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Jay P. Lefkowitz, P.C.
To Call Writer Directly:
[redacted]

[redacted]

Facsimile:
[redacted]

July 29, 2011

Delivery by Facsimile **CONFIDENTIAL**

[redacted]
Assistant United States Attorney
United States Attorney, Southern District of Florida
500 S. Australian Avenue
Suite 400
West Palm Beach, FL 33401

Re: Jeffrey Epstein

Dear [redacted]:

Thank you for your letter of July 27, 2011 to my co-counsel Martin Weinberg concerning the request by the New York District Attorney for copies of the Non-Prosecution Agreement ("NPA") and the "victim list" in regards to Mr. Epstein. We continue for the reasons stated herein to believe that any such disclosure would violate the confidentiality agreement between your Office and Mr. Epstein as well as the provisions of F.R.Crim.P. 6(e).

As to the NPA, you have repeatedly asserted in Doe v United States, No. 9:08-cv-80736-KAM, that the NPA was a ***confidential document***. For instance, in paragraph 6 of Document 14, your own Declaration, you stated that the NPA contained "an express confidentiality provision." In opposing the Motion to Unseal the NPA that was filed by [redacted], you stated that you had informed Judge Marra of the confidentiality provision during an earlier telephonic status conference occurring on August 14, 2008 which "the United States was obligated to honor," Document 29 at 1, and that "the parties who negotiated the Agreement, the United States Attorney's Office and Jeffrey Epstein, determined that the Agreement should remain confidential," Document 29 at 2. Further, you deemed the NPA "confidential," for understandable purposes, in your September 3, 2008 letter to Robert Josefsberg in which you informed him that Judge Marra had set forth procedures for providing the NPA only to those counsel and "victims" who executed a Protective Order preventing its subsequent disclosure.

The New York Assistant District Attorney, [redacted], is representing the prosecution in an appeal regarding a sex offender registration determination, and any disclosure of the NPA to her has the potential to result in its use in that appeal and the real risk that the appellate court will unseal it. We believe it to violate both the spirit and the most logical interpretation of the NPA,

paragraph 13, for you to disclose it absent a subpoena -- which we could oppose in the jurisdiction from which it emanated. We further believe that when parol evidence supplements the text of paragraph 13 of the NPA, it is perfectly apparent from your prior submissions that you as well as we believed the NPA to contain "an express confidentiality provision" that your current willingness to disclose absent court process violates.

As to the "victim list," again, your own prior letters tie the list to the Federal Grand Jury investigation and thus to the non-disclosure provisions of F.R.Crim.P 6(e). On July 8, 2008, you wrote to Jack A. Goldberger, Esq., and informed him that on June 30, 2008, "the United States Attorney's Office provided [him] with a list of thirty-one individuals '***whom it was prepared to name in an Indictment*** as victims of an enumerated offense by Mr. Epstein.'" (emphasis added). On July 9, 2008, you wrote in a follow-up letter to Mr. Goldberger that "the U.S. Attorney's modification of the 2255 portion of the Agreement now limits our victim list to those persons ***whom the United States was prepared to include in an indictment***. This means that, pursuant to Justice Department policy, these are individuals for whom the United States believes it has proof beyond a reasonable doubt that each of them was a victim of an enumerated offense." (emphasis added). First Assistant [redacted] used similar language in tying the names of the "victims" to the basis for a potential indictment, see December 6, 2007 letter from [redacted] to Mr. Lefkowitz at 2, 3; see also your email to Mr. Lefkowitz and Mr. Black on August 14, 2008 at 3:27 PM, where you state that the list contains "only those 'individuals whom [the United States] was prepared to name in an Indictment…" thus clearly providing the nexus between the list and the Grand Jury investigation and its corollary, the protections from non-disclosure enumerated in F.R.Crim.P 6(e).

In terms of case law, the names of witnesses that either testified or were identified during Grand Jury proceedings are subject to the secrecy provisions of F.R.Crim.P 6(e). See, e.g., In re Dow Jones & Co., Inc., 142 F.3d 496, 500 (D.C. Cir. 1998) ("Consistent with these purposes, we have recognized that grand jury secrecy covers 'the identities of witnesses or jurors, the substance of testimony as well as actual transcripts, the strategy or direction of the investigation, the deliberations or questions of jurors, and the like.'"); see also SEC v Dresser Industries Inc., 628 F.2d 1368, 1382 (D.C. Cir. 1980); Fund for Constitutional Gov't v Nat'l Archives & Records Serv., 656 F.2d 856, 869 (D.C. Cir. 1981). Indeed, it is generally recognized that the scope of protection accorded to Grand Jury proceedings under Rule 6(e) is broad and encompasses, among other things, information such as the "victim list" at issue here:

> We construe the secrecy provisions of Rule 6(e) to apply not only to disclosures of events which have already occurred before the grand jury, such as a witness's testimony, but also to disclosures of matters which will occur, such as statements which reveal the identity of persons who will be called to testify or which report when the grand jury will return an indictment.

In re Grand Jury Investigation, 610 F.2d 202, 216-17 (5th Cir. 1980).[1]

We both believe that confidentiality applies to the requested information. We believe that any non-compulsory handover of the list or NPA is inconsistent with the positions you have previously taken in related litigation. Accordingly, we request that you reconsider and decline the request of the New York District Attorney.

Sincerely,

Jay P. Lefkowitz, P.C.

Martin G. Weinberg

JPL/kla

[1] Decisions of the United States Court of Appeals for the Fifth Circuit handed down prior to September 30, 1981, are binding as precedent in the Eleventh Circuit. See Bonner v. City of Prichard, Ala., 661 F.2d 1206, 1207 (11th Cir. 1981).