

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

STATE OF FLORIDA)

vs.)

JEFFREY EPSTEIN,)

Defendant.)
_____)

CASE No. 2008CF009381AXX

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
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ON BEHALF OF [REDACTED] THE INTERVENER:

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

2009 JUL - 1 PM 3:30

FILED

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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24 June 25, 2009
25 Palm Beach County Courthouse
West Palm Beach, Florida 33401
Beginning at 1:50 o'clock, p.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 25, 2009
7 beginning at 1:50 o'clock, p.m. with appearances
8 as hereinbefore noted, to wit:

9 THEREUPON:

10 THE COURT: Let me call up the case
11 of the state of Florida versus Jeffrey
12 Epstein. Let me have counsel announce
13 their appearances for the record.

14 MS. SHULLMAN: Deanna Shullman of
15 Thomas, LoCicero & Bralow on behalf of the
16 Palm Beach Post.

17 THE COURT: Ms. Shullman, nice to see
18 you again, good morning.

19 MS. SHULLMAN: You too.

20 MR. GERBER: William J. Berger for
21 [REDACTED] the intervener.

22 MR. EDWARDS: Brad Edwards also on
23 behalf of the [REDACTED].

24 MR. KUVIN: Spencer Kuvin on behalf
25 of [REDACTED], motion intervener's pleading.

1 MR. GOLDBERGER: Good afternoon,
2 Judge, Jack Goldberger and Robert Critton
3 on behalf of Jeffrey Epstein.

4 THE COURT: And I'm guessing that,
5 Mr. Kuvin, if I grant the motion to unseal
6 that which has been sealed, your motion to
7 intervene will be moot.

8 MR. KUVIN: Will be.

9 THE COURT: I thought so. This is
10 what I'm thinking and -- oh, we've got
11 more.

12 MS. BURNS: One more appearance,
13 excuse me, Judge, Barbara Burns on behalf
14 of the state of Florida, the state
15 attorney's office of the 15th Judicial
16 Circuit.

17 THE COURT: All right. Procedurally,
18 I think the way that this came to us is
19 that at the conclusion or at some point
20 during a plea conference between the state
21 of Florida and Mr. Epstein, the state and
22 the defense hand an agreed order to
23 Judge Puccillo.

24 MS. BURNS: Puccillo.

25 THE COURT: And asked her to sign an

1 agreement to seal some portion of some
2 documents, which she signed off on and now
3 it is the intervener's and the Post's
4 motion to unseal those documents; is that
5 kind of procedurally where we are?

6 MR. GOLDBERGER: Procedurally not
7 exactly correct, I don't know if you want
8 me to clarify that.

9 THE COURT: Please do.

10 MR. GOLDBERGER: Your Honor, this
11 started during the course of a plea
12 colloquy in Mr. Epstein's state proceeding
13 before Judge Puccillo, who is a retired
14 senior judge who was filling in for
15 Judge McSorley on that day, who was the
16 judge assigned to this division. It was a
17 plea agreement with the state attorney's
18 office and it is normal and consistent with
19 any plea colloquy Judge Puccillo asked the
20 defense whether there were any other
21 promises or inducements for Mr. Epstein to
22 enter into his plea agreement other than
23 what was contained in the state standard
24 plea agreement that we had. I felt
25 obligated under the circumstances to alert

1 to the Court that there was a confidential
2 agreement between Mr. Epstein's --
3 Mr. Epstein's attorneys and the United
4 States attorney's office for the Southern
5 District of Florida which would have been
6 triggered upon the successful taking of the
7 plea by Judge Puccillo.

8 In other words, if the plea was
9 accepted by Judge Puccillo, there's a
10 confidential agreement between U.S.
11 attorney's office and the defense that
12 would be triggered and they would agree not
13 to take some actions against Mr. Epstein.
14 I advised Judge Puccillo of that, and at
15 that time she said she would like to see
16 the matter sealed in the court file. I
17 said fine, and then we later -- I then
18 filed that document, and the clerk's office
19 notified me and said we need an order
20 sealing this, and we submitted an order to
21 seal the document.

22 THE COURT: All right. Is there
23 anybody here from the U.S. attorney's
24 office? Has anybody notified them, or is
25 there a dog in this fight or do they care?

1 If they're a party to this confidential
2 thing, wouldn't you think that they might
3 be.

4 MR. GOLDBERGER: Your Honor, they
5 have been noticed. They have taken a
6 position in parallel proceedings that this
7 matter should remain confidential, and they
8 have done that in federal court, and I
9 believe that is their position still.

10 MR. EDWARDS: Your Honor, I have been
11 in communication with the U.S. attorney's
12 office, and they are not taking a position
13 on this issue, which is why they're not in
14 court right now.

15 THE COURT: What's going on in
16 federal court?

17 MR. GOLDBERGER: There are a number
18 of civil cases that are pending right now.

19 THE COURT: And they're talking about
20 the same documents that are under seal here
21 in our court?

22 MR. EDWARDS: Yes.

23 MR. GOLDBERGER: Yes, your Honor, and
24 I will address that at the appropriate time
25 what's going on here.

1 THE COURT: All right. So thank you,
2 Mr. Goldberger for getting that
3 straightened out.

4 MR. GERBER: Judge, just to clarify
5 one other point.

6 THE COURT: Sure.

7 MR. GERBER: I think actually there's
8 an additional step because Mr. Goldberger
9 on behalf of Mr. Epstein or Mr. Critton I
10 believe filed motion, and I think that that
11 will tell us who goes first today and who
12 has the burden today.

