

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

Jay P. Lefkowitz, P.C.
To Call Writer Directly:

Facsimile:

October 28, 2010

By E-mail and By Hand

CONFIDENTIAL

Jennifer Gaffney, Esq.
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Re: SORA Determination for Jeffrey E. Epstein, NYSID # OSI909,
Supreme Court Case # 30129-2010

Dear ADA Gaffney and ADA Egan:

As you know, we represent Jeffrey E. Epstein, who is scheduled to appear in New York Supreme Court, Part 66, on Tuesday, November 9, 2010 for a hearing before the Honorable Ruth Pickholz pursuant to New York's Sex Offender Registration Act (SORA), Correction Law § 168 *et seq.* (McKinney 2008).

To follow up on our conversation in your office on October 13, and as you have requested, we are providing you with a select sampling of materials that we believe expose the stark contrast between the inflammatory, speculative case summary presented by the Board of Examiners in its recommendation for Mr. Epstein, and the actual evidence that exists concerning the alleged conduct for which New York seeks to require Mr. Epstein to register under SORA. We believe that these materials validate our position that Mr. Epstein should most appropriately be designated as a Level 1 offender. Not only is the Board's Level 3 recommendation absurd, given that the offense triggering the registration requirement would most likely have been a *non-registerable misdemeanor* if committed in New York instead of Florida, but as laid bare by the attached sampling of transcript excerpts and other evidence, the Board's purported calculation is also unsupportable under the applicable "clear and convincing evidence" standard.

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First, as we attempted to explain during our meeting with you, the specific conduct which formed the basis of Mr. Epstein's conviction requiring registration under Florida law -- a conviction for Procuring a Person Under 18 for Prostitution, in violation of Fla. Stat. § 796.03¹ -- was a consensual arrangement in which Mr. Epstein received massages and engaged in sexual touching in exchange for money with [REDACTED], a young woman who was over New York's age of consent when the offense cited in the Information allegedly occurred. And as made abundantly clear by the attached excerpts from [REDACTED]'s November 8, 2005 interview with Palm Beach Detective Joseph Recarey, [REDACTED] was certainly 17 by the time events "escalated" from massages to sexual conduct:

- Exhibit A, Davis Tr. 2:5-15 ([REDACTED]) stating that her date of birth is October 10, 1987, which would have made her two days short of 18 years and one month old when she was interviewed by Det. Recarey on November 8, 2005).
- Exhibit A, Davis Tr. 3:15-20 ([REDACTED]) stating that she first heard about Epstein from a friend "about a year ago").
- Exhibit A, Davis Tr. 5:14-23 ([REDACTED]) stating that after meeting Epstein for the first time, she "didn't go again for about two months or so").
- Exhibit A, Davis Tr. 6:13-22 ([REDACTED]) telling Recarey that she saw Epstein approximately 15 times in total, and "things escalated" as time went on).

Furthermore, the record is undisputed that [REDACTED] was at least 17 and over New York's age of consent during the one time that she engaged in consensual sexual intercourse with Mr. Epstein:

- Exhibit A, Davis Tr. 8:17-9:23 ([REDACTED]) stating that she engaged in sexual intercourse with Epstein only once, when she was nearly 18 years old).
- Exhibit A, Davis Tr. 15:12-17 ([REDACTED]) stating that all of her conduct with Epstein was consensual and that Epstein never used any force).²

¹ As previously noted, Jeffrey Epstein concurrently pleaded guilty to an Indictment charging him with one count of Felony Solicitation for Prostitution, Fla. Stat. § 796.07(2)(f), (4)(c), which is *not* a registerable offense under Florida or New York law. See Fla. Stat. § 943.0435; [REDACTED] Correction Law § 168-a(2)(a).

² Notably, in a Probable Cause Affidavit which he signed under oath and filed with the court in order to obtain an arrest warrant for Jeffrey Epstein, Det. Recarey, in discussing allegations involving [REDACTED], omitted the material fact that [REDACTED] clearly stated that her decision to engage in intercourse with Epstein was consensual.