

1 A Yeah.

2 Q -- right about that same time, he quite quickly
3 identified a potential problem, and that was the commitment
4 for the -- or, the agreement that the U.S. Attorney's Office
5 would identify the representative for the victims. Do you
6 recall him raising that?

7 A I don't recall him raising that as an issue, but I
8 know it was an issue.

9 Q All right. It was an issue, and it was one that he
10 raised as soon as he came back. So, there was an effort,
11 which he conducted then in [REDACTED] absence to craft
12 an NPA addendum to address that issue.

13 Do you -- are you -- are you aware that [REDACTED]
14 [REDACTED] received a copy of the NPA in November when Ken
15 Starr wrote a letter to [REDACTED] asking her to review the
16 22.55 portion of it? Do you -- do you remember that issue?

17 A I remember that the issue was appealed to CEOS.

18 Q Okay. Well, it was -- it was appealed initially by
19 letter to [REDACTED], raising an issue that was new to --
20 that had not been raised with you, and that is what led to
21 your letter to Ken Starr on December 4.

22 A I will accept the timeline.

23 Q Okay.

24 A It's difficult without all the documents --

25 Q Sure.

1 A -- but yes.

2 Q And at the time that [REDACTED] saw the NPA,
3 he sent a message to [REDACTED] about the -- about his view
4 of the NPA, and you didn't see it, but I just wanted to name
5 some problems that he identified with the disposition, and
6 get your reaction --

7 A Mm-hmm.

8 Q -- to it. So, first, he says I'm not thrilled
9 about the agreement, but he acknowledges that's out of his
10 hands. He says in terms of the charging and sentencing
11 provisions, he's getting -- Epstein is getting a much better
12 deal than the average defendant, with the exception of
13 defendants who have done physical harm to their victims or
14 abused very young children, we haven't seen more egregious
15 conduct, because of its serial nature. The area we need to
16 be most careful about relates to the victims.

17 The U.S. should seek to ensure that the plea, which
18 is not giving him serious jail time, provides the best means
19 possible to address the harm he caused to the victims. That
20 generally means restitution and/or therapy. While the
21 agreement provides facility for the victims, the relevant
22 terms still seem pretty advantageous for the defendant, and
23 not all that helpful to the victims.

24 They get an attorney who will be paid by the
25 defendant, which involves at least some conflict of interest,

1 or they could hire their own attorneys on a contingency
2 basis, and they get waivers from the defendant when his plea
3 would facilitate their civil cases in any event. Then, they
4 still have to sue him to get anything.

5 Most times with wealthy defendants, we make them
6 agree to a restitution fund, and then still provide that the
7 victims can sue the defendant independently if they choose.
8 We always make them clearly admit their guilt, no nolo pleas.

9 This is incredibly important to the victims. I
10 would have taken the guy to trial unless the victims were
11 clearly against it, and I don't think most of them are here.
12 He then says to [REDACTED], who by this time is working
13 for --

14 A Mm-hmm.

15 Q -- [REDACTED].

16 A Right.

17 Q So, that's the context in which he's addressing it.
18 [REDACTED] specifies that, "[REDACTED] wouldn't and
19 shouldn't address the agreement." So, that -- so that the
20 issue that was then before [REDACTED], put there by Ken
21 Starr, was the -- whether this 22.55 scheme or scenario set
22 out in the NPA was appropriate. It appears that she then
23 sent that back to you to address.

24 A Right.

25 Q But as far as [REDACTED] commentary on the NPA,

1 if you had been aware of this perspective at the time you
2 were -- that you and your people were fashioning the NPA,
3 would that have been helpful to you in -- in deciding out to
4 proceed?

5 A So, may I?

6 Q Yes.

7 A Okay. I assume you've read the whole thing, but
8 let me just take a --

9 Q I have.

10 A And so, a few comments. First, let me say, he was
11 part of the September meeting.

12 Q Mm-hmm.

13 A And -- and to my recollection, these
14 perspectives -- so, so, at least the outlines of the
15 agreement were -- were disclosed at that meeting, and I don't
16 recall this type of communication at that time.

17 Q Okay.

18 A I also recall that there was a lot of back and
19 forth around this restitution fund concept, and our
20 perspective was that the restitution fund puts the victim at
21 a disadvantage --

22 Q Mm-hmm.

23 A -- because -- let me -- let me try to recreate. I
24 don't recall the details, but I recall that there was a
25 perspective that the restitution fund --

1 Q Mm-hmm.

2 A -- put the victims as a disadvantage --

3 Q Mm-hmm.

4 A -- and there is some reference to --

5 Q It's the --

6 A Was it an Alaska case?

7 Q It's called the [REDACTED] case.

8 MR. [REDACTED]: [REDACTED]

9 THE WITNESS I'm sorry?

10 MR. [REDACTED]: [REDACTED].

11 THE WITNESS [REDACTED]?

12 MS. [REDACTED]: [REDACTED] or [REDACTED].

13 THE WITNESS [REDACTED]?

14 BY MS. [REDACTED]:

15 Q Yeah.

16 A And so to the extent that there were better ways of
17 crafting this, that certainly would have been -- been highly
18 relevant, because to my recollection, we were not wed to any
19 particular way of crafting it.

20 The -- the intent of the 22.55 was to come as close
21 as possible to putting the victims in the -- in the position
22 they would have been had he been tried and convicted
23 federally. And so, the answer to your question is yes.

24 Q Is yes, that would have --

25 A Would have been helpful.

1 Q Okay. As you set about addressing the 22.55, you
2 consulted with [REDACTED] [REDACTED]. Do you recall that?

3 A I -- I recall consultations. I don't recall that
4 it was specifically with [REDACTED], but --

5 Q Did you know her?

6 A Yes.

7 Q Okay, and do you recall the nature of your
8 interaction with her?

9 A I -- I don't. I know from contemporary review of
10 the record, that there is an e-mail from her.

11 Q It's 41a.

12 A 41a.

13 Q And what I -- what I want to ask is, is simply, 41a
14 is -- is an e-mail in which you ask -- you note to [REDACTED]
15 [REDACTED], who was [REDACTED] --

16 A Right.

17 Q -- one of her deputies, and she oversaw CEOS. She,
18 [REDACTED], mentioned to you that [REDACTED] was looking at
19 this, which is the --

20 A 22.55.

21 Q -- 22.55, she contacts her counterpart in the civil
22 division, [REDACTED] [REDACTED], and there's an e-mail from him,
23 which is the second page of this exhibit, which he copies you
24 on. So, my question is, is this the extent of your
25 interaction with [REDACTED] [REDACTED] on this issue?

1 A I -- 12 years --

2 Q Okay.

3 A -- after the fact, I don't remember.

4 Q Okay. All right. The -- in Exhibit 35, there is a
5 letter from Jay Lefkowitz in which -- I'm sorry, it's an e-
6 mail from Jay Lefkowitz.

7 A Exhibit?

8 Q Exhibit 35 to you, and this is substantially later,
9 but it has a sentence that -- or a phrase that we'd like to
10 ask you about, and -- all right, it's highlighted at the top.
11 It says, back in the beginning of -- back at the beginning of
12 January, when we both agreed that there were significant
13 irregularities with the deferred prosecution agreement, you
14 called a time out. Is that accurate? Did you and he agree
15 that --

16 A No.

17 Q -- there were significant irregularities?

18 A No.

19 Q Okay.

20 A And if I could, there are -- there are several
21 instances where not just, to me, but to other people as well,
22 Jay recharacterizes conversations.

23 Q Recharacterizes them inaccurately?

24 A Inaccurately.

25 Q Or misleadingly?

1 A Or misleadingly.

2 Q All right.

3 A What I recall agreeing to at some point is there
4 was an appeal to the DAG, or there was an appeal in place,
5 and I basically said -- I think there was a letter that I
6 sent, saying if you want to appeal, go ahead. We're not
7 concerned about this.

8 Q Mm-hmm.

9 A But that doesn't mean that I agree that there were
10 irregularities --

11 Q All right.

12 A -- or that there was a time out, that's -- I'm part
13 of a department. I'm part of a hierarchy. If someone wants
14 to overrule me, that's okay by me.

15 Q All right. So, the NPA addendum was worked out,
16 and the defense team continued its sort of multi-pronged
17 assault. In the middle of the negotiations between [REDACTED]
18 and Lefkowitz about the NPA addendum, that's when you had the
19 much commented on breakfast --

20 A Correct.

21 Q -- on October 12, and you have stated publicly that
22 at -- perfectly accurately that the NPA was signed, and that
23 was a done deal. And so, that -- that this was not tied in
24 any way to any effort to influence the terms of the NPA,
25 fair?

1 A Fair, because the way this was reported was that I
2 negotiated it over breakfast. It was signed, and that's
3 really important.

4 Q Of course. There were, however, a number of open
5 issues --

6 A Yes.

7 Q -- right? And in Exhibit 28, Jay Lefkowitz on page
8 two, this is an e-mail to you, acknowledges your -- your
9 breakfast on Friday. This is dated October 18, and -- and
10 following -- following up on -- your conversation with him
11 about the date for Epstein's plea.

12 So, he notes that, "You said you didn't want to
13 dictate a schedule to the state." So, all I want to note is
14 that when you had the breakfast, there was -- there was --
15 there were issues still open that were the subject of
16 discussions between the defense and the U.S. Attorney's
17 Office.

18 And -- and so, I guess my question is, while that
19 was a meeting of convenience in a public place, in a location
20 where you had business later that day, a speech, I believe,
21 optically, do you understand the public concern that this was
22 sort of a one on one negotiation on pending issues?

23 A So, I -- I understand how there can be concern.
24 This, you know, it is -- it was not unusual -- in this case,
25 I actually very intentionally waited, and tried not to have

1 one on one meetings, but there are other instances where I
2 might from time to time have one on one conversations with
3 the opposing counsel.

4 I don't remember the breakfast. I can speculate
5 that one of the issues that was informing this was somewhere
6 around this time, and I can't say with certainty that this
7 was what it was, but somewhere around this time, there arose
8 allegations that [REDACTED] had directed the designation to her
9 boyfriend's partner, or something along those lines.

10 Q A former -- I believe it was a former law school
11 classmate of her former -- of her then boyfriend.

12 A I don't -- yeah, and so I don't remember what the
13 details --

14 Q Okay.

15 A -- were, but I know that that was a topic that he
16 wanted to raise --

17 Q Mm-hmm.

18 A -- with me.

19 Q Did he at that breakfast?

20 A I honestly -- I don't recall the breakfast.

21 Q Okay.

22 A You asked me about one characterization of what I
23 said in the record, you know, of that breakfast. I think I
24 responded --

25 Q Mm-hmm.

1 A -- through, or my counsel responded, and they're
2 pointing out that I seem fairly perturbed at how he
3 inaccurately characterized something that I said. And so, we
4 don't need to revisit that, but --

5 Q Uh-uh. All right. If you look at Exhibit 27,
6 another sort of point, just to kind of --

7 A All right.

8 MR. [REDACTED]: Could we -- before we --

9 MS. [REDACTED]: Yes?

10 MR. [REDACTED]: -- leave -- are we leaving the
11 breakfast meeting?

12 MS. [REDACTED]: No. This is --

13 THE WITNESS Okay.

14 MS. [REDACTED]: -- this is directly related.

15 MR. [REDACTED]: Okay.

16 BY MS. [REDACTED]:

17 Q And that is, Exhibit 27 is the second e-mail down,
18 is from [REDACTED] to Jay Lefkowitz. The date is October
19 12, so that's the same day as your breakfast.

20 A Right.

21 Q And the date of it is not -- I'm sorry, the time is
22 9:48 a.m. Your breakfast was at 7:00. So, this would have
23 been pretty shortly after your breakfast, and [REDACTED] writes
24 to Jay Lefkowitz with a copy to you and [REDACTED]
25 stating that he just got off the phone with you, that is,

1 [REDACTED] just got off the phone with you, and then he furnishes
2 a revised paragraph one, which suggests -- I mean, I infer
3 from that that shortly after the breakfast, you had a phone
4 conversation with [REDACTED] [REDACTED] about a revision to this
5 paragraph, and that -- that that was likely something that
6 you talked to him about. Again, I'm not --

7 A Right.

8 Q -- suggesting that this --

9 A Again, I -- I don't -- I don't recall the
10 breakfast, so I can't say one way or the other. I -- I
11 take -- I take your point. I don't recall seeing this.

12 Q All right. Well, it was --

13 A But --

14 Q -- you were copied on it. Okay. All right. [REDACTED],
15 you wanted to --

16 BY MR. [REDACTED]:

17 Q I just wanted to point to Exhibit 30.

18 A Can -- can we back up a second?

19 MS. [REDACTED]: Sure.

20 THE WITNESS [REDACTED], I'm not sure whether your
21 concerns are -- so, I would -- I would only raise the
22 question where -- or, the point where, based on this, and I
23 don't recall, so I can't speak, but [REDACTED] is saying, Jay
24 suggests revision has been rejected. Here is our latest,
25 [REDACTED].

1 And so, to -- there are multiple ways to read this.
2 One is that this was raised. Another is that we're rejecting
3 something that Jay had proposed, and --

4 MS. [REDACTED]: Mm-hmm.

5 THE WITNESS -- because I was meeting with Jay, I
6 asked that [REDACTED] not reject it until after I met with him, and
7 I -- I'm speculating, because I don't recall the topic, but
8 it does appear that it says, Jay suggested revision has been
9 rejected. Here is our latest.

10 MS. [REDACTED]: All right. Thank you. [REDACTED]?

11 BY MR. [REDACTED]:

12 Q Can we just go to Exhibit 30 quickly? There's some
13 highlighted language. This is a letter from Lefkowitz to you
14 on October 23rd, 2007, where he recounts, again, the things
15 that happened, or his version of the October 12th breakfast
16 meeting.

17 A Yes.

18 Q Are you at that --

19 A Yes.

20 Q -- at that point right there, Exhibit 30?

21 A Yeah, I'm there.

22 Q Okay. So, in the highlighted language, if you
23 could just take a look at that quickly?

24 A Yes.

25 Q So, he is recounting that you had assured him that

EVENING SESSION

6:00 P.M.

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the office would not intervene with the state's attorney's office, and -- or contact the civil claimants, or intervene regarding the sentence that Epstein receives pursuant to a plea agreement.

7

A Yeah.

8

Q So, is he correct in his recounting that?

9

A Can you -- can you find that for me?

10

Q Yeah.

11

A So, again, I don't have an independent

12

recollection. Oh, no, I'm looking --

13

MS. [REDACTED]: Oh, you have it.

14

THE WITNESS -- for something -- I don't have an

15

independent recollection of that breakfast, but in the

16

contemporaneous e-mails and the contemporaneous record, there

17

is correspondence between -- between [REDACTED] and I, and you all

18

asked for this, and I -- I spoke with my counsel, who then

19

responded, and there's an e-mail exchange where there's an

20

October 20 -- this was an October 23rd e-mail -- October 23rd

21

letter.

