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MEMORANDUM

CONFIDENTIAL

TO: ADA Lisa Friel, Chief, Sex Crimes Unit
ADA Jennifer Gaffney, Deputy Chief, Sex Crimes Unit
ADA Patrick Egan, Sex Crimes Bureau and Trial Bureau 40

FROM: Jay P. Lefkowitz, [REDACTED].
Sandra Lynn Musumeci

DATE: October 8, 2010

SUBJECT: SORA Determination for Jeffrey E. Epstein, NYSID # OSI909,
Supreme Court Case # 30129-2010

Jeffrey Epstein, a 57-year old financial advisor and philanthropist who maintains his primary residence in the U.S. Virgin Islands, has been advised that he is required to register as a sex offender in New York under SORA in connection with a single conviction for a prostitution-related offense committed in Florida dating back to 2005. His duty to register in New York is solely by virtue of the fact that one of several vacation homes that he owns is located in Manhattan. Mr. Epstein has already registered as a sex offender in his home jurisdiction of the U.S. Virgin Islands, as well as in the other states where he owns secondary residences, Florida (the state of his offense) and New Mexico. Significantly, each of these jurisdictions, without exception, reviewed his offenses and determined that Jeffrey Epstein was only subject to that jurisdiction's *lowest reporting obligations*, or in the case of New Mexico, *not required to register at all* under the state's sex offender registration scheme. (Notwithstanding New Mexico's determination that he need not register at all, Mr. Epstein has voluntarily chosen to register in New Mexico in order to ensure his full compliance with the federal Sexual Offender Registration and Notification Act (SORNA), 42 U.S.C.A. § 16901 *et seq.*)

In the face of Mr. Epstein's tangential relation to New York (where he spends little time), his acceptance of responsibility for his actions and demonstrated commitment henceforth to abide by the law unconditionally, and the reasoned determinations of other jurisdictions having greater contact and control over Mr. Epstein, the Board of Examiners of Sex Offenders in New York has recommended that Mr. Epstein be categorized as a Level 3 sex offender. Such a harsh designation would subject Jeffrey Epstein to a lifetime obligation of registering with New York authorities *every ninety days*, despite the fact that he spends minimal time in New York and is already being monitored, under much less onerous provisions, by other jurisdictions with which he has closer ties. Making the recommendation of the Board even more unreasonable is the fact that *the single offense for which Mr. Epstein must register under Florida law, thereby triggering his duty to register under New York law, would not be registerable had Mr. Epstein committed the conduct in New York rather than Florida.*

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Without minimizing the seriousness of this charge -- Procuring a Person Under 18 for Prostitution, in violation of Fla. Stat. § 796.03¹ -- it must be noted that *the New York cognate* of this crime, Promoting Prostitution in the Third Degree, P.L. § 230.25, *is not itself a registerable offense under New York's New York's Sex Offender Registration Act (SORA)*, Correction Law § 168-a(2). Moreover, the conduct underlying this conviction -- a consensual arrangement in which Mr. Epstein received massages and engaged in sexual touching in exchange for money with ■■■, a young woman over the age of consent under New York law, but just under 18 when the offense cited in the Information allegedly occurred (and whose actual age Mr. Epstein did not know) -- would have constituted, at most, a *misdemeanor* if committed in New York instead of Florida. See P.L. § 230.04, *McKinney's Penal Law § 230.04* (2004).² In this particular case, such conduct is not even registerable under New York law, given the evidence that ■■■ was likely 17 at the time that she first met Jeffrey Epstein, and was certainly 17 by the time events "escalated" into sexual conduct, well after her first visit.³ Unless it can be proven by "clear and convincing evidence" that he engaged in sexual conduct with ■■■ specifically during the time that she was 16 (which it cannot), Jeffrey Epstein is not guilty of *any* registerable offense under New York law. See Correction Law § 168-a(2)(a)(i).

In addition to being completely out of line with the sex offender registration decisions of every other law enforcement agency that has considered Jeffrey Epstein and his case, the submission of New York's Board of Examiners of Sex Offenders is legally infirm, in that it is entirely premised on uncharged hearsay allegations contained in an 86-page police report that has been deemed unreliable and proven materially false in numerous key respects. Indeed, after investigating the host of inflammatory allegations contained in the police report, *an experienced sex crimes prosecutor in Palm Beach, Florida determined that the only charge that could be brought was a solicitation offense*, one count of Felony Solicitation for Prostitution, Fla. Stat. § 796.07 (which, as previously noted, is not a registerable offense under Florida law, see Fla. Stat. § 943.0435).⁴ That no charge of rape or sexual contact with a minor was ever prosecuted in

¹ 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). This charge does not involve any sexual contact with underage women and is not a registerable offense under Florida or New York law. See Fla. Stat. § 943.0435; N.Y. Correction Law § 168-a(2)(a).