13 THE COURT: This is -- and I'm
14 thinking outloud that my take on that is
15 that my review of the file shows that the
16 appropriate steps to seal these documents
17 wasn't followed initially. I'm looking at
18 it as it would be whoever's moving to have
19 them sealed, it's their burden to prove the
20 steps that you have to prove to get things
21 sealed by the Court, and so that's -- I
22 hinted last meeting that we all had
23 together but that's where I'd go, so I'd
24 shift the burden over to the federal
25 government and to Mr. Epstein, that's what

1 I'm thinking. Let me ask first go over to
2 the Post, Ms. Shullman, what are your
3 thoughts on that procedure?

4 MS. SHULLMAN: Your Honor, I think
5 that's the correct procedure here. I think
6 Mr. Epstein's motion to make court records
7 confidential tacitly admits what we
8 suspected last time, which was that the
9 initial closure of the documents was not
10 done pursuant to the acceptable procedures.

11 THE COURT: All right. Mr. Berger,
12 Mr. Edwards, that's all right with you?

13 MR. EDWARDS: We agree.

14 MR. GERBER: That's what my point
15 was, yes, your Honor, thank you.

16 THE COURT: Mr. Goldberger, what do
17 you think?

18 MR. GOLDBERGER: That's fine, your
19 Honor, with the -- I'll wait until after
20 the proceeding.

21 THE COURT: All right. You may
22 proceed.

23 MR. GOLDBERGER: Judge, as I said to
24 clarify the record, this matter started
25 during the course of Mr. Epstein's plea

1 colloquy in state court and just so that
2 the record was clear that all inducements
3 for Mr. Epstein's plea was on the record
4 when Judge Puccillo asked me if there had
5 been any promises made to Mr. Epstein, I
6 think properly and ethically we told the
7 Court that there was an agreed --
8 confidential agreement with the federal
9 government that was in place that basically
10 said we will not prosecute Mr. Epstein for
11 federal offenses if the state plea
12 agreement is accepted by the Court and
13 Mr. Epstein's sentence is imposed.

14 The state proceeding was over at the
15 time that I advised Judge Puccillo that, in
16 other words, we had gone through the plea
17 colloquy and I simply was advising her of
18 this other agreement. It was
19 Judge Puccillo who then asked us to
20 approach, and the Court has a copy of that
21 transcript, I believe. It was
22 Judge Puccillo that said I'd like to have
23 that document sealed in the court file, and
24 I acquiesced to that, I said that's fine.

25 So, first, as a preliminary matter,

1 it wasn't like we were coming into court on
2 that day and asking to seal something, so
3 it would have been presumptuous of me to
4 file something to request to have something
5 sealed when it came up during the course of
6 the proceeding, and, in fact, the committee
7 notes on the rule of judicial
8 administration talk about that and say
9 matters come up all the time during the
10 course of hearings and the fact that
11 something is not filed in advance does not
12 necessarily taint the entire process, so we
13 agreed to come forward and file our motion
14 to seal after the fact, because we didn't
15 know this matter would be coming up.

16 But having said that, Judge, this
17 confidential agreement was not part of any
18 state plea agreement, it's not part of the
19 proceedings, it was ancillary to the state
20 proceedings and it had nothing to do with
21 the state proceedings. As an accommodation
22 to Judge Puccillo, we filed it in the court
23 file. Quite frankly, it's unnecessary, it
24 doesn't need to be there, and the simplest
25 approach would be to simply remove it from

1 the court file at this point. We didn't
2 have for it to be there. It's not part of
3 the plea, it's not part of the state
4 resolution of the case, and that would be
5 the simple logical approach to that.

6 If the Court is inclined not do that
7 or if the parties object to that, then I
8 think we move onto some other very, very
9 important issues in this case and for both
10 the intervenors in this case as well as the
11 Palm Beach Post motion for access to this
12 proceeding for really two very, very
13 significant reasons, they are in the wrong
14 place and they're attempting to march up
15 the wrong hill here, your Honor.

16 This matter needs to -- has to be
17 litigated in federal court before
18 Judge Marra who has already heard hearings
19 on this matter. Now, at our last
20 abbreviated hearing two weeks ago, I told
21 you for the first time that there have been
22 two hearings in front of Judge Marra on
23 this very issue, whether this
24 nonprosecution agreement and that's the
25 matter that is sealed in your court file,

1 whether this nonprosecution agreement
2 should be released to the plaintiffs for
3 their use.

4 Judge Marra heard two hearings on
5 this matter and the court has those orders.
6 And in the first hearing Judge Marra very,
7 very, carefully balanced the
8 confidentiality issues of the
9 nonprosecution agreement, the intent of the
10 parties as well of the rules of criminal
11 procedure that I will talk about in a
12 moment, with the plaintiff's right to know
13 what's going on and to have access to this
14 agreement. And Judge Marra crafted an
15 order and in the nature of a protective
16 order and said, plaintiffs, you can have
17 this nonprosecution agreement, you can use
18 it, you can review it, you cannot give it
19 to anyone else other than your clients, and
20 if you want to use it or you want to give
21 it to your clients, you need to tell them
22 about this order that is not to be
23 disclosed to anybody else. And these
24 plaintiffs that are sitting here will tell
25 you that from day one they have had this

1 nonprosecution agreement, they have it for
2 their use, they know every clause that's in
3 that nonprosecution agreement, and I
4 suggest to the Court as to their motions
5 why are we here; they have an agreement
6 already.

