

From: "[REDACTED], [REDACTED] (USAFLS)" <[REDACTED]>
To: "[REDACTED], [REDACTED], [REDACTED] (USAFLS)" <[REDACTED]>, "[REDACTED], [REDACTED] (USAFLS)" <[REDACTED]>
Cc: "[REDACTED], [REDACTED] (USAFLS)" <[REDACTED]>

Subject: FW: Are you going to confer with us?
Date: Wed, 10 Jul 2013 20:00:16 +0000
Importance: Normal

[REDACTED] and [REDACTED],

I received this response from Kathy earlier today.

[REDACTED]

From: [REDACTED], [REDACTED] (USAFLS)
Sent: Wednesday, July 10, 2013 12:27 PM
To: [REDACTED], [REDACTED] (USAFLS)
Cc: [REDACTED]
Subject: Re: Are you going to confer with us?

Typically, if it appears that the Court might lack jurisdiction, the Court will issue a jurisdictional question and both sides will brief the jurisdictional issue simultaneously. I haven't send a jurisdictional question in this case. I would be inclined to let the CA11 flag the issue in the first instance , unless others disagree.

KS

Sent from my iPhone

On Jul 10, 2013, at 12:00 PM, "[REDACTED], [REDACTED] (USAFLS)" <[REDACTED]> wrote:

[REDACTED]

Paul Cassell is eager to know what the government's position is on the intervenors' appeal to the Eleventh Circuit on Judge Marra's interlocutory order. If he is so sure the appellate court lacks jurisdiction, I wonder why it is so important to him that we endorse his argument. In any event, would the DOJ normally move to dismiss an appeal, when another party to the action has already done so? Is this something for DOJ appellate to resolve? Thanks.

[REDACTED]

From: Paul Cassell [[mailto:\[REDACTED\]](mailto:[REDACTED])]
Sent: Wednesday, July 10, 2013 10:59 AM
To: [REDACTED], [REDACTED] (USAFLS); [REDACTED], [REDACTED] (USAFLS)
Cc: [REDACTED], [REDACTED] (USAFLS); Brad Edwards
Subject: RE: Are you going to confer with us?

Dear [REDACTED]

It has been nearly two weeks since we sent this request to you, and we haven't heard anything back from you. Are you going to confer with us about this? And what is the government's position going to be? You will note that Judge Marra said yesterday that there is a "substantial question" about whether the denial of a motion for a protective order is immediately appealable under *Mohawk* – which is exactly the argument we believe it would be in the Government's

interest to endorse.

Sincerely,

Brad Edwards and Paul Cassell for Jane Doe #1 and Jane Doe #2

Paul G. Cassell

Ronald N. Boyce Presidential Professor of Criminal Law

S.J. Quinney College of Law at the University of Utah

332 South 1400 East, Room 101 Salt Lake City, UT 84112-0730

Voice: [REDACTED] Fax: [REDACTED] Email: [REDACTED]

<http://www.law.utah.edu/profiles/default.asp?PersonID=57&name=Cassell,Paul>

You can access my publications on <http://ssrn.com/author=30160>

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From: Paul Cassell

Sent: Thursday, June 27, 2013 7:16 AM

To: [REDACTED], [REDACTED] (USAFLS); [REDACTED], [REDACTED] [REDACTED] (USAFLS)

Cc: [REDACTED], [REDACTED] (USAFLS); Brad Edwards

Subject: RE: Government Position on an Interlocutory Appeal by Epstein - no jurisdictional basis for such an appeal

Dear [REDACTED],

We noticed in the Epstein's recently filed motion for a stay that the Government did not object to that stay pending appeal. We are writing to confirm that you will be ultimately moving to dismiss his appeal in the Eleventh Circuit.

Our understanding of DOJ's position on interlocutory appeals is that they are not permissible in these circumstances, particularly in light of *Mohawk Industries, Inc. v. Carpenter*, 130 [REDACTED] 599 (2009) (affirming 11th Circuit decision that an attorney-client privilege order is not immediately appealable). As you probably know, Epstein plans to rely in *United States v. Perlman* as the basis for an interlocutory appeal. Our understanding is that the Justice Department has long sought to give a narrow construction to *Perlman*. Indeed, it is our understanding that the Justice Department in other Courts of Appeals outside the Eleventh Circuit has argued that *Mohawk* implicitly narrows *Perlman* substantially.

Perlman is most commonly used by criminals who are targets of federal grand jury investigations, who seek to thwart and delay the Justice Department's investigations into their criminal activities. If Epstein is allowed by the Eleventh Circuit to take an interlocutory appeal in this case under *Perlman*, I am sure that this precedent will be used against the Department in countless grand jury investigations down the road.