² Under New York law in 2005 (the time of the offense at issue), Patronizing a Prostitute in the Third Degree, P.L. § 230.04 criminalized prostitution between a "john" over twenty-one years of age and a prostitute less than seventeen years of age. See P.L. § 230.04, *McKinney's Penal Law § 230.04* (2004). The statute was amended in 2007 to eliminate any particular age parameters. See P.L. § 230.04, *McKinney's Penal Law § 230.04* (2010).

³ Significantly, the Florida charge to which Mr. Epstein pleaded guilty criminalizes the prostitution of a person who is under the age of 18 (i.e. 16 and 17 years old), see Fla. Stat. § 796.03, but under New York law, patronizing a prostitute is only a registerable offense where the prostitute is *under the age of 17*, even under the broader scope of P.L. § 230.04 in effect today. See Correction Law § 168-a(2)(a)(i) (stating that Patronizing a Prostitute in the Third Degree, P.L. § 230.04, is a registerable offense "where the person patronized is in fact less than seventeen years of age").

⁴ Initially, after investigating the entire police report, the Palm Beach County sex crimes prosecutor only brought an Indictment charging a single solicitation count. Later, as part of a negotiated arrangement to secure a plea, the prosecutor filed a separate Information charging procurement of a person under 18, asserting solicitation as

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connection with any alleged “16-year old victim” -- or any woman, for that matter -- is, according to the SORA Guidelines themselves, “strong evidence that the offense did not occur.” *Sex Offender Registration Act: Risk Assessment Guidelines and Commentary*, Commentary (2006) at 5, ¶ 7. Moreover, the “lump it all together” summary supporting the Board’s Level 3 recommendation makes no attempt to separate allegations concerning potentially registerable offenses from non-violent sexual activity among consenting adults. In fact, the vast majority of allegations contained in the police report -- which, as noted, were rejected by the sex crimes prosecutor who investigated them -- involve women who were above the age of consent, or women who were unable to specify their ages during certain activities in which they claim to have willingly participated. In short, the case summary prepared by the Board should be rejected as legally and factually insupportable, and the recommendation of the Board should be wholly disregarded.

A proper evaluation and calculation of Jeffrey Epstein’s SORA score, based upon the offenses for which Mr. Epstein was convicted and the registerable activity that can foreseeably be proven by clear and convincing evidence, as is the proper standard, *see* Correction Law § 168-d(3), should place Mr. Epstein squarely within the category of Level 1.⁵ Such a designation is entirely in line with the evaluations of the other jurisdictions that have already considered Mr. Epstein’s risk level under their own sex offender reporting schemes, as set forth in greater detail below:

- In the **U.S. Virgin Islands**, where Jeffrey Epstein maintains his permanent residence and spends the bulk of his time, Mr. Epstein qualifies at the lowest level as a “sex offender” (as opposed to a “habitual sexual offender” or “sex predator”) and is only required to register with authorities *once annually* for the next fifteen years. *See* 14 V.I.C. §§ 1722(b), 1724(d), (e). Mr. Epstein has registered and keeps current his registration with the U.S. Virgin Islands’ authorities, *see* Virgin Islands Sexual Offender/Sexual Predator Registration Form, August 9, 2010 (Exhibit A),⁶ and should he move out of the U.S. Virgin Islands, he is required to register his new address with the U.S.V.I. Department of Justice before leaving, as well as register with his new state of residence within 10 days. *See* 14 V.I.C. § 1724(c).

the factual basis for the charge (because there has never been any allegation that Jeffrey Epstein actually promoted prostitution on behalf of any third-parties).

⁵ Of course, even should an alternative risk calculation be made resulting in a total above the Level 1 ceiling, the District Attorney may ask the Court to exercise its discretion and appropriately designate Mr. Epstein a Level 1 offender to reflect the negligible risk of future harm that he poses to the citizens of New York. *See Sex Offender Registration Act: Risk Assessment Guidelines and Commentary*, Commentary (2006) at 4, ¶ 5; *see also People v. Ferrer*, 69 A.D.3d 513, 514 (1st Dept. 2010) (observing “the risk level designated in the RAI is merely presumptive, and a court may depart from it as a matter of discretion”).

⁶ The attached registration form (Exhibit D), is Mr. Epstein’s most recent registration form, filed on August 9, 2010 when he returned to the U.S. Virgin Islands upon completing his period of community control in Florida. Mr. Epstein first registered with Virgin Island authorities upon his release from incarceration.

