UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA

JANE DOE 1 AND JANE DOE 2,

Petitioners,

vs.

UNITED STATES,

Respondent.
_____/

RESPONDENT'S NOTICE OF FILING EXHIBITS IN SUPPORT OF OPPOSITION TO PETITIONERS' MOTION FOR PARTIAL SUMMARY JUDGMENT, AND RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT

Respondent United States of America files the attached Exhibits in support of its Opposition to Petitioners' Motion for Partial Summary Judgment, and Respondent's Cross-Motion for Summary Judgment:

GOVERNMENT SUMMARY JUDGMENT EXHIBITS

Exhibit Number	Item
A	Letter from James Eisenberg, Esq. to AUSA A. Marie Villafaña, September 21, 2006
B	DOJ Office of Enforcement Operations approval of testimonial immunity for Jane Doe 2, April 13, 2007
C	Transcript of April 24, 2007 Interview of Jane Doe 2
D	December 21, 2007 letter from Jay Lefkowitz, Esq. to United States Attorney R. Alexander Acosta
E	August 4, 2006 victim letter to Jane Doe 2
F	August 11, 2006 victim letter to Jane Doe 1
G	Epstein appeal letters to DOJ Child Exploitation & Obscenity

	Section (CEOS)
H	May 15, 2008 letter from CEOS to Jay Lefkowitz
I	June 23, 2008 letter from Senior Associate Deputy Atty General John Roth to Lefkowitz
J	January 2008 FBI victim letters to Jane Doe 1 and Jane Doe 2
K	November 28, 2007 letter from Kenneth Starr to Alice Fisher
L	December 11, 2007 letter from Lefkowitz to Acosta
M	Attorney General Guidelines for Victim and Witness Assistance (2005)
N	November 27, 2007 email, Jeffrey Sloman to Lefkowitz
O	December 26, 2007 letter, Lefkowitz to Acosta
P	Complaint, E.W. v. Epstein (Jane Doe 1)
Q	Complaint, L.M. v. Epstein (Jane Doe 2)
R	FBI Special Agent E. Nestbitt Kuyrkendall Declaration
S	AUSA A. Marie Villafaña Declaration
T	July 11, 2008 Hearing Transcript
U	August 14, 2008 Hearing Transcript
V	Letters to Deputy Attorney General Filip from Epstein attorneys (May 2008)

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 2, 2017, the foregoing Notice of Filing Exhibits in Support of Opposition to Petitioners' Motion for Partial Summary Judgment, and Respondent's Cross-Motion for Summary Judgment was filed with the Clerk of the Court and served on counsel on the attached service list using CM/ECF.

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GOVERNMENT

EXHIBIT

A

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September 21, 2006

A. Marie Villafana, Asst. U.S. Attorney
500 South Australian Avenue, Suite 400
West Palm Beach, FL 33401

Re: [redacted] Subpoena for T[redacted] M[redacted]

Dear Marie,

Please allow me to confirm my latest e-mail to you. I did receive your e-mail of last week with attachments and passed them on to my client. At this time, I can only say that my client does not want to do either of your suggestions. She does not want to give a statement under the immunity letter you provided with its Kastigar exception and she does not want to testify [redacted] and will not on 5th Amendment grounds. With this client, I am sorry, but I must have a formal grant of immunity before she will say anything.

Sincerely,

JAMES L. EISENBERG

JLE:gw
cc: Ms. T[redacted] M[redacted]

GOVERNMENT EXHIBIT A
PENGAD 800-631-6989

GOVERNMENT

EXHIBIT

B

TOTAL P.01

Office of the Assistant Attorney General Washington, DC 20530-0001

APR 13 2007

The Honorable R. Alexander Acosta
United States Attorney
Southern District of Florida
West Palm Beach, Florida 33401

Attention: A. Marie Villafana
Assistant United States Attorney

Re: Grand Jury Investigation,
Jeffrey Epstein, et al.

Dear Mr. Acosta:

Pursuant to the authority vested in me by 18 U.S.C. § 6003(b) and 28 C.F.R. § 0.175(a), I hereby approve your request for authority to apply to the United States District Court for the Southern District of Florida for an order pursuant to 18 U.S.C. §§ 6002-6003 requiring [redacted] to give testimony or provide other information in the above matter and in any further proceedings resulting therefrom or ancillary thereto.

Sincerely,

Alice S. Fisher
Assistant Attorney General

BRUCE C. SWARTZ
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

P.01/01 APR-16-2007 12:29

GOVERNMENT

EXHIBIT

C

2007-04-25 [redacted] TXT

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
STATE OF FLORIDA

STATE OF FLORIDA,

vs.

JEFFREY EPSTEIN,
Defendant.

TRANSCRIPT OF TAPED STATEMENT OF T[redacted]M[redacted]
4-24-07

Transcribed by:
Vicki S. Woodham, Court Reporter
Notary Public, State of Florida
Consor & Associates
1655 Palm Beach Lakes Boulevard, Suite 500
West Palm Beach, Florida 33401
Phone - 561.682.0905

2007-04 25 [redacted] TXT

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(Taped statement as follows:)

AGENT RICHARDS: This is Special Agent Jason Richards with the FBI along with Special Agent Nesbit Kirkendul and Assistant United States Attorney Marie Bilafonia here to conduct an interview with Ms. T[redacted]M[redacted]. Also present is her attorney, Jim Eisenberg and Carrie Sheehan.

MR. EISENBERG: And we are here -- This is Jim Eisenberg and my investigator, Ms. Sheehan is here. And we're here pursuant to a subpoena that was served on me for T[redacted]M[redacted] and that's why we're here. So Ms. Bilafonia, it's your show.

MS. BILAFONTA: Okay, great.

AGENT RICHARDS: I also want to add that the date is 4-24-07, and the time by my watch is 4:21 p.m.

BY AGENT RICHARDS:

Q. Tatum, we just want to start off and I'll lead off first. We just want to get some basic info about you, simple stuff. I've got your date of birth as 7-26-88; is that correct?

A. Yes, sir.

Q. I just want to get like your basics like that stuff first. Your current address?

A. [redacted] Royal Palm Beach,

33411.

Q. You have a cell phone or --

A. 561[redacted].

Q. And home phone?

A. Only cell.

Q. Only cell, okay. Now have you had other cell phone numbers in the past and do you know any of those?

A. [redacted], that's the only one I can remember.

Q. Okay. But you had some others?

A. Uh-huh.

Q. Okay.

BY MS. BILAFONIA:

Q. Who's your service provider?

A. Metro.

Q. Metro. And for that other number as well?

A. Yes.

BY AGENT RICHARDS:

Q. Where did you go to high school?

A. [redacted].

Q. And what year did you graduate?

A. I dropped out in eleventh.

Q. What year was that that you dropped out, do you remember?

A. No.

Q. What year were you supposed to graduate, your

class?

A. '06.

Q. Okay.

A. I had got my GED.

Q. When did you get that?

A. About three months ago.

Q. And are you going to college anywhere currently?

A. Not right now.

Q. Plans?

A. I have plans.

BY MS. BILAFONIA:

Q. Where are you thinking about going?

A. I'm not positive what I want to do. There's a lot of things on my mind, but right now I'm focusing on my son. I have a two year old so right now I'm just working.

AGENT RICHARDS: He's a handful?

THE WITNESS: Yeah.

AGENT RICHARDS: I have one, too.

THE WITNESS: Yeah. So in the future, I'm definitely going to go to college. I'm going definitely going to go to school. But I have, you know, a modeling career going on right now that's

hopefully going to -- some of you will notice me,

hopefully, and that would be great, but I don't know.

BY MS. BILAFONIA:

Q. Where else are you working?

A. I work for Advanced Cleaning Systems. They clean carpets.

AGENT RICHARDS: Advanced what was it?

THE WITNESS: System Cleaning.

BY MS. BILAFONIA:

Q. And where are they located?

A. Las Palmas, 11 Swanee, S-w-a-n-e-e, Swanee Drive.

Q. Are you working in an office there or do you go out to people's homes?

A. I work in an office there.

BY AGENT RICHARDS:

Q. Obviously, you know why we're here and what we want to talk about. So let me just kind of lead into do you know Jeffrey Epstein?

A. Yes.

Q. Yes, of course, you do. Now when did you meet Jeff? Does he go by Jeff or Jeffrey or --

A. Jeffrey.

Q. Okay. When did you meet him and who introduced you to Jeffrey?

A. My girlfriend, Carolyn, introduced me to Jeffrey.

Q. Do you know her last name?

A. No. She was a friend of one of my friends, so I really didn't know her.

BY MS. BILAFONIA:

Q. When was that?

A. I really couldn't tell you. I don't even remember. It's been so long ago.

BY AGENT RICHARDS:

Q. So Carolyn introduced you to him. Was it at a party setting or how did you guys meet?

A. No. She came to me and she said hey, would you like to make a couple dollars and I said sure. I said doing what? She said, well, I know this Jeffrey. He lives on Palm Beach Island and I bring girls there and he likes massages and I was like okay. So I asked her, I said well, what about my age? And she said well, just make sure that you tell him that you're 18. And I had a fake ID at the time and we went there.

Q. Okay. And about what time period was it that

you went over there first, do you remember?

A. What time period?

Q. Yes. As far as what year was that that you were in school?

A. I was 16.

Q. Sixteen.

BY MS. BILAFONIA:

Q. Were you a freshman or a sophomore, do you remember?

A. I couldn't tell you. I couldn't tell you. Probably a sophomore.

Q. Now you said that Carolyn told you that he likes massages. Did she elaborate on what types of massages?

A. She said sometimes he likes topless massages, but you don't have to do anything you don't want to do. He just likes massages.

Q. And do you know whether Carolyn had given him massages?

A. Yeah, she said she's done it before.

Q. And do you know whether Carolyn had taken any other girls over to see Jeffrey?

A. Yes, she probably did.

Q. Did she tell how much you would make?

A. Yes.
Q. What did she tell you?
A. We go there and we make $200 in 30 minutes.
Q. Now you said that you asked her, you know, what -- do I need to be worried about my age. Why did you ask

her that?
A. Because I don't want to be -- you know, it was like I was underage and I was young and I was pretty stupid and I didn't want to get -- I didn't want to get in trouble, so I always made sure -- I had a fake ID, anyways, saying that I was 18. And she just said make sure you're 18 because Jeffrey doesn't want any underage girls.
BY AGENT RICHARDS:
Q. Now Carolyn, did she -- where did you meet her at? In school? What setting?
A. I was at a friend's house, my girlfriend's house. I don't know what girlfriend's house it was. Everybody was just hanging out. And she said -- she came up to me and she asked me. She said, do you want to make a couple bucks and I said sure.
Q. And after the first time that she took you over there to meet Mr. Epstein, did she ever call you again to

set up any appointments with him or anything like that?

A. No.

Q. Did she ever call you on the phone is what I'm asking?

A. No, I gave Jeffrey my number. And I said, you know, any time you want me to give you a massage again, I'll more than welcome to.

BY MS. BILAFONTA:

Q. So Carolyn took you that first time, but then after that you communicated directly with Jeffrey?

A. Uh-huh.

Q. Tell us about that first time that you went to his house. Who -- how did you get there?

A. One of Carolyn's friends and they dropped us off and then we went. You know, we got escorted up to the massage room and he told me everything. He said, Listen, I like massages. And we had the whole massage table laid out, the lotions and everything. And she was in there for the first like five minutes. And the first time I gave him a massage, she left the room and I gave him a massage. And she told me, she says he likes women topless massages. So I willingly the first time took off my top when I gave him a massage and nothing more than that. It was just a back massage and neck massage and I

was out of there.

Q. Okay. Let me just ask you a couple of follow-up questions. You said that someone escorted you up to the room. Do you know who that was?

A. One of -- what's her name? Actually, Sara, Sara just said, you know, it's up there and she just told me where it was.

Q. And then you said that you and Carolyn went

upstairs together?

A. Uh-huh.

Q. And Carolyn stayed in there for the first few minutes?

A. Uh-huh.

Q. Was Jeffrey already in the room by the time Carolyn left?

A. Yeah, he was in the room.

Q. Okay. Was he there when you guys showed up in the room or did he come in after you were already there?

A. He was in the room already.

Q. And you said that you took your top off. Did anybody ask you to take it off, like did Carolyn say it's time for you to take it off?

A. No, she wasn't in the room.

Q. By the time you took it off, okay.
A. I said, I told Jeffrey, I heard you like massages topless. And he's like, yeah, he said, but you don't have to do anything that you don't feel comfortable with. And I said okay, but I willingly took it off.
Q. Okay. And during that first massage, you said that you gave him a shoulder and neck massage?
A. Neck, back, shoulder, yeah.
Q. Was he face down the entire time that he got his massage?

A. Yeah.
Q. And what did you do during the massage? Did you talk or --
A. Yeah, we talked.
Q. And what would you talk about with him?
A. Well, we were just getting to know each other. We talked about how my lifestyle was, what he did for a living and just all positive things, really nice things.
Q. Okay. What was he wearing when you first came in the room?
A. I'm sorry. When he first -- when he first came in the room, he was fully clothed. And then he said, you know, wait a second. I'm going to go on the massage table and he put a towel over him just like a normal

masseuse would do.
Q. Did he undress and put a towel around him?
A. Uh-huh.
Q. Okay.
A. Yeah, I didn't see anything. It was just back, neck and shoulders.
Q. And after the massage was over, you received the $200?
A. He gives money right away.
Q. I'm sorry. Was that before you started the massage or after the massage he gave you?

A. The first time, he gave me the money right away.
Q. Okay. And he's the person that paid you the $200?
A. No, it's always Sara.
Q. Sara gave you the money?
A. Uh-huh.
BY AGENT RICHARDS:
Q. What's Sara's last name, do you know?
A. I don't know.
MR. EISENBERG: You can't look at papers. If you think you know, you know. If you don't know, --

THE WITNESS: No, I don't know. I don't know Sara's last name. He does.

BY MS. BILAFONIA:

Q. Okay. The only thing I'm confused about is you said that Sara didn't even take you upstairs. She just told you where you should go?

A. Uh-huh.

Q. So when did she pay you the money?

A. She paid me then and there when I first walked in the door, me and Carolyn.

BY AGENT. RICHARDS:

Q. She paid you before you went upstairs?

A. Yes.

BY MS. BILAFONIA:

Q. And how much was Carolyn paid?

A. Everybody got paid $200.

Q. And after -- So after the massage was finished, you said that you had already been paid. Who asked you for your name and telephone number?

A. Jeffrey said, well, I'd like to see you again. Can I have your number? From what I remember, I'm pretty sure he asked me for my number and I gave him my number.

Q. Okay.

BY AGENT RICHARDS:

Q. Did he write it down upstairs? He had a pen handy, I hope?
A. Uh-huh.
BY MS. BTLAFONIA:
Q. On that first massage, you said that you worked on him topless. But when you first started, did you take -- what were you wearing?
A. I was wearing a shirt, a normal shirt and jeans. And I started to do a massage and I said well, I heard you like topless massages. And, of course, he thought I was 18. And he's like yeah, I do. I prefer that. And who wouldn't, you know? So I said okay and I took it off.
Q. And you took off your bra as well?

A. Yes.
Q. And you left your jeans on?
A. Yes.
Q. Okay. So you gave him a massage. Did he request you do anything special in the massage?
A. No.
Q. And he never turned over in that first massage?
A. No.
Q. So you said that that day you gave your name

and number to Jeffrey. When was your next contact from him or anybody who worked for him?

A. The next day, he had called me and he said would like to come out again and I'd like to see you again. I said sure. I took a taxi there and I went there again.

Q. The following day?

A. The next day.

Q. Okay. And you said that Jeffrey is the person who called you for that appointment?

A. No, Jeffrey did not, no. Sara, Sara actually called me. From what I remember, Sara actually called me.

Q. Okay. And she said Jeffrey says he wants to see you again?

A. Yes.

Q. And then you said you took a taxi?

A. Yes.

Q. Is that how you would normally get to and from his house?

A. Uh-huh, if I didn't have friends because I don't drive, yeah.

BY AGENT RICHARDS:

Q. How did you get home the first time when

Carolyn took you over? Did she get a taxi?
A. No, our friend came back and picked us up.
Q. Which friend was that?
A. His name was Brian. I don't know his last name. I really didn't know Carolyn and I didn't know her friends or whatever, but I met Jeffrey. And once I met Jeffrey, he was a very awesome guy and I just -- I don't know. I ended up giving him my number so I could -- I didn't want Carolyn or Brian to drive me anymore. I would rather go to him on my own.
BY MS. BILAFONIA:
Q. When you would take the taxis to and from, would he pay for them?
A. Uh-huh.
Q. And he would pay when you arrived?
A. Uh-huh.
Q. And then he would just give you extra money

when you left to pay for the taxi?
A. No, no. I never asked him for extra money, so I just paid for my own taxi.
Q. Okay. So from the money that he paid you for the massage?
A. Two hundred, yeah.

Q. Where were you living at the time?

A. I was living at [redacted]. It's located on Okeechobee. So I would take, you know, straight Okeechobee down to where I lived.

Q. Do you remember about how much that taxi fare was each way?

A. Twenty dollars.

Q. And did you always use the same taxi service or --

A. No, I used different taxis all the time, so --

Q. And you would just call and have them come to your house?

A. Uh-huh. I used a whole bunch of different taxis, whatever is available.

Q. So you mentioned that the second massage, was it any different than the first one?

A. Yes.

Q. How was it different?

A. When I went there, I went there by myself. And

I went up to the massage room and Jeffrey was just like regular like he was before on his stomach and he had a towel over and we started the massage and I had my top off willingly. And after the massage, he asks me the whole time. He says, Are you comfortable with me doing

this and I said yes and he turned around. And this was like at the end of the massage, our 30-minutes massage, usually it was even shorter than that. And he masturbated at the end of the massage and it was like two seconds and I was just topless.

Q. And when he turned over, then did he touch you at all or was he just --

A. No. I did not touch him. He did not touch me. He didn't even want --

Q. You didn't like continue the massage while he was masturbating or anything?

A. No.

Q. Okay. I cut you off. You said he didn't even?

A. He didn't want me to touch him and he didn't touch me at all.

Q. Did he ever ask you to rub his chest or rub his nipples during the massage?

A. Actually, later on -- because I saw him for a long time. Later on, I asked him, you know, and I asked him -- I would give him -- you know, I would rub his

chest or whatever and massage him while he was masturbating, yeah.

Q. So eventually you would continue the massage

and he would masturbate at the same time?
A. Yeah, but it wasn't on his lower area.
Q. No, you never touched his penis?
A. Right.
Q. Okay. So that was during the second massage. You were paid $200 again?
A. Always.
Q. Always? Every time you went there?
A. Always.
BY AGENT RICHARDS:
Q. Was it always Sara that paid you?
A. Sometimes Jeffrey would and sometimes Sara would.
BY MS. BILAFONIA:
Q. Was it usually before or after the massage?
A. After the first time, it was always after. I would go downstairs and I'd get paid.
Q. So just sort of tell us, when a massage ended, which I assume was after he ejaculated?
A. It wasn't all the time that he did, though.
Q. Okay.
A. It wasn't like every time we went there he

released. Sometimes he just wanted his feet massaged. Sometimes he just wanted a back massage.

Q. Okay. But when the massage was over however it ended, you would just get dressed and go downstairs by yourself or did take you downstairs?

A. Yeah. The chef would make us food and it'd be great. And Jeffrey would get dressed and he'd come down with us sometimes or, you know, it wasn't -- we had fun. It was all positive.

Q. Okay. How many massages do you think that you gave Jeffrey?

A. I gave Jeffrey a lot of massages. I can't tell you. I saw him for a good year.

Q. And how many times -- would you see him weekly or more than once a week?

A. Yeah.

Q. More than once a week?

A. I personally would or I'd bring girls.

Q. Okay. But either you would or either a girl that you brought?

A. Yeah, uh-huh.

Q. Okay.

A. But after a while, it wasn't me anymore. I had brought girls, but I got paid $200 to bring girls.

Q. Okay. So let's talk just about when you were

performing the massages. What other sorts of things would happen? You said that sometimes he would just like his feet massaged. What else would happen during those massage sessions?

A. Nothing. Everything I told you.

Q. Okay. So sometimes a back massage?

A. Sometimes he liked back massages. Sometimes he like feet massages. Sometimes he like his head massaged. He liked his head massaged a lot. Sometimes leg massages, yeah. And it wasn't every time that we went there he masturbated.

Q. Okay. Any idea half and half or less than half the time that he masturbated?

A. Less the time he masturbated.

Q. Did you always perform topless? Did you ever get completely naked towards the end or in the middle and remove all of your clothing?

A. I would wear panties. Willingly one time because we were making jokes and everything and willingly one time I had, yes, I was totally nude, but I was fine with it.

Q. Okay.

A. Totally fine with it.

Q. And how did that massage go?

A. Actually, it was a foot massage and he was

sitting on the couch. We didn't even have the massage table out and I gave him a foot rub and I was nude.

Q. And how much were you paid for that?

A. Two hundred every single time.

Q. Did he at any point kiss you, touch you, show any kind of affection towards you?

A. Never, never.

Q. Okay.

BY AGENT RICHARDS:

Q. Why not?

A. Why not? Why would he?

Q. You seem like a nice young lady, attractive. He never had any urges to --

A. I asked him, I said, When are you going to get married? When are you going to get married, Jeffrey? He said, I'm never getting married. He has, you know, beautiful women all the time. Why would he -- no, huh-uh.

BY MS. BILAFONIA:

Q. He never pulled you closer to him in a sexual way?

A. I wish. No, no, never, ever, ever, no, never. Jeffrey is an awesome man, no.

Q. Okay. Now you said that at some point you started bringing other girls over?

A. Uh-huh.
Q. How did that start?
A. He likes to see different faces.
Q. So he asked you if you had friends that you could bring over or other girls?
A. Uh-huh.
Q. And how did you decide who you would ask to come over?
A. All of my good-looking girlfriends and if they had friends. It's all about, you know, we were just making money and Jeffrey is an awesome guy. We just, you know -- I would tell my girlfriends just like Carolyn approached me. Make sure you tell him you're 18. Well, these girls that I brought, I know that they were 18 or 19 or 20. And the girls that I didn't know and I don't know if they were lying or not, I would say make sure that you tell him you're 18.
Q. Okay. What exactly would you tell them about what would happen after you got to the house?
A. I said he likes massages, but he prefers topless massages. But if you're not comfortable, then don't do it and it won't matter.
Q. And did any of them tell you what happened after that?
A. Always, always, I even asked them.

Q. Okay. And with the other girls, was it the same as what you did or different?

A. Yeah, yeah. I mean, well, I was more willingly to do more, you know. Like I said, I went nude for him one time. But the other girls, they practically were topless and that's all that they were willing to do. Some girls didn't want to go topless and Jeffrey didn't mind.

Q. Were there girls that you brought back multiple times?

A. A couple, a couple, but he really liked to see different faces.

Q. Okay. I'm just wondering are there some girls he really liked and others he didn't like or did he have any preferences in terms of blondes, brunettes?

A. He liked girls like me.

Q. Okay. Thin and attractive?

A. I guess. Yeah, very attractive women. And he didn't say girls. He said women all the time.

Q. Did you ever bring anybody he didn't care for?

A. Huh-uh.

Q. Yeah?

A. Yeah.

Q. How was she different than the others?

A. Black. I screwed up.

Q. How did you know you screwed up?
A. He doesn't like black women, obviously.
Q. So he let you know? He told you that?
A. Yeah, but he was still nice and he still gave her her 200 even though he didn't even have a massage by her.
Q. How did he -- he paid you $200 for bringing each girl?
A. Uh-huh.
Q. And when he told you that, I mean, that's what he told you that he would pay you $200 for bringing the girls?
A. Yeah. He said if you bring me -- if you bring me girls, I'll definitely, you know, give you money, compensate you for your time and willing to do that for me, yeah.
Q. And you said at that point you stopped performing massages for him?
A. At that point, I didn't -- it would be sporadically like. Usually, I had so many girlfriends at the time that, you know, there were some new faces to be saw. And if no one was available, then T[redacted] would go.
Q. I got you.
A. So --
Q. Do you know some of the girls that you brought,

some of the their names?

A. I don't remember, really. They were like not even friends. They were just associates, you know. If anything, they'd be friends of friends, so no.

Q. We have -- I don't know. We have some messages I guess that some girls' names that would call Jeffrey and leave a massage. There's some girls names that are referenced. We were just wondering if you knew them?

A. If you name them, I can probably remember.

MS. BILAFONIA: Jason, do you have that?

BY AGENT RICHARDS:

Q. V[redacted] is one.

A. I don't know V[redacted]. Do you know her last name?

MS. BILAFONIA: We were hoping you did.

THE WITNESS: No, I don't.

BY AGENT RICHARDS:

Q. T[redacted]?

A. T[redacted]? No, that sounds like a black girl's name.

Q. Well, you brought a black girl. What was her name?

A. I don't know. Don't ask me.

Q. S[redacted]?

25 A. S[redacted], S[redacted], yeah, I brought S[redacted].

Q. Who is she? Tell us about S[redacted].

A. S[redacted], we look just alike, if that's the girl I'm thinking about. We went to school together and I brought her one time and then she ended up moving so she couldn't come with me.

Q. Were you guys in the same grade or --

A. No, she was older than me.

Q. A year or two?

A. She was -- Actually, she was like 18. I don't know. She was older. She was like, you know, two ranks, two grades ahead of me.

Q. So when you were a sophomore, she was a senior?

A. I just met her in school and I told her.

BY MS. BILAFONIA:

Q. What was her last name?

A. I don't know.

BY AGENT RICHARDS:

Q. Do you know where she lived? A. I just met her in school and I told her about it.

Q. You told her about it at school? Is that where your discussion was or --

A. Well, I said give me your number. I said you can make a couple of dollars. It's real easy. And if

you're comfortable with it, give me a call.

Q. Was that at school or at a party?

A. No, at school.

Q. At school. You're not sure what her last name was?

A. I have no idea.

Q. Do you know where she lived or anything like that, what car she drove?

A. No.

Q. What'd she look like?

A. What she looked like?

Q. Yeah.

A. Like me, everything, blonde hair, blue eyes.

(Start Side B of tape.)

AGENT RICHARDS: Time recorder is being restarted is approximately 4:50 p.m

BY MS. BILAFONIA:

Q. We were talking about S[redacted]. You were at [redacted] High at the time?

A. No, I was at [redacted].

Q. [redacted], okay.

A. And that's where S[redacted] went to school.

Q. What about a girl named B[redacted]?

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22 A. B[redacted] who?
23 BY AGENT RICHARDS:
24 Q. Did you bring a B[redacted]?
25 A. I brought a couple B[redacted].

1 Q. I want to know about every one you brought.
2 A. Well, one of them died recently, so --
3 Q. What was her name? In a car accident or
4 something?
5 A. No, she died. Unfortunately, she got shot in
6 the head. You guys probably heard it on the news. She
7 got shot in the head by this guy. I don't want to even
8 talk about it because I'll cry.
9 BY MS. BILAFONIA:
10 Q. Let's talk about the other B[redacted].
11 A. I don't even know. I don't know. I don't
12 know. There were some girls that just I would take one
13 time and then I would never talk to again, so I don't
14 know.
15 Q. How many girls do you think you brought to
16 Jeffrey's house?
17 A. That's a good question. I bring a lot, like
18 maybe -- I don't know, maybe 30, maybe 30. It was all
19 about the money to me at that time.
20 Q. Now any of the girls that you brought, did any

of them leave their names and numbers and then they would get appointments directly from Jeffrey or did they always go through you?

A. They went through me, hopefully.

Q. So you don't know?

BY AGENT RICHARDS:

Q. You weren't getting paid, right?

A. I told them, I said, Don't give him your number.

BY MS. BILAFONIA:

Q. If you brought the same girl more than once, would you get paid each time you brought them or just get the initial $200?

A. Every single time I brought a girl, okay, or I referred a girl, I always got $200, always.

Q. Even if she came a second time?

A. Yes.

Q. You would get $200 every time she came?

A. Yes.

Q. Good deal. Okay. What about C[redacted]?

A. C[redacted] who?

Q. Any C[redacted] that you brought to Mr. Epstein's house.

A. I brought a C[redacted] W[redacted].
Q. C[redacted] W[redacted]. Where did she go to school?
A. She didn't go to school.
Q. Okay. How did you know C[redacted]?
A. C[redacted]' been my -- she's my friend in the past. How did I meet C[redacted], at a party or she was my -- Actually, she was my baby's father's girlfriend at the

time and I met her at a party.
Q. You asked her if she'd be willing to go to Jeffrey's house?
A. Uh-huh.
Q. And when -- do you remember when that would have been?
A. Actually, a couple weeks, a couple weeks. I do remember her. A couple weeks after I met him.
Q. So you brought her pretty soon after you met Jeffrey?
A. Uh-huh.
Q. And how old was C[redacted]?
A. Seventeen, 17.
Q. And what happened when you brought C[redacted]?
A. The same thing.
Q. Okay. Well, I know that sometimes you said that the girls would tell you what happened?

A. She went in there. She had a massage -- she gave a massage on his back. She went a couple times. He liked her. She went a couple times. The first time she told me that he didn't it was just like me the first time. He didn't climax at all, nothing happened. It was just a massage. And then she went, I think, like two times after that. And yeah, he masturbated, but no touching. She didn't -- there's no touching of him. No

touching of her. None of my girls ever had a problem and they'd call me. They'd beg me, you know, for us to go to Jeffrey's house because they love Jeffrey. Jeffrey is a respectful man. He really is. I mean, and he all thought we were of age, always. This is what's so sad about it.

Q. How would -- how would you make appointments for girls to go over there?

A. I'd call them and they'd say hi, do you want to go to Jeffrey's house? And they'd say yes or no and we'd call a taxi.

Q. How would you know when Jeffrey was going to be in town?

A. When Jeffrey was in town, Sara would call me.

Q. Did she always call when they were already in

town or would she -- how far in advance would she call you?

A. They only called me when they were in Palm Beach. They never called me from anywhere. They've never called me from anywhere else. It was always when I was in Palm Beach. They'd say hi, we're down here. If you want to come and see Jeffrey, you're more than welcome to.

Q. So you wouldn't have like a specific time when you would go over, like be here at 11 or be here at two?

A. Well, I'd tell them, I'd say -- well, I mean, I'd have to work around his schedule. He'd have to work around mine. Yeah, we'd say I'll be there at three. I'll be there at four, whatever.

Q. Do you -- I know that you said you talked to Sara on the phone. Was there anybody else that you would talk to on the phone?

A. If Jeffrey wasn't there like if I'd call him to see how he was doing or whatever, you know, he had -- his chef would answer the phone. His maid would answer the phone. That's --

Q. But was Sara the only one you talked to about making appointments?

A. Uh-huh, yeah. Well, yeah, if Jeffrey wasn't

available, they'd, you know, he said, the chef or you know, whoever, said Jeffrey will get back to you. Yeah, Sara made the appointments.

Q. So when you were calling to talk to Jeffrey, you were calling the house phone over in Palm Beach?

A. Uh-huh, yeah.

Q. And how often would you talk to Jeffrey on the phone as opposed to talking to one of his assistants?

A. Me and Jeffrey hardly ever talked on the phone. He was always busy. It was mostly Sara. We'd talk when I would get there, you know. So it was like hey, do you

want to come in? Yes, cool, you know. Come there, no, cool, bye.

Q. Do you know someone who works for Jeffrey named Nadia?

A. I think I met her one time.

Q. And what do you know about her?

A. She was there. And the person Nadia, I think, I'm not positive, okay. I'm pretty sure she said that she's from New York and she travels with Jeffrey, but I think I met her one time, if that's the girl that rings the bell, you know, in my head. Nadia I think is that one person I met one time.

Q. Now you said that you had teased Jeffrey about whether he was getting married. Did you ever know him to have a girlfriend or a steady?

A. No, he told me he's never been married. He's never had a girlfriend and he doesn't want to have a girlfriend.

Q. Were you ever asked to bring a girl for someone else like to give a massage to somebody else or to anyone other than Jeffrey?

A. No. I gave Sara a massage before.

Q. And how often did that happen?

A. I only gave Sara a massage like once or twice, once or twice, not that often.

Q. But anybody else, either any friends that were in town or --

A. No. See, my mother is a masseuse and I have experience massaging and he always liked my massages. So he told Sara about my massages and she said, yeah, I want a massage so I'd go over there. I think it was one or two times and I gave her a massage.

Q. Now when the girls were upstairs with Jeffrey in the bedroom, what would you do?

A. The chef would make me carved tomatoes, put some crab meat in it and I'd just eat, wine and dine. Th

was wonderful, great.
Q. And when you would talk to the chef --
A. Yes.
Q. -- would anybody else from the house be there?
A. Yes. I don't know their names. I can't remember. There were like all these foreign girls from -- like they're beautiful, beautiful models that are from different -- they have accents. And no, but it was real interesting because we'd talk. And, you know, I'd learn a lot from them and they'd learn a lot from me just being American. And no, every time I went there it was a good time. And I usually just ate or I'd go and suntan or something near the pool.
Q. And how long you would the other girl be

upstairs normally?
A. Twenty, 25, 20 to 30 minutes.
BY AGENT RICHARDS:
Q. Back to C[redacted] W[redacted], is there anything else about her that you can remember? You were friends with her. She went three times, you think? Did she go back without going through you to set up any appointments that you know about?
A. I don't know.

Q. Okay. Were there any other G[redacted]s that you brought? I know you brought other B[redacted]s or multiple B[redacted]s.

A. Yeah. I don't know. If you would say like a last name, then I would probably remember, but I don't.

Q. Any G[redacted]s? Did you bring a G[redacted]?

A. G[redacted], yeah, that sounds familiar. Yeah, G[redacted] E[redacted], yeah.

Q. G[redacted] C[redacted]?

A. Uh-huh.

Q. What can you tell me about her? How old was she?

A. She's older than me.

Q. Do you know her from school or --

A. No. Where did I meet her? I met her in my neighborhood and I asked her if she wanted to go and

yeah, G[redacted]. She was only there one time, though.

Q. Did she tell you how it went with him upstairs?

A. Yeah.

Q. What'd she say?

A. She said -- she's like ah, I don't know.

Q. She freaked out or something?

A. No, no, but he didn't want her again. He likes tall, slender and she was like short.

Q. What did she say about him?
A. She had fun.
Q. She had fun?
A. Uh-huh.
Q. What did she say happened up there?
A. She was topless and just gave a massage. He didn't, you know, climax or anything.
BY MS. BILAFONIA:
Q. Did you ever, either when you gave him a massage or any of the girls, did you ever use a big back massager or it was only manual massage?
A. No, it was only my hands. We never used anything else.
Q. Now when you were working for him, when you were going over to Jeffrey's house to give massages, did you have a boyfriend?
A. Yeah, yeah.

Q. Okay. How did he feel about you going to Jeffrey's house?
A. He was a jealous little boy, but he didn't care. Bring home the bacon.
Q. What's your boyfriends?
A. D[redacted] I[redacted]

Q. Now I know you that you mentioned that you had a baby. Is that the baby's father?
A. No, no, thank God.
Q. Who is the baby's father?
A. J[redacted] S[redacted].
Q. Okay, J[redacted] S[redacted]. And were you still going to Jeffrey's when you were pregnant?
A. I would bring girls there when I was pregnant.
Q. So did -- so did J[redacted] have concerns about what you were doing at Jeffrey's house?
A. No, he talked to Jeffrey over the phone. Jeffrey actually threw me my baby shower and he got me furniture and a nice rattle for my son and just really nice things, I love mommy frames.
Q. Was the shower at his house and did he attend?
A. No, no, at my house, at my house. And no, Jeffrey wasn't there. He just sent Sara to bring me gifts for the baby.
Q. Oh, okay.

BY AGENT RICHARDS:
Q. Did J[redacted] ever go over there with you?
A. No.
Q. He stayed away.
A. No, he didn't go, no.

BY MS. BILAFONIA:

Q. Did Jeffrey ask you about boyfriends? I mean, was he curious about --

A. Yeah, we always talked about everything, yeah. Do you have a boyfriend, yeah, no, you know. We talked like friends. I don't know. Just about our life stories. You know, he probably knows my whole life story.

BY AGENT RICHARDS:

Q. Now do you still have contact with him or

A. Who?

Q. Jeffrey.

A. No, no one's allowing me.

BY MS. BILAFONIA:

Q. Did he know that you wanted to be a model or that's what you were aspiring to be?

A. Yes, I told him. Yes, I've always wanted to be a model, yes.

Q. Did he ever say he'd help you?

A. Uh-huh, yeah. And I was -- like I said, I was

16 at the time and I felt -- like he said, you know, you can -- I will definitely take you and bring you to New York and everything because he had models there, but I

always turned it down because I was 16 and I didn't want that to get out.

Q. What did you say to him? How did you put him off?

A. I don't know. Oh, well, I don't know. No, he wasn't like begging me or anything. He asked me a couple times and I said -- I just -- there was like no say about it. I just -- I didn't go. And it wasn't like he asked me all the time. He just it's a couple times he asked. He said I'll bring you to New York or whatever we do and we can, you know, try to fulfill your dreams, but I always said no because I was young and I didn't want to screw up the 18 thing.

Q. Did -- when you got pregnant, did he react in any way? I mean, did he tell you if you want to be a model, you know, this is going to mess with your chances as a model or offer any --

A. No.

Q. I'm wondering like how much was he giving you advice? How much stuff were you really -- What did you talk about?

A. After the baby, we didn't really even talk. I

was -- I was totally -- I changed. You know, I was a bad little girl and I totally changed. My whole life

changed. A couple times after I had the baby, I brought a couple girls there. It was like two times. And then me and Jeffrey really stopped talking. We just stopped talking. I had my own life and he had his, so I don't know.

BY AGENT RICHARDS:

Q. Did he ever make any arrangements knowing that you wanted to be a model or were modeling? He has a lot of connections with photographers and stuff. I mean, did he ever set up any photo shoots or anything like that?

A. No. No, because he asked me if I would like to go to pursue what I wanted to do, but like I said, for the second time --

Q. I mean in town here, not to travel to New York for a shoot or anything?

A. No. No, because I always like stood back from that because I didn't want him to know that I was 16.

BY MS. BILAFONIA:

Q. Did you ever get money from Jeffrey when you didn't either give a massage or bring a girl over?

A. Yes.

Q. Okay. When did that happen?

A. I had to pay rent and I was late on my rent.

This was before the baby. And I asked him -- I asked him for like 300. He gave me $500. I don't -- I couldn't tell you how I got it. If anything, I think I went to the house and got it.

Q. Was he there when you went to get the money?

A. No.

Q. Do you know was he in town or did you call him?

A. I don't even -- I can't remember, but I just remember he did give me $500 for rent.

Q. Was that the only time that he gave you money that wasn't connected either to a massage or to bringing a girl?

A. He bought gifts for the baby shower. I can't remember now. Not off the top of my head, no. I never asked him for anything because I just felt -- I'm not like that, you know. I'm not a user and I'm not -- I don't like that. I've never asked him for money, so --

Q. What about presents, either birthday presents? You mentioned gifts for the baby. Any other gifts that he gave you?

A. Yeah, he gave me a -- he had went to Brazil and he came back with a whole bunch of bikinis and he told me to choose one, so I chose one.

Q. Any other gifts, Christmastime or birthdays or anything like that?

A. No.
Q. Did he give any of your friends that you brought gifts?
A. Yeah, the girl who died, B[redacted]. He gave her a bathing suit, too, from Brazil.
Q. We have some telephone numbers that we wanted to ask you about.
BY AGENT RICHARDS:
Q. Just to see if you recognize these or if you ever used any of these numbers that might have been old telephone numbers for you at some point. I don't know how many cell phones you may have had through the years. See if you recognize any of those.
A. [redacted] was my number.
BY MS. BILAFONIA:
Q. What was J[redacted]'s number?
A. J[redacted]'s?
Q. Yeah.
A. What, my baby's father?
Q. Yeah.
A. Oh, I never knew his. Always I just, you know, called him and I never knew his number.
BY AGENT RICHARDS:
Q. It was programmed in your phone?
A. Yeah. So I don't know. I just know [redacted]

because that was my old number like a long time ago.
BY MS. BILAFONIA:
Q. At the time that you were bringing girls over to the house, were you also working a regular job?
A. I worked at City Pizza for a little while, but no, kind of retired and splurged. I didn't have any bills to pay. I saved. I put money in the bank, so --
Q. We had talked about C[redacted] W[redacted] before. Do you know someone named C[redacted] L[redacted]?
A. C[redacted] L[redacted], uh-huh.
Q. And who is that?
A. I brought her a couple times. Who is that?
Q. I mean, did you go to school with her or how did you know her?
A. Oh, I had asked one of my friends. I said do you have any -- It was a guy friend. I said do you have any girls that are willing to give massages and I met up with her. I called her. I talked to her on the phone. I met up with her and she said yeah, cool.
Q. And you said you took her over there a couple of times?
A. Yeah, she went over there more. She went over there more than a couple times.
Q. But you brought her every time that she went over there?

A. That I know of. That I know of, yeah.
Q. Okay. Did you ever tell any of the girls that they would be going over to model lingerie?
A. No. I told them we were going to go Jeffrey's house and it's going to be a topless massage pretty much. Anything you don't want to do, you don't have to do and it's $200, badda-bing, badda-boom. You make $200 in 30 minutes.
Q. Did any of the girls complain about what happened after they left there?
A. No. You asked me that question. No, everybody loved Jeffrey.
Q. No one called you and said, I think that you should call -- I think that we should call the police?
A. No.
Q. No one told you that?
A. No, no, oh, my God. And who is that coming from?
Q. We just have phone calls that seem to contradict what you're telling us?
A. Oh, so you think that people came to me and said that I'm to call the police on Jeffrey?
BY AGENT RICHARDS:
Q. Was there anyone that thought that what Mr. Epstein was doing was inappropriate and was concerned

about that?

A. Every girl that I brought to Jeffrey, they said they were fine with it. And like, for instance, C[redacted] -- C[redacted] W[redacted], a lot of girls begged me to bring them back. They wanted to come back for the money. And as far as I know, we all had fun there. We ate all the food. He gave us free bikinis. No, nothing about any cops.

Q. I mean, was there anyone that thought what he was doing may have been a little bit wrong? Not wanting to report to the police, but just saying, you know, that's kind of weird?

A. We talked about it like because we were underage, but he thought that we were 18. We were like hopefully that no one finds out. Hopefully, Jeffrey doesn't find out our age. But other than that, not calling the cops.

BY MS. BILAFONTA:

Q. Was anybody upset that he was masturbating? I know that you said you told them that they would possibly do the massage topless. They might have expected that. Was somebody shocked --

A. Yeah, of course. I mean, he always told them, okay, and I told them, too. I said if you're going to go there, then you don't have to do anything that you're not

comfortable with. A couple girls when they did come out of there, they're like oh, my God, I wasn't expecting all of that, but he always asked them and I asked them. They'd say that, you know, he asked me are you comfortable with this and they'd say yes. Maybe they were scared, who knows. But yeah, they came out of there like oh, my God, that was kind of weird, you know, yeah.

Q. Were any of them upset about it?

A. Do they like regret it or something?

BY AGENT RICHARDS:

Q. Just shaken up, you know, just kind of shocked?

A. A couple of girls -- well, see, we were so young and Jeffrey didn't know that. Like the whole thing was shooken up when I brought them there. And see, I don't know. I thought that they were, you know, most of the girls that I did bring there, they were 18, 19, 20. But I remember there was a couple times that I had brought like maybe 16 year olds or something, my age. And they -- I don't know. It's like they were scared to say that they were 18. They were like what if he finds out? And they were a little shook up about that, the age thing. But and afterwards like if he climaxed or whatever, if they were like shooken up, I'm like it's okay, you know. And they were like oh, I wasn't

25 expecting that, but they told Jeffrey that, you know,

1 they were comfortable with it. If anything, you know,
2 maybe they were scared and they felt like obligated, like
3 they didn't want to say. I was thinking that they didn't
4 want to say like no, you know, I don't want to do that,
5 so who knows. I wasn't up there with them, so I couldn't
6 tell you.
7 BY AGENT RICHARDS:
8 Q. Who were the ladies who mentioned that to you
9 who were kind of shocked?
10 A. Usually, the girls that I would bring like one
11 time and I wouldn't even see them again.
12 Q. Can you help me out with some names, though?
13 A. Huh-uh, no. I can't remember her name. She's
14 on the top of my - oh, my God, I don't remember. I
15 can't remember.
16 BY MS. BILAFONIA:
17 Q. None of the girls wanted to go to the
18 authorities? Nobody was that upset that called you or
19 spoke to you that was upset with what had happened to the
20 point that they wanted to report it?
21 A. No, no. If anything, thank you, T[redacted], so much
22 because I really could use the money.
23 BY AGENT RICHARDS:

24 Q. Do you know the names of some of the girls that
25 you brought?

1 A. Huh?
2 Q. Do you know the name of some of the girls you
3 brought other than the ones that we've talked about right
4 now?
5 A. Like I said, I can't remember because usually
6 there --
7 Q. There's about 30 of them, so you've got to
8 know --
9 A. No, I don't know because there were girls that
10 I didn't even know so, you know. I just asked them. I
11 said, Hey, would you like to make some money? Here's my
12 number. Do you want to make money? Here's my number,
13 you know, and that's how it went. So I don't remember
14 the names and I really didn't care to know their names,
15 anyway.
16 Q. Do you know their phone numbers?
17 A. Now?
18 Q. Yeah.
19 A. No.
20 Q. Do you know any of their phone numbers?
21 A. No, no, no. That was years ago.

Q. We're just trying to find any other ladies out there that we haven't already seen and you brought 30 of them and we're just trying to --

A. I don't know if I brought 30 of them.

Q. Approximate?

A. Yeah. No, I have no clue, no idea.

BY MS. BILAFONIA:

Q. Did you stay in touch with any of the girls that you brought?

A. Huh-uh.

Q. C[redacted] W[redacted], any of the girls that we've talked about? Did you ever when you were either bringing girls or when you were giving massages, did you ever drink anything or take any drugs, whether it was prescription drugs?

A. I heard this on the news, no. It's ridiculous.

Q. You never took any drugs?

A. Never.

Q. Did any of the girls take drugs? Did you know that they were talking drugs?

A. There was no alcohol. There was no drugs, no.

Q. None of the girls that you brought were using drugs?

A. No.

Q. And just so you know, T[redacted], we're not talking about necessarily crack cocaine. We're wondering if anybody was taking any prescription medication?

A. I don't know if they were taking prescription medication. That's their problem. I don't know.

Q. And you didn't give anybody else any prescription drugs?

A. No, no. When I was 16, I smoked pot, but no.

(Start of Tape 2.)

MR. EISENBERG: Okay, gang, back on the record. And I assume you mean prescription medication not for prescription purposes?

THE WITNESS: I thought you meant like for prescription, prescribed. No, I don't know.

AGENT RICHARDS: Okay.

BY MS. BILAFONIA:

Q. But you weren't taking any anti-depressants or pills or anything?

A. No, no, I just smoked pot. But I mostly went there sober. I was comfortable with Jeffrey. Jeffrey always made me feel so comfortable. I thought I was a big girl. I was 18.

Q. You said that you stopped. Why did you stop

going over there? You said you had a baby and you changed?

A. Yeah.

Q. What happened?

A. Everything changed in my life, everything. I ended up getting a job and I just stopped. I just stopped. I don't know.

Q. But if you felt so comfortable, why did you stop going over there?

A. I just stopped because I have a son now and I didn't feel like it was right. First off, I was a stay-at-home mommy, okay. And what am I going to do, bring my son over there to Jeffrey's, no, you know. So I focused on my son. I had a beautiful baby boy that was my pride and joy. I didn't care for anything else. I didn't care to tell friends. I dropped all my friends. Like he asked me do I have any numbers, no, you know. If anybody does call me, that's my mother. Like it was just me and my baby boy and it's been like that ever since.

BY AGENT RICHARDS:

Q. Having a baby is a life-changing experience, isn't it?

A. Having a baby?

Q. Yes, it's full-time.

A. Awesome, I love it. I love it.
Q. Yeah, he'll be two in August.
A. Mine will be two in June.
BY MS. GTLATONIA:
Q. Is that when you started working with the company you're working for now?
A. Well, I was -- the whole time I was pregnant, I was taken care of by my baby's father. Then I was a

stay-at-home mommy for eight months. After that, I worked at LA fitness, Romeo Pizza. It's been a year now. And what do you mean, is that why I'm working?
Q. No, I just didn't know where you were working. I thought you said you had gotten a job afterwards, after the baby was born?
A. Yeah, I worked at the laundromat for a couple of days. I just like to -- I wanted to soak in my son. That's all I did and I was like a hermit crab in the house, you know. And if anybody -- I told -- I told Sara. I said, you know, I have a baby now and you know, I'd rather stay at home with my baby. My old man was taking care of me. I didn't care about money. Everything was good, so a new life.
BY AGENT RICHARDS:

Q. Speaking of work, when you set up appointments with Sara, did she refer to what the girls were doing as work, like would they go over to Jeffrey's to work for massage or --

A. No.

Q. -- how did she -- were any terms used or just in general? Did she ask you if you had any girls that can work or did you have any girls that can come over? Do you have any girls that can give a Jeffrey a massage? How did she ask for these appointments?

A. All of the above: Do you have any girls that would like to come over? Do you have any girls that would like to work? Yeah, all of the above, really. I mean, me and Sara were really -- it's like a friend relationship. She's fun. No, it wasn't like a specific like hey, you know, do you want to come over and work, no. It was all different: massage, work, whatever.

Q. Okay.

BY MS. BILAFONIA:

Q. You said that you and Sara had developed a friendly relationship. Did Sara ever tell you what types of girls Jeffrey wanted or I think you said that sometimes she would say he likes this girl or I'm sorry, he likes this girl?

A. Yeah.
Q. What exactly -- what guidance did she give you about recruiting the girls?
A. She didn't give me guidance. Jeffrey from the get-go, I really like women like you. So when I would go searching to make money or whatever or my girlfriends, I know what an attractive person looks like and I would -- I would bring them, you know. I didn't bring any overweight people. I just knew what Jeffrey liked, you know.
Q. Did you ever talk to Sara massages when you

gave them, what you did, what you would do?
A. Huh-uh. I didn't know if she knew or not.
Q. I have a picture of someone and I'm just wondering if you recognize this person?
A. No. Was she a girl that was over there?
Q. Just a face that we wanted to --
A. Okay. No, I don't know.
BY AGENT RICHARDS:
Q. When you would ask the ladies if they'd like to go over to see Jeffrey, what was the percentage? How many people would say sure, that sounds good. Let's go do it. And how many would just say, no, I'm not

interested. I mean, do you have -- how often when you would ask the girls --

A. It was usually girls that I brought, the girls that I had brought like first five girls, say, I would say, Listen, you know, recruit your girlfriends and it would go down the line. Recruit your girlfriends and I will pay you guys. So if I was off the wall, say I was, you know, at a club or something and I was like hey, girl, do you want to -- they'd be like you're crazy, you know.

Q. That's what I wondered, when you approached them what was the reaction?

A. But when I talked to them over the phone, if it

was one of my girlfriends' friends or one of their friends, I would tell them exactly and they'd be like okay, you know. And some girls weren't comfortable with it. You know, how your morals are or whatever, if you're comfortable with your body, if you're comfortable with giving an old man a massage for $200.

Q. For 30 minutes.

A. You know, everybody is a different person.

Q. Sure.

A. But most of the girls were -- they were like yeah, sure, yeah.

BY MS. BILAFONIA:

Q. Did you ever say anything about, you know, be careful who you talk to about this or I guess I'm wondering why, you know, were rumors going around at school or how did everything keep under wraps?

A. Everybody knew. I don't know. Everybody made jokes about it. Like it was not in school. It was more like in my neighborhood. They would call me Heidi Fleish and everybody just made jokes about it. I don't know. It wasn't -- but I didn't care.

Q. Right.

A. You know, it wasn't if you didn't get out - it wasn't really a big thing to me at all.

Q. I guess I'm just wondering, you know, kind of

the way that this all came out was finally a parent found out about it --

A. Yeah, I heard.

Q. -- and went ballistic. How did you keep these girls' parents from finding out?

A. I don't know, probably embarrassing. They obviously liked Jeffrey that much that they didn't tell anyone.

Q. Did anybody hassle you at school? Did anybody

call you Heidi Fleish at school?

A. No, no, no, I was out of school by then. No.

Q. Why did you drop out of school?

A. Well, actually, -- why?

Q. I'm sorry. I interrupted you.

A. Because -- no, you didn't. Well, my mother had took me me out of school to home-school me. And then I had went back to a school because I was really behind because she didn't home-school me and I had got pregnant, that's why. And that's in the eleventh grade, that's when I got out because I was pregnant. And I decided that I was -- I mean, I didn't know what I was doing. I wanted to have a house. I said I'm going to have this baby. I need to have a house, a car, and I set out all my goals and that's what happened. But then I ended up getting my GED and I have a life.

BY AGENT RICHARDS:

Q. Were there ever any girls that came to you wanting to work over there that said hey, I'd like to go work over there and make $200 bucks? Did you have any of that?

A. Uh-huh.

Q. Do you remember any of their names or were they classmates or --

A. It wasn't --It wasn't involved in the school so much. It was just that S[redacted] girl in the school.

Q. Okay. So she was really the only like school-related --

A. Like person from school, yeah.

Q. Okay.

A. But it was mostly out of school. So I wasn't really hanging out with the best crowd. And all the people that I did hang out with, they were dropouts. So it wasn't anything in school. It was mostly like the neighborhood people or my friend, one of my guy friends' girlfriend or whatever, you know. We were all young and stupid, but --

BY MS. BILAFONIA:

Q. Anything else? Do you have any questions for any of us, for me or --

A. No, but I hope -- I hope Jeffrey, nothing

happens to Jeffrey because he's an awesome man and it would really be a shame. It's a shame that he has to go through this because he's an awesome guy and he didn't do nothing wrong, nothing.

Q. Are you in love with him at all?

A. My God, no. I love him as a friend. I love

him as a friend. He has done so much for me. No, I'm not in love with him. I tell Jeffrey, do you want to marry me with all of the money that you have.

AGENT RICHARDS: All right. At this time, we're going to conclude the interview. It is 5:34 by my watch.

MR. EISENBERG: The only thing we'll correct is that there might have been a reference to an old guy at 50 and we'll just say a more mature individual who may be in his 50s. Thank you.

(End of the tape.)

CERTIFICATE

- - -

The State of Florida,)

County of Palm Beach.)

I, Vicki S. Woodham, Notary Public, do hereby certify that I was authorized to and did listen to and stenographically transcribe the foregoing tape-recorded proceedings and that the transcript is a true record to the best of my ability.

Dated this 26th day of April, 2007.

Vicki S. Woodham
My Commission Expires:
December 08, 2010
Commission No.: DD617559

GOVERNMENT

EXHIBIT

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December 21, 2007

VIA FACSIMILE (305) 530-6444

Honorable R. Alexander Acosta
United States Attorney
United States Attorney's Office
Southern District of Florida
99 NE 4th Street
Miami, FL 33132

Re: Jeffrey Epstein

Dear Alex:

We again extend our appreciation for meeting with us on December 14 and for carefully considering the issues we have raised both at that meeting and in our submissions to your Office. Having received your letter of December 19, we can see that you have made a significant effort to address our concerns regarding the § 2255 portion of the non-prosecution agreement (the "Agreement"), and we recognize that you have proposed some substantial and important modifications. Respectfully, however, I would suggest that your proposal raises several troubling questions that require careful consideration. We are authoring this letter to respond to your request that we set forth our position regarding §§ 2255 and 3771 as quickly as possible.

As we have all discovered, the problem of integrating in an unprecedented manner what is at its core a $150,000 minimum lump sum damage federal civil statute (§ 2255 in its current form) into a federal deferred/non-prosecution agreement that requires pleas of guilty to state criminal offenses that are correlated to state criminal restitution statutes but not to a disparate federal civil non-restitution statute has proved very challenging. The concomitant problem of how fairly to implement the § 2255 portions of the Agreement so that real victims, if any, who in fact suffered "personal injury as a result of [the] violation" if any of specified federal criminal statutes such as 18 U.S.C. § 2422(b) are placed in the same position as if there had been a trial and conviction also requires serious and careful consideration. In this letter, I want to highlight some specific concerns. *See also* Whitley Opinion.

First, your proposal regarding the § 2255 remedy provisions continues to ask us to *assume* that each and every woman not only was a victim under § 2255, but that the facts alleged could have been proven to satisfy each element of either § 2422(b) (the Internet luring statute) or § 2423 (the sex-tourism statute), within § 2255 of Title 18. Although we have been denied the

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list of alleged "victims" (and lack definitive information as to which federal statutes would serve as a predicate for each particular alleged victim), or even a firm number as to how many you suggest there are, we strongly believe that the *provable* conduct of Mr. Epstein with respect to these individuals fails to satisfy the requisite elements of either 18 USC § 2422(b) (which we understand from prior discussions to be the principal predicate offense upon which the § 2255 provisions rely) or 18 USC § 2423(b) (another predicate of § 2255 that has been the subject of discussions between the parties). *See* Stern Opinion. We believe that the problem arises from the incongruity that exists when attempting to fit a federal civil remedies statute into a criminal plea agreement. Again, I note that this problem could have been avoided had the government opted instead for a restitution fund as we suggested.

Our knowledge of the "list" of alleged victims is limited. However a prototypical example of a witness whom the government has requested we compensate and we believe is inaccurately labeled as a "victim" of a federal crime is [redacted] (whom we have been told remains on the government's "list"). The transcript of her interview with the Palm Beach Police over a year before the FBI became involved in any investigation shows that Ms. [redacted] admitted to lying about her age, that she did not engage in sexual intercourse with Mr. Epstein, and that she was never induced over the telephone, computer or any other means of communication required by § 2422(b). In fact, Ms. [redacted] came to Mr. Epstein's home on only one occasion. She testified that she was informed about the opportunity to give a massage to Mr. Epstein not on a telephone, computer or any other facility of interstate commerce, but rather in a face-to-face discussion with a third party who was her friend (Ms. [redacted] and who told her to lie to Mr. Epstein about her age. As such, it is simply impossible to shoehorn this conduct into any of the above-discussed federal statutes.

In addition, Mr. Epstein did not know of Ms. [redacted] before she actually came to his home, did not induce or persuade her to come by phone, did not speak to her at all by phone prior to her visit, did not induce or persuade Ms. [redacted] to bring an underage girl to his residence, and did not otherwise violate either the federal statute § 2422(b) nor the travel for the purpose statute § 2423(b). Indeed, in her statement, Ms. [redacted] testified: "'Haley told me to say I was 18 because Haley said . . . if you're not then he [Epstein] won't really let you in his house. So I said I was 18." ([redacted] Sworn Statement at 38-39). In fact, there is no evidence that Mr. Epstein expected an underage girl to visit him prior to his regular travel to Florida, his home of fifteen years. Thus the travel could not have been for the purpose of having illegal sexual contact and § 2423(b) is no more available as a predicate for § 2255 recovery than is § 2422(b). Never having reached the threshold violations enumerated under of § 2255, Ms. [redacted] would still have to prove that she suffered a personal injury. Further, unknown to Mr. Epstein at the time, Ms. [redacted] represented herself to be 18 not only to him but also to the public on her web page where she posted a nude photo clearly looking at least 18 years old.

At the December 14 meeting, we also discussed [redacted] as emblematic of our concerns surrounding the government's selection of "victims." As you are aware, Ms. [redacted]

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was identified in previous correspondence as a person who remained on the Government's list of "victims" even after (at least according to Ms. Villafana's letter) the list was subjected to careful multi-party review. Ms.. [redacted] sworn statement clearly reflects the fact that she is not a "victim" under § 2422(b). She plainly admits that she suffered no injury; the conduct was consensual; she lied to Mr.. Epstein about her age; she instructed others to lie about their ages; there was no sexual contact between herself and Mr. Epstein at any time; and there was never any inducement over the telephone, computer or through any other means of interstate commerce We ask that you consider the most relevant highlights from her testimony offered below:

- **Consent**

  A: I said. I told Jeffrey, I heard you like massages topless. And he's like, yeah, he said, but you don't have to do anything that you don't feel comfortable with. And I said okay, but I willingly took it off. ([redacted] Sworn Statement at 10)

- **Lied About Her Age**

  A: . . . I had a fake ID anyways, saying that I was 18. And she just said make sure you're 18 because Jeffrey doesn't want any underage girls. ([redacted] Sworn Statement at 8)

  * * * * *

  A: . . . of course, he thought I was 18. . . ([redacted] Sworn Statement at 13)

- **Instructed Others to Lie About Their Ages**

  A: . . . I would tell my girlfriends just like [redacted] approached me. Make sure you tell him you're 18. Well, these girls that I brought, I know that they were 18 or 19 or 20. And the girls that I didn't know and I don't know if they were lying or not, I would say make sure that you tell him you're 18. ([redacted] Sworn Statement at 22)

- **No Sexual Contact**

  Q: He never pulled you closer to him in a sexual way?

  A: I wish. No, no, never, ever, ever, no, never. Jeffrey is an awesome man, no. ([redacted] Sworn Statement at 21)

- **No Inducement**

  A: No, I gave Jeffrey my number. And I said, you know, any time you want me to give you a massage again, I'll more than welcome to. ([redacted] Sworn Statement at 8)

* * * * *

> A: Every girl that I brought to Jeffrey, they said they were fine with it. And like, for instance, [redacted] -- [redacted] a lot of girls begged me to bring them back. They wanted to come back for the money. And as far as I know, we all had fun there. [redacted] Sworn Statement at 45)

The sworn testimony of [redacted] contains explicit denials from the alleged "victim" herself that she suffered any physical, emotional, or personal injury as required by the express language of § 2255. Further, the sworn testimony of Ms. [redacted] contains a complete disavowal that Mr. Epstein or anyone on his behalf used a facility of interstate commerce to knowingly persuade, coerce, entice, or induce her to engage in sexual offenses as required by § 2422(b). Likewise, the transcript provides no basis for a § 2423(b) violation in that Mr. Epstein had a residence in Palm Beach for over 10 years at the time of these events, traveled to Palm Beach for a myriad of legitimate reasons ranging from medical appointments to business appointments having nothing to do with a sexual objective, and could not be legally charged with traveling to his own home particularly in the absence of any provable nexus between the travel and a dominant purpose to engage in illicit sexual conduct. Although Ms. Villafana informed us during the December 14 meeting that she had a telephone toll record showing an out-of-state call to or from Ms. [redacted] phone to a phone number associated with Mr. Epstein, such a record fails to prove the content of the call, the identity of the communicators, whether the call discussed or resulted in a plan for Ms. [redacted] to visit Mr. Epstein's residence, whether any inducement occurred on the out of state call or, more importantly for purposes of the sex tourism statute, whether any travel was planned to Florida or resulted from the phone call. Ms. [redacted] testimony is that she believed that at any time she was called by Mr.. Epstein or anyone on his behalf, Mr. Epstein was already in Florida. She also testified to the absence of any sexual contact other than topless massages (topless massages are lawful in Florida at age 16, unless the definition of prostitution is unnaturally expanded). A complete transcript of the federal interview of Ms. [redacted] has previously been provided to you.

Your wish to put these women in the same position as they would have been had there been a federal conviction assumes they are each legitimate victims of at least one of the two specific federal crimes enumerated under § 2255. We respectfully have to disagree with that assumption, and even your current formulation of § 2255 would prejudice Mr. Epstein in this regard.

Second, your proposal also effectively deprives Mr.. Epstein of his opportunity to test the validity of these womens' claims claims that would have been extensively tested at trial. In light of what we have already learned about [redacted] and [redacted] it is inappropriate to deny Mr.. Epstein and his counsel the right to test the merits of each of these womens' cases, in order to verify that they in fact suffered "personal injury" as required by § 2255 and to assess whether they are in fact victims of any violations of § 2422(b) or § 2423(b) as also required by

§ 2255. Given your Office's informing us that Ms. [redacted] remained on a reduced list of federal "victims" and given our understanding that Ms. [redacted] as well was one of those who is also on the list of persons the Government contends were victims of Mr. Epstein's alleged violation of federal law, we have a principled concern about adopting your recommended language which would leave Mr. Epstein without a basis to challenge the good faith premise of an application to recover $150,000.

Third, the Agreement, even if modified in accord with your December 19 letter, would put the witnesses in a better position than if Mr. Epstein had been federally prosecuted rather than in an equal position and, in fact, encourages the witnesses to make unfounded claims with impunity. Had there been a conviction, these women would have been thoroughly cross-examined, for the veracity of their statements, their credibility and the foundations, if any, for claiming personal injury. Also, Mr. Epstein would have received, pursuant to either Brady or Jencks, material in the form of prior inconsistent statements made by these women before they learned of any financial benefit that may be available to them—evidence that should be considered in determining the credibility of their application for a substantial civil recovery. Furthermore, Mr. Epstein would be without the means to challenge whether the claimant could make out a prima facie case that she was a victim of a violation by Mr. Epstein of § 2422(b) or any other federal statute–a denial of his rights that would insulate potential claimants such as Ms. [redacted] and Ms. [redacted] from any challenge on this element even if under other circumstances a challenge would result in a summary judgment in Mr. Epstein's favor under Fed. R. Civ. P. 56. Lastly, the modified language recommended by you presupposes that Mr. Epstein would have been charged and convicted of substantive violations rather than charged and convicted of a conspiracy allegation. Conspiracy convictions are not amongst the predicates enumerated by § 2255 and do not, without more, result in the basis for a determination of "personal injury". Since our request to view the draft indictment was rejected on December 14, we have no means to know what it contained by way of allegations.

Fourth, I want to respond to several statements in your letter that we believe require immediate correction. With regard to your first footnote, I want to be absolutely clear. We do not believe for one moment that you had prior knowledge of the AUSA's attempt to require us to hire the friend of her live-in boyfriend, and pay his fees on a contingency basis to sue Mr. Epstein. We realize you corrected that irregular situation as soon as you discovered it. We thought this was precipitated by our complaint, but have no real knowledge as to the timing of events. Furthermore, your letter also suggests that our objection to your Office's proposed victims notification letter was that the women identified as victims of federal crimes should not be notified of the state proceedings. That is not true, as our previous letter clearly states. Putting aside our threshold contention that many of those to whom 3771 notification letters are intended are in fact not victims as defined in the Attorney General's 2000 Victim Witness Guidelines—a status requiring physical, emotional or pecuniary injury of the defendant—it was and remains our position that these women may be notified of such proceedings but since they are neither witnesses nor victims to the state prosecution of this matter, they should not be informed of

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fictitious "rights" or invited to make sworn written or in-court testimonial statements against Mr. Epstein at such proceedings, as Ms.. Villafana repeatedly maintained they had the right to do. Additionally, it was and remains our position that any notification should be by mail and that all proactive efforts by the FBI to have communications with the witnesses after the execution of the Agreement should finally come to an end. We agree, however, with your December 19 modification of the previously drafted federal notification letter and agree that the decision as to who can be heard at a state sentencing is, amongst many other issues, properly within the aegis of state decision making.

Your December 19 letter references Professor Dershowitz's position on the inapplicability of Florida Statute § 796.03. Professor Dershowitz made such arguments in the context of saying that he had been unable to discern, after great effort, and supported by years of experience, any basis for the application of § 2422(b) or other federal sex statutes to Mr. Epstein's conduct and that the federal statutes required more of a stretch to fit the facts than the proposed state statute to which Ms. Villafana wanted Mr. Epstein to plead. Professor Dershowitz also stated that Ms. Villafana had represented that it was she who had the facts to support, both the threatened federal charges of § 2422 and/or § 2423 and the proposed state charge of § 796.03 (which the parties understood to be the state charge of soliciting a minor, as Ms. Villafana's last letter clearly states). Only last week we learned for the first time that Ms. Villafana did not realize that the charge was actually for "procuring" not "soliciting". The charge (a pimp statute) of procuring a prostitute for a third party for financial gain is one for which Ms. Villafana now states she does not have the facts to support.

Furthermore, you suggest that we have purposefully delayed the date of Mr.. Epstein's plea and sentencing in breach of the Agreement and now seek an "11th hour appeal" in Washington. I believe we have already responded to this objection satisfactorily, both in our discussion earlier this week and in the email I sent to you two days ago in which I specifically addressed this issue. Indeed, any impediment to the resolution at issue is a direct cause of the disagreements between the parties as to a common interpretation of the Agreement, and we have at all times made and will continue to make sincere efforts to resolve and finalize issues as expeditiously as possible. In fact, since the initiation of negotiations between Mr.. Epstein's counsel and your Office, we have always proceeded in a timely manner and made several efforts to meet with the attorneys in your Office in person when we believed that a face-to-face meeting would facilitate a resolution.

Finally, the suggestion by your staff that you hold Mr. Epstein in breach of the Agreement by his failure to plea and be sentenced on October 26, 2007 is directly contradicted by Mr.. Sloman's e-mail to me dated October 31 in which he states, "Your understanding from Jack Goldberger conforms to my understanding that Mr.. Epstein's plea and sentence will take place on the same day. I understand that the plea and sentence will occur on or before the January 4th date." This has been our common understanding for some time, which we have now

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reiterated several times. With that said, please be advised that we are working for a quick resolution and do not seek to delay the proceedings.

Thank you again for your time and consideration. We look forward to your response to the concerns we have raised that have not yet been addressed.

I wish you a very happy and a healthy new year.

Sincerely,

Jay P. Lefkowitz

cc: Honorable Alice Fisher, Assistant Attorney General
Jeffrey H. Sloman, First Assistant U.S. Attorney

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E

U.S. Department of Justice

United States Attorney
Southern District of Florida

500 South Australian Ave., Suite 400
West Palm Beach, FL 33401
(561) 820-8711
Facsimile: (561) 820-8777

August 4, 2006

DELIVERY BY HAND
Miss [redacted]

Re: Crime Victims' Rights

Dear Miss [redacted]

Pursuant to the Justice for All Act of 2004, as a victim of a federal offense, you have a number of rights. Those rights are:

(1) The right to be reasonably protected from the accused.
(2) The right to reasonable, accurate, and timely notice of any public court proceeding involving the crime or of any release or escape of the accused.
(3) The right not to be excluded from any public court proceeding, unless the court determines that your testimony may be materially altered if you are present for other portions of a proceeding.
(4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, or sentencing.
(5) The reasonable right to confer with the attorney for the United States in the case.
(6) The right to full and timely restitution as provided in law.
(7) The right to proceedings free from unreasonable delay.
(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

Members of the U.S. Department of Justice and other federal investigative agencies, including the Federal Bureau of Investigation, must use their best efforts to make sure that these rights are protected. If you have any concerns in this regard, please feel free to contact me at 561 209-1047, or Special Agent Nesbitt Kuyrkendall from the Federal Bureau of Investigation at 561 822-5946. You also can contact the Justice Department's Office for Victims of Crime in Washington, D.C. at 202-307-5983. That Office has a website at www.ovc.gov.

