Memorandum

SubjectDate

Re: Operation Leap Year April 23, 2007

ToFrom

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

I. Introduction

This memorandum seeks approval for the attached indictment charging Jeffrey Epstein, [redacted], a/k/a "[redacted]," [redacted], JEGE Inc., and Hyperion Air, Inc. The proposed indictment contains ___ counts and seeks the forfeiture of Epstein's Palm Beach home and two airplanes. [F1]

The FBI has information regarding Epstein's whereabouts on May 16th and May 19th and they would like to arrest him on one of those dates. Epstein is considered an extremely high flight risk and, from information we have received, a continued danger to the community based upon his continued enticement of underage girls. For these reasons, we would like to present a sealed indictment to the Grand Jury on May 15, 2007 , and we would like the presentation of that indictment and the status of the investigation to remain confidential.

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, "Jane Doe #2," from [redacted]. When Jane Doe #2 and another girl began fighting at school because the other girl accused Jane Doe #2 of being a prostitute, one of the school principals intervened. The principal searched Jane Doe #2's purse and found $300 cash. The principal asked Jane Doe #2 where the money came from. Jane Doe #2 initially claimed that she earned the money working at "Chik-Fil-A," which no one believed. Jane Doe #2 then claimed that she made the money selling drugs; no one believed that either. Jane Doe #2 finally admitted that she had been paid $300 to give a massage to a man on Palm Beach island. Jane Doe #2's parents 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. [F2] 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], [redacted], and [redacted]. [F3] 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 a local high school [F4] 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 [redacted]–in the kitchen. The assistant normally 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 or a towel. He would remove the clothing 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. [F5] 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.

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 the PBSAO indictment was reported in the papers, and 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 [F6]

Epstein's conduct violates a number of federal statutes, all of which are discussed herein. None of the statutes or their penalties changed during the time period charged (early 2004 through mid-2005), although many have changed since then. I use the language of the statutes as they appeared while Epstein was committing the offenses.

In addition to conspiracy charges, there are five statutes related to sexual activity that have been violated. First, Epstein traveled in interstate commerce with the intent to engage in illicit sexual conduct, in violation of 18 U.S.C. § 2423(b). Second, Epstein and his assistants used a facility of interstate commerce to induce or entice minors to engage in prostitution and sexual activity for which any person can be charged, in violation of 18 U.S.C. § 2422(b). Third, Epstein transported [redacted] in interstate commerce with the intent that [redacted] engage in sexual activity for which a person can be charged, in violation of 18 U.S.C. § 2421. For these three offenses, knowledge of the victim's age does not need to be proven, although a reasonable belief that a person is over 18 is an affirmative defense to a limited portion of § 2423(b). [F7]

In those instances where Epstein and/or the assistants knew the ages of the girls (or had reason to know their ages but willfully blinded themselves to that knowledge), they can be charged with sex trafficking, in violation of 18 U.S.C. § 1591(a)(1). In such instances, [redacted], [redacted], and [redacted] also can be charged with benefitting from their participation in a venture engaged in human sex trafficking, in violation of 18 U.S.C. § 1591(a)(2).

Epstein and his assistants also can be charged with causing a money transmitting business to transmit funds intended to be used to promote or support unlawful activity, in violation of 18 U.S.C. § 1960(a).

A. <u>Violations of the Mann Act: 18 U.S.C. §§ 2421-2423</u>

1. Knowledge of Age Is Not Required.

The Mann Act criminalizes traveling in interstate commerce to engage in "illicit sexual conduct," (§ 2423(b)), using a facility of interstate commerce to entice a minor to engage in sexual activity or prostitution (§ 2422(b)), and transporting a person to engage in sexual activity (§ 2421). Sections 2423(b) and 2422(b) require a minor victim, but they do not require that the defendant know that the victim is a minor.

For example, in December, the Fourth Circuit issued its opinion in *United States v. Jones* , 471 F.3d 535 (4th Cir. 2006). Jones was charged with transporting a minor across state lines for sexual purposes, in violation of Section 2423(a), which reads:

> A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce . . . with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 5 years and not more than 30 years.

Jones argued that the term "knowingly" in that section required the Government to prove that Jones knew the age of the victim. The Fourth Circuit soundly rejected the argument, citing the other circuits reaching the same conclusion. *Jones* , 471 F.3d at 538-39 (citing *United States v. Griffith* , 284 F.3d 338, 351 (2d Cir. 2002); *United States v. Taylor* , 239 F.3d 994, 997 (9th Cir. 2001); *United States v. Scisum* , 32 F.3d 1479, 1485-86 (10th Cir. 1994); *United States v. Hamilton* , 456 F.2d 171, 173 (3d Cir. 1982)). Instead, the court concluded that the Government need only prove that the defendant "knowingly transported" someone. The Government must also prove that the person transported was, in fact, a minor, but need not prove that the defendant was aware of her minority. In conducting its analysis, the *Jones* Court relied upon cases interpreting sections of Title 21 relating to the distribution of drugs to a minor. *See Jones* at 540. Those cases have held that the Government must prove only that the defendant *knowingly distributed* the narcotics to someone who happened to be underage.

While the Eleventh Circuit has not addressed the question posed by *Jones* , it has addressed 21 U.S.C. § 861(a)(3) and has reached the same conclusion in approving the district court's instructions to the jury:

> Section 845 of 21 U.S.C.A. provides that anyone who knowingly or intentionally distributes controlled substances to a person under twenty-one is subject to enhanced penalties. . . . [T]he court instructed the jury that it is not an essential element of the crime that the person who distributes be knowledgeable that the person to whom he distributes is under twenty-one years old; it is the distribution that must be knowing, although it is an essential element that the person to whom the distribution is made is under twenty-one.

United States v. Pruitt , 763 F.2d 1256, 1261 (11th Cir. 1985). In reaching this decision, the Eleventh Circuit relied upon the Third Circuit's *Hamilton* decision, *supra* :

> There is, however, a precise analogue to this statute, 18 U.S.C.A. § 2421 *et seq.* (White Slave Traffic Act), which prohibits the interstate transportation of persons in order to engage in immoral practices including prostitution, and which provides enhanced penalties for the knowing transportation of persons under the age of eighteen years. Under this statute, knowledge of the victim's age is *not an element* of the crime; the "knowing" component applies to the transportation itself.

Id. at 1262 (citing *Hamilton*). *See also United States v. Williams* , 922 F.2d 737, 739 (11th Cir. 1991) (using same rationale to decide that Government need not prove knowledge of age for a charge of knowingly employing, using, persuading, inducing, enticing, or coercing a person under eighteen years of age in the commission of a drug offense).

In *United States v. Taylor* , 239 F.3d 994 (9th Cir. 2001), the Ninth Circuit addressed a defendant's assertion that knowledge of minority is required to convict him of transporting a minor for purposes of prostitution. The Ninth Circuit held that the "more natural reading of the statute, however, is that the requirement of knowledge applies to the defendant's conduct of transporting the person rather than to the age of the person transported." *Id.* at 997. In *Taylor* , the defendant argued that the court should analogize the statute to the transportation of hazardous waste, which requires a showing that the defendant knew the waste was hazardous. The Ninth Circuit rejected that suggestion:

> in contrast, the transportation of any individual for purposes of prostitution or other criminal sexual activity is already unlawful under federal law. 18 U.S.C. § 2421. Under 18 U.S.C. § 2423(a), the fact that the individual being transported is a minor creates a more serious crime in order to provide heightened protection against sexual exploitation of minors. As Congress intended, the age of the victim simply subjects the defendant to a more severe penalty in light of Congress' concern about the sexual exploitation of minors. *Cf. United States v. Figueroa* , 165 F.3d 111, 115 (2d Cir. 1998) (noting that, if a criminal statute's language is unclear, its scienter requirement is presumed to be met once an individual forms the requisite intent to commit some type of crime).
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> . . .
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> . . . Ignorance of the victim's age provides no safe harbor from the penalties in 18 U.S.C. § 2423(a). If someone knowingly transports a person for the purposes of prostitution or another sex offense, the transporter assumes the risk that the victim is a minor, *regardless of what the victim says or how the victim appears* .

Id. (emphasis added; additional internal citations omitted). *Cf. United States v. Wild* , 143 Fed. Appx. 938, 942 (4th Cir. 2005) (the parties agreed that, to prove a violation of § 2423(a), the United States had to show that (1) the defendant transported the victim in interstate commerce; (2) the defendant did so knowingly and with the intent that the victim engage in prostitution; and (3) the victim was under the age of 18 at the time she was transported).

This reading finds additional support in the Mann Act itself using the doctrine of "expressio unius est exclusio alterius" (to express or include one thing implies the exclusion of the other). Section 2423(g) creates an affirmative defense to one portion of a violation of Section 2423(b). For purposes of that subsection alone, a defendant may raise an affirmative defense, which he must prove, 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." 18 U.S.C. § 2423(g). The inclusion of that affirmative defense shows that Congress considered the issue and decided that the United States does *not* have to make an initial showing of knowledge of age for violations of 2423(b). Congress likewise considered the same issue for the other portions of the Mann Act and reached the same conclusion. If Congress had intended to place the burden of proving age on the United States – or if it had decided that it should create an affirmative defense to those charges – it could have done so. Congress' use of similar offense language for the other sections of the Mann Act shows that Congress likewise did not intend to require proof of knowledge of age to violate those sections either. *See Gustafson v. Alloyd Co., Inc.* , 513 U.S. 561, 570 (1995) (noting the "normal rule of statutory construction" that "identical words used in different parts of the same act are intended to have the same meaning").

