

1 carefully -- the -- each -- each victim was tied to a
2 particular set of criminal activity. In other words, these
3 victims were not lumped in an aggregate sort of formless
4 petri dish.

5 A Yes.

6 Q They were individuals. [REDACTED] had met -- was
7 meeting with them, *indeed was finding new victims along with
8 the FBI, and they were conducting individualized assessments
9 of the viability of each victim witness, and indeed [REDACTED]
10 submitted a follow on pros memo, a pros memo addendum in
11 July, and another one in September, and tailored -- continued
12 to tailor her indictment -- proposed indictment to these
13 individualized acts.

14 The question -- when I -- when I hear the victims
15 referred to in the aggregate, I wonder what effort there was
16 to sit down and address each individual victim, because there
17 were so many, and a credibility issue that could be very
18 troubling with one victim, if -- or, two victims, or four
19 victims --

20 A Fair.

21 Q -- could well be overcome by other victims who had,
22 not those credibility issues, perhaps others, and if I may
23 finish, that in the aggregate, when presented individually in
24 total, a kind of a persuasive case could be made that would
25 be impossible with one or two or three? Does that -- is that

1 **a fair --**

2 A So, that is fair, and I think -- and your point
3 that we shouldn't sort of talk about the victims in aggregate
4 is a fair point. I would -- I would respond, and Ms.
5 [REDACTED] goes into this in her affidavit a little bit, and
6 I've got it -- and I have a recollection of some discussion
7 of this between myself, and you're going to ask me who, so
8 let me just say I don't know who.

9 But the concern is when you have victims that know
10 one another, to what extent would defense -- if you've got
11 two victims that say A happened, even if it's similar sets of
12 facts, and another victim that said he did nothing wrong, and
13 another victim that said horrendous things happened, to what
14 extent does defense cast this as, they are trying to recover,
15 they're trying to do -- and so one of the concerns was when
16 you have victims that know one another, that brought one
17 another in, even if you've got similar patterns, if some of
18 them cast doubt, how would that be taken by -- by the jury?

19 **Q Is that assessment or analysis your own, or is it**
20 **one that you developed with the people you talked to about**
21 **this case?**

22 A So, that -- that assessment would have been, in my
23 general recollection, but also based on my practice, that
24 kind of witness assessment is the kind of thing that I would
25 have relied more on the AUSA -- on my management team for,

1 because that was more within their -- their area of
2 expertise.

3 Q Right, and [REDACTED] in particular was known as
4 a trial attorney.

5 A Right.

6 Q Correct?

7 A Right.

8 Q Do you recall having discussions with [REDACTED] about
9 that?

10 A He would have been the logical --

11 Q Right.

12 A -- person. I know that we had those discussions,
13 and we talked about what happened, how will they -- how will
14 they play out at trial, and -- and the takeaway was, it could
15 play out well, it could not play out well.

16 Q So, as of the time that all --

17 A And again, I say they as a collective.

18 Q Right.

19 A Understanding that some would say exonerating
20 things. Some would have contradictory statements. Some may
21 not want to testify, and -- and so, that conversation was
22 had.

23 Q So, was had, it -- you and [REDACTED] talked about it?

24 A I can't say -- [REDACTED] and I can say, I recall the
25 discussion, you know, I don't know -- 12 years ago, you might

1 recall a discussion from 12 years ago. What -- what you
2 presented to me, for the record, I'm pointing to [REDACTED], or I'm
3 indicating [REDACTED], the -- the issue about civil rights, do you
4 recall who else was in the room or wasn't in the room at the
5 time?

6 Q I --

7 A Yeah, I --

8 Q It's a rhetorical question.

9 A It's a rhetorical question.

10 Q We'll take it, I guess.

11 A But --

12 Q Yes.

13 A -- you know, it's very -- it -- one can remember
14 substance without remembering who was in the room at the
15 time.

16 Q And understanding --

17 A Right.

18 Q -- that this was one case of thousands that were
19 under your --

20 A Correct.

21 Q -- authority, although a particularly sensitive and
22 high profile one, but the -- a -- the question to you is, do
23 you know what individualized assessment [REDACTED] [REDACTED] did of
24 the victim witnesses?

25 A I -- I can't speak to that.

1 Q Do you know whether he actually met with any of the
2 victim witnesses?

3 A I can't speak to that.

4 Q Do you know whether [REDACTED] [REDACTED] went to West Palm
5 and sat down and actually went through the evidence as to
6 each one of the potential --

7 A I --

8 Q -- witnesses?

9 A I can't speak to that.

10 Q Do you know any of that information as to [REDACTED]
11 [REDACTED]?

12 A Again, I can't -- I can't speak to that. I
13 would -- I would say that -- that [REDACTED] was first assistant,
14 and to the extent he relied on the criminal chief, that would
15 be -- he used to be criminal chief, and so --

16 Q Right.

17 A -- he would naturally view the role of criminal
18 chief as being important, and someone that would naturally
19 review matters before they went to the first assistant.

20 Q Okay. So, when you talk -- when you were -- as you
21 recall, having these conversations about the -- the victim
22 issues, as -- as matters of evidence, it -- it -- you cannot
23 tell us what the basis for [REDACTED] [REDACTED] analysis was?

24 A I can't. I mean, as a general matter, I don't
25 recall the specific. As a general matter, when I talk to

1 individuals about a case, I would assume that they had
2 informed themselves, and had done the diligence necessary to
3 have that discussion with me.

4 Q Do you remember him parsing out for you, or --

5 A I --

6 Q -- you know --

7 A -- I don't recall that --

8 Q -- the individual --

9 A -- that level of granularity.

10 Q All right. The -- to finish my sentence, to the
11 individual witnesses, and you're saying you don't.

12 A Yeah.

13 Q And by witness, I mean victim witness. Did you
14 ever sit down with [REDACTED] and have her present to
15 you each witness -- each victim as a potential witness, and
16 her individualized credibility issues, and how as a -- as a
17 prosecutor and an experienced trial attorney, [REDACTED]
18 was going to overcome those issues?

19 A I don't recall doing that, and as a matter of
20 general practice, particularly when it came to what I'll call
21 trial issues --

22 Q Mm-hmm.

23 A -- we had really experienced individuals in the
24 office, and that's not something that I would typically do on
25 this or other high profile cases, because they're the trial

1 lawyers. They -- this is what they do. I would tend to
2 focus more on the legal issues.

3 Q All right. I want to stay with the -- the witness
4 issues, and the evidence of that for the moment.

5 A Mm-hmm.

6 Q In Exhibit 3, this lively exchange between [REDACTED]
7 and [REDACTED], she asks to make a presentation to you in the last
8 major paragraph of her e-mail on page four. She says, "I
9 would like to make a presentation to the U.S. Attorney, [REDACTED],
10 [REDACTED], and you, with our side of the investigation and a
11 revised indictment. The presentation will address the points
12 raised by Epstein's counsel, and will convince you of the
13 strength of the case." Bearing in mind that by this time,
14 [REDACTED] and [REDACTED] had in front of them --

15 A Right.

16 Q -- her pros memo, her proposed indictment, this
17 analysis she did as evidenced in Exhibit 8, but also the
18 submissions from Jerry Lefcourt, and that -- that [REDACTED] had
19 not had a chance to actually make a presentation to them.
20 [REDACTED] [REDACTED] response is on page three, his last paragraph.

21 He chides [REDACTED], and tells her that, "You may
22 not dictate the dates and people you will meet with about
23 this or any other case. If the U.S. Attorney or the first
24 assistant desired to meet with you, they will let you know."
25 She, in her final response on page one points out that she's

1 not trying to dictate anything. She's just asking. Are you
2 aware that -- bear in mind, you didn't see --

3 A Correct.

4 Q -- Exhibit 3, were you aware that [REDACTED] [REDACTED]
5 very much wanted to make a presentation to you and to [REDACTED]
6 [REDACTED] and [REDACTED] [REDACTED] about her case, and her evidence?

7 A So, I don't recall this.

8 Q By this, you mean --

9 A I don't -- I don't recall being aware of this
10 request.

11 Q All right.

12 A As a -- as a general matter, it seemed that there
13 was communications going back and forth. And so, she
14 certainly felt comfortable e-mailing me when she wanted to, I
15 guess is my point, rightly or wrongly. And so, I wasn't
16 aware of that request, and --

17 Q So, are you suggesting that she could easily have
18 e-mailed you and said, Alex, I really want to make a
19 presentation to you?

20 A I'm not suggesting -- let me -- what I'm suggesting
21 is from my perspective, there was a lot of communication in
22 this case, more than is typical. I wasn't aware of -- I
23 don't recall the request, but there was communication in this
24 case.

25 Q What do you -- what do you mean by communication?

1 I mean, there are a lot of e-mails, but --

2 A There is. There are a lot of e-mails, right.

3 Q But a lot of them are because there are draft --
4 later on, we have drafts and so on, but --

5 A I --

6 Q -- we don't --

7 A So, what I mean by that is, I do not recall an
8 impression that she wasn't being -- that she didn't have
9 access, or wasn't being heard.

10 Q To you?

11 A Correct.

12 Q You've already seen two e-mails here where she was
13 scolded pretty seriously, and in one case for approaching --

14 A Correct.

15 Q -- [REDACTED] and you without [REDACTED] [REDACTED] being
16 involved back when --

17 A Correct.

18 Q -- [REDACTED] was crim chief, and then here, she --
19 the -- what [REDACTED] [REDACTED] says to her is quite strong, isn't
20 it? Would you have ever used that language to a subordinate?

21 A You've seen my e-mails and my style.

22 Q I think not.

23 A I -- so, what I -- what I am saying is, from my
24 perspective at the time to the best of my recollection, this
25 was not a case where she was not -- where she was frozen out.

1 This was a case where there was ample communication --

2 MR. [REDACTED]: Well --

3 BY MS. [REDACTED]:

4 Q Did [REDACTED] ever tell you, hey boss, this line
5 assistant, she's being a pain. You know, she's asked for to
6 make a presentation to you. Do you want to do it?

7 A I -- I don't -- look, this was 12 years ago. I
8 don't recall it. Whether he did or not, I can't say, but I
9 don't recall it.

10 Q If he or [REDACTED] or even [REDACTED] had
11 directly asked you for that opportunity, would you have
12 entertained it? Would you have agreed to a presentation from
13 the line attorney?

14 A As a general matter, if someone makes a direct --
15 saying, this is a case that I have worked, I need to sit down
16 and talk to you, I would have said, yes.

17 Q Do you recall any occasion when a line assistant on
18 his or her own initiative came to you and made such a request
19 and you granted it?

20 A I don't, because it rarely got to that level. I --
21 from my impression and my recollection, we had pretty good
22 communications in the office.

23 Q All right, I'm sorry, I --

24 MR. [REDACTED]: That's okay.

25 MS. [REDACTED]: -- cut you off.

1 BY MR. [REDACTED]:

2 Q You've talked about needing to respect the chain of
3 command.

4 A Right.

5 Q Would there have been any repercussions for a line
6 assistant actually trying to approach you about this
7 presentation?

8 A I would hope not. I mean, it's -- I think it's
9 important for line assistants to be respectful and to, you
10 know, let their supervisor know, and issues -- you know, and
11 to do it with -- with respect, and not go around supervisors,
12 but I would hope -- I mean --

13 Q Well --

14 A -- not --

15 Q If she had raised it with a supervisor first, and
16 that supervisor said, no, that's not your place, would you
17 have expected her to have followed what the supervisor had
18 told her on that regard?

19 A Fair. Look, fair point. I'm not aware of this e-
20 mail. I can't speak to that. AS a general matter, I would
21 -- you know, going back to where I started, you know, I would
22 at 6:00 o'clock walk around the office and say, how are
23 things going? What case are you working on? In part,
24 because I thought it was important to.

25 BY MS. [REDACTED]:

1 Q Did you wander up down -- up to West Palm and do
2 that too?

3 A Less often, but yes.

4 BY MR. [REDACTED]:

5 Q You talked a little bit about the experience of
6 your senior staff.

7 A Right.

8 Q What do you know about the experience [REDACTED] [REDACTED]
9 had in handling these types of cases?

10 A You -- when you say these types, you mean --

11 Q Sex crimes --

12 A I --

13 Q -- or --

14 A I can't.

15 Q -- cases involving children --

16 A I can't --

17 Q -- or child victims?

18 A I can't speak to that. I don't know.

19 Q What about [REDACTED] [REDACTED]?

20 A I can't speak to that.

21 Q Or [REDACTED] [REDACTED]?

22 A I can't speak to that.

23 BY MS. [REDACTED]:

24 Q But you do know that [REDACTED] [REDACTED] had
25 substantial experience with child sex crimes?

1 A I --

2 Q You named her PSA coordinator.

3 A I know that she had experience with prior cases.

4 Q All right.

5 A Yeah.

6 Q Okay. We're going to go for half an hour more,
7 then we'll take our break, and then we'll --

8 A Okay.

9 Q -- come back. I -- and we will get back to that
10 other piece of the evidence and the legal issues --

11 A Right.

12 Q -- and then -- and then we'll spend a lot of time
13 on the alternatives. Haven't forgotten that. In June of
14 2007, there was a meeting that defense counsel requested of
15 the sort of next level up from [REDACTED] [REDACTED]. In other words,
16 they had already made a --

17 A Right.

18 Q -- presentation to the line assistant, and her
19 supervisor. They wanted to come to Miami and talk to, in
20 this case, [REDACTED] [REDACTED] and [REDACTED] [REDACTED] --

21 A Mm-hmm.

22 Q -- and they did meet with them. Were you aware --
23 do you have a recollection of whether you were aware that
24 they -- there was such a meeting?