7 They went back to Judge Marra
8 sometime thereafter and asked the Court to
9 expand their use of the nonprosecution
10 agreement, and they said, Judge Marra, we
11 have the nonprosecution agreement but we
12 would like to be able to disclose that
13 agreement to other sides, and Judge Marra
14 in another carefully crafted order said,
15 nuh-uh, no, you have not satisfied your
16 burden, you cannot disseminate this to
17 anyone else, and the order that I have
18 entered remains in place, but most
19 significantly he said, you know what, this
20 is without prejudice.

21 If you have some basis, you have some
22 need that you have not briefed, you have
23 not litigated with me yet concerning
24 dissemination of nonprosecution agreement,
25 come back to me and I'll review it for you.

1 And they have every right to do so, and
2 they have not done so, and it is this
3 motion to intervene that they filed in this
4 court is simply an effort to skirt and to
5 avoid and to go behind the order of
6 Judge Marra that dealt with this issue
7 already.

8 And I think just for the purpose of
9 our hearing, we need to have the two orders
10 of Judge Marra entered into the record of
11 this proceeding. I know I gave copies to
12 the Court, but I have additional copies.

13 MR. GOLDBERGER: Your Honor, I
14 believe there is no objection from either
15 of the parties.

16 THE COURT: Thank you so much. Let's
17 go ahead and mark these as Defendant's
18 Exhibits No. 1 and 2 for identification
19 purposes. Anybody object to me taking
20 judicial notice of Judge Marra's order? By
21 hearing no objection, I'll go ahead and
22 take judicial notice of it.

23 MR. GOLDBERGER: So, your Honor,
24 Judge Marra has dealt with this issue
25 squarely, there's a procedure in place and

1 these matters should be litigated in front
2 of the district court judge that has
3 already heard these matters.

4 THE COURT: Well, let's say that may
5 be true as it relates to these individual
6 plaintiffs in the federal litigation, what
7 about the Post's and the press's -- the
8 media's right to take a look at these
9 things?

10 MR. GOLDBERGER: Your Honor, and this
11 is the second reason why not only the
12 plaintiffs but the Post appear to be
13 marching up the wrong hill here. The Palm
14 Beach Post has filed a motion for access to
15 these documents and they certainly do have
16 first amendment rights and no one would
17 dispute that they have first amendment
18 rights to access to public records,
19 however, most significantly in this case is
20 that the nonprosecution agreement which we
21 gave the court permission to review two
22 weeks ago and presumably the Court has had
23 an opportunity to take a look at it, the
24 nonprosecution agreement talks about and
25 relates to a grand jury matter that is

1 absolutely 100 percent protected from
2 disclosure by Federal Rule of Criminal
3 Procedure Six. I have a copy of that rule
4 for the Court.

5 THE COURT: Let me take a look of
6 that, please.

7 MR. GOLDBERGER: Give us one moment,
8 your Honor, we have it here somewhere.

9 MR. KUVIN: Your Honor, just briefly
10 while they're looking on behalf of the
11 plaintiff [REDACTED] I just wanted to point out on
12 my client motion to intervene, we are not
13 party to the federal action. She only has
14 a state court claim. She's not bound by
15 any federal court order, she is not with
16 the federal court on their claim, so as to
17 that issue, my client stands here
18 synonymous with the Post.

19 THE COURT: Thank you for pointing
20 that out to me.

21 MR. GOLDBERGER: We'll have it for
22 you in one moment, your Honor.

23 Your Honor, Federal Rule of Criminal
24 Procedure Six is a rule that deals with
25 grand jury proceedings, and it confers in

1 the federal system secrecy of all grand
2 jury matters and it's pretty clear in this
3 case that the nonprosecution agreement
4 specifically talks about a grand jury
5 investigation of Mr. Epstein, there's
6 specific reference to a grand jury
7 investigation in the nonprosecution
8 agreement.

9 The rule does not prevent us from
10 telling the Court that there was a grand
11 jury investigation of Mr. Epstein, but what
12 it prevents us from doing, what it prevents
13 this Court from doing, I believe, is
14 disclosing the content of the grand jury
15 investigation, and the agreement itself is
16 very specific as to the grand jury
17 investigation of Mr. Epstein.

18 However, all is not lost for the Palm
19 Beach Post and the intervenors, for that
20 matter. The rule has a specific procedure
21 that allows you to go to the district court
22 where the grand jury is convened, in this
23 case it would be in the Southern District
24 of Florida before Judge Marra and that is
25 under Rule 6E, your Honor, I think it's 6E

1 3E actually. It says: In limited
2 circumstances the Court may authorize
3 disclosure of grand jury matters under
4 request made in connection with the
5 judicial proceeding, so -- and the rule
6 goes onto clearly say, that request must be
7 filed in the district where the grand jury
8 is proceeding.

9 So the first -- you know the Palm
10 Beach Post may have first amendment rights
11 to access but those first amendment rights
12 cannot circumvent the federally protected
13 secrecy of grand jury proceedings and
14 that's what the Post is doing by making
15 this request before this Court.

