

SDNY News Clips

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Public Corruption

Epstein

Jeffrey Epstein Raped Me When I Was 15

NYT

By Jennifer Araoz

8/14/19

The first time I stepped into Jeffrey Epstein's mansion on the Upper East Side in the fall of 2001, I noticed his security cameras. They were hard to miss. Inside the front door, he had small TVs playing the footage in real time. I was a child, just 14 at the time. But the message was clear: I was in the house of someone important and I was being watched.

I can still remember watching myself on those screens as I walked into the house of the person I came to know as a predator, a pedophile, my rapist.

I'm filing a civil action against Jeffrey Epstein's estate and accomplices today, under New York's Child Victims Act. A key provision of the law goes into effect today and allows survivors to revive claims if the statute of limitations had expired.

Epstein was found dead, apparently by suicide, in his jail cell last week. I'm angry he won't have to personally answer to me in the court of law. But my quest for justice is just getting started.

During my freshman year, one of Epstein's recruiters, a stranger, approached me on the sidewalk outside my high school. Epstein never operated alone. He had a ring of enablers and surrounded himself with influential people. I was attending a performing arts school on the Upper East Side, studying musical theater. I wanted to be an actress and a singer.

The recruiter told me about a wealthy man she knew named Jeffrey Epstein. Meeting him would be beneficial, and he could introduce me to the right people for my career, she said. When I confided that I had recently lost my father and that my family was living on food stamps, she told me he was very caring and wanted to help us financially.

The trap was set.

The visits during the first month felt benign, at least at the time. On my second visit, Epstein also gave me a digital camera as a gift. The visits were about one to two hours long and we would spend the time talking. After each visit, he or his secretary would hand me \$300 in cash, supposedly to help my family.

But within about a month, he started asking me for massages and instructed me to take my top off. He said he would need to see my body if he was going to help me break into modeling. I felt uncomfortable and intimidated, but I did as he said. The assault escalated when, during these massages, he would flip over and sexually gratify himself and touch me inappropriately. For a little over a year, I went to Epstein's home once or twice a week.

The last day I went to his house was during the fall of my sophomore year. This time, when I was giving him the massage, he told me to take off my underwear and get on top of him. When I said no, he got more aggressive, held me tightly and raped me.

After that day, I never went back. I also quit the performing arts school — the one I had auditioned for and had wanted so badly to attend. It was too close to his house, the scene of so many crimes. I was too scared I would see him or his recruiter. So I transferred to another school in Queens close to my home. Since I was no longer able to pursue my dream of performing arts I eventually lost interest and dropped out.

It took me years to tell the people close to me what had happened. I was so intimidated by his insistence that I never speak a word of my visits to anyone. And like many survivors, I struggled with anxiety and shame for what I had experienced.

The power structure was stacked against me. His money, influence and connections to important people made me want to hide and stay silent. Those same powerful forces let him hide and evade justice.

That changes, starting now. I want my story to hold Epstein to account and also his recruiters, the workers on his payroll who knew what he was doing and the prominent people around him who helped conceal and perpetuate his sex-trafficking scheme. Their hideous actions victimized me and so many young girls like me.

For years I felt crushed by the power imbalance between Epstein, with his enablers, and me. The Child Victims Act finally offers a counterweight. Moving forward, victims will now have until age 55 to bring a civil case.

I hope more states pass similar laws so that more survivors who endured abuse, assault and rape as a child can know what wresting back their power feels like.

Standing up to the entrenched network of power and wealth that surrounded Epstein is scary, but I am no longer afraid. Reliving these experiences is tough, but I've learned to be tougher.

I used to feel alone, walking into his mansion with the cameras pointing at me, but now I have the power of the law on my side. I will be seen. I will be heard. I will demand justice.

Sasse demands Barr ‘rip up’ 2008 Epstein deal, bring co-conspirators to justice

NY Post
By Emily Jacobs
8/14/19

Sen. Ben Sasse (R-Neb.) has urged Attorney General William Barr to “rip up the non-prosecution, non-investigation agreement” for Jeffrey Epstein so that co-conspirators are brought to justice.

“Too many of Epstein’s secrets have gone to the grave with him, and the Department must not allow his death to be one last sweetheart deal for his co-conspirators,” Sasse wrote in a letter sent to Barr on Tuesday.

“The victims of Epstein’s international sex trafficking ring deserve justice. In order to bring Epstein’s co-conspirators to justice, the Department of Justice should rip up the non-prosecution, non-investigation agreement entered into by Epstein and the U.S. Attorney’s Office for the Southern District of Florida in 2008.”

That 2008 deal, put together by then-US Attorney and recently ousted Labor Secretary Alex Acosta, granted Epstein and “any potential co-conspirators” immunity from federal charges in exchange for him pleading guilty to a single state charge.

Epstein served 13 months in a state prison in Florida, but was allowed out six days a week so he could work from his private office.

Sasse slammed the deal, writing, “This agreement should shock the conscience of anyone familiar with its details.

“These problems run far beyond those identified by the U.S. District Court for the Southern District of Florida, which ruled that federal prosecutors violated the Crime Victims’ Rights Act by hiding the terms of the deal from the women and girls that Epstein raped and exploited until after it was entered.”

This is the second letter Sasse has sent Barr regarding Epstein.

On Saturday, Sasse wrote to the attorney general demanding answers on circumstances that allowed for Epstein to commit suicide in federal custody.

“Heads must roll,” Sasse wrote.

“Every single person in the Justice Department — from your Main Justice headquarters staff all the way to the night-shift jailer — knew that this man was a suicide risk, and that his dark secrets couldn’t be allowed to die with him.”

Barr has promised to bring anyone involved in Epstein’s crimes to justice.

“We will get to the bottom of what happened and there will be accountability,” Barr said, adding, “Any co-conspirators should not rest easy. The victims deserve justice and they will get it.”

Jeffrey Epstein Death: 2 Guards Slept Through Checks and Falsified Records

NYT

By Katie Benner and Danielle Ivory

8/13/19

The two staff members who were guarding the jail unit where Jeffrey Epstein apparently killed himself fell asleep and failed to check on him for about three hours, then falsified records to cover up their mistake, according to several law enforcement and prison officials with knowledge of the matter.

Those disclosures came on Tuesday as the two employees were placed on administrative leave and the warden of the jail, the Metropolitan Correctional Center in Manhattan, was temporarily reassigned, pending the outcome of the investigation into Mr. Epstein's death, the Justice Department announced.

The two staff members in the special housing unit where Mr. Epstein was held — 9 South — falsely recorded in a log that they had checked on the financier, who was facing sex trafficking charges, every 30 minutes, as was required, two of the officials said. Such false entries in an official log could constitute a federal crime.

In fact, the two people guarding Mr. Epstein had been asleep for some or all of the three hours, three of the officials said.

The attorney general, William P. Barr, on Monday ordered the Justice Department's inspector general to look into how Mr. Epstein had managed to commit suicide while in custody and why he had been taken off a suicide watch 12 days earlier.

"We will get to the bottom of what happened," Mr. Barr said.

The warden, Lamine N'Diaye, will be transferred to a Bureau of Prisons office in Philadelphia while the F.B.I. and the Justice Department's inspector general conduct inquiries. The Justice Department said in a statement that it might take additional punitive actions.

Prison staff discovered Mr. Epstein, 66, dead in his cell at the Metropolitan Correctional Center at 6:30 a.m. on Saturday, officials said. He had apparently hanged himself with a bedsheet, likely fastening the sheet to a top bunk and pitching himself forward, law enforcement and prison officials said.

Mr. Epstein had been awaiting trial on charges he had sexually abused scores of teenage girls at his mansions in Manhattan and Palm Beach, Fla.

He had apparently tried to commit suicide once before, on July 23, shortly after he was denied bail, which resulted in him being placed on suicide watch, prison officials familiar with the incident have said.

Six days later, prison officials determined that he was no longer a threat to his own life and returned him to a cell in the 9 South housing unit with another inmate, officials said. That inmate was later transferred out of the cell, leaving Mr. Epstein alone on Friday night.

Though it is standard practice to house people who have recently been taken off suicide watch with another person, the prison did not replace Mr. Epstein's cellmate.

The Justice Department, which oversees the Bureau of Prisons, did not immediately identify the two correctional officers who were placed on administrative leave.

Two prison officials familiar with the incident said the two staff members had not looked in on Mr. Epstein for about three hours before he was found.

One of the staff members was a former correctional officer who had taken a different position at the detention center that did not involve guarding detainees. He had volunteered to work again as a correctional officer for the extra overtime pay, a law enforcement official and an employee at the jail said.

