

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

WEST PALM BEACH DIVISION

CASE NO.: 08-cv-80736-KAM

JANE DOE I and JANE DOE II,)
)
 Petitioners,)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____/

March 28, 2016

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TELEPHONIC STATUS HEARING

BEFORE THE HONORABLE DAVE LEE BRANNON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On behalf of the Petitioners:

THE UNIVERSITY OF UTAH
S.J. QUINNEY COLLEGE OF LAW
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BY: PAUL G. CASSELL, ESQ.

1 APPEARANCES CONTINUED:

2 On behalf of the Respondent:

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7 BY: MARIE C. VILLAFANA, AUSA

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12 On behalf of Intervenor Jeffrey Epstein:

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17 BY: MARTIN G. WEINBERG, ESQ.

18 ALSO PRESENT:

19 Sun Sentinel media
20

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1 (Thereupon, the following proceeding was held:)

2 THE COURT: Good afternoon.

3 This is telephonic status conference in Case Number
4 08-cv-80736; Jane Doe I and II versus The United States of
5 America.

6 Would the parties state their appearances, please, for
7 the record.

8 MR. CASSELL: This is Paul Cassell representing Jane
9 Doe I and Jane Doe II.

10 THE COURT: Thank you, sir.

11 MS. VILLAFANA: Good afternoon. This is Marie
12 Villafana for the United States.

13 THE COURT: Thank you, ma'am.

14 MR. LEE: Good afternoon. Dexter Lee, assistant U.S.
15 attorney for the United States also.

16 THE COURT: Thank you, sir.

17 MR. WEINBERG: Your Honor, this is Martin Weinberg
18 appearing for intervenor Jeffery Epstein.

19 THE COURT: Thank you, sir.

20 And I think that is everybody. I will tell the
21 parties that we have present in the courtroom a representative
22 from the media from the Sun Sentinel.

23 Okay. There are a couple of things I want to talk
24 about today. One of which is scheduling, but I think it is
25 fair that I go over or couple of things first.

1 Many of you already know, but in case some of the
2 people don't, I previously represented, when I was a federal
3 public defender, Alfredo Rodriguez, and he had been an employee
4 of Mr. Epstein. He was prosecuted on a charge about selling
5 the address book that existed there and I represented him in
6 that matter.

7 I know I spoke with Judge Cassell several times in the
8 course of that representation and I will tell you that Mr.
9 Rodriguez has since passed away. I wanted to let you know that
10 so you could consider whether that impacts your decision in
11 this matter at all.

12 I also represented a man whose initials are DG in a
13 totally unrelated matter in this case, who I now believe is a
14 stepfather of a victim. He was not the stepfather when I
15 represented him. And as I said, the charge was totally
16 unrelated.

17 So I don't know if he is the stepfather of either
18 victim one or victim two. I have discussed this with Judge
19 Marra and, of course, he well knows about Alfredo Rodriguez
20 because he was the Judge in that case.

21 And I have also mentioned the DG matter to him as
22 well. And neither he, nor I, believe that that is any kind of
23 a bar to my participating in the settlement conference, but I
24 think in the interest of disclosing everything that you all
25 should know that.

1 Also, I should tell you that I know Miss Villafana
2 given the size of our legal community here in West Palm Beach.
3 And of course, she was a prosecutor on Mr. Rodriguez. So that
4 being said, does that give anybody any problems?

5 MS. VILLAFANA: (Inaudible) represents Jane Doe I and
6 Jane Doe II and I have discussed both the GD situation that
7 (inaudible) Rodriguez --

8 THE COURT: I'm sorry, Miss Villafana. You are
9 breaking up.

10 MS. VILLAFANA: I'm sorry.

11 THE COURT: I am only getting a few words that you are
12 saying.

13 MS. VILLAFANA: Let me maybe speak a little bit more
14 slowly and more loudly. Does that help?

15 THE COURT: That does help.

16 MS. VILLAFANA: Oh, good.

17 All right. As I was saying, I have spoken with Bret
18 Edwards, that representative of Jane Doe I and Jane Doe II in
19 this matter and I have discussed DG. He was not (inaudible) or
20 Jane Doe II in the case. We do not believe there is any
21 conflict. If you do think there is (inaudible) presentation of
22 Alfredo Rodriguez.

