

016

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA)
)
 v) 2:01-CR-135-01
)
BEVERLY M. HOLLAND)

Members of the Jury:

This case is a criminal prosecution brought by the United States against the defendant, Beverly Holland. The Grand Jury returned an eleven count indictment charging Ms. Holland with offenses relating to the transporting of individuals from Vermont to New York to engage in prostitution. The Court has dismissed counts 4 and 5 and the jury should only consider the remaining nine counts. Specifically, the charges are as follows:

Count 1 charges the defendant with conspiracy to commit offenses against the United States by knowingly transporting individuals across state lines, with intent that those individuals engage in prostitution, and to knowingly persuade, induce, entice, or coerce individuals to travel across state lines to engage in prostitution.

Counts 2, 6, 7, 8, and 11 charge the defendant with transporting individuals, who were under the age of 18,

across state lines with the intent that they engage in prostitution.

Counts 3 and 9 charge the defendant with transporting individuals, who were over the age of 18, across state lines with the intent that they engage in prostitution.

Count 10 charges the defendant with persuading, inducing, enticing, and coercing individuals to travel across state lines to engage in prostitution.

ROLE OF INDICTMENT

At this time, I would like to remind you of the function of a grand jury indictment. An indictment is merely a formal way to accuse the defendant of a crime preliminary to trial. An indictment is not evidence. The indictment does not create any presumption of guilt or permit an inference of guilt. It should not influence your verdict in any way other than to inform you of the nature of the charges against the defendant.

The defendant has pleaded not guilty to the charges in this Indictment. You have been chosen and sworn as jurors in this case to determine the issues of fact that have been raised by the allegations of the Indictment and the denial made by the not guilty plea of the defendant. You are to perform this duty without bias or prejudice against the defendant or the prosecution.

MULTIPLE COUNTS

A separate crime or offense is charged in each of the

three counts of the Indictment. Each charge against the defendant and the evidence pertaining to each charge should be considered separately. You must return separate verdicts on each count in which the defendant is charged. The fact that you may find the defendant not guilty or guilty as to one of the offenses charged should not control your verdict as to any other offense charged against the defendant.

REASONABLE DOUBT

I have said that the government must prove the defendant guilty beyond a reasonable doubt. The question naturally is what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has after carefully weighing all of the evidence. It is a doubt that would cause a reasonable person to hesitate to act in a manner of importance in his or her personal life. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A reasonable doubt is not a caprice or whim; it is not a speculation or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy. Under your oath as jurors you are not to be swayed by sympathy; you are to be guided solely by the evidence in this case.

In a criminal case, the burden is at all times upon the

government to prove guilt beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to the defendant, which means that it is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt.

If, after fair and impartial consideration of all of the evidence you have a reasonable doubt, it is your duty to find the defendant not guilty. On the other hand, if after fair and impartial consideration of all the evidence you are satisfied of the defendant's guilt beyond a reasonable doubt, you should vote to convict.

As I have instructed you, the law presumes that the defendant is innocent of the charges against her. The presumption of innocence lasts throughout the trial and ends only if you, the jury, find beyond a reasonable doubt that the defendant is guilty. Should the Government fail to prove the guilt of a defendant beyond a reasonable doubt, you must find the defendant not guilty.

EVIDENCE

You have seen and heard the evidence produced in this trial and it is the sole province of the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits that have been received in evidence, and all the facts which may have been

admitted or stipulated. I would now like to call to your attention certain guidelines by which you are to evaluate the evidence.

There are two types of evidence which you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something she or he knows by virtue of their own senses -- something she or he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit where the fact to be proved is its present existence or condition.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. You infer on the basis of reason and experience and common sense from one established fact the existence or non-existence of some other fact. Circumstantial evidence is of no less value than direct evidence for it is a general rule that the law makes no distinction between direct evidence and circumstantial evidence, but requires that your verdict must be based on all the evidence presented.

You may convict a defendant on the basis of circumstantial evidence alone, but only if that evidence convinces you of the guilt of that defendant beyond a reasonable doubt.

TESTIMONY AND ARGUMENTS EXCLUDED

I caution you that you should entirely disregard any

testimony that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. The evidence that you will consider in reaching your verdict consists, as I have said, only of the sworn testimony of witnesses, the stipulations made by the parties, and all exhibits that have been received in evidence.

