

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION

ORIGINAL

PROCEEDINGS BEFORE THE COURT

PRESIDING: HONORABLE JEFFREY COLBATH

APPEARANCES:

ON BEHALF OF THE STATE:

BARRY E. KRISCHER, ESQUIRE
State Attorney
401 North Dixie Highway
West Palm Beach, Florida 33401
By: BARBARA BURNS, ESQUIRE
Assistant State Attorney

ON BEHALF OF THE DEFENDANT:

JACK GOLDBERGER, ESQUIRE
250 S Australian Ave Ste 1400
West Palm Beach, Florida 33401

And

ROBERT CRITTON, ESQUIRE
515 N Flagler Dr Ste 400
West Palm Beach, Florida 33401

ON BEHALF OF THE PALM BEACH POST:

DEANNA SHULLMAN, ESQUIRE
Thomas, LoCicero & Bralow
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ON BEHALF OF THE INTERVENER:

WILLIAM J. BERGER, ESQUIRE
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2009 JUL - 1 PM 3:30

SUSAN S. WIGGINS, R.P.R. and OFFICIAL COURT REPORTER

SCANNED JUL - 6 2009

1 ON BEHALF OF █
2 MOTION INTERVENER'S PLEADING:
3 SPENCER KUVIN, ESQUIRE
4 2925 PGA Blvd Ste 200
5 Palm Beach Gardens, Florida 33410
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June 26, 2009
Palm Beach County Courthouse
West Palm Beach, Florida 33401
Beginning at 9:59 o'clock, a.m.

1 BE IT REMEMBERED that the following
2 proceedings were had in the above-entitled cause
3 before the HONORABLE JEFFREY COLBATH, one of the
4 judges of the aforesaid court, at the Palm Beach
5 County Courthouse, located in the City of West
6 Palm Beach, State of Florida, on June 26, 2009,
7 beginning at 9:59 o'clock, a.m., with appearances
8 as hereinbefore noted, to wit:

9 THEREUPON:

10 THE COURT: Epstein.

11 MR. GOLDBERGER: Yes, your Honor.

12 THE COURT: Let me call up the State
13 of Florida versus Epstein. Let's have
14 everyone announce their appearance, please,
15 name on the record.

16 MR. CRITTON: Robert Critton and Jack
17 Goldberger on behalf of Mr. Epstein as well
18 as Barbara Compiani from the office of Jane
19 Walsh.

20 MS. SHULLMAN: Deanna Shullman of
21 Thomas, LoCicero and Bralow on behalf of
22 the Palm Beach Post.

23 MR. KUVIN: Spencer Kuvin on behalf
24 of the intervenor █

25 MS. BURNS: Barbara Burns on behalf

1 of the State of Florida.

2 THE COURT: That's it.

3 MR. CRITTON: That's it, it's a wrap.

4 THE COURT: Okay. Orders. Who's not
5 here that I have to mail it to?

6 MR. GOLDBERGER: Mr. Edwards is not
7 here, your Honor.

8 THE COURT: Okay. Mr. Berger,
9 Mr. Edwards. Did I give you enough copies
10 of the order?

11 MR. GOLDBERGER: I ran out. I have
12 just enough. Do you want me to get a copy
13 to Mr. Edwards?

14 THE COURT: Yes, if you'd mail a copy
15 to Mr. Edwards. I got spares if anybody's
16 interested. Anybody need a spare?

17 MR. GOLDBERGER: We're good, your
18 Honor.

19 THE COURT: All right. Motion to
20 Stay, Mr. Goldberger.

21 MR. GOLDBERGER: Thank you, your
22 Honor.

23 THE COURT: Mr. Critton.

24 MR. CRITTON: Good morning, Judge
25 Colbath, do you have a copy of our Motion

1 to Stay?

2 THE COURT: I do, the one that was
3 handed up to me yesterday?

4 MR. CRITTON: Yes, sir, and I have a
5 proposed order in the event the Court
6 chooses to grant; may I provide that to the
7 Court as well?

8 Your Honor, as you know,
9 Mr. Goldberger and I represent Mr. Epstein.
10 We have hired Ms. Walsh and Ms. Compiani as
11 appellate counsel to assist in the filing
12 of a writ of certiorari. I know that comes
13 as no surprise to the Court in that whoever
14 prevailed and lost yesterday, I think the
15 Court recognized we probably filed a writ
16 of certiorari.

