



# Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.

September 13, 2011

Vikki Benkel



RE: PEOPLE vs. JEFFREY EPSTEIN  
COURT DOCKET/INDEX NUMBER: 30/29/10  
DATE OF MINUTES: JAN. 18, 2011 – SURA HEARING

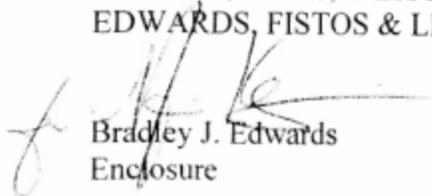
Dear Ms. Benkel:

Enclosed please find our check #3020, in the amount of \$75.00, representing pre-payment for the above referenced transcript.

Please forward the copy of the hearing transcript to the address below at your earliest convenience.

Very truly yours,

FARMER, JAFFE, WEISSING,  
EDWARDS, FISTOS & LEHRMAN, PL



Bradley J. Edwards  
Enclosure

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EFTA00205195

1 SUPREME COURT  
2 TRIAL TERM

NEW YORK COUNTY  
PART 66

3 THE PEOPLE OF THE STATE OF NEW YORK : INDICTMENT #  
4 : 30129/2010

5 AGAINST  
6 JEFFREY EPSTEIN  
7 Defendant.

x SORA HEARING

8 111 Centre Street  
9 New York, New York 10013  
10 January 18, 2011

11 B E F O R E:

12 HONORABLE [REDACTED]  
13 Justice of the Supreme Court

14 A P P E A R A N C E S:

15 For the People: CYRUS R. VANCE, JR., ESQ.,  
16 New York County District Attorney  
17 One Hogan Place  
18 New York, New York 10013  
19 BY: JENNIFER GAFFNEY, ESQ.  
20 Assistant District Attorney

21 For the Defense: KIRKLAND & ELLI, LLP  
22 153 East 53rd Street  
23 New York, New York 10022  
24 BY: JAY LEFKOWITZ, ESQ.  
25 SANDRA MUSUMECI, ESQ.

Vikki J. Benkel  
Senior Court Reporter

1 COURT CLERK: This is number two on the calendar,  
2 matter of Jeffrey Epstein.

3 Your appearances please.

4 MS. GAFFNEY: Jennifer Gaffney for the People.  
5 Good afternoon, Your Honor.

6 MR. LEFKOWITZ: Jay Lefkowitz and Sandra Musumeci  
7 for Mr. Epstein.

8 THE COURT: Mr. Epstein is not here.

9 MR. LEFKOWITZ: That's correct.

10 THE COURT: Are you waiving his appearance?

11 MR. LEFKOWITZ: Yes.

12 MS. GAFFNEY: Your Honor, this case is on for a  
13 SORA hearing this afternoon.

14 The People did receive the board's recommendation  
15 of a Level Three. However, we received the underlying  
16 information from them and also had some contact with  
17 Florida, and we don't believe that we can rely on the entire  
18 probable cause affidavit.

19 I don't know if the board sent that to you as  
20 well.

21 THE COURT: I don't know why you cannot rely on  
22 it.

23 MS. GAFFNEY: Because in Florida of all of the  
24 victims in that probable cause affidavit, they actually only  
25 went forward on one case. There was only an indictment for

1 one victim and that is what the defendant plead to.

2 So it is unlike a situation where everything was  
3 indicted and then we get to sort of assess points for all of  
4 the victims, if it was part of a plea bargain. They did not  
5 actually choose to go forward on any except for the one  
6 victim.

7 So under the board guidelines, the risk assessment  
8 interim guidelines, it actually says, you know, by way of  
9 contrast if an offender is not indicted for an offense, it  
10 is strong evidence that the offense did not occur and I  
11 don't think --

12 THE COURT: Do you find that if somebody is not  
13 indicted it is strong evidence that it did not occur?

14 MS. GAFFNEY: I don't know that we can rely on it  
15 as clear and convincing evidence if the prosecutor's office  
16 never went forward on it. The prosecution said that the  
17 victims, although they spoke to the police early on, did not  
18 cooperate with them. So we don't have any follow up  
19 information.

20 THE COURT: But the board found a Level Three.

21 I have to tell you, I am a little overwhelmed  
22 because I have never seen the prosecutor's office do  
23 anything like this. I have never seen it. I had a case  
24 with one instance it was a marine who went to a bar, and I  
25 wish I had the case before me, but he went to a bar and a 17

1 year old, he was an adult obviously, he was a Marine, a 17  
2 year old came up to him and one thing lead to another and he  
3 had sex with her and the People would not agree to a  
4 downward modification on that.