23 THE COURT: Okay. I am getting most of what you are
24 saying. Are you on a speaker phone?

25 MS. VILLAFANA: I am actually on headphones, Your

1 Honor. And I apologize. I had to take my mother into
2 (inaudible). So I am not in the office.

3 THE COURT: Okay.

4 MS. VILLAFANA: So as to Mr. Rodriguez, we also don't
5 believe there is conflict. If you believe there was a conflict
6 that it should be raised, we would be willing to waive that
7 conflict.

8 THE COURT: Okay. Very good. Thank you, ma'am.

9 MR. CASSELL: This is Paul Cassell for Jane Doe I and
10 Jane Doe II.

11 I think, as Miss Villafana was indicating, our side of
12 the case sees no conflict at all. If there were some
13 hypothetical conflict we would, of course, waive it. We think
14 it is important to move forward with the settlement conference.
15 This isn't something on the merits of the case ultimately other
16 than trying to resolve it.

17 THE COURT: Very good.

18 MR. WEINBERG: And Judge, to the extent I have
19 standing on behalf of the intervenor and for the purposes of
20 furthering the settlement discussions, we have no objection to
21 Your Honor's conducting the settlement discussions.

22 THE COURT: Okay. Very good.

23 I understand that and, of course, it is quite correct
24 that I am not going to be deciding anything. My job is to
25 facilitate a discussion. So I think particularly in light of

1 that, not that I think there would be any conflict anyway, but
2 if there were, I think that would do a lot to mitigate it and
3 of course, the waivers that everybody has mentioned.

4 So let's do first things first. How does the first
5 dates that I have made available, April 20th and April 21st,
6 look?

7 Mr. Lee, how does that look for the Government?

8 MR. LEE: Those dates are good for me, but we have
9 already spoken with our opponents, Mr. Edwards and Professor
10 Cassell.

11 Apparently the April dates are not good. Paul?

12 MR. CASSELL: Yes. I think we have come up with some
13 other dates. As Miss Villafana -- and Dexter, I think you may
14 have been on the e-mail chain as well.

15 We have some other dates we would like to suggest to
16 Your Honor. We have in order of preference May 11th, May 23rd,
17 May 24th, or May 6th I think are four dates in May that all
18 work for the parties. There are a couple of things we need to
19 get sorted out in April and I think it would take a little bit
20 of time to get that done.

21 THE COURT: Okay. Let me take a look at those dates.

22 So your first choice is May 11th. Unfortunately, I am
23 on criminal duty May 11th. So that kind of knocks that one
24 out.

25 So let's take a look at, I believe, your second choice

1 was the 23rd. And that looks wide open. Let me double-check.

2 Yes, May 23rd looks wide open. So May 23rd it shall be.

3 MS. VILLAFANA: Okay.

4 MR. CASSELL: Perfect. Thank you.

5 THE COURT: Sure.

6 And let me tell you how I do these things. First, of
7 course, I like people to be actually present. I find that
8 settlement conferences actually go far better when people are
9 here as opposed to appearing telephonically.

10 And I need people that have the authority to settle
11 the case without seeking permission from anybody else. And
12 with respect to any case involving the Government that is as
13 close as we can get to anybody who can do that, which I know,
14 you know, we can never find that person to come in and appear
15 at this kind of a matter.

16 Does that present any problems with folks for the 23rd
17 with people actually being here?

18 MR. CASSELL: Your Honor, for Jane Doe I and Jane Doe
19 II, I think there were some logistical issues around Jane Doe
20 I. We would propose an order indicating that mediation will
21 take place on that date and then I think we could make
22 arrangements for her to be there.

23 With regard to Jane Doe II, our plan is to either have
24 her there or to have full settlement authority from her. I
25 will be flying from Utah and Mr. Edwards will be traveling

1 to the mediation site as well. So I think our side will be in
2 good shape on that date.