The second officer, a woman who was assigned to that wing, had been ordered to work overtime because the jail was short staffed.

James Petrucci, the warden at a federal prison in Otisville, N.Y., has been named acting warden of the Manhattan jail, officials said.

Some union leaders for prison workers expressed dismay with Mr. Barr's decision to allow the warden to continue working, even as the two staff members were placed on leave.

"It makes me angry that they reassigned the warden," said Jose Rojas, an official in the prison employees' union and a teacher at the Coleman prison complex in Sumterville, Fla. "They didn't put him on administrative leave like the others. The warden made the call to take Epstein off suicide watch and to remove his cellmate. That is egregious."

Since Saturday, Mr. Barr has been briefed multiple times a day on the inquiries into Mr. Epstein's death, a Justice Department official said.

In addition to the investigations by the Justice Department, the inspector general and the F.B.I., two other reviews of Mr. Epstein's death were underway, a Justice Department official said.

A team of psychologists from the Bureau of Prisons visited the Manhattan jail on Tuesday to review each step of the decision to take Mr. Epstein off suicide watch.

On Wednesday, an "after-action team" — led by the bureau's Southeast regional director — is scheduled to be at the prison to determine whether employees and officials followed protocols in the days and weeks before Mr. Epstein died, the official said.

Mr. Epstein's death has drawn sharp criticism from Republican and Democratic lawmakers.

On Monday, the chairman and ranking member of the House Judiciary Committee sent a letter to the acting director of the Bureau of Prisons, Hugh Hurwitz, demanding answers about how Mr. Epstein could have been unsupervised long enough to take his own life.

The letter said Mr. Epstein's apparent suicide had brought to light "severe miscarriages" or deficiencies in how inmates are managed at the jail and had "allowed the deceased to ultimately evade facing justice."

It was signed by Representatives Jerrold Nadler, a New York Democrat, and Doug Collins, a Georgia Republican.

Mr. Nadler and Mr. Collins demanded that the Bureau of Prisons hand over by Aug. 21 any details about Mr. Epstein's mental health evaluations and his housing, as well as the bureau's protocols for handling inmates considered at risk of suicide.

They also requested to be told how Mr. Epstein was being monitored and what the surveillance cameras may have recorded in or near Mr. Epstein's cell.

At the same time, Senator Ben Sasse, a Nebraska Republican on the Senate Judiciary Committee, urged Mr. Barr on Tuesday to rip up an agreement federal prosecutors in Florida had reached with Mr. Epstein in 2008 that shielded not only him, but also any other co-conspirators who may have helped him lure teenage girls into prostitution.

"This crooked deal cannot stand," Mr. Sasse said in his letter.

Our first responders didn't leak Jeffrey Epstein's death: FDNY

NY Daily News
By Thomas Tracy
8/13/19

Sex fiend financier Jeffrey Epstein's death was first leaked on a right-wing Internet message board, but didn't come from FDNY first responders, the department said Tuesday.

Details about the degenerate's demise were up on the anonymous message board 4 Chan about 30 minutes before word of the apparent suicide seeped out.

"[D]ont ask me how I know, but Epstein died an hour ago from hanging, cardiac arrest," the poster wrote on Saturday. When pressed for more information, procedures used to resuscitate Epstein were listed.

The data, which appeared to be from a first responder, was first reported by BuzzFeed News.

"The FDNY reviewed the alleged information and determined it did not come from the Department," an FDNY spokesman told the Daily News.

An ongoing investigation into the leak is focused on hospital personnel right now, sources said.

If a city medic or any other medical professional divulged information about Epstein's death, it is a violation of federal health privacy laws and they could face serious consequences, officials said.

Oren Barzilay, head of FDNY EMS union Local 2507 said he was "confident" that someone other than an FDNY member was responsible.

"Reading the posting it looks clear to me that someone is repeating what they read or saw," Barzilay said. "Patient confidentiality is vital part of our training. Our EMTs and paramedics are well aware of the consequences they would face by leaking such information."

Two federal investigations have been launched into Epstein's death.

The accused sex trafficker died Saturday after he apparently used a bedsheet to hang himself inside his cell at the Metropolitan Correctional Center in lower Manhattan.

Epstein, 66, was being held at the federal prison since he was arrested on sex trafficking charges July 6. He attempted suicide by hanging on July 24 while in MCC's special housing unit, but was not on suicide watch when he died.

Epstein guards suspected of falsifying logs to show they were checking on him: report

Fox News

By Gerren Keith Gaynor

8/13/19

Guards at the New York City jail facility where Jeffrey Epstein is said to have killed himself are suspected of falsifying log entries to show they were checking on the alleged sex trafficker and other inmates with greater regularity than was the case, according to a Tuesday report.

Surveillance video reviewed after Epstein's death shows guards at the Metropolitan Correctional Center did not make some of the checks they claimed to have made in their logs, a source told the Associated Press. The New York Times reported, citing unnamed officials, that the guards fell asleep at some point and did not check on him for up to three hours.

The federal jail workers claimed they were checking on inmates in Epstein's unit every half hour, but investigators now believe that was not the case. The Justice Department on Tuesday said that two guards assigned to watch Epstein had been placed on administrative leave.

The latest revelation, first reported by CBS News, comes amid growing conspiracy theories surrounding Epstein's death as he awaited trial on sex trafficking and conspiracy charges. Prosecutors said he sexually abused dozens of young girls in his New York and Florida residences between 2002 and 2005, allegations that could have landed him behind bars for 45 years.

The 66-year-old disgraced financier was found hanging in his cell on Saturday after using a bedsheet tied to his bunk. He was later pronounced dead at a hospital.

Many lawmakers and conspiracy theorists alike wonder how he could commit suicide inside the Special Housing Unit at the jail facility. Attorney General William Barr said Monday there were "serious irregularities at this facility that are deeply concerning," and said he was demanding "a thorough investigation."

In the aftermath of Epstein's apparent suicide, his alleged "recruiter" Ghislaine Maxwell now finds herself under the microscope.

Geoffrey Berman, the U.S. attorney for the Southern District of New York, has vowed to continue the investigation into Epstein, who, at the time of his death, was in a New York facility awaiting trial on allegations he operated an underage sex trafficking ring. And even though Epstein is now firmly outside the grip of the criminal justice system, his alleged "co-conspirators" do not enjoy a similar reprieve.

Several of Epstein's accusers have pointed to Maxwell as playing a pivotal role in enlisting his victims, according to thousands of pages of court documents unsealed on Friday -- just hours before Epstein reportedly used his bedsheet to hang himself from a prison bunk -- in relation to a 2015 defamation suit filed against Maxwell.

Those who say they're victims of Epstein and other eyewitnesses to the events surrounding his alleged crimes, have testified Maxwell's role was in arranging massages and sexual favors for Epstein and a circle of his high-profile associates.

But Maxwell allegedly played an even more direct role in the sex abuse on several occasions.

Maxwell and Epstein were accused of molesting two victims in 1996 but the claims -- allegedly reported to the FBI -- fell on deaf ears, according to an affidavit viewed by the Miami Herald.

Maxwell has not released any public statements since Epstein's arrest in early July. No criminal charges have been brought against her and she has consistently and vehemently denied all allegations of misconduct.

Jeffrey Epstein's gal pal Ghislaine Maxwell lying low at Massachusetts mansion

NY Post

By Yaron Steinbuch

8/14/19

Jeffrey Epstein's former gal pal Ghislaine Maxwell, who has been accused of procuring underage victims for the millionaire pedophile, has been living in a secluded Massachusetts mansion with her new beau, according to a report.

The 57-year-old British socialite is in a relationship with tech CEO Scott Borgerson, 43, with whom she is living in the \$3 million oceanfront home at the end of a long private road in Manchester-by-the-Sea, the Daily Mail reported Wednesday.

"She's become a real homebody, rarely ventures out. She's the antithesis of the woman who traveled extensively and partied constantly with Epstein," a source familiar with Maxwell's new life told the news outlet.

Maxwell, who has virtually disappeared from view and whose lawyers have not responded to requests for comment, has been described as the late financier's girlfriend, closest pal and sex procurer.

Court papers unsealed Friday — just hours before Epstein was found "unresponsive" in his cell at the Metropolitan Correctional Center in Manhattan — also allege that she served as the "madam" in his alleged ring and also engaged in threesomes with some of the victims.

She has previously denied any wrongdoing.

Epstein is believed to have hanged himself while locked up on federal sex-trafficking charges.

The mansion where Maxwell has been ensconced recently is a stately three-story colonial property with five-bedrooms and wraparound terraces, according to the Daily Mail.

