

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL  
CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE No.502008CA037319XXXXMB AB

B.B.

Plaintiff,

-vs-

JEFFREY EPSTEIN  
AND [REDACTED],

Defendants.

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DEFENDANTS' MOTION FOR SANCTIONS AGAINST SPENCER  
KUVIN, ESQUIRE, AND ALTERNATIVE MOTION TO IDENTIFY

HEARING BEFORE THE HONORABLE  
DONALD HAFELE

Tuesday, January 26, 2010  
Palm Beach County Courthouse  
West Palm Beach, Florida 33401  
8:12 - 8:35 a.m.

Reported By:  
Cynthia Hopkins, RPR, FPR  
Notary Public, State of Florida  
Prose Court Reporting  
Job No.: 1052

[REDACTED] PROSE COURT REPORTING AGENCY, INC. [REDACTED]

1 APPEARANCES:

2 On behalf of the Plaintiff, B.B.:  
3 SPENCER T. KUVIN, ESQUIRE  
4 LEOPOLD KUVIN

5 [REDACTED]  
6 Phone: [REDACTED]

7 On behalf of the Plaintiff, L.M., E.W.,  
8 Jane Doe No. 1:

9 BRADLEY J. EDWARDS, ESQUIRE  
10 FARMER, JAFFE, WEISSING, EDWARDS,  
11 FISTOS & LEHRMAN, P.L.

12 [REDACTED]  
13 Phone: [REDACTED]

14 and

15 G. MICHAEL KEENAN, ESQUIRE  
16 G. MICHAEL KEENAN, P.A.

17 [REDACTED]  
18 Phone: [REDACTED]

19 On behalf of the Defendants:

20 ROBERT D. CRITTON, JR., ESQUIRE  
21 MICHAEL J. PIKE, ESQUIRE  
22 BURMAN, CRITTON, LUTTIER & COLEMAN, LLP

23 [REDACTED]  
24 Phone: [REDACTED]  
25

1 But I will suggest a couple of things,  
2 number one, the press, both print and  
3 audio-visual have jobs to do. And I recognize  
4 that they have their respective positions as  
5 well. The more this case is tried or pre-tried  
6 before the press, the more likely it is that  
7 we're not going to be able to seat a fair and  
8 impartial jury in Palm Beach County.

9 The key word that I think needs to be  
10 addressed and to be emphasized is one of  
11 respect. First and foremost respect for the  
12 entity of our judicial system; respect for each  
13 individual and their right to a fair trial;  
14 respect for each other as members privileged to  
15 practice law in the State of Florida, and  
16 understanding that both sides and all sides are  
17 involved in sensitive, embarrassing, difficult  
18 situations.

19 And when we lose the respect for the  
20 system, that being the judicial system, when we  
21 lose our respect for each other as practicing  
22 lawyers and members in good standing of the  
23 Florida Bar and leaders here in Palm Beach  
24 County as it concerns Bar activities, we erode  
25 a confidence of the public and we bring down

1 PROCEEDINGS

2 ---

3 THE BAILIFF: Please rise. Circuit Court  
4 is in session. Honorable Donald Hafele  
5 presiding.

6 THE COURT: Good morning, everybody.

7 MR. CRITTON: Morning, Judge.

8 MR. KUVIN: Morning, Judge.

9 THE COURT: All right. Much of my evening  
10 last night was taken up by reading this  
11 material and following the conclusion of one  
12 jury trial and the anticipated beginning of  
13 another one after 8:45's this morning. I'm not  
14 in a posture right now to listen to a whole lot  
15 of argument here. I have spent several hours  
16 of my own time reviewing these materials last  
17 night.

18 And I can tell you, I will tell you a  
19 couple of things before hearing any argument if  
20 any is actually needed. The accusations that  
21 are being leveled against both sides, and at  
22 this juncture, primarily Mr. Kuvin, if they are  
23 of any merit, in my view really have their  
24 place in Florida Bar proceedings as opposed to  
25 before this Court.