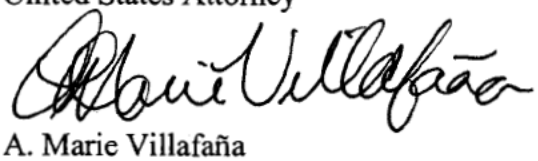
You can seek the advice of an attorney with respect to the rights listed above and, if you believe that the rights set forth above are being violated, you have the right to petition the Court for relief.

In addition to these rights, you are entitled to counseling and medical services, and protection from intimidation and harassment. You also may be entitled to restitution from the perpetrator. A list of counseling and medical service providers can be provided to you, if you so desire. If you or your family is subjected to any intimidation or harassment, please contact Special Agent Kuyrkendall or myself immediately. It is possible that someone working on behalf of the targets of the investigation may contact you. Such contact does not violate the law. However, if you are contacted, you have the choice of speaking to that person or refusing to do so. If you refuse and feel that you are being threatened or harassed, then please contact Special Agent Kuyrkendall or myself.

You also are entitled to notification of upcoming case events. At this time, your case is under investigation. If anyone is charged in connection with the investigation, you will be notified.

Sincerely,

R. Alexander Acosta
United States Attorney

By: 
A. Marie Villafaña
Assistant United States Attorney

cc: Special Agent Nesbitt Kuyrkendall, F.B.I.
Ms. Clearetha Wright, Victim-Witness Coordinator, U.S. Attorney's Office

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EXHIBIT

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U.S. Department of Justice

United States Attorney
Southern District of Florida

500 South Australian Ave., Suite 400
West Palm Beach, FL 33401
(561) 820-8711
Facsimile: (561) 820-8777

August 11, 2006

DELIVERY BY HAND
Miss [redacted]

Re: Crime Victims' and Witnesses' Rights

Dear Miss [redacted]

Pursuant to the Justice for All Act of 2004, as a victim and/or witness of a federal offense, you have a number of rights. Those rights are:

(1) The right to be reasonably protected from the accused.
(2) The right to reasonable, accurate, and timely notice of any public court proceeding involving the crime or of any release or escape of the accused.
(3) The right not to be excluded from any public court proceeding, unless the court determines that your testimony may be materially altered if you are present for other portions of a proceeding.
(4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, or sentencing.
(5) The reasonable right to confer with the attorney for the United States in the case.
(6) The right to full and timely restitution as provided in law.
(7) The right to proceedings free from unreasonable delay.
(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

Members of the U.S. Department of Justice and other federal investigative agencies, including the Federal Bureau of Investigation, must use their best efforts to make sure that these rights are protected. If you have any concerns in this regard, please feel free to contact me at 561 209-1047, or Special Agent Nesbitt Kuyrkendall from the Federal Bureau of Investigation at 561 822-5946. You also can contact the Justice Department's Office for Victims of Crime in Washington, D.C. at 202-307-5983. That Office has a website at www.ovc.gov.

You can seek the advice of an attorney with respect to the rights listed above and, if you believe that the rights set forth above are being violated, you have the right to petition the Court for relief.

In addition to these rights, you are entitled to counseling and medical services, and protection from intimidation and harassment. If the Court determines that you are a victim, you also may be entitled to restitution from the perpetrator. A list of counseling and medical service providers can be provided to you, if you so desire. If you or your family is subjected to any intimidation or harassment, please contact Special Agent Kuyrkendall or myself immediately. It is possible that someone working on behalf of the targets of the investigation may contact you. Such contact does not violate the law. However, if you are contacted, you have the choice of speaking to that person or refusing to do so. If you refuse and feel that you are being threatened or harassed, then please contact Special Agent Kuyrkendall or myself.

You also are entitled to notification of upcoming case events. At this time, your case is under investigation. If anyone is charged in connection with the investigation, you will be notified.

Sincerely,

R. Alexander Acosta
United States Attorney

By: Marie Villafaña
A. Marie Villafaña
Assistant United States Attorney

cc: Special Agent Nesbitt Kuyrkendall, F.B.I.

GOVERNMENT

EXHIBIT

G

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Kenneth W. Starr
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April 28, 2008

BY ELECTRONIC MAIL
AND FEDERAL EXPRESS

Honorable Sigal P. Mandelker
Deputy Assistant Attorney General
United States Department of Justice
1400 New York Avenue, 6th Floor
Washington, DC 20530

Dear Ms. Mandelker:

Since our last submission to you earlier this month (a copy of which is attached for your convenience), two more civil lawsuits have been filed against Jeffrey Epstein. Plaintiffs' counsel in the two civil lawsuits is, once again, the former law partner of First Assistant USA Jeffrey Sloman. As we indicated in our earlier submission, Mr. Sloman's former law firm — a very small firm in Miami — was chosen out of the myriad attorneys in South Florida by virtually all of the alleged victims who have filed lawsuits, two of whom now reside in Virginia. Thus far all of the women who have retained Mr. Herman in connection with this matter are on the government's list of alleged "victims," a list the USAO in Miami assured us would remain confidential. Putting aside the appearance of impropriety, I write to you now to raise our growing concern with respect to the evolving pattern of improper federal involvement.

The new information, contained in the latest complaints, again confirms that this matter is not appropriately within the heartland of federal law. You may recall that in commenting on the earlier civil lawsuits, Mr. Herman was quoted in the Palm Beach *Post* last month as saying that "it doesn't matter" that his clients lied about their ages and told Mr. Epstein that they were 18 or 19. The civil suits also state that the plaintiffs did not discuss engaging in sexually-related activities with anyone prior to arriving at Mr. Epstein's residence. This reinforces our submission that no telephonic or Internet persuasion, inducement, enticement or coercion of any kind occurred. None.

That is only the beginning. Not only are the alleged victims seeking tens of millions of dollars through the avenue of civil litigation unleashed by Mr. Sloman's former law firm, but we also have recently received additional confirmation that FBI Special Agent Kurkendayl attempted to convince witnesses that they were in fact "victims" even though the women themselves strongly disagreed with this characterization. This conduct, once again, goes to the heart of the integrity of the investigation.

In an age of victimization, this effort to proselytize young women and bring them into the maw of the federal criminal justice system raises questions that go to the very core of the honorable use of federal power. In a sworn statement by Ms. [redacted], one of the witnesses, Ms. [redacted] was quite condemnatory of the overreaching by federal law enforcement officers in this case. She further testified—in no uncertain terms—that she does not, and never did, feel like a "victim," despite the fact that the FBI repeatedly tried to convince her otherwise. Ms. [redacted] rejection of this mischaracterization is strongly corroborated by the record:

First. No young woman ever complained. Ever. In fact, the genesis of the state investigation into this matter was not a result of any first-hand account. This silence, even after the highly irregular release of the raw police reports, speaks volumes.

Second. A highly unusual victim notification letter (discussed in greater detail below) improperly overstated Mr. Epstein's prospective criminal status and cited law incorrectly (as subsequently admitted by the USA). This unorthodox letter also inappropriately invited the alleged "victims" of yet to be proven "federal" crimes to make statements at state proceeding(s), even though their names and the basis for their inclusion on the so-called "victims" list, to this day, remain unknown to the State Attorney himself. This is just another example of the federal prosecutors' attempt to 'father' the witnesses and brand them as "victims" without any communication or coordination with state and local authorities.

Third. The new civil lawsuits contain blatant inconsistencies that indicate the women involved did not believe themselves to be victims. The latest civil complaints, which, like the other complaints, also seek significant monetary damages, are riddled with inconsistencies and untrue allegations, many of which both contradict prior sworn testimony of the alleged victims -- and even contradict specific allegations made in those other complaints, filed by the same lawyer. For example, even though one of the new lawsuits alleges that the plaintiff's encounters with Mr. Epstein caused her "emotional injuries," this same woman admitted in her sworn statement to the state authorities that she brought her friends, including another one of the other civil plaintiffs, to Mr. Epstein's home after she herself had already been there. This woman's actions do not reflect the actions of a surprised and traumatized victim.

Also, we are concerned that you may be unaware of an important policy-laden issue and thus feel obligated to bring it to your attention. We briefly mentioned above the victim notification letter and now elaborate on that point. FAUSA Sloman and AUSA Villafana threatened to send a highly improper and unusual "victim notification letter" to all of the women on their list of alleged "victims." This letter was only halted by an eleventh hour appeal to AAG Fisher.

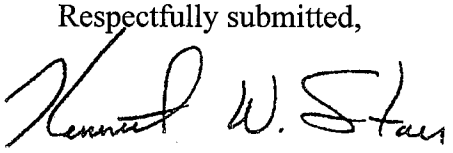
The letter expressly encouraged civil litigation against Mr. Epstein (a copy is available at your request), and as we have previously informed you, AUSA Villafana even tried to facilitate the retention of her own boyfriend's friend to represent the alleged "victims" at Mr. Epstein's expense. Indeed, although in the end this letter was not transmitted to any witnesses in this case, AUSA Villafana has admitted that shortly after Mr. Epstein signed the deferred prosecution agreement (which Ms. Villafana represented would remain confidential), *she notified three women on her list of so called "victims" of the general terms of the deferred prosecution agreement, including the terms relating to civil compensation.*

At every turn, as our own investigation continues, we see overreaching and questionable conduct by federal officials. At bottom, for reasons we have discussed with you, this is a state matter. Transmogrifying this into a federal criminal matter can only be done, as we have demonstrated, by stretching federal law and stretching the facts. Now, in the illuminating reality of unprecedented actions by federal prosecutors in Miami, we see a pattern of victimhood marketing. We see federal officials trumpeting the values of civil litigation, demanding (such as that by AUSA Villafana) that Mr. Epstein make, at a "minimum," a payment of $150,000 to each of the 34 women that the government has labeled as "victims," even though the federal prosecutors have freely acknowledged in writing that they cannot vouch for the veracity of the allegations of any of the alleged "victims."

It is with genuine concern for the bedrock integrity of our federal system that we state most emphatically: This is a state matter that was fully investigated and appropriately handled by the State of Florida, but one that has been seized upon, improperly, by federal enforcement officers and by a US Attorney's office that has chosen to leak confidential (and perhaps grand jury) information to the New York Times and then deny having done so.

This cries out for remediation. The Department of Justice has enormous power, which should be employed with honor and integrity — and reserved for matters that are properly within the federal sphere in what Justice Hugo Black called, simply, Our Federalism. The State of Florida should no longer be stymied in its enforcement of its own law.

Respectfully submitted,



Kenneth W. Starr

Attachment

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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April 8, 2008

BY ELECTRONIC MAIL
AND FEDERAL EXPRESS

Honorable Sigal P. Mandelker
Deputy Assistant Attorney General
United States Department of Justice
1400 New York Avenue, 6th Floor
Washington, DC 20530

Dear Ms. Mandelker:

As you continue, on behalf of the Assistant Attorney General, to assess the submission provided to you late last month, I am obliged to bring more formally to the Department's attention several profoundly important matters that go to the heart of the fairness of this investigation. From the outset, we have maintained that the subject matter of the federal investigation into Jeffrey Epstein, based on the principles of federalism, is quintessentially appropriate for state resolution. Conversely, this matter is wholly inappropriate for federal attention, much less federal prosecution. The State has responded aggressively to the facts at hand—in the form of a state felony disposition. The public interest is thus being fully vindicated by the experienced judgment of the duly elected state prosecutor, a state-empanelled grand jury and a state judge in Palm Beach County.

Unfortunately, we have witnessed prosecutors in the United States Attorney's Office in the Southern District of Florida (the "USAO") attempting to stretch the law and the facts to override the state action in this case. We have new evidence that goes directly to the core of whether there has been adherence to the fundamental principles of both fairness and even-handedness. We ask you, respectfully, to consider these unassailable new facts, as they are inextricably linked to the manner in which the prosecutors have *presented* the facts to you in this case.

As counsel for Mr. Epstein, we have previously brought to the attention of the USAO a clear violation of Departmental policy concerning disclosures that were made to the New York Times. In response, Mr. Sloman stated in writing that "Mr. Thomas was given, pursuant to his request, non-case specific information concerning specific federal statutes." February 27, 2008 Email from J. Sloman. However, we now know, and can prove, that Mr. Sloman's characterization of the nature of these disclosures is materially false.

The USAO has (at a minimum) violated the United States Attorney's Manual through providing case-specific, deeply factual, and highly injurious revelations to the New York Times.

Shortly before the recent wave of civil lawsuits filed by Jeffrey Herman (the former partner of First Assistant United States Attorney in Miami, Jeffrey Sloman), which ask for relief in the amount of $50 million each, Landon Thomas, a New York Times reporter, called the USAO and asked to speak about the Epstein investigation. Mr. Thomas was directed to David Weinstein, an Assistant United States Attorney who reports to FAUSA Sloman. Mr. Weinstein then had significant communications with Mr. Thomas, in which he revealed a great deal of confidential information.

These communications, which were not "off the record," constitute a clear breach of Departmental policy. Members of Mr. Epstein's defense team, including Jay Lefkowitz, have now had the opportunity to hear first-hand and review the contemporaneous notes of the conversations between the USAO and Mr. Thomas. We were shocked and deeply disappointed to learn that the reporter gained substantive and extensive knowledge about both the case and highly confidential aspects of the plea negotiations. For example, AUSA Weinstein told Mr. Thomas that Mr. Epstein had requested armed guards as one part of his plea proposal. According to Mr. Thomas, Mr. Weinstein also urged him "not to believe the spin of [Mr. Epstein's] high-priced attorneys" and that "[Mr. Epstein] does not have a defense, as sexual contact occurred." There is no need to belabor the obvious: this highly prejudicial conduct raises serious issues with respect to the impartiality and objectivity of those prosecutors who have been insisting upon the federalization of a quintessentially state matter.

Also, as you are aware, the terms of the Deferred Prosecution Agreement contain a highly irregular and unprecedented condition with reference to a civil remedy demanded as a condition to the deferral. Specifically, the Agreement requires Mr. Epstein to waive jurisdiction and liability under 18 U.S.C. § 2255 for the settlement of monetary claims that might be made by unidentified alleged victims who would be identified by the USAO at some point, but only after Mr. Epstein was sentenced. We have received an opinion from Joe D. Whitley, a former United States Attorney and Associate Attorney General (with oversight responsibilities over United States Attorneys around the country) regarding this provision. Based on his very considerable experience, the former Associate Attorney General concluded that the procedures and terms dictated by the USAO are both "without precedent" and wholly unorthodox. He further noted that the prosecutors' insistence on including § 2255 is "extremely problematic." This opinion, which I would urge you to consider in its totality, is available upon your request. Neither I, nor any of the other defense lawyers involved with this matter, have ever heard of such a procedure. Furthermore, as a part of this Agreement, Mr. Epstein is precluded from contesting liability as to civil lawsuits seeking monetary compensation for damages brought by any of the identified individuals who elect to settle their civil claims for the statutory minimum of $150,000 or some other agreed-upon higher amount. To add to the strange nature of the § 2255 provision—and the aggressive manner in which federal prosecutors interpret this provision—Mr. Epstein would also be required to pay for an attorney to represent the women if they choose to litigate against him.

Respectfully, federal criminal investigators and prosecutors should not be in the business of helping alleged victims of state crimes secure civil financial settlements as a condition precedent to entering non-prosecution or deferred prosecution agreements. This is especially true where the defendant is pleading to state crimes for which there exists a state statute allowing victims to recover damages. *See* Florida Statutes § 796.09. Despite the existence of a state statute that confers on victims a civil remedy, which truly eliminates the need for a waiver of liability under a federal statute, federal prosecutors inexplicably rejected the idea of employing the state restitution statute. Furthermore, 18 U.S.C. § 2255 is a civil statute implanted in the criminal code that (in contrast to all other criminal restitution statutes) fails to correlate payments to specific injuries or losses and instead presumes that victims under the statute have sustained damages of at least a minimum lump sum without regard to whether the complainants suffered actual medical, psychological or other forms of individualized harm. We understand that it is for this reason that 18 U.S.C. § 2255 has never before been employed in this manner in connection with a non-prosecution or deferred prosecution agreement. Furthermore, the requirement that a *criminal* defendant waive his rights as to *civil* settlement on which USAO insisted is also not a traditional aspect of criminal resolutions.

In addition to the irregular § 2255 provisions, a thematic emphasis on money remedies and private attorney compensation has characterized from the outset the federal prosecutors' demands. Indeed, it is apparent that Mr. Sloman and one of his subordinates, Ms. Ann Marie Villafana, have also been unusually active in encouraging civil litigation against Mr. Epstein. We have mapped out a chronological timeline of the questionable conduct in relation to this specific concern and would be happy to make it available upon your request. However for illustrative purposes, I cite only one example below.

The sudden recent involvement of Mr. Sloman's former law firm—a boutique firm with very few partners—chosen by several of the alleged victims out of all the hundreds of attorneys available in South Florida raises serious issues of at least an appearance that disinterestedness is lacking. It appears that around the same time that Mr. Epstein's defense team was addressing the Deferred Prosecution Agreement with FAUSA Sloman and AUSA Villafana, Mr. Sloman's former law partner—Jeffrey Herman—was recruiting potential plaintiffs for civil litigation against Mr. Epstein.* Furthermore, when Mr. Sloman first learned that counsel for Mr. Epstein had begun to interview some of the alleged victims, Mr. Sloman demanded that Mr. Epstein's counsel desist from contacting the potential plaintiffs. November 5, 2007 Letter from J. Sloman ("there will be no further efforts to contact any victims"). Unfortunately, the representation of

* As recently as one month ago, Mr. Sloman's name was still prominently listed as a part of his former law firm on the public Florida Bar website. Florida State Bar Website.

several of these women by Mr. Herman's law firm, at a minimum, calls into serious question the motivation for objecting to such communications. Although prosecutors previously had assured Mr. Epstein's counsel that the terms of the Deferred Prosecution Agreement would "be kept confidential," (September 24, 2007 Email from M. Villafana), the same prosecutors have recently admitted to disclosing the Agreement's general terms to "three victims" only shortly after the Agreement was signed. December 13, 2007 Letter from M. Villafana.

I am constrained to conclude that the actions of Ms. Villafana and Mr. Sloman call into question the "appearance of impropriety" that federal law and Department policy are intended to prevent. *See* 5 C.F.R. § 2635.702 ("An employee shall not use his public office ... for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity . . .To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a nongovernmental capacity shall comply with [5 C.F.R.] § 2635.502.").

I respectfully submit that the conduct of the USAO in Miami should be carefully reviewed. The decisions of that Office have been tainted by unprofessional means, directed against Jeffrey Epstein, seemingly with the objective of casting him in highly unfavorable light with the leading newspaper in the United States.

We stand ready to support, with documentation, the issues raised in this letter, either in a full submission or in a meeting, if you believe either would be helpful.

Respectfully submitted,

Kenneth W. Starr

GOVERNMENT

EXHIBIT

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U.S. Department of Justice

Criminal Division

Andrew G. Oosterbaan, Chief

Child Exploitation and Obscenity Section

1400 New York Avenue, NW
Suite 600
Washington, DC 20530
(202) 514-5780 FAX: (202) 514-1793

May 15, 2008

Jay Lefkowitz, Esq.
Kirkland & Ellis LLP
Citigroup Center
153 E. 53rd St.
New York, NY 10022-4611

Re: *Investigation of Jeffery Epstein*

Dear Mr. Lefkowitz:

Pursuant to your request and the request of U.S. Attorney R. Alexander Acosta, we have independently evaluated certain issues raised in the investigation of Jeffrey Epstein to determine whether a decision to prosecute Mr. Epstein for federal criminal violations would contradict criminal enforcement policy interests. As part of our evaluation, we have reviewed letters written on behalf of Mr. Epstein on February 1, 2007, June 25, 2007, July 6, 2007, March 28, 2008, April 8, 2008, April 28, 2008, and May 14, 2008, with their attachments. We have also reviewed memos prepared by the U.S. Attorney's Office. As you will recall, we met with you and other representatives of Mr. Epstein to further discuss your views on the propriety of a federal prosecution. We have discussed the factual and legal issues you raise with the Criminal Division's Appellate Section, and we consulted with the Office of Enforcement Operations concerning the petite policy.

We are examining the narrow question as to whether there is a legitimate basis for the U.S. Attorney's Office to proceed with a federal prosecution of Mr. Epstein. Ultimately, the prosecutorial decision making authority within a U.S. Attorney's Office lies with the U.S. Attorney. Therefore, to borrow a phrase from the case law, the question we sought to answer was whether U.S. Attorney Acosta would abuse his discretion if he authorized prosecution in this case.

As you know, our review of this case is limited, both factually and legally. We have not looked at the entire universe of facts in this case. It is not the role of the Criminal Division to re-conduct a complete factual inquiry from scratch. Furthermore, we did not analyze any issues concerning prosecution under federal statutes that do not pertain to child exploitation, such as the money laundering statutes.

As was made clear at the outset, we did not review the facts, circumstances, or terms included in the plea offer, nor any allegations that individuals involved in the investigation engaged in misconduct. Despite that agreement, we note that your letters of April 8, April 28, and May 14 focus in large part on accusations of investigative or prosecutorial misconduct. Not only do allegations of prosecutorial misconduct fall outside the boundary of our agreed review, they also fall outside the authority of the Criminal Division in the first instance. Simply, the Criminal Division does not investigate or resolve allegations of professional misconduct by federal prosecutors. For these reasons, we do not respond to the portion of those letters that discuss alleged misconduct.

Based on our review of all of these materials, and after careful consideration of the issues, we conclude that U.S. Attorney Acosta could properly use his discretion to authorize prosecution in this case. We will briefly address each of the issues that you have raised.

Knowledge of age. Federal child exploitation statutes differ as to whether there must be proof that the defendant was aware that the children were under the age of 18. However, even for those statutes where knowledge of age is an element of the offense, it is possible to satisfy that element with proof that the defendant was deliberately ignorant of facts which would suggest that the person was a minor. For that reason, the fact that some of the individuals allegedly lied to Mr. Epstein about their age is not dispositive of the issue. While there may be an open factual issue as to Mr. Epstein's knowledge, we cannot say that it would be impossible to prove knowledge of age for any such charges which require it. Therefore, Mr. Acosta could rightfully conclude that this factual issue is best resolved by a jury.

Travel for the purpose. In the materials you prepared, you suggest that Mr. Epstein should not be charged with violating 18 U.S.C. § 2423(b) because his dominant purpose in going to Florida was not to engage in illegal sexual activity, but rather to return to one of his residences. While we fully understand your argument, we also find that the U.S. Attorney's office has a good faith basis fully to develop the facts on this issue and brief the law to permit a court to decide whether the law properly reaches such conduct. Mr. Acosta would not be abusing his discretion if he decided to pursue such a course of action.

Intent to engage in the conduct at the time of travel. Based on our review of the facts of this case, we respectfully disagree that there is no evidence concerning Mr. Epstein's intent when he traveled, and when that intent was formed. Should Mr. Acosta elect to let the case proceed so that a jury can resolve this factual issue, he would be within his discretion to do so.

Use of a facility or means of interstate or foreign commerce. Much of the materials you have prepared and much of the meeting we had focused on 18 U.S.C. § 2422(b), specifically your contention that Mr. Epstein did not use the phone to coerce anyone to engage in illegal sexual activity. We understand the issue you raise concerning the statutory interpretation. As before, however, we cannot agree that there is no evidence that would support a charge under Section 2422(b), nor can we agree that there is no argument in support of the application of that statute to this case. Finally, our assessment is that the application of that statute to these facts would not be

so novel as to implicate the so-called "clear statement rule," the *Ex Post Facto* clause, or the Due Process clause. As with the other legal issues, Mr. Acosta may elect to proceed with the case.

Absence of coercion. With respect to 18 U.S.C. § 1591, the alleged absence of the use of force, fraud, or coercion is of no moment. The statute does not require the use of force, fraud, and coercion against minors. Because of their age, a degree of coercion is presumed. In your materials, you note that the statute requires that the minors must be "caused" to engage in a commercial sex act, further arguing that the word "cause" suggests that a certain amount of undue influence was used. We reject that interpretation, as it would read back into the offense an element–coercion–that Congress has expressly excluded. We have successfully prosecuted defendants for the commercial sexual exploitation of minors, even when the minors testified that not only did they voluntarily engage in the commercial sex acts, it was their idea to do so. As such, Mr. Acosta could properly decide to pursue charges under Section 1591 even if there is no evidence of coercion.

More broadly, a defendant's criminal liability does not hinge on his victim identifying as having suffered at his hands. Therefore, a prosecution could proceed, should Mr. Acosta decide to do so, even though some of the young women allegedly have said that they do not view themselves as victims.

Witness credibility. As all prosecutors know, there are no perfect witnesses. Particularly in cases involving exploited children, as one member of your defense team, Ms. Thacker, surely knows from her work at CEOS, it is not uncommon for victim-witnesses to give conflicting statements. The prosecutors are in the best position to assess the witness's credibility. Often, the prosecutor may decide that the best approach is to present the witness, let defense counsel explore the credibility problems on cross-examination, and let the jury resolve the issue. Mr. Acosta would be within his authority to select that approach, especially when here there are multiple, mutually-corroborating witnesses.

Contradictions and omissions in the search warrant application. We have carefully reviewed the factual issues you raise concerning the search warrant application. For a search warrant to be suppressed, however, the factual errors must be material, and the officers must not have proceeded in good faith. Despite the numerous factual errors you describe, the U.S. Attorney's Office could still plausibly argue that the mistakes–whether inadvertent or intentional–were not material to the determination that probable cause existed for a search, and that the search was in good faith in any event. As such, Mr. Acosta could properly elect to defend the search warrant in court rather than forego prosecution.

Petite Policy: After reviewing the petite policy and consulting with the Office of Enforcement Operations ("OEO"), we conclude that the petite policy does not prohibit federal prosecution in this case. According to the U.S. Attorney's Manual, the petite policy "applies whenever there has been a prior state or federal prosecution resulting in an acquittal, a conviction, including one resulting from a plea agreement, or a dismissal or other termination of

the case on the merits after jeopardy has attached." USAM 9-2.031(C). Our understanding is that the state case is still pending. As such, the procedural posture of the state case does not implicate the petite policy.

We recognize that the petite policy could be triggered if the state case concluded after a federal indictment was issued but prior to the commencement of any federal trial. *Id.* However, the policy "does not apply ... where the [state] prosecution involved only a minor part of the contemplated federal charges." USAM 9-2.031(B). Based on our understanding of the possible federal charges and existing state charges, we do not think the petite policy would be an issue should federal proceedings take place.

Federalism and Prosecutorial Discretion. All of the above issues essentially ask whether a federal prosecution *can* proceed. We understand, however, that you also ask whether a federal prosecution *should* proceed, even in the event that all of the elements of a federal offense could be proven. On this issue, you raised two arguments: that the conduct at issue here is traditionally a state concern because the activity is entirely local, and that the typical prosecution under federal child exploitation statutes have different facts than the ones implicated here. You have essentially asked us to look into whether a prosecution would so violate federal prosecutorial policy that a United States Attorney's Office should not pursue a prosecution. We do not think that is the case here for the following reasons.

Simply, the commercial sexual exploitation of children is a federal concern, even when the conduct is local, and regardless of whether the defendant provided the child (the "pimp") or paid for the child (the "john"). In your materials, you refer to a letter sent by the Department of Justice to Congress in which the Department expresses concern over the expansion of federal laws to reach almost all instances of prostitution. In that portion of the letter, the Department was expressly referring to a proposed federal law that reach adult prostitution where no force, fraud, or coercion was used. Indeed, the point being made in that letter is that the Department's efforts are properly focused on the commercial sexual exploitation of children and the exploitation of adults through the use of force, fraud, or coercion. As such, there is no inconsistency between the position taken in that letter and the federal prosecution of wholly local instances of the commercial sexual exploitation of children.

If Congress wanted to limit the reach of federal statutes only to those who profit from the commercial sexual exploitation of children, or only to those who actually traffic children across state lines, it could have done so. It did not. Finally, that a prosecution of Mr. Epstein might not look precisely like the cases that came before it is not dispositive. We can say with confidence that this case is consistent in principle with other federal prosecutions nationwide. As such, Mr. Acosta can soundly exercise his authority to decide to pursue a prosecution even though it might involve a novel application of a federal statute.

Conclusion. After carefully considering all the factual and legal issues raised, as well as the arguments concerning the general propriety of a federal case against Mr. Epstein on these

facts, we conclude that federal prosecution in this case would not be improper or inappropriate. While you raise many compelling arguments, we do not see anything that says to us categorically that a federal case should not be brought. Mr. Acosta would not be abusing his prosecutorial discretion should he authorize federal prosecution of Mr. Epstein.

Sincerely yours,

Andrew G. Oosterbaan
Chief

cc: AAG Alice S. Fisher
DAAG Sigal P. Mandelker
U.S. Attorney R. Alexander Acosta

GOVERNMENT

EXHIBIT

I

U.S. Department of Justice

Washington, D.C. 20530

June 23, 2008

Jay Lefkowitz, Esq.
Kenneth Starr, Esq.
Kirkland and Ellis LLP
777 South Figueroa Street
Los Angeles, CA 90017

Gentlemen:

This Office has completed a thorough review of the U.S. Attorney's handling of the matter involving your client, Jeffrey Epstein. We have received and reviewed your letters of May 19, June 3 and June 19, 2008, the attachments to the June 19 letter, as well as your submissions to the Criminal Division and the U.S. Attorney's Office. Additionally, we have reviewed an extensive set of materials provided by the U.S. Attorney's Office and conferred with a number of highly experienced Department attorneys about this matter. The Deputy Attorney General has also been briefed.

As you know, the Department of Justice vests considerable discretion in its U.S. Attorneys, and the Deputy Attorney General will intervene in only the most unusual of circumstances. We do not believe such intervention is warranted here. Even if we were to substitute our judgment for that of the U.S. Attorney, we believe that federal prosecution of this case is appropriate. Moreover, having reviewed your allegations of prosecutorial misconduct, and the facts underlying them, we see nothing in the conduct of the U.S. Attorney's Office that gives us any reason to alter our opinion.

Sincerely,

John Roth
Senior Associate Deputy Attorney General

cc: Alex Acosta

GOVERNMENT

EXHIBIT

J

U.S. Department of Justice
Federal Bureau of Investigation
FBI - West Palm Beach
Suite 500
505 South Flagler Drive
West Palm Beach, FL 33401
Phone: (561) 833-7517
Fax: (561) 833-7970

January 10, 2008

[redacted]
Royal Palm Beach, FL

Re: Case Number: 31E-MM-108062

Dear [redacted]:

This case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation.

As a crime victim, you have the following rights under 18 United States Code § 3771: (1) The right to be reasonably protected from the accused; (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused; (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding; (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding; (5) The reasonable right to confer with the attorney for the Government in the case; (6) The right to full and timely restitution as provided in law; (7) The right to proceedings free from unreasonable delay; (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

We will make our best efforts to ensure you are accorded the rights described. Most of these rights pertain to events occurring after the arrest or indictment of an individual for the crime, and it will become the responsibility of the prosecuting United States Attorney's Office to ensure you are accorded those rights. You may also seek the advice of a private attorney with respect to these rights.

The Victim Notification System (VNS) is designed to provide you with direct information regarding the case as it proceeds through the criminal justice system. You may obtain current information about this matter on the Internet at WWW.Notify.USDOJ.GOV or from the VNS Call Center at 1-866-DOJ-4YOU (1-866-365-4968) (TDD/TTY: 1-866-228-4619) (International: 1-502-213-2767). In addition, you may use the Call Center or Internet to update your contact information and/or change your decision about participation in the notification program. If you update your information to include a current email address, VNS will send information to that address. You will need the following Victim Identification Number (VIN) '1941737' and Personal Identification Number (PIN) '5502' anytime you contact the Call Center and the first time you log on to VNS on the Internet. In addition, the first time you access the VNS Internet site, you will be prompted to enter your last name (or business name) as currently contained in VNS. The name you should enter is Wild.

If you have additional questions which involve this matter, please contact the office listed above. When you call, please provide the file number located at the top of this letter. Please remember, your participation in the notification part of this program is voluntary. In order to continue to receive notifications, it is your responsibility to keep your contact information current.

Sincerely,

Twiler Smith

Twiler Smith
Victim Specialist

U.S. Department of Justice
Federal Bureau of Investigation
FBI - West Palm Beach
Suite 500
505 South Flagler Drive
West Palm Beach, FL 33401
Phone: (561) 833-7517
Fax: (561) 833-7970

January 10, 2008

James Elsenberg
One Clearlake Center Ste 704 Australian South
West Palm Beach, FL 33401

Re: Case Number: 31E-MM-108062

Dear James Elsenberg:

You have requested to receive notifications for [redacted].

This case is currently under investigation. This can be a lengthy process and we request your continued patience while we conduct a thorough investigation.

As a crime victim, you have the following rights under 18 United States Code § 3771: (1) The right to be reasonably protected from the accused; (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused; (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding; (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding; (5) The reasonable right to confer with the attorney for the Government in the case; (6) The right to full and timely restitution as provided in law; (7) The right to proceedings free from unreasonable delay; (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

We will make our best efforts to ensure you are accorded the rights described. Most of these rights pertain to events occurring after the arrest or indictment of an individual for the crime, and it will become the responsibility of the prosecuting United States Attorney's Office to ensure you are accorded those rights. You may also seek the advice of a private attorney with respect to these rights.

The Victim Notification System (VNS) is designed to provide you with direct information regarding the case as it proceeds through the criminal justice system. You may obtain current information about this matter on the Internet at WWW.Notify.USDOJ.GOV or from the VNS Call Center at 1-866-DOJ-4YOU (1-866-365-4968) (TDD/TTY: 1-866-228-4619) (International: 1-502-213-2767). In addition, you may use the Call Center or Internet to update your contact information and/or change your decision about participation in the notification program. If you update your information to include a current email address, VNS will send information to that address. You will need the following Victim Identification Number (VIN) '1941741' and Personal Identification Number (PIN) '7760' anytime you contact the Call Center and the first time you log on to VNS on the Internet. In addition, the first time you access the VNS Internet site, you will be prompted to enter your last name (or business name) as currently contained in VNS. The name you should enter is Elsenberg.

If you have additional questions which involve this matter, please contact the office listed above. When you call, please provide the file number located at the top of this letter. Please remember, your participation in the notification part of this program is voluntary. In order to continue to receive notifications, it is your responsibility to keep your contact information current.

Sincerely,

Twiler Smith

Twiler Smith
Victim Specialist

GOVERNMENT

EXHIBIT

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November 28, 2007

VIA FACSIMILE

Honorable Alice S. Fisher
Assistant Attorney General
Department of Justice
Criminal Division
950 Pennsylvania Avenue NW
Room 2107
Washington, DC 20530

Re: *Jeffrey Epstein*

Dear Ms. Fisher:

I represent Jeffrey Epstein, who, as you may be aware, was the target of a dual investigation by both state and federal authorities in Florida for acts relating to his interactions with numerous young women. As you may also be aware, Mr. Epstein has entered into a Deferred Prosecution Agreement (the "Agreement") with the United States Attorney's Office for the Southern District of Florida (the "USAO") to resolve its criminal investigation of him. I am writing to request a meeting with you to discuss certain aspects of this case that I find especially troublesome.

As part of the agreement Mr. Epstein was required to sign to avoid a federal indictment, Mr. Epstein was required to waive jurisdiction and liability under 18 U.S.C. §2255 for the settlement of monetary claims that might be made by a group of unidentified alleged victims who will be identified by the USAO at some point in the future. Neither I, nor any of the other defense lawyers involved in this matter, have ever heard of such a procedure. And as part of this Agreement, Mr. Epstein is precluded from contesting liability as to civil lawsuits seeking monetary compensation for damages brought by any of the identified individuals who elect to settle their civil claims for the statutory minimum of either $50,000 (the amount set by Congress as of the date of the occurrences) or $150,000 (the amount currently set by statute) or some other agreed upon damage amount. We believe that the utilization of 18 U.S.C. § 2255 as a pre-condition of criminal plea agreements or non-prosecution agreements is highly unusual and requires careful consideration and additional guidance by your Office. We also believe that the

manner in which the USAO has interpreted the settlement process for these identified individuals under the Agreement requires guidance. These areas are more fully detailed below.*

First. Federal criminal investigators and prosecutors should not be in the business of promoting civil lawsuits as a condition precedent to entering non-prosecution or deferred prosecution agreements. This is especially true where the vehicle for the financial settlement under the Agreement requires payment in a lump sum without requiring proof of actual injury or loss — federal authorities should therefore be particularly sensitive to avoid causing a prejudiced and unfair result. 18 U.S.C. § 2255 is a civil statute implanted in the criminal code; in contrast to all other criminal restitution statutes, § 2255 fails to correlate payments to specific injuries or losses. Instead, the statute presumes that victims have sustained damages of at least a minimum lump sum without regard to whether the complainants suffered actual medical, psychological or other forms of individualized harm. We presume that it is for this reason that 18 U.S.C. § 2255 has never before been employed in this manner in connection with a non-prosecution or, as here, a deferred prosecution agreement. In short, the USAO is operating in uncharted territory.

Second. 18 U.S.C. § 2255 creates the potential for compromising witness testimony. Although generally the Government may promise or provide traditional consideration to potential witnesses, employing a civil statute that promises a lump sum payment to potential witnesses without proof of actual liability or damage provides an extraordinary incentive that is incompatible with the truth-seeking functions of the criminal justice system. Guidelines or other policy directives should be considered to control the extent to which witnesses are informed by investigators about the availability of such financial windfalls. Additionally, an inquiry is necessary in this specific case to assure that disclosures to potential witnesses did not undermine the reliability of the results of the federal criminal investigation of Mr. Epstein.

Third. The USAO has provided no information as to the specific claims made by each identified individual, nor were we provided the names or ages of those individuals or the time-frame of the alleged conduct. The USAO's reluctance to provide Mr. Epstein with *any* information with respect to the allegations against him leaves wide open the opportunity for misconduct by federal investigators. In addition, this information vacuum eliminates the ability for Mr. Epstein and/or his agents to verify that the allegations at issue are grounded in real evidence. Indeed, the requirement that a target of federal criminal prosecution agree to waive his right to contest liability as to *unnamed* civil complainants creates at minimum an appearance of injustice, both because of the obvious Due Process concerns of waiving rights without notice of

* In addition to the areas identified below, it was and remains our position that federal prosecution of this matter is entirely inappropriate based on the prior application and legislative histories of the relevant federal statutes.

even the identity of the complainant(s) and because of the involvement of the federal criminal justice system in civil settlements between private individuals.

Fourth. The USAO has improperly insisted that the chosen attorney representative should be able to litigate the claims of individuals, which violates the terms of the Agreement and deeply infringes upon the spirit and nature of the Agreement. Initially, for the sake of expediting a settlement in this matter, we suggested that Mr. Epstein establish a restitution fund specifically for the settlement of the identified individuals' civil claims and that an impartial, independent representative be appointed to administer that fund. Notably, such a restitution fund was created in a federal case, *U.S. v. Boehm*, Case No. 3:04CR00003 (D. Alaska 2004). The federal prosecutors here rejected this idea, and they insisted that an attorney representative, paid for by Mr. Epstein, be appointed. Yet, there was no suggestion at the time that the attorney representative's duties included litigating claims on behalf of the identified individuals. However, after the parties agreed to the appointment of an attorney representative, the prosecutors announced that the criteria for choosing an appropriate attorney representative now included that the individual be "a plaintiff's lawyer capable of handling multiple lawsuits against high profile attorneys." This interpretation of the scope of the attorney representative's role is far outside the common understanding that existed when we negotiated Mr. Epstein's settlement with the USAO. Furthermore, we firmly believe that ethics rules preclude the representative from litigating claims on behalf of the identified individuals.

In sum, we believe that the actions undertaken in this matter by the USAO with respect to the 18 U.S.C. § 2255 provisions of the Agreement are highly unusual. We respectfully request a meeting with you at your earliest convenience to discuss the important issues raised by the USAO's conduct in this deeply policy-laden matter.

Sincerely,

Kenneth W. Starr

GOVERNMENT

EXHIBIT

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December 11, 2007

VIA FACSIMILE (305) 530-6444

Honorable R. Alexander Acosta
United States Attorney
United States Attorney's Office
Southern District of Florida
99 NE 4th Street
Miami, FL 33132

Re: Jeffrey Epstein

Dear Alex:

I appreciate the opportunity you have provided to review some of the issues and concerns of Mr. Epstein's defense team. Importantly, I appreciate your agreement that this submission would neither be understood by you as constituting a breach of the Non-Prosecution Agreement ("Agreement") nor result in any unwinding of the Agreement by your Office. Implicit in this agreement is the understanding that I can share with you our concerns and request a review on the basis for these concerns, while at the same time assure my client that this submission will not in any respect result in formal or informal repercussions or attempts by any member of the prosecution or investigative team to involve themselves to Mr. Epstein's detriment in any matter related to the Agreement, particularly in the state prosecution. This letter is intended to support our assertion to you that the manner in which both the investigation of allegations against Mr. Epstein and the resolution thereof were highly irregular and warrant a full review. We appreciate your willingness to consider the evidence. We respectfully request that you review Judge Stern's letter to Alan Dershowitz, faxed to you on December 7, 2007, in connection with the concerns we set forth in this submission.

I. FEDERAL INVESTIGATORS RELIED UPON TAINTED EVIDENCE.

We have serious concerns that the summaries of the evidence that have been presented to you have been materially inaccurate. As you may know, the principal witnesses in this case were first interviewed by Detective Recarey of the Palm Beach Police Department (the "PBPD") and other state law enforcement officers. These interviews (the "witness statements") were often tape-recorded thus providing a verbatim and detailed record of the recollections of the witnesses at a point in time prior to any federal involvement. Unfortunately, the police report authored by Detective Recarey and certain affidavits executed by him contained both material misstatements

KIRKLAND & ELLIS LLP

regarding the specifics of what he was told by his witnesses and also contained omissions of critical and often exculpatory information that was recorded verbatim during the taped interview sessions. The federal investigation involved interviews with many of the same witnesses. We are aware that at least one federal interview ([redacted]) was recorded.

We understand that Detective Recarey provided his police report and certain affidavits to the federal authorities but did not provide the actual witness statements of the taped interviews to your Office or to the FBI. These witness statements constitute the best evidence available (they are verbatim and earlier in time to the federal interviews), and they contain statements that are highly exculpatory to Mr. Epstein. Because understanding the compromised nature of the "evidence" against Mr. Epstein is key to a proper view of this case, we summarize it in detail below.

A. <u>The Witness Statements Establish That Mr. Epstein Did Not Target Masseuses Under 18.</u>

Indeed, the witness statements demonstrate that the opposite is true. First, the evidence shows that the many of the masseuses were eighteen or over, including [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted] at the time they visited Mr. Epstein's home. Also, there is substantial evidence, found in the sworn statements of the women themselves, which indicate that, to the extent others were in fact under the age of eighteen, many affirmatively lied about her age. As [redacted] herself told the PBPD: "[redacted] told me to say I was 18 because [redacted] said . . . if you're not then he [Epstein] won't really let you in his house. So I said I was 18". Detective Recarey, however, largely ignored these critical admissions in his Police Report and Probable Cause Affidavit.

- [redacted]

  Q: At any time, did he speak to you and does he know how old you are? Did he know how old you were?

  A: . . .As a mater of fact, [redacted] told me to say I was 18 because [redacted] said tell him you're 18 because if you're not, then he won't really let you in his house. So I said I was 18. As I was giving him a massage, he's like, how old are you? And then I was like 18. But I kind of said it really fast because I didn't want to make it sound like I was lying or anything. (Sworn Statement of 3/15/05).

- [redacted]

  Q: Did he ask you your age?

  A: Yeah, I told him I was 18. (Sworn Statement of 10/05/05).

- [redacted]:

Q: Did he know your age?

A: I don't think -- I think he did. [redacted] was like oh, well if they ask you how old are you just say you're 18 but he never asked me how old I was. I thought you had to be 18 to give a massage (inaudible). (Sworn Statement of 12/13/05)

- [redacted]:

A: We were supposed to say we were 18.

Q: Who told you that, to say that?

A: [redacted] (Sworn Statement of 11/8/05).

- [redacted]

A: I told him I was 18. (Sworn Statement of 10/3/05).

- [redacted] **concerning** [redacted]

Well with [redacted] I don't know how old she is because she lied about her age. She lied to me when I first met her. When I was 18 she told me she was 18. (Inaudible.) Well she left her purse at my house and she told me to make sure that I didn't look in her purse. When I went through her purse I found her state license that said she was 16 so she lied to me about her age. (Sworn Statement of 10/03/05).[1]

- [redacted]

Q: Now, how old were you when you first started going there?

A: Eighteen. I'm 19 now this last March." (Sworn Statement of 10/12/05).

- [redacted]:

Q: And all this occurred when you were 18 though?

---

[1] In addition to giving a sworn statement at the PBPD Station, [redacted] conversations with Detective Reearey while being transported to and from the station were also recorded. This excerpt is taken from the recording of [redacted] traveling from the station.

A: Uh-huh. I had been 18 for like 8 months, nine months already. My birthday is in June so I had been 18 for a while. (Sworn Statement of 2/3/05).

- [redacted]:

Q: Okay. How old are you now? You're -

A: I'm 20

Q: You're 20. So a couple months ago you would have been what, 19?

A: Uh-huh.

Q: Alright. So July, August you would have been 19, 20. On the verge of 20?

A: Uh-huh. (Sworn Statement of 11/4/05)

We believe that other witnesses have similarly told the FBI that Mr. Epstein attempted to monitor the ages of the masseuses who came to his home. We further believe that these transcripts would show that the federal interest in prosecuting Mr. Epstein for paradigmatic state offenses was far less compelling than the inaccurate police reports suggest.

B. Detective Recarey Made Crucial Misstatements in the Police Report and Probable Cause Affidavits.

We have reviewed the sworn and recorded witness statements of many of the individuals who were interviewed (conducted in person or by telephone) as well as a number of the controlled calls cited in the Police Report. Time after time, we found statements in the Police Report attributed to statements made in the sworn recordings that either simply were not said, or in some instances, are flatly contradicted, by the witness who purportedly made the statement. In fact, they often stand in stark contrast to representations made by Detective Recarey in both the official Police Report and in affidavits signed by him under oath . We highlight the most significant ones identified to date:

- [redacted] ***Did Not*** **Report that Epstein Told Her to Lie About her Age**

The Probable Cause Affidavit indicates that during her sworn statement "[redacted] advised that during her frequent visits Epstein asked for her real age. [redacted] stated she was sixteen [and that] Epstein advised her not to tell anyone her real age." Arrest Probable Cause Affidavit at 11. That statement appears nowhere in [redacted] sworn statement.

- [redacted] ***Did Not* State that Epstein Photographed Her Having Sex**

  Detective Recarey also reports [redacted] as claiming that "Epstein would photograph Marcinkova and her naked and having sex and proudly display the photographs within the home." *Id.* at 12. Again, this statement is not in [redacted] sworn statement. To the contrary, the transcript reflects that [redacted] stated: "I was just like, it was me standing in front of a big white marble bathtub . . . in the guest bathroom in his master suite. And 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 was me kind of looking over my shoulder kinda smiling, and that was that." Sworn Statement of 10/11/05 at 35.[2]

- [redacted] **Said Epstein *Did Not* Touch Her Inappropriately**

  Detective Recarey recounts that [redacted] advised that "Epstein grabbed her buttocks and pulled her close to him." Probable Cause Affidavit at 6. *See also*, Police Report (10/07/05) at 30 (same). [redacted] never made this statement. In fact, when Detective Recarey asked, "He did not touch you inappropriately?" [redacted] responded, "No." Sworn Statement of 10/04/05 at 11.

- [redacted] ***Was Not* Sixteen When She First When to Epstein's Home.**

  Detective Recarey states: "[redacted] also stated she was sixteen years old when she first went to Epstein's house". Incident Report at 52. However, [redacted] affirmatively states that she was seventeen when she first went to Epstein's home: "Q: Okay. How old were you when you first went there? A: Seventeen. Q: Seventeen. A: And I was 17 the last time I went there too. I turned 18 this past June". Sworn Statement of 11/14/05.

- [redacted] **Told Detective Recarey that Epstein *Did Not* Take out Sex Toys.**

  The Probable Cause Affidavit indicates that [redacted] stated, "Epstein would use a massager/vibrator, which she described as white in color and a large head. Epstein would rub the vibrator/massager on her vaginal area as he would masturbate." Probable Cause Affidavit at 14; *see also* Police Report (11/10/05) at 49 ("Epstein would use a massager/vibrator, which she described as white in color with a large head, on her."). This statement appears nowhere in the transcript of [redacted] sworn

[2] [redacted] was interviewed by Detective Recarey twice, once by telephone, and once in person. The portions of the Police Report to which we refer specifically cite the in-person interview of [redacted] as the source for the information reported. We have reviewed the recording of that interview and base the comparison on that review. We have never heard a recording of the telephone interview.

statement. In fact, when Detective Recarey asked whether Mr. Epstein had "ever take[n] out any toys," [redacted] responded, "No." Sworn Statement of 11/08/05 at 17.

- [redacted] **Did *Not* Recall Mr. Epstein Masturbating**

Detective Recarey recounts that [redacted] "advised she was sure [Mr. Epstein] was masturbating based on his hand movements going up and down on his penis area." Probable Cause Affidavit at 8. *See also* Police Report (10/07/05) at 35 (same). Detective Recarey's account is in direct contradiction to [redacted] true statement, specifically:

Q: Okay did he ever take off – did he ever touch himself?

A: I don't think so.

Q: No. Did he ever masturbate himself in front of you?

A: I don't remember him doing that. He might have but I really don't remember. (Sworn Statement of 10/05/05 at 7).

- **Juan Alessi Stated that *Only One* Girl Looked Young**

Police Report at 57: "Alessi stated that towards the end of his employment, the masseuses were younger and younger". However, he said no such thing:

Q: Did they seem young to you?

A. No, sir. Mostly no. We saw one or two young ones in the last year. Before that, it was all adults . . . I remember one girl was young. We never asked how old she was. It was not in my job . . . But I imagine she was 16, 17". (Sworn Statement of 11/21/05)

C. Detective Recarey Made Material Omissions in the Police Report.

In addition to the misstatements in the Police Report and Probable Cause Affidavit as to the evidentiary record, there were also material omissions, both of facts known to the PBPD and also of facts not known to the PBPD, though known by the State Attorney. In the latter instance, the lack of knowledge was the result of the PBPD's refusal to receive the exculpatory evidence. In fact, they refused to attend a meeting called by the State Attorney specifically to provide the relevant evidence. Thus, the Police Report and Probable Cause Affidavit only offer a skewed view of the facts material to this matter. Examples follow.

1. ***The Video Surveillance Equipment Located in Mr. Epstein's Office and Garage.*** Both the Police Report (at 43) and the Probable Cause Affidavit (at 18) make

particular mention of the "discovery" of video surveillance equipment (or "covert cameras" as they are called) in Epstein's garage and library/office. Inclusion of this information insinuates a link between the equipment and the events at issue: in the Probable Cause Affidavit Detective Recarey states, "on the first floor of the [Epstein] residence I [Detective Recarey] found two covert cameras hidden within clocks. One was located in the garage and the other located in the library area on a shelf behind Epstein's desk . . . The computer's hard drive was reviewed which showed several images of [redacted] and other witnesses that have been interviewed. All of these images appeared to come from the camera positioned behind Epstein's desk". *See* Probable Cause Affidavit at 18.

Clearly omitted from both the Police Report and the Probable Cause Affidavit is the fact that the PBPD, and specifically Detective Recarey, knew about the cameras since they were installed in 2003, *with the help of the PBPD*, to address the theft of cash from Epstein's home. This fact is detailed in a Palm Beach Police Report prepared in October 2003 detailing the thefts, the installation of video equipment, the video recording capturing Juan Alessi (Mr. Epstein's then house manager) "red handed", and the incriminating statements made by Alessi when he was confronted at the time. *See* Alessi Police Report at 5, 8. The contemporaneous police report confirms the fact that the video footage was turned over to Detective Recarey himself.

2. ***Polygraph Examination and Report.*** On May 2, 2006, Mr. Epstein submitted to a polygraph examination by George Slattery, a highly respected polygraph examiner who is regularly used by the State Attorney. The examination was done at a time when we were told that the sole focus of the investigation was the conduct with [redacted]

Mr. Epstein was asked (a) whether he had "sexual contact with [redacted]" (b) whether he "in anyway threaten[ed] [redacted]" (c) whether he was told by [redacted] "that she was 18 years old"; and (d) whether he "believed [redacted] was 18 years old". As set forth in the Report of the examination, the term "sexual contact" was given an extremely broad meaning in order to capture any inappropriate conduct that could have occurred.[3] The results of the examination confirmed that (i) no such conduct occurred; (ii) Mr. Epstein never threatened [redacted]; (iii) [redacted] told Mr. Epstein she was 18 years old; and (iv) Mr. Epstein believed [redacted] was 18 years old.

[3] The definition included: "sexual intercourse, oral sex acts (penis in mouth or mouth on vagina), finger penetration of the vagina, finger penetration of the anus, touching of the vagina for sexual gratification purposes, touching of the penis for sexual gratification purposes, masturbation by or to another, touching or rubbing of the breasts, or any other physical contact involving sexual thoughts and/or desires with another person".

3. ***Broken "Sex Toys" in Mr. Epstein's Trash.*** The Police Report details the police finding in Mr. Epstein's trash what is described as broken pieces of a "sex toy" and that this "discovery" purportedly corroborated witness statements. Omitted from both the Police Report and the Probable Cause Affidavit is the fact that during the course of executing the search warrant in Epstein's home, the police discovered the other piece of that key "sex toy" and realized it was in fact only the broken handle of a salad server. Though "sex toys" play a prominent role in the Police Report and Probable Cause Affidavit, the Police Report was never amended to reflect the discovery of this new and highly relevant evidence.

4. ***Failure to Consider Exculpatory or Impeaching Evidence.*** Other exculpatory and impeaching evidence known by the PBPD was omitted from the Police Report and Probable Cause Affidavit by, in our view, manipulating the date the investigation was allegedly closed. According to the Police Report (at 85), Detective Recarey "explained [to ASA Belohlavek] that the PBPD had concluded its case in December of 2005". That assertion, which is false, conveniently resulted in the omission of all information adduced subsequent to that date. Thus, though the Police Report in fact contains information obtained after December 2005, the PBPD purported to justify its refusal to consider, or even to include, in the Police Report, the Probable Cause Affidavit or what it released to the public, all the exculpatory and evidence impeaching the witnesses submitted on behalf of Mr. Epstein, most of which was provided after December 2005. That evidence is listed below.

5. ***Unreported Criminal Histories and Mental Health Problems of the Witnesses Relied on in the Police Report and Probable Cause Affidavit.*** Evidence obtained concerning the witnesses relied upon to support the Probable Cause Affidavit casts significant doubt on whether these witnesses are sufficiently credible to support a finding of probable cause, let alone to sustain what would be the prosecution's burden of proof at a trial.[4] Though such evidence was submitted to the PBPD, none of it was included in the Police Report or the Probable Cause Affidavit.

   - **Juan Alessi:** While the Police Report (at 57) and the Probable Cause Affidavit (at 21) contain assertions by Alessi, which allegedly support bringing a criminal charge, the evidence revealing Alessi's evident mental instability; prior criminal conduct against Epstein; and bias towards Epstein is notably omitted. As detailed above, in 2003, Alessi was filmed taking money from Epstein's home. After being caught on videotape unlawfully entering Epstein's home and stealing cash from a briefcase,

[4] While we have never intended to and do not here seek to gratuitously cast aspersions on any of the witnesses, in previously asking the State and now asking you to evaluate the strength of this case, we have been constrained to point out the fact that the alleged victims chose to present themselves to the world through MySpace profiles with self-selected monikers such as "Pimp Juice" and "[redacted]" or with nude photos.

Alessi admitted to the PBPD that he entered the house unlawfully on numerous occasions, stealing cash and attempting to steal Epstein's licensed handgun to commit suicide. Although this information was known by Detective Recarey at the time the Police Report and Probable Cause Affidavit were prepared, and is clearly material to any determination of credibility, it was omitted.

- [redacted] was the source of the vast majority of the serious allegations made against Epstein. While the Police Report and Probable Cause Affidavit rely on [redacted] numerous assertions, there are two significant problems with that reliance. First there is no mention of certain critical admissions made by [redacted] during her interview, as well as on her MySpace webpage (discovered by defense investigators and turned over to the State Attorney). Second, all but omitted from the Police Report is any reference to the facts known about her by the PBPD, specifically, that at the time [redacted] was making these assertions *she had been arrested by the PBPD and was being prosecuted for possession of marijuana and drug paraphernalia.* We take each in turn.

  - [redacted] ***Admits Voluntary Sexual Conduct With Epstein, Refuses to Disclose the Disposition of the Monies She Earned, and Lies About Being "Given" a Car by Epstein***: Detective Recarey failed to include in the Police Report [redacted] admission that on one occasion she engaged in sexual conduct with Epstein's girlfriend as her birthday "gift" to Epstein. Nor does Detective Recarey include the fact that [redacted] flatly refused to discuss with him the disposition of the thousands of dollars she said she was given by Epstein, or that she falsely claimed that she did not use drugs, despite her MySpace entries in which she exclaims "I can't wait to buy some weed!!!!!!!". Detective Recarey was aware the car had been rented, not purchased, and only it was only leased on a monthly basis for two months. While [redacted] fanciful claim that she was given a car appears in the Police Report, it is never corrected.

  - [redacted] ***Was Arrested for Possession of Marijuana and Drug Paraphernalia.*** As noted, on September 11, 2005, [redacted] was arrested for possession of marijuana and drug paraphernalia. In response to this arrest, [redacted] "came forward" (as the Probable Cause Affidavit implies at 10-11), claiming she had knowledge of "sexual activity taking place" at Epstein's residence and misconduct by Epstein. (This "coming forward" appears no where in the Police Report.) Thus, it becomes clear that [redacted] assertions of misconduct by Epstein were motivated by a desire to avoid the repercussions of her own criminal conduct, which should have been taken into account when assessing her credibility as a witness.

- [redacted] ***Steals From a Victoria's Secret Store.*** An investigation by private investigators working for the defense revealed that in late 2005 [redacted] was employed at a Victoria's Secret store in Florida. Three days after her marijuana case was terminated, Hall was caught by a store manager as [redacted] attempted to leave the store with merchandise in her purse, the security tag still attached. Seeing the manager, [redacted] claimed "someone is trying to set me up". Following an internal investigation, which disclosed additional thefts from both the store and a customer, she was fired. In a recorded interview, [redacted] admitted to stealing and asserted that her reason for doing so was that "she was not getting paid enough". This information and supporting documentation was presented to the PBPD, but was never included in the Police Report or Probable Cause Affidavit.

- [redacted] ***Lies on MySpace About Victoria's Secret Store Termination.*** Also uncovered by defense investigators is [redacted] dissembling version of the Victoria's Secret debacle on her "MySpace" webpage. There, [redacted] announced that she ". . . forgot to let everyone know I quit my job at V.S. They said they suspected me of 'causing losses to their company' which by the way is bullshit. I was 'by the book' on EVERYTHING!!! . . . I got so fed up in that office that I handed the Loss Prevention lady back my keys and walked out". This information and supporting documentation was provided by the defense to the PBPD, but was not included in the Police Report or Probable Cause Affidavit.

- [redacted] ***Lies on her Victoria's Secret Job Application.*** Additional information on [redacted] MySpace webpage casts further doubt on her credibility. For example, she boasts to having engaged in a fraudulent scheme to get hired by Victoria's Secret, explaining, "Oh, it was so funny I used [my boyfriend] as one of my references for my Victoria's Secret job and the lady called me back and told me that William Tucker gave me such an outstanding reference that she did not need to call anyone else back, . . . he got me the job! Just like that . . . I lied and said he was the old stock manager at Holister she bought it. . ." This information and supporting documentation was provided by the defense to the PBPD, but was not included in the Police Report or Probable Cause Affidavit.

- [redacted] ***Boasts About Her Marijuana Use.*** Also on her MySpace webpage can be found [redacted] admissions of purchasing and using marijuana and marijuana paraphernalia. Specifically, [redacted] states she "can't wait to buy some weed!!! . . . I can't wait!!! . . . (Hold on:

let me say that again) I can't wait to buy some weed!!!. . . I also want to get a vaporizer so I can smoke in my room because apparently there are 'nares' everywhere". [redacted] also posted a photograph of a marijuana cigarette and labeled it "what heaven looks like to me". This information and supporting documentation was provided by the defense to the PBPD, was not included in the Police Report or Probable Cause Affidavit (although there is both a fleeting reference in the Police Report to [redacted] use of marijuana with her boyfriend (at 67) and in the Probable Cause Affidavit to [redacted] marijuana arrest (at 10-11)).

- [redacted]: While the Police Report and Probable Cause Affidavit contain numerous assertions intended to negate [redacted] taped admission that she clearly told Epstein she was 18, omitted from these documents is reference to [redacted] MySpace webpage, presented to the State Attorney's Office, where , in no connection to this case, *she affirmatively represented to the world that she was 18*, thereby corroborating her lie to Epstein. Also omitted is any reference to her long history of run-ins with law enforcement. Among those are multiple runaway complaints by her parents and her assignment to a special high school for drug abusers.

  - [redacted] ***MySpace Webpage States She Drinks, Uses Drugs, Gets into Trouble, Has Beaten Someone Up, Shoplifts, Has Lost her Virginity, Earns $250,000 and Higher, and Contains Naked and Provocative Photographs.*** The first image seen on [redacted] MySpace webpage, the photo [redacted] chose to represent her, is that of a naked woman provocatively lying on the beach. The illuminating webpage also contains [redacted] assertions that of all her body parts, she "love[s] her ass", she drinks to excess, uses drugs, "gets into trouble", has beaten someone up, has shoplifted "lots", "already lost" her virginity, and earns "$250,000 and higher". As with the other impeaching information, this material, vital to determining credibility, was provided by the defense to the PBPD but was never included in the Police Report or Probable Cause Affidavit.

  - [redacted] ***Prior Record – Drugs, Alcohol, Running Away From Home.*** [redacted] has a history of running away/turning up missing from her parents' various homes; of using drugs and alcohol; and of associating with individuals of questionable judgment. For example, a Palm Beach County Sheriff's Office Report details how only two days after she returned to Florida to live with her father, on March 31, 2006, police were called to the home in response to her father's report that she and her twin sister were missing. The Police Report describes her as "under the influence of a narcotic as [she] could barely stand up,

[her] eyes were bloodshot, and [her] pupils were diluted [sic]". It further documents that [redacted] and her sister had stayed out all night and were returned home by a "drug dealer". This event coincided with [redacted] having been found at an "inappropriate location" by Georgia police in response to a call about [redacted] disappearance. Although this information, material to determining credibility, was provided by the defense and known to the PBPD, it was never included in the Police Report or Probable Cause Affidavit.

- [redacted] While the Police Report and Probable Cause Affidavit rely on statements of [redacted] father, [redacted] his federal bank fraud conviction, which defense investigators discovered and turned over to the PBPD during the course of the investigation, was omitted. [redacted] served 21 months in federal prison for his offense.
- [redacted] While the Police Report and Probable Cause Affidavit rely on statements of [redacted] stepmother, omitted is [redacted] state conviction for identity fraud. This information, uncovered by defense investigators, was also turned over to the PBPD during the course of the investigation.

D. In Light Of The Compromised Nature Of The Evidence, A Fulsome Review Should Be Conducted.

These tainted and inaccurate reports compromised the federal investigation.[5] As you may know, the PBPD took the unprecedented and highly unethical step of releasing these reports to the media as well. These reports spread across the Internet, and were undoubtedly read by the other individuals who were later interviewed by the FBI for giving Mr. Epstein massages. As we have shown, these reports contain multiple fabrications, omissions, and outright misstatements of fact. Moreover, the evidence and the allegations were undeniably misrepresented to the FBI, with no inclusion of the evidence exposing the deficiencies of the "proof" and the exculpatory evidence upon which the State relied. Furthermore, it should be noted that many of these same individuals were also interviewed by the FBI after their state interviews but prior to Mr. Epstein's counsel providing the government with the transcripts of the recorded interviews. The

[5] Although we have been informed that the FBI identified and then interviewed additional potential witnesses, many of their discoveries are believed to have emanated from message pads containing contact information that were seized from Mr Epstein's home pursuant to a state search warrant that was deeply and constitutionally flawed by Recarey's misstatements and omissions as well as other facial deficiencies.

transcripts and tapes, which we hope to share with you in person, will likely present a very different view of those interviews taken afterwards.

Therefore, in the interest of truth, we ask you to review the transcripts, compare them to the FBI reports upon which the indictment was predicated, and then determine whether the FBI summaries and the prosecution memorandum upon which the charging decisions were made overstate Mr. Epstein's federal culpability. Concomitant to these requests, we would ask that you determine whether the investigative team ever provided these trustworthy tapes and transcripts to those in your Office who were being asked to authorize the prosecution so that they could themselves assess the reliability of the FBI interview reports against a verbatim record of the same witness's prior statements. We believe that this request is fair and would not be unduly burdensome.

II. THE IMPROPER INVOLVEMENT AND CONDUCT OF FEDERAL AUTHORITIES.

As established above, the State's charging decision, of one count of the solicitation of prostitution, was hardly irrational or irregular. Indeed, Lana Belohlavek, a Florida sex prosecutor for 13 years, concluded that the women in question were prostitutes and that "there are no victims here." There was no evidence of violence, force, drugs, alcohol, coercion or an abuse of a position of authority. Each and every one of the alleged "victims" knew what to expect when they arrived at Mr. Epstein's house and each was paid for her services. In fact, Mr. Epstein's message book establishes that many of these women routinely scheduled massage sessions with Mr. Epstein themselves, without any prompting. Ms. Belohlavek also noted that many of these individuals worked either as exotic dancers or in one of the many massage parlors dotted across West Palm Beach. Ms. Belohlavek also specifically stated that [redacted] could not be trusted and was "only interested in money." She further found that it was inappropriate for Mr. Epstein to register as a sex offender because she did not believe that he constituted a threat to young girls and because registration had not been required in similar or even more serious cases. Ms. Belohlavak thought, and still believes, that the appropriate punishment is a term of probation.

Yet, the government has devoted an extraordinary amount of its time and resources to prosecute Mr. Epstein for conduct the State believes amounts to a "sex for money" case. While we are loathe to single-out for criticism the conduct of any particular professional, we cannot escape the conclusion that the cumulative effect of the conduct of Assistant United States Attorney Marie Villafana led your Office to take positions during the investigation and negotiation of this matter that has led to unprecedented federal overreaching. In fact, Judge Herbert Stern's states " . . .the federal authorities inappropriately involved themselves in the investigation by the state authorities and employed highly irregular and coercive tactics to override the judgment of state law enforcement authorities as to the appropriate disposition of their case against your client." *See* Judge Stern's letter faxed to you on December 7, 2007.

A. The Petite Policy Should Have Precluded Federal Involvement.

As you know, prior to negotiating the terms of the Agreement, we requested that the government consider the *Petite* Policy and the problems associated with conducting a dual and successive prosecution. We stressed to your Office, on a number of occasions, that we had reached a final negotiated resolution with the State and were only being forced to postpone the execution of that agreement for the sake of the federal investigation. We made submissions and met with your Office to present analyses of the fact that federal prosecution in this matter was in direct conflict with the requirements of the *Petite* Policy. It was our contention, and remains our contention, that federal prosecutors had never intervened in a matter such as this one. And because there was no deficiency in the state criminal process that would otherwise require federal intervention, the express terms of the *Petite* Policy precluded federal prosecution *regardless of the outcome of the state case*. Since the state investigation was thorough and in no way inadequate and the concerns implicated by the matter all involved local issues and areas of traditionally local concern, we urged your Office to contemplate whether a federal prosecution was appropriate.

However, on August 3, 2007, Matthew Menchel rejected a proposed state plea which included that Mr. Epstein serve two years of supervised custody followed by two years of incarceration in a state prison, with the option of eliminating incarceration upon successful completion of the term of supervised custody, among other terms. Mr. Menchel stated that "the federal interest will not be vindicated in the absence of a two year term in state prison." *See* August 3, 2007 letter. Such an articulation of the federal interest, we believe, misunderstands the *Petite* Policy on two grounds. First, the Office's position that the federal interest would not be vindicated in the absence of a jail term for Mr. Epstein, runs contrary to Section 9-2.031D of the United States Attorney's Manual, because this section requires the federal prosecutor to focus exclusively on the *quality or process* of the prior prosecution, not the sentencing outcome. Second, the state plea agreement offered was not "manifestly inadequate" under U.S.A.M. § 9-2.031D. Indeed, the only real difference between the state and federal plea proposals was whether Mr. Epstein served his sentence in jail or community quarantine.

We formerly believed that our *Petite* Policy concerns were being addressed or, at least, preserved, but we learned that only after reaching a final compromise with your Office as to the terms of the Agreement, and at the very last minute, that language regarding the *Petite* Policy was removed from the final version. The two following references to the *Petite* Policy had been included in the draft prosecution Agreements up until September 24, 2007, the day the Agreement was executed, at which point they were eliminated by your Office:

> IT APPEARING, after an investigation of the offenses and Epstein's background, that the interest of the United States pursuant to the Petite policy will be served by the following procedure . . .
>
> Epstein understands that the United States Attorney has no authority to require the State Attorney's Office to abide by any terms of this agreement. Epstein understands that it is his

obligation to undertake discussion with the State Attorney's Office to ensure compliance with these procedures, which compliance will be necessary to satisfy the United States' interest, pursuant to the *Petite* policy.

We reiterate that this case was at heart a local matter that was being fully addressed by the state criminal justice system. The state process resulted in an appropriate resolution of this matter and would have vindicated any conceivable federal interest. Thus, there was no substantial federal interest that justified a federal prosecution. It has recently come to our attention that that the CEOS chief statements may be relevant to this matter. While we welcome the opportunity to consider these statements, our extensive research had found only one federal action that was remotely similar to the federal investigation for the prosecution of this matter, and that case has since been distinguished as well.

