

SDNY News Clips

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## Public Corruption

### Epstein

#### Who Protected Jeffrey Epstein?

New York Times

By The Editorial Board

7/8/19

On Monday, the United States District Court for the Southern District of New York unsealed a 14-page indictment against Jeffrey Epstein, charging the wealthy financier with operating and conspiring to operate a sex trafficking ring of girls out of his luxe homes on Manhattan's Upper East Side and in Palm Beach, Fla., "among other locations."

Even in the relatively sterile language of the legal system, the accusations against Mr. Epstein are nauseating. From "at least in or about" 2002 through 2005, the defendant "sexually exploited and abused dozens of minor girls," some as young as 14 and many "particularly vulnerable to exploitation." The girls were "enticed and recruited" to visit Mr. Epstein's various homes "to engage in sex acts with him, after which he would give the victims hundreds of dollars." To "maintain and increase his supply of victims," he paid some of the girls "to recruit additional girls to be similarly abused," thus creating "a vast network of underage victims."

If convicted, Mr. Epstein faces up to 45 years in prison. This seems a reasonable, if belated, punishment for the rampant abuse of girls of which Mr. Epstein stands credibly accused.

But Mr. Epstein is not the only one for whom a reckoning is long overdue.

The allegations in the New York indictment are a depressing echo of those that Mr. Epstein faced in Florida more than a decade ago, when his perversion first came to light. In 2008, federal prosecutors for the Southern District of Florida, at the time led by Alexander Acosta, who is now the nation's secretary of labor, helped arrange a plea deal for Mr. Epstein that bent justice beyond its breaking point.

In exchange for pleading guilty to two state counts of soliciting prostitution from a minor, Mr. Epstein avoided a federal indictment that could have put him in prison for life. Instead, he served 13 months in a private wing of the Palm Beach county jail, where liberal work-release privileges allowed him to spend 12 hours a day, six days a week in his private office. Mr. Epstein paid restitution to some of his victims and was required to register as a sex offender — a designation that he later tried to have downgraded in New York to a less restrictive level.

In addition to short-circuiting federal charges, the plea agreement killed an F.B.I. investigation and granted immunity to any "co-conspirators." As detailed last fall in a blockbuster series by Julie K. Brown of The Miami Herald, Mr. Acosta and his office worked unusually closely with Mr. Epstein's legal team on the deal. Both sides also labored to keep the agreement secret until it was finalized — including from Mr. Epstein's victims. This, a federal judge ruled in February, violated the rights of those victims, who have pushed for justice ever since.

Not long after his release, Mr. Epstein returned to New York and reminded a local reporter that, legally, he was a sexual “offender,” not a “predator.” He joked, “It’s the difference between a murderer and a person who steals a bagel.”

At first glance, the Epstein saga looks like another example of how justice is not, in fact, blind — of how it tilts toward the powerful at the expense of the vulnerable. Mr. Epstein, who has claimed to have made his fortune managing other rich people’s money, was not just wealthy; he was politically and socially wired, hobnobbing with such boldfaced names as Prince Andrew, Bill Clinton and Donald Trump.

He donated tens of millions of dollars to institutions like Harvard University, which he never attended but where he financed construction of a campus building and formed strong connections to faculty members and administrators. He is also known for having amassed a quirky “collection” of scientists, in whom he liberally invested over the years.

Upon closer examination, this case offers an even more warped picture of justice. Mr. Epstein retained a cadre of high-price, high-profile lawyers who went after prosecutors with everything they had — at least according to Mr. Acosta. In 2011, facing criticism over the plea agreement, Mr. Acosta complained about having endured “a yearlong assault” by Mr. Epstein’s legal sharks. During his 2017 confirmation hearings to become labor secretary, Mr. Acosta claimed to have forged the best deal possible under the circumstances.

That is hardly comforting. It betrays a system in which the rich and well-connected can bully public officials into quiescence — or into pursuing a deal so favorable to the accused that it runs afoul of the law.

Neither should Mr. Acosta and his former team members be allowed to wave off the tough or awkward questions that are likely to arise going forward. Under pressure from Congress, the Justice Department has opened a review into the handling of the case, and last Wednesday a federal appeals court in New York ordered the unsealing of up to 2,000 pages of related documents. Already, distressing new details are surfacing in the case. Most notably, when Mr. Epstein’s Manhattan residence was searched over the weekend, according to a court filing from prosecutors, law enforcement officials recovered “hundreds — and perhaps thousands — of sexually suggestive photographs of fully- or partially-nude females,” some of which “appear to be of underage girls.”

In his request that Mr. Epstein be held without bail, the United States attorney for New York’s Southern District, Geoffrey Berman, noted, “The defendant, a registered sex offender, is not reformed, he is not chastened, he is not repentant.”

Whatever new details emerge, whatever new participants may be implicated, whatever public officials are found to have failed in protecting Mr. Epstein’s victims, the time for secrecy and excuses and sweetheart deals is over. Mr. Epstein’s victims have waited long enough for answers, and they deserve justice.

## Attorney General Bill Barr will not recuse himself from Jeffrey Epstein child sex prosecution

CNBC

By Dan Mangan and Jim Forkin

7/9/19

Attorney General William Barr will not recuse himself from involvement in the new federal criminal prosecution of accused child sex trafficker Jeffrey Epstein.

But Barr will recuse himself from an internal Justice Department probe of current Labor Secretary's Alex Acosta involvement in approving a controversial no-prosecution deal with the wealthy financier a decade ago, officials said Tuesday.

Attorney General William Barr will not recuse himself from involvement in the new federal criminal prosecution of accused child sex trafficker Jeffrey Epstein, an official said Tuesday.

But Barr will recuse himself from an internal Justice Department probe of current Labor Secretary's Alex Acosta involvement in approving a controversial no-prosecution deal with the wealthy financier a decade ago, an official said.

Barr's announced decision to have oversight over the Epstein prosecution came after reports that he had recused himself from the case, which is being prosecuted by the U.S. Attorney's Office for the Southern District of New York.

And it came as a bevy of Democratic members of Congress and presidential candidates demanded that Acosta resign because of his role as then-U.S. Attorney in Miami in signing off on a deal to not prosecute Epstein in the mid-2000s.

Epstein, 66, is accused of sexually abusing dozens of underage girls from 2002 to 2005 after they were brought to his luxurious residences on the Upper East Side of Manhattan, and in Palm Beach, Fla.

The former friend of President Donald Trump and ex-President Bill Clinton pleaded not guilty on Monday, and is being held without bail pending a detention hearing next week.

Epstein was being eyed for the same alleged conduct in Florida that federal prosecutors have now charged him with in Manhattan.

A Justice Department official on Tuesday said that Barr consulted with career ethics officials at the department, and concluded he did not have to recuse himself from the current prosecution in Manhattan.

However, Barr was quoted Monday as saying he was recusing himself from the Epstein case.

"I'm recused from that matter because one of the law firms that represented Epstein long ago was a firm I subsequently joined for a period of time," Barr told reporters on Monday.

Barr joined that law firm, Kirkland & Ellis, in 2009.

Kirkland & Ellis had represented Epstein in 2008, when he was being investigated in Florida.

Barr's comment Monday seems to have referred — or does so now — to his continued recusal from the Justice Department's internal probe into the non-prosecution of Epstein as signed off by Acosta.

“Due to his prior association with Kirkland and Ellis, the Attorney General has and will remain recused from any retrospective review of the resolution of the earlier [Southern District of Florida] matter,” the Justice Department official told CNBC on Tuesday.

## Inside Epstein's \$56 Million Mansion: Photos of Bill Clinton, Woody Allen and Saudi Crown Prince

The New Times

By Matthew Haag

7/8/19

The townhouse where the financier Jeffrey Epstein is accused of engaging in sex acts with underage girls is one of the largest private homes in Manhattan, a short walk from Central Park.

The seven-story residence at 9 East 71st Street, between Fifth and Madison Avenues, sprawls across 21,000 square feet and has five bathrooms, a two-story reception room and many bedrooms, including three three-room suites on the fourth floor.

It also has a heated sidewalk in front to melt the snow during the winter months. On the second floor is a mural that Mr. Epstein had commissioned in recent years: a photorealistic prison scene that included barbed wire, corrections officers and a guard station, with Mr. Epstein portrayed in the middle.

"He said, 'That's me, and I had this painted because there is always the possibility that could be me again,'" said R. Couri Hay, a public relations specialist invited by Mr. Epstein to a meeting at his home and to view the mural three months ago.

A person who visited the townhouse last year remembered Mr. Epstein doing work at the mansion while seated at a large dining table that fit 20 people, with multiple computer monitors and a phone alongside.

Mr. Epstein answered calls while hosting visitors, according to that person and another visitor last year who saw similar behavior. Behind him was a table covered with framed photographs of celebrities and dignitaries, including a signed photograph of former President Bill Clinton.

The visitors each said they were greeted by a tall woman who spoke with an Eastern European accent, who led guests up a marble staircase to a study on another floor. At the base of the stairwell, one of the visitors said, Mr. Epstein had placed a chess board with custom figurines, many dressed suggestively — each piece, he noted, was modeled after one of his staffers.

He decorated the home with other oddities, like a life-size female doll hanging from a chandelier, and had arranged a small dining room to resemble a beach scene.

A wall of the study was covered with photographs of famous people, including Woody Allen, and another that Mr. Epstein pointed out was of Crown Prince Mohammed bin Salman of Saudi Arabia.

Mr. Epstein, 66, is accused of engaging in sex acts with young girls from 2002 to 2005 during naked massage sessions and paying them hundreds of dollars in cash, according to an indictment unsealed on Monday.

During the search of his townhouse on Saturday, investigators seized photographs of nude underage girls, federal prosecutors said. “The alleged behavior shocks the conscience,” Geoffrey S. Berman, the United States attorney in Manhattan, said on Monday.

Prosecutors said they were moving to seize Mr. Epstein’s townhouse.

Mr. Epstein, however, was not even supposed to become the owner of the opulent stone house on the Upper East Side.

In 1989, Mr. Epstein’s mentor, Leslie H. Wexner, the founder and chairman of L Brands, the parent company of Victoria’s Secret and Bath & Body Works, bought the seven-story Beaux-Arts home for \$13.2 million. At the time, it was the highest recorded sale price for a townhouse in Manhattan.

Mr. Wexner then spent at least that much on artwork — including multiple works by Picasso — Art Deco furnishings, Russian antiques, rosewood tables and doors and a gut renovation of the home. Security devices, including a network of cameras, were installed. A cellar was divided into separate spaces, one for red wines and another for white. The renovation was featured on the cover of the December 1995 issue of *Architectural Digest*.

The townhouse had been a longtime private school and Mr. Wexner spent years converting it into a lavish estate.

Mr. Wexner, however, never moved in; he decided to stay in Columbus, Ohio, where L Brands has its headquarters.

But another person did move in: Mr. Epstein. “Les never spent more than two months there,” Mr. Epstein told *The New York Times* in 1996.