When the attorneys on both sides stipulate or agree as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

Anything you have seen or heard outside the courtroom is not evidence, and must be entirely disregarded. You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited merely to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in light of your experiences.

CREDIBILITY OF WITNESSES

You, as jurors, are the sole judges of the credibility of the witnesses and the weight of their testimony. You do not have to accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do

not have to give the same weight to the testimony of each witness, because you may accept or reject the testimony of any witness, in whole or in part. In weighing the testimony of the witnesses you have heard, you should consider their interest, if any, in the outcome of the case; their manner of testifying; their candor; their bias, if any; their resentment or anger toward the defendant, if any; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony. You may believe as much or as little of the testimony of each witness as you think proper.

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses. Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons may well hear or see things differently, or may have a different point of view regarding various occurrences. Innocent misrecollection or failure of recollection is not an uncommon experience. It is for you to weigh the effect of

any discrepancies in testimony, considering whether they pertain to matters of importance, or unimportant details, and whether a discrepancy results from innocent error or intentional falsehood. You should attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

In this case you have heard testimony from a number of witnesses. I am now going to give you some guidelines for your determinations regarding the testimony of the various types of witnesses presented to you in this case.

LAW ENFORCEMENT WITNESS

You have heard the testimony of law enforcement officials in this case. The fact that a witness may be employed by the federal, state, or local government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witness and to give to that testimony whatever weight, if

any, you find it deserves.

IMPERMISSIBLE TO INFER PARTICIPATION FROM ASSOCIATION

You may not infer that the defendant was guilty of participating in criminal conduct merely from the fact that she associated with other people who were guilty of wrongdoing.

ADMISSIONS

There has been evidence in this case that the defendant made certain statements in which the government claims she admitted certain facts charged in the indictment. These statements are known as admissions. You should first examine with great care whether each statement was made. You should then consider whether the statement was made voluntarily and knowingly. All such alleged statements or admissions should be disregarded entirely unless you find beyond a reasonable doubt that the admission was made knowingly and voluntarily.

In determining whether a statement was made voluntarily and knowingly, you should consider all circumstances in evidence surrounding the making of the statement. If you determine that a statement was made knowingly and voluntarily, you may give it such weight as you feel it deserves. Depending on their content, admissions may constitute the strongest sort of evidence against the party making them. Admissions, however, may also provide or support a defense, and you are entitled to decide how to

view them and the weight to give them.

RACE, RELIGION, NATIONAL ORIGIN, SEX OR AGE

You may not consider race, religion, national origin, sex or age of the defendant or any of the witnesses in its deliberations over the verdict or weight given to any evidence.

PRIOR PERJURY

There has been evidence that a witness who testified at this trial lied under oath at another proceeding. I must warn you that the testimony of this witness should be viewed cautiously and weighed with great care. It is, however, for you to decide how much of this testimony, if any, you wish to believe.

ACCOMPLICES AND IMMUNIZED WITNESSES:
CREDIBILITY OF WITNESS

You have also heard witnesses who testified that they were accomplices, that is, they said they participated with the defendant in the commission of a crime. The testimony of accomplices must be examined and weighed by the jury with greater care from the testimony of a witness who did not claim to have participated in the commission of that crime.

This is also true of accomplices or other witnesses who have received immunity. A witness receives immunity from the government when he or she is told his or her crimes will go unpunished in exchange for testimony, or that his or her testimony will not be used against them. A witness who has

entered into such an agreement has an interest in this case different than any ordinary witness. A witness who realizes that he or she may be able to obtain his or her own freedom, or receive a lighter sentence by giving testimony favorable to the government has a motive to testify falsely.

Therefore, you must examine his or her testimony with caution and weigh it with great care. You must determine whether the testimony of the accomplice has been affected by self-interest, or by an agreement he or she may have with the government, or by his or her own interest in the outcome of this case, or by any prejudice he or she may have against the defendants.

UNINDICTED CO-CONSPIRATOR AS GOVERNMENT WITNESS

The government has called as witnesses people who are named by the prosecution as co-conspirators, but who were not charged as defendants.

For this reason, you should exercise caution in evaluating their testimony and scrutinize it with great care. You should consider whether they have an interest in the case and whether they have a motive to testify falsely. In other words, ask yourselves whether they have a stake in the outcome of this trial. As I have indicated, their testimony may be accepted by you if you believe it to be true and it is up to you, the jury, to decide what weight, if any, to give to the testimony of these unindicted co-conspirators.