B. Ms. Villafana Prompted An Unduly Invasive Investigation Of Mr. Epstein.

Ms. Villafana's investigation of Mr. Epstein raises serious questions. Despite the fact that she was made aware of the inaccuracies in the PBPD's Probable Cause Affidavit, she chose to include the affidavit in a document filed with the court knowing that the public could access it. Then, Ms. Villafana issued letters requesting documents whose subject matter have no relation to the allegations against Mr. Epstein. Notably, after we objected to these overly broad and intrusive requests, Deputy Chief Andrew Lourie denied knowledge of Ms. Villafana's actions and Mr. Lourie commendably sought to significantly narrow the list of documents requested. In a subsequent court filing, Ms. Villafana referred to our agreement to remove these items from her demand list as evidence of Mr. Epstein's "non-cooperation".

This was only the beginning. Ms. Villafana also subpoenaed an agent of Roy Black (without following the guidelines provided in the United States Attorney's Manual that require prior notification to Washington necessary to seek a lawyer's records). We once more requested Mr. Lourie to intervene. Despite these efforts, Ms. Villafana followed up with a subpoena for Mr. Epstein's confidential medical records served directly on his chiropractor (with no notice to Mr. Epstein). Ms. Villafana also made the unusual request of asking the State Attorney's Office for some of the grand jury materials. She threatened to subpoena the State when she was informed that it was a violation of Florida law to release this information.

After compiling this "evidence", Ms. Villafana stated she would be initiating an investigation into purported violations of 18 U.S.C. §1591 (again without the required prior DOJ notification). Ms. Villafana then broadened the scope of the investigation without any foundation for doing so by adding charges of money laundering and violations of a money transmitting business to the investigation. Mr. Epstein's counsel explained that there could be no basis for these charges since Mr. Epstein did not commit any prerequisite act for a money laundering charge and has never even been engaged in a money transmitting business. Ms. Villafana responded that Mr. Epstein could be charged under these statutes because he funded

illegal activities. To suggest that Mr. Epstein could violate these statutes simply by spending his legally earned money on prostitutes is manifestly an erroneous interpretation of the law.

To our relief, after briefing Matthew Menchel at a meeting regarding the spurious application of these statutes, we were told to ignore the laundry list and that defense counsels' focus should be turned to 18 U.S.C. §2422(b). Once Mr. Epstein's counsel submitted and presented the reasons why a federal case would require stretching the relevant federal statutes beyond recognition, and that federal involvement in this matter should be precluded based on federalism concerns, the *Petite* Policy, and general principles of prosecutorial discretion, the parties commenced discussions of a possible plea agreement. Around this time, we received an e-mail from Ms. Villafana suggesting that she wanted to discuss the possibility of a concurrent federal and state resolution. We were immediately informed by your Office that Ms. Villafana did not have the authority to make any such plea proposals and would not be involved in any further negotiations of a plea. Despite this commitment, Ms. Villafana was the principle negotiator of the Agreement. At our meeting on September 7, she made reference to an allegation against Mr. Epstein involving a 12 year old individual. This allegation is without merit and without foundation. Though your last letter suggests there was "no contact" between individuals in your Office and the press, we were previously told by Mr. Lourie that the FBI was receiving "information" specifically from Connolly, a Vanity Fair reporter, and not vice versa.

C. Ms. Villafana Included Unfair Terms in the Agreement.

Ms. Villafana took positions in negotiating this matter that stray from both stated policy and established law. First, Ms. Villafana insisted that as part of the federal plea agreement, the State Attorney's Office, without being shown new evidence, should be convinced to charge Mr. Epstein with violations of law and recommend a sentence that are significantly harsher than what the State deemed appropriate. In fact, the State Attorney viewed this matter as a straightforward prostitution case and believed that a term of probation was - and is - the appropriate sentence. At Ms. Villafana's insistence, however, Mr. Epstein was forced to undertake the highly unusual and unprecedented action of directing his defense team to contract the State prosecutors themselves and ask for an upward departure in both his indictment and sentence. There was no effort by the state and federal prosecutors to coordinate the prosecutions, a practice which is against the tenets of the *Petite* Policy. In our view, it is unprecedented to micro-manage each and every term of Mr. Epstein's State plea, including the exact state charges to which Mr. Epstein plead guilty; the time-frame within which Mr. Epstein must enter that state plea and surrender to state officials; and the amount of time he must spend in county jail. This is particularly true where the State

Attorney's Office has a different view of the case and there has been no coordination with state authorities.[6]

In addition, Ms. Villafana required that Mr. Epstein's sentence include a registerable offense. As you know, requiring sexual offender registration will have a significant impact both immediately and forever after. This harsh term, which is said to be suggested by the FBI, was added despite the fact that the State believed that Mr. Epstein's conduct did not warrant any such registration. As you know, state officials have special expertise in deciding which offenders pose a threat to their community. Moreover, this demand places the state prosecutors' credibility at issue and diminishes the force of sexual registration when it is applied to offenders who state prosecutors do not believe are dangerous or require registration. Ms. Villafana's decision not to permit the State Attorney to determine a matter uniquely within its province was unwarranted.

What is more, when negotiating the settlement portion of the Agreement, Ms. Villafana insisted that a civil settlement provision be included in the Agreement, namely, the inclusion of 18 U.S.C. § 2255, a negotiating term which is unprecedented in nature.[7] While we were reluctant and cautious about a plea agreement in which a *criminal* defendant gives up certain rights to contest liability for a *civil* settlement, Ms. Villafana's ultimatums required that we acquiesce to these unprecedented terms. For instance, when plea discussion stalled as a result of Ms. Villafana's demands, Mr. Epstein's counsel received a letter from her stating as it "now appears you will not settle." At this point, Ms. Villafana expressed her intention to re-launch the government's previously set aside money laundering investigation. She also issued a rash of subpoenas and sent target letters to Mr. Epstein's employees, adding new federal charges including obstruction of justice. She then personally called Mr. Epstein's largest and most valued business client without any basis to inform him of the investigation.

In an attempt to prevent further persecution and intimidation tactics, we proposed that Mr. Epstein establish a restitution fund specifically for the settlement of the identified individuals' civil claims and that an impartial, independent representative be appointed to administer that fund. There was no dollar amount limit discussed for the fund, but the idea was still rejected. We then pointed out that the state charges to which Mr. Epstein was to plead guilty carried with it a state restitution provision that would allow "victims" to recover damages. Ms. Villafana, however, rejected this idea and suggested requiring a guardian ad litem, implying that

[6] When asked whether Department of Justice polices regarding coordination with state authorities had been followed, Ms. Villafana gave no response other than stating, "it is none of your concern."

[7] In fact, Stephanie Thacker, a former deputy to Drew Osterbahm, has stated that she knew of no other case like this being prosecuted by CEOS. With that in mind, we welcome the opportunity to review the extensive research that CEOS has done, as indicated by your Office.

the alleged "victims" in question were currently minors and needed special representation. We later learned that the government's list of individuals included a woman as old as twenty-four, which flies in the face of prior representations (it should be noted that any person who is currently twenty four years old or older could not have been a "victim" under 18 U.S.C. § 2255, even if the conduct occurred in 2001). At Ms. Villafana's insistence, the parties ultimately agreed to the appointment of an attorney representative, but Ms. Villafana then took the position that Mr. Epstein should pay for the representative's fees, which effectively meant that Mr. Epstein must pay to sue himself.[8]

Ms. Villafana also proposed wholly irrelevant charges such as making obscene phone calls and violations of child privacy laws. When Mr. Lourie learned of these proposed charges he asked Mr. Epstein's defense team to ignore them as they would "embarrass the Office."

D. Ms. Villafana Continually And Purposefully Misinterpreted The Critical Terms of the Agreement.

Since the execution of the Agreement, Ms. Villafana has repeatedly misconstrued the terms contained therein. As you know, several facets of this matter have been highly contested by the parties. We sometimes have obtained two competing views as to your willingness to compromise on specific issues that we have raised with your Office. In particular, there are times when we have received verbal agreement from you or your staff (and sometimes from Ms. Villafana herself) on a particular issue, only to subsequently receive a contradictory interpretation from Ms. Villafana that negates our prior common understanding. Her misinterpretations appear to be attempts to effectively change the spirit and the meaning of the Non-Prosecution Agreement. We offer several examples of significant misinterpretations.

First, despite the fact that we received several commitments from your Office that it would monitor Mr. Epstein's state sentencing but not interfere with it in any way, Ms. Villafana sought to do just that. Ms. Villafana's decision to utilize a civil remedy statute in the place of a restitution fund for the alleged victims eliminates the notification requirement under the Justice for All Act of 2004, a federal law that requires federal authorities to notify victims as to any available restitution, not of any potential civil remedies, to which they are entitled. Despite this fact, Ms. Villafana proposed a Victims Notification letter to be sent to the alleged federal victims. Ms. Villafana has gone even further, alleging that the "victims" may make written statements or testify against Mr. Epstein at the sentencing. We find no basis in law or the Agreement that provides the identified individuals with either a right to appear at Mr. Epstein's plea and sentence or to submit a written statement to be filed by the State Attorney. Here, Mr.

[8] This arrangement does not put these alleged "victims" in the same position as they would have been had Mr. Epstein been convicted at trial — in fact, they are much better off.

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Epstein is pleading guilty to, and being sentenced for, state offenses, not the federal offenses under which the government has unilaterally recognized these identified individuals as "victims". The notion that individuals whose names are not even known to the charging prosecutor in a state action should somehow be allowed to speak at a proceeding is unjustifiable.

Furthermore, only after obtaining the executed Agreement did Ms. Villafana begin insisting that the selected representative's duties go beyond settlement and include litigating claims for individuals. In Ms. Villafana's Victims Notification letter, she states that Mr. Podhurst and Mr. Josefsberg, the selected attorney representatives, may "represent" the identified individuals. This language assumes that the selected representatives will agree to serve in the capacity envisioned by Ms. Villafana, which is patently incorrect. Yet, neglecting the spirit of the negotiations; neglecting the terms of the Agreement; and neglecting commonly-held principles of ethics with respect to conflicts, Ms. Villafana continues to improperly emphasize that the chosen attorney representative should be able to litigate the claims of individuals.

In a similar fashion, Ms. Villafana has overstated the scope of Mr. Epstein's waiver of liability pursuant to the Agreement. Ms. Villafana began asserting that Mr. Epstein has waived liability even when claims with the identified individuals are not settled just after the execution of the Agreement. Despite the fact that at that time, we obtained an agreement from you that Mr. Epstein's waiver would not stretch past settlement, Ms. Villafana continues to espouse this erroneous interpretation.

E. Ms. Villafana and The Settlement Process.

We are concerned that Ms. Villafana has repeatedly attempted to manipulate the process under which Mr. Epstein has agreed to settle civil claims. First, she inappropriately attempted to nominate Humbert "Bert" Ocariz for attorney representative, despite the fact that Mr. Ocariz has a longstanding relationship with Ms. Villafana. Mr. Ocariz turns out to be a very good personal friend and law school classmate of Ms. Villafana's boyfriend, a fact she assiduously kept hidden from counsel. We also learned from Ms. Villafana that she shared with Ocariz the summary of charges the government was considering against Mr. Epstein. Even after your Office conceded that it was inappropriate for its attorneys to select the attorney representative, Ms. Villafana continued to lobby for Mr. Ocariz's appointment. On October 19, 2007, retired Judge Edward B. Davis, who was appointed by the parties to select the attorney representative, informed Mr. Epstein's counsel that he received a telephone call from Mr. Ocariz directly requesting that Judge Davis appoint him as the attorney representative in this matter.

Furthermore, federal interference continues to plague the integrity of the implementation of the Agreement. We recently learned that despite the fact that there was no communication between state and federal authorities as to the investigation of Mr. Epstein, the FBI visited the State Attorney's Office two weeks ago to request that Mr. Epstein be disqualified to participate in work release even though the Agreement mandates that Mr. Epstein be treated as any other inmate.

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III. CONCLUSION

In sum, we request that you review the evidence supporting the prosecution of Mr. Epstein. Such a review would serve to address similar concerns as those raised in *Brady v. Maryland*, which mandate the disclosure of evidence material to guilt or innocence even after the execution of an Agreement to enter a plea of guilty. *See* 373 U.S. 83 (1963). We believe that the "prosecution team" was informed by its witnesses (including persons other than [redacted] and [redacted] who are discussed at length above) that Mr. Epstein's practice was to seek women older than 18 rather than targeting those under 18. We would expect, for instance, that [redacted] a key witness whose interview with the FBI was recorded, would have provided such exonerating information as well as many others. We would also expect the review to uncover clear evidence that demonstrates that Mr. Epstein did not travel to Florida for the purpose of having illegal underage sex nor that he induced underage women by using the Internet or the phones.

Furthermore, we ask you to consider whether there is reliable evidence not just that Mr. Epstein had sexual contact with witnesses who were in fact underage but whether the allegations are based on trustworthy (and corroborated) evidence that (i) Mr. Epstein knew that the female(s) in question was under 18 at the time of the sexual contact, (ii) Mr. Epstein traveled to his home in Palm Beach for the purpose of having such sexual contact to the extent the allegation charges a violation of 18 U.S.C. § 2423(b) and (c) Mr. Epstein induced such sexual contact by using an instrumentality of interstate commerce to the extent the allegations charge a violation of 18 U.S.C. § 2422(b) (there is no evidence of internet solicitation which is the norm upon which federal jurisdiction is usually modeled under this statute). We believe that the information we provide to you in this submission will be informative and spark a motivation to gain more information with respect to the investigation of this matter.

Again, we are not seeking to unwind the Agreement; we are only seeking for you to exercise your discretion in directing that an impartial and respected member of your Office test the evidence upon which the draft federal indictment was based against the "best evidence," including the transcripts of the tape recorded pre-federal involvement interviews.

Finally, I would like to reiterate our appreciation for the opportunity you have provided to review some of our issues and concerns. I look forward to speaking with you shortly.

Sincerely,

Jay P. Lefkowitz

GOVERNMENT

EXHIBIT

M

U.S. Department of Justice
Office of Justice Programs
Office for Victims of Crime

ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE

May 2005

FOREWORD

We at the Department of Justice have a duty not only to uphold the rights of individuals who are accused or convicted of a crime but to protect the rights of the victims of crime. Dedicated professionals throughout the Department of Justice work to vindicate the rights of crime victims under law, to offer them aid through the Crime Victims' Fund, and generally to ease their interaction with the criminal justice system. Crime victims deserve no less.

This new edition of the *Attorney General Guidelines for Victim and Witness Assistance* will facilitate our critical work on behalf of crime victims. It incorporates the many provisions for crime victims' rights and remedies, including the Justice for All Act of 2004, that have been enacted since the publication of the last edition. It also includes new guidance on assisting the victims of certain crimes, such as human trafficking and identity theft, that may give rise to unique challenges. These updates and improvements will inform the efforts of victim assistance specialists and other personnel throughout the Department of Justice.

We will never be able to reverse the suffering of crime victims or restore all that they have lost. Nevertheless, the Department of Justice can do a great deal to minimize the frustration and confusion that victims of a crime endure in its wake. These *Guidelines* will help us discharge our obligation to do so.

_____

Alberto R. Gonzales
Attorney General of the United States

CONTENTS

ARTICLE I.
VICTIMS' RIGHTS

A. Best Efforts To Accord Rights

Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described below. (18 U.S.C. § 3771(c)(1))

B. Rights of Crime Victims

A crime victim[1] has the following rights under 18 U.S.C. § 3771(a):

1. The right to be reasonably protected from the accused.
2. The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
3. The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
4. The right to be reasonably heard at any public proceeding in the district court involving release, plea, [or] sentencing, or any parole proceeding.
5. The reasonable right to confer with the attorney for the Government in the case.
6. The right to full and timely restitution as provided in law.
7. The right to proceedings free from unreasonable delay.
8. The right to be treated with fairness and with respect for the victim's dignity and privacy.

C. Advice of Attorney

The prosecutor shall advise the crime victim that the crime victim may seek the advice of an attorney with respect to the rights enumerated above. (18 U.S.C. § 3771(c)(2))

D. Enforcement Mechanisms for Victims

The Justice for All Act of 2004 provides crime victims, as defined in article II.D.1, with two mechanisms for enforcing the rights enumerated above.

1. Judicial Enforcement. Crime victims, or the Government on their behalf, may move in Federal district court for an order enforcing their rights. (18 U.S.C. § 3771(d)(3)) "The district court shall take up and decide any motion asserting a victim's right forthwith. If

[1] A "crime victim" for purposes of these rights is a person who satisfies the definition in article II.D.1 of this document.

the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus." (*Id.*)

2. Administrative Complaint. A crime victim may also file an administrative complaint if Department employees fail to respect the victim's rights. The Attorney General must take and "investigate complaints relating to the provision or violation of the rights of a crime victim" and provide for disciplinary sanctions for Department employees who "willfully or wantonly fail" to protect those rights. (18 U.S.C. § 3771(f)(2))

ARTICLE II.
GENERAL CONSIDERATIONS

A. Statement of Purpose

The purpose of this document, the *Attorney General Guidelines for Victim and Witness Assistance* (the *AG Guidelines*), is to establish guidelines to be followed by officers and employees of Department of Justice investigative, prosecutorial, and correctional components in the treatment of victims of and witnesses to crime.

These *AG Guidelines* supersede the *Attorney General Guidelines for Victim and Witness Assistance* (2000).

B. Background

The first Federal victims' rights legislation was the Victim and Witness Protection Act of 1982 (VWPA). Congress amended and expanded on the provisions of the 1982 Act in subsequent legislation, primarily the Victims of Crime Act of 1984, the Victims' Rights and Restitution Act of 1990, the Violent Crime Control and Law Enforcement Act of 1994, the Antiterrorism and Effective Death Penalty Act of 1996, the Victim Rights Clarification Act of 1997, and the Justice for All Act of 2004.

In VWPA, Congress made findings about the criminal justice system's treatment of crime victims. Congress recognized that without the cooperation of victims and witnesses, the criminal justice system would cease to function. Yet, often those individuals were either ignored by the system or simply viewed as "tools" to use to identify and punish offenders. Congress found that all too often a victim suffers additional hardship as a result of contact with the system. VWPA was enacted "(1) to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process; (2) to ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of defendants; and (3) to provide a model for legislation for State and local governments." (Pub. L. No. 97-291, § 2)

In VWPA, Congress instructed the Attorney General to develop and implement guidelines for the Department of Justice consistent with the purposes of the Act. Congress set forth the objectives of the guidelines, which include the provision of services to victims; notification about protection, services, and major case events; consultation with the Government attorney; a separate waiting area at court; the return of property; notification of employers; and training for law enforcement and others. Congress also instructed the Attorney General to assure that all Federal law enforcement agencies outside the Department of Justice adopt guidelines consistent with the purposes of VWPA. (18 U.S.C. § 1512, Historical and Statutory Notes, Federal Guidelines for Treatment of Crime Victims and Witnesses in the Criminal Justice System). In conformance with the congressional directive, the Attorney General promulgated the *Attorney General Guidelines for Victim and Witness Assistance*. Periodically, the *AG Guidelines* have been revised to incorporate new legislative provisions.

Starting with VWPA and continuing through the later legislation, Congress established a list of victims' rights and directed the Justice Department and other departments and agencies of the Federal Government engaged in the detection, investigation, or prosecution of crime to make their "best efforts" to see that crime victims are accorded the rights. The list of rights, commonly referred to as the "victims' bill of rights," is now codified at 18 U.S.C. § 3771(a). Congress also defined a group of services that Federal agencies have the responsibility to provide to crime victims. The basic list of responsibilities appears in 42 U.S.C. § 10607. The Crime Control Act of 1990 later stated that those services "shall" be provided. Specialized provisions dealing with certain types of victims and crimes appear elsewhere in Titles 42 and 18. For example, provisions specifically dealing with child victims and witnesses appear in 18 U.S.C. § 3509.

Subsequent legislation has further expanded victims' rights in a variety of ways. The Violent Crime Control and Law Enforcement Act of 1994 established mandatory restitution for victims of four categories of crime: (1) domestic violence, (2) sexual assault, (3) the exploitation and abuse of children, and (4) telemarketing fraud. The Antiterrorism and Effective Death Penalty Act of 1996 expanded mandatory restitution to virtually all crimes committed in violation of Title 18 of the United States Code. (18 U.S.C. § 3663A) The Victim Rights Clarification Act of 1997 gives victims the right to attend a trial even though they may testify during the sentencing portion of the trial. (18 U.S.C. § 3510) The Victims of Trafficking and Violence Protection Act of 2000 protects immigrant victims of domestic violence, human trafficking, and other crimes from deportation in certain cases. (22 U.S.C. §§ 7101–7110; 8 U.S.C. § 1101(a)(15)(U)) The Justice for All Act of 2004 expanded and recodified the victims' bill of rights and gave victims standing to enforce those rights.

C. Construction of These *AG Guidelines*

The foundation for these *AG Guidelines* is the Federal victims' rights laws. The core statutes are 18 U.S.C. § 3771 and 42 U.S.C. § 10607, but additional rights and requirements exist in other statutes and rules of criminal procedure. In the text of these *AG Guidelines*, all statutory requirements or rules of criminal procedure are followed by a direct citation to the applicable statute or rule. Guidelines that are purely Justice Department policy, as opposed to statutory law, will not be followed by a citation. Guidelines that are policy intended to implement a statutory right, provision, or procedural rule will be followed by a citation referring to the statute or rule.

The *AG Guidelines* use the word "shall" where "shall" appears in a statute. The use of the term "shall" means that the relevant guideline is mandatory, though room may remain for individual judgment in determining how best to comply with the guideline. When the *AG Guidelines* use the word "should," the employee is expected to take the action or provide the service described unless there is an appropriate, articulable reason not to do so. A strong presumption exists in favor of providing rather than withholding assistance and services to victims and witnesses of crime.

D. Definitions of "Crime Victim"

The term "crime victim" is defined differently by different Federal statutes. Unless otherwise noted, these *AG Guidelines* use the following definitions.

1. Enforcement of Rights. For purposes of enforcing the rights enumerated in article I.B, a victim is "a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia" (18 U.S.C. § 3771(e)) if the offense is charged in Federal district court. If a victim is under 18 years of age, incompetent, incapacitated, or deceased, a family member or legal guardian of the victim, a representative of the victim's estate, or any other person so appointed by the court may exercise the victim's rights, but in no event shall the accused serve as a guardian or representative for this purpose. (18 U.S.C. § 3771(e)) A victim may be a corporation, company, association, firm, partnership, society, or joint stock company. (1 U.S.C. § 1)

2. Provision of Services. For purposes of providing the services described in these *AG Guidelines*, a victim is "a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime." (42 U.S.C. § 10607(e)(2)) If a victim is an institutional entity, services may be provided to an authorized representative of the entity. If a victim is under 18 years of age, incompetent, incapacitated, or deceased, services may be provided to one of the following (in order of preference) for the victim's benefit:

    a. A spouse.

    b. A legal guardian.

    c. A parent.

    d. A child.

    e. A sibling.

    f. Another family member.

    g. Another person designated by the court.

    (42 U.S.C. § 10607(e)(2))

E. Application

1. Providers of Rights and Services. These *AG Guidelines* apply to those components of the Department of Justice engaged in investigative, prosecutorial, correctional, or parole functions within the criminal justice system. The *AG Guidelines* are intended to

serve as a model for guidelines on the fair treatment of crime victims and witnesses for other State and Federal law enforcement agencies.

Department components should encourage non-Department personnel specially assigned or deputized to work with Department components to learn and comply with the victims' rights laws and these *AG Guidelines*.

2. Recipients of Rights and Services. The majority of the rights and services in these *AG Guidelines* are applicable to victims of crime. Some provisions apply to witnesses to crime.

   For purposes of determining the applicability of these *AG Guidelines* to any victim, refer to the definitions, *supra*, article II.D.

   A person who is culpable for or accused of the crime being investigated or prosecuted should not be considered a victim for purposes of the rights and services described in these *AG Guidelines*. (18 U.S.C. § 3771(d)(1)) Nonetheless, a person who may be culpable for violations or crimes other than the crime being investigated or prosecuted may be considered a victim under this policy. For example, victims of involuntary servitude or trafficking may be considered victims for purposes of the prosecution of those crimes despite any legal culpability that the victims may have for ancillary immigration or prostitution offenses. In addition, criminal suspects who are subjected to excessive force by law enforcement officers and inmates who are victims of crime during their incarceration for other offenses may be considered victims. An inmate's detention, however, may prevent the inmate from exercising the rights and receiving the services normally afforded to victims. For example, Department personnel are not required by these *AG Guidelines* to transport inmates to court to attend hearings relating to crimes against those inmates.

   A person whose injuries stem only indirectly from an offense is not entitled to the rights or services described in the *AG Guidelines*. Although bystanders are therefore not generally considered victims, there may be circumstances in which a bystander does suffer an unusually direct injury, and Department personnel have the discretion to treat this bystander as a victim.

F. Responsible Officials

Pursuant to 42 U.S.C. § 10607(a), the Attorney General is required to designate persons in the Department of Justice who will be responsible for identifying the victims of crime and performing the services described in that section. These persons are referred to as "responsible officials" in the statute and throughout these *AG Guidelines*. (42 U.S.C. § 10607(a)) The designation of responsible officials for each component appears below and at the beginning of the sections indicating the stage in the process at which the relevant component operates. Responsible officials may delegate their responsibilities under these *AG*

Guidelines to subordinates in appropriate circumstances, but responsible officials remain obliged to ensure that all such delegated responsibilities are discharged.

The Attorney General designates the following responsible officials:

1. Investigators

    a. FBI—the special agent-in-charge of the division having primary responsibility for conducting the investigation.

    b. DEA—the special agent-in-charge of the division having primary responsibility for conducting the investigation.

    c. Bureau of Alcohol, Tobacco, Firearms and Explosives—the special agent-in-charge of the division having primary responsibility for conducting the investigation.

    d. U.S. Marshals Service—the U.S. Marshal in whose district the case is being conducted.

    e. Office of the Inspector General—the Inspector General.

2. Prosecutors

    a. For cases in which charges have been filed—the U.S. Attorney in whose district the prosecution is pending.

    b. For cases in which a litigating division of the Justice Department is solely responsible—the chief of the section having responsibility for the case. The chief of the section is responsible for performing the same duties under these *AG Guidelines* as are required of a U.S. Attorney. By agreement between the litigating division and the Executive Office for United States Attorneys (EOUSA), the responsible official from the litigating division may delegate some responsibilities to the U.S. Attorney in whose district the prosecution is pending.

    c. For cases in which the U.S. Marshals Service is the custodial agency—the U.S. Attorney in whose district the prosecution is pending.

3. Corrections Officials

    a. For cases in which the U.S. Marshals Service is the custodial agency—the U.S. Attorney in whose district the prosecution is pending.

b. For cases in which the Bureau of Prisons has become involved—the Director or Warden of each Bureau of Prisons (BOP) facility where the defendant is incarcerated.

4. Parole Officials

a. For proceedings relating to the revocation of parole or the revocation of supervised release in the District of Columbia—the Chairman of the U.S. Parole Commission.

The responsible official shall designate the individual or individuals who will carry out victim-witness services in each Department of Justice investigating field office, corrections facility, parole office, U.S. Attorney's Office, and Justice Department litigating division. The responsible official shall instruct such designated individuals to comply with these *AG Guidelines* and shall delegate the authority to carry out the activities that are thereby required.

All responsible officials and other employees involved in complying with these regulations must cooperate with other components of the Department of Justice in providing victims with the services required by Federal law and by these *AG Guidelines*. In many instances when certain duties and responsibilities overlap, duplicative provision of services is not required, but responsible officials should promote coordination and interagency teamwork between Department employees and State, local, or tribal officials. At each stage in the provision of services, the transition of responsibility from one component of the Department of Justice to the next must include a sharing of information (in many cases prior to the actual transfer of responsibility). In this way, gaps in notification and other services are eliminated and crime victims receive uniform rather than fragmented treatment, starting from the initial investigation and continuing throughout their entire involvement with the Federal criminal justice system.

Responsible officials and the individuals they have designated should also work with the other Federal agencies that investigate and prosecute violations of Federal law to assist those agencies in providing these services to victims.

G. Cases with Large Numbers of Victims

Individual and personal contact with victims is recommended whenever reasonably feasible. Although implementing these *AG Guidelines* is relatively straightforward in cases in which the number of victims is limited, doing so can present challenges as the number of victims grows into the hundreds and thousands. Department employees should use new technology and be creative in order to provide victims in large cases with the same rights and services as victims in smaller cases. In carrying out their obligations under the *AG Guidelines* in cases with large numbers of victims, responsible officials should use the means, given the circumstances, most likely to achieve notice to the greatest possible number of victims.

If the responsible official (as designated in these *AG Guidelines*) deems it impracticable to afford all of the victims of a crime any of the rights enumerated in 18 U.S.C. § 3771(a), the attorney for the Government should move the appropriate district court at the earliest possible stage for an order fashioning a reasonable procedure to effectuate those rights to the greatest practicable extent. (18 U.S.C. § 3771(d)(2))

1. Identification. Identification of victims is the responsibility of the investigative agency (*see* art. IV.A.2). Identifying and locating victims can be one of the most difficult victim assistance tasks in a case with a large number of victims. Both new technology and traditional law enforcement methods can be utilized to identify victims regardless of whether the case involves a large-scale mass violence crime or a large-scale economic crime. For example, officials may use notices on official Web sites or in print or broadcast media to ask victims to contact the agency. Access to a toll-free number can be arranged so that victims can both provide identification information and receive information about available assistance and services.

   Department employees may also work with hospitals, schools, employers, nonprofit organizations, faith-based organizations, and disaster-assistance centers (where appropriate) to reach out to victims and to secure identification and contact information.

   In large white-collar crime cases, names and addresses of victims may be obtainable from the defendants' records.

   For crimes involving aviation disasters, the FBI is the lead investigative agency and has specialized protocols for collecting passenger- and ground-casualty victim information.

2. Notices and Referrals. The optimal means of notifying and assisting crime victims will necessarily vary with the underlying offense and the victims' own circumstances. The anticipated needs of the victims and the likelihood of effecting actual notice should be the principal criteria for selecting the means to be used. In every case, Department employees should carefully evaluate the type of information relayed and the method of communicating the information to see that investigations are not compromised and that victims' privacy is not inadvertently invaded. Among the means of notifying victims are the following:

   a. Automated Victim Notification System. Department personnel should strive to use the Automated Victim Notification System (VNS) whenever possible in cases with large numbers of victims. With VNS, it is possible to send large numbers of victims an initial notification letter and to invite them either to request subsequent notifications by e-mail or to obtain new information as it develops through the VNS automated call center or the Internet. (As a general rule, the VNS project will provide only one mass mailing per case.) When victims' names and addresses are maintained in an electronic format, it may be possible to transfer that information directly into the system.

b. Electronic Mail. Notice and ongoing communications with victims in cases with large numbers of victims are also substantially facilitated by e-mail. (Because e-mail does not constitute a private and secure means of communication, Department employees should consider obtaining victims' express consent before using e-mail to transmit confidential communications.) Especially in cases in which more personal communication with the victims is called for, such as cases involving violent crime and identity theft, group e-mail lists can make communication with large numbers practicable. Department staff can send periodic updates to the victims about case events and can answer requests for referrals to social services in an efficient manner. E-mail is also one of the best ways to communicate with victims and witnesses in foreign countries.

c. Internet Web Sites. In light of increasingly widespread access to the Internet, Web sites can be created that contain information concerning the progress of investigations and prosecutions. Department employees should avoid posting any information on the Internet that is not for public dissemination. Information that would normally be appropriate for a press release, including the dates of a public court proceeding, is generally appropriate for the Internet. Department employees can place case information on public agency or office Web sites at a marginal cost to the Department.

d. Bridge or Conference Calls. Bridge calls or conference calls allow Department employees to speak to a large group of victims and witnesses in one telephone call. Each victim or witness who wants to participate in the call is told the date and time of the call and given a phone number and PIN. At the designated time, victims and witnesses call in, give their PIN, and are connected to the discussion.

e. Toll-Free Telephone Numbers. Budget permitting, a toll-free telephone number system may be established to permit victims to call in and receive information about the status of a matter or to allow Department employees to make outgoing calls to the victims to alert them to a change in status.

f. Town Meetings. When a crime results in a large number of victims who cannot be readily identified but reside in a limited geographic area, a well-publicized town meeting may be an effective way to identify victims, provide them with notice and pertinent information, and consult with them concerning the crime and the Government's investigation. Public meetings may be inappropriate for identifying or communicating with child victims or victims of certain highly sensitive crimes.

g. Private Groups. Private groups that comprise a significant number of victims of a particular crime may have newsletters or other methods of reaching their members. Some groups, including those organized by court-appointed receivers or plaintiffs' counsel in shareholder suits, may be willing to assist with

preparing and disseminating a newsletter targeted at victims or to assist in some other way.

3. Participation. Technology can be helpful in enabling large numbers of victims to participate in the criminal justice process. E-mail is one means of collecting victim impact statements from a large group located anywhere in the world. The closed-circuit televising of court proceedings has been used in several large cases with victims spread over a large geographic area.

   If a courtroom's observation area is too small to accommodate all the victims who want to observe a proceeding, Department attorneys should consider advocating for moving the proceeding to a larger courtroom or providing a closed-circuit feed of the proceedings to another venue where victims can gather. Department attorneys should also consider advocating for the oral presentation in court of a representative sample of victim impact statements.

H. Cases Involving Juvenile Offenders

1. Generally. Victims of juvenile offenders shall be considered victims for purposes of these *AG Guidelines* and shall be entitled to the normal rights and services except where Federal law specifically provides otherwise. The Federal Juvenile Delinquency Act restricts the type of information that may be disclosed to victims regarding investigations and proceedings of juvenile offenders (unless the juvenile has been transferred for criminal prosecution as an adult). (18 U.S.C. §§ 5031–5042)

   a. Investigative Stage. During the investigative stage, a victim should receive the services to which he or she would normally be entitled, but only a general statement about the progress of an investigation into the role of a juvenile suspect may be disclosed. Investigators and other department employees are cautioned that the name and other identifying data relating to a suspect who is known or believed to have been younger than 18 when the crime occurred should not be disclosed.

   b. Prosecutorial Stage

      (1) Prosecutors in juvenile cases should solicit and receive victims' views on appropriate disposition (not only whether the prosecutor should move to detain, dismiss, defer prosecution, or accept a plea, but also how severe a sentence is warranted). Prosecutors should tell victims that presentence reports and victim impact statements are not mandated at dispositional hearings but that a victim may prepare such a statement for the prosecutor to offer to the court. Upon request, prosecutors should make reasonable efforts to assist the victim in preparing an accurate victim impact statement. The prosecutor may also request that the court order the probation office to prepare a victim impact statement.

(2) Prosecutors are not permitted to convey to the victim any prosecutorial information about the progress of a juvenile proceeding unless and until the court has found the juvenile to be delinquent. After a finding of delinquency, Federal law explicitly permits disclosure of information about the final disposition to the victim or, if the victim is deceased, to the victim's immediate family. (18 U.S.C. § 5038(a)(6)) Upon request, a victim should be apprised of the final disposition of the case and the sentence imposed on the offender.

c. Corrections Stage. A victim should not be notified when the juvenile offender in his or her case has actually been released from custody unless the victim has requested such notification.

I. Victim Declination of Services

Department employees are required, by law and under these *AG Guidelines*, to identify victims of crime, notify them of their rights, and offer them services as described in these *AG Guidelines*. Victims, however, are not required to exercise their rights or to accept these services and may choose at any point in the criminal justice process to decline to receive further services or assistance. Department employees need not provide services that victims have made an informed decision to decline. When a victim declines services, Department employees should attempt to ascertain whether the victim wants to decline all future services or only one or more specific services. In the latter case, responsible officials should continue to provide services that have not been declined. In any event, the responsible official should consider properly documenting the victim's informed declination of mandatory rights and services.

ARTICLE III.
GUIDELINES APPLICABLE TO ALL COMPONENTS

A. Mandatory Reporting of Compliance with the *AG Guidelines*

The Director of the Office for Victims of Crime (OVC), has the statutory responsibility for monitoring Justice Department compliance with the *AG Guidelines*. (42 U.S.C. § 10603(c)(3)(A)) Responsible officials shall report to the Attorney General through the OVC Director about their compliance by means of an Annual Compliance Report containing the relevant data (including the numbers of crime victims offered services) requested by the OVC Director. The Annual Compliance Report shall be submitted to OVC by February 15 of the year following the year that is the subject of the report.

B. Performance Appraisal

The annual work plans and performance appraisals of each appropriate Federal law enforcement officer, supervisor, investigator, prosecutor, corrections officer, and parole official (and appropriate staff of those agencies) shall encompass, as a required activity, implementation of and evaluation of adherence or nonadherence with the victims' rights and victims' and witnesses' services provisions set forth in these *AG Guidelines*. All investigative, prosecutorial, correctional, and postcorrectional components with responsibilities for providing rights and services to victims should include the discharge of such responsibilities among those components' criteria for reviews and evaluations. Verification of the institution of this recommendation must be included in the Annual Compliance Report.

C. Sanctions

Pursuant to the Justice for All Act of 2004, 18 U.S.C. § 3771(f)(2)(C), disciplinary sanctions, up to and including suspension and termination of employment, may result from a willful or wanton failure to comply with provisions of Federal law pertaining to the treatment of crime victims.

D. Mandatory Training

Responsible officials shall ensure that all employees whose primary responsibilities include contact with crime victims and witnesses receive a copy of these *AG Guidelines* and not less than 1 hour of training concerning the *Guidelines* and victims' and witnesses' rights within 60 days after assuming such responsibilities. Responsible officials shall also ensure that the same employees undergo additional training with respect to any changes in the *AG Guidelines* or the law relating to victims' rights within a reasonable time after such changes take effect.

The Deputy Attorney General may, from time to time, direct responsible officials to ensure that other Department employees undergo additional training with respect to victims' rights and these *AG Guidelines*.

E. Reporting Suspected Cases of Child Abuse

All Federal law enforcement personnel have obligations under State and Federal law to report suspected child abuse. All Federal employees should refer to their State child abuse reporting laws to determine the scope of the obligation in cases of suspected child abuse. State laws vary substantially. Some States require mandatory reporting of child abuse or neglect by all persons within their boundaries; others require such reporting only from individuals engaged in expressly listed occupations. When the suspected child abuse is observed on Federal lands, the Federal child abuse reporting law also applies. The Federal child abuse reporting law requires certain professionals (listed below) working on Federal land or in a federally operated (or contracted) facility, in which children are cared for or reside, to report suspected child abuse to an investigative agency designated by the Attorney General to receive and investigate such reports. (42 U.S.C. § 13031)

A report should be made even if the information inadvertently comes to the employee's attention, but not if the suspected child abuse has already been reported and is the subject of an existing report or investigation.

1. **Sanctions for Failure To Report. A covered professional who, while working on Federal land or in a federally operated (or contracted) facility, in which children are cared for or reside, learns of facts that give reason to suspect that a child has suffered an incident of child abuse and fails to report such facts in a timely fashion shall be guilty of a Class B misdemeanor.** (18 U.S.C. § 2258)

2. Mandated Reporters (Covered Professionals). Persons engaged in the following professions and activities on Federal land or in a federally operated (or contracted) facility are subject to the Federal child abuse reporting requirements.

    a. Health Care Professionals. Physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug treatment personnel, and persons performing a healing role or practicing the healing arts.

    b. Mental Health Professionals. Psychologists, psychiatrists, and other mental health professionals.

    c. Counselors. Social workers and licensed or unlicensed marriage, family, and individual counselors.

    d. Educators. Teachers, teacher's aides or assistants, school counselors and

guidance personnel, school officials, and school administrators.

e. Childcare Workers and Administrators.

f. **Law Enforcement. Law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees.**

g. Foster Parents.

h. Commercial Film and Photo Processors.

(42 U.S.C. § 13031(b))

3. Victim Assistance Personnel Should Report Child Abuse. Victim-witness personnel and others with a degree or license in social work, medicine, nursing, mental health, or a similar profession may be mandatory reporters on that basis. In any event, Department of Justice policy is that victim-witness personnel should report suspected cases of child abuse as if they were mandatory reporters under 42 U.S.C. § 13031.

4. Agencies Designated by the Attorney General To Receive Reports. Reports of child abuse on Federal lands or in federally operated (or contracted) facilities pursuant to 42 U.S.C. § 13031 shall be made to the local law enforcement agency or local child protective services agency that has jurisdiction to investigate reports of child abuse or to protect child abuse victims in the area or facility in question. When no such agency has entered into a formal written agreement with the Attorney General to investigate such reports, the FBI shall receive and investigate such reports. (28 C.F.R. Part 81, AG Order No. 1833-93 (Dec. 23 1993)) Reports of child abuse required by State or local law shall be made to the agency or entity identified in accordance with that law.

5. Verbal Reports Preferred. The report of suspected child abuse should be made by a method best suited to giving immediate notice, usually verbally, in person or by telephone, or by facsimile. Reporters should document their report in the same manner that they document other important work-related actions. Responsible officials may develop written reporting forms for this purpose. (see 42 U.S.C. § 13031(e) (use of a form is encouraged, but shall not take the place of the immediate making of oral reports when circumstances dictate)). Reports may be made anonymously. Reports are presumed to have been made in good faith and reporters are immune from civil and criminal liability arising from the report unless they act in bad faith. (42 U.S.C. § 13031(f))

6. Reporting in Indian Country. Reporting child abuse in Indian Country is governed by 18 U.S.C. § 1169 and 25 U.S.C. § 3203. Health care professionals, school employees and officials, childcare providers, social workers, mental health professionals and counselors, law enforcement officers, probation officers, workers in a juvenile rehabilitation or detention facility, or persons employed in a public agency who are

responsible for enforcing statutes and judicial orders, are among those required to report reasonable suspicions that a child has been or may reasonably be expected to be abused. (18 U.S.C. § 1169(a)(1)(H) (full list of mandated reporters)). Reports are to be made to the Federal, State, or tribal agency with primary responsibility for child protection or the investigation of child abuse within the portion of Indian Country involved. If the report involves a potential crime and either an Indian child is involved or the alleged abuser is an Indian, the local law enforcement agency (if other than the FBI) is required to make an immediate report to the FBI. (25 U.S.C. § 3203(b)(2)) The agency receiving the initial report is required to prepare a written report describing the child, the alleged abuser, and the available facts relating to the abuse allegation within 36 hours.
(25 U.S.C. § 3203(c)(1))

F. Victim Notification System

For components participating in the automated Victim Notification System (VNS), victim contact information and notice to victims of events described in article IV of these *AG Guidelines* shall, absent exceptional circumstances (such as cases involving juvenile or foreign victims), be conducted and maintained using VNS. In order for VNS to provide timely victim notification during the investigative, prosecutorial, and correctional phases of a case, the responsible official must provide VNS with all necessary information before transferring notification responsibilities to the next responsible official. Responsible officials shall ensure that employees with responsibilities related to VNS have received and continue to receive adequate training on the proper use of VNS.

As of the publication date of these *AG Guidelines*, not all of the Department's litigating divisions participate in VNS. Regardless of whether a litigating division is a VNS participant, however, the attorney from the division who is handling the case must discharge the duties that are imposed upon a U.S. Attorney under these *AG Guidelines* if the division is solely responsible for the case. With respect to cases handled by the Criminal Division, the responsible official from the Criminal Division may delegate responsibilities to the U.S. Attorney in whose district the prosecution is pending pursuant to an agreement between the Criminal Division and the Executive Office for United States Attorneys (EOUSA).

G. Victim Privacy

Consistent with the purposes of 18 U.S.C. § 3771(a)(8), Department employees engaged in the investigation or prosecution of a crime shall respect victims' privacy and dignity. In particular, Department employees should use their best efforts to respect the privacy and dignity of especially vulnerable victims, such as elderly or juvenile victims and victims of sex offenses or domestic violence. Employees with access to private victim information should not reveal that information to anyone who does not have a need to know it.

Responsible officials should take special note of the Department's policy disfavoring the subjection of sexual assault victims to polygraph examinations. (*See infra* art. VII.B.2.b.)

Although victim privacy must be respected, information that may be relevant to an ongoing crime or to an ongoing investigation or prosecution of a crime should be shared with the investigating agent or prosecuting attorney. Department employees who are directly involved in providing victim services should therefore inform victims, when relevant, that certain information pertaining to victims may be shared among Department employees and other law enforcement officials.

ARTICLE IV.
SERVICES TO VICTIMS AND WITNESSES

A. Investigation Stage

The investigative agency's responsibilities begin with the report of the crime and extend through the prosecution of the case. In some instances, when explicitly stated, the investigative agency's responsibility for a certain task is transferred to the prosecuting agency when charges are filed.

1. Designation of Responsible Officials. Application of article IV.A will be the responsibility of the following officials:

    a. In the FBI, the responsible official is the special agent-in-charge of the division having primary responsibility for conducting the investigation.

    b. In the DEA, the responsible official is the special agent-in-charge of the office having primary responsibility for conducting the investigation.

    c. In the Bureau of Alcohol, Tobacco, Firearms and Explosives, the responsible official is the special agent-in-charge of the office having primary responsibility for conducting the investigation.

    d. In the U.S. Marshals Service, the responsible official is the U.S. Marshal in whose district the case is being conducted.

    e. In the Office of the Inspector General, the responsible official is the Inspector General.

    Responsible officials may delegate their responsibilities under these *AG Guidelines* to subordinates in appropriate circumstances, but responsible officials remain obliged to ensure that all such delegated responsibilities are discharged.

2. Identification of Victims. At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, the responsible official of the investigative agency shall identify the victims of the crime. (42 U.S.C. § 10607(b)(1)) Prior to the filing of criminal charges, components participating in the Victim Notification System (VNS) shall enter the name and available contact information for known victims in that system, and nonparticipating components shall provide the responsible prosecuting official with a list containing the names of and available contact information for known victims. In cases with large numbers of victims, the list shall, if practicable, be provided in an electronic format capable of being readily entered into VNS.

3. Description of Services.

a. Information, Notice, and Referral

(1) Initial Information and Notice. Responsible officials must advise a victim pursuant to this section at the earliest opportunity after detection of a crime at which it may be done without interfering with an investigation. To comply with this requirement, it is recommended that victims be given a printed brochure or card that briefly describes their rights and the available services, identifies the local service providers, and lists the names and telephone numbers of the victim-witness coordinator or specialist and other key officials. Models for such brochures in several different languages are available from the Office for Victims of Crime. Personal contact should be made whenever reasonably feasible.[2] A victim must be informed of—

(a) His or her rights as enumerated in 18 U.S.C. § 3771(a). (18 U.S.C. § 3771(c)(1))

(b) His or her right entitlement, on request, to the services listed in 42 U.S.C. § 10607(c). (42 U.S.C. § 10607(b)(2)).

(c) The name, title, business address, and telephone number of the responsible official to whom such a request for services should be addressed. (42 U.S.C. § 10607(b)(3))

(d) The place where the victim may receive emergency medical or social services. (42 U.S.C. § 10607(c)(1)(A))

(e) The availability of any restitution or other relief (including crime victim compensation programs) to which the victim may be entitled under this or any other applicable law and the manner in which such relief may be obtained. (42 U.S.C. § 10607(c)(1)(B))

(f) Public and private programs that are available to provide counseling, treatment, and other support to the victim. (42 U.S.C. § 10607(c)(1)(C))

(g) The right to make a statement about the pretrial release of the defendant in any case of interstate domestic violence, violation

[2] Contact by law enforcement agencies with foreign nationals residing in other countries must be coordinated with the appropriate officials of the host government through the FBI Legal Attaché Office responsible for the country in which the foreign national resides. In the immediate aftermath of a crime against a foreign national in the United States, the State Department will coordinate contact through the embassy or consulate for the country of which the victim is a citizen.

of a protection order, or stalking. At the earliest opportunity after detection of an interstate domestic violence or stalking offense or violation of a protective order at which it may be done without interfering with an investigation, the responsible official of the investigative agency shall inform the victim that he or she has the right to make a statement regarding the danger posed by the defendant for the purposes of determining pretrial release of the defendant or conditions of such release. (18 U.S.C. § 2263)

(h) The availability of payment for testing and counseling in cases of sexual assaults. The responsible official of the investigative agency shall inform victims of the Attorney General's obligation to provide for the payment of the cost of up to two anonymous and confidential tests of the victim for sexually transmitted diseases during the 12 months following the assault and the cost of a counseling session by a medically trained professional regarding the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as a result of the assault. (42 U.S.C. § 10607(c)(7))

The responsible official should advise the victim of a sexual assault that poses a "risk of transmission" of the Acquired Immunodeficiency Syndrome (AIDS) virus of the circumstances under which the court may order that a defendant be tested for this condition. The official should explain that such an order is only available after the defendant has been charged. (42 U.S.C. § 14011)

(i) The availability of services for victims of domestic violence, sexual assault, or stalking. Responsible officials should take appropriate steps to inform victims of domestic violence, sexual assault, or stalking. of assistance that may be available to them under programs that have received grants from the Attorney General, such as legal assistance services funded by grants under 42 U.S.C. § 3796gg-6, housing assistance for child victims of domestic violence, sexual assault, or stalking funded by grants under 42 U.S.C. § 13975, and other similar services. (*See also* art. VII (offering additional guidance for dealing with victims of domestic violence, sexual assault, or stalking))

(j) The option of being included in VNS. Victims shall be notified of their opportunity to receive notification of case developments through VNS as well as their right to decline to be included in the VNS database.

(k) Available protections from intimidation and harassment. Whenever appropriate, victims should be notified of legal protections and remedies (including protective orders) that are available to prevent intimidation and harassment.

(2) Referral. The responsible official designated in paragraph A.1 shall assist the victim in contacting the person or office responsible for providing the services and relief described in paragraph A.3. (42 U.S.C. § 10607(c)(1)(D)) When charges are filed, the responsibility for making referrals is transferred to the responsible official in the prosecutor's office.

(3) Notice during the investigation. During the investigation of a crime, a responsible official shall provide the victim with the earliest possible notice concerning—

(a) The status of the investigation of the crime, to the extent that it is appropriate and will not interfere with the investigation. (42 U.S.C. § 10607(c)(3)(A))

(b) The arrest of a suspected offender. (42 U.S.C. § 10607(c)(3)(B))

b. Protection From Harassment/Intimidation. The responsible official of the investigative agency shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender. (42 U.S.C. § 10607(c)(2)) Such arrangements may vary from aiding a victim in changing his or her telephone number to the extreme measure of proposing the victim for inclusion in the Federal Witness Security Program (which is available to witnesses only in limited situations and pursuant to very stringent admission guidelines). These *AG Guidelines* shall not be construed to require personal physical protection of a victim, such as by bodyguards. Department personnel should use their discretion and sound judgment when assessing and discussing possible threats and security measures with victims.

c. Return of Property Held as Evidence. At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes is maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes. (42 U.S.C. § 10607(c)(6)) There may be circumstances, however, in which a victim's property will inevitably deteriorate or will be damaged through legitimate use in the law enforcement process. Responsible officials may consider advising victims of such circumstances when they arise. Contraband shall not be returned to victims.

d. Notification to Victims' and Witnesses' Employers and Creditors. Upon request by a victim or witness, the responsible official should assist in notifying—

(1) The employer of the victim or witness if cooperation in the investigation of the crime causes his or her absence from work.

(2) The creditors of the victim or witness, when appropriate, if the crime or cooperation in its investigation affects his or her ability to make timely payments.

Upon filing of charges by the prosecutor, this responsibility transfers to the responsible official of the prosecutor's office.

e. Payment for Forensic Sexual Assault Examinations. The responsible official or the head of another department or agency that conducts an investigation into a sexual assault shall pay, either directly or by reimbursement of the victim, the cost of a physical examination of the victim and the costs of materials used to obtain evidence. The department or agency conducting the sexual assault investigation shall be responsible for the cost of the examination unless payment is provided by other means. (42 U.S.C. § 10607(c)(7))

The sexual assault victim should be informed that he or she may choose to have the department or agency conducting the investigation pay the cost of the examination directly. In no case shall the victim be held responsible for payment of the examination or be required to seek reimbursement for the examination from his or her insurer. Moreover, in no case shall a victim of sexual assault be required to cooperate with law enforcement in order to be provided with a forensic medical examination free of charge.

f. Logistical Information. Victims and witnesses should be provided information or assistance with respect to transportation, parking, childcare, translator services, and other investigation-related services. Upon filing of charges by the prosecutorial agency, this responsibility transfers to the responsible official of the prosecutorial agency.

g. Programs for Department Employees Who Are Victims of Crime. Responsible officials should ensure that Department employees have access to an Employee Assistance Program as well as generally available victim assistance programs. Responsible officials should assist employees in accessing appropriate victim services.

B. Prosecution Stage

The prosecution stage begins when charges are filed and continues through postsentencing legal proceedings, including appeals and collateral attacks.

1. Responsible Officials. For cases in which charges have been instituted, the responsible official is the U.S. Attorney in whose district the prosecution is pending. For cases in

which a litigating division of the Department of Justice is solely responsible, the responsible official is the chief of the section having responsibility for the case. The Department attorney handling such a case shall perform the same duties under these *AG Guidelines* as are required of a U.S. Attorney. By agreement between the litigating division and EOUSA, the responsible official from the litigating division may delegate some responsibilities to the U.S. Attorney in whose district the prosecution is pending.

For cases in which the U.S. Marshals Service is the custodial agency and is housing Federal pretrial detainees (at the same time the offender is being prosecuted by the U.S. Attorney's Office), the responsible official for purposes of performing the duties of the corrections agencies contained in article IV.C shall be the U.S. Attorney in whose district the prosecution is pending.

Responsible officials may delegate their responsibilities under these *AG Guidelines* to subordinates in appropriate circumstances, but responsible officials remain obliged to ensure that all such delegated responsibilities are discharged.

2. Services to Crime Victims

   a. Victim and Witness Security. Department employees should consider the security of victims and witnesses in every case. Where necessary, prosecutors should inform the court of the threat level, risk, and resources available to create a reasonable plan to promote the safety of victims and witnesses. Department employees may make victims and witnesses aware of the resources that may be available to promote their safety, including protective orders, the Emergency Witness Assistance Program, the Federal Witness Security Program, and State and local resources. Prosecutors should consider moving for pretrial detention of the accused pursuant to 18 U.S.C. § 3142(f) when circumstances warrant it.

   b. Information, Notice, and Referrals

      (1) Notice of Rights. Officers and employees of the Department of Justice shall make their best efforts to see that crime victims are notified of the rights enumerated in 18 U.S.C. § 3771(a). (18 U.S.C. § 3771(c)(1))

      (2) Notice of Right To Seek Counsel. The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in 18 U.S.C. § 3771(a). (18 U.S.C. § 3771(c)(2)) If the victim is represented, statutorily mandated notifications and communications may still be directed to the victim, but the attorney for the victim should be copied on those notifications and communications whenever it is feasible to do so. For other types of communications, Department attorneys and their non-lawyer staff should consult and comply with applicable rules of professional conduct, which may regulate contact with represented persons.

(3) Notice of Right To Attend Trial. The responsible official should inform the crime victim about the victim's right to attend the trial regardless of whether the victim intends to make a statement or present any information about the effect of the crime on the victim during sentencing. (18 U.S.C. § 3510(a)) Even if the victim is to testify at trial, the victim may not be excluded from the trial unless the court finds, on a record of clear and convincing evidence, that the victim's testimony at trial would be altered by exposure to other testimony. If the prosecution would nevertheless prefer that the victim not attend the trial, the prosecutor should consider explaining to the victim the need for the victim's sequestration in an effort to obtain it voluntarily.

(4) Notice of Case Events. During the prosecution of a crime, a responsible official shall provide the victim, using VNS (where appropriate), with reasonable notice of—

(a) The filing of charges against a suspected offender. (42 U.S.C. § 10607(c)(3)(C))

(b) The release or escape of an offender or suspected offender. (18 U.S.C. § 3771(a)(2); 42 U.S.C. § 10607(c)(3)(E))

(c) The schedule of court proceedings.

(i) The responsible official shall provide the victim with reasonable, accurate, and timely notice of any public court proceeding or parole proceeding that involves the crime against the victim. In the event of an emergency or other last-minute hearing or change in the time or date of a hearing, the responsible official should consider providing notice by telephone or expedited means. This notification requirement relates to postsentencing proceedings as well. (18 U.S.C. § 3771(a)(2))

(ii) The responsible official shall also give reasonable notice of the scheduling or rescheduling of any other court proceeding that the victim or witness is required or entitled to attend. (42 U.S.C. § 10607(c)(3)(D))

(d) The acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial. (42 U.S.C. § 10607(c)(3)(F))

(e) If the offender is convicted, the sentence and conditions of supervised release, if any, that are imposed. (42 U.S.C. § 10607(c)(3)(G))

(5) Information about the criminal justice system. During the prosecution of a crime (if the victim has provided a current address or telephone number), a responsible official should provide the victim with general information about the criminal justice process, specifically including—

(a) The role of the victim in the criminal justice process, including what the victim can expect from the system as well as what the system expects from the victim.

(b) The stages in the criminal justice process of significance to a crime victim and the manner in which information about such stages can be obtained.

(18 U.S.C. § 1512 (Historical and Statutory Notes); *cf.* Pub. L. No. 97-291 § 6(a)(1)(C) and (D))

(6) Referrals. Once charges are filed, the responsible official shall assist the victim in contacting the persons or offices responsible for providing the services and relief listed in article IV.A.3.a(1).

(a) The responsible official should take appropriate steps to inform victims of domestic violence, stalking, or sexual assault about assistance that may be available to them, such as legal assistance services funded by grants under 42 U.S.C. § 3796gg-6, shelter services funded by grants under the Family Violence Prevention and Services Act (42 U.S.C. § 10401 *et seq.*), and housing assistance for child victims funded by grants under 42 U.S.C. § 13975. Refer to article VII of these *AG Guidelines* for additional guidance on dealing with victims of domestic violence, stalking, or sexual assault.

(b) The responsible official should take appropriate steps to inform immigrant victims of domestic violence that they may petition for immigration protections under the Battered Immigrant Women Protection Act of 2000, 8 U.S.C. § 1101(a)(15)(U).

c. Consultation With a Government Attorney

(1) In General. A victim has the reasonable right to confer with the attorney for the Government in the case. (18 U.S.C. § 3771(a)(5)) The victim's right to confer, however, shall not be construed to impair prosecutorial discretion. (18 U.S.C. § 3771(d)(6)) Federal prosecutors should be available to consult with victims about major case decisions, such as dismissals, release of the accused pending judicial proceedings (when such release is for noninvestigative purposes), plea negotiations, and pretrial diversion. Because victims are not clients, may become adverse

to the Government, and may disclose whatever they have learned from consulting with prosecutors, such consultations may be limited to gathering information from victims and conveying only nonsensitive data and public information. Consultations should comply with the prosecutor's obligations under applicable rules of professional conduct.

Representatives of the Department should take care to inform victims that neither the Department's advocacy for victims nor any other effort that the Department may make on their behalf constitutes or creates an attorney-client relationship between such victims and the lawyers for the Government.

Department personnel should not provide legal advice to victims.

(2) Prosecutor Availability. Prosecutors should be reasonably available to consult with victims regarding significant adversities they may suffer as a result of delays in the prosecution of the case and should, at the appropriate time, inform the court of the reasonable concerns that have been conveyed to the prosecutor.

(3) Proposed Plea Agreements. Responsible officials should make reasonable efforts to notify identified victims of, and consider victims' views about, prospective plea negotiations. In determining what is reasonable, the responsible official should consider factors relevant to the wisdom and practicality of giving notice and considering views in the context of the particular case, including, but not limited to, the following factors:

(a) The impact on public safety and risks to personal safety.

(b) The number of victims.

(c) Whether time is of the essence in negotiating or entering a proposed plea.

(d) Whether the proposed plea involves confidential information or conditions.

(e) Whether there is another need for confidentiality.

(f) Whether the victim is a possible witness in the case and the effect that relaying any information may have on the defendant's right to a fair trial.

d. Separate Waiting Area. During court proceedings, the responsible official shall ensure that a victim is provided with a waiting area removed from and out of the

sight and hearing of the defendant and defense witnesses. (42 U.S.C. § 10607(c)(4))

e. Notification to Victims' and Witnesses' Employers and Creditors. Upon request by a victim or witness, the responsible official should assist in notifying—

(1) The employer of the victim or witness if cooperation in the investigation or prosecution of the crime causes his or her absence from work.

(2) The creditors of the victim or witness, where appropriate, if the crime or cooperation in its investigation or prosecution affects his or her ability to make timely payments.

f. Logistical Information. Victims and witnesses should be provided with information or assistance with respect to transportation, parking, childcare, translator services, and other prosecution-related services.

g. Limited Testing of Defendants In Sexual Assault Cases. (42 U.S.C. § 14011)

(1) Notice and Information. The responsible official should advise the victim of a sexual assault that poses a "risk of transmission" of the Acquired Immunodeficiency Syndrome (AIDS) virus of the circumstances under which the victim may obtain an order that the defendant be tested for this condition and that the results be shared with the victim.

(2) Procedure. The court may order such a test when the following requirements have been met:

(a) The defendant has been charged.

(b) The victim requests that the defendant be tested.

(c) The test would provide information necessary to the victim's health.

(3) Negative Test Results. If the initial test is negative and upon the request of the victim, the court may order followup testing and counseling on dates 6 and 12 months after the initial test. (42 U.S.C. § 14011(b)) The responsible official should assist the victim in requesting the followup testing and counseling when appropriate.

h. Closed-Circuit Televising of Court Proceedings in Cases Involving a Change of Venue. If the court changes the trial venue out of the State in which the case was initially brought to a location that is more than 350 miles from the location in which the proceedings originally would have taken place, the court shall

order closed-circuit televising of the proceedings to the original location to permit victims who qualify under the statute to watch the trial proceedings. (42 U.S.C. § 10608) In any relevant case, the responsible official should, using VNS where appropriate, inform victims of the provision and, if requested by the victims, bring it to the court's attention and facilitate its implementation. In cases in which there has been no change of venue but the prosecution is occurring far from where most victims reside, prosecutors should consider moving for closed-circuit transmission of the proceedings to a forum that is more convenient for the victims.

i. Programs for Department Employees Who Are Victims of Crime. The responsible official should ensure that Department employees who are victims of crime have access to an Employee Assistance Program.

3. Sentencing Proceedings and Victim Impact Statements

a. Victim Impact Statement

(1) When a defendant is convicted, a responsible official should inform victims—

(a) That the U.S. probation officer is required to prepare a presentence investigation report that includes a section assessing the financial, social, psychological, and medical impact of the crime on any individual against whom the offense was committed. (Fed. R. Crim. P. 32(d)(2)(B)) This section is called the “Victim Impact Statement,” and it includes a provision on restitution.

(b) About how to communicate directly with the probation officer if they so desire.

(2) A responsible official should inform the probation officer about information in the Government’s possession relevant to the topics addressed in the victim impact statement so that the presentence report will fully reflect the effects of the crime on victims as well as the appropriate amount of restitution, if any.

(3) The responsible official shall transmit the victim impact statement for an offender to the responsible official in the corrections stage.

b. Sentencing

(1) Interests of Victims. Federal prosecutors should advocate for the interests of victims, including child victims, at the time of sentencing, including in the setting of conditions for supervised release (or parole,

where applicable) in a manner that is consistent with available resources and prosecutorial objectives.

(2) The Right of Victims To Be Reasonably Heard. If a victim (or a lawful representative appearing on behalf of the victim) is present and wants to make a statement at the sentencing of the convicted offender, the prosecutor should advocate for the victim's right to make a statement or present information in relation to the offender's sentence.

(3) Death Penalty Cases. If the Government decides to seek the death penalty, it must file notice with the court of its intention to do so. The notice sets forth the aggravating factors that the Government proposes to prove as justifying a death sentence. The factors for which notice is provided "may include factors concerning the effect of the offense on the victim and the victim's family, and may include oral testimony, a victim impact statement that identifies the victim of the offense, the extent and scope of the injury and loss suffered by the victim and the victim's family, and any other relevant information." (18 U.S.C. § 3593(a))

(a) If the Government files the proper notice, the responsible official should notify the victim and appropriate family members of their potential opportunity to address the court during the aggravation portion of the sentencing hearing and of the date, time, and place of the scheduled hearing.

C. Corrections Stage

1. Responsible Officials. For cases in which the U.S. Marshals Service is the custodial agency, housing Federal pretrial detainees (at the same time the offender is being concurrently prosecuted by the U.S. Attorney's Office), the responsible official is the U.S. Attorney in whose district the prosecution is pending. For cases in which BOP has become involved, the responsible official is the Director or Warden of the BOP facility where the defendant is incarcerated. In proceedings relating to the revocation of parole or the revocation of supervised release in the District of Columbia, the responsible official is the Chairman of the U.S. Parole Commission.

   Responsible officials may delegate their responsibilities under these *AG Guidelines* to subordinates in appropriate circumstances, but responsible officials remain obliged to ensure that all such delegated responsibilities are discharged.

2. Services to Victims

   a. Notice

(1) Custodial Release Eligibility Information. A responsible official of the custodial agency shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each. (42 U.S.C. § 10607(c)(8))

(2) Custodial Release Notification

(a) As soon after trial as reasonably feasible, the responsible official shall provide a victim with notice (through VNS, where appropriate) of the—

(i) Date on which an offender will be eligible for parole and the scheduling of a release hearing, if any, for the offender. (42 U.S.C. §§ 10607(c)(3)(G) and (c)(5)(A))

(ii) Escape, work release, furlough, or any other form of release of the offender from custody. (42 U.S.C. § 10607(c)(5)(B))

(iii) Death of the offender, if the offender dies while in custody. (42 U.S.C. § 10607(c)(5)(C))

(b) When the victim is an inmate, the responsible official may take into consideration, in determining when notice is provided, the security of the offender inmate. (18 U.S.C. § 3771(c)(3)) If there is a serious security risk in informing an inmate victim of an offender's status, the corrections agency may time the notice to minimize that risk, even if the notification takes place after the event. This determination should be made on a case-by-case basis and should not be interpreted to prevent an inmate victim from providing written input in any parole proceeding. The notice requirement in this guideline applies even in cases in which a Department of Justice component is holding a defendant (such as a deportable alien) after time served.

(3) Notice Relating to the Revocation of Parole

(a) When a proceeding relating to the revocation of parole is scheduled due to the offender's violation of the conditions of his parole (including the commission of a new crime), the responsible official shall (in cooperation with BOP, when appropriate) notify the victims of the crime for which parole or supervised release was imposed of the date and time of the revocation proceeding.

(b) The responsible official should also provide victims with the earliest possible notice of—

(i) The release or detention status of the offender.

(ii) The victims' rights to be heard at the parole proceeding, to confer reasonably with the attorney for the Government in the case, and to be treated with fairness and respect. (18 U.S.C. § 3771(a))

(iii) If the offender is found to have violated the conditions of parole or supervised release, the sentence imposed, the conditions of release (if applicable), and the availability of the BOP notification program.

(4) Prisoner Reentry. In anticipation of the offender's release from custody, the responsible official shall prepare the following:

(a) Victim impact statement. If the offender is subject to supervised release in a district other than the district in which the offender was sentenced, the responsible official shall ensure that the victim impact statement portion of the presentence investigation report is transmitted to the U.S. Probation Office in the supervising district.

(b) Notification. No later than 30 days prior to release of the offender, the responsible official shall provide a victim with notice of the date of the offender's release; the city and State in which the offender will be released; and, if the offender is subject to supervised release, the contact information for the supervising U.S. Probation Office. (Note: This renewed notification shall not be shared with the offender or his counsel, except as otherwise required by law.)

b. Separate Waiting Area. During parole hearings, the responsible official should coordinate with the U.S. Marshals Service, BOP, or other entity responsible for the relevant facilities to ensure, where possible, that a victim is provided with a waiting area that is removed from and out of the sight and hearing of the inmate and the inmate's witnesses. (42 U.S.C. § 10607(c)(4))

c. Programs for Department Employees Who Are Victims of Crime. Responsible officials should ensure that Department employees have access to an Employee Assistance Program. To the extent possible, responsible officials should assist employees with identity changes when they are needed to escape domestic violence, sexual assault, or stalking.

ARTICLE V.
RESTITUTION

A. Background

"The principle of restitution is an integral part of virtually every formal system of criminal justice, of every culture and every time. It holds that, whatever else the sanctioning power of society does to punish its wrongdoers, it should also ensure that the *wrongdoer is required to the degree possible to restore the victim to his or her prior state of well-being*." S. Rep. No. 104-179, at 12, *reprinted in* 1996 U.S.C.C.A.N. 924, 925–26 (emphasis added). The Mandatory Victims Restitution Act of 1996 (MVRA) requires that restitution be imposed in a wide variety of circumstances and that the terms of payment "*shall be the shortest time in which full payment can reasonably be made*." (18 U.S.C. § 3572(d)(2) (emphasis added)) Other statutes also authorize the imposition of restitution as part of a criminal sentence.

The Justice for All Act of 2004 provides that victims have the right to "full and timely restitution." (18 U.S.C. § 3771(a)(6)) This provision does not give rise to an independent basis for seeking or awarding restitution, but it underscores the sense of Congress that restitution is a critical aspect of criminal justice. Prosecutors, victim-witness coordinators, investigators, probation officers, clerks of the court, and financial litigation units all share an important role in ensuring that victims receive full and timely restitution. DOJ employees working at each stage of a criminal case—investigating, charging, negotiating plea agreements, advocating for appropriate sentences, and enforcing criminal judgments—must give careful consideration to the need to provide full restitution to the victims of the offenses and should work together as authorized by law to ensure that full and timely restitution is paid. Indeed, the responsibility to pursue restitution does not end when restitution is ordered but continues until restitution has been paid or the liability to pay restitution terminates.

This article describes some of the mechanisms for recovering full and timely restitution. Other references, including the *Prosecutor's Guide to Criminal Monetary Penalties*, may be found on USABook Online, Topic: Restitution.

B. Statutory Framework

Restitution, as part of a criminal sentence, can be imposed only as authorized by statute. Some form of restitution is authorized for virtually every Federal offense that inflicts a recoverable loss (as described in more detail below) on an identifiable victim. Most of the procedural guidelines governing the imposition of restitution—be it mandatory or discretionary—appear at 18 U.S.C. § 3664.