Borgerson, the owner, is a member of the Council on Foreign Relations and the co-founder and CEO of CargoMetrics Technologies, an investment management company that specializes in analyzing data on global shipping, according to a bio on LinkedIn that bears his name.

The former Coast Guard officer, who earned a Ph.D. from the Fletcher School of Law and Diplomacy at Tufts University, "has advised the White House on maritime policy" and "testified a number of times before Congress as a nonpartisan witness," according to the bio.

Last month, the Daily Mail observed Borgerson running errands in the affluent community of Manchester-by-the-Sea, about 25 miles northeast of Boston.

Later, he was seen walking Maxwell's pooch on Boston Common near his apartment where he lives during the week while running his company.

Borgerson declined to comment on his relationship with Maxwell when contacted by the Daily Mail.

Maxwell's lawyer, Jeff Pagliuca, has not responded to requests for an interview with her by the news outlet.

Jeffrey Epstein's Curious Ties to His Brother's Real-Estate Business

NY Magazine

By James D. Walsh

8/14/19

Jeffrey Epstein's apparent suicide over the weekend likely means that his criminal case will not proceed. But in a statement Saturday, Attorney General William Barr issued a sharp warning: "Any co-conspirators should not rest easy." There has been plenty of speculation as to whom may be held responsible for helping or enabling Epstein, from his alleged madam, Ghislaine Maxwell, to the attorneys who handled his business dealings for decades. While he has not been accused of involvement in the sex offender's crimes, new details about Jeffrey's younger brother, Mark Epstein, have raised questions about their business ties, and how close the pair really were.

Jeffrey and Mark grew up together in the Sea Gate community in Brooklyn. Mark, who is a year-and-a-half younger than his brother, went on to start a silk-screening business and, having "semi-retired" at age 39, he dabbled in real estate and philanthropy. In 2009, Mark was named chair of the Cooper Union board. That ended with his resignation in 2015 after the school's controversial decision to begin charging students tuition for the first time in the college's 150-year history.

The Epstein brothers' relationship in adulthood is opaque. In filings, the U.S. Attorney for the Southern District had said Jeffrey had "no known immediate family" and "no meaningful family ties." Yet in a 2009 deposition, Mark said that he knew Donald Trump flew on Jeffrey's plane "numerous times" and that he'd personally seen Trump on his brother's plane once. "They were good friends," Mark recently told the Washington Post. "I know [Trump] is trying to distance himself, but they were." After Jeffrey pleaded not guilty last month to sex trafficking of minors, Mark offered his Florida home to guarantee his brother's bond.

Last month, Mark told Crain's New York that he had no business connection to his brother, but documents show that Mark's real-estate business, Ossa Properties, is linked to J. Epstein & Co., the company through which Jeffrey managed retail billionaire Leslie Wexner's assets. The person in charge of running Ossa Properties, Jonathan Barrett, was also an asset manager for J. Epstein & Co. Mark told Crain's that the connection between the two companies was "a mistake," reminiscent of the "recording error" that linked private-equity tycoon Leon Black's foundation to Jeffrey years after he was convicted of soliciting a minor for prostitution in Florida.

At the center of the curious connection between Mark's real-estate company and his brother is a condominium at 301 East 66th Street, a 15-minute walk from Jeffrey's mansion on East 70th Street. Mark owns the majority of the units in the bland, 16-story, 200-unit building, which he purchased from Wexner in the early 1990s. Mark has said his brother does not own a share of the building, but for years Jeffrey allegedly housed friends, employees, and associates in apartments in the building, including models connected to MC2, the modeling agency in which he invested. (The Daily Beast recently reported that Mark also began dabbling in the modeling industry around the same time Jeffrey invested in MC2.) In 2010, a former MC2 employee said in a sworn statement that the MC2 models were in fact victims of Epstein's underage sex-trafficking ring.

"Jeffrey rents several apartments there where he keeps his girls, alleged models for the MC2 agency he owns," Florida attorney Brad Edwards, who represents a number of Epstein's alleged victims, told "Page Six" in 2009. "But Mark acts like he doesn't even know his brother."

In addition to the models, the Jeffrey Epstein associates who also rented apartments or ran businesses out of the building included an ex-girlfriend, his pilot, and his MC2 business partner, Jean-Luc Brunel. (One of Epstein's alleged victims has claimed she was forced to have sex with Brunel.) Two other potential Jeffrey Epstein co-conspirators, Nadia Marcinkova and Sarah Kellen, both operated businesses that were registered at the building. Former Israeli prime minister Ehud Barak, who was photographed outside Jeffrey's townhouse in 2016, also regularly spent time at the condo.

"I don't live in that building," Mark told Crain's. "I don't monitor who uses those apartments."

General Crimes

Sprecher

Broadway producer Ben Sprecher arrested on child porn charges

AP

8/13/19

A Broadway producer whose first big-budget show was derailed by a con man's false financial promises has been arrested on child porn charges.

The producer, Ben Sprecher, was arrested Tuesday on federal charges of possession and distribution of child pornography.

It was not immediately clear who would represent him at a court appearance.

A criminal complaint prepared by a New York City police detective said Sprecher admitted he possessed child porn files.

The complaint said over 100 electronic files seized from Sprecher's residence included a nearly 46-minute video of a pre-teen girl engaging in sex acts with an adult male.

Sprecher was the lead producer of "Rebecca," a Broadway musical that was canceled before it was to open in fall 2012.

A stockbroker later admitted he'd flimflammed the producers.

Ben Sprecher, Notorious Broadway Producer With Scandal-Scarred Past, Arrested on Federal Child Pornography Charges: Sources

NBC 4
By Joe Valiquette
8/13/19

A Broadway producer with ties to one of the biggest fraud scandals in theatre history faces federal child pornography charges after an early morning raid at his Harlem home Tuesday, law enforcement sources familiar with the case tell News 4.

Ben Sprecher was arrested on a criminal complaint issued by the U.S. attorney's office in Manhattan, the sources said. He was taken into custody by the NYPD and Homeland Security Investigations agents at his home on West 122nd Street, where a search warrant is being executed, the sources say.

The complaint said Sprecher allegedly admitted he possessed child porn files. It also says more than 100 electronic files were seized from his home, including a nearly 46-minute video of a pre-teen girl engaging in sex acts with a man.

It wasn't immediately clear who would represent Sprecher in court.

Broadway producer Ben Sprecher was arrested on federal child pornography charges in Manhattan Tuesday, law enforcement sources say. (Published Tuesday, Aug. 13, 2019)

Sprecher has a lengthy list of Broadway credits, most recently the London stage adaptation of the horror classic "The Exorcist." On his LinkedIn profile, Sprecher also credits himself as a theatre owner-operator, executive producer of the national tour of "Little House on the Prairie" and producer of the Broadway revival of "Brighton Beach Memoirs."

But he is perhaps most notorious for "Rebecca," a \$12 million musical that was set to open in the fall of 2012 -- until Sprecher and other investors found out the show's major backer did not exist.

A Long Island stockbroker named Mark Hotton with a long history of civil fraud lawsuits against him was arrested for scamming Sprecher and the show's other backers. He ultimately plead guilty and was sentenced to more than a decade in prison.

Sprecher was cleared of any involvement in the fraud, but left with his reputation sullied.

"Do I feel like I was duped? I was duped. I was raped," Sprecher told the New York Times in an Oct. 2012 interview.

According to Playbill, lawsuits related to the show's collapse were still being settled as recently as this past May.

Broadway producer Ben Sprecher arrested on child porn charges

NY Post

By Stephanie Pagonis, Lorena Mongelli and Emily Saul

8/13/19

The Broadway producer behind the failed musical “Rebecca” was busted Tuesday for downloading child-porn — as disgusted neighbors said he once went around collecting signatures to get faster Internet.

“For nine years, he was not even able to say ‘hello,’ and suddenly he was quite friendly. ... He needed to have his Internet,” a female resident said of accused kiddie-perv neighbor Ben Sprecher, 65, of Manhattan — who famously had his Broadhurst Theatre play “Rebecca: The Musical” torpedoed by a con man.

Sprecher — who has produced everything from Broadway’s “Brighton Beach Memoirs” to “American Buffalo,” as well as a national tour of “Little House on the Prairie” — is accused of downloading more than 100 videos and photos containing child pornography, according to court documents.

The sick stash included a nearly 46-minute video of a girl, described as between 10 and 12 years old, “engaging in various sex acts with an adult male,” the papers allege.

Sprecher shared at least four of the twisted files with an undercover agent over three days in June, the documents claim.

He has admitted to downloading the illicit porn, court papers say.