The home has a history of going unoccupied by its owner. Herbert N. Straus, an heir to the Macy’s fortune, commissioned the 40-room mansion in the early 1930s and hired the prominent architect Horace Trumbauer to design it. But Mr. Straus died in 1933, leaving the property unfinished and unoccupied.

The Straus family gave the residence to a hospital in 1944. In 1962, the private school, Birch Wathen School, bought it and converted it into a schoolhouse. The school, which was started in 1921 with an emphasis on the arts, relocated after Mr. Wexner bought the house. (It later merged with another private school to start the Birch Wathen Lenox School.)

Mr. Epstein said in the 1996 interview that the mansion was now his, though the transaction has never appeared in New York City records online. In 2011, he transferred ownership of the property from a trust connected to Mr. Epstein and Mr. Wexner to Maple Inc., a United States Virgin Islands-based entity under Mr. Epstein’s control, according to records.

The transfer document, from Nine East 71st Street Corporation to Maple Inc., did not list a purchase price, indicating that it did not involve any exchange of money.

A spokeswoman for Mr. Wexner said that he “severed ties” with Mr. Epstein about a decade ago. Erika Kellerhals, a lawyer in the Virgin Islands who handled the 2011 transfer for Mr. Epstein, did not return a phone call seeking comment.

Mr. Epstein also owns a home in Palm Beach, Fla., a 7,500-acre ranch in New Mexico and an apartment in Paris. He also owns Little St. James Island, a private island in the Caribbean, and at least 15 cars.

A spokesman for Mr. Clinton, whose photograph was on display in Mr. Epstein’s mansion, said that the former president “made one brief visit” around 2002 to the New York home with a staff member and security officials. Mr. Clinton has not talked to Mr. Epstein in more than a decade and has not visited his properties in the Caribbean, Florida or New Mexico, the statement said.

From the street, Mr. Epstein’s Manhattan mansion has features that make it a commanding presence on the block: a 15-foot-tall oak front door (which the police pried open with a crowbar on Saturday during a search of the property), large arched windows on the ground floor and a balcony on the second floor. Mr. Epstein’s initials are on a brass plaque near the front door.

While Mr. Epstein has tried to maintain a private life, he did allow a reporter for Vanity Fair magazine to visit the mansion for a 2003 profile, “The Talented Mr. Epstein.”

The article describes a main hallway that was covered with rows of artificial eyeballs from England that had been made for wounded soldiers.

The room connected to the hallway was a marble foyer adorned with a painting that resembled works by the French artist Jean Dubuffet. “The host coyly refuses to tell visitors who painted it,” the reporter, Vicky Ward, wrote.

The article was published around the same time that he started to recruit underage girls to the mansion, according to the indictment unsealed on Monday.

## The Mystery Around Jeffrey Epstein's Fortune and How He Made It

Bloomberg

By Tom Metcalf, Caleb Melby and Sophie Alexander

7/9/19

In a neighborhood of millionaires and billionaires, close to New York's famous Museum Mile, two initials discreetly adorn the entrance of one of the city's most opulent mansions: J.E.

The letters stand for Jeffrey Epstein, the self-described "collector" of rich and powerful men, who has been accused of sexually assaulting girls inside the luxurious Manhattan home.

On Monday, as federal prosecutors unsealed new charges claiming Epstein ran a sex-trafficking ring that lured dozens of young women to the house, its heavy wood doors bore crowbar marks — evidence of how authorities forced their way in over the sultry Fourth of July weekend. Prosecutors say they discovered hundreds, possibly thousands of suggestive photographs, including those of what appeared to be underage girls.

The latest turn in the long, lurid saga of Jeff Epstein comes more than a decade after a secretive plea deal enabled him to avoid similar charges in Florida. Now, familiar questions are swirling again about his possible links to a Who's Who of prominent political and business figures.

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For all his infamy, there are scant details of how he made his money. While he's frequently been called a billionaire, his net worth is hard to ascertain. He ran a money management firm catering to the ultra-rich, primarily for Victoria's Secret founder Les Wexner, but its assets were never made public and few on Wall Street have dealt with him as a financier or money manager.

According to his lawyers more than a decade ago, he had a net worth in excess of nine figures. Today, so little is known about Epstein's current business or clients that the only things that can be valued with any certainty are his properties. The Manhattan mansion is estimated to be worth at least \$77 million, according to a federal document submitted in advance of Epstein's bail hearing.

He also has properties in New Mexico, Paris and the U.S. Virgin Islands, where he has a private island, and a Palm Beach estate with an assessed value of more than \$12 million. He shuttles between them by private jet and has at least 15 cars, including seven Chevrolet Suburbans, according to federal authorities.

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Epstein's early career is better documented. Born in 1953 and raised in Brooklyn, Epstein dropped out of Cooper Union and NYU's Courant Institute. He landed a gig teaching calculus and physics at Manhattan's exclusive Dalton School between 1973 and 1975, according to a 2002 New York magazine profile, where his students included the son of Bear Stearns Chairman Alan Greenberg.

He joined Bear Stearns in 1976 as a lowly junior assistant to a floor trader. In a swift rise, trading options, he made partner four years later, with former Chief Executive Officer Jimmy Cayne praising his skills. He left in 1981 to set up J. Epstein & Co., but one bank executive said he remained close to Cayne and Greenberg and was a client until Bear Stearns' demise.

Epstein's money management business had an exclusive focus: It would serve only billionaires. Epstein reportedly made all the investment calls.

Since the 1990s, the company has been incorporated in the U.S. Virgin Islands and is now called Financial Trust Co. A person answering the phone at the Saint Thomas-based company hung up after a request for comment was made.

The main client was Wexner, the founder of underwear maker L Brands. Epstein started managing his money in the 1980s and a 2003 Vanity Fair profile noted the pair had a close relationship, close enough for Epstein to acquire the Manhattan mansion from Wexner.

It's unclear how much Epstein paid and when he actually took ownership.

Wexner had purchased the property from the Birch Wathen School, a Manhattan prep school in 1989, according to city records. He sold it in 1998 to a Virgin Islands entity called NES LLC, according to a person familiar with the matter. Epstein is affiliated with NES, public records show.

There are no New York property records documenting a transfer until 2011, when the company that Wexner used to purchase the townhouse transferred it to Epstein's Virgin Islands-based Maple Inc. for \$0. Epstein signed for both sides of the transaction.

"People have said it's like we have one brain between two of us: each has a side," Epstein said in the 2003 profile.

Wexner, who has a \$6.7 billion fortune on the Bloomberg Billionaires Index, declined to comment. He cut ties with Epstein more than a decade ago as suspicions about Epstein swirled, with alleged victims saying Epstein used his employees to bring local teen girls to his Florida mansion for sex and paid them to recruit new victims. The girls were as young as 13-years-old.

None of Epstein's other clients have been identified. But while his money management firm remains a black box, the same can't be said of Epstein himself.

Even before the weekend, the non-prosecution deal he cut in 2008 has come under growing criticism in recent months, with critics calling for Labor Secretary Alexander Acosta, who was the lead prosecutor in the case, to resign since the Miami Herald revisited the case and the plea deal in a November report.

Today, lurid details were splashed across the media as prosecutors detailed the alleged crimes that occurred at Epstein's homes in Manhattan and Palm Beach, Florida, from 2002 to 2005 involving minors as young as 14 and accused Epstein of "creating a vast network of victims."

Epstein paid victims hundreds of dollars in cash after sex acts, prosecutors said. They were initially recruited to give Epstein massages, which became increasingly sexual in nature. At least three of Epstein's employees were involved in recruiting and scheduling minors for sexual encounters with him, as well as other unspecified "associates," the U.S. said. One was based in New York, while two other assistants based at his mansion in Palm Beach were responsible for scheduling the encounters there and escorting victims to a room in the house, according to the indictment.

Prosecutors are attempting to seize the Manhattan townhouse through forfeiture proceedings, on the grounds that his spacious property was used for the sex trafficking. The townhouse was built in 1932 for Herbert Straus, whose parents owned R.H. Macy & Co. and is said to be one of the largest in Manhattan.

Epstein's future address could be far less comfortable. The charges he faces carry a maximum 45 year prison term.

## Jeffrey Epstein prosecutors aided by ‘excellent investigative journalism’

Politico

By Michael Calderone

7/8/19

Allegations that billionaire financier Jeffrey Epstein sought and paid underage girls for sex were an open secret for more than a decade, but his legal battles seemed over after he reached a 2008 deal in Florida to serve a 13-month jail sentence and register as a sex offender.

That changed Monday when federal prosecutors charged the former hedge fund manager with sex trafficking, and he might have the Miami Herald to thank for it.

“We were assisted by some excellent investigative journalism,” Geoffrey Berman, U.S. attorney for the Southern District of New York, said Monday at a news conference to announce the charges.

The Herald’s managing editor, Rick Hirsch, told POLITICO that his paper’s November series, “Perversion of Justice,” advanced the Epstein story by giving “victims a voice” and that the effects were being seen now.

In the series, reporter Julie K. Brown got women to speak for the first time on the record about Epstein’s alleged “cult-like network of underage girls.” She also explored the role of Alex Acosta, who was the U.S. attorney in Miami in 2008 and is now the U.S. Labor secretary, in the deal with Epstein.

“Julie tackled this project because she thought there were questions about whether justice was done, and it’s really had an impact,” Hirsch said. “That’s what it’s all about.”

Berman’s comments at the news conference — which came in response to a question about whether prosecutors had obtained new information about Epstein, who pleaded not guilty — prompted a round of celebrations from journalists. But they also renewed questions about why the allegations against the financier, who has counted presidents Donald Trump and Bill Clinton as friends, were not deeply investigated much earlier.

The case has drawn comparisons to that of filmmaker Harvey Weinstein, whose alleged abuse of women was rumored for years before new revelations in The New York Times and The New Yorker led to criminal charges.

Journalist Vicky Ward tweeted on Monday that a 2003 Vanity Fair profile she wrote about Epstein was “far from the whole story,” claiming that the publication’s editor at the time, Graydon Carter, cut out first-person accounts of Epstein’s treatment of women from a mother and her two daughters.

Ward made the same claim in 2015, prompting a Vanity Fair spokesperson to note that “Epstein denied the charges at the time” and that the claims “were unsubstantiated and no criminal investigation had been initiated.” Vanity Fair declined to comment on Monday.

Carter said in a statement on Monday that editors at the magazine viewed Ward’s reporting as less bulletproof than her tweets indicated.

“In the end, we didn’t have confidence in Ward’s reporting,” said Carter, who left Vanity Fair in 2017. “We were not in the habit of running away from a fight. But she simply didn’t have the goods.”

Some news organizations, notably the now-shuttered Gawker, did keep plugging away with Epstein stories, even as he receded from headlines at most outlets.

Aminda Marqués Gonzalez, the Herald’s executive editor, said in a CNN interview that Brown’s investigation of Epstein last year stemmed from reporting on women’s prisons and human trafficking. “Jeffrey Epstein’s name kept coming up again and again,” Gonzalez said.

