

"IF NO PROSECUTION IS UNDERWAY" AND THE CRIME VICTIMS' RIGHTS ACT

A CORPUS LINGUISTICS ANALYSIS

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THE CRIME VICTIMS' RIGHTS ACT

- 18 U.S.C § 3771
- Signed into law in 2004
- Designed as a statutory bill of rights for victims of crimes committed in violation of federal law or the laws of the District of Columbia



TEN RIGHTS UNDER THE ACT

- 1) the right to be reasonably protected from the accused;
- 2) the right to notification of public court and parole proceedings and of any release of the accused;
- 3) the right not to be excluded from public court proceedings under most circumstances;
- 4) the right to be heard in public court proceedings relating to bail, plea bargains, sentencing, or parole;
- 5) the right to confer with the prosecutor;**
- 6) the right to restitution under the law;
- 7) the right to proceedings free from unwarranted delays;
- 8) the right to be treated fairly and with respect to one's dignity and privacy;**
- 9) the right to be informed in a timely manner of any plea bargain or deferred prosecution agreement;
- 10) and the right to be informed of the statutory rights and services to which one is entitled.



“UNDERWAY” IN THE CRIME VICTIMS’ RIGHTS ACT

18 U.S.C § 3771(d): CVRA rights shall be asserted by the victim “in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred.”

In Re Courtney Wild

- June 2008: NPA in the Southern District of Florida for Jeffery Epstein
- July 2008: Ms. Courtney Wild discovered NPA and brought suit
- July 2008-present: battle through the courts



In Re Courtney Wild

DISTRICT COURT (SDFL)

- > 2011: CVRA rights attach prior to formal filing of charges

- > 2019: Dismissed as moot

11TH CIRCUIT PANEL

- > text of CVRA ambiguous

11TH CIRCUIT EN BANC

- > granted rehearing

In Re Courtney Wild:

11th Circuit en banc


MAJORITY: [NEWSOM, J.]

Provision could be read two different ways:

- (1) "if no prosecution is [yet] underway"; or
- (2) "if no prosecution is [still] underway."

DISSENT: [BRANCH, J.]

Found the majority's reading of the venue provision to be strained and did not comport with how the word "underway" is ordinarily or commonly understood.



Circuit Split

- **In re Dean, 527 F.3d 391 (5th Cir. 2008):**
 - Crime victims have a CVRA right to confer with the government attorney, even if a plea deal is struck before any formal indictment is filed.
- **In re Acker, 596 F.3d 370 (6th Cir. 2010):**
 - It is "uncertain" whether CVRA protections apply "prior to [the] filing of . . . charges."


Corpus Linguistics Findings:

- Reading “if no prosecution is underway” to include prosecutions that are already completed is an unnatural reading of the text.
- The common meaning of “if no prosecution is underway” is a prosecution that is not currently proceeding or in progress because it has not started.

Research Question

What is the ordinary public meaning of “if no prosecution is underway”?

>18 U.S.C § 3771(d): CVRA rights shall be asserted by the victim “in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred.”



Proceeding in Three Parts

- Negation
- "To Be" Verbs
- Adverbs of Time

Initial Search: COCA

"Underway" between 1995 to 2005

>>1,538 results

 Corpus of Contemporary American English

SEARCHFREQUENCY

List Chart Word Browse Collocates Compare KWIC -

underway

[POS] ?

Find matching stringsReset

☒ Sections Texts/Virtual Sort/Limit Options

1

1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004

2

IGNORE

TV/MOVIES
BLOG
WEB-GENL
SPOKEN
FICTION
MAGAZINE
NEWSPAPER
ACADEMIC

Patterns of Usage: Adverbs

- Premodified/ postmodified
by adverbs of time
 - Ex: now, already, well,
currently

Collocate	Frequency (of 200)
“to be” underway (is, was, were, will be, had been)	73
Get/ gets/ got/ getting underway	30
Now underway	15
Already underway	9
Well underway	7
Currently underway	6
Clearly underway	1
Still underway	1
Also underway	1
Once again underway	1
At last underway	1
Other	55

Patterns of Usage: Adverbs

“The discussion of Stalin’s role in bringing on the war is now underway west and east, though some historians seem determined to cut off that discussion by denouncing challenges to the traditional view of Stalin’s benign purposes as ‘absurd.’”

--The Journal of World Affairs

Patterns of Usage: "to be" verbs

- Commonly collocates with "to be" verbs

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Patterns of Usage: "to be" verbs

"She said that training is underway in cardiopulmonary resuscitation and basic first aid for officers in the mental health units and that they've been instructed to check on inmates every 15 minutes instead of every 30."

--The Washington Post

Patterns of Usage: "to be" verbs

"But a coffee crop takes three years to become profitable, and by 1998, organic coffee programs had been underway for only two years in the Sierra."