PRIOR INCONSISTENT STATEMENTS OF A NON-PARTY WITNESS

You may find that a witness has made statements outside of this trial that are inconsistent with the statements that the witness gave here. You may consider the out-of-court statements not made under oath only to determine the credibility of the witness and not as evidence of any facts contained in the statements. As to out-of-court statements that were made under oath, such as statements made in prior testimony, you may consider them for all purposes, including for the truth of the facts contained therein.

FALSE EXCULPATORY STATEMENT

You have heard testimony that the defendant made certain statements outside of the courtroom to law enforcement authorities in which the defendant claimed that her conduct was consistent with innocence and not with guilt. The government claims that these false statements in which she exonerated or exculpated herself are false.

If you find that the defendant gave a false statement in order to divert suspicion from herself, you may, but are not required to infer that the defendant believed that she was guilty. You may not however, infer on the basis of this alone, that the defendant is, in fact, guilty of the crime for which she is charged.

Whether or not the evidence as to the defendant's statements shows that the defendant believed that she was guilty, and the significance, if any, to be attached to any

such evidence, are matters for you, the jury, to decide.

RECORDINGS

The Government has offered evidence in the form of tape recordings of conversations with the defendant. These recordings were made without the knowledge of the defendant.

The use of this procedure to gather evidence is perfectly lawful, and the government is entitled to use the tape recordings in this case.

"ON OR ABOUT" EXPLAINED

The Indictment in this case charges in each count that a particular offense was committed "on or about" a certain date. It is not necessary for the Government to prove that the offense was committed precisely on the date charged; however, it is necessary for the Government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in each specific count. For instance, if the Indictment charges that a specific crime occurred on March 5, 1992 and you find from the evidence beyond a reasonable doubt that the alleged crime occurred on March 4, 1992, a date reasonably near March 5, 1992, you should return a verdict of guilty on that charge.

GOVERNMENT AS A PARTY

You are to perform the duty of finding the facts without bias or prejudice as to any party. You are to perform your final duty in an attitude of complete fairness and impartiality.

The case is important to the government, for the enforcement of criminal laws is a matter of prime concern to the community. Equally, this case is important to the defendant, who is charged with a serious crime.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a case. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals before the Court.

INSTRUCTIONS ON SUBSTANTIVE LAW OF THE CASE

Having told you the general guidelines by which you will evaluate the evidence in this case, I will now instruct you with regard to the law that is applicable to your determinations in this case.

It is your duty as jurors to follow the law as stated to you in these instructions and to apply the rules of law to the facts that you find from the evidence. You will not be faithful to your oath as jurors if you find a verdict that is contrary to the law that I give to you.

However, it is the sole province of the jury to determine the facts in this case. I do not, by any instructions given to you, intend to persuade you in any way as to any question of fact.

All the parties in this case have a right to expect that you will carefully and impartially consider all the evidence

in the case, that you will follow the law as I state it to you, and that you will reach a just verdict.

COUNT 1 - CONSPIRACY

I will begin my instructions on the law in this case by first explaining to you the charge of conspiracy. You will recall that Count I of the Indictment charges the defendant with conspiracy to commit offenses against the United States by knowingly transporting individuals across state lines with intent that those individuals engage in prostitution, and to knowingly persuade, induce, entice, or coerce individuals to travel across state lines to engage in prostitution.

Federal law makes it a separate criminal offense for anyone to conspire or agree with someone else to do something which if actually carried out would constitute an offense.

The conspiracy statute is 18 United States Code § 371. It provides as follows:

If two or more persons conspire . . . to commit any offense against the United States . . ., and one or more of such persons do any act to effect the object of the conspiracy, [an offense against the United States has been committed].

PURPOSE OF THE STATUTE

The defendant is accused of knowingly and willfully conspiring with others to commit certain offenses against the United States, namely: (1) transporting individuals from Vermont to New York with the intent that they engage in prostitution, in violation of 18 U.S.C. §§ 2421 and 2423(a), and (2) persuading, inducing, enticing, or coercing

individuals to travel from Vermont to New York to engage in prostitution, in violation of 18 U.S.C. § 2422.

Conspiracy is an independent offense, separate and distinct from the other federal laws the defendant is accused of violating.