While Brown’s November story brought Epstein back into the spotlight, there wasn’t immediate fallout. Brown told CNN she continued pursuing the story so that law enforcement and government officials wouldn’t “forget that these women were out there. ... They want to tell their story, and they want justice.” She posted on Twitter on Sunday, as reports emerged of the coming charges, that the “REAL HEROES” of her story were the women speaking out.

Colleagues and competitors, meanwhile, have been lauding Brown’s reporting and suggesting she win a Pulitzer Prize. Her 2018 reporting on Epstein was honored earlier this year with a Polk Award, one of journalism’s highest honors, but she wasn’t even a finalist for a Pulitzer.

The Herald’s reporting appeared to be a contender for the investigative reporting and local journalism prizes. USA Today’s national investigations editor, Matt Doig, and The Denver Post’s editor, Lee Ann Colacioppo, who led the groups that vetted stories in those categories, both told POLITICO that there were strong entries from other news organizations.

“The fact that this piece from Miami wasn’t a finalist just speaks to the incredible work being done at newspapers throughout the country — even under the tremendous stresses that newspapers are feeling,” Colacioppo said.

She said “there were no outside pressures” on that decision, despite an April letter from Alan Dershowitz, a former Epstein lawyer, urging the Pulitzer judges not to reward what he called Brown’s “fake news.”

Doig said the Herald “should be commended for what it did,” while noting that other standout entries “should also be rewarded.”

Hirsch, the Herald editor, said he respected the Pulitzer process during “a very strong year for journalism.”

And, he said, “I think what’s happening in the last few days is a lot more important.”

## Jeffrey Epstein Shouldn't Expect to Wriggle Free Again

Daily Beast

By Mimi Rocah

7/8/19

Justice has seemed elusive these past three years. One of the most discouraging themes has been the pattern of powerful white men who seem to get away with sexual misconduct and even criminal behavior toward women and young girls: Donald Trump, Roy Moore, Brett Kavanaugh, among them. Some days, it feels like the idea of “justice” is nonexistent when it comes to this type of powerful perpetrator and conduct.

The case of billionaire Jeffrey Epstein, thus far, is one of the most egregious examples. Epstein actually got caught: He was arrested and charged last decade by federal authorities for running a sex-trafficking operation in which minor girls experienced horrible sexual abuse and rape in Florida. But then Epstein was given a slap-on-the-wrist deal in 2008 from the U.S. Attorney's Office for the Southern District of Florida and some of his co-conspirators were shielded from prosecution. To make matters even worse, that deal seems to have been the product of some serious gamesmanship by a cabal of other powerful white men, including Alex Acosta, then-U.S. attorney and now secretary of labor.

But, finally, it looks like justice will be served to Epstein in the form of new sex-trafficking charges filed by the formidable U.S. Attorney's Office in the Southern District of New York.

Epstein has reportedly been arrested for trafficking dozens of minors in New York and Florida between 2002 and 2005. And this time, Epstein shouldn't expect the ridiculous sweetheart deal he got the first time around.

Charges of federal sex-trafficking (prior to 2006) carry up to 40 years in prison. Short of a cooperation agreement with the government—which in the SDNY famously means full cooperation against all possible other subjects and targets—Epstein will likely serve a very substantial prison sentence possibly a decade or more.

“In my 16 years as a prosecutor, I am only aware of two instances in which someone convicted of a crime of this nature was offered a cooperation agreement.”

In addition, in my experience as a prosecutor involved in trafficking cases in the SDNY, that office is not in the practice of giving slap-on-the-wrist deals to sex offenders and will prosecute the case fairly but with appropriate zeal. The fact that the FBI also reportedly executed a search warrant at Epstein's New York residence suggests either that they had probable cause to believe there was more recent conduct that occurred there and/or that evidence from his past crimes was likely to be found there this many years later. That search could yield important new evidence.

There are already many important questions about this prosecution. First, how could Epstein be prosecuted this many years later? Because since 2006, under federal law, there is no statute of limitations for child sexual exploitation cases of this type. So as long as Epstein's conduct was still chargeable under the prior statute of limitations in 2006, he can be prosecuted for those crimes today.

Second, what should we make of reporting that Epstein's prosecution is being overseen by the Public Corruption Unit of the SDNY? Short answer: It's too soon to say. It could mean that a public official is being investigated or will be charged with Epstein. That could be a minor public figure or a major one. It could mean that SDNY is investigating misconduct in the plea that Epstein was given in 2008. Or it could mean none of those things.

Third, could Epstein cooperate and implicate other powerful men who were involved in this sex trafficking, both Republicans and Democrats? Yes—but the SDNY will not cooperate with a child predator like Epstein easily (for good reason in my view). In my 16 years as a prosecutor, I am only aware of two instances in which someone convicted of a crime of this nature was offered a cooperation agreement. That means Epstein would have to have some very valuable and verifiable information to trade for a cooperation agreement.

Fourth, could Attorney General Bill Barr run interference on this case? Yes. He is the head of the whole Justice Department, even the "Sovereign" district, as SDNY is sometimes playfully called. And while it pains me to say this, given Barr's conduct in the past acting more as a defense attorney for Trump than an overseer of justice, I am concerned that Barr might interfere if he thought that Epstein might implicate Trump, who was friends with Epstein. Barr did say in his confirmation hearings that he might recuse himself on overseeing matters with respect to Epstein because of his (Barr's) affiliation with a law firm, Kirkland & Ellis, which was part of the Florida plea debacle. Now would be a good time to know if Barr followed through on that.

So, there are many open questions and twists and turns that this case will follow. But, for now, in a world in which justice has seemed so elusive, I think we should take a moment to applaud the fact that it appears justice is being served to Jeffrey Epstein and for the many young victims of his horrendous crimes.

Correction: The sex-trafficking statute was amended in 2006 to include a mandatory minimum of 10 or 15 years depending on the age of the victim.

**'I was 14. I had braces': Jeffrey Epstein victims recall how pedophile forced them to perform sex acts ahead of his bail hearing, as prosecutors fight to keep billionaire flight risk behind bars**

Daily Mail

By Chris Spargo

7/8/19

Two of the women who accused Jeffrey Epstein of sexual assault during his previous criminal trial in Palm Beach, Florida back in 2008 are speaking out

Two of the women who accused billionaire Jeffrey Epstein of molesting them when they were minors will be in attendance for his court appearance on Monday in Manhattan.

██████████ was just 16 when she claims a young woman brought her to Epstein's Palm Beach estate and she was paid to give him a massage.

'He said, god, you're just so beautiful and sexy and gorgeous and it was making me feel really uncomfortable,' said ██████████ in an interview with ABC News.

Then he wanted me to rub his back, and he kept asking me to go lower and he was kind of talking to me.

██████████ was even younger, revealing that she was still in middle school when Epstein allegedly forced her into performing sex acts.

'I was 14, I had braces on,' recalled ██████████.

'Like, I remember standing in his kitchen ... and he also had a lot of girls there all the time.'

██████████ and ██████████ who were among the victims in the previous criminal case brought against Epstein, 66, in Florida back in 2008, said that they will both be in court on Monday for his arraignment and bail hearing.

The two also expressed their hope that the registered sex offender stays behind bars.

On June 30, 2008, Epstein pleaded guilty to a single state charge of soliciting an underage girl for prostitution, and ultimately served just 13 months of his 18-month sentence.

That time was served not in a prison, but rather the Palm Beach Stockade, which is a local detention center.

Epstein was also allowed to leave six days a week to go work out of his West Palm Beach office during his time behind bars.

After his release he did have to register as a sex offender, but not in all states.

That fight is over a non-prosecution agreement that Epstein signed in the case, which was overseen by President Trump's current Secretary of Labor, Alex Acosta.

That agreement does not extend to the Southern District of New York.

Lawyers with the Southern District of New York will likely argue that Epstein is a flight risk, and should remain behind bars.

His defense team will fight that, though there is a chance they might acquiesce to home confinement for their client.

That would put him back in the Upper East Side townhouse that authorities spent the weekend tearing through while gathering evidence in the case.

'The first moment finding out Jeffrey Epstein was put in jail was so relieving to me,' said [REDACTED].

'I felt safer. I've waited for this one day just to happen and it's finally come.'

The women in Florida are currently fighting so have Epstein retried in that case.

That office's Public Corruption Unit investigated Epstein, who is facing up to 45 years behind bars if found guilty on both counts: sex trafficking of minors and conspiracy to engage in sex trafficking of minors.

The charges against Epstein were filed following dozens of interviews with victims, who also spoke with the FBI and the NYPD, a law enforcement official told DailMail.com.

Almost all of these women claim they were underage when they were asked to give Epstein massages at his Palm Beach or New York City homes, according to a law enforcement official.

Some of the women also said that they were shuttled between the two properties on Epstein's jet, said that official.

Those women claim that these massages would often lead to Epstein asking that they perform a rape act on him in exchange for money.

That same official said that the incidents for which Epstein is now being charged all occurred between 1999 and 2005.

The Public Corruption Unit is tasked with heading up the 'prosecution of corruption crimes committed by elected and appointed officials, government employees, and individuals and companies doing business with the city, state, and federal government.'

Among the crimes it investigates are 'bribery, embezzlement, and frauds committed against local, state, and federal government agencies,' but no mention of sex trafficking.

Epstein's first court appearance will come less than 48 hours after he was taken into custody by federal agents at Teterboro Airport.

It all happened just before 5pm on Saturday, when Epstein reentered the country for the first time since June 16, when he took off from the same airport bound for Paris.

Prior to that trip, Epstein had been crisscrossing the US as he moved between his properties in New York City, Palm Beach, New Mexico and the US Virgin Islands.

Epstein's arrest comes in the wake of a three-part expose in the Miami Herald detailing his settlements with victims and sweetheart plea deal.

Around the same time he was being arrested, agents with the FBI were seen breaking down the door to his Upper East Side mansion to execute a search warrant in the case.

DailyMail.com obtained exclusive photos which show the aftermath of that search, including Epstein's damaged and splintered door.

The episode is likely to cause embarrassment to Prince Andrew, who was an associate of Epstein but has now severed ties.

Groups of unidentified men were seen coming and going at the property until 2am on Sunday.

A security guard from a nearby building told DailyMail.com that between 20 to 25 law enforcement officials showed up at Epstein's home at around 6:30pm on Saturday.

Most of those were FBI agents, the security guard said. They were accompanied by several officers - both uniformed and plain-clothed - from the New York Police Department.

The guard told DailyMail.com that it took them approximately 10 to 15 minutes before they could pry the door open.

The front entrance appears to be outfitted with fingerprint and keypad technology for security purposes.

The guard says that in the hours since the raid, more law enforcement personnel arrived at the home, where they are expected to work well into Sunday morning.

The guard, who identified himself as Tom, said he would see Epstein there once or twice a month.

He said that two weeks ago, he noticed someone on the street taking photographs of Epstein's residence.

The US Attorney's Office and a spokesperson with the New York Police Department both declined to comment on Saturday.

