MV's Bad Acts

1. All the actions and actors in this matter were entirely local to the State of Florida. The State had convened a grand jury which, after reviewing the evidence from the State's investigation of well over a year, determined only to indict JE on a single count of solicitation of prostitution. Despite this, the Federal prosecutor required that JE's counsel go to the State and demand that the State charge JE with a registrable offense (procuring a person under 18 for prostitution), even though no facts were known by the USAO or given to the State to justify such a charge.

2. This was only one of the extraordinary requirements imposed by the USAO under the terms of a Non-Prosecution Agreement executed with the USAO on September 24, 2007 (an addendum to the Non-Prosecution Agreement was signed on October 30; both documents are referred to collectively as the "NPA"). The Defense team reluctantly entered into the NPA in order to curtail the abuses of an unprecedented overly broad federal investigation of what was exclusively a State matter. In this investigation, MV issued overbroad and unrelated subpoenas which sought information concerning political contacts and organizations, professional colleagues, business clients and associates, lawyers, doctors, friends, etc. These subpoenas and requests for information completely disregarded privacy and relevance concerns. For example:

(a) MV personally contacted one of JE's principal business clients (Les Wexner), through his counsel, without a substantial investigatory justification.

(b) MV issued subpoenas to Defense counsel's investigators seeking to learn the content of the investigators' work for counsel without complying with DOJ Guidelines relating to subpoenaing attorneys and their agents. *See* Subpoenas to Lavery dated June 6, 2007 and Riley dated June 18, 2007. When Defense counsel questioned this, MV cited irrelevant authorities to justify her misconduct, though in fact no approval for her actions was either sought by or given to MV.

3. In June of 2007, in a further attempt to pressure JE into a plea agreement, MV threatened to add money laundering and unlicensed wire transmittal to the list of violations under investigation. However, the USAO was unable to identify an illegal source, a nexus between the money wired and the money used to pay for the alleged conduct, and any promotion of fraud, even though these three elements are required in order to find instances of money laundering pursuant to 18 USC § 1956(a)(2). Also, the USAO could not support a charge of unlicensed wire transmittal under 18 U.S.C. § 1960 because JE never had such a business.

4. Ultimately the Defense team had no choice but to negotiate in order to rein in the unchecked exercise of investigative discretion by the USAO with respect to a wholly State matter in which the State Attorneys Office ("SAO") could find no justification to pursue anything more than a single count for solicitation of prostitution. As part of its highly unusual demands under the NPA, the Federal prosecutor required that JE hire an attorney to represent a list of alleged victims prepared by the USAO (the "USAO List"), and pay each person on the USAO List a minimum of $50,000. Under the NPA, the

USAO refused to provide the names of the alleged victims on the USAO List until after JE was in jail. Moreover, to this day, Federal prosecutors have refused to provide JE with a statement of the USAO's allegations of misconduct with respect to such alleged victims.

5. Before and after the execution of the NPA, Defense counsel repeatedly expressed concerns to the USAO that by refusing to disclose until after JE was in jail both the identities of the persons on the USAO List or the allegations of misconduct with respect to such persons, the NPA exposed JE to virtually unlimited liability to an unlimited number of undisclosed persons. In response, by fax letter dated December 4, 2007, then US Attorney Alex Acosta, expressly represented to Kenneth Starr, a member of JE's Defense team that: (1) it was not the USAO's position that the civil litigation provisions of NPA provided a blanket waiver of liability with respect to any number of unnamed and undisclosed victims, (2) if any persons on the USAO List proceed to trial, they would have some burden to prove they are victims, (3) as plaintiffs the only thing that they would not have to prove is that JE committed a violation of a single enumerated section of title 18. However, if the plaintiffs proceeded to trial, JE's legal team would be entitled to conduct due diligence to confirm that such persons in fact had inappropriate contact with JE, (4) the USAO's interpretive principle would be only to place such persons in the same position as if JE proceeded to trial, and (5) the USAO would interpret the waiver of jurisdiction over JE's person and/or subject matter contained in the NPA as relating exclusively to issues of venue, and the USAO would not interpret that waiver as a waiver of subject matter jurisdiction. Moreover, by letter dated December 6, 2009, then AUSA Jeffrey Sloman expressly represented to Defense counsel that all victims on the USAO List had then already been identified, after a thorough and proper investigation, and that the USAO List included only those persons as to whom the USAO was then "prepared to indict Mr. Epstein."