A conspiracy is a type of criminal partnership, where two or more persons agree to join together to commit a particular offense. The most vital part of the conspiracy is the agreement, which must be willingly entered into by the parties to it.

A successful completion of the conspiracy's objective is irrelevant in determining defendant's guilt under Count 1. The crime of conspiracy is complete once an agreement is reached and an overt act committed in furtherance of the conspiracy.

ELEMENTS OF CONSPIRACY

In order to satisfy its burden of proof on the conspiracy charge, the government must establish each of the following four essential elements beyond a reasonable doubt:

(1) that two or more persons entered into the unlawful agreement charged in the indictment;

(2) that at some point after its formation, the defendant knowingly and willfully became a member of the conspiracy;

(3) that one of the members of the conspiracy (not necessarily the defendant) knowingly committed at least one

of the overt acts charged in the indictment; and

(4) that the overt act(s) which you find to have been committed were committed to further some objective of the conspiracy.

(1) EXISTENCE OF AN AGREEMENT

The first element the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that two or more persons entered into the unlawful agreement charged in the indictment.

In order for the government to satisfy this element, it must prove that there was a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to accomplish an unlawful act. You need not find that the alleged members of the conspiracy actually met and entered into any express or formal agreement. You need not find that the alleged members stated in words or writing what the object or purpose of the conspiracy was, or every precise detail of the scheme. The agreement may only consist of a mutual understanding the members would commit some illegal activity by means of a common plan or course of action, as alleged in Count 1 of the indictment.

There may or may not be direct proof of the agreement. However, because a conspiracy is characterized by secrecy, you may infer its existence from the circumstances and the conduct of the parties involved. You may therefore consider the actions and statements of all of those you find to be

participants as proof that a common design existed for acting together to accomplish an unlawful purpose. Acts that may seem innocent when taken individually may indicate guilt when viewed collectively and with reference to the circumstances in general.

Co-conspirators need not be charged with the crime of conspiracy in order for you to find that the defendant had an agreement with other individuals to commit some illegal act.

Further, Count 1 alleges that the objects of the conspiracy were: (a) to knowingly transport individuals from Vermont to New York with intent that those individuals engage in prostitution, in violation of 18 U.S.C. §§ 2421 and 2423 (a); and (b) to knowingly persuade, induce, entice, or coerce individuals to travel from Vermont or New York to engage in prostitution, in violation of 18 U.S.C. § 2422. In order to find Ms. Holland guilty of Count 1, you must find beyond a reasonable doubt that one of these objects was proven. I also instruct you that you must be unanimous as to the object or objects of the conspiracy.

(2) MEMBERSHIP IN THE CONSPIRACY

The second element the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that the defendant knowingly, willfully and voluntarily became a member of the conspiracy.

If you are satisfied that the conspiracy charged in the indictment existed, you must next ask yourselves who the

members of that conspiracy were. In order to make this determination, you must decide whether the defendant knowingly and willfully joined the conspiracy with knowledge of its unlawful purpose and with the intention of furthering its business or objective.

You must find that the defendant joined the conspiracy with an awareness of at least some of the basis aims and purposes of the unlawful agreement in order to satisfy the knowledge element of the conspiracy charge. Defendant's knowledge is a matter of inference and must be established by her own acts or statements, as well as those of the other alleged co-conspirators. The defendant need not have known the identities of each and every member, nor been fully informed of all of their activities or details of the conspiracy.

The extent of the defendant's participation has no bearing on her guilt. If the evidence establishes beyond a reasonable doubt that defendant knowingly and deliberately entered into an agreement to commit the substantive offenses charged in the indictment, the fact that the defendant did not join the agreement at its beginning, did not know all of the details of the agreement, did not participate in each act of the agreement, or did not play a major role in accomplishing the unlawful goal is not important to your decision regarding membership in the conspiracy. A single act may be sufficient to find that defendant was a member of

the conspiracy. In other words, if her presence was a functional part of the conspiracy, then you may find that she was a member of that conspiracy.

However, mere association with others, mere presence at the place where a crime takes place or is discussed, or knowing about criminal conduct does not, in and of itself, make someone a member of the conspiracy. Proof that the defendant had a financial interest in the outcome of a scheme, of itself, does not suffice to prove membership, either. Mere presence or association with conspirators and financial interest, though, are factors that you may consider among others to determine whether a defendant was a member of the conspiracy.

