

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
 JACK ALAN GOLDBERGER, ESQUIRE
 3 Atterbury, Goldberger, et al.
 250 Australian Ave. South, Suite 1400
 4 West Palm Beach, FL 33401
 5
 6 On behalf of the Defendant
 ROBERT CRITTON, JR., ESQUIRE
 Burman, Critton, et al.
 7 515 N. Flagler Drive, Ste. 400
 West Palm Beach, FL 33401-4349
 8
 9 On behalf of Third Party E.W.
 WILLIAM J. BERGER, ESQUIRE
 10 BRADLEY J. EDWARDS, ESQUIRE
 11 Rothstein Rosenfeldt Adler
 12 401 E. Las Olas Blvd., Suite 1650
 13 Fort Lauderdale, FL 33394
 14
 15 On behalf of Third Party, The Post
 DEANNA SHULLMAN, ESQUIRE
 16 Thomas, LoCiero & Bralow, PL
 17 101 N.E. 3rd Avenue
 18 Suite 1500
 19 Fort Lauderdale, FL 33301-1181
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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 --
 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.

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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 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

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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

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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

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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

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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

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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

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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 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

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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

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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)
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 23
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1 CERTIFICATE
 2
 3
 4 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 *Loianne Rawls*
 11 LOUANNE RAWLS, #100578
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