22

And then there is a response that's drafted on

23

October 25th. I don't know if we can find that. From [REDACTED]

24

to Jay that specifically addresses the point, and then I

25

respond -- [REDACTED] runs that by me, and I respond -- I edit the

1 letter, and I move it -- I sort of emphasize -- like, I make
2 it firmer, and my edit says our office cannot and will not
3 agree to this, and then my comment to [REDACTED] is, what do you
4 think of this rewrite? Is it too strong?

5 BY MR. [REDACTED]:

6 Q What day was that?

7 A That was two days after this. I don't know if we
8 can find that in the -- in the chronological record. That
9 was October 25th. Let's just take a minute. Is that what
10 you have?

11 MR. [REDACTED]: Sorry, apparently my ability to separate
12 paper has failed.

13 THE WITNESS Okay. So, this is --

14 MR. [REDACTED]: Oh, I see.

15 THE WITNESS So --

16 MR. [REDACTED]: Sorry, go ahead.

17 THE WITNESS So, October 25th, I'm writing to [REDACTED],
18 what do you think of this rewrite? Is it too strong? And it
19 says, dear Jay, I'd like to take this opportunity to document
20 our conversation of October 24th which clarified some of the
21 representations in your October 23rd letter.

22 I write in particular because you indicated that
23 your intent in writing the letter was to memorialize our
24 conversations. Our agreement is limited to blank, blank,
25 blank, dot, dot, dot.

1 I specifically want to clarify one of the items
2 that I believe was inaccurate in the October 23rd letter.
3 Your office claims that this office would not intervene with
4 the state attorney's office regarding this matter, or contact
5 any of the individuals, potential witnesses, or potential
6 civil claimants, and their respective counsel in this matter,
7 and neither your office nor the FBI would intervene regarding
8 the sentence Mr. Epstein received.

9 I'm quoting Jay's letter. As we discussed and
10 hopefully clarified, and as the U.S. Attorney previously
11 explained in an earlier conference call, such promises equate
12 to the imposition of a gag order. Our office cannot and will
13 not agree to this. It is the intent of this office to treat
14 this matter like any other case.

15 Thus, as is typical, we do not desire or intend to
16 "intervene" the state attorney's office. The non-prosecution
17 agreement provides sufficient mechanisms to achieve the goals
18 of the federal investigation. You should understand,
19 however, that there are some communications that are typical
20 in these matters.

21 And so, I go on, and so my point is this was
22 pretty -- based on -- if you reviewed my -- my e-mails and
23 language, for me to write something up saying, what do you
24 think of this rewrite, is it too strong?

25 Q Mm-hmm.

1 A And to edit [REDACTED] language to, our office cannot
2 and will not agree to this, is not my agreeing with this
3 characterization, but my polite way of saying, this ain't
4 what I said.

5 Q Mm-hmm.

6 A Let me be clear.

7 Q And then --

8 A Again, no independent recollection. This is just
9 based on inferring from the contemporaneous e-mails.

10 Q Okay.

11 BY MS. [REDACTED]:

12 Q What I would like to do is ask a couple of
13 questions in a couple of areas about the main justice review.

14 A Okay.

15 Q Then take a short break, and then [REDACTED] has some
16 questions that are CVRA related, and then we have some
17 summary questions.

18 A Okay.

19 Q Is that all right?

20 A Can I -- before you -- you move on, can I address
21 something that [REDACTED] was getting at, but it's getting late,
22 so I'm going to circle back to -- to --

23 Q Please.

24 A -- something that I thought you would bring up.

25 MS. [REDACTED]: Sure.

1 THE WITNESS So, I think something to talk about
2 is, pre-agreement and post-agreement, I think are different,
3 and one concern that I had, and I certainly shared with --
4 with Mr. [REDACTED] was once it was signed -- so, we had the
5 initial issues with the case.

6 Once the agreement was signed, we now have an
7 overlying issue of, is there -- is the agreement binding? To
8 what extent it's binding. And so, you -- your question was,
9 why this level of process after the agreement was signed, and
10 I said I think you'll get back to that. And I think to some
11 extent, there are two parts to that.

12 One is, the office shouldn't be afraid of review.
13 We're part of the Department of Justice, and review, whether
14 it by main justice or now you all, is -- is part of the
15 process.

16 And so, to the extent that they want to appeal to
17 main, it would be unseemly to sort of say, don't review us,
18 and I don't think it would help reviewing this, but the
19 second part of it is if we were to walk away from the
20 agreement, that not only are we litigating the underlying
21 criminal case, but we're litigating a civil/criminal issue on
22 top of that, which is, did the agreement bind? And that's
23 something that did inform the exhausting amount of process
24 that they -- that they received, which didn't change any of
25 the outcome.

1 BY MS. [REDACTED]:

2 Q Didn't bind what?

3 A So, if we were to walk away, were -- could we still
4 prosecute?

5 Q I see.

6 A Right? Because having signed that, we were now
7 parties to an agreement, and that would overlay any sort of
8 prosecution. And so, you had these collateral issues coming.

9 BY MS. [REDACTED]:

10 Q Just to make sure we're clear, are you saying that
11 there is -- there would have been difficulty in declaring a
12 breach so that you could then indict?

13 A Correct, and so we'd have to litigate over a
14 breach, because as much as they had collateral challenges,
15 they are very careful in saying, this is not a breach, we
16 would just like review.

17 And so, one of the issues that overlaid the post --
18 the October going forward time period is on top of this, do
19 we now want litigation over a breach? And so, I think that
20 is why the post-agreement time period is different than the
21 pre-agreement --

22 MS. [REDACTED]: Mm-hmm.

23 THE WITNESS -- time period.

24 BY MS. [REDACTED]:

25 Q But was part of that problem the result of the

1 change from, here is the date that you must comply, to, you
2 must use best efforts to comply?

3 A Possibly. I would -- whether it was that, or
4 others, or other parts of the agreement, we can talk about,
5 but how -- once the agreement was signed, and they do not --
6 and they start pushing the date, there becomes a legal issue
7 over, are they really in breach or not?

8 And I'm not -- I understand your perspective. I'm
9 just saying, you know, earlier I said that there was a
10 difference. You asked about the process, and I said from my
11 perspective, there's a difference between the pre-agreement
12 and the post-agreement time period.

13 And much of that difference is informed by, if we
14 declare a unilateral breach, how does this hold up in court?
15 Because now there's a signed agreement that the United States
16 is a party to.

17 Q And are you saying that part of the reason, or
18 maybe all of the reason that you continued to give
19 accommodations and process and delay was because of the
20 concern that you couldn't actually win a breach argument?

21 A I think that was a consideration. Another part of
22 the considerations are if someone -- if a party wants to
23 take -- I mean, main justice gave a lot of process. It
24 wasn't -- it wasn't, you know, it wasn't just to -- to [REDACTED],
25 but it was up to the -- it was just up to the assistant

1 attorney general for criminal division, to be polite, but it
2 was up to the DAG.

3 And so, if main justice is going to give this
4 degree of process, we should -- we should be in the position
5 of saying go forward, as opposed to, I don't think it looks
6 positive for the office to be viewed as fearing department
7 review.

8 Q But were you giving the impression to the
9 Department of Justice that you were the one who wanted this
10 review so that they felt like, well, it's not just these
11 defense attorneys who we can blow off, it is an United States
12 Attorney who is asking for this review, and so therefore we
13 need to give the courtesy of reviewing this?

14 A I don't think I asked for it as opposed to saying,
15 if you would -- so, from the very beginning, they said that
16 they're going to take this to the Deputy Attorney General and
17 Attorney General.

18 And I said, if you want to, fine. They just
19 finally did, but that was not -- that was not -- I think they
20 raised that as early as August or September. And so, I'm not
21 surprised that it ended up there. I also thought it was
22 important to not be in the position of fearing review. I
23 think if you look at the contemporaneous record, there's an
24 effort on our part to expedite the review.

25 BY MS. [REDACTED]:

1 Q But there's a difference between, have at it, go,
2 do what you want, up at main, and getting that --

3 A Right.

4 Q -- that non-opposition, and actually sending a
5 signal to -- in the -- in the case of the criminal division,
6 the assistant attorney general, in the case of the DAG's
7 office, Mark Filip or his assignee, that you supported their
8 review, that the -- this appeal process. You could have
9 said, look, we're going to go ahead and get on with our
10 business.

11 If they want to -- if -- you could have not so much
12 opposed a review, but not seconded their request for -- the
13 defense request for reviews, or not in fact invited the
14 reviews.

15 A So, I'd be curious as to the timeline. I would
16 take issue with, I invited the reviews, and I question
17 whether, did they initiate the reviews on their own, and then
18 I said have at it, or did I -- based on -- I mean, you've got
19 more of a record than I do, or did I invite -- I don't -- I
20 would say I did not invite the reviews.

21 Q Well, let me -- bad terminology, perhaps. Let me
22 ask you this. If -- would've -- did you convey to the
23 criminal division that you wanted them to review this matter,
24 as requested by the defense attorneys?

25 A So, from my perspective, I'm thinking back 12 --

1 Q Mm-hmm.

2 A -- 12 years now. The very reason that we invited
3 ██████ to come down to Miami back in August was a sense that it
4 would end up up here. And so, if it's going to end up up
5 here, let's bring ██████ down.

6 Let's make him part of the initial meeting. You
7 know, if there are concerns, let's raise these. Let's
8 address them. Let's get them out so that we don't end up,
9 after we go forward with all of this, back in front of ██████
10 and ██████. And it's much better to involve main justice
11 earlier.

12 And so, I would say I was trying, if anything,
13 to -- to involve main justice so that we didn't end up where
14 we were, and it had been my expectation that that October
15 date would have been met.

16 The collateral reviews afterwards, the collateral
17 appeals, obviously did not go as -- as we planned, and -- and
18 it was my sense, we were going to end up at main justice one
19 way or another.

20 Q So, my question is in December, after the December
21 meeting --

22 A Right.

23 Q -- that you had with defense counsel, and they told
24 you they were going to go to main justice.

25 A Correct.

1 Q To the criminal division. Did you convey to main
2 justice criminal division that you wanted them to conduct the
3 review that defense counsel were seeking?

4 A So, I don't recall what I may or may not have
5 conveyed. I think my recollection was, if they want a
6 review, that's their right. We're not -- as a department,
7 we're not in the business of telling individuals that they
8 can't take something to your supervisor, or your superior.
9 Whether -- whether main justice takes this on or not is
10 ultimately at their discretion.

11 Q Would it surprise you to learn that the criminal
12 division front office understood you to be requesting their
13 review, the review that was sought by defense counsel?

14 A Would it surprise me? Perhaps. My -- my -- my
15 understanding -- recollection is we shouldn't fear it. If
16 they want it --

17 Q Mm-hmm.

18 A -- that's their right. I thought by inviting [REDACTED]
19 down in the first place that we had at least tried to address
20 that early on, but I also thought that we might end up there
21 in the first place.

22 Q Were you -- were you aware that a decision was made
23 to grant the decision by your office to grant defense
24 counsel's request -- their insistence that [REDACTED]
25 role in the criminal division review be limited to review

1 only, and that he not be permitted to -- or that the criminal
2 divisions -- that the -- I'm sorry, I misspoke. That because
3 [REDACTED] [REDACTED] had already been involved in essentially
4 being a prosecutor on the case --

5 A Right.

6 Q -- that the -- the criminal division and CEOs' role
7 vis a vis this review should be review only. That is, they
8 should be taken off the case as a -- as a partner?

9 A So, I sought e-mails to that affect in the record.
10 I don't have an independent recollection 12 years --

11 Q You --

12 A -- 12 --

13 Q Do you think you were involved in that decision?

14 A To take them off?

15 Q Yes.

16 A To my recollection, I wanted them on as a partner,
17 and I think the contemporaneous --

18 Q Mm-hmm.

19 A -- e-mails from [REDACTED] is, can you please come on
20 board?

21 Q But that was earlier, before this review process?

22 A No. No. Even after the --

23 Q All right.

24 A -- review process, I think there are
25 contemporaneous e-mails where we're saying it's important

1 that you be part. If we go to trial, it's important that you
2 be part of the trial. As I -- as I went through the record,
3 at least I remember --

4 Q Mm-hmm.

5 A -- an e-mail, perhaps from [REDACTED] to [REDACTED] that I'm
6 copied on saying, hey, can you reconsider? It's important
7 that you be part of this.

8 Q Reconsider the review only limitation?

9 A No, no. Reconsider being a part of the trial --

10 Q Oh. All right.

11 A -- team.

12 Q All right. So, to be clear, do I understand that
13 you -- correct me, that you don't have a recollection one way
14 or the other whether you requested the criminal division to
15 conduct the review, or could it have happened, or --

16 A So --

17 Q -- what?

18 A -- to the extent I -- again, I'm going back --

19 Q Mm-hmm.

20 A -- 12 years. To the extent there is a request to,
21 it would be in the context of, this is going to Washington.
22 We're not fearful of this. Have at it.

23 Q And you would have conveyed that to Washington?

24 Not just to the defense attorneys, is that correct?

25 A I imagine in some way. It's --

1 Q All right.

2 BY MS. [REDACTED]:

3 Q And just one --

4 A Yeah.

5 Q -- just one point. This one -- this one was a
6 little bit of an --

7 A Yeah.

8 Q -- odd posture, however, because you had a signed
9 agreement. And so, you know, basically a contract between
10 parties --

11 A Right.

12 Q -- and particularly on Mr. Epstein's side, a party
13 who was -- who was extremely well represented. So, was there
14 any consideration on your part, instead of saying, hey,
15 everybody's got a right to review, knock yourself out, go up
16 to Washington, as opposed to saying something like, that ship
17 has sailed, guys. You signed this agreement. We're going
18 forward. You don't go forward. You're in breach. End of
19 story?

20 A So, his counsel are raising serious issues that go
21 to ethics and go to fundamental relationships between
22 sovereigns. Is this 22.55 appropriate as a matter of federal
23 policy? Is what we're doing an overreach, you know, is what
24 we're doing contrary to law? Are we extracting -- I'm
25 characterizing. This may or may not --

1 Q Mm-hmm.

2 A -- be accurate. Are we extracting unduly? Are we
3 using criminal law to extract civil concessions in an
4 ethically suspect way? Those are serious issues. That isn't
5 just, is this a good case?

6 Those are -- those are genuine issues. I happen to
7 think that, as I recall, that we were in the right or we
8 wouldn't have agreed to it, but by the same token, let's
9 assume that main justice ultimately disagreed. Is that from
10 a main justice perspective? And maybe I'm coming at this
11 from a -- you know, being informed by having been at main
12 justice.

13 Q Mm-hmm.

14 A Where there was talk about, can you believe what
15 this AUSA -- this AUSA may have done or may not have done
16 without consulting, that these are serious issues. They
17 establish precedent.

