

THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80736-CIV-MARRA

IN RE: JANE DOE,  
  
Plaintiff,  
  
vs.  
  
UNITED STATES OF AMERICA,  
  
Defendant.

FILED by \_\_\_\_\_ D.C.  
  
JUL 17 2008  
  
STEVEN M. LARIMORE  
CLERK U. S. DIST. CT  
S. D. of FLA. - MIAMI

ORIGINAL

REC'D by \_\_\_\_\_ D.C.  
  
JUL 18/2008  
  
STEVEN M. LARIMORE  
CLERK U. S. DIST. CT  
S. D. of FLA. - MIAMI

Federal Courthouse  
West Palm Beach, Florida  
July 11, 2008  
10:15 a.m.

The above entitled matter came on for  
Emergency Petitioner for Enforcement of Crime Victim  
Rights before the Honorable Kenneth A. Marra,  
pursuant to Notice, taken before Victoria Aiello,  
Court Reporter, pages 1-32.

For the Plaintiff: Bradley Edwards, Esquire

For the Defendant: Dexter Lee, AUSA

Maria Villafana, AUSA

15  
ADD

1 (Call to Order of the Court).

2 THE COURT: Good morning. Please be seated.

3 This is the case of In Re: Jane Doe, Case  
4 Number 08-80736-Civ-Marra. May I have counsel state  
5 their appearances, please?

6 MR. LEE: Good morning, Your Honor. May it  
7 please the Court, for the United States of America,  
8 we have Maria Villafana, Assistant United States  
9 Attorney and Dexter Lee, Assistant United States  
10 Attorney. And we have seated in the front row FBI  
11 Special Agent Becker Kendall and Jason Richards.  
12 Thank you, Your Honor.

13 MR. EDWARDS: Good morning, Your Honor. Brad  
14 Edwards on behalf of the petitioners. Petitioners  
15 are also in the courtroom today. This petition is  
16 styled on her behalf.

17 THE COURT: Good morning. All right. We're  
18 here on the petitioner's motion to enforce her  
19 rights as a victim under 18 USC 3771. I have  
20 received the petition, the government's response and  
21 the victim's reply, which was filed, I guess, this  
22 morning. So, You want to proceed, counsel?.

23 MR. EDWARDS: Yes, Your Honor. You prefer me  
24 at the podium?

25 THE COURT: It is easier for us to hear you.

1 MR. EDWARDS: Your Honor, as a factual  
2 background, Mr. Epstein is a billionaire that  
3 sexually abused and molested dozens and dozens of  
4 girls between the ages of 13 and 17 years old. And  
5 through cooperating victims, that evidence can be  
6 proven. Because of his deviant appetite for young  
7 girls, combined with his extraordinary wealth and  
8 power, he may just be the most dangerous sexual  
9 predator in U.S. history. This petitioner is one of  
10 the victims and she is in attendance today. Another  
11 one of Mr. Epstein's victims is also in attendance  
12 today. She would be able to provide evidence that  
13 she provided-- that Mr. Epstein paid her to provide  
14 him over 50 girls for the purposes of him to  
15 sexually abuse. Therefore, the undercurrents of the  
16 petition are clear. The plea bargain that was  
17 worked out for Mr. Epstein in light of the offenses  
18 that he committed is clearly unfair to the point  
19 that if anybody looks at the information, it is  
20 unconscionable.

21 THE COURT: Well, I mean, is that for me?  
22 That's not my role. That's the prosecutor's role to  
23 apply, would it not? I can't force them to bring  
24 criminal charges. What do I have to do with that.

25 MR. EDWARDS: Okay.

1 THE COURT: That may be your opinion, that  
2 may be your client's opinion, but I presume that the  
3 government is aware that that's your client's  
4 opinion. How does that change anything?

5 MR. EDWARDS: That's my problem. I'm not  
6 sure that the government is aware that is  
7 petitioner's opinion and that's why we're here  
8 today, just to enforce the victim's rights under 18  
9 USC 3771, Crime Victims Rights Act, and all we are  
10 asking is to order that the plea agreement that has  
11 been negotiated in this case--

12 THE COURT: How do you know there is a plea  
13 agreement? The plea agreement is with the State of  
14 Florida, wasn't it?

15 MR. EDWARDS: There was a state charge with  
16 one victim that I'm aware of. And the plea  
17 agreement as to that one victim was 18 months in the  
18 county jail. But along with that, the Palm Beach  
19 County Sheriff investigating this case was getting  
20 no action out of the local authorities and sent this  
21 to the FBI.

