

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NOS.: 2006-CF9454 AXX and 2008-CF9381 AXX

STATE OF FLORIDA,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

PROCEEDINGS HELD BEFORE

THE HONORABLE JEFFREY J. COLBATH

JUNE 10, 2009

11:08 A.M. - 11:25 A.M.

PALM BEACH COUNTY COURTHOUSE

WEST PALM BEACH, FLORIDA

Reported by Louanne Rawls

Notary Public, State of Florida

West Palm Beach Office #100578

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1 APPEARANCES: 2 On behalf of the Defendant 3 JACK ALAN GOLDBERGER, ESQUIRE 4 Atterbury, Goldberger, et al. 5 250 Australian Ave. South, Suite 1400 6 West Palm Beach, FL 33401 7 On behalf of the Defendant 8 ROBERT CRITTON, JR., ESQUIRE 9 Burman, Critton, et al. 10 515 N. Flagler Drive, Ste. 400 11 West Palm Beach, FL 33401-4349 12 On behalf of Third Party E.W. 13 WILLIAM J. BERGER, ESQUIRE 14 BRADLEY J. EDWARDS, ESQUIRE 15 Rothstein Rosenfeldt Adler 16 401 E. Las Olas Blvd., Suite 1650 17 Fort Lauderdale, FL 33394 18 On behalf of Third Party, The Post 19 DEANNA SHULLMAN, ESQUIRE 20 Thomas, LoCiero & Bralow, PL 21 101 N.E. 3rd Avenue 22 Suite 1500 23 Fort Lauderdale, FL 33301-1181 24 25	1 THE COURT: Last name is spelled? 2 MR. EDWARDS: Edwards. E-D-W-A-R-D-S. 3 THE COURT: Okay. 4 MR. GOLDBERGER: For the other side, Your Honor, 5 Jack Goldberger along with Robert Critton on behalf of 6 Jeffrey Epstein. 7 THE COURT: It is the Post's and E.W.'s Motion to 8 Intervene for the purpose of unsealing records? 9 MR. BERGER: Yes, sir. 10 THE COURT: Here's what I think I know, and I tell 11 you this so that you can fill in the gaps of what you know 12 that I don't know and suggest what you think I ought to 13 do. It appears to me that there was some agreement -- an 14 agreement that was sealed and then an addendum or 15 amendment to the agreement that was sealed as to documents 16 in the Court's files under seal and it appears as though 17 the punitive interveners want to unseal those and take a 18 peak at them. I don't see where any of the proper 19 procedures to seal the documents was ever followed to 20 begin with. I don't know but it's not jumping out at me 21 when I reviewed the file. So, I'm thinking that it might 22 be appropriate and the burden might be on the moving 23 party, being the State and Mr. Epstein, to give them the 24 opportunity to jump through the hur -- hoops to seal the 25 documents if they are entitled to have them sealed, then
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1 PROCEEDINGS 2 --- 3 BE IT REMEMBERED that the following proceedings were had 4 and testimony adduced before the Honorable Jeffrey Colbath, at 5 the Palm Beach County Courthouse, West Palm Beach, Florida 6 beginning at the hour of 11:08 a.m. on June 10, 2009, with 7 appearances as herein noted to-wit: 8 THE COURT: State vs. Epstein. Let me have for the 9 record, announce everybody's appearance. 10 MR. BERGER: Your Honor, William J. Berger and 11 Bradley Edwards for non-party E.W. 12 MS. SHULLMAN: Your Honor, Deanna Shullman of 13 Thomas, LoCiero & Bralow for non-party The Palm Beach 14 Post. 15 THE COURT: Let me slow down a little bit. On behalf 16 of The Post is? 17 MS. SHULLMAN: Deanna Shullman. 18 THE COURT: S-H-U-L-L -- 19 MS. SHULLMAN: S-H-U-L-L-M-A-N. 20 THE COURT: Ms. Shullman, good morning. Mr. Berger, 21 good morning. And Mr. Berger, your client is E -- 22 MR. BERGER: E.W., yes. 23 THE COURT: Anybody else here? 24 MR. EDWARDS: Brad Edwards on behalf of E.W. as 25 well, Judge. Thanks.	1 I'll grant that request. If they're not entitled to seal 2 then I'll order it as documents unsealed. But that's kind 3 of procedurally where I think the case is. I will allow 4 Mr. Berger and Ms. Shullman to argue if they wish to, 5 otherwise I will go over to Mr. Goldberger and Mr. Critton 6 to perhaps talk about what they think about my suggestion. 7 Mr. Berger? 8 MR. BERGER: I -- I'd like to hear what they say. 9 THE COURT: Ms. Shullman? 10 MS. SHULLMAN: Agreed. 11 THE COURT: Mr. Goldberger? 12 MR. GOLDBERGER: Your Honor -- 13 THE COURT: I mean, it looks like they just handed 14 up an Agreed Order to sign. 15 MR. GOLDBERGER: Well, if the Court -- I know the 16 Court is trying to short circuit here and the idea in 17 theory is not horrible, it's not terrible, it's actually 18 not so bad. But let me alert the Court to a couple of 19 issues. First of all, this is not something that came up 20 ahead of time where we were moving to close a hearing or 21 file documents under seal and the Rules of Judicial 22 Administration makes an important distinction between 23 things that are done in advance and things that come up 24 during a hearing and the fact that maybe it goes to the 25 Rule -- talk about situations that arise during the course