6. Despite the express representations of US Attorney Acosta and AUSA Sloman, the USAO List provided to JE's attorneys on July 10, 2009 contains names of individuals who were added to that list well after the NPA was signed, including, for example, a person named [redacted] In her sworn Declaration dated July 9, 2008 submitted to the United States District Court for the Southern District of Florida, MV stated that Rivera refused to speak to federal agents in 2007 and that Rivera's status as a victim was not "confirmed" until federal agents interviewed her for the first time on May 28, 2008, a full eight months after the NPA was signed. Ms. Rivera confirmed this fact in sworn deposition in her civil case against JE on September 30, 2009.

7. Not only has MV disregarded express representations made to Defense counsel by the US Attorney, but, incredibly, MV has now disavowed the US Attorney's authority to make those representations by advising Defense counsel that she is not bound by any of the US Attorney's representations regarding the USAO's interpretation or implementation of the NPA. Moreover, MV has made numerous troubling statements to both the civil court and Defense counsel and has engaged in menacing conduct that has had a chilling effect on Defense counsel's ability to defend JE in the civil litigation:

(a) By notice dated June 12, 2009, MV improperly declared a breach of the NPA with respect to a motion to dismiss or stay certain civil litigation. That motion was prepared by Defense counsel largely in reliance on the interpretive guidance provided by US Attorney Acosta regarding the NPA's civil litigation provisions and was not in breach of the NPA. See page 8 of Lefkowitz June 19, 2009 letter to MV (attached) for a statement of the reasons why it was not a breach. Nevertheless, out of justifiable concern that MV might unilaterally invalidate the NPA and proceed to indict JE after JE had nearly completed his 18-month sentence, Defense counsel withdrew the portion of the motion as to which MV erroneously declared breach.

(b) In that same litigation, MV filed papers on behalf of the United States in which MV made the shocking pronouncement that the protections of the NPA are "illusory". MV stated in her papers that "The United States also notes that this finite termination to Epstein's exposure to potential criminal consequences is illusory. The NPA addresses only certain victims identified during the course of the government's investigation. To the extent that any of the plaintiffs who have already filed suit against Epstein do not fall within that group, the NPA does not address potential charges based on crimes committed against them. The NPA also does not bind any other state or federal prosecutor from pursuing charges for criminal acts committed within their jurisdictions. The federal statute of limitations for offenses against children is ten years or the life of the child, whichever is longer. 18 USC 3283. Thus, for Epstein (or any other person accused of sexually abusing children) to "wait out" any chance of criminal liability, the court would have to stay civil litigation until all of the plaintiffs have died."

(c) Defense counsel has requested the opportunity to review the NPA with MV and resolve the ambiguous issues in the NPA relating to the civil litigation and MV has refused to do so, repeatedly stating to the Defense team that the provisions of the NPA, a document which US Attorney Acosta himself admitted is far from clear, speak for themselves. In so doing, MV has intentionally left the Defense with no choice but to risk being declared in breach whenever Defense counsel seeks to defend the civil litigations with what Defense counsel believes to be valid objections that are not prohibited by the NPA.

(d) Although MV has told the Court and Defense counsel that the USAO "cannot and will not become involved in the civil suits filed against Mr. Epstein" (see MV's June 17, 2009 letter to Jay Lefkowitz), MV has met and continues to meet regularly with civil litigants' counsel to provide assistance.

