KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

601 Lexington Avenue
New York, New York 10022

Jay P. Lefkowitz, P.C.
To Call Writer Directly:
[redacted]

[redacted]

Facsimile:
[redacted]

www.kirkland.com

January 7, 2011

**By Hand Delivery** **CONFIDENTIAL**

Hon. Ruth Pickholz
New York Supreme Court, New York County
Criminal Term, Part 66
111 Centre Street, Room 1047
New York, NY 10013

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

Dear Justice Pickholz:

We represent Jeffrey E. Epstein, who is scheduled to appear before Your Honor in New York Supreme Court, Part 66, on Tuesday, January 18, 2011 for a hearing pursuant to New York's Sex Offender Registration Act (SORA), Correction Law § 168 *et seq.*. We respectfully submit this letter for your consideration with respect to Mr. Epstein's risk level determination under SORA in advance of the scheduled hearing.

As set forth more fully herein and in the accompanying materials which were previously presented to and considered by the District Attorney's Office, ***both we and the District Attorney's Office believe that that Jeffrey Epstein should be appropriately designated as a Level 1 offender under SORA.*** As agreed by the District Attorney's Office after several months of investigation and consideration on their part, a Level 1 designation most appropriately reflects a proper evaluation of Jeffrey Epstein's SORA risk assessment, 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 required under SORA. *See* Correction Law § 168-a(2)(a)(i). In contrast, the inflammatory Level 3 recommendation of the Board of Examiners of Sex Offenders is not, and cannot be, supported by "clear and convincing evidence," as it relies on allegations that were investigated and affirmatively ***not prosecuted*** by experienced sex crimes prosecutors in the State Attorney's Office in Palm Beach County, Florida, where the conduct allegedly occurred. As Your Honor is doubtless aware, under the guidelines promulgated for SORA, such unprosecuted allegations should be discounted and not considered in evaluating Mr. Epstein's SORA level. *See Sex Offender Registration Act: Risk Assessment Guidelines and*

*Commentary*, Commentary (2006), at 5, ¶ 7 ("[T]he fact that an offender was not indicted for an offense may be strong evidence that the offense did not occur.") (emphasis in original).

Jeffrey Epstein is a 57-year old financial advisor and philanthropist who maintains his primary residence in the U.S. Virgin Islands. The January 18th SORA matter is based on a single conviction for a prostitution-related offense committed in Florida dating back to 2005 -- Procuring a Person Under 18 for Prostitution, in violation of Fla. Stat. § 796.03[1] -- and stems entirely from the fact that one of several vacation properties that Mr. Epstein owns is located in Manhattan. Jeffrey Epstein does not live in New York and does not intend to stay in his New York property for periods exceeding ten days at a time. Notwithstanding his attenuated ties to New York, Mr. Epstein has already been voluntarily registered with the Sex Offender Monitoring Unit (SOMU) in New York since May 2010 in order to comply with the federal Sexual Offender Registration and Notification Act (SORNA), 42 U.S.C.A. § 16901 *et seq*..

Because of this single registerable Florida offense, 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 three 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. (Despite New Mexico's determination that Mr. Epstein need not register in that state, Mr. Epstein has voluntarily chosen to register in New Mexico in order to ensure his full compliance with federal SORNA requirements.)

Without minimizing the seriousness of the Florida charge of Procuring a Person Under 18 for Prostitution, in violation of Fla. Stat. § 796.03, it bears noting 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 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.D.," 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

---

[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 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

even registerable under New York law, given that A.D. told police that she first met Jeffrey Epstein in approximately November 2004 -- which was one month after she turned 17 -- and she 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 A.D. 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 fact, only the allegations of registerable conduct that are provable by "clear and convincing evidence" should be considered in determining Mr. Epstein's registration level under SORA. *See* Correction Law § 168-k(2); *see also Sex Offender Registration Act: Risk Assessment Guidelines and Commentary*, Commentary (2006), at 5, ¶ 7. Despite this basic principle of SORA jurisprudence, the recommendation of New York's Board of Examiners of Sex Offenders is almost entirely premised on uncharged hearsay allegations contained in an 86-page police report that is unreliable and has been refuted in numerous material respects by the sworn testimony of many of the complainants and witnesses cited therein. (A compilation of numerous excerpts of such testimony, a copy of which is being furnished to the Court, was provided to the New York County District Attorney's Office in October for their evaluation of the Board's SORA recommendation and to inform the DA's own recommendation of an appropriate SORA designation for Mr. Epstein.) Indeed, the inflammatory allegations contained in the police report and cited in the Board's case summary were extensively investigated by a sex crimes prosecutor in Palm Beach, Florida who had thirteen years of experience in the office and participated in writing Florida's sex crimes regulations. After investigating the entire police report and interviewing the women involved, ***the Palm Beach County sex crimes prosecutor 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 registerable under Florida law, *see* Fla. Stat. § 943.0435).[4] No charge of rape or sexual contact