Page 6 1 of a hearing, that the Rules would not apply to that. 2 Secondly, E.W.'s Motion to Intervene is brought under a 3 Rule that does not apply because she brought it under a 4 Rule that applies to non-criminal cases. Having said that 5 I know the Court's desire to get to the issues here and I 6 just need to alert the Court to one other matter because I 7 think it's really important. The Plaintiffs, E.W., has 8 this agreement already. They have this agreement. Counsel 9 will tell you they have this agreement. There have been 10 two hearings in front of Judge Marra who has the Federal 11 cases here. They moved to unseal the non-prosecution 12 agreement in front of Judge Marra. He entered an initial 13 Order, a very, very well reasoned Order which I have a 14 copy for the Court. 15 THE COURT: Oh, thanks. 16 MR. GOLDBERGER: He entered a very, very well 17 reasoned Order weighing the interest of the Plaintiffs to 18 have access to the non-prosecution agreement with the 19 confidentiality that the parties intended to be part of 20 this agreement. And what he did, he said they can have 21 this agreement. They can review it all they want. If they 22 want to review it with somebody else, they need to give 23 them a copy of this Order that it is not to be disclosed 24 to anyone else. Subsequent to that -- so that's the Rule 25 that's in place right now. Subsequent to that the	Page 8 1 a hearing and do the balancing test where you look at 2 whether there is some compelling government interest and 3 that's going to require an evidentiary hearing. So I have 4 no great objection to filing the Request for Closure and 5 then have a hearing in front of the Court. 6 THE COURT: Well, let's do -- I'm thinking out loud. 7 I'm not ruling. I will give you all a chance to argue 8 further, but this is what I'm thinking I will do, grant 9 the Motion to Intervene. It gives standing to E.W. It 10 gives standing to The Post to contest the fact that these 11 were sealed. And then I will shift the burden back on the 12 State and Defendant, Mr. Epstein, to petition the Court to 13 seal these documents. Until such time that I rule on that 14 I will leave them under seal because they might have been 15 correctly sealed but the procedure wasn't followed. 16 There's got to be notice. You've got to comply with the 17 Administrative Order 2.303. You've got to comply with the 18 Rule of Judicial Administration 2.420(d). I think even 19 though that's a civil -- it addresses a civil matter this 20 is, you know, in the nature of a civil procedure. So, I'll 21 do that. And thank you for these Orders. So, where do we 22 go from here? I'm thinking out loud, not ruling. Mr. 23 Berger? 24 MR. BERGER: Judge, with all due respect I 25 completely disagree with counsel's characterization of
Page 7 1 Plaintiffs went back and said we want to disseminate this 2 Order. We want to disseminate this agreement to other 3 parties and Judge Marra entered a second Order denying 4 that request and said, no. My Order is in place but if you 5 have some compelling reason why you want this agreement to 6 be disseminated to others, file a motion and come back to 7 me. 8 THE COURT: This is as a result of some civil 9 litigation pending in the Federal Courthouse? 10 MR. GOLDBERGER: Yes. 11 THE COURT: As opposed to any criminal prosecution 12 going on? 13 MR. GOLDBERGER: It is civil proceedings that are 14 going on in Federal Court. But in the interest of comedy, 15 Your Honor, the Court has ruled on the confidentiality 16 agreement and has put a well reasoned procedure into 17 place. If the parties want that agreement unsealed where 18 they need to go is go back to Federal Court and Judge 19 Marra invited them to do so. 20 THE COURT: That may be as it pertains to E.W., but 21 what about The Post? 22 MR. GOLDBERGER: I think -- and I think I know where 23 the Court is going on this. If The Post's position is the 24 public has right to acc -- access to this then there is a 25 procedure in place and ultimately the Court has to conduct	Page 9 1 those two Orders. I don't know if he handed up both to 2 you? 3 THE COURT: I do. 4 MR. BERGER: They simply do not say what he tells 5 you they say. 6 THE COURT: I'll read them -- 7 MR. BERGER: All right. 8 THE COURT: -- and I'll allow you to make that 9 argument -- 10 MR. BERGER: And -- and -- 11 THE COURT: -- at the time of the Renewed Motion to 12 Seal. 13 MR. BERGER: All right. And, also, I don't think the 14 Court -- I think the Court needs to deal with this 15 immediately, expeditiously. This is a matter that the 16 Supreme Court has placed incredible scrutiny over. And the 17 Rule that we are traveling under -- we're not only 18 traveling under a Rule of Judicial Administration that 19 applies to criminal and civil cases, we're applying to an 20 Administrative Order of this Court that was in place when 21 the sealing was done and that superseded the sealing. 22 THE COURT: I -- 23 MR. BERGER: I'm just saying, I respectfully request 24 that the Court not delay this one minute. 25 THE COURT: You've got the agreements.

