

decision as to who can be heard at a state sentencing is, amongst many other issues, properly within the aegis of state decision making.³²⁴

Following a conversation between Acosta and Lefkowitz, in which Acosta asked that the defense clarify its positions on the USAO proposals regarding, among other things, notifications to the victims, Lefkowitz responded with a December 26, 2007 letter to Acosta, objecting again to notification of the victims. Lefkowitz argued that CVRA notification was not appropriate because the Attorney General Guidelines defined “crime victim” as a person harmed as a result of an offense charged in federal district court, and Epstein had not been charged in federal court. Nevertheless, Lefkowitz added that, despite their objection to CVRA notification, “[W]e do not object (as we made clear in our letter last week) that some form of notice be given to the alleged victims.” Lefkowitz requested both that the defense be given an opportunity to review any notice sent by the USAO, and that “any and all notices with respect to the alleged victims of state offenses should be sent by the State Attorney rather than [the USAO],” and he agreed that the USAO “should defer to the discretion of the State Attorney regarding all matters with regard to those victims and the state proceedings.”

Months later, in April 2008, Epstein’s attorneys complained in a letter to Mandelker that Sloman and Villafaña committed professional misconduct by threatening to send a “highly improper and unusual ‘victim notification letter’ to all” victims.

F. January – June 2008: While the Defense Presses Its Appeal to the Department in an Effort to Undo the NPA, the FBI and the USAO Continue Investigating Epstein

As described in Chapter Two of this Report, from the time the NPA was signed through the end of June 2008, the defense employed various measures to delay, or avoid entirely, implementation of the NPA. Ultimately, defense counsel’s advocacy resulted in the USAO’s decision to have the federal case reviewed afresh. A review of the evidence was undertaken first by USAO Criminal Chief Robert Senior and then, briefly, by an experienced CEOS trial attorney. A review of the case in light of the defense challenges was then conducted by CEOS Chief Oosterbaan, in consultation with his staff and with Deputy Assistant Attorney General Sigal Mandelker and Assistant Attorney General Alice Fisher, and then by the Office of the Deputy Attorney General. Each review took weeks and delayed Epstein’s entry of his state guilty plea.

As set forth below, during that time, Villafaña and the FBI continued investigating and working toward potential federal charges.

1. Villafaña Prepares to Contact Victims in Anticipation That Epstein Will Breach the NPA

On January 3, 2008, the local newspaper reported that Epstein’s plea conference in state court, at that point set for early January, had been rescheduled to March 2008, at which time he would plead guilty to felony solicitation of prostitution, and that “in exchange” for the guilty plea,

³²⁴ The 2000 Guidelines were superseded by the 2005 Guidelines.