16 This matter has been sealed for
17 almost a year now, 11 months and some days
18 and the Palm Beach Post has not filed
19 anything in this matter until most
20 recently, and their remedy is to go into
21 the federal court and invoke the process of
22 Rule Six and asked Judge Marra to make a
23 limited disclosure of the nonprosecution
24 agreement and the grand jury matters that
25 are contained therein. Who knows whether

1 he will do it, but that's where this battle
2 need to be fought.

3 As a matter of comity, your Honor,
4 this Court should defer to Judge Marra
5 because, A, he has already ruled on the
6 disclosure of the nonpros agreement, but
7 even more importantly, the supremacy clause
8 requires you to defer to the federal laws
9 of criminal procedure that say these
10 matters should be protected and should not
11 be disclosed unless the district court says
12 so.

13 If the Court is going to go on and
14 wants to go to the issues that would be
15 contained if it were not dealing with a
16 grand jury proceeding, obviously there's a
17 test that the Court must then use under the
18 Rules of Judicial Administration and it
19 says matters can be sealed but they should
20 be sealed if there's a compelling
21 government interest or if the sealing is
22 important to the administration of justice.
23 There's a couple other criteria, but the
24 ones obviously that would apply in this
25 case are the compelling government

1 interest, and the importance to the
2 administration of justice.

3 Again, we are dealing with a secret
4 grand jury matter. We cannot circumvent
5 that secrecy by asking the Court to invoke
6 its unsealing power.

7 THE COURT: Thank you.

8 MR. GOLDBERGER: Thank you, your
9 Honor.

10 THE COURT: Let me go over to the
11 other parties and we'll get back to
12 Mr. Goldberger and his client. Post, who
13 wants to go first?

14 MS. SHULLMAN: Mr. Edwards.

15 THE COURT: Mr. Edwards.

16 MR. EDWARDS: Your Honor, inasmuch as
17 Mr. Epstein is relying on Judge Marra's
18 order to support the argument that the
19 nonprosecution agreement needs to remain
20 sealed, I'd like to address that if you are
21 inclined to be persuaded by that argument
22 at all.

23 The orders that have now been moved
24 into evidence are in case No. 80736, and
25 just to put that order in context in

1 actuality, the order says -- specifically
2 puts it back on this Court and confers
3 authority on this Court over this
4 particular document, when in the second
5 page of the February 12th, 2009 order, it's
6 misdated 2009 but it's a 2009 order, and
7 the last two sentences read: If and when
8 petitioners have a specific tangible need
9 to be relieved of the restrictions, they
10 should file an appropriate motion, which we
11 believe we have done in this case, if a
12 specific tangible need arises in the civil
13 cases, which are in circuit court in Palm
14 Beach County, then relief should be sought
15 there and notice to all parties, so to give
16 the Court context for that order, there was
17 a state court plea taken June 30th, 2008,
18 where Mr. Epstein pled guilty to the state
19 court cases as it related to two victims.

20 Now, parallel to that, there was an
21 investigation in federal court where the
22 United States attorney's office and the FBI
23 had more than 30 victims of sex abuse of
24 Mr. Epstein's and they were working with
25 these girls and their cases. Now, several

1 of those girls came to me and said, hey,
2 we're worried that there's a secret deal
3 going on between Epstein and the U.S.
4 attorney's office, so I filed an emergency
5 petition against the U.S. attorney's office
6 asking the federal court to intervene and
7 get in the middle of this and not let this
8 deal go forward without meaningfully
9 conferring with these girls because I was
10 alleging it violated the Crimes Victim's
11 Rights Act; these girls have a right to be
12 heard. That emergency motion was filed
13 July 7th, 2008, and I have that for the
14 Court, and I'd like to enter that into
15 evidence as well.

16 THE COURT: We'll mark that as [REDACTED]
17 Exhibit No. 1.

18 MR. EDWARDS: And an emergency
19 hearing was held four days later in front
20 of Judge Marra, who was randomly assigned
21 to this case at the time the plea was taken
22 and the prosecution agreement was sealed.
23 Judge Marra had nothing to do with the
24 agreement, with Epstein, he didn't know
25 anything about it.

1 So four days later now we're in front
2 of him and the United States attorney's
3 office says for the first time, sorry,
4 girls, you are too late, the deal has
5 already been done as to all of your federal
6 cases and it resulted in the nonprosecution
7 agreement that is attached in the state
8 court case. Judge Marra turned to us and
9 said, what is your remedy.

10 At that point in time I said we don't
11 know because we don't know what protections
12 are inside that agreement, so we want you
13 to unseal it, that's where the motion for
14 protective order came about where he gave
15 us the agreement so we can look at it and
16 determine what remedy, if any, was
17 available. Once we had that agreement
18 under the caveat that we were not able to
19 disseminate to third parties and reviewed
20 it and saw there is very little protection
21 for the girls, we asked to unseal it
22 completely, so that we can talk to third
23 parties, to victim's rights groups and get
24 some insight as to what our possible remedy
25 would be.

1 And so our reason for wanting him to
2 unseal it at that time was we want to be
3 able to talk to other people, and that's
4 where this order from February 12th, 2009,
5 came in, and he denied that motion to
6 unseal it for three reasons.

7 First and foremost, this
8 nonprosecution agreement was not sealed in
9 my Court, you are talking to the wrong
10 judge, you need to go back, so we're
11 getting the back and forth here and it's
12 not in my court, I can't mess with some
13 other judge's order. Obviously, there was
14 a hearing held and that document was sealed
15 for a reason, I'm not privy for those
16 reasons, so I'm not going to override
17 whatever that judge was thinking when they
18 sealed that document.