25 A It -- so, I don't have a recollection, but it rings

1 a bell. I don't know if that distinction is a fair one.

2 Q Well, I can -- I may help amplify the bell a little
3 bit. One of the defense attorneys who was present there in
4 addition to Gerald Lefcourt, Roy Black, and Lillian Sanchez
5 was Alan Dershowitz.

6 A Yeah.

7 Q Does that ring a bell?

8 A So, it does. There's --

9 Q Okay.

10 A I -- I can't say it's a recollection, but it sounds
11 like there -- it sounds right, and in my usual course, once
12 [REDACTED] was meeting with someone, he would typically have let me
13 know.

14 Q All right. All right, and where would such a
15 meeting take place? Would it be in [REDACTED] office? Was it
16 big enough? Or would you use the executive conference room?

17 A Based on the number of people, almost definitely
18 the executive conference room.

19 Q And is that -- do people have to go by your office
20 to get there?

21 A They do not.

22 Q Okay, and would you in a case like this make a --
23 as you said a moment ago, pop your head in --

24 A Right.

25 Q -- and say hello?

1 A Right. As a typical matter, I probably would not,
2 because then it very rapidly turns into a meeting with me as
3 opposed to a --

4 Q Mm-hmm.

5 A -- meeting with --

6 Q Mm-hmm. Okay.

7 A If that makes sense.

8 Q There was some written submissions also submitted.
9 Pretty substantial ones. These addressing more of the legal
10 issues --

11 A Mm-hmm.

12 Q -- both before and after this. Did someone -- and
13 if so, who -- brief you about what happened at the meeting,
14 and what was contained in the written submissions?

15 A So, I do not recall a briefing. I would assume
16 that, again, based on practice, there's a senior level
17 meeting in the office. Based on practice, [REDACTED] would have
18 told me, and then afterwards, he would have said this is what
19 happened.

20 Q All right, but you have no actual recollection of
21 what happened in this case?

22 A I have no actual recollection of -- other than the
23 meeting sounding familiar, I have no recollection.

24 Q So, Exhibit 50 in this packet, it's almost at the
25 end. It's the next to last, really, is a letter that [REDACTED]

1 [REDACTED] offered to the DAG -- the then DAG --

2 A Yes.

3 Q -- in June of 2008, a whole year later. The DAG,
4 Deputy Attorney General Mark Filip, and this is -- you
5 certainly recall that there was an appeal, if you will, a
6 small appeal to the DAG's office --

7 A Right.

8 Q -- by defense counsel, and [REDACTED] [REDACTED] submitted a
9 fairly substantial accounting of what had gone before in the
10 case, and he also submitted a number of other documents
11 relevant to that.

12 He says on page three that at this June 26th, 2007
13 meeting, which he characterizes arguments, legal and factual,
14 were presented against a federal indictment, and [REDACTED]
15 writes that, "The arguments and written materials provided by
16 the defense were examined by the SDFL and rejected." Do
17 you -- is that consistent with any understanding you have of
18 what happened at this meeting?

19 A So, I don't recall, so I'm going to speculate, and
20 the speculation is that by the time this happened, we were
21 fairly far along in how we were viewing this matter.

22 Q This being 2008, or --

23 A No, June.

24 Q June 26th, 2007. Okay.

25 A You know, and as I reviewed the documents, I tried

1 to establish a timeline, but clearly, by July 31st, we had --
 2 you know, we had sort of concluded how we were approaching
 3 it.

4 And so, I'm going to speculate that when he said
 5 the arguments and written materials provided to defense
 6 counsel were examined by the SDFL and rejected, it was they
 7 asked us to drop the matter, and we said we're not dropping
 8 the matter.

9 Q Okay. Okay, and by the way, is -- just to clean
 10 this up, this letter was -- to the DAG, was signed by [REDACTED]
 11 [REDACTED] under your type name, as is --

12 A Right.

13 Q -- standard but you're not cc'd on it. Do you --
 14 do you recall why you didn't sign this letter? why it was
 15 sent by [REDACTED] --

16 A I --

17 Q -- [REDACTED]?

18 A I do not recall.

19 Q I just -- that's a -- that's a point of interest.
 20 and so, I'll draw your attention to --

21 A All right.

22 Q -- Exhibit 49, which is actually dated the day
 23 prior, that is, June 2, 2008, and this is a -- an e-mail to
 24 you from [REDACTED] [REDACTED], who is -- was and is the ethics --

25 A Yes.

1 Q -- officer for the U.S. Attorney's Office, correct?
 2 Reporting back to you an assessment by the executive office
 3 of U.S. Attorneys general counsel's office that they did not
 4 see you as having an either actual or apparent conflict of
 5 interest that would necessitate your recusal from the Epstein
 6 matter by virtue of the fact that you apparent, according to
 7 this, intended to seek employment with Harvard Law School.

8 A Right, or was considering seeking.

9 Q Was considering. All right. Right. Should you
 10 seek employment, it says. So, is it -- is it reasonable for
 11 us to infer that this potential recusal --

12 A Right.

13 Q -- was pending at the time the letter to Mark Filip
 14 was being drafted, and that's why it went out over [REDACTED]
 15 signature, and without you as a CC?

16 A So, I would not infer that.

17 Q Okay.

18 A In part because it was potential -- and in part
 19 because [REDACTED] -- [REDACTED] had the facts at his disposal, and was
 20 the natural -- this was a very detailed letter. I did not
 21 feel that -- I'm speculating here -- as a general matter,
 22 things don't have to go out under my name, and some letters
 23 went out under his name, and some letters went out under my
 24 name, and the ones that went out under my name tended to be
 25 ones that I had more authorship in, and the ones that went

1 out under his name in this case were the ones that he had
2 more authorship in. And so, I would just say that this was
3 the continuing course of that.

4 Q Okay. Thank you. Minor technical issue.

5 BY MS. [REDACTED]:

6 Q Would you have read the letter before it went out?

7 A Probably. I would say in my usual course, he would
8 have shown it to me, but not always.

9 Q Not always letters that would have been sent to the
10 Deputy Attorney General's Office, or just letters in general?

11 A Well, he would have -- I think he would have shown
12 this to me because it's going to the deputy's office. The
13 flip side is, I trust [REDACTED]. I think he's a professional.

14 Something that I -- so, an important distinction to
15 draw, I remember talking to an AUSA that had spent time at
16 main justice, and contrasting the experience of an AUSA with
17 the experience of a trial lawyer here, and sort of the line
18 was you can't send a letter from main justice without three
19 letters of approval, whereas an AUSA in their case typically
20 doesn't even get approval from their line supervisor. And
21 so, as a usual matter, particularly in this case, [REDACTED] would
22 run letters by me.

23 That doesn't mean that every letter had to be run
24 by me, and you know, I was certainly aware that the letter
25 was being transmitted. I was aware of the appeal to D.C. I

1 had comfort in what we had done, and so I thought the appeal
2 would be fine, and if I was out of the office, or if there
3 was some reason that I wasn't going to be consulted, [REDACTED] was
4 quite capable of doing it without my review.

5 Q But if you were in the office, it would have been
6 typical for him to run it by you first?

7 A It would have been.

8 BY MS. [REDACTED]:

9 Q Did you read the letter in preparation for --

10 A I did.

11 Q -- this, and is there anything in it that is --
12 that in your view is not accurate?

13 A I think it's accurate. I think the letter, as it
14 should be, is an advocacy piece for what the office has done
15 as opposed to a, on the one hand, on the other hand, analysis
16 piece. But at this point, we're defending the actions of the
17 office, and I think it appropriately should be an advocacy
18 piece.

19 Q All right. Do you disagree with any of the points
20 of advocacy, or the points made in advocacy?

21 A We -- we'd have to go through it --

22 Q All right.

23 A -- paragraph by paragraph.

24 Q Okay. Okay.

25 A But --

1 Q But nothing struck you so much that you --

2 A I think --

3 Q -- recall?

4 A -- I think he fairly presented the totality of
5 everything to the DAG for the DAG to review her for whoever
6 the DAG designated, and I think that was -- that was an
7 appropriate presentation.

8 Q All right. Thank you. So, now I'd like to launch
9 into -- and before we break for lunch, sort of the core
10 question.

11 A Mm-hmm.

12 Q Which we addressed a little bit earlier, and that
13 is who at the U.S. Attorney's Office made the decision to
14 resolve this case with an offer of a two year state plea, and
15 why?

16 A Right. So, how we got to the two years, I can't
17 tell you, because I can give you my general impression.
18 Ultimately, all the cases in the U.S. Attorney's Office were
19 under me.

20 Ultimately, I saw what we'll call that, you know,
21 three pronged resolution, two years -- you know, registration
22 and restitution, and ultimately that was approved on my
23 authority.

24 Q So, who came -- did you -- did you come up with it?
25 Was it your idea --

1 A I --

2 Q -- of an issue?

3 A I don't -- I don't know. The -- this is
4 reconstructing conversations -- I'm going to speculate now.
5 This was not, let's all get in a room and figure out the
6 resolution in the next half hour.

7 Q Mm-hmm.

8 A But this was a course as things are discussed and
9 there's a back and forth over the course of some days or a
10 week or two, and then people get together and discuss, and a
11 view develops, and then the office proceeds with that. But
12 ultimately -- let me -- let me just sort of push back. Look,
13 ultimately, I approved it, and so, I --

14 Q Okay.

15 A -- accept that. I'm not -- I'm not pushing away
16 responsibility for it. I'm just saying I can't recall how we
17 got to, for example, two years. I can speculate as to
18 particular parts of it, but I can't -- you know, but
19 ultimately I'm not pushing away responsibility.

20 Q I understand, and we're going to delve into that --

21 A Right.

22 Q -- that two years -- shortly, but I want to turn
23 back to Exhibit No. 3, in which sort of the statement that
24 launches this -- what I keep calling a lively exchange, is on
25 page four, the -- the statement from [REDACTED], and this

1 is in response to an inquiry from [REDACTED] to her management,
2 not including you, about what conversations any of them has
3 had with defense counsel --

4 A Right.

5 Q -- about any resolution, because her plan was to
6 talk to Lilly Ann Sanchez about working a plea to federal
7 time concurrent to the state -- whatever the state time was,
8 and in response, [REDACTED] tells her, "I told Lilly that a state
9 plea with jail time and sex offender status may satisfy the
10 USA," meaning the U.S. Attorney --

11 A Right.

12 Q -- I believe. So, that's a -- that's a closed
13 quote after USA. Had he discussed that with you? How did he
14 know that that might satisfy you?

15 A So, I don't recall. I can -- I can speculate based
16 on Mr. [REDACTED] course of conduct, I don't think he would
17 have raised that possibility in a case of this profile
18 without having discussed it with me.

19 Q But you have no specific --

20 A I have no --

21 Q -- recollection?

22 A -- specific recollection, but I don't think he
23 would have done that without having come by and said.

24 Q All right. At this point, bearing in mind that you
25 don't have any specific recollection, at this point, do you

1 believe you had any understanding of what amount of jail time
2 was in play at this point when [REDACTED] tells Lilly Ann
3 Sanchez --

4 A I can't pinpoint that timeline --

5 Q All right.

6 A -- to that degree.

7 Q All right.

8 A Of accuracy.

9 Q He also says later in this e-mail that he told this
10 to Lilly Ann Sanchez a couple of weeks prior before the June
11 26th meeting.

12 A Correct.

13 Q All right. Were you aware that [REDACTED] [REDACTED] had
14 been communicating directly with Sanchez about the case, and
15 specifically that he represented that you might go for a
16 state disposition if it included jail time and sex offender
17 registration?

18 A I -- I don't recall whether I was aware or not. I
19 recall at some point adopting the concept of jail time plus
20 registration, and then plus restitution. And so, I don't
21 know when that would have happened. Let me also speculate
22 that the U.S. Attorney might go -- could also refer to, this
23 is being talked about, no final decision has been made.

24 Q Right. If [REDACTED] [REDACTED] had made that informal
25 discussion comment to Lilly Ann Sanchez without having told

1 you, without having gotten your clearance ahead of time to
2 tell her that, would that -- would that surprise you, or
3 would you have expected him to consult with you about whether
4 it was okay to go ahead and raise this?

