LAW OFFICES OF
GERALD B. LEFCOURT, P.C.
A PROFESSIONAL CORPORATION
[redacted]
NEW YORK, NEW YORK 10021

GERALD B. LEFCOURT
[redacted]

SHERYL E. REICH
[redacted]
RENATO C. STABILE
[redacted]
FAITH A. FRIEDMAN
[redacted]

TELEPHONE
[redacted]
FACSIMILE
[redacted]

June 25, 2007

BY HAND DELIVERY

[redacted]
The United States Attorney's Office
Southern District of Florida
99 NE 4th Street
Miami, Florida 33132

[redacted]
The United States Attorney's Office
Southern District of Florida
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

Re: Jeffrey E. Epstein

Dear Messrs. [redacted] and Ms. [redacted]:

As you are aware, we represent Jeffrey E. Epstein in connection with your ongoing investigation. We write to you in advance of our June 26, 2007, meeting to address some of the concerns that have been raised during our recent conversations. Although not exhaustive of all the issues we wish to discuss, or points we intend to raise, we believe this submission will facilitate a more productive meeting by giving you an overview of our position and the materials we plan to present in order to demonstrate that none of the statutes identified by you can rightly be applied to the conduct at issue here. We are prepared to discuss the issues raised herein further at tomorrow's meeting as well as to discuss additional concerns you may voice, all for the purpose of demonstrating why no federal prosecution should lie.

The Federal Criminal Statutes Identified Should Not Be Applied Here

It is clear from both the fundamental principles of federal criminal law and the specific statutes in question that federal law is not intended to prohibit, nor does it prohibit, all "wrongful" sexual activity. Indeed, there is no federal crime of sex with an underage person –

even assuming such an act took place in this case – nor could there be such a crime under the United States Constitution.[1] By and large, the delineation of such conduct (that is, determining what conduct is wrongful), and the prosecution for such conduct, have been delegated to the states. Such conduct is punishable under state laws, under which the age of consent varies from 14 to 18 with many states making sex with a 16 year old completely lawful regardless of the age of the other person.[2] In short, the role of federal law in this area is carefully circumscribed.

The legislative history of the federal "sex" statutes at issue evinces no federal concern with the prevalent local phenomenon of young adults – 16 or 17 years of age – voluntarily choosing to engage in sexual contact with anyone they desire. This is strictly a state concern, which some states have chosen to criminalize, while others have not, and some local prosecutors have chosen to prosecute, while others have not. It is not an accident that, as far as we have been able to determine, there is no federal case involving a defendant who maintains a reasonable mistake of fact defense, where that defendant reasonably believed the other person was 18 years of age. The federal statutes were not meant to apply in those circumstances as such conduct is a matter of state law. The federal statutes were intended to address those cases involving sexual activity with children. Indeed, the federal concerns intended to be redressed by these statutes, as evidenced by the legislative history; the advisory titles of the statutes; and even their sometimes broad language, are: the use of coercion and violence to lead *children* into a life of prostitution (12, 13, or 14 years old, or younger); sex trafficking and slavery of *children*; interstate or foreign travel to have sex with *children* (or engage in other illegal sexual activity); and trolling for *children* on the internet in order to have sex with them. None of these concerns is present here.[3]

These constitute the paradigmatic federal concerns, mainly because the states are ill prepared to deal effectively with interstate and international trafficking of children. On the other hand, the states are fully capable of deciding how to deal with entirely local matters relating to men who allegedly have inappropriate sexual contact with local young women. To disregard these concerns, to ignore congressional purpose, and attempt to give the federal statutes their broadest possible interpretation would cause the undesired result of criminalizing federally virtually all acts of prostitution or sexual misconduct – a result not intended by Congress and

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[1] *United States v. Lopez,* 514 U.S. 549 (1995).

[2] Notably, Chapter 109A statutes, *e.g.,* §§ 2241-2245, to which § 2423(b) inherently refers, each deal in terms of force and/or age. A review of these statues demonstrates that in each instance unless force is involved, the victim must be under 16 years old for a prosecution to lie.

[3] We understand the Office has taken the view that Mr. Epstein targeted underage high school students. This was absolutely not the case and we will be prepared to discuss at our meeting the objective evidence demonstrating no such targeting occurred.

unlikely to be sanctioned by the courts.[4] To stretch the statutes in the unprecedented way it appears is contemplated would do just that.

Although in this memo we have focused primarily on the federal sex statutes, in the same way that those statutes cannot logically be expanded to cover the conduct at issue, neither can the statutes governing monetary transactions. These latter statutes, designed to curb the use of what would appear to be otherwise innocent financial transactions to disguise proceeds of unlawful activity and avoid Internal Revenue Code requirements, have no place in this case. The ills sought to be remedied by these statutes are far removed from the conduct in which Mr. Epstein purportedly engaged.

We address each statute in turn, starting with those regulating monetary transactions.

18 U.S.C. § 1956(a)(3) - The Money Laundering Statute - Does Not Apply to Mr. Epstein's Alleged Misconduct

No reasonable reading of the money laundering statute can countenance such a charge against Mr. Epstein, for the statute on its face, or as even applied by the courts, has absolutely no application to the alleged misconduct. Under the facts of this case, to charge Mr. Epstein with violating the money laundering statute would be both unprecedented and inappropriate.

The money laundering statute was designed to be used and has been construed as a "concealment" statute, not a spending statute. *See United States v. Shepard*, 396 F.3d 1116 (10th Cir.), *cert. denied*, 545 U.S. 1110 (2005); *United States v. Hall*, 434 F.3d 42 (1st Cir. 2006) (money laundering statute does not criminalize the mere spending or investing of illegally obtained assets. Instead, at least one purpose for the expenditure must be to conceal or disguise the assets).

The Eleventh Circuit has held that "[t]o prove money laundering under § 1956(a)(3), the government must show that the defendant (1) conducted or attempted to conduct a financial transaction (2) involving property represented to be the proceeds of specified unlawful activity, (3) with the intent (a) 'to promote the carrying on of specified unlawful activity,' (b) 'to conceal or disguise the nature, location, source, ownership, or control of property believed to be the

[4] "Section 1591 does not criminalize all acts of prostitution (a vice traditionally governed by state regulation). Rather, its reach is limited to sex trafficking that involves children or is accomplished by force, fraud, or coercion". *United States v. Evans*, 476 F.3d 1176, 1179 n. 1 (11th Cir. 2007). Nor, has the Department of Justice deemed it appropriate. *See, e.g.* United States Department of Justice Civil Rights Division Anti-Trafficking News Bulletin, August/September 2004, Vol. 1, Nos. 8 and 9, at 2 (in order to address the demand for prostitution the federal government must work with the state, as it is state law that controls).

proceeds of specified unlawful activity,' or (c) 'to avoid a transaction reporting requirement under State or Federal law'". *United States v. Puche*, 350 F.3d 1137 (11th Cir. 2003);[5] *see also United States v. Arditti*, 955 F.2d 331 (5th Cir.), *reh'g denied, cert. denied* 506 U.S. 998 (1992), *cert. denied* 506 U.S. 1054, *reh'g denied* 507 U.S. 967 (1993) (undercover agent's representation that he was in the cocaine business and that the initial $15,000 were the proceeds of a collection satisfied requirement for establishing basis for money laundering "sting" operations that government agent represent that property involved in the transaction was the "proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity").

