocariz's name to Lefkowitz. I told him that he was mutual friends with two people whom I respected. I also told Lefkowitz that Ocariz worked at the Shook, Hardy, and Bacon firm, and that he had worked with Guy Lewis, another of Epstein's attorneys. Later, Lefkowitz called me and said that he had checked on Ocariz and he sounded like a good choice, but he asked to be provided with additional names from which to choose. On September 25, 2007 (the day after the agreement was signed), I sent Lefkowitz a list of four additional attorneys. In that e-mail, I wrote: "Just so you know, I have never met Bert [Ocariz], but a good friend in our appellate section⁷ and one of the district judges in Miami are good friends with him and recommended him." The following morning, I asked Lefkowitz to disregard two of the names, one of whom was partners with the husband of an Assistant U.S. Attorney in West Palm Beach because of the Department's conflict of issue rules.

On September 26th, Lefkowitz provided me with two names to consider. I researched their backgrounds and determined that they were both retired state court judges who were of advanced age who were no longer practicing law full-time. I declined those names, writing: "Meaning no disrespect to these distinguished gentlemen, one of my criteria is that, if negotiations with you don't work out, they have the stamina to take you all to trial, so I politely decline your suggestion." Lefkowitz later told me that he had considered the other names and decided that Ocariz was the best choice. I then started to try to work out the details of the

⁶A number of documents related to the state investigation were available at TheSmokingGun.com and other websites. I know that, after he did this, Ocariz contacted [REDACTED] to thank him for the referral and he mentioned that he had found out information about the case and that this was the type of case he would be willing to do pro bono. During that conversation, [REDACTED] did not tell Ocariz about the personal relationship between us.

⁷The "good friend in our appellate section" refers to E.J. [REDACTED]. Reading this now, it is a bit unclear because the recommendation came only from [REDACTED], not from their mutual friend, the district judge, who was never asked for and who never provided a recommendation.

representation so that the girls could be told about their attorney and they could start deciding how they wanted to proceed.

On September 27th, I corresponded both with Lefkowitz and Ocariz about how the representation would be paid for, and with Lefkowitz about what information I could share with Ocariz. I tried to schedule a conference call to discuss the matter, but Lefkowitz was unwilling to meet. Late that afternoon, I spoke with the First Assistant, [REDACTED], who had been out of the office during the last week of negotiations. He expressed concern about our Office selecting any individual attorney and wanted to refer the matter to a Special Master to make the selection. I informed Ocariz about this new development and told him that I would get back to him when I knew the Office's final decision about how to proceed.

I then began working with Lefkowitz to select a Special Master and to create procedures for how the Special Master would select the attorney and, once chosen, how the attorney would proceed with representing the victims. Immediately, Lefkowitz and other attorneys for Epstein began to seek delays and objected to things already contained in the Non-Prosecution Agreement – an attempt to re-open the plea negotiations that had been concluded. They also began to object to my attempts to abide by our legal obligations to inform victims about the outcome of investigations and prosecutions. In early October, I took an unpaid leave of absence to deal with a number of health issues. I attempted to resolve the Special Master issue before I left, but was unable to because of the defense objections. On October 5th, I again asked Lefkowitz to meet with me via telephone to finalize the decision regarding a Special Master. In that e-mail, I gave Lefkowitz the list of attorneys whom we intended to provide to the Special Master for his selection.⁸ “As far as the five attorney names that we will be providing, I propose Bert Ocariz, Katherine Ezell at Podhurst Orseck, Stuart Grossman, Ed Rogers, and Walter Cobath.”