In *United States v. Scott* , 999 F.2d 541, 1993 WL 280323 (6th Cir. 1993), the defendant argued that the Mann Act was unconstitutional for failing to include a requirement that the Government prove the defendant's knowledge of the age of the minor. The Sixth Circuit rejected the argument. First, it found that "[k]nowledge that a girl is under 18 years of age when transported interstate is not part of the proof required of the government in order to sustain a conviction under 18 U.S.C. § 2423. The government proved, as it must, that [the victim] was in fact a minor at the time of the interstate transportation . . . The Mann Act does not require more." *Id.* , 1993 WL 280323 at *6 (citation omitted). The Sixth Circuit then stated:

> it does not offend due process for Congress to draft a statute that does not require the prosecution to show that a defendant believed the victim to be under the age of 18 when she was transported interstate, because the law has traditionally afforded minors substantial protection from others. . . . Similarly, the Constitution does not require that a defendant be provided a defense of mistake of age when accused of a Mann Act violation involving a minor.

Id. (citations omitted).

This approach is consistent with the law of statutory rape, which generally holds that a defendant's good faith mistake as to the victim's age is no defense. In *United States v. Ransom* , 942 F.2d 775 (10th Cir. 1991), the Tenth Circuit addressed a federal statutory rape provision, which provides: "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 has not attained the age of 12 years, or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both." *Id.* at 775 (quoting 18 U.S.C. § 2241(c)). The defendant asserted that a "reasonable mistake as to age defense" should be read into the statute or, alternatively, that the statute was unconstitutional for failing to include such a defense. The Tenth Circuit rejected the arguments, noting that "the majority of courts that have considered the issue have rejected the reasonable mistake of age defense to statutory rape absent some express legislative directive." *Id.* (citations omitted). Further, the "Supreme Court has recognized that the legislature's authority to define an offense includes the power 'to exclude elements of knowledge and diligence from its definition.'" *Id.* (quoting *Lambert v. California* , 355 U.S. 225, 228 (1957)). The Tenth Circuit also agreed with the legislative history, finding that the statute "protects children from sexual abuse by placing the risk of mistake as to a child's age on an older, more mature person who chooses to engage in sexual activity with one who may be young enough to fall within the statute's purview." *Id.* at 777 (citing *Nelson v. Moriarty* , 484 F.2d 1034, 1035 (1st Cir. 1973)). The Ninth Circuit addressed similar arguments in *United States v. Juvenile Male* , 211 F.3d 1169 (9th Cir. 2000), and reached the same conclusions.

As discussed in *Ransom* , Epstein and his assistants were the "older, more mature person[s]" who chose to engage in sexual activity and prostitution with young girls. The risk of mistake regarding the ages of those victims should lie with the targets.

2. Coercion and Enticement: 18 U.S.C. § 2422 [Counts __ to __]

> Whoever, using the mail or any facility or means of interstate . . . commerce, . . . knowingly persuades, induces, [or] entices . . . 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 United States must show either:

First: That the Defendant knowingly used a facility of interstate commerce to persuade, induce, or entice a person to engage in prostitution; and

Second: That the person so persuaded was under the age of 18;

or

First: That the Defendant knowingly used a facility of interstate commerce to persuade, induce, or entice a person to engage in sexual activity;

Second: That the person so persuaded was under the age of 18; and

Third: That the Defendant could have been charged with a criminal offense under the law of Florida based upon the sexual activity. [F8]

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

a. A telephone is a "facility of interstate commerce."

The Eleventh Circuit has ruled that evidence of the use of a 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).

Earlier this year, the Eleventh Circuit found that the United States adequately proved the jurisdictional element of § 2422(b) when evidence was introduced that the defendant used both a cellular telephone and a land-line telephone to entice a minor to engage in prostitution, even though no evidence was introduced that the calls were routed through interstate channels. *United States v. Evans* , 476 F.3d 1176, 1180 (11th Cir. 2007). The Eleventh Circuit then held:

> Telephones and cellular telephones are instrumentalities of interstate commerce. Evans's use of these instrumentalities of interstate commerce alone, even without evidence that the calls he made were routed through an interstate system, is sufficient to satisfy § 2422(b)'s interstate-commerce element.

Id. at 1180-81 (citations omitted).

b. "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 statues also lacked a definition. *Prince* , 515 F.2d 564, 566 (5th Cir. 1975). [F9] 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) (2004). [F10] 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." [F11]

c. "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." According to the Eleventh Circuit Pattern Jury Instruction, 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 (2004). 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 [F12] with a person 12 years of age or older but less than 16 years of age." Fl. Stat. § 800.04(4)(a) (2004).

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) (2004).

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) (2004).

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) (2004). [F13]

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) (2004).

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) (2004). 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) (2004).

Florida law also bars "sexual activity" between adults over the age of 24 and minors who are 16 or 17 years' old. Fl. Stat. § 794.05(1) (2004). 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 (2004).

d. 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).

e. Conspiracy to Violate Section 2422(b) [Count 1]

Unlike most of the other statutes discussed herein, 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. [F14]

f. 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.

The current version of 18 U.S.C. § 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.

Section 2428 went into effect on January 10, 2006, so unless we can show activity continuing past that date, it will not apply. For the relevant time period (2004 to late 2005), criminal forfeiture was governed by 18 U.S.C. § 2253(a), which states:

> [a] person . . . who is convicted of an offense under section 2421, 2422, or 2423 of chapter 117, *shall* forfeit to the United States such person's interest in – . . . (3) any property, real

> or personal, used or intended to be used to commit or to promote the commission of such offense.

This language also should apply to Epstein's Palm Beach home and the two airplanes.

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, and there is no provision for forfeiture of the relevant property.

3. Traveling with Intent to Engage in Illicit Sexual Conduct: 18 U.S.C. § 2423(b) [Counts __ to __]

> A person who travels in interstate commerce . . . 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).

Thus, the United States must prove that Epstein knowingly traveled in interstate commerce and that he did so for the purpose of engaging in illicit sexual conduct, as defined below.

a. Proof of intent to travel

In Appendix C, Epstein's attorneys assert that Epstein's trips to Florida were not undertaken for the sole purpose of engaging in illicit sexual conduct–he traveled just to visit his home and attend meetings, etc.– and, therefore, he lacked the requisite intent to violate Section 2423(b).

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 [F15] 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 and "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).

Just a few weeks ago, the Eleventh Circuit addressed for the first time the issue of a "combined motive" for traveling, and approved the following instruction:

> the Government [] does not have to show that engaging in criminal sexual activity with a minor was the Defendant's only purpose, or even his primary purpose, but the Government must show it was one of the purposes for transporting the minor or for the travel. In other words, the Government must show that the Defendant's criminal purpose was not merely incidental to the travel.

United States v. Hoschouer , ___ F.3d ___, 2007 WL 979931, *1 (11th Cir. Apr. 3, 2007).

The decision of the Eleventh Circuit was consistent with every other circuit that has addressed the issue:

> 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) (The district court did not err in instructing the jury that "it was sufficient for the Government to prove that *one* of the [the defendant's] motives in traveling was to engage in a sexual act with a minor."); *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) ("[I]t is not necessary

to a conviction under the [Mann] Act that the sole and single purpose of the transportation of a female in interstate commerce was such immoral practices."); *United States v. Ellis* , 935 F.2d 385, 389-90 (1st Cir.1991) (jury could consider that defendant's personal motive for bringing minor on interstate family vacations and business trips was to have her available for sexual abuse even though there were other purposes for the trips); *United States v. Snow* , 507 F.2d 22, 24 (7th Cir.1974); *United States v. Harris* , 480 F.2d 601, 602 (6th Cir.1973); *United States v. Cole* , 262 F.3d 704, 709 (8th Cir. 2001) ("The illicit behavior must be *one* of the purposes motivating the interstate transportation, but need not be the dominant purpose," and a defendant's intent may be inferred from all of the circumstances) (citations omitted).

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 from trash pulls, the flight manifests from Epstein's private planes, and testimony from the girls about how the appointments were made.

b. Illicit Sexual Conduct

The United States must prove that one of the purposes of the defendant's travel was to engage in "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).

(i) 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.