19 Second, your reason is you just want
20 to talk to other people about them, and if
21 I'm going to override some other judge's
22 order, I need to have a more compelling
23 reason than you just want to talk to people
24 about.

25 Third, if and when a specific need

1 arises in any of the civil cases, which by
2 the time this order was coming about they
3 were stacking up in state and federal court
4 against Mr. Epstein, petition that court,
5 petition the appropriate court, and he
6 implies that appropriate court is this
7 court where it was initially sealed, which
8 we've done in this case.

9 This court has none of the problems
10 that Judge Marra had in that it was sealed
11 in this courtroom. We have noticed
12 Mr. Epstein to be heard at this hearing,
13 which is one of the requirements that
14 Judge Marra placed on us, and a specific
15 need has arisen. It has been sealed for
16 over a year now, correct, Mr. Goldberger is
17 correct, but the specific need is arising
18 because we are in the middle of discovery.
19 And this document is, as Mr. Goldberger
20 said, a great inducement to Mr. Epstein
21 pleading guilty to sex crimes in state
22 court, and to ultimately being labeled a
23 sex offender, and the only document that
24 pertains to my clients, my client as a
25 victim of Mr. Epstein's sex crime, so at

1 the very least, we should be allowed to ask
2 people in deposition and do discovery about
3 how this document came about. There is a
4 need here.

5 THE COURT: I don't quite get -- I
6 don't think it's relevant to what my task
7 is here, but I don't get how it's relevant
8 in the civil cases what the federal
9 government did or didn't do with regard to
10 prosecuting Mr. Epstein. I don't get that,
11 but I don't know that I need to.

12 MR. EDWARDS: The standard for
13 discovery is just reasonably calculated to
14 lead to discovery of admissible evidence
15 and without going in depth we do have
16 intention --

17 MR. GERBER: Your Honor, can I --

18 MR. EDWARDS: And with respect to the
19 grand jury argument, you've seen the
20 document, it's only page five and six that
21 it's even referred to.

22 THE COURT: All right. Let me turn
23 it over to -- does the Post want to speak?

24 MS. SHULLMAN: I do, but I think he
25 wants to go first so whenever.

1 THE COURT: I haven't considered your
2 motion to intervene yet.

3 MR. KUVIN: I don't believe it was an
4 objection. When it was filed, there was no
5 objection by Mr. Goldberger or Mr. Critton.

6 THE COURT: Are you going to advocate
7 by motion to intervene or are you going to
8 be jumping into the merits of the sealing?

9 MR. KUVIN: I'll jump right into the
10 merits, I'm not going to duplicate anything
11 that was just raised or anything that the
12 press is going to raise, I have an
13 individual interest.

14 THE COURT: All right. Go ahead
15 Mr. Kuvin.

16 MR. KUVIN: Very briefly, your Honor.
17 I represent [REDACTED] who has filed only a state
18 court action, she is not under the federal
19 jurisdiction of Judge Marra, she does not
20 subject herself to the federal jurisdiction
21 of Judge Marra, she was never provided an
22 opportunity to brief any issues before
23 Judge Marra with respect to that order that
24 was entered by Judge Marra or either order.
25 In addition, what's also very important is

1 she has never seen this document, so she
2 does not know what is in the contents of
3 the order, so the issue is raised by
4 Mr. Goldberger about the girls are able to
5 see the document and evaluate how they
6 might need to evaluate this document does
7 not apply to my client because she has
8 never seen it and, frankly, without
9 subjecting herself voluntarily to the
10 jurisdiction of Judge Marra, which she
11 chooses not to do, then she cannot get this
12 document, otherwise she would have to go to
13 federal court, submit herself to the
14 jurisdiction of the federal court to then
15 see a state court document, which does not
16 make any sense because if it is a state
17 court document in state court, as
18 previously stated under Judge Marra's
19 order, it is within your purview and your
20 jurisdiction to rule on a state court
21 document.

22 Finally, with respect to why the
23 document may be relevant, the contents of
24 that document speak to the issues of
25 whether or not Mr. Epstein can or cannot

1 assert his fifth amendment right against
2 self incrimination, and we believe on a
3 good faith believe that on the contents of
4 that document speak to the issues of
5 whether or not he can or cannot deny the
6 claims that have been brought against him
7 both in state and federal court. In other
8 words, whether or not he must, in fact,
9 admit that he molested these 14 year old
10 girls, so, therefore, the content of that
11 document is paramount as to the issues in
12 the civil proceedings that are currently
13 pending in state court which is why we
14 would like that document.

15 THE COURT: Okay. Thank you. Thank
16 you so very much. Ms. Shullman from the
17 Post.

18 MS. SHULLMAN: Thank you, your Honor.
19 I feel a little bit like I have stepped
20 into the twilight zone here, so I'd like to
21 address a couple of the things we've
22 addressed and get us to what we are really
23 here to do today.

24 THE COURT: I don't know if you are
25 referring specifically to the courtroom or

1 the convoluted situation that brings us to
2 the courtroom.

