UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80736-Civ-Marra/Johnson

JANE DOE #1 and JANDE DOE #2

[redacted].

UNITED STATES
_____/

JANE DOE #1 AND JANE DOE #2'S MOTION TO USE CORRESPONDENCE TO PROVE VIOLATIONS OF THE CRIME VICTIMS' RIGHT ACT AND TO HAVE THEIR UNREDACTED PLEADINGS UNSEALED

COME NOW Jane Doe #1 and Jane Doe #2 (also referred to as "the victims"), by and through undersigned counsel, to move this Court to allow use of correspondence between the U.S. Attorney's Office and counsel for Jeffrey Epstein to prove violations of the Crime Victims' Rights Act. Because this Court has already ruled that the correspondence is not privileged – and because it is highly relevant to the victims' case – the motion should be granted. The victims' unredacted pleading quoting the correspondence should also be unsealed, particularly in light of the intense, international public interest in Epstein's controversial plea deal.

BACKGROUND

As the Court is aware, beginning 2008, Jane Doe #1 and Jane Doe #2 pursued civil litigation against Jeffrey Epstein for sexually abusing them. During the course of that litigation, in June 2001, they obtained correspondence between the U.S. Attorney's Office and Jeffrey Epstein's legal counsel. Jane Doe #1 and Jane Doe #2 ultimately settled their civil suits in July 2010. During the settlement discussions, they informed Epstein's legal counsel that they would

be using the correspondence in this CVRA action. Epstein requested advance notice of such filing. Jane Doe #1 and Jane Doe #2 saw no basis for any objection to their using the materials, but agreed to give advance notice to Epstein so that he could make whatever arguments he wished. Accordingly, as part of their settlement, the victims agreed with Epstein that they would file under seal the correspondence so that Epstein would have an opportunity to object if he so desired:

> Counsel for [Jane Doe #1 and Jane Doe #2] have received, as part of discovery in this lawsuit, certain correspondence between Epstein's agents and federal prosecutors. [Jane Doe #1 and Jane Doe #2] may desire to use this correspondence to prove a violation of [their] right to notice by the government and to be treated with fairness, dignity, and respect during criminal investigations and prosecutions under the Crime Victims' Rights Act (CVRA), 18 U.S.C. section 3771, and to seek remedies for any violation that [they] may prove. The parties agree that Epstein will receive at least seven days advance notice, in writing, of intent to so use the correspondence in any CVRA case . . . [Jane Doe #1 and Jane Doe #2] agree to . . . file the documents . . . under seal until a judge has ruled on any objection that Epstein may file."

On August 26, 2010, Jane Doe #1 and Jane Doe #2 provided the specified advance notice to Epstein of their intent to use the correspondence. The notice specifically covered this CVRA action:

> [A]s you know, there is currently pending before Judge Marra a case filed under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, in which two victims of sexual assault by [you] allege they were deprived of their rights under the Act. For example, the victims allege that there were deprived of notice of pending plea bargain arrangements and an opportunity to be heard as well as the right to meaningfully confer with prosecutors. The correspondence provided to us is compelling evidence in support of their claims, as it demonstrates that federal prosecutors were conducting plea discussions with Epstein months before they alerted the victims to any possible plea bargain. The correspondence also demonstrates a willful plan to keep the victims in the dark about the plea discussions. In light of these facts, we intend to make use of this correspondence in the [CVRA] . . . lawsuit[] . . . .

Letter from Bradley J. Edwards to Robert D. Critton, Jr., Case No. 9:08-CV-80893, Doc. #214 (attachment 2).

On September 2, 2010, Epstein filed a motion for a protective order, seeking to bar disclosure of the U.S. Attorney's correspondence in both a pending state court case and the CVRA case. Case No. 9:08-CV-80893, Doc. #214.

On September 13, 2010, Jane Doe #1 and Jane Doe #2's responded, explaining that Epstein had already litigated – and lost – the claim that the information was somehow protected. They also explained that Epstein could not object to use of the information in the CVRA case unless he intervened in the CVRA case. Doc. #217.

One day later, on September 14, 2010, the Court (Magistrate Judge Johnson) denied the motion for a protective order. Doc. #218. The Court explained that "[t]he Court agrees with [Jane Doe] . . . that if [Epstein] believes he has a valid basis for preventing disclosure of the subject documents in the subject state court proceeding, he should file a motion to that effect in the appropriate state court."

On September 28, 2010, Epstein filed an appeal of the Magistrate Judge's order. Epstein argued that because the Magistrate Judge had ruled so rapidly, he had been precluded from filing a reply brief.