3 THE COURT: With respect to Jane Doe II not being
4 here, if you want her not to be here, you will need to file a
5 motion to that affect.

6 MR. CASSELL: All right.

7 THE COURT: Because a big part of the presentation is
8 me telling everybody what a fine idea it is to settle cases and
9 the pluses of minuses of that.

10 And I find that that just works a lot better if the
11 actual decision-makers are here to hear it than they are if
12 they are sitting wherever they are sitting and rolling their
13 eyes as I am talking about these ideas over the phone.

14 And by the way, should I call you Judge Cassell,
15 Professor Cassell, or Mr. Cassell? If a jury was present, I
16 would call you Mr. Cassell, but you tell me what you want.

17 MR. CASSELL: Whatever you would do for our learned
18 colleagues on the other side of the case is fair by me.

19 THE COURT: Okay. Well, I think I guess being a Judge
20 is like the mark of Cane. Once you've got it, it is on you
21 forever. So I will call you Judge Cassell.

22 MR. CASSELL: Mr. Cassell is actually fine.

23 I appreciate your asking, but since it will be Miss
24 Villafana and Mr. Lee, just probably treat everyone parallel
25 there.

1 THE COURT: Okay. That is what I will do then.

2 And then, that part of the settlement conference, that
3 is public when I give the virtues of settling cases because
4 sometimes people like to bring emotional support people with
5 them and I think it is useful for them to hear as well.

6 Then, we come to the point where each side makes a
7 brief presentation about their case. At that point, I seal the
8 procedures. We start with the confidentiality and everybody
9 leaves the room, except the parties and their lawyers. And if
10 the parties have emotional support people there that the other
11 side does not object to being included, then, I let them stay.
12 If they object, then, I tell them they have to leave.

13 And my normal procedure is to start at 10:30 just to
14 give everybody a chance to get here with logistics and I work
15 straight through. Unless we have some kind of medical reason
16 why people need to take a break for lunch.

17 If they do, then, that is fine. We will break for
18 lunch and do that. My experience has been it is better if we
19 press on and keep the conversation going. And we normally
20 know, in the course of this case is not part of that norm, but
21 we normally know by 1:30, 2:00 whether the case is going to
22 settle or not.

23 Does that procedure seem to work for everybody?

24 MS. VILLAFANA: From the Government, yes.

25 MR. LEE: That's fine for the Government, Your Honor.

1 MR. CASSELL: Your Honor, this works out for us.
2 Might I suggest an earlier start time? I will be flying in
3 from Utah the evening before. And so I think we will have
4 everyone -- I believe we are doing this in West Palm Beach?

5 THE COURT: Correct.

6 MR. CASSELL: And so I think if I could suggest 9:30
7 that might make it possible to get an extra hour of work done
8 earlier in the day.

9 THE COURT: Mr. Lee and Miss Villafana, does 9:30 work
10 for you?

11 MR. LEE: 9:30 would be fine, Your Honor. Thank you.

12 MS. VILLAFANA: That is fine.

13 THE COURT: Okay. Then 9:30 it shall be when we start
14 on May the 23rd.

15 Now, what role, if any, do the parties think
16 intervenors have in this?

17 MS. VILLAFANA: Your Honor, speaking for the
18 Government there are three sets of intervenors in this case.
19 There is (inaudible).

20 THE COURT: Okay. Unfortunately, you are going to
21 have to go very slow because I don't know what to make when you
22 are breaking up, but you are breaking up. I heard three sets
23 of intervenors.

24 MS. VILLAFANA: Yes. (Inaudible).

25 THE COURT: Miss Villafana, can Mr. Lee pick up the

1 ball on this?

2 MS. VILLAFANA: Let me try to call back in.

3 THE COURT: Yes. Why don't you try to call back in.

4 MS. VILLAFANA: Sorry about that.

5 THE COURT: That is okay.

6 We will just give Miss Villafana a minute.

7 MS. VILLAFANA: Hello?

8 THE COURT: That is better.

9 MS. VILLAFANA: Oh, great. Thank you. I'm glad it is
10 better. I could hear you perfectly, but I want to be eloquent
11 for you.