17 THE COURT: Let me ask real quick.
18 Anybody objecting to the defendant having
19 the ability to have my decision reviewed by
20 the appellate court before I release these
21 things? I mean, it seems pretty straight
22 forward.

23 MS. SHULLMAN: We have an objection,
24 your Honor, to some extent. The -- you
25 know, the procedure in place here is very

1 similar to that for which they would have
2 to obtain a preliminary injunction.

3 THE COURT: Right.

4 MS. SHULLMAN: So to demonstrate
5 likelihood of success and irreparable harm,
6 I don't think they can do that. I think
7 the plan that you put in -- proposed
8 yesterday is a good one, that is you redact
9 and you release on Monday and that gives
10 them today and Monday to get to the Fourth,
11 otherwise, we're stuck in a position where
12 we have a 30-day window to appeal, and we
13 are all delay, delay, delay.

14 THE COURT: What if I do that? I
15 don't know if it's a difference with that
16 or distinction, but, procedurally, I was
17 thinking I was leaning yesterday towards
18 issuing the order that I just issued. I
19 think that that's a fairly accurate
20 rendition of the written version of my oral
21 pronouncement yesterday, but I order that
22 nothing -- that the redacted orders not be
23 released until -- I'll make it, you know,
24 five of five Monday. That will give you
25 Monday to get down to the Fourth to get

3 MR. CRITTON: Here's what the problem
4 is, Judge, is Ms. Compiani and Ms. Walsh
5 spoke to them yesterday and today, we need
6 a transcript from the hearing yesterday
7 which has not yet been obtained. They need
8 the underlying motions, they need some time
9 to research. It's not a matter of simply
10 filing a writ of petition and that stays
11 the release of the order. There would have
12 to be a separate motion that would be filed
13 with the Appellate Court. The Motion to
14 Stay that we file under Appellate Rule
15 9.310, subsection A, it provides that the
16 party that seeks review shall come to the
17 lower tribal, which is the trial court,
18 which is you, in this instance, and then
19 it's within your discretion either to stay
20 or not to stay under the circumstances, and
21 we simply don't have the time within which
22 to file the appeal under those
23 circumstances.

24 There are two criteria that have
25 to be met here, one is the likelihood of

1 harm where no stay is granted, and the
2 second criteria, not necessary mutually
3 exclusive; that is, you don't have to have
4 both of them, but you certainly have to
5 give an indicia of both of them. The
6 second one is the likelihood of success on
7 the merits.

1 that would be a violation of Federal Rule
2 Six. I note you just handed us your order
3 about two minutes ago, Judge, so no one's
4 had an opportunity to review it, certainly
5 appellate counsel has not had an
6 opportunity to review it. I don't know if
7 you dealt with the appellate rule, but I do
8 note that within your written order, that
9 you, basically, said that in the second to
10 last page, you said this order is no way to
11 be interpreted as permission not to comply
12 with U.S. District Court Judge Marra's
13 previous orders.

14 We respectfully submit that it would
15 not comply with Judge Marra's previously
16 issued orders. We also believe that the
17 supremacy clause, as Mr. Goldberger argued
18 yesterday in conjunction with comity
19 principle, that we think that there's a
20 substantial likelihood on success of the
21 merits on this.

22 With regard to the likelihood of
23 harm, this is a paramount issue here. It's
24 undisputed that this was a confidential
25 agreement. It's a confidential contract

1 between Mr. Epstein and the United States.

2 United States vigorously defended

3 Mr. Edwards when he came into federal court
4 and filed an action to have the MPA
5 released, Judge Marra subsequently entered
6 an order. Another attempt that was made to
7 make the MPA public again.

8 All plaintiffs' counsel has it.

9 The only ones that don't have it is the
10 Post, under the circumstances, and public
11 under the circumstances, but all the
12 plaintiffs' lawyers of the alleged victims,
13 they either have the MPA and the addendum,
14 which I will refer to as the MPA, or they
15 have the ability to get that. That is very
16 clear from Judge Marra's order.