In sum, the defendant, with an understanding of the unlawful character of the conspiracy, must have intentionally engaged, advised, or assisted in it for the purpose of furthering the illegal undertaking. She thereby becomes a knowing and willing participant in the unlawful agreement, a conspirator.

(3) COMMISSION OF AN OVERT ACT

The third element that the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that at least one of the overt acts charged in the Indictment was knowingly committed by at least one of the conspirators at or about the time and place alleged. Even though the government charges that a number of overt acts were

committed, proof of only one is sufficient to satisfy this element.

A conspirator is liable for all acts and all declarations of co-conspirators made or done in furtherance of the conspiracy, including those occurring prior to his or her joining the conspiracy. You need not find that defendant committed any overt act. It is sufficient for the government to show that one of the conspirators knowingly committed an overt act in furtherance of the conspiracy, since such an act becomes, in the eyes of the law, the act of all of the members of the conspiracy.

The overt act need not have been committed at precisely the time alleged in the indictment. It is sufficient if you are convinced beyond a reasonable doubt that it occurred at or about the time and place started.

(4) COMMISSION OF OVERT ACT IN FURTHERANCE OF THE CONSPIRACY

The final element the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that the overt act was committed for the purpose of carrying out the unlawful agreement.

In order for the government to satisfy this element, it must prove that at least one overt act was knowingly and willfully committed by at least one conspirator in furtherance of the some object or purpose of the conspiracy. An overt act, standing alone, may be an innocent, lawful act.

Frequently, however, an apparently innocent act sheds its harmless character if it is a step in carrying out, promoting, aiding or assisting the conspiracy's scheme. You are therefore instructed that the overt act does not have to be an act which, in and of itself, is criminal or constitutes an objective of the conspiracy.

VENUE

In addition to the foregoing elements of the offense of conspiracy, you must consider whether any act in furtherance of the crime occurred within the District of Vermont.

You are instructed that the District encompasses the entire State of Vermont.

In this regard, the government need not prove that the crime itself was committed in this district or that the defendant herself was present here. It is sufficient to satisfy this element if any act in furtherance of the crime occurred within this district. If you find that the government has failed to prove that any act in furtherance of the crime occurred within this district, then you must acquit.

THE INDICTMENT AND THE STATUTE: COUNTS 2, 6, 7, 8 & 11 - TRANSPORTING MINORS

Now I will address the law applicable to Counts 2, 6, 7, 8, and 11, which accuse the defendant of violating § 2423(a) by knowingly transporting individuals under 18 years-old interstate with the intent that they engage in prostitution.

Section 2423 provides as follows:

A person who knowingly transports an individual who has not attained the age of 18 in interstate . . . commerce, . . . with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so

has committed an offense against the United States.

The § 2423(a) counts also cite 18 U.S.C. § 2.

Section 2(b) provides that:

Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punished as a principal.

ELEMENTS OF THE OFFENSE

In order for the defendant to be found guilty of transporting minors interstate intending them to engage in prostitution or other illegal sexual activities, the government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant transported an individual from one state to another;

Second, that the individual was under the age of 18 years at the time; and

Third, that defendant intended at the time of the transportation that the individual would engage in prostitution or other illegal sexual activity.

(1) TRANSPORTING A MINOR INTERSTATE

The first element that the government must prove is that the defendant knowingly transported the person across state lines. There are two aspects to this element: the "knowing" requirement and the transportation requirement.

Generally, as to the "knowing" element, an act is done knowingly if a defendant is aware of her act, and is not acting through ignorance, mistake, or accident. The government is not required to prove that a defendant knew that her acts or omissions were unlawful. You may consider evidence of a defendant's words, acts, or omissions, along with all the other evidence, in deciding whether that defendant acted knowingly.

With respect to the "knowing" requirement in this case, you need not find that the defendant knew that the transported individuals were under 18. The "knowing" requirement applies to the interstate travel for purposes of prostitution. The government must prove beyond a reasonable doubt that the defendant knew she was transporting, or causing the transportation, of the minors across state lines for purposes of prostitution. If you find that the defendant knew that she was transporting, or causing to be transported, minors from Vermont to New York for purposes of prostitution, you may find that the knowledge requirement is satisfied.

The phrase "transports . . . in interstate commerce" means to move or carry, or to cause to be moved or carried, the person from one state to another. The reference in the § 2423(a) counts to § 2(b) means that the defendant need only have caused the transportation, she need not have transported the persons herself. If you find that defendant either transported the minors herself or caused their

transportation, then this element is satisfied. The defendant need not have been present with the individuals when they were transported across state lines.