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1 MR. BERGER: Pardon me? 2 THE COURT: You've got the agreements anyway. You've 3 got what's under seal. 4 MR. BERGER: Judge, we cannot do anything with them. 5 THE COURT: Take that up with Judge Marra. 6 MR. BERGER: No, sir. That is not what the Order 7 says. May I quote Judge Marra. "If a specific tangible 8 need arises in a civil case the relief should be sought in 9 that case." In other words, the civil cases which are in 10 front of Judge Hafele is one forum that Judge Marra said 11 go to it. Judge Marra did not say that this Court does not 12 have jurisdiction to unseal its own sealed records or to 13 vacate its own Order sealing. And any characterization is 14 -- is false. 15 THE COURT: I'll take a look at it and I'll draw 16 from it what it says -- what I think it says. I appreciate 17 your zealous representation of your client. Please, it 18 appears as though you're yelling at me. 19 MS. SHULLMAN: Your Honor? 20 THE COURT: Ms. Shullman? 21 MR. BERGER: Judge, this happens to be a very 22 serious matter and every day of delay delays our 23 discovery. 24 THE COURT: Ms. Shullman? 25 MS. SHULLMAN: Your Honor, if I may be heard on the	1 process and let's get this back on my docket as quickly as 2 possible and give them until Friday to file their notice 3 and ten days after that we have an evidentiary hearing. I 4 go through the process then. What bad thing is going to 5 happen by waiting these extra twelve to fifteen days? 6 MS. SHULLMAN: The bad thing that's going to happen, 7 Your Honor, is that the status quo in Florida is that the 8 constitutional right of access is openness. 9 THE COURT: Right. 10 MS. SHULLMAN: You know, certainly if Your Honor is 11 inclined to postpone this hearing I would ask that it be 12 done expeditiously as you suggest. 13 THE COURT: Yeah. 14 MS. SHULLMAN: You know, Friday and then ten days 15 thereafter, it just delays access for another two weeks 16 and it infringes on our rights. 17 THE COURT: I agree. Mr. Berger, I will let you 18 answer that same question. 19 MR. BERGER: I don't think -- 20 THE COURT: Anything specific rather than -- 21 MR. BERGER: Yes. 22 THE COURT: You know, anything closed that the 23 people are allowed to look at is a transgression and any 24 transgression is bad, but anything unique beyond that? 25 MR. BERGER: Your Honor -- Your Honor, I do not
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1 issue as well. As a representative of the public's right 2 of access -- 3 THE COURT: Right. 4 MS. SHULLMAN: -- here essentially, I would agree 5 with Mr. Berger that we need an immediate hearing on this 6 issue. That's what we're here to do today. I think I heard 7 Your Honor say that he's not clear that the procedures 8 were applied. My review of the record does not reveal that 9 the procedures were complied with. My review is similar to 10 Your Honor's. It looks like sort of everybody approached 11 the bench and Judge Pucillo said let's take it under seal. 12 If Mr. Epstein's counsel is not prepared to go forward 13 today and meet his burden, then I would ask that this 14 Court set a hearing as soon as practical because the right 15 solution here should be to unseal the records and then, 16 you know -- 17 THE COURT: I've gotcha. 18 MS. SHULLMAN: -- and they have to make a motion. 19 THE COURT: Well, what house is on fire? I mean, 20 what is the -- I think what they have to do is they've got 21 to give ten days notice pursuant to the Rule -- the 22 Administrative Order, Rules of Judicial Administration, to 23 go through that process. What -- what prejudice is there? 24 What house is burning down if I say okay. State and 25 defense, go ahead and expeditiously move through the	1 believe that this Court has the jurisdiction to revisit 2 the propriety of the sealing of these records and give the 3 Defendant or the State, for that matter, a second bite at 4 the apple. If the records are sealed improperly, which the 5 Court has said on its face that appears to have occurred, 6 I do not believe that this Court has jurisdiction to allow 7 them a second bite at the apple to go through with the 8 notice requirements. They should have done that in front 9 of Judge Pucillo a year ago and they did not do it. The 10 Rule of Judicial Administration 2.420 simply does not give 11 this Court the right to reactivate the procedure that you 12 outlined. 13 THE COURT: Okay. 14 MR. BERGER: Thank you. 15 THE COURT: Anything further, Mr. Goldberger or Mr. 16 Critton? 17 MR. GOLDBERGER: Just note, Your Honor, as far as 18 the timing of this and we want to do this expeditiously, 19 of course, this sealing occurred not last week, not two 20 weeks ago, not four months ago but eleven and one half 21 months ago. The Post reported this last July. So, I 22 understand the right for the public to have access and we 23 want to do this as quickly as possible but there is no 24 fire here. There is no house burning. 25 THE COURT: Then I'll go ahead and enter an Order as