18 They -- you know, maybe the DAG would have said,
19 this is not the kind of thing we'd support, and this is
20 wrong. And so, at the end of the day, let's move forward,
21 but if -- once these issues are raised, I don't think a U.S.
22 Attorney should say main justice should not review this.

23 I think we're part of one department, and these are
24 valid issues. Main justice doesn't need to take months to
25 review this. Main justice can expedite their review, but

1 those are valid issues for the deputy and the AAG to review.

2 Q But one could look at it and say, well, those are
3 all issues that the defense certainly knew about before they
4 signed that agreement, and having signed the agreement, they
5 are waiving all of that. That's what contracts are for.

6 You've got all these issues, don't sign the contract.

7 A And if I could, I think there's a December letter.
8 I don't know if it's -- if it's in the exhibits, but there's
9 a December letter that I wrote that, for me, is --

10 Q This is the 19th?

11 A Maybe it's the 19th. Let me --

12 Q Or the --

13 MS. [REDACTED]: The 19th is the -- your sort of
14 ill-fated NPA addendum effort.

15 THE WITNESS No. No, a letter to -- to Ken Starr
16 that I -- that I wrote. But --

17 MR. [REDACTED]: The 4th letter is to Ken Starr.

18 THE WITNESS I'm sorry?

19 MR. [REDACTED]: Is it the December 4th letter?

20 THE WITNESS Yeah, it's probably --

21 MR. [REDACTED]: December 4?

22 THE WITNESS It's the December 4th.

23 MS. [REDACTED]: Yeah, it didn't have a date.

24 MS. [REDACTED]: All right. That's the one you
25 wrote --

1 THE WITNESS So --

2 MS. [REDACTED]: -- to him --

3 THE WITNESS -- so --

4 MS. [REDACTED]: -- in response to the --

5 THE WITNESS So --

6 MS. [REDACTED]: -- 22.55 issue.

7 THE WITNESS I think, you know, I -- you know, I'm
8 starting on page four. I have responded personally in some
9 detail to your concerns because I care deeply about both the
10 law and the integrity of this office. I have responded
11 personally and in detail as well, because your letter
12 troubled me on a number of levels. Upon your understanding
13 of the negotiations are. The 22.55 was first discussed July
14 31st.

15 You know, and one of these four points in -- in the
16 middle of 2007, your defense team decides -- asked to meet
17 with me. On September 7th, I met. After considering of the
18 arguments, and after conferring with FBI and [REDACTED],
19 our office decided to proceed with the indictment. At that
20 time, I offered to delay -- our prosecutors to delay
21 presentation to allow you to appeal our decision if you
22 choose. You chose not to.

23 Instead, you elected to enter into the NPA. Since
24 the signing of this agreement, the feds in our office have
25 addressed several issues that have arisen, although the

1 exchanges at the time were a bit litigious.

2 BY MS. [REDACTED]:

3 Q This -- could I -- could I thought point out --

4 A Yeah.

5 Q -- that this letter is in response to not the at
6 the request for a review by the criminal division, that comes
7 later. This is in response to Ken Starr's letter to [REDACTED]
8 [REDACTED] about -- raising 22.55 -- 22.55 issues that had not
9 been raised with you before.

10 A Right, which is -- which is in essence a review. I
11 mean, he -- they're coming to main justice, and you know,
12 it's against these many previous foregone opportunities to
13 object that I receive with surprise your letter requesting an
14 11th hour after the fact review of our agreement. Although
15 it happens rarely, I don't mind this office's decision being
16 appealed to Washington, and have previously directed our
17 prosecutors to delay.

18 Indeed, I'm confident in our prosecutor's evidence
19 and legal analysis. I nonetheless
20 directed them to consult with subject matter experts in the
21 criminal CEOS division to confer to our interpretation of the
22 law before proceeding with this indictment. So, I guess, you
23 know, we consulted CEOS.

24 I'm thus surprised to read a letter addressed to
25 the department headquarters that raises issues that either

1 have not been raised with this office previously, or have
2 been raised and in fact resolved in your client's favor.

3 I'm troubled likewise by the apparent lack of
4 finality in this agreement. The AUSAs have been negotiating
5 with defense counsel and have for sometimes complained to me
6 regarding the tactics used by the defense team. It appears
7 to them that as soon as resolution is reached on one issue,
8 defense counsel finds ways to challenge the resolution
9 collaterally.

10 Q So, this is your protest of, it sounds like Starr's
11 effort to bypass you and go to [REDACTED] with new issues?

12 A It is, and I'm pushing back in that, was I inviting
13 this, or was I sort of saying -- you know, that said, there
14 must be some closure on this matter.

15 Some in our office are deeply concerned that
16 defense counsel will continue to mount collateral challenges
17 to provisions of this agreement, even after Mr. Epstein has
18 entered his guilty plea and thus rendered the agreement
19 difficult, if not impossible to unwind. In closing, I ask
20 that you consult with co-counsel.

21 If after consultation with your defense team you
22 believe that our agreement is unethical, unlawful, or
23 unconstitutional, I'd ask us that you notify us immediately
24 so we can discuss the matter by phone or in person. I've
25 consulted the chief prosecutor in this case who has advised

1 me that she's ready to unwind the agreement and proceed to
2 trial if necessary, or appropriate.

3 Q So, are you suggesting that this represents your
4 protest of their appeal to [REDACTED] --

5 A So --

6 Q -- on this point?

7 A So, protest is a -- is a loaded word. What I'm
8 suggesting is, this is not an invitation to appeal to main
9 justice. This is sort of saying, enough is enough is enough.

10 Q But Mr. Acosta, in fairness, this, to clarify --

11 A Right.

12 Q -- this is in response to a letter directed to
13 [REDACTED] dated November 28th --

14 A Right.

15 Q -- 2007 raising issues that he had not raised with
16 you. The appeal subsequently that I was asking about was --

17 A Right.

18 Q -- an appeal for a de novo review -- a de novo
19 review of the whole case.

20 A Understood, and my -- the reason that I -- that I
21 read this, you know, is this is not -- on the one hand, I'm
22 saying we do not fear review, but I don't -- this is not an
23 invitation to defense counsel to do a de novo -- I am not
24 inviting them. I'm not saying, let's have more review. I'm
25 saying, enough's enough. If they appeal, that's fine, but

1 this is not an invitation to appeal.

2 Q But there was nothing you could do to stop their
3 appeal, right? Except indict?

4 A And so the department shouldn't stop an appeal to
5 main justice by -- you know, by threatening.

6 Q Fair enough.

7 A Because main justice has a right to review.

8 Q I should have said that -- that this -- that this
9 appeal process was stymying progress in resolving the Epstein
10 case.

11 A It was.

12 Q And you had no way -- you had no recourse, other
13 than, at least theoretically, you could have just said, you
14 know, we're --

15 A Right.

16 Q -- going to tear it up and indict, because you're
17 in breach, in effect.

18 A Which would have raised civil litigation --

19 Q Litigation.

20 A -- overlays, which is the point that I thought
21 merited --

22 Q All right.

23 A -- at least flushing out.

24 BY MS. [REDACTED]:

25 Q So, short of the department itself getting a move

1 on, and getting this thing through expeditiously, did you
2 feel like you just had to sit there and wait for everything
3 to get done?

4 A I'm not sure sit there and wait, but -- but
5 ultimately, the case did not get better with time, and there
6 was frustration on our part about, you know, the witnesses
7 are not getting better. You know, time --

8 Q They're getting older.

9 A They're getting -- which goes back to how a juror
10 may see them.

11 MS. [REDACTED]: Right.

12 THE WITNESS And I do recall conversations of their
13 getting older, you know, this case is not getting better. We
14 now have the civil overlay that we need to deal with. And
15 so, yes, that -- there was process, but while there was,
16 should we just call it a day, all of that factored into,
17 well, if the department is reviewing the department is
18 reviewing.

19 BY MS. [REDACTED]:

20 Q Okay. Are you -- what is your view of whether the
21 criminal division's review encompassed the NPA itself?

22 A So, the criminal division, by its terms, did not --
23 did not encompass the -- the NPA. I would say that's
24 different than the deputy's review that encompassed the
25 totality of the -- of the circumstances.

1 Q Okay. Did you discuss the -- did you have
2 conversations with the DAG -- with Mark Filip about this
3 case?

4 A Not to my recollection.

5 Q Okay, and we've already talked about the submission
6 that [REDACTED] [REDACTED] made on behalf of your office?

7 A Which -- which -- yes, which I thought was a
8 fulsome submission, and included the draft indictment, the
9 NPA. I believe it included the term sheet and other
10 documents.

11 Q Did you or anyone else to your knowledge ask ODAG
12 to review or assess the NPA, or approve it?

13 A Not to -- before signature, not to my recollection,
14 but it was part of the ultimate review when [REDACTED] submitted
15 the matter to the deputy, he included the --

16 Q It was --

17 A -- the agreement.

18 Q It was included. Their very brief letter, you
19 remember --

20 A Mm-hmm.

21 Q -- the letter that [REDACTED] [REDACTED] --

22 A Yes.

23 Q -- authored, that he authored. Addressed really
24 only the issue of the appropriateness of the case for
25 prosecution in your office. It did not in any way reference

1 the disposition, the plea agreement, or the NPA.

2 A So -- so, it was a brief letter. Based on [REDACTED]
3 submission, I would have read that letter as, they had all
4 the material in front of them, and they were saying that
5 there was no misconduct or abuse of discretion.

6 Q That's correct, but they did not say that they
7 contacted -- that they addressed or assessed, reviewed even.
8 They didn't say they reviewed or approved the NPA.

9 A They -- I again, you know, I -- if the letter is
10 here, I don't know, but --

11 Q Yeah. I have it right here. It's not marked as an
12 exhibit, but this is [REDACTED] [REDACTED] letter to Jay Lefkowitz and
13 Ken Starr dated --

14 A Right.

15 Q -- June 23, 2008 It states that this office,
16 meaning the Office of the Deputy Attorney General, has
17 completed a thorough review of the U.S. Attorney's handling
18 of the matter involving your client.

19 A And --

20 Q And addresses the -- or, states that they've
21 received and reviewed submissions from both parties, and then
22 states that the deputy attorney general, "Will intervene only
23 in the most unusual of circumstances," in a U.S. Attorney's
24 matter, and, "we do not believe such intervention is
25 warranted here. Even if we were to substitute our judgement

1 for that of the U.S. Attorney, we believe that federal
2 prosecution of this case is appropriate. Moreover, having
3 reviewed your allegations of prosecutorial misconduct, and
4 the facts underlying them, we see nothing in the conduct of
5 the U.S. Attorney's Office that gives us any reason to
6 alter," --

7 A Right.

8 Q -- "our opinion."

9 A And so, so, if I could point out, this office has
10 completed a thorough review of the U.S. Attorney's handling
11 of the matter. And so, handling is a broad -- is a broad
12 term, and in reference to, we believe that federal
13 prosecution of this case is appropriate, the way I recalled
14 reading that is, the federal prosecution of this case, the
15 argument was that the agreement was inappropriate because
16 this case should not have even been prosecuted, and therefore
17 that the disposition -- the federal prosecution of this case,
18 was appropriate.

19 And so, the handling of the matter, we reviewed the
20 handling of the matter, not -- not the agreement, but the
21 handling of the matter, and that the ultimate disposition,
22 if -- you know, is at least not an abuse of discretion, or is
23 appropriate.

24 Q That's how you read it?

25 A That -- that is how I read it.

1 Q And did you ever discuss that -- did you ever
2 discuss with anyone in ODAG what the scope of their review
3 was?

4 A Not to -- not to my recollection. It was a fulsome
5 submission.

6 Q Correct, but if -- if -- but the issues presented
7 by the defense were essentially federalism issues, right?

8 A So, the -- the -- again, this is -- this is based
9 on, you know, as much recollection as contemporaneous record.
10 The issues presented by the defense were, it -- in essence,
11 it was the heart of the non-prosecution agreement, which is,
12 was it -- was it an abuse of discretion to -- to proceed in
13 this case in the way that we did on the grounds that there
14 may not -- there should not have been a federal prosecution
15 in the first place, or that we were using federal criminal
16 law to -- to elicit a civil outcome.

17 And so, I don't think it's fair to sort of
18 narrow -- you can't -- you can't say that our handling was --
19 you know, that their handling was reviewed without reviewing
20 the non-prosecution agreement.

21 Q Do you have any reason to believe that the -- that
22 either ODAG or the criminal division did -- well, that the
23 ODAG, let's stick with that --

24 A Right.

25 Q -- did in fact review the NPA, other than to be

1 **aware it existed, whatever its status might have been?**

2 A So, again, it was clearly submitted. It was
3 clearly referenced.

4 Q Mm-hmm.

5 A And it was clearly part of the complaint. The
6 complaint -- the heart of the complaint about our office was
7 that we were using this agreement to impose civil liability.
8 And so, I think it is fair to infer if the complaint
9 implicates the agreement, that the agreement would have been
10 reviewed.

11 Q That -- but that's your inference. You don't have
12 any -- you don't -- didn't have any specific communications
13 with ODAG --

14 A I don't --

15 Q -- to that effect?

16 A I don't recall a specific communication.

17 Q All right. Okay. I would like to take a short
18 break. We're getting there.

19 A I hear you.

20 Q There is --

21 A I'm good.

22 Q -- one area that my colleague, [REDACTED] will
23 take on --

24 A Mm-hmm.

25 Q -- which has to do with the CVRA --

1 A Right.

2 Q -- and then we have some kind of wind up questions.

3 A Okay.

4 MR. [REDACTED]: Can we -- before we take a break,
5 can I just --

6 MS. [REDACTED]: Yes.

7 MR. [REDACTED]: I'll try to queue up what's going to
8 be coming next --

9 THE WITNESS Mm-hmm.

10 MR. [REDACTED]: -- and maybe that'll help us move
11 through it, because --

12 THE WITNESS Right.

13 MR. [REDACTED]: -- you've been through a very long
14 day.

15 THE WITNESS Yeah.

16 MR. [REDACTED]: We appreciate your -- the time
17 you've put into this. You've been here for quite a long
18 time.

19 THE WITNESS Well, yeah.

20 BY MR. [REDACTED]:

21 Q The area that I want to discuss after the break has
22 to do with the ultimate notification to the victims about the
23 resolution of the case, the state plea, and the result of the
24 federal investigation, and there's going to be -- we have
25 documents that are in your -- that are already marked there

1 that might be helpful if you take a look at a couple of them
2 so we don't have to go through -- maybe during the break so
3 we don't have to go through them one by one, or I can just
4 give you a very quick overview of sort of where we're going.

5 I want to find out basically how you were getting
6 from there -- what would be the -- the state asking for the
7 U.S. Attorney's Office to make the notification to the
8 victims about the upcoming state plea that happens in
9 November of 2007.