5 A So, as a general matter, yes, but -- and let me --
6 let me explain that. AUSAs on occasion, and because this is
7 a high profile -- higher profile case -- a criminal chief may
8 run an idea across opposing counsel and say, look, I don't
9 have authorization.

10 I don't know how the office will react, but it's
11 certainly possible that X, Y, or Z may work out. And that's
12 a very different conversation than, you know, the office will
13 accept.

14 And so, a lot of that really depends on how that
15 conversation goes, and you know, certainly if he's
16 representing my view, I would expect him to check on what my
17 view is, if he's, as criminal chief, saying, this is
18 something that I could support. I don't know how the office
19 will react, that may -- you know, but I can run it up the
20 flagpole, that might be a different type of conversation.

21 Q Okay, and did you know Lilly Ann Sanchez?

22 A I did. She was an AUSA in the office.

23 Q And she left about a month after you came on board?

24 A Was it that -- was it that quick?

25 Q That's our information, yes.

1 A Okay.

2 Q Although she apparently remained a periodic
3 present.

4 A Hence, the wasn't that quick.

5 Q Did you know that she'd been [REDACTED] deputy
6 at major crimes?

7 A I don't remember that.

8 Q All right. Did you -- what did -- what did you
9 remember about her? And had you had any dealings with her
10 after she left the office up to this point?

11 A So, I remember that she was in the office, that she
12 was a senior attorney. Whether within the management
13 structure or not, I -- I didn't recollect until you just
14 raised it, and that I can't swear to it, but it rings a bell
15 that she was in major crimes, and she was someone that you
16 would see at bar functions that would --

17 Q Mm-hmm.

18 A -- she -- she was active in the local bar, and I
19 would see her on occasion at a bar function and say hello.

20 Q All right. Did you encounter her in connection
21 with a case, to your recollection, in the period before
22 Epstein?

23 A I'm hesitating not to avoid, but I'm running
24 through my --

25 Q Mm-hmm.

1 A Not that I recall.

2 Q What's your impression of her as a -- as a
3 practitioner?

4 A She did -- she did quite well after she left the
5 office. She set up -- I think she set up her own practice.

6 Q At the time -- at this time, she was with something
7 called Fowler White Burnett.

8 A Okay, so --

9 Q She --

10 A -- she went to Fowler White.

11 Q -- subsequently --

12 A She subsequently set up her own practice, and I
13 thought she's done well for herself.

14 Q Okay. Were you aware that [REDACTED] had a close
15 personal relationship with Lilly Ann Sanchez, both because
16 they had worked together as chief and deputy chief --

17 A Mm-hmm.

18 Q -- in major crimes, but also because they'd had a
19 dating relationship sometime prior?

20 A I don't recall them having dated, but I don't --

21 Q Do you recall knowing that they had dated in the
22 past?

23 A I don't recall knowing that, and in all candor,
24 that's not the kind of thing I ask about.

25 Q But in this case with her representation of

1 somebody in a matter being ultimately supervised by [REDACTED]
2 [REDACTED], would you have expected [REDACTED] to disclose to you that
3 he'd had a prior romantic relationship with Lilly Ann
4 Sanchez, a member of Epstein's defense team, if only to
5 address a potential appearance of impropriety or conflict of
6 interest?

7 A I think some of that might have depended on how
8 recently. Was it ten years ago? Was it two years ago? If
9 they were in the supervisory chain that this happened, that
10 could raise other -- other issues. So, if to the extent --
11 so, for example, [REDACTED] disclosed to me a potential conflict --

12 Q Mm-hmm.

13 A -- to the extent that these arise, if there is a
14 potential conflict, I'd like to know. I was aware of [REDACTED]
15 conflict. I said, keep going.

16 Q And in fact, [REDACTED] [REDACTED], you're talking about the
17 Herman --

18 A Yes.

19 Q -- connection, the prior --

20 A Yes.

21 Q -- short lived law firm connection. Are you aware
22 that [REDACTED] in fact vetted that through [REDACTED] [REDACTED], your
23 ethics person?

24 A I am -- I don't recall that independently, but I
25 recall knowing about it. He may have told me he vetted it

1 through [REDACTED]. [REDACTED] is highly respected in the office,
2 and --

3 Q Mm-hmm.

4 A -- that would be the appropriate --

5 Q So, are you also aware that [REDACTED] [REDACTED] raised,
6 again with [REDACTED] [REDACTED], the potential, again, appearance of a
7 conflict of interest, or appearance of impropriety, because
8 of his supervision of the Epstein case, and his concurrent
9 close friendship with Mike Tein, who was an attorney who was
10 representing Epstein, as well as Guy Lewis, former U.S.
11 Attorney?

12 A So, I was not aware of that.

13 Q You were not aware of it, but -- but I guess what
14 I'm -- what I'm noting is that both [REDACTED] and [REDACTED]
15 perceived appearance issues, and went through the process
16 that's provided for them to get the blessing to go ahead and
17 proceed with the case by the -- the blessing by the ethics
18 expert --

19 A Right.

20 Q -- but [REDACTED] [REDACTED] apparently did not in this case
21 vis a vis Lilly Ann Sanchez.

22 A Yeah.

23 Q Does that surprise you, or disappoint you, or
24 perplex you, or do you care?

25 A I would want to know more.

1 Q Right.

2 A But certainly it would provide -- I would want to
3 know more before saying I'm disappointed, but again, was it
4 ten years ago? Was it two years ago? What's the
5 continuing -- there are a lot of facts, but certainly it --
6 that's the kind of -- it's the kind of discussion one would
7 typically have with [REDACTED].

8 Q And in this case, what we're talking about is an
9 informal conversation, or informal discussion, to use
10 [REDACTED] own term, with Sanchez as opposed to any of the
11 other attorneys in Epstein's team about a particular
12 resolution that we're going to spend all afternoon talking
13 about, because it has some problematic aspects. Okay? So,
14 you see why we're --

15 A I get it. No, I get it.

16 Q Okay.

17 BY MR. [REDACTED]:

18 Q So, before we break, I'm -- should he have talked
19 about this potential resolution with the line assistant
20 before actually making it?

21 A In a typical case, yes. So, in a typical case, I
22 fostered communication. I would -- I would come -- I'd get
23 involved in cases, but we'd want to know what the line
24 assistant thinks, and they can agree or disagree, but we'd
25 want -- we'd want input.

1 BY MS. [REDACTED]:

2 Q What do you make of this really acid tone between
3 [REDACTED] and [REDACTED]? Between [REDACTED] and [REDACTED] in this Exhibit 3
4 exchange? I mean, [REDACTED] is really -- as I read it, it's
5 pretty strong.

6 A I -- I can't -- I -- I'm not sure what to make of
7 it.

8 Q All right. All right. There are a couple of --
9 let's -- could we go off the record for a split second?

10 (Off the record.)

11 BY MS. [REDACTED]:

12 Q Okay, back on the record. Going back to Exhibit
13 No. 3, there are a few things here that we think are
14 important to raise with you, albeit you not having seen this
15 at the time.

16 [REDACTED] [REDACTED] says that the -- she complains
17 about this soft -- that's my term -- plea offer that [REDACTED]
18 extended to Epstein through Lilly Ann Sanchez. She says that
19 such an offer is completely unacceptable to the FBI, ICE, the
20 victims, and me, meaning [REDACTED] [REDACTED]. Did you have an
21 understanding of what the FBI's position about prosecuting
22 this case was?

23 A My recollection of interaction with the FBI is with
24 [REDACTED] [REDACTED] who was the SAC, and as I recall, he supported
25 the eventual direction of this case.

1 Q Is he the individual who you identify I believe in
2 actually your -- your attorney's written response as the SAC
3 who called you to congratulate you about the --

4 A He is.

5 Q -- the case? About the result?

6 A Yes.

7 Q And was SAC [REDACTED] -- in that same written
8 response from your attorney, there's a mention that he was
9 present at many meetings on this case?

10 A He was present at, at least some, and in part that
11 was at my request, because this was a high enough profile
12 case that I wanted to bring him into this.

13 Q So, the -- we know he was present at the December
14 14, 2007 meeting, right?

15 A Yeah.

16 Q With Ken Starr and company. He is not present
17 at -- to -- according to our investigation, at any other case
18 with defense counsel. Others are. His ASAC, [REDACTED] is
19 present.

20 A So, recollections aren't nearly as good as
21 documents. I don't recall the December meeting. I would
22 have said that he was present at the September meeting, but
23 it may be that I am, because this was so long ago, mixing the
24 two.

25 Q Okay.

1 A Because I thought he would have come to the
2 September meeting.

3 Q No, according to all the information we have, just
4 so you know --

5 A Right.

6 Q -- [REDACTED] was there as ASAC, but not --
7 actually, I'm not sure she was at the -- at any rate, she
8 was -- she was --

9 A Right.

10 Q -- he was present, [REDACTED] was present at the
11 December meeting only.

12 A Right.

13 Q So, just so --

14 A Fair.

15 Q Okay. Would he have been present at meetings other
16 than with defense counsel meetings about this case?

17 A Typically no. Typically, he and I would have
18 talked on the phone or had discussion, and I know that he was
19 aware of the matter.

20 Q So --

21 A I recall his being aware of the matter, and
22 generally positive as to the direction that we were going.

23 Q By the direction or the eventual outcome?

24 A The eventual outcome.

25 Q All right. So, what about the prosecution? Do you

1 know what the FBI's view was about the prosecution?

2 A I can't speak to the timeline. I would have -- and
3 I'm contradicting the documents here, but I would have -- if
4 you had asked me, said that he was present at the September
5 meeting, and was aware of the terms that were presented at
6 the September meeting. Clearly, I'm --

7 Q Right.

8 A -- my recollection is incorrect, and I take that
9 for what it is.

10 Q Just to finish on -- with this point though, my
11 question was an understanding of the FBI's position of the
12 case, not the ultimate disposition. In other words, as of --
13 as of the date of Exhibit 3, there was no deal on the table.
14 So, the question is, what was the FBI's view about the case?

15 A So -- so, I -- I'm not trying to be difficult. At
16 some point, when you say view, the FBI, to my recollection,
17 thought that what Mr. Epstein did was sordid and disgusting
18 and that we should proceed. How we proceeded, I don't recall
19 having -- hearing specific views as to the how as opposed to
20 the, we should.

21 Q All right. Let's -- thank you. Let's take a
22 break, 45 minutes. Thank you.

23 (Off the record.)

24 BY MS. [REDACTED]:

25 Q All right. We're going to go back on the record.

1 We're beginning after the break at 1:30 in the afternoon.

2 Thank you.

3 A Before get started --

4 Q Yes.

5 A -- you referenced an e-mail from [REDACTED] that wasn't
6 part of the packet.

7 Q Correct.

8 A Is that something that I could see and review, or
9 is there discomfort on that?

10 Q Yes. No, I am not -- as long as we make it on the
11 record. Do you -- do you need to do it now, or can we do it
12 during the next break?

13 A It depends how long -- how long is it? It would
14 just take --

15 Q One page.

16 A -- a minute, if you don't mind.

17 Q Do you want to go off the record while Mr.

18 Acosta --

19 (Off the record.)

20 BY MS. [REDACTED]:

21 Q All right. On the record again. For the record,
22 Mr. Acosta has just reviewed and e-mail from [REDACTED]
23 [REDACTED] to [REDACTED], [REDACTED], and [REDACTED]
24 dated July 18, 2007 at 2:07 p.m. It's one that I described
25 to Mr. Acosta a moment -- this morning. Do you have any

1 comments?

2 A I don't.

3 Q All right. Before we broke, we were -- I mentioned
4 your statement about SAC [REDACTED] having attended many
5 meetings. That to be clear was a representation you made in
6 your March 2007 letter to the Daily Beast, not the written
7 response.

8 Looking briefly at -- back at Exhibit 3 and [REDACTED]
9 [REDACTED] -- you don't have to read it yourself. [REDACTED]
10 [REDACTED] representation that in her view the plea offer
11 was completely unacceptable to the victims. Do you -- do you
12 believe that she was correct in her view that the victims'
13 views should have been solicited before a plea offer was
14 made?

15 A So, I would have to think that was one through.
16 There were concerns -- and I don't know about the timeline
17 about communications with the victims. They're sort of laid
18 out in the [REDACTED] affidavit. So, whether or not victims'
19 views were elicited is something I think was the focus of the
20 trial team and not something that I was focused on at least
21 at this time.

22 Q But do you believe as a matter of sort of principle
23 that the views of victims should be elicited before a plea
24 offer --

25 A Right.

1 Q -- is made?

2 A So, as a general matter, yes.

3 Q Okay.

4 A I think that the -- the reason I'm pushing back is
5 because you're saying plea offer, and the CVRA does talk to
6 plea offers as opposed to a situation where deferring
7 prosecution in favor of a state is a very different thing
8 than a plea offer, and at the time, that was not a, it must.
9 That was a depending on the facts and circumstances, that's a
10 judgment call. At least that's how the department, to my
11 understanding, viewed it.