This news comes just days after a judge ordered the unsealing of nearly 2,000 pages of records related to a civil case that could reveal how he and his accused accomplice Ghislaine Maxwell allegedly trafficked underage girls

The documents that will be unsealed are from a defamation case that was settled after Epstein entered a guilty plea guilty to a single charge of soliciting and procuring a person under age 18 for prostitution.

Records in the defamation case contained descriptions of sexual abuse by Epstein along with new allegations of sexual abuse by 'numerous prominent American politicians, powerful business executives, foreign presidents, a well-known prime minister and other world leaders.'

The appeals court found that the judge in the case did seal a number of documents without a justifiable reason when ordering the release.

Epstein's lawyers will first get a chance to appeal, and after those legal proceedings play out the documents will start being prepared by the court for release.

The plea deal Epstein agreed to back in 2008 saved him from having to register as a sex offender in 31 of 50 states.

In a deal unknown to the victim or her lawyer, the minor Epstein admitted to soliciting for prostitution was not the 14-year-old girl who first reported the millionaire money manager, but rather another girl, 16, whose age was left blank on court documents.

That victim's age means that Epstein did not have to register as a sex offender in states like New Mexico, where he owns a 7,600-acre property called Zorro Ranch, and allows him to be classified as a low risk offender in the U.S. Virgin Islands, which is currently his primary residence.

A federal judge ruled earlier this year that then-U.S. Attorney Alex Acosta violated the rights of Epstein's alleged victims when they neglected to notify them that they were no longer pursuing federal charges.

That was another part of the deal, which in addition to allowing Epstein to have work release and live in a low-security facility also agreed to drop a federal probe into the millionaire moneyman.

Now Acosta - who is the current Secretary of Labor and had been mentioned as a possible candidate for attorney general - and others are again coming under fire for allegedly catering to the man who donated millions to the Clintons and hosted President Trump at his Manhattan townhouse while keeping his victims in the dark.

'They were cutting a plea deal. It wasn't a prosecution,' said attorney Spencer Kivin, who represented the 14-year-old girl who alerted police.

'They had a grab bag of 40 girls to choose from.'

He then revealed that he and his client believed they had been the victim referenced in the plea deal.

'It's unbelievably upsetting,' said Kuvin.

'The rug has been swiped out from under the one girl who was brave enough to come forward and break this thing.'

Questions about Epstein's deal started to surface after a series of lawsuits were filed by two of his alleged victims.

The women, identified as Jane Doe 1 and Jane Doe 2, claim in court papers that they were unaware of the secret deal being made between the defense team and prosecutors back in 2007 that guaranteed federal charges would not be brought against Epstein, 63, which could have resulted in a lengthy prison sentence for the millionaire.

They filed their lawsuit a few months after Epstein received his lenient sentence in 2008, with their lawyers saying the U.S. Attorney's Office violated the federal Crime Victims' Rights Act by not speaking with Epstein's victims about the details of his plea agreement.

The two victims who filed the suit were 13 and 14 at the time of the abuse.

This filing contained more than 140 exhibits including emails between Epstein's defense team, the U.S. Attorney's office and former State Attorney Barry Krischer, which lawyers believe clearly show that victims were being left in the dark.

## Jeffrey Epstein, a Billionaire Friend of Presidents Trump & Clinton, Arrested for Sex Trafficking

Democracy Now

7/8/19

Billionaire hedge fund manager Jeffrey Epstein, who has been accused of sexually assaulting underage girls for more than a decade, will appear in federal court today in Manhattan on sex trafficking charges. He was arrested on Saturday for allegedly running a sex trafficking operation by luring underage girls as young as 14 years old to his mansion in Manhattan. Epstein was previously accused of molesting and trafficking dozens of underage girls in Florida, but he ended up serving just 13 months in county jail after the U.S. prosecutor in Florida, Alexander Acosta, cut what's been described as "one of the most lenient deals for a serial child sex offender in history." The plea deal allowed Epstein to avoid a federal trial and possible life in prison, and effectively ended an FBI probe into the case. Acosta is now Donald Trump's labor secretary. Epstein has counted Presidents Donald Trump and Bill Clinton among his friends. We speak with Vicky Ward, an investigative journalist who profiled Jeffrey Epstein for Vanity Fair in 2003 in a piece headlined "The Talented Mr. Epstein." The magazine's editor at the time, Graydon Carter, cut out the testimonies of two young women Epstein allegedly molested who had spoken to Ward on the record. Ward later wrote about the incident for The Daily Beast in an article headlined "I Tried to Warn You About Sleazy Billionaire Jeffrey Epstein in 2003."

Transcript

This is a rush transcript. Copy may not be in its final form.

AMY GOODMAN: This is Democracy Now! I'm Amy Goodman. Billionaire hedge fund manager Jeffrey Epstein, who has been accused of sexually assaulting underage girls for more than a decade, was arrested Saturday on sex trafficking charges. He was arrested at Teterboro Airport in New Jersey. He'll appear in federal court today. The New York Times reports he's being accused of running a sex trafficking operation by luring underage girls—some as young as 14 years old—to his mansion in Manhattan.

He was previously accused of molesting and trafficking dozens, and potentially hundreds, of underage girls in Florida. But Epstein ended up serving just 13 months in county jail after the U.S. prosecutor in Florida, Alexander Acosta, cut what's been described as "one of the most lenient deals for a serial child sex offender in history." The plea deal allowed Epstein to avoid a federal trial and possible life in prison, and effectively ended an FBI probe into the case. Alex Acosta is now Donald Trump's labor secretary.

Jeffrey Epstein has counted Presidents Donald Trump and Bill Clinton among his friends. They've flown with him. Trump told New York magazine in 2002, "I've known Jeff for 15 years. Terrific guy. He's a lot of fun to be with. It is even said that he likes beautiful women as much as I do, and many of them are on the younger side," Trump said about his friend Jeffrey Epstein. Again, this was before all the charges were brought. In 2000, Trump was photographed with Epstein at Trump's Mar-a-Lago Club in Palm Beach, Florida.

To talk about what led up to Epstein's most recent arrest and what comes next, we're joined by Vicky Ward, an investigative journalist who profiled Jeffrey Epstein for Vanity Fair in 2003 in a piece headlined "The Talented Mr. Epstein." The magazine's editor at the time, Graydon Carter, cut out the testimonies of two young women Epstein allegedly molested, who had spoken to Ward on the record, one of them underage. Ward wrote about

what happened with her Epstein reporting for The Daily Beast in an article headlined “I Tried to Warn You About Sleazy Billionaire Jeffrey Epstein in 2003.”

Welcome back to Democracy Now! It’s great to have you with us, Vicky.

VICKY WARD: Thanks, Amy.

AMY GOODMAN: So, for people who do not understand who this man is—he’s referred to as billionaire hedge fund manager Jeffrey Epstein—who is he, and what do you believe he is being charged with right now? The indictment is about to be opened.

VICKY WARD: So, I don’t think he’s a hedge fund manager. He is certainly very wealthy. There is great mystery as to how he actually made his money. He tells people that he advises—he takes a percentage, and he advises billionaires only. He won’t take anyone poorer than a billionaire. And he takes a cut, which adds up to a lot of money. This, when I investigated him in 2002, really turned out to be untrue.

What was interesting was that the man who claimed to have sort of taught Jeffrey many financial tricks, and who claims to this day that Jeffrey has his money, is a gentleman by the name of Steve Hoffenberg, who went to jail for 20 years for committing the biggest Ponzi scheme pre-Bernie Madoff. So, the mystery of Jeffrey Epstein’s wealth has never been clarified.

AMY GOODMAN: He started out as a Dalton teacher, right?

VICKY WARD: Right.

AMY GOODMAN: A teacher at the private school in Manhattan.

VICKY WARD: Absolutely.

AMY GOODMAN: Math teacher.

VICKY WARD: Absolutely. And he then went to Bear Stearns. He left Bear Stearns, the investment bank, under very mysterious circumstances. And what’s interesting about that is that he seemed to have a curious power over the two gentlemen who ran Bear Stearns, James Cayne and Ace Greenberg. And he was certainly questioned by the SEC back in the day.

AMY GOODMAN: The Securities and Exchange Commission.

VICKY WARD: Yes, as to what he might have known about an insider trading case to do with a company called St. Joe Minerals Corp., in which both Ace Greenberg and Jimmy Cayne were also questioned. So, you know, this is a man who definitely trades in the knowledge he has over the rich and famous, and uses it for leverage. He also introduces rich and famous people, like Bill Clinton, like Donald Trump, to girls.

You then asked me about the charges today. I think what's so interesting about the charges today is that they're the result—the indictments that are going to be unsealed are the result not only of the FBI's work, but of the Public Corruption Unit, which does suggest—and obviously I'm speculating here—that bribery may have been involved. And why that's so important is, for me, who tried to expose this man for what he is back in two thousand and—I was actually reporting it late 2002, the piece ran in 2003—is he has, ever since then, got away. He's been untouchable. His money has somehow bought him the ability to evade justice. And so I'm fascinated by the fact that the Public Corruption Unit has been involved in this investigation, as well as the FBI.

AMY GOODMAN: So, in 2018, the Miami Herald published an award-winning series of articles exposing Epstein's crimes and the high-powered people who protected him. The series is called "Perversion of Justice." This is a clip from a video accompanying the piece, where we hear the voices of the women describing what happened to them.

[REDACTED]: I went from an abusive situation to being a runaway to living in foster homes to just already being hardened by life on the streets.

[REDACTED] The other girls that I personally know of that went were coming from trailer parks that were having gun shootings, drugs.

[REDACTED] My mother was on drugs at the time, and she couldn't provide for me. And I was pretty much homeless.

JACK SCAROLA: One child would be lured over, would be paid substantial sums of money, would be offered the further inducement of being paid a bounty for anybody else that she was able to bring to Epstein. A network developed where many young girls in the same kinds of circumstance wound up being victimized.

[REDACTED]: The three of us slid into the backseat of the cab, and we drove, and I remember just driving down Okeechobee Boulevard and thinking how I had never been on Palm Beach Island before, in my whole entire life that I had lived in West Palm Beach.

[REDACTED] By the time I was 16, I brought him up to 75 girls, all the ages of, you know, 14, 15, 16, people going from eighth grade to ninth grade. At just school parties is where I would recruit them from.

[REDACTED] All Jeffrey cared about was "Go find me more girls." His appetite was insatiable. He couldn't stop. He wanted new, fresh, young faces every single day.

AMY GOODMAN: That video from the Miami Herald. The Miami Herald did this incredible three-part series, "Perversion of Justice," by Julie Brown. Vicky Ward, you were doing the first pieces back in 2003. How old are your twin daughters right now?

VICKY WARD: Twin sons, 16.

AMY GOODMAN: Twin sons.

VICKY WARD: Yes.

AMY GOODMAN: Sixteen years old.

VICKY WARD: Yes.

AMY GOODMAN: So, that is very significant, because you were pregnant at the time you were doing this piece.

