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Subject:

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Ken starr writes.

"Sweetheart deal!" So goes the attack on the resolution of the more than a decade ago federal investigation involving our client Jeffrey Epstein. The attack is profoundly misplaced, supported neither by the law nor the facts. Nor is it supported by the structure of our constitutional republic. To the contrary, Jeffrey was subjected to an extremely aggressive federal intrusion into what would typically be considered a quintessentially local criminal matter in south Florida. The offense investigated — at its core, sexual favors for hire — has long been treated as a matter entrusted to laws of the several States, not the federal government. The conduct — for which Jeffrey took full responsibility — was a classic state offense and was treated exactly that way by able, honest prosecutors in Palm Beach County. Nevertheless, without a request from the state prosecutors, the federal government intervened. For their own opportunistic reasons, many are now criticizing the federal decision-makers at the time, including now-Secretary of Labor Alex Acosta (then-United States Attorney in south Florida), for not going far enough.

The critics are wrong on the facts and the law. They also ignore a fact going to the heart of fundamental fairness: In the decade since paying his debt to society, Jeffrey Epstein has led a life characterized by responsible citizenship, numerous acts of generosity and good deeds.

Here are the true key facts: Jeffrey Epstein, a successful self-made businessman with no prior criminal history whatsoever, engaged in illegal conduct that amounted to solicitation of prostitution. That conduct was wrong and a violation of Florida state law. Although no coercion, violence, alcohol, drugs or the like were involved, some of the women he paid were under the age of 18. Those facts were carefully assessed by experienced state sex crime prosecutors who aggressively enforce state criminal laws. No one turned a blind eye to potential offenses to the public order. To the contrary, the Palm Beach State Attorney's Office conducted an extensive fifteen-month investigation, led by the chief of the Sex Crimes Division. Mr. Epstein was then indicted by the state grand jury on a single felony count of solicitation of prostitution.

During that intense investigation, the state prosecutors extensively gathered and analyzed the evidence, met face-to-face with many of the asserted victims, considered their credibility — or lack thereof — and considered the extent of exculpatory evidence, including sworn testimony from many that they lied about being eighteen years old to be allowed into Mr. Epstein's home. After months of negotiations, the state prosecutors believed they had reached a reasoned resolution of the matter that vindicated the public interest — a resolution entirely consistent with that of cases involving other similarly-situated defendants. The system worked as it should have.

Then, in came the feds. The United States Attorney's Office extensively and aggressively investigated whether Mr. Epstein had engaged in a commercial human trafficking ring, targeted minors, or used the internet or traveled interstate in the process. But that's not what this was and that's not what happened. That is precisely why the federal authorities' ultimate decision to defer prosecution to the state was the right one.

However, the federally-demanded resolution was not without conditions. The federal prosecutors insisted on various unorthodox requirements that Mr. Epstein's experienced defense team had never seen imposed on any defendant anywhere. Under the federally-forced deal, Jeffrey was required to request that the state prosecutors demand the imposition of a thirty-month sentence that included both jail time and the strictest conditions of probation: lifetime sex-offender registration. Those draconian measures were far more than warranted by the state grand jury's indictment and would not have otherwise been required under the previously agreed-upon state disposition. As part of this highly unusual deal, the government required Jeffrey to pay for a highly experienced group of attorneys to bring claims against him on behalf of a government list of asserted victims. Jeffrey was required to waive the right to challenge those claims without being provided the asserted victim's identities by the government until after he was incarcerated. Importantly, the feds' decision to decline prosecution in deference to the state in exchange for these extraordinary requirements was reviewed and approved at the multiple levels of the U.S. Department of Justice. Jeffrey took full responsibility, complied with the feds' demands, served his sentence, and in the process was treated exactly the same (including his time served) as any other state-incarcerated individuals. His conduct while in custody was exemplary, and so characterized by the state custodial authorities.

Jeffrey Epstein has paid his debt to society. The challenges to his Agreement with the Government must also be understood as challenges to the millions Mr. Epstein paid to the asserted victims and their lawyers pursuant to that agreement. Amongst the beneficiaries of the Epstein-Federal Government Agreement were the many victims who collectively received many millions as a result of the conditions imposed on Mr. Epstein that prevented him from meaningfully contesting civil liability — moneys that would be at issue if requests to invalidate the agreement were granted.

Our nation faces vitally important challenges, many involving the treatment of women and basic human dignity. Voices are rightly being raised speaking truth to power, especially about women in the workplace. But Jeffrey's offenses of yesteryear, which were entirely outside of the workplace, have long since been redressed by the criminal justice system. He fully and faithfully has performed every promise and obligation required of him by state and federal authorities. In the spirit of the bedrock American belief in second chances and fundamental fairness, that chapter in Jeffrey's otherwise-productive and charitable life should be allowed to close once and for all.

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