

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]

Subject: RE: Jane Does 1 and 2 [REDACTED] United States - CVRA Lawsuit (S.D.Fla.)

Date: Mon, 28 Feb 2011 14:07:55 +0000

Importance: Normal

If you mean can I get a conference call line, yes, I can.

From: [REDACTED]
Sent: Monday, February 28, 2011 9:07 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Jane Does 1 and 2 [REDACTED] United States - CVRA Lawsuit (S.D.Fla.)

[REDACTED] Can you set up a call? I have a 10:00 meeting (30 minutes), and an as yet unscheduled obligation to assist in briefing the AG for his testimony on the Hill tomorrow. Sometime between noon and 1 is likely to be best for me. [REDACTED]

From: [REDACTED]
Sent: Monday, February 28, 2011 8:43 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Jane Does 1 and 2 [REDACTED] United States - CVRA Lawsuit (S.D.Fla.)

I agree, as well. I am available anytime between noon and 3:00 today.

From: [REDACTED]
Sent: Saturday, February 26, 2011 4:19 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Jane Does 1 and 2 [REDACTED] United States - CVRA Lawsuit (S.D.Fla.)

I agree completely. Let's try and talk Monday, with Kate on the phone if possible.

From: [REDACTED]
Sent: Saturday, February 26, 2011 04:08 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Jane Does 1 and 2 [REDACTED] United States - CVRA Lawsuit (S.D.Fla.)

Mr. [REDACTED]

I'm looking for the appropriate officials in the Department with programmatic responsibility for the CVRA, so that we may obtain guidance on our litigating position. What Cassell wants the government to do is abdicate its role in defending its actions. If the DOJ's position is that no rights attach until a charging instrument is filed, then we should vigorously defend that position. Our office is most reluctant to do what Cassell asks, since negotiating the non-prosecution agreement was clearly within the prerogatives granted to the Executive Branch. Whether the bargain struck with Epstein was wise or not should not be the issue.

I will be in the office all day Monday. Thanks for your assistance.

From: Gross, Charles R. (SMO)
Sent: Saturday, February 26, 2011 3:40 PM
To: Lee, Dexter (USAFLS); Manning, Katharine (USAEO)
Cc: Villafana, Ann Marie C. (USAFLS); Greenberg, Benjamin (USAFLS)
Subject: Re: Jane Does 1 and 2 [REDACTED] United States - CVRA Lawsuit (S.D.Fla.)

Dexter: Thanks. Perhaps we should try and find a time to talk on Monday. This scenario raises a variety of policy issues that extend well beyond the question of "when do the rights attach." Frankly, I don't think the court should even reach that question given the posture of the case as you describe it.

Chuck Gross

From: [REDACTED]
Sent: Saturday, February 26, 2011 02:23 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Jane Does 1 and 2 [REDACTED] United States - CVRA Lawsuit (S.D.Fla.)

Ms. [REDACTED]

Our office is currently litigating a Crime Victims Rights Act (CVRA) lawsuit filed by Jane Does 1 and 2, who were victims of sexual abuse by Jeffrey Epstein, a multi-millionaire investor living in Palm Beach, Florida. Jane Does 1 and 2 [REDACTED] United States, Case No. 08-80736-CIV-MARRA (S.D.Fla.). We are seeking your advice and guidance on a proposal from the victims' attorneys, that the government take no position on whether the CVRA granted rights to the victims, when the U.S. Attorney's Office negotiated a non-prosecution agreement with Epstein.

In 2006, the Palm Beach Police Department began investigating allegations that Jeffrey Epstein was enticing underage girls into prostitution. Epstein was alleged to have paid underage girls to provide him with massages, while the young girls were unclothed. The case was referred to the FBI and U.S. Attorney's Office, and the FBI began its own investigation. Epstein hired a number of highly-paid attorneys, including Alan Dershowitz and Kenneth Starr, to attempt to stave off criminal charges.

Ultimately, in 2007, Epstein was charged in state court with soliciting minors for prostitution. In September 2007, the U.S. Attorney's Office entered into a Non-Prosecution Agreement with Epstein, in which he agreed to plead guilty to the state criminal charge, and serve a sentence of 18 months. Epstein also agreed that, in any civil action under 18 U.S.C. 2255 by the underage victims, he would not raise the lack of a federal sex offense as a defense. In July 2008, Epstein plead guilty, and was sentenced to serve six months at the Palm Beach County Detention Facility, followed by 12 months in home detention.

In July 2008, after the Non-Prosecution Agreement had been executed, two victims, TM and CW, filed an action under the CVRA, 18 U.S.C. 3771. They claimed that the government was obligated, under 18 U.S.C. 3771(a) (5), to speak with the victims prior to the execution of the Non-Prosecution Agreement. An emergency hearing was held on July 11, 2008, before U.S. District Judge Kenneth Marra. Since Epstein had entered his state court plea and been sentenced already, the court found there was no emergency. He directed the parties to meet and determine if there were any factual disputes and whether an evidentiary hearing would be necessary.