VICKY WARD: Yes.

AMY GOODMAN: Can you describe what happened to you when you wrote this piece? You spoke to Jeffrey Epstein.

VICKY WARD: Oh, multiple times, multiple times. He wheeled out, you know, all these important bankers and academics and financiers to talk to me. And he would call me all the time, but he would threaten me. He would talk, and then he would say, "You know, Vicky, if I don't like this piece, you know, something is going to happen to your unborn children." You know, and that way, he would sort of say it, you know, lightly, but I went to the magazine's general counsel at the time.

AMY GOODMAN: So, you actually put security on them in the NICU, in the—

VICKY WARD: When they came early, he had asked me what hospital they were going to be born at. So I actually did put security on them. They were born two months prematurely. And I did. And I think one of the reasons it took me so long to revisit this story is that it was obviously extremely traumatic, not least because, you know, getting the two young women who talked to me to go on the record, verifying with sources around them their accounts of what had happened to them, was extraordinarily harrowing and difficult. And—

AMY GOODMAN: So, these are two sisters.

VICKY WARD: Yes. And two sisters who—

AMY GOODMAN: Alleged.

VICKY WARD: —who alleged that Jeffrey Epstein had assaulted each of them separately, on separate occasions, but one of them at the time was underage. And it was a classic story of two young women who did not come from a particularly rich family. The younger one wanted to go to an Ivy League school. Jeffrey offered to pay for this, but only if he got to know this young woman better. And he was very plausible. He had his girlfriend, Ghislaine Maxwell, who—very charming, well educated, British sort of socialite around New York—

AMY GOODMAN: I mean, this is very significant.

VICKY WARD: Yes.

AMY GOODMAN: She's the daughter of Robert Maxwell—

VICKY WARD: Maxwell.

AMY GOODMAN: —former owner of the New York Daily News.

VICKY WARD: Yes. So, Ghislaine was the one who phoned these young women's mother to reassure her how safe they would be, and—because, of course, the poor mother now blames herself terribly for what happened. And, you know, I talked to—there were numerous people. The artist Eric Fischl was a friend of the older daughter. They all verified. They remembered these two women recounting their trauma at the time, so brave. We all go through this, and then to suddenly find, at the 11th hour, that somehow Jeffrey got to the editor of the magazine. This story was being pulled. I was told—

AMY GOODMAN: Wait a second. He came into Condé Nast's offices?

VICKY WARD: Yes, he came in. I had had no—I was not told about this. He came in. He had a private meeting with the magazine's then-editor, Graydon Carter, after which I was informed that Graydon believed Jeffrey Epstein. I was told that Jeffrey Epstein had told Graydon that he was, quote-unquote, "sensitive about the women." And so they would be pulled from the story. So it would now be a business story. And—

AMY GOODMAN: About what? A business story.

VICKY WARD: Well, it was a business story that explained that Jeffrey Epstein was not who he claimed to be in his professional life. But the very powerful, awful stories of what happened to these women got taken out. And I was—

AMY GOODMAN: And these girls, are they involved with the case that's being opened today, where he's being brought into a Manhattan court?

VICKY WARD: I don't know. I have heard—I have not confirmed that. I have—one source has told me that possibly they are, which, for me, would be—

AMY GOODMAN: Sixteen years later.

VICKY WARD: Sixteen years later. Because one of the things that has haunted me is that there I was, trying to expose this man in 2003, and the original—the first FBI investigation, the one that got neutered by Alexander Acosta, didn't begin until 2006, so it's always been on my conscience that for three years he molested hundreds of sort of helpless, poor women who were in no position to fight back against him.

AMY GOODMAN: Alex Acosta.

VICKY WARD: Yeah.

AMY GOODMAN: We'll end it with him, who's now President Trump's labor secretary, was the U.S. attorney in Florida at the time.

VICKY WARD: Yeah.

AMY GOODMAN: This sweetheart deal, to say the least—

VICKY WARD: Yeah.

AMY GOODMAN: I mean, Jeffrey Epstein, if found guilty at the time of molesting, assaulting the number of women who had brought cases, something nearly around 40—

VICKY WARD: Right.

AMY GOODMAN: —could have gone to jail for life in prison.

VICKY WARD: If Alexander Acosta had let the FBI to continue with its investigation. But instead, there was this—that he had one meeting with Jay Lefkowitz, a member of Jeffrey Epstein's powerhouse, massive sort of legal team, and he did the—you know, he later justified the plea deal that was cut, the nonprosecution agreement, that was significantly, by the way, not just helpful to Jeffrey Epstein, but helpful to four conspirators who had enabled him. He claimed later, "Well, you know, the women's testimony might not have stood up. This was the best deal I could get." But, in fact, we now know that he actually broke the law. You're not allowed to cut a deal like that and not tell victims, who were cooperating with a separate FBI investigation, which is what happened. They were completely blindsided by this thing.

And finally, this year—and I have to say thank you to Julie Brown, the Miami Herald journalist, for highlighting the issue before Congress, and thank you to Ben Sasse, the Republican senator from Nebraska, for joining with 15 Democrats and going back to the Justice Department and saying, "What on Earth happened? This is a clear miscarriage of justice. Investigate it," because I think it's against that political climate of goodwill that you now have the FBI saying, "OK, let's go back."

AMY GOODMAN: Very quickly, as we end, the relationship that Jeffrey Epstein had with President Clinton? Flew him numerous times around the world.

VICKY WARD: Yes.

AMY GOODMAN: And with President Trump?

VICKY WARD: Yes. Well, he called that plane—right?—if you can believe it, the "Lolita Express," which—

AMY GOODMAN: Who called it?

VICKY WARD: Jeffrey Epstein, which gives you some idea of the lack of humility of this person. His power—I think the whole reason he has got away for so long is the extraordinary network of powerful people that he

could bring down with him. That is why he's remained untouchable for so long. So his friendships are not insignificant; they're a big part of this story.

AMY GOODMAN: Well, we will certainly continue to follow this. Vicky Ward, investigative journalist who profiled Jeffrey Epstein for Vanity Fair in 2003 in a piece headlined "The Talented Mr. Epstein."

When we come back, we look at the shocking case in Alabama where prosecutors have dropped manslaughter charges against a pregnant woman whose pregnancy ended after she was shot in the stomach by a co-worker, then she herself was charged with manslaughter. Stay with us.

## Who Is Jeffrey Epstein? An Opulent Life and Lurid Accusations

New York Times

By James Barron

7/9/19

For years, Jeffrey Epstein lived a luxurious life, socializing with celebrities, jetting off to Europe, California or the Caribbean, where he owned a private island.

In New York, where he lived in one of the largest private houses in Manhattan, his name turned up in gossip columns from time to time, linked to presidents and princes. But he largely stayed out of the spotlight, almost never talking to reporters.

He remained an enigma, a mysterious money manager who even managed to keep any client list private.

Now Mr. Epstein, 66, is at the center of a case involving sex-trafficking and conspiracy charges. He was charged on Monday with bringing girls as young as 14 to his homes in Manhattan and Palm Beach, Fla., for sex. He is also accused of paying some of them to recruit other girls, also underage. Mr. Epstein pleaded not guilty.

He was indicted by a federal grand jury in New York more than a decade after the top federal prosecutor in Miami — Alexander Acosta, now President Trump's labor secretary — signed off on a plea deal involving similar allegations that was kept secret from his accusers until it had been finalized in court.

It spared Mr. Epstein from a trial and possible long sentence in federal prison. Instead, he served 13 months on state charges of soliciting prostitution in Florida. But he was allowed to leave the jail six days a week to go to an office and work.

Since then, The Miami Herald has run a series of articles about Mr. Epstein's case, and the Justice Department has faced criticism of the plea deal as another instance of a well-connected man sidestepping a reckoning. The prosecutors in Manhattan who brought the new charges against Mr. Epstein made it clear that the 2008 deal in Florida did not apply.

"The agreement, by its terms, only binds the Southern District of Florida," Geoffrey S. Berman, the United States attorney in Manhattan, said on Monday.

The indictment marked the downfall of a man who had, until then, been dogged for years by allegations that he lured girls and young women into disturbing sexual encounters but seemed to have escaped serious consequences.

He was a noticeable presence at Manhattan parties and movie screenings: Where other men wore jackets and ties, he wore what he always wore — a polo-style shirt, open at the collar, and jeans.

People who have met Mr. Epstein describe him as charming, chatty, disarming and funny. New York magazine said in 2002 that he brought "a trophy-hunter's zeal to his collection of scientists and politicians."

In 2015, when the now-defunct site Gawker published what it said was his address book, there were entries for three Trumps (Donald, his ex-wife Ivana and their daughter Ivanka); Michael R. Bloomberg, the former mayor; the actors Alec Baldwin and Dustin Hoffman; the singer and songwriter Jimmy Buffett (whose name was misspelled); and the Nobel Peace Prize winner Elie Wiesel, among many others.

He turned up in the gossip columns but lived “a life full of question marks,” as New York magazine put it in 2002. More than one writer likened Mr. Epstein to Jay Gatsby, the enduringly impenetrable F. Scott Fitzgerald character. He was said to look a little like the designer Ralph Lauren, who was born in the Bronx.

But Mr. Epstein came from Brooklyn. His father was a city Parks Department employee. Mr. Epstein took classes in physics at The Cooper Union in the mid-1970s and later attended New York University, but did not receive a degree from either school, New York magazine reported.

He began his career as a math teacher at the Dalton School, an elite private school in Manhattan whose alumni include the cable-news anchor Anderson Cooper, the comedian Chevy Chase and the actress Claire Danes.

“By most accounts, he was something of a Robin Williams-in-“Dead Poets Society” type of figure, wowing his high-school classes with passionate mathematical riffs,” according to the New York magazine article. From there he took his math skills to Bear Stearns, then a powerful Wall Street investment bank.

Both New York magazine and Vanity Fair magazine reported that he made connections at Dalton that led him to Alan C. Greenberg, then the dauntless chief executive of the Wall Street firm Bear Stearns. Known as “Ace,” Mr. Greenberg was later the firm’s chairman and the chairman of its executive committee.

Under Mr. Greenberg and another top executive, James Cayne, Mr. Epstein “did well enough to become a limited partner — a rung beneath full partner,” Vanity Fair reported.

He left in the early 1980s, forming a consulting firm called the International Assets Group that he ran out of his apartment, according to Vanity Fair. Later he set up a money management firm called J. Epstein & Co. It eventually became the Financial Trust Company, based in the Virgin Islands.

But there was an expensive footnote about him and Bear Stearns. When two big Bear Stearns hedge funds collapsed in 2007 at the start of the financial crisis, Mr. Epstein’s firm was one of the bigger losers, out more than \$50 million. Mr. Epstein’s firm also claimed in a lawsuit that he lost even more money when Bear Stearns itself collapsed in 2008.

Exactly what his money management operation did was cloaked in secrecy, as were most of the names of whomever he did it for. He claimed to work for a number of billionaires, but the only known major client was Leslie Wexner, the billionaire founder of several retail chains, including The Limited.

