

Memorandum

SubjectDate

Re: Operation Leap Year January 31, 2007

ToFrom

R. Alexander Acosta, United States Attorney [REDACTED]
Jeff Sloman, First Assistant United States Attorney
[REDACTED], Chief, Criminal Division
[REDACTED], MAUSA, Northern Region
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I. Introduction

This memorandum seeks approval for the attached indictment charging Jeffrey Epstein, [REDACTED], and [REDACTED]. The proposed indictment contains ___ counts and seeks the forfeiture of Epstein's Palm Beach home and two airplanes.

The investigation initially was undertaken by the City of Palm Beach Police Department in response to a complaint received from the parents of a 14-year-old girl, [REDACTED], from Royal Palm Beach. When [REDACTED] and another girl began fighting at school, one of the school principals intervened. The principal searched [REDACTED]'s purse and found \$200 cash, the principal accused [REDACTED] of selling drugs. [REDACTED] denied selling drugs, and explained that she had been paid \$200 to give a massage to a man on Palm Beach island. [REDACTED]'s parents were notified and they approached the Palm Beach Police Department ("PBPD") about pressing charges. PBPD began investigating the recipient of the massage, Jeffrey Epstein, and two of his assistants, [REDACTED] and [REDACTED]. PBPD identified 27 girls who went to Epstein's house to perform "massage services" (not including one licensed massage therapist). The girls' ages ranged from 14 years' old to 23 years' old. Some girls saw Epstein only once and some saw him dozens of times. The "massage services" performed also varied. Some girls were fully clothed while they massaged Epstein; some wore only their underwear; and some were fully nude. During all of these massages, Epstein masturbated himself and he would touch the girl performing the massage, usually fondling their breasts and touching their vaginas - either over their clothing or on their bare skin. Epstein often used a vibrator to masturbate the girls and digitally penetrated a number of them. For the girls who saw him more often, Epstein graduated to oral sex and vaginal sex. Epstein sometimes brought his assistant/girlfriend, [REDACTED], into the sexual activity. One of the girls described [REDACTED] as Epstein's "sex slave".

On October 18, 2005, PBPD obtained a search warrant with the assistance of the Palm Beach County State Attorney's Office ("PBSAO"). By this time, PBSAO had already been contacted by Epstein's cadre of lawyers. When PBPD arrived at Epstein's home two days later (10/20/05) to execute the search warrant, they found several items conspicuously missing. For example, computer monitors and keyboards were found, but the CPUs were gone. Similarly, surveillance cameras were found, but they were disconnected and the videotapes were gone. Nonetheless, the search did recover some evidence of value, including message pads showing messages from many girls over a two year span.

The messages show girls returning phone calls to confirm appointments to "work." Messages were taken by [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] is not being treated as a target, and has consented to an interview with a proffer letter. The search also recovered numerous photos of Epstein sitting with naked girls whose ages are undetermined.

Photographs taken inside the home show that the girls' descriptions of the layout of the home and master bedroom/bathroom area are accurate. PBPD also found massage tables and oils, the high school transcript of one of the girls, and sex toys.

In sum, the PBPD investigation showed that girls from Royal Palm Beach High School would be contacted by one of Epstein's assistants to make an appointment to "work." Up to three appointments each day would be made. The girls would travel to Epstein's home in Palm Beach where they would meet Epstein's chef and Epstein's assistant—usually ██████—in the kitchen. The assistant would escort the girls upstairs to the master bedroom/bathroom area and set up the massage table and massage oils. The girl sometimes was instructed to remove her clothing. The assistant would leave and Epstein would enter the room wearing a robe. He would remove the robe and lie face down and nude on the massage table. Epstein would then instruct the girl on what to do and would ask her to remove her clothing. After some time, Epstein would turn over, so that he was lying face up. Epstein would masturbate himself and fondle the girl performing the massage. When Epstein climaxed, the massage was over, and the girl was instructed to get dressed and to go downstairs to the kitchen while Epstein showered. Epstein's assistant would be in the kitchen and the girl would be paid—usually \$200—and if it was a "new" girl, the assistant would ask for the girl's phone number to contact her in the future. Girls were encouraged to find other girls to bring with them. If a girl brought another girl to perform a "massage," each girl would receive \$200.

