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Prosecutors Must Turn Over Docs In Billionaire Sex Offender Jeffrey Epstein Case

John Pacenti, Daily Business Review

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Roy Black

Partner

Black, Srebnick, Kornspan & Stumpf

Attorneys for two alleged sexual assault victims trying to negate a federal nonprosecution agreement with billionaire pedophile Jeffrey Epstein applauded a decision by a federal appellate court as a triumph for victims' rights.

But Epstein's celebrity defense attorney Roy Black said the decision by the U.S. Courts of Appeals for the Eleventh Circuit in Atlanta undercuts the plea negotiation process and attorney-client privilege.

The U.S. Court of Appeals for the Eleventh Circuit affirmed an order requiring prosecutors to turn over documents about plea discussions with Epstein. The decision also lifted an appellate stay on the ruling by U.S. District Judge Kenneth Marra in West Palm Beach to allow the release of documents to the women, identified in court papers only as Jane Doe No. 1 and Jane Doe No. 2.

The women say they were sexually molested as minors by Epstein and claim federal prosecutors violated the Crime Victims' Rights Act when they negotiated the nonprosecution agreement in 2007.

Both sides agreed the opinion sets a precedent unrivaled in other federal circuits.

"So much of the legal area of victims' rights is breaking new ground and new territory," said Jay Howell, a Jacksonville appellate lawyer who represented the women. "The court decision here expands the rights of the victims and the victims' ability to discover information about the criminal case."

He said the women have stuck with the case out of "a fundamental sense of injustice" for the underage victims of Epstein.

Black, a partner at Black, Srebnick, Kornspan & Stumpf in Miami, said the 23-page opinion issued Friday has wider implications in plea bargains. No longer can defense attorneys be candid with prosecutors when trying to negotiate a plea, he said.

"This is now the leading precedent holding that plea bargain discussions are not confidential, and now criminal defense lawyers must censor their communications with prosecutors," Black said. "The Eleventh Circuit has ruled there is no privilege, there is no confidentiality."

Miami attorney Joseph DeMaria, a partner at Fox Rothschild and former federal prosecutor, said while the opinion is legally correct, it could have a significant impact on the 90 percent of federal cases resolved by pleas. He said it now is up to Congress to amend the Crime Victims' Rights Act to carve out a safeguard for defendants.

He foresees "a chilling effect on plea negotiations where victims are aggressively seeking information."

"If these type of plea discussions are now discoverable by victims, then it's going to cause significant problems for the government and defendants in trying to resolve criminal cases," DeMaria said.

Epstein was accused of luring underage women to his Palm Beach mansion for sex. The television show "Law & Order SVU" had a "ripped from the headlines" episode based on Epstein, who is also known for his celebrity connections. Flight logs show former President Bill Clinton flew on Epstein's private plane 10 times from 2002 to 2005.

Plea bargain

The appellate case stems from a decision by federal prosecutors not to charge Epstein if he pleaded guilty to state charges in Palm Beach Circuit Court for soliciting an underage girl for prostitution. He was sentenced to 18 months in jail and house arrest.

Epstein moved back to New York City from Palm Beach after he finished his sentence.

The women contend they could have argued against the nonprosecution agreement if they were informed before the agreement was reached.

"Our clients want to see Mr. Epstein held accountable for the numerous sex offenses he committed against many children," said Bradley Edwards, the women's trial counsel and a partner at Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman in Fort Lauderdale.

Edwards said the documents at this point will be disclosed only to the plaintiffs and will not become part of the public record.

Andrew Levi, a partner at Lehr Levi & Mendez in Miami and former federal prosecutor, said once documents are in the hands of civil attorneys they can easily be passed on to news media or put in other court records.

"It's not as if they are given to the attorney with any type of limitation attached," he said. "We are going to have to see how this plays out in the future to determine if this decision has a chilling effect on the candor and possibly the effectiveness of communications by defense counsel when negotiating a plea."

Unanimous opinion

Epstein's criminal defense attorneys, Black and Martin G. Weinberg of Boston, intervened in the appeal as third parties. The appellate ruling was written by one of the more conservative members of the Eleventh Circuit.

Judge William H. Pryor said the federal rule of evidence cited by Epstein in the interlocutory appeal did not protect him against discoverability of plea negotiations.

"And even if they did, Epstein clearly falls outside its protection because he entered a guilty plea and the victims intend to use the correspondence against the United States, not against Epstein," Pryor wrote.