Mr. Wexner is the chief executive of L Brands, which now operates Victoria’s Secret and Bath & Body Works. Mr. Epstein also did work for Steven Hoffenberg, a financier who offered to rescue The New York Post in 1994, the year before he was charged with securities fraud.

Mr. Epstein's townhouse was once owned by a company that he and Mr. Wexner both controlled. In 2011, it was transferred to a Virgin Island-based company called Maple Inc., of which Mr. Epstein is the president.

A spokeswoman for Mr. Wexner said the retail magnate had "severed ties" with Mr. Epstein about a decade ago. Calls to Financial Trust's office in St. Thomas and to a lawyer for Mr. Epstein there have not been returned.

Over the weekend, investigators smashed the tall wooden front doors of Mr. Epstein's \$56 million Manhattan townhouse in a raid, and said they found a safe with lewd photographs. In arguing that his wealth and private jets made him a flight risk, they said he had six residences.

They also emphasized his private island in describing his primary residence on Little St. James Island, in the Virgin Islands. They said he had a second home on the islands, along with places in New Mexico — a ranch he reportedly named "Zorro" — and Paris.

They also described a fleet that included S.U.V.s and a Mercedes-Benz sedan. His New York State sex-offender listing, required after his deal in Florida in 2008, said he also had a 2017 Bentley.

There was no mention of the Boeing 727 — decorated with mink and sable throws — that flew him to Africa with former President Bill Clinton and the actor Kevin Spacey in 2002. It also flew Mr. Epstein and other acquaintances to a TED Talk in California with lunch catered by Le Cirque, a Manhattan restaurant with a celebrity clientele.

President Clinton "knows nothing about the terrible crimes" that Mr. Epstein was charged with in New York or pleaded guilty to in Florida in 2008, a spokesman for the former president said on Monday. The spokesman, Angel Ureña, said that Mr. Clinton had taken four trips on Mr. Epstein's plane in 2002 and 2003 — one to Europe, one to Asia and two to Africa.

Mr. Ureña emphasized that Mr. Clinton was accompanied by staff members and supporters of Mr. Clinton's foundation "on every leg of every trip" and was accompanied by someone from his staff and his security detail when he made "one brief visit" to Mr. Epstein's home. That was around the same time as a meeting in Mr. Clinton's office in Harlem in 2002, Mr. Ureña said.

"He's not spoken to Epstein in well over a decade, and has never been to Little St. James Island, Epstein's ranch in New Mexico or his residence in Florida," Mr. Ureña said.

Not everyone who flew on Mr. Epstein's planes was a boldface name. Models "have been heard saying they are full of gratitude to Epstein for flying them around, and he is a familiar face to many of the Victoria's Secret girls," Vanity Fair said in 2003 after noting, "Epstein is known about town as a man who loves women — lots of them, mostly young."

Private as he was, he was apparently concerned about what the public thought of him. A mutual friend arranged for him to meet R. Couri Hay, a public relations consultant. Mr. Hay said on Monday that their first meeting, at Mr. Epstein's townhouse, took place three years ago.

Mr. Epstein was not ready to re-emerge in the public eye — not then, anyway. Three months ago, Mr. Epstein called and invited him over to discuss damage control, Mr. Hay said.

“He hates every story starting with ‘billionaire pervert,’” Mr. Hay said. “Jeffrey had long stories about the difference between pedophilia with very young children and tweens and teens a little older.” He added, “It was his way of trying to talk his way around it.”

Mr. Hay said he ultimately declined to work for Mr. Epstein. He said he had misgivings about Mr. Epstein’s sincerity.

Sarah Maslin Nir, Matthew Goldstein and Matthew Haag contributed reporting.

## Complex Frauds

Gyure

### No Prison for the Friars Club Boss Members Seem to Love or Hate

The New York Times

By Colin Moynihan

7/8/19

A former executive director of the Friars Club was sentenced to one year of supervised release on Monday, but there were few signs in the courtroom, filled to overflowing with bickering current and past members, that the proceeding would end the rancor that disrupted the 115-year-old club.

Some critics of the former director, Michael Gyure, who pleaded guilty in January to having filed false tax returns, said his actions reflected a pattern of lax oversight at the club.

Mr. Gyure's supporters, on the other hand, have dismissed the criticism as overblown and described his continued stewardship as vital to the club's future.

Judge Naomi Reice Buchwald of Federal District Court in Manhattan repeatedly emphasized on Monday that Mr. Gyure, 51, was being sentenced only for his tax offenses. Gripes about his leadership, she said, were beyond the court's scope.

"It's clear that there are factions within this club," she said at one point. "It seems to me that the dispute between the factions is essentially a civil dispute."

His guilty plea covered tax returns for four years ending in 2015. He was charged with failing to include hundreds of thousands of dollars in supplemental income, including personal expenses covered by the club.

Prosecutors had asked that Mr. Gyure be sentenced to 12 to 18 months in prison, saying that, beyond his tax offenses, he had sought to enrich himself at the expense of the club and its members. Defense lawyers said Mr. Gyure did not deserve prison time, noting, among other things, that many members want him to continue to help lead the organization and that he was given a new five-year employment contract, albeit in a different role with no oversight of the club's finances.

There was little doubt that those supportive members outnumbered the critics in the courtroom and, after the sentencing, some returned to the club, now shuttered for the summer and undergoing renovations, for a celebration.

Mr. Gyure acknowledged the divisions in his statement to the court, telling Judge Buchwald he had only himself to blame for his tax crimes.

"I recognize that I have some detractors at the Friars Club," he said. "Sadly, I have given them ammunition."

He quickly added that "the vast majority" of club members were on his side and promised "integrity and loyalty" to them.

The club, whose members have included Frank Sinatra, George Burns and Johnny Carson, has served as a bastion for a type of humor symbolized by the insult-filled roasts that it has held for celebrities and which are often broadcast on television.

Since 1957, the club's headquarters has been an East 55th Street townhouse, known as the "Monastery," which includes a barbershop, a gym and a second floor bar named after Barbra Streisand.

Over the last decade or so, some members became concerned by what they viewed as poor oversight by the club's management. The club lost its tax-exempt status as a fraternal organization in 2010. Charity events took in \$3 million but yielded only \$13,000 for charity. The club was often late in paying bills and its state taxes.

Prosecutors wrote in a sentencing memorandum to the court that even as the club was struggling financially, Mr. Gyure aimed to benefit himself. For example, they said Mr. Gyure had attempted to direct any profits from a roast of the former NFL quarterback Terry Bradshaw, which was aired on ESPN, to a company he led, instead of the Friars.

Defense lawyers countered that the Friars typically created separate companies to handle roasts so the club would avoid liability, and that Mr. Gyure had not benefited because the roast did not turn a profit.

Mr. Gyure began serving as executive director in 2007.

"For the past 12 years Michael has been the glue that held the Friars Club together," Paul Shechtman, a defense lawyer told the judge on Monday.

But three former Friars and one current member of the club vehemently disagreed, saying that mismanagement under his reign had led to multiple problems.

One who spoke was Sondra Beninati, who said she became disturbed when she realized the Friars owed large amounts of unpaid sales tax. She agreed to wear a hidden recording device for federal investigators who raided the club in 2017 because of suspicion of financial improprieties.

She said she and her husband had asked how club officials were handling the sales tax matter and sought several meetings with Mr. Gyure.

"We were blocked at every turn," she said.

But Judge Buchwald cut Ms. Beninati and two other speakers short, saying their assertions were not directly connected to the false tax returns that Mr. Gyure had filed.

"How the club is run is up to its members," she said, and advised that one recourse might be the ballot box. "Elections, they have consequences."

## No jail time for tax-cheating Friars Club honcho, some members aren't laughing

New York Daily News

By Trevor Boyer

7/8/19

The tax-cheating former director of the Friars Club escaped a prison stint on Monday, the culmination of a court case that left some roast-ready members fuming.

At his hearing in Manhattan Federal Court, disgraced club honcho Michael Gyure was sentenced to time served, a year of supervised release and 100 hours of community service, and fined \$5,500.

"I have no one to blame but myself," a contrite Gyure told the court, choking up as he described a happy childhood in England and loving parents. "I have betrayed their memory," he said, adding, "I am so sorry that they have had to suffer this disgrace."

Gyure has paid the Internal Revenue Service a total of \$156,920 for what he owed for three years of false tax filings, plus interest, said his lawyer, Paul Shechtman.

Just by looking at these celebrities, we'd be none the wiser to know they are gay. Meanwhile, they have all publicly come out and are all in a relationship.

The standing-room-only courtroom was packed with Friars members who were rooting for Gyure's freedom or howling for his scalp.

The comedy world's most famous private club has endured tight finances and the prospect of declining membership. Gyure pleaded guilty in January to filing faulty tax forms following a two-year investigation by the Justice Department. The club is now closed for renovations.

"In my opinion, Michael Gyure is a bad person," declared lawyer Irwin Cohen, asserting that on three occasions Gyure chiseled him out of thousands of dollars for work he did on the club's behalf. "I trusted him, and I believe he preyed on me," he said. "I think that incarceration is justified."

Comedy writer Carol Scibelli also griped about Gyure's leadership, claiming he took a committee chairmanship from her and that "members were thrown out for ridiculous offenses, others left in disgust."

When Friars board member Arthur Aidala rose to speak, a weary Judge Naomi Reice Buchwald quipped, "Which side are you on?" drawing laughter from an audience appreciative of a snarky jibe.

"The groom's side, your honor," deadpanned Aidala. "I think it's obvious, your honor, that Mr. Gyure has the support of the board."

## Terrorism & Narcotics

### Wise Honest

#### **Their Son Died After Being Held by North Korea. Now They Want a \$500M Ship as Payment.**

Vice News

By Trone Dowd

7/8/19

The parents of Otto Warmbier are demanding compensation for the untimely death of their son, whether North Korea wants to cooperate or not.

Fred and Cindy Warmbier have filed a lawsuit in the Southern District of New York putting a legal claim on a North Korean bulk carrier ship seized by the U.S. government last year. The Ohio couple are asking that the 17,601-ton ship named the Wise Honest be used to pay off part of the \$500 million settlement that North Korea owes the family, as determined by the U.S. District Court for the District of Columbia last December.

But North Korea has adamantly denied any responsibility in the 22-year-old student's death in June 2017 a few days after he was returned to the U.S. from more than a year in North Korean detention. The family believes Otto was tortured and holds the socialist state accountable.

Seized assets could be the way the Warmbiers get compensation. There is a precedent for such lawsuits: Just two years ago, the acting Manhattan U.S. Attorney determined that a \$500 million building on Fifth Avenue could be used to pay off fines related to violations of Iran sanctions.

The Wise Honest, which was North Korea's second-largest merchant ship, was caught illegally transporting coal near American Samoa in April 2018. U.S. officials determined that the ship was using the trade profits to fund North Korea's nuclear and ballistic missile programs, violating rules set by U.N. and U.S. sanctions.