3 MS. SHULLMAN: Just this whole
4 federal state situation. There is no hill
5 for the public and the press to march up in
6 Judge Marra's court as Mr. Edwards pointed
7 out, Judge Marra has specifically held the
8 agreement was not filed in this case under
9 seal or otherwise, so were I to march into
10 Judge Marra's courtroom and do my whole
11 public access spiel, he would say take it
12 to you, your Honor, because it's not a
13 record in my court. It is a record here,
14 and in the state court as we talked about
15 the last time, we were here, there's a
16 presumption of openness. The burden is on
17 Mr. Epstein to overcome that presumption.
18 While he filed a very brief memorandum
19 after our last hearing, which identified
20 for interest, he has by no means met the
21 test of either establishing those interest
22 or establishing the remainder of that test
23 which would be that closures no broader
24 than necessary ineffective no other
25 reasonable alternatives, so if I could, I'd

1 like to sort of focus us back to the
2 inquiry we're here to make today in this
3 court, and that is whether your Honor is
4 going to provide public access to two
5 records that are, I think, indisputably in
6 your Honor's court file in this court's
7 file.

8 It's a plea agreement and an
9 addendum; those are historically and
10 typically open records.

11 Mr. Goldberger mentioned that the
12 plea agreement was sort of incidentally
13 filed in this court file, and that it was
14 sort of an afterthought that happened. He
15 never came into court intending that it
16 even be part of the court file, but
17 Judge Pucillo specifically said, this is a
18 significant inducement to accepting the
19 plea in my court. This agreement that you
20 have with federal prosecutors is
21 significantly the reason why you're
22 entering this plea before me. And she took
23 those records into the court file
24 presumably because they are significant to
25 this litigation. Even if there was an

1 incidental filing, which cannot possibly be
2 the case here, there is no mechanism in
3 Florida law to call a Mulligan and to pull
4 it out of the court file. As you know, the
5 Floridians have a constitutional right of
6 access, there's no mechanism in that law to
7 just say, oopsy, let's take it out of the
8 file, so they have to meet their burden and
9 they have to show under Rule 2.420 that one
10 of those interests is satisfied. They have
11 identified four here. I have not heard
12 them discuss them at any great length. But
13 I will go through them quickly.

14 The imminent threat to the fair,
15 impartial orderly administration of
16 justice, or to protect a compelling
17 government interest. As your Honor is
18 aware, the federal government is not here
19 today. I have spoken with the state
20 attorney's office who has indicated that
21 their only interest is in protecting to the
22 extent necessary because I've not seen
23 these documents the identity of the victims
24 of these crimes.

25 The Post in its motion to intervene

1 has already set forth that we have no
2 objection to redacting the victim's names
3 if, in fact, that is required because we
4 haven't seen the agreement. To avoid
5 substantial injury to innocent third
6 parties, again, absolutely no showing on
7 that test. I have no burden at this point,
8 but I will simply state that the law in
9 Florida is clear that Mr. Epstein doesn't
10 have standing to assert that interest.

11 And, finally, something else I heard
12 nothing about to avoid substantial injury
13 to a party which, I guess, presumably would
14 be Mr. Epstein by disclosure of matters
15 protected by a privacy right not generally
16 inherent in this specific type of
17 proceedings. Again, I have not heard any
18 attempt to meet the burden on that issue,
19 however, Florida law is equally clear that
20 participants in crimes lose their privacy
21 interest in the matters and facts and
22 circumstances of the commission of those
23 crimes, so Mr. Epstein surely cannot
24 establish that there is a separate privacy
25 interest not inherent in a criminal

1 prosecution regarding the molestation of
2 young girls.

3 The circumstances under which closure
4 is allowed in Florida are exceedingly
5 narrow. We first -- and before we do
6 anything else -- have to find that one of
7 those interests is met here, that it exists
8 and that the movant has met its burden in
9 demonstrating that it's significant enough
10 to require the court to consider closure.
11 That's not the end of inquiry. And, of
12 course, I have not yet heard anything else
13 about that second half of the test which
14 talks about the idea that closure is no
15 broader than necessary to protect that
16 interest and that it would be effective and
17 that there are no other alternatives.

18 In speaking of the federal litigation
19 there are instances when both Mr. Epstein's
20 lawyers and the federal prosecutors have
21 placed portions of the agreement into the
22 public court file. There are -- thus
23 attempts to seal those records in the
24 federal litigation have been unsuccessful,
25 so part of this agreement the cat is

1 already out of the bag. But there is also
2 an enormous public interest in what's going
3 on here, apart from the idea that this man
4 is accused of having many, many victims who
5 were all young children which, of course,
6 in itself creates a lot of public concern,
7 the chief of police at the time sent a
8 letter to the state prosecutors and said,
9 what are you guys doing, how are you
10 handling this, this is highly unusual; I
11 don't like what I'm seeing here. And even
12 went so far as to say, state attorney's
13 office, should you all step away from this
14 case.

15 So we have public interest from the
16 perspective of the police chief questioning
17 the state attorney's office about whether
18 it's doing its job. We have public
19 interest that's spurred by the idea that
20 some of the victims in the federal
21 prosecution -- in the federal court claimed
22 they weren't aware of it, we just heard
23 Mr. Edwards talk about the fact that his
24 clients weren't aware of the agreement
25 unless it all went down, so we have a

1 significant public interest about how
2 everybody in this litigation is doing their
3 job. There is nothing more fundamentally
4 important than the ability of the public
5 and the press to observe how its
6 government, all branches of its government,
7 do its job.