The PBPD investigation consists primarily of sworn taped statements from the girls. When PBPD began having problems with PBSAO, they approached the FBI. The investigation was formally presented to FBI and to me after PBSAO "presented" the case to a state grand jury and that grand jury returned an indictment charging Epstein with three counts of solicitation of prostitution. [Fl](#)

Once I determined that there were federal statutes violated, FBI, ICE, and I opened files. The federal investigation has focused on the interstate nexus required for all of the federal violations, so a number of grand jury subpoenas were issued for telephone records, flight manifests, and credit card records. The federal agents also re-interviewed some of the girls, but limited their questions to "new" topics, such as the specific means of contact, to avoid creating inconsistent *Jencks* materials. The agents also delved into Epstein's history and interviewed others and obtained records to corroborate the girls' stories. FBI also interviewed girls who came forward after PBSAO indictment was reported in the papers and the additional girls identified through those interviews.

I will first address the different crimes with which Epstein can be charged, setting forth the elements of those offenses and the types of evidence that I intend to use to satisfy those elements. Second, I will summarize the evidence related to each girl who has been identified as a potential victim in this case. As to each date/event identified, I will note which offense was committed and, if charged, the Count number related to that offense. Appendix A also contains a sheet for each girl, which contains a photograph taken around the time she met Epstein, her date of birth, and a summary of the evidence related to that girl. Appendix B is a chart summarizing the evidence pertaining to each count.

Following the discussion of the girls' statements and evidence, there is a discussion of the evidence from other witnesses, including corroborating evidence and information related to Epstein's background. The last section discusses forfeiture.

II. The Law of the Offenses Charged

Epstein's conduct violates a number of federal statutes, all of which are discussed herein. I erred on the side of over-charging to allow the Office to consider the options and to delete those counts that it considers to be the weakest. If any of the statutes or their penalties changed during the time period charged (early 2004 through mid-2005), it is noted.

A. Coercion and Enticement: 18 USC § 2422

Whoever, using the mail or any facility or means of interstate . . . commerce, . . . knowingly persuades [or] induces . . . any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 5 years and not more than 30 years.

18 U.S.C. § 2422(b). The Eleventh Circuit Pattern Jury Instructions list the elements of this offense as:

First : That the Defendant knowingly used a facility or means of interstate commerce to persuade or induce an individual under the age of eighteen to engage in prostitution or sexual activity;

Second : That the Defendant believed that such individual was less than eighteen years of age;

Third : That if the sexual activity had occurred, the Defendant could have been charged with a criminal offense under the law of Florida; ^{E2} and

Fourth : That the Defendant acted knowingly and willfully.

The statute does not define “facility or means of interstate commerce” or “prostitution.”

1. A telephone is a “facility of interstate commerce.”

The Eleventh Circuit, however, has ruled that evidence of the use of a cellular telephone satisfies the element of using a facility or means of interstate commerce. *United States v. Drury*, 396 F.3d 1303, 1311 (11th Cir. 2005) (the term “facility of interstate commerce . . . establishes federal jurisdiction whenever any “facility of interstate commerce” is used in the commission of [the] offense, regardless of whether the use is interstate in nature (*i.e.* , the telephone call was between states) or purely intrastate in nature (*i.e.* , the telephone call was made to another telephone within the same state).”). In *Drury* , the defendant used his land-line telephone to call an undercover agent’s cellular telephone. Although both the defendant and the agent were in Georgia, the signals to the agent’s cell phone had to pass through VoiceStream’s Jacksonville, Florida switching center. The defendant argued that he did not know or intend that the call pass in interstate commerce. The Eleventh Circuit was unpersuaded:

The calls were not accidentally or incidentally placed, but rather were made knowingly to further a scheme. . . . Accordingly, whether Drury knew or intended that they would travel across state lines is immaterial.

Id. at 1313. In *Drury* , the Eleventh Circuit did not address whether the district court erred by instructing the jury that telephones are “facilities in interstate commerce.” In an unpublished decision from last year, the Eleventh Circuit wrote, in dicta , that there was no error in instructing a jury that “the telephone system was a facility of interstate commerce.” *United States v. Roberts* , 2006 WL 827293 n.1 (11th Cir. Mar. 30, 2006). *See also United States v. Strevell* , 2006 WL 1697529, *3 (11th Cir. June 20, 2006) (finding that a defendant’s placing of “numerous phone calls from Philadelphia to Miami in order to arrange his sexual encounter” was sufficient to prove the use of a facility and means of interstate and foreign commerce).