10 That would be document 32b, to the defense then
11 finding out that the government want to notify the victims by
12 letter, and then demanding that they see the letter and have
13 some kind of comment on it. That would be document 33, an e-
14 mail from Lefkowitz.

15 Then we have an exchange of letters, but the one
16 I'd like you to look at is document 37, which is a letter
17 coming from [REDACTED] to the defense -- not now, but you know,
18 during the break. So, I want to find out how we get from
19 that document, 36, where [REDACTED] is writing --

20 MS. [REDACTED]: 36.

21 BY MR. [REDACTED]:

22 Q -- as letter saying that -- citing the CVRA
23 regulations saying that the government is obligated to notify
24 the victims about the resolution of the case, and attaching a
25 draft letter to the victims telling them the time and date of

1 the state resolution and plea, inviting them to come.

2 To ultimately a letter from you coming on the 19th
3 of December 2007, which is No. 41b agreeing to not notify the
4 victims of the state plea, and agreeing with the defense to
5 have the state be responsible for putting out that
6 notification.

7 And then we end ultimately with a letter or draft
8 letter that we have that goes out to the victims in the case
9 on -- after the plea in July. Well, we have the draft I'm
10 going to show you, which comes in June, showing that the
11 letter was clearly meant to be sent after the plea as per the
12 agreement, and that is document number 51.

13 A Okay. That's --

14 Q So, it's a lot to --

15 A That's a --

16 Q -- unpack there.

17 A That's a lot to unpack. We should probably take it
18 a step at the time?

19 Q Yes. I just wanted to --

20 A All right.

21 Q -- give you an overview, because I think that some
22 of what you had mentioned earlier -- and I know -- I know
23 it's --

24 A Yeah.

25 Q -- been a long time, so --

1 A Yeah.

2 Q -- I'll try to orient you for the timelines. So,
3 if you'd just have a -- I've highlighted the sections of
4 those letters that we want to talk about, and if you have a
5 chance while we're taking a break to look through them, that
6 may help orient you so that we're not --

7 A Right.

8 Q -- spinning our wheels on this. I don't want to
9 waste any of your time.

10 A Fair.

11 MS. [REDACTED]: All right. Off the record.

12 (Off the record.)

13 MS. [REDACTED]: All right. Back on the record.

14 MR. [REDACTED]: Are we back on the record?

15 MS. [REDACTED]: Yes.

16 BY MR. [REDACTED]:

17 Q Okay, great. So, I know I gave you a lot to unpack
18 over the short break we just had. One -- basically what
19 we're trying to get to find out is how the -- your decision
20 making process regarding the victim notification issue. So,
21 maybe if you could just give us a -- anything with your
22 December 19th decision, could you give us an explanation
23 about how you got there?

24 A So, I think we should probably take this in stages.

25 Q Okay.

1 A As a general matter, I recall that there was back
2 and forth regarding -- after the agreement -- regarding how
3 to notify the victims, and there was back and forth between
4 [REDACTED] and Jay Lefkowitz and [REDACTED] around all that.
5 Sorry, I'm losing my voice.

6 I recall that there was an issue in particular that
7 was raised that I tried to address in the letter, and I
8 recall at the end of the day, it was my impression that once
9 there was an agreement for him to plead, that there was an
10 attempt by [REDACTED] to provide notice to the victims, but it was
11 a very -- it was I think on a Friday, and he was pleading on
12 a Monday morning or something along those lines.

13 And finally, I recall that the view of the office
14 was that the CVRA did not apply, and so that this was a
15 discretionary balancing that included consideration of what
16 impact notification of the 22.55s would have at trial -- the
17 22.55 provision, if we had to go to trial. So, we can -- we
18 can unpack that, but those are my -- my general
19 recollections.

20 Q Okay.

21 A And look, let me -- let me add, I -- so, I think
22 it's important -- so, I came in and out of the case at
23 stages, and -- and I was involved in certain aspects more
24 than others, and while we had a long discussion about the
25 terms sheet and matters like that, while I was clearly

1 involved in at least one dispute around the 22.55, the nuts
2 and bolts of how victims were notified is not something that
3 I have a recollection about.

4 Q Okay. Fair.

5 A But we can unpack it.

6 Q Okay. Let's start with the Exhibit 33. So, there,
7 we have an -- as you can see, it's an e-mail from Lefkowitz -
8 -

9 A Mm-hmm.

10 Q -- to you, and to [REDACTED], objecting to the -- a
11 letter being sent to the victims, unless the defense gets to
12 review it. And later on in some of your other
13 correspondence, you discuss that you -- you extended to the
14 defense the courtesy of allowing them to review these
15 letters. Is this the genesis of that courtesy?

16 A I can't -- I don't have a recollection as to what
17 the genesis might be. I know that there was back and forth
18 between our office and the defense about the -- that letter.

19 Q Okay, but as you can see on 33 that you're not on
20 the response from [REDACTED], but [REDACTED] instructs [REDACTED] to
21 send the proposed letter to Lefkowitz, and --

22 A Yeah.

23 Q -- I assume that [REDACTED] wouldn't have done that had
24 you objected to it.

25 A Again, I don't -- I don't recall any specific

1 conversation. As a general matter, this is not something I
2 was getting into the weeds on unless I had to. There was a
3 lot of back and forth.

4 Q Mm-hmm.

5 A [REDACTED] is someone that I trusted. He was handling
6 this matter. He's incredibly experienced. I know that there
7 were concerns and issues around the impact that notification
8 would have on the witnesses. I know there were -- there were
9 issues around the language, and I trusted that folks were
10 working those out.

11 Q Mm-hmm. One of the -- the criticisms that's come
12 post, you know, the CVRA --

13 A Right.

14 Q -- litigation that's been the government allowing
15 the defense to have review of these letters, or potential
16 victim notification letters coming out of the government, and
17 that that's unusual. Have you ever -- have you had any other
18 cases where you've let the defense review such documents?

19 A I've had no other cases where I'm even aware of
20 victims being notified, because I assume it all operates
21 without it rising to management level.

22 Q Mm-hmm.

23 A And so this is the first and only time that how
24 individuals are notified, to my recollection, was even in the
25 executive suite.

1 Q Mm-hmm. Isn't that usually done -- accomplished by
2 almost a computerized task?

3 A I -- I would assume so, so yes.

4 Q And it's a -- given that that's the usual way that
5 notifications are made by a victim witness specialist, who is
6 usually that person?

7 A Yes.

8 Q Do I have that right? And so, the FBI has their
9 victim witness specialist?

10 A Yes.

11 Q And your office, the U.S. Attorney's Office has
12 dedicated people who do that job as well?

13 A Correct.

14 Q So, why in this case, not direct, the -- this --
15 this notification to that person to be done in the usual
16 course, why elevate to something that the defense is going to
17 be able to review?

18 A So, so, I can't address the second half of that,
19 but the first half of that question, why -- why was it
20 elevated? You know, I think [REDACTED] addressed some of that in
21 her, was it 2017 affidavit, and -- and so, we had an
22 agreement that had been signed, and we also had substantial
23 questions as to whether that agreement -- whether ultimately
24 Jeffrey Epstein would plead in court or not.

25 And so, one of the questions is, how do you deal

1 with notification of a possibility, where that possibility
2 could be used to impeach potential future witnesses who are
3 also the victims, and that is a matter that was being worked
4 out by the AUSAs in the office.

5 Q And the -- and the impeachment is what?

6 A And so, the impeachment -- and I -- I would -- I
7 believe [REDACTED] went into it in some detail, is you stand --
8 you, Miss Victim, stand to gain quite a bit of money if
9 there's a conviction, correct?

10 Isn't -- weren't you aware of this agreement, if we
11 have to go to trial? Weren't you aware of this agreement?
12 And this isn't based on my recollection. This is based on
13 the [REDACTED] affidavit, where she says that she had concerns
14 that the impeachment go along -- somewhere along the lines
15 of, were you aware that if Mr. Epstein's convicted, you stand
16 to receive substantial sums? Yes. Were you influenced by
17 this?

18 And there was some -- according to her affidavit,
19 this isn't my independent recollection, this is according to
20 her affidavit, there had already been dispositions of the
21 victims -- of at least some of the victims that raised these
22 issues. And so, I do think it was a valid concern by the
23 AUSAs how these notifications took place.

24 Q Okay, but isn't that the -- that type of line of
25 cross examination the same for any case where there's a super

1 **wealthy defendant?**

2 A It may be. The 22.55 may make it a little
3 different because it's automatic, but ultimately, these are
4 the judgements that line attorneys make, and as U.S.
5 Attorney, I think it's appropriate to back up their judgment
6 unless there was some reason for me to believe it was
7 incorrect.

8 Q Was there any thought ever to just giving the
9 victims notification that there will be a proceeding that
10 will end the federal case, just separating that in a -- maybe
11 a later notification about the 22.55?

12 A I can't speak to what thought there was or was not.
13 I can say around this time frame, it was far from clear that
14 there would ever be -- that Epstein would ever go into court,
15 and we were thinking we may have to just go to trial, because
16 these collateral attacks keep going.

17 Q Okay. Okay. Let's get back on track to the -- the
18 question that I asked earlier about allowing the defense the
19 courtesy to look at these letters. Is -- can you just remind
20 us again, what was -- what was the reasoning that you're --
21 that they're allowed to look at the --

22 A So --

23 Q -- victim notification letters?

24 A I can't speak to that. This is something that --
25 that [REDACTED] and [REDACTED] would have handled. I think that, you

1 know, I'm responsible for the office. I'm not shirking, I'm
2 just saying that this is -- that this was for the most part
3 within their wheelhouse, and not something that -- that I was
4 involved in. I can -- I can speculate.

5 Q Sure.

6 A The agreement was notifying them -- the letter was
7 notifying them of certain rights in the agreement, and
8 therefore, this is a time when we weren't sure what was
9 happening with the agreement. And so, perhaps this was a way
10 to -- to address some of the concerns around the 22.55. I
11 don't know. I'm just speculating.

12 Q Okay. Let's move onto Exhibit 36. This is a
13 letter that goes out to Lefkowitz under [REDACTED] signature.
14 You are cc'd on the letter.

15 A All right.

16 Q And what he is doing is sending a draft victim
17 notification letter, which is attached as the attachment
18 there, dated December 6th, 2007. And I wanted to get your
19 impressions of -- if you go to page three of the letter,
20 please? And that -- the first little paragraph there, when
21 it --

22 A Mm-hmm.

23 Q -- refers to the Victims' Rights and Restitution
24 Act, and then ultimate for the CVRA, if you could just read
25 that paragraph to yourself, please?

1 A Are you referring to paragraph 10?

2 Q I'm sorry, I'm not on the -- I'm on the letter,
3 not -- I'm sorry, I'm on the --

4 A Oh.

5 Q -- left -- the letter to --

6 A Sorry.

7 Q -- Lefkowitz, not the draft letter. This one right
8 here.

9 A The additionally?

10 Q Yes, additionally, pursuant to the Victims' Rights
11 and Restitution Act of 1990, our office is obligated,
12 etcetera.

13 A Okay.

14 Q Do you agree with that language? That
15 interpretation of the victims' rights, as far as the
16 notification?

17 A So, let's -- let's sort of take this -- this one
18 sentence at a time. With respect to notification of other
19 information that we were supposed to disclose, the statute
20 requires that we provide victims with the earliest possible
21 notice of -- I -- I will assume that that is a restatement of
22 the statute.

23 I don't have it in front of me, but let's assume
24 that that's a restatement of the statute. Just as in 18,
25 these sections are not limited to -- the victims, through

1 this federal -- should be appropriately informed that a non-
2 pros does not require to forego its legal obligation. On a
3 sentence by sentence basis, I mean, do I agree, sitting here?
4 Sure, but I would want to sort of sit down before I gave a
5 legal opinion and spent more time with it, but --

6 Q Okay, because coming out of your office, sort of
7 this and that -- well, let's go to the next page, page four.

8 A Yeah.

9 Q There is a citation to the right to confer in the
10 first paragraph there, citing the CVRA's reasonable right to
11 confer with the attorneys of the government in this case.

12 A Okay.

13 Q So, we have -- you know, it looks like to me -- I
14 mean, let's --

15 A Right.

16 Q -- well, it -- it appears that there is two
17 references to the CVRA obligations that the government has
18 that ultimately the government argues that it did not have.
19 Can you explain why that is a correct interpretation?

20 A So, what I can say is I recall -- so, it looks like
21 at least some of the victims were notified. I recall a
22 discussion and a view that the CVRA did not require it -- it
23 was discretionary, because it wasn't -- the case had not
24 indicted, so it did not attach on its terms. That doesn't
25 mean that it's not something you aspire to. That just means

1 it wasn't legally binding.

2 Q So -- and in the same manner though, while the CVRA
3 isn't legally binding, it also doesn't prevent you from
4 notifying the victims, does it?

5 A It does not, no.

6 Q And you have the discretion to notify, should you
7 choose to.

8 A Correct.

9 Q Okay. And so, if you look at the letter that's
10 attached to this, this is a draft that goes out where on page
11 one -- two -- page three of the letter, and the second to
12 last paragraph, the letter is giving notice of Mr. Epstein's
13 change of plea and sentencing that will occur on -- well, at
14 this time, it was December 14th at 2007, and it gives the
15 address, and it says underneath there you are entitled to be
16 present and make a statement under oath.

17 If you choose, you can submit a written statement
18 under oath, etcetera, etcetera. So, this is a letter that's
19 actively inviting victims to come to the state. Would you
20 agree that that's inviting victims to come to the state plea?

21 A That -- I think that's fair.

22 Q And with the letter's reasoning that the government
23 is sending -- would like to send this letter because it
24 believes it's obligated to, because it resolves the federal
25 case?

1 A So, I -- I don't want to speak to the reasoning,
2 but it's clearly a draft that the government is saying, it
3 intends to send.

4 Q Okay. Now, ultimately, just this is not a
5 question, just --

6 A Got it.

7 Q -- some information that will help to move us
8 along.

9 A Right.

10 Q The -- obviously, this letter is never sent. Ms.
11 [REDACTED] drafts, we have them, and I'm not going to show
12 them to you, 30 letters, copies of the letter --

13 A Right.

14 Q -- to different victims, addresses them, puts them
15 in envelopes, and is then told not to send the letters.

16 A All right. Well, the plea never -- it's scheduled
17 for December 14th, so yeah.

18 Q Yes, but one of the issues that's still percolating
19 until the end of December is who is going to make this
20 notification? Because as you can expect, the defense pushes
21 back on this letter.

22 And so now we go to the -- the -- number 39,
23 please? And this is a December 11th, 2007 letter from Ken
24 Starr to you, and if you look on page two, at the front -- at
25 the top of the -- the top of the page there, he is -- this

1 letter is complaining about an oral notification that Ms.
2 [REDACTED] gave to a -- one of the defense -- one of the
3 victim's attorneys that a letter would be coming.