12 THE COURT: Very good.

13 MS. VILLAFANA: Am I interrupting anyone if I start
14 again?

15 THE COURT: No. We have all been very good and kept
16 our mouth shut while you have been off the line.

17 MS. VILLAFANA: Okay. All right. So the first with
18 intervenors with Mr. Black, Mr. Weinberg, and Mr. Lefkowitz and
19 in Docket Entry 158, Judge Marra granted limited intervention
20 for them to assert a claim that certain documents were
21 privileged. That issue has been resolved in the District Court
22 and by the Eleventh.

23 So as far as of the Government is concerned, all
24 issues related to them have been resolved and they don't have
25 anything left to mediate.

1 MR. WEINBERG: And I agree with that, Your Honor. I
2 am here on Mr. Epstein's behalf and not on behalf of the legal
3 team.

4 THE COURT: Okay. Very good.

5 MS. VILLAFANA: Then with regard to group two is
6 Mr. Epstein. He is the only person in that group. He filed
7 several motions to intervene.

8 Two of them were related to particular documents that
9 he was seeking to invoke, either an attorney/client privilege
10 or a 6(e) privilege and those issues also have been resolved.

11 Then he also sought in Docket Entry 207, he moved to
12 intervene. He moved for prospective limited intervention in
13 which he asked to intervene at the remedy stage. Saying when
14 and if the parties reached the stage at which the Court will
15 consider what remedy to order if it finds that the Government
16 violated the Plaintiff's rights under the CVRA and he sought to
17 intervene.

18 He said that he does not seek to intervene generally
19 in the case. And he also wrote that the dispute is solely
20 between the Plaintiffs and the Government. Judge Marra granted
21 his motion in Docket Entry 246 allowing him to intervene with
22 regard to any remedy issue.

23 So the point of the mediation is really to avoid
24 reaching the remedy issue and avoid reaching the liability
25 issue. And allowing the parties to decide how to resolve the

1 case without making the Court decide those issues for us.

2 So from the Government's perspective, Mr. Epstein
3 doesn't have a role to play in the mediation.

4 THE COURT: And what says Mr. Epstein?

5 MR. WEINBERG: First, I don't think there would be any
6 disadvantage to the process with Mr. Epstein's participation.

7 To the extent that the settlement is not going to
8 reach decisions on liability, or proposals on liability, or
9 proposals on remedy, particularly the remedies that would
10 effect Mr. Epstein, then I don't disagree with the Government.

11 But I anticipate that the Government and the Jane Does
12 to come to a final resolution that there is at least going to
13 be the potential for some effort by Judge/Mr. Cassell to at
14 least discuss remedies that they have advanced principally
15 dating back to, I think, it is Docket Entry 127, where at least
16 a subset of the remedies do involve Mr. Epstein's interest.

17 And for that reason, think there is no disadvantage to
18 his participating in the event that the Court ever addresses
19 any proposals dealing with those remedies.

20 THE COURT: Okay. Mr. Cassell.

21 MR. WEINBERG: One level more specific, Judge.

22 Mr. Cassell has advanced a theory that would involve a
23 proposal to invalidate non pros agreement that Mr. Epstein
24 reached with the United States attorney.

25 The U.S. attorney has objected to that. We believe

1 that that remedy would not be appropriate. Mr. Epstein has
2 fully conformed to the non pros agreement and met its
3 conditions, including going to jail. We think that it wouldn't
4 be legally appropriate to invalidate it.

5 But to the extent that there is any decisions reached
6 between the Government and the Jane Does at a settlement
7 conference presided by Your Honor that would effect such
8 interest by Mr. Epstein, we would simply wish to be there and
9 think it would further an overall settlement.