2. What is “prostitution”?

As noted above and discussed more thoroughly below, almost none of the girls engaged in traditional sexual intercourse with Epstein. The common activity included allowing Epstein to fondle the girl while he masturbated himself, Epstein’s digital penetration of the girl, and Epstein’s use of a vibrator on the girl while he masturbated himself. It is clear that this activity was done in exchange for money, but the defense will likely argue that some of the activity was not “sexual enough” to qualify as “prostitution.”

Title 18 carries no definition of “prostitution.” In *United States v. Prince* , the Fifth Circuit approved of the generic definition “sexual intercourse for hire” where the West Virginia statutes also lacked a definition. *Prince* , 515 F.2d 564, 566 (5th Cir. 1975). ^{E3} In 1946, the Supreme Court defined prostitution as the “offering of the body to indiscriminate lewdness for hire.” *Cleveland v. United States* , 329 U.S. 14, 17 (1946). *Black’s Law Dictionary* contains several definitions of prostitution:

Prostitution: Act of performing, or offering or agreeing to perform a sexual act for hire.

Engaging in or agreeing or offering to engage in sexual conduct with another person under a fee arrangement with that person or any other person. Includes any lewd act between persons for money or other consideration. Within meaning of statute proscribing

prostitution, comprises conduct of all male and female persons who engage in sexual activity as a business.

Black's Law Dictionary (6th Ed. 1990) at 1222. The term "lewd" is especially broad, and probably covers all of the acts described below.

The district court may decide to limit the term to the definition contained in Florida law. The Florida Statutes define prostitution as "the giving or receiving of the body for sexual activity for hire . . ." Fl. Stat. § 796.07(1)(a) (2005). Sexual activity, in turn, means "oral, anal, or vaginal penetration by, or union with, the sexual organ of another, anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation . . ." Fl. Stat. § 796.07(1)(d). If this definition is used, those instances where the girls remained clothed and where Epstein did not fondle the girls' vaginas would probably fall outside the definition of "prostitution."

3. What is "any sexual activity for which any person can be charged with a criminal offense"?

Section 2422 outlaws both the use of a facility of interstate commerce to entice a minor to engage in prostitution and the use of that facility to entice a minor to engage in "any sexual activity for which any person can be charged with a criminal offense." As set forth in the Pattern Jury Instruction above, the determination of what sexual activity is criminal is governed by Florida law.

Florida law bars a person from procuring anyone under the age of **18** to engage in prostitution or to cause a minor to be prostituted. Fl. Stat. § 796.03 (2005). Florida also defines four categories of lewd or lascivious offenses that criminalize behavior between adults and children under the age of **16** :

1. "Lewd or lascivious battery" occurs when an adult "[e]ngages in sexual activity ^{F4} with a person 12 years of age or older but less than 16 years of age." Fl. Stat. § 800.04(4)(a).

2. "Lewd or lascivious molestation" occurs when an adult "intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator." Fl. Stat. § 800.04(5)(a).

3. "Lewd or lascivious conduct" occurs when a person intentionally touches a person under 16 years of age in a lewd or lascivious manner or solicits a person under the age of 16 to commit a lewd or lascivious act. Fl. Stat. § 800.04(6)(a).

4. "Lewd or lascivious exhibition" occurs when a person intentionally masturbates or exposes his genitals in a lewd or lascivious manner in the presence of a victim who is less than 16 years of age. Fl. Stat. § 800.04(7)(a).

All of these offenses are classified as second degree felonies when perpetrated by an adult. Fl. Stat. §§ 800.04, 800.04(5)(c)(2), 800.04(6)(b), 800.04(7)(c).

Section 800.04 affirmatively bars two defenses to these charges. First, "[n]either the victim's lack of chastity nor the victim's consent is a defense to the crimes proscribed by this section." Fl. Stat. § 800.04(2). Second, the "perpetrator's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the perpetrator's bona fide belief of the victim's age cannot be raised as a defense in a prosecution under this section." Fl. Stat. § 800.04(3).