(ii) 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," and is meant to include prostitution, the creation of pornography, and other [undefined] 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. [F16] 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).

c. 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." I also have elected to treat all of these sexual massages as "commercial sex acts" regardless of whether there was any penetration. Epstein exchanged money for the opportunity to view underage girls in various states of undress and to masturbate in front of them. As described by the girls, Epstein received sexual gratification from the experience and he constantly tried to "push the envelope" to convince the girls to become more and more sexual. As [redacted]. described, when a girl refused to let Epstein touch her, Epstein "down-promoted her" to become a recruiter.

d. Conspiracy [Count 2]

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.

e. Additional Ancillary Offense [Count 3]

The statute contains an additional ancillary offense making it illegal, for the purpose of commercial advantage or private financial gain, to arrange, induce, procure, or facilitate the travel of a person knowing that such person is traveling in interstate commerce for the purpose of engaging in illicit sexual conduct. 18 U.S.C. § 2423(c). Once of [redacted] job responsibilities, for which she was paid handsomely, was to arrange both the appointments with the underage girls and also to arrange Epstein's travel. Epstein's pilots testified that [redacted] was the person who would call them to have them at the airport at a given time and who would tell them where they would be traveling to. Accordingly, I have charged [redacted] alone with a single count of violating § 2423(c).

f. The Affirmative Defense Regarding Knowledge of Age

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.

Congress's decision to include an affirmative defense to part of the statute shows that it has considered the issue and determined that the Government does *not* have to prove that the defendant knew the victims were underage for the other portions of the statute. This is consistent with the cases interpreting various sections of the Mann Act.

Thus, for those instances where we know that a 16- or 17-year-old girl affirmatively told Epstein that she was 18 – and it would have been reasonable for Epstein to believe that statement – I have not charged Epstein with violating 2423(b).

g. 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. As explained above, for the relevant time period (2004 to late 2005), criminal forfeiture was governed by 18 U.S.C. § 2253(a), which also applies to violations of section 2423.

4. Transportation of an Individual to Engage in Sexual Activity: 18 U.S.C. § 2421[Counts __ to __]

> 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, [redacted], from New York to Florida to engage in sexual activity with one of the girls. As will be explained below, one of the victims, [redacted]., estimates that she engaged in sexual activity with Epstein "hundreds of times." [redacted]. reports that, at some point, Epstein agreed to pay [redacted]. more money if she would engage in sexual activity with [redacted] while Epstein watched. Some of this activity occurred before [redacted]. turned 18 and some occurred afterwards. Regardless of [redacted].'s age at the time, [redacted] "could have been charged with" the following criminal offenses:

- offering to commit or committing prostitution or lewdness, Fl. Stat. § 796.07(2)(e) (2004);
- soliciting, inducing, or enticing another to commit prostitution or lewdness, Fl. Stat. § 796.07(2)(f) (2004);
- aiding, abetting, or participating in either of the above-listed offenses, Fl. Stat. § 796.07(2)(h) (2004); or
- purchasing the services of any person engaged in prostitution, Fl. Stat. § 796.07(2)(i) (2004).

Since the transported individual is considered a "victim" under this statute, [redacted] 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. During the relevant time period, the forfeiture provision of 18 U.S.C. § 2253(a)(3) applied, which mandates the forfeiture of assets used in the commission of the violation of Section 2421.

B. Sex Trafficking of Children: 18 U.S.C. § 1591(a)

For those cases where there is evidence that the defendants either knew or, but for their willful blindness, would have known that the victim was under 18, the defendants can be charged with violating

two subsections of the child sex trafficking statute. Section 1591(a)(1) prohibits recruiting or obtaining children to engage in a commercial sex act. Section 1591(a)(2) punishes those who benefit financially from child sex trafficking.

1. Obtaining Children to Engage in Commercial Sex Acts: 18 U.S.C. § 1591(a)(1) [Counts ___ to ___]

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. The term "commercial sex act" has the same meaning as discussed above ("any sex act, on account of which anything of value is given to or received by any person ").

This charge has frequently been used in connection with "sex tourism" cases prosecuted by the Office, where the defendant arranged through an undercover "travel agency" to travel overseas to have sex with underage prostitutes. This case is analogous with [redacted], [redacted], and [redacted] serving as Esptein's "travel agency" for his interstate travel to Florida to engage in prostitution with young girls.

In *United States v. Roberts* , 174 Fed. App. 475 (11th Cir. 2006), Roberts challenged his conviction for attempting to engage a minor in commercial sex acts in violation of Section 1591(a)(1), all in violation of Section 1594(a). [F17] Roberts contacted an undercover website promising travels to Costa Rica to meet underage prostitutes. Roberts arranged a trip with the undercover website, but then changed his mind because he did not want to travel internationally. Roberts and the undercover agent then arranged for the [non-existent] prostitutes to travel to Florida to meet Roberts at a hotel there. Roberts challenged the proof of the jurisdictional element of the offense. The Eleventh Circuit found sufficient evidence that Roberts' activities were "in or affecting interstate commerce" based upon Roberts' use of a credit card to pay for his trip with the travel agency, his decision to meet the prostitutes at a hotel that served interstate travelers, and the fact that the prostitutes were supposed to move in international commerce. *Id.* at 478-79.

The case of *United States v. Strevell* , 185 Fed. Appx. 841 (11th Cir. 2006), involved one of the people who actually tried to travel to Costa Rica using the undercover website. Strevell also challenged his conviction, claiming that the United States did not have jurisdiction over activity that was to take place overseas. The Eleventh Circuit rejected the argument, stating that Section 1591(a)(1):

> criminalize[s] the use of interstate commerce in an attempt to obtain and entice a minor for prostitution. Although all of Strevell's actions occurred in the United States, it is clear that he used means of interstate commerce in attempting to obtain and entice a minor for sex. He made numerous phone calls from Philadelphia to Miami to order to arrange his sexual encounter in Costa Rica. . . . he attempted to board a plane from Miami to Costa Rica in order to meet one, if not two, 14-year-old prostitutes.

Id. at 845.

Thus, the evidence of Epstein's violation of this statute includes his travel in interstate commerce to commit the offense; directing his assistants to make interstate telephone calls to set up the appointments; and wiring money interstate to some of the girls as "bonuses."

In *United States v. Evans* , 476 F.3d 1176 (11th Cir. 2007), and *United States v. Sims* , 161 Fed. Appx. 849 (11th Cir. 2006), the Eleventh Circuit affirmed Section 1591(a)(1) convictions for "pimps" who obtained underage girls and forced the girls to engage in prostitution. In *Evans* , the defendant argued that his purely intrastate activity was not "in or affecting interstate commerce." The Eleventh Circuit found that Evans' "conduct substantially affected interstate commerce" based on his "use of hotels that served interstate travelers and distribution of condoms that traveled in interstate commerce." *Evans* , 476 F.3d at 1179.

Evans shows that [redacted], [redacted], and [redacted] are equally liable for violating Section 1591(a)(1), since their actions were in and affecting interstate commerce (using the telephone and

traveling with Epstein), and they recruited, enticed, provided, and obtained underage girls to work as prostitutes for Epstein.

2. Benefitting Financially from Participating in a Venture Engaged in Sex Trafficking: 18 U.S.C. § 1591(a)(2) [Count ___]

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) (emphasis added).

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, [redacted], [redacted], [redacted], [redacted], and [redacted], could be considered people who benefitted financially from their participation in that venture based upon the salaries that they received from Epstein. They will, no doubt, argue that the salaries that they received were unrelated to the work of setting appointments for Epstein to meet with prostitutes. The evidence, however, reveals the importance of this part of their jobs. For example, in reviewing [redacted] telephone records, during periods that they were traveling to Florida, more than 50% of the calls that she makes – on a cellular telephone paid for by Epstein – are to girls whom we have identified. There are, no doubt, girls whom we have not identified. Setting up the appointments and travel arrangements, purchasing birthday gifts for the girls, wiring funds to them add up to a significant portion of [redacted] duties and, therefore, a significant part of her pay. With respect to [redacted], she participated in some of the sexual performances. During the relevant period, [redacted], [redacted], and [redacted] all received a salary and free housing in Manhattan, as well as the ability to travel with Epstein on his private plane, staying in his home, and being fed by his private chef. All of these amount to "something of value" and the relationship of the three assistants as co-employees amounts to a "group of two or more individuals associated in fact, whether or not a legal entity," that is, a "venture" as defined in Section 1591(b)(3).

3. Conspiracy

The Child Sex Trafficking statutes do not include a separate conspiracy charge, so, if charged, it would have to be an object of a Section 371 conspiracy. In light of Section 1591(a)(2), which is directed to "ventures," a separate conspiracy charge might be subjected to a multiplicity challenge. That challenge would probably be fruitless, as evidenced by the fact that Epstein cannot be charged in the Section 1591(a)(2) count but certainly could be charged in a conspiracy to violation Section 1591(a)(1), but I have erred on the side of caution and have not included violating Section 1591(a)(1) as a second object of the Section 371 conspiracy.

4. Penalties and Forfeiture

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).

As part of the slavery legislation, Congress included a separate forfeiture provision, which states:

> The court, in imposing sentence on any person conviction of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeiture 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 . . .

18 U.S.C. § 1594(b). Section 1594 also makes contraband any property used or intended to be used to commit or to facilitate the commission of slavery violations. *See* 18 U.S.C. § 1594(c)(1)(A). Thus, these violations are another basis for forfeiting the Palm Beach home and the two airplanes.

D. <u>Charges that Were Considered and Rejected</u>

1. Promotion Money Laundering: 18 U.S.C. § 1956(a)(3)(A)

Section 1956(a)(3)(A) states:

> 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.