17 So there's certainly no harm to
18 the plaintiffs from under these
19 circumstances. And the harm in this
20 instance is only to Mr. Epstein under the
21 circumstances because as Judge Letz
22 (phonetic) once said, it's very much like
23 an attorney/client privilege or a privilege
24 document where once the proverbial horse is
25 out of the barn, you can't get him back in.

1 We cited a case called Mariner versus
2 Baker 3 -- So. 39, So.2d 608 First District
3 1989. In the Mariner case, this was not a
4 usual incident report and the Court, I know
5 your Honor previously did a great deal of
6 personal injury work and related work,
7 you're very familiar. In fact, you
8 commented yesterday and said, I don't see
9 how the MPA is going to be admissible in a
10 civil proceeding anyway. Again, you're not
11 ruling on that ultimately, the judges in
12 both the State and federal court cases will
13 do that.

14 In the Mariner case, the judge
15 ordered that the defendants object at the
16 direction of incident reports. The judge
17 said, sorry, you've got to produce those
18 incident reports. And the Court said, give
19 them to me under seal because, again, we
20 are talking about incident reports as
21 distinct from an agreement between two
22 parties which was deemed to be confidential
23 between the United States government and
24 Mr. Epstein. Only irreparable harm here as
25 to Mr. Epstein because if it's released,

1 you cannot remedy that harm on appeal.

2 And in the Mariner case, if the judge
3 said, if you put the documents under seal,
4 which is exactly the situation we have now
5 is, I will grant the stay and let the
6 appellate court determine whether or not
7 incident reports, which have a much lower
8 threshold for production or for discovery
9 reasons, and, again, there's no harm in an
10 instance like that, even in an incident
11 report came out in the Mariner cases, so
12 what. It won't be used, you can't use any
13 of the information you obtained. In this
14 particular instance, because it is
15 confidential, there is no way the Court can
16 remedy the harm.

17 With regard to the defendants in this
18 case, again, I think we've demonstrated
19 both irreparable harm, and we believe a
20 substantial likelihood on the success.

21 Again, how do you demonstrate a substantial
22 likelihood on the success? The fact that
23 we would -- if this Court thought that we
24 should prevail, my guess, you would not
25 have ruled as you did, but as the Court is

1 aware, oh, surprise to all of the lawyers
2 here. Sometimes judges get reversed. I
3 know that's a shock to most of the lawyers
4 in this room and most of the courts, but
5 that happens on occasion, and, therefore,
6 we believe we can show through the
7 supremacy clause, the grand jury reference
8 that we will prevail and that your order
9 will be quashed.

With regard to alleged harm by any other party, the Post in this instance reported at the sentencing of Mr. Epstein on or about June 30th of 2008. They waited until June 1st of '09. This was such a pressing issue, the Post wanted to get this desperately out to the public, they were so anxious to do it, that they waited 11 months before they did anything.

1 case, that would be Judge Hafele or two of
2 Mr. Edwards' cases are where is Mr. Kuvin's
3 case is or Judge Marra, where Mr. Edwards'
4 case is. Judge Marra can certainly control
5 whether or not they should be released, and
6 I've covered Mr. -- oh, and Mr. Edwards
7 because he could have gone back to Judge
8 Marra because he's got one federal court
9 case -- did he try for that form and get
10 it -- no, they came in here. He tried to
11 do it in a run around Judge Marra.

12 He didn't file his motion until
13 late May of '09. My guess is it was
14 Mr. Edwards who probably said to the Post,
15 gee, why don't you join in this, you
16 haven't been here for 11 months, why don't
17 you come in now, maybe intervene. And then
18 Mr. Kuvin, on behalf of his client, █
19 estate court case, came in on June 11th,
20 again, almost a year to the date after
21 Mr. Epstein's sentence.

22 It's no burning issue, there's no
23 fire here to put out, giving us 30 days, or
24 at least a reasonable period of time to
25 file petition for writ, and then if the

1 Court denies our stay at least asking the
2 appellate court for stay under the
3 circumstances. There's no harm to them.
4 The harm is only to Mr. Epstein, and we
5 think as a substantial likelihood, that we
6 would succeed.

18 THE COURT: Thank you much.

19 Ms. Shullman, don't worry about
20 responding to the issue of motive or
21 seeking this relief or the timing of your
22 request or party's request. I don't think
23 that bears upon the merits of either
24 parties.