Thus, it is clear that the statute unquestionably and explicitly requires (a) the use of *proceeds* of *specified unlawful activity*; or (b) cash which is or was represented to be the product of unlawful activity, with neither paradigm being applicable in the case. That this was how the statute was intended to be used and is understood is further evidenced by section 9-105 of the United States Attorney's Manual, which states:

> Sections 1956 and 1957 both require that the property involved in the money laundering transaction be the proceeds of specified unlawful activity at the time that the transaction occurs. The statute does not define when property becomes "proceeds," but the context implies that the property will have been derived from an already completed offense, or a completed phase of an ongoing offense, before it is laundered. Therefore, as a general rule, neither § 1956 nor § 1957 should be used where the same financial transaction represents both the money laundering offense and a part of the specified unlawful activity generating the proceeds being laundered.

The allegations of this case simply do not support a money laundering charge. Any attempt to make such a charge would constitute inappropriate overreaching and would stretch the statute beyond its intended purpose. Unlike the typical money laundering case, Mr. Epstein did not receive money or funds *from* any criminal conduct which he then used in a financial transaction. *See, e.g., United States v. Taylor*, 239 F. 3d 994 (9th Cir. 2001) (defendant charged with running an illegal escort service and using proceeds *from that business* to pay credit cards

[5] Instructive is Eleventh Circuit Pattern Jury Instruction 70.4 which states that the defendant can be found guilty of § 1956(a)(3)(A) only if (1) he knowingly conducted a financial transaction; (2) the transaction involved property represented to be the proceeds of specified unlawful activity or that was used to conduct or facilitate specified unlawful activity; and (3) the defendant engaged in the transaction with the intent to promote the carrying on of specified unlawful activity.

used to purchase airline tickets to fly prostitutes to Las Vegas). Nor did Mr. Epstein use money he knew otherwise to be unlawfully *tainted* in a financial transaction designed to facilitate, conduct, or promote prostitution or other criminal conduct. Rather, to the extent the evidence may show that Mr. Epstein *paid* for sexual services, he most certainly did so with *untainted*, legitimately earned funds.

In addition, unlike the typical "sting" case, which 1956(a)(3) was enacted to address, there is no evidence that Mr. Epstein was aware, or that government or law enforcement personnel made him aware of circumstances from which he could reasonably have inferred that the funds were from specified unlawful activity. This is not a case where large amounts of cash of questionable origin were repeatedly delivered to Mr. Epstein in small denominations in duffel bags and boxes. *See, e.g., Puche*, *supra*, 350 F. 3d 1137; *see also United States v. Rahseparian*, 231 F. 3d 1257 (10th Cir. 2000) (government failed to prove that defendant knew that money was obtained by mail fraud, the unlawful activity underlying money laundering count).

To proceed under a view that the statute covers such behavior would lead to the unintended result of making use of a credit card or wire transfer to pay for sexual services provided by a prostitute money laundering. That was surely not what Congress intended, how the courts have interpreted the language of the statute, or even how it is viewed by the Department of Justice.

18 U.S.C. § 1960 - Prohibition of Unlicensed Money Transmitting Business Does Not Apply to Mr. Epstein's Alleged Misconduct

Likewise, a prosecution under § 1960 cannot lie.

18 U.S.C. § 1960 is a regulatory statute that was enacted in order to combat the growing use of money transmitting businesses for the purpose of transferring large sums of illegally obtained monies and to avoid the strictures of the Internal Revenue Code, as well to fund terrorism. The type of business contemplated by Congress is one which, for a fee, accepts funds for transfer within or outside the United States. *See United States v. Talebnejad,* 460 F.3d 563, 565 (4th Cir. 2006); *United States v. Velastegui*, 199 F.3d 590 (2d Cir. 1999). Once the money transmitter receives the fee and the money from the customer, a third party at the recipient location then pays the money to the designee or the transmitter wires the money directly to the recipient.

These formal and informal businesses are often operated for the purpose of sending money to an individual's home country from the United States. *See, e.g., Talebnejad, supra,* 460

F.3d at 567 (Iranian immigrants operated money transmitting business in Maryland); *Velastegui*, 199 F.3d at 593 (money transferred to Mexico by unlicensed agent); *United States v. Bah*, 2007 U.S. Dist. LEXIS 25274 (S.D.N.Y. 2007) (defendant operated restaurant in New York which also transmitted cash overseas); *United States v. Abdullah*, 2006 U.S. Dist. LEXIS 47493 (W.D.Va. 2006) (Iraqi defendant charged customers a fee for transferring money from the United States to Middle Eastern countries). However, as noted, in many instances, due to the lack of uniform regulation, these businesses have served to transfer funds which were the proceeds of illegal activity. *See United States v. Valdes*, 2006 U.S. Dist. LEXIS 12432 (S.D.N.Y. 2006) (defendants transmitted proceeds of drug trafficking to Colombia); *see also* P.L. 103-325, Title IV, § 408, 108 Stat. 2252. In response to the growing concern about this improper use of these businesses, Congress enacted § 1960, in conjunction with § 5330, establishing a regulatory scheme to assist in the effective enforcement of criminal, tax, and other laws and prevent such businesses from participating in any illegal enterprises. *Id.*

It is clear that § 1960 does not apply, and was never intended to apply, to Mr. Epstein's purported misconduct. Mr. Epstein did not own or operate a "money transmitting business" as defined in § 5330. Nor was he in the money transmitting business. Mr. Epstein was not providing check cashing, currency exchange, or money transmitting or remittance services. Nor was he issuing or redeeming money orders, travelers' checks, or other similar instruments, or acting as a person engaged as a business in the transmission of funds.

Indeed, he was not carrying on a business at all through these transfers. The term "business" is defined as an "activity or enterprise for gain, benefit, advantage or livelihood" (Black's Law Dictionary (7th ed. 2007)) or as "a usually commercial or mercantile activity engaged in as a means of livelihood". Merriam-Webster's Online Dictionary. The only funds transferred were Mr. Epstein's personal monies, monies he lawfully earned. He did not profit from the transmission of this money. Nor was the act of transmitting the money a means of his livelihood. He simply took legitimate money and used it to meet his financial obligations.