Sprecher was picked up by Homeland Security and the NYPD around 6 a.m. at his tony townhome on West 122nd Street in Morningside Heights, authorities said. His family was home at the time, according to law-enforcement sources.

“The police officers went inside the building, and they then brought him out. [Sprecher] had a smile on his face — probably nervous and embarrassed about what was going on,” said D.B. Shark, a Web-based radio host and local.

“He is a pleasant guy” Shark said. “This is so shocking. But you never know who’s next-door.”

Sprecher allegedly amassed the online kiddie porn between at least October 2018 and this month.

Neighbors recalled how important the suspect’s Internet connection was to him a few years ago, with one resident, Jenny Raymond, saying he “made an effort to send out notifications [to get a faster speed] to all the neighbors” in 2014.

A Manhattan federal judge banned the producer from using the Internet at his arraignment Tuesday afternoon.

Sprecher’s public-defender lawyer, Martin Cohen, argued that his client needed at least his e-mail to work, to which the judge replied, “He doesn’t seem to be doing too much these days.”

Sprecher’s townhome is currently on the market for nearly \$3.7 million.

Sprecher, who has been married for 25 years and has two adult children, also was barred by the judge from perusing any kind of porn and ordered “to avoid all unsupervised contact with minors.”

Prosecutors argued that he should be fitted with a monitoring device, too, but the judge refused.

Sprecher was released on \$100,000 bond and ordered back to court Sept 12. His lawyer declined comment after the hearing.

In 2012, Sprecher and “Rebecca” co-producer Louise Forlenza were scammed by former Long Island stockbroker Mark Hotton, who netted \$60,000 in fees from them with promises of lining up \$4.5 million in investments for their psychological thriller.

Hotton then claimed one of his big investors died suddenly of malaria while on safari, and that KO’d the money pot. He pleaded guilty to money-laundering conspiracy and was sentenced to 34 months behind bars.

Then in 2017, Sprecher cried on the stand in Manhattan court while testifying against his former press agent, who he and Forlenza sued for \$10 million, claiming the rep later scared away real investors who might have been able to save the production. The publicist was ordered to pay the pair \$90,000.

Broadway producer Ben Sprecher arrested on child porn charges

NY Daily News

By Stephen Rex Brown and Thomas Tracy

8/13/19

A Tony award-nominated Broadway producer was busted Tuesday for possession of a sick stash of child porn, prosecutors said.

NYPD and Homeland Security investigators raided Ben Sprecher's home in Morningside Heights on W. 122nd St. at 6 a.m., seizing an external hard drive that contained "numerous files containing child pornography," prosecutors said.

Sprecher, who produced the Tony-nominated "Fortune's Fool" in 2002 and a revival of "The Odd Couple" in 2005, shared around 100 child porn files on a file-sharing network beginning in October 2018.

The 65-year-old was charged with possession and distribution of child pornography. The most serious charge carries a maximum sentence of 20 years in prison.

After being read his rights the disgraced producer admitted he "accessed" and "downloaded" perverted child porn files, according to a criminal complaint in Manhattan Federal Court.

One video cited by an NYPD detective on the case showed a preteen girl engaged in sex acts with an adult man, according to the five-page complaint. The video was over 45 minutes long. The complaint says that Sprecher shared four child porn files through the network with law enforcement.

"Sexualizing young children is unconscionable; and this Office and our law enforcement partners will continue to utilize all of the expertise and resources available to shine a light on every dark corner where it is produced, shared, and possessed," Manhattan U.S. Attorney Geoffrey Berman said.

Sprecher, who is married with two grown children, declined comment after being released on \$100,000 bond. He grabbed the camera of a Daily News photographer as he left the courthouse.

"Mr. Sprecher has engaged in this conduct over a lengthy period of time," Assistant U.S. Attorney Samuel Rothschild said. "It's not a one-off."

Sprecher's attorney Martin Cohen asked that he be allowed to have access to the internet for work.

"Mr. Sprecher works as a producer," Cohen said, adding that his client needed to be able to set up meetings and read email.

"He doesn't seem to be doing too much these days," Magistrate Judge Henry Pitman said. He ordered Sprecher not use the internet or have unsupervised interactions with minors.

Despite his extensive credits, Sprecher is probably best known for his involvement in the "Rebecca" debacle in 2012. Sprecher thought he had lined up financial backing for a Broadway run of the musical, only to learn he had been tricked. A con man, Mark Hotton, had fabricated the existence of a South African investor who

supposedly died before he could pour \$4.5 million into the show. Sprecher had to pull the plug on the production, costing 130 people jobs.

Hotton was sentenced to nearly three years in prison for the scam in 2014.

Sprecher was cleared of any involvement in the scam, but the fallout damaged his reputation. A civil suit over the fiasco featured allegations that Sprecher had failed investors and “hid the truth.”

Violent and Organized Crime

Walter

Tekashi69 bodyguard sentenced to more than 5 years behind bars for restaurant shooting

NY Daily News

By Trevor Boyer and Leonard Greene

8/14/19

Brooklyn rapper Tekashi69's former bodyguard was sentenced Wednesday to 62 months in prison for his admitted role in a shooting at an Upper East Side restaurant.

Faheem Walter's attorney argued that he had already suffered enough after being shot and nearly dying in the bloody Oct. 26, 2018 fracas that began when private security guards would not allow him into Phillipe Chow on E. 60th St.

Tekashi69, whose real name is Daniel Hernandez, went to the restaurant to meet with a record executive. Hours earlier, Hernandez was sentenced to 4 years probation in connection with a video he made of a 13-year-old girl having sex.

Walter and another member of Tekashi's entourage were turned away from the eatery, but later returned and hit one of the security guards over the head with a chair.

The guard pulled a licensed handgun and fired twice, hitting Walter in the torso. Walter was rushed to a hospital, and was later charged with gang assault.

"He almost didn't make it," his defense attorney, Edward Sapone, said in Manhattan Federal Court. "The bullet ripped through his intestine."

Surgery saved Walter, but resulted in hundreds of stitches, a scar from his collarbone to his belly button and continual infections at the site of his colostomy.

Sapone argued the gory consequences of the shooting would serve as a deterrence to the public — and a reminder to Walter not to commit further crimes.

Still, his lawyer said, Walter took responsibility for his role in that shooting by making a guilty plea.

"He picked the fight, with the wrong guy," Sapone said.

But prosecutors said Walter was actually an enforcer for the Nine Trey Bloods, a gang associated with Tekashi, and even admitted on recordings to carrying a gun for Nine Trey.

"He was kind of a go-to guy if something needed to be taken care of," said Assistant U.S. Attorney Michael Longyear.

Longyear asked the judge to take into account an Instagram Live video that Walter broadcasted June 1 from a contraband smartphone within his cell at the Metropolitan Correctional Center.

Walter, 29, bragged to his online audience that he was “still standing,” Longyear said.

Though Walter made no threats, references to the gang, or denials of his guilt in the broadcast, “To us it was a little surprising... that he would still engage in this conduct. He’s breaking MCC’s rules,” Longyear explained.

Judge Paul Engelmeyer acknowledged that Walter never actually used the gun he carried for the gang. But he still participated in the gang’s violent activity.

“You appear to have learned a very hard lesson a very hard way,” Engelmeyer said.

Walter could be out of jail in three years with good behavior, authorities said.

Sapone said Walter joined the entourage to work for Tekashi, not to get involved with the gang.

“That’s not the job he signed up for,” Sapone said. “He wishes he never met Hernandez.”

Tekashi 69, a trash-talking hip-hop star, pleaded guilty to nine racketeering, gun and drug charges and flipped on his former friends in January. He remains in custody and hopes his cooperation will convince a judge to impose a light sentence.

Civil Division

NYCHA

NYCHA's overtime spending climbs again, hitting \$95 million

NY Post
By Nolan Hicks
8/13/19

The city's budget has sprung a big leak.

Overtime spending at the city's embattled Housing Authority ballooned to \$95.5 million last year, as employees labored to correct the scandalous living conditions that led to a partial federal takeover of the agency, new payroll figures from the Empire Center think tank show.

Some of the biggest payouts went to NYCHA's plumbers — one of whom took home more than a quarter of a million dollars in total pay thanks to massive overtime.

Robert Procida racked up \$181,422 after working 1,668 hours in extra shifts. That's an average of 32 hours of overtime a week.

It brought his total take-home pay to \$286,246 for the year, the Empire Center found.

More than half of NYCHA's 13,000 employees worked extra time between July 2018 and June 2019, according to an analysis of payroll data by the conservative group.

Overall, New York City spent \$1.9 billion on overtime in its most recent budget, according to the figures.