22 THE COURT: It was actually the Palm Beach--  
23 Town of Palm Beach Police, not the Sheriff's Office.

24 MR. EDWARDS: I'm sorry, Judge. And that's  
25 why the FBI got involved because Michael Feeter

1 wrote a scathing letter to the State Attorney about  
2 Mr. Epstein receiving preferential treatment by  
3 local authorities.

4 Before the FBI took the case, they went  
5 behind the victim's back, and this is our motion,  
6 without the victim's input and allowing her the  
7 right to meaningfully confer with the government,  
8 which is a right that she can assert at this time.  
9 They worked out a plea deal where if Mr. Epstein  
10 would plead to this other charge regarding another  
11 victim in the state court case, they would agree to  
12 not prosecute him for all of the federal charges of  
13 what they were aware of in federal court..

14 THE COURT: So that's already apparently  
15 taken place, correct?

16 MR. EDWARDS: I don't know if it has taken  
17 place. I'm not sure exactly what stage it is in. I  
18 know it is supposed to be attached at some point in  
19 time to a state court plea.

20 THE COURT: Hasn't he already plead guilty,  
21 though?

22 MR. EDWARDS: If he did plead guilty, it is  
23 my understanding and belief that the agreement with  
24 the federal government and with the U.S. Attorney's  
25 Office wasn't signed on that day. So it is still my

1 belief, I could be wrong, but that that agreement  
2 hasn't been completed as of this time.

3 THE COURT: So let's assume it hasn't been  
4 completed.

5 MR. EDWARDS: Okay. Then petitioner would  
6 like the right to confer with--

7 THE COURT: You can go in the conference  
8 room. We've got the FBI agents, you've got the  
9 assigned prosecuting attorney. You have got a  
10 conference room. You've got your client. Go and  
11 talk. Confer. And then it is up government to  
12 decide what to do, correct?

13 MR. EDWARDS: In a way, Your Honor, that's  
14 very similar to what happened in In Re: Dean and PB  
15 case where there is a plea agreement negotiated and  
16 then the victim gets the right to confer.

17 THE COURT: It's already negotiated. What  
18 am I supposed to do?

19 MR. EDWARDS: Order that the agreement that  
20 was negotiated is invalid and it is illegal as it  
21 did not pertain to the rights of the victim.

22 THE COURT: I can order you into the  
23 conference room. Then the government can do what it  
24 chooses. It can agree to prosecute or it can agree  
25 to going forward with the agreement it had already

1 reached and after consulting your client and in  
2 taking into consideration your client's views,  
3 decide to go forward anyway. I can't make them  
4 prosecute him. I can't-- All I can do is, at best,  
5 say confer with the victim, consider the victim's  
6 input before you make a decision or reconsider the  
7 decision you already made in view of the victim's  
8 input, if it is possible for you to do that. So if  
9 I invalidate the agreement, what's the best you can  
10 get? The right to confer?

11 MR. EDWARDS: Exactly. That is all we can.

12 THE COURT: So why can't you go into the  
13 conference room now, take as much time as you feel  
14 you need and confer?

15 MR. EDWARDS: Judge, at this time I'd like to  
16 move ore tenus to add the victim that's in the  
17 courtroom to this conference with the U.S.  
18 Attorney's Office.

19 THE COURT: So is that Jane Doe 2 for  
20 purposes of this?

21 MR. EDWARDS: Exactly, Your Honor.

22 THE COURT: All right. Let me hear from the  
23 government then.

24 MR. LEE:. Good morning, Your Honor. May it  
25 please the Court.

1           Let me update the Court on the status of  
2       various matters. The agreement to defer prosecution  
3       to the State of Florida was signed and completed by  
4       December of 2007. Mr. Epstein's attorneys sought a  
5       higher review within the Department of Justice and  
6       it took a number of months for that to come to  
7       fruition. When it came to fruition, he ended up  
8       pleading guilty on June 30, 2008 to two charges in  
9       state court, and he was sentenced to a term of  
10      incarceration of 18 months, with another 12 months  
11      of community control after the completion of his  
12      sentence, and he is currently incarcerated as we  
13      speak.