1 our system of justice. I will not be a party  
2 to that.

3 I don't think at this juncture that I have  
4 any legal grounds to sanction anyone. And in a  
5 careful review of the papers that even if  
6 Mr. Kuvin's conduct is sanctionable, that the  
7 quid pro quo, so to speak, would be to publish  
8 the name of the Plaintiff as an alternative as  
9 a sanction for any such conduct.

10 But I think that again the main focus here  
11 has to be one of respect. Mr. Critton.

12 MR. CRITTON: May it please the Court.  
13 Your Honor, the purpose of the position that I  
14 filed on behalf of my client directed to both  
15 Mr. Kuvin and the alternate motion to identify  
16 was basically to secure my client's -- to try  
17 to preserve my client's right to fundamental  
18 fairness and the right to ultimately obtain a  
19 fair trial here in Palm Beach County.

20 This Court has told us on more than one  
21 occasion that each party, whatever the facts  
22 and circumstances, they are entitled to  
23 fundamental fairness. Both parties are to be  
24 treated with respect and both parties either  
25 before this Court or a jury are entitled to a

1 fair trial free of prejudice and bias from any  
2 poisoning of the jury pool.

3 In this particular instance, the purpose  
4 of the motion and it was directed in large part  
5 to the publishing of the, providing of the  
6 video to Mr. Lambiet of the deposition of, the  
7 very, very, brief, the two-question deposition  
8 of Mr. Epstein which if questioned by the press  
9 and merely saying, gee, there was a deposition,  
10 he walked out it turns out on advice of  
11 counsel, not at Mr. Epstein's request, on  
12 advice of counsel he walked out of a  
13 deposition, that deposition would never be an  
14 admissible document.

15 There is nothing that occurred at that  
16 deposition other than the name and then the  
17 question about, Mr. Epstein, is it true you  
18 have an egg-shaped whatever, that would never  
19 be admissible at that point in particular where  
20 the deposition was terminated.

21 Therefore, the purpose of giving the  
22 deposition to Mr. Lambiet had, had no purpose  
23 other than it was a media play to try to  
24 prejudice, that effectively may well prejudice  
25 my right to, my client's right to a fair trial

1 going to punish all 30 of you.

2 In this instance Mr. Kuvin's response was  
3 in large part directed to other lawyers in  
4 other circumstances completely unrelated to the  
5 B.B. case.

6 And this case, this motion and focus  
7 respectfully to the Court is on B.B., not on  
8 what else has happened in this case. There is,  
9 I have never made nor has anyone in my firm  
10 made any, not one single comment about B.B. in  
11 the press that I can find or that I could  
12 reference.

13 There was an article Sunday in the Post, a  
14 big article about Mr. Epstein. And a number of  
15 comments that were attributed to myself and  
16 were attributed to Mr. Luttier of my firm.

17 I was unaware of the article. I never  
18 commented. I was unaware that the article was  
19 going in, in there. Everything that was in the  
20 article related to documents that were on file  
21 with the Court.

22 And therefore I respectfully suggest to  
23 the Court and, and I would remind the Court --  
24 not remind the Court -- or remind the Court but  
25 in a nice way, is that Mr. Edwards who is here,

1 and that is the issue.

2 And the other issue that I raised with  
3 regard to Mr. Kuvin's seeking media attention,  
4 there is a First Amendment right. I am well  
5 aware of that under the circumstances, so I am,  
6 I am aware of that.

7 I am also aware and I am conscious of how  
8 both this Court and Judge Marra and as well  
9 Linnea Johnson in terms trying to control  
10 discovery ordering these are the parameters, if  
11 you go outside the parameters, this is what I  
12 am going to do. And Judge Johnson gave wide  
13 berth to discovery. In some instances she said  
14 I don't want you do that. She's controlling  
15 that.