5 So I am a little overwhelmed here because I see --  
6 I mean I read everything here, I am just a little  
7 overwhelmed that the People are making this application.

8 I could cite many many, I have done many SORAs  
9 much less troubling than this one where the People would  
10 never make a downward argument like this.

11 MS. GAFFNEY: I agree with Your Honor, it is  
12 incredibly unusual for us to make a downward argument. But  
13 the problem is the one thing that we have from the board is  
14 it seems to be in contradiction to their own guidelines  
15 which if something was not indicted, you are not supposed to  
16 rely on it.

17 THE COURT: They obviously took that into  
18 consideration.

19 MS. GAFFNEY: And I tried to reach -- I reached  
20 the authorities in Florida to try to see if they had all the  
21 interview notes or other things that we can then  
22 subsequently rely on that might be considered clear and  
23 convincing evidence, if they had interviewed these women on  
24 their own, and they never did. No one was cooperative and  
25 they did not go forward on any of the cases and none of them

1 were indicted. So I don't know.

2 THE COURT: And you spoke to the prosecutor?

3 MS. GAFFNEY: The actual prosecutor left the  
4 office. I spoke to the prosecutor that took over the case.

5 THE COURT: Maybe you can find the prosecutor that  
6 left the office.

7 You have done more in other cases looking into it.  
8 I have never seen the prosecutor's office do this. I have  
9 to tell you, I am shocked.

10 MS. GAFFNEY: Right, but I spoke to the prosecutor  
11 that took over the case and they don't have anything, any  
12 affidavits, any statements, any notes.

13 THE COURT: Why don't you speak to the prosecutor  
14 that did do the case, I am sure you could find that  
15 prosecutor.

16 MS. GAFFNEY: I can find her, but based upon what  
17 the other prosecutor said, they did not speak to that  
18 prosecutor either.

19 THE COURT: You did not speak to the prosecutor  
20 yourself, you did not speak to them, that is hearsay. You  
21 did not speak to the prosecutor that handled the case.

22 MS. GAFFNEY: That's right.

23 THE COURT: I don't think you did much of an  
24 investigation here.

25 MS. GAFFNEY: I mean I called the prosecutor.

1 Even though the first prosecutor left, presumably the  
2 prosecutor's office has the file.

3 THE COURT: I would still call the prosecutor.

4 MS. GAFFNEY: Anything from these women they would  
5 have forwarded it to us.

6 THE COURT: I don't know that, I think you have to  
7 speak to the prosecutor.

8 But be that as it may, I hear your argument.  
9 Anything else?

10 MS. GAFFNEY: I mean that is why I don't think we  
11 can, I don't think we are entitled to rely on this because  
12 they did not go forward.

13 THE COURT: The board made a recommendation.

14 MS. GAFNEY: Correct.

15 MS. MUSUMECI: May I speak, Your Honor?

16 THE COURT: Yes.

17 MS. MUSUMECI: Good afternoon.

18 I would like to bring a few additional points to  
19 Your Honor's attention that don't come across in the board  
20 recommendation.

21 The first is that Mr. Epstein is not a resident of  
22 New York, unlike most of these out of state, he has not  
23 changed his address and moved to New York, he maintains a  
24 vacation home in New York. His primary residence is the  
25 U.S. Virgin Islands.

1 He is registered in the U.S. Virgin Islands, he  
2 has been since his release from jail. He notifies the  
3 Virgin Island authorities every time he leaves that  
4 jurisdiction. Virgin Island authorities rated him at the  
5 lowest level of registration.

6 He also registered in Florida, which is the state  
7 of this particular offense, and the only reason that this  
8 conviction is even before Your Honor.

9 The offense for which he was convicted is not a  
10 registrable offense in New York. He is only registrable  
11 here arguably because based on the provision of SORA that  
12 says if a crime is registrable in the state of conviction,  
13 then it is registrable here in New York. And the Florida  
14 authorities that considered that rated him at the lowest  
15 level of their SORA statute.

16 He additionally has a vacation home in New Mexico  
17 and is registered in New Mexico. The New Mexican  
18 authorities when they considered his offenses, determined he  
19 need not register at all. Nevertheless, he has voluntarily  
20 registered with New Mexico and maintains that registration.

21 Additionally, because of his possession of a  
22 vacation home in New York, he has been voluntarily  
23 registered with New York SOMU, the Sex Offender Monitoring  
24 Unit since May of this year. He notifies them whenever he  
25 comes to travel to New York. He never comes to New York for

1 more than seven days or at least he has not since he has  
2 been registered. He has no intention to ever be here for  
3 longer than a period of ten days.