1. Mandatory Restitution. The MVRA requires courts to impose the full amount of restitution (without regard to the defendant's economic circumstances) in most of the commonly prosecuted Federal offenses, including virtually all Title 18 property offenses and all crimes of violence. (18 U.S.C. § 3663A) The only exception to mandatory restitution is for an offense against property with respect to which the court makes a finding from facts on the record either that (a) the number of identifiable

victims is so large that restitution is impracticable or (b) determining complex issues of fact related to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process. (18 U.S.C. § 3663A(c)(3))

In addition to offenses covered by MVRA, restitution is also required in certain cases involving sexual abuse, child abuse, and domestic violence. (18 U.S.C. §§ 2248, 2259, 2264, 2327) Other mandatory provisions apply to failure to pay legal child support obligations (18 U.S.C. § 228(d)); peonage, slavery, and human trafficking (18 U.S.C. § 1593); and the operation of illegal methamphetamine labs and drug labs (21 U.S.C. §§ 853(q), 856(a)).

The procedures for issuing restitution under these sections now match the relevant procedures for other types of mandatory restitution and restitution under the general restitution statute. These procedures are set forth in 18 U.S.C. § 3664.

2. Discretionary Restitution. The general restitution statute, 18 U.S.C. § 3663, provides that a court "may order" restitution for any Title 18 offense not covered by the mandatory restitution provisions of 18 U.S.C. § 3663A(c). For drug offenses listed under 21 U.S.C. §§ 841, 848(a), 849, 856, 861, and 863, restitution may be ordered as long as the victim is not a participant.[3] Similarly, restitution may be ordered in air piracy offenses (unless they fall within the mandatory restitution provisions of 18 U.S.C. § 3663A(c)) and in any criminal case to the extent agreed to by the parties in a plea agreement. (18 U.S.C. § 3663(a))

   If the sentencing court finds that the complication and prolongation of the sentencing process involved in ordering restitution outweigh the need to provide restitution to any victims, the court may decline to do so. (18 U.S.C. § 3663(a)(1)(B)(ii))

3. Restitution as a Condition of Probation. Restitution may also be ordered as a discretionary condition of probation and supervised release for any offense, and it is not limited in such circumstances to the offenses set forth in 18 U.S.C. §§ 3663(a) and 3663A(c)(1)(A) (offenses for which an order of full restitution is authorized). Restitution in this context expires with the term of parole or supervision. (18 U.S.C. § 3563(b)) Prosecutors should seek imposition of such a condition in appropriate cases.

C. Considerations Affecting the Recovery of Restitution

1. Charging Decisions. When exercising their discretion, prosecutors shall give due consideration to the need to provide full restitution to the victims of Federal criminal offenses. This discretion is also governed by the Principles of Federal Prosecution,

[3] An order of "community restitution" for certain drug offenses may be imposed in cases in which no identifiable victim exists. The amount of such community restitution will be based on the amount of the public harm caused by a defendant in accordance with guidelines promulgated by the U.S. Sentencing Commission. (18 U.S.C. § 3663(c); U.S.S.G. § 5E1.1(d))

which currently are published in the *United States Attorney's Manual* at § 9-27.000. Even when a Federal offense has clearly been committed for which restitution could be imposed, other considerations may lead to a decision not to charge an offense. Those considerations include, but are not limited to, whether there is a substantial Federal interest, whether the person is subject to effective prosecution in another jurisdiction, and whether there exists an adequate noncriminal alternative to prosecution.

2. Prejudgment Restraint of Assets. If a decision is made to charge an offense, prosecutors should consider whether it is appropriate to seek the prior restraint of those assets that will be subject to the court's restitution order if the defendant is convicted. An injunction prior to sentencing, whether voluntary or pursuant to a properly supported motion, may prevent the dissipation or transfer of assets for the benefit of crime victims. (*See, e.g.*, 18 U.S.C. § 1345)

3. Conferring with Victims. Victims have the reasonable right to confer with the attorney for the Government in the case. (18 U.S.C. § 3771(a)(5); *see also*18 U.S.C. § 3664(d)(1): "[T]he attorney for the Government, after consulting, to the extent practicable, with all identified victims, shall promptly provide the probation officer with a listing of the amounts subject to restitution."))

D. Considerations in Plea Agreements

In all plea discussions, prosecutors must consider "requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the counts to which the defendant actually plead[s]." (Pub. L. No. 104-132 § 209; 18 U.S.C. § 3551 note)

1. Mandatory Restitution Offenses. Section 3663A of Title 18 mandates that restitution be ordered for crimes of violence, for offenses against property under the criminal code (unless the court makes a special finding described in subsection (c)(3) of that section), and for offenses described in 18 U.S.C. § 1365, if an identifiable victim or victims suffered a physical injury or pecuniary loss. Several other previously enacted statutes also mandate restitution: 18 U.S.C. §§ 2248, 2259, 2264, and 2327. In cases that fall under these statutes, the court is obligated to impose a restitution order.

2. Nonmandatory Restitution Offenses. Even when restitution is not mandatory, Federal prosecutors should give careful consideration to seeking full restitution to all victims of all charges contained in the indictment or information as part of any plea agreement.

3. Both Mandatory and Nonmandatory Restitution Offenses. When an indictment contains both charges for which restitution is mandatory and charges for which restitution is not mandatory, prosecutors should give careful consideration to requiring either a plea to a mandatory restitution charge or an acknowledgment by the defendant in the plea agreement that a mandatory restitution charge gave rise to the plea agreement. Either step will trigger the application of the mandatory restitution provisions of 18 U.S.C. § 3663A. (18 U.S.C. § 3663A(c)(2))

4. Application of the Sentencing Guidelines. Prosecutors should be mindful that the *United States Sentencing Guidelines* generally require the imposition of restitution when it is authorized by law, and prosecutors should not enter into agreements on restitution that would violate the U.S.S.G. (U.S.S.G. § 5E1.1; USAM § 9-27.410 [now published at USAM § 9-27.400 *et seq.*]) Moreover, prosecutors should recognize that anticipatory payment of restitution is a factor to be considered in determining "acceptance of responsibility." (U.S.S.G. § 3E1.1, cmt. n.1(c))

5. Approval of Plea Agreements by Supervisory Attorneys. Supervisory attorneys who review plea agreements (as required by the "Principles of Federal Prosecution" (USAM § 9-27.450)) and assistant U.S. Attorneys who draft plea agreements should ensure that they comply with the law and with these *AG Guidelines*. The Principles of Federal Prosecution list the factors that should be considered when determining whether to enter into a plea agreement. These factors include, among other considerations, the effect that the plea agreement will have on the victim's right to restitution. (USAM §§ 9-27.420–430)

6. Other Considerations. In general, plea agreements should require the following:

    a. Accounting of Economic Circumstances. A defendant must provide a complete and accurate accounting of his or her economic circumstances, including the disposition of any illegally received funds, to both the U.S. probation officer and the prosecutor.

    b. Immediate Enforceability of Criminal Penalties. Any criminal monetary penalties must be paid immediately and may be enforced immediately (prosecutors should encourage the defendant to make payment toward his restitution obligation before the imposition of sentence. (U.S.S.G. § 3E1.1, cmt. n.1(c))

    c. Prepayment of Special Assessments. In order to reduce the administrative burden imposed on the United States Attorney's Office (USAO), the Bureau of Prisons, and the clerk of the court, statutorily required special assessments should be paid prior to sentencing.

E. Restitution Procedures

When seeking to have restitution imposed, prosecutors must follow the procedures that are set forth in 18 U.S.C. § 3664.

1. Determining the Amount of Restitution

    a. List of Amounts Subject to Restitution. An attorney for the Government is statutorily required to provide promptly to the probation office upon request a

list of the amounts subject to restitution. Prosecutors should provide such a list, if appropriate, even when it is not requested.

The statute further requires the attorney for the Government to consult "to the extent practicable" with all identified victims before providing this list. (18 U.S.C. § 3664(d)) Responsible officials should contact victims directly whenever practicable. In cases in which direct contact is impracticable, such as cases involving large numbers of victims, responsible officials may publish a notice in a manner designed to reach as many victims as possible.

b. Verification of Loss. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the Government. (18 U.S.C. § 3664(e)) Because the attorney for the Government bears this burden, the attorney should work with the investigative agent to try to verify the amount of loss claimed by each victim. After the required consultation with the victims, the attorney for the Government may make an independent determination regarding the amount of the losses that can be proved by a preponderance of the evidence and that are appropriately attributable to the defendant's criminal conduct.

c. Restitution in the Full Amount. In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's loss without regard to the economic circumstances of the defendant. (18 U.S.C. § 3664(f)(1)(A)) In other words, even though restitution may not be mandatory, it must be ordered in full if it is to be ordered at all. Thus, for purposes of discretionary restitution under § 3663, the amount of the loss and the defendant's economic circumstances may be considered by the court on the issue of *whether* to award restitution, but those factors are irrelevant to the *amount* of restitution ordered. (18 U.S.C. § 3663(a)(1)(B)(i))

d. Deferral of Final Determination. If the victim's or victims' losses cannot be determined at least 10 days prior to sentencing, the attorney for the Government or the probation officer should so inform the court, and a date for final determination of the losses may be set for up to 90 days after the sentencing. (18 U.S.C. § 3664(d)(5))

e. Amended Restitution Orders. Even after a final determination of restitution, a victim may petition the court for an amended restitution order within 60 days after discovering additional losses. A showing of good cause for failure to include such losses in the initial claim is required before such an order can be granted. (18 U.S.C. § 3664(d)(5))

f. Fine as Impairment of Restitution. A fine shall be imposed only to the extent that it would not impair the defendant's ability to make restitution to a victim other than the United States. (18 U.S.C. § 3572(b))

g. Report of the Probation Officer. After the attorney for the Government gives the probation officer the list of the amounts subject to restitution, the probation officer is required to include in the presentence report (or another report if a presentence report is not prepared) a complete accounting of losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant. Each defendant is required to provide to the probation officer with an affidavit describing his or her financial resources, including a complete list of all assets owned or controlled as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and such other information as the court may require. (18 U.S.C. § 3664(d)(3)) If the number or identity of the victims cannot be ascertained, or other circumstances make it impracticable for the probation officer to complete the report for the court, the probation officer will so inform the court. (18 U.S.C. § 3664(a))

h. Notice to Victims. Probation officers are responsible for notifying all identified victims of—

(1) The offense(s) of which the defendant was convicted.

(2) The amounts subject to restitution that were submitted to the probation officer.

(3) The victims' opportunity to submit information to the probation officer concerning the amount of their losses.

(4) The scheduled date, time, and place of the sentencing hearing.

(5) The availability of a lien in favor of the victims pursuant to 18 U.S.C. § 3664(m)(1)(B).

(6) The victims' opportunity to complete and file with the probation officer separate affidavits (on a form provided by the probation officer) relating to the amount of their losses subject to restitution.

The statute permits the prosecutor's office to coordinate with the probation office in making such notices, and responsible officials should assist in providing this notice in whatever way possible. Much of this information should be provided to the victim through VNS. (18 U.S.C. § 3664(d)(2))

i. Additional Documentation. After reviewing the probation officer's report, the court may require additional documentation or hear testimony. (18 U.S.C. § 3664(d)(4)) These proceedings may be done in camera for privacy and are governed only by Fed. R. Crim. P. 32(i), chapter 227 (sentences), and chapter 232 (miscellaneous sentencing provisions). (18 U.S.C. § 3664(c))

2. Payment Provisions. The attorney for the Government should advocate immediate payment of restitution, unless the interests of justice require otherwise. (18 U.S.C. § 3572(d)(1)) If the court finds that the interests of justice so require, the court may provide for payment on a date certain or in installments. (18 U.S.C. § 3572 (d)(1)) If the court does not require immediate payment, the length of time over which scheduled payments are made shall be the shortest time in which full payment can reasonably be made. (18 U.S.C. § 3572(d)(2)) Except in extraordinary circumstances, prosecutors should request that the court order a payment schedule that requires a defendant to pay restitution to the full extent of his or her financial ability. Prosecutors should not agree to a payment plan that precludes enforcement pursuant to 18 U.S.C. § 3613.

3. Change in Defendant's Economic Circumstances. A restitution order must provide that the defendant notify the court and the Attorney General (through the United States Attorney's Office) of any material change in economic circumstances that might affect his or her ability to pay restitution. (18 U.S.C. § 3664(k)) This requirement should be in effect only for as long as the defendant remains liable for payment of restitution. Victims and the United States may also notify the court of any change in the defendant's economic condition. (18 U.S.C. § 3664(k)) After receiving notice of any material change in the defendant's economic circumstances, the U.S. Attorney's Office must then notify all of the victims of this change in circumstances and must certify to the court that the victims have been notified. After receiving this notification, the court may adjust the repayment schedule *sua sponte* or on the motion of any party. (18 U.S.C. § 3664(k))

   If an incarcerated defendant who is obligated to pay restitution receives "substantial resources from any source," the defendant is required to apply the value of the resources to any unpaid restitution or fine. (18 U.S.C. § 3664(n)) During their incarceration, inmates who are liable for restitution should be encouraged to participate in programs that enhance their income and financial responsibility.

F. Sentencing

When the court imposes a restitution obligation, the prosecutor should seek to ensure that the victims are clearly identified and that the amount due as restitution to each victim is clearly specified. If applicable, the court should also clearly specify joint and several liability and the order of distribution among victims.

Additionally, victims have the right "to be reasonably heard at any public proceeding in the district court involving . . . sentencing" (18 U.S.C. § 3771(a)(4)), which would include restitution.

When more than one defendant is liable for restitution, prosecutors should ordinarily seek the imposition of joint and several liability. (18 U.S.C. § 3664(h)) However, when the defendant had only a minimal role in the offense, the defendant has provided exceptional cooperation, or the administration of the restitution obligation would be more efficient if the extent of a defendant's liability is limited, the prosecutor may recommend to the court that liability be apportioned or limited as long as the net result is that each victim is entitled to receive full restitution from some combination of the defendants.

In limited circumstances, the court may determine that, even though full restitution is authorized, the imposition of full restitution is not required because there are too many victims or unduly complex issues of fact that outweigh the need to provide restitution. This exception does not apply to crimes of violence. (18 U.S.C. § 3663A(c)(3)) When this exception does apply, the prosecutor should nevertheless seek restitution for the benefit of the victims to the extent practicable.

If payment in full cannot be made at the date of sentencing, prosecutors should still seek to ensure that payment is made in the shortest time in which full payment can reasonably be made. (18 U.S.C. § 3572(d)(2)) Payment plans should not limit the ability of the United States or the victim to immediately and fully enforce the restitution obligation using all available remedies authorized by law.

G. Enforcement of Restitution

Pursuant to § 209 of MVRA, Pub. L. No. 104-132, § 209 (codified as a note under 18 U.S.C. § 3551), the Attorney General was directed to issue guidelines to ensure that "orders of restitution made pursuant to the amendments made by this subtitle [the MVRA] are enforced to the fullest extent of the law."

Restitution owed to victims of crimes is a critical part of the criminal judgment. The primary means to enforce restitution obligations are found in 18 U.S.C. §§ 3572, 3612, 3613, 3613A, 3614, 3615, 3664 and 28 U.S.C. §§ 3001–3301. In addition, State law may be used to enforce an order of restitution.

1. Enforcement by the United States. Orders of restitution imposed under MVRA must be enforced to the fullest extent of the law. Restitution owed to victims of crimes is a critical part of the criminal judgment. The Financial Litigation Units in the U.S. Attorneys' Offices should take all steps possible to help ensure that this money is collected and that victims of crime are fully compensated for their losses. All prosecutors and victim-witness coordinators should support the mission of criminal debt collection. Cooperation and coordination with the Financial Litigation Unit is in fact part of the performance appraisal of criminal assistant U.S. Attorneys.

Each U.S. Attorney must develop and maintain a memorandum of understanding or plan, which shall include a policy for addressing both the imposition and enforcement of restitution obligations. The Executive Office for United States Attorneys will provide a suggested model memorandum of understanding. The memorandum of understanding should address the role of the prosecutors, probation officers, victim-witness assistance coordinators, Asset Forfeiture Unit, and Financial Litigation Unit. Each USAO should establish a priority scheme to ensure that the most important and collectible restitution obligations receive priority attention.

2. Aggressive Efforts To Enforce Restitution. The liability to pay a fine or restitution issued under MVRA lasts 20 years plus any period of incarceration or until the death of the defendant. (18 U.S.C. § 3613(c)) Absent a court-ordered stay on appeal, a defendant who fails to pay restitution that is due immediately or defaults on a payment plan should be aggressively pursued for collection of the debt. Under MVRA, criminal defendants have very limited property that is exempt from seizure. The only property that is exempt from enforcement is some of the same property that is exempt from an IRS levy for taxes. (18 U.S.C. § 3613(a)(1))

3. Filing of Liens. An order of restitution is a lien in favor of the United States on all property and rights to property of the person fined as if it were liability for unpaid taxes. (18 U.S.C. § 3613(c)) To guarantee enforcement to the fullest extent of the law, a lien should be filed by the United States in all cases in which restitution is ordered to a non-Federal victim and not immediately paid. For Federal victims, a lien should be filed in all cases in which restitution is ordered in an amount greater than $500 and not immediately paid.

4. Notice to Victims of Certain Proceedings. Victims are entitled to notice of postjudgment public court enforcement proceeding. (18 U.S.C. § 3771(a)(2)) The right to notice does not apply to non-court proceedings, such as depositions not conducted before a judge, nor does the right to notice apply to uncontested motions or orders that do not require a hearing. (For example, notice is not required for the entry of an uncontested Garnishment Disposition Order, even if the local practice is that such orders are only entered when the judge is actually on the bench as opposed to in chambers). Each U.S. Attorney's Office should devise a procedure for ensuring that victims receive proper and timely notice, such as through VNS.

5. Discovery of Assets. Additionally, discovery of the debtor's assets should be pursued, to include, but not limited to, the following: reviewing the presentence report for asset information; requesting a financial statement or completed interrogatories from the debtor regarding assets and liabilities or, in the case of an incarcerated debtor, consulting with the assigned case manager regarding assets and liabilities; inquiring whether any victims have information about the debtor's assets; requesting asset information from the prosecutor and case agent; and researching online property-locator services available to the Financial Litigation Unit.

6. Further Investigation. In cases in which the U.S. Attorney's Office has reason to believe that the debtor may have assets based on the inquiries and research set forth above or other information, a credit report should be obtained and, where practicable, the deposition of the defendant or other parties who may have knowledge of the debtor's assets should be conducted.

7. Default. If it is discovered that a defendant who has defaulted on payment of restitution has the ability to pay, a default hearing under 18 U.S.C. § 3613A, or resentencing pursuant to 18 U.S.C. § 3614, should be considered. All enforcement remedies, including those under the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001–3308, should be pursued, including garnishment of the debtor's wages, execution of the debtor's nonexempt property, and filing of a fraudulent transfer action. A victim may be entitled to notice (see paragraph 4 under this subsection). A victim may also be entitled to be heard under 18 U.S.C. § 3771(a)(4) if the public proceeding is deemed to involve sentencing.

8. Enforcement Proceedings. All enforcement proceedings must be in accordance with the law and justice. Thus, for example, garnishments should not issue against property that is clearly exempt under 18 U.S.C. § 3613. Criminal actions for nonpayment should only be initiated when the defendant's failure to pay is willful. Enforcement actions should not be taken that will make a defendant a public charge or, absent circumstances approved by the U.S. Attorney, deprive the defendant's dependents of a residence. (A debtor is not entitled to use stolen money to provide himself a residence.) Enforcement actions should make economic and administrative sense. Victims may be entitled to notice and an opportunity to be heard in accordance with 18 U.S.C. §§ 3771(a)(2) and (a)(4) (also see paragraph 4 and 7 of this subsection).

9. Enforcement for Debtors Who Are Under Supervision by the Probation Office. Enforced collection remedies should only be used against debtors under the supervision of the probation office after consultation with that office.

H. Interaction Between Restitution and Asset Forfeiture

Government attorneys prosecuting civil or criminal forfeiture cases should assist crime victims in obtaining restitution in the following manner. If a defendant has sufficient assets to pay immediately the restitution order without using property forfeitable to the Government, the defendant must use those assets (not the forfeitable property) to satisfy the restitution order. If a defendant does not have sufficient assets to pay immediately the restitution order without using forfeitable property, however, the Government may use the procedural provisions of the forfeiture statutes to preserve and recover forfeitable property and to apply such property toward satisfaction of the restitution order.

There are essentially three manners in which the United States can use assets seized for forfeiture to satisfy a defendant's restitution obligations: petitions for remission, petitions for restoration, and, in some cases, direct transfers prior to forfeiture.

The first method for compensating victims is through a Petition for Remission. (28 C.F.R. § 9.1 *et seq.*) Petitions for Remission are submitted by each individual victim to the Department of Justice's Asset Forfeiture and Money Laundering Section (AFMLS). This option is particularly useful when there are victims of offenses that underlie civil forfeitures but no companion criminal case and, thus, no order of restitution. It is also useful in cases that involve only corporate entities.

The second method for compensating victims is through a Petition for Restoration. *Department of Justice Forfeiture Policy Directive 02-1—Guidelines and Procedures for Restoration of Forfeited Property to Crime Victims via Restitution in Lieu of Remission* allows AFMLS to restore criminally forfeited assets to victims who are named in a judicial restitution order. The U.S. Attorney's Office submits the Petition for Restoration on behalf of victims by certifying that the victims named in the court's restitution order meet the criteria for restoration under the policy. This option is particularly useful when multiple victims have incurred only economic losses, when the interest of third-party claimants must be determined, or when property would be best liquidated by using asset forfeiture procedures.

The third method for compensating victims is through the termination of forfeiture proceedings before a final order of forfeiture is entered. At the request of the United States, the district court may order that funds seized but not finally forfeited to the United States be paid to the clerk of the court toward the satisfaction of the defendant's restitution obligation. This option is particularly useful when the assets seized are liquid and when there are no third-party claimants.

I. Limitation on Liability

These *AG Guidelines* are issued in conformance with the statutory requirements of MVRA. Pursuant to that Act, nothing in §§ 2248, 2259, 2264, 2327, 3663, 3663A, or 3664 of Title 18 and arising out of the application of those sections, and therefore nothing in these *AG Guidelines*, shall be construed to create a cause of action not otherwise authorized in favor of any person against the United States or any officer or employee of the United States. (18 U.S.C. § 3664(p))

ARTICLE VI.
GUIDELINES FOR CHILD VICTIMS AND CHILD WITNESSES

A. Statement of Purpose

These guidelines are intended to guide every Justice Department law enforcement officer, investigator, prosecutor, victim-witness professional, and staff member in the proper and appropriate treatment of child victims and witnesses. At all times, Department personnel should be aware of the trauma child victims and witnesses experience when they are forced to relive the crime during the investigation and prosecution of a criminal case, particularly while they are testifying in court. A primary goal of such officials, therefore, shall be to reduce the trauma to child victims and witnesses caused by their contact with the criminal justice system. To that end, Department personnel are required to provide child victims with referrals for services and should provide child witnesses with such referrals.

The basic victims' rights laws discussed elsewhere in these *AG Guidelines* apply equally to child victims. In addition, Congress has enacted laws that specifically address the issues raised by children's participation in the criminal justice process. Congress enacted the Victims of Child Abuse Act of 1990 (VCAA) in response to an alarming increase in reports of suspected child abuse made each year. To address this nationwide emergency, the 1990 VCAA requires certain professionals to report suspected cases of child abuse under Federal jurisdiction and amends the United States Criminal Code to ensure protection of children's rights in court and throughout the criminal justice system. (18 U.S.C. § 3509) Article VI of these *AG Guidelines* shall serve to ensure full implementation of VCAA by all investigative, prosecutorial, and correctional components of the Department of Justice. Guidelines dealing with the reporting of suspected child abuse appear in article III.E.

B. General Guidelines

1. Privacy Protections for Child Victims and Witnesses

   a. Confidentiality of Information. Department personnel should scrupulously protect children's privacy in accordance with 18 U.S.C. § 3509(d) and these *AG Guidelines*. Department personnel connected with a criminal proceeding involving a child victim or witness shall keep all documents that disclose the name or any other information concerning the child in a secure place and shall disclose the documents only to persons who by reason of their participation in the proceeding have reason to know the information. (18 U.S.C. § 3509(d)(1))

   b. Filing Under Seal. Any Department employee filing papers in court that disclose the name of or any other information concerning a child shall file the papers under seal. (See procedure described in 18 U.S.C. § 3509(d)(2))

   c. Motion To Render Nonphysical Identifying Information Inadmissible. Federal prosecutors should consider moving in any prosecution under chapter 110 or section 1466A of Title 18 for an order that the name, address, social security

number, and other nonphysical identifying information (other than the age or approximate age) of any minor who is depicted in any child pornography shall not be admissible and may be redacted from otherwise admissible evidence. (18 U.S.C. § 2252A(e))

d. Protective Orders. Federal prosecutors should seek protective orders whenever necessary to protect the privacy of a child. Prosecutors should be aware that "any person" may seek such an order. (18 U.S.C. § 3509(d)(3); *see also* 18 U.S.C. § 3509(b)(2)(E) (describing protective orders in the context of videotaped depositions))

e. Sanctions for Violating the Disclosure Rules. A knowing or intentional violation of the privacy protection accorded children in 18 U.S.C. § 3509 is a criminal contempt punishable by not more than one year's imprisonment, or fine, or both. (18 U.S.C. § 403)

f. Disclosure to Certain Persons. Title 18 U.S.C. § 3509 does not prohibit disclosure of a child's name or other information about the child to the defendant, the attorney for the defendant, and others listed in the statute including anyone to whom, in the opinion of the court, disclosure is necessary to the welfare and well-being of the child. (18 U.S.C. § 3509(d)(4))

2. Guardian *ad Litem*

a. Appointment. To protect the best interests of the child, the court may appoint a guardian *ad litem* for a child who was a victim of, or a witness to, a crime involving abuse or exploitation. (18 U.S.C. § 3509(h)(1)) Although 18 U.S.C. § 3509(h) by its terms applies only to cases in which a child is a victim of or witness to abuse or exploitation, prosecutors should consider whether moving for the appointment of a guardian *ad litem* would be appropriate in any case in which a child is a victim of or a witness to a crime.

b. Attendance at Proceedings. The court-appointed guardian *ad litem* may attend all the depositions, hearings, and trial proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child. (18 U.S.C. § 3509(h)(2))

c. Access to Documents. The guardian *ad litem* may have access to all reports, evaluations, and records, except attorney's work product, necessary to effectively advocate for the child. Because of the grand jury secrecy provisions contained in Fed. R. Crim. P. 6(e), the extent of a guardian *ad litem's* access to grand jury materials is limited to the access routinely provided to victims and their representatives. (18 U.S.C. § 3509(h)(2))

d. Duties. The guardian *ad litem* shall marshal and coordinate the delivery of resources and special services to the child. (18 U.S.C. § 3509(h)(2))

e. Testimony. The guardian *ad litem* shall not be compelled to testify in any court action or proceeding concerning any information or opinion received from the child in the course of serving as a guardian *ad litem*. (18 U.S.C. § 3509(h)(2))

3. Extension of Child Statute of Limitations. The statute of limitations for offenses involving the sexual or physical abuse of a child under the age of 18 years is extended for the life of the child. (18 U.S.C. § 3283)

4. Multidisciplinary Child Abuse Teams

a. Definition and Purpose. A multidisciplinary child abuse team is a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse. (18 U.S.C. § 3509(a)(7)) The purpose of multidisciplinary teams is to maintain the credibility and reliability of the child's testimony as well as to monitor the child's safety and well-being throughout the case. The goals of the multidisciplinary team are (1) to minimize the number of interviews to which the child is subjected to reduce the risk of suggestibility in the interviewing process, (2) to provide needed services to the child, and (3) to monitor the child's safety and well-being.

b. Consultation with Multidisciplinary Child Abuse Teams. A multidisciplinary child abuse team shall be used when it is feasible to do so. (18 U.S.C. § 3509(g)(1)) Department personnel should use existing multidisciplinary teams in their local communities. Law enforcement personnel are encouraged to bring other professionals onto the teams. Local laws and guidelines concerning the teams may vary, and Federal personnel should become familiar with the local provisions. If no multidisciplinary team is in place in a particular community, Department personnel should develop a team if in their judgment it is feasible to do so.

c. Role of Multidisciplinary Child Abuse Teams. The role of the multidisciplinary child abuse team shall be to provide services that the members of the team in their professional roles are capable of providing, including—

(1) Case service coordination and assistance, including the location of services available from public and private agencies in the community. (18 U.S.C. § 3509 (g)(2)(F)) This includes child support services, court schools for children, and similar services.

(2) Medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings. (18 U.S.C. § 3509(g)(2)(A))

(3) Telephone consultation services in emergencies and in other situations. (18 U.S.C. § 3509(g)(2)(B))

(4) Medical evaluations related to abuse or neglect. (18 U.S.C. § 3509(g)(2)(C))

(5) Psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a case with a child victim or witness. (18 U.S.C. § 3509(g)(2)(D))

(6) Expert medical, psychological, and related professional testimony. (18 U.S.C. § 3509(g)(2)(E))

(7) Training services for judges, litigators, court officers, and others that are involved in child victim and child witness cases, in handling child victims and child witnesses. (18 U.S.C. § 3509(g)(2)(G))

C. Investigation/Forensic Interviewing of Child Victims and Witnesses

Particularly in cases of child abuse, evidence from medical examinations and forensic interviews of children may provide the only corroboration for a successful prosecution of the case. Medical examinations provide documentation of the event and injuries, and forensic interviews gather factual information from a child to determine if the subject was the victim of a crime or witnessed a crime against another person. The forensic interview should be appropriate for the age and developmental level of the subject, but it should not be confused with a therapeutic interview that is conducted for the purpose of designing treatment for and providing treatment to a child.

1. Referral for Medical Exam. The first investigator responding to a report of child abuse or sexual abuse shall refer the child victim for an emergency medical examination.

2. Forensic Interviewing Procedures To Reduce Trauma to Children. Whenever possible, interviews of child victims and witnesses should be conducted by personnel properly trained in the techniques designed to best elicit truthful information from a child while minimizing additional trauma to the child.

D. Prosecutions Involving Child Victims and Child Witnesses

1. Closing the Courtroom. When a child testifies, the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines, on the record, that requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child's inability to communicate effectively. An order to close the courtroom shall be narrowly tailored to serve the Government's specific compelling interest. Federal prosecutors should consider consulting an expert

when evaluating whether testifying in open court may cause a child "substantial psychological harm." (18 U.S.C. § 3509(e))

2. Speedy Trial. In a proceeding in which a child is called to give testimony, the court may *sua sponte* or on a motion by the attorney for the Government or a guardian *ad litem* designate the case as being of special public importance. Attorneys for the Government should consider moving the court to make such a designation in any case involving a child witness for the Government. In cases so designated, the court shall expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial to minimize the length of time the child must endure the stress of involvement with the criminal justice process. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child. (18 U.S.C. § 3509(j))

3. Stay of Civil Action. If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, the civil action shall be stayed until the end of all phases of the criminal justice action, and any mention of the civil action during the criminal justice proceeding is prohibited. A criminal action is pending until its final adjudication in the trial court. (18 U.S.C. § 3509(k))

4. Competency

    a. Presumption. A child is presumed to be competent. (18 U.S.C. § 3509(c)(2); *see also* Fed. R. Evid. 601.)

    b. Requirements of Written Motion and Compelling Reasons. The court may conduct a competency examination of a child witness only upon written motion and offer of proof of incompetency by a party. To hold an examination, the court must determine on the record that compelling reasons exist. A child's age alone is not a compelling reason. Psychological and psychiatric examinations to assess the competency of a child witness shall not be ordered without a showing of compelling need. (18 U.S.C. §§ 3509(c)(3), (4), (9))

    c. Conduct of the Examination. A competency examination regarding a child witness shall be conducted out of the sight and hearing of a jury. Only persons listed in 18 U.S.C. § 3509(c)(5) are permitted to be present. Direct examination of the child shall normally be conducted by the court on the basis of questions submitted by the attorney for the Government and the attorney for the defendant, including a party appearing pro se. The court may permit an attorney, but not a party appearing pro se, to examine a child directly on competency, if the court is satisfied that the child will not suffer emotional trauma as a result of the examination. Federal prosecutors should consider

making this request of the court because in many instances questioning by a familiar person may be less traumatic for the child. Prosecutors should, however, be aware that defense attorneys likewise may make such a request. (18 U.S.C. §§ 3509(c)(7)) Questions asked shall be appropriate to the age and developmental level of the child, shall not be related to the issues at trial, and shall focus on determining the child's ability to understand and to answer simple questions. (18 U.S.C. § 3509(c)(8))

5. Adult Attendant. A child testifying at or attending a judicial proceeding has the right to be accompanied by an adult attendant to provide emotional support for the child. (18 U.S.C. § 3509(i))

   The statute permits the court, at its discretion, to allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies. The court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding. The adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child. The image of the adult attendant, for the time the child is testifying by closed-circuit television or being deposed, shall be recorded on videotape contemporaneously with the image of the child. Federal prosecutors should inform children and their guardians of this right and facilitate its implementation. (18 U.S.C. § 3509(i))

6. Testimonial Aids. The court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or any other demonstrative device the court deems appropriate for the purpose of assisting a child in testifying. (18 U.S.C. § 3509(*l*))

   Federal prosecutors have a wide variety of demonstrative devices to choose from to assist children in testifying. Prosecutors should use their sound judgment in deciding which device to use. Some devices, such as anatomical dolls, should be used only after training on their proper use and careful consideration of the case law regarding their use.

7. Alternatives to Live, In-Court Testimony by Child Victims

   a. Reasons. A Federal statute permits prosecutors to use live testimony by closed-circuit television and videotape depositions as alternatives to live, in-court testimony from child witnesses in cases involving offenses against children, when the court finds that the child is unable to testify in open court for any of the following reasons:

      (1) The child is unable to testify because of fear.

      (2) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying.

(3) The child suffers a mental or other infirmity.

(4) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(18 U.S.C. § 3509(b)(1)(B)(i) - (iv) and (b)(2)(B)(i)(I) - (IV))

Notwithstanding the foregoing statutory authority, prosecutors should be aware that constitutional constraints arguably require three criteria to be satisfied before any alternative to live, in-court testimony can be used:

(1) In-court testimony would traumatize the child witness.

(2) The trauma would result from the presence of the defendant.

(3) The trauma would render the child witness unable to communicate.

See Maryland v. *Craig*, 497 U.S. 836 (1990); *cf. Crawford* v. *Washington*, 541 U.S. 36 (2004). Some Federal appellate courts have held as much. *See, e.g.*, *United States* v. *Bordeaux*, 400 F.3d 548 (8th Cir. 2005) (reversing a conviction obtained by way of two-way, closed-circuit testimony from a child victim, because the district court had failed to find that the child's "fear of the defendant was the dominant reason" for her inability to testify in open court). Prosecutors should therefore consider seeking to establish the presence of these three factors on the record before relying on alternatives to live, in-court testimony.

b. Who May Apply. In a proceeding involving an alleged offense against a child, the following persons may apply to the court for an order for an alternative to live in-court testimony: the attorney for the Government; the child's attorney; a guardian *ad litem*; and the child's parent or legal guardian (videotaped depositions only). (18 U.S.C. § 3509(b)(1)(A) and (b)(2)(A))

c. Child Victims' Live Testimony by Two-Way Closed-Circuit Television

(1) Timing. The person seeking the order shall apply for the order at least 5 days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(2) Preliminary Findings. The court shall support a ruling on the child's inability to testify with findings on the record. In determining whether the impact on an individual child (of one or more of the factors or reasons listed in paragraph 7.a. above) is so substantial as to justify an order allowing testimony by closed-circuit television, the court may question the child in chambers, or at some other comfortable place other

than the courtroom, on the record for a reasonable period of time, with the child attendant, the prosecutor, the child's attorney, the guardian *ad litem*, and the defense counsel present.

(3) Conduct of the Televised Proceeding. If the court orders the taking of the child's testimony by closed-circuit television, the attorney for the Government and the attorney for the defendant (not including a defendant appearing pro se) shall be present in a room outside the courtroom with the child and the child shall be subjected to direct and cross-examination. The only other persons who may be permitted in the room with the child during the child's testimony are the child's attorney or guardian *ad litem;* persons necessary to operate the closed-circuit television equipment; a judicial officer, appointed by the court; and other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child, including an adult attendant, as described in 18 U.S.C. § 3509(i).

The child's testimony shall be transmitted by closed-circuit television into the courtroom for viewing and hearing by the defendant, jury, judge, and public. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed-circuit television transmission shall relay the defendant's image and the voice of the judge into the room in which the child is testifying. (18 U.S.C. § 3509(b)(1))

d. Videotape Deposition of Child Victims. A court may issue an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape. If at the time of trial the court finds that the child is unable to testify for the reasons set out above, the court may admit into evidence the child's videotaped deposition in lieu of the child's testifying at the trial. (18 U.S.C. § 3509(b)(2)(C))

(1) Preliminary Finding. Upon receipt of an application for a videotaped deposition, the court is required to make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the reasons listed in 7.a. above. If the court finds that the child is likely to be unable to testify in open court for any of these reasons, the court shall order that the child's deposition be taken and preserved by videotape.

(2) Conduct of the Deposition. The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are the attorney for the Government; the attorney for the defendant; the child's attorney or guardian *ad litem;* persons necessary to operate the

videotape equipment; the defendant, subject to 18 U.S.C. § 3509(b)(2)(B)(iv); and, other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child, including an adult attendant, as described in 18 U.S.C. § 3509(i).

(3) Defendant's Rights. The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child. (18 U.S.C. § 3509(b)(2)(B)(iii) and (iv))

(4) Procedures for Handling and Preserving the Videotape. Procedures for handling and preserving the child's videotape deposition are listed in 18 U.S.C. § 3509 (b)(2)(B)(v) and (b)(2)(F).

(5) Protective Order. In connection with the taking of a videotaped deposition, the court may enter a protective order to protect the privacy of the child. (18 U.S.C. § 3509(b)(2)(E))

8. Victim Impact Statement. The directives concerning victim impact statements appearing elsewhere in these *AG Guidelines* apply equally to cases in which children are victims. (18 U.S.C. § 3771(a)(4); *see supra* art. IV.B.3.a)

   Responsible officials should obtain and report to the probation officer accurate information concerning a child's victimization. Children can prepare victim impact statements. Child victim impact statements should be in an age-appropriate format that permits the child to express his or her views concerning the personal consequences of his or her victimization at a level and in a form of communication commensurate with his or her age and ability.

   To provide the probation officer with the most useful and accurate information possible, responsible officials should request information from the multidisciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected.

9. Sentencing. A Federal prosecutor's responsibility for advocating the interests of victims at sentencing includes child victims. (Fed. R. Crim. P. 32; *see also supra* art. IV.B.3.b)

   As with adult victims, at the earliest opportunity and within sufficient time for the victim to prepare a statement that can be presented at sentencing, the responsible official should notify the victim by available and reasonable means of the victim's right to address the court at sentencing and of the date, time, and place of the scheduled hearing. If the victim is present and if the victim wants to make a statement at the sentencing, the prosecutor should advise the court of the right of a victim to be reasonably heard at the sentencing hearing. (18 U.S.C. § 3771(a)(4))

Regardless of whether the victim is present, the right of allocution defined above may be exercised instead by a parent or legal guardian of the victim who is present at the sentencing hearing if the victim is below the age of 18 years or is incompetent. If the victim is deceased or incapacitated, this right of allocution by the victim may be exercised by one or more family members or relatives designated by the court and present at the sentencing hearing. (18 U.S.C. § 3771(e))

ARTICLE VII.
GUIDELINES FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING

With the passage of the Violence Against Women Act (VAWA) in 1994, Congress recognized that victims of domestic violence, sexual assault, or stalking have special needs. VAWA recognized the devastating consequences that violence has on victims, families, and society as a whole and acknowledged that these crimes require specialized responses to address unique barriers that prevent victims from seeking assistance and redress through the justice system.

A. Statement of Purpose

These guidelines are intended to provide guidance on the special needs of victims of domestic violence, sexual assault, or stalking. Although the basic victims' rights laws and policies discussed elsewhere in these guidelines apply equally to victims of domestic violence, sexual assault, or stalking, this section focuses on provisions that are of particular importance for victims of these crimes. These crimes often cause mental and emotional trauma as well as physical injury. It may be more difficult for victims to report these crimes because of the associated social stigma and because the victims often have an ongoing relationship with the offender. In addition, these crimes are generally committed for the purpose of exerting power and control over the victim. These victims are in great danger of future violence after reporting and during the investigation and prosecution of the case. Appropriate responses in these cases can save lives, prevent future violence, and promote victim recovery. For these reasons, Department personnel involved in investigating and prosecuting cases involving domestic violence, sexual assault, or stalking should make victim safety a high priority. Although these crimes are commonly referred to as "violence against women" because the majority of victims are women, these guidelines apply to all victims, regardless of gender.

B. General Guidelines

1. Victims' Declination of Services. Victims are not required to accept services and may choose to decline to receive further services. When victims do so, Department personnel should determine specifically what information and services the victim wants to forgo. In addition, Department personnel should ensure that victims are making an informed decision about the rights and services available to them. (*See supra* art. II.I.)

2. Privacy Protections for Victims of Domestic Violence, Sexual Assault, or Stalking. As discussed in article III.G, Department employees should use their best efforts to respect the privacy and dignity of especially vulnerable victims, including victims of domestic violence, sexual assault, or stalking. In sexual assault cases, special consideration should be given to the appropriateness of using two types of evidence:

    a. Evidence about a victim's past sexual behavior or alleged sexual predisposition is generally inadmissible in court. Prosecutors should be aware of this evidentiary rule and use it when appropriate. (Fed. R. Evid. 412)

b. Policy Disfavoring Polygraphs of Sexual Assault Victims. Department employees should not request that sexual assault victims take a polygraph except in extraordinary circumstances.

3. Services for Victims of Domestic Violence, Sexual Assault, or Stalking at the Investigation Stage. In addition to providing the services covered elsewhere in these *AG Guidelines* (*see supra* art. IV.A.3), responsible officials at the investigative stage should, when appropriate, give particular consideration to providing the following services to victims of domestic violence, sexual assault, or stalking:

   a. Assistance in Developing a Safety Plan. A safety plan is an individualized plan developed by victims of crime to reduce the threats of harm that they and members of their family face. Safety plans include strategies to reduce the risk of physical violence and harm (such as obtaining a protective order) and strategies to maintain basic human needs, such as housing and income, despite the disruption caused by the victimization (including relocation, loss of employment, and physical injury). Victims may require, and responsible officials should consider providing, assistance in identifying potential risks to safety and well-being, options for addressing those risks, and the types of services and support that may be required from the criminal justice system and providers of community-based victim services.

   b. Referrals to and Assistance in Accessing Victim Advocacy and Support Services in the Community. Victims of domestic violence, sexual assault, or stalking may need support for an extended period of time. It is therefore highly advisable to assist victims in accessing ongoing support, advocacy, and legal services from community-based victim service providers. Responsible officials should make referrals to and emphasize the benefits of victims making contact with community-based victim service programs.

   c. Assistance in Enrolling in Address-Confidentiality Programs and Taking Other Safety Measures. Responsible officials should be familiar with any victim address-confidentiality program that exists in the jurisdiction and the requirements for enrollment in those programs. Such programs provide an alternate legal address for the victim and forward correspondence to the victim confidentially.

4. Services or Victims of Domestic Violence, Sexual Assault, or Stalking at the Prosecution Stage. A prosecuting official's responsibilities include providing victims of any crime with certain information and notices, referrals to services, and consultation with the Government attorney. In cases involving victims of domestic violence, sexual assault, or stalking, Department personnel should refer with special care to these *AG Guidelines*. (*See supra* art. III.G (Victim Privacy); IV.B.2.d (Separate Waiting Area); IV.B.2.g. (Limited Testing of Defendants in Sexual Assault Cases); and IV.A.3.a(1)(g)

(Right to Make a Statement About Pretrial Release in an Interstate Domestic Violence, Stalking, or Violation of a Protective Order Case))

5. Services for Victims of Domestic Violence, Sexual Assault, or Stalking at the Corrections Stage. In cases involving victims of domestic violence, sexual assault, or stalking, Department personnel should refer with special attention to article IV.C.2.a.(2) (Custodial Release Notification).

6. Mandatory Restitution for Victims of Sexual Abuse or Domestic Violence. The Violence Against Women Act of 1994 requires courts to order full restitution in cases of sexual abuse (18 U.S.C. § 2248) and domestic violence (18 U.S.C. § 2264). In cases of domestic violence and sexual assault, Department personnel should consider the following when implementing restitution procedures:

    a. In order to protect the confidentiality of the victim's location, and to increase the likelihood of locating victims after an extended period of time, victims should be encouraged to provide an alternate contact, such as a family member, through whom they could be contacted in the event that restitution is ultimately collected.

    b. Because the victim and offender may own shared property, care should be taken to ensure that seizure of property from an offender for payment of restitution or fines does not impair the property rights of the crime victim.

7. Immigration Relief for Victims of Domestic Violence, Sexual Assault, or Stalking. Certain aliens who are victims of domestic violence, sexual assault, or stalking may be eligible for special immigration relief that would permit them to gain legal residence in the United States. Immigrant victims should be encouraged to consult with a qualified immigration law practitioner for advice concerning the full range of benefits for which they may be eligible.

    a. VAWA Self-Petitioning. The immigration provisions of the Violence Against Women Act allow certain battered immigrants to file for immigration relief without their abusers' assistance or knowledge. This relief is available only for the spouses and children of U.S. citizens or aliens lawfully admitted for permanent residence. (8 U.S.C. § 1154)

    b. S–5 Visa. An S–5 visa may be granted when the applicant has reliable information about an important aspect of a crime or the pending commission of a crime, is willing to share the information with law enforcement officials or to testify in court, and the applicant's presence in the United States is necessary to the successful investigation or prosecution of a case. (8 U.S.C. § 1101(a)(15)(S))

    c. U Visa. U visas may be available to aliens who have suffered substantial physical or mental abuse as a result of being the victims of certain crimes

designated by the Violence Against Women Act of 2000—including rape, domestic violence, trafficking, sexual assault, abusive sexual contact, and sexual exploitation—that violate Federal, State, or local laws and have occurred while in the United States (including in Indian Country and on military installations) or its territories or possessions. To be eligible for a U visa, the victim must possess information concerning the crime, and the U visa petition must include a certification from a Government official (as listed in the statute) stating that the victim is helping, has helped, or is likely to be helpful in the investigation or prosecution of the crime. Recipients of U visas are eligible for employment authorization and may, after 3 years, adjust their status to that of a lawful permanent resident in accordance with Federal law and regulations. In appropriate circumstances, these visas may be available to family members of the victim. (8 U.S.C. §§ 1101(a)(15)(U), 1184(p), 1255(l))

d. T Visa. An immigrant victim of domestic violence, sexual assault, or stalking may also be a victim of a severe form of trafficking in persons. If so, he or she may be eligible for a T visa. (8 U.S.C. § 1101(a)(15)(T))

ARTICLE VIII.
GUIDELINES FOR VICTIMS OF TERRORISM AND OTHER MASS CASUALTIES

Some violent crimes may involve large numbers of victims who suffer physical injury, death, or extreme psychological injury. Terrorism involves extreme factors that exacerbate the impact on victims and challenge the ability of Department employees to meet victim assistance requirements and the complex needs of the victims. Responding to victims may be made more challenging due to the magnitude of the event, numbers of victims, where they reside, and where the crime occurred. Acts of terrorism affecting U.S. citizens overseas are investigated by the FBI and sometimes indicted by the Justice Department. If the crime occurs in another country, that country may arrest and prosecute those responsible. Investigations and prosecutions of terrorism crimes by other countries present difficult challenges for victims and the Justice Department officials who are responsible for providing services to these victims. Some FBI and Justice Department investigations may be pending for years and even decades, thus providing challenges for the component responsible for maintaining contact with victims and keeping them informed.

In addition to terrorism, other types of crime may involve large numbers of victims. Some of these crimes include aviation disasters and toxic spills caused by deliberate actions.

The term “mass violence” is not statutorily defined. For purposes of these *AG Guidelines*, “mass violence” means an intentional violent criminal act that results in physical, emotional, or psychological injury to so large a number of victims as to significantly increase the burden of victim assistance and compensation for the responding jurisdiction.

A. Statement of Purpose

This article is intended to guide responsible officials and other Department employees, including investigators, prosecutors, and victim assistance personnel, in meeting the demands of assisting victims of crimes involving terrorism, mass violence, or large-scale casualties.

B. Identification of Victims

Responsible officials shall determine who has suffered direct harm as a result of an act of terrorism or other form of mass violence. Determining who has suffered direct victimization as a result of terrorism or other crime of mass violence involving hundreds or thousands of individuals may be a difficult process. In some situations, it may be necessary for FBI agents and victim specialists to conduct a joint victim identification and intake process with organizations such as the Red Cross or local responding agencies. Accurate and timely identification of victims and development of contact information for surviving victims and family members of deceased victims may be complicated when nongovernmental relief agencies are the first to develop victim lists. Some relief organizations have taken the position that they are prohibited from sharing victim information with Government agencies. It may become necessary to subpoena victim names and contact information in such cases, but responsible officials should avoid taking such an adversarial approach if victim information can be obtained in a timely manner by other means. Responsible officials should

consider using any of the various means of identifying victims that are surveyed with respect to crimes involving large numbers of victims. (*See supra* art.II.G.1.) In cases involving terrorism or mass violence in a foreign country, the State Department should be consulted on its role in identifying and contacting victims.

In the event of a chemical or biological incident affecting large numbers of victims, Department personnel should coordinate with the Centers for Disease Control and Prevention and other responsible agencies to identify victims. The provision of information and assistance to victims as required by Federal law and these *AG Guidelines* may then be handled as it would be in response to other crimes involving large numbers of victims.

C. Provision of Services

The component of the Justice Department with responsibility for investigating the crime shall begin the process of providing information and assistance to victims at the earliest practicable opportunity.

Families of victims may be asked to identify the legal next-of-kin or provide a single point-of-contact for purposes of receiving information, personal effects, or benefits. Nevertheless, given the mobility and complexity of families, responsible officials should consider defining broadly which family members are entitled to receive information relating to a pending investigation.

Mechanisms utilized to provide information and assistance should be designed to ensure equality of treatment and to promote access by the largest number of victims. Among the matters to be considered in cases involving large numbers of victims or geographically dispersed victims are the following:

1. Notifications. Various means of providing information to victims may be appropriate in cases involving terrorism and mass casualties. They include the following:

    a. Toll-free hotlines. Toll-free lines may be established to handle multiple cases or individual cases. They may be set up on a statewide, nationwide, or international basis. These hotlines should be updated regularly in order to maintain credibility with victims.

    b. Case-Specific Web Pages. Case-specific Web pages have the benefits of being cost efficient, maintainable over a long period of time, and unintrusive because use by victims is self-initiated. They may be used to post information as diverse as trial transcripts and information on attending the trial and coping with the emotional impact of the trial.

    c. Closed-Circuit Broadcast of Trial Proceedings. 42 U.S.C. § 10608 requires that victims have access to closed-circuit television (CCTV) viewing of trial proceedings when a change of venue is granted and a trial is moved out of state and more than 350 miles from the location in which the proceeding would

originally have been brought. The law does not address the situation in which the location of the crime and the prosecution is not in the vicinity where most or all of the victims reside or circumstances involving victims who live in many different States or countries. Whenever feasible, prosecutors should encourage the trial court to cooperate in making trial proceedings accessible to the greatest number of victims.

d. Informational Briefings. Not all case information is appropriately communicated to victims through writing, especially when victims or surviving family members have been extremely traumatized by the impact of the crime or the information provided is of an extremely personal or sensitive nature. Personal contact and communication can serve a number of important purposes, including building better relationships between victims and Government officials, ensuring that victims have an opportunity to ask questions about complex issues, allowing multiple victims to hear the same information at the same time, and providing an opportunity for victims of the same crime to share their experiences. Briefings can be held in person or via telephone bridge calls, video conferencing, or Internet Web casting.

2. Direct Assistance. Victims of terrorism or mass violence may receive assistance with travel to and lodging near criminal justice proceedings, support for crisis and mental health counseling, access to "safe havens" or separate and secure designated areas near a courthouse or CCTV site for viewing a trial. In addition, the Department makes funding available for victim compensation and assistance programs in each State and territory. These programs complement Federal efforts and victims should be referred to them for assistance in matters beyond the scope of the Federal Government.

3. Autopsies of Overseas Terrorism Victims. The Department has both investigative and humanitarian interests in having access to critical forensic evidence in terrorism cases, including the remains of U.S. citizen victims. The FBI exercises lead agency responsibility in terrorism cases under U.S. jurisdiction. Under optimal circumstances, recovery and processing of victim remains should be integrated into the investigation by the FBI. FBI officials should consult with families of victims on the issue of an autopsy and provide an explanation of the process, how remains will be returned to them, and how they can receive information about autopsy findings. FBI officials should give due consideration to religious and cultural concerns expressed by the family and try to accommodate their wishes to the extent possible. The FBI should coordinate the return of remains, personal effects, and death certificates to family members following any autopsy that it orders.

4. Return of Personal Effects. A mass-casualty crime may require that Department personnel review all personal effects collected from the victims and their immediate vicinity. Sensitivity should be used in preparing and presenting personal effects to the victims' families. Department personnel should return personal effects to the legal next-of-kin or another individual who is legally authorized to receive the items.

Ensuring that surviving victims and family members receive personal effects and other property belonging to victims may be complicated by several factors: (1) the volume of personal effects retained for evidence or forensic testing, (2) the length of time items may need to be held, and (3) the condition of personal effects recovered after crimes involving high-impact weapons. Responsible officials should consider establishing operations, if authorized and funded by Congress, for processing personal effects or contracting with private companies that specialize in decontamination, cleaning, and restoration of personal effects.

5. Prosecutions in Foreign Countries. When arrests and prosecutions occur in other countries, the responsible official should attempt to facilitate the provision of information about those proceedings to victims (through VNS, if appropriate), including notification of key events and proceedings, information on the criminal justice system in that country, and summaries or updates on trial proceedings, sentencing, and any subsequent appeals. These efforts should involve coordination with the FBI Legal Attaché Office or U.S. Embassy or Consulate officials in the relevant country.

6. Transition of Victim Responsibilities Between Responsible Officials. Once a case reaches the prosecution phase following an indictment, the size of the victim population may necessitate joint efforts by victim assistance personnel from both the investigative and prosecutorial components. Responsible officials should ensure a smooth transition of responsibilities.

D. Multijurisdictional Response to Domestic Terrorism and Mass Violence Victims

A mass-casualty crime occurring within the United States will necessitate a multilevel response by local, State, and Federal agencies and nongovernmental organizations. The National Response Plan designates the FBI as the lead agency for crisis management and the Federal Emergency Management Agency (FEMA) in the Department of Homeland Security (DHS) as the lead agency for consequence management when the President has declared a major disaster. Federal victim assistance personnel at the national and local levels should maintain effective relationships with State and local agencies and organizations, including State victim compensation and assistance programs, to ensure that the Department can discharge victim identification, notification, and assistance requirements and support the community response. Victim assistance should be built into local planning efforts and the roles and responsibilities of individual agencies included in planning and exercises.

Victim assistance personnel should also coordinate with the Center for Mental Health Services in the Department of Health and Human Services in arranging the delivery of appropriate mental health services to victims in the aftermath of terrorism or mass violence.

E. Criminal Aviation Disasters

The Aviation Disaster Family Assistance Act of 1996 (ADFAA) includes specific requirements for providing assistance, information, and support to families of victims.

ADFAA applies to ground casualties as well as passengers and crew on board the aircraft. The National Transportation Safety Board (NTSB) is responsible for coordinating family assistance and ensuring that ADFAA is enforced, unless the cause of the disaster is suspected or known to be criminal. If so, the responsibility transfers to the FBI along with the lead for investigating the disaster.

ARTICLE IX.
GUIDELINES FOR VICTIMS OF HUMAN TRAFFICKING

A. Statement of Purpose

Trafficking victims are particularly vulnerable because of the circumstances of their victimization and require extra assistance to ensure that they are cared for and provided with essential services after rescue. Many of these victims are children, many do not speak English, and many are not in the United States legally. Therefore, although trafficking victims possess all the rights and access to benefits that other victims possess, they have also been granted additional rights and benefits under the Trafficking Victims Protection Act (TVPA) and the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 (codified at 22 U.S.C. § 7101 *et seq*.) and regulations pursuant thereto. This section describes those rights and benefits and directs the responsible official to ensure that trafficking victims are aware of and are provided with them.

B. General Guidelines

1. Responsible Officials. With the following exceptions, the responsible officials are those officials designated in article IV of these *AG Guidelines*.

    a. Investigation Stage. In the investigation stage, the FBI shall take reasonable steps to ensure that victims are provided with their rights as described in this section immediately upon notification that potential trafficking victims have been located. If the FBI is not the initial investigative agency to encounter a potential victim, the responsible official at the U.S. Attorney's Office or Civil Rights Division shall take steps to ensure that the rights of the potential victim are enforced.

    b. Coordination with Other Agencies During Both Investigation and Prosecution Stages. In both the investigation and prosecution stages, the responsible officials should coordinate with officials from other departments—particularly the Department of Homeland Security and the Department of Health and Human Services—to enforce the rights of victims of severe forms of trafficking.

2. Identification of Victims. In identifying victims at the earliest stage of an investigation (42 U.S.C. § 10607(b)(1)), the responsible official should determine whether a potential victim meets the definition of a victim of a severe form of trafficking, which involves—

    a. Sex Trafficking. Recruiting, harboring, transporting, providing, or obtaining a person for the purpose of a commercial sex act in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

b. Forced Labor. Recruiting, harboring, transporting, providing, or obtaining a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(22 U.S.C. § 7105(b)(1)(C))

C. Provision of Special Services for Victims of Human Trafficking

1. Generally. Victims of severe forms of trafficking are eligible for special services discussed in this article of these *AG Guidelines*. The services are available without regard to whether an indictment is eventually filed or whether any indictment that is filed includes TVPA charges. U.S. citizen victims may not be eligible for these services because of their citizenship status, which entitles them to other programs not available to alien victims.

2. Detention

a. To the extent practicable and allowed by law, victims of severe forms of trafficking should not be formally detained. (28 C.F.R. § 1100.31(b))

b. If detention is necessary, such victims should not be detained in facilities inappropriate to their status as crime victims (unless they are themselves charged with a crime). (22 U.S.C. § 7105(c) and 28 C.F.R. § 1100.31(b))

d. Where appropriate and practicable, such victims should be housed separately from areas in which criminals are detained. (28 C.F.R. § 1100.31(b))

e. To the extent practicable, trafficking victims in Federal custody shall—

(1) Receive necessary medical care, mental health assessment and treatment, and other assistance. (22 U.S.C. § 7105(c)(1)(B) and 28 C.F.R. § 1100.31(c))

(2) If their safety is at stake or if there is danger of additional harm, be provided protection including—

(a) Measures to protect them and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates. (22 U.S.C. § 7105(c) (1)(C)(i) and 28 C.F.R. § 1100.31(d))

(b) Affirmative steps to ensure that the victims' names and identifying information are not disclosed to the public. (22 U.S.C. § 7105(c)(1)(C)(ii) and 28 C.F.R. § 1100.31(d))

3. Information. Responsible officials shall provide victims with information about their rights and applicable services, including the following:

   a. Legal Services. Pro bono and low-cost legal services, including immigration services.

   b. Federal and State Benefits and Services. The types of services and benefits available to trafficking victims are contingent upon whether a victim has been subjected to an act that satisfies the TVPA definition of a severe form of trafficking, the victim's immigration status, and the victim's willingness to assist law enforcement. Victims who are minors and who have received benefits-eligibility letters and adult victims who have certification from the Department of Health and Human Services (HHS) are eligible for assistance that is administered or funded by Federal agencies to the same extent as refugees. Others may be eligible for more limited benefits. In addition, minor dependent children of victims of a severe form of trafficking are also eligible for services.

   c. Victim Service Organizations and Assistance Programs. Relevant organizations may include domestic violence shelters and rape crisis centers. In addition, OVC funds programs that provide specialized and comprehensive services to individuals who have been identified by Federal law enforcement officials as victims of a severe form of trafficking but have not yet been certified by HHS as described above. (A detailed list of OVC-funded programs to help victims of trafficking in persons is available at http://www.ojp.usdoj.gov/ovc/help/traffickingmatrix.htm).

   d. Protections available, especially against threats and intimidation, and remedies available as appropriate for the victim's circumstances.

   e. Rights of individual privacy and confidentiality issues.

   f. Victim compensation and assistance programs.

   g. Immigration benefits and programs.

   h. Restitution.

   i. Notification of case status.

   j. Availability of medical services.

   (28 C.F.R. § 1100.33)

4. Translation and Interpretation Services. Trafficking victims shall have access to information about their rights and to translation services. The responsible official shall ensure that trafficking victims have reasonable access to translation services and/or interpreter services if those victims are not able to communicate in English or are illiterate

in their own language. (28 C.F.R. § 1100.33) Interpreters should be thoroughly screened to ensure that they are not in any way involved in the trafficking or familiar with either the victims or the traffickers.

5. Immigration Benefits. If a Department employee learns that a victim or witness does not have legal status in the United States, the employee should determine whether immigration relief as provided by TVPA or other Federal law is appropriate to ensure the ability of the victim or witness to remain in the United States. Department personnel should not offer victims or witnesses legal advice about legal status issues but should refer victims and witnesses to services that provide referrals to legal counsel. TVPA provides two forms of immigration relief: (1) continued presence and (2) a T visa. Both forms of relief are available only to victims of a severe form of trafficking. Continued presence may be sought only by Federal law enforcement on behalf of potential witnesses, but a T visa may be sought independently by a victim. If a victim has concluded that he or she would like to pursue legal status by applying for a T visa, Department personnel should assist in the application process by providing, in a timely fashion, the supporting documentation that must come from the Department. As a general matter, types of legal status include—

    a. Continued Presence. Aliens who are victims of a severe form of trafficking and who are potential witnesses are eligible to remain in the United States. If the responsible official determines that an alien trafficking victim is a potential witness to a trafficking crime, the responsible official may request that the Department of Homeland Security permit the continued presence of the victim for 1 year. Continued presence also provides the victim with employment authorization. Law enforcement may seek extensions of continued presence when appropriate. (22 U.S.C. § 7105(c)(3); 28 C.F.R. § 1100.35(a))

    b. T Nonimmigrant Status

        (1) Individuals may apply for a T nonimmigrant visa for themselves if—

            (a) They are victims of a severe form of trafficking.

            (b) They are in the United States on account of trafficking.

            (c) They face extreme hardship involving unusual and severe harm if they were to be removed from the United States.

            (d) They have complied with any reasonable request for assistance in the investigation or prosecution of the trafficking activities.

        (TVPA Section 107(e); 8 C.F.R. § 214.11)

        (2) Recipients of T visas are eligible for employment authorization and may, after 3 years, adjust their status to that of a lawful permanent resident in accordance with Federal law and regulations. In appropriate

circumstances, T visas may be available to members of a victim's family.

(3) If warranted, the responsible official should support the application of a trafficking victim who has complied with any reasonable request for assistance in the investigation or prosecution by completing an I–914B form for a T visa.

(4) If a prosecutor determines that supporting a T visa would not be prudent in any case in which a trafficking victim seeks such a visa, the prosecutor must provide written justification for that determination to the U.S. Attorney for the district or, in the alternative, to the Office of the Assistant Attorney General for Civil Rights.

c. U Visa. U visas may be available to aliens who have suffered substantial physical or mental abuse as a result of being the victims of certain crimes designated by the Violence Against Women Act of 2000—including rape, domestic violence, trafficking, sexual assault, abusive sexual contact, and sexual exploitation—that violate Federal, State, or local laws and have occurred while in the United States (including in Indian Country and on military installations) or its territories or possessions. To be eligible for a U visa, the victim must possess information concerning the crime, and the U visa petition must include a certification from a Government official (as listed in the statute) stating that the victim is helping, has helped, or is likely to be helpful in the investigation or prosecution of the crime. Recipients of U visas are eligible for employment authorization and may, after 3 years, adjust their status to that of a lawful permanent resident in accordance with Federal law and regulations. In appropriate circumstances, these visas may be available to family members of the victim. (8 U.S.C. §§ 1101(a)(15)(U), 1184(p), 1255(l))

d. Significant Public Benefit Parole or Deferred Action. Witnesses, threatened family members, and victims for whom there is insufficient evidence to meet the TVPA victim criteria may be eligible for significant public benefit parole to enable them to enter or remain in the United States temporarily.

e. The responsible official shall assist alien trafficking victims who want to be repatriated rather than avail themselves of the immigration benefits provided in TVPA.

f. S–5 Visa. S–5 visas may be granted when the applicant has reliable information about an important aspect of a crime or the pending commission of a crime, is willing to share the information with law enforcement officials or to testify in court, and the applicant's presence in the United States is necessary to the successful investigation or prosecution of a case. (8 U.S.C. § 1101(a)(15)(S))

6. Certification of Victims for Assistance

   a. HHS Certification. Adult victims are eligible for certification by the Department of Health and Human Services for benefits equivalent to those that are available to refugees if the victim has been granted continued presence and is willing to assist law enforcement or has made a bona fide application for T nonimmigrant status. Minor victims are not required to have either continued presence or a bona fide T visa to receive benefits. Instead, they receive services as provided by a letter of eligibility for benefits. (22 U.S.C. § 7105(b)(1)(A), (E))

   b. The responsible official shall support the certification of a trafficking victim if the victim has complied with any reasonable request for assistance in the investigation or prosecution of trafficking activities. If a prosecutor concludes that such certification is not prudent, the prosecutor must provide written justification of that determination to the U.S. Attorney for the district or, in the alternative, to the Office of the Assistant Attorney General for Civil Rights.

ARTICLE X.
GUIDELINES FOR VICTIMS OF IDENTITY THEFT

A. Statement of Purpose

This section contains special guidelines for ensuring that victims of identity theft are provided with the assistance that is appropriate to the unique circumstances of that crime. Responsible officials should therefore consult the other relevant provisions of these *AG Guidelines* in addition to this article when assisting victims of identity theft.

B. General Guidelines

1. Identification of Victims. Individuals do not have to know that their identity was misused in order to be victims, nor does the victim have to have incurred a financial loss to be considered a victim. All individuals who have had financial or personal information compromised in an identity theft crime should be identified, and their names and contact information should be entered into VNS. The responsible official at the investigative phase should take a proactive approach to identifying victims, which may include creating and publicizing a toll-free hotline for citizens concerned that they may have been victimized and media advertising of a fraud case or investigation with instructions for potential victims to contact the investigative agency.

2. Description of Services. In general, Department personnel should consider consulting the Federal Trade Commission's Web site, www.consumer.gov/idtheft/law_howhelp.html, for information and guidance on assisting victims of identity theft.

    a. Referral. In addition to all other services required under these *AG Guidelines*, the responsible official should—

        (1) Refer victims to the particularly useful or relevant services specifically provided for victims of identity theft by other Federal agencies, including the Federal Trade Commission, as well as by nongovernmental organizations.

        (2) Refer victims to relevant credit reporting services.

        (3) Advise victims to file an individual police report.

    b. Notification to Victims' Employers and Creditors. If requested to do so by the victim, the responsible official should—

        (1) Assist in notifying creditors and employer. The responsible official should assist in contacting a victim's employer and credit card companies, mortgagee(s), and other creditors by letter or telephone call in order to notify them that the victim has been identified as a victim of an identity-theft crime.

(2) Inform creditors of the nature and status of the case. The responsible official should provide creditors with documentation relating to the case if requested, including appropriate charging sheets, plea agreements, and judgments.

(3) Notify creditors of availability of restitution. The responsible official should notify creditors that, if they absolve the victim of unlawfully incurred debt, they may become entitled to restitution from the perpetrator. (18 U.S.C. § 3664(j)(1))

3. Information From Businesses Available to Victims

a. The responsible official at the investigative phase should notify a victim of identity theft that business entities that have entered into commercial transactions with a person who has allegedly made unauthorized use of a means of identification of the victim may be required, at no cost to the victim, to provide copies of transaction records in their control. (15 U.S.C. § 1681g(e)(1))

b. In making the notification under paragraph a, the responsible official shall avoid providing legal advice and shall not be responsible for assisting the victim in requesting the information and records to which the victim may be entitled under the law.

ARTICLE XI.
NONLITIGABILITY

These *AG Guidelines* provide only internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, or standards of conduct or care, substantive or procedural, enforceable at law by any person in any matter civil or criminal. These *AG Guidelines* shall not be construed to create, enlarge, or imply any duty or obligation to any victim, witness, or other person for which the United States or its employees could be held liable in damages. No limitations are hereby placed on otherwise lawful litigative prerogatives of the Department of Justice.

GOVERNMENT

EXHIBIT

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Sloman, Jeff (USAFLS)

From: Sloman, Jeff (USAFLS)
Sent: Tuesday, November 27, 2007 1:55 PM
To: Jay Lefkowitz
Cc: Acosta, Alex (USAFLS)
Subject: Epstein

Jay,

Please accept my apologies for not getting back to you sooner but I was a little under the weather yesterday. I hope that you enjoyed your Thanksgiving.

Regarding the issue of due diligence concerning Judge Davis' selection, I'd like to make a few observations. First, Guy Lewis has known for some time that Judge Davis was making reasonable efforts to secure Aaron Podhurst and Bob Josephsberg for this assignment. In fact, when I told you of Judge Davis's selection during our meeting last Wednesday, November 21st, you and Professor Dershowitz seemed very comfortable, and certainly not surprised, with the selection. Podhurst and Josephsberg are no strangers to nearly the entire Epstein defense team including Guy Lewis, Lili Ann Sanchez, Roy Black, and, apparently, Professor Dershowitz who said he knew Mr. Josephsberg from law school. Second, Podhurst and Josephsberg have long-standing stellar reputations for their legal acumen and ethics. It's hard for me to imagine how much more vetting needs to be done.