10 THE COURT: Understood.

11 Mr. Cassell, what is your position?

12 MR. CASSELL: Our position is aligned with the
13 Government on this.

14 First off, we think that Mr. Epstein has no right to
15 be anywhere close to the mediation. The motion was for
16 prospective intervention. And so he is not technically
17 recognized as an intervenor at this point.

18 So we think we would like to have an opportunity to
19 sit down with the Government and with the help of Your Honor to
20 mediate the matter at issue and try to resolve things.

21 We do think there would be a significant disadvantage
22 if we turn a two-sided mediation into a three-sided mediation.
23 I haven't done the math, but it becomes exponentially more
24 complicated whenever you have other people there.

25 We also have to remember that we are going to have a

1 sexual abuse victim there and additional people could be
2 problematic for her emotional well-being. And some of the
3 things that might be said could be problematic as well.

4 With regard to, you know, we are going to continue to
5 press. Our opening position will be that there should be a
6 finding of liability. And that a non prosecution agreement
7 should be invalidated, but I imagine there is going to be
8 discussion of the pros and the cons of that.

9 If the case got to that point, then, if that was the
10 resolution that the Government and the victims reached, then at
11 that point Judge Marra could consider whether Mr. Epstein had a
12 right to intervene. But until the discussions have reached
13 that point, it seems like it is very premature and
14 disadvantageous for him to be involved.

15 THE COURT: Okay. Very good. So that is two of our
16 groups. What about our third group?

17 MR. LEE: I will address that, Your Honor. This is
18 Dexter Lee.

19 The third group would be the Palm Beach Post and the
20 Palm Beach Daily News. I will call them the media intervenors.
21 They initially sought limited intervention to oppose a motion
22 for a supplemental protective order that was filed by attorneys
23 on behalf of Mr. Epstein.

24 Their limited motion for intervention was granted by
25 the District Court in Docket Entry 326 on April the 15th of

1 2015. The same order, 16 pages long, denied Mr. Epstein's
2 motion for a supplemental protective order. So since their
3 limited intervention has been addressed, we believe they have
4 no right to attend the confidential segments of this mediation
5 settlement conference.

6 THE COURT: Very well.

7 From my quick amount of research that I have done in
8 taking a look at this, I have not seen a great deal of case law
9 about intervenors at settlement conferences. I don't know if
10 you all have any in particular that you would want to call to
11 my attention.

12 MR. LEE: Your Honor, we would submit that the case
13 law on intervenors does not apply here because Epstein is only
14 a prospective intervenor. Until he is actually an intervenor,
15 he is just like any other citizen who might want to attend
16 something that is confidential, but has no right to do so.

17 THE COURT: Okay.

18 MS. VILLAFANA: Your Honor, this is Marie Villafana.

19 I just need to correct Mr. Casell's presentation. I
20 don't think that he realizes that although Mr. Epstein moved
21 for prospective limited intervention, Judge Marra did grant his
22 motion.

23 So I think that he has been allowed to intervene so
24 far. So that means that he is prospective, but I think -- and
25 I am not aware of any case law. And I think, as the Court is

1 aware, this case is really *sui generis* and there is nothing
2 similar to this.

3 The one thing I wanted to mention in keeping with what
4 Mr. Cassell mentioned earlier is because this case is so unique
5 involving litigation between a prosecutor function and victims,
6 the idea of having the perpetrator present at a mediation with
7 victims, I think, would not be in keeping with the Crime
8 Victim's Rights Act, or just the general tenor of mediation
9 conferences in the District Court.

10 MR. CASSELL: This is Mr. Cassell.

11 If I could just jump in. I am aware that the motion
12 has been granted, but looking at it right in front of me it
13 says he is allowed to intervene with regard to any remedy issue
14 concerning the non prosecution agreement in this case. It is
15 uncertain at this juncture whether the mediation is going to
16 get to that point.

17 So until we have certainly reached that juncture, he
18 is like any other citizen that has no interest in the case.

19 MR. WEINBERG: And I would contend, Your Honor, since
20 this is scheduled as a one-day settlement conference with an
21 objection of having a complete settlement and not seeing any
22 prejudice, at least to my being present, even if Your Honor in
23 your discretion decided that Mr. Epstein should not personally
24 be present unless and until there is a discussion of remedy
25 that there would simply be no prejudice to the successful

1 outcome of the settlement with my presence.