12 Q And was it also your view that it would have, as a
13 general matter, it's a better practice or better approach to
14 talk to the victims before?

15 A As a general practice, yes.

16 Q All right. Do you think that would have been
17 particularly important in this case where the proposal
18 involved sending the case back to the state, which the
19 victims were aware had already mishandled the case to begin
20 with?

21 A So, a few -- there are -- there are a few things in
22 that question that I think are packed. Whether the victims
23 were aware and were of the view, from my perspective and my
24 recollection, were of the view that the state had mishandled
25 the case, I can't speak to.

1 Some of the victims were, to my recollection,
2 exonerating him. There was concern that some of the victims
3 were more on his side than on the prosecution's side. And
4 so, that judgement call of which victims are notified and how
5 much I think is something that really is a judgement call
6 that needs to be done almost on a case by case basis by
7 individuals that are aware of sort of the facts and
8 circumstances surrounding each victim.

9 In the general -- in a general case, you want to
10 have fulsome communication. I can understand in cases where
11 victims might be giving exonerating information, where -- or,
12 there is restitution at stake, that could be different.

13 **Q And by the people involved, are you talking at**
14 **the -- at the trial team level?**

15 **A At the trial team level with whatever appropriate**
16 **supervisors --**

17 **Q Mm-hmm.**

18 **A -- are engaged in the victim notification issues.**

19 **Q And in this case, that would not include you, is**
20 **that correct?**

21 **A That -- I don't recall cases where I got -- where I**
22 **became part of the victim notification judgements.**

23 BY MS. [REDACTED]:

24 **Q Did you ever issue an instruction to the trial team**
25 **that they should not consult with the victims before the NPA**

1 **was signed?**

2 A So, not that I recall. I know that there's some
3 instances where after the NPA was signed, I said, you know,
4 I'm directing that we withhold notification for five days, or
5 X period of time to work this out.

6 But before the NPA was signed, I don't recall -- in
7 all candor, I don't recall discussions about victim
8 notification until after the NPA was signed. I don't know if
9 there's e-mail traffic before the NPA was signed, but I don't
10 recall victim notification issues until after the NPA was
11 signed.

12 **Q Okay.**

13 BY MR. [REDACTED]:

14 **Q And I just -- one more question on this topic is**
15 **that prior to -- we interviewed other people, obviously, in**
16 **this --**

17 A Mm-hmm.

18 **Q -- case, and we interviewed Ms. [REDACTED], and one**
19 **of the things that she told us, she has a recall of a -- of a**
20 **meeting with you present, Mr. [REDACTED], and Mr. [REDACTED], where**
21 **this issue of victim notification was discussed in the**
22 **timeframe of prior to the FBI, and at that meeting, she was**
23 **specifically instructed that we are not going to talk about**
24 **it with the victims. Do you recall that meeting?**

25 A I don't -- I don't recall. If that's her

1 recollection, that's her recollection. I don't -- I don't
2 recall that. I -- I recall knowing that there were issues
3 around victim notification. I recall, particularly after the
4 NPA was signed, I recall efforts, I believe, to notify as it
5 was being signed -- to notify the victims of the upcoming
6 state plea.

7 Q Mm-hmm.

8 A And I recall discussions -- if not discussions --
9 let me not say discussions -- a general concern about the
10 victim notification, what does that do? Because the victim
11 is also a witness, and a --

12 Q Mm-hmm.

13 A -- potential witness, and in some cases and adverse
14 witness. And so, how does all that balance out?

15 Q Okay. Well, we're going to drill down into
16 those --

17 A Right.

18 Q -- post-NPA issues later on.

19 A Right.

20 Q Just now, focusing on --

21 A Right.

22 Q -- pre-NPA, before it's signed, when the
23 negotiations are going back and forth.

24 A Right.

25 Q You have memory of this topic coming up?

1 A I don't recall discussing the victim notification
2 issues.

3 Q Okay, and what would your response be though to --
4 are you -- are you aware of the CVRA litigation that went on?

5 A Yes.

6 Q From Judge Marra?

7 A Yes.

8 Q So, one of the issues that comes up in Judge
9 Marra's decision is, he made a finding that the government
10 violated the CVRA because they didn't inform -- consult with
11 the victims --

12 A Right.

13 Q -- prior to signing the NPA, and there is a
14 perception, or he -- from his opinion that the government did
15 this -- failed to communicate that in order to eventually
16 keep the victims in the dark and protect the resolution. Why
17 is that an incorrect assumption?

18 A And so -- so, I would say that [REDACTED] sets out her
19 reasoning in her affidavit. She talks about --

20 BY MS. [REDACTED]:

21 Q Are you referring to the -- her 2017 affidavit?

22 A Her 2017 affidavit. She talks about -- I believe
23 she notified at least some victims, and it became an issue,
24 and there's concern -- you know, you have this NPA.
25 Whether -- whether or not that NPA will ultimately remain is

1 a very open question, because from our office's expectations,
2 we expected him to plead shortly after that, and he did not.

3 And so, are we going to trial or are we not is a
4 very open question, and I think there is -- has to be
5 discretion, where there is no legal requirement. There has
6 to be discretion to judge how much you can tell the victims
7 and when.

8 BY MR. [REDACTED]:

9 Q Okay, just -- just one other point, and this is
10 that -- we've reviewed --

11 A Yeah.

12 Q -- Ms. [REDACTED] declaration, and the
13 notifications that she's referring to there, those
14 discussions take place after the signing of the NPA. So,
15 we're just talking about here still --

16 A Right.

17 Q -- just the pre-NPA --

18 A Yeah.

19 Q -- pre-signing of that. So, does that change your
20 answer at all?

21 A Again, I don't -- I don't recall the victim
22 notification being issued before the NPA. I recall a lot of
23 discussions afterwards. I don't recall. That doesn't mean
24 they didn't happen. That just means I don't recall them.

25 Q Was there any concern with you or among any of the

1 other people involved in this negotiation phase that if the
2 victims were to find out that we are negotiating this NPA
3 that it will blow up the NPA, that it will cause us trouble
4 in some way?

5 A Our -- my focus before the NPA was signed was, here
6 are -- here are these terms. You know, and then for the
7 team, go negotiate this. And so, from my perspective, it was
8 much more of a, what are the terms, than the victim
9 notification issues around that.

10 BY MS. [REDACTED]:

11 Q Right, but just to follow up --

12 A Right.

13 Q -- did you hear any discussion amongst the people
14 that you were dealing with --

15 A I --

16 Q -- that they were afraid that the victims might
17 raise such objections, or go to the press that this whole
18 thing would be -- you know, come to a -- come to a halt?

19 A So, I tried to think -- I don't recall -- I believe
20 we notified the victims in advance of the state hearing so
21 that they would be aware. We didn't notify them before we
22 signed the NPA to my recollection, but we certainly notified
23 them of the state hearing. And so, I was aware generally of
24 what was being done, but the NPA and what we -- you know, the
25 NPA was the focus, not the victim notification --

1 MS. [REDACTED]: When --

2 THE WITNESS: -- part of that.

3 MS. [REDACTED]: -- when you talk about -- go ahead.

4 MR. [REDACTED]: We -- we're going to get into the
5 plea --

6 THE WITNESS: Right.

7 MR. [REDACTED]: -- and what we're --

8 MS. [REDACTED]: All right.

9 THE WITNESS: Right.

10 MR. [REDACTED]: -- a little bit later on.

11 THE WITNESS: Right.

12 BY MR. [REDACTED]:

13 Q Just one -- can I just direct you to --

14 A Yeah.

15 Q -- document number 15?

16 MS. [REDACTED]: Exhibit 15?

17 THE WITNESS: Yeah.

18 BY MR. [REDACTED]:

19 Q Okay. So, do you -- that was an e-mail that is
20 from Ms. [REDACTED] to [REDACTED], then forwarded to you?

21 A Yeah.

22 Q Do you see the reference in there where she
23 mentions that she spoke to [REDACTED], or [REDACTED]
24 [REDACTED] reminded her -- where is it?

25 MS. [REDACTED]: It's in the second paragraph --

1 THE WITNESS: Yeah, no, I --

2 MS. [REDACTED]: -- in the middle.

3 THE WITNESS: I see it.

4 MR. [REDACTED]: The middle --

5 THE WITNESS: It's highlighted.

6 BY MR. [REDACTED]:

7 Q Could you just read that? The agents and I have
8 not reached out to the victims to get their approval, which
9 as [REDACTED] politely reminded me, is required under the law. Do
10 you -- do you -- do you recall that e-mail?

11 A I -- again, I don't recall this specific e-mail.
12 My recollection is a view that there is no requirement to
13 notify, because it's not a plea, it's deferring in favor of a
14 state prosecution.

15 And therefore, it becomes a discretionary issue,
16 and what notification is appropriate is really a function of
17 how you interact with -- with victims who are also potential
18 witnesses, and I was aware -- I support what the office did.
19 I'm not backing away from it.

20 I'm just saying I can't, 12 years later,
21 reconstruct what the thought process was other than there was
22 no legal obligation. It was a discretionary issue, and this
23 is how the discretion was exercised.

24 Q But did -- do you remember -- so, there's two
25 things. Any -- do you remember any discussions coming up

1 about the topic of what we have to do as far as notification
2 in the pre-NPA negotiations?

3 A I -- again, I really don't. I know there was a lot
4 of discussion after the NPA. I don't recall pre-NPA
5 discussions on this.

6 Q Last question on this.

7 A Sure.

8 MS. [REDACTED]: By him.

9 THE WITNESS: Yeah.

10 BY MR. [REDACTED]:

11 Q You're getting at least forwarded to you an e-mail
12 from the trial attorney in the case showing that she is
13 concerned about the notification issue, and she's raising at
14 least the -- referencing the head of --

15 A Right.

16 Q -- CEOs about this issue. Did this ring any bells
17 to you? Raise any --

18 A So, from this, I would infer that a discussion was
19 had as to what the obligations had -- were, and whether we
20 had to or not, because -- so, I think it's fair to infer she
21 is, you know, e-mailing my first assistant.

22 I don't know what the attachment here -- oh, the
23 attachment here is the term sheet, so to speak, and my first
24 assistant is forwarding it to me in large part so that I get
25 the attachment, and I think from here, it's fair to infer

1 that -- that some conversation or discussion was had. I
2 don't remember the conversation or discussion.

3 My focus was on the terms. I'm willing to accept
4 that the conversation was had. My recollection of the
5 obligations under the CVRA is that they did not attach,
6 because this was not an indictment, it was not a plea, and
7 that it was entirely discretionary how we proceeded, and
8 therefore how you proceed is a function of, should you notify
9 victims?

10 Yes, but there are concerns because they're also
11 witnesses. There are concerns because we are going out of
12 our way to provide for restitution, and all of that played
13 into a complex calculus.

14 Q That was it.

15 BY MS. [REDACTED]:

16 Q So, you said that there was a view that there's no
17 requirement to notify the victims. Who was that view coming
18 from?

19 A I can't -- I can't speak to person A, B, or C. I
20 can say that if -- if the office thought there was a legal
21 obligation, there are too many professionals involved in this
22 that if they thought there was a legal obligation to notify,
23 they would have done so.

24 At some point in this process, whether it was pre
25 or post, I know that there was some explicit consideration of

1 what are the obligations, and some discussion of, this is not
2 the obligations don't attach until indictment, and therefore,
3 this is a discretionary matter.

4 Whether that happened in September or in August or
5 October, I can't speak to. But I know that that was -- that
6 was talked about, and I think later on in the record, there's
7 an e-mail from our appellate chief in a different case that
8 highlights, well, there is this Texas case that just ruled
9 the other way. So, clearly, it's an issue that had been
10 talked about, and I recall it being talked about. I just
11 can't tell you the when, or the with who.

12 Q And would there have been any -- you've spoken on
13 one concern --

14 A Right.

15 Q -- concerning impeachment of the victims regarding
16 their --

17 A Yeah.

18 Q -- financial aspect of the NPA. Would there have
19 been any downside to consulting with the victims concerning,
20 hey, the U.S. Attorney's Office is considering a resolution
21 short of a plea that involves charges in state court. How do
22 you feel about that, victims?

23 A So, there may not have been a downside. It's
24 difficult to recreate. My understanding, going back 12
25 years, was that the victims would be aware of what was

1 happening in the state court and have an opportunity to speak
2 up at the state court hearing.

3 Q And where does that -- where does this come from?

4 A So, my understanding is that when he was going to
5 go into state court that they would have been notified that
6 that was an all-encompassing plea, that that state court
7 sentence would also mean that the federal government was not
8 proceeding.

9 Q But again, in terms of --

10 A Before -- your point is before it was signed.

11 Q Correct, so that they could have input --

12 A Right.

13 Q -- into trying, perhaps, if they wanted to, to
14 persuade you that that --

15 A Right.

16 Q -- was not a good idea.

17 A It may have -- it may have been a -- look, looking
18 back on it, it may have been a very good idea. I can't speak
19 to what the thought process was then, other than it was
20 discretionary and it was not legally required.