4 And so, Mr. Starr is writing you to complain about
5 it, and he mentions in -- later in that paragraph that we
6 have thought that the notification process had been in
7 abeyance until completion of our ongoing discussions with
8 respect to that process. So, were you having discussions
9 with Mr. Starr about the process at this time?

10 A I don't recall discussions. I -- I think there was
11 at least correspondence, or -- I'm sorry, where are you? I
12 was reading the -- reading the letter. This -- I'm sorry,
13 where are you? What paragraph?

14 Q Let's take a look -- and it's been a long day.
15 Let's slow down here. We're on the second page of the Starr
16 letter.

17 A Yes.

18 Q And it would be this and that, the -- the language
19 in there -- in the second sentence, which goes towards the
20 bottom.

21 A This notification, but quite apart from our
22 substantive concerns, which -- we had thought the
23 notification process had been in abeyance until the
24 completion. That appears not to be so. This is
25 respectfully -- so, where does it imply that I was having --

1 I don't recall communications with Mr. Starr, that's why I'm
2 curious where -- at least verbal communications. I'm curious
3 where you're reading that from.

4 Q I thought he -- he's saying, we had thought that
5 the notification process had been held in abeyance until
6 completion of our ongoing discussions. Are you saying that
7 that's -- he's --

8 A So, I don't know where that may have come from, and
9 I don't recall. I recall at one point -- I think I sent a
10 letter saying we'll hold off for a week. I don't recall the
11 date of that letter, while you review some matters. Where
12 the abeyance came from, I can't -- I can't speak to.

13 Q Okay. Let's go to Exhibit 41b. This is your
14 December 19th letter, and what I'd like to draw your
15 attention to is page two, the second to last paragraph there.

16 A Yes.

17 Q So, could you tell us how your decision making
18 around this paragraph, how you got to this decision?

19 A So, so, you're asking me to recreate -- I -- at
20 some point, the issue clearly moved from [REDACTED] interacting
21 with defense counsel to -- to my desk, and my recollection 12
22 years after the fact is -- so, you're saying we shouldn't
23 notify them about the state proceeding, and sure, the
24 state -- this was negotiated between Epstein and the state
25 attorney.

1 We did not direct the state proceeding. So,
2 whatever state process is appropriate for the state process
3 will be given. But with respect to the federal resolution,
4 we intend to provide victims with notice of the federal
5 resolution as required by law, and your question is if we
6 thought it was discretionary.

7 I recall our believing it was discretionary, but
8 you could also -- it doesn't hurt to in a letter say we're
9 kind of required to do this, and I think it was the right
10 thing to provide them notice of the federal resolution.

11 And once that resolution was reached, and part of
12 the key word is what the resolution is, my understanding is
13 that [REDACTED] made efforts to notify victims of that resolution
14 and let them know that -- that there would be a hearing the
15 following Monday, that they should attend, because these --
16 it would bring an end to the case.

17 Q Well, let's just back up real quick. As far as --
18 so, do you -- as far as the state attorney notifying people
19 of -- victims of the --

20 A Right.

21 Q -- state resolution, did you have any concerns with
22 that particular part of it?

23 A So, difficult to recreate the thought process 12
24 years later, but ultimately you've got federal, and you've
25 got state, and the state attorney will do what the state

1 attorney thinks is appropriate. It's not for me to direct
2 the state attorney.

3 I'm inferring, based on this language, it's not for
4 me to direct the state attorney, or for our office to direct
5 the state attorney's office on its obligations with respect
6 to the state outcome.

7 Q Okay. I'm just asking because, you know, the whole
8 case came to your office because of some issues with the
9 state attorney's resolution of the case. So, now it's going
10 back, and they're going to be in charge of the notification.
11 Did that raise any flags with you, or did you have any
12 concern about whether it would be done correctly, or done at
13 all?

14 A So, again, you've -- I -- this has come up in
15 different contexts, and I think it's -- there was obviously a
16 concern about how it was being charged, but that doesn't mean
17 that they will not fulfill whatever obligations they have.
18 Let's not assume that -- that the state attorney's office is
19 full of bad actors.

20 Q Okay.

21 BY MS. [REDACTED]:

22 Q But even if not assuming that they're full of bad
23 actors --

24 A Right.

25 Q -- it's going to be difficult for them to notify

1 the victims, wasn't it, that they didn't even necessarily
2 know the same list as the federal victims, because you had
3 found more victims.

4 A So, we could certainly have shared that list with
5 them. I mean, there are -- there are ways that this could
6 have happened. I don't know how -- what the communication
7 were, but as a conceptual matter, having the state notify
8 them of the state hearing and having the federal government
9 say, and this is the federal resolution, is consistent with
10 the law.

11 Q But since the federal resolution is tied to the
12 state plea, is -- why not just combine the two of them in the
13 notification? Here's the federal resolution. We're tying it
14 to the state plea, and here's --

15 A Right.

16 Q -- the date of the state plea?

17 A I can't speak to the why not. I can -- you know, I
18 can speak to my belief that this would be consistent with
19 law. That could also be one approach. I can't speak to why
20 A versus B.

21 Q Did somebody instruct you that -- or did you have a
22 conversation consulting with somebody about whether this was
23 the better approach?

24 A I -- I would have said -- you know, based on
25 practice -- not recollection, but based on practice, I would

1 have sat down with [REDACTED], most likely, since he was handling
2 this matter, and we would have talked about it. I -- I would
3 not have sent this without running it by at least [REDACTED], if
4 not other individuals in the office. I don't know if based
5 on your record there is -- there's e-mails with drafts, but
6 you know, every document that I'm aware of was sort of shared
7 within the management team, and this would have been one of
8 those.

9 Q With respect to that one specific decision about
10 this should be at the discretion of the state's attorney, did
11 you consult with anybody in D.C. about that issue?

12 A I don't recall consulting with someone in D.C.
13 about this issue. I recall a general perspective that the
14 CVRA as a technical matter did not attach because ultimately
15 this was not -- it hadn't -- this was not an indictment.

16 BY MR. [REDACTED]:

17 Q Oh, can we -- before we leave this letter --

18 A If I could, I -- I -- and I understand your
19 questions, but I feel some obligation to raise the tension
20 between, did you consult in D.C. versus should you allow D.C.
21 review.

22 And so, just, you know, we certainly were allowing
23 review, but U.S. Attorney's Offices don't consult on every
24 matter, especially offices that have the kind of
25 experience --

1 MS. [REDACTED]: Mm-hmm.

2 THE WITNESS -- that Miami does.

3 MR. [REDACTED]: Back to me?

4 MS. [REDACTED]: Mm-hmm.

5 MS. [REDACTED]: Mm-hmm.

6 MS. [REDACTED]: Back to you.

7 BY MR. [REDACTED]:

8 Q Before we finish with this letter from the 19th,
9 can we look at page three, please? There is -- if you could
10 read the first paragraph on page three to yourself, please?

11 A Okay.

12 Q Could you -- in that section, you mention that
13 prosecutors had asked you to declare a breach, and you
14 resisted. Can you discuss that?

15 A So -- sure. That's -- that's referencing -- I
16 think increasing frustrations by the -- by the prosecutors,
17 and I think that's reflected in contemporaneous e-mails
18 saying, why don't we just rip this up?

19 And I recall conversations with [REDACTED], and that goes
20 a little bit to what we talked about earlier, which is
21 concern that a unilateral breach would overlay not just the
22 initial issues that we had, and not just the fact that the
23 victims are getting older and the case isn't getting better,
24 but then we have, was the unilateral breach a valid breach,
25 or was it not a valid breach?

1 And is -- is the delay justified or not justified.
2 And ultimately, that additional -- that additional
3 liability -- not liability, that additional legal uncertainty
4 was -- would have made the case even harder, because they
5 were very careful to always say there is no breach.

6 MS. [REDACTED]: Mm-hmm.

7 THE WITNESS Let me -- let me address, because I
8 went on to read the next paragraph as well. And so let me
9 circle back to an earlier issue --

10 MR. [REDACTED]: Great.

11 THE WITNESS -- because I at least want to address
12 it because the next paragraph then says, and it's clear that
13 I'm increasingly frustrated. It's against that -- that my
14 frustration with it appears to be an 11th hour appeal weeks
15 before the now scheduled July 4th plea date. That said, the
16 issues raised are important and must be fully vetted
17 irrespective of timelines concerns. We hope to preserve the
18 July 4th date.

19 I understand defense counsel shares our -- with
20 this in mind, and in the event the defense counsel may wish
21 to seek review of our determination in Washington, I spoke
22 this past Monday with Attorney Gen [REDACTED] confirming if it's
23 possible appearing to ask her to grant the potential request
24 for review, and to in fact review this case in an expedited
25 manner in an attempt to preserve the July 4th date.

1 MR. [REDACTED]: January 4th.

2 MS. [REDACTED]: That address -- January.

3 THE WITNESS I'm sorry, the January 4th plea date.

4 Sorry, it's --

5 BY MS. [REDACTED]:

6 Q And that addresses the question I was asking.

7 A And that goes to the question you're asking, and
8 again, I'm recreating and I'm speculating. Having that
9 following the -- another 11th hour appeal here, I would say
10 I -- I wouldn't say, let's appeal this again. I think I'm
11 saying pretty clearly, it's against my frustration with what
12 appears to be an 11th hour appeal weeks before the now
13 scheduled July -- January 4th plea date that this is not an
14 invitation to do another appeal, because the appeal is
15 already in Washington.

16 But my -- my saying, if -- if we're going to do
17 this appeal, let's get it over and done with, then I'm sort
18 of speculating based on the language, so that we can get this
19 pled on January 4th, and let's not put it off until after the
20 holidays.

21 Q But you did say, "To ask her to grant the potential
22 request," --

23 A Which is --

24 Q -- "for review."

25 A Which is why I wanted to on my own raise it,

1 because is that saying please appeal me, or is that saying --
2 this is an 11th hour appeal that you have now taken to
3 Washington.

4 It is December 19th. We're about to go into the
5 holidays. There's a January 4th plea date. This should not
6 be another way to put it off. And so, if you're going to do
7 this, I'm going to try to expedite it so we can get this
8 done.

9 Q And in fact, it took until May --

10 A Yeah.

11 Q -- 15.

12 A And it did, and apologies, I just realized my voice
13 is --

14 Q All right.

15 A -- rising. So, I don't know if that's my
16 frustration at reading this again, or it's getting late, but
17 it -- but it was a frustrating matter. Apologies.

18 BY MR. [REDACTED]:

19 Q Let's just move to Exhibit 46. So, this is an e-
20 mail from Ms. [REDACTED] to you and [REDACTED] discussing how she
21 has interviewed some victims that day. There's a mention
22 that one of the victims said that she would rather not get
23 any money and she'd have -- she would rather have Epstein
24 spend a significant time in jail. Did that piece of
25 information go into your character list at all about how the

1 **case should be resolved?**

2 A So, again, not based on recollection, because this
3 is maybe if not 12, 11 years ago.

4 **Q Okay.**

5 A But at this point, there had been an agreement.
6 The agreement was signed. It was being reviewed. Based on
7 this e-mail, we're trying to get and expedite the criminal
8 division, because I -- I see it says please reach to [REDACTED] to
9 make her decision.

10 And I -- I think at this point, as I said, if -- if
11 we knew earlier -- if we knew that it was going to go this
12 long and take all of this, I think we may have approached the
13 case differently, but we were so far along on this, there was
14 a signed agreement.

15 The United States can't unwind an agreement just
16 because it's frustrated, or just because some victim
17 indicates that they don't like it. That's not -- you know,
18 if the agreement is not legally valid, if there are some
19 other concerns, but I don't think this in and of itself would
20 have been grounds for unwinding an agreement.

21 **Q Do you think it's misleading for the government to**
22 **have been interviewing these witnesses and preparing them for**
23 **a trial when there's already a signed NPA that resolves the**
24 **issue?**

25 A So, that was part of the judgement that there's a

1 signed agreement, but based on the course of conduct, is that
2 agreement really an agreement that will be honored? And so
3 there was an ongoing investigation as well, because we didn't
4 know if we'd go to trial, and I know that -- not I know.

5 My recollection is that the judgement was until we
6 know that this agreement is really going to be performed
7 fully, that to inform victims of the possibility of civil
8 recovery is problematic, and -- and I can't say that
9 judgement's incorrect. That -- I think that's a valid
10 judgement.

11 Q Fair enough, and then the last question on this e-
12 mail is at the bottom, Ms. [REDACTED] invites you to attend
13 interviews with four of the girls who would be coming in the
14 following day.

15 A Mm-hmm.

16 Q Did -- did you attend?

17 A I -- I did not, and as U.S. Attorney, I don't think
18 I attended -- that's not -- that wasn't typical for our
19 office.

20 Q Would -- was that ever -- had you ever had that
21 type of request come from a line assistant?

22 A Not to my recollection, but I also tended not to
23 have communications come from line assistants in the first
24 place.

25 Q Were you at all curious, given the -- you discussed

1 the issues with the witnesses in this case --

2 A Right.

3 Q -- that, potential impeachment, and that -- you
4 know, that caused you to -- that went into the negotiation
5 phase. Did you have any interest in seeing these people --
6 even interacting with them personally so you could make your
7 own assessment?

8 A So, any interest is --

9 Q Would there be value in doing that?

10 A So, we had very experienced prosecutors. It's not
11 just interacting with the -- the -- the victims were in a
12 really hard position. It's not -- how I would draw a
13 distinction between a victim being interviewed by an agent,
14 and how a victim holds up in court, in a public setting under
15 cross examination, and in that, I don't think anyone in the
16 office was questioning the pain or the suffering of the
17 victims. I think that the issues were how would they hold up
18 in court, which are uniquely trial issues.

19 Q Okay. Then let's move onto -- what -- what -- what
20 was your understanding that -- that the federal government
21 was going to do as far as the notification about the
22 resolution of the case?

23 A So, my understanding was that once we believed that
24 the case was going to be -- that the -- that the plea was
25 going to go forward, that we would notify the victims of the

1 resolution, and of the agreement, and how -- basically, how
2 it played out.

3 Q Now, are you saying now -- now, you had agreed to
4 not notify -- well, did you -- I mean, you're -- one would
5 read your December 12th -- 19th letter as an agreement that
6 the federal government is not going to notify the victims of
7 the state plea. That's -- and that will end that part of the
8 case. Is that correct?

9 A So, so, I would parse my letter differently, and
10 this is 12 years after the fact, and so this isn't based on
11 recollection, but on my reading and my understanding of the
12 course of conduct in this case, sitting here now.

13 Q Mm-hmm.

14 A My understanding was that our office was
15 notified -- was it on a Friday afternoon?

16 Q Yes.

17 A That he would be pleading on Monday, and that at
18 that time, [REDACTED] made efforts to notify victims that he would
19 be pleading, and that that would terminate the federal
20 resolution of this matter, and that the victims should attend
21 that hearing, which wasn't the state resolution of the case.
22 It was the federal resolution.