14           We have two arguments, Your Honor. First,  
15      insofar as the right that they claim under  
16      3771(a)(5), their right to confer in the case, we  
17      respectfully submit that there was no case in  
18      federal court and, indeed, none was contemplated if  
19      the plea agreement was to be successfully completed,  
20      since it contemplated the State of Florida sentence  
21      on the criminal charges. So as long as certain  
22      conditions were met and certain federal interests  
23      were vindicated, the federal government was  
24      satisfied that this was an appropriate disposition.

25           Insofar as the best effort, Your Honor, we



1 have cited the Attorney General's guidelines. The  
2 guidelines do say that you should normally advise  
3 victims of plea negotiations and the terms of the  
4 plea, but they recognize that there are times when  
5 they may not be appropriate or could cause some harm  
6 or prejudice, and they set out six factors which are  
7 to be considered, non-exhaustive factors.

8 We have advised, in the declaration of AUSA  
9 Villafana that when the subject of having Mr.  
10 Epstein concede that he would be convicted of an  
11 enumerated offense for purposes of a cause of action  
12 under 18 USC 2255, there was a rather strenuous  
13 objection from Mr. Epstein's counsel that the  
14 federal government was inducing some effort to  
15 either fabricate claims, enhance claims or embellish  
16 claims and if this agreement ultimately could not be  
17 consummated, then we'd have a federal prosecution on  
18 our hands, and we did not want to be in a positin of  
19 creating additional impeachment material.

20 I can't say that the stand by Mr. Edwards  
21 that the arguments of inducement in a subsequent  
22 civil action can be made by any criminal victim,  
23 that is true. It is another thing for that  
24 inducement to have come before the prosecution  
25 arguing about the credibility and veracity of the

1 individual. That was a considerably strong point, in  
2 essence, in not discussing those terms with the  
3 victims as might ordinarily be done if those  
4 considerations did not exist.

5 So, first, Your Honor, we believe that  
6 3771(a)(5) does not apply.

7 THE COURT: Well, what about the language in  
8 the statute that suggests that a victim can bring a  
9 claim or seek enforcement of his or her rights under  
10 the statute before a case is filed? What does that  
11 refer to?

12 MR. LEE: Your Honor, we believe that's a  
13 venue provision essentially telling an individual if  
14 there is no exigent case, there is no case of United  
15 States versus So And So, then you seek to enforce  
16 your rights, then you can go in and do so in the did  
17 court where the offense occurred. This is not  
18 saying, necessarily, that rights exist, but if you  
19 believe they exist, here is the place where you're  
20 going to have to lodge it, and the Court will have  
21 to decide.

22 Now, there are certain of the eight rights  
23 accorded in 3771(a) that could come up before any  
24 charge is filed. For instance, let's say somebody  
25 believes that the perpetrator of the crime is going

1 to try to harm them or threatened them or  
2 intimidated them into not testifying or cooperating  
3 with the government and, of course, no indictment  
4 has been returned. If an individual went to the  
5 government and believed that the individual had not  
6 acted appropriately, they can go to the district  
7 court and say I need to have my rights under  
8 3771(a)(1) enforced because those people are  
9 threatening me, and the government hasn't done  
10 enough. That would be a situation.

11 But we're talking really here about (a)(5),  
12 which is the right to consult in the case and we  
13 respectfully submit that there is not case until a  
14 charge has been filed.

15 THE COURT: So, what about the circuit case  
16 that was actually pending case had to do with a plea  
17 agreement in a pending case?

18 MR. LEE: Yes. The distinction between the  
19 Dean case and the instant case, Your Honor, is  
20 this. In Dean, they had negotiated with BP  
21 Petroleum for a plea and it was always contemplated  
22 that there was going to be a federal prosecution.  
23 The distinction in this case was that there was  
24 already a pending state prosecution and the  
25 objective for both sides was to keep it in state

1 court and the federal government's objective was to  
2 ensure that there were sufficient safeguards in the  
3 state court proceedings and concessions made by Mr.  
4 Epstein so that federal interests, particularly a  
5 cause of action for damages for the victims of the  
6 sexual exploitation could be preserved. So that's  
7 the key distinction because there was no federal  
8 case, there was no federal criminal charge  
9 contemplate so long as the agreement could be  
10 reached.