He was joined in the unanimous decision by Judge Beverly Martin and U.S. District Judge Charlene Edwards Honeywell of Orlando, sitting by designation.

The U.S. attorney's office in Miami argued before Marra that the victims did not need to be notified of the agreement because the women's liberty was not at stake. It also took the position that the Crime Victims Right Act did not apply unless federal charges were filed against Epstein.

Victims' Rights

Howell said the decision indicates how courts have come around to the victim's point of view. He said as a state prosecutor in 1978, victims' rights were nearly non-existent.

"There has been a fundamental change in the courts," he said. "It's only been in the last 30 years that courts examines things from the view point of the victim."

He said plaintiffs attorneys have asked the Justice Department in Washington why Epstein was offered the nonprosecution agreement but were told all decisions on the billionaire were made in Florida.

"Why was such a lenient deal offered?" Howell asked. "Washington is supposed to be tough on crimes against children, but the decision in this case certainly disputes that policy."

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Appeals Court Rules in Favor of Crime Victims' Rights in Registered Pedophile Jeffrey Epstein Case

In a landmark decision, the US Court of Appeals for the Eleventh Circuit Court on April 18, 2014, ruled in favor of two crime victims represented by Farmer Jaffe Weissing Partner Brad Edwards and his co-counsel, Paul Cassell

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Appeals Court Rules in Favor of Crime Victims' Rights in Registered Pedophile Jeffrey Epstein Case

In a landmark decision, the U.S. Court of Appeals for the Eleventh Circuit Court on April 18, 2014, ruled in favor of two crime victims represented by Farmer, Jaffe, Weissing, Edwards, Fistos & Lehman Partner Brad Edwards and his co-counsel, Paul Cassell, Ronald N. Boyce Presidential Professor of Criminal Law - S.J. Quinney College of Law at the University of Utah. The ruling upheld the District Court which ordered the United States Attorney's Office to provide the victims and their advocates the large volume of correspondence exchanged between Jeffrey Epstein and the Government that resulted in the government electing not to Federally prosecute Epstein for his many sexual crimes against children. Attorneys Edwards and Cassell argued the case before the Eleventh Circuit in February, against attorneys Roy Black and Martin Weinberg.

The case involves a federal criminal investigation that resulted in the Federal Government learning that Jeffrey Epstein and certain co-conspirators sexually abused dozens and dozens of minor girls in West Palm Beach, Florida. Epstein ultimately reached a plea deal, under which he plead guilty only to a state charge of procuring a minor for prostitution in exchange for the Federal Government agreeing not to pursue federal sex crimes on behalf of more than 40 victims. Represented by Attorney Brad Edwards and Paul Cassell, two of the girls sought to have the plea deal thrown out because prosecutors had not informed them of what was happening and had taken steps to conceal the peculiar plea arrangements. The victims moved to have access to the correspondence between prosecutors and defense attorneys to prove their case.

The Eleventh Circuit ruled that that the victims were entitled to have access to the materials. Agreeing with Attorneys Edwards and Cassell, the Eleventh Circuit ruled that the communications were not privileged or otherwise barred from distribution. The Eleventh Circuit explained that the victims should "enjoy an evidentiary benefit from the disclosure of plea negotiations to prove where the United States violated their rights under the [Crime Victims' Rights] Act."

Upon learning of the ruling Attorney Brad Edwards stated: "The victims have fought hard for almost 6 years now to learn why the person who molested them and many other children was ultimately allowed to live above the law and avoid being held accountable for his crimes. I'm pleased that the Eleventh Circuit has made this ruling which will bring the victims one step closer to knowing the truth. Wealth and power should not immunize anyone from punishment for harmful sexual acts against children; in the circumstances when it does, the victims should at least have access to the explanation why. These documents should begin to explain."

Farmer, Jaffe, Weissing, Edwards, Fistos & Lehman, P.L., a Fort Lauderdale Litigation firm, focuses on Consumer Class Actions, Personal Injury, Wrongful Death, and Whistleblower Suits (qui tam). The firm is headquartered at 425 N. Andrews Avenue, Suite 2 and may be reached at (800) 400-1098 or (954) 524-2820. Additional information about Brad Edwards, or Farmer, Jaffe, Weissing, Edwards & Lehman, P.L., may be obtained from the firm's website at <http://www.pathtojustice.com/attorneys/brad-edwards/>, <http://www.abuseandassault.com> or <http://www.pathtojustice.com>.

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