Florida law does bar "sexual activity" between adults over the age of 24 and minors who are 16 or 17 years' old. Fl. Stat. § 794.05(1). In those cases, "sexual activity" is defined as "oral, anal, or vaginal penetration by, or union with, the sexual organ of another." *Id.* With this offense, ignorance of the victim's age, misrepresentation of the victim's age, and a bona fide belief that the victim is over the age of 17 are not defenses. Fl. Stat. § 794.021.

4. Charging Decisions

Due to the differences in these statutes, for girls who were under the age of 16, I have charged instances of enticement to engage in sexual activity for which a person may be prosecuted *and* enticement to engage in prostitution. For girls who were 16 or 17 at the time, I have charged only

enticement to engage in prostitution, unless the conduct with the particular girl rises to the level of “sexual activity” as defined in Fl. Stat. § 800.04(1)(a).

5. Conspiracy to Violate Section 2422(b).

Unlike most of the other statutes discussed below, Section 2422(b) does not include its own conspiracy prohibition. Accordingly, a conspiracy to violate Section 2422(b) requires the allegation of a Section 371 conspiracy. While, generally speaking, it is nice to avoid the trouble of alleging a 371 conspiracy, in this case it actually may work to our benefit. First, it allows us to set forth in the indictment, in painstaking detail, the scope of the conspiracy. Second, it allows us to allege as “overt acts,” items that might otherwise be excluded pursuant to Fed. R. Evid. 404(b). For example, if Epstein and his assistants engaged the services of an eighteen-year-old girl (“A”) to perform a sexual massage on Epstein, that could not be charged as a substantive offense. But, if A was asked to bring additional girls and A later brought Epstein girls who were under eighteen, then the activities with A were overt acts in the conspiracy. ^{E5}

6. Penalties and Forfeiture

The charged offenses occurred before the enactment of the Adam Walsh Act, so each count carries a sentence of 5 to 30 years in prison, supervised release of up to life, and a \$250,000 fine. Section 2428 states that the Court, in imposing sentence, “shall order, in addition to any other sentence imposed . . . that such person shall forfeit to the United States – (1) such person’s interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation[.]” Applying this language, Epstein’s Palm Beach home and the two airplanes that he used to travel to West Palm Beach are subject to forfeiture.

The charge of conspiracy to violate Section 2422 carries a penalty of only 5 years in prison because it must be charged as a Section 371 conspiracy.

B. Travel with Intent to Engage in Illicit Sexual Conduct: 18 USC § 2423(b)

A person who travels in interstate commerce or travels into the United States . . . for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

18 U.S.C. § 2423(b).

1. Proof of intent to travel

The defendant will most likely assert that his travel to Florida was not done with the intent to engage in illicit sexual conduct—he traveled just to visit his home and attend meetings, etc.—so he lacked the requisite intent.

The Eleventh Circuit has held that, in order to be convicted of violating Section 2423(b), the United States must prove that the defendant “had formed the intent to engage in sexual activity with a minor when he crossed state lines.” *United States v. Hersh*, 297 F.3d 1233, 1246 (11th Cir. 2002). See also *United States v. Han*, 230 F.3d 560 (2d Cir. 2000) (defendant could be convicted of violating Section 2423(b) even though no sexual activity occurred because “minor” was really an undercover officer because the defendant had formed the necessary intent by developing a plan to cross state lines to engage in sexual acts with the minor); *United States v. Root*, 296 F.3d 1222, 1231-32 (11th Cir. 2002).

Although the Eleventh Circuit has not addressed the issue of a “combined motive” for traveling, every other circuit that has addressed the issue has found that the proper statement of the law is:

It is not necessary for the government to prove that the illegal sexual activity was the sole purpose for the transportation. A person may have several different purposes or motives for such travel, and each may prompt in varying degrees the act of making the journey.

The government must prove beyond a reasonable doubt, however, that a significant or motivating purpose of the travel across state or foreign boundaries was to have the individual transported engage in illegal sexual activity. In other words, the illegal sexual activity must have not been merely incidental to the trip.

United States v. Hayward, 359 F.3d 631, 637-38 (3d Cir. 2004). See also *United States v. Garcia-Lopez*, 234 F.3d 217, 220 (5th Cir.2000); *United States v. Vang*, 128 F.3d 1065, 1072 (7th Cir.1997); *United States v. Meacham*, 115 F.3d 1488, 1495 (10th Cir.1997); *United States v. Sirois*, 87 F.3d 34, 39 (2d Cir.1996); *United States v. Campbell*, 49 F.3d 1079, 1082-83 (5th Cir.1995); *United States v. Ellis*, 935 F.2d 385, 389-90 (1st Cir.1991); *United States v. Snow*, 507 F.2d 22, 24 (7th Cir.1974); *United States v. Harris*, 480 F.2d 601, 602 (6th Cir.1973).