The United States has a statutory obligation (Justice for All Act of 2004) to notify the victims of the anticipated upcoming events and their rights associated with the agreement entered into by the United States and Mr. Epstein in a timely fashion. Tomorrow will make one full week since you were *formally* notified of the selection. I must insist that the vetting process come to an end. Therefore, unless you provide me with a *good faith* objection to Judge Davis's selection by COB tomorrow, November 28, 2007, I will authorize the notification of the victims. Should you give me the go-ahead on Podhurst and Josephsberg selection by COB tomorrow, I will simultaneously send you a draft of the letter. I intend to notify the victims by letter after COB Thursday, November 29th. Thanks,

Jeff

GOVERNMENT

EXHIBIT

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December 26, 2007

VIA FACSIMILE (305) 530-6444

Honorable R. Alexander Acosta
United States Attorney
United States Attorney's Office
Southern District of Florida
99 NE 4th Street
Miami, FL 33132

Re: Jeffrey Epstein

Dear Alex:

I write to address the questions you posed to me during a conversation we had late last week. Specifically, you requested a clarification of our position on two issues: (1) our view on your latest proposal regarding notification to the alleged victims under 18 U.S.C. § 3771; and (2) our response to your proposed language regarding the 18 U.S.C. § 2255 component of the deferred-prosecution agreement (the "Agreement"). Before I turn to these questions, I would like to reiterate that this letter responds to your invitation to discuss proposed modifications to the Agreement and should not be construed in any way as a breach of the Agreement. With that said, I must tell you that the more I look into these issues, the more difficulties I see in trying to tie the resolution of a federal criminal matter with a federal civil matter involving minors, and this is even further complicated when the premise of the resolution is a deferred federal prosecution conditioned on a plea to specific state offenses with a specific sentence pre-determined and required to be imposed by the state court, without consideration of the fact that the State view of this case differs dramatically from yours. With that in mind, I turn to each of your questions below.

First, although we appreciate your willingness to modify your Office's § 3771 notice, which is embodied in your latest proposal, we must still object to aspects of your proposal on the ground that notice under § 3771 is per se inapplicable to this case under the Attorney General's own guidelines, because the alleged victims are not "crime victims" under § 3771. The Attorney General Guidelines for Victim and Witness Assistance defines "crime victim" as follows:

> For the purpose of enforcing the rights enumerated in article I.B, a victim is 'a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia' (18 U.S.C. § 3771(e)) if the offense is **charged** in Federal district court. If a victim is under 18 years of age, incompetent, incapacitated, or

> deceased, a family member or legal guardian of the victim, a representative of the victim's estate, or any other person so appointed by the court may exercise the victim's rights, but in no event shall the accused serve as a guardian or representative for this purpose. (18 U.S.C. § 3771(e)).

The Attorney General Guidelines for Victim and Witness Assistance, at 9 (emphasis added).

Here, the women are clearly not "crime victims" under the Attorney General Guidelines definition. To be a "crime victim", a person or entity must be harmed by an offense that has been charged in Federal district court. *See U.S. v. Guevara-Toloso*, 2005 WL 1210982 at *2 (E.D.N.Y. May 23, 2005) (noting that § 3771's reference to "the crime" suggests "a focus only on the crime with which a defendant is charged in the case in which a victim seeks to assert her statutory rights.") (emphasis added) Since there has been no offense charged in Federal district court in this matter, the identified individuals necessarily do not qualify as "crime victims". In addition, the Attorney General Guidelines further defines a "crime victim" as "a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime. (42 U.S.C. § 10607(e)(2))" *Id.* As you know, we believe we have shown that at least some (if not all) of the identified individuals did not suffer any injury at all in connection with Mr. Epstein's alleged conduct.[1]

In addition, under the Attorney General Guidelines, notification must be balanced against any action that may impinge on Mr. Epstein's due process rights. The Attorney General Guidelines clearly call into question "the wisdom and practicality of giving notice" to a "possible witness in the case and the effect that relaying any information may have on the defendant's right to a fair trial." The Attorney General Guidelines for Victim and Witness Assistance, at 30. The Attorney General Guidelines caution federal prosecutors from providing notice to potential witnesses in instances where such notice could compromise the defendant's due process rights. This is particularly true, as here, if the notice includes confidential information, including the conditions of a confidential deferred-prosecution agreement or non-prosecution agreement. In light of these concerns, we respectfully request that you reconsider sending notices to the alleged victims pursuant to § 3771.

Our objection to § 3771 notwithstanding, we do not object (as we made clear in our letter last week) that some form of notice be given to the alleged victims. To that end, we request an opportunity to review the notification before it is sent in order to avoid any confusion or misunderstandings. We believe, however, that any and all notices with respect to the alleged victims of state offenses should be sent by the State Attorney rather than your Office, and we

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[1] See for example, our prior submissions regarding Saige Gonzalez and Tatum Miller.

agree that your Office should defer to the discretion of the State Attorney regarding all matters with regard to those victims and the state proceedings.

Second, the more we work to resolve our mutual concerns regarding the § 2255 component of the Agreement, the more our growing fears are realized that the implementation of § 2255 in this case is inherently flawed and becoming truly unmanageable. In the first instance, the implementation of § 2255 in this matter causes manageability concerns because it appears the civil component of this case must be stayed until after all phases of a criminal action have been resolved. 18 U.S.C. § 3509(k), which codifies child victims' and child witnesses' rights, seems on its face to preclude any interference arising from a potential or pending civil action on a related criminal proceeding in order to protect a defendant's right to due process. The statute states:

> If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, the civil action shall be stayed until the end of all phases of the criminal action and any mention of the civil action during the criminal proceeding is prohibited. As used in this subsection, a criminal action is pending until its final adjudication in the trial court.

18 U.S.C. § 3509(k). *See also, John Doe 1 v. Francis*, 2005 WL 517847, at *2 (N.D. Fla. Feb. 10, 2005) ("the language of 18 U.S.C. § 3509(k) is clear that a stay is required in a case such as this where a parallel criminal action is pending which arises from the same occurrence involving minor victims. *See* 18 U.S.C. § 3509(k). Inasmuch as Plaintiffs have offered no authority or evidence to the contrary, the Court finds that the stay in this case must remain in effect until final adjudication of the criminal case by the state court.")

It appears that any attempt to resolve the civil component of this case (be it through structured settlements or civil litigation) may be precluded by § 3509(k) insofar as all phases of the criminal action have not yet been resolved. To allow for a civil cause of action while a related criminal action remains pending can unduly bias the witnesses who could be improperly incentivized by a potential monetary recovery. The prevention of such a result is precisely the reason that § 3509(k) was enacted. Indeed, there can be no such resolution of "all phases of the criminal action" here, until Mr. Epstein's state sentence is concluded and all opportunity for the initiation of a federal prosecution is foreclosed.

In addition, we have reiterated in previous submissions that Mr. Epstein does not believe he is guilty of the federal charges enumerated under § 2255. For this reason, we believe that your proposed language regarding an appropriate § 2255 procedure unfairly asks Mr. Epstein to agree that each and every alleged victim identified by the Government is a victim of an enumerated federal offense under § 2255 and should, therefore, be placed in the same position

she would have been had Mr. Epstein been convicted of such an offense. As we discussed last week, it is this requirement that makes your § 2255 proposal so problematic. As much as we appreciate your willingness to revisit the § 2255 issues, we cannot accept your language as proposed, because we believe that the conduct of Mr. Epstein with respect to these alleged victims fails to satisfy the requisite elements of any of the enumerated offenses, including 18 U.S.C. § 2422(b) or 18 U.S.C. § 2423(b). In light of the information we have presented to you regarding the two alleged victims whom we understand appear on your list, we hope you understand why your language presents us with these concerns. Essentially, you are asking us to help put these women in a position that may not be warranted.

In short, your proposed language regarding § 2255 states that Mr. Epstein should be treated "as if he had been convicted" of an enumerated federal crime. This requires Mr. Epstein to in essence admit guilt, though he believes he did not commit the requisite offense. The United States Attorney Manual ("USAM") 9-27.440, Principles of Federal Prosecution, sets forth a clear requirement when a defendant tenders a plea of guilty but subsequently denies committing the offense to which he has offered to plead. Specifically, 9-27.440 provides, in part:

> In a case in which the defendant tenders a plea of guilty but denies committing the offense to which he/she offers to plead guilty, the attorney for the government should make an offer of proof of all facts known to the government to support the conclusion that the defendant is in fact guilty. *See also* USAM 9-16.015.

To date, your Office has refused our requests to share such information with us. For the purposes of attempting to resolve the § 2255 issue, we once again request that your Office make this proof available. Specifically, your Office has represented that liability exists under § 2422(b) and § 2423(b), as well as the state offense, Florida Statute § 796.03. We would welcome this previously sought information at your earliest convenience to enable us to resolve this matter in a timely fashion.

Finally, I would like to address your request that we provide revised language to your Office regarding the appropriate § 2255 procedure. Given the inherent complexities described above, we have not been able to find language that comports with the Agreement and your stated goals, especially given your insistence that the women be placed in the same position as if Mr. Epstein "had been convicted".[2] However, if you so choose — and keeping in mind that we

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[2] In addition, we remind you that wholly and apart from the judicial stay that appears to be required under § 3509(k), we believe that the minimum damages amount referenced in § 2255 ($150,000) is subject to an ex-post facto motion, as the statutory minimum was $50,000 at the time of the alleged conduct and the statute is being implemented in a deferred-prosecution agreement.

intend to abide by the Agreement — we would be willing at you earliest convenience to discuss possible alternatives.

Thank you for your time and consideration. We remain available to work with you to resolve these difficult issues in a constructive manner, and we look forward to your response to the concerns we have raised that have not yet been addressed by your Office.

Sincerely,

Jay P. Lefkowitz

cc: Jeffrey H. Sloman, First Assistant U.S. Attorney

GOVERNMENT

EXHIBIT

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: 50 2008 CA 028058 XXXXMB AD

E.W.,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

COMPLAINT

Plaintiff, E.W., by and through her undersigned counsel, sues the Defendant, Jeffrey Epstein, and alleges:

1. This is an action in an amount in excess of $15,000.00, exclusive of interest and costs and is within the jurisdictional limits of this Court.

2. This Complaint is brought under a fictitious name in order to protect the identity of the Plaintiff because this Complaint makes allegations of sexual assault and child abuse of a then minor.

3. At all times material to this cause of action, the Plaintiff, E.W. (hereinafter referred to as "Plaintiff"), was a resident of Palm Beach County, Florida.

4. At all times material to this cause of action, the Defendant, Jeffrey Epstein, had a residence located at 358 El Brillo Way, West Palm Beach, Palm Beach County, Florida.

5. Defendant, Jeffrey Epstein, is currently a citizen of the State of Florida, as he currently resides in West Palm Beach, Florida at the Palm Beach County Jail and has the intention to remain in Florida. This is substantiated by the residence that he maintains at 358 El Brillo Way, West Palm Beach, Florida where he spends the majority of his time, and intentions to remain at that address permanently are further evidenced by his statements to the Court during his State Plea colloquy on June 30, 2008, case number 06CF009454AMB, taken before the Honorable Judge Dale Pucillo, wherein he indicated that after his release from the Palm Beach County Jail he intends to reside permanently at his home at 358 El Brillo Way, West Palm Beach, Florida, and he plans to work in West Palm Beach, Florida as well.

6. At all times material to this cause of action, the Defendant, Jeffrey Epstein, was an adult male born in 1953.

7. At all times material, the Defendant, Jeffrey Epstein, owed a duty unto Plaintiff to treat her in a non-negligent manner and to not commit intentional or tortious or illegal acts against her.

8. All of the allegations within this Complaint occurred in West Palm Beach, Florida.

FACTUAL ALLEGATIONS

9. Upon information and belief, the Defendant, Jeffrey Epstein, has demonstrated a sexual preference and obsession for minor girls.

10. The Defendant, Jeffrey Epstein, developed a plan, scheme, and criminal enterprise that included an elaborate system wherein the then minor Plaintiff was brought to the Defendant,

Jeffrey Epstein's residence by the Defendant's employees, recruiters, and assistants. When the assistants and employees left the then minor Plaintiff and other minor girls alone in a room at the Defendant's mansion, the Defendant, Jeffrey Epstein, himself would appear, remove his clothing, and direct the then minor Plaintiff to remove her clothing. He would then perform one or more lewd, lascivious, and sexual acts, including, but not limited to, masturbation, touching of the then minor Plaintiff's sexual organs, coercing or forcing the then minor Plaintiff to perform oral sex on him, using vibrators or sexual toys on the then minor Plaintiff, coercing the then minor Plaintiff into sexual acts with himself or others, and digitally penetrating the then minor Plaintiff. He would then pay the Plaintiff for engaging in this sexual activity.

11. The Plaintiff was first brought to the Defendant, Jeffrey Epstein's mansion in 2002 when she was a fourteen-year old in middle school.

12. The then minor Plaintiff was a vulnerable child without adequate parental support at all times material to this Complaint. The Defendant, Jeffrey Epstein, a wealthy financier with a lavish home, significant wealth, and a network of assistants and employees, used his resources and his influence over a vulnerable minor child to engage in a systematic pattern of sexually exploitive behavior.

13. Beginning in approximately August 2002 and continuing until approximately September 2005, the Defendant, Jeffrey Epstein, coerced, induced and/or enticed the impressionable, vulnerable, and economically deprived then minor Plaintiff to commit various acts of sexual misconduct. These acts included, but were not limited to, fondling and inappropriate and illegal sexual touching of the then minor Plaintiff, forcing the then minor Plaintiff into oral sex, sexual misconduct and masturbation of the Defendant, Jeffrey Epstein, in

the presence of the then minor Plaintiff, handling and fondling of the then minor Plaintiff's sexual organs for the purpose of masturbation, and encouraging the then minor Plaintiff to become involved in prostitution; Defendant, Jeffrey Epstein, committed numerous criminal sexual offenses against the then minor Plaintiff including, but not limited to, sexual battery, solicitation of prostitution, coercing a minor into a life of prostitution, and lewd and lascivious assaults upon the person of the then minor Plaintiff.

14. In addition to the direct sexual abuse and molestation of the then minor Plaintiff, Defendant, Jeffrey Epstein, instructed, coerced and otherwise induced the then minor Plaintiff to bring him numerous other minor children for the purposes of further satisfying his deviant sexual attraction to minors. Defendant, Jeffrey Epstein, used his money, wealth and power to unduly and improperly manipulate and influence the then minor Plaintiff to bring him these other minor girls in exchange for money. This influence led the then minor Plaintiff away from the life of a middle school aged child and into a delinquent lifestyle.

15. The acts referenced above in paragraphs 10 through 14, committed by Defendant, Jeffrey Epstein, against the then minor Plaintiff were committed in violation of numerous criminal State statutes condemning the sexual exploitation of minor children, prostitution, sexual performances by a child, lewd and lascivious assaults, sexual battery, contributing to the delinquency of a minor and other crimes, specifically including, but not limited to, those criminal offenses outlined in Chapters 794, 800, 827 and 847 of the Florida Statutes, as well as those designated in Florida Statutes §796.03, §796.07, §796.045, §796.04, §796.09, §39.01, and §827.04.

16. The above-described acts took place in Palm Beach County, Florida at the residence of the Defendant, Jeffrey Epstein. Any assertions by the Defendant, Jeffrey Epstein, that he was unaware of the age of the then minor Plaintiff are belied by his actions and rendered irrelevant by the provisions of applicable Florida Statutes concerning the sexual exploitation and abuse of a minor child. The Defendant, Jeffrey Epstein, at all times material to this cause of action, knew and should have known of the Plaintiff's minority.

17. The above-described acts were perpetrated upon the person of the then minor Plaintiff on numerous occasions.

18. In June 2008, in the Fifteenth Judicial Circuit in Palm Beach County, Florida, the Defendant, Jeffrey Epstein, entered pleas of "guilty" to various Florida state crimes involving the solicitation of minors for prostitution and the procurement of minors for the purposes of prostitution.

19. As a condition of that plea, and in exchange for the Federal Government not prosecuting the Defendant, Jeffrey Epstein, for numerous federal offenses, Defendant, Jeffrey Epstein, additionally entered into an agreement with the Federal Government acknowledging that E.W. was a victim of his conduct.

20. The Plaintiff is included in the list of victims identified by the Federal Government as victims of the Defendant, Jeffrey Epstein's illegal conduct. The Defendant, Jeffrey Epstein, is thus estopped by his plea and agreement with the Federal Government from denying the acts alleged in this Complaint, and must effectively admit liability to the Plaintiff.

COUNT I

Sexual Exploitation, Sexual Abuse and/or Sexual Assault of a Minor

21. The Plaintiff repeats and realleges paragraphs 1 through 20 above.

22. Defendant, Jeffrey Epstein, tortiously assaulted Plaintiff sexually on numerous occasions between approximately August 2002 and approximately September 2005, and further sexually exploited her and contributed to her delinquency during that time. Defendant's acts were outrageous, egregious, intentional, unlawful, offensive and harmful.

23. The sexual assaults were in violation of the numerous state statutes described in paragraph 15 above, and the assaults and acts of exploitation were committed by Defendant, Jeffrey Epstein, willfully and maliciously.

24. As a direct and proximate result of Defendant, Jeffrey Epstein's assaults on the Plaintiff, the Plaintiff has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her privacy and other damages associated with Defendant, Jeffrey Epstein, controlling, manipulating and coercing her into a perverse and unconventional way of life for a minor. The then minor Plaintiff incurred medical and psychological expenses and the Plaintiff will in the future suffer additional medical and psychological expenses. The Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature and the Plaintiff will continue to suffer these losses in the future.

WHEREFORE, the Plaintiff, E.W., demands judgment against the Defendant, Jeffrey Epstein, for compensatory damages, attorney's fees, and such other and further relief as this

Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

COUNT II

Cause of Action Pursuant to Florida Statute 796.09

25. The Plaintiff adopts and realleges paragraphs 1 through 20 above.

26. The allegations contained herein in Count II are a separate and distinct legal remedy.

27. Defendant, Jeffrey Epstein, was a wealthy and powerful man, and Plaintiff was an economically disadvantaged and impressionable minor.

28. Defendant, Jeffrey Epstein, used his vast wealth and power to coerce Plaintiff into prostitution and/or coerced her to remain in prostitution.

29. Defendant, Jeffrey Epstein, coerced Plaintiff into prostitution in one or more of the following ways:

A. Domination of her mind and body through exploitive techniques;

B. Inducement;

C. Promise of greater financial rewards;

D. Exploitation of a condition of developmental disability, cognitive limitation, affective disorder, and/or substance dependency;

E. Exploitation of human needs for food, shelter or affection;

F. Exploitation of underprivileged and vulnerable economic condition or situation;

G. Use of a system of recruiting other similarly situated minor girls to further coerce and induce Plaintiff into the lifestyle of prostitution; and

H. Exploitation through demonstration of abundant wealth and power to impress a young and vulnerable then minor Plaintiff and to coerce her into prostitution.

30. As a direct and proximate result of the offenses committed by Defendant, Jeffrey Epstein, against Plaintiff pursuant to Florida Statutes §769.09, the Plaintiff has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her privacy and other damages associated with Defendant, Jeffrey Epstein, controlling, manipulating and coercing her into a perverse and unconventional way of life for a minor. The then minor Plaintiff incurred medical and psychological expenses and the Plaintiff will in the future suffer additional medical and psychological expenses. The Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature and the Plaintiff will continue to suffer these losses in the future.

WHEREFORE, the Plaintiff, E.W., demands judgment against the Defendant, Jeffrey Epstein, for compensatory damages, attorney's fees, and such other and further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

COUNT III

Intentional Infliction of Emotional Distress

31. The Plaintiff adopts and realleges paragraphs 1 through 20 above.

32. The Defendant, Jeffrey Epstein's conduct towards the then minor Plaintiff was intentional and reckless.

33. The Defendant, Jeffrey Epstein, deliberately and recklessly inflicted mental suffering upon the then minor Plaintiff.

34. The Defendant, Jeffrey Epstein's conduct was outrageous in character, and so extreme in degree, going beyond all bounds of decency.

35. The Defendant, Jeffrey Epstein's intentional, deliberate and reckless conduct caused severe emotional distress to the Plaintiff. Defendant, at the time he committed these numerous sexual assaults on Plaintiff, had a specific intent to harm the then minor Plaintiff and his conduct did so harm the Plaintiff.

36. As a direct and proximate result of the Defendant, Jeffrey Epstein's intentional and reckless conduct, the Plaintiff has in the past suffered and in the future will continue to suffer physical injury, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her privacy and other damages associated with the Defendant, Jeffrey Epstein, controlling, manipulating and coercing her into a perverse and unconventional way of life for a minor. The then minor Plaintiff incurred medical and psychological expenses and the Plaintiff will in the future suffer additional medical and psychological expenses. The Plaintiff has suffered a loss of income, a loss of the capacity to

earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature and the Plaintiff will continue to suffer these losses in the future.

WHEREFORE, the Plaintiff, E.W., demands judgment against the Defendant, Jeffrey Epstein, for compensatory damages, attorney's fees, and such other and further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

COUNT IV

Civil Remedy for Criminal Practices

37. The Plaintiff realleges paragraphs 1 through 20 above.

38. The allegations contained herein in Count IV are a separate and distinct legal remedy.

39. The Defendant, Jeffrey Epstein, participated in an enterprise, or conspired or endeavored to so participate, through a pattern of criminal activity in violation of Florida Statutes §772.103(3)-(4).

40. The Defendant, Jeffrey Epstein, participated in this pattern of criminal activity by engaging in at least two of the following acts of criminal misconduct with the same or similar intents, results, accomplices, victims, and methods of commission within a five year period:

A. Procuring for prostitution, or causing to be prostituted, any person who is under the age of 18 years in violation of Florida Statutes Chapter 796;

B. Forcing, compelling, or coercing another to become a prostitute in violation of Florida Statutes §796.04;

C. Acts of battery in violation of Florida Statutes Chapter 784;

D. Act of lewdness in violation of Florida Statutes Chapter 800;

E. Sexual performance or exploitation of a child in violation of Florida Statutes §827.071; and

F. Other crimes involving contributing to the delinquency of a child, sexual abuse of a child, and coercing a child into prostitution.

41. Under the Defendant, Jeffrey Epstein's plan, scheme, and enterprise, the Defendant, Jeffrey Epstein, paid employees and underlings to repeatedly find and bring him minor girls in order for the Defendant to solicit, induce, coerce, entice, compel or force such girls to engage in acts of prostitution and sexual misconduct.

42. The Plaintiff was the victim of the Defendant, Jeffrey Epstein's plan, scheme, and enterprise. The Plaintiff was called on the telephone and transported by various individuals to the Defendant, Jeffrey Epstein's residence, where she was placed in a room along with the Defendant, enticed to commit acts of prostitution, battery, and sexual exploitation. The Defendant, Jeffrey Epstein, conspired with his assistants and employees and various adults and minor children in order to accomplish his enterprise of seeking out, gaining access to, and exploiting minor children such as the Plaintiff.

43. After introducing Plaintiff into prostitution, he enticed her to remain in prostitution and be a part of his deviant sexual lifestyle through exploitive techniques, such as offering additional money to Plaintiff in exchange for her bringing him additional minor girls to sexually abuse and commit sexual crimes against.

WHEREFORE, under the provisions of Florida Statutes Chapter 772, the Plaintiff demands judgment against the Defendant, Jeffrey Epstein, for compensatory damages, treble

damages, costs and attorneys' fees, and such other and further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

DATED this 10th day of September, 2008.

THE LAW OFFICE OF BRAD EDWARDS & ASSOCIATES, LLC
Attorneys for Plaintiff
2028 Harrison Street
Suite 202
Hollywood, Florida 33020
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Facsimile: 954-924-1530

Jay Howell, Esquire
Florida Bar #225657
JAY HOWELL & ASSOCIATES, P.A.
Co-Counsel for Plaintiff
644 Cesery Boulevard
Suite 250
Jacksonville, Florida 32211
Telephone: 904-680-1234
Facsimile: 904-680-1238

STATE OF FLORIDA - PALM BEACH COUNTY
I hereby certify that the foregoing is a true copy of the record in my office.
THIS 19 DAY OF January 20 12
SHARON R. BOCK
CLERK & COMPTROLLER
By _____
DEPUTY CLERK

By: _____
Brad Edwards
Florida Bar #542075

GOVERNMENT

EXHIBIT

Q

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: _____

L.M..,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

50 2008 CA 028051 XXXX MB

AD

COMPLAINT

Plaintiff, L.M., by and through her undersigned counsel, sues the Defendant, Jeffrey Epstein, and alleges:

2008 SEP 11 PM 5:13

1. This is an action in an amount in excess of $15,000.00, exclusive of interest and costs and is within the jurisdictional limits of this Court.

2. This Complaint is brought under a fictitious name in order to protect the identity of the Plaintiff, L.M., because this Complaint makes allegations of sexual assault and child abuse of a then minor.

3. At all times material to this cause of action, the Plaintiff, L.M. (hereinafter referred to as "Plaintiff"), was a resident of Palm Beach County, Florida.

4. At all times material to this cause of action, the Defendant, Jeffrey Epstein, had a residence located at 358 El Brillo Way, West Palm Beach, Palm Beach County, Florida.

5. Defendant, Jeffrey Epstein, is currently a citizen of the State of Florida, as he currently resides in West Palm Beach, Florida at the Palm Beach County Jail and has the intention to remain in Florida. This is substantiated by the residence that he maintains at 358 El Brillo Way, West Palm Beach, Florida where he spends the majority of his time, and intentions to remain at that address permanently are further evidenced by his statements to the Court during his State Plea colloquy on June 30, 2008, case number 06CF009454AMB, taken before the Honorable Judge Dale Pucillo, wherein he indicated that after his release from Palm Beach County Jail he intends to reside permanently at his home at 358 El Brillo Way, West Palm Beach, Florida, and he plans to work in West Palm Beach, Florida as well.

6. At all times material to this cause of action, the Defendant, Jeffrey Epstein, was an adult male born in 1953.

7. At all times material, the Defendant, Jeffrey Epstein, owed a duty unto Plaintiff to treat her in a non-negligent manner and to not commit intentional or tortious or illegal acts against her.

8. All of the allegations within this Complaint occurred in West Palm Beach, Florida.

FACTUAL ALLEGATIONS

9. Upon information and belief, the Defendant, Jeffrey Epstein, has demonstrated a sexual preference and obsession for minor girls.

10. The Defendant, Jeffrey Epstein, developed a plan, scheme, and criminal enterprise that included an elaborate system wherein the then minor Plaintiff was brought to the Defendant,

Jeffrey Epstein's residence by the Defendant's employees, recruiters, and assistants. When the assistants and employees left the then minor Plaintiff and other minor girls alone in a room at the Defendant's mansion, the Defendant, Jeffrey Epstein, himself would appear, remove his clothing, and direct the then minor Plaintiff to remove her clothing. He would then perform one or more lewd, lascivious, and sexual acts, including, but not limited to, masturbation, touching of the then minor Plaintiff's sexual organs, using vibrators or sexual toys on the then minor Plaintiff, coercing the then minor Plaintiff into sexual acts with himself, and digitally penetrating the then minor Plaintiff. He would then pay the Plaintiff for engaging in this sexual activity.

11. The Plaintiff was first brought to the Defendant, Jeffrey Epstein's mansion in 2002 when she was a fourteen-year old in middle school.

12. The Defendant, Jeffrey Epstein, a wealthy financier with a lavish home, significant wealth, and a network of assistants and employees, used his resources and his influence over a vulnerable minor child to engage in a systematic pattern of sexually exploitive behavior.

13. Beginning in approximately July 2002 and continuing until approximately September 2005, the Defendant, Jeffrey Epstein, coerced and/or enticed the impressionable, vulnerable, and economically deprived then minor Plaintiff to commit various acts of sexual misconduct. These acts included, but were not limited to, fondling and inappropriate and illegal sexual touching of the then minor Plaintiff, sexual misconduct and masturbation of the Defendant, Jeffrey Epstein, in the presence of the then minor Plaintiff, and encouraging the then minor Plaintiff to become involved in prostitution; Defendant, Jeffrey Epstein, committed numerous criminal sexual offenses against the then minor Plaintiff including, but not limited to,

sexual battery, solicitation of prostitution, procurement of a minor for the purposes of prostitution, and lewd and lascivious assaults upon the person of the then minor Plaintiff.

14. In addition to the direct sexual abuse and molestation of the then minor Plaintiff, Defendant, Jeffrey Epstein, instructed, coerced and otherwise induced the then minor Plaintiff to bring him numerous other minor children for the purposes of further satisfying his deviant sexual attraction to minors. Defendant, Jeffrey Epstein, used his money, wealth and power to unduly and improperly manipulate and influence the then minor Plaintiff to bring him these other minor girls in exchange for money. This influence led the then minor Plaintiff away from the life of a middle school aged child and into a delinquent lifestyle.

15. The acts referenced above in paragraphs 10 through 14, committed by Defendant, Jeffrey Epstein, against the then minor Plaintiff were committed in violation of numerous criminal State statutes condemning the sexual exploitation of minor children, prostitution, sexual performances by a child, lewd and lascivious assaults, sexual battery, contributing to the delinquency of a minor and other crimes, specifically including, but not limited to, those criminal offenses outlined in Chapters 794, 800, 827 and 847 of the Florida Statutes, as well as those designated in Florida Statutes §796.03, §796.07, §796.045, §796.04, §796.09, §39.01, and §827.04.

16. The above-described acts took place in Palm Beach County, Florida at the residence of the Defendant, Jeffrey Epstein. Any assertions by the Defendant, Jeffrey Epstein, that he was unaware of the age of the then minor Plaintiff are belied by his actions and rendered irrelevant by the provisions of applicable Florida Statutes concerning the sexual exploitation and

abuse of a minor child. The Defendant, Jeffrey Epstein, at all times material to this cause of action, knew and should have known of the Plaintiff's minority.

17. The above-described acts were perpetrated upon the person of the then minor Plaintiff regularly and on numerous occasions.

18. In June 2008, in the Fifteenth Judicial Circuit in Palm Beach County, Florida, the Defendant, Jeffrey Epstein, entered pleas of "guilty" to various Florida state crimes involving the solicitation of minors for prostitution and the procurement of minors for the purposes of prostitution.

19. As a condition of that plea, and in exchange for the Federal Government not prosecuting the Defendant, Jeffrey Epstein, for numerous federal offenses, Defendant, Jeffrey Epstein, additionally entered into an agreement with the Federal Government acknowledging that L.M. was a victim of his conduct.

20. The Plaintiff is included in the list of victims identified by the Federal Government as victims of the Defendant, Jeffrey Epstein's illegal conduct. The Defendant, Jeffrey Epstein, is thus estopped by his plea and agreement with the Federal Government from denying the acts alleged in this Complaint, and must effectively admit liability to the Plaintiff.

COUNT I

Sexual Exploitation, Sexual Abuse and/or Sexual Assault of a Minor

21. The Plaintiff repeats and realleges paragraphs 1 through 20 above.

22. Defendant, Jeffrey Epstein, tortiously assaulted Plaintiff sexually on numerous occasions between approximately July 2002 and approximately September 2005, and further

sexually exploited her and contributed to her delinquency during that time. Defendant's acts were outrageous, egregious, intentional, unlawful, offensive and harmful.

23. The sexual assaults were in violation of the numerous state statutes described in paragraph 15 above, and the assaults and acts of exploitation were committed by Defendant, Jeffrey Epstein, willfully and maliciously.

24. As a direct and proximate result of Defendant, Jeffrey Epstein's assaults on the Plaintiff, the Plaintiff has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her privacy and other damages associated with Defendant, Jeffrey Epstein, controlling, manipulating and coercing her into a perverse and unconventional way of life for a minor. The then minor Plaintiff incurred medical and psychological expenses and the Plaintiff will in the future suffer additional medical and psychological expenses. The Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature and the Plaintiff will continue to suffer these losses in the future.

WHEREFORE, the Plaintiff, L.M., demands judgment against the Defendant, Jeffrey Epstein, for compensatory damages, attorney's fees, and such other and further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

COUNT II

Cause of Action Pursuant to Florida Statute 796.09

25. The Plaintiff adopts and realleges paragraphs 1 through 20 above.

26. The allegations contained herein in Count II are a separate and distinct legal remedy.

27. Defendant, Jeffrey Epstein, was a wealthy and powerful man, and Plaintiff was an economically disadvantaged and impressionable minor.

28. Defendant, Jeffrey Epstein, used his vast wealth and power to coerce Plaintiff into prostitution and/or coerced her to remain in prostitution.

29. Defendant, Jeffrey Epstein coerced Plaintiff into prostitution in one or more of the following ways:

A. Domination of her mind and body through exploitive techniques;

B. Inducement;

C. Promise of greater financial rewards;

D. Exploitation of a condition of developmental disability, cognitive limitation, affective disorder, and/or substance dependency;

E. Exploitation of human needs for food, shelter or affection;

F. Exploitation of underprivileged and vulnerable economic condition or situation;

G. Use of a system of recruiting other similarly situated minor girls to further coerce and induce Plaintiff into the lifestyle of prostitution; and

H. Exploitation through demonstration of abundant wealth and power to impress a young and vulnerable then minor Plaintiff and to coerce her into prostitution.

30. As a direct and proximate result of the offenses committed by Defendant, Jeffrey Epstein, against Plaintiff pursuant to Florida Statutes §769.09, the Plaintiff has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her privacy and other damages associated with Defendant, Jeffrey Epstein, controlling, manipulating and coercing her into a perverse and unconventional way of life for a minor. The then minor Plaintiff incurred medical and psychological expenses and the Plaintiff will in the future suffer additional medical and psychological expenses. The Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature and the Plaintiff will continue to suffer these losses in the future.

WHEREFORE, the Plaintiff, L.M., demands judgment against the Defendant, Jeffrey Epstein, for compensatory damages, attorney's fees, and such other and further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

COUNT III

Intentional Infliction of Emotional Distress

31. The Plaintiff adopts and realleges paragraphs 1 through 20 above.

32. The Defendant, Jeffrey Epstein's conduct towards the then minor Plaintiff was intentional and reckless.

33. The Defendant, Jeffrey Epstein, deliberately and recklessly inflicted mental suffering upon the then minor Plaintiff.

34. The Defendant, Jeffrey Epstein's conduct was outrageous in character, and so extreme in degree, going beyond all bounds of decency.

35. The Defendant, Jeffrey Epstein's intentional, deliberate and reckless conduct caused severe emotional distress to the Plaintiff. Defendant, at the time he committed these numerous sexual assaults on Plaintiff, had a specific intent to harm the then minor Plaintiff and his conduct did so harm the Plaintiff.

36. As a direct and proximate result of the Defendant, Jeffrey Epstein's intentional and reckless conduct, the Plaintiff has in the past suffered and in the future will continue to suffer physical injury, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her privacy and other damages associated with the Defendant, Jeffrey Epstein, controlling, manipulating and coercing her into a perverse and unconventional way of life for a minor. The then minor Plaintiff incurred medical and psychological expenses and the Plaintiff will in the future suffer additional medical and psychological expenses. The Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature and the Plaintiff will continue to suffer these losses in the future.

WHEREFORE, the Plaintiff, L.M., demands judgment against the Defendant, Jeffrey Epstein, for compensatory damages, attorney's fees, and such other and further relief as this

Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

COUNT IV

Civil Remedy for Criminal Practices

37. The Plaintiff realleges paragraphs 1 through 20 above.

38. The allegations contained herein in Count IV are a separate and distinct legal remedy.

39. The Defendant, Jeffrey Epstein, participated in an enterprise, or conspired or endeavored to so participate, through a pattern of criminal activity in violation of Florida Statutes §772.103(3)-(4).

40. The Defendant, Jeffrey Epstein, participated in this pattern of criminal activity by engaging in at least two of the following acts of criminal misconduct with the same or similar intents, results, accomplices, victims, and methods of commission within a five year period:

A. Procuring for prostitution, or causing to be prostituted, any person who is under the age of 18 years in violation of Florida Statutes Chapter 796;

B. Forcing, compelling, or coercing another to become a prostitute in violation of Florida Statutes §796.04;

C. Acts of battery in violation of Florida Statutes Chapter 784;

D. Act of Lewdness in violation of Florida Statutes Chapter 800;

E. Sexual performance or exploitation of a child in violation of Florida Statutes §827.071; and

F. Other crimes involving contributing to the delinquency of a child, sexual abuse of a child, and coercing a child into prostitution.

41. Under the Defendant, Jeffrey Epstein's plan, scheme, and enterprise, the Defendant, Jeffrey Epstein, paid employees and underlings to repeatedly find and bring him minor girls in order for the Defendant to solicit, induce, coerce, entice, compel or force such girls to engage in acts of prostitution and sexual misconduct.

42. The Plaintiff was the victim of the Defendant, Jeffrey Epstein's plan, scheme, and enterprise. The Plaintiff was called on the telephone and transported by various individuals to the Defendant, Jeffrey Epstein's residence, where she was placed in a room along with the Defendant, enticed to commit acts of prostitution, battery, and sexual exploitation. The Defendant, Jeffrey Epstein, conspired with his assistants and employees and various adults and minor children in order to accomplish his enterprise of seeking out, gaining access to, and exploiting minor children such as the Plaintiff.

43. After introducing Plaintiff into prostitution, he enticed her to remain in prostitution and be a part of his deviant sexual lifestyle through exploitive techniques, such as offering additional money to Plaintiff in exchange for her bringing him additional minor girls to sexually abuse and commit sexual crimes against.

WHEREFORE, under the provisions of Florida Statutes Chapter 772, the Plaintiff, L.M., demands judgment against the Defendant, Jeffrey Epstein, for compensatory damages, treble

damages, costs and attorneys' fees, and such other and further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

DATED this 10th day of September, 2008.

THE LAW OFFICE OF BRAD EDWARDS & ASSOCIATES, LLC
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644 Cesery Boulevard
Suite 250
Jacksonville, Florida 32211
Telephone: 904-680-1234
Facsimile: 904-680-1238

By: _____
Brad Edwards
Florida Bar #542075

STATE OF FLORIDA - PALM BEACH COUNTY
I hereby certify that the foregoing is a true copy of the record in my office.
THIS 19 DAY OF January, 2012
SHARON R. BOCK
CLERK & COMPTROLLER
By _____
DEPUTY CLERK

GOVERNMENT

EXHIBIT

R

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA

JANE DOE #1 AND JANE DOE #2,

Petitioners,

vs.

UNITED STATES,

Respondent.
_____/

SECOND DECLARATION OF E. NESBITT KUYRKENDALL

I, E. Nesbitt Kuyrkendall, declare as follows:

1. I am a Special Agent in the Federal Bureau of Investigation (FBI) and have been so employed since 1997. I am currently assigned to the West Palm Beach office of the FBI Miami Field Division.

2. In 2006, I was assigned as the case agent on the investigation of Jeffrey Epstein, which was referred to as Operation Leap Year.

3. As part of that investigation, I attempted to interview Jane Doe #2 at her residence. Jane Doe #2 was walking to her vehicle, and she refused to speak with me.

4. I returned to my vehicle to get a grand jury subpoena for Jane Doe #2 and handed it to her. Jane Doe #2 threw the grand jury subpoena onto the ground. I then verbally instructed her that it was a court order and she was expected to appear at the grand jury at the location, date, and time that appeared on the subpoena. Jane Doe #2 got into the vehicle and drove away without speaking to me.

5. Jane Doe #2 later obtained counsel and appeared for a videotaped interview on April 24, 2007. During the videotaped interview, Jane Doe #2 expressed her opinion that Jeffrey Epstein should not be prosecuted. She said, "I hope Jeffrey, nothing happens to Jeffrey because he's an awesome man and it would really be a shame. It's a shame that he has to go through this because he's an awesome guy and he didn't do nothing wrong, nothing."

6. Other than these events, neither I nor any other FBI agent had any contact with Jane Doe #2 during the course of the investigation. Jane Doe #2 never contacted me or my co-case agents asking for information about the investigation or asking to confer with anyone from the government about the resolution of the matter.

7. On August 7, 2007, my co-case agent and I interviewed Jane Doe #1 as part of the investigation of Jeffrey Epstein. At no time during that interview did Jane Doe #1 ask to confer with anyone from the government about any potential criminal charging decisions or about any potential resolution of the matter. An FBI report was prepared. Between the time of the interview and the signing of the Non-Prosecution Agreement in September 2007, Jane Doe #1 never contacted me or my co-case agent asking for information about the investigation or asking to confer with anyone from the government about any potential criminal charging decisions or about the resolution of the matter.

8. In October 2007, my co-case agent and I met with Jane Doe #1 at a Publix grocery store in Palm Beach Gardens. We were meeting with Jane Doe #1 to advise her of the main terms of the Non-Prosecution Agreement. Among other information I provided, I told Jane Doe #1 that an agreement had been reached, Mr. Epstein was going to plead guilty to two state charges, and there would not be a federal prosecution.

9. After my co-case agent and I met with Jane Doe #1 and two other victims, I became concerned about what would happen if Jeffrey Epstein failed to perform his obligations under the Non-Prosecution Agreement. If Mr. Epstein breached or failed to perform those obligations, then the government would need to be ready to proceed with a prosecution. I was concerned that if the victims were informed of the Non-Prosecution Agreement, which included an option for victims to seek monetary damages in a civil matter, then Epstein's counsel would use the notifications to impeach me and the victims if a prosecution were to proceed in the future. Accordingly, after conferring with the U.S. Attorney's Office, a decision was made that no further notifications would be made at that time.

10. After the Non-Prosecution Agreement was signed, in the last quarter of 2007 and continuing through 2008, the investigative team felt that there was a possibility that Epstein would breach or fail to perform the terms of the Agreement. Accordingly, the investigation continued in case the prosecution of Epstein would later proceed. The continuing investigation included additional witness interviews, service of grand jury subpoenas, and testimony before the grand jury.

11. On January 31, 2008, as part of the continuing investigation of Jeffrey Epstein, I participated in an interview of Jane Doe #1 with Marie Villafaña from the U.S. Attorney's Office and Myesha Braden from the Justice Department. Jane Doe #1 was re-interviewed in case Epstein breached or failed to perform under the Non-Prosecution Agreement.

12. Throughout the investigation, we interviewed many victims that fell within the scope of Mr. Epstein's criminal activity. A majority of the victims expressed concern about the possible disclosure of their identities to the public. A number of the victims raised concerns about having to testify and/or their parents finding out about their involvement with Mr. Epstein.

Additionally, for some victims, learning of the Epstein investigation and possible exposure of their identities caused them emotional distress. Overall, many of the victims were troubled about the existence of the investigation. They displayed feelings of embarrassment and humiliation and were reluctant to talk to investigators. Some victims who were identified through the investigation refused even to speak to us. Our concerns about the victims' well-being and getting to the truth were always at the forefront of our handling of the investigation.

13. During interviews conducted from 2006 to 2008, no victims expressed a strong opinion that Epstein be prosecuted. As noted above, Jane Doe #2 expressed her opinion that nothing should happen to Epstein.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on May 22, 2017.

E. Nesbitt Kuyrkendall

E. NESBITT KUYRKENDALL
Special Agent
Federal Bureau of Investigation
West Palm Beach, Florida

GOVERNMENT

EXHIBIT

S

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80736-Civ-Marra/Matthewman

JANE DOE 1 AND JANE DOE 2,

Petitioners,

vs.

UNITED STATES,

Respondent.
_____/

DECLARATION OF A. MARIE VILLAFAÑA IN SUPPORT OF GOVERNMENT'S RESPONSE AND OPPOSITION TO PETITIONERS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT

1. I, A. Marie Villafaña, do hereby declare that I am a member in good standing of the Bar of the State of Florida. I graduated from the University of California at Berkeley School of Law (Boalt Hall) in 1993. After serving as a judicial clerk to the Hon. David F. Levi in Sacramento, California, I was admitted to practice in California in 1995. I also am admitted to practice in all courts of the states of Minnesota and Florida, the Eighth, Eleventh, and Federal Circuit Courts of Appeals, and the U.S. District Courts for the Southern District of Florida, the District of Minnesota, and the Northern District of California. My bar admission status in California and Minnesota is currently inactive. I am currently employed as an Assistant United States Attorney in the Southern District of Florida and was so employed during all of the events described herein.

2. I am the Assistant United States Attorney who was assigned to the investigation of

Jeffrey Epstein. For purposes of 18 U.S.C. § 3771(a)(5), I was the "attorney for the Government," although, as discussed below, no federal criminal charges were ever filed and there was no "case," as that term is used in the statute. I have previously filed two Declarations (*see* DE14 and DE35). This Declaration repeats some of the information contained in the earlier Declarations for ease of reference.

3. The federal investigation of Jeffrey Epstein was handled by the Federal Bureau of Investigation ("FBI"). The federal investigation was initiated in 2006 at the request of the Palm Beach Police Department ("PBPD") into allegations that Jeffrey Epstein and his personal assistants had used facilities of interstate commerce to induce young girls between the ages of thirteen and seventeen to engage in prostitution, amongst other offenses.

4. Although the U.S. Attorney's Office for the Southern District of Florida ("the Office") opened the matter to conduct an investigation and to evaluate a possible prosecution, the Office never accepted the matter for federal prosecution, that is, the Office never authorized the presentation of a proposed indictment to a federal grand jury or the filing of any federal charge in a criminal complaint or information, and no case was ever filed.

5. Throughout the investigation, the FBI's Victim-Witness Specialist and I prepared and provided victim notification letters. (*See* Exs. E[1] & F). Letters to reported victims were prepared early in the investigation and subsequently delivered as each of those victims was contacted. The victim notification letters that were sent early in the investigation were sent to

[1] Exhibits designated by a number are attached to this Declaration. Exhibits designated by a letter are attached to the Government's Response and Opposition to Petitioners' Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment.

individuals who had been identified as potential victims of Epstein, but whom the investigative team had not yet interviewed and had not necessarily determined were in fact victims of a federal offense or came under the protection of the Crime Victims' Rights Act ("CVRA"). For example, the U.S. Attorney's Office letters were hand-delivered by FBI agents to Jane Doe 1 and Jane Doe 2 on dates subsequent to the dates of the letters. At the time those letters were sent, determinations had not yet been made that Jane Doe 1 and Jane Doe 2 were in fact victims of a federal offense or came under the protections of the CVRA. Nonetheless, the investigative team and I adopted an approach of providing more notice and assistance to potential victims than the CVRA may have required, even before the circumstances of those individuals had been fully investigated and before any charging decisions had been made. My letters to Jane Doe 1 and Jane Doe 2 notified them of their rights under the CVRA, including the right to confer with me and the right to seek counsel with respect to their CVRA rights. (*Id.*). My letters also contained my direct dial telephone number, the direct dial telephone number of the case agent, Nesbitt Kuyrkendall, and the telephone number for the Justice Department's Office for Victims of Crime. (*Id.*). Both Jane Doe 1 and Jane Doe 2 also received letters from the FBI's Victim-Witness Specialist, which were sent on January 10, 2008. (*See* Ex. J). Neither Jane Doe 1 nor Jane Doe 2 ever contacted me to discuss the investigation, potential charges or resolutions of the matter, or otherwise. If they had, I would have been happy to discuss the matter and provide their comments, concerns, or desires to my superiors. I never declined any victim's request to confer regarding any aspect of the investigation.

6. A subpoena was issued to Jane Doe 2 for testimony and documents in September, 2006. Within a few days, I was contacted by attorney James Eisenberg, who informed me that he

was representing Jane Doe 2. Mr. Eisenberg also informed me that Jane Doe 2 would not provide testimony or appear for a consensual interview unless the U.S. Attorney's Office obtained court-ordered use immunity for Jane Doe 2 pursuant to 18 U.S.C. § 6001, *et seq.* *See* Ex. A. I had several oral and written communications with Mr. Eisenberg asking him if Jane Doe 2 would appear under the protection of a standard *Kastigar* letter, but he told me that Jane Doe 2 would only appear if statutory immunity pursuant to 18 U.S.C. § 6001 was received. For example, in my letter of January 24, 2007, I confirmed my earlier conversation where Mr. Eisenberg had advised that Jane Doe 2 intended "to invoke the Fifth Amendment if questioned," and that she "was unwilling to speak to [the investigative team] pursuant to a *Kastigar* letter." (*See* Ex. 1.)

7. In the same letter of January 24, 2007, I raised concerns regarding whether Mr. Eisenberg had a conflict of interest. (*See id.*) As noted in Jane Doe 2's Declaration, Mr. Eisenberg's fees were paid by Jeffrey Epstein, the target of the investigation. In response, Mr. Eisenberg wrote the attached letter dated February 1, 2007. (*See* Ex. 2.) Mr. Eisenberg stated that it was the attitude of the U.S. Attorney's Office, in which the "office refuses to accept the fact that it is [Jane Doe 2's] decision not to cooperate with the government that upsets her." (*Id.* at ¶ 1.) Mr. Eisenberg also assured me "that there is no conflict of interest in [his] representation of [Jane Doe 2]. In this case I have always been asked and always will exercise independent judgment to follow my client's independent will." (*Id.* at ¶ 2.) Despite his expressed misgivings about the Palm Beach Police Department's handling of its investigation, Mr. Eisenberg stated that "[n]one of the above is directed at you personally. I want to repeat that you have always treated us with respect." (*Id.* at p. 2, final paragraph.)

8. In light of Mr. Eisenberg's representations that there was no conflict of interest, and in light of his clear statements that he represented Jane Doe 2, I could not directly contact or "confer" with Jane Doe 2 without running afoul of the Florida Bar rules (e.g., R. Regulating Fla. Bar 4-4.2) and 28 U.S.C § 530B.

9. I continued to converse with Mr. Eisenberg about having Jane Doe 2 appear for a voluntary interview, which continuously delayed the investigation. To that end, on February 5, 2007, I provided Mr. Eisenberg with two proposed *Kastigar* letters that I felt should assure Jane Doe 2 that she was being interviewed only as a witness and potential victim. (*See* Ex. 3.) At Jane Doe 2's request, I also prepared Office paperwork to obtain authorization for childcare while Jane Doe 2 was interviewed. (*See* Ex. 4.)

10. On February 12, 2007, after another conversation in which Mr. Eisenberg re-iterated Jane Doe 2's intent to invoke her Fifth Amendment privilege and Jane Doe 2's refusal to testify without 6001 immunity, Mr. Eisenberg provided, at my request, a letter detailing Jane Doe 2's concerns regarding testifying without immunity. (*See* Ex. 5.) In that letter, Mr. Eisenberg "reiterate[d] that [Jane Doe 2] will refuse to voluntarily cooperate with the federal government." Jane Doe 2 thereafter denied being involved in or a victim of any criminal activity and made statements meant to exculpate Jeffrey Epstein, including "[Jane Doe 2] never touched Mr. Epstein in a sexual way and Mr. Epstein never touched [Jane Doe 2] at all. At one point, Mr. Epstein did ask [Jane Doe 2] her age. [Jane Doe 2] insisted that she was eighteen years old." (*See id.*) Describing Jane Doe 2's position, Mr. Eisenberg wrote: "We believe no crime was committed." (*See id.*)

11. Based upon the proffer letter provided by Mr. Eisenberg, in March 2007, I prepared a Request for Authorization to Apply for a Compulsion Order seeking Immunity pursuant to 18 U.S.C. §§ 6001-6003 for Jane Doe 2. On April 13, 2007, Bruce C. Swartz, Deputy Assistant Attorney General, approved the request, on behalf of Alice Fisher, Assistant Attorney General. (*See* Ex. B.) I then applied to the Court for an Order compelling Jane Doe 2's testimony. U.S. District Judge Middlebrooks granted the application on April 16, 2007. (Ex. 6.)

12. After learning of Judge Middlebrooks' Order, Mr. Eisenberg asked whether Jane Doe 2 could appear for an interview, rather than provide formal testimony pursuant to her subpoena, so that he could be present. On April 24, 2007, Jane Doe 2 was interviewed; the interview was videotaped. (Ex. C.) During the interview, Jane Doe 2 again denied being involved in or a victim of any criminal activity and made statements meant to exculpate Jeffrey Epstein. (*See id.*) Jane Doe 2 also informed me and the FBI agents who were present that she "hope[d] . . . nothing happens to [Epstein] because he's an awesome man" and that she believed that it was "a shame that he has to go through this because he's an awesome guy and he didn't do nothing wrong, nothing." (*Id.*)

13. Other than that interview, I had no direct contact with Jane Doe 2 during the course of the investigation. Jane Doe 2 never contacted me at all, either directly or through Mr. Eisenberg, whether seeking information; requesting to confer with me regarding the investigation, charging decisions, or the resolution of the matter; or complaining that she was not being treated with fairness and respect.

14. In light of other evidence and witness statements, the investigative team considered Jane Doe 2's exculpatory statements to be false. Nonetheless, those statements precluded us from

including her as a victim who would be referenced in any federal indictment. Despite this, in light of the investigative team's general approach to try to go above and beyond in terms of caring for the victims, I continued to treat her as a victim. In that vein, shortly after the Non-Prosecution Agreement (NPA) was signed, I contacted Mr. Eisenberg to ask whether he still represented Jane Doe 2. Mr. Eisenberg stated that he did. I then told him that we would soon be making victim notifications, and asked Mr. Eisenberg whether I could send the notification directly to Jane Doe 2, or if it had to be served through him. Mr. Eisenberg instructed me that any victim notification should be sent to him.

15. As explained in further detail below, after the NPA was signed, Mr. Epstein, through his counsel, made several attempts to avoid having to perform the obligations that he had undertaken in the NPA. Several of those attacks alleged prosecutorial misconduct by me, and Epstein's attorneys used my efforts to provide a post-NPA-signing victim notification to Jane Doe 2 as evidence of that claimed misconduct. (*See, e.g.,* Ex. L.) In response to Mr. Lefkowitz's ruinous allegations against Jane Doe 2 and myself, on December 13, 2007, I sent a response to Mr. Lefkowitz defending myself and Jane Doe 2. (Ex. 7.)

16. During the course of the suit filed by Jane Doe 1 and Jane Doe 2, the Petitioners have alleged that the case agents, the U.S. Attorney's Office, and I personally committed acts that violated their rights under the CVRA. They have pointed to various pieces of correspondence with counsel for Epstein to suggest that the negotiations were not at arms' length or that certain things were done inappropriately in order to keep the victims from finding out about the NPA. Their interpretations and assertions are incorrect.

17. In the summer of 2007, Jeffrey Epstein, through his attorneys, and the U.S. Attorney's Office for the Southern District of Florida ("the Office") entered into negotiations to resolve the investigation. Prior to that, Epstein's attorneys had made several attempts to convince the Office to discontinue its investigation and not pursue any possible federal prosecution of Epstein. These attempts were rejected. At that time, Mr. Epstein had already been charged by the State of Florida with solicitation of prostitution, in violation of Florida Statutes § 796.07. Mr. Epstein's attorneys sought a global resolution of the matter. The Office instructed me to engage in negotiations to reach an agreement with Epstein to defer federal prosecution in favor of prosecution by the State of Florida, so long as certain basic preconditions were met – Epstein would have to serve a jail sentence of two years (later reduced to 18 months), Epstein would have to register as a sex offender, and Epstein would have to accept liability to the victims identified in the federal investigation for damages in lieu of the restitution that would have been mandatory if Epstein had been convicted of the federal offenses under investigation.

18. Prior to the Office making its decision to direct me to engage in negotiations with Epstein's counsel, I discussed the strengths and weaknesses of the case with members of the Office's management and informed them that most of the victims had expressed significant concerns about having their identities disclosed. While I was not part of the final decision-making at the Office that arrived at the two-year sentence requirement, I was part of the discussions regarding sex offender registration and the restitution provision. It is my understanding from these and other discussions that these factors, that is, the various strengths and weaknesses of the case and the various competing interests of the many different victims (including the privacy concerns expressed by many), together with the Office's desire to obtain a guaranteed sentence of

incarceration for Epstein, the equivalent of uncontested restitution for the victims, and guaranteed sexual offender registration by Epstein to help protect other minors throughout the country in the future, were among the factors that informed the Office's discretionary decision to negotiate a resolution of the matter and to ultimately enter into the NPA.

19. After the fact, Petitioners are critical of the NPA's terms. They have alleged that Epstein would easily have been convicted and that all of the victims were eager to participate in a full-fledged federal prosecution. Alternatively, they have suggested that a successful federal prosecution could have been mounted based solely on Epstein's actions with Jane Doe 1 and Jane Doe 2. As the prosecutor who handled the investigation, I can say that these contentions overlook the facts that existed at the time the NPA was negotiated. First, as set out above, Jane Doe 2 clearly stated her opposition to assisting the investigation, much less a prosecution. She was not alone. As noted in Special Agent Kuyrkendall's Declaration, many victims expressed reservations about assisting in the investigation. For example, Special Agent Timothy Slater described how one victim told him that she did not want to be bothered again, she had moved away to distance herself from the situation, and she wanted to "let this be in my past." (Ex. 8 at ¶ 7.) Similarly, the person whom Petitioners refer to as "Jane Doe 5" also had been approached by the investigative team in 2007 but refused to speak with them. (*See* D.E. 14 at ¶ 3.) Regardless of the perceived strength of the corroborating evidence, it was and remains my professional opinion as an experienced prosecutor that a successful prosecution would have required convincing all of the identified victims to come forward and speak publicly at a trial, knowing that they would face public scrutiny and withering cross-examination. Using my best efforts to accord all of the victims their right to be treated with fairness and with respect for their dignity and privacy, and in

the exercise of my prosecutorial discretion, I believed and still believe that a negotiated resolution of the matter was in the best interests of the Office and the victims as a whole. The Office had also reached that same conclusion.

20. Second, the suggestion that a successful prosecution could have been mounted naming only Jane Doe 1 and Jane Doe 2 as victims is overly optimistic at best. The investigative team and I worked tirelessly to put together the evidence necessary to prove beyond a reasonable doubt that Epstein committed federal offenses. We recognized how difficult a trial would be and that a successful case could be made only if a jury heard from a long series of credible victims, who did not know each other (to avoid an allegation of collusion) and who had all been subjected to the same treatment at Epstein's hands. A case involving just two victims who knew each other, including one who had previously stated – on videotape – that she never engaged in sexual contact with Epstein, would never have been charged as a federal case, must less resulted in a conviction.

21. Negotiations to resolve the Epstein matter were difficult, and it was not clear that they would be successfully completed. If Epstein did not enter an agreement with the Office, then the Office needed to be in the best position it could be to charge and convict him. Accordingly, I did not want to share with victims that the Office was attempting to secure for them the ability to obtain monetary compensation for the harm they had suffered. I was aware that, if I disclosed that and the negotiations fell through, Epstein's counsel would impeach the victims and my credibility by asserting that I had told victims they could receive money for implicating Epstein. In fact, Epstein's attorneys made exactly that claim in a deposition of one of the victims. (*See* Ex. 9 at 44-51.) Attorney Michael Tien, who represented Epstein, asked one of the identified victims the following questions:

TIEN: Now tell me about when the federal prosecutors told you about getting reimbursed.

A: I have no idea what you're talking about.

TIEN: Tell me about when the federal prosecutors spoke to you about getting money you feel you're entitled to from Mr. Epstein.

A: I don't know what you're talking about.

TIEN: Do you know who Marie Villafana is?

A: No, sir.

TIEN: Did you ever meet with any federal prosecutors?

A: I think – yeah. I think they were – I think they were like FBI.

TIEN: Uh-huh. Did you meet with federal prosecutors?

A: They came to my house one time, yes.

TIEN: When did they come to your house?

A: Very long ago.

TIEN: Was it this year, 2008?

A: It was not this year, no.

TIEN: Was it 2007?

A: I'd have to say at least two years ago or a year ago, yeah. So it would be 2007, 2006; but it was a while ago.

* * *

TIEN: So if I say the name to you Marie Villafana, you don't know who that is?

A: No, sir.

TIEN: How many women and how many men came to your house?

A: I want to say two ladies and two guys.

TIEN: Did someone named Jeffrey Sloman come to your house?

A: I don't know names, sir.

TIEN: Do you know who Jeffrey Sloman is?

A: No, sir.

* * *

TIEN: And you say you don't know who Jeff Sloman is?

A: No, sir.

TIEN: Does it refresh your recollection that he's the number two prosecutor at the U.S. Attorney's Office?

A: No.

TIEN: That he's Marie Villafana's boss?

A: No.

* * *

TIEN: Did you meet with an agent named Nesbitt Kuyrkendall, a woman?

A: I don't know.

TIEN: Did Ms. Kuyrkendall speak to you about getting reimbursed from Mr. Epstein?

A: I've never had a discussion with anyone about getting reimbursed from Mr. Epstein.

* * *

TIEN: And we've learned that many of the girls, some of whom are as old as 23, were told by the government that they would get money at the end of the criminal prosecution. Does that sound familiar to you?

A: No, sir.

While I knew that none of the Special Agents or I had ever discussed lawsuits or even restitution with any victim during any of their interviews and that First Assistant U.S. Attorney Sloman had never met any of the victims, this was exactly the type of cross-examination that I anticipated Epstein's attorneys would try at a trial. The Office and I concluded that opening up the possibility for such impeachment would be detrimental to the prosecution of Epstein if a negotiated resolution failed and Epstein were thereafter to be criminally charged.

22. As noted above, the negotiations were difficult and at times I urged the Office to break off negotiations when I felt Epstein's attorneys were proceeding in bad faith. Despite my reservations, I attempted to conduct the negotiations professionally and cordially. Petitioners in this case have attempted to construe some of my communications to suggest that I was overly friendly with Epstein's counsel to the detriment of the victims or that I was taking steps to undercut

the victims' ability to be present at any change of plea. These allegations are erroneous. I was simply being professional and cordial with opposing counsel.

23. For example, I am chided for an email regarding researching misdemeanor charges (*see* DE361 at ¶ 20), but, as noted above, I was instructed to construct a plea to federal or state offenses that resulted in a sentence of two years (later reduced to 18 months). This required me to find a relevant charge with the agreed-upon statutory maximum and then determine whether the facts developed in the investigation fit that charge. I was unable to find a relevant federal charge that had a statutory maximum of two years, and that required me to research the possibility of stacking two federal misdemeanor charges.

24. The Petitioners also suggest that I attempted to "contrive to establish jurisdiction away from the location where the crimes actually occurred—and away from where the victims actually lived—so as to avoid the public finding out about anything" (DE361 at ¶ 24). This also is false. By the time of that email, there already was intense press coverage of the case, including efforts to publicly identify victims. As noted above and in the Declaration of Special Agent Kuyrkendall, and even in the letters from Jane Doe 2's counsel (Exs. 2 and 5), the victims who had been interviewed in the federal investigation were most concerned about keeping their identities secret. The possibility of press coverage was a strong deterrent to their participation in the investigation and possible prosecution. My reason for recommending filing charges in Miami was to protect the privacy interests of the victims in the case by allowing them the opportunity to attend court proceedings – by definition, proceedings open to the public – with a reduced chance that their identities would be compromised. The FBI and the U.S. Attorney's Office regularly transport victims from their homes to court proceedings, and the same would have occurred if

federal charges against Epstein had been filed in Miami. Similarly, with regard to the selection of the attorney representative for the victims, I recommended two Miami attorneys whom I knew to have reputations for being tenacious, skillful, and committed to protecting their clients rather than burnishing their reputations in the press. Although I understood that any civil suits that were filed would be publicly available, in light of the stated desire of most victims to remain anonymous, I did not believe that an attorney representative who actively sought out press coverage would be best suited to represent the victims in this case and protect their privacy interests.

25. Petitioners' suggestion that it was the Office, rather than the victims, who desired confidentiality also is misplaced. Even now, more than a dozen years after the investigation began, the Petitioners are proceeding by pseudonym to protect their privacy, and the Office has asserted the privacy rights of the other identified victims, as has counsel for other victims (*e.g.*, DE 335). All of the victims who filed civil claims against Epstein did so by pseudonym, and some victims did not even pursue civil claims for fear of being publicly identified. A suggestion that, ten to twelve years ago, when many were still teenagers, the victims were willing to step forward in a public forum and expose themselves to public scrutiny – much of which was unfairly critical of them – is unfounded and untrue.

26. In June 2009, while Jane Doe 1 and Jane Doe 2 and many other victims were pursuing their civil suits against Epstein and while the instant case was pending, the Court asked me to address an issue related to the NPA and the civil suits. With counsel for Petitioners present, I informed the Court that:

> the non-prosecution agreement[] sought to do one thing, which was to place the victims in the same position they would have been if Mr. Epstein had been convicted of the federal offenses for which he was investigated. And that if he had

> been federally prosecuted and convicted, the victims would have been entitled to restitution, regardless of how long ago the crimes were committed, regardless of how old they were at the time, and hold old they are today, or at the time of the conviction. And it also would have made them eligible for damages under [18 U.S.C. §] 2255. And so our idea was, our hope was that we could set up a system that would allow these victims to get that restitution without having to go through what civil litigation will expose them to. *You have a number of girls who were very hesitant about even speaking to authorities about this because of the trauma that they have suffered and about the embarrassment that they were afraid would be brought upon themselves and upon their families. So we do through the non-prosecution agreement tried [sic] to protect their rights while also protecting their privacy.*

(Ex. 10 at 31-32 (emphasis added)). None of the victims' attorneys who were present, including Petitioners' counsel, disputed my statement, and that statement remains true today. The investigative team, the FBI's victim-witness coordinator, and I all proceeded with a "victims first" approach, and we all used our best efforts to protect the victims and accord them their rights. Petitioners allege that I did not give their now-professed desires to have Epstein prosecuted sufficient weight, but they never communicated those desires to me or the FBI agents and my role was to evaluate the entire situation, consider the input received from all of the victims, and allow the Office to exercise its prosecutorial discretion accordingly.

27. Petitioners' motion also suggests that some of the terms of the NPA or my actions were improper (*see* DE361 at ¶¶ 26-27). First, plea negotiations – like settlement negotiations (whether between the parties in the instant case or between Jane Doe 1, Jane Doe 2, and Epstein) – are normally kept confidential. Rule 11(c)(1) of the Federal Rules of Criminal Procedure prohibits judicial involvement in plea negotiations, and the Eleventh Circuit has ruled that there is a "bright line rule" that courts should not offer any comments on plea negotiations. *See, e.g., United States v. Johnson*, 89 F.3d 778, 783 (11th Cir. 1996); *United States v. Tobin*, 676 F.3d

1264, 1307 (11th Cir. 2012). Likewise, Federal Rule of Criminal Procedure 6(e) requires confidentiality for persons subject to a grand jury investigation. My recommendations to opposing counsel to limit any plea agreement to its essential terms, rather than disclosing the reasons behind those terms, and to exclude the names of persons who would not be parties to the agreement, was in keeping with those general policies. Finally, when at an impasse in negotiations, a change of venue can be beneficial, such as when settlement conferences are held in a judge's chambers or a mediator's office rather than in the office of one of the parties. My suggestion to meet Epstein's counsel "off campus" was in no way improper; it was simply an effort to facilitate a resolution through a meeting at a neutral location, but that meeting never even occurred. On the other hand, during the course of the investigation, I routinely traveled to meet with victims at their homes, their jobs, and at coffee shops.

28. With regard to paragraph 29 of DE361, copies of emails sent to and from my personal email address were produced in discovery. Pursuant to my agreement with Mr. Edwards (counsel for Petitioners), personal email addresses were redacted. Some of those emails are included in the exhibits attached to Petitioners' motion. (*See, e.g.*, DE361-15.)

29. In the end, the Office and I agreed that no federal misdemeanor charges adequately addressed the facts of the case, and the Office decided that, instead, it would forego federal prosecution if Epstein pled guilty to an applicable state offense that would require sex offender registration and an 18-month jail term, and if Epstein also agreed to allow the identified victims to obtain an uncontested recovery of damages in lieu of the restitution that would have been available under federal law.

30. Also, with regard to the confidentiality of the Non-Prosecution Agreement, the statements contained in paragraph 31 of DE361 are accurate. As courts have acknowledged, NPAs are not made part of a public court file but are maintained by a prosecutor's office. The Privacy Act, Fed. R. Crim. P. 6(e), and other statutes and rules keep private files related to subjects of investigations. There are some laws, including FOIA, that limit the confidentiality of those files, but, generally speaking, there is no public right of access to the Office's files. Thus, the assurance that I would not distribute – essentially, "leak" – the NPA was simply an assurance that I intended to abide by Office and Department policy and the law. The NPA made clear that the Office would disclose the NPA in response to appropriate FOIA requests and compulsory process, but would provide Epstein with notice before making such disclosure. (DE361, Ex. 62 at 5.) In part, this notice would ensure that no unlawful disclosure would be made mistakenly and subject the Office to civil liability. Nothing in the NPA prohibited disclosing its terms to the victims; the confidentiality provision covered only the document itself.

31. Petitioners' motion contains a number of other criticisms of the terms of the NPA, but despite my letters to them giving them my telephone number and encouraging them to contact me, neither Jane Doe 1 nor Jane Doe 2 ever contacted me or Special Agent Kuyrkendall prior to the signing of the NPA to ask about the investigation or to encourage prosecution. Jane Doe 2 specifically told me that she did not want Epstein prosecuted. Other victims had told me their fears of having their involvement with Esptein revealed and the negative impact it would have on their relationships with family members, boyfriends, and others.

32. Once the NPA was signed on September 24, 2007, I asked the agents to meet with the victims to provide them with information regarding the terms of the agreement and the

conclusion of the federal investigation. I also anticipated that they would be able to inform the victims of the date of the state court change of plea, but that date had not yet been set by state authorities at the time the first victims were notified.

33. Special Agents Kuyrkendall and Richards met with three victims, including Jane Doe 1, soon after the NPA was signed. It had been anticipated that they would meet with all the victims. However, almost immediately after the NPA was signed, Epstein, through his counsel, began to delay and inhibit the performance of his obligations under the NPA. First, he challenged the method for selecting the attorney-representative provided by the NPA for victims who wished to use that attorney's services in seeking damages from Epstein. Among other efforts, Epstein also sought to challenge the list of victims identified during the course of the investigation and, as mentioned above, specifically attacked the inclusion of Jane Doe 2 as a victim because of her exculpatory statements. While Petitioners here suggest that I was too lenient in my handling of the negotiations with Epstein's counsel, after the NPA was signed, Epstein's counsel raised challenges that I had been too aggressive.

34. These and other attacks and efforts to avoid the NPA's terms led the FBI investigative team, the Office, and me to conclude that prosecution and trial remained a possibility and we should prepare as such. This meant that the victim notifications had to cease because: (1) we no longer knew whether Epstein would perform under the NPA and, hence, we did not know whether providing information about the NPA would be accurate; and (2) we believed that Epstein, through his counsel, would attempt to use victim notifications concerning the NPA to suggest that the victims had been encouraged by the FBI or the Office to overstate their victimization for monetary compensation. The FBI and the Office decided, therefore, to do no further notifications

regarding the NPA at that time. Our concerns were prescient as shown by the deposition quoted in paragraph 21 above. This deposition occurred in February 2008 during the period that Epstein was complaining to various levels of the Justice Department about the investigation and the NPA.

35. Accordingly, the investigation continued while Epstein raised numerous erroneous allegations against me, the investigative team, other Office personnel, and the victims, seeking release from the Office and the Department of Justice of the obligations he had undertaken in the NPA. (*See* Exs. D, G, K, L, O.) While those "appeals" proceeded to the U.S. Attorney, the Child Exploitation and Obscenity Section in Washington, D.C., the Assistant Attorney General, and the Deputy Attorney General, the investigative team and I continued interviewing and identifying victims, issuing subpoenas, and collecting evidence. The investigation continued up until the day that Epstein entered his state court guilty plea.