(e) MV made the alarming statement in her letter to Defense counsel dated June 15, 2009 that although the USAO has an obligation to give notice of breach, the USAO has no obligation to allow JE to cure any perceived breaches of the highly ambiguous provisions of the NPA. Thus, if Defense counsel takes a principled position in a particular civil case based on its interpretation of the NPA, and MV disagrees, then MV can unilaterally declare a breach and invalidate the NPA without providing Defense counsel with any opportunity to rectify the disagreement. In such circumstances, MV has cavalierly stated in her June 17, 2009 letter to Jay Lefkowitz that JE should "elect to err on the side of caution in making decisions that relate to the performance of his duties." In the context of these civil litigations "erring on the side of caution" has required JE to forego

legitimate rights to defend himself. For example, out of concerns that MV might invalidate the NPA if the Defense team exercised the right – confirmed by US Attorney Acosta – to challenge the bona fides of a claim made by one person on the USAO list, JE was forced to pay a $50,000 settlement to a woman whom he never actually met.

(f) MV's cavalier attitude regarding the performance of JE's duties under the NPA is particularly disconcerting given MV's history of declaring breaches when none have occurred. MV has created a distorted record of the events in this matter by stating in her June 15 letter that JE has engaged in a continuing pattern of breaches of the NPA. However, each claim of continuing breach in MV's June 15, 2009 letter is demonstrably false. For example:

(i) MV falsely claimed a failure by JE to use "best efforts" to enter his guilty plea and be sentenced within the time frame required by the NPA. However, the date of entry of JE's plea and the resulting sentencing was deferred with the written consent of US Attorney Acosta who recognized the need for and provided the Defense with an opportunity to pursue an independent assessment of this matter by the Justice Department. See pages 2 through 4 of Lefkowitz's June 19, 2009 letter to MV for a timeline of events and higher level Justice Department reviews, agreed to and accepted as legitimate by the USAO, which delayed JE's plea. Note that when reviews were completed on June 23, 2008, JE entered his guilty plea and began serving his sentence a week later.

(ii) MV falsely claimed a breach with respect to Defense counsel's failure to provide the USAO with a copy of the plea agreement until the last business day prior to the plea. MV sent notice of this breach on June 27, 2008. However, the independent Justice Department review of the matter was not completed until June 23, 2008. Until the review was completed it was not appropriate to draft a plea agreement which, if the USAO's actions were not overturned, would potentially include additional charges and sentencing that the SAO would not have imposed on JE. It was the obligation of the SAO, and not the Defense team, to prepare the plea agreement, once the independent review was completed. The SAO did so on June 27, 2008, four days after notice of the Justice Department's final determination was sent to Defense counsel. After reviewing the document, Defense counsel sent it to the USAO the very same day it received it. See page 4 of Lefkowitz's June 19, 2009 letter to MV.

(iii) MV falsely claimed that the original draft of plea agreement failed to comply with the incarceration provisions of the NPA, when in fact the plea agreement fully complied with the NPA's sentencing provisions. MV falsely claimed that the NPA required JE to "serve" eighteen months in prison for 24 hours a day. However, the express language of the NPA requires only an aggregate 18-month sentence, and not that JE actually serve 18 months in prison. Further confirmation of this is found in paragraph 12 of the NPA which expressly provides that JE would be entitled to the same gain time credit as is available to any other inmate based on the standard rules and regulations that apply in the

State of Florida. In its original form as drafted by the State, the plea agreement provided for the same 12- and 6-month sentences followed by community control as is required under the terms of the NPA. There was no substantive breach of the NPA.

(iv) MV claimed that JE's counsel obstructed USAO in the performance of its alleged obligation to notify victims. This was also demonstrably false. Defense counsel raised numerous valid objections to the notification letters, many of which were incorporated by the USAO. See page 5 of Lefkowitz's June 19, 2009 letter to MV for a summary of the valid objections raised by Defense Counsel to the USAO's proposed victim notification letters.

(v) MV claimed that JE's counsel failed to timely fulfill its obligation to secure the attorney representative for the "victims" identified by the USAO. Again, this too is demonstrably false. See page 6 of Lefkowitz June 19, 2009 letter for summary of events leading up to the selection by Judge Davis of Podhurst firm, the additional time required for the "resolution" (albeit inadequate) of open issues in NPA regarding the attorney representative and the notification only 5 days later by Defense counsel that JE would pay Josefsberg's fees.