21 Q But at least as we sit here today, you cannot
22 recall a particular problem that somebody brought up to you
23 and said, we should not consult because of this problem?

24 A I don't recall that, and clearly, given the way
25 it's played out, it may have been much better if we had.

1 BY MS. [REDACTED]:

2 Q In the last 15 or --

3 A Right.

4 Q -- 20 minutes, you've several times referred to
5 discussions and we.

6 A Right.

7 Q I want to make it clear that so far, the people who
8 were involved in this case, the Epstein case in your shop
9 were you, [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. If -- is
10 there anyone else who was involved in those discussions other
11 than those five?

12 A Not to my recollection at this phase.

13 Q Okay. Okay. I just want to make sure --

14 A Yes.

15 Q -- we understand who you --

16 A Yeah.

17 Q -- who is encompassed --

18 A Right.

19 Q -- in that general discussion --

20 A Right.

21 Q -- of -- of the matter. Okay. So, on July 26, so,
22 we're now a month after that -- that presentation by the
23 defense counsel to the team, including [REDACTED] and [REDACTED].

24 A Correct.

25 Q There was a meeting in Miami, and it was, again,

1 among [REDACTED], [REDACTED], [REDACTED] by telephone, [REDACTED]

2 [REDACTED], as well as the two case agents --

3 A Mm-hmm.

4 Q [REDACTED] and [REDACTED]. Did you
5 know them, by the way?

6 A I did not, not to my recollection.

7 Q Okay, and also their supervisor, [REDACTED] [REDACTED]? Did
8 you know [REDACTED] [REDACTED]?

9 A Somewhat.

10 Q All right, and they were all in West Palm, of
11 course.

12 A Yeah.

13 Q And then ASAC [REDACTED].

14 A Yeah.

15 Q Do you recall her?

16 A Somewhat.

17 Q All right. They arrived -- or, at least, the trial
18 team -- the investigative team arrived ostensibly to discuss
19 the case. It turned out to be a very brief meeting
20 essentially consisting of [REDACTED] [REDACTED] coming in, announcing
21 that you had decided on a two year state resolution, and then
22 essentially leaving without -- that is, [REDACTED] [REDACTED] left the
23 meeting without discussion.

24 This was -- this has been described to us as
25 stunning to the investigative team. They had no idea this

1 was coming. This was -- they were completely blindsided.
2 The question is, were you aware that [REDACTED] [REDACTED] was going
3 to announce that you had decided on this resolution?

4 A So, I don't recall that, but I had decided and
5 endorsed this resolution at some point. And so, the fact
6 that I don't recall doesn't mean that -- I wasn't at the
7 meeting, I don't recall. But I clearly had endorsed this
8 resolution, and so --

9 Q Mm-hmm.

10 A -- his announcement would have been consistent with
11 my decision.

12 Q And again, that decision was reached without
13 consultation and discussion with -- and input from the line
14 AUSA. Does that trouble you?

15 A Sitting here today, I wouldn't have said that there
16 was no input from the AUSA. So, to the extent that she felt
17 there was no consultation or input, that would. From my
18 perspective, trying to recreate things from 12 years ago,
19 there had been discussions and consultations, and she had
20 spoken with [REDACTED] and [REDACTED] and -- and it would have been my
21 guess that views were known and articulated, and there was
22 good communication back and forth.

23 Q But again, that's your expectation of your people,
24 is that correct?

25 A Correct.

1 Q Okay. So -- and also, from our interviews, it --
2 there's -- our -- it's our understanding that you popped your
3 head into that meeting and said hello to the folks --

4 A Okay.

5 Q -- gathered. Do you have any --

6 A Again, I --

7 Q -- recollection of that?

8 A -- I don't remember the meeting.

9 Q All right.

10 A I may have -- I may have done that.

11 Q And it's not --

12 A Right.

13 Q -- completely uncharacteristic of you?

14 A Right.

15 Q Okay.

16 A It's not.

17 Q All right.

18 A No, because that was an internal meeting. That
19 wasn't --

20 Q Right, or -- correct, as opposed to the --

21 A Right.

22 Q -- scenario we were discussing this morning. All
23 right, this deal, and we're not talking about --

24 A Right.

25 Q -- the term sheet yet, two major prongs we want to

1 talk about. One -- the first one is forgoing federal
2 prosecution, right? Going for a state only disposition, and
3 I talked to you this morning about the five -- sort of the
4 five ways a case could proceed when it comes from the state.
5 You can either decline it and give it back to the state. You
6 can go ahead and indict, but the guy -- let the defendant or
7 defendants go to trial, or plead to the indictment. You can
8 indict, negotiate a deal, although you talked about some of
9 the issues there, and you can also file a complaint and
10 negotiate pre-indictment, or negotiate something.

11 A Right.

12 Q So, why was it that all of those other options were
13 rejected, and the state only deal was settled on?

14 A So, let me -- let me back up a minute, because I
15 think it was a little more -- a little more fluid. The way
16 the matter came to the office was, the state wasn't doing
17 enough.

18 It didn't provide for prison time. It didn't
19 provide for registration, and then you had the restitution
20 issue. There were legal issues, which I'm sure we'll talk
21 about. There were witness issues. And -- and we could go to
22 trial, potentially, and we may or may not prevail.

23 Alternatively, we could look at a pre-indictment
24 resolution, and at various points, the office went back and
25 forth between a federal pre-indictment resolution, and a

1 state pre-indictment resolution. I think you showed me an
2 exhibit where [REDACTED] said a 371 with the rule 11. There was
3 some discussion of other statutes at some point. I don't
4 recall the timeline.

5 And so ultimately, the focus was as an initial
6 matter, what -- how do we get this to resolution with some
7 flexibility for state versus federal? I think -- not I
8 think. I -- you know, there was a preference for deferring
9 to the state.

10 Q Where does that come from? What --

11 A In part because the legal issues are to some extent
12 also present in a federal resolution, because that then
13 becomes a precedent for other similarly situated cases.

14 Q Did you want to avoid a precedent?

15 A So, should we talk about the legal issues? Because
16 we -- we say we keep coming back to the legal issues, but --

17 Q All right. Talk about the legal issues.

18 A So -- so, when I was at civil rights, one of the
19 areas of responsibility that I had was trafficking. I was
20 very supportive. We set up some of the first human
21 trafficking task forces. I thought civil rights really
22 became aggressive. I think [REDACTED] was one of the point
23 people.

24 We brought in [REDACTED] to be a point person on
25 human trafficking. One of the background issues that -- that

1 informed the time and all those prosecutions and also the
2 development of the trafficking law was, what is the
3 distinction between trafficking and solicitation, and how --
4 and what is the distinction between a truly federal case and
5 a local case?

6 Because there was a lot of concern at the time
7 about federalizing something that is traditionally local.
8 Now, that was 12 years ago, and I think that those concerns
9 are no longer in play today nearly -- and certainly not to
10 the extent that they were 12 years ago.

11 **Q This was the state of play at the time you were the**
12 **AAG for --**

13 **A** At the AAG and afterwards as I was U.S. Attorney to
14 some extent, there was a lot of discussions about
15 federalizing state issues generally, and certainly in the
16 legislative issues that went back and forth, that was -- that
17 was a consideration.

18 **Q Wasn't that trend very swift as of -- was it '06**
19 **when the Adam Walsh Act was enacted?**

20 **A** So -- so, sure. I think we're trending in a
21 certain direction.

22 **Q All right.**

23 **A** And I think that trend has continued and
24 accelerated, but these were very -- these were valid, in my
25 opinion, considerations at the time, and one question to be

1 considered is, how would a court look at this -- because
2 different judges may look at these statutes differently. And
3 how would a court consider federal nexus issues?

4 And so, that was, to my mind, an important
5 consideration, because this was at the time to some extent
6 uncharted territory, and while we might prevail, and probably
7 would prevail, we may not have, and how is that weighed
8 against a certain plea with registration that would make sure
9 that the public knew that this person was a sex offender?

10 Q Okay, a couple of things. One, did you engage in
11 that -- that discussion, based on your experience, with [REDACTED]
12 [REDACTED]? Did -- did you -- did you engage in that kind of
13 conversation?

14 A I don't recall who I may have talked to, but this
15 was -- when -- when -- you will see in the record reference
16 to legal issues. This -- these were the legal issues, at
17 least to my mind, that that's referring to.

18 Q But did you sit -- I mean, not to be silly about
19 it, but --

20 A Right.

21 Q -- did you sit in your office and ponder them, or
22 did you in the context of --

23 A We would have -- we would have discussed them.

24 Q All right, we, being you, and --

25 A I and -- whether it's [REDACTED] or [REDACTED] or [REDACTED], I

1 wouldn't have sat and pondered them on my own, but we would
2 have had some level of discussion about these.

3 Q So, conversely, is it your understanding that --
4 that those three guys understood from you at least your
5 perspective on these legal issues?

6 A I -- let me -- let me push back. Those -- those
7 three professionals, because they are --

8 Q Oh --

9 A Yeah.

10 Q I'm sorry.

11 A Well, in this context, it's --

12 Q Colleagues, yes.

13 A Yeah. Yeah. So, there were two large buckets of
14 issues. One was the witness issues, and on those, I would
15 have deferred more to folks that are experienced trial
16 prosecutors. The other one are these legal issues.

17 Q Mm-hmm.

18 A And you see it with the fed -- with the reference
19 at the very beginning to the federal nexus --

20 Q Mm-hmm.

21 A -- and you see it throughout where -- these were
22 discussions that we had, and from the very beginning, what is
23 the federal nexus, and how do we make it clear that we are
24 not stepping on something that is a purely local matter,
25 because we don't want bad precedent for the sake of the

1 larger human trafficking issue.

2 Q Did you have those conversations with your three
3 subordinate colleagues in this case?

4 A I would have had those conversations with those
5 colleagues. Whether it was with all three, or with two, I
6 can't recall, but I would have had those conversations.

7 Q And do you recall whether anyone -- anyone among
8 them pushed back as, for example, [REDACTED] indicated
9 his view of some of those issues?

10 A So -- so, I don't recall specific pushback. I
11 can -- I can say where we concluded, which is there -- we are
12 comfortable enough with the law to believe that we are --
13 that if we need to go to court, we can do so ethically, and
14 we have a good chance of winning. Because if we could not go
15 forward --

16 Q Of course.

17 A Then -- then we just can't go forward, right? No
18 matter what outcome you want. Was it a slam dunk? Was there
19 some legal risk? Yes, there was some legal risk.

20 Q Mr. Acosta, you use the term a roll of the dice in
21 your press conference.

22 A Yes.

23 Q In -- there's a different -- I mean, at one end,
24 you have a slam dunk. I would submit that no criminal
25 prosecution --

1 A Right.

2 Q -- is a slam dunk.

3 A Correct.

4 Q Likewise, I would ask you to comment on whether any
5 prosecution is really a roll of the dice, given that a
6 prosecuting authority, in this case, the U.S. Attorney's
7 Office, will have always done investigation, persuaded at
8 least a majority of grand jurors to -- that they -- that
9 there is sufficient proof to bring an indictment --

10 A Right.

11 Q -- and so on. Do you -- do you -- would you still
12 hang your hat on a roll of the dice hook?

13 A So, I don't know if I would use that exact phrase.

14 Q All right.

15 A But let me -- let me just say, because you --
16 prodding grand jurors. From our perspective, sitting in the
17 office in 2006 and 2007, this is a case that someone comes to
18 you and says, this has been presented, we have no reason to
19 believe the state attorney acted -- we're not happy with what
20 they did, but we have no reason to believe that there was
21 funny business.

22 Q Misconduct?

23 A Misconduct.

24 Q All right.

25 A And let's assume that there is no misconduct,

1 because you don't want to assume that again still. So, the
2 state attorney took this, reviewed it, presented it to a
3 grand jury, and the grand jury came out with this kind of
4 recommendation. That at least is indicative of some -- some
5 other authority looking at this and making a judgement as to
6 what it looks like.

7 Q Are you aware that at least at the investigative
8 and line assistant level, there was -- they had understanding
9 and reason to believe that the state prosecutors had put in
10 witnesses into their grand jury and set about impeaching
11 them? I'm not --

12 A Right.

13 Q -- suggesting that this is misconduct, but it's a
14 way of approaching evidence before a grand jury, and if they
15 did that, it would be perhaps charitably for the purpose of
16 making it abundantly clear to the grand jurors how the
17 witness would fair --

18 A Right.

19 Q -- or not fair under aggressive cross-examination
20 at a trial and so on.

21 A Right.

22 Q So, were you aware of that at the time?

23 A I was not.

24 Q You were not.

25 A Right.

1 Q You were not aware that that was an actual concern
2 and understanding --

3 A That -- that there was --

4 Q -- by your team?

5 A That there was a concern that they basically --

6 Q Tanked the case.

7 A Tanked.

8 Q Yes.

9 A So, there was -- I --

10 Q You -- I just --

11 A -- I --

12 Q You didn't know that?

13 A I was aware of a concern about how the state
14 attorney -- how aggressive they were.

15 Q Right.

16 A There's a -- there's a distance between how
17 aggressive they were versus tanking a case.

18 Q Right, but I am telling you the concern by your
19 people at the ground level --

20 A Right.

21 Q -- was the latter.

22 A Understood.

23 Q Okay.

24 A Aware of lack of aggression, tanking the case, very
25 specifically, I mean, there might have been, hey, you know,

1 is there -- this looks really odd, but you've given a level
2 of granularity as to highly unusual conduct. So, my point,
3 there is at least a perspective coming out of the state.
4 There are legal concerns.

