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October 27, 2010

By E-mail and By Hand

CONFIDENTIAL

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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.*.

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 hope and expect that these materials will 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 unsupported 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, [REDACTED] Tr. 2:5-15 ([REDACTED] stating that her date of birth is [REDACTED] [REDACTED] [REDACTED].
- Exhibit A, [REDACTED] Tr. 3:15-20 ([REDACTED] stating that she first heard about Epstein from a friend "about a year ago").
- Exhibit A, [REDACTED] 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, [REDACTED] 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, [REDACTED] 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, [REDACTED] 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; N.Y. 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.

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- See also Exhibit B, Recarey Dep. 418:14-419:5 (Recarey testifying that [REDACTED] told him in November 2005 that she had consensual sex with Epstein shortly before their interview, when [REDACTED] was 17 and nearly 18).

Moreover, contrary to a characterization in the Board of Examiner's Case Summary, [REDACTED] was clear in her testimony that she voluntarily kissed "a female friend"³ in front of Epstein when she was well over 17 and nearing her 18th birthday:

- Exhibit A, [REDACTED] Tr. 12:12-13:12 ([REDACTED] stating the last time that she saw Epstein -- which, based on testimony cited above, was the time they had sex -- was the week before [REDACTED], and further stating that the one time she was with the female friend was shortly before that, [REDACTED]).

All of this conduct involving [REDACTED] would have constituted, at most, a *non-registerable misdemeanor* if committed in New York instead of Florida. See P.L. § 230.04, *McKinney's Penal Law § 230.04* (2004).⁴ Because it cannot be proven by "clear and convincing evidence" (or indeed, by any credible evidence) that Mr. Epstein engaged in sexual conduct with [REDACTED] specifically during the time that she was under 17, Mr. Epstein is not guilty of *any* registerable offense under New York law. See Correction Law § 168-a(2)(a)(i).

A brief look at the evidence concerning [REDACTED], another woman who appears to play a significant role in the Board's recommendation, similarly demonstrates that Det. Recarey mischaracterized [REDACTED] claims to manufacture registerable conduct with respect to [REDACTED]. For example, [REDACTED] could not provide firm or even approximate dates for her earliest interactions with Mr. Epstein:

- Exhibit C, [REDACTED] Tr. 2:24-27 [REDACTED] stating that her date of birth is [REDACTED] which would have made her nearly [REDACTED] when she was interviewed by Det. Recarey on October 11, 2005).

³ Again, the transcript of [REDACTED]'s interview with Det. Recarey reveals significant prejudicial inaccuracies in Recarey's Probable Cause Affidavit. For example, Recarey swore that [REDACTED] claimed that Epstein had [REDACTED] and the other female "kiss and fondle each other around the breasts and buttocks," whereas [REDACTED] expressly denied that the female touched her buttocks or vagina at all, and instead noted only a "very brief" touch of her breasts that [REDACTED] thought may have been "accidental." See Exhibit A, [REDACTED] Tr. 10:25-11:25, 12:12-17.

⁴ 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*, whether under 2004 law or 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 [REDACTED] years of age").

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- Exhibit C, [REDACTED] Tr. 3:11-20 ([REDACTED], estimating that her contact with Epstein lasted somewhere between a year and a half and two years).
- Exhibit C, [REDACTED] Tr. 4:12-23 ([REDACTED], guessing about the timing of her first meeting with Epstein and stating that she does not know whether she was 16 or 17).
- Exhibit C, [REDACTED] Tr. 11:42-12:4 ([REDACTED], saying that she cannot keep track of specifically when different events with Epstein took place).

While [REDACTED] could not say with certainty when she first met and massaged Mr. Epstein, [REDACTED] stated definitively and unambiguously that she was 17 years old during their single instance of brief sexual intercourse, when she claimed that Mr. Epstein momentarily penetrated her, before immediately withdrawing and apologizing, in the midst of other consensual sexual conduct:

- Exhibit C, [REDACTED] Tr. 17:21-33 ([REDACTED] saying that she was “definitely” 17 when she had sex with Epstein, but that she could not recall the specific date of when that took place).
- *See also* Exhibit B, Recarey Dep. 407:4-411:9 (Recarey testifying that he understood that [REDACTED] was 17 or 18 during the momentary “sex,” for which she could provide no specific date).

