

**From:** "[REDACTED] (USAFLS)" <[REDACTED]>  
**To:** "[REDACTED] (USAFLS)" <[REDACTED]>, "[REDACTED] (USAFLS)" <[REDACTED]>, "[REDACTED] (USAFLS)" <[REDACTED]>, "[REDACTED] (USAFLS)" <[REDACTED]>  
**Cc:** "[REDACTED] (USAFLS)" <[REDACTED]>, "[REDACTED] (USAFLS)" <[REDACTED]>, <[REDACTED]>, at 2: <00.p.m.@hp-s0-71-2.usa.doj.gov>;

**Subject:** RE: Jane Does 1 and 2 [REDACTED] United States - Hearing on Friday, August 12, 2011, at 2:00 p.m.

**Date:** Tue, 16 Aug 2011 20:59:37 +0000

**Importance:** Normal

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Thanks for the update, [REDACTED]

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**From:** [REDACTED] (USAFLS)  
**Sent:** Tuesday, August 16, 2011 9:39 AM  
**To:** [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS)  
**Cc:** [REDACTED] (USAFLS); [REDACTED] (USAFLS)  
**Subject:** RE: Jane Does 1 and 2 [REDACTED] United States - Hearing on Friday, August 12, 2011, at 2:00 p.m.

[REDACTED]

The hearing last 2.5 hours. Judge Marra first heard from the proposed intervenors, Bruce Reinhart and Roy Black. Bruce seeks to intervene to move for sanctions against the victims' attorneys for making baseless allegations against Reinhart for purported violations of DOJ and Florida Bar rules. Black seeks to intervene to prevent the unsealing and use of Epstein's defense attorneys' work product, as referenced in the series of one-sided e-mails provided to the victims' attorneys in the civil litigation against Epstein. Judge Marra gave Black and the government two weeks to submit additional briefing on the issue, with an opportunity for the victims to respond. Marra questioned how a matter could still be protected attorney work-product if it had been revealed to the government, the opposing side, in the Epstein criminal investigation. Black argued that criminal defense attorneys should be allowed to be candid and frank with prosecutors, free from any fear that their thoughts and impressions will be made public at some future time.

The court denied the victims' motion to accept facts. Judge Marra said the victims had not denominated their motion as one for summary judgment, recognized that many of the alleged "facts" were opinions and conclusions, and said it was unfair to make the government stipulate or disagree with those "facts." The Court heard argument on the motion to compel the government to provide relevant information helpful to their case, and the motion for a finding that the CVRA had been violated.

During our portion of the argument, I emphasized section 3771(d)(6)'s admonition that "[n]othing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction." I suggested that, if the court was faced with two possible interpretations of a provision, and one would impair the A/G's prosecutorial discretion and one would not, the court was obligated to choose the one that would not.

Judge Marra was skeptical that applying 3771(a)(5), the right to reasonably consult with the attorney for the government in the case, would really impair prosecutorial discretion. At one point, he stated that, if the government had consulted with the victims prior to entering into the non-prosecution agreement, while the victims may not have agreed with that course of action, there was nothing they could do. He asked how that would impair prosecutorial discretion. I argued that U.S. Attorney's Offices decline prosecutions frequently, and that construing 3771(a)(5) to apply prior to the filing of a formal charge, would require the government to consult with identified victims prior to declining a case for prosecution. Additionally, I expressed pessimism that victims would not try to seek court intervention in the event an unfavorable decision had been made by the U.S. Attorney's Office.

The Court inquired about an evidentiary hearing. I told the Court that the government had asserted a "best efforts" defense, and that the resolution of that issue would require an evidentiary hearing. On the issue of discovery, the Court asked me if it had the authority to permit discovery. I said yes, if the court believed discovery was necessary to resolve disputed factual issues in the case.

I do not expect the court to rule until the round of briefing on the work-product issue is completed. I have included [REDACTED] and [REDACTED] on this e-mail. They both attended the hearing and I welcome any comments they might want to add.

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**From:** [REDACTED]. (USAFLS)  
**Sent:** Tuesday, August 16, 2011 9:02 AM  
**To:** [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS)  
**Subject:** RE: Jane Does 1 and 2 [REDACTED] United States - Hearing on Friday, August 12, 2011, at 2:00 p.m.