36. One of the people who was re-interviewed after the NPA was signed was Jane Doe 1, who was re-interviewed on January 31, 2008. I was present for that interview. Since I was aware that Epstein might proceed to trial, as with other victims whom I interviewed, I asked Jane Doe 1 whether she would be willing to testify if there were a trial. At that time, Jane Doe 1 stated that she hoped Epstein would be prosecuted and that she was willing to testify. The FBI's letters of January 10, 2008, informing Jane Doe 1 and Jane Doe 2 that the case was still under investigation and that it could be a lengthy process (Ex. J) were accurate. Jane Doe 1's re-interview was part of that continued investigation, so no one was deceived. The process was not lengthier only because Epstein ultimately entered his state court guilty pleas as contemplated by the NPA.

37. In mid-June 2008, Attorney Edwards contacted your Affiant to inform me that he represented Jane Doe 1 and another identified victim (not Jane Doe 2). Attorney Edwards asked to meet to provide me with information regarding Epstein. On June 19, 2008, Attorney Edwards sent me an email stating that he had "information and concerns that I would like to share" and that he wanted to meet with me to "discuss [his] plans." DE362-30. As noted in the email, he had one "client" at the time, who has been referred to in this suit as Jane Doe 1, and he did not state that Jane Doe 1 wished to meet with me. (*Id.*) I invited Attorney Edwards to send to me any information that he wanted me to consider. At the time of my conversation with Attorney Edwards, I was still preparing to present charges against Epstein if Epstein succeeded in having the NPA set aside or if he failed to perform the terms of the NPA. I did not disclose the existence of the NPA to Edwards because I did not know whether the NPA remained viable at that time or whether Epstein would enter the state court guilty pleas that would trigger the NPA. I was aware that a final decision on Epstein's challenges to the NPA and the federal investigation was expected shortly, so I impressed upon Attorney Edwards that time was of the essence. Attorney Edwards sent nothing at that time, nor did he ever inform me that Jane Doe 1 and/or Jane Doe 2 wanted to confer with me before any resolution was reached. If anything had been provided by Edwards, Jane Doe 1, or Jane Doe 2, I would have reviewed it and shared it with my superiors. I also advised Attorney Edwards that he should consider contacting the State Attorney's Office. I was informed, however, that no contact with that office was made. At that time, attorney Edwards had also alluded to Jane Doe 2, so I advised him that, to my knowledge, Jane Doe 2 was still represented by Attorney James Eisenberg. He did not dispute or correct my understanding.

38. On Friday, June 27, 2008, at approximate 4:15 p.m., I received a copy of Epstein's proposed state plea agreement and learned that Epstein's state court change of plea was scheduled for 8:30 a.m., Monday, June 30, 2008. The Palm Beach Police Department and I attempted to notify the victims about that hearing in the short time available to us. I specifically called attorney Edwards to provide notice to his clients regarding the hearing. I believe that it was during this conversation that Attorney Edwards notified me that he represented Jane Doe 2. I urged attorney Edwards to have his clients attend the hearing so that they could address the Court, if they wished, and I stressed the importance of the hearing. I never told Attorney Edwards that the state charges involved "other victims," and neither the state court charging instrument nor the factual proffer limited the procurement of prostitution charge to a specific victim. In fact, as mentioned in ¶ 37, *supra*, I had encouraged Attorney Edwards to contact the State Attorney's Office to discuss his client and the Epstein investigation with the state prosecutor. Attorney Edwards informed me that he could not attend the hearing but that someone would be present at the hearing. The case agents and I attended the hearing as members of the general public, and did not publicly announce our presence since we were there only as observers. Neither attorney Edwards nor any of his clients were present, and no one identified themselves to me, the FBI agents, or the state court as being present on behalf of the petitioners.

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39. On July 3, 2008, attorney Edwards contacted me to discuss how the Epstein matter had been resolved and to raise concerns regarding that resolution. I shared the concerns that attorney Edwards raised with my superiors at the U.S. Attorney's Office.

40. I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 2nd day of June, 2017.

A. Marie Villafaña, Esq.

EXHIBITS TO 6/2/2017 VILLAFAÑA DECLARATION

Exhibit Number	Description
1	January 24, 2007 letter from A. Marie Villafaña to James Eisenberg with attachment (redacted)
2	February 1, 2007 letter from James Eisenberg to A. Marie Villafaña (redacted)
3	February 5, 2007 fax from A. Marie Villafaña to James Eisenberg with attachments (redacted)
4	February 6, 2007 Authorization for Reimbursement of Unusual Expenses (redacted)
5	February 12, 2007 letter from James Eisenberg to A. Marie Villafaña (redacted)
6	April 16, 2007 Order from Judge Middlebrooks (redacted)
7	December 13, 2007 letter from A. Marie Villafaña to Jay Lefkowitz (redacted)
8	January 26, 2015 Declaration of Timothy R. Slater, Section Chief, Federal Bureau of Investigation (redacted)
9	February 20, 2008 Deposition Transcript, *State of Florida v. Jeffrey Epstein* (redacted)
10	June 12, 2009 Hearing Transcript, *Jane Doe, et al. v. Jeffrey Epstein*, S.D. Fla. Case No. 08-80119-CIV-Marra

Exhibit 1

U.S. Department of Justice

United States Attorney
Southern District of Florida

500 South Australian Ave., Suite 400
West Palm Beach, FL 33401
(561) 820-8711
Facsimile: (561) 820-8777

January 24, 2007

DELIVERY BY HAND
James L. Eisenberg, Esq.
250 S Australian Ave, Ste 704
West Palm Beach, FL 33401-5007

Re: Federal [redacted] Subpoena

Dear Jim:

[redacted] I have enclosed a new subpoena for T[redacted] M[redacted]. As I mentioned earlier, Ms. M[redacted] is not a target of this investigation and the United States seeks her testimony solely as a victim/witness. During our last conversation regarding Ms. M[redacted], you indicated that she was unwilling to speak with us pursuant to a *Kastigar* letter and that she also was unwilling to speak with the [redacted] and intends to invoke the Fifth Amendment if questioned. Please confer with her to confirm whether this remains her position. If it is, please advise in writing. Even if Ms. M[redacted] is inclined to invoke her Fifth Amendment rights, she must still appear pursuant to the subpoena so that I may ask her questions that would not require the invocation of the Fifth Amendment. If she still invokes, I intend to move to compel her answers. If you or your client is unavailable on February 6, 2007, please let me know of another Tuesday when you are available.

I also am concerned about a potential conflict of interest in your representation of Ms. M[redacted] In case of future litigation regarding this issue, please provide me with information regarding who is paying (directly or indirectly) for your services on behalf of Ms. M[redacted], the scope of your representation, and whether you are taking direction on this matter from anyone other than Ms. M[redacted] If any formal or informal joint defense agreements exist, whether in writing or otherwise, please provide a copy of such agreements. If the agreement is purely oral, please provide a written summary of its terms.

I look forward to your response.

Sincerely,
R. Alexander Acosta
United States Attorney

By: A. Marie Villafaña
A. Marie Villafaña
Assistant United States Attorney

United States District Court

SOUTHERN DISTRICT OF FLORIDA

TO: T[redacted] M[redacted]

SUBPOENA TO TESTIFY

[redacted]

SUBPOENA FOR:

[X] **PERSON** [X] **DOCUMENTS OR OBJECT[S]**

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date and time specified below.

PLACE:	ROOM:
United States District Courthouse 701 Clematis Street West Palm Beach, Florida 33401	[redacted] DATE AND TIME: February 6, 2007 1:00pm*

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

[redacted]

***Please coordinate your compliance with this subpoena and confirm the date and time , and location of your appearance with Special Agent Nesbitt Kuyrkendall, Federal Bureau of Investigation, Telephone: (561) 822-5946.**

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK	DATE:
(BY) DEPUTY CLERK	January 23, 2007

This subpoena is issued upon application of the United States of America

Name, Address and Phone Number of Assistant U.S. Attorney
Ann Marie C. Villafaña, Assistant U.S. Attorney
500 So. Australian Avenue, Suite 400
West Palm Beach, FL 33401-6235
Tel: (561) 820-8711 x3047
Fax: (561) 802-1787

*If not applicable, enter "none."

To be used in lieu of AO 110

FORM ORD-227
P-00[redacted]88

Exhibit 2

EISENBERG & FOUTS, P.A.
Attorneys At Law
JAMES L. EISENBERG
Florida Bar Board Certified Criminal Trial Lawyer
National Board Of Trial Advocacy Certified Criminal Trial Advocate
KAI LI ALOE FOUTS

One Clearlake Centre, Suite 704, 250 Australian Avenue South, West Palm Beach, FL 33401 561/659-2009 Fax: 561/659-2380

February 1, 2007

A. Marie Villafana, Asst. U.S. Attorney
500 South Australian Avenue, Suite 400
West Palm Beach, FL 33401

Re: Grand Jury Subpoena for T[redacted] M[redacted]

Dear Marie,

I received your letter dated January 24, 2007 with regard to T[redacted] M[redacted] I must admit I forced myself to wait several days to respond in order to "cool off" and not say anything I would regret later. Now that time has passed, allow me to respond appropriately.

1. If you want to force Ms. M[redacted], a single mother, to come to the [redacted] to personally invoke her Fifth Amendment rights, she will be there. That does remain her position. My only request is that you provide a babysitter service for her child. I will be there, but I am not paid to babysit and Ms. M[redacted] should not have to pay someone. It is this type of attitude, that your office refuses to accept the fact that it is Ms. M[redacted]'s decision not to cooperate with the government that upsets her. Your office fails to recognize that merely coming to court is a problem for a single mother like Ms. M[redacted] and, under these circumstances, appears to be a waste of time at best and, in her mind, personal harassment.

2. Rest assured that there is no conflict of interest in my representation of Ms. M[redacted] In this case I have always been asked and always will exercise independent judgment to follow my client's independent will. The remainder of your questions as to this matter are really none of the Government's business.

3. I will share with you that one of the reasons for our firm position that Ms. M[redacted] will invoke her Fifth Amendment right and choose not to voluntarily cooperate with the Government is our concern that the Government is not exercising independent judgment in this case.

The history of this case has been in the newspapers. The case is being prosecuted in State court. Despite the state court prosecution, the Town of Palm Beach Police Chief went on what can only be

described as a public rampage in the newspaper when the case was not prosecuted to his liking that reminded me of a small child having a public temper tantrum. In my thirty years of experience, I have never seen a law enforcement officer like this publicly make what appeared to be a political case in the newspaper for a prosecution and publicly criticize anyone who got in his way, including the elected State Attorney. This resulted in a federal investigation on a topic no one remembers the Federal Government ever being interested in prosecuting before. Although I am certain that you personally have not had your decision-making process compromised, the appearance that your office is being influenced by the Town of Palm Beach Police Chief's agenda is very real. Under these circumstances I don't see how any lawyer could advise any client to voluntarily cooperate. Of special concern is that the Town of Palm Beach Police have promoted prosecuting at least one of the girls who allegedly gave massages.

One final thought. My client and my fear that Ms. M[redacted] could be prosecuted is enhanced by the demand for the personal appearance made in your letter. Your initial Kastiger letter fell far short of granting the functional equivalent of DOJ immunity. Several months ago I was given the distinct impression through our conversations that you were going to obtain DOJ immunity for Ms. M[redacted] Now the government is changing course for no apparent reason. This leads to speculation that the only reason for the turnabout is that prosecution in either state or federal court is being considered by someone.

None of the above is directed at you personally. I want to repeat that you have always treated us with respect. Maybe your office should advise the Town Police Chief to act in a similar fashion.

Sincerely,

JAMES L. EISENBERG

JLE/gw
cc: T[redacted] M[redacted]

Exhibit 3

U.S. Department of Justice

United States Attorney
Southern District of Florida

A. Marie Villafaña
500 South Australian Ave, Suite 400
West Palm Beach, Florida 33401
(561) 820-8711
Facsimile (561) 820-8777

FACSIMILE COVER SHEET

TO: JIM EISENBERG, ESQ. DATE: February 5, 2007

FAX NO. 561 659-2380 # OF PAGES: 6

PHONE NO. _____ RE: T[redacted] M[redacted]

FROM: A. MARIE VILLAFAÑA, ASSISTANT U.S. ATTORNEY

PHONE NO. 561 820-8711

COMMENTS: Hi Jim - These probably say the same thing, but they sound a little different. If you have any suggestions for changes, please let me know.

Thank you for your time today. I appreciate your patience.

Regards,
Marie

GOVERNMENT EXHIBIT 3

PENGAD 800-631-6989

U.S. Department of Justice

United States Attorney
Southern District of Florida

500 South Australian Ave., Suite 400
West Palm Beach, FL 33401
(561) 820-8711
Facsimile: (561) 820-8777

February 5, 2007

DELIVERY BY HAND
Ms. T[redacted] M[redacted]
c/o James L. Eisenberg, Esq.
250 S Australian Ave, Ste 704
West Palm Beach, FL 33401-5007

Re: [redacted] Testimony of T[redacted] M[redacted]

Dear Ms. M[redacted]

This letter confirms the understanding between yourself and the United States Attorney's Office for the Southern District of Florida.

You have represented that you will truthfully answer questions of the federal government in its investigation of the procurement of prostitutes, amongst others. You will supply complete and truthful information to the attorneys and law enforcement officers of the federal government and to any [redacted] which may conduct an investigation, as well as in any other proceeding related to or growing out of this investigation. The obligation of truthful disclosure includes your obligation to provide the attorneys and law enforcement officers of the federal government with any documents, records or other tangible evidence within your custody or control relating to the matters about which you are questioned. You will neither attempt to protect any person or entity through false information or omission, nor falsely implicate any person or entity.

No statements provided by you on this date in this matter pursuant to this agreement will be offered into evidence in any criminal case against you, except during a prosecution for perjury and/or giving a false statement. However, if it is determined that you have materially violated any provision of this agreement, all statements made by you shall be admissible in evidence against you in any proceeding.

The federal government remains free to use information derived from the [redacted] testimony directly or indirectly for the purpose of obtaining leads to other evidence, which may be used against you. You expressly waive any right to claim that such evidence should not be introduced because it was obtained as a result of the grand jury testimony. Furthermore, the federal government may use statements made in the grand jury testimony and all evidence derived directly or indirectly therefrom for the purpose of cross-examination, if you testify at any trial or if you

suborn testimony that contradicts your prior statements and testimony.

No additional promises, agreements and conditions have been entered into other than those set forth in this letter and none will be entered into unless in writing and signed by all parties.

Sincerely,

R. Alexander Acosta
United States Attorney

By: _____
A. Marie Villafaña
Assistant United States Attorney

I have read this agreement and discussed it with my attorney, and I hereby acknowledge that it fully sets forth my agreement with the office of the United States Attorney for the Southern District of Florida. I state that there have been no additional promises, agreements or representations made to me by any officials of the United States in connection with this matter.

Dated: February ____, 2007
West Palm Beach, Florida

_____
T[redacted] M[redacted]

Witnessed by:

_____
James L. Eisenberg, Esq.
Attorney for T[redacted] M[redacted]

U.S. Department of Justice

United States Attorney
Southern District of Florida

500 South Australian Ave., Suite 400
West Palm Beach, FL 33401
(561) 820-8711
Facsimile: (561) 820-8777

February 5, 2007

DELIVERY BY HAND
James L. Eisenberg, Esq.
250 S Australian Ave, Ste 704
West Palm Beach, FL 33401-5007

Re: T[redacted] M[redacted]

Dear Mr. Eisenberg:

I am writing to clarify the ground rules for the interview with your client, T[redacted] M[redacted] ("your client"), to occur February ____, 2007.

As I mentioned earlier, Ms. M[redacted] is not a target or subject of this investigation, but instead is being interviewed solely as a victim/witness. However, to address your concern about criminal exposure, if your client complies with every provision of this agreement, then the United States Attorney's Office for the Southern District of Florida ("this Office") will treat all statements made by your client during the interview as statements made pursuant to Rule 11(f) of the Federal Rules of Criminal Procedure. This is not a grant of immunity, which can be given only with approval of the Justice Department, but protects your client from having the statements made by her during the interview from being used against her directly. To guard against any misunderstandings concerning the interview of your client, this letter sets forth the terms of this agreement.

Your client agrees to be fully interviewed, that is, to provide information concerning your client's knowledge of, and participation in criminal activity, including but not limited to the procurement of prostitutes. The protection of this letter applies to an interview that will be conducted by this Office, Special Agents of the Federal Bureau of Investigation, and any other federal law enforcement agency this Office may require. Under this agreement, no information disclosed by your client during the interview will be offered in evidence against her in any criminal or civil proceeding, provided that your client complies with this agreement and that the information your client furnishes is truthful, complete, and accurate.

If, however, your client gives materially false, incomplete, or misleading information,

then this Office may use such information in any matter or proceeding and your client is subject to prosecution for perjury, obstruction of justice, and making false statements to government agencies. Any such prosecution may be based upon information provided by your client during the course of the interview, and such information, including your client's statements, will be admissible against your client in any grand jury or other proceeding.

The government also may use statements made by your client in the interview and all evidence derived directly or indirectly therefrom for the purpose of impeachment or cross-examination if she testifies at any trial or hearing, and/or in any rebuttal case against your client in a criminal trial in which she is a defendant or a witness. These provisions are necessary to ensure that your client does not make or offer any false representation or statement in any proceeding or to a government agency or commit perjury during any testimony.

Your client further agrees that attorneys for the United States may be present at the interview, and agrees not to seek disqualification of any such government attorney from any proceeding or trial because of their participation at the interview.

The entire agreement between the United States and your client is set forth in this letter. No additional promises, agreements, or conditions have been entered into and none will be entered into unless in writing and signed by all parties.

If the foregoing accurately reflects the understanding and agreement between this Office and your client, it is requested that you and your client execute this letter as provided below.

Sincerely,
R. Alexander Acosta
United States Attorney

By:
A. Marie Villafaña
Assistant United States Attorney

I have received this letter from my attorney, James L. Eisenberg, Esquire, have read it and discussed it with my attorney, and I hereby acknowledge that it fully sets forth my understanding and agreement with the Office of the United States Attorney for the Southern

District of Florida. I state that there have been no additional promises or representations made to me by any official of the United States Government or by my attorney in connection with this matter.

Dated: _____

_____
T[redacted] M[redacted]

Witnessed by:

_____
James L. Eisenberg, Esquire

Exhibit 4

U.S. Department of Justice

Authorization for Reimbursement of Unusual Expenses of Fact Witnesses

Request for Unusual Expense(s) of Fact Witness
(For United States Attorney's Office Use Only)

Control #

1. Case Name	2. Court Docket Number	3. Requesting AUSA
[redacted]		A. Marie Villafana
4. Location of Court Proceeding	5. Contact Person	6. Contact Person Number
West Palm Beach		561 209 - 1047

7. Witness Name & Address, Phone #, SSN	8. Vendor Name & Address, Phone #, TIN/SSN
T [redacted] M [redacted]	
9. Payment to be made to:	10. Receipt/Invoice #:
T [redacted] M [redacted]	

11. Type of Unusual Expense:

- ☐ Medically Necessary Item (Attached Supporting Statement)
- ☒ Dependent Care
- ☐ Excess Lodging/Per Diem
- ☐ Travel & Transportation
- ☐ Pretrial Conference Waiver
- ☐ Other

12. Explanation:

The witness has a small child and ~~would not~~ had no one who could watch the child while she testified.

13. Start Date of Service (MO/DA/YR)	14. End Date of Service (MO/DA/YR)	15. Amount
2/6/07	2/6/07	

16. Justification:

GOVERNMENT EXHIBIT 4

PENGAD 800-631-6989

17. I hereby certify that the expenses and services listed on this document are appropriate and are within the Federal laws and regulations. I fully understand that I can be held personally liable or be subject to disciplinary action for improperly using government funds or services that exceed delegated authority or that violate Federal laws or regulations.

Signature of Requesting AUSA

Date

18. Name & Title of Approving Official	19. Date (MO/DA/YR)	20. Signature of Approving Official

UPWE Form

Exhibit 5

EISENBERG & FOUTS, P.A.
Attorneys At Law
JAMES L. EISENBERG
Florida Bar Board Certified Criminal Trial Lawyer
National Board Of Trial Advocacy Certified Criminal Trial Advocate
KAI LI ALOE FOUTS
One Clearlake Centre, Suite 704, 250 Australian Avenue South, West Palm Beach, FL 33401 561/659-2009 Fax: 561/659-2380

February 12, 2007

A. Marie Villafana, Asst. U.S. Attorney
500 South Australian Avenue, Suite 400
West Palm Beach, FL 33401

Re: [redacted] for T[redacted] M[redacted]

Dear Marie,

As always, it was a pleasure speaking to you the other day. Pursuant to our telephone conference I am writing this letter to proffer my concerns for T[redacted] M[redacted] should she testify without immunity before a [redacted]. Therefore, allow me to reiterate that Ms. M[redacted] will refuse to voluntarily cooperate with the federal government. She has a good faith basis for her position under the Fifth Amendment to the United States Constitution.

We, of course, do not live or work in a vacuum. We have read many inflammatory remarks the Town of Palm Beach Police Chief has made to the media about the state court's handling of the Jeffrey Epstein investigation. The police chief's remarks frighten both myself and my client. I am aware that the town police have prepared documents to charge at least one of Mr. Epstein's lady friends in state court. If they can push to have one lady charged I remain unconvinced that they do not have the ability or political clout to push to have other ladies such as Ms. M[redacted] charged.

The proffered facts that raise my concerns are being provided via this proffer letter. Pursuant to our telephone conference agreement, this letter and its contents cannot be used against Mr. M[redacted]

Ms. M[redacted] is not at all certain of dates. She does remember meeting Mr. Epstein about three years ago. She is not certain of her age, it could have been when she was sixteen. A girlfriend asked her if she wanted a job giving massages. Ms. M[redacted] agreed because she had knowledge of massages through her mother, who was a masseuse.

Ms. M[redacted] went to Mr. Epstein's house via taxi. Ms. M[redacted]'s girlfriend instructed Ms. M[redacted] that, if asked, she had to tell Mr. Epstein that she (M[redacted]) was eighteen years old. The friend was nineteen years old and M[redacted] looked old for her age, so passing for eighteen was not a problem. At

the home Ms. M[redacted] met Mr. Epstein and later gave him a massage. The friend had told Ms. M[redacted] to give the message topless. Mr. Epstein told M[redacted] that if she were at all uncomfortable being topless, not to do it and it was not a requirement of employment as a masseuse. Ms. M[redacted] never touched Mr. Epstein in a sexual way and Mr. Epstein never touched Ms. M[redacted] at all. At one point, Mr. Epstein did ask Ms. M[redacted] her age. Ms. M[redacted] insisted that she was eighteen years old.

Ms. M[redacted] continued to see Mr. Epstein over time and massages were given in a similar fashion. She was later asked if her friends wanted to work in a similar way and she asked some girls who did give Mr. Epstein massages. Ms. M[redacted] was never asked to bring girls of any age to Mr. Epstein's home. When she did have her friends come over, she instructed all of them that if asked, they insist that they were eighteen years old. She is not certain at all of any of these girls' real ages.

In summary, our concern is that if the government believes that Mr. Epstein committed some federal offense, then Ms. M[redacted] could be considered a co-conspirator. We believe no crime was committed. The Fifth Amendment was not intended to protect the guilty, however. It was enacted to protect citizens who fear prosecution notwithstanding their innocence. Our fear of any prosecution, especially in light of the Town police chief's public remarks, is clearly in good faith.

Sincerely,

JAMES L. EISENBERG

JLE:gw
cc: Ms. T[redacted] M[redacted]

Exhibit 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
NORTHERN (WEST PALM BEACH) DIVISION

[redacted]

FILED BY _____ D.C.
2007 APR 16 PM 2:15
CLERK U.S. DIST. CT.
S.D. OF FLA. WPB

IN RE:

[redacted]

SEALED ORDER

On Application of the United States Attorney for the Southern District of Florida, and it appearing to the satisfaction of the Court:

1. That T[redacted] M[redacted] has been called to testify and to provide other information before the United States District Court for the Southern District of Florida, [redacted]; and

2. That in the judgment of the said United States Attorney, T[redacted] M[redacted] has refused to testify and provide other information on the basis of her privilege against self-incrimination; and

3. That in the judgment of the said United States Attorney, the testimony and other information from T[redacted] M[redacted] may be necessary to the public interest; and

4. That the aforesaid Application has been made with the approval of the Assistant Attorney General in charge of the Criminal Division of the Department of Justice or a duly designated Acting Assistant Attorney General, pursuant to the authority vested in him by Title 18, United States Code, Section 6003, and Title 28, Code of Federal Regulations, Sections 0.175 and 0.132(e).

NOW, THEREFORE, it is ordered pursuant to Title 18, United States Code, Section 6002, that T[redacted] M[redacted] give testimony and provide other information which she refuses to give or to [redacted]

provide on the basis of her privilege against self-incrimination, as to all matters about which she may be interrogated before said United States District Court, [redacted], as well as any subsequent proceeding or trial.

However, no testimony or other information compelled under this Order (or any information directly or indirectly derived from such testimony or other information) may be used against T[redacted] M[redacted] in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order.

IT IS FURTHER ORDERED the this Order shall be **SEALED** in accordance with Fed. R. Crim. P. 6(e)(6), except that a copy of this Order shall be provided to counsel for the United States, who may disclose the existence of the Order [redacted] to the witness, to counsel for the witness, and to law enforcement officers engaged in the investigation [redacted]. Those persons may review the Order, but may not retain a copy of the Order, nor may they disclose the existence of the Order to any others.

DONE and **ORDERED** this 16 day of April, 2007, at West Palm Beach, Florida.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

cc: A. Marie Villafaña, AUSA

Exhibit 7

U.S. Department of Justice

United States Attorney
Southern District of Florida

500 S. Australian Ave, Ste 400
West Palm Beach, FL 33401
(561) 820-8711
Facsimile: (561) 820-8777

December 13, 2007

DELIVERY BY ELECTRONIC MAIL
Jay P. Lefkowitz, Esq.
Kirkland & Ellis LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4675

Re: Jeffrey Epstein

Dear Jay:

I am writing not to respond to your asserted "policy concerns" regarding Mr. Epstein's Non-Prosecution Agreement, which will be addressed by the United States Attorney, but the time has come for me to respond to the ever-increasing attacks on my role in the investigation and negotiations.

It is an understatement to say that I am surprised by your allegations regarding my role because I thought that we had worked very well together in resolving this dispute. I also am surprised because I feel that I bent over backwards to keep in mind the effect that the agreement would have on Mr. Epstein and to make sure that you (and he) understood the repercussions of the agreement. For example, I brought to your attention that one potential plea could result in no gain time for your client; I corrected one of your calculations of the Sentencing Guidelines that would have resulted in Mr. Epstein spending far more time in prison than you projected; I contacted the Bureau of Prisons to see whether Mr. Epstein would be eligible for the prison camp that you desired; and I told you my suspicions about the source of the press "leak" and suggested ways to avoid the press. Importantly, I continued to work with you in a professional manner even after I learned that you had been proceeding in bad faith for several weeks – thinking that I had incorrectly concluded that solicitation of minors to engage in prostitution was a registrable offense and that you would "fool" our Office into letting Mr. Epstein plead to a non-registrable offense. Even now, when it is clear that neither you nor your client ever intended to abide by the terms of the agreement that he signed, I have never alleged misconduct on your part.

The first allegation that you raise is that I "assiduously" hid from you the fact that Bert Ocariz is a friend of my boyfriend and that I have a "longstanding relationship" with Mr. Ocariz.

I informed you that I selected Mr. Ocariz because he was a friend and classmate of two people whom I respected, and that I had never met or spoken with Mr. Ocariz prior to contacting him about this case. All of those facts are true. I still have never met Mr. Ocariz, and, at the time that he and I spoke about this case, he did not know about my relationship with his friend. You suggest that I should have explicitly informed you that one of the referrals came from my "boyfriend" rather than simply a "friend," which is the term I used, but it is not my nature to discuss my personal relationships with opposing counsel. Your attacks on me and on the victims establish why I wanted to find someone whom I could trust with safeguarding the victims' best interests in the face of intense pressure from an unlimited number of highly skilled and well paid attorneys. Mr. Ocariz was that person.

One of your letters suggests a business relationship between Mr. Ocariz and my boyfriend. This is patently untrue and neither my boyfriend nor I would have received any financial benefit from Mr. Ocariz's appointment. Furthermore, after Mr. Ocariz learned more about Mr. Epstein's actions (as described below), he expressed a willingness to handle the case *pro bono*, with no financial benefit even to himself. Furthermore, you were given several other options to choose from, including the Podhurst firm, which was later selected by Judge Davis. You rejected those other options.

You also allege that I improperly disclosed information about the case to Mr. Ocariz. I provided Mr. Ocariz with a bare bones summary of the agreement's terms related to his appointment to help him decide whether the case was something he and his firm would be willing to undertake. I did not provide Mr. Ocariz with facts related to the investigation because they were confidential and instead recommended that he "Google" Mr. Epstein's name for background information. When Mr. Ocariz asked for additional information to assist his firm in addressing conflicts issues, I forwarded those questions to you, and you raised objections for the first time. I did not share any further information about Mr. Epstein or the case. Since Mr. Ocariz had been told that you concurred in his selection, out of professional courtesy, I informed Mr. Ocariz of the Office's decision to use a Special Master to make the selection and told him that the Office had made contact with Judge Davis. We have had no further contact since then and I have never had contact with Judge Davis. I understand from you that Mr. Ocariz contacted Judge Davis. You criticize his decision to do so, yet you feel that you and your co-counsel were entitled to contact Judge Davis to try to "lobby" him to select someone to your liking, despite the fact that the Non-Prosecution Agreement vested the Office with the exclusive right to select the attorney representative.

Another reason for my surprise about your allegations regarding misconduct related to the Section 2255 litigation is your earlier desire to have me perform the role of "facilitator" to convince the victims that the lawyer representative was selected by the Office to represent their interests alone and that the out-of-court settlement of their claims was in their best interests. You now state that doing the same things that you had asked me to do earlier is improper meddling in civil litigation.

Much of your letter reiterates the challenges to Detective Recarey's investigation that have

already been submitted to the Office on several occasions and you suggest that I have kept that information from those who reviewed the proposed indictment package. Contrary to your suggestion, those submissions were attached to and incorporated in the proposed indictment package, so your suggestion that I tried to hide something from the reviewers is false. I also take issue with the duplicity of stating that we must accept as true those parts of the Recarey reports and witness statements that you like and we must accept as false those parts that you do not like. You and your co-counsel also impressed upon me from the beginning the need to undertake an independent investigation. It seems inappropriate now to complain because our independent investigation uncovered facts that are unfavorable to your client.

You complain that I "forced" your client and the State Attorney's Office to proceed on charges that they do not believe in, yet you do not want our Office to inform the State Attorney's Office of facts that support the additional charge nor do you want any of the victims of that charge to contact Ms. Belohlavek or the Court. Ms. Belohlavek's opinion may change if she knows the full scope of your client's actions. You and I spent several weeks trying to identify and put together a plea to federal charges that your client was willing to accept. Yet your letter now accuses me of "manufacturing" charges of obstruction of justice, making obscene phone calls, and violating child privacy laws. When Mr. Lourie told you that those charges would "embarrass the Office," he meant that the Office was unwilling to bend the facts to satisfy Mr. Epstein's desired prison sentence – a statement with which I agree.

I hope that you understand how your accusations that I imposed "ultimatums" and "forced" you and your client to agree to unconscionable contract terms cannot square with the true facts of this case. As explained in letters from Messrs. Acosta and Sloman, the indictment was postponed for more than five months to allow you and Mr. Epstein's other attorneys to make presentations to the Office to convince the Office not to prosecute. Those presentations were unsuccessful. As you mention in your letter, I – a simple line AUSA – handled the primary negotiations for the Office, and conducted those negotiations with you, Ms. Sanchez, Mr. Lewis, and a host of other highly skilled and experienced practitioners. As you put it, your group has a "combined 250 years experience" to my fourteen. The agreement itself was signed by Mr. Epstein, Ms. Sanchez, and Mr. Lefcourt, whose experience speaks for itself. You and I spent hours negotiating the terms, including when to use "a" versus "the" and other minutiae. When you and I could not reach agreement, you repeatedly went over my head, involving Messrs. Lourie, Menchel, Sloman, and Acosta in the negotiations at various times. In any and all plea negotiations the defendant understands that his options are to plead or to continue with the investigation and proceed to trial. Those were the same options that were proposed to Mr. Epstein, and they are not "persecution or intimidation tactics." Mr. Epstein chose to sign the agreement with the advice of a multitude of extremely noteworthy counsel.

You also make much of the fact that the names of the victims were not released to Mr. Epstein prior to signing the Agreement. You never asked for such a term. During an earlier meeting, where Mr. Black was present, he raised the concern that you now voice. Mr. Black and I did not have a chance to discuss the issue, but I had already conceived of a way to resolve that

issue if it were raised during negotiations. As I stated, it was not, leading me to believe that it was not a matter of concern to the defense. Since the signing of the Non-Prosecution Agreement, the agents and I have vetted the list of victims more than once. In one instance, we decided to remove a name because, although the minor victim was touched inappropriately by Mr. Epstein, we decided that the link to a payment was insufficient to call it "prostitution." I have always remained open to a challenge to the list, so your suggestion that Mr. Epstein was forced to write a blank check is simply unfounded.

Your last set of allegations relates to the investigation of the matter. For instance, you claim that some of the victims were informed of their right to collect damages prior to a thorough investigation of their allegations against Mr. Epstein. This also is false. None of the victims was informed of the right to sue under Section 2255 prior to the investigation of the claims. Three victims were notified shortly after the signing of the Non-Prosecution Agreement of the general terms of that Agreement. You raised objections to any victim notification, and no further notifications were done. Throughout this process you have seen that I have prepared this case as though it would proceed to trial. Notifying the witnesses of the possibility of damages claims prior to concluding the matter by plea or trial would only undermine my case. If my reassurances are insufficient, the fact that not a single victim has threatened to sue Mr. Epstein should assure you of the integrity of the investigation.[1]

---

[1]There are numerous other unfounded allegations in your letter about document demands, the money laundering investigation, contacting potential witnesses, speaking with the press, and the like. For the most part, these allegations have been raised and disproven earlier and need not be readdressed. However, with respect to the subpoena served upon the private investigator, contrary to your assertion, and as your co-counsel has already been told, I did consult with the Justice Department prior to issuing the subpoena and I was told that because I was not subpoenaing an attorney's office or an office physically located within an attorney's office, and because the business did private investigation work for individuals (rather than working exclusively for Mr. Black), I could issue a grand jury subpoena in the normal course, which is what I did. I also did not "threaten" the State Attorney's Office with a grand jury subpoena, as the correspondence with their grand jury coordinator makes perfectly clear.

With regard to your allegation of my filing the Palm Beach Police Department's probable cause affidavit "with the court knowing that the public could access it," I do not know to what you are referring. All documents related to the grand jury investigation have been filed under seal, and the Palm Beach Police Department's probable cause affidavit has never been filed with the Court. If, in fact, you are referring to the *Ex Parte* Declaration of Joseph Recarey that was filed in response to the motion to quash the grand jury subpoena, it was filed both under seal and *ex parte*, so no one should have access to it except the Court and myself. Those documents are still in the Court file only because you have violated one of the terms of the Agreement by failing to "withdraw [Epstein's] pending motion to intervene and to quash certain grand jury subpoenas."

With respect to Ms. M[redacted], I contacted her attorney – who was paid for by Mr. Epstein and was directed by counsel for Mr. Epstein to demand immunity – and asked only whether he still represented Ms. M[redacted] and if he wanted me to send the victim notification letter to him. He asked what the letter would say and I told him that the letter would be forthcoming in about a week and that I could not provide him with the terms. With respect to Ms. M[redacted]s status as a victim, you again want us to accept as true only facts that are beneficial to your client and to reject as false anything detrimental to him. Ms. M[redacted] made a number of statements that are contradicted by documentary evidence and a review of her recorded statement shows her lack of credibility with respect to a number of statements. Based upon all of the evidence collected, Ms. M[redacted] is classified as a victim as defined by statute. Of course, that does not mean that Ms. M[redacted] considers herself a victim or that she would seek damages from Mr. Epstein. I believe that a number of the identified victims will not seek damages, but that does not negate their legal status as victims.

I hope that you now understand that your accusations against myself and the agents are unfounded. In the future, I recommend that you address your accusations to me so that I can correct any misunderstandings before you make false allegations to others in the Department. I hope that we can move forward with a professional resolution of this matter, whether that be by your client's adherence to the contract that he signed, or by virtue of a trial.

Sincerely,

R. Alexander Acosta
United States Attorney

By: s/*A. Marie Villafaña*
A. Marie Villafaña
Assistant United States Attorney

cc: R. Alexander Acosta, U.S. Attorney
Jeffrey Sloman, First Assistant U.S. Attorney

You also accuse me of "broaden[ing] the scope of the investigation without any foundation for doing so by adding charges of money laundering and violations of a money transmitting business to the investigation." Again, I consulted with the Justice Department's Money Laundering Section about my analysis before expanding that scope. The duty attorney agreed with my analysis.

Exhibit 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA

JANE DOE #1 and JANE DOE #2,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.
_____/

DECLARATION OF FBI SPECIAL AGENT TIMOTHY R. SLATER

TIMOTHY R. SLATER declares as follows:

1. I am a Special Agent, Federal Bureau of Investigation (FBI), currently assigned as a Section Chief at FBI Headquarters, Washington, D.C. I was appointed a Special Agent in May 1999. Upon graduation from the FBI Academy at Quantico, Virginia, in September 1999, I was assigned to the Detroit Field Office. I was subsequently transferred to the FBI Miami Field Office in May 2006.

2. In 2006, I was assigned to work on an investigation of Jeffrey Epstein, who was accused of sexually abusing many young girls under the age of 18. In the course of our investigation, the FBI identified many potential victims of sexual abuse by Epstein. We obtained names by speaking to other victims, who frequently knew of friends who had also been paid money by Epstein to provide sexual services to him.

3. One of the victims identified was [redacted] In January – February 2007, I used various computer indices to try and locate Ms. [redacted] By using these indices and other means, I found two international phone numbers which I believed were being used by Ms.

Case

GOVERNMENT EXHIBIT 8

[redacted].

4. Sometime during January – February 2007, I called the one of the numbers, in an attempt to speak to Ms. [redacted] Also in my office was FBI Special Agent Nesbitt E. Kuyrkendall, the lead agent for the investigation of Jeffrey Epstein. I was not using a speakerphone when I spoke with Ms. [redacted] I asked S/A Kuyrkendall to be present because she, as the lead agent, was thoroughly versed in the details of the entire investigation, and I might need her assistance to respond to a question posed by Ms. [redacted] that I was unable to answer.

5. When I dialed the number, a young woman answered the phone. I told her my name, identified myself as a Special Agent with the FBI, and asked if she was [redacted] She said yes. I used a technique which I employ when speaking to people on the phone, who might question whether I am truly an FBI agent. I provided her with the phone number of the FBI Field Office in Miami, Florida, and told her she could hang up and verify the number. She could then call me back at the number, and her call would be routed to me. Ms. [redacted] said that would not be necessary.

6. I told Ms. [redacted] about our investigation of Jeffrey Epstein, and the allegations that Epstein had sexually abused many underage young girls. I told her we believed she might be a victim of sexual abuse by Epstein.

7. Ms. [redacted] answered basic questions, telling me that she did know Jeffrey Epstein. She quickly became uncomfortable, telling me she moved away to distance herself from this situation, and expressing her desire to "let this be in my past." She asked that I not bother her with this again.

8. I thanked Ms. [redacted] and told her I appreciated her time. I provided my name and encouraged her to call the FBI Miami Field Office, if she had any questions or needed assistance.

The entire phone conversation only last several minutes.

9. I did not hear from Ms. [redacted] again. In mid-March 2007, I reported for my new assignment at FBI Headquarters in Washington, D.C.

10. I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 26, 2015.

TIMOTHY R. SLATER
Section Chief
Federal Bureau of Investigation
Washington, D.C.

Exhibit 9

Consor & Associates
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 2006 CF09454AXX

STATE OF FLORIDA,

-vs-

JEFFREY EPSTEIN,
Defendant.
_____/

DEPOSITION OF [redacted]

Wednesday, February 20, 2008

2:00 p.m. - 4:30 p.m.
Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401

COPY

Reported By:
Judith F. Consor, FPR
Notary Public, State of Florida
Consor & Associates Reporting and Transcription
Phone - 561.682.0905

GOVERNMENT EXHIBIT 9
PENGAD 800-631-6989

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APPEARANCES:

On behalf of the State:
LANNA BELOHLAVEK, ESQ.
ASSISTANT STATE ATTORNEY
401 North Dixie Highway
West Palm Beach, Florida 33401
561.355.7100

On behalf of the Defendant:
MICHAEL R. TEIN, ESQ.
KATHRYN A. MEYERS, ESQ.
LEWIS TEIN, PL
3059 GRAND AVENUE, SUITE 340
COCONUT GROVE, FL 33133

On behalf of the Defendant:
JACK A. GOLDBERGER, ESQ.
ATTERBURY, GOLDBERGER & WEISS
250 AUSTRALIAN AVENUE SOUTH
SUITE 1400
WEST PALM BEACH, FLORIDA 33401
561.659.8300

ALSO PRESENT:
ON BEHALF OF THE WITNESS: THEODORE J. LEOPOLD, ESQ.
KEITH J. BRETT, DIRECTOR OF MULTIMEDIA DIVISION, LEGAL-EZE

- - -

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I N D E X

WITNESS: PAGE:

[redacted]

DIRECT EXAMINATION 4

BY MR. TEIN:

- - -

NO E X H I B I T S M A R K E D

- - -

.....CERTIFIED QUESTIONS.....

Page	Line
53	22
55	1
59	2
111	14
112	2

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Deposition taken before Judith F. Consor, Court Reporter and Notary Public in and for the State of Florida at Large, in the above cause.

- - -

Thereupon,

[redacted]

having been first duly sworn or affirmed, was examined and testified as follows:

THE WITNESS: I do.

DIRECT EXAMINATION

BY MR. TEIN:

Q. Good afternoon. Please tell me your full name.

A. [redacted]

Q. And can you please spell it.

A. [redacted]

[redacted]

Q. Thank you.

May I call you [redacted]

A. Uh-huh.

Q. [redacted] I'm going to ask you a few questions, several questions today. If at any time you want to take a break, you just let me know. Okay?

A. Okay.

Q. If you at any time don't understand one of

my questions, will you just please let me know?

A. Yes.

Q. And if at any time you're not feeling well or something like that, you'll tell us, right?

A. Yes.

Q. Do you feel okay today?

A. Yes.

Q. Not taking any alcohol or drugs or anything like that, right?

A. No.

Q. So you feel ready to have your deposition taken?

A. Yes.

Q. [redacted] what is your address?

A. I'm currently living at my aunt's house and I don't know it off the top of my head.

Q. Where is it?

A. In Jupiter.

Q. Who is your aunt?

A. [redacted]

Q. Who else is living there?

A. [redacted] my uncle.

Q. Anyone else living there?

A. No.

Q. The contempt motion that your mother filed

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against your father regarding your fifty million-dollar lawsuit against Jeffrey Epstein says that you live with your aunt and uncle and have been living there; is that correct?

A. Yes.

Q. How long have you been living with your aunt and uncle?

A. Since my father kicked me out.

Q. That was Thanksgiving of this past year?

A. Yes, sir.

Q. Okay. Didn't your firefighter boyfriend [redacted] get an apartment for the two of you?

A. No, sir. He has an apartment, but by himself.

Q. Did he get an apartment for the two of you to live in?

A. No, sir.

Q. Are you planning to move in with him?

A. Maybe one day in the future.

Q. Do you have a plan to move in with him presently?

A. No.

Q. Have you been to the apartment that you and [redacted] have discussed moving in together?

A. I have been to the apartment.

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Q. Where is that?
A. Palm Beach Lakes.
Q. Have you spent the night over there?
A. No, sir.
Q. Do you know the address there?
A. I do not.
Q. Isn't your sister [redacted] planning on living with you and [redacted]?
A. No.
Q. [redacted] you know that this court case is a criminal prosecution, correct?
A. Correct.
Q. And you know that it's a criminal prosecution against a man who has no criminal background. Do you know that?
A. I do now.
Q. You agree that court is a very serious matter?
A. Yes.
Q. And you're here with your lawyer Mr. Leopold, right?
A. Yes.
Q. And you know that Mr. Leopold recently filed a lawsuit in federal court against Jeffrey Epstein, seeking fifty million dollars.

MR. LEOPOLD: Let me just object. [redacted] let me instruct you. Anything that you have learned through conversations between you and me are protected. So if you know any of that information outside of those discussions, you may answer. But if the only way you know it is through our discussions, do not answer that question.

BY MR. TEIN:

Q. [redacted] you know that Mr. Leopold recently filed a lawsuit in federal court on your behalf against Jeffrey Epstein seeking fifty million dollars?

MR. LEOPOLD: Same objection.

If you know the answer to that outside of our discussions, you may answer. If it is the only way that you know the answer is through our discussions, do not answer that question.

THE WITNESS: Okay.

MR. LEOPOLD: Attorney/client privilege.

BY MR. TEIN:

Q. You can answer the question unless --

MR. LEOPOLD: Same objection.

MR. TEIN: Let me finish.

MR. LEOPOLD: Excuse me. We're --

MR. TEIN: No. Let me finish.

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MR. LEOPOLD: Lewis, we're not going to do that.

MR. TEIN: My name is not Lewis.

I'm going to finish my question. Okay?

MR. LEOPOLD: Do not answer until you hear from me.

BY MR. TEIN:

Q. Other than conversations that you have had with Mr. Leopold -- I'm not asking about that -- are you aware that Mr. Leopold has filed a lawsuit in federal court seeking fifty million dollars from Jeffrey Epstein on your behalf?

MR. LEOPOLD: Same objection.

Anything that you learn through conversations between you and me, do not answer. Those are protected. If you know through any other realm of knowledge, you may answer.

THE WITNESS: No.

BY MR. TEIN:

Q. You have no idea that Mr. Leopold filed a fifty million-dollar lawsuit on your behalf against Jeffrey Epstein?

MR. LEOPOLD: Same objection.

Do not answer that question if it's through discussions that you and I had. Outside of that,

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you may answer. So do not answer that question if that is the only basis by which you understand that answer.

THE WITNESS: No.

BY MR. TEIN:

Q. You didn't know that?

MR. LEOPOLD: Don't answer that question. Again, it's attorney/client privilege. Any information you've learned through conversations between you and I are protected. If you know it through any other realm, you may answer.

MR. TEIN: Are you going to say that for every question in the deposition, Mr. Leopold?

MR. LEOPOLD: When you ask improper questions like that without the proper --

MR. TEIN: You're going to stop your speaking objections right now. Okay?

MR. LEOPOLD: Without the proper --

MR. TEIN: You need to stop your speaking objections.

Let's continue.

MR. LEOPOLD: Counsel, you just asked me a question and I'm going to state it on the record --

MR. TEIN: You need to stop your speaking

objections. Check your rules.

MR. LEOPOLD: Excuse me. For the record, Counsel asked me a question. I'll state the answer on the record. He asked me the question am I going to be answering that way throughout the deposition. So long as there's improper foundation and predicate asked by the attorney, I will protect my client and I make the record where appropriate. If counsel wishes to ask an appropriate worded question with the proper foundation and predicate, I will certainly allow the client to answer the question.

MR. GOLDBERGER: Why don't you just state attorney/client privilege and just be done with it?

MR. LEOPOLD: I want the record to be clear.

MR. TEIN: You want to waste time is what you want to do.

You were supposed to be here this morning and you totally broke the deal, the agreement that you had with us if your hearing got cancelled.

But let's move on and maybe you'll stop obstructing this deposition.

MR. LEOPOLD: I think the record is very

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clear where we stand thus far.

Is there a recording taken of this deposition?

THE COURT REPORTER: Yes.

MR. LEOPOLD: Just make sure that's preserved.

BY MR. TEIN:

Q. Go to Exhibit 20-01 -- well, before you do that, [redacted] are you aware that a lawyer named Jeffrey Herman filed a lawsuit on your behalf, yes or no?

MR. LEOPOLD: Objection.

Any conversations that you and I have had regarding that, if that is the only way by which you understand how to answer that question, do not answer. It's attorney/client privilege, as well as any conversations you may have had with the attorney from Miami. That is also attorney/client privilege. And I'm assuming --

MR. TEIN: You're actually wrong about the attorney/client privilege.

MR. LEOPOLD: I'm assuming Counsel is not asking you to divulge attorney/client --

MR. TEIN: Of course not.

BY MR. TEIN:

Q. [redacted] are you aware that Jeffrey Herman,

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an attorney, filed a fifty-million-dollar lawsuit on your behalf against Jeffrey Epstein, yes or no?

MR. LEOPOLD: Same objection.

MR. TEIN: We've heard the objection 10 times already.

MR. LEOPOLD: Counsel, excuse me.

MR. TEIN: Just say attorney/client privilege. Stop interrupting my questions.

MR. LEOPOLD: I'm entitled to make an objection for the record, which I'm doing, and I'll make the same objection. And if it calls for attorney/client privilege, any conversations you and I have had, do not answer the question.

And I think that it might be appropriate, for the record, to ask questions via [redacted] as opposed to [redacted] I think that would be more appropriate for this deposition.

BY MR. TEIN:

Q. Go ahead. Please answer yes or no.

A. Yes.

Q. Thank you.

In fact, you know that Mr. Herman held a press conference after he filed the fifty-million-dollar lawsuit on your behalf, don't you?

A. After it happened.

Q. You know that he had a press conference, don't you, yes or no?

A. Yes.

Q. In fact, let's go to Exhibit 20-01.

MR. GOLDBERGER: Look behind you. You'll see it.

BY MR. TEIN:

Q. Have you ever seen that picture before?

A. Yes.

Q. Is that a picture of your father, your stepmother and Mr. Herman at the press conference regarding your lawsuit?

A. Yes.

Q. Now you know that this is a very serious matter, don't you?

MR. LEOPOLD: Asked and answered. Objection.

MR. GOLDBERGER: All right. You can object. You're representing a witness here, Mr. Leopold. You can object on privilege grounds. You cannot make legal objections. You have no standing to do so.

MR. LEOPOLD: I'm going to make them and then --

MR. GOLDBERGER: We're --

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MR. LEOPOLD: We're going to leave or we're going to take a break, because his demeanor is not appropriate. There's no reason to have this kind of demeanor. If you want to have this kind of demeanor with me --

MR. TEIN: You are obstructing this deposition.

MR. GOLDBERGER: Why don't you guys go outside and just talk about --

MR. LEOPOLD: She -- her job is very difficult and she's not going to be able to take us both talking at the same time.

MR. GOLDBERGER: Off the record.

MR. LEOPOLD: We're not going off the record, Jack. We're not, Jack. Her job is very difficult. I'm going to make the record.

I don't think it is appropriate, especially in the small confines of this room, to be very aggressive with this young lady.

MR. TEIN: That's not happening. Stop, stop actually --

MR. LEOPOLD: If you're going to interrupt me, we're going to cancel this deposition --

MR. TEIN: Stop misrepresenting.

THE COURT REPORTER: I need one at a time,

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no matter who it is.

MR. LEOPOLD: I think we're going to take a break. Perhaps you might want to talk to your co-counsel --

MR. TEIN: I don't need to talk to him.

MR. LEOPOLD: But we're going to take a break.

MR. TEIN: We're not taking a break unless the witness needs a break.

You're obstructing this deposition, Ted.

MR. LEOPOLD: Come on, [redacted]

You all want to continue in this demeanor --

MR. TEIN: You're obstructing the deposition. Stop making speeches. We're not discussing this with you. The questions are to your client. Go take your five-minute break.

MR. LEOPOLD: Fine. We need to make sure the record's clear and clean.

And I want to make sure, as I've already asked you -- I know that you're one of the best in town -- that this audio -- this needs to be preserved. Okay?

MR. TEIN: Go take your five-minute break, Mr. Leopold, now.

You were supposed to be here at nine a.m.; it's now after two. Take your break and come back.

MR. LEOPOLD: Okay. If the demeanor keeps up, we will not be here beyond those five minutes.

MR. TEIN: Take your break and come back.

MR. LEOPOLD: Okay. So I suggest that you relax.

MR. TEIN: I suggest that you take your break.

MR. GOLDBERGER: Let them take that five-minute break.

MR. LEOPOLD: But I would suggest that you take deep breaths.

MR. TEIN: Suggest whatever you want. Go take a break.

(Thereupon, a recess was taken.)

BY MR. TEIN:

Q. [redacted] you agree that giving testimony today at your deposition is something very serious, don't you?

A. Yes.

Q. And you respect the court, don't you?

A. Yes.

Q. Let me show you Exhibit 31-001. Can you

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read that out loud, please.

A. Okay. What do you want?

Q. Will you read that out loud, please.

A. Oh.

Q. Thank you.

A. Lol hah my baddd...lol yah i got some stupid court shit on the 20th...bullshit...and damn you still have court shit with him? Like after so long wow im sorry... well yah well we will definitely havta make plans for sure..because i miss u tons times a million and no no no i love you...o and p.s. i love ur default pic niggaa. Muah xo.

Q. Did you send that message last week to a friend of yours on MySpace?

A. I wouldn't know. There's no dates and I've deleted that MySpace, so --

Q. We're going to talk about that in a second.

A. Okay.

Q. Did you send that message last week --

A. Right.

Q. Let me finish my question.

Did you send that message last week to a friend of yours on MySpace?

A. I wouldn't know the date, but obviously, it's to a friend.

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Q. Did you send that message to a friend of yours on MySpace?
A. Sure, yes.
Q. Were you referring to this deposition?
A. Yes.
Q. Do you find the term n-i-g-g-e-r offensive?
A. That's not anywhere in there.
Q. What word did you use in there?
MR. LEOPOLD: Where are you referring to, Counsel? There's 20 plus words in there.
MR. TEIN: Don't make a speaking objection.
THE WITNESS: Are you referring to anything --
MR. LEOPOLD: No, [redacted] Don't -- don't -- let him ask you the question.
BY MR. TEIN:
Q. What question were you asking, [redacted]?
MR. LEOPOLD: She doesn't ask questions. You ask the questions. What is the question pending?
BY MR. TEIN:
Q. [redacted] what is the last word on there in the text of your message before the closing?
A. Niggaa.
Q. Don't you find that term offensive?

A. No.

MR. LEOPOLD: Can you spell it for the record, please.

THE WITNESS: N-i-g-g --

MR. TEIN: No, no, no. You are not going to be asking questions.

MR. LEOPOLD: I'm not asking questions. I'm asking for the record the word to be spelled, because we don't have a video here today.

MR. TEIN: These exhibits are part of the record. You --

MR. LEOPOLD: Well, it's not marked as an exhibit.

MR. TEIN: Stop interrupting me, Mr. Leopold. I have marked and identified as an exhibit and you will get it.

MR. LEOPOLD: There has been no identification of this document in the record.

MR. TEIN: Mr. Leopold, stop interrupting this deposition.

MR. LEOPOLD: What is the exhibit number marked for identification?

MR. TEIN: 31-001.

MR. LEOPOLD: Do we have copies? Is it on the record anywhere?

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BY MR. TEIN:

Q. Let me ask you, [redacted] did you in fact write your friend this message about this deposition?

A. Yes.

Q. So you wrote your friend that this deposition is stupid court s-h-i-t, correct?

A. Yes.

Q. Because you think this deposition is stupid court s-h-i-t, don't you?

A. No.

Q. You wrote that to your friend, didn't you?

A. Yes.

Q. You think that court is stupid, don't you?

A. In some cases.

Q. And you think that court is bull s-h-i-t, don't you?

A. No.

Q. And you think this deposition is bull s-h-i-t, don't you?

A. No.

Q. You wrote that to your friend, didn't you?

MR. LEOPOLD: Objection. Asked and answered.

MR. TEIN: That's not an objection.

BY MR. TEIN:

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Q. You wrote that to your friend, didn't you?

MR. LEOPOLD: Objection. Asked and answered, for the fourth time.

MR. TEIN: You are improperly objecting, Mr. Leopold. You have no grounds to object. And that's not an objection.

MR. LEOPOLD: It is an objection.

MR. TEIN: Then terminate the deposition if you think it's been asked and answered.

MR. LEOPOLD: Counsel, I am not precluded from just making an objection to the form of the question. As the courts well know, and if you practice here in West Palm Beach, many of the judges require you to set the objection with specificity. And I will do that. And if you don't want me to, you can make the record. But I will do that.

MR. TEIN: Here's what we'll do, Ted. You can -- I will allow you to reserve an objection to form for every single one of my questions. Otherwise, all you're doing is obstructing.

MR. LEOPOLD: I won't do that.

MR. TEIN: Of course; because you want to obstruct.

MR. LEOPOLD: All right.

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BY MR. TEIN:

Q. [redacted] you think that giving testimony today, under oath, is bull s-h-i-t, don't you?

A. No.

Q. And you wrote that to your friend on MySpace last week, didn't you?

MR. LEOPOLD: Objection. Asked and answered.

THE WITNESS: No, I did not.

BY MR. TEIN:

Q. You didn't write this exhibit?

A. I wrote that, but I didn't write what you said.

Q. You wrote in this exhibit, "I got some stupid court s-h-i-t on the 20th. Bull s-h-i-t." Didn't you write that?

A. Yes.

Q. Referring to this deposition, didn't you?

A. Referring to the court. I was later informed that it was a deposition.

Q. I'm going to ask you some questions now about what happened when you went to Jeff Epstein's house three years ago. Okay?

A. Uh-huh.

Q. When the police interviewed you one month

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after you went to Epstein's house, you swore on your mother's grave that you and Epstein did not engage in sex of any kind?

A. Yes.

Q. Didn't you tell that to the police?

A. Yes. And I will continue. I have never had sex with him.

Q. Did what happened upstairs at Jeff Epstein's house take you completely by surprise, [redacted]?

A. Yes.

Q. Now the civil complaint that you filed against Mr. Epstein for fifty million dollars alleged that you were totally shocked by what happened when you got there.

A. Yes.

Q. Were you totally shocked by what happened when you got to Epstein's house?

A. Yes.

Q. You didn't expect it at all, did you?

A. No.

Q. You had absolutely no idea why your friend [redacted] was taking you to Epstein's house, right?

A. I was informed it was a massage.

Q. All you thought that it was going to be was a massage, correct?

A. Yes.

Q. Before you got to Epstein's house [redacted] never said anything to you on the telephone about sexual activity with Epstein, did she?

A. No.

Q. And before you got to Epstein's house [redacted] never sent you a message over the Internet about sexual activity with Epstein, did she?

A. No.

Q. Did [redacted] ever try to convince you to engage in any sexual activity with Epstein?

A. No.

Q. Did [redacted] every try to convince you to engage in any sexual activity with Epstein?

A. I don't know who [redacted] is.

Q. Do you have a friend [redacted]?

A. No.

Q. Okay. Before you went so Epstein's house did anyone call or e-mail you to induce you to engage in sexual activity with Epstein?

A. No.

Q. So you're sure that before you got to Epstein's house no one tried to persuade you to engage in sexual activity with Jeffrey Epstein?

A. No.

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Q. You're sure that -- let me ask the question again.

You're sure that before you got to Epstein's house no one tried to persuade you to engage in sexual activity with Epstein for money. Are you?

MR. LEOPOLD: Objection. Asked and answered.

THE WITNESS: No. And I've already answered that a bazillion times.

BY MR. TEIN:

Q. He's coaching you now. So I'm going to ask the question --

MR. LEOPOLD: Counsel, I've made an objection for the record.

MR. TEIN: Stop speaking.

MR. LEOPOLD: I'm not going to stop speaking. You can't interrupt me when I'm making the record.

MR. TEIN: You're coaching the witness.

MR. LEOPOLD: Counsel --

MR. TEIN: Stop coaching the witness.

BY MR. TEIN:

Q. [redacted] let me ask you --

MR. LEOPOLD: If you continue to --

MR. TEIN: Stop interrupting my questions.

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MR. LEOPOLD: If you do it one more time, we're leaving.

BY MR. TEIN:

Q. [redacted]

MR. LEOPOLD: I'm going to make the record. You cannot interrupt me when I'm making the record. Out of professional conduct, you cannot do that. I'm entitled to make the record. I made an objection, asked and answered. Your demeanor is inappropriate. You're willing and you are able and you're responsible to ask a question in a professional manner, and ask the question and once you get the answer, to either follow up on it or move on, but not continuously browbeat and ask the same question over and over because you don't like the answer.

MR. TEIN: Calm down, sir.

MR. LEOPOLD: Trust me, I'm very calm here. When I'm not calm, you'll know it. I'm very calm.

So please continue on. But I will not allow you to continue to harass her in the demeanor that you're doing. Ask her a question and move on.

MR. TEIN: Are you done?

MR. LEOPOLD: Thank you. I am.

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MR. TEIN: Stop misrepresenting the record and calm down. I'm going to ask my question. Stop it.

BY MR. TEIN:

Q. [redacted] --

MR. LEOPOLD: I think the record is very clear.

MR. GOLDBERGER: Let me just clarify something. When you object to the form of a question, you're not instructing the witness not to answer the question, are you?

MR. LEOPOLD: No. And I'm not making that objection; only on attorney/client privilege.

MR. TEIN: Will you stop speaking now so I can ask my question? Are you done?

Okay. I'm going to ask my question.

BY MR. TEIN:

Q. Listen, [redacted] --

MR. LEOPOLD: Hold on. Stop.

I've been doing this for 20 plus years and have met a lot of attorneys, but I've never had an experience like this where I've --

MR. TEIN: Stop your speeches.

MR. LEOPOLD: If you continue to do this, whether it's with me or with my client, I will not

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put up with it and I don't need to put up with it and it's not appropriate. And I'm sure Mr. Goldberger knows all this, because I know that he wouldn't do this. So I will not put up with it. And I think it's highly inappropriate to do this with this child sitting here, the way you're acting, primarily towards me, and I will not put up with it.

MR. TEIN: Will you please stop your speech so I can ask questions?

MR. LEOPOLD: So long as you act professionally, I will do so. But if you continue to do it this way, I will leave.

MR. TEIN: Suit yourself.

BY MR. TEIN:

Q. [redacted] are you sure that before you got to Epstein's house no one tried to persuade you to engage in sexual activity with Epstein for money?

MR. LEOPOLD: Asked and answered. Objection.

MR. TEIN: Did you get her answer?

THE COURT REPORTER: No, I did not.

THE WITNESS: I'm sure.

BY MR. TEIN:

Q. Let me ask you a few questions about your

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contact with Jeffrey Epstein. Okay?

A. (Witness nods head up and down.)

Q. Jeff never e-mailed you, did he?

A. No.

Q. Jeff never text messaged you, did he?

A. No.

Q. Jeff never chatted in a chat room with you, did he?

A. No.

Q. Before you got to Epstein's house you had never spoken to Jeff, had you?

A. No.

Q. And before you got to Epstein's house you had never met Jeff?

A. Correct.

Q. Before you got to Epstein's house you had never told Jeff that you were under 18, right?

A. No.

Q. Before you got to Epstein's house had you ever told Jeffrey that you were under 18?

A. No. I never spoke to the man before that.

Q. And you only went to Jeff Epstein's house that one time three years ago, correct?

A. Yes.

Q. You never went there again, correct?

A. No.

Q. All right. Let me ask you two final areas of questioning about this and we'll move onto something else. Okay?

A. Uh-huh. Yes. I'm sorry.

Q. Before you got to Epstein's did anyone associated with Epstein ever call you on the phone and try to persuade, induce, entice or coerce you to engage in any sexual activity?

A. No.

Q. Before you got to Epstein's did anybody associated with Epstein ever contact you on the Internet and try to persuade, induce, entice or coerce you to engage in any sexual activity?

A. No.

Q. [redacted] who told you that when you got to Jeff Epstein's house you should lie to Jeff about your age?

A. [redacted].

Q. Was it [redacted] or was it the other girl in the car who you rode over with to Epstein's house?

A. [redacted]

Q. Who was the other girl in the car with you that day?

A. I honestly don't know.

Q. Had you ever seen her before?
A. No, sir.
Q. You told the police that when you rode over to Epstein's you had no idea who she was, right?
A. Correct.
Q. You told the police that you didn't know her name, but she was like really dark, kind of like a Spanish girl?
A. Yes.
Q. Those were your words, right?
A. Yes.
Q. Do you now know who she is?
A. No, sir.
Q. So it was [redacted] who told you to lie about your age to Jeff Epstein?
A. Yes, sir.
Q. And [redacted] told you that if you weren't 18, Epstein wouldn't let you into his house, right?
A. That's -- yes, yes.
Q. All right. Let's talk for a minute about when you first met Jeff. Okay?
A. Sure.
Q. When you first met Jeff he tried to find out how old you were, right?
A. Excuse me?

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Q. When you first met Jeff he tried to find out how old you were, right?

A. Not when we first introduced each other; when we get upstairs, then, yes.

Q. During the massage Jeff asked you how old you were, correct?

A. Yes, yes.

Q. Now hadn't you already told Jeff's assistant, the one who walked you upstairs, that you went to college and had just moved down here from Ohio?

A. I never spoke to the lady.

Q. Do you want to rethink that answer?

MR. LEOPOLD: Is that a question?

BY MR. TEIN:

Q. Do you want to rethink that answer?

A. No. I didn't really speak with her that much.

Q. Do you want to try to refresh your memory on that?

MR. LEOPOLD: Do you have something to refresh her memory with?

MR. TEIN: Do you want to stop making speaking objections?

MR. LEOPOLD: No. But to refresh someone's memory, you show them a document.

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MR. TEIN: I know how to do this.

MR. LEOPOLD: Then show her a document.

MR. TEIN: Stop speaking.

MR. LEOPOLD: I'm not going to stop speaking. I'm going to continue to make the record.

MR. TEIN: You're obstructing. Please stop.

MR. LEOPOLD: I'm not obstructing. But if you want to refresh her recollection, you need to show her something.

That's not a proper question. I object to the foundation and the predicate of that question.

MR. TEIN: Are you done?

MR. LEOPOLD: I am now. Thank you.

BY MR. TEIN:

Q. Do you want to try to refresh your memory as to whether you had any conversation with the woman who walked you upstairs in Epstein's house in which you told her that you went to college and had just moved down from Ohio?

MR. LEOPOLD: Objection. Object to the form of the question. Lack of foundation and predicate.

BY MR. TEIN:

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Q. You can answer the question.

A. Sure.

Q. Is there anything that would refresh your memory that in fact you told Mr. Epstein's assistant, the one who walked you upstairs, that you went to college and you had just moved down here from Ohio?

A. I don't remember saying that, but if you -- I don't remember saying that myself, so --

Q. That would be a lie, right?

A. No. I really don't remember.

Q. So you told Jeff that you were 18 years old, correct?

A. Yes.

Q. Do you remember Detective [redacted] Pagan of the Police Department, Palm Beach Police Department?

A. Yes.

Q. Do you remember you spoke to her?

A. Yes.

Q. Do you remember that you told Detective Pagan that when you lied about your age to Jeff you said it really fast because you didn't want to make it sound like you were lying?

A. I don't remember the words exactly, but I do remember telling her I told him I was 18.

Q. And do you remember telling Detective Pagan

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that when you lied to Epstein about your age that you said it really fast so Epstein wouldn't realize you were lying?

A. No, I don't remember saying those words exactly to her. I remember telling her that I told Epstein I was 18.

Q. Does it sound right to you that you told Detective Pagan that you said your age really fast to Epstein --

MS. BELOHLAVEK: Objection. Asked and answered.

BY MR. TEIN:

Q. -- so he wouldn't think that you were lying?

MR. LEOPOLD: Objection. Asked and answered, lack of foundation, mischaracterization of her earlier testimony. She's already answered that question.

BY MR. TEIN:

Q. You can answer it.

MR. LEOPOLD: Same objection. It's been asked and answered.

You can answer. I've made the objection.

THE WITNESS: I forget the question, now.

BY MR. TEIN:

Q. Let me put it again.

Does it sound right to you that you told Detective Pagan that when you lied about your age to Jeffrey Epstein, you said it really fast because you didn't want to make it sound like you were lying?

MR. LEOPOLD: Objection. Lack of foundation, asked and answered.

THE WITNESS: I could have possibly said that, yes.

BY MR. TEIN:

Q. You didn't want Mr. Epstein to know that you were lying about your age, right?

A. Correct.

Q. You didn't want Mr. Epstein to know that you were not 18 yet, right?

A. Correct.

Q. You wanted Mr. Epstein to believe that you really were 18, right?

A. Correct.

Q. Do you remember when Mr. Epstein asked where you went to school?

A. Yes.

Q. And you told Mr. Epstein you went to Wellington, right?

A. Yes.
Q. Was that the truth?
A. No.
Q. In fact, you went to Royal Palm, right?
A. Yes.
Q. So you lied to Mr. Epstein again, correct?
A. Yes.
Q. Is Wellington the college that you told Jeff's assistant that you were attending?
A. I don't remember having that conversation with her, so I wouldn't know if that's what I said.
Q. That was a lie, though, wasn't it?
MR. LEOPOLD: Objection to the form of the question, lack of foundation. You're making an assumption. She just answered you she can't tell you that.
MR. TEIN: Speaking objection. And you well know that, Mr. Leopold.
MR. LEOPOLD: She can't answer that question. The way you phrased that question, you're purposely making her not be honest in her testimony. She can't answer a question like that. She doesn't remember. So then you say, "So you were lying." That's improper and you know that. That's not a proper question. And any attorney

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that would do that to a witnesses or to a person that's sitting in this chair is not acting professionally. You can't ask a question like that. You can do it, but it's not proper. And I'm sure you weren't trained that way, certainly not ethically.

MR. TEIN: Will you stop?

MR. LEOPOLD: I'm not going to stop, because the way you're asking that question is improper and you know it.

MR. TEIN: You're losing your cool.

BY MR. TEIN:

Q. Ms. [redacted] --

MR. LEOPOLD: Trust me. I'm very calm. When I lose my cool, you'll know it.

MR. TEIN: I do know it.

BY MR. TEIN:

Q. Ms. [redacted] Mr. Epstein never asked you to do anything other than massage him, correct?

A. Incorrect; because he asked me to take off my bra, so that would be two things he's asked me to do.

Q. Other than asking you to take your bra off, Mr. Epstein never asked you to do anything with him other than massage, correct?