"'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 Palm Beach 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 [redacted] [F18] would ask Banasiak to pay one of the girls after a massage was completed. On other occasions when Epstein and [redacted] were not in Florida, [redacted] 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.

Epstein also sent funds via Western Union as "bonuses" for some of the girls. These transactions could also be considered to "facilitate" the criminal activity by insuring the girls' loyalty and continued available to Epstein for his sexual gratification.

Epstein's behavior seems to fall squarely within the language of the statute as written, including the Eleventh Circuit's pattern jury instruction. [F19] In conducting research, however, all cases charged under this section involved undercover "sting" operations. I contacted the Department's Money Laundering Section and learned that subsection 1956(a)(3) was drafted specifically to apply to money laundering "sting" operations, and was not intended to reach the activity that Epstein was involved in. Accordingly, I chose the more conservative route and decided not to charge Epstein with this offense.

2. Aiding and Abetting an Unlawful Money Transmitter: 18 U.S.C. § 1960

Section 1960(a) makes it a crime for someone to knowingly conduct or direct all or part of an "unlicensed money transmitting business." An "unlicensed money transmitting business" means "a money transmitting business which affects interstate or foreign commerce in any manner or degree and . . . (C) otherwise involves the transportation or transmission of funds that are . . . intended to be used to promote or support unlawful activity." 18 U.S.C. § 1960(b)(1).

The term "unlawful activity" is not defined in Section 1960. Another one of the money laundering statutes, Section 1956 cross-references Section 1961(1) for the definition of "specified unlawful activity." Section 1961(1) defines "racketeering activity" to include "any act which is indictable under any of the following provisions of title 18, United States Code: . . . sections 1581-1591 (relating to peonage, slavery, and trafficking in persons), . . . [and] sections 2421-24 (relating to while slave traffic) . . ."

1. The Money Transmitting

As I mentioned above, Epstein's property manager, Janusz Banasiak, would withdraw $1500 at a time for household expenses from Commerce Bank. The funds in that bank account were transferred from Epstein's main bank account in New York on an "as needed" basis. Banasiak documented how he used the funds, including payments made to various girls at the request of Epstein or [redacted]. Epstein also sent funds via Western Union as "bonuses" for some of the girls. These transactions could also be considered to "promote or support" the criminal activity by insuring the girls' loyalty and continued available to Epstein for his sexual gratification.

2. How Epstein "directed" an unlicensed money transmitting business.

As mentioned above, I originally considered charging Epstein with promotion money laundering, in violation of 18 U.S.C. § 1956(a)(3)(A). After conferring with the Money Laundering Section at the Department of Justice, it was recommended that I forego the Section 1956 charge and, instead, I should charge Epstein with aiding and abetting the unlicensed money transmitting by causing his bank and Western Union unwittingly to transmit funds intended to be used to promote and support sex trafficking and white slave traffic.

The Money Laundering Section referred me to the case of *United States v. Tobon-Builes* , 706 F.2d 1092 (11th Cir. 1983), where a defendant was convicted of violating 18 U.S.C. § 1001 by causing banks to fail to file Currency Transaction Reports ("CTRs") by structuring transactions. [F20] Over a six-hour period, Tobon-Builes and an accomplice went to ten different banks in Northern Florida where they each purchased a $9,000 cashier's check with cash. Because each individual purchase was less than $10,000, thereby escaping the banks' duty to file a CTR for each transaction. Tobon-Builes was arrested and admitted that he had won over $100,000 playing poker and was purchasing cashier's check in amounts less than $10,000 to avoid bank reporting requirements because he did not want to pay federal taxes on his winnings. Tobon-Builes argued that he could not be charged with concealment of material information in violation of 18 U.S.C. § 1001 because he did not have a duty to file a CTA – only the financial institution has that legal obligation.

The Eleventh Circuit rejected the argument, stating that the government:

> charged and proved that Tobon willfully and knowingly caused financial institutions not to report currency transactions that they had a duty to report and would have reported if they had known about such transactions. Support for this holding is found in 18 U.S.C. § 2(b)

which provides that one who "willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

Id. at 1099 (quoting 18 U.S.C. § 2(b)). Further, "it is well established that § 2(b) was designed to impose criminal liability on one who causes an intermediary to commit a criminal act, even though the intermediary who performed the act has no criminal intent and hence is innocent of the substantive crime charged, in this case concealment." *Id.* (citations omitted). The operation of Section 2(b) foreclosed Tobon-Builes' legal incapacity argument, and the Eleventh Circuit noted a series of cases where someone without a legal duty used an innocent agent to violate that agent's legal duty. In each of those cases, the defendant was convicted via operation of Section 2(b). *See id.* at 1100-01 (citations omitted). Since its issuance, *Tobon-Builes* has been cited in numerous cases for the proposition that a defendant can be convicted as a principal, even where he uses as innocent intermediary to commit the charged offense.

In this case, Commerce Bank and Western Union were the innocent intermediaries who operated the money transmitting business. Nonetheless, Epstein's directions to pay the girls caused Western Union to transmit funds that were intended to be used to promote or support unlawful activity – the prostitution of minors. Epstein's directions to Banasiak caused Commerce Bank to transmit funds via its ATM to Banasiak, who withdrew those funds that Epstein intended to use or promote the same unlawful activity. Accordingly, one could charge Epstein alone with individual counts of violating Section 1960 for each Western Union transfer and for each ATM withdrawal that occurred immediately prior to one of Banasiak's documented payments to one of the girls.

I decided not to include these charges because I felt that the charge would confuse the jury or make them feel that the Government was overreaching, and the penalty for this activity is less than the penalties for the other charged offenses.

2. The Travel Act: 18 U.S.C. § 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, but the "unlawful activity" must be a " *business enterprise* involving" prostitution. If Epstein were a pimp who was soliciting girls for other men and [redacted] was assisting him in that effort, the Travel Act would apply. However, since Epstein is using [redacted] 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.

III. <u>Victims</u>

A. Jane Doe #1 ([redacted].) - ([redacted])

1. Facts

Some time in early 2004, the exact date being unknown, Jane Doe #1 was approached by two individuals, [redacted] and Tony, while at a beach club on Singer Island. [redacted] was a classmate of JD#1 at [redacted] High School. [redacted] asked JD#1 if she wanted to make some money giving a massage to a wealthy man on Palm Beach Island. JD#1 was told that she would be paid $200, she would have to remove some of her clothing, and that there might be some "fondling." JD#1 agreed to go to the house. Within a few days, JD#1 was called by [redacted] and Tony, and all three drove to Epstein's home on Brillo Way in Palm Beach.

The three were admitted through the gate and went to the "back entrance" of the house, entering through the kitchen. In the kitchen, JD#1 was met by [redacted] and some other members of the household. [redacted] led JD#1 upstairs to Epstein's dressing area [F21] where the massage table was already set up. [redacted] then left the room and Epstein entered wearing a towel. Epstein laid face down and JD#1 was told to remove her clothes (she remained in her panties). JD#1 then began to massage Epstein as he

directed her. After massaging his back area for some time, Epstein turned over so that he was laying face up. Epstein began masturbating and trued numerous times to touch JD#1, grabbing her rear end and trying to touch other places in a sexual manner. JD#1 pulled away several times, telling Epstein that she did not want him to touch her. Epstein continued to masturbate, and instructed JD#1 to pinch his nipples, which she did. Epstein climaxed and the massage ended. Epstein stood up and wiped himself off. Epstein went into the master bathroom while JD#1 got dressed. After both were dressed, Epstein paid JD#1 $200 in cash (2 $100 bills). Because JD#1 would not let Epstein touch her, Epstein told JD#1 that she shouldn't give him any more massages, but she could bring girls to the house and she would get paid $200 for every girl that she brought.

When JD#1 went downstairs, [redacted] asked JD#1 for her telephone number so that [redacted] could contact JD#1 directly. JD#1 gave her telephone number to [redacted], and all future communications were directly with [redacted]. JD#1 says that she received the first call from [redacted] soon after her first visit to Epstein's residence. Telephone records for [redacted] telephone and JD#1's telephone were subpoenaed. The first telephone contact between JD#1 and [redacted] was on March 12, 2004, and it continued through July 24, 2005.

JD#1 described how [redacted] would call to arrange appointments for Epstein. [redacted] would call to ask JD#1 if anyone was available to "work." JD#1 says that some of these calls occurred prior to Epstein's travel to Florida others would occur when Epstein was already in town. During some of the telephone calls, [redacted] would request a particular girl, other times she would just ask JD#1 to find a girl or girls to come over. JD#1 stated that she sometimes received multiple calls during one of Epstein's stays. Once JD#1 received a call from [redacted], JD#1 would call one or more girls to see if they were available and then would call [redacted] back to confirm the date and time. This is consistent with the telephone records that were received. The phone records that were subpoenaed show 70 telephone calls between [redacted] and JD#1. [F22] JD#1 also placed one call to [redacted] telephone.