As will be explained below, for each substantive count of violating § 2423(b), we have evidence that Epstein or one of his assistants called a girl a day or two before traveling to Florida, and called again while he was in Florida. The evidence consists of cell phone records for the assistants and the girls, the message pads recovered from the search of Epstein's home, and the flight manifests from Epstein's private planes.

2. Illicit Sexual Conduct

"Illicit sexual conduct" means:

(1) a sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or (2) any commercial sex act (as defined in section 1591) with a person under 18 years of age.

18 U.S.C. § 2423(f).

a. What is a Sexual Act?

Title 18, United States Code, Section 2246(2) defines "sexual act" as:

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however, slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

And Chapter 109A states: "Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who – (1) has attained the age of 12 years but has not attained the age of 16 years; and (2) is at least four years younger than the person so engaging; or attempts to do so" has committed a federal offense.

Thus, for purposes of this case, when the victim is under the age of 16, and Epstein either digitally penetrated the girl or used a vibrator on her vagina, I have alleged that the defendant has violated Section 2423(b) when he traveled in interstate commerce for the purpose of engaging in a sexual act as defined in this statute.

b. What is a commercial sex act?

"The term 'commercial sex act' means any sex act, on account of which anything of value is given to or received by any person." 18 U.S.C. § 1591(c)(1). The statute does not go on to define "sex act," but the legislative history of this statute makes clear that the term is to be read very broadly. The term "commercial sex act" replaced the term "prostitution" in an earlier version of the statute.

Section 1591 was enacted as part of the "Victims of Trafficking and Violence Protection Act of 2000." Pub. L. 106-384, 114 Stat. 1464. In drafting that legislation, Congress noted: "The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to *prostitution*, pornography, sex tourism, and other commercial sexual services ." *Id.* at § 102(b)(2). The highlighted language shows that

“commercial sexual services” is a broader term than “prostitution,” but includes prostitution and the creation of pornography, amongst other acts.

When the Sentencing Commission amended the Sentencing Guidelines to correspond with this new legislation, it replaced the term “prostitution” with “commercial sex acts” in the heading of part G of Section 2 and throughout that section. ^{F6} The Commission gave a stated reason for the amendment:

This amendment ensures that appropriately severe sentences for sex trafficking crimes apply to commercial sex acts *such as production of child pornography, in addition to prostitution . . .* It proposes several changes to § 2G1.1 . . . to address more adequately the portion of section 112(b) of the Victims of Trafficking and Violence Protection Act of 2000 . . . The amendment proposes three substantive changes to § 2G1.1. First, this amendment broadens the conduct covered by the guideline *beyond prostitution* to encompass all commercial sex acts, consistent with the scope of the Act. . . .

U.S.S.G. App. C, Vol II, Amendment 641 (emphasis added).

The reference to child pornography is especially helpful to us, because the child pornography statutes use the term “sexually explicit conduct,” which is extremely broad, and includes masturbation and the “lascivious exhibition of the genitals or pubic area of any person.” 18 U.S.C. § 2256(2)(A).

3. Charging Decisions

For girls who were under the age of 16, I have charged instances of travel with the intent to engage in a “sexual act” with a girl under the age of 16 *and* travel to engage in a “commercial sex act” with a minor. For girls who were 16 or 17 at the time, I have charged only travel to engage in a “commercial sex act.”

4. Conspiracy

Section 2423(e) creates a separate offense for conspiring to violate Section 2423(b), so the indictment will contain a single conspiracy count, without the allegation of overt acts, for the entire period of the conspiracy.

5. Defense

Section 2423(g) provides that in “a prosecution under this section based on illicit sexual conduct as defined in subsection (f)(2), it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the person with whom the defendant engaged in the commercial sex act had attained the age of 18 years.” So, for those allegations involving commercial sex acts with 16- and 17-year-old girls, the defendant can come forward and present affirmative evidence that he *reasonably* believed that the girls were 18 or older. The defense cannot be asserted for the sex acts with girls under the age of 16.