While I was on leave, First Assistant [REDACTED] negotiated an Addendum to the Non-Prosecution Agreement that called for a Special Master to select one or more attorneys to represent the victims. Those negotiations were almost as difficult as the ones leading to the Non-Prosecution Agreement, and the Addendum was not signed until October 29, 2007. In mid-October, after I learned of the Office's final decision, I informed Ocariz that the decision to use a Special Master had been made and told him the name of the Special Master. In addition, I stated: “I will leave it to you whether you or someone in your firm wants to contact Judge Davis. I apologize that this process has become so cumbersome. It has reminded me why government bureaucracy moves so slowly. Thank you for your willingness to step up and undertake this difficult project.” I next had contact with Ocariz on October 29th, when Ocariz

⁸Please note that, in the final version, no list of attorneys was provided to the Special Master.

sent me an e-mail asking whether Judge Davis had been selected as the Special Master. I responded that Judge Davis had been selected. Following that exchange, I have had no further contact with Ocariz and I still have never met him face-to-face. At some time after these events, E.J. [REDACTED] told Ocariz about our relationship, but I do not know exactly when that occurred.

I understand from Epstein's attorneys that Ocariz did contact Judge Davis about serving as the attorney for the victims. Judge Davis selected a different firm (ironically, one of the firms I had included in my October 5th list, which the defense rejected at the time). After pressure from Epstein's attorneys, the firm chosen by Judge Davis declined the appointment and no other firm has been appointed or selected. Several of the victims have since obtained private counsel. No one has selected Ocariz to be her attorney and when victims have asked me to recommend an attorney, I have simply declined, stating that I could not provide them with that advice. Despite the existence of the Non-Prosecution Agreement, Epstein's counsel and several private investigators have tried to contact the victims, greatly upsetting some victims. On the advice of other child exploitation prosecutors, I contacted a national crime victims' organization, which was able to appoint pro bono attorneys for those victims who wanted representation regarding the state and federal criminal cases.

Conclusion

At this time, none of the terms of the Non-Prosecution Agreement have been followed or enforced. In light of Epstein's failure to abide by the term of the Agreement, the Office will consider prosecuting Epstein. I wanted to bring this allegation to the attention of the Office of Professional Responsibility, and to provide your Office with any other information that is needed.

Please advise me if any further information or action is needed. Thank you for your assistance with this matter.

Sincerely,

R. Alexander Acosta
United States Attorney

By: [REDACTED]

cc: R. Alexander Acosta, U.S. Attorney



U.S. Department of Justice

United States Attorney
Southern District of Florida

██████████
First Assistant U.S. Attorney

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Office of Professional Responsibility
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950 Pennsylvania Avenue, NW, Room 3266
Washington, DC 20530-0001
VIA Federal Express

April 21, 2008

Re: Self Reporting - ██████████, FAUSA S.D.F.L.

Dear Sir or Madam,

I am taking this opportunity to advise you that I have learned that lawyers for an individual named Jeffrey Epstein have raised ethical concerns regarding my involvement in his potential prosecution in the Southern District of Florida. Upon information and belief, Epstein has notified Assistant Attorney General Alice Fisher and/or her staff that I have an actual and/or perceived conflict of interest because two of Epstein's alleged victims hired my former law firm to represent them in civil proceedings against Epstein. Although I am not privy to the actual allegations, I understand that Epstein's counsel claims that I should be removed from supervising the current investigation and/or disciplined. Mr. Epstein is represented by Jay Lefkowitz, Esq. and Dean Kenneth Starr of Kirkland & Ellis LLP, Harvard Law Professor, Alan Dershowitz, Gerald Lefcourt, Esq., Martin Weinberg, Esq., Lily Ann Sanchez, Esq., Guy Lewis, Esq. and Michael Tein, Esq. to name a few.

Background.

On September 24, 2007, the United States Attorney's Office for the Southern District of Florida ("SDFL") entered into a Non-Prosecution Agreement ("the Agreement") with Jeffrey Epstein regarding his sexual conduct involving minor victims. Since then, members of Epstein's defense team have since claimed that the Agreement was the product of coercion. 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 his objections.