Consent of the persons being transported is irrelevant. Such consent is not a defense to any of the violations charged in the Indictment. Congress set out in the Mann Act to deal with cases which frequently, if not normally, involve consent and agreement by the transported persons. Their acquiescence does not lessen the crime. Similarly, the moral character of persons transported is irrelevant.

In sum, to find that the first element has been satisfied, you need not find that defendant knew the individuals were minors, but you must find that she knew they were crossing state lines.

(2) TRANSPORTED INDIVIDUAL UNDER 18

The second element to a § 2423(a) offense that the government must prove beyond a reasonable doubt is that at the time the relevant individuals were transported interstate, they had not attained the age of 18. In order to convict on any or all of the charges in Counts 2, 6, 7, 8 and 11, you must find beyond a reasonable doubt that the individual referenced in the pertinent count had not reached the age of 18 when she was transported to New York.

(3) INTENT THAT PERSONS TRANSPORTED ENGAGE IN PROSTITUTION

The third element that the government must prove beyond a reasonable doubt to establish a § 2423(a) offense is that,

at the time of transportation, the defendant intended that the persons transported would engage in prostitution.

Generally, prostitution consists of sex for hire. In other words, performing sexual acts for money, or offering or agreeing to offer sexual acts for money, is prostitution. You need not find that the defendant had a commercial or profit motive in order for such conduct to be considered prostitution.

The intent to engage persons in prostitution need not be the sole purpose in making the interstate trip. A person may have several different purposes or motives for such travel and each may prompt, in varying degrees, the act of making the journey. If multiple motives for the transportation are shown, the intention to transport for illegal sexual activity need not be proven to be the "dominant" or a paramount motive. You need only find that one of the dominant motives included the transportation for illegal sexual activity in order to find the required intent existed.

Such a motive must have existed prior to the conclusion of the interstate transportation. This intent may be shown by circumstantial evidence. That improper purpose must have played a role in the defendant's decision to transport persons across state lines.

I have one further note regarding counts 2 and 3. In these counts, the Government alleges that the trip charged in the Indictment was the first such trip allegedly described by

Judy and Jen occurring in the early summer of 2000. You must unanimously so find in order to convict.

THE INDICTMENT AND THE STATUTE: § 2421 COUNTS

Counts 3 and 9 charge the defendant under the second section of the Mann Act that we have discussed: § 2421, which bars transporting persons from one state to another with the intent that the persons engage in prostitution or in some other illegal sexual activity. Section 2421 provides that:

Whoever knowingly transports any individual in interstate . . . commerce, . . . with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so

shall be guilty of an offense against the United States.

ELEMENTS OF THE OFFENSE

In order to satisfy its burden of proof on the charge of transporting persons interstate for prostitution or other illegal sexual activity, the government must prove the following two elements beyond a reasonable doubt:

First, that the defendant knowingly transported the persons named in the Indictment in interstate commerce; and

Second, that at the time of such transportation, the defendant intended that those persons would engage in prostitution or in any other illegal sexual activity.

(1) TRANSPORTS ANY INDIVIDUAL IN INTERSTATE COMMERCE

The first element the government must prove beyond a reasonable doubt to establish an offense under § 2421 is that

the defendant knowingly transported individuals across state lines.

As I already have instructed you with regard to § 2423(a), the "knowing" requirement here refers to traveling interstate for purposes of prostitution. The government must prove beyond a reasonable doubt that the defendant knew she was transporting individuals across state lines for the purposes of prostitution. As long as you find that the defendant knew she was transporting persons from the State of Vermont to the State New York, intending that they work as prostitutes, you may find that this element has been satisfied. As to this part of the Mann Act, § 2421 states that in order to be found guilty, the defendant must herself have transported the persons at issue interstate. It is not enough if she caused or arranged other parties to do the transporting.

Here, as before, consent of the persons being transported is irrelevant; it is not a defense to a violation of the Mann Act. And again, the moral or legal character of the persons transported is immaterial to the issue of the defendant's guilty or innocence under § 2421.

