

HONORABLE BEN SASSE
UNITED STATES SENATE
ADDRESS
WASHINGTON, DC ZIP

BY EMAIL AND MAIL

DEAR SENATOR SASSE:

We author this letter in response to your statement, responding to the decision of the Justice Department to commence an OPR investigation of the 2007-8 plea negotiations conducted by the United States Attorney's Office for the Southern District of Florida and attorneys representing Jeffrey E Epstein and in particular to your describing Mr. Epstein as a "child rapist", and asserting that he participated in a "child sex trafficking ring" and "received a pathetically soft sentence". None of these descriptions are accurate. We know these descriptions to be starkly inaccurate because we represented Mr. Epstein during these negotiations. There was no allegation that Mr. Epstein raped children. There was no allegation made during the course of this investigation that he trafficked children for sex. And the sentence that was imposed as a result of these negotiations was anything but "pathetically soft" in that it involved a prison sentence, followed by a term of probation, followed by the obligation to register as a sex offender for life, and included the payment of millions of dollars to those alleged to be victims of his offenses. Importantly, absent the negotiated federal Agreement that resulted from lengthy and arms length negotiations between a team of experienced and senior federal prosecutors and defense attorneys including the undersigned, as explained below, there would very likely have been no prison sentence ever imposed on Mr. Epstein. This was anything but a "sweetheart deal" and the consequences were anything but "pathetically soft".

What you may not fully understand because of the inaccurate and over-sensationalized recent Miami Herald articles is that the offenses being investigated by the United States Attorney's Office were not child rape or the running of a sex trafficking ring where children were alleged to have been engaging in sex for money with third parties, but instead were paradigmatic solicitation offenses where Mr. Epstein was shown to have paid for sexual massages with young women some of whom were underage, many of whom were older than 18. There was no use of the internet, no child pornography, no force, no fraud, no travel to a location away from his

residence to engage in illegal sex, no commercial trafficking of women to others for profit*, none of the normal features of a federal sex offense prosecution. This is important. The United States Attorney's Office's investigation was focused on conduct that was far outside the heartland of the three federal criminal statutes that were the focus of the investigation, 18 USC 2423(b), 18 USC 2422(b), 18 USC 1591. The testimonial and documentary evidence acquired by the Government demonstrated, at most, conduct either at or outside the scope of these federal statutes as clearly defined by prior legal precedent. The conduct at issue was local; it was not interstate nor international. It occurred solely in Mr. Epstein's home in Florida. There was no proof that he traveled in interstate commerce for the purpose of having illegal sex. There was neither illegal enticement nor coercion nor force nor fraud nor human trafficking nor was Mr. Epstein accused of using drugs or alcohol to convince young females to engage in sexual massages with him, thus removing the investigated conduct from the ambit of other federal criminal sex offense statutes. At its essence, the conduct (the payment of money to young women for sex) was squarely within the heartland of state sex offense laws i.e. they were quintessentially local and state offenses that had traditionally and regularly been prosecuted solely by state not federal authorities. In fact, any federal criminal prosecution of Mr. Epstein would have been unprecedented. Despite our extensive review of federal jurisprudence at the time – a study we reviewed with the investigating prosecutors considering whether or not the investigation should result in federal charges – there was no prior federal prosecutorial precedent that would have supported a federal prosecution of conduct that consisted at its core of behavior fitting squarely within the state solicitation statutes.

What else you may not know is that the decision-making within the United States Attorney's Office was widely shared by a number of respected and experienced federal prosecutors. This was not a 1:1 deal negotiated directly with the United States Attorney Alexander Acosta. Senior prosecutors holding positions high in the hierarchy of his Office knew about, participated in, and approved the negotiated settlement.

Likewise you may not know that it was Mr. Epstein who sought further review because of certain conditions of the negotiated Agreement – conditions that, uniquely, required him to persuade State prosecutors to bring a criminal felony charge that would support sex offender registration in addition to the single charge that they believed fit the crimes (solicitation) and further required him to waive his rights to contest liability in monetary lawsuits if brought by a list of then unnamed alleged victims that was not

disclosed to Mr. Epstein until after the Agreement was executed and his state plea was entered. The Department of Justice, at our request, reviewed the terms of the Agreement at multiple levels. First, the Criminal Division including the heads of its CEOS group reviewed the Agreement, then the Deputy Attorney General, reviewed and then approved the decisions of the United States Attorney. This was anything but some closed room sweetheart deal between Epstein, his lawyers, and Mr. Acosta.

Mr. Epstein thereafter pled guilty as required, served 11 of 18 months of his sentence in custody– the same as all other equally situated state prisoners, completed his consecutive probationary term, registered as a sex offender, and paid many millions of dollars in monetary lawsuits brought by the complaining witnesses/victims identified in the federal investigation. None of these outcomes would have occurred but for the negotiated Agreement. The punishment resulting from the federal Agreement far exceeded the sentence that would have been recommended by the chief of the Palm Beach State Attorney's Sex Crimes Division i.e. the more punitive portions of the overall Agreement were the sole result of the federal intervention what had been a purely state investigation. As in all plea agreements, the Government achieved its principal goals of incarceration and restitution all without risking – very real risks given the nature of the investigated conduct and its failure to squarely fit within the scope of federal criminal law – a trial and acquittals.

* Only after the negotiations concluded, one women claimed to have had sex at Mr. Epstein's urging with third parties.