NYCHA's overtime spending has risen in recent years, growing 58 percent from the \$60.6 million it spent during the city's 2015 budget year.

The \$95.5 million it spent during the most recent budget is also up.

1 percent from the \$94.5 million it spent during the 2018 budget, which ended in June 2018.

A NYCHA spokesman attributed the overtime surge in recent years to growing repair needs and new efforts to combat the agency's chronic heat and water outages, which are often linked to its decrepit pipes and plumbing in its 316 housing developments.

That's borne out in who scored the overtime.

The authority's 19 plumbing supervisors scored the biggest average overtime payments, earning on average \$71,505 from extra shifts.

They are charged with supervising and directing the work done by NYCHA's plumbers and other staff in connection with the water, drainage and gas systems at the sprawling public-housing agency. All told, they racked up a combined \$1.4 million from 12,492 hours of overtime.

In addition to Procida, who has worked for NYCHA since 1987 and who could not be reached for comment, the other biggest plumbers on the overtime list included Daniel Hock Jr., who got \$130,901.16 in overtime, and José Ortiz, who got \$124,343.01.

The union representing NYCHA's plumbers, United Association Local 1, did not return a message from The Post seeking comment.

"Our goal is to improve productivity and deliver the highest level of service to our residents, and we will use all tools at our disposal, including overtime," said NYCHA spokesman Chester Soria.

Securities and Commodities Fraud

Margulies

NY Jury Quick To Convict Marketing Pro In Snack Food Fraud

Law 360

By Pete Brush

8/13/19

A Manhattan jury needed a mere 90 minutes Tuesday to find a marketing professional guilty of helping a California woman steal \$2.8 million from snack and pet food investors, with prosecutors pointing to an "avalanche" of forgeries he created.

The jury of eight women and four men wasted no time convicting Joel Margulies, 74, on counts of securities and wire fraud, conspiracy, identity theft and illegally transporting a gun after a trial before U.S. District Judge Jed S. Rakoff that opened Aug. 5.

Judge Rakoff set a Dec. 16 sentencing date for Margulies, who must also resolve a drug charge that was severed from the case by another judge prior to trial. After prosecutors indicated they still intend to pursue that charge, the judge pressed them to resolve it quickly, take it to trial or drop it.

"I think it's a royal waste of time," Judge Rakoff said.

Along with his two co-defendants, Lisa Bershman and Barry Schwartz, Margulies has now been found guilty of duping investors in two Bershman ventures — Starship Snacks Corp. and All American Pet Co. Inc. — from 2014 to 2017. Bershman and Schwartz, who are married and hail from San Diego, entered guilty pleas. Prosecutors called Margulies a "one-man fake document factory" who helped by creating fake tax, bank and legal papers — sometimes using the names of real people he knew or had heard of.

Documents put before the jury showed that Margulies assisted Bershman in telling investors that beverage maker Monster Energy Co. planned to purchase her snack food venture and that food giant Nestle had its eye on All American Pet Co. In fact, the pet food product was beset by production problems, including mold, and the snack venture was a mere concept.

Margulies adopted the name of a real Nestle employee on a fake letter of interest in the pet food venture sent to investors and also used the name of a real Manhattan lawyer with whom he had been acquainted, documents showed.

Texts between Bershman and Margulies in December 2016 showed them both mocking investors, who had begun to suspect foul play as the two companies foundered.

"Now I am laughing," Bershman wrote.

"Laughing is a good thing," Margulies replied.

In 2016, Margulies, who resides in Tennessee, also sent Bershan, who was in New York City, a Smith & Wesson pistol and ammunition. In an email, he told her there was "nothing legal" about the shipment and he urged her to keep the gun under lock and key even though brandishing it would give her a "hormone surge."

After his arrest in October 2017, Margulies told the FBI that Bershan was "afraid" because investors were catching on and threatening her. She wanted a gun for protection, he said.

Margulies' lawyer, Brent Horst, conceded the gun charge during opening statements, but on the fraud-related counts he argued his client was duped by Bershan and unwittingly assisted her because he had fallen in love.

But on Tuesday, prosecutor Christine Magdo showed the jury bank records that showed Margulies took at least \$90,000 from the fraud, not including other benefits he received, including living for a time with Bershan in the upscale Bel Air neighborhood in Los Angeles.

Margulies regularly instructed Bershan about how to deal with investors, including helping her craft a story with a "rainbow" at the end to keep them satisfied, according to a text message. That proved he was no mere dupe, Magdo said.

"He knew exactly what he was doing," Magdo said.

At closings, Horst returned to the love narrative, showing the jury photos of Bershan seemingly living the high life.

"He acted foolishly. He had strong feelings for her," Horst said, dismissing dozens of damning pieces of evidence as "just noise."

Horst said after the verdict that he respects the jury's decision. Jurors declined comment on their way out of the Daniel Patrick Moynihan U.S Courthouse in Lower Manhattan.

Margulies is represented by Brent Horst of Horst Law.

The government is represented by Negar Tekeei and Christine Magdo of the U.S. Attorney's Office for the Southern District of New York.

The case is USA v Bershan et al., case number 1:17-cr-00638, in the U.S. District Court for the Southern District of New York.

Sharma and Farkas

Centra Execs Can't Use Privileged Chats To Skirt Indictment

Law 360

By Philip Rosenstein

8/13/19

A New York federal judge on Tuesday denied the co-founders of a defunct cryptocurrency company's attempt to dismiss a criminal indictment against them over the divulgence of privileged documents to prosecutors.

Sohrab "Sam" Sharma and Robert Farkas, co-founders of the embattled and shuttered cryptocurrency company Centra Tech, sought to dismiss their criminal indictment related to fraud charges stemming from Centra Tech's \$25 million initial coin offering. They alternatively asked for the removal of the existing prosecution team for having been potentially exposed to privileged documents during the discovery process.

Sharma further asked the judge to suppress evidence obtained during his arrest at his apartment in Florida. In a partial win, his request to suppress statements made during his arrest was granted.

"To the extent that the prosecution team viewed any of the potentially privileged documents, defendants have shown neither that the government's conduct was 'manifestly and avowedly corrupt' nor that defendants were prejudiced by the disclosures," the judge said. "Defendants have not shown that the government intentionally intruded on the attorney-client privilege."

Sharma and Farkas, along with former Centra Tech chief operating officer Raymond Trapani, were charged with running an unregistered initial coin offering from July to October 2017 for Centra Tokens, promoted as a vehicle for developing a currency exchange platform and debit card that would allow users to spend cryptocurrency. According to prosecutors, investors in the ICO were misled into believing Centra Tech had partnerships with major payment card companies.

Prosecutors allege the trio lied about already having relationships with Visa Inc., for example.

Trapani has since pled guilty to a variety of securities and wire fraud charges.

With a trial set for later this year, Sharma and Farkas asked U.S. District Judge Lorna G. Schofield in April to throw out their indictment. They said that before their arrests in April 2018, the government had used search warrants to obtain from Slack Technologies Inc. copies of communications Sharma and Farkas had with both in-house and outside counsel.

The government said it had a walled-off "taint" team review the documents gleaned from the Slack search warrant for privileged material, but Sharma and Farkas said the documents ultimately handed over in discovery were "clearly privileged" and revealed that the taint team's review was "woefully inadequate."

The government admitted that two agents may have seen potentially privileged information in 15 documents out of a total of 1.3 million files from the "Slack Warrant."

"Even if [the agents] had seen the potentially privileged documents, defendants offer no explanation as to how this exposure prejudiced their defense," the judge said. "None of the potentially privileged documents [except

one] has any apparent bearing on what are likely to be the issues in this case, and consequently, they would not give the government any unfair 'tactical advantage' and insight into defendants' 'means of defeating the charges.'"

Sharma also requested that the court suppress statements he made to the FBI during his arrest that came after he was put in handcuffs but before he was read his Miranda rights. He further asserted that, because those statements led law enforcement into his bedroom, the gun, laptop and smartphone they seized there "should be suppressed as 'fruits of the poisonous tree.'"

The government and Sharma had already gone back and forth on this topic in May, with prosecutors asking that Sharma's efforts be ended without a hearing.

The judge largely sided with the prosecutors on Tuesday, denying the former executives' motion to suppress a firearm, iPhones and a laptop, and denying as moot a motion to suppress Sharma's statement that he had "not yet" been criminally convicted when asked.

Counsel for Farkas said late Tuesday that they intend to file a motion for reconsideration.

The government declined to comment.

Counsel for Sharma did not respond to requests for comment Tuesday evening.

The government is represented by Samson Enzer and Negar Tekeei of the U.S. Attorney's Office for the Southern District of New York.