5 We believed -- at the end of the day, I thought we
6 would prevail, but they're valid, and then you overlay that
7 with witness concerns, and concerns as to how juries, which
8 were different in 2006 on these issues.

9 **Q What do you base that on, by the way?**

10 **A** It's --

11 **Q Because you're not a trial attorney anymore.**

12 **A** So, experience with how juries in South Florida
13 looked at these matters, and with how South Florida looked at
14 the project Safe Neighborhood -- I'm sorry, --

15 **Q It's childhood.**

16 **A** Project Safe Childhood run initiative generally,
17 and so there had been -- there had been prior instances where
18 we had talked about this, and we had gotten some pushback.

19 **Q From --**

20 **A** From within the office, from within the FBI.

21 **Q On what?**

22 **A** On -- on sort of sex cases more generally.

23 **Q And pushback in what regard?**

24 **A** Where should we put our resources? And so, there
25 was -- there was just a general -- just general pushback.

1 Q Okay, but there are a couple things there. One is,
2 the juries -- the juries -- the petite juries, and --
3 which --

4 A Right.

5 Q -- you -- I'd still like the answer on.

6 A Yeah.

7 Q And then the other is the FBI being loath to muck
8 around with these cases that they were not --

9 A Yeah.

10 Q -- yet --

11 A So --

12 Q -- engaged with.

13 A So, let's -- let's take them one at a time, you
14 know, and -- and in all candor, I think we're looking at this
15 through a 2019 lens. You know, at the time, and I've said
16 this in different forms, but you know, Weinstein was known
17 and about, and actions weren't taken, and Bill Cosby was
18 known about. And they're each -- go with me. They're each
19 different --

20 Q All right.

21 A -- but I do think the public looked at these cases
22 differently in 2006, and there are at least some
23 individuals -- I'm not saying it was the right view -- but
24 there are at least some individuals who would have looked and
25 said, this is a solicitation case, not a trafficking case.

1 Q All right. Who in your office -- who in the U.S.
2 Attorney's Office ever said that?

3 A So, this was -- this came up in the context of, how
4 would the victims do in court? And it wasn't just, you know,
5 how will they be impeached, but how will jurors look at the
6 fact patterns around this generally?

7 Q And who was -- who was talking --

8 A I can't --

9 Q -- about that?

10 A I can't say. I know that it was discussed. I
11 can't say A, B, C, or D. I --

12 Q Well, it wouldn't have been D, because it would --
13 D would be [REDACTED], and I think you would agree with
14 me that she would not --

15 A I would agree --

16 Q -- concede that.

17 A I would agree with you.

18 Q All right.

19 A With that, but my point is that when we're
20 talking -- so, when you're looking at victims in court today,
21 I think it's fair to say that the way we approach -- there's
22 been -- you know, there's been a lot of changes in victim
23 shaming, and the degree to which all of that is permitted.

24 The degree to which I think the public understands
25 that -- that girls, minor females, may be scared and may

1 testify differently. And I'm suggesting that it's important
2 to sort of think back to 2006 and understand that these
3 issues may have been viewed differently.

4 Q You -- you're -- you have not -- since leaving the
5 U.S. Attorney's Office -- been engaged in the investigation
6 and prosecution or handling in any respect of child sex
7 crimes, is that correct?

8 A That is correct.

9 Q So, on what do you base this -- is it -- is it a --
10 your cultural observation? Your perspective on the evolution
11 of popular culture, not in a derogatory way, that leads you
12 to that assessment?

13 A So, on a few -- certainly the law has changed, and
14 the law has become much more aggressive. So, for example, I
15 believe the law on proof of age has changed where proof of
16 age is no longer required.

17 Q The law has, but the case law even at this time was
18 already --

19 A What was --

20 Q -- reasonably clear on that.

21 A Was reasonably clear, and certainly moving in that
22 direction.

23 Q Correct. Wouldn't you have wanted to be at the
24 forefront of this?

25 A So, I believe I was at the forefront of trafficking

1 issues, and I think if you were to look at my civil rights
2 record, I really was at the forefront of trafficking issues.

3 Q Even the U.S. Attorney's Office had a very robust,
4 as we discern it now, a very robust initiative. It maybe
5 wasn't a formal initiative, but commitment to prosecute these
6 cases.

7 A Correct, and -- and I fully supported that. All
8 the more reason why, if there is an issue, and there is a
9 potential for some judge, rightly or wrongly, whether I agree
10 or not -- because you can't always predict -- even though you
11 think you'll prevail, you can't always predict where holdings
12 go. To --

13 Q Are you talking about on appeal?

14 A On appeal or in trial to --

15 Q Right.

16 A -- to issue a negative precedent on travel for
17 purpose of, or on federal nexus, and if you think back at the
18 time, on appeal, there were -- there's a lot of case law on
19 commerce clause and federal nexus.

20 Q Right.

21 A And so, I think that that is an important and valid
22 factor that goes into the decision making that assesses the
23 risk of trial, not just from the -- this -- you know, how the
24 victims will testify in this particular case, but also what
25 this means to the greater -- to the greater effort.

1 Q I understand that completely. What I -- what I am
2 not hearing is where a voice other than you and your team in
3 this case was being heard, like [REDACTED]. Did --
4 did you --

5 A And --

6 Q -- talk to him about these issues? Because --

7 A Not --

8 Q -- CEOS --

9 A Not to --

10 Q -- was at the forefront of --

11 A Not to my recollection.

12 Q All right. Wouldn't --

13 MR. TODD: Let [REDACTED] finish her questions.

14 THE WITNESS: Okay. Sorry. Sorry.

15 MS. [REDACTED]: We're all --

16 THE WITNESS: I apologize.

17 MS. [REDACTED]: We're on a mutual role here.

18 THE WITNESS: Okay.

19 BY MS. [REDACTED]:

20 Q But wouldn't -- if you'd had those concerns,
21 perfectly well founded, why not reach out and engage with
22 CEOS and see what their assessment was about the
23 vulnerability that this case might expose your office to?

24 A So, I can't reconstruct that 12 years later. You
25 know, one interesting question is would CEOS have come to

1 mind versus civil rights crim, because coming from civil
2 rights crim, I -- you know, my primary trafficking contacts
3 would have been --

4 Q Did you pick up the phone and --

5 A Not --

6 Q -- call them?

7 A Not to my recollection.

8 Q So, I guess what I'm -- what I'm getting at is you,
9 based on substantial experience and a commitment to these
10 cases in your office -- the U.S. Attorney's Office -- had
11 formed your own analytical analysis -- your own analysis
12 legally.

13 You've told us you've discussed this or made those
14 issues and concerns known to the people who were below you,
15 at least immediately below you, and that it -- that's where
16 it sort of rested. There was not an effort to go out and
17 enhance or add to your understanding of the case, and legal
18 issues.

19 A So, to my recollection, I don't recall, and it's --
20 we'll get into perhaps -- you know, I -- from my impression,
21 I actually thought I was being more aggressive than main
22 justice would feel comfortable with, and --

23 Q More aggressive in what respect?

24 A In my interpretation and how comfortable I was
25 going forward than main justice, and we can get into that,

1 but I thought I was being more aggressive, not less, and so I
2 had these concerns. I did not vet them at main justice.

3 Q Okay. When you said more -- more aggressive, are
4 you talking about the fact that you crafted this state
5 disposition, or that you were more forward leaning on the
6 potential of prosecuting Epstein federally?

7 A More forward leaning.

8 Q And yet you didn't. You didn't -- you didn't lean
9 sufficiently far forward to actually pull the trigger and
10 have an indictment returned.

11 A So, I would push back on that, and that from my
12 perspective, we were leaning forward, because we did
13 prosecute him by deferring to the state, and ensuring that at
14 the state --

15 Q All right.

16 A -- he had a sentence that he -- where he went to
17 jail.

18 Q All right. Okay. I want to sort of move on. I
19 want to ask you a question about 11C1C, please, that you
20 mentioned earlier.

21 A Okay.

22 Q And sort of alluded to here, when we --

23 A Right.

24 Q -- talked about judges, and we talked about
25 dismissing charges from an indictment. Was your -- what was

1 your position as U.S. Attorney with regard to the binding
2 pleas in an 11C1C plea agreement?

3 A We used them very rarely.

4 Q But why?

5 A As a typical matter, judges did not like them.

6 Q And -- and was that something that as U.S.
7 Attorney, you engaged with the judges on, or was that simply
8 a matter of seeing what they did with them?

9 A It -- it happened before I got there. I suspect it
10 continued to happen after I left.

11 Q All right. Okay. That said, were there some
12 occasions in which the office, if you recall at all, did do
13 11C1C --

14 A There --

15 Q -- plea agreements?

16 A -- may have been. I don't recall.

17 Q Okay. All right.

18 MR. [REDACTED]: And [REDACTED], before we move onto --

19 MS. [REDACTED]: Yes.

20 MR. [REDACTED]: -- another issue, can I --

21 MS. [REDACTED]: Yeah. I'm --

22 MR. [REDACTED]: -- go back a second --

23 MS. [REDACTED]: -- still with federal -- I'm still
24 on the federal prosecution, but go ahead.

25 BY MR. [REDACTED]:

1 Q We had talked about the -- you talked about the
2 state grand jury, and how their decision informed your
3 decision, and you said, well, what state grand jury did with
4 this. What was your understanding of what this was? Like,
5 what exactly the state grand jury looked at?

6 A So, so, let me back up. I said it was a factor
7 that informed, not just --

8 Q I understand.

9 A -- determined. So, my understanding is that at
10 least some core amount of facts were presented, and I
11 understand that since it was at the state, the FBI may have
12 found additional witnesses, but when it was presented, the
13 very reason the office took it in the first place was because
14 it was presented to the state, and it went to a grand jury,
15 and the recommendation from the grand jury was for a -- you
16 know, a statute that would not require jail time, and that
17 seemed wrong.

18 But the very fact that it was presented to a grand
19 jury certainly was one of several factors that we considered,
20 because it at least indicated some level of how individual
21 jurors may view this.

22 Q Do you have any recollection that the state grand
23 jury presented a single witness, who, as [REDACTED] talked about
24 earlier, that they impeached?

25 A I have -- I have read that it was a single witness.

1 Since then, I don't have an independent recollection of that.

2 Q Okay.

3 BY MS. [REDACTED]:

4 Q And were you -- how familiar were you with Florida
5 state criminal procedure?

6 A It depends what -- what area.

7 Q Well, you never practiced there, right?

8 A Correct.

9 Q I forget what law school you went to.

10 A Not Florida.

11 Q Not in Florida, and you were not a member of the
12 Florida bar.

13 A Correct.

14 Q Correct. So, really any knowledge you had would
15 have sort of been picked up?

16 A I should -- I should point out that a number of
17 AUSAs in Florida are not a member of the Florida bar, so
18 that's not unusual.

19 Q Oh, okay. No -- I'm not -- I'm not --

20 A Right.

21 Q -- suggesting --

22 A Right.

23 Q -- otherwise.

24 A And in federal employment, you can move from --

25 Q Right.

1 A Yeah. So, I had been U.S. Attorney for quite a
2 while, and then I -- you know, I think we would have been
3 interacting with the state system sufficiently, and if there
4 was something that I had questions on, I could certainly ask.

5 Q Were you aware that in the Florida system, grand
6 juries were not required to be used to bring federal criminal
7 charges except in capital cases?

8 A Yes.

9 Q Okay, so even bringing a case to a grand jury was
10 an -- in a non-capital context, was somewhat unusual?

11 A An indication that there were some concerns or
12 something, so the state attorney, presenting it in the best
13 possible light, is looking to test the case.

14 Q All right, and without getting into any substance,
15 did you at any point become aware of the kind of reaction
16 that the line AUSA, [REDACTED], was getting from the
17 federal grand jurors to whom she was presenting?