2 To the extent that the settlement conference evolves
3 into a discussion of Mr. Epstein's rights and I think there are
4 two sets of rights. One is the non pros agreement which we, of
5 course, vigorously oppose for a variety of reasons and I
6 believe the Government does as well.

7 But there was also a suggestion in the earlier
8 pleadings that one of the remedies that Mr. Cassell might seek
9 is some disclosure of 6(e) materials. We did seek to intervene
10 to protect Mr. Epstein's rights against the disclosure of 6(e)
11 materials, but if that remains one of the remedies sought by
12 Mr. Cassell it is a second reason why Mr. Epstein has an
13 interest in being there. It could be a conditional interest.

14 In other words, I could be a silent participant unless
15 and until the settlement conference evolves towards a
16 discussion of final remedies. I am hopeful it doesn't evolve
17 in a way that would implicate Mr. Epstein's rights.

18 I think there are a lot of other remedies that are at
19 issue that have been raised by Mr. Cassell. A lot of issues
20 between the one party that had obligations under the CVRA which
21 is the Government and the Jane Does, but simply seeing the
22 potential that if this evolves in a manner that would implicate
23 Mr. Epstein's legal rights that I be present, rather than
24 requiring or encouraging a separate or second settlement
25 discussion in order to reach the result, I think, everybody on

1 this phone call wants to reach, which is a final settlement of
2 this long-lasting case.

3 THE COURT: Okay. Very good.

4 Here's a case that you all might want to take a look
5 at. This a case out of the Southern District of Mississippi.
6 It is *State Farm Fire and Casualty Company v. Jim Hood*. It is
7 at 266 FRD 135. It's a 2010 discussion.

8 An it dealt with members of the news media filing a
9 motion to intervene as of right to challenge an order sealing a
10 settlement agreement between the parties. That is about the
11 only thing that I could find in the short amount of time I had
12 to do some research dealing with intervenors and settlement
13 conferences.

14 And it is not exactly on point, but it is particularly
15 when it comes to the unsealing of an agreement that might be
16 something that the parties would have some interest in taking a
17 look at.

18 What I am going to do is I am going to give you some
19 time to file some briefing on that to lay out your positions
20 and see if there is any research on that.

21 And I think instead of going back and forth on the
22 briefing, I think the best bet is if I just give everybody one
23 deadline to file whatever they are going to file. And then, I
24 will have to make my decision after that.

25 So any supplemental briefing that you would like to

1 file on this issue of the presence of intervenors will be due
2 on Friday, April 15th at 5:00 Eastern Time.

3 MR. LEE: Your Honor, I am going to be out of town on
4 the 13th through the 15th. Will it be possible to have one
5 additional week until April 22nd?

6 THE COURT: Sure.

7 We will make it April 22nd at 5:00 Eastern Time. Does
8 that work for you, Mr. Lee and Miss Villafana? Does that work
9 for you.

10 MS. VILLAFANA: Yes, it does.

11 MR. LEE: Yes, it does.

12 MS. VILLAFANA: Yes.

13 THE COURT: And Mr. Weinberg, does that work for you,
14 sir?

15 MR. WEINBERG: It does. Thank you, Your Honor.

16 THE COURT: Anything else we need to talk about today?

17 MR. LEE: Nothing from the Government.

18 MS. VILLAFANA: No, Your Honor.

19 THE COURT: Okay. Then I am looking forward to seeing
20 what you all have to say. And I am looking for to doing this
21 settlement conference and we are in recess.

22 MS. VILLAFANA: Thank you so much, Your Honor.

23 (Thereupon, the proceedings concluded.)
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CERTIFICATE

I hereby certify that the foregoing telephonic transcript is an accurate transcript of the audio recorded proceedings in the above-entitled matter.

06/19/19

Bonnie Joy Lewis,
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