MR. LEOPOLD: Objection. Foundation,

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predicate.

THE WITNESS: Correct.

BY MR. TEIN:

Q. You told the police, in your words, that you did not whack him off, right?

A. Correct.

Q. What does that mean?

A. Whack, like whacking off?

Q. Your term, what does that mean?

A. Masturbating.

Q. Mr. Epstein never tried at any time to grab your hand, did he?

A. No.

Q. Mr. Epstein never tried to put your hand anywhere, did he?

A. No.

Q. At no time did you touch Mr. Epstein's penis, did you?

A. No.

Q. And he did not touch you, correct?

A. Incorrect.

Q. Well, you told the police, "At no time did he touch me." Were you lying to the police then?

A. No. Well, I wasn't being fully truthful, but I wasn't lying.

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Q. You told the police twice when you spoke to [redacted] Pagan that "at no time did he touch me." Didn't you say that to the police?

A. Yeah.

Q. And you're saying that that was not fully truthful. Is that what you're saying now?

A. Correct.

Q. And you're saying if you're not fully truthful, that's not a lie. Correct?

A. You took that out of context like really bad. I didn't mean like that. Touching my legs and -- he never kept his hands to himself the entire time. That's what I'm trying to say.

Q. You told the police, "At no times did he touch me." You agree with that, correct?

A. No, I don't agree with that, because he did touch me.

Q. Did you tell the police that he did not touch you, yes or no?

A. It's a possibility, but I do not remember.

Q. Okay. And you did not have any type of sex with Jeff, correct?

A. No.

Q. And you did not have any type of oral sex with Jeff, correct?

A. No.
Q. No type of intercourse with Jeff, correct?
A. Correct.
Q. All right. Let's talk about what happened after the massage was over.
A. Okay.
Q. After the massage, you told Epstein that you wanted to bring your twin sister back so she could make some money, correct?
A. Incorrect.
Q. Your twin sister is [redacted] right?
A. Correct.
Q. And you love [redacted] very much, don't you?
A. Yes.
Q. And when you left the house you were joking with the other girls, weren't you?
A. Incorrect.
Q. Well, when [redacted] and the other girl in the car that day made their statements to the police they told the police that you were joking afterwards. Are you saying that they were lying to the police about that?
A. No. But a question or -- questions from [redacted] -- like she asked me questions, but it wasn't joking. She was kind of like in a happy way, like, "Oh, what did you do? What did you do?" Like those kind of

things, but it wasn't joking about it at all.

Q. You joked about it, didn't you?

A. No.

Q. You said to [redacted] that if you did this every weekend you'd be rich, didn't you?

A. No. That's what [redacted] told me.

Q. You didn't tell that to [redacted]

MR. LEOPOLD: Objection. Asked and answered.

THE WITNESS: No.

BY MR. TEIN:

Q. After you left Epstein's house you took the money and you went shopping with [redacted] and the other girl in the car, correct?

A. Incorrect. I didn't spend any of the money.

Q. You went to Marshall's, didn't you?

A. I went along, yes, but I didn't --

Q. You went shopping with them at Marshall's, didn't you?

MR. LEOPOLD: Objection.

THE WITNESS: I guess you could say that.

MR. LEOPOLD: Objection. Lack of predicate and foundation. Mischaracterization of earlier testimony.

BY MR. TEIN:

Q. And [redacted] bought a purse, right?

A. Yes.

Q. And you were with her the whole time at Marshall's, correct?

A. Yes.

Q. Now tell me about when the federal prosecutors told you about getting reimbursed.

A. I have no idea what you're talking about.

Q. Tell me about when the federal prosecutors spcke to you about getting money you feel you're entitled to from Mr. Epstein.

A. I don't know what you're talking about.

Q. Do you know who [redacted] Villafona is?

A. No, sir.

Q. Did you ever meet with any federal prosecutors?

A. I think -- yeah. I think they were -- I think they were like FBI.

Q. Uh-huh. Did you meet with federal prosecutors?

A. They came to my house one time, yes.

Q. When did they come to your house?

A. Very long ago.

Q. Was it this year, 2008?

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A. It was not this year, no.
Q. Was it 2007?
A. I'd have to say at least two years ago or a year ago, yeah. So it would be 2007, 2006; but it was a while ago.
Q. How many federal prosecutors or FBI agents came to your house?
A. I'm trying to remember. I want to say four people came.
Q. Did they give you their business cards?
A. If they did, I don't remember, and they weren't toward me. Maybe my parents have them. I don't know.
Q. Did they give you their cell phone numbers?
A. No.
Q. Did you ever speak to them on their cell phones?
A. No, sir.
Q. Did they speak to your parents?
A. That's something you'd have to ask my parents.
Q. Do you know whether they spoke to your parent's?
A. No, sir.
Q. You have no idea?

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A. No, sir.

MR. LEOPOLD: Objection. Asked and answered.

BY MR. TEIN:

Q. So if I say the name to you [redacted] Villafona, you don't know who that is?

A. No, sir.

Q. How many women and how many men came to your house?

A. I want to say two ladies and two guys.

Q. Did someone named Jeffrey Sloman come to your house?

A. I don't know names, sir.

Q. Do you know who Jeffrey Sloman is?

A. No, sir.

Q. Do you know who Jeffrey Herman is?

A. Yes.

Q. That's the lawyer who first sued Epstein on your behalf, right?

A. Yes.

Q. Has Mr. Herman advanced your family any money?

MR. LEOPOLD: Any conversations that you've had with Mr. Herman regarding that issue, you are not to disclose. If you've learned in some other

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fashion, you may answer.

THE WITNESS: Okay.

I wouldn't know.

BY MR. TEIN:

Q. You don't know?

A. No.

MR. LEOPOLD: Objection. Foundation. Attorney/client privilege.

BY MR. TEIN:

Q. And you say you don't know who Jeff Sloman is?

A. No, sir.

Q. Does it refresh your recollection that he's the number two prosecutor at the U.S. Attorney's Office?

A. No.

Q. That he's [redacted] Villafona's boss?

A. No.

Q. Does it refresh your memory that he's the ex-partner of Jeff Herman, the first lawyer who sued you -- sued Mr. Epstein on your behalf for fifty million dollars?

A. No, sir. I don't know who he is.

Q. Without telling me any conversations that you've had with your lawyers, how is it that you selected Mr. Herman as your lawyer from the 81,000 members of the

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Florida Bar?

A. I did not select him.

Q. Who did?

A. My father.

Q. Did you ever meet Mr. Herman?

A. Once.

Q. Don't -- don't tell me what you discussed with him. Where did you meet him?

A. I was shopping in my -- he showed up at my friend's house.

Q. Whose house?

A. My friend [redacted].

Q. Is that [redacted] from the Quarterdeck Tavern?

A. Yes.

Q. And did you have a meeting with him at [redacted] house?

A. Yes. I guess you could say that.

Q. And who else was there?

A. My Aunt [redacted].

Q. And what was that meeting about?

MR. LEOPOLD: Objection. That calls for attorney/client privilege.

BY MR. TEIN:

Q. What discussions did you have with

Mr. Herman in the presence of [redacted]?

A. None.

Q. What discussions did you have in the presence of her aunt?

A. Of my aunt?

MR. GOLDBERGER: It's the witness's aunt.

BY MR. TEIN:

Q. Oh, of your aunt.

A. The only one that we've ever discussed or ever had.

Q. And so you were in a conversation with Mr. Herman and your aunt?

A. Yes, sir.

Q. And you discussed privileged matters during that conversation?

MR. LEOPOLD: Object to the form. I think you might have to educate her on that question.

BY MR. TEIN:

Q. You discussed the lawsuit?

A. Yes.

Q. Did [redacted] tell you about any conversations that she had with Mr. Herman?

A. As far as I'm concerned, she's never spoken or she's never had a conversation. She only opened the door and then left. She's the one who answered the door.

Q. Why did the meeting take place at [redacted] house?

A. I spent the night that night at her house.

Q. And when was this?

A. A while ago.

Q. How long ago?

A. A month and a half ago. I'm guessing.

Q. A month and a half ago?

A. Uh-huh.

Q. So was it before of after Mr. Herman filed the fifty-million-dollar lawsuit against Epstein?

A. After.

Q. Did you meet with an FBI agent named Nesbitt Kurkendall, a woman?

A. I don't know.

Q. Did Ms. Kurkendall speak to you about getting reimbursed from Mr. Epstein?

A. I've never had a discussion with anyone about getting reimbursed from Mr. Epstein.

Q. Have you met with an agent named Jason Richards?

A. Not to my knowledge.

Q. How about an agent named Tim Slater?

A. No, sir.

Q. How about an agent named Junior Ortiz?

A. No.

Q. And we've learned that many of the girls, some of whom are as old as 23, were told by the government that they would get money at the end of the criminal prosecution. Does that sound familiar to you?

A. No, sir.

Q. Other than Mr. Leopold here -- I'm not asking about Mr. Herman either --

A. Uh-huh.

Q. -- did anyone ever discuss with you that you could get reimbursement for your damages?

A. No, sir.

Q. Did you or any member --

MR. LEOPOLD: Are you referring to a criminal matter or a civil matter?

BY MR. TEIN:

Q. Did you or any member --

MR. LEOPOLD: Excuse me. Let me object to the form of the question.

BY MR. TEIN:

Q. Did you or any member of your family ever get a victim notification letter from anyone?

A. I no longer live at that residence and I wouldn't know.

Q. So your testimony is that you have never

received a victim notification letter, correct?

rect.

Q. And your testimony is that you don't know if your parents have ever received a victim notification letter, correct?

A. Correct.

Q. Have you given any evidence to prosecutors or law enforcement in this case?

A. What do you mean by evidence?

Q. Well. Anything that you can touch or feel.

A. No.

MR. LEOPOLD: Objection to the form of the question.

BY MR. TEIN:

Q. So you haven't given anything physical --

A. No.

Q. -- any item to any prosecutor, police officer or law enforcement agent, correct?

A. My cell phone four years ago or three years ago, but that's it.

Q. You gave your cell phone to whom?

A. [redacted] Pagan.

Q. Did she keep it?

A. Ask her.

Q. You gave it to her and then you didn't get

it back at the end of the meeting?

A. No. They -- yeah. No. They have it. I'm guessing. I don't have it.

Q. How much money are you hoping to get out of Mr. Epstein?

MR. LEOPOLD: Objection to the form of the question. Attorney/client privilege.

BY MR. TEIN:

Q. How much money are you hoping to get, you, yourself, hoping to get out of Epstein?

MR. LEOPOLD: Same. Same objection, attorney/client privilege.

Don't answer the question.

BY MR. TEIN:

Q. I'm not asking about what your lawyer told you.

MR. LEOPOLD: I'm instructing her not to answer the question, because any of those conversations involve her counsel.

MR. TEIN: Certify that.

MR. LEOPOLD: Please.

.....CERTIFIED QUESTION.....

BY MR. TEIN:

Q. Now, [redacted] you lied to get out of this deposition, didn't you?

A. No, sir.

Q. You didn't want to come to court today and tell the story that you had told to the police under oath, did you?

MR. LEOPOLD: Object to the form of the question. Lack of foundation, predicate.

THE WITNESS: No. I have no problem coming here and talking to you.

BY MR. TEIN:

Q. And to avoid getting served with a lawful subpoena, you lied about your name, didn't you?

A. No.

Q. And in fact, just lying yourself wasn't enough, was it?

MR. LEOPOLD: Objection to the form of the question.

Don't answer it. It's not a question.

Object to the form of the question. Lack of foundation.

MR. TEIN: Are you instructing her not to answer?

MR. LEOPOLD: I am.

MR. TEIN: Certify it.

MR. LEOPOLD: Please.

.....CERTIFIED QUESTION.....

BY MR. TEIN:

Q. You asked your co-workers --

MR. LEOPOLD: It's vague and ambiguous.

BY MR. TEIN:

Q. You asked your co-workers at the Quarterdeck Tavern to lie for you, didn't you?

A. No. I informed my boss about what was going on and he told me that he would help in any way that he can.

Q. Okay. You got your friend [redacted] to lie by switching name tags with you, correct?

A. Incorrect. It was a coincidence that same night she was not wearing her name tag; she was wearing mine. But I was also not wearing -- I was wearing my name tag. Everyone switches name tags. It just so happens it was a coincidence that same night the people came with the papers.

MR. TEIN: Will you put up Exhibit 18-001?

MR. GOLDBERGER: And mark 18-001 for identification purposes to this deposition.

MR. LEOPOLD: None of them have been marked yet. Can we mark them and put them as attachment to the depositions? Because I think you've shown three photos now. And this is the only one that

has been marked for identification yet.

BY MR. TEIN:

Q. [redacted] --

MR. LEOPOLD: Hold on just a second. Just so the record is clear --

MR. TEIN: I'm not speaking to you.

MR. LEOPOLD: Okay. Then don't speak to me then. But I'll speak to Mr. Goldberger, perhaps.

But at least for the record, can we put on the record what the previous two photographs were marked for identification?

MR. GOLDBERGER: We will make sure that the record is clear at the end of the deposition so that there's no ambiguity.

MR. LEOPOLD: Thank you.

BY MR. TEIN:

Q. [redacted] I've put a photograph marked 18-001 up on the screen. Do you see that?

A. Yup.

Q. Who is that in the photo?

A. [redacted] on the left and me on the right.

Q. [redacted] right?

A. Yes.

Q. [redacted] your friend at the Quarterdeck Tavern, right?

A. Yes.

Q. [redacted] your friend, who you say the day that the process servers went to serve you with a subpoena for this deposition, just happened -- just by coincidence, was wearing your name tag?

A. Yes, sir.

Q. And just by coincidence, you were wearing her name tag, correct?

A. Yes.

Q. Your testimony under oath is that's just a coincidence, right?

A. Total honesty.

Q. It just happens to be the day that you were going to be served with a subpoena, correct?

A. That wasn't the first day that --

MR. LEOPOLD: [redacted] just answer the question. It calls for a yes or no.

THE WITNESS: Yes.

BY MR. TEIN:

Q. You said that wasn't the first day you were going to be -- you thought you were being served with a subpoena, correct?

A. Correct.

Q. You knew before the day that you switched name tags with [redacted] that the process servers were

looking for you, didn't you?

A. No. I knew --

MR. LEOPOLD: Just answer it. It calls for a yes or no.

THE WITNESS: Okay. No.

BY MR. TEIN:

Q. Now you can explain the answer that your counsel stopped you from explaining.

A. Okay. I work at Quarterdeck and people were telling me that people were looking for me. So yes, I was aware that people were searching for me. But I had no idea who they were or what their intentions were. But I thought they were just people I didn't want to talk to. So I just didn't want to talk to them. And every time they'd come to work I wasn't there. And so happens the night that they came in me and my friend switched name tags. No big deal.

Q. That's a lie, isn't it?

MR. LEOPOLD: Objection. Don't answer that question. That's harassment and I will not allow it. He could ask the questions and we'll allow a jury to make that determination, but not counsel. I will not allow her to answer that question.

MR. TEIN: Certify it.

MR. LEOPOLD: I'll certify it.

.....CERTIFIED QUESTION.....

She's answered that question. She's explained it five times already. The fact that Counsel doesn't like the answer, that's a different query.

MR. TEIN: Stop making speaking objections.

MR. LEOPOLD: I'm not. I'm not going to put up with it, because it's in appropriate, Jack, and you know it. I will not allow Counsel to berate a witness, whether it's in a criminal case or a civil case, whether my client or --

MR. TEIN: Calm down.

MR. LEOPOLD: Excuse me.

No, I'm not going to allow it. That is not proper.

MR. GOLDBERGER: Okay.

MR. LEOPOLD: If he wants to say that she's lying after asking it five times and her explaining in great detail, he can do that. But I'm not going to allow her to answer, nor be harassed by him. It's improper.

MR. GOLDBERGER: Okay. But your response that Counsel doesn't like the question -- or doesn't like the answer -- just let me finish.

MR. LEOPOLD: Absolutely. I wasn't going

to interrupt you.

MR. GOLDBERGER: Just requires us to say we like the answer to that question. And it's not you and I or you and Mr. Tein who are testifying here. It's the witness.

MR. LEOPOLD: Fine. But after the sixth time of asking the same question and then coming back and pointing a finger at her and saying, "You're a liar" --

MR. TEIN: That didn't happen.

MR. LEOPOLD: That's fine. But I'm not going to allow her to answer that question, because she's answered that same question and has explained it.

Now Counsel might be sitting there rubbing his head with a migraine. That's his problem. But if he can't ask a question appropriately in a professional manner, we will leave. I will not allow her to be berated like that.

MR. GOLDBERGER: Actually, we're very happy with the answer.

MR. LEOPOLD: That's great.

MR. GOLDBERGER: Do you want us to get into that?

MR. TEIN: Ted --

MR. LEOPOLD: This is really big stuff that you're going through. But that's fine; just ask your question and move on. But do it one time. If you don't understand it, I'll let you follow up, but I'm not going to allow you to ask the same question time and again and then call her a liar. Just ask the question, get the answer and move to the next subject matter.

MR. TEIN: Ted, I'm sitting right across the table from you.

MR. LEOPOLD: Yes, sir.

MR. TEIN: Please be quiet. Don't yell.

MR. LEOPOLD: I will not be quiet.

MR. TEIN: Stop yelling.

MR. LEOPOLD: Lewis, when I'm yelling you'll know it. I will not --

MR. TEIN: My name is not Lewis.

MR. LEOPOLD: I thought your first name was Lewis, Mr. Tein.

MR. TEIN: You watched me for three days at the evidentiary hearing where you sat in the back of the courtroom. You should know who I am.

MR. LEOPOLD: Well, that's the impression you must have made in the courtroom.

I will not be quiet.

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MR. TEIN: That's obnoxious. Stop being obnoxious. It's stupid. Let's go ahead with the questions.

MR. LEOPOLD: I will make the record.

MR. TEIN: Let's get on with the questions.

MR. LEOPOLD: Do you need a break?

(Thereupon, a recess was taken.)

BY MR. TEIN:

Q. Okay. [redacted] after you told your manager at the Quarterdeck Tavern everything that was going on and he told you he would help you any way he could, he hid you in the kitchen from the process servers, correct?

A. Incorrect.

Q. Isn't it true that lying to avoid service is a meaningless lie to you, [redacted]

A. Incorrect.

Q. What is your manager's name?

A. I have three. Would you like to know all --

Q. Who's the one who lied for you?

A. [redacted]

Q. And what did [redacted] do to lie for you?

A. Said I wasn't there.

Q. And who did he tell wasn't there?

A. Ask him.

Q. Where were you when [redacted] told this someone that you were not at the Quarterdeck Tavern?

A. Eating nachos.

Q. At the Quarterdeck Tavern?

A. Yes.

Q. What did you do so that [redacted] would lie to the process servers for you?

A. Nothing.

Q. You just got him to lie for you, didn't you?

A. No. I had no influence on him saying I wasn't there.

Q. He took that upon himself?

Isn't it true that Mr. Epstein's process servers had to ask the police to get you out of the restaurant so that they could serve you?

MR. LEOPOLD: Objection. Lack of foundation, predicate.

BY MR. TEIN:

Q. You can answer the question.

MR. LEOPOLD: If you know. Don't guess.

THE WITNESS: No. Can you repeat the question?

MR. TEIN: Don't coach.

MR. LEOPOLD: Don't guess.

MR. TEIN: That's a coaching.

MR. LEOPOLD: No. That's an instruction to the client.

MR. TEIN: No. You don't do that.

THE WITNESS: Can you repeat the question?

MR. LEOPOLD: Let me just state for the record --

BY MR. TEIN:

Q. Once the police -- isn't it true that Mr. Epstein's process servers had to ask the police to get you out of the restaurant so that they could serve you?

A. Incorrect. My boss called the police.

Q. And once the police showed up, to stop you from lying to avoid service, you made up another lie that the process servers had harassed you. Isn't that correct?

A. Incorrect.

Q. You lie all the time, don't you?

MR. LEOPOLD: Objection.

THE WITNESS: Incorrect.

BY MR. TEIN:

Q. You have a MySpace page, don't you?

A. No longer do I have a MySpace page. I deleted it.

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Q. When did you delete your MySpace page?
A. A couple days ago.
Q. Who told you to take your MySpace page down a couple of days ago?
A. Nobody. I'm sick and tired of MySpace.
Q. You all of a sudden got sick and tired of MySpace and just a few days before this deposition you decided to delete your MySpace page, correct?
A. Correct.
Q. Is that your testimony under oath?
A. Yes.
Q. Did you take your MySpace page down because you thought the government might subpoena it?
A. Incorrect.
Q. Hadn't your MySpace page been up for over three months before you took it down?
A. Correct. But I also had made tons of MySpaces over the last years. I just get tired of them and delete them because -- drama -- and make new ones.
Q. We're going to talk about that.
So you deleted your MySpace page after you were already under subpoena for this deposition, correct?
A. Correct.
Q. What about the MySpace page didn't you want us to see, [redacted]

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A. Nothing.
Q. Well, we're going to come back to MySpace in a second.
A. You do that.
Q. [redacted] I'm going to ask you some questions about why you lie about your age so often, okay?
MR. LEOPOLD: Objection to the form. Argumentative.
BY MR. TEIN:
Q. You lie about your age all the time, don't you?
MR. LEOPOLD: Objection, argumentative.
THE WITNESS: Incorrect.
BY MR. TEIN:
Q. You lie about your age to get body piercings, don't you?
A. Incorrect.
Q. You have body piercings, don't you?
A. Yes.
Q. You have four body piercings; isn't that right?
A. Five.
Q. Other than the piercings on your ears -- I'm not talking about that --
A. Oh, then no; just one.

Q. And where is the one body piercing?
A. Belly.
Q. When did you get that?
A. For my birthday, with my stepmother and my father.
Q. And when was that?
A. When I was 14.
Q. Okay. So you had that body piercing when you met Epstein, correct?
A. It might have been, or maybe that -- yeah, either my 14th birthday or my 15th. I honestly don't remember.
Q. Now you've lied about your age to get into bars by using driver's licenses that aren't yours, correct?
A. Incorrect.
Q. Are you swearing under oath that you've never done that?
A. Yes, I swear under oath.
Q. And you've lied about your age to buy beer, correct?
A. Incorrect.
Q. You're swearing under oath that you've never lied to stores about your age?
A. I've never lied to a store about my age or

anything.

Q. You try to look much older than you are, don't you?

A. Incorrect.

Q. And you've lied about your age on your MySpace pages, don't you?

A. Incorrect.

Q. All right. Let's look at Exhibit 26-01 one.

MS. BELOHLAVEK: 26-001?

MR. TEIN: Yes.

BY MR. TEIN:

Q. On this page you lied to everyone that you were 18, didn't you?

A. Correct.

Q. Let's go to Exhibit 33.

MS. BELOHLAVEK: That's 33-001?

TEIN: Correct.

BY MR. TEIN:

Q. On this page you lied to everyone that you were 19, didn't you?

A. Incorrect.

MR. LEOPOLD: Just answer the question.

THE WITNESS: Oh, incorrect.

BY MR. TEIN:

Q. Now you can explain your answer.
A. I know that I have seen all of these and I know that this one is mine.
Can you go down?
MR. LEOPOLD: Just for the record, you're pointing to the photo.
THE WITNESS: I'm pointing to --
BY MR. TEIN:
Q. You're pointing to the one where it says your age is 18?
A. Correct.
Q. That's yours, right?
A. Correct. That's mine from a couple years ago that I have not been on, because I don't use that. Please keep going down, please. And I think that's it, because there's no one -- just that one is mine.
Q. So the one you pointed to where it says your age is 18, that's yours, correct?
A. Correct.
Q. And when you wrote 18 as your age on your MySpace page, that was a lie, wasn't it?
A. Correct.
Q. Did you lie about your MySpace page back then because you couldn't post on MySpace unless you were 18?

A. Correct. There was a rule many years ago that you had to be 18 to have a MySpace.

Q. So you lied about your age so you could post on MySpace, right?

A. Yes.

Q. Let's go back to the top one on this page, 33-01.

Are you testifying now under oath that this MySpace page where the headline says, "Twins do have more fun," and the location is given as Lox, abbreviation for Loxahatchee, and the age is 19, and it says [redacted] is it your testimony that you did not post that?

A. Correct.

Q. Now let's go back to the one that you were pointing to before on this page, where it says your age is 18 and you lied about your age to post MySpace, okay?

A. Uh-huh, yes.

Q. All right. Why did you finally put your true age on your MySpace profile four days before you were scheduled to testify before the Grand Jury?

A. I don't know what you're talking about.

MR. LEOPOLD: If you don't understand, ask him to ask the question again.

MR. TEIN: Don't coach.

THE WITNESS: I don't know which MySpace you're talking about.

BY MR. TEIN:

Q. The MySpace page that you're just pointing to, where it says you were 18.

A. Yes.

Q. And you were lying about your age, right?

A. Uh-huh.

Q. Why did you finally post your true age on your MySpace profile --

A. Uh --

Q. -- four days before you were scheduled to testify before the Grand Jury?

A. I honestly don't know which MySpace, because I've had like a bazillion MySpaces, and in that year, I had two, that one and another one, and that one's been deleted. So I don't know which one you're referring to.

Q. You remember that you changed your age on your MySpace page from 18 to your true age just four days before you went and testified in the Grand Jury?

A. No.

Q. You don't remember that.

A. No.

Q. Do you remember Detective Recarey? Did you

ever meet a Detective Recarey?

A. I don't know the names.

Q. How many different detectives have you met with on this case from Palm Beach?

A. Probably a good six or seven, maybe.

Q. Did one of the detectives tell you before you testified in the Grand Jury that you should take your MySpace age and put your true age?

A. No.

Q. Didn't Detective Recarey have to come to your house to pick you up to get you to testify in front of the Grand Jury?

A. Possibly; maybe because I didn't have a ride; I was only 14 or 15 at the time.

Q. Your mom didn't drive you?

A. No.

Q. Stepmom didn't drive you?

A. I think my dad. Oh, my dad; my dad drove me.

Q. Your dad drove you?

A. Yes, sir.

Q. So your testimony is Detective Recarey did not drive you, correct?

MR. LEOPOLD: Objection. /asked and answered.

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THE WITNESS: No. I'm pretty sure my dad drove me, because he was there with me.

BY MR. TEIN:

Q. Did any detective tell you to change your age on your MySpace page, to put your true age?

A. No, sir.

Q. Now you also lied on your MySpace page about your income, didn't you?

A. Yes.

Q. And you lied, saying that you made a quarter million dollars a year and higher, correct?

A. As a joke, yes.

Q. That was a lie, wasn't it?

A. Yes.

Q. And you also lied on your MySpace page, saying that you were married, didn't you?

A. Possibly. And that might have been an error on my part.

Q. Now you also lie to the police, don't you?

A. No.

Q. Well, you lied to the police in your tape-recorded statement that you gave to Detective [redacted] Pagan three years ago, didn't you?

A. To my knowledge, no, I did not.

Q. Well, you lied to the police when you

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accused Mr. Epstein of attempting to murder your father, didn't you?

A. No. I never heard a statement saying that Mr. Epstein tried to murder my father.

Q. You made that statement, didn't you?

MR. LEOPOLD: Do you have a statement to show her? That's been asked and answered.

MR. TEIN: I'm sorry. I didn't hear the witness' answer, Mr. Leopold.

BY MR. TEIN:

Q. [redacted] you told the police, didn't you, that Mr. Epstein almost killed your father, didn't you?

A. No.

Q. Three years ago, before Mr. Epstein even knew about this investigation, you told the police that Epstein had "already come to my dad's house and did something to my dad's tires and my dad almost died. I didn't want my dad to get hurt, because Jeff already almost killed him."

Didn't you say that?

A. Not to my knowledge or recollection. I have never said anything like that.

Q. That would have been a complete lie, wouldn't it have been?

A. Yeah.

Exhibit 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO. 08-80119-CIV-MARRA

JANE DOE, et al.,

Plaintiffs,

vs.

JEFFREY EPSTEIN,

Defendant.

WEST PALM BEACH, FLORIDA

JUNE 12, 2009

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE KENNETH A. MARRA,
UNITED STATES DISTRICT JUDGE

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REPORTED BY:	LARRY HERR, RPR-RMR-FCRR-AE Official United States Court Reporter Federally Certified Realtime Reporter 400 North Miami Avenue, Room 8N09 Miami, FL 33128 305.523.5290

THE COURT: We are here in the various Doe vs. Epstein cases.

May I have counsel state their appearances?

MR. HOROWITZ: Adam Horowitz, counsel for plaintiffs Jane 2 through Jane Doe 7.

THE COURT: Good morning.

MR. EDWARDS: Brad Edwards, counsel for plaintiff Jane Doe.

THE COURT: Good morning.

MR. GARCIA: Good morning, Your Honor. Sid Garcia for Jane Doe II.

THE COURT: Good morning.

MR. WILLITS: Good morning, Your Honor. Richard Willits, here on behalf of the plaintiff C.M.A..

THE COURT: Good morning.

MS. EZELL: Good morning, Your Honor. I'm Katherine Ezell from Podhurst Orseck, here with Amy Adderly and Susan Bennett, and I believe my partner, Bob Josefsberg, is going to appear by telephone.

THE COURT: Mr. Josefsberg, are you there?

MR. JOSEFSBERG: I am, Your Honor.

THE COURT: Good morning.

MR. JOSEFSBERG: Good morning.

THE COURT: All right. Do we have all the plaintiffs stated their appearances? Okay.

Defense?

MR. CRITTON: Your Honor, Robert Critton on behalf of Mr. Epstein, and my partner, Michael Burman.

THE COURT: Good morning.

MR. GOLDBERGER: Good morning, Your Honor. Jack Goldberger on behalf of Mr. Epstein.

THE COURT: I see we have some representatives from the United States Attorney's Office here.

MS. VILLAFANA: Good morning, Your Honor. [redacted] Villafana for the U.S. Attorney's office.

THE COURT: Good morning.

Who else do we have on the phone?

MR. CRITTON: Your Honor, we have two members of the defense team are on the phone, also.

THE COURT: Who do we have on the phone?

MR. WEINBERG: Martin Weinberg. Good morning, Your Honor.

MR. LEFKOWITZ: Jay Lefkowitz. Good morning, Your Honor.

THE COURT: Good morning.

I scheduled this hearing for very limited issues which, as you all know, there's been a motion by Mr. Epstein to stay the civil proceedings against him. The one issue I have concern about is Mr. Epstein's contention or assertion that by defending against the allegations in the civil proceedings, he

may expose himself to an allegation by the United States in the non-prosecution agreement that he's violated that agreement and therefore would subject himself to potential federal charges.

I had asked for some briefing on this. I asked the United States to present its position to me. And I received the Government's written response, which I frankly didn't find very helpful. And I still am not sure I understand what the Government's position is on it.

So first let me hear from Mr. Epstein's attorneys as to what do you believe the concern is. I don't believe the non-prosecution agreement has ever been filed in this Court; am I correct?

MR. CRITTON: To my knowledge, Your Honor, it has not.

THE COURT: So I don't believe I've ever seen the entire agreement. I've seen portions of it.

MR. EDWARDS: Your Honor, I believe that it was filed under Jane Doe 1 and 2 vs. United States of America, case under seal in your court.

THE COURT: Okay.

MR. EDWARDS: In a separate case.

THE COURT: In that case, okay. Was it actually filed in that case?

MR. EDWARDS: I filed it under seal.

THE COURT: In any event, what's Mr. Epstein's concern about if you defend the civil actions, you're going to expose

yourself to a claim for a breach by the United States of the non-prosecution agreement?

MR. CRITTON: Robert Critton.

Your Honor, our position on this case is, I'd say is somewhat different. When this issue originally came before the Court, as you are aware prior to my firm's involvement in the case, there was a motion filed on behalf of Mr. Epstein seeking a stay. And I think it was in Jane Doe 102 and then subsequently Jane Doe 2 through 5 because all of those cases were filed on or about the same time.

And at that time the Court looked at the issue and it was based upon a statutory provision at that time. And the Court said I don't find that it's applicable, or for whatever reason I think the Court said I don't consider that to be a pending proceeding or a proceeding at that particular time.

In that same order, which was in Jane Doe 2, I believe it's -- not I believe, I know it's docket entry 33, the Court also went on to talk about at that particular point in time dealt with the issue of the discretionary stay.

And the Court said at that time, I'm paraphrasing, but the Court also does not believe a discretionary stay is warranted. And what the Court went on to say is that if defendant does not breach the agreement, then he should have no concerns regarding his Fifth Amendment right against self-incrimination.

The fact that the U.S. Attorney or other law enforcement officials may object to some discovery in these civil cases is not in and of itself a reason to stay the civil litigation, so that any such issue shall be resolved as they arise in the course of the litigation.

And I would respectfully submit to the Court that the position that the Government has taken in its most recent filings changes the playing field dramatically. Because what the Government in essence has said as distinct from the U.S. saying is, well, we object to some discovery, or we may object to some discovery in the civil cases.

What they have, in essence, said is if you take some action, Mr. Epstein, that we believe unilaterally, and this is on pages 13 and 14 of their pleading or of their response memo to the Court's inquiry, they say if Mr. Epstein breaches the agreement. They said it's basically like a contract, and if one side breaches, the other side can sue.

In this instance what the Government will do is if we believe that Mr. Epstein has breached the agreement, we'll indict him. We will indict him. And his remedy under that circumstance, which is an incredible and catastrophic catch 22 is, we'll indict him and then he can move to dismiss. That's a great option.

In this particular instance my mandate in defending -- and that's a dramatic change in the Government's position,

because the Government is not saying, and the Court was pretty specific in what you asked the Government for in its response is, in essence, and it's the same question in a more limited fashion you're posing today is whether Mr. Epstein's defense of the civil action violates the NPA agreement, the non-prosecution agreement, between the U.S. and Mr. Epstein.

And the Government refuses to answer that question. They won't come out and say, yes, it will, or no, it won't. What they're doing is they want to sit on the sideline, and as their papers suggest is, they want us to lay in wait and that if, in fact, they believe he violates a provision of the NPA as it relates to the defense of this case or these multitude of cases, then they can come in and indict him -- no notice, no opportunity to cure.

We don't think that's what the NPA says, but that's certainly what their papers say. We'll indict him, no notice, no opportunity to cure. We will indict him, and his remedy under that circumstance is that he can move to dismiss the indictment.

Well, that's great except Mr. Epstein, his mandate to me and I know his mandate to his criminal lawyers, is: Make certain I don't do anything, in particular in these civil cases that would in any way suggest that I am in willful violation of the NPA.

Now, in the Court's prior ruling in the docket entry

33, certainly some aspects of the NPA are within Mr. Epstein's control. There's no question about that. But aspects that relate to the defense of these cases, either in terms of the civil lawyers who are defending these, I think there's 12 or 13 pending cases in front of you, there's another four cases in the state court, is the risk is substantial, it's real, and it presents a chilling effect for the civil lawyers in moving forward to determine whether or not we're taking some action that in some way may be a violation of the NPA.

And the Government's, again, refusal or non-position with regard to past acts that have been taken in the civil case with regard to the defense or future acts that we may take with regard to these contested litigation casts an extraordinary cloud of doubt and uncertainty and fear that the defense of these cases could jeopardize Mr. Epstein and put him in the irreparable position of violating the NPA and then subsequently being indicted.

In this particular instance, again, Mr. Epstein has no intention of willfully violating the NPA, but it's of great concern to him. And I'd say with the position that the Government has taken, no notice, no cure period, no opportunity to discuss. Again, we think that's not what the NPA provides, it's not what the deal was between the two contracting parties, the United States and Mr. Epstein. But that's clearly what their papers say under the circumstances, and it would create

this irreparable harm to Mr. Epstein under the circumstances.

In essence, we're left with a catch 22 in defending the civil cases. We have a mandate to take no action, to take any action which may be deemed to be a violation of the NPA, either in the past or in the future, which would in any way risk Mr. Epstein being indicted by the United States.

He has the clear risk of an indictment based upon the papers that the Government filed. It's real, it's not remote, and it's not speculative. It chills the action of the defense in this instance of both Mr. Epstein and his attorneys in trying to defend these cases and decide under the circumstances can we do this, can we take this position with regard to depositions, can we take this legal position with regard to motions to dismiss, with regard to responses, with regard to replies?

And we send out paper discovery. Is this in some way if we contact someone who may be an associate of these individuals as part of our investigation, is that potentially in any way a violation of the NPA? Again, we don't think so.

And, obviously, again, my direction has been from my client: Don't take any action that would result in me being indicted under the NPA. Well, that's great. But, generally, civil lawyers or civil lawyers in defending a personal injury case or a tort case, which is exactly what these are, and from a practical standpoint, we use various tools to do discovery.

They're standard. They're specific. They're very temporary. Very typical.

But in this instance, as the Court knows, things are not typical with regard to this case in any way, shape or form. We can't even serve subpoenaes, there's objections and there's -- we can't even serve objections to third parties so we can obtain documents unless we have to filter it through the plaintiffs' attorneys. They won't allow us to use their clients' names, even in a subpoena that would never be filed in the court.

How do we do a deposition of a third party? We wanted to take the deposition of Jane Doe 4. Well, who is she? Well, we can't tell you that. Well, who's the defendant? Well, we can't tell you that because nobody wants anybody to know anything about the case. They want to present it strictly through rose-colored glasses.

And in this particular instance, we simply can't defend this case or take certain action with the spector hanging over us that, in fact, the Government may deem it to be a violation of the NPA, because very clearly in their response papers, they don't say. They say we don't take the position, and then they take a substantial position is we think there's not all that substantial factors that would entitle him to a stay.

Except for the one major issue which the Court posed

in the question is, is can he defend these cases? That's what I really want to know. Can he defend these cases and, in essence, what he has done in the past or what his defense team has done in the past and what they're going to do in the future, can you give him, Epstein, assurances that the Government under this situation, whatever he does, based on advice of counsel, that that cannot be a willful violation of the NPA, which they can -- they, the U.S. -- can then turn around and say that's a violation of the agreement and, therefore, we're going to go proceed to indict you under the circumstances.

Our position is, Your Honor, is that the U.S. has now cavalierly suggested that, as they did in picking up on the court's docket entry or prior order, is, look, compliance with the NPA is solely up to Mr. Epstein. In this type of balance of equities, it doesn't speak in favor of a stay.

Well, that's great. And maybe that was the position back in '08, on August 5th of '08, when the issue came up in front of the Court with regard to the initial stay.

But the Government's papers under these circumstances suggested a very different set of circumstances. Their own unilateral, which is the issue that we argued in the motion for stay, is that the Government's position is that we can unilaterally indict this man if we think he's breached the NPA.

We don't think that's right, but we have no buffer

between us and the Government. They'll say, and as the Court knows, the Government has substantial power. The Government does what it wants. Most of the time hopefully they're right. Sometimes they make mistakes.

But in this particular instance, my client has rights. We think that there's notice provisions, we think there's cure provisions under the NPA. That's not what their paper says under the circumstances.

And what we'd like to know from the Government, and maybe the answer is basically what the Court asks is, let the Government come forward today and say, based on the knowledge that we have, or as of today's date, June 12th, 2009, we, the Government, agree that there is no set of circumstances, not that we're not aware of, but as of today's date, there is nothing that exists that would be a violation of the NPA.

THE COURT: Well, that's way beyond what I'm interested in. I don't know what Mr. Epstein may have done outside the context of defending this case that may constitute a violation. And if he has done something outside the context of defending this case that's a violation, I don't care. That's between the United States and Mr. Epstein.

I'm only concerned about whether anything he does in defending these civil actions is going to be a violation of the non-prosecution agreement. If he has done something else, it's none of my business, and I don't care, and I'm not going to

even ask the Government to give you an assurance that he hasn't done anything that might have violated the agreement up till today. I'm only interested in defending these civil actions.

MR. CRITTON: Then I would respectfully submit to the Court that the Government be asked in that limited context, are they as of today, whether there were or not, but as of today is there anything that has been done or will you take the position, the United States, that any position that Mr. Epstein has taken with regard to defending these civil cases is in any way a violation of the NPA?

THE COURT: Well, I'm not sure what they're going to say, but that might -- that cures the problem up to this point. But then we have to deal with what's going to happen from here on in. And that's another issue that we have to deal with.

So I understand your position.

But has anyone suggested to you on behalf of the United States that there is something that you've done in defending this case that they believe may or could be construed as a violation of the non-prosecution agreement? Has anyone pointed to anything that you've done? For example, the fact that you've wanted to take their -- I don't know if you've noticed depositions or not in this case, but if you've sent notice of taking deposition, if you sent requests for production of documents, if you sent interrogatories, if you issued third party subpoenas? Is anything you've done thus far

in the context of this case been brought to your attention as a potential violation?

MR. CRITTON: I have received no notification nor am I aware that we've received any notification of any action that we have taken today. As I suggested to the Court, I don't know when they've done or not. And in their papers they suggested, well, we don't know everything that's gone on in the civil litigation.

But from a practical standpoint, it was a number of comments that were made in their papers is, we can indict, we can see if there's a breach.

Judge, I may have some --

THE COURT: Before you go on.

MR. CRITTON: I'm sorry.

THE COURT: You've focused a great deal on the Government's response to my inquiry as supporting your position that you're in jeopardy. But you've made the suggestion, even before this brief was filed, that defending the case was going to potentially result in an assertion or allegation that you breached the non-prosecution agreement.

So what was it that caused you to make that initial assertion? Because that's what caught my attention, was not -- this brief that the Government has filed was in response to something that you filed initially in your most recent motion for a stay which raised the issue.

So what was it that gave you some concern to even raise the issue that defending this case is going to constitute a breach?

MR. CRITTON: Because there are other instances where counsel other than myself, not in the civil aspects, where allegations have been made and letters have been sent by the United States suggesting that there's been a violation of the NPA. And under those circumstances, some notification was provided.

THE COURT: Did it have anything to do with defending the civil actions?

MR. CRITTON: It did not.

THE COURT: So then why was that issue raised by you in the first instance?

MR. CRITTON: Because of the prospect that the defendant could take, that the U.S. would take the position under the circumstances that a position that we took with regard to the contested litigation may well impact, that the Government may have a very different view of what the interpretation of the agreement is.

And as an example is a number of the parties, and I know the Court doesn't want to get into a discussion, the issue is, is under 2255 is that from the defendant's perspective the deal that was cut on that, it was a very specific deal. It dealt with both consensual and contested litigation. It dealt

with a secret list of individuals who we had no idea who was on the list, and a commitment that he would under certain circumstances be required to pay a minimum amount of damages, which our position is under 2255 based upon the statute that was in effect at the time, a $50,000 as to anyone who wanted -- who came forward who was on the list and met certain criteria.

The position that now has been asserted by a number of the plaintiffs under the circumstances, and it's been pled, and actually a number of the complainants is, is Epstein agreed, and they cite to a letter that was sent by Ms. Villafana from the Government, that says he has to plead guilty or he can't contest liability. That may be true under very, very limited or specific circumstances.

But what the plaintiffs have done in a number of the cases, and these are pending motions, is they've said is, well, we think C.M.A. cases is a good example, they've pled 30 separate counts of 2255 alleged violations. And they're saying under the circumstances is, therefore, we have 2255 violations, there's 30 of them, so 30 times 150, or should be, or whether it's 150, that's the amount of money that we want, so maybe $15 million, or whatever the number is.

Some of the other plaintiffs' lawyers have been even more creative. They've said is, well, we'll agree that it's only one cause of action but that each number of violations; that is, if 20 alleged incidents occurred, that we would

consider to be, or that we will argue are violations, then we can take 20 times the 50, or the 150, depending on which statute is applicable.

So the Government under that set of circumstance could say, and, again, this is one of the reasons that we raised it, they could say, look, our deal with you was that you couldn't contest liability, that you were waiving liability, or your ability to contest an enumerated offense under 2255.

Again, part of the deal was as to an enumerated offense. Okay. Well, what's that mean? What did he plead to? Well, he really didn't plead to anything, which is another issue associated with the 2255. But if the Government comes in and says, no, wait a minute, our position was, is that you're stuck with 2255 and the language within the NPA. And, therefore, whether it's an offense or whether it's multiple offenses or violations or each one represents an individual cause of action, if the Government takes the position that's adverse to what we think the clear reading of the agreement was under those circumstances, they could claim a violation.

And as a result -- and that's one of the reasons we put -- that was the most glaring one to us, so we raised that issue. And then when the Government's response came with regard to, is we can just proceed to indict if we think that there's been a breach of the agreement.

That puts us at substantial risk and chills our

ability to move forward. Thank you, Your Honor.

THE COURT: Thank you. Who wants to be heard from the plaintiffs first?

Is there any plaintiff's attorney who is contending that the defense of these civil actions by Mr. Epstein is going to constitute a breach of the non-prosecution agreement?

MR. JOSEFSBERG: Your Honor, this is Bob Josefsberg. May I speak?

THE COURT: Yes, sir.

MR. JOSEFSBERG: We're not quite confident that any breaches of any agreement, which were third-party beneficiaries, should be resolved by you. We're not saying it shouldn't. But we have not raised any breach of agreement. We think that is between the United States and Mr. Epstein.

What I find incredulous and disingenuous is that Mr. Epstein is saying that he wants a stay because he may be forced into taking actions in the defense of this case that would violate the agreement.

And let me make our position clear on that. If he wants to move to take depositions, interrogatories, production, and they are according to your rulings appropriate, not invasive of the privacy of someone, and they are relevant, then I don't know how those could in any way be violations of the agreement.

What I find hypocritical is that there are two parts

to the agreement that I am a beneficiary of. One of them is that he has agreed that on any action brought in the 2255, he will admit to liability.

And I received on May 26 a motion to dismiss, which we're prepared to respond to and disagree with, but totally contesting liability, saying that the statute doesn't apply because the girls are no longer minors and saying, and this is the great one, saying that the predicate of the conviction under 2255 has not been satisfied.

Now, the understanding that I have is the agreement between the Government and Mr. Epstein was that the Government desired to see these victims made whole, and wanted them to be in the same position as if Mr. Epstein had been prosecuted and pled or convicted. And they would be able to have the predicate of that criminal conviction, which just as a matter of liability would just be introduced as proof that he's done this.

They, under the agreement, are supposed to admit to liability on limited something that's under 2255. He has filed, but since there is no conviction, there can be no civil suit under 2255, with which we disagree. But it is totally in opposite of the NPA.

The second part is there are many young ladies, and this perhaps he can use this to his great advantage, who are humiliated about this entire situation. Some of them won't

come forward.

We were appointed by Judge [redacted] as a Special Master to represent these young ladies. And some of them don't even want to file suit. They don't even want to be known as Jane Doe 103. They don't want any of the risks for these motions that are pending.

And part of the agreement was that if we represented them and they settle, Mr. Epstein would pay our fees. And he has written us as of yesterday that he is under no obligation to pay our fees on settling cases.

Now, those two matters, I believe, may be breaches. But I am not asking this Court at this time to do anything about them. Nor am I telling the Government, I'm not running to the Government and saying indict him because I want you to pressure him to do what he agreed to.

I'm a third-party beneficiary for that agreement, and I may move to enforce certain parts of it. But as far as the issue of staying the litigation, that is the exact opposite of the intent and the letter of the NPA. The purpose of the NPA was so that these 34 young ladies, these victims who have been severely traumatized, may move on with their lives.

And to stay this action would be the exact opposite of the purpose of that agreement and would be horrible psychologically for all of my clients.

THE COURT: Mr. Josefsberg, I understand your

position. And I don't want to argue the merits of whether a stay should or should not be granted.

I'm just trying to understand what the ground rules are going to be if I grant a stay or if I deny a stay. And I've already denied a stay once. I have to decide this current motion, and I just want to know what is going to happen if I deny the stay in terms of Mr. Epstein's exposure under the non-prosecution agreement. That's my concern.

So if you're telling me that you're not going to urge the United States, on behalf of any of your clients, to take the position that he's breached the agreement because he's taking depositions, because he's pursuing discovery, because he's conducting investigations that anyone in any other type of civil litigation might conduct with respect to plaintiffs that are pursuing claims against a defendant, that those typical types of actions, in your judgment, are not breaches of the agreement and that he can go forward and defend the case as any other defendant could defend, and you're not going to run to the United States and say, hey, he's breaching the agreement by taking depositions and he's breaching the agreement by issuing subpoenas to third parties in order to gather information necessary to defend, then I don't have a problem. But if he's going to be accused of breaching the agreement because he sends out a notice of deposition of one of your clients, how is he supposed to defend the case?

MR. JOSEFSBERG: Your Honor, you're totally correct. He can depose my client. That's not a problem. But the problem is that these are not typical clients and this is not a typical case. He has written in his pleadings that he wants to publish the names of these girls in the newspapers so that other people may come forward to discuss their sexual activities with these different plaintiffs. That's not your typical case. But are rulings that you'll make in this case, and they're not part of the NPA.

As far as my going to the Government is concerned, I find it very uncomfortable for me to use the Government to try to pursue my financial interest in litigation. And I know that Mr. Epstein and his counsel will make much ado about it. So I am not going to be running there.

However, if they start taking depositions regarding liability, I will consider that to be a breach because they're supposed to have admitted liability.

THE COURT: But, again, I don't have the agreement and I don't remember reading the agreement. But what I'm being told is the part of the agreement that admits liability is only as to a 2255 claim, and there are numerous other personal injury tort claims other than 2255 claims.

And there's a limit of damages on the 2255 claim, as I understand it, but I presume that all the plaintiffs are going to seek more than the limited or capped amount of damages in

the non-prosecution agreement as to the other claims.

And so why aren't they entitled to defend and limit the amount of damages that your client is seeking on the non-2255 tort claims?

MR. JOSEFSBERG: Your Honor, you are correct. On non-2255 tort claims, they are permitted to do the defense, whatever is appropriate.

My cases are pure 2255 on which liability under the agreement is supposed to be admitted. Now, as to the amount of damages, there are legal issues that will be before you and under the C.M.A. cases that are getting before you, as to whether it is 50 or 150. That has nothing to do with the NPA.

There are legal issues that are before you as to whether it is per statute, per count or per incident or per plaintiff. Those have nothing to do with the NPA. There is no amount in NPA. Those will be resolved.

Anyone who has brought a case that is outside of 2255, the defense is permitted to contest liability under the NPA. That's no violation.

Under the NPA if someone brought a case under just 2255, Mr. Epstein, if he is to keep his word, cannot contest liability. And there would no need to stay this. Because it is a self-fulfilling agreement. He can contest liability. And as far as the amount of damages, anyone that wants to go over the statutory minimums, of course, he can contest that in any

way that is proper under the Rules of Evidence and your rulings. The NPA has no limitation on his contesting damages above the minimum statutory amount.

The only thing that he has done is in his actions of refusing to pay for settling defendants, and in his saying that he has no liability under 2255, those appear to be contrary to what's in the NPA.

But I'm not in any position right now to claim a breach, and I don't know whether I'd be claiming a breach or enforcing it in front of you, suing him for fees, asking you to have him admit liability, or complaining to the Government. And that's why I'm not that helpful in this situation because I think it's the Government's role.

But I do not waive the right to be a third-party beneficiary because pursuant to my appointment, which was agreed to by Mr. Epstein, I and my clients have certain rights, and we want to enforce them.

But his defending this lawsuit will not in any way be a violation. His getting this lawsuit stayed would be a violation of the spirit of taking care of these girls, and there would be other issues. Like if there is a stay, Your Honor, would he be posting a bond?

THE COURT: We don't need to talk about those issues. That's not my concern.

MR. JOSEFSBERG: I agree, Your Honor, we don't.

THE COURT: That's not my concern. So, again, I just want to make sure that if the cases go forward and if Mr. Epstein defends the case as someone ordinarily would defend a case that's being prosecuted against him or her, that that in and of itself is not going to cause him to be subject to criminal prosecution.

MR. JOSEFSBERG: I agree, Your Honor.

THE COURT: Any other plaintiff's counsel want to chime in?

MR. WILLITS: Richard Willits on behalf of C.M.A.. I would join, to weigh in on what Mr. Josefsberg said.

MR. JOSEFSBERG: Your Honor, I could not hear.

THE COURT: We'll get him to a microphone. Mr. Willits is speaking.

MR. WILLITS: On behalf of my client, C.M.A., we join in what Mr. Josefsberg said, and we also want to point out something to the Court.

First, we want to make a representation to the Court, we have no intention of complaining to the U.S. Attorney's Office, never had that intention, don't have that intention in the future, but, of course, subject to what occurs in the future.

I want to point out to the Court that Mr. Epstein went into this situation with his eyes wide open, represented by counsel, knowing that civil suits had to be coming. If he

didn't know it, his lawyers knew it.

He appears to be having second thoughts now about he could have negotiated this way or he could have negotiated that way with the U.S. Attorney's Office. And they want to impose their second thoughts on the innocent plaintiffs. We don't think that's fair. We think it's in the nature of invited error, if there was any error whatsoever.

Thank you.

THE COURT: You agree he should be able to take the ordinary steps that a defendant in a civil action can take and not be concerned about having to be prosecuted?

MR. WILLITS: Of course. And we say the same thing Mr. Josefsberg said. It's all subject to your rulings and the direction of this Court as to what is proper and what is not proper. And we're prepared to abide by the rulings of this Court, and we have no intention of running to the State's Attorney.

THE COURT: The U.S. Attorney?

MR. WILLITS: I'm sorry. The U.S. Attorney.

THE COURT: Mr. Garcia.

MR. GARCIA: Thank you, Your Honor.

If I may briefly, I think perhaps defense counsel forgot about this, but on pages 17 and 19 of my memorandum of law in opposition to the motion to dismiss, I did make reference to the non-prosecution agreement, and I did say that

the contesting of the jurisdiction of this Court was a potential breach of the non-prosecution agreement.

So my client happens to have, and they have filed with the Court a copy of her state court complaint, given the fact that the non-prosecution agreement limits the non-contesting of jurisdiction to claims exclusively brought under the federal statute.

I'm going to go ahead and withdraw those contentions on pages 17 and 19 of my memo of law because it doesn't apply to my case. So to the extent that I raised this issue with defense counsel and the Court, I'm going to withdraw that aspect of it.

THE COURT: Can you file something in writing on that point with the Court?

MR. GARCIA: Yes.

THE COURT: What do you say about this issue that we're here on today?

MR. GARCIA: I think that the problem that I have with it is that this non-prosecution agreement is being used by defense counsel for the exact opposite purpose that it was intended. My perception of this thing, and I wasn't around, is that Mr. Epstein essentially bought his way out of a criminal prosecution, which is wonderful for the victims in a way, and wonderful for him, too.

Now he's trying to use the non-prosecution agreement

as a shield against the plaintiffs that he was supposed to make restitution for.

And, certainly, he can take my client's depo. He's done extensive discovery in the state court case -- very intrusive, I might add. And we don't care, because we can win this case with the prosecution agreement or without the prosecution agreement. We are ready to go forward.

THE COURT: You're not going to assert to the United States Government that what he's doing in defending the case is a violation for which he should be further prosecuted?

MR. GARCIA: Absolutely not.

THE COURT: Anyone else for the plaintiffs?

MR. HOROWITZ: Judge, Adam Horowitz, counsel for plaintiffs Jane Doe 2 through 7.

I just wanted to address a point that I think you've articulated it. I just want to make sure it's crystal clear, which is that we can't paint a broad brush for all of the cases.

The provision relating to Mr. Epstein being unable to contest liability pertains only to those plaintiffs who have chosen as their sole remedy the federal statute. My clients, Jane Doe 2 through 7, have elected to bring additional causes of action, and it's for that reason we were silent when you said does anyone here find Mr. Epstein to be in breach of the non-prosecution agreement. That provision, as we understand

it, it doesn't relate to our clients.

THE COURT: Okay. But, again, you're in agreement with everyone else so far that's spoken on behalf of a plaintiff that defending the case in the normal course of conducting discovery and filing motions would not be a breach?

MR. HOROWITZ: Subject to your rulings, of course, yes.

THE COURT: Thank you.

Anyone else have anything to say from the plaintiffs?

Ms. Villafana, if you would be so kind as to maybe help us out. I appreciate the fact that you're here, and I know you're not a party to these cases and under no obligation to respond to my inquiries. But as I indicated, it would be helpful for me to understand the Government's position.

MS. VILLAFANA: Thank you, Your Honor. And we, of course, are always happy to try to help the Court as much as possible. But we are not a party to any of these lawsuits, and in some ways we are at a disadvantage because we don't have access. My access is limited to what's on Pacer. So I don't really know what positions Mr. Epstein may have taken either in correspondence or in discovery responses that aren't filed in the case file.

But your first order was really just what do you think about a stay, and then the second order related to this hearing and asked a much more specific question, which is whether we

believe that Mr. Epstein's defense was a breach of the agreement.

And I've tried to review as many of the pleadings as possible. As you know, they're extremely voluminous. And I haven't been through all of them. But we do believe that there has been a breach in the filing that Mr. Josefsberg referred to, and contrary to Mr. Critton, we do understand that we have an obligation to provide notice, and we are providing notice to Mr. Epstein today.

The pleading that we found to be in breach -- the non-prosecution agreement, sought to do one thing, which was to place the victims in the same position they would have been if Mr. Epstein had been convicted of the federal offenses for which he was investigated.

And that if he had been federally prosecuted and convicted, the victims would have been entitled to restitution, regardless of how long ago the crimes were committed, regardless of how old they were at the time, and how old they are today, or at the time of the conviction.

And it also would have made them eligible for damages under 2255.

And so our idea was, our hope was that we could set up a system that would allow these victims to get that restitution without having to go through what civil litigation will expose them to.

You have a number of girls who were very hesitant about even speaking to authorities about this because of the trauma that they have suffered and about the embarrassment that they were afraid would be brought upon themselves and upon their families.

So we did through the non-prosecution agreement tried to protect their rights while also protecting their privacy. So, pursuant to the non-prosecution agreement -- on the other hand, we weren't trying to hand them a jackpot or a key to a bank. It was solely to sort of put them in that same position.

So we developed this language that said if -- that provided for an attorney to represent them. Most of the victims, as you know from the pleadings, come from not wealthy circumstances, may not have known any attorneys who would be in a position to help them.

So we went through the Special Master procedure that resulted in the appointment of Mr. Josefsberg, and the goal was that they would be able to try to negotiate with Mr. Epstein for a fair amount of restitution/damages. And if Mr. Epstein took the position, which apparently he has, which is that the $50,000 or $150,000 floor under 2255 also would be a cap. That if they were to proceed to file suit in Federal Court to get fair damages under 2255, Mr. Epstein would admit liability, but he, of course, could fight the damages portion, which means that, of course, he would be entitled to depositions; of

course, he would be entitled to take discovery, and we don't believe that any of that violates the non-prosecution agreement.

The issue with the pleading that he filed, the motion to dismiss the case, I believe it's Jane Doe 101, represented by Mr. Josefsberg, is that that is a case that was filed exclusively under 18 U.S.C., Section 2255. She met that requirement. Mr. Epstein is moving to dismiss it, not on the basis of damages, he is saying that he cannot be held liable under 2255 because he was not convicted of an offense.

The reason why he was not convicted of an offense is because he entered into the non-prosecution agreement. So that we do believe is a breach.

The issue really that was raised in the motion to stay and that I addressed in our response to the motion to stay is that Mr. Epstein's -- Mr. Epstein wants to stay the litigation in order to leave, in order to sort of attack the cases of the victims whether they are fully within the non-prosecution or not, non-prosecution agreement or not, and leave the Government without a remedy if he does, in fact, breach those terms. And that is why we opposed the stay.

THE COURT: I'm not sure what you mean by that last statement.

MS. VILLAFANA: Well, because this issue related to the motion to dismiss on Mr. Josefsberg's client came up after

we had filed that response. And what we said in the response to the motion to stay is that the reason why he wants to stay the litigation is so that the non-prosecution agreement terminates based on a period of time, as he puts it. And then afterwards he would be able to come in here and make all of these arguments that clearly violate the non-prosecution agreement but we would be without remedy.

THE COURT: But you're not taking the position that other than possibly doing something in litigation which is a violation of an express provision of the non-prosecution agreement, any other discovery, motion practice, investigations that someone would ordinarily do in the course of defending a civil case would constitute a violation of the agreement?

MS. VILLAFANA: No, Your Honor. I mean, civil litigation is civil litigation, and being able to take discovery is part of what civil litigation is about. And while there may be, for example, if someone were to try to subpoena the Government, we would obviously resist under statutory reasons, all that sort of stuff. But, no, Mr. Epstein is entitled to take the deposition of a plaintiff and to subpoena records, etc.

THE COURT: And even if he seeks discovery from a Government agency, you have the right to resist it under the rules of procedure but that would not constitute a violation, again unless there's a provision in the prosecution agreement

that says I can't do this?

MS. VILLAFANA: Correct.

THE COURT: That's your position?

MS. VILLAFANA: Yes.

THE COURT: Thank you.

MS. VILLAFANA: Thank you, Your Honor.

THE COURT: Mr. Critton, did you want to add anything?

MR. CRITTON: Yes, sir. Just a few responses to some of the issues that have been raised.

The most glaring, at least from our perspective, is both Mr. Josefsberg's comments that he believes that there's a violation of the NPA as well as Ms. Villafana with regard to Jane Doe 101.

Mr. Josefsberg, while he was the attorney rep who was selected by Judge [redacted] to represent a number of individuals, alleged victims that may have been on the list, he represents many of them. And the type of response that was filed in 101 would probably be very similar to what we will file if he files -- and he filed 102 as well. But if he files 103, 104 and 105, or whatever number he files, we may well take that same legal position in our motions and in our response or in reply.

And what we've been, in essence, told today is we consider that to be a violation of the NPA under the circumstances.

102 is a perfect example that he filed is, we have e-mails going back and forth between the Government and my clients' attorneys at the time that suggested that 102 probably doesn't even fit within the statute of limitations.

So under Mr. Josefsberg's argument is as well, we've only brought a 2255 claim. We don't care whether she's within or is outside the statute of limitations. Because she was on the list and under the circumstances, he has to admit liability, which we contest is under that set of circumstances you're stuck with it. You can fight damages if you can, but she's a real person and you can't raise statute of limitations.

The other point that kind of strikes out is there's probably a difference. And I'm happy to provide a copy of the NPA or a redacted portion of the NPA which deals with the civil issues, which are paragraphs 7, 8, 9 and 10, and the entire addenda in camera for the Court to look at, if plaintiff's counsel and the Government, I guess, really, because they're not a party, is if they have no objection because they all have access based on a prior court order to the non-prosecution agreement.

So I'm happy to provide that to the Court today and show it to counsel so that the Court can review that.

But our position with regard to the 2255 claims is that -- there were two types of claims that could be filed, one was consensual litigation, the second was contested litigation.

And under the consensual, in essence, which Mr. Epstein did, is he's offered $50,000 of the statutory minimum for that time period to all of those individuals.

THE COURT: Can I interrupt you a second?

MR. CRITTON: Yes, sir.

THE COURT: I'm not here, and I don't believe it's my role to decide whether or not there is or is not a breach of the agreement. I'm just trying to understand what the Government's position is regarding your defending these cases.

Now, I'm just saying this as an example. If, for example, in the non-prosecution agreement there was a provision that said explicitly: Jeffrey Epstein shall not move to dismiss any claim brought under 2255 by any victim no matter how long ago the allegations or the acts took place, period.

If that was in the agreement and you filed a motion to dismiss by someone who brought a claim, it might sound like it might be a violation.

MR. CRITTON: I agree.

THE COURT: So you would know that when you filed your motion because it was right there for you to read.

And so to stay the case because I want to do something that the contract expressly prohibits me from doing, so stay the case until the agreement expires so then I can do something that the agreement said I couldn't do so you won't be in fear of prosecuting, I'm not sure that that is what I'm concerned

about.

I'm concerned about discovery, investigation, motion practice, that's not prohibited by a provision of the agreement. If there's something that's prohibited by the agreement that you, knowing what the agreement says, go ahead and do, anyway, I guess that's a risk you're going to have to take. If there's a legitimate dispute about it, I guess some arbiter is going to decide whether it's a breach or not.

But, again, that's something you and Mr. Burman, Mr. Goldberger, and you are all very good lawyers, and he's got a whole list of lawyers representing him, and you've got the agreement and you're going to make legal decisions on how to proceed, and you're going to have to go and make your own decisions.

I'm concerned about things that aren't in the agreement, that aren't covered, that you're going to be accused of violating because, again, you take depositions, you send out subpoenas, you file motions that are not prohibited by the agreement. And that's what I'm concerned about.

MR. CRITTON: And I understand that, Your Honor.

But at the same time, it's as if the lawyers and the clients, based upon our interpretation of the agreement, and, believe me, we would not have filed 101, the motion to dismiss, but for believing that there was a good faith basis to do that under the circumstances.

And now, in essence, we're being accused not only by -- not accused, but it's been suggested that there's a breach of the NPA, not only by Mr. Josefsberg on behalf of 101, but as well Ms. Villafana on behalf of the United States.

That's the perfect example. They're basically saying we think you violated. We may send you notice under the circumstances. So does that mean that on 101 we have to back off of it because we think in good faith that it's a motion and is that something that this Court ultimately will rule?

THE COURT: I don't know that I'm the one who is going to make that decision. Again, that's not the kind of thing that I was concerned about. I was more concerned about the normal, ordinary course of conducting and defending a case that would not otherwise expressly be covered under the agreement, that you're going to then have someone say, ah, he's sent a notice of deposition, he's harassing the plaintiffs. I don't know if there's a no contact provision in the agreement or no harassment type of provision in the agreement. Ah, this is a breach because you sent discovery, or he's issuing subpoenas to third parties trying to find out about these victims' backgrounds, he's breaching the agreement.

Those are the kind of things that I was worried about.

MR. CRITTON: The concern that we have is as part of doing this general civil litigation, it's not just the discovery process. And I understand the issues that the Court

has raised.

But part of it is that often cases are disposed of either on a summary basis or certainly legal issues that come before the Court during the course of the case, just like in a criminal case. That's clearly part of the, I'd say the defense of the case under the circumstances; and if, in fact, an individual can't legally bring a cause of action for certain reasons, such as has been suggested in 101, and may be suggested in 102 when that pleading is filed, that certainly is a position that puts my client at risk.

As another example that I use with C.M.A., that they filed this 30-count complaint. Now, they have the state court claims as well. But they, in essence, have said they filed another pleading with the Court that says depending on what the Court rules, in essence, on whether we can file multiple claims or one cause of action with multiple violations, we may dump the state court claims and, therefore, we'll just ride along on that. That's a very different --

Mr. Epstein would never have entered into, nor would his attorneys have allowed him to enter into that agreement under those circumstances where he had this unlimited liability. That clearly was never envisioned by any of the defendants -- by the defendant or any of his lawyers under the circumstances.

And if that's claimed to be a violation, either by the

attorneys; i.e., he's not recapitulating on liability under the 2255, and that's all we have now. That's our exclusive remedy.

And the Government says, yeah, that's right, that's a violation of the NPA. It again chills us from moving forward, filing the necessary motion papers and taking legal positions that may put my client at risk for violating the NPA and then creating the irreparable harm of, after having been in jail, after having pled guilty to the state court counts, after registering on release as a sex offender, he's complied and done everything, taken extraordinary efforts to comply with the NPA, puts him at substantial risk. And that's what our worry is moving forward.

MR. JOSEFSBERG: Your Honor, may I be heard. May I make three comments? It will take less than a minute.

THE COURT: Yes, sir.

MR. JOSEFSBERG: Mr. Critton refers to the alleged victims. I want you to know that our position is that pursuant to the NPA they're not alleged victims. They are actual, real victims, admitted victims.

Secondly, he argues about the statute of limitations on 102. I know that you don't want to hear about that, and I'm not going to comment about it. But please don't take our lack of argument about this as being we agree with anything.

Last and most important, we totally agree with Mr. Critton in his suggestion that he hand you a copy of the

NPA. I think that many of the questions you asked will be answered when you read the NPA, and I think it's very unfair of everyone who is sitting in front of you who have the NPA to be discussing with you whether it's being breached, whether there should be a stay when you're not that familiar with it.

If we would give you a copy of it, I think it would be much more helpful in making your ruling.

THE COURT: Maybe Judge Colvat will resolve this issue for me.

MR. JOSEFSBERG: Even if he doesn't, Your Honor, I believe we are allowed to show it to you.

THE COURT: I'll tell you what: I'll wait for Judge Colvat to rule, and then if he rules that it should remain sealed, then I'll consider whether or not I want to have it submitted to me in camera.

Anything else, Mr. Josefsberg?

MR. JOSEFSBERG: No. I thank you on behalf of myself and the other counsel on the phone for permitting us to appear by phone.

THE COURT: All right. Anyone else have anything they want to add?

MR. EDWARDS: Brad Edwards on behalf of Jane Doe.

I only had one issue here, and when I read your motion that you wanted to hear on the narrow issue of just defense in the civil actions filed against him violates the

non-prosecution agreement, I was expecting that we were going to hear something from the Government similar to the affidavit that was filed by Mr. Epstein's attorneys wherein he indicates as of the day of this affidavit attached to the motion to stay, the U.S. Attorney's Office has taken the position that Epstein has breached the non-prosecution agreement and it names specifically investigation by Epstein of this plaintiff and other plaintiffs, Epstein's contesting damages in this action. Epstein, or his legal representatives, making statements to the press. And we didn't hear any of those things.

So that's what I was expecting that the U.S. Attorney's Office was going to expound on and say, yes, we've made some communications to Epstein. He's violating.

What we're hearing right now, today, just so that I'm clear, and I think the Court is clear now, is that the non-prosecution agreement is what it is. There have been no violations, but for maybe what Mr. Josefsberg brought up.

But there are very few restrictions on Mr. Epstein. He went into this eyes wide open. And whether or not I agree with the agreement, how it came to be in the first place, is neither here nor there.

But there have been no violations or breaches up to this point. And his affidavit that was filed, I'm just troubled by where it even came from. I mean, it's making specific allegations that the U.S. Attorney's Office is

threatening a breach, and this is part of the motion to stay, which we're all battling here.

So I just wanted to indicate to the Court or remind the Court that there have been specific allegations made, the United States Attorney's Office is making these allegations of breach, which we haven't heard any of the evidence of.

Thank you.

THE COURT: All right.

Ms. Villafana, did you want to respond to that suggestion that there were other allegations of breach besides the one that you've just mentioned today?

MS. VILLAFANA: No, Your Honor.

THE COURT: Thank you. I appreciate your giving me the information, which I think has been very helpful today, and I'll try and get an order out as soon as possible.

[Court adjourned at 11:10 a.m.].

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

s/Larry Herr

_____ _____

DATE LARRY HERR, RPR-CM-RMR-FCRSC

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GOVERNMENT

EXHIBIT

T

THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA

IN RE: JANE DOE,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

_____/

Federal Courthouse

West Palm Beach, Florida

July 11, 2008

10:15 a.m.