Attorney Brad Edwards initially represented the victims. Soon, he was joined by Paul Cassell, a University of Utah law professor, and former federal judge who served in the District of Utah from 2002-2007. Cassell is a victims' rights advocate who has appeared in many cases throughout the United States. The victims' rights suit was inactive for the next two years, with Edwards and Cassell using the civil suit as a means to attempt to gain access to information helpful in their civil actions for damages against Epstein. They were able to obtain a copy of the Non-Prosecution Agreement through the civil litigation.

In August 2010, the district court, noting that the last civil suit had been settled, entered an order closing the case. Edwards and Cassell immediately filed documents with the court, advising that the case should not be closed or dismissed, and they wanted to pursue final action by the court. Since September 2010, AUSA [REDACTED] and I have been dealing with Cassell and Edwards on how to resolve the case. They claim the victims had a right to be consulted prior to the execution of the Non-Prosecution Agreement, and that we violated the CVRA by not consulting them. The remedy they seek is a set aside by the court of the Non-Prosecution Agreement, and a prosecution of Epstein.

On December 10, 2010, United States Attorney [REDACTED], First Assistant [REDACTED], [REDACTED], and I, met with Cassell, Edwards, and CW, one of the victims. We discussed the posture of the case, and CW told us her views of what occurred and her desire to see Epstein receive justice for what he did. Cassell presented U.S. Attorney Ferrer a four-page letter, requesting an investigation of the Jeffrey Epstein prosecution. He claims there may have been improper influence exercising by Epstein, noting that Epstein is a "politically-connected billionaire." Cassell cites to an alleged tip off to Epstein that a search warrant on his residence was to be executed; that a former AUSA, [REDACTED] left the West Palm Beach office and soon began appearing on behalf of individuals aligned with Epstein; and an unprecedented level of secrecy between the FBI and the U.S. Attorney's Office, where the FBI was purportedly kept in the dark about the impending Non-Prosecution Agreement. He also claims that the victims were deceived regarding the existence of the Non-Prosecution Agreement.

Cassell's request for an investigation was referred to DOJ OPR on December 16, 2010. Ruth Plagenhoef has requested various documents from our office, presumably to determine whether an investigation should be opened. Cassell and Edwards had planned to file a motion for summary judgment on December 17, 2010. Due to concerns that the U.S. Attorney's Office might have to be recused, due to the allegations of misconduct, Cassell agreed to defer filing their motion. We have since been advised by EOUSA General Counsel's Office that there is no need for our office to recuse itself, since we are only litigating the legal issue of whether rights under the CVRA attached.

After the new year began, Cassell inquired about the status of the OPR complaint and the recusal issue.

On Thursday, February 10, 2011, Deputy Chief [REDACTED] AUSA [REDACTED], and I spoke with Cassell and Edwards regarding the status of the case. I told them Cassell's letter request for an investigation of the Non-Prosecution Agreement had been referred to OPR, and OPR had requested various documents from our office. I also told them the EOUSA General Counsel's office advised that our office could go ahead and represent the United States in the CVRA lawsuit. I suggested that the parties were ready to move forward with filing documents with the court so it could resolve this case.

I asked whether it might be useful to engage in mediation in an attempt to resolve the case. Cassell told us they wanted the Non-Prosecution Agreement to be set aside. I told him that was not likely to happen. Cassell then suggested that the United States Government should step aside and allow them to "go after" Epstein to get the agreement set aside. I asked him how he expected that would be done, since the only parties to the Non-Prosecution Agreement were Epstein and the Government. Cassell said they would file their summary judgment motion, and the government would take no position on their motion. Presumably,

Epstein would either intervene, or be brought in as a necessary party, and defend the Non-Prosecution Agreement. I told them this would have to be approved by the U.S. Attorney and Main Justice.

I have serious misgivings about not defending the Executive Branch's prerogative to engage in a Non-Prosecution Agreement, free from supervision or oversight by the judiciary. If we stand by the sidelines, Cassell will be arguing the Government was obligated to consult with the victims, and because we failed to do so, the agreement is a nullity. Whatever we may think of the Agreement, it was the prerogative of the U.S. Attorney's Office to enter into it with Epstein, and we should be willing to defend what we did. The DOJ's position is that the rights in the CVRA do not attach until there is a federal court proceeding. Since Epstein was never charged in federal court, we were not obligated to consult with the victims before entering into the Non-Prosecution Agreement.

We wanted to seek your views on Cassell's suggestion before we responded to him. We are currently scheduled to have a conference call with Cassell and Edwards on Tuesday, March 1. I can be reached at [REDACTED]

[REDACTED] Thanks.
[REDACTED]