18 A I did not.

19 Q All right. Another aspect of concern that I think
20 you mentioned in your press conference was the concern about
21 labelling or putting the girls -- the girls -- the victims in
22 a position where they would be labelled as prostitutes,
23 right? Do you recall --

24 A I'm not sure --

25 Q -- mentioning that?

1 A -- I phrased it that way, but I -- I take -- I take
2 your --

3 Q We'll defer to the record.

4 A Right.

5 Q But -- but you did -- you did express concern, and
6 our understanding is there was some expression of concern in
7 the U.S. Attorney's Office among the folks about the victims
8 having to self-identify, or --

9 A Right.

10 Q -- admit that they were sort of prostitutes. The
11 disposition that was reached in the state -- and that -- and
12 that -- avoiding that was something to be desired --

13 A Yes.

14 Q -- right?

15 A Yes.

16 Q The charge to which Epstein was ultimately require
17 to plead guilty did just that. It was a solicitation to
18 prostitution of minors. Was that -- did that factor in at
19 all as a -- as a -- as an issue of -- that -- that was not
20 being addressed at all --

21 A Right.

22 Q -- by the state disposition?

23 A So, I -- I was aware of and signed off on this
24 three point --

25 Q The term sheet?

1 A -- it's in here somewhere -- term sheet. In terms
2 of the negotiation over which state statute was used, and
3 which victims, that is something that -- that -- to my
4 understanding, was being handled by Ms. [REDACTED], and from
5 my perspective, she would certainly have had sensitivity to
6 that.

7 Q And do you have any idea how that three -- those
8 three counts or charges were reduced to simply one?

9 A I do not. That would be a function of the course
10 of the negotiations.

11 Q Why was -- why wasn't any reasoning for this
12 disposition -- deferring to the state -- set forth in
13 writing? Why didn't anyone do a memo explaining what your
14 reasoning was, or what the office's reasoning was?

15 A I can't speak to that directly, but I can say that
16 it would have been unusual. I don't recall other cases where
17 there was a, this is the reason for our disposition type
18 memo. At least not memos that came to me.

19 Q Okay. I'm showing you two, and the caption is --
20 is all that's relevant here, but there are two memos that are
21 both dated February 2006, and March 2006. One of them is in
22 fact addressed to you from [REDACTED], and it attaches a
23 memo, which is a require for pretrial diversion to resolve
24 case against an individual named Ronald Sasse, S-a-s-s-e.

25 And it is a child pornography possession case in

1 which the conclusion was that the defendant merely possessed
2 it, and that it was a case that should be resolved by
3 pretrial diversion, and I'm just only bringing that to your
4 attention --

5 A Right.

6 Q -- as well as this second one that I'll show you,
7 to show you that there are cases involving, you know, child
8 sex crimes, where it's -- the office did see fit to set forth
9 its analysis and reasoning for the proposed result.

10 The second document, dated February 15, 2006, is a
11 memo, not to you, but to [REDACTED] [REDACTED] in his capacity as chief
12 of the criminal division, and it requests authorization to
13 enter into a plea agreement with a five year cap, and it --
14 it is a C1C plea, and the handwritten notes indicate that the
15 supervisors concurred in it. Again, I'm simply suggesting
16 that there -- that there are at least some examples where the
17 office, you know, in these kinds of cases --

18 A Right.

19 Q -- did --

20 A So --

21 Q -- put it to paper.

22 A So, I can only speculate.

23 Q Mm-hmm.

24 A And questions I would have is, to what extent was
25 this put on paper, because it was a case that [REDACTED] or others

1 were not involved with. So, this was the way that in this
2 case, the chief of the -- you know, the economic crimes, or
3 in this case, you know, [REDACTED] is chief of the criminal
4 division, we're communicating information rather than walking
5 in and having a discussion.

6 We're just communicating it on paper as a way to
7 obviate a discussion. In this particular case, there were --
8 there was discussion, there was communication, and so a memo
9 to sort of establish -- in other words, is this a required
10 approval memo, or is this a memo that says, in lieu of
11 getting together, where are the facts, let me know what you
12 think.

13 Q All right, and was there not a practice, or even a
14 requirement in the office that plea dispositions should be
15 memorialized in writing in -- in -- with the rationale?

16 A So, to the extent that a line attorney might be
17 seeking permission from a supervisor --

18 Q Mm-hmm.

19 A -- on a plea disposition, I would think that they
20 would communicate that in writing as the cleanest, most
21 typical way when you've got 20 or 30 line attorneys and one
22 supervisor. That is not necessarily the only way, and
23 certainly as U.S. Attorney, I don't recall a -- you know, a
24 practice of memorializing to me what plea dispositions would
25 be.

1 Q Okay, and in this case, you were involved in the
2 case, right?

3 A And in this case, I was involved, and so to be
4 clear, I'm not -- I -- I'm not saying that I disagreed with
5 this, and I'm not walking away with it. And so, to the
6 extent that I may have in a meeting said this looks good,
7 that may have obviated a need to --

8 Q All right.

9 A -- write that up.

10 Q Okay. Thank you. Another aspect of the state
11 resolution that raises concern -- and it -- and let me make
12 clear that -- that many of our questions are framed in this
13 way, but we are also reflecting a concern that's been
14 expressed in the press, and in the public, and by others.

15 A I understand. Understood.

16 Q So --

17 A Understood.

18 Q -- we're sort of coming through that lens. So,
19 another aspect of the state resolution that raises concern
20 is, doesn't it appear that the -- that by going -- sending
21 this matter back to the state, there's more federal
22 interference, more federal involvement in the state process
23 than there would have been if you had just kept the case?

24 A So in hindsight, one of the issues I think in this
25 case is after the agreement, and you know, we keep calling it

1 a non-prosecution agreement, and I kept saying call it an
2 agreement to defer in favor of state prosecution.

3 Q A DPA instead of an NPA?

4 A Right.

5 Q Why wasn't it called a DPA, by the way?

6 A I don't know. There's one e-mail where I suggested
7 putting in reference to petite policy.

8 Q Right.

9 A And [REDACTED] [REDACTED] said, looks strange, take it out.
10 There's another e-mail in the record where I keep saying --
11 everyone keeps calling it an NPA, call it a deferred to
12 state. So, I can't -- you know, I can't say why not, but
13 it's an important distinction.

14 Q But if you had said -- it -- I don't want to go --

15 A Yeah.

16 Q -- to far afield, but if you had said, uh-uh, call
17 it, no, call it a deferred prosecution --

18 A Right.

19 Q -- agreement, they would have changed it, right?

20 A They would have, and I -- I actually asked that we
21 have a clause based -- I don't have the independent
22 recollection of this, but based on the record that we include
23 a clause saying that we were doing this in light of the
24 petite policy to defer, and [REDACTED] [REDACTED] pushes back and says,
25 I haven't seen that, and he's the local expert, so I deferred

1 to him. I take responsibility, but it's an important
2 distinction. And so -- I'm sorry, I just lost track of your
3 question.

4 Q We were talking about, doesn't this involve more
5 federal interference?

6 A Could I -- could I grab a Red Bull from you that I
7 bought?

8 MR. HERRON: Yeah.

9 THE WITNESS: Sorry, just a --

10 MS. [REDACTED]: Do you want to take a five minute
11 break?

12 THE WITNESS: Would you mind?

13 MS. [REDACTED]: Not at all.

14 THE WITNESS: Yeah.

15 MS. [REDACTED]: Call it, please, at any time.

16 THE WITNESS: Let me grab the Red Bull.

17 MS. [REDACTED]: Off the record.

18 (Off the record.)

19 BY MS. [REDACTED]:

20 Q All right. Thank you. All right. Back on the
21 record. So, Mr. Acosta, I was asking you about -- didn't
22 this -- didn't this resolution end up injecting the feds into
23 the state business in a pretty aggressive way?

24 A And -- and so what I was saying is in hindsight,
25 one of the -- one of the issues here is I think this would

1 have gone very differently if after the agreement to defer in
2 favor of state prosecution, all the victims knew about this,
3 they had gone into state court, he had pled October --
4 whatever the date was -- had been sentenced, had served his
5 sentence, and case over.

6 And so, one -- you know, to the extent there are
7 lessons learned, an attempt to provide a -- an attempt to
8 backstop the state here, rebounded, because in the process,
9 it got convoluted, and complex, and ended up being arguably
10 more intrusive than it would have had this just been, here is
11 what we'll do, go back to the -- if you go back to the state
12 and work this out, but --

13 Q Would that have required or depended on cooperation
14 from the state authorities?

15 A So, I think I was clear, and my recollection is
16 this was an issue where I said it is up to you, and one of
17 the -- I edited a few parts of this. I got involved
18 selectively.

19 Q Exhibit 21b is --

20 A Oh.

21 Q -- your edits.

22 A Okay. So, let's -- before I say I think, let's go
23 to --

24 Q But --

25 A -- 21.

1 Q But before we talk about 21b, as a general matter,
2 you talked earlier about the more -- the sort of more
3 typical, usual way in which the U.S. Attorney's Office and
4 local authorities -- prosecutive authorities would work, and
5 that is cooperatively, and would decide who gets what, and --

6 A Right.

7 Q -- who has what responsibilities. Here, there was
8 not such cooperation, apparently.

9 A There wasn't, and I was going to say, to my
10 recollection, we can look at whether it's in 21b or not, one
11 of my edits was make it clear that it's up to him to figure
12 this out with the state attorney, because we as federal
13 prosecutors are not going to walk in and dictate to the state
14 attorney.

15 Q But in affect, you did.

16 A I --

17 Q By -- you did -- you did it through Epstein.

18 A I -- I understand. And so, in an attempt to -- in
19 an attempt to reach a resolution, particularly as convoluted
20 as this got, I do think a lesson learned is that it ended up
21 perhaps being worse that if we would not have in the first
22 place.

23 Something -- I -- we, my team, we very much thought
24 that it was important that he go to jail. That it was
25 important that he register. How we got to that ending is

1 unusual, and as an attempt to factor in, here are all the
2 issues around the federal statutes, the concerns about
3 trafficking law, here are the victim issues as to trial, and
4 how -- you know, here is -- here are all these things. And
5 so, on the one hand, deferring to state -- to the state,
6 appears -- appears logical.

7 On the other hand, the way it played out was a lot
8 more confrontational with the state than I would have hoped,
9 particularly because rather than go back to the state and
10 work it out, in the collateral -- subsequent collateral
11 attacks, they almost tried to state to circumvent and to --
12 you know, to get the state to circumvent and undermine our
13 agreement.

14 Q And that was -- when you say they, you mean the
15 defense team?

16 A Yes.

17 Q So, you could have -- you could have obviated that
18 whole thing if you had just offered the same result, which
19 would be a plea to a criminal charge with, for sake of
20 argument, a two-year cap, which would have required a C1C
21 plea.

22 A Right.

23 Q And you'd get your restitution, because federal law
24 requires it. They would have been able to proceed under 18
25 USC 22.55 anyway, and he would have gone to jail and been

1 registered as a sex offender. All just within the normal
2 course of doing business as the U.S. Attorney's Office. Why
3 not pursue that? Who was -- who was calling the shots that
4 said, yeah, we'll do it, but it's got to be with the state?
5 Was that the defense?

6 A So, something that -- that wasn't the defense.
7 Something that I think is important to sort of lay out here,
8 is the -- the -- sort of the terms sheet was developed really
9 early in the case.

10 Q Excuse me, it's dated, it's presented to the team
11 by [REDACTED] [REDACTED] on the 31st of July. Do you consider that
12 early?

13 A So, from -- let me -- let me clarify from my
14 perspective. It was developed and approved by me before I
15 became involved with interactions with the defense team.

16 Q In the sense that you only met with the defense
17 team for the first time in the person of Ken Starr and Jay
18 Lefkowitz and company on the 7th of September.

19 A And it wasn't the 7th of -- yeah, the 7th of --

20 Q The 7th of September.

21 A -- September.

22 Q 2007.

23 A And that is important, because it goes to -- there
24 is a lot of buzz in the media, did they influence this
25 outcome? To my recollection, they may not even have been

1 attorneys of record in this case, and I don't know when they
2 came onto the case.

3 Q Well, there's an e-mail in the package that
4 indicates that you got a call from K and E --

5 A Right.

6 Q -- on -- on or about the 6th of August.

7 A After the terms sheet was --

8 Q Correct.

9 A -- presented, and so I say that because we can --
10 we can -- and probably will talk about whether those terms
11 were the best judgement or not, but once those terms were
12 agreed and approved, with the exception of the 24 to 18 as a
13 material, and then we can talk about how that happened, we
14 stuck, and I backed the office, and I backed [REDACTED] in her
15 negotiations on those. And so, I just -- I think that's
16 important to note.

17 Q I understand. I -- that's not, for the moment, the
18 focus.

19 A Fair.

20 Q It's the terms themselves, and in this case, the
21 state court disposition, everything that you wanted to get
22 with the state court disposition, you could have gotten with
23 a federal plea --

24 A We --

25 Q -- much more easily.

1 A We could have, and there was certainly some
2 consideration of a 371, and that may be -- you know, in
3 retrospect, it would have obviated a lot of issues.

