

Memorandum



SubjectDate

Prosecution Memorandum March 10, 2007

In re Operation Leap Year

ToFrom

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U.S. Attorney

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Chief, Criminal Division

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I. INTRODUCTION

This memorandum seeks approval for the attached Requests for Authorization to Apply for a Compulsion Order seeking Immunity pursuant to 18 U.S.C. Sections 6001-6003 for witnesses Haley Robson and Tatum Miller in connection with the ongoing investigation named "Operation Leap Year."

II. BACKGROUND

Operation Leap Year involves the investigation of Jeffrey Epstein and three of his assistants, Sarah Kellen, Adriana Ross (nee Mucinska), and Nadia Marcinkova. The targets would arrange "sexual massages" for Epstein when he would travel to Palm Beach, and many of those "sexual massages" were performed by minor females. Robson and Miller both began their relationships with Epstein as "masseuses" when they were under the age of 18.¹ After performing massages for a period of time, Robson and Miller began recruiting other girls to perform massages. Robson and Miller received \$200 for each girl they brought to Epstein's home.

Both witnesses have been approached by the FBI to provide information via an informal

¹ Robson and Miller are not known to each other, and they were each "recruited" to become massages by different individuals. They are, however, similarly situated, so I have joined both requests for immunity in this memorandum.

proffer with a “*Kastigar* letter” or testifying before the grand jury with a “pocket immunity” letter. Both witnesses are represented by counsel. Miller is an openly hostile witness who claims to be “in love” with Epstein. She has never spoken to any law enforcement officer about what happened between her and Epstein. Miller is represented by Jim Eisenberg, who is being paid by Epstein. Eisenberg has admitted to speaking regularly with Roy Black, who is Epstein’s “behind the scenes” attorney, but Eisenberg insists that he is exercising independent judgment on behalf of Miller. Eisenberg has stated that Miller will not meet with agents or the Office or testify before the grand jury without full immunity.

Robson is not hostile to cooperating with the Office and the FBI. Robson’s father is a Miami-Dade police officer and she is represented by Mike Dutko. Robson’s father is paying for Dutko’s services and made it clear to us that Robson is antagonistic to Epstein. However, during one conversation, something Dutko said sounded similar to a line I had heard from Eisenberg. I pressed Dutko about it and Dutko admitted that he had spoken with Bruce Lyons and Roy Black about the case and his representation of Robson. It seemed that Robson and her father knew nothing about this and the following day Dutko called to inform me that Robson was independent of Epstein and nothing further would pass between Dutko and the Epstein camp.

The distinction between Robson and Miller is this. Robson did cooperate with the City of Palm Beach’s investigation of Epstein from the beginning. Halfway through her interview, a police officer walked into the interview room and informed Robson that she had just “admitted” to a second-degree felony and the only thing she could do to save herself was to cooperate with them. Robson continued to cooperate with the Police Department, telling them about other girls that she brought to Epstein’s house and providing telephone numbers and introductions to other victims. Despite this cooperation, the City of Palm Beach Police Department prepared a “probable cause affidavit” to charge Robson with the second-degree felony. The affidavit was never filed because the Palm Beach County State Attorney’s Office decided to present the case to the grand jury, which did not indict Robson, but the Police Department released/leaked the affidavit to the press, so Robson and her attorney are aware that the Police Department wanted to, and still could, press charges against her. For this reason, Dutko is concerned that Robson faces real exposure to criminal liability. Eisenberg, on behalf of Miller, asserts that Miller also faces real exposure because Miller did exactly the same thing that Robson did.

III. THE STATUS OF THE GRAND JURY INVESTIGATION

The grand jury has heard testimony regarding the youngest of Epstein’s known victims. Saige G. was 14 years’ old when she went to Epstein’s house. Epstein ordered her to get undressed and instructed her to “straddle” him while she massaged his back so that her buttocks touched his lower back/buttock area. After a period of time, Epstein told Saige G. to climb off of him and he went to the bathroom to masturbate. Epstein then returned to the massage table lying face up. Epstein instructed Saige G. to massage his chest and he then used a back massager/vibrator on Saige G.’s vagina and then digitally penetrated Saige G.’s vagina while he continued to masturbate himself. After he ejaculated, Epstein paid Saige G. \$300 and told her to get dressed.