The Agreement was the product of months of negotiations. Specifically, counsel for Epstein 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 your client, misrepresented their ages; (b) the authorities investigating Epstein engaged in misconduct; (c) the contemplated federal statutes have no applicability to the allegations; 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 Epstein with 30 days to appeal the decision to the Assistant Attorney General of the United States, Alice Fisher. Epstein and his lawyers decided to forego this opportunity.

The crux of the Agreement deferred 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 mandated, *inter alia*, (1) a guilty plea in Palm Beach County Circuit Court to solicitation of prostitution (Fl. Stat. Section 796.07) and solicitation 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 - 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). Within weeks of the execution of the Agreement, Epstein sought to delay the entry of his guilty plea and sentence. After the SDFL agreed to accommodate his 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.

At a 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. Counsel 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. Ultimately, by the beginning of January 2008, Epstein's lawyers requested an independent review, which was granted. As of April 21, 2008, members of AAG Alice Fisher's staff are still conducting that review.

Upon information and belief, lawyers for Epstein have alleged that I have a conflict of interest and, presumably, should be disciplined and/or removed from all involvement in this matter. The basis for this allegation is the fact that one or more of Epstein's alleged victims is/are being represented by a law firm that I was associated with between May 2001 and October 2001. I presume that Epstein's lawyers have alleged that I referred these victims to this law firm.

Response.

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. A copy of the filing is attached. 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 and returned to the SDFL.

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 amended was adopted on July 1, 2002, without shareholder action. Although the filing was not immediate, 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. A copy of that document is also attached. 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 lawyer Jeff Herman. Herman told me that he was planning to file a civil lawsuit the next week against Jeffrey Epstein. He said that his clients are frustrated with the lack of progress of the state's investigation and wanted to know whether the USAO could file criminal charges even though the state was looking into the matter. I told Herman that I would not answer any questions related to Epstein – hypothetical or otherwise. I asked him how the family 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 refused to answer any questions he asked of me. I immediately documented this conversation and informed the United States Attorney who informed Senior Litigation Counsel and Ethics Advisor [REDACTED]. AUSA [REDACTED] opined that he did not see a conflict. Should you require any additional information, please feel free to contact me.

Sincerely,

R. Alexander Acosta
United States Attorney

By: [REDACTED]

[REDACTED]
First Assistant United States Attorney

cc: R. Alexander Acosta
United States Attorney

HERMAN SLOMAN & MERMELSTEIN, P.A.

ATTORNEYS AT LAW

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100 SOUTHEAST SECOND STREET
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May 8 2001

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*****35.00 *****35.00

Via Federal Express

Department of State
Division of Corporations
409 East Gaines Street
Tallahassee, Florida 32399

**Re: Filing of Articles of Amendment
of Herman & Mermelstein, P.A.
New Corporate Name: Herman Sloman & Mermelstein, P.A.**

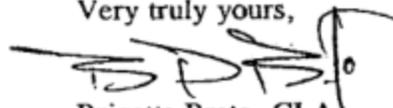
Dear Sir/Madam:

Enclosed herewith for filing please find the executed Articles of Amendment for Herman & Mermelstein, P.A. in duplicate. Also enclosed is our check payable to the Secretary of State in the amount of \$35.00 for the Dept. fees.

Please return the extra copy as filed to my attention.

Should you require any further information in order to proceed, please contact the undersigned at (305) 377-2200, extension 7905. Thank you for your assistance in this matter.

Very truly yours,


Brigitte Breto, CLA
Certified Legal Assistant

Enclosure

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FILED
01 MAY -9 PM 3: 56
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

N/C

T BROWN MAY 16 2001

ARTICLES OF AMENDMENT
OF
HERMAN & MERMELSTEIN, P.A.

FILED
01 MAY -9 PM 3: 56
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to Section 607.1006 of the Florida Business Corporation Act, the undersigned corporation adopts the following Amendment to its Articles of Incorporation.