8 There are multiple, as Mr. Edwards
9 also mentioned, multiple civil lawsuits
10 that have spurned as a result of
11 Mr. Epstein's conduct, and, again, the
12 public has an interest in what's going on
13 in civil litigation matters.

14 In short, this matter involves a
15 major public interest from a lot of
16 different levels. There is no basis for
17 closure that has been asserted here. It's
18 a heavy burden to meet. We start with the
19 idea that openness is the right thing to do
20 but there is essentially no purpose served
21 at this point by keeping these agreements
22 sealed in this case.

23 Unless your Honor has any questions,
24 I think that's it.

25 THE COURT: Okay. Thank you so very

1 much. Ms. Burns, on behalf of the state of
2 Florida, anything you'd like to add or
3 advocate?

4 MS. BURNS: If I may, your Honor.

5 THE COURT: Sure.

6 MS. BURNS: Good afternoon, your
7 Honor.

8 THE COURT: Good afternoon.

9 MS. BURNS: Your Honor, the State is
10 not here to take a position on whether or
11 not this court should seal -- continue to
12 seal the records or unseal the records. We
13 are here merely to uphold the state laws
14 which require all of us as members of the
15 judicial system to protect the rights of
16 the confidentiality of the victims. I do
17 see two issues here, your Honor.

18 One is if you decide to unseal the
19 records based upon the arguments that have
20 been presented to you, then the State would
21 ask that the court first do an incamera
22 viewing, not just merely open up that
23 portion of the file for viewing by all
24 interested parties, first, that the Court
25 do an incamera viewing to make two

1 evaluations.

2 Number one, does the document, in
3 fact, have a relationship to the criminal
4 case in the state matter. And, number two,
5 evaluate the right of public access versus
6 the victim's right to confidentiality. If
7 this Court does decide to unseal those
8 records, then the State would ask that this
9 Court before making the document public
10 access, then make certain that in place is
11 that the victim's identities are amended to
12 initials if their names are used.

13 The State does have a concern
14 regarding the argument of the Federal Rule
15 Six in that is this Court bound by a
16 federal rule which perhaps has been made
17 unenforcible by virtue of making it a part
18 of the state file, so I think the Court
19 also would need to address that issue
20 before making its ruling.

21 THE COURT: All right, great. Thank
22 you so much.

23 MS. BURNS: Thank you, Judge.

24 THE COURT: One last chance for the
25 federal government, they're not here and

1 I'll let rebuttal of any other
2 presentation, Mr. Goldberger, or,
3 Mr. Critton, you'd like to make.

4 MR. GOLDBERGER: Thank you, your
5 Honor. As to the last argument made by
6 Ms. Burns as to the applicability of
7 Federal Rule 6 of the Rules of Federal
8 Criminal Procedure it's something that we
9 learned in the law school that the
10 supremacy clause controls and to the extent
11 there's a conflict between the federal
12 doctrine and the state doctrine, the
13 supremacy clause requires the federal rule
14 of law to apply and to control. And
15 certainly in this case you cannot use a
16 state procedure to circumvent a federal
17 rule of criminal procedure that confers
18 secrecy to a grand jury proceeding.

19 And the Palm Beach Post response to
20 the argument never made note of the grand
21 jury rule, they simply avoided that issue
22 and that in our mind is equally important
23 as the fact in the interest of comity this
24 Court should defer to the rulings of
25 Judge Marra already.

1 As to Mr. Kuvin's argument that he
2 has a client that is in state court and is
3 not in federal court and therefore he
4 doesn't have a remedy in federal court.
5 With all due respect to Mr. Kuvin, that's
6 similarly wrong. Judge Marra's order
7 specifically dealt with a class of
8 individuals who were identified as victims
9 of Mr. Epstein's conduct, and Judge Marra's
10 order says that anyone who's been
11 identified by the United States attorney's
12 office as a victim has right to the
13 nonprosecution agreement under the same
14 rules.

15 Just so the Court understands, I know
16 we are talking like the Court understands
17 everything about this case. There was a
18 list of victims that was created at the
19 time that the nonprosecution agreement was
20 entered into and Mr. Kuvin's client is on
21 that list. That list was created by the
22 U.S. attorney's office. He has the same
23 rights to the nonprosecution agreement as
24 if he filed this case in federal court and
25 he knows that we've told him that he has

1 that access.

2 As to the fact that the
3 nonprosecution agreement is presumably not
4 filed in the federal case in our last
5 hearing in front of Judge Marra on June 5th
6 -- I'm sorry, June 12th, Mr. Edwards
7 advised Judge Marra that he had, in fact,
8 filed a nonprosecution agreement to no
9 one's surprise under seal in the federal
10 file, so the nonprosecution agreement
11 according to Mr. Edwards' declaration at
12 that hearing is contained in the federal
13 court system.

14 For all of those reasons, your Honor,
15 and the reasons that I previously indicated
16 to the Court, we would ask the Court to
17 defer to the federal court in this matter.

18 THE COURT: Okay. Thank you very
19 much. Here is what I'm planning on doing,
20 so you know where I'm going on this. I'll
21 make an oral announcement and I'll follow
22 it up with a written order so that you all
23 can have something to take to wherever you
24 want to take it.

25 I find that the appropriate procedure

1 to seal or close these documents has not
2 been met, so I'll deny the motion to seal
3 the documents. I'll grant the motion to
4 unseal them. I will take a look at the
5 documents. I will redact out of them
6 the -- what I'll do is, I'll leave the
7 originals intact sealed in the court file
8 to protect the names of any underage
9 victims.