6. Penalties and forfeiture

A violation of section 2423, including the conspiracy provision of 2423(e), has no mandatory minimum sentence, and the maximum sentence is 30 years in prison, lifetime supervised release, and a \$250,000 fine. Section 2428’s forfeiture provision applies to these violations as well.

C. Transportation of an Individual to Engage in Sexual Activity: 18 USC 2421

Whoever knowingly transports any individual in interstate or foreign commerce . . . with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

18 U.S.C. § 2421. This traditional “Mann Act” section can be used to charge Epstein alone with transporting his girlfriend, ██████████, from New York to Florida to engage in sexual activity with one of the girls. As will be explained below, one of the victims, ██████████, estimates that she engaged in sexual activity with Epstein “hundreds of times.” ██████████ reports that, at some point, Epstein agreed to pay ██████████ more money if she would engage in sexual activity with ██████████ while Epstein watched. Some of this activity occurred before ██████████ turned 18 and some occurred

afterwards. Regardless of ██████'s age at the time, ██████ "could have been charged with" the following criminal offenses:

- offering to commit or committing prostitution or lewdness, Fl. Stat. § 796.07(2)(e);
- soliciting, inducing, or enticing another to commit prostitution or lewdness, Fl. Stat. § 786.07(2)(f);
- aiding, abetting, or participating in either of the above-listed offenses, Fl. Stat. § 796.07(2)(h); or
- purchasing the services of any person engaged in prostitution, Fl. Stat. § 796.07(2)(i)

Since the transported individual is considered a "victim" under this statute, ██████ cannot be charged, so Epstein is named alone. See, e.g., *United States v. Love*, 592 F.2d 1022, 1025 (8th Cir. 1979) (citing *Gebardi v. United States*, 287 U.S. 112, 118-19 (1932)). Just as with Section 2423(b), the Government must prove that the defendant had the requisite intent prior to the travel, but the Government does not have to prove that the defendant's sole purpose for traveling and transporting the individual was to have the individual engage in illegal sexual activity. *Mortensen v. United States*, 322 U.S. 369, 374 (1944); *Crespo v. United States*, 151 F.2d 44, 46 (1st Cir. 1945).

This offense carries a statutory maximum of ten years in prison. Section 2428's forfeiture provision also applies to this offense.

D. Sex Trafficking: 18 USC 1591(a)

Another potential charge, which probably can be used only against ██████ ██████ and others who referred or procured girls for Epstein, is human sex trafficking, in violation of 18 U.S.C. § 1591(a).

Section 1591(a)(1) makes it illegal for any person to knowingly, in or affecting interstate or foreign commerce, recruit, entice, transport, provide, or obtain by any means a person knowing that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act. Section 1591(a)(2) makes it illegal for a person to knowingly benefit "financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing that . . . the person has not attained the age of 18 years and will be caused to engage in a commercial sex act."

The term "commercial sex act" has the same meaning as discussed above. The statute defines "venture" as "any group of two or more individuals associated in fact, whether or not a legal entity." 18 U.S.C. § 1591(b)(3).

With respect to 1591(a)(2), the Tenth Circuit has stated the elements as:

1. the defendant knowingly benefitted financially from participating in a venture;
2. the acts engaged in by the venture were in or affecting interstate commerce;
3. the venture recruited, enticed, harbored, transported, provided, or obtained by any means a person;
4. the defendant knew that the person was under the age of eighteen;
5. the defendant knew the minor would be caused to engage in a commercial sex act.

United States v. Wild, 143 Fed. Appx. 938, 942 (10th Cir. 2005).

Epstein's assistants, ██████ ██████ and Leslie _____, could be considered people who recruited or obtained by any means girls under the age of 18 who would be caused to engage in commercial sex acts. They also could be considered people who benefitted financially from their participation in that venture based upon the salaries that they received from Epstein. We also may want to consider adding some of the "local pimps." For example, the boyfriend of one of Epstein's former assistants recruited girls for Epstein and got paid. If a girl who performed a sexual massage for Epstein brought more girls to Epstein, the original girl would get paid \$200 for each "referral."

These violations of Section 1591(a) carry a statutory maximum of 40 years' imprisonment, supervised release of up to life, and a \$250,000 fine. 18 U.S.C. § 1591(b)(2). As discussed further below, some of the girls were told that they would only have to "model lingerie." A violation of Section

1591(a) carries a harsher penalty if the offense was “effected by fraud.” There still is no mandatory minimum, but the maximum term of imprisonment is life. 18 U.S.C. § 1591(b)(2).