1. The name of the corporation is Herman & Mermelstein, P.A.
2. The following amendment to the Articles of Incorporation was adopted by the corporation.
3. ARTICLE I of the Articles of Incorporation of Herman & Mermelstein, P.A. is hereby amended as follows:

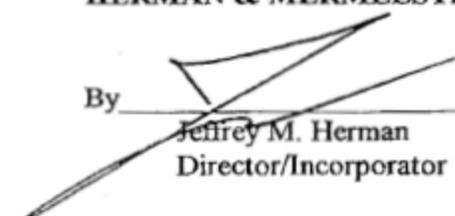
The name of this Corporation shall be:

HERMAN SLOMAN & MERMELSTEIN, P.A.

4. The Amendment was adopted by the undersigned incorporator on May 7, 2001, without shareholder action.
5. Shareholder action for the adoption of this Amendment was not required.

HERMAN & MERMELSTEIN, P.A.

Dated: 5/8/01

By 
Jeffrey M. Herman
Director/Incorporator

L:\USERS\BPF\CORP\Amend4\HM

P97000038284

HERMAN & MERMELSTEIN, P.A.

ATTORNEYS AT LAW

3230 STIRLING ROAD
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TELEPHONE (954) 962-2200
FACSIMILE (954) 962-4292
WWW.HERMANLAW.COM

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
02 JUL -3 PM 3:49

July 2, 2002

Via Federal Express

Department of State

Division of Corporations

409 East Gaines Street

Tallahassee, Florida 32399

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*****35.00 *****35.00

Re: **Filing of Articles of Amendment
of Herman Sloman & Mermelstein, P.A.
New Corporate Name: Herman & Mermelstein, P.A.**

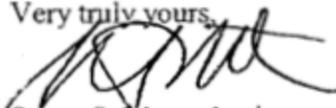
Dear Sir/Madam:

Enclosed herewith for filing please find the executed Articles of Amendment for Herman Sloman & Mermelstein, P.A. in duplicate. Also enclosed is our check payable to the Secretary of State in the amount of \$35.00 for the Dept. fees.

Please return the extra copy as filed to my attention.

Thank you for your assistance in this matter.

Very truly yours,


Stuart S. Mermelstein

SSM:ch
Enclosures

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N/C

SHEPARD JUL 12 2002

ARTICLES OF AMENDMENT

OF

HERMAN SLOMAN & MERMELSTEIN, P.A.

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
02 JUL -3 PM 3:49

Pursuant to Section 607.1006 of the Florida Business Corporation Act, the undersigned corporation adopts the following Amendment to its Articles of Incorporation.

1. The name of the corporation is Herman Sloman & Mermelstein, P.A.
2. The following amendment to the Articles of Incorporation was adopted by the corporation.
3. ARTICLE I of the Articles of Incorporation of Herman Sloman & Mermelstein, P.A. is hereby amended as follows:

The name of this Corporation shall be:

HERMAN & MERMELSTEIN, P.A.

4. The Amendment was adopted by the undersigned incorporator on July 1, 2002, without shareholder action.
5. Shareholder action for the adoption of this Amendment was not required.

HERMAN SLOMAN & MERMELSTEIN, P.A.

Dated: 7-2-02

By


Jeffrey M. Herman
Director/Incorporator

L:\USERS\BPB\CORP\Amend511M.wpd

Inside the Bar

Find a Lawyer

Stuart Samuel Mermelstein

Member in Good Standing **Eligible to practice in Florida**

ID Number: - 947245
 Address: Herman & Mermelstein P A
 18205 Biscayne Blvd Ste 2218
 North Miami Beach, Florida
 331602148
 United States
 Phone: 305.9312200
 E-Mail: ssm@HERMANLAW.COM
 County: Miami-Dade
 Circuit: 11
 Admitted: 09/24/1992

10-Year **None**
Discipline History

Firm: Herman Sluman & Mermelstein PA

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[Updated: 02-27-2008]

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