At best, the evidence demonstrates that Mr. Epstein transmitted funds from personal accounts in New York to accounts in Florida in order to pay for personal expenses – food, flowers, household upkeep, etc. This cannot be viewed as anything different from giving cash to a family member, or transferring money from a savings or brokerage account to a checking account, in order to pay bills and expenses. Under no reading of the facts can Mr. Epstein's conduct in transferring money between his accounts constitute a "business", much less a money transmitting business. As such, a prosecution under the statute should not lie.

18 U.S.C. § 1591 – The Misconduct Alleged Does Not Fall Within the Ambit of the Statute

18 U.S.C. § 1591 – "Sex Trafficking of Children or by Force, Fraud, or Coercion" – was passed as part of the Trafficking Victims Protection Act ("TVPA") to address a problem far removed from the present set of circumstances: human trafficking, in general, and human sex trafficking, in particular, involving both a commercial and coercive component. The statutory scheme was designed to prevent the organized exploitation of women and children for profit and was not intended to address the conduct alleged here:

> The central principle behind the Trafficking Victims Protection Act is that criminals who knowingly operate enterprises that profit from sex acts involving persons who have been brought across international boundaries for such purposes by force or fraud, or who force human beings into slavery, should receive punishment commensurate with the penalties for kidnapping and forcible rape.

147 Cong. Rec. E2179-02; *see also* United States Department of Justice Civil Rights Division Anti-Trafficking News Bulletin, April 2005, Vo. 2, No. 1 at 1; July 2004, Vol. 1, No 7. at 6; and January 2004, Vol. 1, No. 1, at 1, 3 (reflecting the positions of President Bush, Attorney General Gonzalez, former Attorney General Ashcroft, and former Assistant Attorney General for the Civil Rights Division Acosta that human trafficking involves force, fraud and coercion, and is a form of modern day slavery). The behavior and actions of Mr. Epstein are far removed from the human trafficking concerns addressed by Congress in enacting § 1591. Any attempt to prosecute him under this section would be unprecedented and highly irregular.

Not surprisingly, the case law does not support any such prosecution. Nationwide there are relatively few appellate decisions dealing with prosecutions under § 1591. In the Eleventh Circuit, there are only a handful, several of which are unpublished. A review of these cases reveals that the paradigmatic case for enforcement falls into one of two categories.[6] The first involves defendants who have engaged in a highly predatory sort of business – prostituting underage persons, either by force, fraud, or coercion. These cases bear no relationship to the circumstance at issue here. *See, e.g., United States v. Norris*, 188 Fed. Appx. 822 (11th Cir. 2006) (unpublished)(prosecution of several men for conspiracy to hold young women in peonage, and to traffic them for commercial sex acts, involving force and threats; bail issue); *United States v.*

[6] A review of the United States Department of Justice Civil Rights Division Anti-Trafficking News Bulletins confirms that this same pattern exists nationwide. We will be prepared to discuss these cases further at our meeting and will supply details about the cases upon request.

Sims, 161 Fed. Appx. 849, 2006 WL 14581 (11th Cir. 2006) (unpublished). *See also Evans*, *supra*, 476 F.3d 1176. The second involves sex tourism sting operations where the defendants signed up for a "Taboo Vacation," usually to go to Costa Rica to have sex with children. In these cases the state interest is relatively minimal and United States treaty obligations have made federal intervention a high priority. *See, e.g.*, *United States v. Clarke*, 159 Fed. Appx. 128, 2005 WL 3438434 (11th Cir. 2005)(unpublished); *United States v. Strevell*, 185 Fed. Appx. 841, 2005 WL 1697529 (11th Cir. 2006)(unpublished), *cert. denied*, 127 U.S. 692 (2006). No such federal interest is implicated in the purely local case of Mr. Epstein.

Here, there was no trafficking – no "force, fraud or coercion"; no threats; no sexual servitude; no financial venture; no profit from a financial venture; no forced work in the commercial sex industry; and no transporting of children from underdeveloped countries to the United States or even across state lines. Nor was there any conduct which can be considered so extremely abusive or violent, that an expansion of the statutes beyond their intended purpose would be warranted.

18 U.S.C. § 2421 – Mann Act – The Statute Was Not Intended To Address The Misconduct Alleged Here

Any attempt to charge Mr. Epstein under 18 U.S.C. § 2421 would violate both the spirit and purpose of the statute. Section 2421 was first enacted by Congress in 1910 to prevent the use of interstate commerce to facilitate prostitution, concubinage, or other forms of immorality. *Hoke v. United States,* 227 U.S. 308 (1913); *Wilson v. United States,* 232 U.S. 563 (1914); *Caminetti v. United States,* 242 U.S. 470 (1917). The statute's primary purpose was to address the so-called commercial case of transporting females for immoral purposes. *Cleveland v. United States*, 329 U.S. 14 (1946) (even though the Act includes some non-commercial cases within its scope, its primary focus is commercial sexual activity); *United States v Jamerson*, 60 F Supp 281 (D.C. Iowa 1944). However, it has also served to protect women against conduct, whether commercial or not, that involves transportation and is exploitive or violent. *See, e.g., De Vault v. United States,* 338 F.2d 179, 180 (10th Cir. 1964) (applying the Act to protect girl who was raped).

The Mann Act is a relatively antiquated morality statute that, despite its overly broad language, is wisely used only sparingly. Notably, the most recent reported decision in the 11th Circuit involving the Mann Act was decided in 1984. *United States v. Phelps*, 733 F.2d 1464 (11th Cir. 1984).

Indeed, a nationwide search of reported prosecutions and convictions under the Act reveals that the statute has primarily been limited to cases involving prostitution rings/businesses and their owners. *United States v. Holland,* 381 F.3d 80 (2d Cir. 2004) (woman running prostitution *business* convicted for recruiting and transport of prostitutes under § 2421); *United States v. Footman*, 215 F.3d 145 (1st Cir. 2000) (pimp who ran a *prostitution ring* convicted of violating § 2421). Likewise, in keeping with its purpose and title, the statute has been used in sex *trafficking* cases involving the exploitation of the poor and disadvantaged from foreign countries. *See, e.g., United States v. Julian*, 427 F.3d 471 (7th Cir. 2005) (sex tourism operator in Mexico facilitating travel of poor Mexican boy for sexual relationship in the United States violated § 2421). On the other hand, other cases which have targeted non-owners of prostitution rings, have further limited § 2421 prosecutions to circumstances involving egregious conduct, such as the use of force or kidnapping. *See, e.g, United States v. Lowe*, 145 F.3d 45 (1st Cir. 1998) (defendant transported woman across state lines against her will and then raped her). *See also Poindexter v United States,* 139 F.2d 158 (8th Cir. 1943) (transportation by defendant of woman across state line with purpose of raping her violated 18 U.S.C. § 2421 since statute covers interstate transportation of woman without pecuniary motive where intent is to have illicit relations with her by force or otherwise); *Brown v United States*, 237 F.2d 281 (8th Cir. 1956) (the defendant violated the Act when he tricked woman into his car and drove her across state lines where he threatened, choked, struck and raped her, and then drove her back to the bus depot where he had picked her up). As we have previously pointed out, the allegations being levied against Mr. Epstein involve no such misconduct.