On October 7, 2010, Jane Does' legal counsel filed a response (Doc. #221), explaining that no basis existed for barring use of the documents and that, in any event, Epstein needed to intervene in the CVRA case if he was going to have standing to object to use of the documents there.

On October 20, 2010, this Court (Marra, J.), entered an order (Doc. #222) remanding to the magistrate judge to give Epstein an opportunity to file a reply brief.

On November 1, 2010, Epstein filed a reply to the response to his motion for protective order. Doc. #223.

On January 5, 2011, this Court (Johnson, J.) entered an order (Doc. #226) resolving Epstein's objection. The Order began by stating: "To the extent Epstein's Counsel ask the Court to find the subject correspondence privileged and on that basis prohibiting Plaintiffs' Counsel from disclosing it in either of the two proceedings, said request is denied." *Id.* at 3. The Order, however, indicated that Jane Does' counsel should file the correspondence under seal with "the appropriate institution" so that the institution could "make the determination of admissibility as it relates to their respective cases." *Id.* at 3.[1]

DISCUSSION

I. JANE DOE #1 AND JANE DOE #2 SHOULD BE PERMITTED TO USE THE CORRESPONDENCE, AS IT IS HIGHLY RELEVANT TO THEIR CASE.

Under the Magistrate Judge's Order, Jane Doe #1 and Jane Doe #2 are directed to submit the correspondence to "the appropriate institute" for a "determination of admissibility." The victims have done that, filing only a redacted version of their pleading in the public court file,

[1] At one point, the Magistrate Judge appeared to think that the "appropriate institution" for the CVRA was the Justice Department, as the Magistrate Judge thought that Jane Doe was proceeding by way of an "*internal* Justice Department Complaint procedure." Of course, Jane Doe is not proceeding here by way of the internal Justice Department procedure, but rather the statutorily authorized procedure for filing a motion in the district court. *See* 18 U.S.C. § 3771(d)(3).

submitting an unredacted version to the Court. The victims have also submitted all of the correspondence to the Court under seal as well.

The only remaining issue for the Court under the Magistrate Judge's Order is a "determination of admissibility as it relates" to the CVRA case. The correspondence is plainly admissible, as it is highly relevant to the victims' argument that the Justice Department has intentionally concealed the existence of the non-prosecution agreement from them. The correspondence specifically shows that the U.S. Attorney's Office reached a firm non-prosecution agreement with Epstein in September 2007, but subsequently deliberately decided to conceal the existence of that agreement from the victims. The correspondence further shows that the U.S. Attorney's Office was aware of its statutory obligation to inform the victims of the non-prosecution agreement. Indeed, some of the correspondence involves specific discussion of the CVRA and victim notices.

All relevant evidence is admissible. *See* Fed. R. Evid. 402. Relevant evidence is "broadly defined," *United States* [redacted] *Glasser*, 773 F.2d 1553, 1560 (11th Cir. 1985), as evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probable than it would be without the evidence." Fed. R. Evid. 401. Much of the correspondence bears directly on points that the U.S. Attorney's Office has already discussed in its pleadings. The Government's Response to the Victim's Petition, for example, contains an extensive discussion of the background of the investigation, the plea negotiations, and the U.S. Attorney's Office's understanding of its obligations under the CVRA. *See* Government's Resp. to Victim's Emergency Petition for Enforcement of Crime Victims Rights Act at 3-6 (doc. #13) (citing Declaration of Asst. U.S.

Attorney Marie Villafaña). These same subjects were also discussed at length at the Court's July 11, 2008, hearing on the matter. *See, e.g.,* Tr. July 11, 2008, at 3-4, 18-19, 22-29. The correspondence provides far more detailed information on this subject than was previously available to the victims. More important, the correspondence also shows a concerted effort by the U.S. Attorney's Office and Epstein to conceal the non-prosecution agreement from the victims.

The victims should therefore be allowed to use the correspondence, as it sheds important light on the events surrounding the non-prosecution agreement, which are central to the victims' arguments that the U.S. Attorney's Office violated their rights.

II. THE VICTIMS' PLEADINGS SHOULD BE UNSEALED.

The victims' pleadings should also be unsealed. The victims have, of course, filed only a redacted version of their pleading in the court public file, thereby ensuring full compliance with the Court's order that they give Epstein a chance to object. But there is no underlying reason for sealing of these documents. The Court has already ruled that the correspondence is not privileged. Accordingly, no good reason exists for keeping the pleadings confidential, and accordingly they should be made part of the Court's public file.