---

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] Indeed, following her investigation of the numerous allegations included in the police report, the Palm Beach County sex crimes prosecutor opined to the case detective, "There are no real victims here." *See* Deposition of Det. Joseph Recarey at 484:21-485:13 (included as Exhibit B to the Oct. 28, 2010 Letter from J. Lefkowitz and S. Musumeci to J. Gaffney and P. Egan of the New York District Attorney's Office). Indeed, ***all*** of the conduct alleged in the 86-page police report was commercial, in that it all involved an exchange of money to the women. Later, as part of a negotiated arrangement to secure a plea, the prosecutor filed a separate Information, *see* Exhibit A,

with a minor was ever prosecuted in connection with any alleged "16-year old victim" -- or any woman, for that matter. According to the SORA Guidelines themselves, such an exercise of discretion by the prosecutor not to pursue allegations -- particularly allegations as serious as rape -- is "strong evidence that the offense did not occur." *Sex Offender Registration Act: Risk Assessment Guidelines and Commentary*, Commentary (2006) at 5, ¶ 7.

Furthermore, the Board's recommendation lumps a mass of uncharged allegations together and makes no attempt to separate allegations concerning potentially registerable offenses from non-violent sexual activity among consenting adults. In fact, as demonstrated in the materials provided to the District Attorney's Office (and furnished to the Court), the vast majority of allegations contained in the Board's recommendation and the police report on which it was based 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. Most significantly, these allegations were duly rejected by the sex crimes prosecutor who investigated them. In short, the case summary prepared by the Board is legally and factually insupportable, and the Board's Level 3 recommendation should be disregarded by the Court, as it has by the District Attorney's Office.

The Level 1 designation that both Mr. Epstein and the District Attorney's Office ask this Court to impose is appropriate based on Mr. Epstein's offense and is entirely in line with the evaluations of every other law enforcement agency and jurisdiction that has already considered Mr. Epstein's risk level under their own sex offender reporting schemes. A Level 1 designation is also appropriate as a matter of justice, given the fact that Mr. Epstein does not actually reside in New York, the fact that he is already being monitored by the several other jurisdictions having a much greater nexus than New York to Mr. Epstein and his offense, the extraordinary unlikelihood that he will ever again re-offend, and because the offense which triggered the registration requirement in Florida would not have been a registerable offense at all (and would likely have been a misdemeanor) had it been committed in New York instead of Florida.[5]

---

charging Procurement of a Person under 18, asserting solicitation (and not actual procurement) as the factual basis for the charge (because there has never been any allegation that Jeffrey Epstein promoted prostitution on behalf of any third-parties).

[5] Under SORA, even if a presumptive risk calculation results in a total above the Level 1 threshold, the Court may exercise its discretion and appropriately designate Mr. Epstein a Level 1 offender to reflect the factors addressed herein and the negligible risk of future harm that Mr. Epstein 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").

Finally, we respectfully ask the Court to consider Mr. Epstein's remarkable personal characteristics and the fact that he is unlikely to ever violate the law again. Pursuing a love of math and science, Jeffrey Epstein 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 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. 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 accept the recommendation of the New York District Attorney's Office, which has considered this matter closely over the past several months -- and to follow the lead of the other jurisdictions that have already evaluated Mr. Epstein's offenses and all adjudged him to be the lowest level of registrant -- by adjudging Jeffrey Epstein to be a Level 1 offender under SORA.

In addition, if Your Honor is inclined to agree with the recommendation of the District Attorney's Office and adjudge Mr. Epstein at Level 1, we respectfully ask the Court to permit the Level 1 SORA adjudication to take place without Mr. Epstein's personal appearance on January 18th. As previously noted, Mr. Epstein is a resident of the U.S. Virgin Islands who has various international business commitments over the coming weeks and who travels to New York only sporadically. Additionally, we have reason to believe that there may be media interest in this matter, which distractions may well be avoided if Mr. Epstein himself does not personally appear before the Court. Without objection from the District Attorney, it would be our request that Mr. Epstein's presence in court on January 18th be waived (though counsel will, of course, appear on his behalf) and that we be permitted to make separate arrangements with the Court Clerk for Mr. Epstein to sign the Level 1 designation. (As previously noted, Mr. Epstein's current registration information is already on file with SOMU.) Of course, Mr. Epstein understands and takes seriously his legal obligations, and he will arrange to be present in Court on the 18th, should the Court indicate that it will look negatively upon his absence.

Thank you for your consideration.

Sincerely,

Jay P. Lefkowitz, P.C.

Sandra Lynn Musumeci

JPL/slm

Enclosures

cc: ADA Jennifer Gaffney, New York District Attorney's Office
ADA Patrick Egan, New York District Attorney's Office