4 Q So, who said no, that's not --

5 A So --

6 Q -- acceptable?

7 A So, there is e-mails that at the time [REDACTED] spoke to
8 me about it. I don't recall, but I'll take responsibility
9 for -- for favoring -- or, not for favoring, but if that's --
10 if that's what happened, I will take responsibility. From my
11 perspective, and my recollection, there are two -- two
12 factors here.

13 Well, I don't know if it's two factors, but at
14 least two factors. One, concerns about how this interacts
15 with federal law, and what precedents this might mean for
16 other trafficking cases. Two, a southern district's general
17 dislike for rule 11, and -- and then third, there were other
18 federal statutes that were considered at various points, and
19 I remember looking at those and saying, yeah, I don't -- it
20 doesn't quite -- it doesn't quite fit.

21 Q To -- just to be clear, that process of looking for
22 the square peg that --

23 A Right.

24 Q -- would fit into the round hole of -- of the two
25 years that had been committed to was a process that came

1 before the NPA was actually negotiated, at a time when [REDACTED]
 2 [REDACTED] was working with defense counsel to see if there
 3 was a federal charges that could be within the two year --

4 A Correct.

5 Q -- scope that would allow Jeffery Epstein to serve
 6 his time in a federal facility, rather than in a state
 7 facility. Is that --

8 A That --

9 Q -- is that correct?

10 A -- is correct.

11 Q Okay.

12 A And I recall -- I recall at least one of those
 13 ideas, and I recall that my general reaction to it was, we're
 14 pushing the law that just looks odd, and we don't want to go
 15 there.

16 Q Are you talking the assault on an airplane, or the
 17 obstruction of a witness, or --

18 A I actually -- my recollection is not about the
 19 assault on the airplane --

20 Q Okay.

21 A -- but about his home being a special maritime
 22 jurisdiction.

23 Q Oh.

24 A Which is -- no.

25 Q Definitely square peg in round hole.

1 A Right.

2 Q Correct? But there were -- so, I guess it -- is
3 it -- is it -- is it accurate that from your standpoint, an
4 11C1C federal disposition was not going to be acceptable?
5 That that's not something that you would approve?

6 A It would have been unusual, I don't recall with
7 specificity, but I can -- based on circumstances, infer that
8 it would have been unusual, and -- and I would have looked at
9 it and said this isn't -- this isn't typical. I'm not
10 comfortable.

11 Q So, why not -- why not offer the five year hit, and
12 say that's it?

13 A I wish I could speculate. I mean, I could sit here
14 and speculate after the fact. I can speak to what I recall.
15 I can speak to what I approved. I can speak to the
16 considerations that went into it. There are all sorts of
17 things that in hindsight we may or may not have done, which
18 may have worked out well or not. I -- I can't answer that.

19 Q So, I guess -- I guess the -- sort of the big
20 unanswered as yet question is, why was there a fixation on
21 the two years when that's not something that comported with
22 anything that was possible in the federal scheme?

23 A So, speaking to the two years, I don't remember
24 with specificity. I -- let me give you my general
25 recollection --

1 Q Mm-hmm.

2 A -- and then let me speculate.

3 Q Mm-hmm.

4 A My general recollection is that there were earlier
5 charges, you all may know those in more detail than I do, but
6 there were earlier state charges that were brought.

7 Q That were brought?

8 A That -- I'm sorry, not that were brought, that were
9 contemplated.

10 Q Of which there is no public record?

11 A There is -- I don't know if there's public record
12 or not. I can just say my recollection is that there were
13 earlier state charges that were contemplated. The state
14 attorney chose to not pursue those earlier state charges and
15 take it to a grand jury.

16 From public information, my understanding is that
17 that's why Chief [REDACTED] became upset. My general
18 recollection is that the two years represented what he would
19 have received if the original recommendation, or the original
20 view of the state attorney's office had gone through, and it
21 hadn't been brought to the grand jury, and I would -- I would
22 sort of point to -- you know, in this Exhibit 3 -- I thought
23 it was in Exhibit 3.

24 Somewhere, there's a reference to -- as you can see
25 it -- Exhibit 3, page three, as you and the agents conceded,

1 had Epstein been convicted of a felony that resulted in a
2 jail sentence and sex offender status, neither the FBI nor
3 our office would have interceded.

4 Q But that is completely silent as to what those
5 original charges may have been, or --

6 A I --

7 Q -- how they related to --

8 A I understand.

9 Q Okay.

10 A And so, so, to just close the loop, my
11 understanding is that those two years reflected what that
12 would have been such that the case would not have come to
13 federal authorities in the first place.

14 Q Okay. Where did that information come from? Who
15 said, oh, those charges would have resulted in a two year
16 sentence? Was that something that was analyzed by your
17 office, or did it come from defense counsel, or --

18 A I --

19 Q -- from who?

20 A I can't -- I can't speculate. It had to come from
21 someone.

22 Q It did not come from you, is that correct?

23 A So, I would not have the knowledge to know what
24 that charge would have resulted. As an initial matter, a
25 penalty that says up to blank years is rarely that number of

1 years, right?

2 Q Right.

3 A By the time you apply guidelines and all that, and
4 so I would not have the knowledge to know how to calculate
5 that state sentence.

6 Q And in fact were you aware that Florida did have
7 its own state guidelines -- sentencing guidelines?

8 A Generally, I -- I know that --

9 Q Right.

10 A -- there is a process.

11 Q Right.

12 A Might I at some point have said, you know, Mr. or
13 Ms. AUSA, or management team member, if this had been done
14 the right way in the state, what would he have gotten, and
15 someone comes back to me, possibly, maybe someone at some
16 point had said, look, this would never have come to us if it
17 was done the right way in the state, and this was the term
18 that he would've gotten.

19 At some point in this process, my general
20 understanding is we got to that two years based on not
21 random, but based on, this was the calculation that he would
22 have received.

23 Q Right, and to make sure we understand, is that your
24 actual recollection, or is it your belief based on what you
25 know happened that that's the way it --

1 A So --

2 Q -- happened?

3 A So, it is my recollection of my understanding,
4 which is convoluted, so let me --

5 Q Yeah.

6 A It is how I recall viewing the term sheet when I
7 approved it.

8 Q Okay.

9 A How it got into -- and so, if we got to the term
10 sheet --

11 Q It's 21 -- no, it's not.

12 A It's -- it's one of these exhibits.

13 MR. [REDACTED]: 15.

14 BY MS. [REDACTED]:

15 Q Thank you, 15.

16 A 15. So, if we go to the terms sheet, Epstein
17 pleads guilty -- contender to an information follow --
18 charging him with -- these particular statutes are -- I am
19 not familiar with, but I would have assumed that either [REDACTED]
20 or someone else would have selected them appropriately. It
21 makes a binding recommendation to serve at least two years in
22 prison.

23 Q Let me back up if I could. Those three statutes,
24 did you understand those three statutes to be the three
25 statutes that -- or, to be the statutes that the state

1 originally was going to bring?

2 A I can't speak to that.

3 Q You don't know.

4 A I don't know.

5 Q So, you don't know what the statutes were?

6 A Yeah.

7 Q Okay.

8 A Yeah. You know, it makes a joint binding
9 recommendation at least two years in prison. My -- my
10 understanding, my recollection of my understanding, when I
11 reviewed these terms, is that that reflected what he would
12 have received if he had -- if the state had gone through with
13 an initial -- with an initial charge, and from our
14 perspective at the time, that would have obviated the need in
15 the first place to have engaged federal authorities. Agree
16 or disagree with the logic, I'm trying to explain the logic.

17 Q Mm-hmm. No, I understand. Thank you for that
18 clarification. Is it -- you posited a couple of
19 possibilities that you might have said, you know, gee, what
20 would --

21 A Right.

22 Q -- he be looking at if --

23 A Right.

24 Q -- the state had done what it originally set out to
25 do or was supposed to do. Is it -- how also likely is it

1 that someone came to you, one of your people, and said, hey,
2 I suggest we go with two years, because the same reason.

3 A It's --

4 Q In other words, it came from --

5 A Right.

6 Q -- somebody else to you, and you agreed.

7 A So, it's very difficult to reconstruct this in
8 retrospect, in part because I don't want to leave the
9 impression that there was one meeting where this was
10 discussed --

11 Q Mm-hmm.

12 A -- as opposed to, you've got -- you're sitting
13 across the hall from someone, you're sitting down the hall
14 from someone. There are ongoing discussions, how do we
15 resolve a matter that has some thorny legal questions, some
16 difficult victim witness questions, and this is the kind of
17 back and forth where I might have indicated a concern,
18 someone was trying to address that concern, or I might have
19 asked the question. It -- it's --

20 Q Well, you've already told us that you did express
21 concern --

22 A Right.

23 Q -- about the case, and somebody -- and you were
24 having conversations with [REDACTED], possibly [REDACTED],
25 correct?

1 A Correct.

2 Q And is it possible -- does it -- is it reasonable
3 that one of them might have come up with a solution for you
4 to your problems?

5 A And that's the point that I'm --

6 Q Okay.

7 A -- trying to make. It's certainly possible, and
8 it's difficult to reconstruct that 12 years after the fact.

9 Q All right. All right. I want to go back to wind
10 up this -- this concern about engagement with the federal --
11 I mean, engaging the federal system into the state process.
12 21b is the exhibit that is your comments really on the very
13 final version of --

14 A Right.

15 Q -- the NPA on September 24, and the -- the language
16 is quite striking to us in this regard, looking at the -- at
17 the first e-mail there, you've talked about deleting the
18 petite policy portion upon [REDACTED] recommendation, and
19 inserting global resolution language which you've proposed.

20 And then you then say, "I'm not comfortable with
21 requiring the state attorney to enter into a joining
22 recommendation," and then you propose essentially taking out
23 a mention of the state attorney's office regarding the -- the
24 sentence recommendation, and then you also note, "I'm not
25 comfortable with requiring a state court to stick with our

1 timeline," and you ask that the reference be softened -- your
2 term is to soften.

3 You also use soften below when you talk about
4 your -- making it -- a concern about making Epstein an agent
5 of the U.S. regarding negotiations. So, you're really -- and
6 then at the very top, in the -- in the later follow up e-
7 mail, you express concern about, "Do we really need to set a
8 date for his reporting? I'm very nervous about that. If I
9 were a judge, I would be upset by the federal government
10 telling a state court how to manage their calendar. Can we
11 delete?"

12 A Right.

13 Q So, clearly you're very mindful, right, of the
14 importance of not injecting the federal sovereign into the
15 state sovereign.

16 A Correct.

17 Q Fair? All right, but yet, this whole set up, the
18 whole NPA did require certain actions to occur, however they
19 came about, in the state, because of the federal requirement.

20 A Yes.

21 Q And why was that a good idea?

22 A In hindsight, the complexity that this took on
23 clearly is something that -- that if I was advising a fellow
24 U.S. Attorney today, I would say, think it through. I do
25 think it would have played differently if he had actually not

1 done all the collateral deals and stuck to what was --

2 Q But that came later.

3 A It --

4 Q This is before it's signed.

5 A It came -- it came later, but let me -- let me at
6 least say that, and stuck to October 26th, but look, I
7 understand your point, and -- and the response that I can
8 give was, you have -- we had these concerns, but we also
9 thought it was very important that he serve some real
10 punishment, and that he register. And whether -- whether we
11 balance that or not, a lot of people are going to be
12 questioning for a long, long time, but that's how we balanced
13 it.

14 Q Because the state disposition was not a
15 precondition to achieving those two objectives. You could
16 have done it with a federal plea, serving time --

17 A Arguably --

18 Q -- and the offender registration.

19 A Arguably, we could have done it with a federal plea
20 if judges would have gone -- if judges would have gone for
21 rule 11s, which in the Southern District they tend not to,
22 but arguably. I --

23 Q Okay. Okay. I just wanted to --

24 A And you know, again, this is -- this is a hindsight
25 thing, but yes.

1 Q It is, but what we're focusing on is not so much
2 the hindsight as the -- at the time, did this make sense?
3 And it seems that you all were putting in so much effort, and
4 it was so hard to make this come together and work, that
5 it -- it's striking that it didn't collapse of its own -- of
6 its -- of its own weight.

7 A And to that point, let me say, you know, it's also,
8 if I had to speculate, one question that I'd -- that I'd ask
9 is, everyone's putting in all this effort. You know, [REDACTED]
10 put in a lot of work on the negotiations with the defense
11 counsel that were somewhere between zealous and difficult.

12 Q Meaning defense counsel were --

13 A Yeah.

14 Q -- between zealous and --

15 A Yeah.

16 Q -- difficult?

17 A Yeah. Whether there's zealous advocates or cross
18 line to rude, we can have conversations about, and at what
19 point, you know, would it have proceeded differently if folks
20 said, let's take a big step back, and let's seriously
21 reconsider? But everyone was very, let's get the job done,
22 let's put him in jail. And I -- look, I'm speculating in
23 hindsight.

24 Q But could you not have pulled the plug at any time
25 before it was signed? I mean, clearly by the morning of that