

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

STATE OF FLORIDA )  
 )  
vs. ) CASE No. 2008CF009381AXX  
 )  
JEFFREY EPSTEIN, )  
 )  
Defendant. )  
\_\_\_\_\_ )

**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  
101 N.E. 3rd Avenue - Ste 1500  
Fort Lauderdale, Florida 33301

ON BEHALF OF [REDACTED] THE INTERVENER:

WILLIAM J. BERGER, ESQUIRE  
BRAD EDWARDS, ESQUIRE  
225 NE Mizner Blvd Ste 675  
Boca Raton, Florida 33432

SCANNED JUL - 6 2009

1 ON BEHALF OF [REDACTED]  
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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24 June 26, 2009  
25 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 intervener [REDACTED]

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

1           them to stop this from being released; what  
2           do you think?

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 tribunal, 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.

8 We believe that based upon the  
9 Court decision, respectfully, that the  
10 Court, that the Appellate Court, will quash  
11 your order, for the reasons Judge Puccillo  
12 was the one who requested that the document  
13 in this -- this was argued yesterday, so  
14 I'm going to be very brief. She is the one  
15 who requested post sentencing, that the  
16 document be filed under seal. It was her  
17 request that the defense seceded to that  
18 under the circumstances. That certainly  
19 was inadvertent, could have just as easily  
20 remained under seal with Mr. Goldberger or  
21 with the State Attorney under those  
22 circumstances.

23 Secondly, that it relates to the  
24 portions of it, specifically, within the  
25 MPA to deal with the grand jury proceeding,



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.

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

19 Mr. Edwards, who is not here  
20 today, filed a federal court action and  
21 those issues were talked about and  
22 discussed at some length with regard to  
23 Judge Marra's two orders.

24 Judge Marra's rule, you can't get  
25 them, if you want to get them, go to that

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, [REDACTED]  
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.

7 Therefore, we would request the  
8 Court grant a stay as I've suggested in my  
9 proposed order for 30 days of giving  
10 Ms. Walsh and Ms. Compiani an opportunity  
11 to actually do their job under the  
12 circumstances, so the court reporter  
13 doesn't have to work over the weekend to  
14 expedite transcripts for us, and secondly,  
15 if we file within the 30 days, then let the  
16 appellate court determine whether or not  
17 the stay remains or not.

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 [REDACTED] 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.

3 THE COURT: You're right, exactly.  
4 One is page one through seven, and the  
5 second one is just two pages that's not  
6 even signed by everybody.

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. Kuvlin 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 --

18 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

1 court reporter to work over the weekend so  
2 we can get a transcript?

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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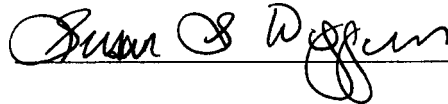


## C E R T I F I C A T E

THE STATE OF FLORIDA,  
COUNTY OF PALM BEACH.

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

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



SUSAN S. WIGGINS, R.P.R.