JD#1 brought seven (7) underage girls to Epstein's home. Every time that she brought a girl, JD#1 was paid $200, always in cash, always in $100 bills, always by Epstein. JD#1 also brought one 23-year-old woman to Epstein's home. Epstein "didn't care for her" and told JD#1 that the woman was too old. Epstein told JD#1 "the younger the better," and told JD#1 that he didn't like to have problems with girls who didn't know what to expect, so she should always tell the girls in advance what would happen when they arrived. JD#1 reported that she always told the girls that they would have to get undressed and give a massage and that there might be some "fondling." JD#1 reports that she told all of the girls that they could tell Epstein that they were uncomfortable with anything and he would stop. JD#1 stated that she had asked [redacted] about a rumor that a girl who had intercourse with Epstein had been paid $1,000. [redacted] said that she doubted that was true because Esptein "doesn't have sex with the girls, he just plays around with them."

JD#1 also reports that [redacted] had told JD#1 to tell Epstein that she was 18 if he asked and that JD#1 told that to the girls whom she recruited. JD#1 said that she told Epstein that she was 18 but that "he knew better." JD#1 also said that she was never instructed by Epstein or [redacted] to make sure that the girls that she brought were over 18 and was never asked to provide identification/proof of her age for herself or for any of the girls whom she brought. One of JD#1's friends described Jane Doe #2 as "the youngest-looking girl" that JD#1 had brought to Epstein's house. Yet [redacted] made another appointment for JD#2 to come to Epstein's house without either [redacted] or Epstein asking about JD#2's age. JD#2 was 14 years' old.

2. The Sexual Activity & Knowledge of Age

JD#1's cellular phone records show the first contact with Tony on March 7, 2004. On March 11, 2004, JD#1 called Tony at 9:13 p.m. Epstein arrived the same day, at 11:20 p.m. On March 12, 2004, JD#1 called Tony at 8:59 a.m. and 9:21 a.m. At 3:38 that afternoon, JD#1 received her first call from [redacted].

JD#1 provided one sexual massage where Epstein masturbated while trying to fondle JD#1. JD#1 was 17 years' old at the time. JD#1 told Epstein that she was 18 years' old, but believes that Epstein "knew better."

3. The Charges and Overt Acts Based upon Activity with JD#1

a. Overt Acts

#. On or about March 11, 2004, Defendants JEFFREY EPSTEIN, [redacted], and [redacted] traveled from Teterboro, New Jersey, to Palm Beach County, Florida aboard the Gulfstream aircraft owned by Defendant HYPERION AIR, INC.

#. On or about March 12, 2004, Defendants JEFFREY EPSTEIN and [redacted] caused Jane Doe #1 to travel to 358 El Brillo Way, Palm Beach, Florida.

#. On or about March 12, 2004, Defendant JEFFREY EPSTEIN made a payment of $200 to Jane Doe #1.

b. Substantive Offenses

Count	Date(s)	Offense	Statute	Defendant(s)
#	3/7/04 - 3/11/04	Use of cellular phone to persuade, induce, or entice Jane Doe #1 to engage in prostitution	2422(b)	EPSTEIN [redacted]

Although Epstein traveled to Florida on March 11, 2004, after the appointment with [redacted] had been made, [redacted] affirmatively told Epstein that she was 18, so he probably could succeed in raising the affirmative defense.

4. <u>Possible Credibility Challenges</u>

Jane Doe #1 has been granted 6001 immunity by the Department and has appeared before the Grand Jury. After her experiences with Epstein, JD#1 became a stripper and worked in various clubs in West Palm Beach and Orlando. JD#1 is currently working as a waitress at a regular restaurant in the Fort Lauderdale area. She currently is living with her parents but is scheduled to move out soon. JD#1's primary credibility challenge is that she brought several girls to Epstein's home – knowing that they were underage – and she has been given immunity for her testimony. JD#1 suffers from depression and takes medication for that condition.

The grand jurors listened attentively to JD#1 and seemed to believe her. After her testimony they were anxious to indict Epstein, asking when an indictment would be forthcoming. JD#1 is very straightforward about Epstein's actions, and her own.

B. Jane Doe #2 ([redacted].) - [redacted]

As mentioned above, Jane Doe #2's parents originally brought Epstein's behavior to the attention of the Palm Beach Police Department.

1. <u>The Sexual Activity</u>

[redacted]. went to Epstein's house once, on February 6, 2005, when she was 14 years' old. [redacted]. was in the 9th grade at [redacted] High School at the time. [redacted]. was recruited by [redacted]. [redacted] cousin, [redacted], was dating [redacted] at the time. On February 5, 2005, [redacted] and her boyfriend went to [redacted] house to watch a movie. At 10:00 pm [redacted] used her cell phone to call Epstein's home. [redacted] heard [redacted] describing [redacted] to the person on the telephone. ([redacted] states that she was speaking with [redacted] [redacted]). After [redacted] hung up, [redacted] asked why she was giving her physical description to someone. [redacted] asked [redacted] if she wanted to make $200 giving a massage to a very rich man on Palm Beach. [redacted] and [redacted] began arguing because [redacted] didn't want [redacted] to do a massage. [redacted] decided to go anyway so that she could make $200. [redacted] states that she would have to take her top off and that Epstein would masturbate during the massage. [redacted] states that [redacted] knew she would have to strip down to her bra and panties and that "the more she did, the more [money] she would make." [redacted] instructed [redacted] that, if Epstein asked, [redacted] would say she was 18 and was a senior at [redacted] High School.

On February 6, 2005, at 12:50 pm [redacted] called [redacted] [redacted] cell phone. Two minutes later, [redacted] called [redacted]. At 1:01 pm, [redacted] called Epstein's Palm Beach house and, one minute later, [redacted] again called [redacted]. [redacted] and [redacted] both say that [redacted] and another girl [Serena] went to [redacted] house and picked her up. They drove to the Palm Beach house. A security guard asked why they were there, and [redacted] said they were there to see Jeffrey. The guard let them in and they entered the house through a side door into the kitchen.

Epstein and an assistant [probably [redacted]] arrived and the assistant led [redacted] upstairs to the master bedroom where all the massages took place. [redacted] was able to describe the bathroom and the pictures of naked girls in the home accurately, and she describes how she and the assistant picked out massage lotions. [redacted] states that the assistant told her to take her top off. Epstein entered shortly thereafter and forcefully ordered [redacted] to take her pants off. [redacted] removed her pants while Epstein entered the toilet area of the bathroom. Epstein returned wearing only a towel. Epstein laid face down and told [redacted] to straddle him
to massage his back. [redacted] bare buttocks touched Epstein's lower back/top of his buttocks. Epstein asked [redacted] age and where she went to school and [redacted] said that she was 18 and was a senior at [redacted]. Epstein got up from the massage table and went to the toilet area where he masturbated and ejaculated. Epstein then returned and laid facing up. He continued to masturbate while directing [redacted] to massage his chest. Epstein then told [redacted] to remove her panties and to grab a large back massager that was across the room. Epstein began using the massager on [redacted] vagina while he masturbated. Epstein then digitally penetrated [redacted]. [redacted] looked at Epstein to express her displeasure with the penetration and Epstein looked at her and sarcastically said, "What's the matter?" [redacted] looked away. When Epstein ejaculated, the contact stopped. Epstein gave [redacted] $300 and left [redacted] to get dressed. Epstein also asked [redacted] to leave her telephone number. [redacted] dresses, went downstairs, and left with [redacted] and Serena. [redacted] received $200 for bringing [redacted].

In the car on the way home, [redacted] told [redacted] that Epstein "fingered" her and paid her $300. ([redacted] confirms this, which should be admissible as a prior consistent statement.) [redacted] joked that they could get rich if they went to Epstein's house every weekend. The girls went shopping and [redacted] then took [redacted] home.

When [redacted] returned to school on Monday, she told a friend what had happened. As discussed in the introduction, rumors started flying around the school and [redacted] and another girl got into a fight.. One of the school administrators searched [redacted] purse and found the $300. When confronted, [redacted] initially stated that she earned the $300 through her job at Chik-Fil-A. She then stated she had sold drugs to get the money, and finally admitted that she had gotten the money from Epstein.

[redacted] began working with a Palm Beach Police Detective. Controlled calls were made to [redacted]. [redacted] was initially suspicious because she had heard about the problems at the school. [redacted] convinced [redacted] that she wanted to return to Epstein's house because she needed more money. [redacted] was recorded saying, "the more you do, the more you make."

On March 30 and 31, 2005, [redacted] placed controlled calls to [redacted] about setting up another meeting with Epstein. Also on March 30 and 31, 2005, [redacted] and [redacted] made calls to and from each other. On March 31 and April 1, 2005, [redacted] called [redacted] and left voicemail messages, which were recorded, to confirm a visit to Epstein's house. Epstein flew in to Palm Beach International Airport ("PBIA") on March 31, 2005. The April 1 recorded voicemail messages, were to confirm a visit to Epstein's house on "Saturday" which would have been Saturday, April 2, 2005. On Tuesday, April 5, 2005, Palm Beach Police Department did a trash pull at Epstein's home, and recovered a handwritten note, "[redacted] with Sage on Saturday at 10:30." Epstein departed PBIA on April 6, 2005.

Charges Based on Activity with Jane Doe #2.

