

March 1, 2011

Wifredo A. Ferrer
United States Attorney
Southern District of Florida

Re: Jane Doe #1 and Jane Doe #2 vs. United States, No. 09-80736

Dear Mr. Ferrer:

We are writing to you personally on behalf of Jane Doe #1 and Jane Doe #2 in one last effort to try and narrow our range of difference in the pending Crime Victims Rights Act case regarding Jeffrey Epstein. We make two requests: First, we are requesting that you agree to our proposal for narrowing the range of disputes between your Office and the victims, Jane Doe #1 and Jane Doe #2. Second, if you are unable to agree to our proposal, we request that you agree not to withhold information in your Office's possession that would support their claims under the Crime Victims Rights Act (CVRA).

By way of background, as you know, we have been attempting to work with your Office for more than two-and-a-half years to reach a stipulated set of facts in this CVRA case that would avoid the need for any public battle between your Office and the victims. Indeed, we reached out to you for a personal meeting to try to avoid a fight, and you were kind enough to meet with Jane Doe #1 and her undersigned attorneys. During that meeting, we expressed our intention to go the extra mile to try and avoid any fight with your Office and to see if there was a way to fight only Jeffrey Epstein the sex offender, rather than the prosecutors who work for you.

Today we had a telephone conference call with two of your attorneys, [REDACTED] in which they told us that we would not be receiving any cooperation from your Office on our CVRA case and that, in short, we would have to "see you in court." We were also told that your Office was taking the position that it could, and would, withhold from the victims information in your Office's possession that would support their claims under the CVRA. After receiving approval from Dexter and Marie, we wanted to write to you personally in one last effort to see if we can narrow our differences on these two issues and avoid a disappointing battle.

Narrowing the Issues in Dispute

During today's conference call, it appeared that there was some confusion from Dexter and Marie as to precisely what the victims were proposing. Our proposal is simply this: that

your Office and Jane Doe #1 and Jane Doe #2 would stipulate to a set of facts to provide context for the Court while we litigate the legal issue in dispute, that is whether the CVRA applies even though no federal charges were ultimately filed. If your Office prevails on that issue, the victims would obviously have no claim under the CVRA. The victims would then pursue their appellate rights in the Eleventh Circuit. If, however, the victims prevail on that issue, then your Office would take "no position" on the remedy sought by the victims for the violation of their rights afforded them under the Act. Your Office would essentially stand aside and agree not to take any position on the victims' request to set aside the NPA as a remedy for that violation of the victims' rights.

We understood from our meeting with you in December that you wanted to do what you could to help the victims in this case. Yet as we understood [REDACTED] today, they were taking the position that we would receive no cooperation of any sort from your Office. And we further understood from them that your Office was now going to take the position that even if the victims' congressionally-mandated rights were violated, there is simply no remedy for those violations and thus the victims should have no recourse for the violations.

On behalf of our clients, we want to once again reach out and make sure that your Office wants to move to an adversarial litigation posture on these issues. We simply don't understand why your Office is now going to take a litigating position hostile to ours on issues beyond the legal question of when CVRA rights attached in this case. We appreciate that the Department has institutional concerns about the timing of CVRA rights. But we don't understand why your Office is now going to fight against the victims in their efforts seeking to overturn a NPA that by any measure is unfair. This is not simply our view – the unfairness of the NPA has now attracted comment literally throughout the world, including serving as the basis for an unfavorable portrayal in a recent *Law and Order: Special Victim Episode* and a feature story yesterday in the London-based *Sunday Mail*. We are not asking your Office to join us in our efforts to throw out this unjust agreement. But can't your Office simply stand on the sidelines and let us make our case against Epstein. Fighting a politically well-connected billionaire is difficult enough, without having the weight of the U.S. Attorney's Office for the Southern District of Florida thrown against us too. We respectfully make one last request for you to move forward with our proposal for narrowing differences between us.

Withholding Favorable Evidence

If you feel that your Office must fight us in court on every possible issue, then we are respectfully writing to request that we resolve one issue outside of court: Whether your Office can withhold from the victims evidence in its possession that is favorable to their CVRA case. During our conference call with [REDACTED], we pointed out that if we were criminal defense attorneys representing criminals, your Office would promptly turn over to us all information in its possession that was helpful to these criminals under the *Brady* and *Giglio* decisions. We asked your Office to extend to the victims the same assistance that it would provide to criminals – i.e., we asked [REDACTED] to voluntarily provide to us information

in your Office's possession that was helpful the victims' CVRA case. We were informed that your Office will be taking the position in Court that it can and will withhold from the victims such information, apparently on the theory that victims lack due process or other "discovery" rights under the CVRA.