We have found no reported decision in the past 20 years in which an individual was prosecuted under the Mann Act for simply traveling across state lines with a woman whom he paid for sexual services – even assuming the evidence shows this to be the case here. To use the Act to prosecute Mr. Epstein, where he was neither the owner nor operator of a prostitution ring, and where there are no allegations of kidnapping, force, or violence, would be unprecedented and would stretch the statute beyond what all understand is its modern day intended purpose.

18 U.S.C. § 2422(b) – The Misconduct Alleged Does Not Fall Within the Ambit of the Statute

In enacting the internet trolling statute, 18 U.S.C. § 2422(b), Congressional concerns were focused on a very specific and recent phenomenon: young people using the Internet in ever-increasing numbers, and attracting sexual predators out of the woodwork. Disturbingly, computers and the internet made it frighteningly easy for sexual predators to enter into the homes of families, undetected by parents, and prey on these children in cyberspace. As Congress recognized, with so many children online, the internet provided predators a new place -

cyberspace - to target children for criminal acts. Congress enacted the internet trolling statute to combat the alarming increase in internet predators, who were able to maintain their anonymity, while making unwanted sexual solicitations of vulnerable youngsters.

The statutory language and reported decisions confirm the statute's important, but narrow, focus. Section 2422(b) does not establish any federal sex crimes with a minor, which remain a matter of state, not federal, concern. Instead, as the reported cases reveal, it defines a crime of **communication**, not of sexual contact. Indeed, what all of the cases have in common is that the defendant used the internet to communicate with a child or purported child (or a person with influence over such a child or purported child), and with the intent to arrange a sexual tryst with the child, *with both the belief that the person was a child and with full knowledge that sexual activity with an individual of that age was illegal* – precisely the situation the statute was designed to reach.

Mr. Epstein's case lies far outside those parameters, and far outside the language and intended reach of the statute. In Mr. Epstein's case, even if there were inappropriate sexual contact with one or more 16 or 17 year olds, there was no use of the Internet to lure young victims, and no danger presented by Internet predation.

18 U.S.C. § 2423(b) – No Travel *For The Purpose* of Engaging In Illicit Sexual Conduct, As Required By The Statute

The linchpin of a prosecution under § 2423(b) is "travel *for the purpose of* engaging in . . . illicit sexual conduct". The evidence overwhelmingly demonstrates that no case can be made that Mr. Epstein ever traveled to Florida *in order to* engage in illicit sexual conduct.

Elimination of the "purpose" requirement of the statute would undermine congressional intent, as recently expressed and re-affirmed in the Trafficking Act of 2002 and PROTECT Act of 2003.[7] Unlike subsections (a) and (b), § 2423(c), makes it unlawful to travel in *foreign commerce* and engage in illicit sexual conduct, without *any* proof of intent or purpose. It was enacted in response to the extraordinary difficulties the Department of Justice had faced in proving a defendant's intent or purpose in traveling when prosecuting foreign travel cases. Significantly, Congress did *not* amend § 2423(b), which continues to require *purpose* where the travel is *interstate*. Thus, Congress recognized the state's primary interest in proscribing illicit sexual conduct occurring within the state, *unless* one traveled to the state *for that purpose*.

[7] Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (2003). *See generally United States v. Clark*, 435 F.3 1100 (9th Cir. 2006).

Legislative intent, and concepts of federalism, would be undermined if interstate travel with only incidental sexual conduct were prosecuted.

The nature and scope of Mr. Epstein's activities in Florida do not support the conclusion that any purported illicit sexual conduct was an "important" "purpose of the travel, a significant motivating factor", or in other words, more than merely incidental. *See United States v. Horschauer*, 2007 WL 979931 (11th Cir. 2007) (unpublished).

We understand from conversations with Ms. [redacted] that she believes that Mr. Epstein was and is a resident of New York, and that all trips to other homes were trips "away from home," undertaken for a limited period and with a specific purpose. The evidence clearly does not support this view.[8]

Mr. Epstein has owned a home in Florida since September, 1990 – longer than any other residence he has owned – when he purchased the property on El Brillo Way. He spent substantial amounts of money during the relevant period to improve and to maintain this home. In addition, his travel records demonstrate that during the relevant period Mr. Epstein both spent the majority of his weekends, and additional time in Florida. Although he left Florida for business and other projects, he consistently returned to Florida, weekend after weekend, year after year. Specifically, the flight logs establish that for the period 2003 - 2005 (through September)[9], there is **no month** when he did not spend at least one long weekend in Florida, including in the summer months, and that he spent well over half of all weekends in Florida.[10]

Upon returning to Florida, Mr. Epstein routinely visited with various family members and close friends, all of whom reside or have homes in Florida, saw his primary care physician for checkups and prescribed tests, and frequented movie theaters and comedy clubs. Notably, during the relevant period, Mr. Epstein's mother took seriously ill, was often hospitalized, and convalesced in Florida until she died in 2004. A principal reason for Mr. Epstein's travels to

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[8] Although the locus of one's residency for tax purposes is not conclusive on the question of where one in fact resides, on a number of occasions since 1995 the taxing authorities of New York State have determined that Mr. Epstein did not spend sufficient time in New York to be considered a resident of New York for tax purposes. Since 1999, Mr. Epstein has qualified under the applicable test as a domiciliary of the United States Virgin Islands and is therefore entitled to the tax advantages being a domiciliary there affords.

[9] Mr. Epstein stopped traveling to Florida beginning in October, 2005.

[10] In 2003, there were 31 multi-day trips to Florida, 29 of which were for multi-day weekends; in 2004, 37 multi-day trips to Florida, 36 of which were multi-day weekends; and in 2005 (nine months), 24 multi-day trips to Florida, 21 of which were multi-day weekends.

Florida during that time was to visit with and attend to his mother's needs, see to her funeral arrangements, and address matters relating to her estate.

In recognition of the amount of time he spent in Florida, during the relevant period Mr. Epstein worked with several local real estate agents to purchase a larger home. For example, in 2004, as publicly reported, he attempted to acquire the Gosman Estate, a unique property that was eventually auctioned by the Bankruptcy Court.

Similarly, due to the extensive amount of time he spent in Florida and his desire to have his pilots close by and available should a flight out of Florida be required, the home base for Mr. Epstein's flight operations was Florida. Routine maintenance of the aircraft, periodic FAA inspections, and interior refittings were all carried out in Florida. Indeed, the regular crew members – the pilots and engineer – all resided in Florida, as did the majority of contract crew members who were hired from time to time. Both Hyperion Air Inc. (legal owner of Mr. Epstein's Gulfstream G-IIB), and JEGE, Inc. (legal owner of Mr. Epstein's Boeing 727), rent office space and a storage facility in Florida for the purpose of housing airplane records, including flight logs and wiring drawings, and providing the crew with a local office.

