



U.S. Department of Justice

United States Attorney
Southern District of Florida

November 30, 2007

DELIVERY BY FACSIMILE

Kenneth W. Starr, Esq.
Kirkland & Ellis LLP
[REDACTED]

Re: Jeffrey Epstein

Dear Mr. Starr:

I write in response to your letter of November 28, 2007, to Assistant Attorney General [REDACTED]. There are a number of issues that must be addressed, but I believe that a history of the negotiations with the various counsel for Mr. Epstein would best illustrate how the Non-Prosecution Agreement was reached. I then will address some of your client's attempts to attack the agreement that he signed, and I finally will address how our Office intends to proceed.¹

At the end of 2006, Guy Lewis contacted AUSA [REDACTED] when he learned that she was handling the federal investigation of Mr. Epstein. He asked to meet with her and she stated that she believed such a meeting would be premature. In December, Lilly Ann Sanchez and Gerald Lefcourt again contacted AUSA [REDACTED] to set a meeting. AUSA [REDACTED] requested documents in advance of such a meeting, but the request was refused. Ms. Sanchez then contacted AUSA [REDACTED], who agreed to meet with Ms. Sanchez and Mr. Lefcourt. On February 1, 2007, Ms. Sanchez and Mr. Lefcourt met with AUSAs [REDACTED] and [REDACTED], as well as a member of the Federal Bureau of Investigation, presented defense counsel's view of the case, and promised a willingness to assist in the investigation. The Office was unpersuaded by their presentation, and the investigation continued.

By the late Spring and early Summer, the focus of the investigation left investigating the facts of the victims' claims and turned more to Mr. Epstein's background, his asserted defenses, co-conspirators, and possible witnesses who could corroborate the victims' statements. The

¹First Assistant U.S. Attorney [REDACTED] is sending a letter under separate cover addressing some of the items in the correspondence from you and Mr. Lefkowitz, since he has been directly involved in discussions of those issues.

investigation also began to look into financial aspects of the case, requiring the issuance of several subpoenas. At that time, Mr. Lefcourt began leveling accusations of improprieties with the investigation and sought a meeting with [REDACTED], who was then Chief of the Criminal Section. By that time, our Office had already received a proposed initial indictment package, which had been reviewed by the supervisors in our West Palm Beach Office and by attorneys with the Justice Department's Child Exploitation and Obscenity Section, but which was awaiting review by [REDACTED] and [REDACTED]. The Office deferred presenting the indictment to the grand jury to accommodate your client's request for a meeting. The Office also agreed to wait several weeks for that meeting to occur to allow four of Mr. Epstein's attorneys to be present, and also provided Mr. Epstein's counsel with a list of the statutes that were the subject of the federal investigation.

On June 26, 2007, [REDACTED], [REDACTED], [REDACTED] and [REDACTED], and two Special Agents with the FBI met with four attorneys for Mr. Epstein, specifically, Alan Dershowitz, Roy Black, Gerald Lefcourt, and Lilly Ann Sanchez. During that meeting, Professor Dershowitz and other members of the defense team presented legal and factual arguments against a federal indictment. Counsel for the defense also requested the opportunity to present written arguments, which was granted. The arguments and written materials provided by the defense were examined by the Office and rejected.

On July 31, 2007, [REDACTED], [REDACTED], [REDACTED] and [REDACTED], and two FBI agents again met with Roy Black, Gerald Lefcourt, and Lilly Ann Sanchez. On that date, the Office presented a written sheet of terms that would satisfy the Office's federal interest in the case and discussed the substance of those terms. That term sheet is attached hereto. As you will note, one of those terms was:

Epstein agrees that, if any of the victims identified in the federal investigation file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the U.S. District Court for the Southern District of Florida over his person and the subject matter. Epstein will not contest that the identified victims are persons who, while minors, were victims of violations of Title 18, United States Code, Sections(s) 2422 and/or 2423.

During that meeting, the focus was on Mr. Epstein's unwillingness to spend time in prison, and various suggestions were raised by defense counsel, including the proposal that Mr. Epstein could serve a sentence of home confinement or probation. This was repeatedly mentioned by counsel for Mr. Epstein as being equivalent to a term of incarceration in a state or federal prison. Mr. Epstein's counsel mentioned their concerns about his safety in prison, and our Office offered to explore a plea to a federal charge to allow Mr. Epstein to serve his time in a federal facility. Counsel were also presented with a conservative estimate of the sentence that Mr. Epstein would face if he were convicted: an advisory guideline range of 188 - 235 months of imprisonment with a five-year mandatory minimum prison term, to be followed by lifetime supervised release. Counsel was told that Mr. Epstein had two weeks to accept or reject the proposal.