We believe that the position that your Office can suppress relevant evidence is legally unfounded for four reasons and, in any event, is unsound policy at odds with promises that the Attorney General has made to crime victims and to the public. With regard to the legal problems in this position, first, the CVRA promises victims of crime that they will be "treated with fairness." 18 U.S.C. § 3771(a)(8). The clear intent of Congress in passing this provision was to provide a substantive "due process" right to crime victims. As one of the CVRA's co-sponsors (Senator Kyl) explained, "The broad rights articulated in this section are meant to be rights themselves and are not intended to just be aspirational. One of these rights is the right to be treated with fairness. Of course, fairness includes the notion of *due process*. Too often victims of crime experience a secondary victimization at the hands of the criminal justice system. This provision is intended to direct Government agencies and employees, whether they are in executive or judiciary branches, to treat victims of crime with the respect they deserve." 150 CONG. REC. S4269 (Apr. 22, 2004) (emphasis added).

Because the CVRA extends a "due process" right to crime victims like Jane Doe #1 and Jane Doe #2, victims have a right to fair access to evidence to prove their case. The very foundation of the *Brady* obligation is due process: "[T]he suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). It would similarly violate due process for the prosecution to suppress evidence favorable to a crime victim where the evidence is material either to proving a CVRA violation or to the remedy for a violation.

Second, entirely apart from whether the victims have a right to obtain such information, your Office has an affirmative obligation to disclose it to victims. The CVRA directly commands that "[o]fficers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their *best efforts* to see that crime victims are notified of, and accorded, the rights described in [the CVRA]." 18 U.S.C. § 3771(c)(1) (emphasis added).¹ It is simply impossible for

¹ As you can see from this language, the CVRA applies not only to the U.S. Attorney's Office for the Southern District of Florida but also to the relevant office of the FBI. We are "cc'ing" a copy of this letter to the FBI so that they can be informed of our view that they should provide assistance to the victims in this matter as well, rather than join your Office in any effort to withhold evidence. We understand that your Office represents the FBI on these issues, and are happy to continue our discussions with you regarding the FBI obligations in this area. At the appropriate time, however, if we are unable to reach agreement, we would like to have this discussion with a representative of the FBI to see whether they are in accord with your position. It is our understanding that the appropriate person would be the "special agent-in-charge of the division having primary responsibility for conducting the investigation." ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE 11 (May 2005).

your Office to make its “best efforts” to accord victims their rights while simultaneously withholding evidence that would help them obtain those rights in court.

Third, the attorneys in your Office have duties of candor to the Court that would not permit it to present evidence or testimony that is known to be false. Fla. Bar Rule 4-3.3(a)(4). Allowing the victims access to evidence favorable to their claim will insure compliance with this rule. Similarly, in an ex parte proceeding, a lawyer must inform the court of all material facts known to the lawyer that will enable the court to make an informed decision “whether or not the facts are adverse.” Fla. Bar. Rule 4-3.3(d). If your Office is correct that we are not entitled to access to favorable evidence, then the proceedings involving that evidence are essentially ex parte – requiring your Office to make disclosure to the Court. Surely the more appropriate way to proceed is to simply disclose those materials in the first instance to the victims.

Fourth and finally, your Office has previously taken the position that the CVRA petition filed by the victims is covered by the civil rules. If so, then the victims can serve discovery requests as in any other civil cases. The victims can likewise take depositions of witnesses who possess relevant evidence to their claims. Indeed, under Fed. R. Civ. P. 26(a)(1)(A), your Office would be required to automatically produce such information.

For all these reasons, it is our considered opinion that your Office does not have a legally well-founded position to withhold evidence from the victims in this case. Even if the Office did have such a position, however, we are mystified as to why your Office would want to assert such a position. Attorney General Holder has recently publicly discussed the Department’s obligations regarding production of exculpatory information to criminals, explaining “We’re not here to win cases, but to do justice.” *Attorney General Holder Discusses Efforts to Improve Prosecutor Training*, WALL ST. J., Apr. 30, 2010. With all respect, we submit that your Office should seek to do justice not merely for criminals, but also for the victims of those criminals. We therefore respectfully request that you simply provide this information to us as a matter of justice, avoiding the need for us to litigate this question. To avoid burdening your Office, we would be happy to provide a specific list of the information that we believe is material to the victims’ CVRA case – a limited amount of information that could be swiftly located by your Office.

Conclusion

We frankly believe we have been very patient on this case and have gone to the extra mile to avoid an unnecessary fight with your Office. But our clients are asking us what the status of their case is, and we have an obligation to proceed diligently. Our first choice is to work something out with you. But if your Office is for some reason unwilling or unable to do that, we believe we have an overwhelming case of clear cut CVRA violations – a case that we will present to the Court.

As we told [REDACTED], even though your Office has refused to provide any accommodations to us, we will continue to discuss with them our proposed statement of facts, with the aim of removing information that they believe is damaging to your Office and that we can leave out as unessential to our case. We hope that you will favorably consider our requests in this letter and try to find an approach that will minimize our need to become embroiled in a court dispute between crime victims and the prosecutors who aim to protect them. If we are unable to do so, our intention is to file our "summary judgment" pleadings (which we provided in their entirety to your Office as a courtesy six months ago) on March 18, 2011.

Sincerely,


Bradley J. Edwards 7c


Paul G. Cassell

Co-Counsel for Jane Doe #1 and Jane Doe #2

Cc:

[REDACTED]
Miami FBI Field Office
[REDACTED]

The views expressed in this letter are solely those of its authors.