Page 14 1 I've indicated, that is that I'll grant the Intervener's 2 Motion to Intervene. You have standing. I will order that 3 the State and/or the defense by noon Friday file a Notice 4 of -- comply with the Administrative Order 2.303 and the 5 Judicial Rule -- the Rule of Judicial Administration 6 2.420, paragraph d, that outlines the procedures to seal 7 files in these types of cases and then we'll get a hearing 8 scheduled for argument on whether or not they will be 9 sealed. Until that time they will remain sealed because 10 Judge Pucillo signed off on the Order and I'm not inclined 11 to disturb that until I find more about the merits of the 12 movant's position. 13 MR. GOLDBERGER: Thank you. 14 THE COURT: Anybody want to reduce any of that mess 15 to a written Order? 16 MR. EDWARDS: I'd like to Your Honor. I'd like to 17 know if you're going to give us a hearing date today. 18 THE COURT: I'll deal with that. Yeah. Let me give 19 you some time. How much time do you think it's going to 20 take? I don't think I'm going to have any surprises. How 21 much time do you think we need? A half hour? 22 MR. EDWARDS: Not more. I'd say an hour at the 23 longest. 24 THE COURT: I'm not taking evidence or anything like 25 that. In the meantime, do you agree it would be prudent	Page 16 CERTIFICATE 1 2 3 4 I LOUANNE RAWLS, certify that I was authorized to 5 and did digitally report the foregoing proceedings and that the 6 transcript is a true and complete record of my notes. 7 8 Dated this 10th day of June, 2009. 9 10 <i>Louanne Rawls</i> 11 LOUANNE RAWLS, #100578 12 13 14 15 16 17 18 19 20 21 22 23 24 25 AUTHENTICATED The original file was electronically signed using RealLegal technology.
Page 15 1 for me to take a look and see what the content of these 2 things are so I can be articulate on what -- their know 3 about? I didn't do that for today's hearing? 4 MR. GOLDBERGER: The defense -- 5 MR. EDWARDS: The non-prosecution agreement? 6 THE COURT: Right. Whatever is under seal. Whatever 7 it is that's under seal I'll take a look at it so that I 8 can at least have a feel for apparently what you all know 9 and I don't. 10 MR. GOLDBERGER: The defense has no objection. 11 THE COURT: Okay. I'll go ahead and read those two 12 sealed documents and I'll see you back here, assuming that 13 Mr. Goldberger and Mr. Critton get that done between now 14 and Friday. Ten days from this Friday is the 22nd. How 15 about we do this on the 25th at 1:30? 16 MR. GOLDBERGER: One moment, Your Honor. That's fine 17 with me. 18 MR. BERGER: Thank you. 19 THE COURT: All right. Great. Thank you so much. 20 MR. GOLDBERGER: Thank you, Judge. 21 (PROCEEDINGS CONCLUDED) 22 23 24 25	