"We are committed to holding North Korea accountable for the death of our son Otto, and will work tirelessly to seize North Korean assets wherever they may be found," the Warmbiers said in a statement released Saturday.

Otto Warmbier was arrested during a study abroad trip to North Korea in January 2016 at Pyongyang International Airport for allegedly stealing propaganda posters. He was detained and sentenced to 15 years of hard labor in March 2016 before being returned to the U.S. in June 2017. When Otto arrived back home, however, he was blind, deaf and brain dead. His parents decided to remove his feeding tube. Warmbier died just six days after his return to the U.S.

A Hamilton County coroner could not identify what caused the college student's death, but both U.S. officials and Warmbier's parents have suspected that he was tortured during his 17 months in captivity.

According to the New York Daily News, North Korean officials called the seizure of the cargo ship a "gangster-like flagrant act of robbery," and demanded that the vessel be returned "without hesitation."

This is not the only time the Warmbiers made news recently. Earlier this year, President Donald Trump found himself in hot water after saying that he didn't believe North Korea's leader Kim Jong Un was complicit in Otto's death.

"What happened is horrible," Trump said during the Hanoi Summit in February. "I really believe something very bad happened to him, and I don't think that the top leadership knew about it. [...] I don't believe he allowed that to happen. Prisons are rough. They are rough places and bad things happen. But I really don't believe that he [Kim] knew about it."

Trump went back on his statement on Twitter the next day, but not without sharp criticism from the Warmbier family.

"We have been respectful during this summit process," Warmbier's parents said in a statement. "Now we must speak out. Kim and his evil regime are responsible for the death of our son Otto. Kim and his evil regime are responsible for unimaginable cruelty and inhumanity. No excuses or lavish praise can change that."

Last month, a 29-year-old Australian student Alek Sigley was detained in North Korea for spreading anti-government sentiment over social media, according to the North Korean Central News Agency. Sigley, who was studying Korean literature at Kim Il Sung University, was deported from the country on July 4, after a week in detention.

## Matters of Interest

### Trump Can't Block Twitter Followers, US Appeals Court Rules

NY Law Journal

By Mike Scarcella and Nate Robson

7/9/19

President Donald Trump's efforts to block certain critics from following him on Twitter is discriminatory and violates the First Amendment, a U.S. appeals court ruled Tuesday.

The three-judge panel of the U.S. Court of Appeals for the Second Circuit upheld a lower court ruling against Trump. The plaintiffs, represented by the Knight First Amendment Institute at Columbia University, are Twitter users who were "blocked" from accessing his social media account.

"Once the president has chosen a platform and opened up its interactive space to millions of users and participants, he may not selectively exclude those whose views he disagrees with," Circuit Judge Barrington Parker wrote for the unanimous panel.

The panel said: "In resolving this appeal, we remind the litigants and the public that if the First Amendment means anything, it means that the best response to disfavored speech on matters of public concern is more speech, not less."

The panel said the ruling does not consider private social media accounts that may be used by elected officials, and does not consider whether social media companies themselves are bound by the First Amendment when policing their platforms.

In Trump's case, the panel said he uses the account as a way to communicate with the public about his administration.

Trump blocked Twitter users who were critical of his presidency, and a trial court judge in Manhattan last year concluded that blocking these accounts violated the First Amendment. At the time, the Knight Foundation's Jameel Jaffer praised the ruling, which he said "reflects a careful application of core First Amendment principles to government censorship on a new communications platform."

Jaffer, the Knight Institute's executive director, said in a statement Tuesday:

"Public officials' social media accounts are now among the most significant forums for discussion of government policy. This decision will ensure that people aren't excluded from these forums simply because of their viewpoints, and that public officials aren't insulated from their constituents' criticism. The decision will help ensure the integrity and vitality of digital spaces that are increasingly important to our democracy."

The appeals court, concluding Trump's account is a public forum, noted how often he uses his account—@realDonaldTrump—to announce official news. Trump, for instance, announced his administration's move to ban transgender service members, and he used his account to announce that he had fired his chief of staff, Reince Priebus, and replaced him with John Kelly.

"The president excluded the individual plaintiffs from government-controlled property when he used the blocking function of the account to exclude disfavored voices," the appeals court said Tuesday.

## Judicial Review of Claims of Government Misconduct in Parallel Investigations

Law 360

By Elkan Abramowitz and Jonathan Sack

7/9/19

Defending an individual who is the subject of parallel civil and criminal investigations is one of the more challenging aspects of white-collar defense practice. The situation is quite common, for example, in securities fraud investigations conducted by the Securities and Exchange Commission and Department of Justice. Parallel investigations raise both pragmatic and legal concerns. As a practical matter, an individual may have to choose between invoking her Fifth Amendment right against self-incrimination, which could have adverse consequences in civil proceedings, or, conversely, not remain silent and make statements detrimental in criminal proceedings. In addition, as a legal matter, parallel investigations pose the danger of prosecutors' behind-the-scenes use of civil investigations as a means of securing evidence they might not otherwise be able to obtain.

Courts have held that when federal prosecutors use a civil investigation in furtherance of a criminal investigation, fundamental constitutional rights—including a defendant's right against self-incrimination—may be infringed. An important procedural question that arises is what preliminary showing a defendant must make in a criminal case to trigger discovery and judicial inquiry into the conduct of federal prosecutors. This issue was addressed in a recent opinion by Judge Jesse Furman in *United States v. Rhodes*, No. 18-cr-887 (S.D.N.Y.), a prosecution for securities fraud and related offenses in the Southern District of New York.

In this article, we begin with a discussion of the basic limitations on federal prosecutors when they conduct criminal investigations at the same time as related civil enforcement investigations. We then discuss the Rhodes case and Judge Furman's decision, which required prosecutors to provide a substantial summary of their interactions with civil investigators before deciding whether further inquiry was warranted. The facts and ruling in Rhodes illustrate the importance of being sensitive to possible government overreach during parallel civil and criminal investigations, and of advancing constitutional arguments when appropriate to protect a defendant's rights.

### Parallel Civil and Criminal Investigations

In *United States v. Kordel*, the Supreme Court held that the government may conduct parallel civil and criminal investigations without violating due process, so long as it does so in good faith and pursuant to proper procedures. 397 U.S. 1, 11 (1970). Prosecutors may use evidence obtained in a civil investigation in a subsequent criminal proceeding "unless the defendant demonstrates that such use would violate his constitutional rights or depart from the proper administration of criminal justice." *United States v. Teyibo*, 877 F. Supp. 846, 855 (S.D.N.Y. 1995). An individual's rights would be violated if the government were to (1) bring a civil action "solely to obtain evidence for its criminal prosecution," or (2) "fail to advise the defendant in its civil proceeding that it contemplates his criminal prosecution." *Kordel*, 397 U.S. at 11-12 (emphasis added).

In *Kordel*, a corporate executive was convicted of violating the Food, Drug, and Cosmetic Act partly on the basis of earlier answers to interrogatories served on his company by the Food and Drug Administration (FDA) in a civil proceeding. The defendant argued that the use of civil interrogatories to obtain evidence in a nearly contemporaneous criminal prosecution violated his Fifth Amendment right against compulsory self-incrimination.

The Supreme Court rejected the claim, holding that the defendant's failure to invoke his Fifth Amendment rights in responding to the FDA's interrogatories foreclosed his claim of having been compelled to give testimony against himself. The Court affirmed the district court's finding that the FDA had not acted in bad faith in serving interrogatories, which the FDA regularly did in similar cases. *Id.* at 7-10.

Applying *Kordel*, the Second Circuit has set out the procedural steps for a challenge to a prosecutor's handling of parallel investigations. *United States v. Gel Spice Co.*, 773 F.2d 427, 434 (2d Cir. 1985). In *Gel Spice*, the Second Circuit held that a defendant who seeks discovery regarding potential misconduct in parallel civil and criminal governmental investigations must make "a 'substantial preliminary showing' of bad faith before an evidentiary hearing or even limited discovery is to be held." *Id.* (quoting *United States v. Tiffany Fine Arts*, 718 F.2d 7, 14 (2d Cir. 1983)). This standard recognizes the "special danger" of the government undermining the rights of a defendant in a criminal investigation "by conducting a de facto criminal investigation using nominally civil means." *Sterling Nat'l Bank v. A-1 Hotels Int'l*, 175 F. Supp. 2d 573, 579 (S.D.N.Y. 2001).  
The 'Rhodes' Case

In the Rhodes case, the defendant Jason Rhodes, a hedge fund manager, was indicted on several charges, including securities and wire fraud, investment adviser fraud, and conspiracy. The government alleges that Rhodes used investor funds to repay other investors, pay hedge fund expenses, and support his lifestyle rather than invest in the hedge fund's portfolio. No. 18-cr-887, ECF No. 8 (S.D.N.Y.). According to the indictment, Rhodes created false account statements to cover up the misuse of investor funds, which resulted in losses to investors of approximately \$19.6 million. *Id.* ¶ 6.

In March 2019, Rhodes filed a motion seeking discovery regarding possible improper coordination between the SEC and DOJ. *Id.*, ECF No. 29. Rhodes's chief argument is that DOJ improperly secured personal emails and text messages by means of productions compelled by SEC subpoenas (later turned over to DOJ) instead of a valid search warrant issued by a judge on the basis of probable cause. In support of this contention, Rhodes explained that the SEC had served him with a subpoena for documents in February 2017, after one of Rhodes's co-founders had pled guilty to fraud charges and shortly before a grand jury returned indictments of co-conspirators in Rhodes's case. According to Rhodes, DOJ was aware of his role at the hedge fund at the time the SEC first subpoenaed him but nevertheless chose not to charge him. Instead, the government allegedly "laid in wait for nearly two years" while Rhodes produced documents to the SEC and appeared for SEC testimony. *Id.*, ECF No. 37 at 6.

In a criminal complaint against Rhodes, DOJ relied on information gathered by the SEC, including text messages Rhodes had produced pursuant to SEC subpoena. Rhodes was later indicted on criminal charges, including securities fraud, but, unusually, the SEC did not file a civil complaint. Rhodes now argues that, under these circumstances, the district court should infer that DOJ "used the civil discovery process in the SEC proceeding [solely] to develop the criminal case against [Rhodes,] in violation of his due process rights," *id.*, ECF No. 29 at 9, and thus should order broad discovery to the defense relating to the prosecutors' dealings with the SEC.

DOJ opposed the motion, arguing that Rhodes had offered "mere conjecture" that there "may have been improper coordination." *Id.*, ECF No. 32 at 8 (emphasis added). In the government's view, Rhodes has not alleged any misleading representations to Rhodes or his counsel concerning an ongoing criminal investigation when Rhodes received and responded to the SEC's subpoena. The government also noted that Rhodes understood he faced possible criminal prosecution throughout the SEC's investigation, as made plain by his invocation of his Fifth Amendment rights during SEC testimony.