Mr. Epstein's counsel, still dissatisfied with the Office's review of the case, demanded to meet with me and to have the opportunity to meet with someone in Washington, D.C. To accommodate Mr. Black, the meeting was put off until September 7, 2007, despite the fact that the indictment was ready for presentation to the grand jury. In the interim, AUSA [REDACTED] and the investigators met with the Chief of the Child Exploitation Section, [REDACTED], to review, yet again, the evidence and legal theories of prosecution. Chief [REDACTED] strongly supported the indictment and even offered to join the trial team and provide additional support from his Section.

On September 7, 2007, I met with you, Mr. Lefkowitz, and Ms. Sanchez, along with Chief [REDACTED], [REDACTED], and AUSAs [REDACTED] and [REDACTED].² You and other counsel for Mr. Epstein again presented arguments regarding the sufficiency of the federal interest in the case and other legal and factual issues. Your arguments were discussed afterwards and the unanimous opinion of all of the attorneys present was in favor of prosecution.

During the September 7th meeting, your co-counsel, Mr. Lefkowitz, also offered a plea resolution. His offer, in essence, was that your client be subject to home confinement at his Palm Beach home, using private security officers who would serve as "wardens," if necessary. Mr. Lefkowitz expressed the belief that such a sentence would be particularly appropriate because, as a wealthy white man, your client may be the subject of violence or extortion while in prison. Finally, both you and your co-counsel expressed the belief that Mr. Epstein's extensive charitable giving should be considered in our prosecution decision. I summarily rejected these proposals, and indicated that the twenty-four month offer presented previously by this Office stood. I should add that there were four other prosecutors present at the meeting, representing a combined experience of more than fifty years. Never had any of them heard, or heard of, an attorney making a similar argument, and especially not in a child exploitation case.

The issue of the inclusion of a restitution-type remedy for the victims pursuant to 18 U.S.C. § 2255 was specifically raised and discussed at the September 7th meeting, and you thanked AUSA [REDACTED] for bringing it to your attention as a novel approach to allowing the victims to receive essentially federal restitution while allowing a plea to a state charge.

After considering everything said and written by Mr. Epstein's legal defense team, and after conferring with Chief [REDACTED], I informed you that we still intended to proceed to indictment. Since counsel had indicated a desire to appeal the matter to the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division, I agreed to delay the presentation of the indictment for two weeks to allow you to speak with someone in Washington, D.C., if you so chose.

²I note that this meeting had been delayed several weeks to allow for Mr. Black's participation, yet he was not present.

Instead, Mr. Epstein elected to negotiate the Non-Prosecution Agreement, and on September 12, 2007, counsel for the United States ([REDACTED], Garcia, and [REDACTED]) and counsel for Mr. Epstein (Messrs. Lefcourt, Lefkowitz, and Goldberger) met with State Attorney Barry Krisher and Assistant State Attorney [REDACTED] to discuss a plea to an Information in the state court that would satisfy the federal interest in the case. As noted on the term sheet of July 31st, one of those essential terms was a guilty plea to a charge requiring sex offender registration. During that meeting, the issue of sex offender registration was raised, and Mr. Goldberger told the federal prosecutors that there was no problem, Mr. Epstein would plead guilty to the charge of solicitation of minors for prostitution (Fl. Stat. 796.03), which was one of the statutes listed on the original term sheet. Although our Office had wanted Mr. Epstein to plead guilty to three different offenses, we agreed to this compromise.³ Of course, we later learned that, at the time Mr. Goldberger made that statement, he incorrectly believed, based upon a statement from ASA [REDACTED], that Fl. Stat. 796.03 did not require sex offender registration.

The parties then began working first on a plea agreement to a federal charge and, when it was clear that there was no guarantee the Mr. Epstein would serve his sentence in a minimum security prison camp, the discussion turned to a Non-Prosecution Agreement. Both the federal plea agreement and the Non-Prosecution Agreement included references to Section 2255 because neither the contemplated federal charges nor the proposed state charges encompassed all of the identified victims. If Mr. Epstein had been prosecuted under the planned indictment, the identified victims would have been eligible for restitution and damages under Section 2255. As explained above, one of the United States' interests, which had to be satisfied by the Non-Prosecution Agreement, was providing appropriate compensation to the victims. This provision of the Agreement was heavily negotiated. As Mr. Lefkowitz wrote in his November 29th e-mail to Mr. [REDACTED], which we received the same day as your letter, your client "offered to provide a restitution fund for the alleged victims in this matter; however that option was rejected by [our] Office." The option was rejected for several reasons. First, the Office does not serve as legal representatives to the victims and has no authority to bind the victims, nor could it provide a monetary figure that would represent a "loss" amount for restitution purposes. Second, there would be no legal basis for federal restitution without a conviction for a federal offense. And, third, it was my belief that this Office should not be put in the position of administering a restitution fund. Our Section 2255 proposal put the victims in the same position that they would have been in if we had proceeded to trial and convicted Mr. Epstein of his crimes, with the exception that the victims were provided with counsel.⁴ Your client and his