23 Q And so, you -- you're saying that the state plea
24 was also the federal resolution of the case?

25 A Based on my understanding of what happened, that's

1 how my recollection -- based on having reviewed the record,
2 that's how I believe it proceeded, although I think [REDACTED]
3 attempted to do so, couldn't reach some attorneys, and
4 exercised best efforts to let them know, but did not get
5 ahold of all of the victims --

6 Q Let's --

7 A -- over the weekend.

8 Q Before we get too deep into that, let's just take a
9 quick look at Exhibit 51. So, this is an e-mail forwarded to
10 you from [REDACTED] from January -- June 25th, 2008. So, that is
11 five days prior to the plea in this case.

12 A Yes.

13 Q Or, the state court plea, and the attachment there,
14 you'll notice is a letter with a notification of identified
15 victims, and the letter is written, would you disagree --
16 it's written with, on June 30th, Epstein pled guilty. Do you
17 see that?

18 A Yes.

19 Q So, the inference -- it appears to be that this
20 letter was to be sent after the plea.

21 A I -- I see that. I also -- based on my review of
22 the record, where I think I'm recalling the [REDACTED]
23 affidavit, where she said that she made an attempt to notify
24 the victims as soon as she was made aware that he would be
25 pleading -- that he would be pleading in state court.

1 Q Well, the -- what [REDACTED] says in affidavit --

2 A Correct.

3 Q -- I believe is that she made notification, and the
4 police department -- Chief [REDACTED] police department made
5 notifications. Is that -- is that correct? Does that ring a
6 bell?

7 A I --

8 MR. TODD: Do you have a copy of the affidavit, so
9 we can just look at it?

10 MR. [REDACTED]: Do you have [REDACTED] affidavit e-
11 mail?

12 MS. [REDACTED]: It's right here. One copy.

13 THE WITNESS I'll hand it back.

14 MR. [REDACTED]: Almost done.

15 THE WITNESS So, relevant to this paragraph 34, and
16 then another paragraph, these and other attacks and efforts
17 to avoid the NPA's terms led the FBI investigative team, the
18 office, and me to conclude that prosecution at trial remained
19 a possibility, and we should prepare as such.

20 This meant that the victim notification letters had
21 to cease, because one, we no longer knew whether Epstein
22 would perform under the NPA, and hence, we did not know
23 whether providing information about the NPA would be
24 accurate, until we believed that Epstein, through his
25 counsel, would attempt to use victim notification concerning

1 the NPA to suggest that victims had been encouraged by the
2 FBI or the office to overstate the victimization for monetary
3 compensation. And then fast forwarding because you can read
4 it on your own.

5 On Friday, June 27th at approximately 4:15, I
6 received a copy of Epstein's proposed state plea agreement,
7 and learned that Epstein's state court change of plea was
8 scheduled for 8:30 a.m. on Monday.

9 The Palm Beach Police Department and I attempted to
10 notify the victims about the hearing in the short time
11 available to us. I specifically called to Attorney Edwards
12 to provide notice to his clients regarding the hearing.

13 I believe it was during this. I never told that
14 the state charges involved other victims, and neither the
15 state court charging instrument nor the factual proffer
16 limited the procurement of prostitution charges to a specific
17 cell.

18 So, that was what I was referring to. Again, I
19 am -- I am basing this based on my review of the affidavit
20 and not on recollection of how this may or may not have
21 proceeded 12 years ago.

22 Q Okay. You know, would it surprise you to learn
23 that Ms. [REDACTED] only communicated with Mr. Edwards that
24 day? That's because she was under the direction from a
25 manger to only contact Edwards regarding this -- the

1 potential plea for that Monday?

2 A The affidavit said she attempted to notify the
3 victims, so I can't speak to that.

4 Q Okay.

5 A And I don't have an independent recollection of
6 this going back 12 years.

7 Q Were you aware that Ms. [REDACTED] was directed to
8 have no communication with the state's attorney's office, and
9 probably during the later period of the case in 2008?

10 A Not to my recollection.

11 Q Okay, so did you have -- would you not recall
12 hearing anyone directing her to not communicate with the
13 state attorney's office?

14 A I can't speak 12 years later, what role I may or
15 may not have had. I question how, if we need -- if there is
16 a -- an attempt to schedule a plea in all that, how can there
17 not be communication? But I can't -- I can't say whether I
18 did or did not. When I say I have no recollection, I mean
19 that in the broadest sense of the word.

20 Q Okay. In your December 19th letter, you -- you did
21 agree that the state attorney's office would notify the
22 state's victims, right?

23 A Yes.

24 Q And do you have any idea how that was to be
25 accomplished?

1 A I can't speak to that, no.

2 Q And would you have any knowledge of who the state
3 victims are?

4 A I would infer that -- that our office would have
5 had sufficient communication with the state attorney's office
6 to communicate who the victims were in this case, because it
7 was an ongoing -- it was an ongoing matter, and -- but I
8 don't know.

9 Q Do you want to go on?

10 MS. [REDACTED]: Okay. Are you -- are you done with
11 your -- that portion at least, for the moment?

12 MR. [REDACTED]: Yes. Thank you.

13 BY MS. [REDACTED]:

14 Q I'd just want to clarify something you said a
15 moment --

16 A Sure.

17 Q -- ago, Mr. Acosta. You said you referred to the
18 agreement, the NPA, as having been -- it was signed and was
19 being reviewed. Were you talking about Washington?

20 A Right.

21 Q The criminal division, but we established earlier,
22 did we not, that the NPA was not the subject of the criminal
23 division review. They expressly declined to review it.

24 A I stand corrected.

25 Q Okay. I just wanted to be clear on the record.

1 Thank you. So, we -- we've had a lot of conversation about
2 facts. We are fortunate in this case to have a plethora of
3 documents upon which we can rely even 12 years or so after
4 the fact, and we've tried to plum your -- the depths of your
5 memory as to the events.

6 Are there any facts -- any conversations, any
7 incidents, anything based on the questions that you've heard
8 here today that you recall, have recalled, that you want to
9 tell us about, want us to know?

10 A So, give me a minute to just sort of think this
11 through.

12 Q Of course.

13 A I think we've covered most of the issues pretty
14 clearly. I guess I would have two general comments. The
15 first is, whether folks agree or disagree with the initial
16 two years, you know, registration and restitution.

17 The office's focus was on having Mr. Epstein go to
18 jail at a time when, from our perspective, these -- these
19 cases were, at least presented with these facts, federally at
20 least unusual, and that most trafficking cases involved
21 different -- a different sort of nexus.

22 It involved bringing individuals into the country,
23 or holding individuals against their will, or doing something
24 like that, and -- and this will go to my second point which
25 is, you know, sitting here, we now see several high profile

1 individuals who abused power, and have now been prosecuted --
2 who were known at the time who abused drugs, like Bill Cosby
3 and -- who were -- there were rumors at the time, and you
4 know, and -- and so, looking back, maybe it was the right
5 call.

6 Maybe it wasn't the right call, but there is some
7 degree of -- I'm not sure what the right adjective is.
8 Frustration, that -- and certainly, some of this goes to me,
9 but I think a lot of this goes to [REDACTED], and the individuals
10 involved, that the attempt to put someone in jail as opposed
11 to decline the case and say this is just a state case,
12 that -- that the -- that the federal issues are too tricky,
13 that ultimately, this is sort of novel interpretations, that
14 the attempt to come up with an outcome has rebounded in the
15 way that it has, and I'm not -- I'm not saying, look, that
16 that's life, and I understand that.

17 But I do think it's important to look back on this,
18 and try to be in the shoes of the thought process in 2006 and
19 '07 when trafficking prosecutions were fairly new, when, you
20 know, more so than today, some jurors may have looked at this
21 as prostitution, and were -- perhaps more so than today --
22 judge's tolerance for victim shaming may have both caused
23 more hesitation on the part of victims, but also created more
24 issues at trial. And so, I think we've touched on that, but
25 I think as we sort of wrap up --

1 Q Mm-hmm.

2 A -- this portion of it, it's important to just
3 restate that.

4 Q And -- and to -- in addition, are there any facts
5 that you -- conversations, or anything that you --

6 A Fair, you did ask this.

7 Q -- that we have -- that we've not really elicited
8 from you that you want us to know? And to be clear, you'll
9 have an opportunity to --

10 A Right.

11 Q -- supplement this.

12 A Not that I can think of --

13 Q All right.

14 A -- sitting here.

15 Q All right. How do you respond to public criticism
16 that the defense attorneys -- the Epstein defense team, were
17 gaining extraordinary access to an influence on prosecutors
18 from the line level all the way up through the department?

19 A So, I would point out early on in the case -- when
20 I said early, you pushed back, but from my perspective, early
21 on in the case. Not when it was first investigated, but when
22 it first bubbled up for decision.

23 Q And that would be mid-2007?

24 A Mid-2007. June-ish, May to June 2007, May, June,
25 July. We determined, here are -- here is what we'd need for

1 resolution. And I -- I think I addressed some of this in the
2 Daily Beast's letter.

3 Q Mm-hmm.

4 A Because we were receiving criticism back then, and
5 I think that letter has been misconstrued to some extent,
6 because it was not, oh, here are influential people, we're
7 backing off.

8 It was, we, early on, set three criteria. Two
9 years, registration, restitution. Despite all these
10 attorneys, despite all these appeals, despite all these
11 efforts, the office did not budge with the caveat of the 24
12 to 18 months, which we've discussed, and from my perspective,
13 despite all of that, I backed the office in sticking by that
14 resolution in the various appeals to Washington.

15 And so ultimately, it was a year-long process, but
16 we ended up a year later exactly where we started with the
17 caveat of the 24 to 18. And so, to the extent that there was
18 influence, there was -- there was no change in position.

19 Q Well, my question was access. That this team of
20 defense attorneys --

21 A Right.

22 Q -- had extraordinary access, that they asked for
23 meetings, they --

24 A Right.

25 Q -- pressed for -- with communications, and they had

1 that access. Was -- did that seem extraordinary to you?

2 A So, they asked for a meeting with me before the
3 agreement was signed.

4 Q Mm-hmm.

5 A I granted that. That's not the first and only time
6 that I granted a meeting to -- to defense attorneys. I don't
7 think it's atypical, particularly as a case is coming to --
8 to resolution -- for a U.S. Attorney to sit down and meet
9 with opposing counsel, and I can think of several cases where
10 that happened. There was certainly a lot of access in
11 Washington. I would speak to -- you know, I think that's a
12 question to direct to this building.

13 Q Mm-hmm.

14 A Because the process here was lengthy, and
15 frustrating. But I think we successfully held firm in our
16 positions, despite all the process in this building.

17 Q And again, my focus is not on your response, but on
18 the access.

19 A And --

20 Q Based on the prominence and the -- the prominence
21 of the defense attorneys. If these had been local attorneys,
22 your sort of average criminal defense attorney from, you
23 know, name where they hang out in --

24 A Right.

25 Q -- Miami coming to you and pressing for this, you,

1 writ large, the department, do you believe they would have
2 had the same or a comparable level of access?

3 A So --

4 Q I don't know the answer. I'm asking.

5 A Yeah. So, I guess I'd respond this way. If an
6 attorney after meeting with my management staff asked for a
7 meeting with me, I believe I did and would have granted it,
8 and I can think of several matters on which those types of
9 meetings were granted. And so, that was not unusual.

10 Q All right.

11 A With respect to the back and forth after the
12 agreement was signed? This was an unusual agreement, and to
13 some extent, as a result, the back and forth quickly
14 elevated, particularly because matters would elevate in
15 particular when they were being addressed at main justice.
16 That would be one natural way for matters to elevate within
17 the office. And so, the fact that they were being addressed
18 and reviewed, and letters were coming here, would naturally
19 elevate the way the matter was treated in Miami.

20 Q In particular, Jay Lefkowitz had ready access to --
21 of course, he was involved in the negotiations with [REDACTED]
22 directly in creating the NPA, but after that, it appears from
23 the record that he was often contacting you, and running or
24 going above the people who worked for you, and on numerous
25 occasions, you -- again, my characterization -- reprimanded

1 him, or instructed him not to do that, and to direct his
2 communications to the line attorney or her supervisors. Is
3 that -- is that --

4 A I --

5 Q -- a fair characterization?

6 A Yes, on -- I think on several occasions, I said
7 direct them, and again, that was after the agreement was
8 signed, but yes.

9 Q But there were many issues still pending, correct?

10 A Yes.

11 Q Okay, and that was his ability to reach out to you
12 as a function of your personal association. Is that fair?

13 A So, I don't think that's a fair characterization.
14 I think it -- you could also say that it was the ability
15 of -- a function of his -- his insistence in not doing what
16 we asked, and the fact that in a typical course, a Miami
17 attorney would not have done this, because they would have to
18 interact with the office on an ongoing basis.

19 Q Mm-hmm.

20 A And so, the repeat litigator behaves very
21 differently than the one time razed earth litigator.

22 Q Mm-hmm. Razed, R-a-z-e-d?

23 A Correct.

24 Q Is it reasonable to -- for us to understand that
25 you have followed the media coverage of what happened in the

1 Epstein case over the years?

2 A Yes.

3 Q In your view overall, and in whatever specific
4 respect you wish to address, is -- has it been accurate or
5 not so?

6 A I think it has been inaccurate in several ways, and
7 we can go through them, but --

8 Q If you could just tick those off?

9 A So, I think it's inaccurate in that it has been
10 characterized as our approving a state plea, and --

11 Q Mm-hmm.

12 A -- the complexity of this case was a state plea,
13 and we were deferring to -- in favor of a state prosecution
14 has been lost, and it's something that I have attempted to
15 correct, but it's very difficult to sort of explain that in
16 the media.

17 You know, this is a bad analogy, and so I haven't
18 used it in the media, but I've thought about it, and so I'll
19 share it. So, after the Jessie Smollett plea in Chicago,
20 there was some discussion of whether the federal government
21 should bring charges, and I remember the media saying that,
22 and I haven't used this analogy, because I don't want to
23 compare, and I think it would be disrespectful to compare the
24 facts of that case to what happened to these victims, and I
25 still -- and I don't want the comparison to be drawn, but

1 there is a legal comparison, right?

2 The U.S. Attorney in Chicago could have stepped in
3 and said, whether or not the state takes this plea, we may
4 investigate this federally, and sort of stopped that plea
5 from going forward, or at least put a wrench in those gears,
6 or the U.S. Attorney could have pursued that under petite
7 policy, and did not.

8 And so, our stepping into this sort of reminded me
9 of how many times cases that are viewed as a manifest
10 injustice do occur, and yet the federal government does not
11 step in? And the fact that we stepped in has been construed
12 as, this became a federal prosecution, and sort of going --
13 going to -- is it [REDACTED], or --

14 Q [REDACTED].

15 A [REDACTED]. [REDACTED] sort of question earlier, the
16 distinction between -- it was not a manifest injustice versus
17 this was the right outcome, is something that I think has
18 been lost in the coverage of this matter.