The amount of time Mr. Epstein spent at his home in Florida, and the extensive list of Florida-based activities clearly undermines the contention that Mr. Epstein is a New York resident and defeats the notion that his *purpose* in traveling to Florida was to engage in illicit sexual conduct. On the contrary, Mr. Epstein returned to Florida to engage in the routine activities of daily living. We do not believe that the government could overcome the many substantial hurdles to be encountered when attempting to prove that a specific trip to Florida was for the required statutory "purpose" of engaging in specific "illicit sexual conduct".[11]

Improprieties Surrounding The Search Warrant

We previously referred to the many irregularities, misrepresentations and omissions which tainted the state's case. These irregularities would have a significant impact on any federal prosecution. For example, early on in any prosecution, the legality of the initial search

[11] There are, of course, a number of other ways in which Mr. Epstein's conduct did not violate § 2423(b). For instance, we anticipate that it will be difficult to show under the facts that at the time he initiated his travel to Florida, he knew the woman from whom he would later receive a massage, if at all, was at the time under the age of 18, or that he would engage in "illicit sexual conduct" as defined by that statute. Similarly, and again assuming that it could be shown that one of his purposes in traveling to Florida was to receive a massage, given that the activities during many of the massages varied, we do not believe it can be established that his *purpose* (or even one of his purposes) in traveling was to engage in "a sex act", however that term is ultimately defined.

conducted pursuant to the state search warrant would need to be litigated. The warrant suffers from such substantial glaring, facial deficiencies that a motion to suppress would likely result in the suppression of all items seized during the search of 358 El Brillo, as well as all evidence derived from the search, both physical and testimonial.

In addition, the affidavit prepared by Det. [redacted] in support of the search warrant is replete with material misstatements and omissions which, if not intentional, at a minimum, were made with reckless disregard for the truth. The principal misstatements and omissions all involve Det. [redacted] assertions of what the women interviewed said in their recorded sworn statements, statements taken by Det. [redacted] himself and with which he was fully familiar. However, a comparison of the transcripts of those interviews with the information set forth in the affidavit reveals many instances in which Det. [redacted] represented to the issuing judge that the women interviewed said things which they did *not* in fact say, or failed to reveal material information contained in those same statements that would have been important for the judicial officer to know in determining whether the warrant should issue at all and, if so, whether the seizure of the broad categories of items outlined in the warrant should be authorized. Additionally, the execution of the warrant resulted in the seizure of a number of items which clearly fell outside the scope of the warrant, thus, requiring suppression of these unlawfully seized items.

The material misstatements and omissions fall into three categories: (1) the mischaracterization of the significance of surveillance/videotape equipment located in Mr. Epstein's home; (2) the mischaracterization and misrepresentation of facts associated with the ages of the women and Mr. Epstein's claimed knowledge of their ages; and (3) the mischaracterization and misrepresentation of facts concerning the conduct in which Mr. Epstein allegedly engaged with these women. We take each in turn.

Misrepresentations Regarding The Surveillance Equipment

In an attempt to justify a seizure of computers at Mr. Epstein's residence – despite the fact that there was no misconduct alleged in connection with the use of computers – Det. [redacted] affirmed that he

> . . . recalled working a previous case within Epstein's residence on October 5, 2003, when Epstein reported a theft from within his house. A former, disgruntled houseman was suspected in stealing monies from the house. At that time, I observed several covert cameras which, would capture and record images of anyone within

> the residence. Epstein had purchased covert cameras which were built in wall clocks and table clocks. These images were then downloaded onto proprietary spyware software for later viewing. (Affidavit at 10).

The clear implication of Det. [redacted] statement is that images of the purported "victims" may have been captured on the cameras and downloaded to computers where they remained, and could be seized, pursuant to a warrant.

Det. [redacted] however, knew full well, but failed to inform the court, that the cameras were part of a security system installed with the assistance of the Palm Beach Police Department and were located in only two areas of the house – Mr. Epstein's office and the garage. Det. [redacted] was also aware – but did not tell the court – that none of the women interviewed alleged that she visited, much less engaged in illicit conduct, with Mr. Epstein in either location. Finally, none of the witnesses ever claimed, even when asked, that Mr. Epstein videotaped her, or evidenced any knowledge whatsoever that he may have videotaped her visit. There can be no doubt that his misstatements and omissions were intentional and designed to establish probable cause that did not exist and to overcome staleness concerns.

Misrepresentations Regarding The Age Of The Witnesses and Mr. Epstein's Knowledge

Det. [redacted] *affirmed* that [redacted] claimed:

> [Mr. Epstein] told her the younger the better. (Affidavit at 4)

And, that:

> [redacted] stated she once tried to bring a 23 year old female and Epstein stated that the female was too old. (Affidavit at 4)

What Det. [redacted], no doubt intentionally, omitted was [redacted] *further* explanation, which rendered Mr. Epstein's comments *innocuous*:

> A: Let me put it this way, he – I tried to bring him a woman who was 23 and he didn't really like it.
>
> Q: He didn't go for it?
>
> A: It's not that he didn't go for it. It's just that he didn't care for it. ***And he likes the girls that are between the ages of 18 and 20***. [redacted] Statement at 12) (emphasis added)

Had that critical information – information that turns allegedly illegal conduct into more innocent conduct – been included it would have seriously undermined the probable cause for the search warrant.

Similarly, and equally problematic, Det. [redacted] *refused* to include statements demonstrating that when asked by Mr. Epstein, *the girls* affirmatively misrepresented their ages as being 18, and/or Mr. Epstein was not aware of their true ages. ([redacted] Statement at 39, [redacted] Statement at 12, [redacted] Statement at 5, [redacted] Statement at 9). Indeed, although he noted that [redacted] had told Mr. Epstein she was 18, omitted from the affidavit why she lied:

> [redacted] said tell him you're 18 because if you're not, he won't let you in his house. So I said I was 18. As I was giving him a massage, he was like how old are you. And then I was 18. But I kind of said it really fast because I didn't want to make it sound like I was lying or anything. ([redacted] Statement at 39).

Misrepresentations Regarding The Conduct In Which Mr. Epstein Purportedly Engaged

In the following statement Det. [redacted] affirmatively misrepresented what [redacted] stated:

> [redacted] states Epstein would photograph them naked and having sex and proudly display the photographs within the home". (Affidavit at 9).

Ms. [redacted] actually made the following statement:

> A: I was just like, it was me standing in front of a big white marble bathtub … And it, it wasn't like I was you know spreading my legs or anything for the camera, I was like, I was standing up. I think I was standing up and I just like it, it was me kind of like looking over my shoulder kinda smiling, and that was that. ([redacted] Statement at 35).