11 THE COURT: All right. So they want me to  
12 invalidate your non-prosecution agreement.

13 MR. LEE: Your Honor, we respectfully submit  
14 that 3771 does not grant authority of this Court to  
15 do so. In the Dean case, for instance, Your Honor,  
16 there was a plea agreement that was entered into and  
17 district court, of course, entertained a plea  
18 agreement and exercised its judicial discretion in  
19 terms of whether to accept it or not. The victims  
20 were encouraged to go to district court and say, you  
21 know, we didn't hear about this. We should have,  
22 and we object to it for the following reasons. The  
23 district court take that into account. There is no  
24 plea agreement before this Court. There will be no  
25 plea proceedings in this court. That was all done

1 in state court several weeks ago. So that's another  
2 basis for distinguishing Dean.

3 THE COURT: All right. So is there any  
4 point in conferring with these victims?

5 MR. LEE: Your Honor, I will always confer,  
6 sit down with Jane Doe 1 and 2, with the two agents  
7 and Ms. Villafana. We'll be happy to sit down with  
8 them.

9 THE COURT: But it wouldn't make any  
10 difference in terms of the outcome. Would maybe  
11 give them the benefit of your explanation of why you  
12 did what you did and why you came to the conclusion  
13 you did, but it is not going to change your decision  
14 in any way.

15 MR. LEE: If it is going to change, it would  
16 have to be done at a level higher than mine, Your  
17 Honor.

18 THE COURT: What was-- I didn't understand  
19 your statement earlier that Mr. Epstein wanted some  
20 kind of review of higher authority within the  
21 Department in terms of whether or not the federal  
22 government was going to insist on preserving any  
23 civil claims.

24 MR. LEE: Your Honor, of the agreement was  
25 consumated by the parties in December of 2007. Mr.

1 Epstein's attorneys wanted a further review of the  
2 agreement higher up within the Department of Justice  
3 and they exercised their ability to do that.

4 THE COURT: Meaning? Again, I'm trying to  
5 understand. He wasn't happy with the agreement that  
6 he had signed?

7 MR. LEE: Basically, yes. And was trying to  
8 maintain that the agreement should be set aside or  
9 more favorable terms.

10 THE COURT: Now, in terms of -- You don't  
11 dispute that Jane Doe 1 and 2-- First of all, do you  
12 have an objection to Jane Doe 2 being added as a  
13 petitioner in this case?

14 MR. LEE: No, I don't.

15 THE COURT: I'll grant that request.

16 You don't dispute that they're victims  
17 within the meaning of the Act.

18 MR. LEE: It depends to which -- There is one  
19 Jane Doe-- Well, there is one individual who is one  
20 of Mr. Edwards' clients who we do not believe to  
21 been a victim. If these are SN and CW, then we have  
22 no objection and I can discuss-- If I may have a  
23 moment, Your Honor.

24 Your Honor, thank you. I have been  
25 corrected. We have no objection.

1 THE COURT: Okay.

2 MR. LEE: We agree they're victims.

3 THE COURT: Now, what is your position,  
4 then, regarding the right of a victim of a crime  
5 that is potentially subject to federal prosecution  
6 to be, to have input with the prosecutor, your  
7 office, before a resolution or decision not to  
8 prosecute is made? Do you say that there is no  
9 right to confer under those circumstances because  
10 there is no "case pending" so any decision not to  
11 prosecute, there is no right to confer but that  
12 right to confer only is triggered once there is an  
13 indictment or an information filed?

14 MR. LEE: That is correct, Your Honor. The  
15 Attorney General guidelines which were published in  
16 May of 2005 provide that the rights in 3771(a)(1  
17 through 8) accrue when a charge is filed in federal  
18 court. Now, that my change after the Dean  
19 decision. It is under consideration. But that's  
20 the government's position.

21 THE COURT: All right. And so -- Are you  
22 saying all of the rights--

23 MR. LEE: Your Honor, some of the rights  
24 clearly will only pertain after a charge has been  
25 filed. The one that pertains to notice of public

1 hearing, public proceedings, though, can't apply  
2 until there are public proceedings to be had.

3 Of course, these guidelines are a floor and  
4 not a ceiling. They're to be applied with common  
5 sense. If somebody-- If charges of assault were  
6 being investigated and somebody would come in and  
7 say the perpetrator whom you're investigating is  
8 getting ready to indict has been threatening me,  
9 following me, and I need help because he or she is  
10 going to do something bad to me and try to take care  
11 of me before I can testify in the grand jury, this  
12 person would not be turned away because a charge  
13 hasn't been filed yet. Those guidelines would be  
14 applied with common sense.

15 But specifically insofar as a (a)(5), which  
16 is the right to consult with the attorney for the  
17 government in the case, that would not accrue until  
18 there is a days. And, in our view, a case doesn't  
19 come into being until charges are filed.