(g) Although there was no merit to these or any of the other claims of breach in that June 15, 2009 letter, MV warned the Defense that all of these so-called "breaches" will be considered by the USAO in determining what remedies to pursue for future breaches. Apparently, MV is attempting to argue that the continuing nature of JE's alleged breaches permits the USAO to refrain from taking action until the last of such breaches is concluded. However, on page 2 of the NPA, the USAO is required to initiate prosecution within 60 days of giving JE notice of a breach. Consideration of past breaches in determining a remedy for a future breach would arguably be a violation of the NPA requirement to initiate prosecution within 60 days of notice of any particular breach. MV's threat to consider past breaches in connection with future breaches is essentially a statement that MV intends to ignore the requirements of the NPA.

(h) MV also stated in her June 15, 2009 letter that the USAO will not accept the excuse that JE was relying on attorneys to guide him in interpreting the provisions of the NPA. MV stated that JE is highly intelligent and experienced with the law and is reportedly spending more than 12 hours a day at his attorney's office working on nothing but the pending litigation against him. Apart from JE being highly intelligent and besieged by litigation, this was also false. Apparently, MV insists that JE should not be able to rely upon the professional judgment of the very attorneys that negotiated the NPA and must now be solely responsible for interpreting this highly ambiguous agreement.

8. In addition to utterly disavowing the US Attorney's representations regarding the interpretation of NPA's civil litigation provisions, MV has also stated that she is not bound by any statements or promises made by US Attorney Acosta regarding the implementation of JE's State sentence and related matters. On several occasions, US

Attorney Acosta expressly represented to both Jay Lefkowitz and Alan Dershowitz that the USAO would not involve itself in these matters, which are rightfully within the State's exclusive domain. Nevertheless, from the very beginning of JE's incarceration, MV has diligently inserted herself in each State decision relating to JE's sentence:

(a) MV intervened in the PBSO's determination as to whether or not to grant JE work release, despite assurances from US Attorney given to Jay Lefkowitz and Alan Dershowitz after JE was sentenced that the USAO would neither object to nor interfere with work release. MV met with Col. Michael Gauger regarding work release on July 1, 2008, one day after JE was sentenced and began serving. Although MV sent a July 3, 2008 follow-up email to Col. Gauger stating that the USAO has no objection to JE's being treated like any similarly situated prisoner and that work release is in the Sheriff's discretion, MV also stated in her email to Col. Gauger that JE's sitting in his attorney's office, making phone calls, web-surfing and having food delivered to him is probably not in accordance with the objectives of imprisonment. In her July 3 email to Col. Gauger, MV attached what she referred to as a pertinent portion of the NPA agreement, which should not have been disclosed to the PBSO. MV also sent Captain Sleeth a December 11, 2008 letter in which she admitted that she made a request for public records in order to obtain JE's file and proceeded to comment on what she claimed were inaccuracies and omissions in JE's file. MV, a Federal prosecutor, presumed to instruct the Sheriff's office about the State offenses for which the Sheriff's office was incarcerating JE. She suggested that Captain Sleeth consult with the appropriate State judges about JE's work release, even though MV acknowledged that Judge McSorelely issued a standing order that work release decisions are entirely within the Sheriff's discretion. And she informed Captain Sleeth about "victims" identified in the federal investigation (that was suspended pursuant to the NPA and that are in no way part of JE's plea or incarceration), to whom she wanted to give Captain Sleeth's contact information because they may ask that Exclusionary Zones be programmed into JE's GPS. All of this was nothing less than a thinly veiled attempt to get the Sheriff's office to reverse its work release decision.

