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Ignorance of age not valid defense in sex cases, expert says

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Friday, August 04, 2006

Even if Palm Beach money manager Jeffrey Epstein didn't know that girls who police say gave him sexual massages at his Intracoastal home were under the legal age, that alone wouldn't have exempted him from criminal charges of sexual activity with minors.

"Ignorance is not a valid defense," said Bob Dekle, a legal skills professor who was a Lake City prosecutor for nearly 30 years, half of that time specializing in sex crimes against children.

Jeffrey Epstein**Billionaire
financier**Jeffrey
Epstein has
been indictedfor felony solicitation of
prostitution by a grand
jury following
accusations by teen girls.[• Past headlines](#)

"There is no knowledge element as far as the age is concerned," Dekle said.

After an 11-month investigation, Palm Beach police said there was probable cause to charge Epstein, 53, with unlawful sex acts with a minor and lewd and lascivious molestation. They contend that Epstein — friend of the rich and famous and financial patron of Democratic Party organizations and candidates — committed those acts with five underage girls.

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In the past week, New York Attorney General and gubernatorial candidate Eliot Spitzer has returned about \$50,000 in campaign contributions he received from Epstein, and Mark Green, a candidate to replace Spitzer in his current job, has returned \$10,000 to him because of the Palm Beach scandal, the *New York Daily News* has reported.

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The case raised eyebrows because the state attorney's office rarely, if ever, kicks such charges to a grand jury. And it increases the difficulty of prosecuting child sex abuse cases, especially when the defendant is enormously wealthy and can hire high-priced, top-tier lawyers.

At least one of Epstein's alleged victims told police he knew she was underage when the two of them got naked for massages and sexual activity. She was 16 years old at the time and said Epstein asked her questions about her high school, according to police reports.

A girl who said she met Epstein when she was 15 said he told her if she told anybody what happened at his house, bad things could happen, the police reports state.

Epstein's youngest alleged victim was 14 when she says she gave him a massage that included some sexual activity. She is now 16. The girl's father says he doesn't know whether she told Epstein her age.

"My daughter has kept a lot of what happened from me because of sheer embarrassment," he said. "But she very much looked 14. Any prudent man would have had second thoughts about that."

Defense attorney Jack Goldberger maintains that not only did Epstein pass a polygraph test showing he did not know the girls were minors, but their stories weren't credible. The state attorney's office also implied that their credibility was an issue when it decided not to charge Epstein directly, but instead give the case to the grand jury.

"A prosecutor has to look at it in a much broader fashion," a state attorney's spokesman said last week.

Epstein hired Harvard law Professor Alan Dershowitz when he became aware he was under investigation, and Dershowitz gave prosecutors information that some of the alleged victims had spoke of using alcohol and marijuana on a popular Web site, according to a Palm Beach police report.

Prosecutors typically consider two things in deciding whether to charge somebody with sex-related offenses against minors — whether there is sufficient evidence and whether there is a public interest in doing so, Dekle said.

If two teens are in a sexual relationship and the boy turns 18 before the girl, he could be charged with a sex crime if the sex continues. There would be no public interest in pursuing that, Dekle said.

But where there is a large gap in ages — and especially in cases of teachers with students — there is a public interest in prosecuting, he said. Likewise if the accused has a track record of sex with minors.

Still there is a "universal constant" in prosecuting these cases, Dekle said. Men who exploit underage children for sex often carefully choose their victims in ways that will minimize the risk to them, he said.

Victims usually are from a lower social status, and they may suffer from psychological problems, Dekle said.

"Lots of child sexual abuse victims have been victimized by multiple people over a period of time. Then

the act of abuse produces behavior in the victims that further damages their credibility." Examples include promiscuous behavior and drug abuse.

Some of the alleged victims in the Epstein case returned to his home multiple times for the massage sessions and the \$200 to \$300 he typically paid them per visit. "That would be a definite problem for the prosecutor," said Betty Resch, who prosecuted crimes against children in Palm Beach County for five years and now is in private practice in Lake Worth.

"The victim becomes less sympathetic" to a jury, Resch said. "But she's a victim nevertheless. She's a kid."

Most men charged with sex crimes against minors look normal, Dekle said. A jury expecting to see a monster seldom will. And the victims' ages work against them and in favor of the defendant in a trial, Dekle said.

If a child and an adult tell different stories and both swear they're telling the truth, adult jurors are more likely to believe the adult, Dekle said.

"You have all these things working against you in a child sex abuse case. Prosecutors normally try to be very careful in filing those cases because they know what they're getting into. There is no such thing as an iron-clad child sexual abuse case."

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