20 THE COURT: And are there any reported  
21 decisions that you are aware of where any court has  
22 found a right to confer before charges are filed?

23 MR. LEE: I'm not aware of any, Your Honor.

24 THE COURT: All right. Thank you.

25 MR. LEE: Thank you, Your Honor.



1 THE COURT: Counsel?

2 MR. EDWARDS: I would just like to address  
3 that Dean decision. They're asking you that you  
4 just simply ignore it because the decision clearly  
5 was a decision made because as it is a direct result  
6 of a plea deal being worked out prior to the victims  
7 being able to speak.

8 THE COURT: But there was a pending case,  
9 though, correct?

10 MR. EDWARDS: As I understand the decision--

11 THE COURT: As I understand the plea deal, it  
12 was negotiated prior to charges being filed. Then  
13 there was a filed case and then the court had the  
14 ability to accept the plea or not. And at that  
15 point, you would have the ability to entertain or  
16 assert an objection because you weren't consulted  
17 about the plea.

18 So there was a proceeding or case in which  
19 you can assert a right to confer. How do you do  
20 that before a case is filed? How do you enforce the  
21 government or force the government to consult about  
22 not filing a case? Every case they have to consult  
23 with the victim before they decide not to prosecute?

24 MR. EDWARDS: No, there are limitations. I  
25 think in my reply I refer to the case of U.S. V.

1 Rubin where they discussed that very scenario  
2 stating there at least has to be criminal charges  
3 contemplate by the government before these rights  
4 kick in. The rights under (d)(3) and (a)(5), the  
5 right to confer and the Dean case clearly states  
6 clearly rights under the CBRA apply before  
7 prosecution is under way. Logically, this includes  
8 the CBRA establishments of a victim's reasonable  
9 right to confer with the attorney for the  
10 government. And, that's read in the plain reading  
11 of the statutes as well.

12 This first case in interpreting it, I think  
13 it's pretty clear the distinction they're making  
14 between BP and this case. Is it a distinction  
15 without a real difference in that the court is  
16 saying you have this right before the case is filed  
17 which is exactly what we are saying. And the result  
18 in that case was they filed the case, later let him  
19 plea out to some sweet deal. And in this case, what  
20 we have is they avoid that by deciding not to file.  
21 Either way, you deprive the victim of their right  
22 before making that decision.

23 And the main problem that the court had in  
24 Dean, as it states, the victims do have rights when  
25 there is an impact and the eventual sent is

1 substantially less. Whereas here, their input is  
2 received after the parties have reached a tentative  
3 deal. Well, the government just stated the deal was  
4 reached back in October of 2007. However, attached  
5 to their response is a letter to my client  
6 petitioner, dated January 10, 2008, after the time  
7 then counsel just put on the record that the deal  
8 was already finalized and it starts, the opening  
9 paragraph talks about whether they wanted the  
10 victims to have the right to confer. It says, this  
11 case is currently under investigation. This is  
12 January 2008. This case has been a lengthy process  
13 and we request your continued patience while we  
14 conduct a thorough investigation. Sounds like the  
15 exact opposite of, we want you to come in and confer  
16 and let us know what you really feel about this.

17 That is our biggest problem with what has  
18 happened here, is that she just wasn't given a voice  
19 and if somebody would have heard her, we believe  
20 there would have been a different outcome. To go  
21 back into a room right now and talk, after there has  
22 already been a plea negotiated without Your Honor  
23 ordering that in this case the plea deal needs to be  
24 vacated, it is illegal and give her her rights.

25 THE COURT: Well, would you agree or not

1 that Mr. Epstein plead guilty to the state charges  
2 probably at least, in part, in reliance upon the  
3 fact that he had an agreement with the federal  
4 government they weren't going to prosecute? Would  
5 you concede that or would you present evidence to  
6 that effect?

7 MR. EDWARDS: Of course we would. Yes, of  
8 course. Sure.

9 THE COURT: So you agree that Mr. Epstein is  
10 now sitting in the Palm Beach County Jail a  
11 convicted felon serving 18 months of imprisonment,  
12 at least in material part, because he relied upon  
13 the government's non-prosecution agreement?

14 MR. EDWARDS: Yes. I agree that he is sitting  
15 there because he is guilty and maybe he took the  
16 plea rather than going to trial and being found  
17 guilty later in part because of this non-prosecution  
18 agreement that was worked out behind the other  
19 victims' backs. I would agree with that.