We are just writing to see what your position is on Epstein's attempt to take such an appeal. We invoke our right to confer to ask: Is the Justice Department really going to allow to agree to such a thing here?

Thanks in advance for clarifying your position. We hope that you will confirm that you intend to move to dismiss Epstein's appeal. (We will be so moving.) If you are not going to make such a motion, we may want to press the issue with the U.S. Attorney in your Office and/or the Criminal Appeals Section of the Justice Department in Washington, [REDACTED]. We believe that the Department's standard litigating position against interlocutory appeals under *Perlman* will support our motion to dismiss Epstein's appeal here.

Brad Edwards and Paul Cassell for Jane Doe #1 and Jane Doe #2

Paul G. Cassell
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██████████ (phone)

██████████ (fax)

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From: Paul Cassell
Sent: Monday, June 24, 2013 6:46 PM
To: ██████████, ██████████ (USAFLS); ██████████, ██████████ ██████████. (USAFLS)
Cc: ██████████, ██████████ (USAFLS); Brad Edwards
Subject: RE: Judge Marra's Order Granting the Victims' Motion to Compel Discovery Within 30 Days

[tried to send this earlier, but it may not have gone out]

Dear ██████████,

We haven't seen the sealed order granting the Government's motion for stay either. (Have you?).

But, in any event, Judge Marra's order on June 19, 2013 (DE 190) specifically stated that "The petitioners' motion to compel discovery from the Government [DE 130] is GRANTED. Within THIRTY (30) DAYS from the date of entry of this order, the Government shall . . . [produce various discovery]." For your convenience, I attach a copy of DE 190 ordering the Government to produce discovery within 30 days.

So we are expecting to see you produce the bulk of our discovery on July 19, 2013, as specifically directed in DE 190 which granted our motion to compel.

Looking forward to moving the case towards a resolution.

Brad Edwards and Paul Cassell for Jane Doe #1 and Jane Doe #2

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From: ██████████, ██████████ (USAFLS) [████████████████████]
Sent: Monday, June 24, 2013 5:24 PM
To: Paul Cassell; ██████████, ██████████ ██████████. (USAFLS)
Cc: ██████████, ██████████ (USAFLS); Brad Edwards
Subject: RE: One additional discovery request in Jane Doe #1 and Jane Doe #2 vs. U.S., No. 08-80736

Paul,

You have addressed your additional discovery request to the correct person. In the Court's order denying the government's motion to dismiss, the Court referenced "[t]he stay of discovery pending ruling on the government's motion to dismiss entered November 8, 2011 [DE #123] is LIFTED." I checked back into my CM/ECF notifications on Outlook, and did not find any for D.E. 123. I checked the docket sheet, which indicates a sealed order being entered on November 9, 2011, which is D.E. # 123.

I was under the impression the Court had not ruled on the government's motion to stay. On December 6, 2012, the petitioners filed their Motion for Prompt Ruling Denying Government's Motion to Stay (D.E. 179), in which the petitioners noted that, "[t]he government's motion was filed more than one year ago, yet (presumably because of a flurry of other motions) the Court has yet to rule on this particular motion." From this, it appears petitioners also believed the Court had not ruled on the government's motion for stay.

In any event, your e-mail states that "you look forward to receiving the discovery materials that the Court has ordered you to produce on the schedule that the Court has ordered them produced." What is your view as to the schedule that the Court has ordered the documents produced? Is that contained in D.E. 123? Thanks.

From: Paul Cassell [<mailto:>]
Sent: Monday, June 24, 2013 4:07 PM
To: (USAFLS); (USAFLS)
Cc: (USAFLS); Brad Edwards
Subject: RE: One additional discovery request in Jane Doe #1 and Jane Doe #2 vs. U.S., No. 08-80736

Dear

I am writing to confirm that you remain the person that we should be contacted with regard to the above-captioned case. If not, please advise as to who the appropriate contact person is (and please forward this message to that person).

In light of the Court lifting the stay on discovery, we are writing send one additional discovery request. Of course, this request is in ADDITION to the requests previously sent. It should not be viewed as replacing the other discovery requests or extending the deadline for producing the materials covered by the other discovery requests.

We look forward to receiving the discovery materials that the Court has ordered you to produce on the schedule that the Court has ordered them produced.

Please let us know if you have any questions.

Paul Cassell and Brad Edwards for Jane Doe #1 and Jane Doe #2

Paul G. Cassell
Ronald N. Boyce Presidential Professor of Criminal Law
S.J. Quinney College of Law at the University of Utah

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