10 I will make copies of those. I'll
11 redact out the names leaving -- expose the
12 initials of any of the individuals. I'll
13 get that done -- I'll get my written order
14 out granting and denying the respective
15 motions hopefully by the end of today. If
16 not today, tomorrow. I plan on releasing
17 the redacted versions probably Monday, so
18 that those will be available for public
19 consumption on Monday.

20 MR. GOLDBERGER: Your Honor, thank
21 you. Thank you for the oral pronouncement.
22 Your Honor, based on the Court's ruling, we
23 do have a motion to stay disclosure of the
24 nonprosecution agreement. The rules of
25 appellate procedure require us to file that

1 before, your Honor.

2 Your Honor, we do intend to take
3 certiorari on this to the Fourth District
4 Court.

5 THE COURT: That's why I figure
6 between the written rule and the disclosure
7 give you a chance to catch your breath and
8 do that. I guess you might want that. Is
9 Monday 5 p.m. enough time for you to get
10 over to the DCA?

11 MR. GOLDBERGER: Actually, your
12 Honor, the Rule of Appellate Procedure
13 maintains jurisdiction with you on this
14 matter to entertain the motion to stay.

15 THE COURT: So I need to handle the
16 motion to stay?

17 MR. GOLDBERGER: Correct, your Honor.

18 THE COURT: Do you want to argue that
19 now? Do you want to take a look at that,
20 catch your breath, come back and see me
21 Monday sometime; what's your pleasure?

22 MR. GOLDBERGER: We're ready to do it
23 now, your Honor. We're ready to do it now.

24 THE COURT: All right. Interveners,
25 your thoughts.

1 MR. KUVIN: Matter of procedure
2 point, I just want to make sure that the
3 motion to intervene is, in fact, granted.

4 THE COURT: You're [REDACTED] motion to
5 intervene is granted. Do you have a
6 written order for me to sign off on there?

7 MR. KUVIN: I can submit that.

8 THE COURT: Why don't you catch your
9 breath and come back tomorrow and I'll hear
10 argument. It will give me a chance to read
11 the motion, check out the rules, take a
12 look, got to get myself gassed up. Anybody
13 want to drop anything off for me to read
14 before the hearing, please do that. Why
15 don't we do that tomorrow morning, and why
16 don't we reconvene here tomorrow at 1:30 on
17 the motion to stay.

18 MR. GOLDBERGER: That's fine.

19 THE COURT: How does your schedule
20 look?

21 MR. GERBER: Your Honor, is it
22 possible to have it a little later, perhaps
23 an hour later tomorrow?

24 THE COURT: 2:30.

25 MR. GERBER: If possible.

1 THE COURT: How about a little later
2 than that still, let me take a look at our
3 official calendaring system here.

4 MR. CRITTON: Judge Colbath, I'm gone
5 tomorrow, I'm going to Gainesville at one
6 or 12:30-ish. I told my wife I would be
7 home at one. My daughter's birthday, 21,
8 she's having a party, I plan to be there.
9 Can we do it tomorrow morning any time, it
10 would be great.

11 THE COURT: Tomorrow morning is ugly.
12 This isn't going to take long.

13 MS. BURNS: This is a five-minute
14 motion.

15 THE COURT: Why don't we do this,
16 meet at 8:15?

17 MS. SHULLMAN: Your Honor, I'm not
18 going to be able to get my kids to school
19 if I have to be here at 8:15. My husband
20 is in California right now.

21 MR. GOLDBERGER: I don't mean to jump
22 in. I wonder if we can do some of this
23 telephonically.

24 MS. SHULLMAN: Yes, I can appear by
25 phone or I can have one of my partners.

1 THE COURT: In the morning what would
2 be a good start time for you?

3 MS. SHULLMAN: Nine would be better.
4 I can't drop them off before eight.

5 THE COURT: It's going to be brief
6 argument, let's do it 9:00 tomorrow
7 morning; 9:00 work for you?

8 MR. CRITTON: Yes, sir. Thank you.

9 MR. GOLDBERGER: Just very briefly,
10 the Court is going to look at the
11 nonprosecution agreement and do some
12 redacting, I believe. I just need to
13 advise the court in addition to Mr. Epstein
14 and perhaps victims mention the
15 nonprosecution agreement, there are third
16 parties who the Court needs to look about
17 redacting their names also, and that's
18 contained in the nonprosecution agreement.

19 In other words, there are other
20 people beside Mr. Epstein and Mr. Victims
21 whose names are mentioned in the
22 nonprosecution agreement, and I would ask
23 the Court to look at those names also for
24 the purpose of redacting.

25 THE COURT: I'll like a look.

1 MR. EDWARDS: Your Honor, those are
2 not names of victims, those are
3 co-conspirators as listed in the agreement
4 and we would object to any redaction of
5 those names. I don't think there's any
6 standing to ask for that.

7 THE COURT: I'll take a look. All
8 right. See you all tomorrow morning at
9 nine. If you want to send anything to me
10 later this afternoon or tomorrow morning
11 before we take the bench, I'm happy to
12 receive it. Have a good afternoon.

13 (Proceedings 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 48,
inclusive, represent a true and accurate
transcription of my steno notes taken at said
proceedings.

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

Susan S. Wiggins

SUSAN S. WIGGINS, R.P.R.