Det. [redacted] further swore in his affidavit that [redacted]

> Advised that sometime during the massage, Epstein grabbed her buttocks and pulled her close to him. (Affidavit at 6).

[redacted] squarely denied being touched "inappropriately" or otherwise by Mr. Epstein:

Q: . . . . He did not touch you inappropriately?

A: No. ([redacted] Statement at 11).

These misrepresentations were compounded by Det. [redacted] failure to include accounts by the witnesses that Mr. Epstein did *not* in fact engage in illicit conduct during their encounters. Specifically, Det. [redacted] did *not* inform the court that witnesses stated: (1) they were not asked to and did not touch Mr. Epstein's genitals, ([redacted] Statement at 43, [redacted] Statement at 12); (2) they did not have sex with Mr. Epstein, [redacted] Statement at 43); (3) Mr. Epstein did not masturbate during the massage, ([redacted] Statement at 11; [redacted] Statement at 13; and [redacted] Statement at 7); and, (4) Mr. Epstein did not touch them inappropriately. ([redacted] Statement at 11; [redacted] Statement at 13, 15; [redacted] Statement at 42).

After all the misstatements are corrected, the omissions included, and the irrelevant facts omitted, what is left is an equivocal account of an encounter eight months prior to the warrant application and an equally unreliable account of an encounter which, even assuming *arguendo* it occurred, was more than eleven months old. Surely this evidence was too stale to support issuance of a search warrant, as it did not provide probable cause to believe that any items evidencing a violation of the subject statutes – let alone any items of the type described as "kept and used" in such violations – would still be on the premises at the time of the search.

Unlawful Search Of The Second Residence

The officers executing the search warrant exceeded the scope of the warrant when they entered and proceeded to search the second residence on Mr. Epstein's property. Even if those agents did not know in advance that the building was a second residence, which they did,[12] that fact would have been immediately obvious to them upon entry. Notwithstanding such knowledge, they disregarded the terms of the warrant and proceeded to search the second residence.

There was no probable cause for a search of that residence and thus, both the search and seizure of items found therein violated the Fourth Amendment.

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[12] A review of the videotape of the pre-search walk-thru of El Brillo reveals that officers knew *prior* to searching the second residence and seizing items located therein, that this was the living quarters of someone other than Mr. Epstein. This is corroborated by the Palm Beach Police Report in which Officer [redacted] recounts "I assisted in the search of [redacted] living quarters. Numerous cd's along with a message book was seized". Police Report at 46; *see also* Police Report at 45.

However, even assuming the warrant could possibly be read to encompass the search of the second residence, the affidavit is completely devoid of probable cause to search it. "[W]hen law enforcement wishes to search two houses or two apartments, it must establish probable cause as to each". *United States v. Cannon*, 264 F.3d 875, 879 (9th Cir. 2001).

There Was No Probable Cause To Seize Many Of The Items Listed In The Warrant

In addition, there was no probable cause to search for videotapes since all the women who were asked whether they had been videotaped *denied knowledge* of any videotaping. These are crucial facts which Det. [redacted] *omitted* from his affidavit. Moreover, as noted, Det. [redacted] had actual knowledge from his prior investigation that that were a limited number of video cameras located in the house and they were focused *only* on Mr. Epstein's desk and the garage – two locations where money was kept and where no one alleged any wrongdoing took place.

Likewise, nothing in the affidavit could support a finding of probable cause to believe that computers or computer-related items were used in the commission of the alleged offenses. The seizure and subsequent search of the computers and computer-related items clearly violated the Fourth Amendment. *See, e.g., United States v. Riccardi*, 405 F.3d 852, 862-63 (10th Cir. 2005) (warrant authorizing seizure of computer, all electronic and magnetic media stored therein, and a host of external storage devices without limitation unconstitutional as authorizing general search); *United States v. Joe*, 2007 WL 108465 at *7 (N.D.Cal. January 10, 2007) ("computers and related or similar devices, and information on hard or floppy drives, which may contain any documents and records . . .." overbroad and ordering suppression); *United States v. Slaey*, 433 F.Supp.2d 499, 500 (E.D.Pa. 2006) ("[a]ny records, documents, materials and files maintained on a computer" overbroad because it authorized agents to seize everything, even if unrelated to the offense under investigation and even if wholly personal); *United States v. Clough*, 246 F.Supp.2d 84, 87-88 (D.Me. 2003)(warrant to search computers which contained no limitations on the search was unconstitutionally overbroad); *United States v. Hunter*, 13 F.Supp.2d 574, 584 (D.Vt. 1998)(section of warrant which authorized seizure of all computers, all computer storage devices, and all computer software systems was unconstitutionally overbroad).

Finally, there was no probable cause to believe that "hair fiber, semen, or other bodily fluids" would likely to be at Mr. Epstein's residence some eight months or more after the alleged criminal violations.

There are serious hurdles to a federal prosecution, including the way the federal investigation was initiated, namely by Palm Beach Police Detective [redacted] Although Det. [redacted] questionable actions undermined the state proceeding, his work was provided to your Office "on a silver platter". Even though the FBI conducted its own investigation, that

investigation cannot avoid being tainted by Det. [redacted] actions. Many of the leads the FBI followed, the witnesses it interviewed, and the documents it subpoenaed all inexorably flowed directly from the fruits of Det. [redacted] investigation.

Det. [redacted] credibility is interwoven in the federal investigation given the overlap of witnesses and documentary evidence with the antecedent state investigation. Not only would a federal prosecution implicate issues of the scope of taint of both physical evidence and witness testimony emanating from the state search, a federal prosecution would inexorably result in scrutiny of the extent to which Det. [redacted] pre-search investigation was adversely compromised by his zeal to prosecute Mr. Epstein.

That Det. [redacted] desire to prosecute Mr. Epstein ran so deep is no more evident than through his participation in the unprecedented, selective, and prejudicial public release of materials such as the Palm Beach Police Reports and Probable Cause Affidavits. These documents, like the search warrant affidavit, were replete with material misstatements and omissions, one of the most glaring of which was the reference in the Police Reports to the discovery of a "sex toy" in Mr. Epstein's trash. Through the execution of the search warrant, it was discovered that the "sex toy" purportedly found in a trash pull was in fact only a piece of a broken salad fork. Despite this discovery, Det. [redacted] bent on painting the facts to support Mr. Epstein's prosecution, never took any steps to correct the Police Report and note the innocent nature of the item.

***Petite* Policy**

We have previously submitted extensive materials regarding the role the *Petite* Policy should play in this matter. Rather than restate our position, we would like to discuss it in detail at the meeting.