19 I think a second issue that has been lost in the
20 coverage of this matter is, there are references to Prince
21 Andrew, and Alex Dershowitz and Governor Richardson and Bill
22 Clinton, and thing happening in London, and the so called
23 Lolita Express where things may have happened on airplanes.
24 And so, this is viewed from the public as this international
25 matter, where the victims were local, the actions, to my

1 recollection, was local.

2 And so, the distinction between this Palm Beach
3 incident and what the media likes to cover, which is, you
4 know, was, you know, did Mr. Epstein force a minor to have
5 sexual relations with Prince Andrew, is a very different fact
6 pattern both in terms of the public perception of forcing a
7 minor to have sex with a third party, that they have -- you
8 know, that is outside the solicitation context.

9 It's sort of -- I'm travelling with these women,
10 and forcing them to have sex, versus a more local matter
11 that -- I don't want to say solicitation, because I think
12 we've covered that, but that some may view as that.

13 Q Mm-hmm.

14 A And I think those are two major elements --

15 Q Right.

16 A -- that have been lost in the coverage.

17 Q The case has been criticized as having involved
18 improper influences, or favors, or payments that affected
19 decisions that were made within your office, and you're aware
20 of all those --

21 A Yeah.

22 Q -- allegations as well. In connection with this
23 case. Were you yourself ever offered any -- any payments, or
24 any favors, or any promises or job assistance or anything
25 like that --

1 A No.

2 Q -- in connection with this case?

3 A No.

4 Q And to your knowledge, was there any such offer to
5 anyone associated with this case in your office?

6 A Not to my knowledge.

7 Q It's been asserted also that the -- the handling of
8 the case in the office was affected by Epstein's wealth and
9 influence in the Palm Beach community. Do you -- what is
10 your -- what's your response to that criticism?

11 A Again, my response would be, you know, sometime in
12 May or June we came up with these three points, and we stuck
13 to them, and -- and you know, I -- despite all of this, you
14 know, when people make these assertions, somewhere along the
15 way, the fact that we stuck to those points is lost and is
16 not talked about.

17 And so, we did stick to those points. You know,
18 and -- and questioned whether the case would have come to us
19 in the first place but for -- and so, you know, I think that
20 could also go the other way.

21 Q I don't understand that.

22 A That it's highly unusual for a case to be brought
23 to the state -- to the U.S. Attorney's Office after the state
24 attorney declined -- not declines, but --

25 Q Fails to fully prosecute?

1 A Right, and so, so one question that at -- that also
2 doesn't get asked is, you know, to what extent was this case
3 brought to us in the first place because of this, because of
4 his profile?

5 Q In other words, are you suggesting that his wealth
6 and influence in the community affected the state
7 authorities?

8 A I'm not suggesting that. What I'm suggesting is
9 the case came in, the case proceeded, and someone can make
10 the argument that the only reason that Chief [REDACTED] brought
11 it to us was because it had such a high profile -- are there
12 other matters that take place in Palm Beach that a state
13 attorney declines in the first place that isn't brought to
14 the state attorney because it doesn't rise to that --

15 Q You mean to the U.S. Attorney.

16 A -- to the -- to the U.S. Attorney because it
17 doesn't rise to that profile.

18 Q All right. All right.

19 BY MS. [REDACTED]:

20 Q Well, in fairness, he might've done it because of
21 the number of victims too, right?

22 A He may have. I don't know. What I'm suggesting is
23 we tried to treat it fairly, not looking at, hey, how wealthy
24 is he, but also not saying we need to do this because he is
25 so wealthy.

1 BY MS. [REDACTED]:

2 Q What do you think about the media's treatment of
3 the line assistant, [REDACTED] [REDACTED]?

4 A I think she -- I wish her name wouldn't be in the
5 media. You know, to some extent, U.S. Attorneys, when they
6 take the job, realize that part of their job is to take the
7 slings and arrows.

8 You know, there are instances when AUSAs were
9 accused of misconduct, and -- and I always sort of felt that
10 that was -- I don't want to say below the belt, but that's
11 not why they take the pay cuts that they take to go into
12 federal service, and you know, I think the media coverage of
13 this case has been unfair, and has lost a lot of the
14 complexities.

15 It's not surprising, because I mean, here, we're
16 talking about -- about a lot of those complexities, and it
17 takes a fairly sophisticated discussion, but I think it's
18 particularly unfair on [REDACTED].

19 Q In your attorney's written response, he used the
20 term relentless for -- to characterize the team of lawyers --
21 the defense lawyers, and in that Daily Beast article that
22 you --

23 A Right.

24 Q -- wrote, you referred to the yearlong assault on
25 the prosecution and the prosecutors, you noted that the

1 defense was, "More aggressive than any of which I or the
2 prosecutors in my office had previously encountered." You
3 noted that the defense investigated prosecutors and tried to
4 disqualify two, and I believe that those two are [REDACTED]
5 [REDACTED] and [REDACTED] [REDACTED]. Is that --

6 A That is correct.

7 Q All right.

8 A Yeah.

9 Q And you also noted, or asserted that there were
10 investigations into the family lives of individual
11 prosecutors, accusations of bias and misconduct against
12 individual prosecutors, and even the threat of a book on
13 prosecutorial zeal. Do you still regard that
14 characterization as accurate?

15 A I do. You know, whether I would use those same
16 words now, we can spend a lot of time talking about it, and
17 I'd want --

18 Q All right.

19 A -- to think about, but I do think that's accurate.
20 I think this really was a razed earth type of matter, and in
21 the office's typical interactions, the prosecutors know they
22 have to come back to the office. And so, they would not --
23 sorry, not the prosecutors. It's getting late, though. The
24 defense counsel.

25 And so, they would not -- it's not just the

1 accusations against the attorneys, but the
2 mischaracterization. I -- you know, I could go through the
3 record, and there's several instances where my words, or
4 other AUSAs words are being mischaracterized, or where --
5 going back to one of the [REDACTED] e-mails, people walk out of the
6 meeting believing they have an agreement, and then that's
7 unwound, and -- that that is not -- I don't know if that's
8 typical in Washington, but that's certainly not typical in
9 the Miami office.

10 Q All right, in that Daily Beast article, I think you
11 also used the term peccadillos.

12 A Yes.

13 Q What did you mean by that in particular?

14 A Could I see the -- could I see the --

15 Q Mm-hmm. I was afraid you'd ask that. I have it
16 right in front of me, and I don't at the moment, but --

17 MS. [REDACTED]: Are you talking about the to whom it
18 may concern letter?

19 MR. [REDACTED]: Yes.

20 THE WITNESS Yes.

21 BY MS. [REDACTED]:

22 Q Yes. Thank you, and it's a reference on the second
23 numbered page of this copy, to personal peccadillos, in the
24 middle of the page.

25 A Also, individual prosecutors and their families

1 looking for personal peccadillos that provide a -- so, [REDACTED]
 2 was, to my recollection, she wasn't investigated. [REDACTED] y

3 [REDACTED]
 4 [REDACTED] and I haven't encountered that in other cases.
 5 I recall it -- at one point, they also looked in [REDACTED], and
 6 [REDACTED] family, and his background, and I thought that was a
 7 little out of line.

8 Q [REDACTED]
 9 [REDACTED]
 10 [REDACTED]

11 A [REDACTED]
 12 [REDACTED]
 13 [REDACTED]

14 Q [REDACTED]
 15 A [REDACTED]
 16 [REDACTED]
 17 [REDACTED] [REDACTED]
 18 [REDACTED] [REDACTED]
 19 [REDACTED]
 20 [REDACTED]

21 Q [REDACTED]
 22 [REDACTED]

23 A I --

24 Q [REDACTED]
 25 [REDACTED]

1 A [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] But the point I was trying to convey is, this is

5 not a -- this is not typical behavior by defense counsel.

6 Q Did --

7 A And despite all this, my point was, despite all

8 this, we did not budge.

9 Q And again, that's not the focus of --

10 A Right.

11 Q -- of this question. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 A [REDACTED]

17 Q [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 Q All right. Are there any other examples where

21 defense counsel came to you that have not otherwise been

22 addressed with --

23 A I'm --

24 Q -- allegations about someone --

25 A I'm hesitating --

1 Q -- else --

2 A -- just because I'm trying to think through, and
3 not to my recollection, no.

4 Q Did they ever raise or imply that there were --
5 that there was information regarding you of whatever respect,
6 that was in the nature of a sort of a threat, or a veiled
7 warning?

8 A So, the book reference was that I might be
9 personally embarrassed by pursuing this matter, because I
10 would be the subject of a chapter in a book on prosecutorial
11 overreach.

12 Q And who was going to write that book? Do you know?

13 A Professor Dershowitz.

14 Q Mm-hmm. Okay. Did you consider him a professional
15 friend at all?

16 A I had not, to my recollection, met him. I -- I
17 understand in this letter I sort of grouped him in.

18 Q Mm-hmm.

19 A But I would -- I'd say for the record that it's
20 hard to know what my intent was in 2011, but that's for
21 simplicity of grouping individuals, because I did go to
22 Harvard.

23 I may have run into him at Harvard, but he was not
24 my professor, and I don't -- I didn't work for him as a
25 teaching assistant. I had some interest in criminal law, so

1 I may have chatted with him, but -- but that would have been
2 it.

3 Q And did you consult with him at all in connection
4 with your efforts -- your interest in potentially teaching or
5 being involved in the -- sort of the law school world, either
6 at Harvard, or at Florida International, or anywhere else?

7 A Not to my recollection. At some point when I
8 applied for the deanship -- I wasn't aware of the deanship
9 until -- so, let's -- let's take this -- let's take this in
10 part. I thought about looking at Harvard for a teaching
11 position. To my recollection, I never followed through on
12 that.

13 Q Mm-hmm.

14 A I knew Elena Kagan, and may have had a conversation
15 with her that would have been a preliminary, how does this
16 process work? But I don't recall taking it -- if I took it
17 that far, and I'm not saying that I did -- this was a long
18 time ago -- I never sort of went through -- the way law
19 schools hire is a very -- they call it the "meat market."

20 Q Mm-hmm.

21 A Take that for what it's worth. It's something that
22 happens at the hotels here, at the -- at the Marriott here
23 in -- on Connecticut, and it's a very formalized process, and
24 I never --

25 Q Mm-hmm.

1 A -- went through that. I don't recall any
2 conversation with Professor Dershowitz about that. To the
3 extent I was thinking about it, it'd be natural for me to
4 talk to [REDACTED] but I don't recall talking to him. With
5 respect to Professor Dershowitz, with respect to FIU, the
6 dean process is very decentralized.

7 To the extent a faculty member spoke to him, I
8 don't know. To my recollection, and again, this is a long
9 time ago, I did not ask him for a reference or a letter or
10 something to that regard, although I may have. It was a
11 long, long time ago. I was also no longer active in this
12 case at the time.

13 Q All right, and what about with respect to that same
14 process on your part, Ken Starr, who actually was a dean of a
15 law school at the time? Did -- did he provide you with a
16 reference, or --

17 A Not --

18 Q -- advice?

19 A Not to my recollection.

20 Q All right.

21 A As -- as the letter from -- from Ken at the end,
22 there was some -- by the time this was over, there was some
23 degree of tension between us on my resolution of this matter.

24 Q But it also appeared to be tension that both of you
25 were eager to leave aside.

1 A I'm a big believer, and I had good relationships
2 with the defense bar. I think lawyers can disagree and not
3 be disagreeable, and we would be a better profession if we
4 all learned to do that.

5 Q So would the world.

6 A Yes.

7 Q There is an -- sort of investigative journalist
8 author named [REDACTED] [REDACTED]?

9 A Yes.

10 Q Do you know that name?

11 A Yes.

12 Q Did you ever speak with her?

13 A So, she was the recipient of the do -- to whom it
14 may concern letter at the Daily Beast.

15 Q Oh, really?

16 A Yes.

17 Q All right. All right. Thank you. I didn't -- we
18 didn't know that. Did she comment back to you on it?

19 A It was a long time ago. I don't -- I don't recall.

20 Q So, she wrote a book called trafficking. Have you
21 read that --

22 A She did --

23 Q -- about this case?

24 A She did. I haven't read it recently, but I read it
25 a while ago.

1 Q And she says in that book that you told her a few
2 years after the NPA was signed that as she writes, "He felt
3 incapable of going up against those eight powerful attorneys.
4 He felt his career was at stake." Did you say that to her?

5 A Not to my recollection, and what I tried to do was,
6 for the record, provide this letter to her, and the purpose
7 of this letter was to say the exact opposite, which is -- and
8 you know, we have this -- you know, and she and the New York
9 Times, and I think the New York Times called it -- what --
10 what's the word? Like, apologia? Does anyone know what --

11 Q Apologia.

12 A Apologia.

13 Q It's a -- it's an --

14 A I --

15 Q -- apology. It's a fancy way of saying --

16 A Yeah.

17 Q -- you're --

18 A Yeah.

19 Q -- explaining yourself.

20 A Yeah. I looked it up, and it's a little more
21 derogatory than explaining yourself, because I felt a need --

22 Q Mm-hmm.

23 A -- to look it up, but the New York Times called
24 this letter an apologia.

25 Q Mm-hmm.

1 A And this was recently, and I say this, because when
2 folks read this letter, they read it as, this is why, you
3 know, we had these -- they -- I think sometimes they
4 selectively read language. The prosecutors and agents in
5 this case -- and what followed was a yearlong assault. I
6 used the word assault as it was more aggressive than anything
7 in which I or the prosecutors in my office had previously
8 encountered.

9 Excuse me. Mr. Epstein hired an army of legal
10 superstars, Harvard Professor Dershowitz, former judge and
11 then Pepperdine lodging Ken Starr, former deputy assistant to
12 the president then Kirkland & Ellis law partner Jay
13 Lefkowitz, and several others, including prosecutors that
14 formerly worked in the U.S. Attorney's Office, the child
15 exploitation section -- I'm not sure who that was -- of the
16 Department of Defense, and they --

17 **Q Department of Defense?**

18 A No, no, in the child exploitation and obscenity
19 section of the Justice Department. Defense attorneys next
20 requested a meeting with me. And they read that as saying
21 these -- there were all these powerful lawyers in the case,
22 but they don't then go on to talk about, despite this army of
23 attorneys, the office held firm to the terms first presented
24 to Mr. Black in the original meeting.

25 **Q So, is it your -- so, what I understand you saying**

1 is that the panoply, this pantheon of attorneys did not have
2 the influence on you that's alleged?

3 A And -- and the purpose of this letter was to say,
4 despite all this --

5 Q Right.

6 A -- we held firm. So, how can you say that there's
7 influence if we held firm?

8 Q So, the --

9 A And I would -- I would also -- I'm sorry.

10 Q No, no.

11 A I would also note, and I think we talked about
12 this, that those terms were developed before many of these
13 individuals came on board.