E. Money Laundering: 18 USC 1956

Epstein and his associates can face charges of promotion money laundering.

Whoever, with the intent – (A) to promote the carrying on of specified unlawful activity; . . . conducts or attempts to conduct a financial transaction involving . . . property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both.

18 U.S.C. § 1956(a)(3). “‘Conducts’ includes initiating, concluding, or participating in initiating, or concluding a transaction.” 18 U.S.C. § 1956(c)(2). The “term ‘transaction’ includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, . . . or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.” 18 U.S.C. § 1956(c)(3).

A “financial transaction” is:

(A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, . . . or

(B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree.

18 U.S.C. § 1956(c)(4).

The “specified unlawful activity” is one of the offenses listed in 18 U.S.C. § 1961(1), namely “any act which is indictable” under Section 1591(a) (sex trafficking) and Sections 2421 through 2423 (relating to white slave traffic). See 18 U.S.C. § 1961(1)(B).

Epstein’s property manager, Janusz Banasiak, was interviewed and served with a subpoena for records relating to his employment. Banasiak resides in the “guest house” on Epstein’s property, and has access to a “Jeffrey Epstein Household Account.” Banasiak uses that account to pay for various household expenses. Banasiak’s practice was to withdraw \$1500 at a time from the bank, and he then would keep a detailed accounting of how the money was spent and, when the \$1500 was used up, he would send a copy of the accounting to Epstein’s accountant and he maintained a copy for himself. A review of those records showed a number of entries that would simply have a girl’s name and a round dollar amount – usually \$200. Banasiak explained that on several occasions when Epstein was “in residence,” Epstein or ██████ ^{E7} would ask Banasiak to pay one of the girls after a massage was completed. On other occasions when Epstein and ██████ were not in Florida, ██████ would call Banasiak to say that a girl was coming to the house and Banasiak should give the girl \$200 in an envelope. Banasiak stated that he would follow these instructions and that he knew that the money was for “massages,” but he insisted that he did not know that sexual activity was occurring. Why Epstein would pay “masseuses” when he was out of town cannot be explained.

F. Charges that Were Considered and Rejected

1. The Travel Act: 18 USC 1952

Section 1952 bans the travel in interstate commerce in aid of racketeering. So, if a person travels in interstate commerce with the intent to promote an unlawful activity—which can include prostitution, and after this travel he performs an act to promote that unlawful activity, then he has violated the Travel Act. At first blush, this appears to apply. However, the “unlawful activity” must be a “*business enterprise* involving” prostitution. If Epstein were a pimp who was soliciting girls for other men and ██████ was assisting him in that effort, the Travel Act would apply. However, since Epstein is using ██████ to solicit girls on Epstein’s own behalf, I don’t believe that Epstein’s personal use of the prostitutes can be considered a business enterprise.

^{F1}PBSAO's handling of this case was incredible, and is discussed in Appendix ___ to this memorandum.

^{F2}The pattern jury instruction does not address a case like this where it is alleged that the facility of interstate commerce was used to induce the girl to engage in *prostitution*. In such a case, the third element probably could be deleted.

^{F3}In *Bonner v. City of Prichard*, 661 F. 2d 1206 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions rendered prior to October 1, 1981.

^{F4}"Sexual activity" is defined as "the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose." Fl. Stat. § 800.04(1)(a).

^{F5}"An 'overt act' is any transaction or event, even one which may be entirely innocent when considered alone, but which is knowingly committed by a conspirator in an effort to accomplish some object of the conspiracy." 11th Cir. Pattern Jury Instr., Offense Instr. 13.1 (2003).

^{F6}Part G contains the guidelines for calculating the offense levels for "Offenses Involving Commercial Sex Acts, Sexual Exploitation of Minors and Obscenity."

^{F7}On one occasion, Banasiak was directed to give money by Ghislaine Maxwell. Maxwell is the daughter of the late Robert Maxwell, a British newspaper tycoon. Maxwell is credited with bringing Epstein into high society, and it appears that at some time they were romantically involved. Maxwell also has been implicated in another act of molesting a young girl, which is discussed in the 404(b) section below.