--The Environmental Magazine

"To-be" Verbs

Subject (sg.) + BE + UNDERWAY	Present	Past	Future
Simple	if no prosecution is underway	if no prosecution was underway	if no prosecution will be underway
Progressive	if no prosecution is being underway	if no prosecution was being underway	if no prosecution will be being underway
Perfect	if no prosecution has been underway	if no prosecution had been underway	if no prosecution will have been underway

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Phrase as a Whole

CVRA rights shall be asserted by the victim “in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred.”

18 U.S.C § 3771(d)

Negation

- Keyword: underway
- Collocate: negation
 - Ex: No... underway; not... underway
- Results: 51 relevant negation results
 - **zero** instances in the corpus where referring to an event that was completed

Negation: Concordance Lines

Source information:

Source	SPOK: ABC_Nightline
Date	1991 (19910117)
Title	U.S. Air Attacks Continue; Iraqi Missiles Hit Israel

Expanded context:

much for joining us. ABC's Bob Zelnick, our Pentagon correspondent, is standing by now at the Pentagon. Bob, has there been another backgrounder, briefing? What do you have? ZELNICK: We have some diplomatic and military source information, Ted. First of all, let me go to how you opened the program by saying there was no knowledge as to whether the Israelis had in fact or were in fact in the process of responding to tonight's events. My information is that at the current time, there is no Israeli action underway nor has there been one up until now. Number two, it was a night of great confusion. I had confirmed at one point a report did reach the Israeli embassy in Washington that one of the missiles had been, in fact, chemical or nerve gas and Americans were informed about that. Everyone was relieved later to find out that that was not the case. Then the U.S., when the full situation was known, in many conversations with the Israelis, actually continuing conversations this evening,

Negation: Concordance Lines

Source information:

Source	NEWS: ORegister
Date	2019 (19-02-23)
Title	The selective court of mob justice


Expanded context:

charges, but a Los Angeles Superior Court judge ruled last fall that the lawsuit has enough merit to go forward. The trial is scheduled to begin in August. # Last May, House Democratic Leader Nancy Pelosi promised an investigation. " As Members of Congress, we each have a responsibility to uphold the integrity of the House of Representatives, and any type of alleged misconduct must be investigated by the Ethics Committee, " she said. # But on Feb. 12, Washington, D.C., journalist Susan Crabtree reported on RealClearPolitics.com that there still is no investigation underway. # These are allegations of child sex abuse against a sitting congressman. Where's the tweeting and shouting? # The uneven level of outrage seems driven by a vision of a Greater Truth, seen through the lens of identity politics, which is disinterested in knowing what really happened. Instead, the sentence is determined with a rock-paper-scissors of victimhood. Estrogen defeats patriarchy but loses to pigment. Two of the same has no winner, so it's a do-over. # On Thursday, Chicago Police Department

Additional Search: COCUSC

"Underway" in Current U.S. Code

- 89 results
 - Commonly modified with adverbs of time
 - Commonly collocates with to be verbs

 Corpus of the Current US Code (COCUSC)

⚡ ✕

▶ Corpus Filters

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▶ Columns

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COCUSC: Concordance Lines

10 U.S.C. § 2884

(14) With regard to issues of lead-based paint in housing units, a summary of data relating to the presence of lead-based paint in such housing units, including the following by military department:

(A) The total number of housing units containing lead-based paint.

(B) A description of the reasons for the failure to inspect any housing unit that contains lead-based paint.

(C) A description of all abatement or mitigation efforts completed or underway in housing units containing lead-based paint.

(D) A certification as to whether military housing under the jurisdiction of the Secretary concerned complies with requirements relating to lead-based paint, lead-based paint activities, and lead-based paint hazards, as described in section 408 of the Toxic Substances Control Act ([15 U.S.C. 2688](#)).

COCUSC: Concordance Lines

16 U.S.C. § 410

(2) Duties of Secretary. In carrying out the Network, the Secretary shall—

(A) review studies and reports to complement and not duplicate studies of the historical importance of Reconstruction Era that may be underway or completed, such as the National Park Service Reconstruction Handbook and the National Park Service Theme Study on Reconstruction;

COCUSC: Concordance Lines

42 U.S.C. § 6601

“4. Annual Public Disclosure of the Number of Classified Research Projects. Each agency head shall inform the Director of OSTP by September 30 of each year of the number of classified research projects involving human subjects underway on that date, the number completed in the previous 12-month period, and the number of human subjects in each project. The Director of OSTP shall report the total number of classified research projects and participating subjects to the President and shall then report to the congressional armed services and intelligence committees and further shall publish the numbers in the Federal Register.

CONCLUSION

1. The use of the present, simple tense “no prosecution is underway” has significance to the phrase’s meaning.
2. “Underway” is commonly modified by adverbs of time when intended to be understood narrowly.
3. There is no available corpus data to support the interpretation of “no prosecution is underway” to mean the prosecution is complete.