14 Q Mm-hmm. Mm-hmm.

15 A So, it's not like these terms were developed
16 because, oh, now these individuals are on board.

17 Q All right. And we haven't, of course, talked about
18 the whole work release issue, but --

19 A Yeah.

20 Q -- I think that speaks -- the record --

21 A Yeah.

22 Q -- speaks for itself on that.

23 A Yeah.

24 BY MS. [REDACTED]:

25 Q So, I'm not sure I'm clear. Did you have an

1 interview, or give a -- have a conversation with Ms. [REDACTED]
2 aside -- or, just sent her this letter?

3 A I spoke to her briefly saying, I'm not going to
4 speak on the record. I'm not going to address even off the
5 record details of this case, but I will provide a letter to
6 you. I've had a lot of requests over the years to talk about
7 this case.

8 There were enough requests coming that I thought it
9 important to provide a statement to defend the actions of the
10 office. I didn't want it to be to one reporter in
11 particular, because I did not want to play favorites. And
12 so, I provided a to whom it may concern letter that was a
13 public letter, but then I gave it to her.

14 MS. [REDACTED]: All right. Go on?

15 BY MS. [REDACTED]:

16 Q And just one thing on the work release issue. Did
17 you tell the defense that -- that the U.S. Attorney's Office
18 would not object if he got work release as long as he was
19 treated like every -- like every other defendant?

20 A So -- so, I don't recall what I may or may not have
21 said specifically around work release. My recollection of
22 our general position is, you're pleading in state court to
23 incarceration of 18 -- it's now 18 months, it was 24.
24 Whether it was 18 or 24, this would have been -- any
25 conversation I would have had would have been after the

1 agreement was signed.

2 It's our expectation that he be treated just like
3 everyone else, if -- if it was typical to provide that kind
4 of work release in these cases, that would have been news to
5 me. I certainly would not have expected that, and I think
6 based on our subsequent communications with the state
7 attorney's office, that was not what our office envisioned.
8 By the same token, I don't think our office envisioned that
9 he be treated worth that the typical offender.

10 Q Well, did you know that [REDACTED] was in fact trying to
11 make sure that he didn't get work release?

12 A Yes. And so, I don't see any reason why I would
13 have contradicted that, is -- is my point.

14 Q All right. You've mentioned a number of times that
15 the sexual offender registration was the -- one of the three
16 important prongs for you and the office.

17 A Yes.

18 Q What was it that you saw the sex offender
19 registration as accomplishing?

20 A So, to some extent it's putting the community on
21 notice that, irrespective of whether he's in Florida or
22 elsewhere, he's a registered sex offender. To some extent, I
23 don't know if this is -- but I'll say it anyhow. This was a
24 serious crime, and there is a public sanction associated with
25 this, and I thought to the extent that he committed the types

1 of acts that typically are associated with registration that
2 that should go forward, but the primary motivation there was,
3 put the public on notice that he is a registered sex
4 offender.

5 Q And did you see any conflict with that as being a
6 goal with the provision in the NPA that was -- that the NPA
7 was going to be kept confidential, and the communications in
8 which the -- in which the U.S. Attorney's Office was having
9 with the defense about continuing to keep things
10 confidential? Do you see any inconsistency between those
11 two?

12 A No, in that I -- I genuinely was of the opinion
13 that this NPA would go public, and certainly his public --
14 his state court plea would be public, and his registration
15 would be public. And so, it would -- what he did would be
16 known.

17 Q And given what you know about these office's back
18 and forth on notifying the victims, do you think, looking at
19 the entire course of conduct of the office, that the victims
20 were treated fairly, and with dignity and respect?

21 A So, I want to be careful, not because I'm fudging,
22 but because it's a complex question. If, looking back in
23 hindsight, we knew that there would be a -- what was it? Two
24 eight months period, when -- do we have an agreement, do we
25 not have agreement, is this concluded, is this not concluded?

1 Is this an ongoing investigation?

2 How do we deal with all these notification issues?

3 If we had foreseen all of that, I think I've said before,
4 that -- that something I certainly think should have been
5 considered, and it's very possible we would have done
6 something very different.

7 But that was not foreseen. And so, it's then a
8 very difficult judgement to be made, because there is an
9 agreement. There is concern as to if we have to go to trial,
10 how do you address this?

11 There is, you know, going to the [REDACTED]
12 affidavit, at least one instance -- and I'm merging my
13 recollection here, and -- and my knowledge after the fact,
14 because your question sort of calls for an after the fact
15 assessment.

16 So, you've got the [REDACTED] affidavit, which
17 points out that defense counsel did all they could, but is
18 using this to impeach and weaken witness credibility in a
19 case where there's already questions around witness
20 credibility.

21 And so, it's a very imperfect situation with
22 discretionary judgements to -- to do the best, to sort of
23 balance all these factors. Is that the best outcome?
24 Probably not, but that's where the -- that's where we were,
25 and that's why I think this case would have been very

1 differently if -- what was it, October 24 --

2 Q Mm-hmm.

3 A -- he would have gone in and plead and taken his
4 time and served his time like so many other people have done
5 as opposed to mount all these legal challenges that we then
6 had to work through.

7 Q And I'll preface my question with the -- with the
8 fact that we're still investigating this. We've made no
9 conclusions --

10 A Mm-hmm.

11 Q -- with respect to this, but if OPR determines that
12 your office should be criticized for its handling of this --

13 A Right.

14 Q -- matter, does that criticism fall on you, or does
15 it fall on your senior managers? Because as a non-
16 prosecutor, you were relying on them to keep you informed,
17 and for their judgement.

18 A So, I was the U.S. Attorney. I certainly relied on
19 my staff, but ultimately, I was the U.S. Attorney, and I
20 don't think it's justifiable or fair to sort of say this was
21 on them. I was sufficiently aware of matters that -- that --
22 it was my office, and -- and while I'll say that I was -- I
23 might not recall this, or I was relying on A, B, or C for
24 guidance, or to handle this matter, ultimately, I think those
25 judgements always sort of bubble up.

1 BY MS. [REDACTED]

2 Q In your press conference, you reference -- this is
3 the -- I think July 10, 2019 press conference. You
4 referenced victims, what they went through was --

5 A Mm-hmm.

6 Q -- horrific, you said, and then you said, I've seen
7 these videos. I've seen the interviews. I have seen the
8 interviews on television of these victims, and their stories.
9 Just to be clear, are you talking about interviews and
10 television coverage and videos recently, or back in 2006
11 and --

12 A Recently.

13 Q -- 2007? Okay. I just wanted to be very clear
14 about that. The U.S. Attorney's manual requires us all in
15 the department to conduct the fair, even handed
16 administration of the federal criminal laws. What's your
17 view as to how the handling of this case comported with that
18 principle?

19 A So, I do think it was fair, and even handed. We --
20 you know, after the fact, may look back and say that two year
21 may not have -- you know, it shouldn't have been a manifest
22 injustice standard. It should have been, you know, a sort of
23 a de novo, let's treat this as a new prosecution.

24 That's a judgement you'll all make, but -- but
25 those judgements were made with an eye toward fairness and

1 impartiality, and once those judgements were made, despite
2 all the attorneys involved, and despite all the litigation,
3 and all the -- all the stuff, all the appeals to Washington
4 and the -- you know, we stuck to that position.

5 Q Mm-hmm.

6 A And I think that speaks to the way the office
7 approached this matter.

8 Q All right. We -- I -- we spoke sort of offline
9 earlier about an issue that was raised in that press
10 conference that was not clearly answered on your part in that
11 context, and the question was -- and this is on page 15 of
12 the internet transcript of --

13 A Right.

14 Q -- that press conference. You were asked whether
15 you were ever made aware that Mr. Epstein was "an
16 intelligence asset of some sort." And you -- you in your
17 response you said you couldn't answer it -- couldn't address
18 it directly because of guidelines. Can you clarify -- first
19 of all, were you ever made aware of that --

20 A If he was --

21 Q -- assertion?

22 A -- I'm not aware of it.

23 Q All right. Did defense counsel ever say to you
24 that Epstein had that status?

25 A Not to my recollection.

1 **Q All right.**

2 A And -- and to clarify, I also don't know where
3 press reports from multiple sources -- not from multiple
4 sources, but from multiple media outlets that I told someone
5 that he was an intelligence asset.

6 I do not know where that came from. If -- if I can
7 just -- so, there are questions that I may be asked publicly,
8 that I don't think it's right for me to comment as to what
9 classified information I may or may not know, because that's
10 not the kind of stuff you'd go into, but the answer is no,
11 and no.

12 **Q All right. Without reservation, without any --**

13 A No, and no.

14 **Q All right. Excellent. Thank you. A couple of**
15 **final questions. As you can tell --**

16 A Can I -- can I --

17 **Q Yes.**

18 A -- address as second issue that has come up at
19 times?

20 **Q Yes.**

21 A There are also media reports that this was because
22 of cooperation in some financial --

23 **Q Mm-hmm.**

24 A -- financial matters. I don't know where that may
25 have -- I don't know where that may have come from.

1 Q All right. Thank you, and we are familiar with
2 that, what you're referring to.

3 A Was -- was there cooperation related to financial
4 matters?

5 Q We didn't ask you about it.

6 A Okay.

7 Q As you can tell, OPR obtained many electronic
8 records --

9 A Yeah.

10 Q -- mainly e-mails, but other electronic holdings
11 from the department. The Department of Justice, however, has
12 not been able to find/recover a portion of your e-mail
13 account as U.S. Attorney that contained e-mails received by
14 you between May 26th, 2007, and March 2008.

15 A Correct.

16 Q A period of time rather relevant to this. We have
17 obtained many records of course from senders and from other
18 people copied. So, we have many of the records, but the fact
19 is, that's a --

20 A Mm-hmm.

21 Q -- gap in the holdings, and this is despite the
22 fact that as you no doubt know, the law requires that U.S.
23 Attorney records be maintained and archived --

24 A Right.

25 Q -- indefinitely. Can you give us any insight, any

1 **idea why that might be the case?**

2 A I can't, and my recollection was after -- after
3 several issues that took place, the department had some sort
4 of records retention software that automatically retained
5 these e-mails. Is that not accurate?

6 Q **There was a -- there was a switchover from --**

7 A Right.

8 Q **-- a period in which that record retention**
9 **responsibility resided with each U.S. Attorney's Office, and**
10 **at the switchover, it became centralized.**

11 A Right.

12 Q **And this appears to have sort of gotten lost in**
13 **the --**

14 A Been caught in the switchover. I -- my
15 recollection is that there was some automatic retention
16 mechanism --

17 Q **Okay.**

18 A -- and I can't address that, although there's
19 certainly a fulsome -- a fulsome record.

20 Q **But just to ask the inevitable question --**

21 A Right.

22 Q **-- did you take any action to discard, destroy, or**
23 **dispense with any official records --**

24 A Not --

25 Q **-- related to this matter?**

1 A Not to my recollection. I think there's a fulsome
2 record, and not to my recollection.

3 Q All right, and is there any particular gap that
4 you've discerned in the records that we've provided to you?

5 A Not that I recall. Do you have the e-mails that I
6 sent, out of curiosity?

7 Q We do.

8 A Okay. So, you have the sent, but not received.

9 Q Yes.

10 A Just checking.

11 Q And likewise, we retrieved from the federal records
12 center --

13 A Right.

14 Q -- records that were boxed up and sent there, hard
15 copy documents, after your term ended, and there is nothing
16 that relates to the Epstein case. There were records that
17 were maintained that were kept in the main office --

18 A Right.

19 Q -- after you left, because it was an ongoing
20 matter, but it -- do you have any idea why there are not any
21 in the records of yours --

22 A So --

23 Q -- that were sent?

24 A So, I have a recollection that when I left, there
25 were some binders that I passed along to ■■■■, because it was

1 an ongoing case, and we sort of had binders out that sort of
2 had correspondence back and forth.

3 Q All right, and you've already made -- we've --
4 we -- I asked you about facts, but you addressed a sort of a
5 broader statement to us for the record about the case. Is
6 there anything else you want to tell us at this point?

7 A Give me a second to --

8 Q Sure.

9 A -- sort of think this through.

10 Q In fact, if you'd like to take a quick break and
11 talk to your attorney, and that will be the last question.

12 A Do we need a break?

13 MR. [REDACTED]: No.

14 MS. [REDACTED]: Your attorney says god no.

15 THE WITNESS I will -- I will follow up on this.

16 MS. [REDACTED]: All right.

17 THE WITNESS Nothing that I -- if something comes
18 up, my understanding is that we're receive the transcript,
19 and have enough time given the length of this to review and
20 comment.

21 BY MS. [REDACTED]:

22 Q Exactly, yes, and for the record --

23 A Right.

24 Q -- when the transcript is prepared, which should be
25 within a couple of weeks, we'll ship that off to your

1 attorney.

2 A Mm-hmm.

3 Q We'll ask you to review it, to make not only any
4 corrections, but also clarifications, and to add to it --

5 A Mm-hmm.

6 Q -- if you feel having read something that it needs
7 to be clarified or expanded upon, you're invited to do so.

8 A And if I could ask one -- one other question. Is
9 there -- and I'm not familiar enough with the way OPR
10 operates, and this may be suigeneris, so you may not be
11 prepared to answer, if there is a report as opposed to a
12 letter, which is what I typically am familiar with, will that
13 report be shared in advance for comment?

14 Q I am going to --

15 A Or is that to be determined?

16 MS. [REDACTED]: I am going to defer to Ms. [REDACTED]
17 for that.

18 MS. [REDACTED]: That's a question that doesn't need to
19 be on the record. Do you have anything else that you'd want
20 to put on the record before we close out?

21 THE WITNESS: I do not.

22 MS. [REDACTED]: All right.

23 MS. [REDACTED]: All right. Thank you. I want to
24 extend our great appreciation for your willingness --

25 THE WITNESS No problem.

1 MS. [REDACTED]: -- to come in and help us with this
2 case.

3 THE WITNESS So, so, let me -- now that we're off
4 the record, let me say --

5 MS. [REDACTED]: Are we off the record?

6 THE REPORTER: Not yet.

7 THE WITNESS Not yet? Oh.

8 MS. [REDACTED]: No?

9 THE REPORTER: You didn't say it.

10 MS. [REDACTED]: All right. That's it. We're off
11 the record.

12 (Whereupon, at 8:38 p.m. the interview of R.
13 Alexander Acosta was concluded.)

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C E R T I F I C A T E

THE UNITED STATES OF AMERICA)
)
 IN THE DISTRICT OF COLUMBIA)

I, Beth Roots, Notary Public, before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing pages was duly sworn by me; that the testimony of said witness was reported by me by electronic record, and thereafter reduced to typewritten form; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of this action.

Beth Roots
Notary Public in and for the
District of Columbia

My commission expires:

April 30, 2020