25 MS. SHULLMAN: The constitutional

1 right of access doesn't have a waiver
2 provision, your Honor.

3 THE COURT: Well, go ahead. Let me
4 hear -- I'm on board so far with
5 Mr. Critton's version of, Judge, if you let
6 it out, you let it out, so irreparable harm
7 is kind of easy. I think that it is a
8 two-prong test. I think he's got to jump
9 over both hurdles. I think he's got to
10 show some likelihood of success. If you
11 want to spend some energy arguing that
12 there's no irreparable harm, you may do so,
13 but if I hand it out today and everybody
14 gets to see it, you can't fix that
15 tomorrow.

16 MS. SHULLMAN: Sure.

17 THE COURT: So I think they've
18 established that.

19 MS. SHULLMAN: Let me address that
20 very briefly first, your Honor, to remind
21 you in meeting this burden that they failed
22 to meet yesterday, they identified four
23 interests which they liken now to the
24 motion to stay to the four harms.

25 One, of -- for the first three of

1 them, they mentioned they have no standing
2 to assert the compelling government
3 interest, the government didn't show up,
4 the imminent threat to the administration
5 of justice, again, that's the government's
6 issue. The innocent third party privacy
7 rights, they have no standing. The only
8 one is, he's not really articulated today
9 it's some sort of invasion of Mr. Epstein's
10 privacy rights.

11 Florida law is clear that those
12 who are participants in crimes do not have
13 privacy rights with respect to the facts
14 and circumstances surrounding those crimes.
15 So unless I'm going hear something outside
16 of the context of Mr. Epstein's criminal
17 prosecution, he has no privacy right in
18 this agreement.

19 THE COURT: Let me share with you
20 what I'm thinking about doing, even at the
21 conclusion of Mr. Critton's presentation,
22 and that is deny the motion to stay, but
23 delay the release of the records in
24 question until noon Friday. That will give
25 them a little bit of time to see if the

1 Fourth sees this case from a different
2 vantage point, a different light, and maybe
3 they'll look down and say, oh, Judge
4 Colbath, you missed it and, you know, stay
5 the matter. That will give them a
6 reasonable amount of time to get the
7 transcripts to go to the Fourth because I'm
8 a big fan of appellate review and making
9 case law.

10 MS. SHULLMAN: And I understand, your
11 Honor, if you are suggesting a week from
12 today, that's a little bit long. Remember
13 the status quo here, we are in sort of a
14 strange procedural posture because your
15 Honor decided that the initial closure was
16 improper, but the recent request for
17 closure was denied, so instead of a status
18 quo where we have a document that should be
19 released, it's under seal where it
20 shouldn't be, so any moment that it is kept
21 under seal is a serious deprivation of the
22 public and the press's right to access,
23 which you have already determined they
24 have, we think you are correct, of course,
25 so I would ask that any stay --

1 MR. CRITTON: She's pandering, your
2 Honor.

3 MS. SHULLMAN: I will say he
4 respectfully disagreed with you, so I think
5 a week is too long. I do this day in and
6 day out, I have spent many a weekend on
7 these matters in my career. If you want to
8 give them till Tuesday, I'll be kind, but
9 the Fourth will act quickly on this. I
10 don't think that a week's delay is
11 necessary. I think, in fact, it under-
12 minds the public purpose here.

13 THE COURT: All right. Any other
14 respondents want to go anything further?

15 MS. SHULLMAN: The State Attorney's
16 office also advises me that Friday is a
17 holiday and the courts are closed.

18 THE COURT: Thank you for telling me
19 that. Friday is a holiday.

20 MR. KUVIN: July 4th.

21 THE COURT: The day of the birth of
22 our constitution.

23 MR. KUVIN: Good morning, your Honor.
24 On behalf of intervenor █ obviously, the
25 Court is inclined to delay the disclosure

1 of this, but under Rule 9.310, if your
2 Honor were to issue such a stay, we would
3 point out the provision C of the rule,
4 which requires a posting of the bond.