1. <u>Overt Acts</u>

#_____On or about February 3, 2005, Defendants EPSTEIN, [redacted], and [redacted] traveled from Columbus, Ohio, to Palm Beach County, Florida, aboard the Boeing 727 aircraft owned

by Defendant JEGE, INC.

_____. On or about February 5, 2005, EPSTEIN and [redacted] caused telephone calls to be made by Jane Doe #1 to 917-855-3363.

#_____. On or about February 5, 2005, EPSTEIN and [redacted] caused a telephone call to be made by Jane Doe #1 to 561-655-7626.

#_____. On or about February 6, 2005, EPSTEIN and [redacted] caused one or more telephone calls to be made by Jane Doe #1 to 917-855-3363.

#_____. On or about February 6, 2005, EPSTEIN and [redacted] caused Jane Doe #1 to make one or more telephone calls to Jane Doe #2.

_____ . On or about February 6, 2005, EPSTEIN and [redacted] caused Jane Doe #1 to make one or more telephone calls to 561-655-7626

_____ . On or about February 6, 2005, EPSTEIN and [redacted] caused Jane Doe #1 to transport Jane Doe #2 to 358 El Brillo Way, Palm Beach, Florida.

_____ . On or about February 6, 2005, EPSTEIN made a payment of $300 to Jane Doe #2 and a payment of $200 to Jane Doe #1.

#_____. On or about March 30, 2005, EPSTEIN and [redacted] caused Jane Doe #1 to make one or more calls to 917-855-3363.

#_____. On or about March 30, 2005, [redacted] placed a call to a telephone used by Jane Doe #1.

_____ . On or about March 31, 2005, [redacted] placed a call to a telephone used by Jane Doe #1.

_____ . On or about March 31, 2005, EPSTEIN traveled from New York, New York to Palm Beach County, Florida, aboard the Boeing 727 aircraft owned by Defendant JEGE, INC.

_____ . On or about March 31, 2005, EPSTEIN and [redacted] caused Jane Doe #1 to place a call to Jane Doe #2.

#_____. On or about April 1, 2005, EPSTEIN and [redacted] caused Jane Doe #1 to place a call to 561-655-7629.

#_____. On or about April 1, 2005, EPSTEIN and [redacted] caused Jane Doe #1 to place one or more calls to Jane Doe #2.

2. Substantive Counts

Count	Date(s)	Offense	Statute	Defendant(s)
#	2/5/05-2/6/05	Use of cellular phone to persuade, induce, or entice S.G. to engage in sexual activity or prostitution	2422(b)	EPSTEIN [redacted]
#	3/30/05-4/1/05	Attempted use of cellular phone to persuade, induce, or entice S.G. to engage in sexual activity or prostitution	2422(b)	EPSTEIN [redacted]
#	3/31/05	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] JEGE, INC.

I did not charge EPSTEIN with traveling on February 3, 2005 from New York to Palm Beach based upon conduct with Jane Doe #2 because he traveled to Palm Beach prior to the appointment being made with Jane Doe #2.

I charged the travel on March 31, 2005, even though Jane Doe #2 never went to EPSTEIN's house because at the time of his travel, EPSTEIN *intended* for Jane Doe #2 to come to the house. *See 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 and "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).

4. <u>Possible Credibility Challenges</u>

Jane Doe #2 has been the focus of Epstein's attorneys because she was the youngest girl and the one who brought Epstein's activities to light. Copies of a MySpace page credited to Jane Doe #2 were provided to the State Attorney's Office and to our office. On that page, Jane Doe #2 states that she is 21 years' old, she drinks and has taken drugs, she shoplifts, and she earns $250,000 each year. The MySpace page also shows a picture of Jane Doe #2 wrestling with her boyfriend and a photograph of a naked girl lying on a beach. Copies of those materials are attached hereto. During her first sessions with the police, she also minimized what happened with Epstein, denying that he touched her.

With respect to the minimization of the conduct, we have secured two experts in these types of cases, who will explain how child victims of sexual abuse minimize what happened to them until they feel more secure about the interviewer. In addition, there is the prior consistent statement that JD#2 made to JD#1 while they were in the car driving away from Epstein's home.

With respect to the MySpace page, JD#2 says that it is inaccurate. When she was confronted with the page before the state grand jury, she denied putting certain items on the page. When we met with her, she again said that she did not remember putting certain things on the page and she believed that it wasn't her page. After that meeting, we tried to determine whether JD#2 was telling the truth and that someone really had doctored her page. We were able to determine that the page was created on a single day and had never been accessed since the date of its creation. Some of the information was identical to JD#2's "active" MySpace page, and other parts were different. It also was created in a different state. Unfortunately, because of the passage of time, the ISP no longer had information about the specific IP address used to create the page, so we could not trace the creation back to a particular person.

Assuming that JD#2 really did create the MySpace page and simply forgot about it, in my opinion, most of the information that they are focused on doesn't really undermine JD#2's credibility in this case. MySpace pages are notorious for "puffing," so of course JD#2 claimed that she was 21 and made $250,000 – no one would believe the truth of those statements. Certainly Epstein never visited the site before sexually molesting JD#2, so he did not rely upon the claim that JD#2 was 21 when he decided to digitally penetrate her. JD#2 admittedly drank and was sexually active with her boyfriend. If JD#2 were not a person who engaged in these types of activities, JD#1 wouldn't have approached JD#2 to recruit her to give a sexual massage to Epstein. The photograph of the nude girl on the beach is obviously a picture that was digitally created (there is a cruise ship headed directly towards the girl on the beach) and is obviously not JD#2.

C. Jane Doe #3 ([redacted].) - ([redacted])

Jane Doe #3 also attended [redacted] High School with Jane Doe #1 and JD#1 recruited her to go to Epstein's home to perform a sexual massage. JD#3 was in her sophomore year of high school. JD#1 told JD#3 that she could make $200 for massaging Epstein. JD#1 drove JD#3 to Epstein's house and told her that Epstein may ask her to take her top off and may try to touch her, but she could tell him if she felt uncomfortable. JD#1 also instructed JD#3 to tell Epstein that she was 18, if he asked.

When they arrived at Epstein's house, they entered through the kitchen, and they were met by [redacted]. [redacted] escorted JD#1 and JD#3 upstairs to the dressing area and helped them set up the massage table, select the lotions, and obtain towels. [redacted] then left the room. Epstein entered and introduced himself. Epstein and JD#1 then stepped outside for a moment and only Epstein returned. Epstein removed his clothing and laid down on his stomach. During the massage, Epstein repeatedly grabbed and pulled at JD#3 to get her closer to him so he could fondle her. At the end of the massage, Epstein paid JD#3 $200 and asked for her telephone number. JD#1 also received $200 for bringing her.

A short time later, [redacted] called JD#3 and left a message asking her to perform another massage. Jane Doe #1 made arrangements for JD#3 to return for a second massage. During the second visit, JD#1 and JD#3 again entered through the kitchen, where they were greeted by Epstein. Epstein led JD#3 upstairs, leaving JD#1 in the kitchen. During the massage, Epstein was on the telephone, and no sexual activity took place. Both JD#1 and JD#3 received $200. JD#3 did not remove her clothing during either of these sessions.

JD#3 did not return to Epstein's residence for several months because she and JD#1 had gotten into an argument. We do not know the exact date when JD#3 returned to Epstein's home, but we know that it was at least by December 3, 2004, because on that date, JD#3 received a call directly from [redacted]. After that break in time, JD#3 started going to Epstein's home on a regular basis. Each time she removed more and more clothing, at Epstein's request. JD#3 also explains that Epstein pushed at every session for more sexual activity. Epstein would masturbate during virtually every session, and would ask JD#3 to pinch his nipples. Epstein would pinch JD#3's nipples, and rub her vagina. On several occasions, Epstein digitally penetrated JD#3, he also used a large vibrator/back massager on JD#3's vagina. Epstein asked JD#3 to straddle him naked while he was lying on his back. Epstein then reached through her legs to masturbate himself. Epstein tried to rub his penis again JD#3's vagina but never penetrated her.

JD#3 stated that she was usually contacted by [redacted], via her cellular phone, to set up appointments. [redacted] would sometimes call from New York or the U.S. Virgin Islands stating, "we will be coming into town, can you work?" Sometimes [redacted] would call when they already were in town asking if JD#3 was able to work the same day or the following day. [redacted] sometimes made appointments before Epstein left town for the next time that they would be in town. On several occasions, [redacted] made the appointments with JD#3.

Epstein gave JD#3 three Victoria's Secret bra and panty sets and gave her a "Rocket Pocket" vibrator for her 18th birthday.

1. Charges and Overt Acts Based Upon Activity with Jane Doe #3

#. On or about December 6, 2004, Defendant [redacted] made one or more telephone calls to Jane Doe #3.

#. On or about December 12, 2004, Defendant [redacted] made a telephone call to Jane Doe #3.

#. On or about December 13, 2004, Defendant EPSTEIN traveled from the U.S. Virgin Islands to Palm Beach County, Florida, aboard the Gulfstream aircraft owned by Defendant HYPERION AIR, INC.