³Another significant compromise reached at the meeting was a reduction in the amount of jail time – from twenty-four months down to eighteen months, which would be served at the Palm Beach County Jail rather than a state prison facility.

⁴As [REDACTED] will address in his letter to Mr. Lefkowitz, Section 2255 provides that the perpetrator shall pay the attorney's fees of the victim, so the appointment of counsel was not such a benefit to the victims but, rather, was done, in part, to benefit Mr. Epstein by allowing him

attorneys agreed with this alternative.

The negotiation of the Agreement was lengthy and difficult. Mr. Lefkowitz and AUSA [REDACTED] went through several drafts of both a federal Plea Agreement and a Non-Prosecution Agreement. Throughout these negotiations, when a member of the defense team was dissatisfied with the Office's position, it was repeatedly appealed through the Office. So several members of the defense team spoke with [REDACTED], currently chief of staff to Assistant Attorney General [REDACTED], and [REDACTED] regarding the terms of the Agreement, including the Section 2255 provisions. At the eleventh hour, when your legal team realized that Fl. Stat. 796.03 would require Mr. Epstein to register as a sex offender, you sought to change the most essential term of the agreement – a term that Messrs. Goldberger, Lefkowitz, and Lefcourt had specifically agreed to at the September 12th meeting with the State Attorney's Office – asking to allow Mr. Epstein to plead to a charge that would not require registration. When AUSAs [REDACTED] rejected the suggestion, several members of the defense team appealed directly to me, which also failed. When that failed, according to press reports, apparently Mr. Lefcourt "leaked" a letter intended for me to the press containing the reasons why he did not believe Mr. Epstein should have to register.

Prior to signing the Non-Prosecution Agreement, Mr. Epstein's defense team included yourself, Ms. Sanchez, and Messrs. Dershowitz, Lefcourt, Lefkowitz, Lewis, Black, and Goldberger. At least one other "criminal law expert" was involved in plea negotiations, and several associates at your firm conducted research on discrete issues. This impressive legal team reviewed the Agreement and counseled Mr. Epstein. Based upon that counsel, Mr. Epstein decided that it was in his best interests to enter into the Non-Prosecution Agreement, and the Non-Prosecution Agreement itself is signed both by Mr. Lefcourt and Ms. Sanchez as well as by Mr. Epstein.

Since the signing of the Agreement on September 24th, more than two months' ago, it appears that several attorneys on your legal team are dissatisfied with the Agreement. Counsel have objected to several steps taken by the U.S. Attorney's Office to effectuate the terms of the Agreement, in essence presenting collateral challenges to portions of the Agreement. Your letter is the latest example. It is not the intention of this Office ever to force the hand of a defendant to enter into an agreement against his wishes. Your client has the right to proceed to trial. If your client is dissatisfied with his Agreement, or believes that it is unlawful or unfair, we stand ready to unwind the Agreement. One of the reasons the Office agreed to forego federal prosecution was to avoid the expenditure of extensive resources, yet these interminable "negotiations" have caused the expenditure of excessive management resources, and the Office is unwilling to invest any more of those resources. The prosecution of the case also has been delayed almost eight months to allow you to raise any and all issues; we will not tolerate any further delay.

to try to privately negotiate a group resolution of all claims with one attorney.

KENNETH STARR, ESQ.
NOVEMBER 30, 2007
PAGE 6 OF 6

Accordingly, please provide us with a definitive statement, signed by your client, of his intention to abide by each and every term of the Agreement by close of business on Tuesday, December 4, 2007. By that time, you must also provide us with the agreement(s) with the State Attorney's Office and a date and time certain for the plea and sentencing, which must occur no later than December 14, 2007. If we do not receive these items by that time, we will deem the agreement to be rescinded and will proceed with the prosecution. There must be closure in this matter.

Sincerely,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

cc: [REDACTED], First Assistant U.S. Attorney
AUSA [REDACTED]

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