In addition to establishing that [REDACTED] was 17 during her interactions with Mr. Epstein (and therefore, Mr. Epstein’s conduct toward her is not reportable), [REDACTED]’s statements to Recarey further reveal that [REDACTED] viewed her interactions with Mr. Epstein (both sexual and non-sexual), as well as her sexual interactions with a female named “[REDACTED],” as consensual and entirely self-interested:

- Exhibit C, [REDACTED] Tr. 15:1-21 ([REDACTED], telling Recarey that Epstein would pay her money to spend time with him, relax by the pool, and eat meals, without any sexual activity, and she did that to get paid).
- Exhibit C, [REDACTED] Tr. 20:13-20 ([REDACTED], describing that she would not let Epstein touch her unless he paid her an extra one hundred or two hundred dollars).
- Exhibit C, [REDACTED] Tr. 19:13-23 ([REDACTED], describing how she made the choice on her own to shop with another female (“[REDACTED]”) to buy sex toys for Epstein).
- Exhibit C, [REDACTED] Tr. 20:35- 46 ([REDACTED], describing how she and [REDACTED] once decided on their own to buy sex toys and engage in sex with each other as a “birthday gift” to Epstein).

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- Exhibit C, [REDACTED] Tr. 13:28-41 ([REDACTED], stating that even after speaking to police, she “didn’t want to burn [her] bridges” with Epstein because she viewed him as a “spectacular connection” and she used him for money and other benefits).
- Exhibit C, [REDACTED] Tr. 27:12-27 ([REDACTED], stating that she acted “crazy, promiscuous, whatever you want to call it,” in order to receive money and gifts from Epstein).

The enclosed excerpts should make clear that [REDACTED] -- inaccurately described in the Board’s recommendation as the “16-year old victim” who went to Epstein’s home “at least 100 times” -- was not, in fact, a victim of any reportable criminal conduct by Jeffrey Epstein, but rather, was an opportunistic young woman who, at 17 and 18 years of age, repeatedly made conscious decisions to engage in promiscuous behavior that she believed was entirely in her own self-interest. Indeed, other evidence demonstrates that [REDACTED] regularly acted in her own self-interest. [REDACTED] only agreed to speak to police about Jeffrey Epstein following her own September 2005 arrest for marijuana possession in an attempt to curry favor with law enforcement officials:

- [REDACTED]

Furthermore, shortly after speaking to police, [REDACTED] was terminated from a job at [REDACTED] as a result of stealing merchandise from [REDACTED] and another store:

- Exhibit E, [REDACTED]

In short, [REDACTED] was not a victim of Jeffrey Epstein, and accordingly, Mr. Epstein’s conduct involving [REDACTED] should not factor into the SORA assessment at all.

In fact, transcripts of police interviews with numerous other women who are cited in the police reports and in the Recarey Probable Cause Affidavit reveal numerous other troubling inaccuracies and exaggerations in the police paperwork on which the Board apparently blindly relied in reaching its unsupportable Level 3 recommendation. The following are just a few examples of several such egregious misstatements and material omissions in the police paperwork:

- Exhibit F, [REDACTED] Tr. 11:25-12:21 ([REDACTED], who introduced Epstein to several women, telling police that Epstein liked girls who were “between the ages of like 18 and 20” -- a qualification that appears to have been deliberately omitted from Recarey’s statement in the Probable Cause Affidavit that Epstein told [REDACTED], “The younger, the better”).

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- Exhibit G, [REDACTED] Tr. 5:18-23, 11:6-22 (17-year-old woman stating to police that Epstein did not touch her inappropriately, did not try to touch her, and did not masturbate while she gave him a massage, despite allegations in the Recarey Probable Cause Affidavit that Epstein “grabbed her buttocks and pulled her close to him”).
- Exhibit H, [REDACTED] Tr. 2:25-3:12, 18:7-20 (woman stating that she was 17 when she first met Epstein and telling police that Epstein never used any sex toys on her and touched her with his hands (as opposed to “something else”), refuting a claim in the Recarey Probable Cause Affidavit that “on occasion, Epstein would use a massager/vibrator on her”).
- Exhibit I, [REDACTED] Tr. 12:6-12 (woman telling police that she was 17 when she first met Epstein, in contradiction to the Recarey Probable Cause Affidavit which states that this same woman was only 16 when she first met Epstein)
- Exhibit J, [REDACTED] Tr. 4:10-11, 11:4-7 (woman stating that her date of birth is [REDACTED], which would have made her 17 years and 9 months old during her sole contact with Epstein in November 2004, and testifying that her interaction with Epstein was entirely consensual, despite claim in the Recarey Probable Cause Affidavit that she had “just turned [REDACTED]” and suggestion that she was coerced or tricked into interacting with Epstein).
- Exhibit K, Thomas Tr. 3:18-4:1, 5:6-15 (clarifying that woman was 19 or 20 years old during her sole encounter with Epstein, and therefore, any sexual conduct with him described in the police report and Recarey Probable Cause Affidavit should not be scored under SORA and was not even criminal or reportable under the applicable Florida law).