Sharma is represented by Gennaro Cariglio Jr.

Farkas is represented by Paul D. Petruzzi.

The case is U.S. v. Sharma et al., case number 1:18-cr-00340, in the U.S. District Court for the Southern District of New York.

Matters of Interest

Obama-era counsel Greg Craig's trial postponed; new jury to be selected

Washington Times
By Jeff Mordock
8/13/19

A federal judge agreed to restart the trial of former Obama White House lawyer Greg Craig and pick a new jury after his defense team complained Tuesday that the panel's having been selected out of public view could deny him the right to a fair trial.

Judge Amy Berman Jackson said she'll take a do-over Wednesday, selecting a new jury and pushing back the opening arguments of the trial until later this week.

Mr. Craig's lawyers raised the objection Tuesday, saying Judge Jackson's decision to close the courtroom a day earlier while lawyers questioned potential jurors tainted the selection process.

Mr. Craig's team said that violated his right to a public trial on a charge of lying to federal investigators about his work on behalf of Ukrainian officials.

Judge Jackson was incredulous when the lawyers raised the objection, asking defense attorney William Murphy whether they needed to start over. She later relented telling both sides there was "no choice" but to pick new jurors.

Francesco Campoamor-Sanchez, a prosecutor with the U.S. Attorney's Office in Washington, D.C., told the judge he agreed with the decision to start anew.

Judge Jackson said starting from scratch would be messy. She initially said the delay could postpone the trial until October while an all-new jury pool was summoned. She then took a recess, consulted with the jury office, and returned to say roughly 100 potential jurors would be available Wednesday.

"It's a little bit of a setback, but ultimately I think it's going to delay us by two to three days," she said.

Opening arguments, which had been expected Tuesday, will now occur either Thursday or Friday. It also means the trial could continue until after Labor Day, Judge Jackson said.

Typically, courtrooms are open to the public during jury selection.

Judge Jackson on Monday cleared the room but let the press stay for the first part, where she announced the questions she would ask. Jurors answered her questions and those of the lawyers privately.

She admitted Monday she'd never done that before but defended the move, saying some jurors objected to answering questions in public in such a high-profile case.

One juror discussed a mental health issue while another talked about being a crime victim, she said.

Judge Jackson asked potential jurors about their knowledge of special counsel Robert Mueller, President Trump's ex-campaign chairman Paul Manafort and other figures in the 22-month Russia investigation.

Mr. Craig, who served as White House Counsel from 2009 to 2010, faces one charge of making false statements and concealing information from Justice Department investigators investigating violations of foreign lobbying laws.

Prosecutors say he misled authorities about the work he performed for the Ukrainian government, which occurred after he left the Obama administration.

Manafort had tapped Mr. Craig and his law firm, Skadden Arps, to write a report whitewashing a former Ukrainian president's prosecution of a political rival. Prosecutors say his efforts to pitch the report to U.S. media outlets amounted to foreign lobbying.

Epstein Saga Puts Spotlight on Crime Victim's Rights Act

NY Law Journal

Robert J. Anello and Richard F. Albert

8/14/19

The significance of the Crime Victims' Rights Act (CVRA), which is intended to guarantee crime victims a role in federal criminal proceedings, has been highlighted in the case of Jeffrey E. Epstein, the financier accused of sexually trafficking underage girls. Because the government's noncompliance with the CVRA in negotiating Epstein's plea deal in 2008 led to the former U.S. Attorney for the Southern District of Florida, Alexander R. Acosta, losing his cabinet position as Secretary of Labor, practitioners can expect prosecutors and judges to be more focused on the CVRA going forward.

Worthy of the attention of white-collar practitioners is the currently pending motion by two victims in the Epstein case to rescind the key portions of Epstein's non-prosecution agreement—those that barred his prosecution in the Southern District of Florida—based on the court's prior finding that the government violated the CVRA. Although Epstein's death this past weekend in an apparent suicide now makes it unlikely that the court will rule on that aspect of the motion, the possibility that a violation of the CVRA could result in the rescission of a non-prosecution agreement has implications for white-collar practitioners and their clients.

Crime Victims' Rights Act

Congress enacted the CVRA, codified at 18 U.S.C. §3771, in 2004 “to make crime victims full participants in the criminal justice system.” It requires federal employees engaged in criminal investigations and prosecutions “to make their best efforts to see that crime victims are notified of, and accorded,” a list of ten enumerated rights. These rights have been found to attach before formal charges are filed and courts are instructed to “ensure that crime victims are afforded” the rights therein.

Among the rights guaranteed crime victims by the CVRA is the right to “reasonable, accurate, and timely notice” of any public court or parole proceeding and the right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding. In addition, the CVRA mandates that prosecutors and government attorneys confer with crime victims and give them timely notice of any plea bargain or deferred prosecution agreement.

The statute provides that victims or their lawful representatives may seek to enforce these rights by bringing a motion for relief to compel prosecutors to comply in the district court in which the case is being prosecuted or, if no prosecution is underway, in the district in which the crime occurred. The CVRA requires district courts to take up such motions “forthwith” and appellate courts to decide within 72 hours of filing any challenge of a denial of rights brought by mandamus petition. Although the statute makes clear that in no case should a violation of the CVRA provide grounds for a new trial, under the clause of the act codified at 18 U.S.C. §3771(d)(5), a victim may make a motion to re-open a plea or sentence if: 1) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied; 2) the victim petitions the court of appeals for a writ of mandamus within 14 days; and 3) the accused has not pled guilty to the highest offense charged.

In reviewing the history of the CVRA in its 2016 decision in *Federal Insurance Company v. United States of America*, the U.S. Court of Appeals for the Second Circuit noted that because the act began as a proposed constitutional amendment, the law is “relatively sparse [in] technical detail.” That lack of detail has left open

questions regarding the appropriate remedy for the government's violation of the statute. Congress specifically provided that violations do not result in a civil cause of action for damages, but rather directed the attorney general to "promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials . . ." The statute further states that the attorney general or his/her designee be the final arbiter of any filed complaint.

The Justice Department enacted regulations to outline the procedures a crime victim shall follow when he or she believes their CVRA rights have been violated. 28 C.F.R. §45.10. The regulations provide that because the Justice Department's Victims' Rights Ombudsman is the "final arbiter," its determination is not subject to judicial review. When violations are found, the responsible employee is required to undergo training on victims' rights. If the violation was found to be willful or wanton, the ombudsman is authorized to recommend "a range of disciplinary sanctions" which may include written reprimands, suspensions, reductions in grade or pay, removals or furloughs.

The Epstein Case

In 2005, the Federal Bureau of Investigation and local police in Palm Beach, Florida, initiated an undercover investigation of Epstein after receiving allegations that he had molested an underage girl at his Florida mansion. The investigation is claimed to have revealed that Epstein had engaged in similar behavior with multiple underage girls and had organized a sex ring where minor girls allegedly were "lent" to other individuals.

The FBI's investigation led to the preparation of a 53-page indictment against Epstein. The indictment was never presented to a grand jury, however. In 2008, federal prosecutors, led by Acosta, negotiated a non-prosecution agreement with Epstein which allowed him to plead guilty in state court to lesser charges of soliciting a minor for prostitution. Epstein served 13 months at the Palm Beach County Sheriff's Department Stockade, during which time he was allowed to leave custody and work from his office six days a week.

A series of articles from The Miami Herald exposed the nature of a so-called secret deal that allowed Epstein to evade federal sex trafficking charges. Two of Epstein's victims have cited the government's alleged failure to comply with the CVRA's requirements that prosecutors confer with crime victims and provide timely notice of proposed plea-bargaining arrangements in a long running litigation in the U.S. District Court for the Southern District of Florida.

After initially filing an emergency petition in that court for relief under the CVRA in July 2008, the victims filed a motion in 2011 seeking a finding that the government violated their CVRA rights. The government sought dismissal of the case. Although details of the arguments are elusive because the briefing remains sealed, the decision of District Judge Kenneth E. Marra denying the motion, *Doe v. United States*, 950 F. Supp. 2d 1262, 1266 (S.D. Fla. 2013), reveals that the government argued the victims did not have standing because the relief they sought—the vacation or rescission of the non-prosecution agreement to enforce their CVRA rights—was legally impossible. The government argued that rescission of an otherwise valid agreement is prohibited by constitutional due process even if the agreement was entered into in violation of the CVRA. Further, the government argued that even if the court could set aside the agreement, such ruling would be futile because the prosecutors' office legally was bound to abide by the terms of its earlier contract.