4 Like I said, he does notify the authorities when  
5 he is here. He fully understands the reason for voluntary  
6 registration, he wants to be compliant with the Federal SORA  
7 law which requires wherever you own a property to register.

8 To require Mr. Epstein to register as a Level  
9 Three offender in New York would actually require him to  
10 come to New York more than he does normally, it would  
11 require him to come every 90 days and renew his  
12 registration.

13 He is very diligent in registering with New York  
14 authorities.

15 All of the other jurisdictions that have  
16 considered his case have determined that he either not  
17 register at all or register at the lowest level, and he has  
18 been more than compliant with all of those requirements.

19 Your Honor, we would join in the prosecutor's  
20 application.

21 THE COURT: I am sure you would.

22 MS. MUSUMECI: By way of background, we have been  
23 in contact with the prosecutor's office on this matter since  
24 I believe certainly since Mr. Epstein got his notification,  
25 which I believe was in August. We have met with the

1 prosecutor and provided numerous materials for the  
2 prosecutor to consider. We have included in that a  
3 deposition from the detective who headed this investigation  
4 who acknowledged in a sworn deposition that the lead  
5 prosecutor who originally had the case, whose name I cannot  
6 pronounce, Lanna Belohlavek, I apologize for the  
7 mispronunciation, said to the detective after her  
8 investigation, there are no real victims here.

9 All of the alleged conduct that is cited in the  
10 board's write up was commercial conduct. All of the alleged  
11 conduct the women went voluntarily, there are no allegations  
12 of force certainly none.

13 THE COURT: There was no allegation of force in  
14 the marine either, who met a girl in a bar, a young girl 17,  
15 there was no force there.

16 MS. MUSUMECI: It is our understanding that the  
17 prosecutor in Florida conducted a full investigation, as  
18 full as she was able with the cooperation afforded by these  
19 complainants, and determined that the only case that she  
20 could present to the grand jury was this indictment for a  
21 non registrable offense then --

22 THE COURT: But it is registrable here.  
23 I don't know what you mean non registrable  
24 offense.

25 MS. MUSUMECI: Let me explain, Your Honor.

1 Mr. Epstein plead to two charges, one was an  
2 indictment which is an offense that is not registrable, it  
3 is a Florida indictment for --

4 THE COURT: Then why does he have to register  
5 here?

6 MS. MUSUMECI: It was a second offense that he  
7 plead to --

8 THE COURT: That is registrable.

9 MS. MUSUMECI: That is registrable.

10 That offense was by information and that is the  
11 only registrable offense, that is what the DA's office is  
12 considering in doing their scoring.

13 The indictment which was the only case that the  
14 prosecutor even prosecuted through grand jury is not even a  
15 registrable offense.

16 THE COURT: He plead guilty to a registrable  
17 offense.

18 MS. MUSUMECI: Yes.

19 THE COURT: What did he plead guilty to?

20 MS. GAFFNEY: He plead guilty to the procuring a  
21 person under 18 for prostitution.

22 THE COURT: Procuring a person under 18 for  
23 prostitution.

24 MS. GAFFNEY: Right.

25 THE COURT: How old was she?

1 MS. GAFFNEY: It appears the first time they met  
2 she was either 16 or 17, then for the remainder of their  
3 relationship she was probably 17.

4 THE COURT: How long was their relationship?

5 MS. GAFFNEY: She met, she gave him approximately  
6 15 massages, including with sexual contact, and ultimately  
7 when she is 17 had intercourse with him.

8 THE COURT: She is a child.

9 MS. MUSUMECI: Your Honor, I would note that under  
10 SORA it is clear that prostitution offenses are only  
11 registrable when in fact by clear and convincing evidence  
12 the woman or victim is 17, is under 17.

13 THE COURT: Well, she met him at 16, he procured  
14 her at 16 from what I read.

15 MS. MUSUMECI: There is evidence we challenged.

16 THE COURT: He plead guilty to that, didn't he?

17 MS. MUSUMECI: He plead guilty to under 18, which  
18 is the law in Florida, which is a different standard than  
19 what the law is in New York. And there is no evidence,  
20 there is no clear and convincing evidence as to her specific  
21 age at the time of the specific conduct.

22 THE COURT: Well, the DA just told me she was most  
23 likely 17, she just said it on the record.

24 MS. MUSUMECI: Your Honor, we agree that the  
25 evidence is that she was 17 on the one occasion she had

1 consensual intercourse with him and 17 is not registrable or  
2 criminal under New York law.