In fact, in a deposition, Det. Recarey himself acknowledged that there were certain other damning allegations contained in his police reports that he failed to correct, to the detriment of Mr. Epstein:

- Exhibit B, Recarey Dep. 423:1-425:17 (Recarey testifying that he knew that Epstein had purchased covert cameras near his desk on the first-floor of his Palm Beach home following a burglary in 2003, a fact that Recarey failed to mention in his police report when noting that Recarey “found” a covert camera located in that very location).
- Exhibit B, Recarey Dep. 458:8-460:18 (Recarey testifying that he knew that certain objects recovered from Epstein’s garbage, which had been incorrectly identified as “anal

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wands,” were in fact broken eating utensils (not sex toys), and noting that he made no amendment in his police report to reflect that correction).

Recarey also admitted in his deposition that the prosecutor handling the Epstein matter, whom Recarey acknowledged to be an experienced prosecutor specializing in sex crimes cases involving children, expressed her view to Recarey that, “There are no real victims here.”

- Exhibit B, Recarey Dep. 484:21-485:13 (Recarey conceding that the Florida prosecutor handling the Epstein case told Recarey that there were no victims in this case).
- Exhibit B, Recarey Dep. 506:18-507:21 (Recarey acknowledging that the Florida prosecutor handling the Epstein case had been with the State Attorney’s office for approximately twenty years and specialized in sex crimes cases involving underage children).

Indeed, the state prosecutor herself investigated and evaluated the allegations of the numerous women cited in Det. Recarey’s 86-page police report and apparently discounted most of them, determining that the only charge that could be indicted was 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). No charge of rape or sexual contact with a minor was ever prosecuted in connection with any allegations made against Jeffrey Epstein, a fact that, in itself and by the terms of the SORA Guidelines, is compelling evidence that such offenses did not occur. *See Sex Offender Registration Act: Risk Assessment Guidelines and Commentary*, Commentary (2006) at 5, ¶ 7. Accordingly, Jeffrey Epstein should not be scored for such alleged conduct that was squarely rejected by the prosecutor and/or grand jury.

The evidence also makes abundantly clear that Jeffrey Epstein did not know that certain of the woman whom he hired to give him massages were underage, due in large part to the fact that these women lied outright and sought to deceive Mr. Epstein about their ages:

- Exhibit F, ██████ Tr. 12:13-21 (█████ telling police that she lied to Epstein and told him that she was 18 when she was only 17, and further reporting to police that “most of the girls lied” to Epstein about their ages).
- Exhibit J, ██████ Dep. 15:25-17:2 (woman testifying that she was told by ██████ that she had to be over 18 to massage Epstein, so she lied and claimed to be 19 because she wanted to make money).
- Exhibit G, ██████ Tr. 5:5-8 (woman telling police that Epstein did not know her age).

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- Exhibit L, ██████ Tr. 38:21-39:18 (█████ telling police that she told Epstein that she was 18 and in twelfth grade because ██████ told her that Epstein would not allow her in his house if she was under 18).
- Exhibit M, ██████ Dep. 32:17-19, 35:19-38:7 (█████ testifying that she was told that Epstein would not allow her into his house if she was under 18, and so she lied to Epstein and told him that she was 18 and went to a different school).
- Exhibit N, Miller Dep. 6:11-20, 7:24-8:8 (woman testifying that she was instructed to tell Epstein that she was 18 if she wanted to give him a massage for money, and since she had a fake ID she decided to go).
- Exhibit O, ██████ Tr. 13:16-22 (woman telling police that Epstein never knew her age, but she was instructed to tell Epstein that she was 18 because women had to be a certain age to massage him).