16 And in some instances wherein this  
17 instance where we terminated the deposition of  
18 Mr. Epstein, the Court said I don't want you  
19 doing that under the circumstances.

20 And so, the focus here is not on my  
21 conduct or on somebody's conduct. In this case  
22 it's on Mr. Kuvin's conduct. And it's not like  
23 elementary school where the teacher says where  
24 little Johnny is out of line and the teacher  
25 says, look, little Johnny made a mistake; I am

1 and myself were able to agree after the public,  
2 after the publication by Mr. Kuvin of the  
3 Epstein deposition is an issue that came in  
4 front of this Court with regard to a concern  
5 that Mr. Edwards expressed about whether or not  
6 we were going to publish the deposition of L.M.

7 If the Court will recall and what the  
8 Court directed to both Mr. Edwards and I at  
9 that time, and in fact we entered into an  
10 agreement and an order that said, look, neither  
11 the deposition of L.M. nor the deposition of  
12 Mr. Epstein will be used for any purpose, that  
13 is the video deposition. The transcript can be  
14 filed in accordance with that. If you want to  
15 use the video deposition, folks, you come to  
16 me. These are who you can show the video to  
17 under the circumstances. But you entered an  
18 order and I think it was in October. It was  
19 after and as a result of what happened with  
20 regard to Mr. Kuvin.

21 So my, my focus here is solely on what  
22 Mr. Kuvin did solely with regard to the video  
23 deposition, of the two-question video  
24 deposition. It served no purpose. That  
25 deposition would never be admissible; under no

1 circumstances was it filed in court. And its  
2 sole purpose was to both create a media frenzy  
3 and interest.

4 And as this Court is probably aware and as  
5 we referenced in our motion, it ended up on  
6 YouTube under the circumstances and it was a  
7 very popular item.

8 So I know the Court has spent a lot of  
9 time reading the various information that we  
10 provided. And based on what the Court  
11 indicated I am not going to belabor it other  
12 than to say that the conduct is, is that of  
13 Mr. Kuvin, the conduct here is with regard to  
14 him providing a copy of that video deposition  
15 to Mr. Lambiet under the circumstances and then  
16 it ends up so that anyone, any time, any Tom,  
17 Dick, and Harry, can cue onto the, onto  
18 Mr. Lambiet's web site and cue onto the  
19 deposition which has no probative value. Its  
20 only value was sensationalism and media frenzy,  
21 and with regard to someone can check on  
22 Mr. Kuvin and then hit his web site or find out  
23 who he was.

24 Under the circumstance I think under the  
25 Bitterman case whereas an attorney has acted in

1 video has a distinct impact under the  
2 circumstances. The people see it. It fuels  
3 the media frenzy. You will see it on Channel  
4 5, Channel 12, or Channel 25. And it serves no  
5 purpose in this Court or in this case other  
6 than to prejudice one side or the other.

7 And with regard to the identity of B.B., I  
8 will just rely on, under the circumstances she  
9 and her lawyer, she and/or her lawyer have  
10 allowed this case to be tried in the media.  
11 With regard to B.B. I have never, as I  
12 referenced earlier, I have never brought up  
13 B.B. It's not my conduct or my firm's conduct.  
14 It's Mr. Kuvin's conduct under the  
15 circumstances.

16 And I will rest with whatever the Court's  
17 decision is with regards to the identity of  
18 B.B. But there are other things that I could  
19 say but in regard to the time that you have  
20 spent, I will turn it over to Mr. Kuvin.

21 MR. KUVIN: In regard to the Court's prior  
22 statement and with respect of the time Your  
23 Honor has spent reviewing this motion, I don't  
24 want to take up more of the Court's time. I  
25 will address the video so the record is clear.