20 THE COURT: So he accepted the State's deal  
21 in part because he knew he had an agreement from the  
22 federal government that they weren't going to  
23 prosecute.

24 MR. EDWARDS: I presume. I speculate that is  
25 true.

1 THE COURT: So you want me now, then, to set  
2 aside the government's agreement with him because  
3 there was no conferring, yet he has already accepted  
4 a plea agreement and is sitting in custody, in part,  
5 in reliance on that agreement. I mean, I can undo  
6 the agreement in your theory, but how do I-- Mr.  
7 Epstein, in a sense, would then be adversely  
8 affected by my actions when he acted in reliance  
9 upon the agreement. How does that work?

10 MR. EDWARDS: Certainly, we're only asking  
11 you to vacate the agreement. I understand and your  
12 point is well taken. And I believe that at that  
13 point in time his rights may kick in and say, wait,  
14 I was relying on this other deal so I wouldn't be  
15 prosecuted for these hundreds of other girls that I  
16 molested; that I plead guilty over here to the one  
17 girl that I will admit to molesting. So maybe I can  
18 get to withdraw my plea. But the last thing he wants  
19 to do because if he ends up going to trial, I'll be  
20 in prison for the rest of his life like any other  
21 person who ever did this crime would be. He could  
22 have that argument, I guess, but still wouldn't  
23 really work well for him.

24 THE COURT: All right. So you still think I  
25 should set aside the agreement, require the

1 government to confer?

2 MR. EDWARDS: Work out a plea negotiation  
3 commensurate with the crimes that he committed and  
4 that are favorable after they confer with the  
5 victims. And it is within their discretion. Of  
6 course, they can decide on their own that, hey, I  
7 think that the agreement was fair after they have  
8 talked with the victims. That could happen. I  
9 don't know if a reasonable person that would do  
10 that, but it could happen.

11 THE COURT: Apparently, you are not  
12 suggesting that that these person are not  
13 reasonable.

14 MR. EDWARDS: I'm suggesting they haven't  
15 conferred with the victims and that if they took  
16 into consideration what these two in the courtroom  
17 have to say, I don't think that we'd be in this same  
18 position right now.

19 THE COURT: They have never spoken to your  
20 client about what happened to them?

21 MR. EDWARDS: They have spoken to them about  
22 what happened. Maybe not about what the girls  
23 wanted to happen as a result of this case, which is  
24 part of conferring to decide that these girls wanted  
25 money on their own, which is basically what this--

1 this non-prosecution agreement entails that has  
2 language that he'll agree to liability in a civil  
3 case. That's not what these girls-- They want  
4 justice. They want him in prison now more than  
5 ever. The reason they stated they kept this  
6 agreement from the girls and they basically conceded  
7 we didn't tell the girls about this agreement, well,  
8 the reason is because they would have objected and  
9 they wouldn't have been able to sign off on this and  
10 the victims would have had a voice, and we'd still  
11 been going through litigation. The exact problem  
12 they tried to prevent, at least in their terms which  
13 was the impeachment of these girls at a later trial,  
14 is still available to anybody once the civil suits  
15 are filed anyway.

16 They have three arguments. One, we didn't  
17 have to talk to them. Two, we did talk to them sort  
18 of. And if you don't buy that, the reason we didn't  
19 talk to them, we were trying to prevent them from  
20 being impeached later. None of them trump the  
21 victims' rights to confer prior to plea  
22 negotiations. That's why, Your Honor, we would ask  
23 this Court to enter an order vacating that previous  
24 plea agreement as illegal, ask them to confer with  
25 the victims once again or for the first time and

1 work out a negotiated plea to that accord.

2 THE COURT: Well, all you can ask them to do  
3 is confer. I can't ask them to do anything beyond  
4 that. I mean, it is up to them to negotiate.

5 MR. EDWARDS: I wouldn't quarrel with that.

6 THE COURT: Now, having learned today, I  
7 guess, that the agreement was signed when, in  
8 October?

9 MR. EDWARDS: October 2007, I heard.

10 THE COURT: About eight or nine months ago,  
11 is there any need to rush to a decision in this  
12 matter? The decision has already been made. You  
13 filed this, I think, on the presumption that the  
14 agreement was about to take place and you wanted to  
15 be able to confer beforehand and you weren't sure  
16 what was going on.