In fact ██████, the sole 14-year-old cited in the Board's write-up, had a history of lying about her age and representing herself to be much older than she was, and engaging in sexual activity while underage:

- Exhibit P, ██████'s MySpace Page (portraying ██████ to be age 18 in March 2006, when she was actually 15, and exhibiting ██████ posing in suggestive, sexually graphic photos).
- Exhibit M, ██████ Dep. 68:12-69:18 (█████ testifying that she lied about being 18 on her MySpace page).
- Exhibit M, ██████ Dep. 108:7-110:1 (█████ acknowledging that she was in a sexual relationship with a 22-year-old firefighter while she was still underage).
- Exhibit M, ██████ Dep. 121:3-21 (█████ admitting that she was sexually active when she was 14, before she ever met Epstein).

This evidence represents just a small sampling of the materials generated during the lengthy investigation and prosecution of Jeffrey Epstein (as well as during the case's aftermath), but we believe it exposes the allegations cited in the Board's case summary as being unsubstantiated and utterly unreliable. The glaring discrepancies between the accounts of various women and the mischaracterization of their claims in the police paperwork, the lack of reliable evidence that

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certain women were underage at the time of their encounters with Mr. Epstein, and the questionable credibility and self-interest of many of the women cited all support the conclusion of the Palm Beach prosecutor that there were no victims here. Moreover, these facts cannot support by "clear and convincing evidence" the grossly inflated SORA risk assessment calculation offered by the Board. For all of the reasons set forth herein and in our letter of October 11, 2010, therefore, we ask you to reject the Board's recommendation outright and advocate for a more reasonable Level 1 designation, in line with what several other jurisdictions have already done.

Finally, on a separate but related point, we note that upon further consideration and investigation, our current view is that *Jeffrey Epstein should not be required to register in New York at all.*⁵ Mr. Epstein maintains his primary residence in the U.S. Virgin Islands and does not actually live, work, or attend school in New York, the three measures which determine whether someone needs to register under SORA. *See* Corrections Law § 168-a(14), (15), § 168-k. Indeed, the New York State Department of Taxation has not recognized Mr. Epstein as a domiciliary of New York since 1992, despite the fact that he has maintained a vacation home in New York since that time:

- Exhibit Q, State of New York Department of Taxation and Finance, 3/1/1996 Statement of Personal Income Tax Audit Changes, at 1.

Mr. Epstein has already registered as a sex offender in the jurisdiction of his residence -- the U.S. Virgin Islands. And the other states where he owns secondary residences -- Florida (the state of his offense) and New Mexico -- have determined either that he should only be subject to that jurisdiction's *lowest reporting obligations* or that he is *not required to register at all*. Yet even in New Mexico, where he is not required to register, Mr. Epstein has *chosen to maintain his registration*, again, to ensure his compliance with federal law. Because it is our view that Jeffrey Epstein should not be *required* to register in New York at all, given the short temporary visits he makes to the state, should he be designated as anything other than a Level 1 offender, we would likely be compelled to challenge the initial determination of the Board concerning his obligation to register in New York in the first instance by filing an Article 78 proceeding.

Thank you again for meeting with us two weeks ago and for giving us the opportunity to provide you with these materials. We hope that these excerpts and other documents have demonstrated to you that the Board's recommendation was based on an imprecise analysis of a

⁵ Of course, as we discussed in our meeting, Jeffrey Epstein intends to register in New York under SORA, whether required to or not, in order to ensure his compliance with the federal Sexual Offender Registration and Notification Act (SORNA), 42 U.S.C.A. § 16901 *et seq.*, and indeed, he has voluntarily been registered with the N.Y.P.D.'s Sex Offender Monitoring Unit (SOMU) since May 20, 2010.

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flawed presentation of allegations. The evidence that we have presented reveals that the Board failed to scrutinize, or even consider individually, the allegations contained in the police reports, and as a consequence, the Board came up with a recommendation that deviates dramatically from the findings of the prosecutor who investigated and evaluated this case, as well as every other jurisdiction that has considered Mr. Epstein's registration obligations. For all of these reasons, we ask you to reject the unfounded recommendation of the Board of Examiners, which cannot be supported by clear and convincing evidence, and instead, defer to the discretion of the states that have a more direct nexus to Mr. Epstein and his offense by designating Epstein as a Level 1 under SORA.

We are happy to meet again or schedule a call should you require additional information or wish to discuss this matter further. In any event, we look forward to speaking with you about this matter and your position on the SORA hearing in advance of our scheduled court date on November 9th.

Sincerely,

Jay P. Lefkowitz, P.C.
Sandra Lynn Musumeci

JPL/slm

Attachments