1 bad faith, and what Mr. Kuvin, separate and  
2 apart from any Bar issue -- in fact I well  
3 recognize that this Court nor any court does  
4 not have the jurisdiction to punish under the  
5 Bar rules. That's left to the Florida Bar as I  
6 understand, or actually the Supreme Court under  
7 the circumstances. I am not asking for that,  
8 but it was bad faith for Mr. Kuvin to have done  
9 it under the Bitterman case.

10 All the Court is saying is I am not going  
11 to tolerate that conduct just as you suggested  
12 to Mr. Edwards. And I know we were agreeable  
13 to not posting any video depositions, find that  
14 the conduct of Mr. Kuvin under the  
15 circumstances was in bad faith, inappropriate,  
16 and grant the sanction of attorney's fees  
17 against Mr. Kuvin that related to the filing  
18 and the arguing of this motion, directing that,  
19 just as you did in the L.M. and E.W. cases,  
20 video depositions not only of the parties but  
21 also of witnesses not be filed in the Court  
22 file, not be shared with, other than the  
23 attorneys, parties, and experts under the  
24 circumstances and not file it with the Court.  
25 This does not involve the transcript, but the

1 In reviewing the material as I am sure you were  
2 aware late last night, specifically reading the  
3 Gentile case from the United States Supreme  
4 Court, what struck with me is reading Justice  
5 Rehnquist, and this is a case involving an  
6 attorney that went to the press. He actually  
7 held a press conference six months before the  
8 trial was actually to take place.

9 And it was the Florida Bar -- I'm sorry,  
10 it was a Nevada Bar opinion where the Nevada  
11 Bar sanctioned that criminal defense lawyer for  
12 holding that press conference.

13 The United States Supreme Court reversed  
14 that opinion. And what's important about that,  
15 important is when I read it last night, Justice  
16 Rehnquist's opinion when it says an attorney's  
17 duties do not begin inside the courtroom door.  
18 He or she cannot ignore the practical  
19 implications of a legal proceeding for the  
20 client. Just as an attorney may recommend a  
21 plea bargain or civil settlement to avoid the  
22 adverse consequences of a possible loss after  
23 trial, so too an attorney may take reasonable  
24 steps to defend a client's reputation and  
25 reduce the adverse consequences of indictment

1 including an attempt to demonstrate in the  
 2 court of public opinion that the client does not  
 3 deserve to be tried.  
 4 How I respond to that --  
 5 THE COURT: Excuse me, just a moment,  
 6 please.  
 7 MR. KUVIN: Yes.  
 8 THE COURT: I understand that. And if an  
 9 offensive was logged against your client by  
 10 Defendant in a manner that would have either  
 11 identified her contrary to court order and/or  
 12 the protection that had already been put in  
 13 place relative to her anonymity, or there would  
 14 have been statements even by way of her  
 15 initials by the defense that would have  
 16 implicated her in some type of untoward conduct  
 17 that would have been publicized, certainly I  
 18 think that in that Gentile case there was the  
 19 attempt by the lawyer to defend the reputation  
 20 of the client.  
 21 What Mr. Critton is commenting on is what  
 22 is perceived to be taking the offensive, not  
 23 defending one's client's reputation but, in  
 24 fact, sharing with someone who is a gossip  
 25 columnist with the Palm Beach Post a video

1 Mr. Epstein's attorneys were the ones that  
 2 took the offensive and not specifically --  
 3 excuse me, specifically attacking all victims.  
 4 While Mr. Critton does a very good job of  
 5 coming in and trying to parse out each  
 6 individual girl, B.B., L.M., E.W., Jane Doe  
 7 No. 1, there are at least 14 current ongoing  
 8 civil proceedings. And according to arrest  
 9 records which were released by the Palm Beach  
 10 Post absent of any attorney just as of  
 11 yesterday, possibly hundreds of victims of  
 12 Mr. Epstein of underage girls, hundreds.  
 13 He and his attorneys have attacked all the  
 14 victims as a group. They have not disseminated  
 15 between whether it's B.B. or E.W.  
 16 Therefore, every girl who comes before  
 17 this court in a civil proceeding is tainted by  
 18 the conduct and statements that are made by  
 19 Mr. Epstein's attorneys, both criminal, civil,  
 20 and the press.  
 21 THE COURT: So, respectfully does that  
 22 justify the publication to Mr. Lambiet of  
 23 Mr. Epstein's aborted deposition by way of  
 24 videotape?  
 25 MR. KUVIN: Respectfully that deposition