17 MR. EDWARDS: Precisely, Your Honor. And I'm  
18 holding the letters that are exhibits that they were  
19 writing to my client during the year of 2008 telling  
20 her how lengthy of a process this was going to be  
21 and be patient. So, right, I was completely in the  
22 dark about when this agreement was signed.

23 THE COURT: In view of the fact that this  
24 agreement has already been consummated, and you want  
25 me to set it aside, as opposed to something that's



1 about to occur, would you agree that-- and I have  
2 done this very quickly because of the petition and  
3 your allegation that something was about to happen.  
4 I'm not blaming you.

5 MR. EDWARDS: I was mistaken.

6 THE COURT: I'm not blaming you for doing  
7 that. In view of what you know now, is there any  
8 need to treat this as an emergency that has to be  
9 decided by tomorrow?

10 MR. EDWARDS: I can't think of any reason in  
11 light of what we just heard.

12 THE COURT: Mr. Lee, do you have anything  
13 else you wanted to add? Does either side think I  
14 need to take evidence about anything? If I do,  
15 since this is not an emergency anymore, I can  
16 probably find a more convenient time to do that. I  
17 don't have the time today to take evidence. But if  
18 you do believe that I should take evidence on this  
19 issue.

20 MR. EDWARDS: It may be best if I conferred  
21 with the U.S. Attorney's Office on that and we can  
22 make a decision whether it is necessary or whether  
23 Your Honor deemed it was necessary for you to make a  
24 decision.

25 THE COURT: I want to know what your

1     respective positions are because it may be something  
2     in terms of having a complete record, and this is  
3     going to be an issue that's it going to go to the  
4     Eleventh Circuit, may be better to have a complete  
5     record as to what your position is and the  
6     government's is as to what actions were taken. And  
7     I don't know if I have enough information, based on  
8     Ms. Villafana's affidavit or I need additional  
9     information. And because it is not an emergency, I  
10    don't have to do something quickly, we can play it  
11    be ear and make this into a more complete record for  
12    the court of appeals.

13           MR. EDWARDS: If there is a time where it is  
14    necessary to take evidence, Your Honor is correct in  
15    stating that it is not an emergency and it doesn't  
16    need to happen today. And, I will confer with the  
17    government on this and if evidence needs to be  
18    taken, it be taken at a later date. It doesn't seem  
19    like there will be any prejudice to any party.

20           THE COURT: Mr. Lee, do you have any  
21    thoughts? You want to consult with Mr. Edwards?

22           MR. LEE: There may be a couple of factual  
23    matters that I need to chat with petitioner's  
24    counsel on. If we can reach agreement on those as  
25    to what was communicated to CW and what time, if

1 they don't dispute that, then we don't think it will  
2 be necessary to have an evidentiary hearing. But if  
3 we can agree, fine or maybe we can't. We'll talk  
4 about it.

5 THE COURT: All right. So why don't you let  
6 me know if you think an evidentiary hearing is  
7 necessary. If there are additional stipulations you  
8 want to enter into or supplement what has already  
9 been presented, you can do that.

10 Now, the other issue I want to take up,  
11 though, is the government filed its response to the  
12 petition under seal. And so I want to know why.  
13 What is in there that at this point needs to be  
14 under seal? Is there anything in there that's  
15 confidential, privileged, anything that's different  
16 from what you hve said here in open court that  
17 requires that to be sealed?

18 MR. LEE: Well, Your Honor, on our motion to  
19 seal was based on two reasons. One that dealt with  
20 individuals or minors at the time that the offense  
21 occurred. So we were attempting to protect the  
22 privacy of those individuals. And also it dealt  
23 with negotiations with Mr. Epstein which were in the  
24 nature of plea negotiations, which we treat as  
25 confidential. Normally, they're not aired out in

1 open court. So those were our two reasons.

2 THE COURT: All right. But I guess the  
3 letters you attached only related to Mr. Edwards'  
4 client.

5 MR. LEE: Three of them, yes, Your Honor.

6 THE COURT: Are you prepared, Mr. Edwards,  
7 to waive any issues regarding the release of those  
8 documents that relate to your clients?

9 MR. EDWARDS: Judge, I think it would be  
10 appropriate to redact the names of the clients as  
11 they have done.

12 THE COURT: I don't think the names are in  
13 there.

14 MR. EDWARDS: I think they're redacted.  
15 They're blacked out. I have no problem with  
16 releasing those documents. I'm not sure that's part  
17 of the deal. But if it is--

18 MR. LEE: It is.

19 MR. EDWARDS: Okay. I'll waive.

20 THE COURT: You really don't have any  
21 objection to those letters that were sent to them  
22 being released to the public?