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- **Florida** -- where Jeffrey Epstein was actually convicted of the prostitution offense that obligated him to register as a sex offender under Florida law -- designated Mr. Epstein as the lower of two levels of sex offender under that state's sex offender registration act. *See* Letter of Jack A. Goldberger to New York State Division of Criminal Justice Services, August 12, 2010 (Exhibit B); *see also* Fla. Stat. § 775.21 (Florida sexual predator statute), § 943.0435 (Florida sexual offender statute). More tellingly, Florida then imposed upon Mr. Epstein the most minimal of reporting requirements under that sex offender designation, requiring him to report to Florida authorities ***only two times per year during any period that he is a permanent resident of Florida***. *See* Letter of Jack A. Goldberger to New York State Division of Criminal Justice Services, August 12, 2010 (Exhibit B). Florida authorities further advised Mr. Epstein, upon relocating his permanent residence to the U.S. Virgin Islands, that he need only notify them if he returns to Florida for more than five days at a time.
- **New Mexico**, where Mr. Epstein owns a vacation home and has minimal ties -- similar to New York -- has determined that it will ***not require Mr. Epstein to register at all*** under that state's sexual offender reporting statute. *See* Letter of Regina Chacon, New Mexico Department of Public Safety to Jeffery E. Epstein, August 19, 2010 (Exhibit C); *see also* NMSA 1978, § 29-11A-3(E). As previously noted, notwithstanding the state's determination that he need not register, Mr. Epstein voluntarily chose to register with New Mexico authorities in order to comply with federal requirements under the Sexual Offender Registration and Notification Act (SORNA), 42 U.S.C.A. § 16901 *et seq.*

A Level 1 designation under New York's SORA would also accurately reflect the fact that Jeffrey Epstein presents a negligible risk of reoffending, as further evidenced by the following:

- ***Mr. Epstein has had no instances of criminal or sexual misconduct whatsoever during the past five years***, ever since the time that the Florida matter began and Mr. Epstein was put on notice about the illegality of his conduct, despite its consensual nature.
- Stephen R. Alexander, Psy.D., the clinical and forensic psychologist who has worked with Mr. Epstein since May 2006, praised Mr. Epstein's cooperativeness, self-reflection, and receptiveness to treatment and opined, "Relying upon my 25 years of experience as a forensic psychologist and the plethora of data gathered by me, I state with confidence that Mr. Epstein poses no threat to himself or the community. It is abundantly clear that he has learned his lesson and the probability of his reoffending is negligible. Mr. Epstein poses no threat to either himself or the general community, and he requires no additional intervention or treatment for his no-risk/low-risk status to be maintained into the future." Letter of Stephen R. Alexander, Psy.D. to Jack Goldberger, Esq., August 16, 2010 (Exhibit D).

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- The Palm Beach County Sheriff's Office, which had custody of Mr. Epstein during his thirteen months of incarceration, approved Mr. Epstein for work release and permitted him to leave the jail and report to work on a daily basis from October 2008 until his release in July 2009. *See* Letter of Deputy K. Smith of August 12, 2010 (Exhibit E).
- While serving his year of community control, both the Court and Mr. Epstein's probation officer granted Mr. Epstein's requests for permission to travel briefly outside Florida for business purposes on numerous occasions. *See, e.g.*, Order of Circuit Court of the Fifteenth Judicial Circuit for Palm Beach County of December 18, 2009 (Exhibit F) (allowing Epstein to travel overnight on weekdays for business pending 48-hour notice and approval of his probation officer).

Finally, Mr. Epstein has a remarkable personal history which further compels the conclusion that he is unlikely to ever violate the law again. Discovering a love of math and science as a young man, he worked his way up from being a college drop-out to become a highly successful financial advisor, as well as founder and patron of the C.O.U.Q Foundation Inc. and Enhanced Education, charitable organizations which, among other things, fund numerous philanthropic entities, educational grants and activities, as well as medical and advanced scientific research at top universities and academies around the world. For well over 50 years, Mr. Epstein has lived, and will continue to live, as a productive, philanthropic, and law-abiding member of society, not a recidivist criminal. Indeed, Mr. Epstein's guilty pleas to the instant offenses in 2008, when he was 55 years old, mark the first and only criminal convictions of Mr. Epstein's life. Mr. Epstein's willingness to acknowledge his guilt and agree to leave the comforts of his home to serve thirteen months behind bars, followed by a year of community supervision, is a testament to both his acceptance of responsibility for his crimes and his motivation to learn from his mistakes. While he admittedly lost his way, the harsh lessons of the past few years have, as observed by Dr. Alexander, helped Jeffrey Epstein refocus and recommit to directing his personal energies to productive experiences to the fullest extent possible. Mr. Epstein is not in any way a typical sex offender, and his personal strengths and attributes distinguish him as someone who is extremely unlikely ever to commit another sexual offense.

For all of the reasons set forth in this brief memorandum, we respectfully ask you to follow the lead of the other jurisdictions that have already evaluated Mr. Epstein's offenses, (which lie only on the very perimeter of New York's registration statute) -- and all adjudged him to be the lowest level of registrant -- by consenting to designate Jeffrey Epstein with the appropriate SORA classification of Level 1.