1 deposition of the Defendant where nothing was  
 2 said to my knowledge about B.B., nothing was  
 3 said relative to her reputation or standing in  
 4 this community but simply for whatever  
 5 publicity could be gained from the short  
 6 aborted deposition.  
 7 MR. KUVIN: If I can address that.  
 8 THE COURT: Thank you.  
 9 MR. KUVIN: Directly addressing that issue  
 10 statements were made about, to the press by  
 11 Mr. Epstein's criminal lawyers and his civil  
 12 lawyers such as: These women are liars; we  
 13 have established that it was a childish  
 14 performance by the Palm Beach Police  
 15 Department; there were never any victims; he  
 16 never denied girls came to the house but passed  
 17 a polygraph on knowledge of age; that none of  
 18 the girls were minors and their stories were  
 19 not credible; there was never any sex between  
 20 Jeffrey Epstein and underage women according to  
 21 lead attorney Jack Goldberger from Idaho where  
 22 he was vacationing with his family. He said  
 23 Mr. Epstein absolutely insisted anybody who  
 24 came to his house was over the age of 18. The  
 25 law was not violated here.

1 was on file with the Court and there is no  
 2 legal difference, none cited by Mr. Critton,  
 3 none found by myself between a deposition and a  
 4 video. Both are synonymous to each other. The  
 5 deposition was on file with the Court prior to  
 6 any contact and albeit this contact Mr. Lambiet  
 7 made with me directly, not me to the media.  
 8 That was on file.  
 9 THE COURT: The media somehow obtained the  
 10 aborted deposition of --  
 11 MR. KUVIN: The media --  
 12 THE COURT: Let me finish, please.  
 13 MR. KUVIN: Sure, sure.  
 14 THE COURT: The media somehow obtained the  
 15 video deposition of Mr. Epstein absent your  
 16 participation is what you're suggesting to me?  
 17 MR. KUVIN: What I am suggesting is not  
 18 that the -- is that the media contacted me at  
 19 the conclusion of the deposition to find out  
 20 what had happened.  
 21 And that same exact date I filed the  
 22 motion for sanctions with a copy of the  
 23 transcript of the deposition in the Court file.  
 24 And it was public record as of the date of  
 25 deposition according to both the ethics

1 opinions that were cited by me in my response  
2 as well as the Gentile case. When something is  
3 public record, there is no limitation on a  
4 circulation of that information.

5 Had Mr. Epstein himself not terminated  
6 that deposition, none of it would have been  
7 public record because there would have been no  
8 need to file it.

9 So, while I understand the Court's  
10 admonition and I absolutely respect it and I'm  
11 to follow that every day in my practice, this  
12 was not an offensive started by me, but it was  
13 a response to the accusations landed by his  
14 attorneys against all of these women who are  
15 victims of him. But I respect the Court's  
16 opinion and obviously we'll follow that  
17 continually in this case.

18 THE COURT: All right. Well, I have said  
19 most of what I needed to say already here. And  
20 I do not place my imprimatur on the conduct  
21 that was suggested here relative to the  
22 disbursement of the aborted video deposition of  
23 Mr. Epstein to the press by counsel.

24 And I am going to order that in this case  
25 as well as any companion cases involving

1 proceedings, it may very well have an opposite  
2 effect to the ultimate outcome.

3 I think it is best that we do our best  
4 within the confines of the rules and  
5 regulations of the Florida Bar to confine our  
6 comments to those that are permitted and to not  
7 stray beyond that.