#. On or about December 14, 2004, Defendant [redacted] made one or more telephone calls to Jane Doe #3.

#. On or about December 19, 2004, Defendants EPSTEIN and [redacted] caused Jane Doe #3 to place a telephone call to Defendant EPSTEIN's home.

#. On or about December 20, 2004, Defendant [redacted] made a telephone call to Jane Doe #3.

#. On or about January 6, 2005, Defendant [redacted] made a telephone call to Jane Doe #3.

#. On or about January 6, 2005, Defendant EPSTEIN traveled from Teterboro, New Jersey to Palm Beach County, Florida, aboard the Gulfstream aircraft owned by Defendant HYPERION AIR, INC.

#. On or about January 7, 2005, Defendant [redacted] made one or more telephone calls to Jane Doe #3.

#. On or about January 14, 2005, Defendant [redacted] made one or more telephone calls to Jane Doe #3.

#. On or about January 14, 2005, Defendants EPSTEIN, [redacted], [redacted], and [redacted] traveled from the U.S. Virgin Islands to Palm Beach County, Florida, aboard the Boeing 727 aircraft owned by Defendant JEGE, INC.

#. On or about February 3, 2005, Defendants EPSTEIN, [redacted], and [redacted] traveled from Columbus, Ohio to Palm Beach County, Florida aboard the Boeing 757 aircraft owned by Defendant JEGE, INC.

#. On or about February 4, 2005, Defendant [redacted] made a telephone call to Jane Doe #3.

#. On or about February 10, 2005, Defendants EPSTEIN, [redacted], [redacted], and [redacted] traveled from New York, New York to Palm Beach County, Florida, aboard the Boeing 757 aircraft owned by Defendant JEGE, INC.

#. On or about February 10, 2005, Defendant [redacted] made a telephone call to Jane Doe #3.

#. On or about February 21, 2005, Defendant [redacted] made a telephone call to Jane Doe #3.

#. On or about February 21, 2005, Defendants EPSTEIN, [redacted], and [redacted] traveled from [TIST] to Palm Beach County, Florida, aboard the Boeing 757 aircraft owned by Defendant JEGE, INC.

#. On or about February 24, 2005, Defendant [redacted] made one or more telephone calls to Jane Doe #3.

#. On or about February 24, 2005, Defendants EPSTEIN, [redacted], and [redacted] traveled from Teterboro, New Jersey to Palm Beach County, Florida, aboard the Gulfstream aircraft owned by Defendant HYPERION AIR, INC.

#. On or about February 27, 2005, Defendants EPSTEIN, [redacted], and [redacted] caused Jane Doe #3 to make a telephone call to 786 246-6607.

#. On or about March 7, 2005, Defendant [redacted] made one or more telephone calls to Jane Doe #3.

#. On or about March 17, 2007, Defendant [redacted] made a telephone call to Jane Doe #3.

#. On or about March 18, 2005, Defendant EPSTEIN traveled from New York, New York to Palm Beach County, Florida aboard the Boeing 757 aircraft owned by Defendant JEGE, INC.

#. On or about March 20, 2005, Defendants EPSTEIN and [redacted] caused Jane Doe #3 to make one or more telephone calls to 358 El Brillo Way.

#. On or about March 30, 2005, Defendant [redacted] made a telephone call to Jane Doe #3.

#. On or about March 31, 2005, Defendant EPSTEIN traveled from New York, New York to Palm Beach County, Florida aboard the Boeing 757 aircraft owned by Defendant JEGE, INC.

#. On or about April 8, 2005, Defendant [redacted] made a telephone call to Jane Doe #3.

#. On or about April 8, 2005, Defendants EPSTEIN, [redacted], and [redacted] traveled from Teterboro, New Jersey to Palm Beach County, Florida, aboard the Gulfstream aircraft owned by Defendant HYPERION AIR, INC.

#. On or about April 26, 2005, Defendant [redacted] made one or more telephone calls to Jane Doe #3.

#. On or about April 27, 2005, Defendants EPSTEIN and [redacted] traveled from Teterboro, New Jersey to Palm Beach County, Florida, aboard the Gulfstream aircraft owned by Defendant HYPERION AIR, INC.

#. On or about May 6, 2005, Defendants EPSTEIN and [redacted] caused Jane Doe #3 to make a telephone call to 917-855-3363.

#. On or about May 6, 2005, Defendants EPSTEIN, [redacted], [redacted], and [redacted] traveled from Teterboro, New Jersey to Palm Beach County, Florida, aboard the Gulfstream aircraft owned by Defendant HYPERION AIR, INC.

#. On or about May 19, 2005, Defendant [redacted] made one or more telephone calls to Jane Doe #3.

#. On or about May 19, 2005, Defendants EPSTEIN, [redacted], and [redacted] traveled from Teterboro, New Jersey to Palm Beach County, Florida, aboard the Gulfstream aircraft owned by Defendant HYPERION AIR, INC.

2. Substantive Counts

Count	Date(s)	Offense	Statute	Defendant(s)
#	12/6/04-6/2/05	Use of cellular phone to persuade, induce, or entice Jane Doe #3 to engage in prostitution	2422(b)	EPSTEIN [redacted]
#	12/13/04	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] HYPERION
#	1/6/05	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] HYPERION
#	1/14/05	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] JEGE
#	2/3/05	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] JEGE
#	2/10/05	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] JEGE
#	2/21/05	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] JEGE
#	2/24/05	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] HYPERION
#	3/18/05	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] JEGE
#	3/31/05	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] JEGE
#	4/8/05	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] HYPERION
#	4/27/05	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] HYPERION
#	5/6/05	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] HYPERION

#	5/19/05	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] HYPERION
#	12/6/04-6/2/05	Recruiting, enticing, providing, or obtaining 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.	1591(a)(1)	EPSTEIN [redacted]

Jane Doe #3 never told her age to Epstein, but she also never told him that she was 18. They discussed her high school soccer games and her plans to attend college in the future. In addition, as discussed below, Jane Doe #4 was a close friend of JD#3 and they often went to Epstein's house together. Jane Doe #4 told Epstein that she and JD#3 went to the same school and were in the same class, and JD#4 told Epstein that she was a junior. There also is evidence that Epstein gave JD#3 a vibrator for her 18th birthday, knowing that it was her 18th birthday and offered to fly JD#3 to his home in the Virgin Islands after she was 18.

With respect to the enticement charge and the human trafficking charge, I included [redacted] and [redacted] because of the number of calls that they were involved with. There were a total of 156 calls between [redacted] and JD#3, and there were 28 calls between [redacted] and JD#3. Although [redacted] was aboard the plane during several trips, there is no evidence that she ever had contact with JD#3 or arranged for JD#3 to engage in sexual activity with Epstein; thus, I have not charged her in connection with any of this activity. Rather than try to parse out each instance where JD#3 was enticed, I elected to charge the enticement and sex trafficking offenses over the range of dates representing the first telephone call from [redacted] to JD#3 until the last call from [redacted] before JD#3's 18th birthday (the activity with Epstein continued thereafter, but at that point it is beyond our jurisdiction to prosecute). The proper unit for charging the travel offense is each trip, so I have charged the trips where [redacted] or [redacted] spoke with JD#3 shortly before Epstein traveled, again stopping at the point that JD#3 turned 18.

D. Jane Doe #4 ([redacted]) - [redacted]

Jane Doe #4 also was recruited by Jane Doe #1 and was a student at [redacted] High School. Jane Doe #4 received 60 calls from [redacted] during the period of April 25, 2004 (when she was 16) through October 6, 2005 (when she was 18). JD#4 states that she performed only a few sexual massages, although that is belied by the number of telephone calls. JD#4 reports that she performed the sexual massages while wearing her bra and panties. During the sessions, Epstein pulled JD#4's bra down and grabbed her breast. Epstein tried to touch JD#4's vagina and grabbed her butt. Epstein masturbated during the sessions and he instructed JD#4 to pinch his nipples while he masturbated.

Epstein told JD#4 to take her clothes off and that she could make more money if she would do more (engage in more sexual activity). Epstein constantly pushed for JD#4 to become more sexual, asking her if she had sex with her boyfriend and if she liked sex. JD#4 was paid $200 for each sexual massage that she performed, and she received the payments from Epstein and [redacted].

Epstein also told JD#4 that she could make more money if she "brought her pretty friends" to perform sexual massages. Epstein told JD#4 that the girls that she brought should know what to expect when they arrive. [redacted] also asked JD#4 to bring more girls. JD#4 brought at least two more girls to Epstein's home. She was paid $200 for each girl whom she brought.

[redacted] and [redacted] made the appointments with JD#4. JD#4 told Epstein that she was a junior at [redacted] High School, so there is evidence that Epstein knew that JD#4 was under 18.