The above entitled matter came on for Emergency Petitioner for Enforcement of Crime Victim Rights before the Honorable Kenneth A. Marra, pursuant to Notice, taken before Victoria Aiello, Court Reporter, pages 1-32.

For the Plaintiff: Bradley Edwards, Esquire

For the Defendant: Dexter Lee, AUSA

Maria Villafana, AUSA

(Call toOrder of the Court).

THE COURT: Good morning. Please be seated.

This is the case of In Re: Jane Doe, Case Number 08-80736-Civ-Marra. May I have counsel state their appearances, please?

MR. LEE: Good morning, Your Honor. May it please the Court, for the United States of America, we have Maria Villafana, Assistant United States Attorney and Dexter Lee, Assistant United States Attorney. And we have seated in the front row FBI Special Agent Becker Kendall and Jason Richards. Thank you, Your Honor.

MR. EDWARDS: Good morning, Your Honor. Brad Edwards on behalf of the petitioners. Petitioners are also in the courtroom today. This petition is styled on her behalf.

THE COURT: Good morning. All right. We're here on the petitioner's motion to enforce her rights as a victim under 18 USC 3771. I have received the petition, the government's response and the victim's reply, which was filed, I guess, this morning. So, You want to proceed, counsel?.

MR. EDWARDS: Yes, Your Honor. You prefer me at the podium?

THE COURT: It is easier for us to hear you.

MR. EDWARDS: Your Honor, as a factual background, Mr. Epstein is a billionaire that sexually abused and molested dozens and dozens of girls between the ages of 13 and 17 years old. And through cooperating victims, that evidence can be proven. Because of his deviant appetite for young girls, combined with his extraordinary wealth and power, he may just be the most dangerous sexual predator in U.S. history. This petitioner is one of the victims and she is in attendance today. Another one of Mr. Epstein's victims is also in attendance today. She would be able to provide evidence that she provided-- that Mr. Epstein paid her to provide him over 50 girls for the purposes of him to sexually abuse. Therefore, the undercurrents of the petition are clear. The plea bargain that was worked out for Mr. Epstein in light of the offenses that he committed is clearly unfair to the point that if anybody looks at the information, it is unconscionable.

THE COURT: Well, I mean, is that for me? That's not my role. That's the prosecutor's role to apply, would it not? I can't force them to bring criminal charges. What do I have to do with that.

MR. EDWARDS: Okay.

THE COURT: That may be your opinion, that may be your client's opinion, but I presume that the government is aware that that's your client's opinion. How does that change anything?

MR. EDWARDS: That's my problem. I'm not sure that the government is aware that is petitioner's opinion and that's why we're here today, just to enforce the victim's rights under 18 USC 3771, Crime Victims Rights Act, and all we are asking is to order that the plea agreement that has been negotiated in this case--

THE COURT: How do you know there is a plea agreement? The plea agreement is with the State of Florida, wasn't it?

MR. EDWARDS: There was a state charge with one victim that I'm aware of. And the plea agreement as to that one victim was 18 months in the county jail. But along with that, the Palm Beach County Sheriff investigating this case was getting no action out of the local authorities and sent this to the FBI.

THE COURT: It was actually the Palm Beach--Town of Palm Beach Police, not the Sheriff's Office.

MR. EDWARDS: I'm sorry, Judge. And that's

why the FBI got involved because Michael Feeter wrote a scathing letter to the State Attorney about Mr. Epstein receiving preferencial treatment by local authorities.

Before the FBI took the case, they went behind the victim's back, and this is our motion, without the victim's input and allowing her the right to meaningfully confer with the government, which is a right that she can assert at this time. They worked out a plea deal where if Mr. Epstein would plead to this other charge regarding another victim in the state court case, they would agree to not prosecute him for all of the federal charges of what they were aware of in federal court..

THE COURT: So that's already apparently taken place, correct?

MR. EDWARDS: I don't know if it has taken place. I'm not sure exactly what stage it is in. I know it is supposed to be attached at some point in time to a state court plea.

THE COURT: Hasn't he already plead guilty, though?

MR. EDWARDS: If he did plead guilty, it is my understanding and belief that the agreement with the federal government and with the U.S. Attorney's

Office wasn't signed on that day. So it is still my belief, I could be wrong, but that that agreement hasn't been completed as of this time.

THE COURT: So let's assume it hasn't been completed.

MR. EDWARDS: Okay. Then petitioner would like the right to confer with--

THE COURT: You can go in the conference room. We've got the FBI agents, you've got the assigned prosecuting attorney. You have got a conference room. You've got your client. Go and talk. Confer. And then it is up government to decide what to do, correct?

MR. EDWARDS: In a way, Your Honor, that's very similar to what happened in In Re: Dean and PB case where there is a plea agreement negotiated and then the victim gets the right to confer.

THE COURT: It's already negotiated. What am I supposed to do?

MR. EDWARDS: Order that the agreement that was negotiated is invalid and it is illegal as it did not pertain to the rights of the victim.

THE COURT: I can order you into the conference room. Then the government can do what it chooses. It can agree to prosecute or it can agree

to going forward with the agreement it had already reached and after consulting your client and in taking into consideration your client's views, decide to go forward anyway. I can't make them prosecute him. I can't-- All I can do is, at best, say confer with the victim, consider the victim's input before you make a decision or reconsider the decision you already made in view of the victim's input, if it is possible for you to do that. So if I invalidate the agreement, what's the best you can get? The right to confer?

MR. EDWARDS: Exactly. That is all we can.

THE COURT: So why can't you go into the conference room now, take as much time as you feel you need and confer?

MR. EDWARDS: Judge, at this time I'd like to move ore tenus to add the victim that's in the courtroom to this conference with the U.S. Attorney's Office.

THE COURT: So is that Jane Doe 2 for purposes of this?

MR. EDWARDS: Exactly, Your Honor.

THE COURT: All right. Let me hear from the government then.

MR. LEE:. Good morning, Your Honor. May it

please the Court. Let me update the Court on the status of various matters. The agreement to defer prosecution to the State of Florida was signed and completed by December of 2007. Mr. Epstein's attorneys saught a higher review within the Department of Justice and it took a number of months for that to come to fruition. When it came to fruition, he ended up pleading guilty on June 30, 2008 to two charges in state court, and he was sentenced to a term of incarceration of 18 months, with another 12 months of community control after the completion of his sentence, and he is currently incarcerated as we speak.

We have two arguments, Your Honor. First, insofar as the right that they claim under 3771(a)(5), their right to confer in the case, we respectfully submit that there was no case in federal court and, indeed, none was contemplated if the plea agreement was to be successfully completed, since it contemplated the State of Florida sentence on the criminal charges. So as long as certain conditions were met and certain federal interests were vindicated, the federal government was satisfied that this was an appropriate disposition.

Insofar as the best effort, Your Honor, we have cited the Attorney General's guidelines. The guidelines do say that you should normally advise victims of plea negotiations and the terms of the plea, but they recognize that there are times when they may not be appropriate or could cause some harm or prejudice, and they set out six factors which are to be considered, non-exhaustive factors.

We have advised, in the declaration of AUSA Villafana that when the subject of having Mr. Epstein concede that he would be convicted of an enumerated offense for purposes of a cause of action under 18 USC 2255, there was a rather strenuous objection from Mr. Epstein's counsel that the federal government was inducing some effort to either fabricate claims, enhance claims or embellish claims and if this agreement ultimately could not be consumated, then we'd have a federal prosecution on our hands, and we did not want to be in a positin of creating additional impeachment material.

I can't say that the stand by Mr. Edwards that the arguments of inducement in a subsequent civil action can be made by any criminal victim, that is true. It is another thing for that inducement to have come before the prosecution

arguing about the credibility and veracity of the individual. That was a considerably strong point, in essence, in not discussing those terms with the victims as might ordinarily be done if those considerations did not exist.

So, first, Your Honor, we believe that 3771(a)(5) does not apply.

THE COURT: Well, what about the language in the statute that suggests that a victim can bring a claim or seek enforcement of his or her rights under the statute before a case is filed? What does that refer to?

MR. LEE: Your Honor, we believe that's a venue provision essentially telling an individual if there is no exigent case, there is no case of United States versus So And So, then you seek to enforce your rights, then you can go in and do so in the did court where the offense occurred. This is not saying, necessarily, that rights exist, but if you believe they exist, here is the place where you're going to have to lodge it, and the Court will have to decide.

Now, there are certain of the eight rights accorded in 3771(a) that could come up before any charge is filed. For instance, let's say somebody

believes that the perpetrator of the crime is going to try to harm them or threatened them or intimidated them into not testifying or cooperating with the government and, of course, no indictment has been returned. If an individual went to the government and believed that the individual had not acted appropriately, they can go to the district court and say I need to have my rights under 3771(a)(1) enforced because those people are threatening me, and the government hasn't done enough. That would be a situation.

But we're talking really here about (a)(5), which is the right to consult in the case and we respectfully submit that there is not case until a charge has been filed.

THE COURT: So, what about the circuit case that was actually pending case had to do with a plea agreement in a pending case?

MR. LEE: Yes. The distinction between the Dean case and the instant case, Your Honor, is this. In Dean, they had negotiated with BP Petroleum for a plea and it was always contemplated that there was going to be a federal prosecution. The distinction in this case was that there was already a pending state prosecution and the

objective for both sides was to keep it in state court and the federal government's objective was to ensure that there were sufficient safeguards in the state court proceedings and concessions made by Mr. Epstein so that federal interests, particularly a cause of action for damages for the victims of the sexual exploitation could be preserved. So that's the key distinction because there was no federal case, there was no federal criminal charge contemplate so long as the agreement could be reached.

THE COURT: All right. So they want me to invalidate your non-prosecution agreement.

MR. LEE: Your Honor, we respectfully submit that 3771 does not grant authority of this Court to do so. In the Dean case, for instance, Your Honor, there was a plea agreement that was entered into and district court, of course, entertained a plea agreement and exercised its judicial discretion in terms of whether to accept it or not. The victims were encouraged to go to district court and say, you know, we didn't hear about this. We should have, and we object to it for the following reasons. The district court take that into account. There is no plea agreement before this Court. There will be no

plea proceedings in this court. That was all done in state court several weeks ago. So that's another basis for distinguishing Dean.

THE COURT: All right. So is there any point in conferring with these victims?

MR. LEE: Your Honor, I will always confer, sit down with Jane Doe 1 and 2, with the two agents and Ms. Villafana. We'll be happy to sit down with them.

THE COURT: But it wouldn't make any difference in terms of the outcome. Would maybe give them the benefit of your explanation of why you did what you did and why you came to the conclusion you did, but it is not going to change your decision in any way.

MR. LEE: If it is going to change, it would have to be done at a level higher than mine, Your Honor.

THE COURT: What was-- I didn't understand your statement earlier that Mr. Epstein wanted some kind of review of higher authority within the Department in terms of whether or not the federal government was going to insist on preserving any civil claims.

MR. LEE: Your Honor, of the agreement was

consumated by the parties in December of 2007. Mr. Epstein's attorneys wanted a further review of the agreement higher up within the Department of Justice and they exercised their ability to do that.

THE COURT: Meaning? Again, I'm trying to understand. He wasn't happy with the agreement that he had signed?

MR. LEE: Basically, yes. And was trying to maintain that the agreement should be set aside or more favorable terms.

THE COURT: Now, in terms of -- You don't dispute that Jane Doe 1 and 2-- First of all, do you have an objection to Jane Doe 2 being added as a petitioner in this case?

MR. LEE: No, I don't.

THE COURT: I'll grant that request.

You don't dispute that they're victims within the meaning of the Act.

MR. LEE: It depends to which -- There is one Jane Doe-- Well, there is one individual who is one of Mr. Edwards' clients who we do not believe to been a victim. If these are SN and CW, then we have no objection and I can discuss-- If I may have a moment, Your Honor.

Your Honor, thank you. I have been

corrected. We have no objection.

THE COURT: Okay.

MR. LEE: We agree they're victims.

THE COURT: Now, what is your position, then, regarding the right of a victim of a crime that is potentially subject to federal prosecution to be, to have input with the prosecutor, your office, before a resolution or decision not to prosecute is made? Do you say that there is no right to confer under those circumstances because there is no "case pending" so any decision not to prosecute, there is no right to confer but that right to confer only is triggered once there is an indictment or an information filed?

MR. LEE: That is correct, Your Honor. The Attorney General guidelines which were published in May of 2005 provide that the rights in 3771(a)(1 through 8) accrue when a charge is filed in federal court. Now, that my change after the Dean decision. It is under consideration. But that's the government's position.

THE COURT: All right. And so -- Are you saying all of the rights--

MR. LEE: Your Honor, some of the rights clearly will only pertain after a charge has been

filed. The one that pertains to notice of public hearing, public proceedings, though, can't apply until there are public proceedings to be had.

Of course, these guidelines are a floor and not a ceiling. They're to be applied with common sense. If somebody-- If charges of assault were being investigated and somebody would come in and say the perpetrator whom you're investigating is getting ready to indict has been threatening me, following me, and I need help because he or she is going to do something bad to me and try to take care of me before I can testify in the grand jury, this person would not be turned away because a charge hasn't been filed yet. Those guidelines would be applied with common sense.

But specifically insofar as a (a)(5), which is the right to consult with the attorney for the government in the case, that would not accrue until there is a days. And, in our view, a case doesn't come into being until charges are filed.

THE COURT: And are there any reported decisions that you are aware of where any court has found a right to confer before charges are filed?

MR. LEE: I'm not aware of any, Your Honor.

THE COURT: All right. Thank you.

MR. LEE: Thank you, Your Honor.

THE COURT: Counsel?

MR. EDWARDS: I would just like to address that Dean decision. They're asking you that you just simply ignore it because the decision clearly was a decision made because as it is a direct result of a plea deal being worked out prior to the victims being able to speak.

THE COURT: But there was a pending case, though, correct?

MR. EDWARDS: As I understand the decision--

THE COURT: As I understand the plea deal, it was negotiated prior to charges being filed. Then there was a filed case and then the court had the ability to accept the plea or not. And at that point, you would have the ability to entertain or assert an objection because you weren't consulted about the plea.

So there was a proceeding or case in which you can assert a right to confer. How do you do that before a case is filed? How do you enforce the government or force the government to consult about not filing a case? Every case they have to consult with the victim before they decide not to prosecute?

MR. EDWARDS: No, there are limitations. I think in my reply I refer to the case of U.S. V. Rubin where they discussed that very scenario stating there at least has to be criminal charges contemplate by the government before these rights kick in. The rights under (d)(3) and (a)(5), the right to confer and the Dean case clearly states clearly rights under the CBRA apply before prosecution is under way. Logically, this includes the CBRA establishments of a victim's reasonable right to confer with the attorney for the government. And, that's read in the plain reading of the statutes as well.

This first case in interpreting it, I think it's pretty clear the distinction they're making between BP and this case. Is it a distinction withoug a real difference in that the court is saying you have this right before the case is filed which is exactly what we are saying. And the result in that case was they filed the case, later let him plea out to some sweet deal. And in this case, what we have is they avoid that by deciding not to file. Either way, you deprive the victim of their right before making that decision.

And the main problem that the court had in

Dean, as it states, the victims do have rights when there is an impact and the eventual sent is substantially less. Whereas here, their input is received after the parties have reached a tentative deal. Well, the government just stated the deal was reached back in October of 2007. However, attached to their response is a letter to my client petitioner, dated January 10, 2008, after the time then counsel just put on the record that the deal was already finalized and it starts, the opening paragraph talks about whether they wanted the victims to have the right to confer. It says, this case is currently under investigation. This is January 2008. This case has been a lengthy process and we request your continued patience while we conduct a thorough investigation. Sounds like the exact opposite of, we want you to come in and confer and let us know what you really feel about this.

That is our biggest problem with what has happened here, is that she just wasn't given a voice and if somebody would have heard her, we believe there would have been a different outcome. To go back into a room right now and talk, after there has already been a plea negotiated without Your Honor ordering that in this case the plea deal needs to be

vacated, it is illegal and give her her rights.

THE COURT: Well, would you agree or not that Mr. Epstein plead guilty to the state charges probably at least, in part, in reliance upon the fact that he had an agreement with the federal government they weren't going to prosecute? Would you concede that or would would present evidence to that effect?

MR. EDWARDS: Of course we would. Yes, of course. Sure.

THE COURT: So you agree that Mr. Epstein is now sitting in the Palm Beach County Jail a convicted felon serving 18 months of imprisonment, at least in material part, because he relied upon the government's non-prosecution agreement?

MR. EDWARDS: Yes. I agree that he is sitting there because he is guilty and maybe he took the plea rather than going to trial and being found guilty later in part because of this non-prosecution agreement that was worked out behind the other victims' backs. I would agree with that.

THE COURT: So he accepted the State's deal in part because he knew he had an agreement from the federal government that they weren't going to prosecute.

MR. EDWARDS: I presume. I speculate that is true.

THE COURT: So you want me now, then, to set aside the government's agreement with him because there was no conferring, yet he has already accepted a plea agreement and is sitting in custody, in part, in reliance on that agreement. I mean, I can undo the agreement in your theory, but how do I-- Mr. Epstein, in a sense, would then be adversely affected by my actions when he acted in reliance upon the agreement. How does that work?

MR. EDWARDS: Certainly, we're only asking you to vacate the agreement. I understand and your point is well taken. And I believe that at that point in time his rights may kick in and say, wait, I was relying on this other deal so I wouldn't be prosecuted for these hundreds of other girls that I molested; that I plead guilty over here to the one girl that I will admit to molesting. So maybe I can get to withdraw my plea. But the last thing he wants to do because if he ends up going to trial, I'll be in prison for the rest of his life like any other person who ever did this crime would be. He could have that argument, I guess, but still wouldn't really work well for him.

THE COURT: All right. So you still think I should set aside the agreement, require the government to confer?

MR. EDWARDS: Work out a plea negotiation commensorate with the crimes that he committed and that are favorable after they confer with the victims. And it is within their discretion. Of course, they can decide on their own that, hey, I think that the agreement was fair after they have talked with the victims. That could happen. I don't know if a reasonable person that would do that, but it could happen.

THE COURT: Apparently, you are not suggesting that that these person are not reasonable.

MR. EDWARDS: I'm suggesting they haven't conferred with the victims and that if they took into consideration what these two in the courtroom have to say, I don't think that we'd be in this same position right now.

THE COURT: They have never spoken to your client about what happened to them?

MR. EDWARDS: They have spoken to them about what happened. Maybe not about what the girls wanted to happen as a result of this case, which is

part of conferring to decide that these girls wanted money on their own, which is basically what this-- this non-prosecution agreement entails that has language that he'll agree to liability in a civil case. That's not what these girls-- They want justice. They want him in prison now more than ever. The reason they stated they kept this agreement from the girls and they basically conceded we didn't tell the girls about this agreement, well, the reason is because they would have objected and they wouldn't have been able to sign off on this and the victims would have had a voice, and we'd still been going through litigation. The exact problem they tried to prevent, at least in their terms which was the impeachment of these girls at a later trial, is still available to anybody once the civil suits are filed anyway.

They have three arguments. One, we didn't have to talk to them. Two, we did talk to them sort of. And if you don't buy that, the reason we didn't talk to them, we were trying to prevent them from being impeached later. None of them trump the victims' rights to confer prior to plea negotiations. That's why, Your Honor, we would ask this Court to enter an order vacating that previous

plea agreement as illegal, ask them to confer with the victims once again or for the first time and work out a negotiated plea to that accord.

THE COURT: Well, all you can ask them to do is confer. I can't ask them to do anything beyond that. I mean, it is up to them to negotiate.

MR. EDWARDS: I wouldn't quarrel with that.

THE COURT: Now, having learned today, I guess, that the agreement was signed when, in October?

MR. EDWARDS: October 2007, I heard.

THE COURT: About eight or nine months ago, is there any need to rush to a decision in this matter? The decision has already been made. You filed this, I think, on the presumption that the agreement was about to take place and you wanted to be able to confer beforehand and you weren't sure what was going on.

MR. EDWARDS: Precisely, Your Honor. And I'm holding the letters that are exhibits that they were writing to my client during the year of 2008 telling her how lengthy of a process this was going to be and be patient. So, right, I was completely in the dark about when this agreement was signed.

THE COURT: In view of the fact that this

agreement has already been consumated, and you want me to set it aside, as opposed to something that's about to occur, would you agree that-- and I have done this very quickly because of the petition and your allegation that something was about to happen. I'm not blaming you.

MR. EDWARDS: I was mistaken.

THE COURT: I'm not blaming you for doing that. In view of what you know now, is there any need to treat this as an emergency that has to be decided by tomorrow?

MR. EDWARDS: I can't think of any reason in light of what we just heard.

THE COURT: Mr. Lee, do you have anything else you wanted to add? Does either side think I need to take evidence about anything? If I do, since this is not an emergency anymore, I can probably find a more convenient time to do that. I don't have the time today to take evidence. But if you do believe that I should take evidence on this issue.

MR. EDWARDS: It may be best if I conferred with the U.S. Attorney's Office on that and we can make a decision whether it is necessary or whether Your Honor deemed it was necessary for you to make a

decision.

THE COURT: I want to know what your respective positions are because it may be something in terms of having a complete record, and this is going to be an issue that's it going to go to the Eleventh Circuit, may be better to have a complete record as to what your position is and the government's is as to what actions were taken. And I don't know if I have enough information, based on Ms. Villafana's affidavit or I need additional information. And because it is not an emergency, I don't have to do something quickly, we can play it be ear and make this into a more complete record for the court of appeals.

MR. EDWARDS: If there is a time where it is necessary to take evidence, Your Honor is correct in stating that it is not an emergency and it doesn't need to happen today. And, I will confer with the government on this and if evidence needs to be taken, it be taken at a later date. It doesn't seem like there will be any prejudice to any party.

THE COURT: Mr. Lee, do you have any thoughts? You want to consult with Mr. Edwards?

MR. LEE: There may be a couple of factual matters that I need to chat with petitioner's

counsel on. If we can reach agreement on those as to what was communicated to CW and what time, if they don't dispute that, then we don't think it will be necessary to have an evidentiary hearing. But if we can agree, fine or maybe we can't. We'll talk about it.

THE COURT: All right. So why don't you let me know if you think an evidentiary hearing is necessary. If there are additional stipulations you want to enter into or supplement what has already been presented, you can do that.

Now, the other issue I want to take up, though, is the government filed its response to the petition under seal. And so I want to know why. What is in there that at this point needs to be under seal? Is there anything in there that's confidential, privileged, anything that's different from what you hve said here in open court that requires that to be sealed?

MR. LEE: Well, Your Honor, on our motion to seal was based on two reasons. One that dealt with individuals or minors at the time that the offense occurred. So we were attempting to protect the privacy of those individuals. And also it dealt with negotiations with Mr. Epstein which were in the

nature of plea negotiations, which we treat as confidential. Normally, they're not aired out in open court. So those were our two reasons.

THE COURT: All right. But I guess the letters you attached only related to Mr. Edwards' client.

MR. LEE: Three of them, yes, Your Honor.

THE COURT: Are you prepared, Mr. Edwards, to waive any issues regarding the release of those documents that relate to your clients?

MR. EDWARDS: Judge, I think it would be appropriate to redact the names of the clients as they have done.

THE COURT: I don't think the names are in there.

MR. EDWARDS: I think they're redacted. They're blacked out. I have no problem with releasing those documents. I'm not sure that's part of the deal. But if it is--

MR. LEE: It is.

MR. EDWARDS: Okay. I'll waive.

THE COURT: You really don't have any objection to those letters that were sent to them being released to the public?

MR. EDWARDS: Of course not, Judge.

THE COURT: Then what is there about the plea agreement or the negotiations that is in the response that we really haven't already kind of--

MR. LEE: Your Honor, there was a confidentiality agreement in the deferral of prosecution to the State of Florida. So we were trying to maintain the confidentiality of the negotiations that occurred since we had discussions during those negotiations as one of the reasons why we decided not to tell all of the individuals what was going on.

THE COURT: But is that still necessary, that confidentiality or is that kind of moot at this point?

MR. LEE: Well, we would like it sealed. Admittedly, what happened today in open court has probably weakened our argument. I don't dispute that.

THE COURT: In your opinion, anything in particular, any paragraph in the response or in Ms. Villafana's affidavit that you think is particularly troublesome that should remain under seal?

MR. LEE: May I have a moment, Your Honor?

THE COURT: Yes.

MR. LEE: Thank you. Your Honor, one aspect

of this in the notification letters that were dispatched to individuals which were attached to Ms. Villafana's declaration, there is a citation to a clause in the agreement that was reached regarding the damages remedy under 18 USC 2255 that was subject to the constitutionality agreement, we believe that should still remain confidential.

THE COURT: But hasn't the fact that this provision was part of the agreement again been aired? Is there any secret to it anymore?

MR. LEE: The actual text of it has not been aired. The existence of it has been heard but the actual text has not and we believe it should still remain confidential.

THE COURT: Okay. Any other argument on that issue?

MR. LEE: No, Your Honor. Thank you.

THE COURT: Ms. Villafana wants to speak to you.

MR. LEE: Your Honor, one item that I'd like to bring to the Court's attention. We had advised Mr. Epstein and his attorneys that if we were to dislose some of the agreement, we would give them advance notice and ability to lodge an objection. We would like an opportunity to do that.

THE COURT: All right. But you're not disclosing. It would be by my order that it would be disclosed.

MR. LEE: Yes, Your Honor. And we just would like to register that we believe it should remain confidential.

THE COURT: All right.

MR. EDWARDS: Your Honor, I don't see any authority for keeping that under seal.

THE COURT: I agree. The fact that there is this preserved right on behalf of the victims to pursue a civil action is already a matter of public record; the exact text of the clause-- I don't see that disclosing the text of the clause when the fact that the clause exists is already a matter of public record. It is not harmful in any way to Mr. Epstein or the government and the letters to the victim that the victim can disclose those letters, they're not under any confidentiality obligation or restriction and they're free to disclose it themselves if they choose to. So I don't see that there is any real public necessity to keep the response sealed in view of what we discussed already on the record and the victim's ability to disclose those provisions of their own choosing, if they wish. So, in view of

the public policy that matters filed in court proceedings should be open to the public and sealing should only occur in circumstances that justife the need to restrict public access, I'm going to deny the motion to seal the response and allow that to be viewed.

All right. So I'll let both of you confer about whether there is a need for any additional evidence to be presented. Let me know one way or the other. If there is, we'll schedule a hearing. If there isn't and you want to submit some additional stipulated information, do that, and then I'll take care of this in due course.

MR. EDWARDS: Thank you, Your Honor.

THE COURT: All right.

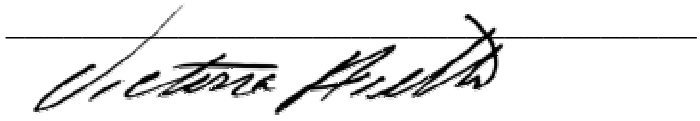
MR. LEE: Thank you, Your Honor.

MS. VILLAFANA: Thank you, Your Honor.

THE COURT: You're welcome.

(Proceedings concluded.)

I hereby certify that the foregoing is true and correct to the best of my ability.



Victoria Aiello, Court Reporter

GOVERNMENT

EXHIBIT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE, Petitioner,	)	Case No. 08-80736-CIV-MARRA
-v-	)	
UNITED STATES OF AMERICA, Respondent.	)	West Palm Beach, Florida August 14, 2008

TRANSCRIPT OF HEARING

BEFORE THE HONORABLE KENNETH A. MARRA

U.S. DISTRICT JUDGE

Appearances:

FOR THE PETITIONER	Bradley J. Edwards, ESQ., and Paul G. Cassell, ESQ.
FOR THE RESPONDENT	Dexter Lee, AUSA, and Ann Marie C. Villafana, AUSA
Reporter (561)514-3768	Stephen W. Franklin, RMR, CRR, CPE Official Court Reporter 701 Clematis Street, Suite 417 West Palm Beach, Florida 33401

(Call to the order of the Court.)

THE COURT: Good afternoon.

VOICES: Good afternoon, Your Honor.

THE COURT: All right. This is the case of In Re: Jane Does 1 and 2, case number 08-80736-CIV-MARRA.

May I have counsel state appearances, please, and if you can please try and speak up so we can hear you.

MR. EDWARDS: Okay. Brad Edwards, on behalf of Jane Doe 1 and 2.

MR. CASSELL: Paul Cassell, along with Mr. Edwards.

THE COURT: Good afternoon.

MR. LEE: Good afternoon, Your Honor. For the United States Government, Dexter Lee, Assistant U.S. Attorney, and Marie Villafana.

THE COURT: All right. Good afternoon.

Mr. -- everyone, we're having trouble hearing you, so if you can try and speak up, and also if you could identify yourself before you begin speaking so the reporter can accurately indicate on the record who is speaking. I appreciate that.

I scheduled this for a status conference in order to determine whether I'm going to need additional -- as far as the parties were concerned, whether either of the parties thought that I needed additional information in order to proceed with the pending motion by the Plaintiffs or whether

we have a complete record based upon what's already been submitted, and I wasn't quite sure where we were on that since we last met.

So if I can hear from Mr. Edwards or Mr. Cassell first what the Plaintiffs' position as far as where we stand on the record in terms of whether I need additional facts, evidence, or there's going to be a stipulation submitted to me upon which I can rely.

MR. EDWARDS: Sure.

Your Honor, this is Brad Edwards.

I believe that you do have a sufficient record, in that I don't think that -- I think that we're in agreement that additional evidence does not need to be taken in the case for Your Honor to make a ruling. We have actually met with the U.S. Attorney, and we've had meaningful discussions in an attempt to resolve our issues. I think the only issue, we can probably agree to this right now, is that the victims are unable at this point in time to go any further with requesting a remedy from the Court without the full and complete plea agreement being produced to us from the U.S. Government, and the U.S. Government's hands are tied in that there's a confidentiality agreement within that plea agreement that prohibits them from turning that over.

So at this point in time, we would be asking Your Honor to enter an order compelling them to turn over that

agreement, and at that point in time I think we can meet again and probably resolve our disputes amongst ourselves.

THE COURT: All right. So do I understand that you're modifying your claim for relief at this point and only seeking me to compel the Government to produce the plea agreement, or are you -- or is this a -- a preliminary step, after which you're then going to evaluate whether you want me to do something further?

MR. EDWARDS: I think it's the latter, Your Honor. It is, and it will likely always be, our position that the victims' rights are violated. However, because of the legal consequences of invalidating the current agreement, it is likely not in my clients' best interest to ask for the relief that we initially asked for.

So in order to effectively evaluate the situation and ask for the appropriate relief, we would just be asking Your Honor at this point in time to allow us to see the full entire plea agreement that is purportedly drafted to protect my victims. That only seems fair to know, you know, what the plea agreement says, especially in light of the fact that Mr. Epstein knows what the plea agreement says.

THE COURT: All right. And then if I grant that relief, you will evaluate the agreement and then decide whether to either dismiss your case or go forward and ask for some additional relief?

MR. EDWARDS: That's correct, Your Honor.

THE COURT: Is it your plan or is there any kind of -- been any kind of discussion between you and the Government as to what you -- if I grant the relief of requiring the Government to at least present you with the agreement and let you view it, has there been any discussion about you keeping it confidential and not letting it go any further than your clients and using it for your decision-making purposes, or do you wish to have it released to you, and you would be able to use it however you wished?

MR. EDWARDS: Well, Your Honor, we would prefer that it be produced to us and not have to keep it confidential. I think that that creates an undue hardship on us. However, if it was Your Honor's order that we do maintain some confidentiality of the agreement, we would certainly abide by it.

The reason we want it is not so that it's disseminated everywhere; however, there is a public interest in viewing what happens in the court process, and this is just part of it. There's no reason that it should be sealed or kept confidential. Seems to be an overwhelming reason to -- to make it public. However, that's not our intention. Our intention is just to view it, represent my clients and then evaluate it and ask the Court for the appropriate relief after we've seen it.

THE COURT: All right. And, again, although I hear you saying you think that it shouldn't be kept confidential because there's some public interest in it, but if you had it to use for whatever, to represent your client either in advising your clients whether to go forward with this case or not, or I guess to use it in connection with any other litigation that you might want to initiate on behalf of your clients where that agreement might have some relevance, what's the interest in using -- having the ability to disclose it beyond those purposes?

MR. EDWARDS: Well, certainly if -- if the agreement was designed to protect these victims in a criminal as well as a civil context, and we are going to be filing civil cases against Mr. Epstein, and this agreement, undoubtedly it will play a big role in the amount of protection the victims have been allotted, as well as the course of action in the civil cases. It seems inevitable that it's going to become, you know, more public at that point in time, and I think that's in the very near future.

At this point in time, it's not intention to make it public, but I think that inevitably happens as soon as civil litigation begins, and this is at the heart of it, so . . .

THE COURT: Well, civil litigation has already begun, hasn't it?

MR. EDWARDS: Right.

THE COURT: Okay. All right.

MR. EDWARDS: At least for some other parties, with other attorneys and other things, so . . .

THE COURT: Well, you filed a case yesterday, didn't you?

MR. EDWARDS: We filed one of them. It is not on behalf of one of the Jane Does that I'm representing in this action.

THE COURT: Okay. All right.

MR. EDWARDS: Just so that we're clear.

THE COURT: I haven't seen the name, so I didn't know who it was on behalf of.

All right. Let me hear from Mr. Lee or Ms. Villafana.

I understand that you're under a confidentiality agreement, and I understand that you feel restricted in what you can unilaterally do, but I've already entered some rulings in this case that have made portions of that agreement public. Is there any reason to keep the rest of the agreement confidential, other than you're obligated by the agreement and don't want to be in a position where you've unilaterally violated it absent a court order?

MR. LEE: Yes, Your Honor. This is Dexter Lee. Good afternoon.

Your Honor, we do feel bound by the confidentiality provision such that we could not voluntarily disclose this non-prosecution agreement without court order compelling us to do so.

The provision in the non-prosecution agreement required us to notify Mr. Epstein and his attorneys of any attempts to have this document disclosed in a public forum, and we have done so. They have expressed their desire that if this document is to be disclosed to the Petitioners in this case, that it be done pursuant to a protective order which would preclude the victims from disseminating it publicly.

We believe that is appropriate in this action. It would allow them access to the document, which they claim they have a need to have, and that's fine. They can review it and determine where they wish to go. We believe there's no public interest in having this disseminated.

Now, should there be subsequent litigation between Mr. Edwards' clients and Mr. Epstein, and the subject matter of this agreement should arise, then Mr. Epstein and Mr. Edwards will be in a position to litigate that in whatever forum it is, rather than having that issue disposed of where they're not present to voice their objections.

So we would ask the Court to, if it compels us to disclose it, to do so under a protective order which would

provide for no public dissemination.

THE COURT: All right.

MS. VILLAFANA: Your Honor this is Marie Villafana.

Just to add onto what Mr. Lee was saying, one of our concerns is that there are names of individuals in the order who are not currently --

THE COURT: Ms. Villafana, I'm having trouble hearing you. I apologize.

MS. VILLAFANA: I'm sorry.

Your Honor, one of our concerns is that the agreement contains names of individuals who are not currently -- haven't pled guilty or haven't -- do not have certain obligations. And I think that there may be a Rule 6(e) issue if the agreement is made public or available to the press, et cetera.

THE COURT: Okay. So, I'm sorry, you say there are names of other individuals that do what?

MS. VILLAFANA: They were other individuals who are the subject of these -- who are the subject of the Government's investigation but who are not necessarily known to the public in the sense that Mr. Epstein entered the guilty plea and the public is aware of that, but they may not know about these other individuals who haven't been indicted, and therefore I think they have a bit of a privacy interest here.

THE COURT: Okay. But they're not parties to the agreement.

MS. VILLAFANA: No.

THE COURT: Okay. Other than the fact that the Government bound itself in the agreement not to disclose it, and you require a court order to have it disclosed, what would be the public interest, or what would be the justification for denying disclosure of the agreement at least to purported victims of Mr. Epstein's conduct? Why shouldn't the victims who the Government, as I understand it, provided notice of their rights under the Act that they had the status of victims, why shouldn't they have the opportunity to see that agreement?

MS. VILLAFANA: Your Honor, I guess I will respond.

I was prepared to -- I need to highlight an issue for the Court. I was prepared to argue today that we had provided the victims with the portion of the agreement that is relevant to them.

Last night and this morning, in conversations with Mr. Epstein's attorneys, they have said for the first time that they do not believe that one portion of the agreement is binding, and that is the portion that has been disclosed to the victims. So I can no longer say that they have the portion that is relevant to them.

THE COURT: I'm sorry, I didn't quite follow that,

Ms. Villafana.

You've had discussions with Mr. Epstein's counsel as to what?

MS. VILLAFANA: Your Honor, in preparation for today's hearing, I was -- I had been working to confirm with Mr. Epstein's attorney that the agreement that I have described in my declaration is the one that they are performing under. Last night and this morning for the first time, I was told that they believe that a portion of the agreement that is described in my declaration and that was disclosed to the victims does not bind them. So as of this point, the victims have not received at least what Mr. Epstein claims is the portion relevant to them.

THE COURT: Okay. Your understanding is that Mr. Epstein's taking the position that the portions of the agreement that have already been disclosed are not -- is not binding on Mr. Epstein?

MS. VILLAFANA: Yes.

MR. LEE: Your Honor, this is Dexter Lee. If I may?

The agreement initially negotiated was executed in September of 2007. That's part one, I will call it.

In October, there was an addendum to the executed agreement which occurred the month before. There was some more discussions, and there was a letter that was submitted

to Mr. Epstein's attorneys by the United States Attorney in December. That's part three, I will call it.

There is now a dispute between the Government and Mr. Epstein's attorneys about whether certain portions after the original agreement are effective and binding. I just need to make the Court aware of that and also Mr. Edwards and Judge Cassell.

MR. EDWARDS: This is the first time --

This is Brad Edwards speaking.

This is the first time we're hearing any of this. This is obviously even further evidence that the victims were unaware of the plea agreement that was being worked out.

But, nonetheless, I don't think that it changes our position, in that we believe we're entitled to not only the plea agreement, but all of the addenda that have been attached to that plea agreement and have become part of that plea agreement, just so that what we're asking for is clear.

MR. LEE: Your Honor, this is Dexter Lee.

We are prepared to give all three hopefully, in our view, pursuant to a protective order preventing public disclosure, but we just want the Court and the Petitioners' counsel to know that there is a dispute ongoing right now about which portions are effective and which are not. And we can discuss that with them at the conclusion of the hearing.

THE COURT: All right. But again, as far as my

earlier question, even though there's a dispute now apparently between Mr. Epstein and the Government as to what portions of the agreement are or are not binding, does the Government have any reason why the victims should not have the benefit of seeing these -- the agreement, whether, you know, it's going to be held binding down the road or not, other than you agreed in a confidentiality order not to disclose it? But beyond that, is there any justification that the Government can provide to me as to why the victims, people who have been identified by the Government as victims of Mr. Epstein, should not have the benefit of seeing this plea agreement, or non-prosecution agreement, whatever you want to term it?

MR. LEE: Your Honor, this is Dexter Lee. When you refer to victims, do you mean victims beyond the three that are parties to the instant litigation?

THE COURT: I mean -- yes, I'm talking about anyone who the Government may have disclosed as a -- as a -- or sent notice to based upon your understanding of who might have been a potential or an alleged victim of Mr. Epstein's conduct, whether they're part of this lawsuit or not.

MR. LEE: Well, if the Court is asking whether we could expand the protective order such that it would permit disclosure to those other victims identified that have received notification already, I believe that would be

appropriate.

THE COURT: Okay. But I guess my real question is do you have any reason that you could advance why they should not get it?

Let's just limit ourselves to the victims who are the Jane Does in this case before we go beyond that. Is there any reason that the Government can advance why the two Jane Does 1 and 2 in this case should not have the opportunity to view the plea agreement, or the deferral agreement or the addenda to it? Can anyone justify not letting them see it?

MR. LEE: Your Honor, this is Dexter Lee.

No, we cannot.

THE COURT: Okay. All right. Now, Mr. Edwards.

MR. EDWARDS: Yes.

THE COURT: Is there any reason why I shouldn't, assuming I'm going to allow or require the Government to produce the agreement and the addenda to your clients in this case -- and we'll talk about other victims in a minute -- is there any reason why, at least initially, it shouldn't be subject to a protective order so that in the case, for example, that you filed yesterday on behalf of an alleged victim under a Jane Doe, where you specifically reference this agreement in your -- in one the counts, that it shouldn't remain subject to a protective order at least until

Mr. Epstein has the opportunity to litigate whether or not it should be disclosed beyond -- beyond your clients or other victims?

MR. EDWARDS: At this point, Your Honor, I think that that would probably be fair.

My only real concern is that if there's an order out there where anybody can access on PACER and it says, "okay, at this point I'm ordering the Government to disclose this plea agreement," I just want to make sure if anybody else feels entitled to that agreement, whether it's other victims, or counsel, or what have you, that they be required to request it from the Government or these attorneys rather than try to subpoena or request it from my office, knowing that I have access to this confidential agreement.

Other than that, no, I don't have any other reasons why that's not a reasonable order.

THE COURT: All right. And let's assume I think it should be available to any person that the Government has identified as an alleged victim of Mr. Epstein's conduct, and they've sent notice of their rights under the statute as a victim to this -- these individuals, and I permit disclose to your clients, or anyone else who fits into the category of victim as described by the Government, and require -- you know, again, impose a protective order that it shouldn't go to anyone beyond that until such time as, in a pending

lawsuit, I conclude that the protective order should be lifted after Mr. Epstein has an opportunity to be heard on that issue, is there anything else that you would need at this point?

MR. EDWARDS: No, Your Honor.

This is Brad Edwards.

At this point in time that's all we're requesting.

THE COURT: And Mr. Lee or Ms. Villafana, if I conclude that anyone that you've identified as a victim and notified as a victim of their rights with respect to the investigation of Mr. Epstein is entitled to view the agreements, subject to a protective order until such other time that I say it should be released beyond that, do you -- is there any reason why I shouldn't make it available to all of the people who have been identified by you as a victim?

MR. LEE: This is Dexter Lee, Your Honor.

The answer is no, there's no problem, with the exception of the grand jury issue that my colleague, Ms. Villafana, mentioned earlier. I may have to defer to her right now on that issue to see if that would preclude what the Court is asking.

THE COURT: All right. Hold on one second.

(Brief pause in proceedings.)

THE COURT: Mr. Edwards, is there any reason why you would need to see the names of others that the Government

may have been investigating that might appear -- whose names might appear in these agreements? Is there any interest that you would have in that or need to see that information?

MR. EDWARDS: Well, the primary interest would be that those are obviously important witnesses for any case that my clients have against Mr. Epstein, witnesses that Mr. Epstein is clearly aware of, since he has access to the complete full agreement, and it seems inherently unfair that he would have access to the names -- to a witness list that my clients would not be privy to.

THE COURT: Well, why wouldn't you be able to get those through discovery in the civil litigation?

MR. EDWARDS: And that may be an appropriate time to get it. But that would be my primary objection for not getting the names of the victims, whether now or eventually.

THE COURT: No, as I understand it, this is not the names of other victims, this is the names of other individuals that the Government may have been investigating in connection with their investigation of Mr. Epstein, and they're concerned about grand jury secrecy and information that may have been brought before the grand jury that should not be made public at this point, as I understood the Government's position.

Is that correct, Ms. Villafana?

MS. VILLAFANA: Yes, Your Honor.

MR. EDWARDS: Well, Your Honor, as I understand this -- and correct me if I'm wrong, anybody -- this non-prosecution agreement provides for a dismissal or immunity for other individuals, and I think these are the individuals that we are talking about. But all of that is inextricably intertwined within this agreement, and it is this agreement in its total form that is supposed to protect the victims. I think that the victims have a right to know of these other individuals, who my clients were also familiar with during the course of this conduct, and how it protects them in this case. And I don't see why they should, once again, get an incomplete version of this. Because these are characters that are very intertwined with the -- the -- with Mr. Epstein's conduct. This is not completely and wholly indifferent or irrelevant conduct for some other people. This is all part of the same conduct, and I think that's probably necessary for us to evaluate the effect of this agreement and whether or not we're going to continue to pursue this case.

THE COURT: All right. So you're assuming that the agreement also provides that the Government will not prosecute these other individuals? That's what your assumption is?

MR. EDWARDS: Yes, Your Honor.

THE COURT: Do you have any information to -- upon

which you make that conclusion, or is that just an assumption?

MR. EDWARDS: That is all just, you know, the discussions that we've had with various individuals, law enforcement, clients, things like that. And putting it together, that's what we believe is a portion of this agreement. If I'm wrong about that, one of the U.S. Attorneys on the phone can probably correct me. But that's my belief.

THE COURT: All right. Well, assume they're just mentioned in the agreement in some way. And I'm not sure how or why they would be mentioned. But assume they're mentioned in the agreement, but there's no agreement by the Government not to prosecute them. Is there any reason for you to have their names if it's other than for the purpose of finding out the extent to which the Government has agreed not to prosecute Mr. Epstein and other individuals?

MR. EDWARDS: That's a tough question for me to answer without knowing in what context those individuals are listed. However, I just renew my previous argument that I do believe they're intertwined, and I think that, once again, if we get a version of this plea agreement without the portions that pertain to these other individuals, then we could possibly be in the same position where we are not sure as to the full extent of the protection allowed under this

agreement. That would be -- without knowing how they're mentioned, I can't voice any other objection to not getting those portions but I could certainly foresee where, you know, we're not going to get out of it what we're asking.

THE COURT: All right. Well, again, I didn't understand the Government to want to redact the entire provisions that relate to these individuals. I understood that they just wanted to redact their names.

Am I correct, Ms. Villafana?

MS. VILLAFANA: Yes.

THE COURT: Okay. So if you were given the agreement with these names redacted but you saw the context in which they were listed, and then, after seeing the agreement and the context in which their names were mentioned, if it presented a problem to you that they were being withheld, couldn't you then just, you know, file another motion for disclosure of the names after you've had an opportunity to, you know, evaluate whether or not there's any real need for you to get these names?

MR. EDWARDS: Okay. We could do that at that time, Your Honor.

THE COURT: All right. Anything else that anybody wants to add to what -- our discussion?

MR. EDWARDS: One more thing, Your Honor. This is Brad Edwards.

Same topic. My clients are currently in a position where they may be speaking to local law enforcement regarding certain issues pertaining to this case, and if we are unable to have access to the other named people in this agreement, it may put them at a disadvantage in terms of whether or not it would be in their benefit to speak with other law enforcement about this case. I mean, certainly if there's individuals who have been given immunity in this agreement, then it would only be to the disadvantage of my clients to continue to try to pursue criminal charges.

So in that regard, that would be my only objection to not having the names of these other individuals.

THE COURT: All right. Well, again, you're assuming that there's some kind of immunity or deferral of prosecution --

MR. EDWARDS: That's correct.

THE COURT: -- given to people other than Mr. Epstein, correct?

MR. EDWARDS: That's correct.

THE COURT: Okay. And that's something that would be clear once you got the agreement and you read it, and if the names were -- you know, if that was apparent in the agreement, then you could come back and ask me to require the disclosure of the names.

MR. EDWARDS: Okay. That sounds fair.

THE COURT: All right. Mr. Lee or Ms. Villafana, did you have anything else you wanted to add?

MS. VILLAFANA: Well, Your Honor, I guess I will just tell the Court this. It does indeed contain language related to that issue. So I don't know if you want to make Mr. Edwards jump through that hurdle or if you want to make that decision now.

THE COURT: All right. So you're telling me that there is some language in the agreements that does obligate the Government to not prosecute individuals other than Mr. Epstein?

MS. VILLAFANA: Correct.

THE COURT: All right. So if that's true, why should the victims not know who those people are?

MS. VILLAFANA: Your Honor, I guess my concern really relates to disclosure. And if your protective order -- or I don't know if you need a written protective order or an ore tenus order, limit Mr. Edwards to disclosing it only to his clients and to his co-counsel, then I don't think that we would have a basis to object.

THE COURT: Again, with the right for them to come back and ask for the ability to disclose it beyond that limited group at a later time after Mr. Epstein has an opportunity to be heard?

MS. VILLAFANA: Right.

THE COURT: Again, Mr. Edwards, do you have any problem with that procedure, you know, you're permitted to disclose -- the names of these individuals who are also getting the benefit of a non-prosecution agreement would be disclosed to you under the terms of the protective order without prejudice to you being able to, in any litigation that ensues, seeking to disclose it beyond the limited group?

MR. EDWARDS: No, Your Honor, that's fine.

THE COURT: All right. Well, then I'm going to order the Government to produce the agreement and any addenda to Mr. Epstein -- Mr. Edwards in this case, and it would be available also to any other individuals who have been identified by the United States as victims in connection with the investigation of Mr. Epstein, subject to a protective order. Which, I'm going to ask the parties to try and work on the language of a protective order to submit to me that would prohibit disclosure to anyone other than Mr. -- to the victim, or victims' counsel, without prejudice to the victims seeking the ability to disclose it beyond that limited group after Mr. Epstein has an opportunity to be heard on further disclosure.

MR. EDWARDS: Okay. Thank you, Your Honor.

MR. LEE: This is Dexter Lee.

Very well, Your Honor. We appreciate your time.

THE COURT: All right. So is there any questions

about it? Is there anything unclear about what I'm ordering?

And I'm also -- okay. And the names of the -- there will be no redaction in the agreements, but any victim has to -- who gets notice of this has to agree to be bound by the protective order until further order of the Court.

MS. VILLAFANA: Your Honor, this is Marie Villafana.

Just to be clear, we are not under an obligation to advise the victims of this, but if the victim asks for a copy of the document, this is the procedure that we'll follow?

THE COURT: Well, I'm not going to tell you whether you have any obligation under the Act to disclose this or not. I don't want to get into that. I don't know that you do, but I don't want to say that you don't. So if you have an independent obligation to disclose this to victims under the Act, then -- then I'm not telling you not to do it.

MS. VILLAFANA: Okay. But your order isn't ordering us to do it. We will have to make our evaluation.

THE COURT: I'm only ordering it to be available to victims, and the -- and then you have to decide whether you're obligated under the Act to disclose it to anyone else who falls into that category.

MS. VILLAFANA: Okay. Thank you, Your Honor.

THE COURT: All right. Thank you.

VOICES: Thank you, Your Honor.

THE COURT: Have a good day.

(Proceedings concluded.)

* * * * *

CERTIFICATE

I, Stephen W. Franklin, Registered Merit Reporter, and Certified Realtime Reporter, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated this 20th day of AUGUST, 2008.

_____

Stephen W. Franklin, RMR, CRR

GOVERNMENT

EXHIBIT

V

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May 19, 2008

VIA FACSIMILE (202) 514-0467 ***CONFIDENTIAL***

Honorable Mark Filip
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Dear Judge Filip:

In his confirmation hearings last fall, Judge Mukasey admirably lifted up the finest traditions of the Department of Justice in assuring the United States Senate, and the American people, of his solemn intent to ensure fairness and integrity in the administration of justice. Your own confirmation hearings echoed that bedrock determination to assure that the Department conduct itself with honor and integrity, especially in the enforcement of federal criminal law.

We come to you in that spirit and respectfully ask for a review of the federal involvement in a quintessentially state matter involving our client, Jeffrey Epstein. While we are well aware of the rare instances in which a review of this sort is justified, we are confident that the circumstances at issue warrant such an examination. Based on our collective experiences, as well as those of other former senior Justice Department officials whose advice we have sought, we have never before seen a case more appropriate for oversight and review. Thus, while neither of us has previously made such a request, we do so now in the recognition that both the Department's reputation, as well as the due process rights of our client, are at issue.

Recently, the Criminal Division concluded a very limited review of this matter at the request of U.S. Attorney Alex Acosta. Critically, however, this review deliberately excluded many important aspects of this case. Just this past Friday, on May 16, 2008, we received a letter from the head of CEOS informing us that CEOS had conducted a review of this case. By its own admission, the CEOS review was "limited, both factually and legally." Part of the self-imposed limitation was CEOS's abstention from addressing our "allegations of professional misconduct by federal prosecutors"—even though such misconduct was, as we contend it is, inextricably intertwined with the credibility of the accusations being made against Mr. Epstein by the United States Attorney's Office in Miami ("USAO"). Moreover, CEOS did not assess the terms of the Deferred Prosecution Agreement now in effect, nor did CEOS review the federal prosecutors' inappropriate efforts to implement those terms. We detail this point below.

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By way of background, we were informed by Mr. Acosta that, at his request, CEOS would be conducting a review to determine whether federal prosecution was both appropriate and, in his words, "fair." That is not what occurred. Instead, CEOS has now acknowledged that we had raised "many compelling arguments" against the USAO's suggested "novel application" of federal law in this matter. Even so, CEOS concluded, in minimalist fashion, that "we do not see anything that says to us *categorically* that a federal case should not be brought" and that the U.S. Attorney "would not be *abusing his prosecutorial discretion* should he authorize federal prosecution of Mr. Epstein" thus delegating back to Mr. Acosta the decision of whether federal prosecution was warranted (emphasis added). Rather than assessing whether prosecution would be *appropriate*, CEOS, using a low baseline for its evaluation, determined only that "it would not be impossible to prove . . ." certain allegations made against Mr. Epstein. The CEOS review failed to address the significant problems involving the appearance of impermissible selectivity that would necessarily result from a federal prosecution of Mr. Epstein.

We respect CEOS's conclusion that its authority to review "misconduct" issues was precluded by Criminal Division practice. We further respect CEOS's view that it understood its mission as significantly limited. Specifically, the contemplated objective was to determine whether the USAO would be abusing its discretion by bringing a federal prosecution rather than making its own de novo recommendations on the appropriate reach of federal law. However, we respectfully submit that a full review of all the facts is urgently needed at senior levels of the Justice Department. In an effort to inform you of the nature of the federal investigation against Mr. Epstein, we summarize the facts and circumstances of this matter below.

The two base-level concerns we hold are that (1) federal prosecution of this matter is not warranted based on the purely-local conduct and the unprecedented application of federal statutes to facts such as these and (2) the actions of federal authorities are both highly questionable and give rise to an appearance of substantial impropriety. The issues that we have raised, but which have not yet been addressed or resolved by the Department, are more than isolated allegations of professional mistakes or misconduct. These issues, instead, affect the appearance and administration of criminal justice with profound consequences beyond the resolution in the matter at hand.

* * *

In a precedent-shattering investigation of Jeffrey Epstein that raises important policy questions—and serious issues as to the fair and honorable enforcement of federal law—the USAO in Miami is considering extending federal law beyond the bounds of precedent and reason. Federal prosecutors stretched the underlying facts in ways that raise fundamental questions of basic professionalism. Perhaps most troubling, the USAO in Miami, as a condition of deferring prosecution, required a commingling of substantive federal criminal law with a proposed civil remedy engineered in a way that appears intended to profit particular lawyers in

private practice in South Florida with personal relationships to some of the prosecutors involved. Federal prosecutors then leaked highly sensitive information about the case to a New York Times reporter.[1] The immediate result of this confluence of extraordinary circumstances is an onslaught of civil lawsuits, all save one brought by the First Assistant's former boutique law firm in Miami.

The facts in this case all revolve around the classic state crime of solicitation of prostitution.[2] The State Attorney's Office in Palm Beach County had conducted a diligent investigation, convened a Grand Jury that returned an indictment, and made a final determination about how to proceed. That is where, in our federal republic, this matter should rest. Mr. Epstein faces a felony conviction in state court by virtue of his conduct, and the only reason the State has not resolved this matter is that the federal prosecutors in Miami have continued to insist that we, Mr. Epstein's counsel, approach and demand from the State Attorney's Office a harsher charge and a more severe punishment than that Office believes are appropriate under the circumstances. Yet despite the USAO's refusal to allow the State to resolve this matter on the terms the State has determined are appropriate, the USAO has not made any attempt to coordinate its efforts with the State. In fact, the USAO mandated that any federal agreement would be conditioned on Mr. Epstein persuading the State to seek a criminal punishment unlike that imposed on other defendants within the jurisdiction of the State Attorney for similar conduct.

From the inception of the USAO's involvement in this case, which at the end of the day is a case about solicitation of prostitution within the confines of Palm Beach County, Florida, we have asked ourselves why the Department of Justice is involved. Regrettably, we are unable to suggest any appropriate basis for the Department's involvement. Mr. Epstein has no criminal history whatsoever. Also, Mr. Epstein has never been the subject of general media interest until a few years ago, after it was widely perceived by the public that he was a close friend of former President Bill Clinton.

The conduct at issue is simply not within the purview of federal jurisdiction and lies outside the heartland of the three federal statutes that have been identified by prosecutors—18 U.S.C. §§ 1591, 2422(b), and 2423(b).

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[1] One of the other members of Mr. Epstein's defense team, Jay Lefkowitz, has personally reviewed the reporter's contemporaneous notes.

[2] Although some of the women alleged to be involved were 16 and 17 years of age, several of these women openly admitted to lying to Mr. Epstein about their age in their recent sworn statements.

These statutes are intended to target crimes of a truly national and international scope. Specifically, § 1591 was enacted to combat human trafficking, § 2422 is aimed at sexual predation of minors through the Internet, and § 2423 deals with sex tourism. The nature of these crimes results in multi-jurisdictional problems that state and local authorities cannot effectively confront on their own. However, Mr. Epstein's conduct was purely local in nature and, thus, does not implicate federal involvement. After researching every reported case brought under 18 U.S.C. §§ 1591, 2422(b), and 2423(b), we found that not a single case involves facts or a scenario similar to the situation at hand. Our review of each precedent reflects that there have been no reported prosecutions under § 1591 of a 'john' whose conduct with a minor lacked force, coercion, or fraud and who was not profiting from commercial sexual trafficking. There have likewise been no cases under § 2422(b)—a crime of communication—where there was no use of the Internet, and where the content of phone communications did not contain any inducing or enticing of a minor to have illegal sexual activity as expressly required by the language of the statute. 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). Lastly, there are no reported cases of violations of § 2423(b) of a person whose dominant purpose in traveling was merely to go to his own home.[3]

Although these matters were within the scope of the CEOS review, rather than considering whether federal prosecution is appropriate, CEOS only determined that U.S. Attorney Acosta "would not be abusing his prosecutorial discretion should he authorize federal prosecution" in this case. The "abuse of discretion" standard constitutes an extremely low bar of evaluation and while it may be appropriate when the consideration of issues are exclusively factual in nature, this standard fails to address concerns particular to this situation, namely the "novel application" of federal statutes. The "abuse of discretion" standard in such pure legal matters of statutory application risks causing a lack of uniformity. The same federal statutes that would be stretched beyond their bounds in Miami have been limited to their heartland in each of the other federal districts. Also, because this case implicates broader issues of the administration of equal justice, federal prosecution in this matter risks the appearance of selectivity in its stretching of federal law to fit these facts.

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[3] Federal prosecution of a man who engaged in consensual conduct in his home that amounted to, at most, the solicitation of prostitution, is unprecedented. Since prostitution is fundamentally a state concern, (*see United States v. Evans*, 476 F.3d 1176, n.1 (11th Cir. 2007) (federal law "does not criminalize all acts of prostitution (a vice traditionally governed by state regulation)")), and there is no evidence that Palm Beach County authorities and Florida prosecutors cannot effectively prosecute and punish the conduct, there is no reason why this matter should be extracted from the hands of state prosecutors in Florida.

In fact, recent testimony of several alleged "victims" contradicts claims made by federal prosecutors during the negotiations of a deferred prosecution agreement. The consistent representations of key Government witnesses (such as [redacted], [redacted], [redacted] and [redacted] confirm the following critical points: *First*, there was no communication, telephonic or otherwise, that meets the requirements of § 2422(b). For instance, Ms. [redacted] confirmed that Mr. Epstein never emailed, text-messaged, or used any facility of interstate commerce whatsoever, before or after her one (and only) visit to his home. [redacted] Tr. (deposition) at 30. *Second*, the women who testified admitted that they lied to Mr. Epstein about their age in order to gain admittance into his home. Indeed, the women who brought their underage friends to Mr. Epstein testified that they would counsel their friends to lie about their ages as well. Ms. [redacted] stated the following: "I would tell my girlfriends just like [redacted] approached me. Make sure you tell him you're 18. Well, these girls that I brought, I know that they were 18 or 19 or 20. And the girls that I didn't know and I don't know if they were lying or not, I would say make sure that you tell him you're 18." [redacted] Tr. at 22. *Third*, there was no routine or habit of improper communication expressing an intent to transform a massage into an illegal sexual act. In fact, there was often no sexual activity at all during the massage. Ms. [redacted] testified that "[s]ometimes [Mr. Epstein] just wanted his feet massaged. Sometimes he just wanted a back massage." [redacted] Tr. at 19. [redacted] also stated that Mr. Epstein "never touched [her] physically" and that all she did was "massage[ ] his back, his chest and his thighs and that was it." [redacted] Tr. at 12-13. *Finally*, there was no force, coercion, fraud, violence, drugs, or even alcohol present in connection with Mr. Epstein's encounters with these women. Ms. [redacted] stated that "[Mr. Epstein] never tried to force me to do anything." [redacted] Tr. A at 12. These accounts are far from the usual testimony in sex slavery, Internet stings and sex tourism cases previously brought. The women in actuality were not younger than 16, which is the age of consent in most of the 50 states, and the sex activity was irregular and in large part, consisted of solo self-pleasuring.

The recent crop of civil suits brought against Mr. Epstein confirm that the plaintiffs did not discuss any sexually-related activities with anyone prior to arriving at Mr. Epstein's residence. This reinforces our contention that no telephonic or Internet persuasion, inducement, enticement or coercion of a minor, or of any other individual, occurred. In addition, Mr. Jeffrey Herman, the former law partner of one of the federal prosecutors involved in this matter and the attorney for most of the civil complainants (as described in detail below), was quoted in the Palm Beach *Post* as saying that "it doesn't matter" that his clients lied about their ages and told Mr. Epstein that they were 18 or 19.

Not only is a federal prosecution of this matter unwarranted, but the irregularity of conduct by prosecutors and the unorthodox terms of the deferred prosecution agreement are beyond any reasonable interpretation of the scope of a prosecutor's responsibilities. The list of improprieties includes, but is not limited to, the following facts:

- Federal prosecutors made the unprecedented demand that Mr. Epstein pay a minimum of $150,000 per person to an unnamed list of women they referred to as minors and whom they insisted required representation by a guardian ad litem. Mr. Epstein's counsel later established that all but one of these individuals were actually adults, not minors. Even then, though demanding payment to the women, the USAO eventually asserted that it could not vouch for the veracity of any of the claims that these women might make.

- Federal prosecutors made the highly unusual demand that Mr. Epstein pay the fees of a civil attorney chosen by the prosecutors to represent these alleged "victims" should they choose to bring any civil litigation against him. They also proposed sending a notice to the alleged "victims," stating, in an underlined sentence, that should they choose their own attorney, Mr. Epstein would not be required to pay their fees. The prosecutors further demanded that Mr. Epstein waive his right to challenge any of the allegations made by these "victims."

- The Assistant U.S. Attorney involved in this matter recommended for the civil attorney, a highly lucrative position, an individual that we later discovered was closely and personally connected to the Assistant U.S. Attorney's own boyfriend.

- Federal prosecutors represented to Mr. Epstein's counsel that they had identified (and later rechecked and re-identified) several alleged "victims" of federal crimes that qualified for payment under 18 U.S.C. § 2255, a civil remedy designed to provide financial benefits to victims. Only through state discovery provisions did we later learn that many of the women on the rechecked "victim list" could not possibly qualify under § 2255. The reason is that they, themselves, testified that they did not suffer any type of harm whatsoever, a prerequisite for the civil recovery under § 2255. Moreover, these women stated that they did not, now or in the past, consider themselves to be victims.

- During the last few months, Mr. Herman, First Assistant Sloman's former law partner, has filed several civil lawsuits against Mr. Epstein on behalf of the alleged "victims." It is our understanding that each of Mr. Herman's clients are on the

Government's confidential "list of victims." Most of these lawsuits seek $50 million in money damages.[4]

- Assistant U.S. Attorney David Weinstein spoke about the case in great detail to Landon Thomas, a reporter with the *New York Times*, and revealed confidential information about the Government's allegations against Mr. Epstein. The Assistant U.S. Attorney also revealed the substance of confidential plea negotiations.

- When counsel for Mr. Epstein complained about the media leaks, First Assistant Sloman responded by asserting that "Mr. Thomas was given, pursuant to his request, non-case specific information concerning specific federal statutes." Based on Mr. Thomas' contemporaneous notes, that assertion appears to be false. For example, Mr. Weinstein told Mr. Thomas that federal authorities believed that Mr. Epstein had lured girls over the telephone and traveled in interstate commerce for the purpose of engaging in underage sex. He recounted to Mr. Thomas the USAO's theory of prosecution against Mr. Epstein, replete with an analysis of the key statutes being considered. Furthermore, after Mr. Epstein's defense team complained about the leak to the USAO, Mr. Weinstein, in Mr. Thomas' own description, then admonished him for talking to the defense, and getting him in trouble. Mr. Weinstein further told him not to believe the "spin" of Mr. Epstein's "high-priced attorneys," and then, according to Mr. Thomas, Mr. Weinstein forcefully "reminded" Mr. Thomas that all prior conversations were merely hypothetical.

We are constrained to conclude that the actions of federal officials in this case strike at the heart of one of the vitally important, enduring values in this country: the honest enforcement of federal law, free of political considerations and free of the taint of personal financial motivations on the part of federal prosecutors that, at a minimum, raise the appearance of serious impropriety.

We were told by U.S. Attorney Acosta that as part of the review he requested, the Department had the authority, and his consent, to make any determination it deemed appropriate regarding this matter, including a decision to decline federal prosecution. Yet, CEOS's only conclusion, based on its limited review of the investigation, is that U.S. Attorney Acosta would not abuse his discretion by proceeding against Mr. Epstein. Thus, the decision of whether

[4] As recently as two months ago, Mr. Sloman was still listed publicly as a part of his former law firm. While we assume this was an oversight, Mr. Sloman's identification as part of the firm raises the appearance of impropriety.

prosecution *is fair and appropriate* has been placed, once again, in U.S. Attorney Acosta's hands.

In light of the foregoing, we respectfully ask that you review this matter and discontinue all federal involvement so that the State can appropriately bring this matter to closure. We would greatly appreciate the opportunity to meet with you to discuss these important issues. Such a meeting would provide the Department with an opportunity to review the paramount issues of federalism and the appearance of selectivity that are generated by the unprecedented attempts to broaden the ambit of federal statutes to places that they have never before reached. We sincerely appreciate your attention to this matter.

Respectfully submitted,

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May 27, 2008

VIA FACSIMILE (202) 514-0467

CONFIDENTIAL

Honorable Mark Filip
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Dear Judge Filip:

This letter briefly supplements our prior submission to you dated May 19, 2008. In that communication, we urgently requested that your Office conduct an independent review of the proposed federal prosecution of our client, Jeffrey Epstein. The dual reasons for our request that you review this matter are (i) the bedrock need for integrity in the enforcement of federal criminal laws, and (ii) the profound questions raised by the unprecedented extension of federal law by the United States Attorney's Office in Miami (the "USAO") to a prominent public figure who has close ties to former President Clinton.

The need for review is now all the more exigent. On Monday, May 19, 2008, First Assistant Jeffrey Sloman of the USAO responded to an email from Jay Lefkowitz informing U.S. Attorney Alex Acosta that we would be seeking your Office's review. Mr. Sloman's letter, which imposed a deadline of June 2, 2008 to comply with all the terms of the current Non-Prosecution Agreement (the "Agreement"), plus new unilateral modifications, on pain of being deemed in breach of that Agreement, appears to have been deliberately designed to deprive us of an adequate opportunity to seek your Office's review in this matter.

The USAO's desire to foreclose a complete review is understandable, given that the Child Exploitation and Obscenity Section ("CEOS") has already determined that our substantive arguments regarding why a federal prosecution of Mr. Epstein is not warranted were "compelling." However, in contradiction to Mr. Sloman's assertion that CEOS had provided an independent, *de novo* review, CEOS made clear that it did not do so. Indeed, CEOS declined to examine several of the more troubling aspects of the investigation of Mr. Epstein, including the deliberate leak to the *New York Times* of numerous highly confidential aspects of the investigation and negotiations between the parties as well as the recent crop of civil lawsuits filed against Mr. Epstein by Mr. Sloman's former law partner.

The unnecessary and arbitrarily imposed deadline set by the USAO was done without any respect for the normal functioning and scheduling of state judicial matters. It requires that Mr. Epstein's counsel persuade the State Attorney of Palm Beach to issue a criminal information

to a charge that the State Attorney has not, despite a two year investigation, determined to be appropriate. Mr. Epstein's counsel must also successfully expedite a plea of guilty to this charge on a date prior to July 8, 2008, which is the date presently set by the state court Judge.

Further, the unnecessary deadline is even more problematic because Mr. Epstein's effort to reconcile the state charge and sentence with the terms of the Agreement requires an unusual and unprecedented threatened application of federal law. Thus, it places Mr. Epstein in the highly unusual position of having to demand that the State acquiesce to a more severe punishment than it had already determined was appropriate.

We have attempted to resolve these and other issues through the USAO and CEOS, including raising our concerns about the USAO's inappropriate conduct with respect to this matter. But those avenues have now been shut down. Mr. Sloman's letter purports to prohibit any further contact between Mr. Epstein's defense team and U.S. Attorney Acosta, and instead requires us to communicate with the USAO only though Mr. Sloman's subordinates.

While it pains us to say this, this misguided prosecution from the outset gives the appearance that it may have been politically motivated. Mr. Epstein is a highly successful, self-made businessman and philanthropist who entered the public arena only by virtue of his close personal association with former President Bill Clinton. There is little doubt in our minds that the USAO never would have contemplated a prosecution in this case if Mr. Epstein were just another "John."

U.S. Attorney Acosta previously has stated that he is "sympathetic" to our federalism-related concerns, but he has taken the position that his authority is limited by enforcement policies set forth in Washington, D.C. As expressed in our prior communication to you, we believe that a complete and independent appraisal and resolution of this case most appropriately would be undertaken by your Office – beginning with the rescission of the arbitrary, unfair, and unprecedented deadline that Mr. Sloman demands to have imposed in this case. At the very least, we would appreciate a tolling of the arbitrary timeline imposed on our client by the USAO in order to allow time for your office to consider our request that you undertake a review of this case.

Thank you for your time and attention.

Respectfully submitted,

Kenneth W. Starr
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