In addition, no sealing order could be justified in this case. The Eleventh Circuit has instructed that the district courts must make substantial findings before sealing records in cases before it. For instance, in *United States* [redacted] *Ochoa-Vasque*, 428 F.3d 1015 (11th Cir. 2005), it reversed an order from this Court that had sealed pleadings in a criminal case, emphasizing the importance of the public's historic First Amendment right of access to the courts. To justify

sealing, "a court must articulate the overriding interest along with findings specific enough that a reviewing court can determine whether the closure order was properly entered." *Id.* at 1030.

Here there is no overriding interest in keeping the pleadings secret. To the contrary, there is an overriding interest in having these matters exposed to public light. There is considerable public interest in the question of how a serial pedophile could arrange such a lenient plea agreement with the U.S. Attorney's Office. There has long been suspicion that Jeffrey Epstein was receiving favorable treatment in the criminal investigation because of his wealth and power. *See, e.g.,* Abby Goodnough, *Questions of Preferential Treatment Are Raised in Florida Sex* Case, N.Y. TIMES, Sept. 3, 2006, at 19 (noting questions that the public had been left "to wonder whether the system tilted in favor of a wealthy, well-connected alleged perpetrator and against very young girls who are alleged victims of sex crimes"). Indeed, the interest in the matter is strong enough that the widely-viewed television program *Law and Order: Special Victim Unit* devoted an episode to it last month, suggesting in its plot that federal government had intervened improperly to prevent effective prosecution. *See* Law & Order *Commemorates Jeffrey Epstein's Taste for Teen Hookers,* http://gawker.com/#!5751094/law--order-commemorates-jeffrey-epsteins-taste-for-teen-hookers. Also, there is strong current media interest in the case. "British tabloids have gone berserk the past two weeks with the growing scandal over the friendship that Prince Andrew, 51, fourth in line for the throne, has maintained with the multimillionaire, a registered sex offender [Jeffrey Epstein]." Jose Lambiet, *Prince's Friendship with Pedophile Causes Furor Across the Pond*, PALM BEACH POST, Mar. 9, 2011, at 2B. There are also current reports that the FBI is reopening its investigation into the matter. *See* Sharon Churcher, *FBI Will Reopen Case Against Prince's Friend*, SUNDAY MAIL (UK), Mar. 6, 2011.

Of course, the Court is not being asked in this pleading to decide the wisdom of the non-prosecution agreement entered into by the U.S. Attorney's Office. The public can make up its own mind on that subject – but only if it is allowed to review the facts surrounding the negotiation of the agreement and the treatment of crime victims during the negotiation process. The Court should accordingly unseal the victims' pleading.

III. EPSTEIN HAS NO "STANDING" TO RAISE ANY OBJECTIONS WITHOUT INTERVENING IN THE CVERA CASE.

As a courtesy to Epstein, we have provided copies of all these pleadings to defendant Epstein. It should be noted, however, that while Epstein is well aware of this CVRA action, he has chosen not to intervene. *Cf.* Fed. R. Civ. P. 24 (providing procedures for intervention). Without intervening in the case, he cannot raise any objections to use of the correspondence in this case – or to any relief that the Court might grant to the victims.

The victims have no objection to Epstein intervening in this case – at this time. If, however, Epstein delays intervention until after a reasonable period of time, the victims will argue that his motion to intervene is untimely. The victims will argue that any attempted intervention by Epstein after the date on which the Government must respond to the victims' motion for a finding of violation of the CVRA is untimely, as that is when the victims must begin drafting reply pleadings. *See United States* [redacted]*. Jefferson County*, 720 F.2d 1511, 1516 (11th Cir. 1983) (listing factors to be considered in determining whether motion to intervene is timely).

CERTIFICATE OF CONFERENCE

The Government has no objection to the motion to unseal. On August 26, 2010, Epstein was given notice of the victims' intent to use these materials in this case. He has yet to intervene in this case, let alone interpose any objection in this case.

CONCLUSION

For all the foregoing reasons, the Court should allow Jane Doe #1 and Jane Doe #2 to use the U.S. Attorney's correspondence in this CVRA action. The Court should therefore unseal the victims redacted pleading, entering the full pleading – and the attached correspondence – as publicly accessible records.

DATED: March 21, 2011

Respectfully Submitted,

s/ Bradley J. Edwards
Bradley J. Edwards
FARMER, JAFFE, WEISSING,
EDWARDS, FISTOS & LEHRMAN, P.L.
[redacted]

and

Paul G. Cassell
Pro Hac Vice
[redacted]
Attorneys for Jane Doe #1 and Jane Doe #2

CERTIFICATE OF SERVICE

The foregoing document was served on March 21, 2011, on the following using the Court's CM/ECF system:

[redacted]

Joseph L. Ackerman, Jr.
[redacted]
(courtesy copy of pleading via U.S. mail)

[redacted]