8 I am not reluctant, as both of you know,  
9 to issue sanctions if I see conduct that is  
10 untoward or unprofessional or that will work to  
11 erode what I believe are the basic principles  
12 of justice, and that is fundamentally the right  
13 to both parties, each party that comes before  
14 this Court, no matter their standing, no matter  
15 their accusations, to a fair trial. And again,  
16 nothing will deter this Court from that  
17 aspiration.

18 So the motions at this point are denied.  
19 The request for sanctions is denied. The  
20 request in the alternative to identify B.B. is  
21 denied.

22 I want to again remind each side that the  
23 Court only has a finite time among its 1750  
24 cases to spend on each case. And I want you to  
25 utilize that time constructively and consistent

1 matters brought by the Plaintiffs against  
2 Mr. Epstein that absent Court order no  
3 videotape depositions may be disseminated  
4 beyond the lawyers, the parties, and any  
5 experts that are involved in the case.

6 I will leave you with the following: That  
7 while I respect Justice Rehnquist's statements  
8 in the Gentile case and while certain conduct  
9 may be technically permissible, it does not  
10 mean that we lose sight of the basic tenets of  
11 justice that is to confine a trier of fact's  
12 consideration of this case to what is in this  
13 courtroom and what is learned by the trier of  
14 fact within the confines of the courtroom  
15 itself.

16 Most of the time when doing their jobs,  
17 the press takes positions in terms of their  
18 recitation of their stories, meaning that what  
19 you may say, as innocuous as you think it may  
20 be, could be far more detrimental based upon  
21 the totality of the story than you may think  
22 your comments are at first blush.

23 So, while you may think you are helping  
24 your respective clients, when it comes to  
25 speaking to the press during pretrial

1 with my oath to serve this community in the  
2 best possible way I can.

3 So, please, in the future refrain from  
4 filing these types of motions unless they are  
5 of critical importance to the progress of this  
6 case. Anything that needs Florida Bar  
7 attention should be directed to the Florida  
8 Bar.

9 Thank you, Gentlemen, very much for your  
10 courtesy. Thank you, Madam Court Reporter, as  
11 well. I wish everybody a good rest of the  
12 week. I know I will be seeing you again later.

13 MR. KUVIN: Your Honor, point of  
14 clarification.

15 THE COURT: You may proceed with the next  
16 motion. I see Mr. Silber is here and  
17 Mr. Edwards and Mr. Keenan as well.

18 MR. KUVIN: Your Honor --

19 THE COURT: Mr. Kuvin.

20 MR. KUVIN: Yes, sir. Your Honor, you  
21 mentioned not being able to show my client  
22 depositions?

23 THE COURT: No, sir. I said the parties  
24 are able to view the depositions.

25 MR. KUVIN: Okay.

1 MR. CRITTON: Do you want us to use  
 2 that --  
 3 MR. KUVIN: The parties, the parties'  
 4 attorneys and experts, and absent court order,  
 5 no one else.  
 6 MR. CRITTON: May I reduce that to writing  
 7 and then submit it to the Court?  
 8 THE COURT: Yes, sir.  
 9 MR. CRITTON: Thank you.  
 10 (The hearing was concluded.)  
 11  
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1 CERTIFICATE  
 2  
 3 STATE OF FLORIDA  
 4 COUNTY OF PALM BEACH  
 5  
 6  
 7 I, Cynthia Hopkins, Registered Professional  
 8 Reporter and Florida Professional Reporter, State of  
 9 Florida at large, certify that I was authorized to  
 10 and did stenographically report the foregoing  
 11 proceedings and that the transcript is a true and  
 12 complete record of my stenographic notes.  
 13 Dated this 31st day of January, 2010.  
 14  
 15  
 16 *Cynthia J. Hopkins*   
 Cynthia Hopkins, RPR  
 17  
 18 Job #1052  
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