(b) Despite US Attorney Acosta's assurances and MV's statements to Col. Gauger, four months earlier, that the USAO had no objection if the Sheriff's office exercised its discretion to grant JE work release on the same basis as any other similarly situated inmate, on November 24, 2008, MV also sent Roy Black a notice that JE's participation in the work release program was a breach of the NPA. In that notice, MV again falsely claimed that the NPA required that JE serve 18 month's imprisonment when in fact the NPA only required an 18-month sentence. MV claimed that the NPA required that JE remain in jail 24 hours a day, even though the NPA contained no such requirement and contemplated that JE would receive benefits afforded to all other similarly situated inmates. The PBSO determined that JE satisfied the work release requirements applicable to all similarly situated inmates and granted JE work release on that basis. Consequently, there was no breach of the NPA and, notwithstanding MV's claim of breach, the USAO had no grounds to and did not take any action against JE with respect to work release.

(c) Once again in utter disregard of US Attorney Acosta's assurances, MV is now attempting to intervene to prevent the transfer of JE's community control to the Virgin Islands. Like

other forms of probation, community control may be transferred when the offender is eligible for such a transfer, as JE is in this case. Lacking any express authority in the NPA, by letter dated September 18, 2009 to Roy Black, MV made a thinly veiled threat to initiate prosecution against JE if he chose to proceed with the application to transfer his community control. MV stated in her letter that the transfer of JE's community control would "frustrate the purpose" of the NPA and thereby violate its terms. MV did not state in the September 18 letter that JE's transfer would be an express violation of the terms of the NPA because there is no express prohibition of a transfer in the NPA. Nevertheless, MV warned that if JE proceeds knowing of the USAO's objection, then that along with all of the previous so called "breaches" of the NPA, would be considered in determining the USAO's "final course of action.

(d) In support of this outrageous position, MV again falsely claimed that JE was required to, but did not, "serve" 18 months in prison. MV also falsely claimed that JE's sentence was reduced "based on work release." It was not. The period of incarceration required under the sentence was reduced based on gain time to which any similarly situated inmate would have been entitled; the reduction had nothing to do with work release. JE's eligibility for gain time credit was expressly provided for in the NPA. In any event, for the reasons explained above, the grant of work release was entirely proper, within the Sheriff's discretion and decidedly not a breach of the NPA.

(e) MV also claimed in her September 18, 2009 letter that the statement in the plea agreement that JE would remain in Palm Beach was an important factor to Judge Pucillo in issuing the sentence. This too was demonstrably false in that the judge expressly acknowledged at the sentencing hearing the possibility that JE might wish to relocate and advised that, at such time, JE should check with the local municipalities for registration procedures.

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MV has consistently distorted the provisions of the NPA and the factual record in this matter. She has effectively tied Defense counsel's hands in defending JE against civil claims that well exceeded the scope contemplated by the provisions of the NPA. She has intervened in purely state matters involving the implementation of JE's sentence and related issues, when the US Attorney himself repeatedly assured JE's counsel that the USAO would have no involvement. Despite representations to the court and Defense counsel that the USAO would not intercede in the civil litigations, she has met regularly with plaintiffs' counsel to provide assistance, while at the same time refusing to work with Defense counsel to clarify the provisions in the NPA that the US Attorney himself has characterized as far from clear. MV has made it plain to Defense counsel that it cannot rely on any interpretive guidance previously provided by the US Attorney or other members of his office regarding the meaning of the NPA's civil litigation provisions or any other aspects of the NPA, including implementation of purely state matters regarding JE's sentence. She has gone so far as to warn that JE may not rely on counsel in interpreting his duties under the NPA for which he will be held solely responsible. She has made extraordinary statements both in declarations before the civil court and in her letters to defense counsel that the protections provided by the NPA are illusory. Although the NPA clearly precludes her from doing so, MV warned Defense counsel that she intended to consider

any and all of the matters which she previously incorrectly characterized as breaches in deciding what action the USAO will ultimately take against JE after he completed the probationary portion of his State sentence; a sentence that the State did not require and would never have been imposed in the absence of the NPA. In other words, MV effectively neutralized Defense counsel's ability to adequately defend the civil actions and stymied any efforts by JE to avail himself of state procedures regarding how JE could have properly served the remainder of his state sentence with no guarantees that, after JE completed his sentence, he would be entitled to any of the protections agreed to under the NPA.