Robson is the girl who recruited Saige G. and brought her to Epstein's house. The grand jury heard about how the appointment was arranged. Saige G.'s stepmother was the first person to bring the criminal activity to the attention of the Palm Beach Police Department. After interviewing Saige G., the police placed a number of controlled calls to Robson to set up a second appointment with Epstein. The grand jury also heard about those calls and the evidence retrieved via a "trash pull" from Epstein's house. One of the recovered items was a written message that Haley would bring Saige on the upcoming Saturday, which matched the evidence from the controlled calls.

Robson and Miller's telephone records have been subpoenaed and analyzed. They show a large number of calls between their cell phones and Sarah Kellen's cell phone and Epstein's house in Palm Beach. Their records also show calls to other girls who they are known to have brought to Epstein's house.

The grand jury has not yet heard testimony regarding Miller, but the investigation has revealed one girl who was underage when Miller brought her to Epstein's house. The girl states that Miller told her she would just have to model lingerie and that, the day after visiting Epstein's house, the girl called Miller and told her that she wanted to call the police to report what Epstein had done.

IV. THE NEED FOR THE WITNESSES' TESTIMONY AND THE REQUESTED IMMUNITY.

The most difficult part of this prosecution will be proving the knowledge and intent of the targets. For example, Kellen could assert that she knew that she was setting up massages for Epstein, but she believed that they were regular massages. All of the targets are likely to aver that they did not know that the girls were under the age of 18.

Robson and Miller are the witnesses most likely to provide insight into that knowledge and intent. For example, during her initial interview with the Palm Beach Police Department, Robson noted that Kellen had mentioned something about how Epstein did not like to have sex with the girls, he was just "turned on" by masturbating in front of them. The police officers did not follow up on this statement. If Kellen really said this, or something like this, then Kellen clearly knew that Epstein was engaging in sexual activity, even if she didn't know all of the details of the sexual acts that occurred. Robson also said that she told the girls that she brought to say that they were 18, but she also said that, while she was giving massages to Epstein, he knew that she was under 18. No one asked Robson whether Kellen or someone else told her to instruct the girls to say that they were 18. No one has asked Robson whether Kellen or Epstein ever complained that the girls looked too young or asked her to confirm that the girls were over 18.

Robson and Miller are believed to have brought the most girls to Epstein's house. Miller also went to Epstein's house while Epstein was out of town to demand money and Epstein's property manager provided that money to her.

I have explained to counsel for Robson and Miller that FBI and this Office consider them to be victims of Epstein and not as targets of the investigation. Both began working for him when they were under 18 and continued past their 18th birthdays. Nevertheless, because of the actions of the Palm Beach Police Department – both preparing the probable cause affidavit against Robson and releasing their investigative reports to the press – counsel for both girls feel that my assurances are inadequate. In light of the shenanigans in the state investigation and prosecution, I cannot fault them for their concerns.

The U.S. Attorney's Manual recommends prosecuting witnesses in a situation such as this and getting their cooperation as part of a plea bargain. Certainly the evidence against Robson is very strong. She gave a taped confession, there are controlled calls, and there is no doubt that she knew Saige G.'s age and what would happen inside the room with Epstein. Besides contradicting my assurances, a decision to prosecute Robson and/or Miller would result in a refusal by all of the girls to come forward because approximately 90% of the identified girls brought other girls to Epstein, so all of them would feel at risk.

The concern about granting immunity is that it will reduce the girls' credibility at trial and could lead them to be less than candid – especially Miller who has already expressed her desire to protect Epstein. I believe that Robson will be very truthful and the reason for the grant of immunity can be explained to a jury. I believe it is probable that Miller will lie even with the grant of immunity. Accordingly, I plan to put Miller before the grand jury and question her aggressively. If she does lie, I would like to charge her with perjury and to bring that charge before Epstein is charged and/or tried. That prosecution will send the message that lying to protect Epstein will immediately convert your status from victim to target and will be addressed harshly.

■. RECOMMENDATION

For these reasons, I recommend that the attached Requests for Authorization to Apply for Compulsion Order on behalf of Haley Robson and Tatum Miller be submitted to the Witness Immunity Unit.