3 And the prostitution aspect of having intercourse  
4 with a 17 year old is not registrable conduct.

5 THE COURT: Why does he have to register here?

6 MS. GAFFNEY: Because it is a register able  
7 offense in Florida, New York State board of examiners --

8 THE COURT: Recognizes it.

9 MS. GAFFNEY: Recognizes it, yes.

10 THE COURT: I have had many cases like that where  
11 it was not registrable here but it was in the state where  
12 the person came from and New York recognized that.

13 MS. MUSUMECI: Your Honor, we are not saying that  
14 he should not register. Mr. Epstein has already registered  
15 and recognizes his duty to register.

16 THE COURT: I am glad of that, very glad of that.  
17 I am sorry he may have to come here every 90 days.  
18 He can give up his New York home if he does not  
19 want to come every 90 days.

20 Anything else?

21 I rely on the board.

22 MS. MUSUMECI: Your Honor, we would reserve our  
23 right to appeal Your Honor's ruling.

24 THE COURT: Of course, do so.

25 MS. GAFFNEY: For the record, Your Honor, he is

1 going to be deemed a Level Three sex offender with no  
2 designation, correct?

3 THE COURT: Correct.

4 MS. MUSUMECI: For purposes of the appeal I  
5 believe that Your Honor --

6 THE COURT: Give me the board's scoring.

7 The board has scored use of violence the least,  
8 10.

9 Sexual contact with victim, 25. I agree.

10 Number of victims, three or more. He only plead  
11 guilty to one, but apparently there were more than one and I  
12 think the People concede that although they say it was not  
13 reliable.

14 Duration of offense, conduct with victim,  
15 continuing course of sexual misconduct, the People have told  
16 me it was continuing for 20 points.

17 Age of victim 11 through 16, he got 20 points for  
18 that, and she was 16 at the time.

19 Other victim characteristics, there was no mental  
20 disable or helplessness. I agree.

21 Relationship with victim stranger, 20 points.

22 Age at first act of sexual misconduct, 20 or less.  
23 They scored him zero on that.

24 Number and nature of prior crimes, no history,  
25 they scored him five on that.

1 Recency of prior offense less than three years,  
2 they gave him zero.

3 Drug or alcohol abuse history, they gave him zero.

4 Acceptance of responsibility, they gave him zero.

5 Conduct while confined, they gave him zero.

6 And supervision, they gave him zero.

7 Living employment situation, zero.

8 They gave him 130 points, which is the highest  
9 level, and I agree with that.

10 MR. LEFKOWITZ: If I could be heard for one  
11 moment.

12 It appears that the state board made its  
13 determination based on access to a police report in Florida.

14 The prosecutor, the lead prosecutor, the lead sex  
15 crimes prosecutor in Palm Beach made a determination that  
16 the complainants and the police report itself was not  
17 credible and decided not to prosecute on the basis of all of  
18 that.

19 In addition, there has been through the course of  
20 the last few years some civil litigation, as you might  
21 imagine, involving these matters and we now have sworn  
22 testimony in evidence from the complainants themselves  
23 disclaiming much of what appears in the police report.

24 So, Your Honor, we would submit and this is not to  
25 make light in any way of the conduct what Mr. Epstein did or

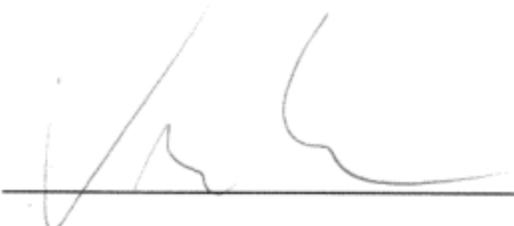
1 what Mr. Epstein plead guilty to, but with respect to  
2 everything and that is why Mr. Epstein voluntarily  
3 registered in New York even though there is a question about  
4 whether he has any obligation just as a jurisdictional  
5 matter, but Your Honor, with respect to the appropriate  
6 level for him to register, we would submit Your Honor that  
7 the evidence simply does not support the foundation of the  
8 state's determination.

9 THE COURT: You have made a very clear record and  
10 you have your right to appeal.

11 I feel the board looked into all of this, made  
12 their recommendation, found him to have 130 points and I see  
13 no reason to disturb that.

14 Thank you.

15  
16 I, Vikki J. Benkel, a Senior Court Reporter in and for  
17 the State of New York, do hereby certify that the foregoing  
18 transcript is true and accurate to the best of my knowledge,  
19 skill and ability.

20  
21   
22 Vikki J. Benkel

23  
24  
25  
*Vikki J. Benkel*  
*Senior Court Reporter*