

From: [REDACTED]

To: [REDACTED]

Cc: [REDACTED]

Subject: Hammad Memo - Epstein Death Investigation

Date: Wed, 14 Aug 2019 22:49:41 +0000

Hammad Memos under NY Rule of Professional Conduct 4.2 are approved seriatim by the Unit Chief (criminal) or Deputy Chief (civil); Civil or Criminal Professional Responsibility Officer; and Division Chief.

Requesting AUSA: Donaleski/ Roos

USAONo: 2019R01059

Investigation/Complaint/Arrest/Indictment: Investigation

Covert or Overt Contact: Overt

Ongoing, Additional, Different Crime (Yes/No): Yes

Any Special Precautions (discuss below) (Yes/No): Yes

Bar(s) of Admission: New York

Discussion:

We are currently investigating the circumstances surrounding the August 10, 2019 apparent suicide of Jeffrey Epstein while in the custody of the Bureau of Prisons ("BOP") at the Metropolitan Correctional Center ("MCC"). In particular, we are investigating MCC staff's (i) decision not to reassign a cellmate to Epstein on August 9, 2019, contrary to regular BOP practice and direct orders from the Warden; (ii) the failure of correctional officers assigned to the Special Housing Unit ("SHU") at which Epstein was housed the night of August 9, 2019, to perform the required overnight counts and 30-minute checks; and (iii) the falsification of records related to those count slips and 30-minute checks, in violation of Title 18, United States Code, Section 1519. We would like to have agents interview three inmates who were housed in the same area of the SHU with Epstein on August 9 and 10, 2019, in order to discuss what they saw and heard that night, including whether officers performed any overnight checks, or said or did anything upon discovering Epstein in his cell. While we anticipate interviewing other cooperating witnesses who were in the SHU that night, no cooperating witness was housed in the same area of the SHU as Epstein. Thus, these three inmates would be the most likely to have overheard or seen something of relevance. While ten other inmates were housed in the same area as Epstein and these three inmates, we have conferred with the AUSAs assigned to those matters and do not believe that those inmates would be appropriate individuals to approach, given their pending charges.

Each of the three inmates is considered a potential witness in our investigation, and each is also currently being prosecuted by our Office in connection with other crimes. Investigating agents will seek to interview the inmates at MCC, will advise them of their *Miranda* rights prior to speaking with them, and will direct them not to discuss their ongoing criminal case. None of the investigating agents have had any involvement in the investigations of the conduct for which these individuals have already been charged, and they will make that clear to the inmates before trying to interview them. Nor do we intend to ask any of the inmates about why they are in the SHU or about facts which may implicate them in misconduct while housed at the MCC. Instead, our questioning will be narrowly focused on the general behavior of the guards while the inmates have been housed in the SHU (including whether checks are or are not regularly done) and, more specifically, the events on the night of August 9-10. We believe that the inmates may be more likely to cooperate and be forthcoming in this setting, rather than going through their attorneys. An overview of each of the inmates is set forth below.

- [REDACTED] is currently charged by Indictment in [REDACTED] with [REDACTED] counts of [REDACTED], in violation of Title [REDACTED]. These charges relate to [REDACTED]. A trial date has not yet been set. We have conferred with AUSA [REDACTED], to whom the case is assigned, and he has no objection to us proceeding in this manner.
- [REDACTED] is currently charged by Indictment in [REDACTED] with one count of [REDACTED], in violation of Title [REDACTED], in connection with an incident in which he [REDACTED]. We have conferred with AUSA [REDACTED], to whom the case is assigned, and he has no objection to us proceeding in this manner.

• [REDACTED] pled guilty to [REDACTED], in violation of [REDACTED] [REDACTED]). His guidelines are [REDACTED] months' imprisonment. His sentencing is scheduled for [REDACTED]. We have conferred with AUSAs [REDACTED] and [REDACTED], to whom the case is assigned, and they have no objection to us proceeding in this manner.

The proposed contact is permissible under *Hammad* because the inmates are not represented in connection with their status as potential witnesses to the events of August 9 and 10, 2019. Moreover, agents will be instructed to advise the inmates of their *Miranda* rights, make clear they are not part of the investigation that gave rise to the inmates' pending charges, not ask any questions about their open criminal cases, and direct the inmates not to speak about their open criminal cases. Additionally, while there is no question that the Sixth Amendment, including its right to counsel, ordinarily applies at the point of indictment, none of these defendants have been indicted for the conduct about which we propose to question them. Nor, as noted, do we intend to question them about anything that might require them to implicate themselves in misconduct while being housed as a result of the crimes for which they have previously been charged. Accordingly, we believe the proposed contact is permissible.

[REDACTED]
Assistant United States Attorney
Southern District of New York
[REDACTED]