Conclusion

This case started as and should end as a state matter. It involves local issues which are best addressed by state law. The statutes identified were never intended to be applied in circumstances such as these, where the federal interests intended to be redressed by the statues are not present. We hope that after a full and candid discussion with your office you too will see the inadvisability of proceeding with a federal indictment. We are prepared to address any of the subjects touched on above and welcome any additional issues you wish to raise. We are also prepared to make a fuller written or oral presentation on all the issues we have raised herein or any other lingering concerns you have.

LAW OFFICES OF
GERALD B. LEFCOURT, P.C.

[redacted]

Thank you for your cooperation in this matter. We look forward to meeting on June 26, 2007. If you have any questions, please do not hesitate to call.

Very truly yours,

Gerald B. Lefcourt

cc: Lilly Ann Sanchez, Esq.
Roy Black, Esq.
Alan Dershowitz, Esq.

AUGUST 2, 2007 - LILLY TO MENCHEL

FOWLERWHITE
ATTORNEYS AT LAW
BURNETT
MIAMI • FORT LAUDERDALE • WEST PALM BEACH • ST. PETERSBURG

[redacted]
MIAMI, FLORIDA 33131
TELEPHONE
FACSIMILE [redacted]
WWW.FOWLER-WHITE.COM

LILLY ANN SANCHEZ
DIRECT PHONE NO.:
DIRECT FACSIMILE NO.: [redacted]

August 2, 2007

Mr. Matthew Menchel
Chief, Criminal Division
United States Attorney's Office
Southern District of Florida
99 NE 4 Street
Miami, Florida 33132

Re: Jeffrey Epstein

Dear Matt:

As we discussed at Tuesday's meeting, and consistent with our view that no federal prosecution should lie in this matter, Mr. Epstein is prepared to resolve this matter via a state forum. We are in receipt of your memo regarding same and as the dynamics of the meeting did not allow for us to fully detail our proposal, we do so now. We believe that our respective positions are not very far apart and that a mutually agreeable resolution can be reached that will accomplish the interests of the United States Attorney's Office as well as those of the community.

We welcomed your recognition that a state prison sentence is neither appropriate for, nor acceptable to, Mr. Epstein, as the dangers of the state prison system pose risks that are clearly untenable. We acknowledge that your suggestion of a plea to two federal misdemeanors was an attempt to resolve this dilemma. Our proposal is significantly punitive, and if implemented, would, we believe, leave little doubt that the federal interest was demonstrably vindicated.

The Florida state judicial system, unlike the federal system, provides for numerous types of onerous sanctions after a defendant is remanded to the custody of the state. The sentence is tailored to the needs of the local community and the risk posed by a specific defendant. After a great deal of thought, our proposal consists of both a severe supervised custody, with an assurance that any violation would result in the immediate implementation of the two year period of incarceration. We must keep in mind that Jeffrey Epstein is a 54-year old man who has never been arrested before. He has lived an otherwise exemplary life, characterized by both many charitable contributions and philanthropic acts. His reputation has suffered significantly as a result of his poor judgment in these matters. He is well aware of the ramifications of his past behavior and, accordingly, there is no concern, whatsoever, that he will re-offend.

The following proposal is offered as an assurance to the community that the goals of appropriate punishment and rehabilitation are attained.

We will agree to a sentence of two years in state prison pursuant to Florida Statute 948.012(2) which permits a split sentence whereby Mr. Epstein will be sentenced to a term of supervised custody, followed by a period of incarceration. Supervised custody in the state system includes potential daily surveillance, administered by officers with restricted case loads. Supervised custody is an individualized program in which the freedom of Mr. Epstein is limited to the confines of his residence with specific sanctions imposed and enforced. *See* Florida Statute 948.001(2). Should Mr. Epstein successfully complete the terms and conditions of his custody, the Judge will eliminate the incarcerative portion of the sentence. If Mr. Epstein, however, fails to comply with the conditions of his supervised custody. The period of incarceration will be immediately implemented.

We, therefore, propose the following:

- Two years supervised custody with the following mandatory and special conditions:
  - Confinement to home
  - Report to a community control officer at least once a week or more often as directed by the officer
  - Permit a community control officer to visit him unannounced at home at any time, day or night
  - Obtain psychological counseling
  - No unsupervised contact with all the victims in the instant case
  - Perform community service
  - Payment of Restitution
  - Application of 18 U.S.C. § 2255[1]
  - Payment of a contribution of a defined amount to a charitable organization benefitting victims of sexual assault
  - Payment of Court and probationary costs
  - Payment of law enforcement investigative costs
  - Submit to random drug testing
  - Refrain from associating with persons engaged in criminal activities
  - Refrain from committing any new law offenses
  - Any other specific conditions that the Office may deem necessary

- Two additional years of reporting probation:

[1] 18 U.S.C. 2255 provides that any minor who suffers injury as a result of the commission of certain offenses shall recover actual damages and the cost of any suit. It is important to note that Mr. Epstein is prepared to fully fund the identified group of victims which are the focus of the Office – that is, the 12 individuals noted at the meeting on July 31, 2007. This 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.

- Mandatory conditions as provided in Florida Statute § 948.03
- Special conditions as stated above

If the terms of supervised custody and probation are successfully completed, then the two years of state prison is eliminated.

This proposal provides for the two year imposition of the state prison sentence if any violation of the supervised custody or probation occurs. Accordingly, the Office's position that Mr. Epstein agree to a resolution that includes jail time is satisfied by this proposal. It would immediately bring closure to a matter that has been pending for over two years, allows Mr. Epstein to commence with his sentence, and, most significantly, allow the victims to move forward with their lives. We are in process of scheduling a meeting with R. Alexander Acosta, United States Attorney, to further discuss this matter.

Sincerely,

Lilly Ann Sanchez

cc. R. Alexander Acosta
Gerald Lefcourt
Roy Black

MAY 14, 2008 - FROM THE DEFENSE TO THE GOVT

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

[redacted]
Los Angeles, California 90017
[redacted]
www.kirkland.com

Kenneth W. Starr
To Call Writer Directly:
[redacted]

Facsimile:
[redacted]
Dir. Fax: [redacted]

May 14, 2008

VIA FACSIMILE

Honorable [redacted]
Assistant Attorney General
Department of Justice
950 Pennsylvania Ave. NW, Room 2107
Washington, DC 20530

Dear General [redacted]:

Thank you very much for taking the time to speak with me yesterday. I write to you now to supplement our discussion. As you know, I feel strongly that the involvement of the federal government—culminating in the Deferred Prosecution Agreement—runs afoul of fundamental principles of federalism, the well-established *Petite* Policy, and issues of paramount importance with respect to the administration of justice. As I further explain below, I am constrained to conclude that the prosecution's theory of the case is irreparably infected due to the unprecedented stretching of federal law and of the facts, and the prejudicial impact of requiring the inclusion of a federal civil remedies statute in the Deferred Prosecution Agreement.