Judge Marra found as a threshold matter that the CVRA "authorize[d] the rescission or 're-opening' of a prosecutorial agreement, including a non-prosecution arrangement—reached in violation of a prosecutor's conferral obligations under the statute." Noting that §3771(d)(5) specifically contemplates the re-opening of a plea or sentence where the government has not complied with the CVRA, the court, without detailed analysis,

rejected the government's due process claim. The court further relied on case law and legislative history to expansively read the statute to permit the rescission of non-prosecution agreements just as it permits the rescission of plea agreements.

In a subsequent motion for partial summary judgment, the two victims asserted that prosecutors violated their right to confer under the CVRA. On Feb. 21, 2019, Marra issued a decision agreeing with the victims, making detailed findings that prosecutors violated the CVRA by failing to confer with the two victims when they entered into the 2008 non-prosecution agreement with Epstein. The court found "particularly problematic" the government's concealment of the 2008 agreement and statements that misled victims to believe that federal prosecution was still possible.

Appropriate Remedy

Still at issue in the case is the appropriate remedy. In briefing filed in May 2019, the victims have sought a variety of equitable remedies, including a letter of apology from the U.S. Attorney's Office and monetary sanctions. In addition, and most significantly to white-collar practitioners, the victims seek rescission of the portion of the non-prosecution agreement precluding federal prosecution of Epstein in the Southern District of Florida. The victims argue that the CVRA's procedural restrictions set forth in §3771(d)(5) do not apply because they are not seeking to re-open a plea: Epstein never pleaded guilty in federal court. The victims also argue that the court's findings that Epstein joined with the government deliberately to keep his agreement from the victims means that he cannot be heard to complain about losing the benefit of the resulting illegal agreement.

The government asserts that none of the equitable relief sought by the victims is authorized by the CVRA because the statute specifically refers enforcement to the Justice Department. The government further argues that partial rescission of the non-prosecution agreement is inappropriate because (1) it would harm those victims who do not want the case re-opened and desire to remain anonymous; (2) it would have the perverse effect of allowing the government to disregard its obligations under the agreement (i.e., an immunity grant) despite the fact that Epstein has complied with his obligations; and 3) it contravenes the basic tenets of contract law.

The government further points out the inconsistency in the victims' position. The victims asserted an expansive reading of §3771(d)(5) of the CVRA, which allows for rescission in limited circumstances, beyond pleas or sentences to permit the possibility of rescission of the non-prosecution agreement at issue, and the district court accepted that position in its 2013 decision. But the victims now argue that the express procedural requirements of §3771(d)(5)—which they cannot satisfy—do not apply. According to the government, the petitioners "cannot have it both ways."

The court's decision is pending as of the preparation of this article.

Implications for White-Collar Cases

Recognizing that Epstein's death may moot the question, strong reasons would nevertheless have militated against permitting rescission of Epstein's non-prosecution agreement. The government's position that the CVRA was intentionally drafted to narrowly limit the remedies available to victims are well taken, and the notion that the victims can expand the reach of §3771(d)(5) to reach non-prosecution agreements but be relieved of its express procedural requirements is hard to square.

Further, the constitutional due process implications for a defendant raised by such a result appear substantial. Courts long have recognized that plea or similar agreements in criminal cases are unique contracts raising special due process concerns for fairness to defendants, and on that basis have required the government to specifically perform such agreements or completely relieved a defendant of the impact of the plea. Because Epstein served his full state court sentence, he could not have been relieved of the impact of his plea. However unduly lenient some may now view it, the partial rescission that the victims sought years after the fact appears unsupported in the case law and unsupportable on basic contract principles.

Further, even before Epstein's death, the unusual circumstances of the case might have rendered moot the victims' rescission demand. Subsequent to the filing of the parties' remedies briefs, on July 8, 2019, the U.S. Attorney's Office for the Southern District of New York announced that it had filed charges against Epstein for sex trafficking of minors in New York and Palm Beach Florida between 2002 and 2005. That prosecution appeared to vindicate the two victims' demands for a federal prosecution and to have provided them an avenue to exercise their CVRA right to confer with prosecutors.

But experience teaches that a bad set of facts can push the law. Here, the misconduct of which Epstein was accused is egregious, and public furor was exacerbated by the perception that he used his wealth and privilege to manipulate the criminal justice system, with the knowing assistance of prosecutors, in violation of the terms and intent of the CVRA.

The attention and publicity that a ruling rescinding Epstein's non-prosecution agreement would have generated likely would embolden victims and their representatives to assert their rights to be informed about and confer with prosecutors about plea agreements. That would be unwelcome to white-collar practitioners, who often seek to pursue efforts to dispose of cases with the least possible media and victim attention. In significant business-related prosecutions, a large number of persons and entities may claim to be victims; dealing with them can create logistical and practical difficulties for prosecutors, who typically prefer the advantage of a maximum level of control over their case.

Further, because many potential prosecutions of corporations are resolved by non-prosecution agreements and deferred prosecution agreements—both of which are generally not considered “plea” agreements—a ruling extending the CVRA's rescission remedy to such agreements but not enforcing its strict procedural requirements would inject significant new uncertainty into their finality. Such a ruling might have generated a fair number of questions from in-house corporate counsel in industries, like financial services and health care, that tend to get regular prosecutorial and regulatory enforcement attention.

Conclusion

The alleged victims of Jeffrey Epstein already have used the CVRA to successfully bring down a former U.S. attorney. But for Epstein's death, their effort to use the statute to rescind Epstein's non-prosecution agreement could have had even greater implications for the criminal justice system.

Donziger Faces Criminal Contempt Prosecution Team at Seward & Kissel

NY Law Journal
By Jack Newsham
8/13/19

Steven Donziger, the suspended attorney who was ordered to pay an \$800,000 judgment for allegedly rigging an Ecuadorian lawsuit against Chevron Corp., is now being prosecuted for criminal contempt by court-appointed attorneys at Seward & Kissel.

Donziger's cutthroat legal war with Chevron has raged for years, but has significantly escalated in recent weeks. On July 31, U.S. District Judge Lewis Kaplan of the Southern District of New York ordered Donziger to explain why he shouldn't be prosecuted for allegedly failing to turn over assets to Chevron and comply with discovery orders.

In an unusual twist, the judge also appointed Rita Glavin, Brian Maloney and Sareen Armani of Seward & Kissel to prosecute Donziger for criminal contempt. In appointing a private prosecution team, the judge cited federal criminal rules and an explanation by the U.S. Attorney for the Southern District of New York that the office declined to take up the case referral "on the ground the matter would require resources that we do not have readily available."

The judge gave Glavin and her colleagues the power to issue subpoenas and to seek and execute search warrants.

For now, Donziger—who is represented by Andrew Frisch—is wearing an ankle bracelet and has been made to surrender his passports, according to an Aug. 9 letter filed by Glavin. Donziger has been released on \$800,000 bond secured by his apartment and signed off by two people, one of whom is his wife.

The criminal case is the latest development in a long-running legal war. Donziger represents a group of Ecuadorians who sued Chevron for widespread environmental contamination and won a multibillion-dollar ruling in Ecuadorian courts. Chevron said the decision was procured by fraud, however, and has fought efforts to enforce the judgment and won a racketeering suit against Donziger.

The oil company and its legal team at Gibson, Dunn & Crutcher have lately been trying to seize Donziger's assets. Donziger and his law firm Donziger Law were ordered in July to pay Chevron \$3.4 million in attorneys' fees after Lewis agreed to hold him in civil contempt.

Kaplan's appointment of the Seward & Kissel lawyers as special prosecutors isn't without precedent. A special prosecutor was appointed to investigate the leak of evidence in a political corruption case in Rhode Island and ultimately racked up \$152,247 in legal bills, paid by the Administrative Office of U.S. Courts, according to a 2006 decision by the U.S. Court of Appeals for the First Circuit.

Like the First Circuit case, Lewis appointed the Seward attorneys under Federal Rule of Criminal Procedure 42(a)(2). The Administrative Office's practice of paying appointed special prosecutors' fees is "usual in Rule 42(a) appointments," said the 2006 decision.

Harry Sandick, a former prosecutor and white-collar defense partner at Patterson Belknap Webb & Tyler, said he couldn't recall a lawyer in private practice being appointed to prosecute a case from his time in the Southern

District, although he did recall SDNY prosecutors taking up a contempt case against artist Shepard Fairey, who admitted to manipulating evidence in a copyright suit. He noted that Glavin, who previously worked nearly 12 years for the Justice Department, was an experienced prosecutor and defense lawyer.

“Hopefully, she’ll be able to resolve this matter in a way that is fair to all sides,” he said.