### The District Court's Order

On June 18, 2019, following a hearing and the government's submission of an affidavit, Judge Furman ordered the government to provide additional information regarding the prosecutors' coordination with and involvement in the SEC's civil investigation for the court's in camera review. *Id.*, ECF No. 47.

As an initial matter, the court noted that both parties had invoked the wrong standard for determining whether Rhodes should be allowed to conduct discovery. Relying on decisions addressing claims of selective prosecution, Rhodes argued that he was entitled to discovery if he provided "some evidence tending to show the existence" of the essential elements of a due process violation. *Id.*, ECF No. 37 at 5 (quoting *United States v. Armstrong*, 517 U.S. 456, 469 (1996)). The government pointed to a standard typically applied in suppression cases—i.e., that discovery is appropriate only "if the moving papers are sufficiently definite, specific, detailed, and non-conjectural to enable the court to conclude that contested issues of fact ... are in question." *Id.*, ECF No. 32 at 8 (quoting *United States v. Mahaffy*, 446 F. Supp. 2d 115, 127 (E.D.N.Y. 2006)). Judge Furman rejected both positions and applied the test set forth in *Gel Spice*, 773 F.2d at 434, which called on the district court to determine whether Rhodes had made a "substantial preliminary showing" of bad faith by the government.

The court held that, on the present record, Rhodes had failed to make that showing, but observed that the Second Circuit had adopted the "substantial preliminary showing" standard in *Gel Spice* against the backdrop of (1) multiple affidavits of government lawyers concerning the relationship between the civil and criminal investigations at issue, and (2) documents given to the district court for in camera review. Rhodes, No. 18-cr-887, ECF No. 47 at 2. In the Rhodes case, in contrast, the government had submitted only a single affidavit by one of the Assistant U.S. Attorneys responsible for DOJ's criminal prosecution. The affidavit was limited to that AUSA's knowledge and attested that he "neither directed nor requested the issuance of [the SEC's subpoena]" and that he "had no role in formulating the [subpoena's] content." *Id.*, ECF No. 44-1 ¶ 6. Because the affidavit did not say anything about the knowledge or involvement of others involved in the criminal investigation, Judge Furman found that the affidavit did "nothing to advance the ball." *Id.*, ECF No. 47 at 2.

Accordingly, Judge Furman ordered the government to "make a more substantial showing in camera." *Id.* Specifically, the court directed the government to submit a detailed affidavit that sets forth "the nature and extent of any and all communications between the SEC and those involved in the criminal investigation of Rhodes," along with copies of any substantive communications. *Id.* at 2-3. Only after reviewing these materials in camera would the court decide whether the requested discovery is warranted. *Id.* The government submitted its supplemental affidavit and exhibits in camera on July 1, 2019. *Id.*, ECF No. 48.

### Conclusion

In white-collar criminal matters, parallel investigations are routine. In addition to a grand jury investigation, federal or state civil enforcement authorities—e.g., the SEC, CFTC and New York State Attorney General or Department of Financial Services—may conduct their own civil investigations, and a company often conducts an internal investigation. The multiplicity of investigations poses an inherent danger: that prosecutors could use non-criminal investigations to secure statements or tangible evidence that might otherwise not be available to them.

This issue was recently addressed in the context of a company internal investigation in *United States v. Connolly*, 2019 WL 2120523, at \*1 (S.D.N.Y. May 2, 2019). Chief Judge Colleen McMahon held that the extensive involvement by the CFTC, SEC, and DOJ in an internal investigation conducted by counsel for Deutsche Bank—combined with the government's failure to conduct a meaningful investigation of its own—meant that the bank and its counsel "were de facto the Government." Because the government "outsourced" its

investigation, the government in a criminal prosecution could not use statements an employee had given during interviews with the bank's counsel—under the threat of termination—because the statements were effectively compelled in violation of the employee's Fifth Amendment rights. *Id.* at \*14.

As the Rhodes case illustrates, the issue of misusing non-criminal investigations also arises in the context of a parallel investigation conducted by civil enforcement authorities. Proving any such misuse may be very difficult, but the recent order in Rhodes, requiring prosecutors to provide details about their dealings with civil investigators, lays out a procedural path by which the government may be called upon to describe the coordination between prosecutors and civil enforcement authorities. This case highlights the importance of being alert to possible misuse of civil investigations by prosecutors and pursuing discovery and judicial relief when appropriate.

Elkan Abramowitz and Jonathan Sack are members of Morvillo Abramowitz Grand Iason & Anello P.C. Mr. Abramowitz is a former chief of the criminal division in the U.S. Attorney's Office for the Southern District of New York. Mr. Sack is a former chief of the criminal division in the U.S. Attorney's Office for the Eastern District of New York. Justin Roller, an associate of the firm, contributed to this article.

## Barr Says Legal Path to Census Citizenship Question Exists, but He Gives No Details

NYT

By Katie Benner

7/8/19

President Trump and Attorney General William P. Barr began working to find a way to place a citizenship question on the 2020 census just after the Supreme Court blocked its inclusion last month, Mr. Barr said on Monday, adding that he believes that the administration can find a legal path to incorporating the question.

“The president is right on the legal grounds. I felt the Supreme Court decision was wrong, but it also made clear that the question was a perfectly legal question to ask, but the record had to be clarified,” Mr. Barr said in an interview. He was referring to the ruling that left open the possibility that the citizenship question could be added to the census if the administration came up with a better rationale for it.

“It makes a lot of sense for the president to see if it’s possible that we could clarify the record in time to add the question,” Mr. Barr added.

But he also acknowledged that the career Justice Department lawyers who had worked on the census question had little appetite to continue on the case after Mr. Trump inserted himself into the process. “We’re going to reach a new decision, and I can understand if they’re interested in not participating in this phase,” Mr. Barr said. The Justice Department announced a day earlier that it was replacing them, a nearly unheard-of move.

In a court filing on Monday in New York, though, plaintiffs in the case asked a judge to block the lawyers’ withdrawal because they did not demonstrate “satisfactory reasons” for the change.

The talks between Mr. Barr and Mr. Trump and the decision to replace the legal team underscore administration officials’ difficulty in adding a citizenship question to the census. Democrats have criticized the pursuit as an effort to reshape the results of the census — which affects the allocation of hundreds of billions of federal dollars each year — to benefit Republicans.

Mr. Barr said that the Trump administration would soon reveal how it plans to add the question, but he would not detail potential legal pathways. The main challenge, he said, would be adding the question without disrupting the census.

At a news conference later on Monday after touring a federal prison in Edgefield, S.C., with Senators Lindsey Graham and Tim Scott, the Republicans who represent the state, Mr. Barr declined to say whether the president would issue an executive order to add the question. It was not clear what such an order would accomplish; the Constitution makes Congress responsible for overseeing the census, not the president, though the administration carries it out.

The Trump administration’s handling of the census has already put Mr. Barr in the cross hairs of House Democrats, who strongly oppose the addition of a citizenship question. And the hostilities may soon spike.

In a warning shot on Monday, Speaker Nancy Pelosi informed colleagues that she intended to schedule a full House vote “soon” to hold Mr. Barr and Commerce Secretary Wilbur Ross in contempt of Congress for defying subpoenas for documents related to the census question. Ms. Pelosi called the census dispute “essential to who

we are as a nation” and asserted that the materials in question would “shed light on the real reason the administration added a citizenship question.”

The House Oversight and Reform Committee, which is investigating the Trump administration’s decision to add the question, voted last month to recommend that the two cabinet officials be held in contempt, mostly along party lines, despite protests from the administration that it was working in good faith to meet the requests.

If the House follows through with a contempt vote on the floor — and no date for a vote has yet been set — it would be empowering the Oversight Committee to take Mr. Barr and Mr. Ross to court to ask a judge to enforce their subpoenas. Doing so is an exceedingly rare step and puts a black mark on both officials’ public records.

The House has already threatened to hold Mr. Barr in contempt once over a separate case related to a subpoena for material connected to Robert S. Mueller III’s investigation as special counsel. But in the end, lawmakers struck a deal with the attorney general and voted on a resolution that merely authorized them to go to court to enforce the subpoena rather than formally accusing Mr. Barr of being in criminal contempt.

House Democrats intend to go further this time, formally accusing both officials of criminal defiance of their summons if the administration does not relent beforehand, according to a senior Democratic aide familiar with the plans. Still, the practical outcome could be the same since the Justice Department would almost certainly refuse to bring a criminal case against the men.

Kerri Kupec, a Justice Department spokeswoman, declined to comment on the contempt issue.

The conversations between Mr. Barr and Mr. Trump came amid a series of abrupt reversals on the issue. After the Supreme Court delayed the administration’s effort to add the citizenship question, ruling that its rationale was “contrived,” Mr. Ross and Justice Department lawyers declared the issue all but dead last week in the near term.

Mr. Ross said that the Census Bureau, which the Commerce Department oversees, would focus on conducting “a complete and accurate census” and had begun to print forms that did not include the citizenship question. Justice Department lawyers, who had argued that they faced a strict June 30 cutoff for printing the census forms, also concluded as that deadline passed that the question would have to wait for the next census in another decade.

But Mr. Trump, who had been strategizing with Mr. Barr to come up with a way to add the question, overruled Mr. Ross and the lawyers a day later, denouncing their statements as “fake news.”

“We are absolutely moving forward, as we must, because of the importance of the answer to this question,” Mr. Trump said on Twitter.

His discussions with Mr. Barr did not appear to make their way to the Commerce Department officials or the Justice Department lawyers working on the case. Mr. Barr did not say why, and a Justice Department spokeswoman would not say whether he had told aides about the discussions or instructed the lawyers on the case to keep pursuing the issue.

A Justice Department official said that even though Mr. Trump told Mr. Barr immediately after the ruling that he still wanted the question added, Mr. Barr, and subsequently the department, thought the issue was settled for the time being, in part because the census forms were already being printed.

Because of their conversations, however, Mr. Barr was not surprised by the message on Twitter and he knew he had to get the department to switch gears.

But the lawyers expressed surprise last week at the president's assertion, telling a federal judge who had summoned them to a conference call that they would most likely recant their earlier admission of defeat.

"The tweet this morning was the first I had heard of the president's position on this issue, just like the plaintiffs and your honor," Joshua Gardner, a lawyer working on the census issue, told Judge George J. Hazel of the United States District Court in Maryland.

But Mr. Barr said on Monday that the president's statement did not surprise him because "he and I had talked" about the census issue "several times" after the Supreme Court tossed out the citizenship question.

Mr. Barr confirmed that lawyers in the Justice Department's federal programs branch, who typically defend the administration's positions in court, would no longer work on the census question. He said that James Burnham, the No. 2 official in the department's civil division who had led the census team, recommended that lawyers in its consumer protection branch work on the question instead.

The Justice Department was still seeking lawyers to work on the census case on Monday, reaching out to lawyers in the office of immigration litigation to work on the matter, according to an email reviewed by The New York Times.

"They did a super job," Mr. Barr said of the departing team. "They were very professional."

Mr. Barr said that he did not know whether any of the original team members wanted to stay on. "I didn't really get into the details," he said.