1. Overt Acts Based Upon Activity with Jane Doe #4

2. Substantive Offenses

Count	Date(s)	Offense	Statute	Defendant(s)
#	4/25/04-6/29/05 F23	Use of cellular phone to persuade, induce, or entice Jane Doe #4 to engage in prostitution	2422(b)	EPSTEIN [redacted]
#	_____	Travel in interstate commerce with intent to engage in illicit sexual conduct	2423(b)	EPSTEIN [redacted] HYPERION
#	4/25/04-6/29/05	Recruiting, enticing, providing, or obtaining 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.	1591(a)(1)	EPSTEIN [redacted]

E. Jane Doe #5 ([redacted].) - [redacted]

Jane Doe #5 also attended [redacted] High School. She was recruited to give sexual massages to Epstein in the fall of 2004, when she was 17 years' old. She was recruited indirectly by Jane Doe #4.

Jane Doe #5 reported that she entered the home through the kitchen and was introduced to [redacted]. [redacted] brought JD#5 upstairs to the dressing area, where she met Epstein. JD#5 performed approximately 10 sexual massages for Epstein. The first two massages she performed fully clothed, and there was no sexual activity. Beginning with the third massage, Epstein instructed JD#5 to remove her clothes and he began masturbating during the massages. JD#5 also describes how Epstein would verbally push her to engage in more and more sexual activity. JD#5 states that Epstein began fondling her vagina and digitally penetrating her, and the activity escalated to full sexual intercourse in his bedroom. JD#5 was paid $300 during her visits to Epstein's home. She also received a $200 "Christmas bonus" via Western Union on December 23, 2004.

JD#5 received 31 calls from [redacted] and 15 calls from [redacted]. JD#5 states that she received the payments from Epstein and [redacted]. JD#5 says that Epstein definitely knew her age. JD#5 could not drive, and Epstein provided her with a private car company that would pick her up and take her home after the sexual encounters.

1. Overt Acts Based upon Activity with Jane Doe #5

#. On or about November 14, 2004, Defendant [redacted] caused a telephone call to be made to a telephone used by Jane Doe #5.

#. On or about November 17, 2004, Defendant [redacted] caused a telephone call to be made to a telephone used by Jane Doe #5.

#. On or about November 18, 2004, Defendants EPSTEIN, [redacted], [redacted], and [redacted] traveled from Teterboro, New Jersey to Palm Beach County, Florida aboard the Gulfstream aircraft owned by Defendant HYPERION AIR, INC.

#. On or about November 19, 2004, Defendant [redacted] caused a telephone call to be made to a telephone used by Jane Doe #5.

#. On or about December 3, 2004, Defendants EPSTEIN, [redacted], and [redacted] traveled from New York, New York to Palm Beach County, Florida aboard the Boeing 727 aircraft owned by Defendant JEGE, INC.

#. On or about December 5, 2004, Defendant [redacted] caused one or more telephone calls to be made to a telephone used by Jane Doe #5.

#. On or about December 13, 2004, Defendant [redacted] caused one or more telephone calls to be made to a telephone used by Jane Doe #5.

#. On or about December 13, 2004, Defendant EPSTEIN traveled from the U.S. Virgin Ilands to Palm Beach County, Florida aboard the Gulfstream aircraft owned by Defendant HYPERION AIR, INC.

#. On or about December 14, 2004, Defendant [redacted] caused one or more telephone calls to be made to a telephone used by Jane Doe #5.

#. On or about December 17, 2004, Defendants EPSTEIN and [redacted] traveled from Teterboro, New Jersey to Palm Beach County, Florida aboard the Gulfstream aircraft owned by Defendant HYPERION AIR, INC.

#. On or about December 18, 2004, Defendant [redacted] caused one or more telephone calls to be made to a telephone used by Jane Doe #5.

#. On or about December 23, 2004, Defendant EPSTEIN caused a Western Union wire transfer order to be sent to Jane Doe #5.

#. On or about January 1, 2005, Defendant [redacted] caused a telephone call to be made to a telephone used by Jane Doe #5.

#. On or about January 1, 2005, Defendants EPSTEIN, [redacted], and [redacted] traveled from TQPF to Palm Beach County, Florida aboard the Gulfstream aircraft owned by Defendant HYPERION AIR, INC.

#. On or about January 2, 2005, Defendant [redacted] caused one or more telephone calls to be made to a telephone used by Jane Doe #5.

#. On or about January 6, 2005, Defendant EPSTEIN traveled from Teterboro, New Jersey to Palm Beach County, Florida aboard the Gulfstream aircraft owned by defendant HYPERION AIR, INC.

#. On or about January 8, 2005, Defendant [redacted] caused one or more telephone calls to be made to a telephone used by Jane Doe #5.

#. On or about January 9, 2005, Defendant [redacted] caused one ore more telephone calls to be made to a telephone used by Jane Doe #5.

#. On or about January 19, 2005, Defendants EPSTEIN, [redacted], [redacted], and [redacted] traveled from New York, New York to Palm Beach County, Florida aboard the Boeing 757 aircraft owned by Defendant JEGE, INC.

F1 Each of the airplanes is held in a separate "shell corporation," JEGE, Inc., and Hyperion Air, Inc. Epstein is the shareholder in both of these corporations and they serve no purpose other than to hold and maintain the airplanes for Epstein's personal use. Because these assets are not held as personal property in Epstein's name, I have indicted the two corporations, which will be named as co-conspirators and as aiders and abettors in the relevant offenses.

F2 During a meeting, Epstein's current attorneys, Gerald Lefcourt and Lilly Ann Sanchez, admitted that attorney Roy Black instructed Epstein to have the CPUs removed, but they insisted that those instructions were given well in advance of the execution of the search warrant – not in response to a "leak."

F3 [redacted] has since gotten married and is now "[redacted] [redacted]." I will refer to her as [redacted] since that is the name she used during the relevant period.

F4 Of the 20 underage girls who are the subject of the indictment, 13 attended [redacted] High School, 1 attended [redacted] High School, 2 attended [redacted] High School, 1 attended [redacted] High School, 2 attended John I. Leonard High School, and 1 was home schooled. As explained below, some of the girls who did not attend [redacted] High School worked at an "Olive Garden" restaurant in [redacted] with Jane Doe #1, one of the main recruiters for Epstein.

F5 Sometimes Epstein made the payment and asked for the phone number, sometimes it was the assistant.

F6 Attached as Appendix C are materials received from counsel for Epstein, including their legal analysis. The points they raise are addressed in this memo.

F7 Section 2421 was originally referred to as the Mann Act. Sections 2422 and 2423 are more recent additions, which focus on children. All three sections are sometimes jointly referred to as the Mann Act.

F8 Note that there is an Eleventh Circuit Pattern Jury Instruction for *attempted* enticement of a minor. In that instruction, the Eleventh Circuit included a willfulness requirement – including a requirement that the defendant believe that the individual was under eighteen. Those additional requirements apply to a charge of attempted enticement because attempt is a specific intent offense that requires the United States to prove that the defendant "knowingly and willfully intended to commit the offense" – *i.e.* , that he intended to commit the crime. 11th Cir. Pattern Jury Instr., Special Instr. 11 ("Attempt(s)") (2003). Where, as here, the offense is completed, the statutory language requires only that the defendant *knowingly* persuade, induce, or entice someone to engage in prostitution or criminal sexual activity.

F9 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.

F10 I have used the Florida Statutes in effect at the time that the offenses occurred. They have not changed since then although, as shown below, amendments are currently pending.

F11 There currently is legislation pending before the Florida Legislature increasing the penalties related to child prostitution. The section defining "prostitution" has been renumbered but the language remains the same. That chapter also has an offense of obtaining a person for "lewdness," (Proposed Fl. Stat. 796.07), which is defined as "any indecent or obscene act." (Proposed Fl. Stat. 796.011(4))

F12 "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).

F13 The Florida Legislature currently is amending § 800.04(7) making it a second-degree felony to commit lewd or lascivious exhibition in front of any victim, regardless of the victim's age.

F14 "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).

F15 Although *Hersh* specifically mentions "sexual activity with a minor," knowledge of age is not required, as discussed above.

F16 Part G contains the guidelines for calculating the offense levels for "Offenses Involving Commercial Sex Acts, Sexual Exploitation of Minors and Obscenity."

F17 Section 1594(a) makes it a crime for any person to attempt to violate Section 1591.

F18 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.

F19 The Jury Instruction requires proof of three elements:

First: that the Defendant knowingly conducted a financial transaction;

Second : that the financial transaction involved property used to conduct or facilitate specified unlawful activity; and

Third : that the Defendant engaged in the financial transaction with the intent to promote the carrying on of specified unlawful activity.

Eleventh Cir. Pattern Jury Instr., Offense Instr. 70.4 (2003).

F20 *Tobon-Builes* was decided prior to the enactment of 31 U.S.C. § 5324(a), which created a criminal offense for causing a domestic financial institution to fail to file a required report, such as a CTR.

F21 From the descriptions provided by the girls and by the police officers who conducted the search of the home, attached to Epstein's master bedroom was a large room that contained a steam shower, dressing area, and closets. This space was separate from the regular master bathroom. Because some activity occurred in the bedroom itself, I will use the term "dressing area" to refer to the space where the sexual massages occurred.

F22 More telephone calls occurred, but calls placed to JD#1's home telephone from Epstein's home telephone (or vice-versa) were not captured in the cellular phone records in our possession.

F23 Although the telephone contact with JD#4 continued through October 2005, she turned 18 on June 30, 2005.