5 We not only agree with your Honor's
6 ruling, but we believe such appeal they are
7 filing is absolutely frivolous and we are
8 going to be requesting fees and cost for
9 the filing of that appeal, so as a result,
10 we are requesting a bond be posted if a
11 stay of any type is issued in this case
12 because of the fact that we want to make
13 sure that our attorneys' fee and costs are
14 covered for the frivolous nature of the
15 appeal. And it's dictated strictly in
16 subsection A. It gives the Court the
17 authority. It says:

18 A stay pending review may be
19 conditioned upon a good and sufficient
20 bond, other conditions or both. Therefore,
21 we believe your Honor does have the
22 authority to issue such a requirement that
23 the posting of a bond be issued.

24 THE COURT: All right. Thank you
25 very much. I will deny the motion to stay.

1 I will delay the release of the documents
2 until noon Thursday. I will deny the
3 request to compel the movant, the
4 defendant, Mr. Epstein, to post a bond, and
5 I'll let the appellate court tell us and
6 teach us what the law on this case will be.

7 It's always interesting how these
8 cases unfold and come to us a little
9 different than everyone else. Now, let me
10 have the attorneys come up here and
11 approach.

12 (The following proceedings were held
13 sidebar, out of the hearing of the jury.)

14 THE COURT: I reviewed the two
15 documents, I didn't see any kids' names in
16 there. Everybody was hinting the
17 children's names or the initials' names. I
18 had my big black highlighter out, I don't
19 see anything worth redacting, so.

20 MR. GOLDBERGER: It's the plaintiff's
21 document that identifies the children's
22 names. It's a letter to me actually.

23 THE COURT: I was wondering if
24 everybody thought there was something in
25 there that wasn't in there.

1 MR. CRITTON: It's a test of your
2 skills, your Honor.

7 MR. GOLDBERGER: While we're all up
8 here chatting, there are references to
9 other names up here.

10 THE COURT: Yes, Mr. Goldberger, and
11 no one has identified in the document says
12 these are people that are not going to be
13 prosecuted. Mr. Kuvin made the argument
14 that these are co-conspirators. These are
15 innocent people that have nothing to do
16 with these proceedings. They have nothing
17 to do with --

MS. SHULLMAN: They have a standing.

19 THE COURT: I will renew my ruling
20 that I gave you yesterday, and deny your
21 request to redact those names out of there.
22 All right, so I'll hang on to these till
23 Thursday at noon, and anybody that comes --
24 wants to come and get them, I don't know if
25 there's a mechanism for -- I stand on the

1 courthouse steps and pass them out.

2 MS. SHULLMAN: If there are no
3 redactions to be made.

4 THE COURT: No redaction.

5 MS. SHULLMAN: I would do an order
6 directing the Court to release them and
7 they may become unsealed. You don't
8 need --

9 MS. COMPIANI: Your Honor, are you
10 going to write up a written order
11 denying --

12 MR. GOLDBERGER: Are you going to do
13 that?

14 THE COURT: Put together a written
15 order?

16 MS. SHULLMAN: Denying the stay?

17 THE COURT: Yes, A, denying the stay;
18 B, delaying the disclosure or unsealing of
19 these documents until noon Thursday; C,
20 denying the motion for bond.

21 MR. GOLDBERGER: And you'll need that
22 order quickly.

23 THE COURT: Yeah, fax that and we'll
24 get it signed quick today.

25 MR. GOLDBERGER: Are you forcing the

3 MR. CRITTON: Thank you, your Honor,
4 for moving us this morning.

5 (Side bar conference held outside the
6 hearing of the jury concluded.)

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2 C E R T I F I C A T E

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4 THE STATE OF FLORIDA,
5 COUNTY OF PALM BEACH.

6 I, SUSAN S. WIGGINS, R.P.R., Official
7 Court Reporter for the Fifteenth Judicial Circuit,
8 Criminal Division, in and for Palm Beach County,
9 Florida; do hereby certify that I was authorized
10 to and did report the foregoing proceedings before
11 the Court at the time and place aforesaid; and
12 that the preceding pages numbered from 1 to 24,
13 inclusive, represent a true and accurate
14 transcription of my stenonotes taken at said
15 proceedings.

16 IN WITNESS WHEREOF, I have hereunto
17 affixed my official signature this 29th day of
18 June 2009.

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SUSAN S. WIGGINS, R.P.R.