First, I am deeply concerned about the reality that each of the federal statutes at issue—18 U.S.C. §§ 2422(b), 2423(b) and 1591—would have to be stretched far beyond the precedent set in every prior case to bring the facts of this matter within their orbit. § 2422 is aimed at sexual predation of minors through the Internet, § 2423 deals with sex tourism and § 1591 was enacted to combat human trafficking. Under § 2422(b), the federal crime in question is one of communication. Frequently, cases under § 2242(b) involve sting operations where illicit communication through the Internet is evidenced in emails or chat-room transcripts. In this case, however, there is no evidence that Mr. Epstein or anyone at his direction ever used the Internet, the phone, or any other facility of interstate commerce to persuade, induce, entice or coerce anyone to engage in illegal sexual activity. Furthermore, the Government's contention that "routine and habit" can fill the factual and legal void created by the lack of evidence that such a communication ever occurred sets this case apart from every reported case brought under § 2422(b). Also, there are no incidences of interstate travel with a minor or of interstate travel by Mr. Epstein except to return to his home of 17 years in Palm Beach for a wide-range of business, family, and personal purposes entirely unrelated to any of the activities that would fall within the ambit of § 2423(b). Finally, there are no allegations of force, fraud, coercion, or sex trafficking that would fit within the purpose or language of § 1591. The facts provided here are supported

by the recent testimony of several of the alleged "victims" whose sworn statements indicate that Mr. Epstein's conduct simply does not implicate any articulated federal priority.

We have reviewed every reported case brought under each of the three statutes and found that there is no precedent for any federal involvement that encompasses these facts. There are simply no cases where the Department has seen fit to broaden the reach of federal law, ignoring mores of the local community, in an attempt to embrace conduct within a federal prosecution that is quintessentially local and that involved no for-profit enterprise. Indeed, there are no examples of federal intervention in any similar matter that was the subject of a thorough antecedent state criminal investigation and a state prosecution that included Grand Jury proceedings, an indictment, and an agreement by the defendant to enter a guilty plea. In short, the unprecedented decision to continue federal involvement in this matter implicates profoundly important issues concerning the Department's *Petite* Policy, the proper deference to a well-established state-federal balance, and the appearance of selectivity.

Second, the inclusion of terms in the Deferred Prosecution Agreement which relate to 18 U.S.C. § 2255 have resulted in an unhealthy and damaging blend of criminal and civil law, and of state and federal jurisdiction. As you know, § 2255 is a federal civil statute by which victims of certain federal crimes may collect a lump-sum money award in the minimum amount of $150,000 without any proof of actual damages, though they must show "personal injury." This provision is the antithesis of traditional restitution statutes, which expressly condition payment on individually proven damages. In Mr. Epstein's case, the demands by federal prosecutors that § 2255 be included in the Deferred Prosecution Agreement and that Mr. Epstein make payments under § 2255 to a "list" of unnamed individuals were both conditions precedent to that Agreement, which effectively eliminated the requirement to prove any "personal injury." In fact, the United States Attorney's Office in Miami rejected the defense team's suggested alternatives, namely the use of established state restitution statutes or the creation of a trust fund out of which monetary payments could be made. The inclusion of § 2255, however, has irreparably jeopardized the credibility of testimony because the ability of claimants to recover a lump sum payment invites witnesses to exaggerate their testimony against the federal target—especially when that target is known to be wealthy. Just as the Government could not, in fairness, simply offer direct lump sum payments to witnesses in exchange for inculpatory testimony, the Government should not indirectly be able to rely on § 2255 to incentivize testimony against Mr. Epstein.

Due to the actions of federal prosecutors, the prejudicial effect of including § 2255 in the Deferred Prosecution Agreement has already been actualized. A notification letter for the alleged "victims" was leaked to at least three witnesses despite the fact that United States Attorney Acosta agreed that the letter was inappropriate to send. This letter, which expressly identified the recipient as a "victim," provided that the "victim" could recover monetary damages in the minimum amount of $150,000 under § 2255 and that a civil attorney, selected by the

prosecutor and paid for by Mr. Epstein, could represent them. The letter also explicitly stated, in an underlined sentence, that the women could elect to hire their own attorneys to pursue litigation against Mr. Epstein, but that if they did so, Mr. Epstein would not be obligated to pay their fees. Recently, several civil lawsuits, seeking $50 million each, have been brought against Mr. Epstein. Remarkably, [redacted], the former law partner of [redacted], filed all save one of these complaints. [redacted], the individual who supervised the federal investigation of Mr. Epstein, was listed as a title partner of Mr. [redacted] firm on the Florida Bar Website as recently as two months ago. Finally, our investigation has uncovered repeated examples of FBI agents emphasizing to witnesses that they are "victims." Recently, as a result of established state procedures, we were able to take the statements of several women on the Government's "list" of alleged "victims" who, by the terms of the Deferred Prosecution Agreement, Mr. Epstein would be obligated to pay. In sworn statements, the women testified that they did not consider themselves to be "victims" and that they did not believe they suffered any injury whatsoever from their meetings with Mr. Epstein, a condition precedent to recovery under § 2255.

In conclusion, I believe that any potential federal involvement has already been poisoned by: (1) the stretching of federal law to fit the facts of this matter, and (2) the prejudicial impact of the unprecedented inclusion of § 2255 in the Deferred Prosecution Agreement. The plea negotiations between Mr. Epstein's counsel and the United States Attorney's Office in Miami, which eventually led to the execution of the Deferred Prosecution Agreement, were unfairly based on an inaccurate view of the facts, as demonstrated by the recent sworn statements of many of the alleged "victims." And the quick and easy attempt to remedy these problems by excising the § 2255 portions of the Agreement will not adequately address the harm caused by prosecutors' misguided efforts to implement these terms.[1]

As a slight departure from the aforementioned issues, you should be aware that the mandated inclusion of § 2255 provisions is one of many highly unusual circumstances that have characterized this federal criminal investigation. For instance, there has been a verifiable, unauthorized disclosure of confidential (and perhaps Grand Jury) materials by the United States Attorney's Office to a senior reporter of the New York Times.[2] You should also be aware of the fact that United States Attorney Acosta now refuses to take my calls.

---

1 While we take this opportunity to express our concerns with the negotiations and implementation of the Deferred Prosecution Agreement, it is still operative and binding on both parties. However, we were told by United States Attorney Acosta that as part of the review he requested, the Department had the authority, and his consent, to make any determination it deems appropriate regarding this matter, including to decline federal prosecution.

2 Jay Lefkowitz has personally reviewed the reporter's contemporaneous notes.

As you know, I strongly believe justice is best served by the Department's declining to authorize any continued federal involvement in what had been a state investigation and prosecution of Mr. Epstein. I, along with Joe Whitley and Jay Lefkowitz, would greatly appreciate you taking the time to meet with us. Thank you for your consideration.

Respectfully submitted,

Kenneth W. Starr

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Kenneth W. Starr	May 14, 2008	5	[redacted]	

Message: