

1 day, you were calling for some edits that really reflected --
2 seemed to reflect a real discomfort --

3 A I --

4 Q -- as you identify.

5 A Again, I'm perhaps supporting -- I'm supporting the
6 point you're trying to make that we were focused on getting
7 this done, and real concern that he would not go to jail.
8 And a question that I think is a valid one in my mind is, did
9 the focus on, let's just get this done and get a jail term,
10 mean that we didn't take a step back and say, let's evaluate
11 how this train is moving?

12 Q You --

13 A From my perspective.

14 Q Okay. I want to just sort of round out the little
15 bit of this -- the state -- the state only resolution. You
16 used the term a couple of times backstopping. What do you
17 mean by that?

18 A What I mean by that is, a sense that the state
19 wasn't doing enough, and perhaps backstopping is a polite way
20 of saying encouraging the state to do a little bit more.

21 Q Mm-hmm. All right. Did you have any discussions
22 about whether this disposition comported with the Ashcroft
23 memo in that you were hunting to the state for a minor
24 charge, for a fairly minor charge, what you -- your office
25 had already understood from the evidence was a quite wide

1 ranging scheme of predatory, my term, behavior regarding
2 minor victims?

3 A So, I don't recall a discussion around the Ashcroft
4 memo. I would characterize what we did differently, in that
5 there are any number of instances where the federal
6 government or the state government can proceed, and state
7 charges are substantially less and different, and on a fairly
8 regular basis, the federal government allows the state -- not
9 allows, but stands aside and lets the state proceed.

10 Q But in this case, you actually had an active
11 investigation that had been proceeding for a year.

12 A So, let's take the drug context, where there might
13 be any number of active investigations where the federal
14 charges can be rather substantial, but ultimately, the
15 federal government says just let the state proceed with this,
16 or violent crime cases where the federal government could
17 bring gun charges using felon in possession or another
18 mandatory minimum, but the state goes forward with -- so, in
19 that sense --

20 Q But the state goes forward with what?

21 A Forward with different charges that -- that have a
22 lesser term. And so, I don't think it's unusual. We can
23 talk about, you know, whether this was the best disposition
24 or not, but I don't think it's unusual to have fact patterns
25 that are under investigation that proceed in state court,

1 where the disposition is different than -- and would have
2 been if it had proceeded in federal court.

3 Q All right. Do you have anything on that?

4 [REDACTED]: On the two years, or something else?

5 [REDACTED]: No. I'm going back to the two
6 years.

7 [REDACTED]: Okay.

8 BY [REDACTED]:

9 Q Did you think -- did you believe at the time, if
10 this was part of your thinking, that because it was so
11 important to get sex offender registration, and even later
12 developed damages -- monetary damages for the victims, under
13 the state plea arrangement, that pretty much the only thing
14 that the government had -- the federal government had to give
15 up in this negotiation was jail time? If you wanted -- you
16 wanted --

17 A Right.

18 Q -- three things --

19 A Correct.

20 Q -- you've said, jail time, sex offender status, and
21 some kind of restitution or damages --

22 A Right.

23 Q -- mechanisms. Sex offender registration, there's
24 no -- really no give there. You either register or you
25 don't. I'm being binary --

1 A Right.

2 Q -- again, I'm sorry.

3 A But it is binary, so --

4 Q It is binary.

5 A Yes.

6 Q And likewise, the --

7 A Right.

8 Q -- monetary recovery provisions. So, really, the
9 only thing to negotiate is time, right?

10 A And so, your question is why did we not start at
11 three so we ended up at two?

12 Q Well, that's -- that's -- that's a consequence of
13 what --

14 A So --

15 Q -- I was asking.

16 A So, again, my recollection is I understood this to
17 reflect what he would have received as opposed to some
18 arbitrary, let's start at three so we end up at two. I
19 also -- I'm sorry, you have a question?

20 Q No, go ahead. Go ahead. I'll get to my question.

21 A You know, I also -- from my perspective, was, you
22 know, early on when we set firm on the two years, I thought
23 two years would have been the right outcome. We ended up on
24 18 months. I can't say how. There's some documents that
25 might help, but I -- but I was at least initially firm on

1 those two years.

2 Q Right, so you -- when you say, I thought the two
3 years was the right amount, is that based on your
4 understanding that that's what he would have gotten in the
5 state?

6 A Correct.

7 Q All right.

8 A That -- and the point I'm trying to convey there is
9 that this wasn't, to my understanding, a random number, but
10 it was informed by, this is what he would have received, and
11 therefore it is a reasonable -- agree or disagree with the
12 analysis, but it was an informed number to begin with.

13 BY [REDACTED]:

14 Q But you don't recall how that analysis was done, or
15 who conducted --

16 A I --

17 Q -- that analysis?

18 A -- don't recall that.

19 BY [REDACTED]:

20 Q Or even whether it was accurate, actually?

21 A I -- again, I don't recall that.

22 Q All right.

23 BY [REDACTED]:

24 Q And I understand the explanation.

25 A Right.

1 Q And --

2 A Right.

3 Q -- what it's tied to, but was there any
4 consideration -- because this case --

5 A Right.

6 Q -- was not about one or two victims. It was a very
7 large scheme by this older, wealthy man, to essentially turn
8 minors into prostitutes, have sex with them, oral sex, get
9 other people involved.

10 You've described it in prior statements as
11 grotesque and deserving of punishment. What I'm not hearing
12 through this process is anybody taking a look at this overall
13 conduct, and saying, what is the appropriate punishment for
14 this man's conduct? Was there such a consideration, and did
15 you feel that two years adequately punished him for the scope
16 of his conduct?

17 A Fair question, and perhaps going back to where we
18 started, which is petite. To my mind at the time, there was
19 a distinction between what would be the adequate punishment
20 if this was a purely federal case, versus what is necessary
21 so that it is not a -- to put it in petite language -- a
22 manifest injustice, so that it wouldn't have come to the
23 office in the first place.

24 And that I think is the important distinction,
25 because if the two years is what he would have received, and

1 therefore it would not have come into the office under
2 petite, then if there is a state disposition to that, that is
3 one possible outcome.

4 It would be a different outcome if this was truly a
5 federal pro=section independent of the state, which goes back
6 to the point I was making about concern about a federal
7 precedent with this kind of sentence, because then when the
8 next person comes along, they say, well, here is this
9 precedent under 371, or whatnot.

10 And so, this was, rightly or wrongly, and I
11 understand the -- the pushback -- an analysis that
12 distinguished between what is necessary to prevent manifest
13 injustice, versus what is the appropriate federal outcome to
14 that. Agree or disagree with the logic is one thing, but did
15 I explain the logic?

16 Q You've -- yes, you've explained the logic.

17 A Okay.

18 Q And I'm going to push back a little bit --

19 A Right.

20 Q -- on that, because the petite policy specifically
21 says it does not apply where the state conduct is only a
22 minor part -- an insignificant part of the entire course of
23 conduct, and they give examples about where you have some
24 type of a RICO scheme, and the state has indicted or
25 convicted the perpetrator based on something that could be

1 one single overt act in the government's conspiracy, and
2 doesn't that really show what is going on here, that what the
3 state had done was really just a small, minor part of this
4 scheme that the federal government had a --

5 A Right.

6 Q -- had a real opportunity to punish him for this
7 entire course of conduct?

8 A So, possibly, but if I can circle back to your
9 question previously, it's interesting that you characterize
10 this as, he's turning these girls into prostitutes, and then
11 I think that's really interesting, because in 2019, 13 years
12 afterwards, despite all the changes in the law, there is
13 still some element somewhere that says he's turning these
14 girls into prostitutes, whereas this was a typical
15 trafficking case of the kind that you'd see in the Lou De
16 Baca days where, you know, it was called modern day slavery.
17 That's a very different fact pattern.

18 So, you know, a girl that's held captive, is forced
19 to service multiple men per day, where this is part of an
20 ongoing business arrangement. And so, I hear what you're
21 saying, but if here at this table at least some element of
22 that characterization is live, what would it mean in 2006
23 when these laws are still being developed? And that
24 consideration, rightly or wrongly, was part of this analysis.

25 BY [REDACTED]:

1 Q Was it explicitly -- in other words, was -- was
2 that aspect of it, the -- I -- the perception that this was
3 perhaps activity that -- in which the victims cooperated?
4 Was that part of the --

5 A No, no. Let me -- let me distinguish. I didn't
6 say the perception that this was activities in which the
7 victims cooperated. What I was going to -- what I -- and
8 I've gone to before is, would jurors -- is there at least one
9 juror that might say, look, we've got conflicting victim
10 testimony.

11 Some of them said he did nothing wrong. They all
12 knew each other. They kept going back and taking payment.
13 Is this trafficking, or is this prostitution? I'm not -- I'm
14 not saying I agree with that, and I don't think -- I don't
15 think prosecutors do, I'm saying is there -- is there at
16 least a possibility of that? And --

17 Q Was that articulated to you by the people you were
18 listening to by [REDACTED] and --

19 A So --

20 Q -- [REDACTED]?

21 A So, that certainly was part of the discussions when
22 I talk about the victim issues, would at least some jurors
23 view it that way, rightly or wrongly?

24 Q And you recall having that -- those --

25 A I --

1 Q -- conversations?

2 A I recall having not only how would the witnesses
3 stand up in court, but how would jurors view them? And then
4 the second part of that is, as it goes up in the appellate
5 process with respect to the -- the federal nexus. And so, I
6 hear you, but you know, I -- it's -- it's sort of one of the
7 factors. And so --

8 BY [REDACTED]:

9 Q And so --

10 A Yeah.

11 Q -- what I'm getting though is that there didn't
12 seem like there was a consideration or discussion about, is
13 this two years capturing the scope of his conduct, versus,
14 we're just going to tie it to this potential state crime that
15 could have been charged?

16 A Fair, and I would -- I would say that the two years
17 was not meant -- so, the petite policy has several prongs,
18 and to my recollection, the petite analysis was not based
19 on -- and let's not even call it petite analysis. That
20 overstates it.

21 But it was much more of a, is this a manifest
22 injustice, and -- and if the original -- and so, you sort of
23 see it in the Exhibit 3. This would not have been brought to
24 the office in the first place if -- you know, if he had plead
25 to jail time and registration, and rightly or wrongly, that

1 was understood from the very beginning of the case, and was a
2 factor in how the case was viewed.

3 Q And how do you know that it wouldn't have -- that
4 [REDACTED] wouldn't have been upset with a minimal jail
5 time, even if there was sex registration?

6 A So, I can't 12 years later say how we knew that. I
7 can say that my -- my general impression was that this was
8 proceeding at the state, that there were certain charges, and
9 that those charges changed when it went to a grand jury, and
10 that it went from -- I think they even changed the ASA
11 involved.

12 [REDACTED]: They did.

13 THE WITNESS: I can't speak for certain, but you
14 probably have that from the record, and that when they
15 changed the ASA involved and took it to grand jury, the
16 charges that came back were substantially less.

17 BY [REDACTED]:

18 Q Do you remember the circumstances? Did you know
19 the circumstances under which that ASA was changed?

20 A I don't know.

21 Q All right. The -- by the way, do you remember an
22 occasion in which [REDACTED] came to your office in Miami
23 to press you on what was going to be happening with the
24 federal case?

25 A I don't recall.

1 Q You don't recall. I --

2 [REDACTED]: Just one more, [REDACTED] --

3 [REDACTED]: Yeah.

4 THE WITNESS: Yeah.

5 BY [REDACTED]:

6 Q So, before we --

7 A Yeah.

8 Q -- leave this --

9 A Yeah.

10 Q -- one little thing. So, if this case had come
11 into the federal system as apart from the --

12 A Right.

13 Q -- taken the digression through the --

14 A Right.

15 Q -- state system, do you think that the two years
16 was an appropriate punishment, given the scope of his
17 conduct?

18 A I think if it had come into the federal system
19 apart from the whole state and the petite considerations and
20 all that, we may have ended up in a different place. I
21 viewed the two years, to my recollection, as a manifest
22 injustice standard, and not an appropriate punishment
23 standard.

24 Q Meaning whether it was manifestly unjust that he
25 get two years?

1 A No, whether it was -- so, let me -- let me -- let
2 me rephrase. No jail time was a manifest injustice. If he
3 had gone to jail for two years in the state system and
4 registered, the question of whether it would have come to the
5 office at all, and to my recollection, the consensus was, and
6 ██████, based on Exhibit 3, agrees with that, that it would
7 never have come to the office in the first place, because we
8 would not view that under petite as a manifest injustice.

9 There are any number of cases that are prosecuted
10 around the country where an individual gets a jail time that
11 the federal government may not agree with, but that doesn't
12 mean that the federal government reprosecutes those cases.
13 The instances where the federal government reprosecutes a
14 state case are pretty rare, to my knowledge.

15 And so, under the petite standard, and the
16 petite -- the manifest injustice would -- it would have been
17 a manifest injustice to have zero jail time, and zero
18 registration, but if the original charges had remained, that
19 would be a different matter. That does not mean that that is
20 the best outcome in the state system.

21 and so, perhaps beating a -- you know, an issue,
22 but let me maybe give an example. One concern that I had was
23 that in the violent crime side, the state brings a case, and
24 you know, there is a deferment, no jail time. The state then
25 brings a second case, and there's minimal jail time. Well,

1 now the person has done three violent crimes, they have a
2 gun, they go federal, and it's like, please don't do that.
3 Pretty please don't do that.

4 You know, we're going to punish you a little bit,
5 and then all of a sudden in comes the federal government with
6 the big, big punch to the face, because the federal sentences
7 are so different than the state sentences. And that happens
8 all the time in any number of contexts in Florida. That
9 doesn't mean that all of those cases get reprosecuted as gun
10 cases in Florida.

11 That means that we understand that the Florida
12 system is different than the federal system. And so, the way
13 we looked at, at least based on my recollection, those two
14 years was not, what would he have received if this was a
15 purely federal case, but would this case have been prosecuted
16 by the federal system additionally if he had received jail
17 time and registration in the state system?

18 **Q And would -- is it fair to say that this particular**
19 **concern about, for lack of a better word, federalism or the**
20 **petite policy, was that a primary concern of yours versus any**
21 **of your employees in terms of [REDACTED] or [REDACTED]?**

22 **A I think it's fair to say that I focused more on the**
23 **legal side of things, and my team focused more on the trial**
24 **and how this would play out at trial, and both of them --**
25 **both of them sort of informed the outcome.**

1 Q And are you including this petite policy in your
2 consideration of the legal issues?

3 A Yes. Yeah. I think those are all tied together.

4 BY [REDACTED]:

5 Q So, you mentioned victim --

6 A But -- but could I -- could I --

7 Q Yes.

8 A But to clarify, I thought we had sufficient to go
9 forward so it wasn't an ethical violation to proceed.

10 Q Mm-hmm. Okay. The victim -- you mentioned the
11 victims coming into state court, and you talked about all the
12 victims coming into state court. Do you have any idea what
13 victims formed the basis for the original charge that --

14 A I do not.

15 Q -- he was indicted on? Do you know whether it was
16 one -- was it a felony assault pros of a non-minor.

17 A Mm-hmm.

18 Q It could have been -- it was three instances to
19 felonize it. You don't know whether it was one person three
20 times, three people?

21 A I do not.

22 Q And you don't know whether that person was a minor
23 or not?

24 A I do not.

25 Q All right.

1 A I would assume they were, but I do not.

2 Q Likewise, do you know who was the victim, or who
3 the victims were who formed the basis for the 796.03 charge
4 to which Epstein ultimately pled in June of 2008?

5 A I did not at the time. I've read various accounts
6 of that, but that's based on matters that I've read and not
7 an independent recollection.

8 Q And what's your understanding?

9 A My understanding is that there's some -- that there
10 is at least some issue in the media over whether the -- the
11 right or the best victims were chosen from the prosecution's
12 perspective.

13 Q And do you know -- was there any indication of who
14 the victims were? Do you know who the victims were who were
15 the subject of the state charges?

16 A Which particular names? No, I don't.

17 Q Right, I'm not asking you --

18 A Yeah.

19 Q -- other than names --

20 A Yeah.

21 Q -- I just want to know if you know who they are or
22 how many they were.

23 A I -- I do not.

24 Q Right, it could be one, right? For this -- for the
25 solicitation. It could be one conceivably. Both the charges

1 could relate to one victim.

2 A Right. So -- so, those matters were very much part
3 of the negotiation that [REDACTED] and to some extent Andy were
4 involved in. I did not --

5 Q What makes you think that -- that -- the -- your
6 people were negotiating which victims would form the basis?

7 A Fair. Fair point.

8 Q Okay.

9 A Fair point. I withdraw. They may not have. I
10 don't know -- I don't know how in the weeds and how much our
11 folks, as a federal system, sort of interacted with the state
12 in terms of what punishment. I -- there's at least some
13 discussion in the media regarding whether the punishment was
14 a function of the victims and registration, and I can't speak
15 to that.

16 Q All right. Are you aware, just as a point of
17 interest, that the public record of the proceedings in the
18 state court related to Epstein are utterly silent as to who
19 or how many victims form the basis of the charges to which he
20 pled?

21 A I -- no. I was not aware.

22 Q Okay. So, this idea of many victims coming forth
23 in state court and so on are not -- is not -- it's not really
24 in play. All right. So, you have a two year -- two years
25 has been now -- a two year state deal has been announced to

1 the team by [REDACTED].

2 A Yeah.

3 Q With your knowledge and approval, right? Because
4 he wouldn't do it otherwise. Is that right?

5 A Fair.

6 Q Though at least one was surprised. Do you know
7 what drove the timing of the plea offer? In other words, why
8 did it have to be made at that point?

9 A I do not.

10 Q Okay. You know that [REDACTED] submitted his
11 resignation on the 23rd of July.

12 A I saw that in the --

13 Q Right.

14 A -- in the -- in the documents.

15 Q In the documents, and he submitted that to you
16 among other -- as well as the --

17 A Yeah.

18 Q -- HR people. Why not -- well, then there was a
19 July 31st meeting at which the term sheet was presented.
20 This document 15 is the term sheet that was presented, as
21 [REDACTED] indicates in her September 6th cover note -- cover e-
22 mail. And you said you approved it. You happen to be copied
23 --

24 A Right.

25 Q -- though --

1 A So --

2 Q [REDACTED] --

3 A Let me --

4 Q -- forwards this, but --

5 A Let me -- let me be -- let me be accurate. I
6 approved these terms, whether it was this specific term sheet
7 or another -- another document that might have been earlier
8 that looked highly similar to this.

9 My recollection is approving a, a -- you know,
10 approving a resolution that had him pleading to certain state
11 counts that had a binding two-year plus recommendation that -
12 - and that provided for 22.55 restitution.

13 Q Right, but you don't know if it was this sheet of
14 paper?

15 A I can't say 12 years after the fact whether it was
16 this specific sheet --

17 Q Right.

18 A -- or --

19 Q All right.

20 A -- or others. I -- based on the fact that this was
21 in the e-mail, I think it's safe to -- to assume, but --

22 Q To assume what?

23 A To assume that it was this.

24 Q Oh.

25 A But it's possible that there was as slight

1 difference in --

2 Q All right. In fact, this -- this same document
3 with a couple of --

4 A Right.

5 Q -- additional bullets that had to do with the date
6 of entry of the plea, sort of ministerial, is what was
7 prepared by [REDACTED] [REDACTED] on or about the 31st -- on or
8 before the 31st of July, and this document, as indicated --

9 A Mm-hmm.

10 Q -- here, along with the attached guidelines
11 calculation is what was provided to the folks who met on the
12 31st --

13 A Fair.

14 Q -- of July. Okay. So, on that 31st, it was [REDACTED]
15 [REDACTED], Jerry Lefcourt, [REDACTED] Sanchez, and the purpose of
16 the meeting with Sloman, Menchel, Lourie, and [REDACTED] as
17 well as the case agents was to present the plea offer. And
18 did you get briefed on how that plea offer went?

19 A I don't recall being briefed, but in the regular
20 course, I would have been.

21 Q All right, and at that meeting, there was an
22 expression of concern by the defense team that Epstein wanted
23 to avoid being incarcerated in the state system because of
24 concerns for his physical safety, and that concern was
25 accommodated to the extent that the U.S. Attorney's Office

1 team agreed to explore federal resolution. How does that
2 square with your decision that a state plea is how this case
3 was going to be --

4 A Right.

5 Q -- decided?

6 A So, I think I indicated later that it's a little
7 bit more fluid than a decision here or a decision -- you
8 know, than binary situations. My recollection is we were
9 very focused on, this man should go to jail, and this man
10 should register.

11 The two year plea to the state charges seemed
12 reasonable and seemed a way to go. We can agree or disagree.
13 Reasonable in terms of -- not in terms of, was it the -- the
14 most just outcome, but seemed like a disposition that we
15 would agree to.

16 But ultimately, the focus was on getting him to
17 jail, and if that meant exploring a 371, it's at least worth
18 exploring. And so, I don't think it was inconsistent,
19 because the focus really was on, he needs to go to jail.

20 Q Okay. In this case, that -- that push back of
21 the -- that resulted --

22 A Right.

23 Q -- in the agreement to explore a federal plea --

24 A Right.

25 Q -- was because Epstein was afraid to be in prison.

1 Why would the U.S. Attorney's Office accommodate that? And
 2 here, we're getting to -- we're beginning to talk about a
 3 major point of criticism of this whole process and the
 4 outcome and that is that it appeared that the U.S. Attorney's
 5 Office was bending over backward to accommodate the concerns
 6 of Jeffrey Epstein, and in this case, he was uncomfortable
 7 going to a federal or state prison, but all child sex
 8 predators who go to prison are going to face some --

9 A Yeah.

10 Q -- challenges, right?

11 A Right, and I remember along the way a heavy push
 12 that he be incarcerated at this home under some kind of home
 13 confinement, and my reaction to that was no way.

14 Q Right.

15 A And okay, you don't like prison, but that doesn't
 16 mean you get to be incarcerated in your house.

17 Q Mm-hmm.

18 A Which is interesting, because subsequently --

19 Q Yeah.

20 A And so --

21 Q Because subsequently, what? You might as well
 22 finish --

23 A Well, because --

24 Q -- that.

25 A -- subsequently, the way that the state executed

1 the terms of incarceration were not what I would have
2 expected. And so, again, the focus from my perspective is,
3 he needs to go to jail. If the team agreed to explore it,
4 you know, the 371 was on the table to the extent we had
5 been -- I'm speculating now. This is not to make the record
6 clear.

7 Q Mm-hmm. Thank you.

8 A I'm speculating, not recalling. I can speculate a
9 371 with a two year rule 11 had been discussed based on the
10 contemporaneous record, and so, to the extent it had already
11 been discussed, even if it was not the direction we were
12 taking, would it have been unusual for folks in the room to
13 say, well, look, we've discussed that, let's go back. You
14 know, let's see where it goes. I can't fault -- to the
15 extent it had been discussed -- I can't fault anyone for
16 saying, let's go back and look at it. I think that's
17 distinguishable at least from subsequent --

18 Q All right. At that point, the defense was given
19 two weeks to take it or leave it, and if not, you would
20 indict, and there were several occasions --

21 A Correct.

22 Q -- when that kind of ultimately was made. Did that
23 mean -- I mean, given all of your concerns about barriers to
24 what you would consider a successful federal prosecution, was
25 that a bluff?

1 A No.

2 Q It was not.

3 A It was not.

4 Q You were at some level at least prepared to approve
5 the presentation of the -- or, the presentment of --

6 A We --

7 Q -- an indictment?

8 A We should not have gone forward with these
9 negotiations if we weren't ready to --

10 Q All right.

11 A -- to approve. Whether in this form or a different
12 form and indictment, and I say that because it was very much
13 a draft indictment that hadn't been reviewed fully by the
14 chain, but it wasn't a bluff.

15 Q Well, by this time it -- it had been reviewed, and
16 it --

17 A Had it been reviewed, and revised, and --

18 Q It had -- there -- there had been some efforts to
19 begin revising, so --

20 A So --

21 Q Yeah.

22 A Some --

23 Q It wasn't finalized.

24 A Yeah. Some efforts to begin --

25 Q Exactly.

1 A Right.

2 Q Okay. Looking at 11a, this is a letter that [REDACTED]
3 [REDACTED] drafted to sort of actually respond to a
4 counteroffer by the defense. The counteroffer is represented
5 in Exhibit 10b, which is a letter from [REDACTED] Sanchez
6 which we don't need to go into in detail, because as you've
7 already pointed out, essentially it was a home confinement,
8 and you know, very, very soft --

9 A Yeah.

10 Q -- landing counteroffer. In 11a, [REDACTED]
11 tweaks [REDACTED] letter, you're copied on this, and the date is
12 August 2, Thursday, and he notes that he hadn't discussed it
13 in detail with you, but he wanted to -- he hoped that
14 tomorrow, Friday the 3rd --

15 A Right.

16 Q -- he'd have a chance to, and what's notable here
17 is that -- is that the -- there's strong language that the
18 "Office believes that the federal interest would not be
19 vindicated in the absence of a two year term of state
20 imprisonment for Mr. Epstein. That offer was not meant as a
21 starting point for negotiation. It is the minimum term of
22 imprisonment that will obviate the need for federal
23 prosecution."

24 A You're on paragraph two?

25 Q One.

1 A One, yes.

2 Q Oh, two.

3 A Yeah.

4 Q It's the first --

5 A Right.

6 Q -- long paragraph. And then he also states that --
7 that you in the last paragraph -- the U.S. Attorney, "U.S.
8 Attorney Acosta has asked me to communicate that the two year
9 term of incarceration is non-negotiable."

10 A Yes.

11 Q That's pretty firm. That's a -- that's a line --

12 A It is.

13 Q -- in the concrete that is setting, right?

14 A Right.

15 Q And 11b is the letter as it actually went out the
16 next day.

17 A And it's got the same language.

18 Q It's identical. It has the same language. It has
19 one typo corrected. This is [REDACTED] last day in the
20 office.

21 A Yes.

22 Q And he's gone after that. Do you think that this
23 was an -- the appropriate timing to extend this offer, or to
24 set this as the minimum offer, or was it something that you
25 would've liked to have seen more fully developed in

1 negotiations with defense counsel?

2 A I'm sorry, I don't understand your question when
3 you say more fully developed.

4 Q Well, you -- you have two years. Would -- would
5 further consideration have led the U.S. Attorney's Office to
6 decide that, well, maybe the two years is too much of a
7 giveaway; we should stick with a five year federal plea?

8 A Yeah. I can't -- so, I can't speculate this far
9 after the fact whether waiting an additional time period and
10 further discussion would have changed things. I can tell you
11 how we came up with it, but that -- that's a lot of
12 speculation.

13 Q Would you say that [REDACTED] was -- as the
14 criminal chief, was essentially the driver of this -- of the
15 resolution --

16 A Right.

17 Q -- presented in this letter?

18 A I can't. Again, you're asking me to speak to
19 something from 12 years ago. I can't speak to it. I was
20 aware of the multiple prongs. I approved it. If we had had,
21 you know, if -- if a -- at some point -- is your question is
22 if at some point there had been a, let's sit down and
23 reconsider meeting, would we have gone in a different
24 direction? Perhaps, but I can't, 12 years after the fact,
25 speculate as to what may have happened if something had

1 happened.

2 Q All right.

3 A That's just a lot of hypotheticals.

4 Q Understood. The question though is whether Matt
5 Menchel, who was the author --

6 A Right.

7 Q -- of this, who first raised it --

8 A Right.

9 Q -- with [REDACTED] Sanchez --

10 A Yeah.

11 Q -- in an informal discussion, and who presented it
12 to the U.S. Attorney's Office team, was this really his baby?

13 A I can't --

14 Q Approved by you.

15 A I can't -- I don't remember who I talked to about
16 what, and so it wouldn't be fair for me to -- you know, I
17 can't single out any one person as having a greater or lesser
18 role.

19 Q Well, you were not the architect of this, right?
20 You approved it as you've described it.

21 A No, I haven't said I wasn't the architect. What I
22 said is I don't recall --

23 Q Right.

24 A I recall approving it. You know, I -- I think what
25 I'm trying to convey is these discussions are much more fluid

1 than I think any one single architect. You've got multiple
2 lawyers. They interact on a daily basis. They talk back and
3 forth.

4 To -- to sort of put it in an OPR context, there's
5 probably not going to be a single author to the report.
6 You're all going to go back and forth, and there might be
7 someone that has -- maybe there is a single author. Who
8 knows? But it's -- I think it's difficult to say there's a
9 single person, and ultimately I was U.S. Attorney, and so I
10 approved it and --

11 Q To your knowledge, did anyone in that chain of --

12 A Right.

13 Q -- that five person chain or anyone else disagree
14 with this offer?

15 A To --

16 Q I'm not talking about --

17 A To my knowledge -- to my knowledge, I think [REDACTED]
18 at sometimes may have felt uncomfortable, but whether there
19 was explicit disagreement or not, I don't recall. In terms
20 of my management chain, I don't recall any disagreement.

21 Q That you were aware of?

22 A That I was aware of. I -- I recalled discussions.
23 So, for example, [REDACTED] might say I might proceed with a 371
24 with a two year cap under rule 11, but then we move in this
25 other direction, and I don't recall anyone saying, let's take

1 a time out, let's reconsider.

2 Q All right.

3 A And let me -- let me just clarify, I think at
4 various points in this case -- and it's hard -- it's hard to
5 sort of single out the timeline. Ms. [REDACTED] was
6 supportive, or maybe I wish we would go in a different
7 direction, and that sort of went in and out a little bit.

8 Q On her part?

9 A Yes.

10 Q Let me ask you this. Having reached the decision
11 that you approved --

12 A Right.

13 Q -- that this was the offer, and the term sheet, or
14 the terms, having that decision made, would you have expected
15 your line AUSA to frustrate that, or to not abide by that,
16 since it was your decision?

17 A No, with a caveat that if at any point someone felt
18 truly uncomfortable, I would expect them to come and talk to
19 me about it.

20 Q And can you recall any instance in which an AUSA --
21 a line AUSA came and talked to you about a disposition that
22 he or she was uncomfortable with?

23 A Yes. So, I'll give you an example. I don't recall
24 who, before you ask me, but there was this AUSA who was new
25 to the office who impressed the hell out of me. I'm sorry,

1 that's not appropriate language -- who impressed me
2 significantly.

3 He had inherited a case, and it was a fraud case,
4 and the -- the bigger players had been charged, and he was
5 basically given a lesser player to -- to basically just
6 finish up on, right?

7 It was a done deal. The person was ready to plead
8 to some minor count, no jail time, and he felt uncomfortable
9 with it, and went to his supervisor, and then ultimately came
10 up to me, and I had a discussion with this person about it,
11 and it ended up with my telling him to go back and call the
12 defense counsel and tell them we were dropping the case.

13 Q Mm-hmm.

14 A Which, for a new AUSA in the office is pretty gusty
15 and unusual, but if this person really felt that this lesser
16 player wasn't deserving, then that was the right thing to do.

17 Q Right.

18 A And so, I don't -- and the person was not punished
19 for it.

20 Q Mm-hmm.

21 A If anything --

22 Q Mm-hmm.

23 A -- you know, I recounted that story to others.

24 Q Okay. A question, shifting gears --

25 A Yeah.

1 Q -- a little bit, about 18 USC 22.55.

2 A Yes, okay.

3 Q Not to be confused with 22 -- 28 USC 22.55, which
4 every prosecutor is familiar with. So, whose idea was that?
5 It's, it's a civil provision, a civil -- it's not
6 restitution, it's damages. It's a damages recovery provision
7 in the criminal code.

8 A Right.

9 Q Who came up with that?

10 A I can't speak to who came up with it.

11 Q Okay.

12 A I can speak to -- to the reasoning behind it.

13 Q Your reasoning, or the proponent's reasoning?

14 A My recollection of the reasoning as to why we
15 thought it was important.

16 Q And the importance was to provide a mechanism for
17 recovery of damages?

18 A To -- yeah.

19 Q Okay.

20 A Yeah. I mean, the victims bad situation, and we
21 just -- and here is -- well, go on.

22 Q All right.

23 A I might circle back on something.

24 Q So, is it fair to say that's a fairly -- had you
25 ever heard of it before? Had you come across it before?

1 A I don't know, but I don't think so.

2 Q Okay. So, is it fair to say it was novel to the
3 office? To you, and to this team?

4 A I don't want -- I don't think it's fair to say that
5 it's novel to the office.

6 Q Well, to the -- do you -- do you recall whether
7 anybody in the team had had experience with 18 USC 22.55 in a
8 criminal --

9 A I don't have a recollection of any discussion as to
10 whether people had experience with this or not.

11 Q Did you believe that any legal research was needed,
12 or should be undertaken to ensure that the procedure was in
13 fact legally sound when embedded, as it was in this case, in
14 a criminal plea?

15 A So, I would have expected to the extent that there
16 were concerns. Again, we had incredibly experienced --
17 between the various individuals on my management team, we
18 probably had 50 years plus of criminal experience. I would
19 have expected to the extent their concerns, for those
20 concerns to be raised.

21 Q Did you raise any -- any such concerns about it, or
22 did it seem to make sense to you?

23 A From my perspective, I recall -- I don't know if it
24 was at the time or subsequent to it, reading it, and -- and
25 it seemed -- it seemed to -- to make sense.

1 Q Okay. After [REDACTED] letter went out on the
2 3rd of August, you almost immediately -- it appears you
3 received a telephone call from Kirkland & Ellis, is that
4 correct?

5 A That -- I don't recall it independently, but that's
6 what the record shows.

7 Q All right, and that's reflected in Exhibit 12. Do
8 you remember who called you?

9 A I do not.

10 Q Do you recall -- it apparently was from the context
11 of this Exhibit 12, it -- and the caption, Epstein.

12 A Right. Right.

13 Q It appears that the call related to Epstein,
14 correct?

15 A Correct. Again, I don't remember the phone call,
16 but from the e-mail, I accept that it happened.

17 Q So, what had been your knowledge and relationship
18 of -- with Ken Starr of Kirkland & Ellis --

19 A Right.

20 Q -- up to this point?

21 A So, I had been an associate at Kirkland, I think I
22 indicated, what was it --

23 Q Mm-hmm.

24 A -- from '94 to '90 -- what was it? Was it '96 or
25 '97?

1 Q A couple of years.

2 A For a couple of years. I worked on at least one
3 case that I recall with him. I was the junior associate on a
4 merits brief that he argued. He, at the time, was also
5 special counsel. And so he wasn't in the office nearly as
6 much because he was double hatting as special counsel --

7 Q Mm-hmm.

8 A -- and partner.

9 Q Mm-hmm. All right, and what about [REDACTED]?

10 A So, [REDACTED] was a partner at the time. I
11 don't recall working with him on any particular case,
12 although I think I worked with him on at least a matter. He
13 was on my hallway. He had an outside office. I had the
14 typical inside office.

15 Q Had you had any interaction -- any contact with
16 them in the intervening years, socially or professionally?

17 A Off and on, I was in Washington. They -- you know,
18 Ken Starr was in Washington. I think [REDACTED] had moved to New
19 York but then came back to Washington to be in the
20 administration, and he was in the policy office, and we may
21 have -- not may have. We likely interacted.

22 Q And while you were here at the criminal -- at the
23 civil rights division?

24 A Correct.

25 Q All right, and did you -- were you friends? Were

1 you professional acquaintances? Were you what? How would
2 you characterize that?

3 A We were professional acquaintances that had worked
4 together several years ago that continued to interact.

5 Q Is that true as to the two of them?

6 A I mean, it's hard to characterize these things. I
7 think -- I think that's fair to say.

8 Q Did Ken Starr know who you were?

9 A Yes.

10 Q And obviously [REDACTED] as well?

11 A Yes.

12 Q Okay. So, what was your reaction to being
13 contacted by them in -- by their firm, them, presumably one
14 of --

15 A Right.

16 Q -- them perhaps?

17 A So --

18 Q In --

19 A So, I don't know who called based on the e-mail. I
20 can infer that it was one of them.

21 Q Mm-hmm.

22 A And you know -- and I think my reaction is captured
23 by not my e-mail, but -- but by Jeff's comment, and what -- I
24 don't have a clear recollection, but I'm going to
25 speculate/infer that I heard they were being brought onto the

1 case, and I probably walked down to Jeff's office and said,
2 hey, Kirkland's coming onto the case, I bet you they're going
3 to come on to try to take this up to D.C.

4 And then I get a phone call, and -- you know, and
5 then I tell Matt, who tells Jeff, you know, I didn't know,
6 maybe -- Kirkland made a call to -- you're right,
7 unbelievable.

8 And then I say they're likely to go to D.C. We
9 should strategize a bit. My concerns behind that are, will
10 D.C. look at this as sort of legally troubled, going back to
11 the earlier points that I made about the policy issues around
12 the trafficking issues up here in D.C.

13 Q Mm-hmm.

14 A And I really do think he should go to jail. And
15 so, I want to strategize a bit.

16 Q So, did you have concern about the fact that you
17 were -- that the defense team was sort of appealing you to
18 the big house?

19 A I think based on this, I almost predicted this
20 would happen.

21 Q Yeah.

22 A And Jeff is saying, you were right, unbelievable,
23 where I in some way, shape, or form predicted that something
24 would -- someone would be hired, or something would happen to
25 take this all up to D.C.

1 Q And had you experienced other cases -- other
2 instances in which defense team went to D.C. while you were
3 at U.S. Attorney's Office -- while you were the U.S.
4 Attorney?

5 A Yes.

6 Q Was that a concern to you?

7 A It wasn't a concern. It was a, how do we address
8 this so that we can back our position and our office.

9 Q Did you have concerns about the disposition that
10 was underway? About -- main justice scrutiny of the NPA
11 scheme?

12 A So, I had no concerns about main justice scrutiny
13 of the NPA scheme. In fact, I invited Drew to come down --

14 Q Right.

15 A -- and he was part of the meeting where we
16 discussed the NPA. And so, I say that because if I had
17 concerns, I wouldn't have invited him. If anything, my
18 concern was, is main justice on board, or are we going to
19 basically be told to drop this case when it goes up to main
20 justice?

21 Q Mm-hmm. In your e-mail to [REDACTED], when
22 Sloman's on vacation --

23 A Yeah.

24 Q -- you say that -- you make reference to a process
25 foul, that the attorneys in the defense team want to go to

1 D.C. on the case on the grounds of a process foul, i.e., that
2 I have not met with them, and you expressed concern that that
3 would delay matters. Is that what led you to agree to meet
4 with the defense team on the 7th of September?

5 A It is. My concern was it they came up to D.C., and
6 the first talking about was the U.S. Attorney didn't even
7 agree to meet with us, that's not the best -- that's not the
8 best foot to start with when you're having your case
9 reviewed.

10 Q So, what was your understanding of what the purpose
11 of the meeting on September 7th was supposed to be?

12 A They wanted to argue -- they, being defense
13 counsel, wanted to argue why we should not pursue this case.

14 Q And in this case, it was Starr and Lefkowitz from
15 Kirkland & Ellis, and Lilly Ann Sanchez, I believe who met
16 with you.

17 A Fair. I remember it was Starr and Lefkowitz. I
18 don't know if it was Lilly Ann.

19 Q All right, and our information is it was you, Drew
20 Oosterbaan, Sloman, [REDACTED], and John MacMillan. Do you --
21 do you know John MacMillan?

22 A Vaguely.

23 Q All right. He was an AUSA as well.

24 A Right.

25 Q Correct? In West Palm?

1 A Right, and if I can just add, again, I -- I invited
2 Drew --

3 Q Mm-hmm.

4 A -- so, Drew became fully aware of that, and my
5 concern in getting Drew into the meeting was to not have them
6 appeal us, and then having Drew say, not a good case.

7 Q All right. So, were you aware that Drew Oosterbaan
8 had, in preparation for this, gone to West Palm and actually
9 gone through the evidence and met with the case agent and the
10 line AUSA

11 A I was not. Drew is an independent actor and could
12 do what -- yeah, what he thought appropriate.

13 Q Did that -- does that seem like an appropriate
14 thing for him to have done in your eyes?

15 A Sure.

16 Q Okay. Would you describe the meeting -- oh, and
17 two other people who were there were, again ASAC Val Parlave
18 and Junior Ortiz --

19 A Right.

20 Q -- the SSA. So, and the meeting I think was in
21 West Palm Beach.

22 A Yes.

23 Q So, what do you recall about the meeting? The
24 dynamics? Who spoke? How did it go down?

25 A I recall there were a lot of people. I think Mr.

1 Starr spoke most of the time. I think -- my recollection, as
2 best as I can -- you know, with the caveat I thought [REDACTED]
3 [REDACTED] was there and clearly he wasn't. So, presented
4 several arguments. I then either left the room with my team,
5 or I think I most likely asked them to leave the room. I
6 then went around and --

7 Q Asked who to leave the room?

8 A Asked the --

9 Q The defense?

10 A -- defense. I then went around the table, and I
11 said, does anyone have any concerns, or something to that
12 effect. And then hearing none, I asked them to come back in,
13 and I reaffirmed the position of the office.

14 Q In other words, you sort of decided -- you ruled
15 from the bench, as it were. Fair enough?

16 A Fair enough.

17 Q Okay. You didn't take -- take it under advisement.
18 You gave them what your position was right then and there.

19 A That -- that's my recollection. I don't know if
20 you have information contrary, but at least --

21 Q Okay.

22 A -- that's my recollection.

23 Q Okay. So, is it fair to say it was more of a
24 presentation on the part of Ken Starr and his side rather
25 than a debate or discussion?

1 A I think that that's fair to say. I may have asked
2 a question or two, but my -- my recollection was not a -- was
3 not a negotiation, but a, let's hear you out.

4 Q And so, we understand it was mainly a federalism
5 presentation, as opposed to evidence, is that accurate?

6 A I believe that's accurate, yes.

7 Q And in your letter to Ken Starr dated -- the letter
8 is actually not dated, but we know that it was sent on the
9 4th of December --

10 A Okay.

11 Q -- of 2007, and it's in this package. You noted
12 that --

13 A Which exhibit?

14 MR. GONZALEZ: 34.

15 BY [REDACTED]:

16 Q Thank you. Exhibit 34. You note on page four --
17 I'm sorry, page five, you -- you referred to the federalism
18 arguments, and you say that after considering the arguments
19 and conferring with the FBI and Drew Oosterbaan, you decided
20 to proceed with the indictment, but that you would delay
21 presentation of the indictment to allow the defense to appeal
22 to D.C. Does that mean that you didn't find the federalism
23 arguments sufficiently persuasive to you to change your
24 position?

25 A Yes, with the position defined as some concern, but

1 if we need to -- if we don't come to a resolution based on
2 the sheet, then we indict.

3 Q And there is a letter of --

4 BY [REDACTED]:

5 Q I'm sorry, when you say some concern, some concern
6 about the federalism argument?

7 A Yeah. Going -- going back to what we talked about
8 with respect to the earlier conversation about solicitation
9 versus trafficking, and the federal nexus. But back in July,
10 we had decided that we were going forward, that either there
11 is this pre-indictment resolution, or we go forward with an
12 indictment. The September meeting did not alter or shift our
13 position.

14 BY [REDACTED]:

15 Q Even though you had some federalism concerns of
16 your own, they didn't rise to a sufficiently high level.

17 A So, their request -- their request was to drop the
18 matter.

19 Q Right.

20 A And -- and --

21 Q Okay.

22 A -- going back again, understood. There is -- there
23 is legal risk. There is witness risk. All of these. If we
24 can get pre-indictment resolution, good. If not, the
25 indictment was not a bluff. It was -- it was real.

1 Q So, was -- I mean, Ken Starr is of course well
2 known.

3 A Right.

4 Q He was solicitor general, he's -- you know,
5 etcetera. Did you find his arguments well set forth?
6 Impressive?

7 A So, you're asking for something that's 12 years --
8 if I had to characterize, by the time this meeting took
9 place, there had been a fair amount of thought around these.
10 There had been a fair amount of -- and I at least felt
11 comfortable that while there was some legal risk, he
12 needed -- we needed -- you've got to balance the legal risk
13 and the precedent risk with -- with outcomes, and Mr. Epstein
14 should go to jail, and should register, and I felt
15 comfortable -- I felt comfortable enough to basically
16 reiterate our position that --

17 Q But my -- but my question with respect to --

18 A Right.

19 Q -- was, did you enjoy the give and take with --
20 with a man of Mr. Starr's --

21 A In all candor, no.

22 Q -- standing?

23 A No.

24 Q No? Not at all.

25 A Not at all, because --

1 Q All right.

2 A -- it would have been easier to not have the
3 meeting in the first place.

4 Q All right. Do you recall an exchange -- was he --
5 was -- were you the person to whom he was directing most of
6 his comments?

7 A Most -- most likely.

8 Q And do you recall any exchange with him about the
9 fact that -- sort of an observation that the two of you, you
10 and he, were the only two people in the room who had been
11 presidentially nominated and senate confirmed to any position
12 so that the two of you had kind of that commonality. Does
13 that ring --

14 A Do you mean --

15 Q -- a bell?

16 A -- was he trying to butter me up?

17 Q Was he? I mean, was he?

18 A I don't -- I -- look, this was 12 years ago. I
19 don't recall. You know, I think as we talk about this, it's
20 important to note that the position did not change. Whatever
21 exchange there may have had, our position did not change.

22 Q Right. After this meeting, within a few days, in
23 furtherance of the resolution that had been offered, [REDACTED]
24 [REDACTED] and [REDACTED] Lourie met with the state attorney's
25 office to sit down and try to work out how this thing would

1 work, and mind you, this was before -- well before the NPA
2 is --

3 A Right.

4 Q -- actually formulated. Did you learn what
5 happened at that meeting? Do you know how it devolved?

6 A I may have. I don't -- I don't recall, you know,
7 sitting here today.

8 Q All right. It's at this meeting that somehow, the
9 three charges that you specified -- your office specified in
10 the term sheet became one. So, suddenly Epstein was to plead
11 only to one charge, and this was agreed to by the U.S.
12 Attorney's Office folks who were there. Do you know how or
13 why that happened?

14 A I haven't the slightest idea.

15 Q If you had known -- if they had called you on the
16 phone, sort of the mid-trial --

17 A Right.

18 Q -- call to the boss, asking what you wanted them to
19 do, what would you have said?

20 A So from my perspective, when I said -- you know,
21 when I indicated I approved this term sheet, this is the
22 minimum, I meant what I said. I also recognize that AUSAs in
23 the usual course need some degree of discretion to negotiate.
24 and so, my assumption after that September meeting, I think I
25 indicated that there was a deadline --

1 Q Mm-hmm.

2 A -- that was fairly short, was that [REDACTED] and [REDACTED]
3 and some -- working together would go back and work out an
4 agreement based on those terms, and you know, in the give and
5 take, if they think that this is an important concession,
6 that's within their discretion, but I would have been
7 comfortable sticking to that --

8 Q With --

9 A -- charge sheet. With -- something that drove me
10 is when I -- when I said something, I -- as a general matter,
11 I didn't bluff. I really meant what I said.

12 Q So, in that terms sheet, I mean, to be fair, what
13 Menchel's letter says is two years --

14 A Right.

15 Q -- is the minimum. If the decision to agree to let
16 him plead to one as opposed to all three had no impact on
17 that two years, would -- would you have cared?

18 A Fair enough, and so going -- going back to where
19 I -- you know, to an earlier discussion -- can I get another
20 Red Bull? Going -- going back to earlier discussion, I think
21 I indicated that the charges -- the state charges I wasn't
22 familiar with. And so if in the give and take, those charges
23 changed, my focus was on two years registration and
24 restitution, as long as those charges were -- captured the
25 conduct in some appropriate way.

1 Q So, later -- rather much later, the defense counsel
2 admitted that at this meeting, they thought --

3 A Yes.

4 Q -- that under misinformation from the state
5 attorney's office that that charge that they got the U.S.
6 Attorney's Office, or somehow the -- the U.S. Attorney's
7 Office approved, the 793 -- 796.03 charge was not sex
8 offender registerable, and that's a -- that's pretty --
9 that's a pretty major mistake, right?

10 A It is, and --

11 Q I mean, that's -- that goes to the heart of you --

12 A And --

13 Q -- one of your major concerns.

14 A And they tried -- they tried to get us to change
15 that, and I said no.

16 Q The defense tried to get you off sex offender
17 registration.

18 A Pretty vigorously.

19 Q Right? But at this point, the focus is on the
20 charge, and the defense is -- one might characterize it as
21 trying to pull a fast one by agreeing wholeheartedly to plead
22 to one charge, knowing or at least believing incorrectly that
23 it was not registerable, and the U.S. Attorney's Office not
24 having that belief, but thinking it was registerable.

25 So, there's a disconnect. There is error, and the

1 error stems, as they later learned, from the ASA herself.
 2 So, we look at that, and wonder whether that shouldn't have
 3 raised some concern that this plan to put things back in the
 4 hands of the state, which had kind of mishandled the case to
 5 being with, as at this point even not a good idea, because
 6 they were continually -- continuing to be -- well, I won't
 7 characterize it, but less than reliable. Was that a -- is
 8 that a fair comment of concern?

9 A So, one question I would have is, at what point did
 10 we become aware that there had been, first, the error was in
 11 our favor, not the defense's favor, because [REDACTED] got it
 12 right as opposed to the ASA.

13 Q Correct.

14 A And secondly, at what point did our team become
 15 aware of them trying to pull a fast one? Was it before or
 16 after the signing of the NPA?

17 Q It was well after.

18 A Right.

19 Q But the -- the point here is that the U.S.
 20 Attorney's Office folks were not as familiar with the state
 21 procedure -- the state criminal procedure, and the ins and
 22 outs of the sentencing and incarceration, as you learned
 23 later.

24 So, didn't this put the U.S. Attorney's Office side
 25 at a substantial disadvantage in trying to play in the

1 sandbox in which both the defense -- local defense counsel
2 and the ASAs were very comfortable?

3 A Possibly, although I would point out that it was
4 the AUSA who got it right.

5 Q Eventually.

6 A Not eventually. The AUSA --

7 Q Oh.

8 A -- was correct in her analysis.

9 Q Right.

10 A So, in this case, she was more familiar than the
11 state attorney.

12 Q Not by practice, but by research, or --

13 A By research, and so --

14 Q Right.

15 A -- my point is we had good people that were able
16 to, if they weren't familiar with something, the research
17 clearly worked.

18 Q But it took, as you saw in the -- in the -- in the
19 process of dealing with the work release and all of that, it
20 took a lot of --

21 A It --

22 Q -- work to keep up with those --

23 A It did.

24 Q -- errors.

25 A Which is why I say in hindsight, if, given all the

1 effort that took place after this defer to the state was
2 reached, if all that had been known, I really think the
3 analysis would have proceeded differently, because that
4 was -- what was a lot of work. That was probably as much
5 work, if not more than a trial.

6 Q Right. Right. Right. Meanwhile, the -- we'll
7 talk about the actual text of the NPA in a moment, but
8 following that -- actually, no, before it was being
9 finalized -- before it was finalized, [REDACTED] [REDACTED] was
10 working to identify a federal charge, as we discussed before.
11 In that process, she came up with a plan that would have
12 resulted -- cobbling things together in an 18 month sentence
13 instead of --

14 A Mm-hmm.

15 Q -- 24 months. Somehow, that became the new floor.
16 The -- the new standard. Do you know how that came about,
17 and who actually agreed to that?

18 A I -- I don't. I -- I referenced the one e-mail
19 where I think [REDACTED] says, he argued 12.

20 Q Right.

21 A I said 24. We agreed to 18. I assume in the give
22 and take, this was an agreement that was reached, and --

23 Q But that was 18, as -- as to the potential federal
24 charges. It somehow became imported --

25 A I --

1 Q -- into the state disposition.

2 A I can't -- I can't speak to that. This was -- this
3 was something that the "trial team" was negotiating, and from
4 my perspective, this is -- these were the terms that we
5 wanted. These were the terms that I expected if they came
6 back and said, no deal. Disappointed, but go forward, but
7 they tried to get a deal, and -- and --

8 Q The defense tried?

9 A No, but our prosecutors.

10 Q Oh.

11 A And to some extent, you know, they -- and the give
12 and take of any negotiation, I don't think it's unfair for an
13 AUSA to -- to give up some things.

14 Q But did -- you had -- had stated clearly to not
15 only the defense team through the Menchel letter, but also I
16 believe at the end of the September 7 meeting, that two years
17 was the deal. So, did somebody come to you and say, looks
18 like it's going to be 18 months, and allow you to then
19 approve that?

20 A I don't recall if someone came to me separately or
21 independently of the final language. I clearly approved it
22 at some point.

23 Q Mm-hmm.

24 A And so to the extent it was approved, that's --
25 that's on me, but I would -- I would argue that, you know,

1 someone's negotiating, one said says 24, another side says
2 12. They say, let's agree to 18. To some extent as U.S.
3 Attorney, I think I have to back the -- the negotiating
4 discretion of my AUSAs.

5 Q But you -- you explained quite eloquently the
6 reasoning for the two year plea as being what Epstein would
7 have faced if he'd been prosecuted --

8 A Right.

9 Q -- you know, absentia, by the state appropriately,
10 and then suddenly, without any apparent relationship to that
11 analysis, the 18 months pops up from an effort to try to get
12 federal charges. And so how do you -- how -- does that not
13 undercut the basis for the two years?

14 A So, I can provide the reasoning for the two years.
15 I also though think as a -- as a supervisor, as U.S.
16 Attorney, it's important to understand that when individuals
17 go out into the field, negotiations take place. And if every
18 time there is some give, they need to come back to the U.S.
19 Attorney, or there is a fear that the U.S. Attorney will not
20 back us.

21 You know, there is -- there's a certain -- I think
22 there's a management issue there in that if an AUSA speaking
23 on behalf of the U.S. makes an agreement, as long as that
24 agreement is within a certain range, the U.S. Attorney should
25 back that, because they're the ones that are in the -- on the

1 line. They're the ones that are managing the case, and it's
2 sort of unfair to consistently second guess those late
3 night -- I don't -- I don't want to characterize it --

4 Q Okay.

5 A -- as a late night negotiation, but those -- that
6 give and take that happens sometimes in a conference room or
7 on the phone.

8 Q Do you know exactly what give and take occurred in
9 this case regarding the 18 months?

10 A I do not. I read that one document.

11 Q Okay.

12 A But I do not.

13 Q All right. Any other questions on this one?

14 BY [REDACTED]:

15 Q Really quick. I agree with what you're saying in
16 principle, but in this case, you had had a -- almost like a
17 mandatory, two years is the minimum that the --

18 A Right.

19 Q -- U.S. Attorney will accept. Under those
20 circumstances, where you have come out and said, this is the
21 minimum we'll accept, would you have expected them to have to
22 come back to you to get approval for any kind of reduction in
23 that amount?

24 A Would I have expected them? I think Ms. [REDACTED]
25 was in a tough position, because opposing counsel was coming

1 at her. It was a tough negotiation. Would I have wanted two
2 years? Yes. Would I fault her for agreeing to 18 months? I
3 don't think that's fair to her.

4 BY [REDACTED]:

5 Q You could have said no, right?

6 A I could have, but it was an -- but she had agreed
7 to it. The process had gone further down, and to some
8 extent, I -- I think there is a need to respect that process.
9 That happens -- I guess I was getting -- you know, this is
10 not the only case where a supervisor sort of says, this is
11 our -- this is our standard, and -- and at some point, things
12 move, and you've got to provide some discretion.

13 Q All right.

14 BY [REDACTED]:

15 Q Do you think she misunderstood the priorities?

16 That she thought you wanted to get to a resolution, and so
17 the two years could -- could be undercut, versus taking your
18 words literally and saying this is the line in the sand
19 beyond which you should not go, even if it means kill this --
20 kill the resolution?

21 A So, if I had to speculate, I don't think it was a
22 misunderstanding of priorities as opposed to opposing counsel
23 was exhausting, and if you go through the full record, it
24 really was an exhausting -- opposing counsel in this case was
25 very good at taking any slight millimeter, and turning it

1 into, oh, so you said we could do this, and in that back and
2 forth, sometimes there is a, can't we just agree in the
3 middle?

4 Q And I understand what you're saying, but weren't
5 they exhausting because the U.S. Attorney's Office would not
6 say no to them? And so they always believed from the get-go,
7 because they have a two year minimum that the --

8 A Right.

9 Q -- that the office is willing to then say, oh, we
10 can go down from there, and that that set the tone from then
11 on that they could continually chip away at you on virtually
12 every single term that came about? So, yes, they were
13 exhausting, but isn't that because the U.S. Attorney's Office
14 would not tell them no?

15 A So I would push back, because after the agreement
16 was signed, I would argue they did not chip away. They --
17 they certainly kept appealing collaterally, and we can talk
18 about that, because there were other concerns raised there,
19 but once we had that September meeting, between that
20 September meeting and the signing of the deferment in favor
21 of the state, that was all negotiated by the trial team.
22 That wasn't a, come back to the U.S. Attorney, or come to the
23 first assistant. That really, to my recollection, was, go
24 negotiate with the state -- with the line.

25 Q Well, but there were a number of things that came

1 about later on. I mean, they -- they continually griped
2 about the 22.55, and that got -- you know, that got modified.

3 A Later on -- and I think later on's are different
4 for some reasons we can talk about now or later, but there
5 was an attempt to work this out later on that was clearly
6 there.

7 [REDACTED]: The --

8 THE WITNESS But I think that's very different
9 than, how was the agreement negotiated? And I think that's a
10 very different -- a different sort of timeline.

11 BY [REDACTED]:

12 Q So in your mind, was she prepared to walk away from
13 the deal if need be?

14 A After it was signed?

15 Q Before it was signed.

16 A Before it was signed, it honestly was, get a deal
17 or ultimately if we have to indict, we indict, and that's
18 what I said, and -- and look at it this way. After having
19 said that, if that really was a bluff, what would I look
20 like, right? I would look awful.

21 And so, for that reason, that was not a bluff.
22 That was a thought through, this is what we will do, and if
23 you don't agree to this, then we indict, and we indict. You
24 can't make those kinds of statements and not follow through.
25 The office loses credibility if you do.

1 Q Right, but you can keep giving on certain terms.

2 A But we -- and my point is we did not give, with the
3 exception of that 24 to 18, we did not give.

4 BY [REDACTED]:

5 Q Well, you also gave up two charges.

6 A Again, I'm thinking of a two years, registration,
7 restitution, and so with the exception of that 24 to 18, we
8 did not give.

9 Q I want to go back. This morning, we were talking
10 about our tracks, and we talked about the legal track, and a
11 little bit about the evidence track. There's another aspect
12 of the evidence track that is in play here, because there was
13 a substantial type of evidence, and the question is, to what
14 extent were you aware of this.

15 In October of 2005, the local police executed a
16 search warrant on Epstein's residence, and among things they
17 found there were cables and cords where there had been
18 computers -- computer equipment, video surveillance, cameras,
19 and CPUs, all of that, that computer based stuff. It had
20 been removed, forgetting why necessarily. If you look at
21 Exhibit 29, were you aware of that, by the way? That that
22 had occurred?

23 A I was aware that the state had gathered evidence,
24 but not much more --

25 Q Beyond that.

1 A -- beyond that.

2 Q Okay. So, 29 is --

3 A I'm sorry, I'm on 21.

4 Q Wait a minute, this is not the one I'm looking for.
5 73? Let's do -- do you know what? Okay. That's not -- this
6 is not the exhibit I'm looking for, and the numbers are a
7 little bit messed up.

8 There is a -- an e-mail, which I may or may not be
9 able to put my hands on -- in which [REDACTED] informs
10 you that she really wants to get her hands on important
11 potential -- on computer evidence, that it's important
12 potential evidence, and she had a plan to get it.

13 So, the question is whether you knew at the time
14 that there was -- that the investigators had identified this
15 computer evidence as being out there, and that they believed
16 it contained a potentially very significant evidence against
17 Epstein, computers, surveillance cameras, given his
18 activity --

19 A Right.

20 Q -- in his home --

21 [REDACTED]: He's not on it.

22 BY [REDACTED]:

23 Q All right. She did not inform you. She informed
24 someone else that we -- she informed Sloman and Menchel on
25 July 3rd, and Lourie. My apologies. You're not on this.

1 Where she advises them that she wants -- we want to -- "we
2 want to get the computer equipment that was removed from
3 Epstein's home prior to the state search warrant as soon as
4 possible." So, there was the stuff out there, and --

5 A Right.

6 Q -- as of July, there was an abiding keen interest
7 in getting it, and the defense team was resisting the
8 prosecutors efforts to get it. Were you aware of that at
9 all?

10 A So, you -- I think you asked about that in your
11 questions to me.

12 Q Right, I did.

13 A I have no recollection of -- of this computer
14 evidence that --

15 Q All right.

16 A Did the question say that -- without getting into
17 specifics, that there was a grand jury issue around this?

18 Q It does. It --

19 A I don't have that --

20 Q It is addressed in the non-prosecution agreement if
21 you look at the final non-pros --

22 A Yeah. I don't have --

23 Q It's referred to --

24 A The question that you asked, what question was
25 that?

1 Q The question was whether you were aware that that
2 was something that the prosecutors wanted to get?

3 A I don't -- I don't have a recollection of some
4 computer evidence.

5 Q All right, and -- and --

6 A But I think -- is there?

7 Q Are you --

8 A What was the question?

9 Q -- aware that [REDACTED] was instructed by her managers
10 to delay her efforts to get this computer evidence, because
11 the defense were resisting those efforts, and it became an
12 issue of -- an issue that was in play in the negotiations?

13 A I have -- I have no recollection of that.

14 Q Okay.

15 A If you can give me one second?

16 Q Sure.

17 A Pending federal -- and so, your question said that
18 there was litigation pending in federal court relating to the
19 U.S. Attorney's efforts to obtain --

20 Q Yeah.

21 A -- computer evidence?

22 Q Without going into further detail.

23 A I -- I have no recollection of any litigation
24 pending in federal court regarding that.

25 Q All right, and were you -- did anyone suggest to

1 you and your team that the -- or, getting to a plea deal was
2 premature, because it -- you needed to get this evidence
3 first, so that you knew whether you had potentially some very
4 important evidence again Epstein?

5 A I have no recollection, and if anything --

6 Q Okay.

7 A -- I think there was a desire to move quickly as
8 opposed to slowly.

9 Q On the plea?

10 A Yes.

11 Q And do you -- do you know where that energy came
12 from? Who was --

13 A I --

14 Q --wanting to --

15 A -- I don't, but --

16 Q -- move quickly?

17 A -- as I recall -- so, for example, when we were
18 setting up the meeting in September, there was a -- a request
19 to set it up in August as opposed to September, and we had to
20 push it back to September because of vacations or something.

21 Q All right. So, in addition to not getting the
22 computer evidence, the government curtailed the investigation
23 to a large extent, despite finding more victims. There were
24 witnesses who were not interviewed, things that were not
25 searched, property that wasn't searched, target letters not

1 served. Do you -- so, these all would have been steps taken
2 by the FBI to enhance the federal investigation, right? As
3 opposed to back to the state --

4 A Right.

5 Q -- case that this was sort of --

6 A Yeah.

7 Q -- being returned to.

8 A Right.

9 Q Was this --

10 MR. TODD: Are you asking Alex if he's aware of all
11 the things you just said?

12 BY [REDACTED]:

13 Q Were you aware of all -- of those steps that were
14 being foregone, or foreclosed?

15 A No. My -- my assumption would have been, we may
16 have to go to trial, and so we should continue to develop the
17 basis for trial. So, if I could, for example, I think I --
18 after Drew came down, I said if we go to trial, can you be on
19 the trial team? I cite that, because I'm thinking, we may
20 have to go to trial.

21 Q Right.

22 A Why not get Drew who's from Miami on the trial
23 team?

24 Q So, is it -- is it your understanding that the
25 federal investigation, notwithstanding the drafting of this

1 NPA, was still continuing?

2 A Yes. We -- you know, my understanding is you run
3 these on parallel tracks, and again, I'm -- I'm sitting here
4 inviting the head of CEOS to be part of the trial team, and
5 talking about how to formulate the trial team.

6 Q Okay.

7 A That -- that implies that I was clearly thinking we
8 might be going to trial.

9 Q All right. When you first received the draft of
10 the non-pros agreement, and this is 16a, it's a draft by
11 [REDACTED]. Do you know who came up with the -- the --
12 it sounds like you didn't, but who came up with the name or
13 the moniker non-prosecution agreement?

14 A I do not.

15 Q Do you know what this was modelled on, if anything?
16 Where it --

17 A I --

18 Q What the genesis was?

19 A I do not. I noticed from the contemporaneous e-
20 mails that initially it was done differently, and I think it
21 was [REDACTED] Lourie who said write it as a contract, or I think
22 there is -- there is an e-mail to that effect. Someone may
23 recall it better than I, but --

24 Q This version of September 10, which is the first
25 business day after that --

1 A Yeah.

2 Q -- September 7th meeting, from [REDACTED],
3 goes to her management up through you, and you do a rewrite
4 almost right away, adding original state charges which at
5 that point were all still in play, and you also added -- this
6 is Exhibit 16b -- a statement that it would be Epstein's job
7 to move the state to add additional charges, and that -- that
8 latter piece is on page three, just below paragraph eight.
9 So, you were --

10 A Can I -- can I back up a second?

11 Q Sure.

12 A When you say I did a rewrite, is there some
13 indication of what I did a rewrite of?

14 Q Yes. If you compare the two --

15 A Right.

16 Q -- there's -- there are things that are bracketed
17 in yellow in Exhibit 16b, which represent --

18 A Right.

19 Q -- the changes from 16a.

20 A Right.

21 Q Okay. So, those are the two things that are
22 different, and they're referenced in your -- your message --

23 A Yeah.

24 Q -- at the beginning. We bracketed them just to
25 make it easier for you to -- to recognize --

1 A Right.

2 Q -- that. So, my point is that right from the
3 beginning, you were participating in the process -- in the
4 drafting process.

5 A Oh. So -- so, I would -- I would characterize that
6 as not participating in the drafting process, but approving a
7 draft. There is -- there is a --

8 Q I --

9 A -- slight --

10 Q -- I did a small --

11 A -- difference.

12 Q -- rewrite.

13 A Yeah. And so, something comes -- here's how I
14 would distinguish. Someone that's participating in the
15 drafting process is sitting at the table with two or three
16 people, drafting it as they go, versus something goes through
17 the management chain, and someone in the supervisory chain
18 says, can you change A, B, or C?

19 Q All right.

20 A I -- I clearly -- you know, here and in other
21 places, it looks like I'm inserting the same themes, which is
22 deferring to the state -- let's mention the state charges --

23 Q Mm-hmm.

24 A -- and we can't force the state to do anything.

25 And so, I -- I'm adding to this. I'm clearly aware of it and

1 approving it, but I wouldn't say that I was drafting.

2 Q Fair enough. Did you read it?

3 A I would assume that I read it, or else I wouldn't
4 have edited it.

5 Q All right. So, we have a draft from [REDACTED] -- a
6 working draft on September 10 with a small rewrite from you.
7 There is in the Exhibit 17 series indication that -- of the
8 kind of activity that [REDACTED] was going through to come up
9 with a federal plea, but eventually she and the defense
10 attorney who is most actively working on this, Jay Lefkowitz,
11 turn back to the NPA, and if you look at 17d, just to make
12 the sort of staffing clear, you know, of course [REDACTED]
13 has left, [REDACTED] is going on vacation as of September
14 15, and so [REDACTED] Lourie has helped finalize. So, the
15 finalizing of the NPA, the final version of which is in
16 Exhibit 22, falls to [REDACTED] with [REDACTED], right?

17 A Yes.

18 Q Okay, and [REDACTED] puts you on notice in 18b in that
19 process. This e-mail in 18b is sort of a follow on to 18a.
20 Do you see it comes one minute after your e-mail in 18a?
21 It's a response from her to you, only in which she makes note
22 that the defense, "tried to reopen all the loopholes that I
23 had sewn shut."

24 A Yes.

25 Q So, it's fair to say that you're kind of -- you're

1 on notice that they're being difficult?

2 A I -- I -- that's fair.

3 Q Okay. In the course of that being difficult, 19a
4 is an e-mail to you from [REDACTED] on September 18 in which she
5 represents that -- or, explains that the defense is -- is --
6 that things are kind of falling apart with the negotiations,
7 and she fears the deal is going to fall apart completely.

8 MR. TODD: Should we take a quick break here?
9 You're losing your voice.

10 [REDACTED]: I'm fine.

11 MR. TODD: You could probably use a minute.

12 [REDACTED]: All right. We'll take a break.

13 THE WITNESS All right.

14 [REDACTED]: A four minute break.

15 MR. TODD: Four minutes, that's --

16 [REDACTED]: Okay.

17 (Off the record.)

18 BY [REDACTED]:

19 Q Back on the record. Looking at Exhibit 19c, you
20 say -- you write to [REDACTED] [REDACTED] regarding whether you're
21 available to -- at a time when she's going to be hashing out
22 language. You advise her that -- but I -- "I don't think I
23 should be part of negotiations. I'd rather leave that to you
24 if that's okay."

25 A Yes.

1 Q Why did you say that to her?

2 A Because she was the line lawyer involved, and I
3 thought -- I think it's important for a U.S. Attorney to,
4 absent truly exceptional circumstances, to not get involved
5 in sort of the negotiations. You can meet, like I did in
6 September, reaffirm the position of the office, back your
7 AUSA, but ultimately, I think your trial lawyer needs
8 discretion to do their job.

9 Q At this point, of course we know [REDACTED] is on
10 vacation.

11 A Right.

12 Q And you were aware, were you not, that [REDACTED] Lourie
13 was about to decamp for Washington? In other words, he left
14 at the end of September --

15 A Yes.

16 Q -- to become the chief of staff and principle
17 deputy, assistant attorney general --

18 A Correct.

19 Q -- for [REDACTED] --

20 A Yes.

21 Q -- who headed the criminal division. Okay, so it
22 was really just the two of them at this point, and with
23 nobody apparently involved between them and you.

24 A So, fair, but when you say just the two of them,
25 [REDACTED] is an incredibly experienced lawyer. So, to say just

1 the two of them is not to take -- not -- should not imply
2 that there was an experience in that --

3 Q I --

4 A -- table.

5 Q I certainly in no way intended to --

6 A Right.

7 Q -- to --

8 A Fair.

9 Q -- suggest that.

10 A Fair enough.

11 Q Looking at 19d, in which [REDACTED] [REDACTED] is on page
12 two, looking at the latest draft from [REDACTED], meaning [REDACTED]
13 [REDACTED], and this is in the -- in the -- in the throes of
14 negotiating the NPA. [REDACTED] [REDACTED] is essentially telling you
15 he agrees with [REDACTED] observations that the defense are just
16 up to all kinds of nonsense in this deal, and constantly
17 changing their terms, and just not apparently negotiating or
18 dealing with these warring drafts with the drafting process
19 in good faith.

20 Again, that's my characterization, but [REDACTED]
21 says to you in this e-mail, "I suggest we simply tell him,
22 [REDACTED] that his counteroffer is rejected, and that we
23 intend to move forward with our case." Right? And then your
24 response is interesting. You say to him, why don't we
25 just -- why don't we just call him? Tell him, one, you

1 agree, and then change things. Two --

2 A You being [REDACTED] agrees and changes things?

3 Q Correct. Tell him you agree, meaning, [REDACTED] agrees?

4 A No. No.

5 Q I see.

6 A Yeah.

7 Q Tell him --

8 A Tell him, you, [REDACTED], agree, and you change things.

9 Q I see.

10 A That is not acceptable to us, and is in bad faith.
11 Stop it, or we'll just indict, and then try to work it out.

12 Q So, is the try to work it out -- if the -- if
13 numbers one and two are what you should tell -- what [REDACTED]
14 should tell [REDACTED], is number three something [REDACTED]
15 should tell [REDACTED], or what you're telling [REDACTED]? Try to work it
16 out?

17 A It's what I'm -- what I'm -- what I'm telling [REDACTED].

18 Q Okay. So, just to be clear, you say, tell him,
19 meaning you, [REDACTED], tell Jay, number one --

20 A So --

21 Q -- and number two, but number three is then what
22 you're instructing [REDACTED] to do? I --

23 A Yes.

24 Q -- I'm just trying to understand.

25 A Yes. So --

1 Q Okay.

2 A So, my understanding of this is, they're being
3 difficult. Hey, this isn't the first time that an attorney
4 agrees to something and then goes back and tries to pull a
5 fast one. So, tell him you're onto this, that they need to
6 stop it, or we'll indict, but then that we'll try to -- you
7 know, [REDACTED] should try to work it out.

8 Q Okay.

9 A But they need to stop this tactic.

10 Q Did you really think that was going to be effective
11 with this defense --

12 A I don't know.

13 Q -- team?

14 A You know, I think one of the hard things with this
15 is, if it was right on September 6th, it remained right,
16 irrespective of really -- I think I say, sorry, I know it's a
17 pain.

18 Q You do.

19 A This negotiation was a pain, but if it was the
20 right position, the fact that you've got annoying counsel on
21 the other side doesn't it make it less of a right position.
22 You tell them stop being annoying, you try to work it out,
23 and if not, then you indict.

24 Q All right, and is that sort of --

25 A You had a question?

1 ██████████: I was going to, but ██████ was going
2 ahead.

3 BY ██████████:

4 Q Is that -- is that consistent with your sort of way
5 of doing business, being even, and working it out?

6 A Yeah. This is our position. It's not a bluff.
7 It's what we want. You work it out. People yell and scream
8 on the other side. You work it out. If not, then we indict.

9 Q What would have been the tipping point for you?
10 What would have caused you to say, okay, I agree with you,
11 ██████. I agree with you, ██████. Let's indict?

12 A So, it's really difficult to speculate, but I think
13 the tipping point would have been a failure to reach -- it
14 was pretty clear. Jail time, registration, restitution.
15 Okay, we moved from 24 to 18 months. That was a give and
16 take. But ultimately, if they came back and said, we can't
17 agree to these terms, then we indict.

18 Q All right.

19 BY ██████████:

20 Q It seemed like your troops were telling you, we've
21 reached the end of our rope. We really want to just go
22 forward and indict.

23 A Right.

24 Q And you were coming back with, tell them again that
25 the defense is being difficult, but I want you to work it

1 out. Does that tell your troops basically that where your
2 priority is, you want them to get to this resolution, and if
3 they have to give up stuff, it's okay -- it's really okay,
4 but you want this resolution?

5 A So, it's not if you have to give up stuff. I'm not
6 telling them to give up stuff. I'm not telling them to
7 negotiate things away, but I think -- the dynamic from my
8 perspective is incredibly -- so, there's a tactic that
9 counsel sometimes take where they negotiate, and then they
10 try to come back and renegotiate, and that is, to my
11 thinking, one of the most annoying tactics that you can have,
12 and it -- and it creates a lot of -- of frustration, and what
13 I'm trying to say is, look, they might be frustrating folks,
14 but if this had been worked out -- so -- so, looking at this,
15 we thought we had an agreement, and then they changed things,
16 and I'm saying, look, if you thought you had an agreement,
17 tell them you had an agreement.

18 Don't let them change things. I understand it's
19 frustrating to you, but if it was right two weeks ago, the
20 fact that they are frustrating attorneys doesn't change the
21 underlying legal analysis. The attorney's behavior doesn't
22 inform the rightness or wrongness of a certain disposition,
23 to a point.

24 BY [REDACTED]:

25 Q What's that point?

1 A So, I think after the -- now I'm calling it an NPA.
2 I was personally very frustrated with the failure to report
3 on October 20, and had I envisioned that entire collateral
4 attack, I think I would have looked at this very differently.

5 Q In what respect?

6 A To the extent that this was -- going back to, for
7 example, the public corruption prosecutions that we had, one
8 of the values of it was to have a public figure stand up and
9 say, I did this, and plead.

10 One of the values was the, you know, avoiding a
11 long and messy legal process. And so when you put all of
12 that together, those -- you know, this is why I say it's not
13 quite -- this was the factor that we'd consider, that it's
14 all of this put together, and in something that could have
15 been very positive for the victims and for sending a signal,
16 as it dragged on, became exhausting and negative for the
17 victims.

18 It put us in a position of what do we do with
19 notifications. It put us in the position of a lot of appeals
20 to Washington. It put us in the position of having to deal
21 with complicated legal issues that actually got more messy in
22 terms of how does a federal 22.55 relate to a -- to a state
23 charge, and had all of that been known, I do think this would
24 have proceeded differently.

25 Q Differently in what way?

1 A So -- so, if I had factored all of that -- like, I
2 can't predict it's --

3 Q Right.

4 A -- what I would have done, but I think if I had
5 known all that, this could have proceeded very differently.
6 I was very frustrated with the October to June time period.

7 Q So, if you had been back in that timeframe in early
8 September, looking at this with, I don't know, what, Harry
9 Potter character it is --

10 A Right.

11 Q -- but whoever can see into the future, and -- and
12 anticipated or foresaw --

13 A Right.

14 Q -- what would have happened, would you have simply
15 said, look, we're not going to go the state route, we'll go
16 the federal route?

17 A Quite possibly.

18 Q All right.

19 A And let me sort of -- we'll probably get into it,
20 but at some point, I do think the post versus the pre-
21 signature time period was different for any number of
22 reasons, and we'll probably want to talk about that.

23 Q All right. We will, but now, I'd like to turn to
24 some of the terms of the --

25 A Fair.

1 Q -- the NPA, because you did make -- let me -- let
2 me make sure that this is correct --

3 [REDACTED]: You skipped this one.

4 BY [REDACTED]:

5 Q Oh yeah, before that -- thank you, my colleague
6 reminds me 19e is an exhibit that has a -- an exchange
7 between you and [REDACTED] Lourie about the -- at a time when the
8 plea agreement -- the federal plea agreement --

9 A Right.

10 Q -- was still in play, and the issue is whether you
11 should sign it, and --

12 A Right.

13 Q -- you didn't want to, because you never do, but
14 you say at the bottom, we should only go forward if the trial
15 team supports and signs this agreement. What did you mean by
16 that? The -- the first part of it?

17 A So -- so, what I meant by that was I got something
18 that the -- that is -- the document was unusual. So, my
19 signature appearing on this document is not in and of itself
20 unusual.

21 Q And this would have been the plea agreement -- not
22 the federal plea agreement, not the -- or was this about the
23 NPA?

24 A This was about the NPA.

25 Q Okay.

1 A Right, and so the NPA had my signature. Now, the
2 NPA's almost too generous.

3 Q Mm-hmm.

4 A So, that in and of itself is not indicative of
5 something, but it does raise my concern. Is this something
6 that ultimately the trial team does not feel comfortable
7 with? And if it's something they don't feel comfortable
8 with, then they should speak up and let me know, because we
9 shouldn't go forward with it.

10 Q And did you ever have a conversation or a
11 discussion about that issue, other than mentioning it?

12 A Not -- not to my recollection. I would --

13 Q Okay.

14 A -- assume based on this that [REDACTED] would read it and
15 would take me at my word and say, look, if -- I think you're
16 going in the wrong direction, Alex. You know, I think you're
17 going in the wrong direction, or I'm uncomfortable with it.

18 Q Okay. All right.

19 BY [REDACTED]:

20 Q Did you ever have a direct conversation with [REDACTED]
21 [REDACTED] about wanting her to sign the agreement as opposed
22 to yourself?

23 A I -- I did not. This was my -- my communications
24 with [REDACTED], and -- and I really meant that if at the end of
25 the day, my team isn't comfortable, then you shouldn't go

1 forward.

2 Q You never recall hearing from [REDACTED] that she was
3 not comfortable moving forward with the plea agreement?

4 BY [REDACTED]:

5 Q The NPA?

6 A I did not hear -- I don't recall hearing from [REDACTED]
7 that she was not comfortable. I know that at various points
8 she became frustrated. At various points, [REDACTED] became
9 frustrated, but they were negotiating this. If at some point
10 they did not -- they thought this was a mistake, or wrong, or
11 unjust, I would think that they would tell me.

12 Q What would you have done?

13 A Sit down and really have a serious conversation
14 about where this is going, and sit down and hear them out,
15 again, even if -- at this late phase.

16 Q Right.

17 A Would be -- I would -- I would think that that's
18 what I would have done.

19 Q All right. Let's turn to the NPA. What is it?
20 Exhibit 22? Did you read it? We know that you made some
21 final tweaks to it. 22.

22 A So --

23 Q Is the final -- as signed --

24 A 22. And so, I would -- again, I don't have an
25 independent recollection of reading it. I would not have

1 made tweaks to it without reading it.

2 Q Okay.

3 A And so, I think you can infer that I read it.

4 Q All right, and let me say, you -- you were clerk to
5 an appellate -- a very eminent appellate judge, and you
6 did -- did you do appellate work --

7 A I did.

8 Q -- yourself? So, you were somebody who's an
9 appellate lawyer, who has that experience at a high level, is
10 often more sensitive to words, and phrasings, and to
11 documents, contents, than might be, again, to be -- to
12 caricaturize a little bit, but a more of a shoot from the hip
13 trial attorney who spends his days, you know, in a -- in a
14 rough and tumble courtroom, and is it fair to say that you
15 were more of the former, and more --

16 A So, I would push back. I think that's not
17 respecting the talent of the trial lawyer, and particularly
18 on these types of agreements or documents, these are folks
19 that sort of have expertise, because even if this was sui
20 generis, they have seen a lot of this.

21 Q I am not suggesting that [REDACTED] and [REDACTED]
22 Lourie --

23 A Right.

24 Q -- were not up to this.

25 A Right.

1 Q Because certainly she also had a lot of appellate
2 experience. I'm simply noting that -- that this seems to be
3 sort of in your wheelhouse.

4 A What -- look, I apologize. Whether -- I'm not sure
5 what in my wheelhouse means. I -- you know, I appear to have
6 read this. I suggested some edits. As I would have
7 approached this document, my assumption would have been I'm
8 looking at it from my earlier concerns, that -- the policy
9 level concerns.

10 Does it capture that we're deferring to the state?
11 Going back to the put in the petite policy versus not. Does
12 it capture the policy concerns of -- of appropriately
13 understanding that we can't force the state to do something?
14 And does it capture the essential elements of the terms that
15 we had looked for, the --

16 Q All right.

17 A -- you know, the imprisonment, registration, and
18 restitution.

19 Q All right. So, one of the things that is a little
20 striking that's different from the original draft NPA, even
21 as amended by you. So, let's pull out the 16b. Is that --
22 is what I would call the non-admission of guilty, so, in
23 the -- in the first page of 16b, the first paragraph that's
24 the first clause after the one through five statutes listing,
25 in 16b, reads, "It appearing that Epstein has accepted

1 responsibility for his behavior by his signature on this
2 agreement."

3 A I'm sorry, you're on 16b?

4 Q 16b.

5 A Okay. It appearing, yes.

6 Q Okay. So, his is -- and this is not -- I mean,
7 this seems to be fairly typical sort of plea agreement
8 language, right?

9 A Yeah.

10 Q And if you look at the top of the final NPA, 22,
11 the third, it appearing clause --

12 A I'm sorry. Where --

13 Q Fine.

14 A -- where are you?

15 Q 16b.

16 A Right.

17 Q Has --

18 A The third, it appearing?

19 Q It appearing he has -- the -- down at the bottom.

20 A Yeah.

21 Q It says -- refers to at the --

22 A It has accepted responsibility.

23 Q -- second up.

24 A Yes.

25 Q Exactly. He's accepted responsibility.

1 A Right.

2 Q And then above in the fourth, it appearing --

3 A Yeah.

4 Q -- it references the fact that, it appearing,
5 "Epstein has committed offenses against the United States."

6 A Yes.

7 Q Okay? So, he -- there's a sense of acceptance of
8 responsibility. In the final NPA, which is 22 in your right
9 hand, the --

10 A Right.

11 Q -- third it appearing clause says nothing about
12 Epstein committing offenses. It simply references the U.S.
13 Attorney's Office and the FBI having conducted their own
14 investigation into Epstein's background and any offenses that
15 may have been committed by Epstein, including --

16 A Right.

17 Q -- the enumerated statutes. And then following the
18 enumerated federal statutes, there's no reference at all to
19 Epstein accepting responsibility. Do you -- do you -- do you
20 view that -- the removal of that acceptance of responsibility
21 to be something that was appropriate?

22 A So, trying to reconstruct, the focus was on -- and
23 I know I'm repeating myself, but jail time, registration,
24 restitution. Whether he accepted responsibility for a
25 federal or for a state, I think my focus would have been on,

1 these were the terms. Does this encompass those terms?

2 Q So, as that concession is not something material as
3 far as -- I don't want to use the legal term material, but it
4 wasn't important --

5 A So -- so --

6 Q -- to your objectives?

7 A So --

8 Q Is that right?

9 A First, I'm not sure -- so, it wasn't a concession
10 from that -- that -- those four bullets, right? It was a
11 concession from an earlier draft.

12 Q Right.

13 A And so to say it's not important is, again, there
14 was an early draft. It changed. The focus was in any give
15 and take, drafts change. The focus was, did he go to jail?
16 Did he have to register? Did we have restitution?

17 Q All right.

18 BY [REDACTED]:

19 Q Do you remember noticing that change, and thinking
20 it --

21 A I --

22 Q -- just doesn't matter?

23 A I don't. In all -- in all candor, until right now,
24 I was not aware of that -- of that change. I doubt I would
25 have taken two documents and sort of put them side by side,

1 as opposed to, does this capture what we're trying to get to.

2 BY [REDACTED]:

3 Q So, does that --

4 A I was aware of the 24 to 18.

5 Q Mm-hmm.

6 A But up until this question, I wasn't aware of that
7 change, to my recollection.

8 Q So --

9 BY [REDACTED]:

10 Q And you're aware of the 24 to 18 because you
11 noticed it in the NPA, or because somebody told you
12 separately? Or do you know?

13 A I can't -- I can't say other than I was aware.

14 BY [REDACTED]:

15 Q In the final NPA on page five, there's a series of
16 things that are included at the bottom of that page, in that
17 long paragraph, and the one that I want to focus on is the
18 immunity portion.

19 That was certainly not in the original draft
20 proposed by the U.S. Attorney's Office. In this paragraph,
21 the United States agrees, "That it will not institute any
22 criminal charges against any potential coconspirators of
23 Epstein, including but not limited to [REDACTED]

24 [REDACTED] Did you notice
25 that provision?

1 A I -- I don't recall focusing on the coconspirator
2 provision. To the extent I reviewed this coconspirator
3 provision, I can speculate that my thinking would have been
4 the focus is on Epstein's -- Epstein's going to jail.
5 Whether some of his employees go to jail, or other, lesser
6 involved, is not the focus of this.

7 Q All right. This particular provision, as you know,
8 has been --

9 A It has --

10 Q -- enormously --

11 A -- generated --

12 Q -- criticized.

13 A Enormous, yes.

14 Q For a number of reasons. One of which is that it
15 is blanket transactional immunity. It gives blanket immunity
16 to unnamed, unidentified --

17 A Yes.

18 Q -- potential coconspirators. People who, even in
19 the future, if evidence is developed against them, as long as
20 they could be considered coconspirators of Epstein in this
21 conduct, they have a get out of jail free card. Do you have
22 any idea where that came from?

23 A I don't, and I don't want to characterize it as
24 giving -- I understand how it could be read that way in the
25 record. I don't want to characterize it, but I don't know

1 where this could have come from.

2 I was -- I would have reviewed this for the policy
3 concerns. Did it do the -- the sort of the bullet points,
4 and my assumption, rightly or wrongly, would have been that
5 [REDACTED] and [REDACTED] would have looked at this, and that this
6 was -- was appropriate. I understand your point.

7 Q All right, and I believe the point you were
8 referring to is that when I use the term jail -- get out of
9 jail free card, that you recognize this is limited to your
10 district?

11 A And that's an important point --

12 Q Of course.

13 A -- to recognize.

14 Q Of course, but nonetheless, this does give blanket
15 immunity to people -- you have no idea who they might be,
16 correct? If you had focused on it, would that have raised
17 some question in your mind?

18 A If -- if there was a discussion like what we're
19 having here, then it very possibly could have raised. It's
20 difficult to say it would have, but I understand your
21 concern.

22 Q All right, and the named individuals, [REDACTED]
23 [REDACTED] are all
24 individuals who were described in the pros memo and so on,
25 and the pros memo does identify that at least one of these

1 women herself engaged in sexual activity with minor -- with
2 minor girls.

3 A Yeah.

4 Q So that she has liability in and of her own --

5 A So, I don't have an independent recollection of
6 that, but when I reviewed the pros memo, I did notice that.

7 Q All right. Now, you told us this morning that you
8 have no recollection of that actually having read the pros
9 memo back at that time.

10 A I think what I said was I don't have a recollection
11 of whether I did or did not read the pros memo. I have
12 since, when you've provided it, read it, and I note that it
13 does reference her.

14 Q Having read it now, does that change your view of
15 anything that we've talked about so far today?

16 A So, reading it 12 years later, knowing all of this,
17 possibly, and part of it is I do think we approach these
18 cases differently, and I think these cases would play out
19 very differently in court today. I think it's very difficult
20 to sort of go back and recreate a thought process from 12
21 years ago.

22 Q And if you were relying back then on the
23 characterization and summary and recounting of this case to
24 you by your people -- your senior people, [REDACTED] --

25 A Mm-hmm.

1 Q -- and in particular, [REDACTED] --

2 A Right.

3 Q -- would you -- do you -- do you have a -- did --
4 did anyone in that ground, including [REDACTED] Lourie, in any way
5 to your recollection characterize this case as not serious,
6 or as trivial, or as involving non-important -- unimportant
7 victims? In any way try to diminish either the conduct or
8 the victims?

9 A Not to my recollection. I -- I do think there was
10 a concern as to how the victims would present in court, given
11 impeachment, and given contradictory statements, but that's
12 different than trivializing the case.

13 Q All right. Okay. Back to the immunity provision.
14 Were you aware that none of the four named coconspirators had
15 cooperated?

16 A I was not. To my recollection.

17 Q And do you recall any other case in which blanket
18 immunity in the U.S. Attorney's Office --

19 A Right.

20 Q -- was -- in which blanket immunity, really
21 without -- virtually without limitation --

22 A I -- so, I --

23 Q -- was granted?

24 A I don't recall discussion around this provision,
25 and a general matter, I did not discuss the -- in typical

1 cases that came -- that bubbled up to my level, it was -- the
2 focus was on who the prime, you know, target is, and not on
3 what we would do with the coconspirators. And so, I don't
4 recall, but that doesn't mean it didn't happen. That's just
5 not typically something that I got involved with.

6 Q And likewise, non -- immunity being given to non-
7 cooperating coconspirators, or codefendants? Is that
8 something that was done in your office?

9 A Again, I -- as a typical matter, we -- I did not
10 get involved with these, but let me -- let me also say that
11 this wasn't a federal prosecution in the first place. And
12 so, this whole thing is sui generis to some extent.

13 Q It is, but the -- but the grant of immunity is
14 real, right?

15 A I understand where you're coming from.

16 Q All right. If you had focused on that provision,
17 would you have insisted it come out?

18 A One question I would have had is, if we're
19 naming -- as I sit here and sort of focus as we are now, but
20 this is with the benefit of hindsight and criticism --

21 Q Mm-hmm.

22 A -- if there are specific folks, why do we have any
23 potential language? Because that seems quite broad.

24 Q It's -- it's without limitation as to people as
25 long as they're coconspirators, right?

1 A But -- and so what is -- what is the need for that?

2 Q Okay.

3 A And I would --

4 Q I see.

5 A And so, if we had this kind of discussion, I would
6 be sending [REDACTED] an e-mail saying, what's the need for this?
7 What's up?

8 Q But to be clear, as we sit here today, you have no
9 recollection of having noticed that?

10 A I -- I don't have a recollection of -- if I read
11 over it, my assumption would have been that [REDACTED] and [REDACTED]
12 thought this through and sort of addressed it for a reason.

13 Q All right, and if --

14 BY [REDACTED]:

15 Q And did you have any -- anyone ever come to you
16 with the evidentiary issues and say, we need to track this
17 down before we give such a blanket immunity?

18 A I don't recall any conversation around
19 coconspirators.

20 BY [REDACTED]:

21 Q This is where there is a mention of computer
22 equipment. There is a provision later in that -- in that
23 same paragraph that provides that, "The federal grand jury
24 investigation will be suspended, and all pending federal
25 grand jury subpoenas will be held in abeyance unless and

1 until the defendant," --

2 A Right.

3 Q -- "violates any term of this agreement. The
4 defendant likewise agrees to withdraw his pending motion to
5 intervene and quash certain grand jury subpoenas. Both
6 parties agree to maintain their evidence, specifically
7 evidence requested by or directly related to the grand jury
8 subpoenas that have been issued, and including certain
9 computer equipment in violate until all of the terms of the
10 agreement have been satisfied." Do you -- do you -- do you
11 view that this agreement to suspect the -- at least certain
12 aspects of the federal investigation to have been an
13 appropriate concession?

14 A You know, again, my -- my focus was on certain
15 points. I would have assumed reading this that this was
16 thought through.

17 Q Okay.

18 A And that -- and that people had.

19 Q Had -- had --

20 A Had thought it through, you.

21 Q All right. Okay. There is what's been criticized
22 as a confidentiality provision.

23 A Yes.

24 Q Right? And that's on that same page, page five,
25 paragraph -- numbered paragraph 13, which provides that, "The

1 parties anticipate that this agreement will not be made part
2 of any public record."

3 And then there is an exception for FOIA or
4 compulsory process from a court, in which the government will
5 provide notice to Epstein. That seems to be limited to the
6 placing of this document on the public record, right? As
7 opposed to sharing it, or disclosing it for whatever purpose
8 to individuals. Did -- is that -- is that a distinction that
9 makes sense?

10 A That is -- that is a fair distinction upon reading
11 this. I'm not sure that that is a distinction that was -- I
12 mean, I'm basing that on my reading currently, and not as a
13 recollection.

14 Q And in fact the parties, both defense counsel and
15 even the U.S. Attorney's Office took the position that this
16 should never have seen the light of day, even to be disclosed
17 to, you know, victims or other parties and interest, except
18 for filing it, or except for sharing it on a limited basis
19 with law enforcement. I think there were e-mails that talk
20 about if we share it, we'll tell them not to disclose it.

21 A Mm-hmm.

22 Q Is that sort of overstating what this paragraph
23 requires?

24 A Possibly. I can -- you know, we can get into that,
25 and we can discuss it. I would need to understand a little

1 bit more. I know there was litigation around disclosure on
2 this, and I'd need to understand much more the positions that
3 we took and the why before commenting on them.

4 Q There's -- in Exhibit 23, there is a discussion of
5 the -- the -- whether the NPA after it has been signed could
6 be revealed -- the existence of it could be revealed to the
7 police chief, or even the FBI, or the girls, and [REDACTED]
8 [REDACTED] in the middle of page one, or two thirds of the way
9 down on page one of Exhibit 23, proposes that if we tell
10 anybody about the NPA, you just ask that -- that the
11 recipient of that information not disclose it.

12 And you then at the top of the page to Lourie and
13 [REDACTED] and [REDACTED], who is going to take over [REDACTED]
14 Lourie's position as the managing AUSA in West Palm Beach,
15 should talk with you about it on Wednesday, about the -- you
16 should talk about who we tell, and how much. Do you remember
17 that conversation, and --

18 A I -- I don't. I know there were several concerns
19 about leaks and media, and I imagine that we had a
20 conversation quite literally about who to tell, and how much.

21 Q And did you -- did you feel that this -- at the
22 time, as best as you recall, did you feel that that clause
23 bound you to not tell anyone?

24 A So, my recollection of the clause, whether it
25 was -- whether it was this clause or whether there was a

1 discussion, I was -- I was aware of this provision, and my
2 recollection of this provision is at some point it was raised
3 as something that -- that was the subject of negotiation.

4 Q Okay.

5 A That the office policy was that we -- that these
6 types of deferred prosecution agreement is not made part of
7 the public record, and --

8 Q Mm-hmm.

9 A -- therefore that this is not a substantial
10 concession --

11 Q Mm-hmm.

12 A -- because in the typical course of business, this
13 would not be part of the public record.

14 Q And that's because it's a non-prosecution as
15 opposed -- agreement as opposed to a deferred prosecution
16 agreement?

17 A So, deferred prosecution is not -- to analogize
18 from a non-prosecution to a deferred prosecution, these
19 are -- you know, if the non-prosecution is not typically part
20 of the public record, the deferred prosecution, it makes
21 sense that it follows the same.

22 And so, it seemed that -- it seemed a concession --
23 I understand how it was perceived publicly after the fact.
24 At the time, it seemed that we weren't giving up much,
25 because the typical policy is this is not part of the public

1 record, and individuals need to file a FOIA. And so by
2 saying it's not part of the public record, and individuals
3 need to follow FOIA, if that -- if that is viewed as a
4 concession, it really isn't.

5 Q So, how would -- I mean, did -- is it -- is it
6 understandable that Epstein would not want this document to
7 see the light of day, because it describes the existence and
8 nature and scope of the federal investigation --

9 A Right.

10 Q -- and also his concession to liability under
11 22.55?

12 A It's understandable. It was also my impression at
13 the time that it would see the light of day, because --

14 Q Mm-hmm.

15 A -- if victims have 22.55, the ability to get 22.55,
16 they obviously have to hear about it from somewhere, and
17 given the press interest, eventually this would be FOIA'd.
18 And so, from my thinking at the time, rightly or wrongly,
19 this is a concession that's basically saying we'll follow
20 office policy, and we're likely going to be FOIA'd on this
21 anyhow, and it can play out in the FOIA. And so, is this
22 really a --

23 Q Yeah.

24 A -- concession?

25 Q All right. Another piece of the -- the agreement

1 is -- is something that is absent, and that's the sort of
2 typical language that you find in a -- I think in pretty much
3 any federal plea agreement, which is, this agreement
4 only -- the defendant understands that this agreement only
5 binds the U.S. Attorney's Office for whatever district he or
6 she is in, or --

7 A Right.

8 Q -- you know, and that -- and that truly what you
9 would call global dispositions are unusual --

10 A Right.

11 Q -- for the federal government.

12 A And I would note, you know, and this is after the
13 fact that it does say this district agrees.

14 Q Okay. Understood, and it's also has you as a
15 party, not the Department of Justice.

16 A Right.

17 Q But it does omit that standard language, and do you
18 know whether that was done sort of by mistake, or
19 consciously?

20 A I -- I have no -- I can't speak to that.

21 Q All right. another piece is phrasing that you
22 injected at the -- when you addressed the first -- where it
23 was -- it was toward the end. Where --

24 A Right.

25 Q -- you talked about injecting the best efforts

1 language.

2 A Yes.

3 Q Okay. Does it -- what -- what's -- I believe you
4 made clear why you did that. That is, to avoid the
5 appearance of having the federal government be dictating
6 anything, but why rely on best efforts, and to what extent is
7 that even enforceable?

8 A So, first, let me -- let me say it was not to avoid
9 the appearance. It was to avoid the actual legal discovery
10 dictating, but -- so, Epstein understands that he has no
11 authority to require -- that -- to undertake discussions and
12 to use -- so, as I recall, if he did not plead, then there
13 was no agreement.

14 Q No, no, no. This -- I'm sorry.

15 A Yes.

16 Q I don't mean to -- it appears in paragraph --
17 numbered paragraph --

18 A Right.

19 Q -- 11, Epstein shall use his best efforts to enter
20 his guilty plea and be sentenced no later than the --

21 A Right.

22 Q -- set date, and then in the first paragraph after
23 numbered clause 11, he will use his best efforts to ensure
24 compliance with certain procedures, and best efforts to
25 convince the judge of the Florida court to accept his binding

1 recommendation. So, best efforts kind of became a sticking
2 point in enforcement, didn't it? Because what does it mean?
3 What does best efforts mean?

4 A So, I think it's fair to say that one of the issues
5 that came up after this was entered into was the U.S.
6 Attorney's Office, at least from my perspective, was in a
7 little bit of a bind because we had agreed to this, yet he
8 wasn't turning himself in. And so, how do we deal with that?
9 And so, that's not a phrase that I focused on at the time. I
10 understand your point.

11 Q All right. I'm going to move on from those. Is
12 there anything else on those NPA clauses?

13 A And finally, let me -- let me just say you didn't
14 ask, we had incredibly experienced attorneys in the office.
15 I assumed, rightly or wrongly, that this language had been
16 thought through and vetted, and you know, sitting here 12
17 years later, I understand the issues that have arisen from
18 it, but at the time, these were not issues that were focused
19 on.

20 Q to your knowledge, who was involved in the
21 drafting, other than [REDACTED] [REDACTED] on your side --

22 A Right.

23 Q -- and [REDACTED] Lourie, and you, to some extent?

24 A So, I can't say 12 years after the fact, but again,
25 [REDACTED] Lourie, very experienced head of the Palm Beach Office

1 has prosecuted any number of cases.

2 Q In -- again, just to keep --

3 A Right.

4 Q -- perspective and context, the final week that
5 this was being negotiated, [REDACTED] Lourie was in Washington, and
6 bouncing back and forth on the weekends, because he was in
7 transition to the front office here in the criminal division
8 in this building. That's a factor in terms of being able to
9 give attention to some details. Would you agree with that?
10 It could be a factor?

11 A So, it could be a factor. On the other hand, I'd
12 say that [REDACTED] wasn't leaving the department. He is
13 professional. He knows his stuff, and you would expect a
14 professional -- if they're reviewing a document, whether
15 they're on vacation, whether they're looking to move from one
16 part of the department to another, that you would expect them
17 to review it, you know, fulfilling their -- their
18 responsibility to sort of focus in and make sure that -- that
19 it's -- that it encompasses what it should. And that's not a
20 criticism of [REDACTED]. That -- that's saying that, well, that
21 might be a factor. That doesn't lessen from my perspective
22 reliance on his expertise.

23 Q Mm-hmm. Understood. After the NPA was signed --

24 A Right.

25 Q -- and [REDACTED] came back --