This case is a reunion of sorts for Glavin and Frisch, Donziger’s lawyer. They represented co-defendants in the Manhattan District Attorney’s case against Dewey & LeBoeuf executives. “Ms. Glavin and I have worked very well together in the past, and I anticipate that she and I will have many constructive conversations to determine whether there is a viable way to resolve the case short of trial,” Frisch said in an Aug. 11 letter.

“If not, we will try the case,” Frisch’s letter continued. “Mr. Donziger is fully aware of the possible consequences in the event of an unfavorable verdict and will face them if and when a trial so results.”

Donziger called the charges “an act of Trump-style retribution” by Kaplan in an Aug. 1 tweet.

Frisch, who runs his own firm, said a follow-up conference was set for late September but declined to comment on the case generally. Glavin declined to comment.

Randy Mastro, a partner at Gibson Dunn who represents Chevron, would only say of the criminal prosecution that it is a separate matter from the civil suit “to which Chevron is not a party.”

Jail Where Epstein Died Has Record of Security Blunders

Courthouse News
By Adam Klasfeld
8/13/19

Months after the Metropolitan Correctional Center was celebrated for keeping hold of Joaquín “El Chapo” Guzmán — the drug lord who famously broke out twice from maximum-security prisons in Mexico — Jeffrey Epstein’s reported suicide there embroils a criminal probe that implicates some of the most powerful men in the world in child sex trafficking.

Beneath its fortress-like public image, however, the 12-story structure where Epstein was found dead on Saturday is no stranger to high-profile security failures.

This photo shows the Manhattan Correctional Center in New York on July 1, 2019. (AP Photo/Richard Drew) One pending lawsuit accuses MCC of covering up the fatal beating of inmate Roberto Grant in 2015 as an overdose. Another inmate, Reza Zarrab, purports to have survived an attempted assassination at the MCC two years later, retribution for implicating Turkish President Recep Tayyip Erdogan in an Iranian money-laundering scheme that is the biggest ever charged in U.S. history.

Inside the MCC, sex and bribery scandals abound, as do ubiquitous reports of smuggled cellphones, one of which purportedly allowed former CIA engineer Joshua Adam Schulte to leak classified data from prison.

Months before the WikiLeaks source purportedly got hold of multiple contraband cellphones, including at least one heavily encrypted device, former MCC guard Victor Casado pleaded guilty in April 2018 to taking a \$45,000 bribe from Zarrab to smuggle in a cellphone, alcohol, Dayquil and other items.

Accusations of spectacular security breakdowns inside the MCC were a running feature of Zarrab’s case. Midway through testimony that stretched for more than a week before U.S. District Judge Richard Berman — who also presided over the Epstein case — terror suspect Faouzi Jaber filed a lawsuit accusing Zarrab of raping him at the MCC.

Zarrab called those suspiciously timed claims “fiction,” and Jaber later withdrew his claims.

Against this backdrop, an ex-federal prosecutor offered some insight as to why the MCC’s reputation has been little worse for the wear.

“The problem is that you have a code of silence,” the prosecutor said in an interview, speaking on the condition of anonymity. “Guards do not talk about other guards, and prisoners do not talk about anybody. There are the rare occasions where prisoners bring civil rights suits, but it’s a very strong culture of silence.”

In 2007, the culture of silence was of little help to former MCC guard Nicholas Defonte, convicted of having sex with a female inmate.

Cameron Douglas, the eldest son of “Basic Instinct” star Michael Douglas, features in another lurid report of MCC misconduct. The drug-addicted celebrity scion told a court eight years ago that he got his former lawyer, Jennifer Ridha, to smuggle him Xanax in her bra. Ridha insisted in a tell-all that she kept the pills in her pants pockets.

In the 1990s meanwhile an MCC security lapse nearly cost the government its key cooperating witness in the foiled Bojinka plot, a plan to assassinate Pope John Paul II and blow up two U.S. airliners.

While being held at MCC after his 1995 extradition from Malaysia, Wali Khan Amin Shah nearly escaped the MCC by climbing to an unsecured portion of the prison's roof. Khan became a cooperating witness against his Bojinka co-conspirators, suspected 9/11 mastermind Khalid Sheikh Mohammed and Ramzi Yousef, who carried out the World Trade Center bombing in 1993.

More recently, the government faced harsh words from U.S. District Judge William Pauley III in a case that puts the MCC at the heart of a murder cover-up.

"I read the autopsy report," Pauley said in a July hearing about the death of former MCC inmate Roberto Grant. "He was beaten to death in a dormitory that people are supposed to be supervising, right?"

Grant suffered blunt-force trauma, according to his autopsy, but his family says MCC staffers labeled the death an overdose despite finding no trace of drugs in Grant's system.

At last month's hearing, a government attorney insisted that Grant died quickly and that the prison was not negligent. Pauley did not immediately issue a ruling, but his sharp questions left little doubt as to his leanings.

"I really don't know what duty [the U.S. Bureau of Prisons] believes they do owe to prisoners after what I just heard," Andrew Laufer, an attorney for Grant's family, told the judge at the time.

As for the Epstein case, Attorney General William Barr already has observed "serious irregularities" in how the tycoon fared under Bureau of Prisons guidelines. Epstein was reportedly removed from suicide watch before his death and transferred to a section of the jailhouse requiring corrections officers to check in on him every 30 minutes.

Reacting to reports that Epstein was held in MCC's infamous "9 South" wing, a former federal prosecutor said: "I've been on the ninth floor many times, and it really is hermetically sealed from the rest of the population."

The Washington Post reported that "several" hours passed without such a check-in before Epstein's death and that the staffer assigned to keep tabs on him was not a corrections officer.

New York City Medical Examiner Barbara Sampson has not yet completed her report, and the incident has sparked separate investigations by the Justice Department's inspector general and the FBI.

Justice Department spokeswoman Kerri Kupec announced Tuesday that MCC's warden has been reassigned pending outcome of these probes.

Epstein's attorneys meanwhile have tapped a storied pathologist for their own investigation: Dr. Michael Baden, who testified in O.J. Simpson's defense and helped investigate the assassinations of President John F. Kennedy and Martin Luther King Jr.

2nd Circuit's Decision Could Embolden Federal Anti-Corruption Prosecutors

NY Law Journal
By Phillip Bantz
8/13/19

In a ruling that could embolden federal anti-corruption prosecutors, the U.S. Court of Appeals for the Second Circuit has ruled that it's not necessary to meet the heightened standard of proving that a bribe was paid in exchange for an "official act" in Foreign Corrupt Practices Act cases.

The decision in *U.S. v. Ng Lap Seng* is a clear win for the Justice Department and marks the first time that a circuit court has applied the official act rule, which the U.S. Supreme Court established in *McDonnell v. U.S.*, to the FCPA.

"People on the defense side of FCPA cases have long felt that the agencies have taken a tremendously extensive view of their jurisdiction to prosecute FCPA and types of conduct that are violative of the FCPA—and this does nothing to rein that in," said Emily Westridge Black, a partner at Haynes and Boone in Austin, Texas, and Dallas, who specializes in FCPA litigation.

She added, "We can expect that this will not curb and will likely increase enforcement action."

Black also saw the decision as a signal of things to come, describing it as the "tip of the iceberg in terms of people testing the FCPA." Since the Justice Department launched the FCPA pilot program in 2016, prosecutors have focused more on individual accountability. And whereas companies tend to settle FCPA cases because they have so much to lose, individuals are more inclined to take their chances at trial, which has led to more challenges to the scope of the FCPA.

"On the one hand, we're seeing extensive prosecutions, but we'll also see people making these interesting defense arguments that have been percolating in the defense community for a while," Black said. "Looking forward, we'll have a much better sense of the true scope of the FCPA five to 10 years from now."

The defendant in the case, Ng Lap Seng, a wealthy Chinese real estate developer, was convicted of paying bribes and gratuities to United Nations officials in violation of the FCPA. On appeal, he argued, in part, that the trial judge had erred in failing to instruct the jury on the McDonnell standard.

But the Second Circuit held that McDonnell doesn't apply to the FCPA or Section 666, a law that addresses bribery that involves federal funds, because both laws have a more expansive definition of bribery.

"The way I read McDonnell, it wouldn't apply on its face to the FCPA," said Jason Jones, a partner in King & Spalding's special matters and government investigations practice in Washington, D.C. "The Second Circuit seems to me to have gotten it right."

Jones noted the decision also clarified the "FCPA clearly requires a quid pro quo," meaning that proving a defendant offered or provided payment, even for a corrupt purpose, isn't enough by itself to satisfy the statute.

"It's just that the quo is a lot broader under the FCPA," he added. "I think it's good clarity, but I don't think it would be a surprise to most prosecutors."