23 MR. EDWARDS: Of course not, Judge.

24 THE COURT: Then what is there about the  
25 plea agreement or the negotiations that is in the

1 response that we really haven't already kind of--

2 MR. LEE: Your Honor, there was a  
3 confidentiality agreement in the deferral of  
4 prosecution to the State of Florida. So we were  
5 trying to maintain the confidentiality of the  
6 negotiations that occurred since we had discussions  
7 during those negotiations as one of the reasons why  
8 we decided not to tell all of the individuals what  
9 was going on.

10 THE COURT: But is that still necessary,  
11 that confidentiality or is that kind of moot at this  
12 point?

13 MR. LEE: Well, we would like it sealed.  
14 Admittedly, what happened today in open court has  
15 probably weakened our argument. I don't dispute  
16 that.

17 THE COURT: In your opinion, anything in  
18 particular, any paragraph in the response or in Ms.  
19 Villafana's affidavit that you think is particularly  
20 troublesome that should remain under seal?

21 MR. LEE: May I have a moment, Your Honor?

22 THE COURT: Yes.

23 MR. LEE: Thank you. Your Honor, one aspect  
24 of this in the notification letters that were  
25 dispatched to individuals which were attached to Ms.

1 Villafana's declaration, there is a citation to a  
2 clause in the agreement that was reached regarding  
3 the damages remedy under 18 USC 2255 that was  
4 subject to the constitutionality agreement, we  
5 believe that should still remain confidential.

6 THE COURT: But hasn't the fact that this  
7 provision was part of the agreement again been  
8 aired? Is there any secret to it anymore?

9 MR. LEE: The actual text of it has not been  
10 aired. The existence of it has been heard but the  
11 actual text has not and we believe it should still  
12 remain confidential.

13 THE COURT: Okay. Any other argument on  
14 that issue?

15 MR. LEE: No, Your Honor. Thank you.

16 THE COURT: Ms. Villafana wants to speak to  
17 you.

18 MR. LEE: Your Honor, one item that I'd like  
19 to bring to the Court's attention. We had advised  
20 Mr. Epstein and his attorneys that if we were to  
21 disclose some of the agreement, we would give them  
22 advance notice and ability to lodge an objection. We  
23 would like an opportunity to do that.

24 THE COURT: All right. But you're not  
25 disclosing. It would be by my order that it would

1 be disclosed.

2 MR. LEE: Yes, Your Honor. And we just would  
3 like to register that we believe it should remain  
4 confidential.

5 THE COURT: All right.

6 MR. EDWARDS: Your Honor, I don't see any  
7 authority for keeping that under seal.

8 THE COURT: I agree. The fact that there is  
9 this preserved right on behalf of the victims to  
10 pursue a civil action is already a matter of public  
11 record; the exact text of the clause-- I don't see  
12 that disclosing the text of the clause when the fact  
13 that the clause exists is already a matter of public  
14 record. It is not harmful in any way to Mr. Epstein  
15 or the government and the letters to the victim that  
16 the victim can disclose those letters, they're not  
17 under any confidentiality obligation or restriction  
18 and they're free to disclose it themselves if they  
19 choose to. So I don't see that there is any real  
20 public necessity to keep the response sealed in view  
21 of what we discussed already on the record and the  
22 victim's ability to disclose those provisions of  
23 their own choosing, if they wish. So, in view of  
24 the public policy that matters filed in court  
25 proceedings should be open to the public and sealing

1 should only occur in circumstances that justify the  
2 need to restrict public access, I'm going to deny  
3 the motion to seal the response and allow that to be  
4 viewed.

5 All right. So I'll let both of you confer  
6 about whether there is a need for any additional  
7 evidence to be presented. Let me know one way or  
8 the other. If there is, we'll schedule a hearing.  
9 If there isn't and you want to submit some  
10 additional stipulated information, do that, and then  
11 I'll take care of this in due course.

12 MR. EDWARDS: Thank you, Your Honor.

13 THE COURT: All right.

14 MR. LEE: Thank you, Your Honor.

15 MS. VILLAFANA: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 (Proceedings concluded.)  
18  
19

20 I hereby certify that the foregoing is true  
21 and correct to the best of my ability.  
22  
23

24   
\_\_\_\_\_

25 Victoria Aiello, Court Reporter