(2) INTENT THAT PERSONS TRANSPORTED ENGAGE IN PROSTITUTION OR ANY OTHER ILLEGAL SEXUAL ACTIVITY

The second element that the government must prove beyond a reasonable doubt to establish an offense under § 2421 is that, at the time of transportation, the defendant intended that the individuals transported interstate would engage in

prostitution.

This element has the same requirements as the similar element already discussed in § 2423(a). The definition of prostitution is the same: sex for money. And again, the defendant's intent to engage the individuals in prostitution or other illegal sexual activity need not be the sole purpose in making the interstate journey. This element is the same as well: you must find beyond a reasonable doubt that one of the defendant's motives included prostitution in order to find the required intent existed. Again, this motive must have existed prior to the conclusion of the interstate transportation, and such intent may be shown by circumstantial evidence.

INDICTMENT AND THE STATUTE: § 2422(a) COUNTS

Count 10 of the indictment charges the defendant with the third and final provision of the Mann Act: § 2422(a). This provision prohibits one from knowingly persuading, inducing, enticing, and coercing individuals to travel interstate to engage in prostitution. Section 2422(a) provides that:

Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate . . . commerce . . . to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, [has committed a crime against the United States].

PURPOSE OF THE STATUTE

As we have discussed, § 2422(a) is a counterpart to §§ 2423(a) and 2421. Section 2422(a) applies when someone

persuades or induces another person, of any age, to travel in interstate commerce to engage in prostitution. Whereas the transporting itself is the main conduct proscribed in § 2421 (applicable to all ages), and the transportation of minors is the main conduct proscribed in § 2423(a), it is the persuasion, inducement, enticement, or coercion that is the core of § 2422(a).

ELEMENTS OF THE STATUTE

In order to satisfy its burden of proof on the charge under 18 U.S.C. § 2422(a), the government must establish both of the following two elements beyond a reasonable doubt:

(1) defendant knowingly persuaded, induced, enticed, and coerced the persons cited in Count 10 to travel in interstate commerce; and

(2) the travel was for the persons to engage in prostitution.

(1) KNOWINGLY PERSUADED, INDUCED, ENTICED, OR COERCED PERSONS TO TRAVEL IN INTERSTATE COMMERCE

The first element the government must prove beyond a reasonable doubt to establish this offense is that the defendant knowingly persuaded, induced, enticed, and coerced the persons cited in Count 10 to travel in interstate commerce.

You need not find that the defendant was physically present with the named adults during the interstate transportation to satisfy this element. Rather, the key to this element is that the defendant was a cause of their

interstate transportation either directly and indirectly through persuasion, inducement, enticement, or coercion.

(2) TO ENGAGE IN PROSTITUTION

The second element the government must prove beyond a reasonable doubt is that the defendant's transportation of the persons cited in Count 10 was for the purpose of engaging in prostitution. Again, offering sex acts in exchange for money is considered "prostitution." You need not find that the defendant had a commercial or profit motive in order for the conduct to be considered prostitution.

CONCLUSION

I caution you, members of the jury, that you are here to determine the guilt or innocence of the defendant before you today solely from the evidence in this case. I remind you that the mere fact that this defendant has been indicted is not evidence against them. Also, the defendant is not on trial for any act or conduct or offense not alleged in the Indictment. Neither are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

You should know that the punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the judge, and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

It is your duty as jurors to consult with one another and to deliberate. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. Do not hesitate to re-examine your own views and change your opinion if you think that you were wrong. Do not, however, surrender your honest convictions about the case solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

To return a verdict, it is necessary that every juror agree to the verdict. In other words, your verdict must be unanimous.

At this time, I would like to offer my sincere thanks to the alternate.

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. A verdict form has been prepared for your convenience. After you have reached agreement as to each of the counts contained in the Indictment, you will have your foreperson record a verdict of guilty or not guilty as to each count of the Indictment. Your foreperson will then sign and date the verdict form and you will then return to the courtroom.

If, during your deliberations you should desire to communicate with the Court, please put your message or question in writing signed by the foreperson, and pass the

note to the marshal who will then bring it to my attention.
I will then respond as promptly as possible, either in
writing or by having you returned to the courtroom so that I
can speak with you. I caution you, however, with regard to
any message or question you might send, that you should never
state or specify your numerical division at the time.

Also, a copy this charge will go with you into the jury
room for your use.

I appoint _____ as
your foreperson.

A handwritten signature in black ink, appearing to read "William C. Bennett". The signature is fluid and cursive, with a large loop at the end.