What happened at the hearing?

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**From:** [REDACTED] (USAFLS)  
**Sent:** Friday, August 12, 2011 9:16 AM  
**To:** [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS)  
**Cc:** [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS)  
**Subject:** RE: Jane Does 1 and 2 [REDACTED] United States - Hearing on Friday, August 12, 2011, at 2:00 p.m.

Good luck. Let me know what happens after the hearing. Sure to get press calls.

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**From:** [REDACTED]. (USAFLS)  
**Sent:** Friday, August 12, 2011 9:07 AM  
**To:** [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS)  
**Cc:** [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS)  
**Subject:** Re: Jane Does 1 and 2 [REDACTED] United States - Hearing on Friday, August 12, 2011, at 2:00 p.m.

Best of luck, [REDACTED] We're in good hands with you there. Thanks for all your hard work in this difficult matter.

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**From:** [REDACTED] (USAFLS)  
**Sent:** Friday, August 12, 2011 12:06 AM  
**To:** [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS)  
**Cc:** [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS)  
**Subject:** Re: Jane Does 1 and 2 [REDACTED] United States - Hearing on Friday, August 12, 2011, at 2:00 p.m.

I agree that we should go forward with our best efforts defense, at least at this point.

Good luck tomorrow, [REDACTED] Hopefully, the judge will realize that he never needs to get to the best efforts defense or to any evidentiary hearing.

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**From:** [REDACTED] (USAFLS)  
**Sent:** Thursday, August 11, 2011 07:38 PM  
**To:** [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS)  
**Cc:** [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS); [REDACTED] (USAFLS)  
**Subject:** Jane Does 1 and 2 [REDACTED] United States - Hearing on Friday, August 12, 2011, at 2:00 p.m.

Colleagues,

Judge Marra will be holding a hearing tomorrow, August 12, at 2:00 p.m., on the victims four (4) motions. In the court's order, he stated he would be asking for the parties' positions on whether an evidentiary hearing is necessary. For our part, on the legal issue of whether rights under the Crime Victims Rights Act attached prior to the filing of a formal charge, the government does not believe any evidentiary hearing is necessary. The only two facts which are relevant are not disputed by the victims: (1) no formal charge was ever filed against Epstein in the S.D.Fla.; and (2) Epstein entered pleas of guilty to state charges on June 30, 2008, in Palm Beach County Circuit Court.

If the court were to find that CVRA rights did attach in the absence of a formal charge against Epstein, the government has asserted that it used its "best efforts" to comply with the CVRA. In October 2007, after the non-prosecution agreement was signed, FBI agents met with four victims and advised them of the agreement. There is a dispute over what was told to these individuals, and the reasons why notifications to other victims did not occur. The victims also claim that CVRA letters sent to them by the FBI in January 2008 and May 2008 were deceptive, since an agreement with Epstein had already been reached (although not fully approved by Main Justice).

I believe an evidentiary hearing would be necessary for the government to present its "best efforts" defense. This would involve the government calling witnesses, including [REDACTED], the FBI agents, and other current and former DOJ employees with relevant knowledge of our efforts to comply with the CVRA.

We need to decide whether to maintain our best efforts defense, since it exposes us to an opportunity for the victims to probe what we did, and why we did it, and provide a platform for making us look bad. One consideration is whether our chances of prevailing, e.g. convincing the Court that we did use our best efforts, is sufficiently great to justify the effort and ordeal.

I believe we should go forward with our best efforts defense. Our office did its best to ensure the victims were apprised of events in the matter involving Epstein, despite howls of protest coming from Epstein's attorneys. Our office had to walk a narrow path between perceived CVRA responsibilities, the incessant complaining from Epstein's legal camp, and preserving what might still have been a federal prosecution of Epstein had he gotten the agreement overturned at DOJ, or reneged on it completely. Giving up on the best efforts defense would be conceding too much.

[REDACTED]: We will call you tomorrow after the hearing, to let you know about what went on, and the press coverage.

I will be leaving here at 9:00 a.m. and hope to be at the West Palm Beach office by 11:00 a.m. Thanks.

[REDACTED]